September 16, 2011

The Honorable Gary L. Lammers
Putnam County Prosecuting Attorney
336 East Main Street, Suite B
Ottawa, Ohio 45875

SYLLABUS: 2011-033

1. A county dog warden has no authority to receive by gift, devise, or bequest money or other property. If the terms of a gift or bequest of moneys specify that the moneys are to be placed to the credit of the dog and kennel fund or are for the benefit of the county dog warden, a board of county commissioners may accept the moneys and have them deposited in the county treasury to the credit of the dog and kennel fund.

2. Money received by a county for the housing, sale, and disposition of licensed dogs brought to the pound directly by their owners pursuant to R.C. 955.16-.17 must be credited to the dog and kennel fund. (1981 Op. Att'y Gen. No. 81-037 (syllabus, paragraph 5), approved and followed.)

3. Money received by a county for the redemption of a dog pursuant to R.C. 955.18 must be credited to the dog and kennel fund.

4. Money received by a county for the sale or adoption of a dog pursuant to R.C. 955.16 must be credited to the dog and kennel fund.

5. Fines collected for violations of R.C. 955.11, R.C. 955.21, R.C. 955.22, R.C. 955.23, R.C. 955.25, and R.C. 955.261 must be deposited in the county treasury to the credit of the dog and kennel fund.

6. Fines collected for a violation of a resolution or ordinance enacted by a county, township, or municipal corporation to control dogs must be distributed in accordance with R.C. 955.99(I) and are not credited to the dog and kennel fund.

MIKE DEWINE
★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

September 16, 2011

OPINION NO. 2011-033

The Honorable Gary L. Lammers
Putnam County Prosecuting Attorney
336 East Main Street, Suite B
Ottawa, Ohio 45875

Dear Prosecutor Lammers:

I am in receipt of your request for an opinion regarding the types of moneys deposited into the county dog and kennel fund. Specifically, my understanding is that you would like us to address whether moneys derived from the following sources either may or are required to be credited to the dog and kennel fund: (1) grants or donations by private parties; (2) fees paid by owners for surrendering their dogs to the county dog warden; (3) fees paid by owners for recovering dogs that have been impounded (known as redemption fees); (4) fees paid by owners for adopting dogs held in the county dog pound; and (5) fines collected for violations of state laws or local laws relating to dogs.

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 to enforce [R.C. 955.01-.27], [R.C. 955.29-.38], and [R.C. 955.50]." R.C. 955.12.[1] Among their other duties, the county dog warden and deputies "shall make a record of all dogs owned, kept, and harbored in their respective counties" and "shall patrol their respective counties and, [subject to certain exceptions,] 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.*

Each county has a special fund within the county treasury known as the dog and kennel fund. *See* R.C. 955.19-.20. The dog and kennel fund primarily receives funding from two sources—fees and fines. R.C. 955.19 states that "[a]ll funds received by the county dog warden or poundkeeper in connection with the administration of [R.C. 955.01-.18] shall be deposited in the county treasury and placed to the credit of the dog and kennel fund." R.C. 955.20 similarly provides that "[t]he

---

[1] A dog warden and deputy wardens may be employees of the county, or a board of county commissioners may appoint officers employed by a county humane society to act as county dog warden and deputies if the humane society "owns or controls a suitable place for keeping and destroying dogs." R.C. 955.15; *see also* 2009 Op. Att'y Gen. No. 2009-027, at 2-182 n.1. My understanding is that the dog warden and deputy warden in Putnam County are county employees.

registration fees provided for in [R.C. 955.01-.14] constitute a special fund known as 'the dog and kennel fund.'" In addition, R.C. 955.44 provides that "[a]ll fines collected for violations of [R.C. 955.11, R.C. 955.21, R.C. 955.22, R.C. 955.23, R.C. 955.25, and R.C. 955.261] shall be deposited in the county treasury to the credit of the dog and kennel fund." To the extent funds are available in the dog and kennel fund, the board of county commissioners is required to appropriate "sufficient funds … for the purpose of defraying the necessary expenses of registering, seizing, impounding, and destroying dogs in accordance with [R.C. 955.01-.27]." R.C. 955.20; *see also* 2009 Op. Att'y Gen. No. 2009-027, at 2-182. If the amount appropriated by the board of county commissioners is insufficient, the board in its discretion "may appropriate further funds for the use and purpose of the county dog warden in administering [R.C. 955.01-.27]." R.C. 955.20.

We first consider a private grant or donation of moneys specifically intended to benefit the dog and kennel fund.[2] No provision in R.C. Chapter 955 bestows upon a county dog warden the authority to accept private grants or donations for the dog and kennel fund. *Cf., e.g.*, R.C. 307.514 (law library resources fund shall receive all moneys that are "designated for deposit into the fund by gift or bequest from any person, firm, or corporation"). R.C. 9.20 is a general statute addressing the authority of certain public bodies to accept gifts and provides, in part, as follows:

> The state; *a county*, a township, or a cemetery association *or the commissioners* or trustees *of a county*, township, or cemetery association; a municipal corporation or the legislative authority, a board, or other officers of a municipal corporation; and a benevolent, educational, or correctional institution, wholly or in part under the control of the state, or the board of directors, trustees, or other officers of the institution *may receive* by gift, devise, or bequest *moneys*, lands, or other properties, *for their benefit or the benefit of any of those under their charge and may hold and apply the moneys, lands, or properties according to the terms* of the gift, devise, or bequest. (Emphasis added.)

