July 14, 2009

The Honorable Mark J. Howdyshell
Morgan County Prosecuting Attorney
19 E. Main Street
McConnelsville, Ohio 43756

SYLLABUS: 2009-027

A board of county commissioners has the authority under R.C. 955.20 to order payment from the dog and kennel fund for the insurance premiums and fuel associated with the operation of a vehicle that is owned by the county humane society to the extent that the vehicle is used by the county dog warden to perform the duties of her office, or by the humane society as part of its operation of an animal shelter on behalf of the county as set forth in R.C. 955.15.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

July 14, 2009

OPINION NO. 2009-027

The Honorable Mark J. Howdyshell
Morgan County Prosecuting Attorney
19 E. Main Street
McConnelsville, Ohio 43756

Dear Prosecutor Howdyshell:

You have asked whether a board of county commissioners has the authority to order the payment of expenses associated with the operation of a motor vehicle that is owned by the county humane society but was used by the county dog warden. The Morgan County Humane Society (humane society) owns a truck that it provided to the county dog warden for use in performing the duties of her office. In exchange for the dog warden's use of the vehicle, the Morgan County Board of Commissioners (board of commissioners) enacted a resolution to provide insurance and fuel for the truck, the expenses to be paid from the dog and kennel fund. *See* note 2, *infra*. The county auditor has questioned whether these expenditures may lawfully be paid by the county.

A board of county commissioners is required to "appoint or employ a county dog warden and deputies in such number, for such periods of time, and at such compensation as the board considers necessary." R.C. 955.12.[1] Among her other duties, a dog warden is required to "patrol" the county and "seize and impound on sight all dogs found running at large and all dogs more than three months of age found not wearing a valid registration tag." *Id.* The dog warden is also required to seize dogs that are being treated inhumanely. *Id.* The board of county commissioners has a concomitant duty to appropriate funds "for the purpose of defraying the

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[1] A dog warden and deputy dog wardens may be employees of the county or the board of county commissioners may appoint officers employed by the county humane society to act as dog warden and deputy dog wardens if the humane society "owns or controls a suitable place for keeping and destroying dogs." R.C. 955.15. *See also* R.C. 955.12. You have stated that, in Morgan County, the dog warden is a county employee.

necessary expenses of registering, seizing, impounding, and destroying dogs." R.C. 955.20.[2] *See also* note 5, *infra.*

R.C. 955.20 grants a board of county commissioners clear authority to provide a vehicle for the use of the county dog warden. *See* 1952 Op. Att'y Gen. No. 1321, p. 263; 1928 Op. Att'y Gen. No. 1553, vol. I, p. 63. Indeed, R.C. 955.27 characterizes a vehicle as a necessary expense "relating to the registration, seizing, impounding, and destroying of dogs."[3] A dog warden's

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[2] R.C. 955.20 reads in pertinent part:

> The registration fees provided for in sections 955.01 to 955.14 of the Revised Code constitute a special fund known as "the dog and kennel fund." The fees shall be deposited by the county auditor in the county treasury daily as collected and shall be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets, and other equipment, for the purpose of paying the compensation of county dog wardens, deputies, poundkeepers, and other employees necessary to carry out and enforce sections 955.01 to 955.261 of the Revised Code, and for the payment of animal claims as provided in sections 955.29 to 955.38 of the Revised Code, and in accordance with section 955.27 of the Revised Code. The board of county commissioners, by resolution, *shall appropriate sufficient funds out of the dog and kennel fund*, not more than fifteen per cent of which shall be expended by the auditor for registration tags, blanks, records, and clerk hire, *for the purpose of defraying the necessary expenses of registering, seizing, impounding, and destroying dogs* in accordance with sections 955.01 to 955.27 of the Revised Code, and for the purpose of covering any additional expenses incurred by the county auditor as authorized by division (F)(3) of section 955.14 of the Revised Code.
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> If the funds so appropriated in any calendar year are found by the board to be insufficient to defray the necessary cost and expense of the county dog warden in enforcing sections 955.01 to 955.27 of the Revised Code, the board, by resolution so provided, after setting aside a sum equal to the total amount of animal claims filed in that calendar year, or an amount equal to the total amount of animal claims paid or allowed the preceding year, whichever amount is larger, *may appropriate further funds for the use and purpose of the county dog warden in administering those sections*.
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> (Emphasis added.)

