April 15, 1994

OPINION NO. 94-018

The Honorable Michael G. Spahr
Washington County Prosecuting Attorney
205 Putnam Street
Marietta, Ohio 45750

Dear Prosecutor Spahr:

You have requested an opinion concerning the operation of a pet cemetery within your county. You describe the circumstances in that regard as follows:

> Our county has a humane society known as the Humane Society of the Ohio Valley (hereinafter HSOV). Prior to 1984, it operated a facility on land which it owned. It permitted its land to be used as a pet cemetery. In 1984, it leased approximately one and one-half acres from the Washington County Commissioners on which to build a new facility. No mention was made in the lease of using the land as a pet cemetery. However, in late 1985, the County Commissioners apparently gave HSOV verbal permission to use a portion of the leased premises as a pet cemetery. Since that time, approximately 132 dogs and cats have been buried there. Neither the County nor HSOV has complied with the provision of Chapter 961 which was effective August 29, 1986.

Your request thus presents the following questions:

1. May a board of county commissioners operate a pet cemetery on county-owned property?

2. Assuming the board of county commissioners would make the declaration of land use restriction required of the owner of land used or to be used as a pet cemetery by R.C. 961.02, may a county humane society operate a pet cemetery?

3. Since the county humane society has constructed a crematorium for disposing of the remains of dogs which have been lawfully destroyed, may the society permit the public to make use of the crematorium as an alternative to burying the pet's remains in a pet cemetery?

I. Authority of County to Control Animals

Your first question concerns the authority of the board of county commissioners to operate a pet cemetery. You have stated that the pet cemetery would operate as a place where members of the public could bring their deceased pets for burial. It is well settled that a board of county commissioners, as a creature of statute, possesses only those powers that are expressly granted by statute or necessarily implied therefrom. *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Thus, whether the board of county commissioners may operate a pet cemetery depends upon whether it has been granted that power by the General Assembly.

A. R.C. Chapter 955

The authority of the county commissioners with respect to domestic animals is set forth in R.C. Chapter 955, which establishes a scheme for the registration and control of dogs within each county. Although the board of county commissioners has incidental responsibilities under this chapter for animals other than dogs, *see generally* R.C. 955.29-.38 (payment of claims for livestock killed by dogs), its primary responsibility is for the registration and control of dogs. For example, pursuant to R.C. 955.12, the board of county commissioners must appoint or employ a county dog warden and necessary deputies, whose duties include seizing and impounding dogs. Further duties concerning the control of dogs are imposed upon the board by R.C. 955.15, which requires the county commissioners, except in certain circumstances, to "provide nets and other suitable devices for the taking of *dogs* in a humane manner, provide a suitable place for impounding dogs, make proper provision for feeding and caring for the same, and *provide humane devices and methods for destroying dogs*" (emphasis added). *See generally* R.C. 955.20 (county dog and kennel fund).

It is apparent from an examination of R.C. Chapter 955 that the General Assembly has imposed upon counties certain responsibilities with respect to the registration and control of dogs. The General Assembly has not, however, imposed upon counties similar powers or duties with regard to the registration or control of cats or other domestic animals. *See generally* 1981 Op. Att'y Gen. No. 81-037 (syllabus, paragraph three) (stating in part: "A *county-operated* dog pound may accept licensed dogs directly from their owners for housing, sale, or disposition and may charge the owners a fee for such service, but may not also accept cats" (emphasis added)).

B. Authority of County to Operate Pet Cemetery

You specifically ask whether the county may operate a pet cemetery that would be made available to members of the public for the burial of deceased pets. The only statute that may relate to the power of a county to operate a pet cemetery is R.C. 955.15. The portion of R.C. 955.15 requiring the county to "provide humane devices and methods for destroying dogs" may arguably include the authority to provide for the suitable burial of the remains of the dogs so destroyed. The proposed use of the pet cemetery as described in your request, however, would not be limited to the burial of the remains of those dogs that the county has lawfully destroyed. Rather, the pet cemetery would be made available to the public generally for the burial of any deceased pets. Operation of such a pet cemetery thus appears to exceed the county's authority under R.C. 955.15. Therefore, in

answer to your first question, the board of county commissioners is without authority to operate a pet cemetery that would be available to the public for the burial of deceased pets.

II. County Humane Societies

Your second question asks whether a county humane society[1] may, on property leased from the county, operate a pet cemetery that would be made available to the general public for burial of deceased pets. R.C. 1717.05 provides for the establishment of county humane societies, in part, as follows: "A society for the prevention of acts of cruelty to animals may be organized in any county by the association of not less than seven persons." As further provided in R.C. 1717.05, once the record of the proceedings for the election of the society's officers has been filed with the Secretary of State, "the board of directors and the associates, and their successors, shall have the powers, privileges, and immunities incident to incorporated companies." Specifically concerning the government of county humane societies, R.C.1717.05 states in part: "Such society may ... make such rules, regulations, and bylaws, as are deemed expedient by its members for its own government and the proper management of its affairs." The objects of such humane societies, as stated in R.C. 1717.02, "shall be the inculcation of humane principles and the enforcement of laws for the prevention of cruelty, especially to children and animals."