R.C. 9.20 thus provides that a county or a board of county commissioners may receive a gift or bequest of money, for the county's or the board's benefit, or the benefit of those under the board's charge, to be applied according to the terms of the gift or bequest.[3]

---

[2] We understand your question as asking about grants or donations specifying that the moneys are to be placed to the credit of the dog and kennel fund, are for the benefit of the county dog warden, or are to be used for purposes for which dog and kennel fund moneys may be expended. For purposes of this opinion, we also assume that the grant or donation is otherwise unrestricted and not part of an "institutional fund" subject to R.C. 1715.51-.59 or an "institutional trust fund" subject to R.C. 5813.01-.07. *See* 2010 Op. Att'y Gen. No. 2010-012, at 2-78 n.1.

[3] Your opinion request refers to "donations" and "grants" rather than "gifts." The dictionary defines "donation" as "the making of a gift esp. to a charity or public institution" and defines "grant" as "a gift (as of land or money) for a particular purpose." *Merriam-Webster's Collegiate Dictionary*

In 1989 Op. Att'y Gen. No. 89-074, the Attorney General addressed whether a nonprofit corporation could donate money to a county sheriff for the purpose of hiring additional sheriff deputies. Applying the principle of *expressio unius est exclusio alterius*, or the "expression of one thing implies exclusion of another," the Attorney General first concluded that the corporation could not make a donation directly to the sheriff, but that the corporation could make a donation to the board of county commissioners pursuant to R.C. 9.20. 1989 Op. Att'y Gen. 89-074, at 2-340 to 2-341 ("the legislature intended to limit the public bodies or officers that are authorized to accept gifts, devises, or bequests pursuant to R.C. 9.20.… [T]here is no authority for county officers other than the county commissioners to receive gifts, devises, or bequests…. The [corporation] may, however, make a donation to the county commissioners pursuant to R.C. 9.20").

Addressing the corporation's ability to donate funds to the board of county commissioners for the purpose of hiring sheriff deputies, 1989 Op. Att'y Gen. No. 89-074, at 2-341, noted:

> R.C. 9.20 has been interpreted by my predecessors to confer a qualified rather than an absolute power to receive and administer property. In 1957 Op. Att'y Gen. No. 1150, p. 545, it was determined that a governmental agency may receive property and administer the same pursuant to R.C. 9.20 provided that the terms or conditions of the gift do not require the agency to exercise powers or perform duties and functions not otherwise accorded it by law. "[T]he authority of governmental agencies to administer property according to the terms of gifts, devises, or bequests is primarily limited by the scope of the functions, powers and duties of those agencies." *Id.* at 550. *See also* 1982 Op. Att'y Gen. No. 82-086. Therefore, whether the county commissioners have the authority to accept a donation for the purpose of enabling the sheriff to hire additional deputies depends upon the powers and duties of the commissioners with respect to the hiring of deputies.

Because the sheriff has the power to hire deputies, not the board of county commissioners, the Attorney General concluded the board of county commissioners could *not* receive a donation for the specific purpose of hiring additional sheriff deputies. *Id.* at 2-342. However, because the board of county commissioners has the authority to set the total amount of employee compensation for the sheriff's office under R.C. 325.17, the board of county commissioners *could* receive a donation of money to be allocated to the sheriff's total budget for employee compensation. *Id.* at 2-342.

The reasoning in 1989 Op. Att'y Gen. No. 89-074 is persuasive and applies with equal force in the present situation. A county dog warden has no authority under R.C. 9.20 to directly receive by gift, devise, or bequest money or other property. A county dog warden, however, is appointed or employed by the board of county commissioners, R.C. 955.12, and thus is under the charge of a board of county commissioners for purposes of R.C. 9.20. Accordingly, a board of county commissioners

---

371, 545 (11th ed. 2005). Thus, for purposes of this opinion, we consider a donation or grant to be a "gift" within the meaning of R.C. 9.20. *See* 1989 Op. Att'y Gen. No. 89-074, at 2-341 n.4.

may accept a gift, devise, or bequest of moneys or property on behalf of the county dog warden so long as the board has the authority to administer the moneys or property according to the terms of the gift, devise, or bequest. *See* 1989 Op. Att'y Gen. No. 89-074, at 2-341; *see also* 1993 Op. Att'y Gen. No. 93-056, at 2-266 ("[t]he authority of a board of county commissioners to implement a gift pursuant to R.C. 9.20 is limited by the statutory authority that the board otherwise possesses").