[3] R.C. 955.27 reads:

> After paying *all necessary expenses of administering the sections of the Revised Code relating to the registration, seizing, impounding, and destroying of dogs, including* the purchase, construction, and repair of *vehicles* and facilities

duty to "patrol" the county, as well as to seize and impound dogs, obviously requires not only the use of a vehicle, but a vehicle that is specially designed or outfitted for the safe and humane transportation of animals. In this instance, the humane society owns such a specialized vehicle and made it available to the county dog warden to use in the performance of her official duties. The county's payments for insurance premiums and gasoline in consideration for the dog warden's use of a vehicle appropriate to her office's needs would help defray the necessary expenses of the dog warden in administering and enforcing R.C. Chapter 955, and thus may properly be made from the dog and kennel fund.

If the vehicle was used not only by the dog warden, but also by the humane society to carry out its own functions unrelated to the statutory duties of the dog warden, however, the board of commissioners would be required to determine the county's use of the vehicle in relation to that of the humane society's in order to allocate the portion of expenses which the county may properly pay.[4] The board of commissioners, in consultation with the humane society, may develop, within the reasonable exercise of its discretion, a method for allocating these expenses between the county and humane society, based on the parties' proportionate use of the vehicle. *See generally* 2004 Op. Att'y Gen. No. 2004-036.

You have explained that, until recently, the board of commissioners and humane society in Morgan County operated under a contract where the county leased a building and the land on which it is located to the humane society, and the humane society used the premises to operate an

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> *necessary for the proper administration of such sections*, making compensation for injuries to livestock inflicted by dogs, and after paying all animal claims, the board of county commissioners, at the December session, if there remains more than two thousand dollars in the dog and kennel fund for that year in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized by law, and having one or more agents appointed pursuant to law, or any other society organized under Chapter 1717. of the Revised Code, that owns or controls a suitable dog kennel or a place for the keeping and destroying of dogs that has one or more agents appointed and employed pursuant to law, may pay to the treasurer of the society, upon warrant of the county auditor, all such excess as the board deems necessary for the uses and purposes of the society. (Emphasis added.)

[4] For opinions explaining the distinction between the duties of the county dog warden and a county humane society, and the limitations on a dog warden's authority to delegate his duties to the humane society, *see* 1990 Op. Att'y Gen. No. 90-107; 1954 Op. Att'y Gen. No. 4660, p. 683; 1938 Op. Att'y Gen. No. 2614, vol. II, p. 1234. *See also* R.C. Chapter 1717 (creation and powers of a humane society); 1986 Op. Att'y Gen. No. 86-055.

animal shelter and accept for care dogs seized by the dog warden as authorized by R.C. 955.15. [5] Although the contract is no longer in effect, the expenses about which you ask were incurred during the term of the contract. If the humane society used the vehicle as part of its responsibility to operate the animal shelter and accept dogs from the dog warden on behalf of the county under R.C. 955.15, the board of commissioners may include the expenses associated with that use, as well as the dog warden's use, in determining the county's proportionate share of the vehicle's expenses.[6] The county need only exclude those expenses associated with the humane society's use of the vehicle that was unrelated to the county's administration and enforcement of R.C. Chapter 955. *See* note 4, *supra*.

In conclusion, it is my opinion, and you are hereby advised that a board of county commissioners has the authority under R.C. 955.20 to order payment from the dog and kennel fund for the insurance premiums and fuel associated with the operation of a vehicle that is owned by the county humane society to the extent that the vehicle is used by the county dog warden to perform the duties of her office, or by the humane society as part of its operation of an animal shelter on behalf of the county as set forth in R.C. 955.15.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General

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[5] Under R.C. 955.15, a board of county commissioners is required to "provide a suitable place for impounding dogs," but "need not furnish a dog pound" if the county has a humane society with one or more agents and maintains "an animal shelter suitable for a dog pound and devices for humanely destroying dogs." In that instance, "the county dog warden shall deliver all dogs seized by him and his deputies to such society at its animal shelter." *Id.* If a county uses the animal shelter of a county humane society, the board of county commissioners "shall provide for the payment of reasonable compensation to such society for its services so performed out of the dog and kennel fund." *Id.*

[6] We reach this conclusion as a matter of statutory interpretation. The Attorney General cannot, through means of a formal opinion, construe a contract or determine the respective rights and responsibilities of the parties thereto. *See* 2005 Op. Att'y Gen. No. 2005-033 at 2-347; 1983 Op. Att'y Gen. No. 83-087 at 2-342.