Examination of R.C. Chapter 1717 reveals that the General Assembly has legislated concerning county humane societies in a very general way. *See, e.g.,* R.C. 1717.02 (declaring the objects of county humane societies); R.C. 1717.05 (establishment of the board of directors); R.C. 1717.06.-09 (employment of county humane society agents and their assistance by other police officers); R.C. 1717.14 (authority of county humane society agent, in limited circumstances, to summarily seize a child for the child's protection). Although there is no express grant of authority within R.C. Chapter 1717 allowing county humane societies to perform specific activities, the General Assembly has recognized elsewhere that county humane societies regularly perform certain functions. For example, nowhere within R.C. Chapter 1717 are county humane societies expressly empowered to operate animal shelters or devices for the humane destruction of animals. R.C. 955.15, however, relieves the county of its duty under that statute to provide a dog pound if there exists within the county a humane society "having one or more agents and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs."

It appears, therefore, that rather than prescribing the specific means by which a county humane society may carry out its statutory objectives, the General Assembly has left those decisions to the discretion of the humane society, limited, of course, by its statutorily defined objectives. *See Meeks, Boren, & Miller, Co. v. Cleveland Humane Society*, 12 Ohio N.P. (n.s.) 625 (C.P. Cuyahoga

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[1] It is beyond the scope of an opinion of the Attorney General to determine whether the Humane Society of the Ohio Valley (HSOV) has been properly established, and is currently operating, as a county humane society under R.C. Chapter 1717. This opinion will, therefore, address the powers of county humane societies generally, rather than the specific powers of the HSOV.

County 1912). The operation of a pet cemetery, which demonstrates and fosters respect for the life and well-being of such animals, might reasonably be judged to further a county humane society's statutory objectives to inculcate humane principles and enforce laws preventing cruelty to animals. Thus, should the county humane society determine, in the exercise of a reasonable discretion, that the operation of a pet cemetery available to the public for the burial of deceased pets serves its statutory objectives, as set forth in R.C. 1717.02, it may do so.[2]

III. Public Access to Crematorium of County Humane Society

Your final question asks whether the county humane society may make its crematorium available to the public as an alternative means of disposing of their deceased pets. Your letter states that the humane society has constructed the crematorium as a means of disposing of the remains of dogs that have been lawfully destroyed. The construction and use of the crematorium for such purpose is plainly contemplated to fall within the statutory authority of the humane society. *See* R.C. 955.15. Again, as long as the county humane society determines in a reasonable exercise of its discretion that making its crematorium available to the public for such purpose furthers the society's statutory objectives, it may make the use of its crematorium available to the public as a means of disposing of their deceased pets.

IV. Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A board of county commissioners has no authority to operate a pet cemetery that would be available to the public for the burial of deceased pets.

2. Should a county humane society determine, in a reasonable exercise of its discretion, that operating a pet cemetery for the disposal of the remains of deceased pets falls within the objectives of such society, as set forth in R.C. 1717.02, it may make such service available to the public.

3. Should a county humane society determine, in a reasonable exercise of its

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[2] As mentioned in your request, R.C. Chapter 961 establishes certain requirements for, and restrictions upon, the operation of pet cemeteries. For example, R.C. 961.02 requires that the owner of land to be used as a pet cemetery file in the office of the recorder of the county in which the land is located a "declaration restricting the land to being used only for such purposes as are usual and normal for the operation of a pet cemetery." Your second question assumes that the county, as owner of the land on which the cemetery is located, will make the declaration referred to in R.C. 961.02. Because you have not asked, this opinion will not discuss the provisions within R.C. Chapter 961 that apply to persons operating pet cemeteries.

discretion, that allowing its crematorium to be used for the disposal of the remains of deceased pets falls within the objectives of such society, as set forth in R.C. 1717.02, it may make such service available to the public.

Respectfully,

LEE FISHER
Attorney General

April 15, 1994

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Washington County Prosecuting Attorney
205 Putnam Street
Marietta, Ohio 45750

SYLLABUS: 94-018

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2. Should a county humane society determine, in a reasonable exercise of its discretion, that operating a pet cemetery for the disposal of the remains of deceased pets falls within the objectives of such society, as set forth in R.C. 1717.02, it may make such service available to the public.

3. Should a county humane society determine, in a reasonable exercise of its discretion, that allowing its crematorium to be used for the disposal of the remains of deceased pets falls within the objectives of such society, as set forth in R.C. 1717.02, it may make such service available to the public.