Examining the statutory authority of a board of county commissioners to receive and administer a gift or bequest of moneys in which the donor specifies that the moneys are either to be placed to the credit of the dog and kennel fund or are for the benefit of the county dog warden, we note first that moneys received by a board of county commissioners as a gift are public moneys that must be deposited in the county treasury. *See* R.C. 9.38; 1994 Op. Att'y Gen. No. 94-073, at 2-368; 1985 Op. Att'y Gen. No. 85-055, at 2-342; 1983 Op. Att'y Gen. No. 83-055, at 2-216. The dog and kennel fund is a special fund created within the county treasury, R.C. 955.19-.20, and nothing in R.C. 955.19-.20 prevents deposit in the dog and kennel fund of moneys from sources other than those identified in the statutes. *Cf.* 1981 Op. Att'y Gen. No. 81-037, at 2-146 (money paid to a county pursuant to a contract whereby the county enforces municipal animal control ordinances is not money paid in connection with the administration of R.C. 955.01-.18 and, as a result, "*need not be* deposited in the dog and kennel fund" (emphasis added)). In addition, even if the terms of a gift of moneys do not specify that the moneys are to be placed to the credit of the dog and kennel fund, a board of county commissioners may transfer unrestricted moneys from the general fund of the county to any other fund in the county treasury, including special funds. *See* R.C. 5705.14(E) ("[m]oney may be transferred from the general fund to any other fund of the subdivision"); *see also* R.C. 5705.10(D) ("all revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose … shall be paid into the general fund"); 1918 Op. Att'y Gen. No. 1076, vol. I, p. 414 (syllabus) ("[a] bequest 'to the state of Ohio' should be paid into the state treasury to the credit of the general revenue fund"). Accordingly, if the terms of a gift or bequest of moneys specify that the moneys are to be placed to the credit of the dog and kennel fund or are for the benefit of the county dog warden, a board of county commissioners may accept the moneys and have them deposited in the county treasury to the credit of the dog and kennel fund.

It should be noted, however, that R.C. 9.20 uses permissive language. Thus, a board of county commissioners may, but is under no obligation to, accept a gift of moneys for the benefit of the county dog and kennel fund. *See* 1989 Op. Att'y Gen. No. 89-074, at 2-342. If a board of county commissioners accepts the gift, though, the board must comply with the terms of the gift and may not use the moneys for a purpose other than that designated by the gift's terms.

We next address the various fees mentioned in your opinion request. "To determine the legislative intent, we first review the statutory language. In reviewing the statutory language, we accord the words used their usual, normal, or customary meaning." *Gutmann v. Feldman*, 97 Ohio St. 3d 473, 2002-Ohio-6721, 780 N.E.2d 562, at ¶14 (citations omitted). "Where the wording of a statute is clear and unambiguous, [the] only task is to give effect to the words used." *State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994). R.C. 955.19 provides that "[a]ll funds received by the county dog warden or poundkeeper in connection with the administration of [R.C. 955.01-.18] shall be" credited to the dog and kennel fund. This language is clear and unambiguous. Thus, we must

determine whether the various fees mentioned in your opinion request constitute funds received "in connection with the administration of [R.C. 955.01-.18]." R.C. 955.19.

The first fee mentioned in your opinion request is the fee paid by an owner for surrendering a dog to the county dog warden. In 1981 Op. Att'y Gen. No. 81-037, the Attorney General addressed whether a county may charge a fee for accepting dogs from their owners. Relying primarily on the language of R.C. 955.16-.17, the Attorney General concluded that 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." 1981 Op. Att'y Gen. No. 81-037 (syllabus, paragraph 3). Further, "[m]oney received by a county for the housing, sale, and disposition of licensed dogs brought to the pound directly by their owners pursuant to R.C. 955.16-.18 must be placed in the dog and kennel fund." *Id.* (syllabus, paragraph 5). We agree with the reasoning and conclusions of 1981 Op. Att'y Gen. No. 81-037. Fees paid by an owner for surrendering a dog to the county dog warden are required to be credited to the dog and kennel fund.

The second fee mentioned in your opinion request is the fee paid by an owner for recovering a dog that has been impounded (known as a redemption fee). R.C. 955.18 provides for redemption fees and states that "[a]ny dog that is seized and impounded under [R.C. 955.12, R.C. 955.15, and R.C. 955.17] may be redeemed by its owner, keeper, or harborer … upon payment to the dog warden or poundkeeper of all costs assessed against the animal and upon providing the animal with a valid registration tag if it has none." Thus, redemption fees paid pursuant to R.C. 955.18 are required to be credited to the dog and kennel fund. R.C. 955.19; *see also* 1981 Op. Att'y Gen. No. 81-037 (syllabus, paragraph 5).

The third fee mentioned in your opinion request is the fee paid by an owner for adopting a dog held in the county dog pound. The disposition of impounded dogs is governed by R.C. 955.16. As explained in 1990 Op. Att'y Gen. No. 90-107, at 2-475:

> R.C. 955.16(A)(1) provides for the immediate humane destruction of a dog if "necessary because of obvious disease or injury" …. Absent a need for immediate destruction, R.C. 955.16(A) provides for minimum holding periods to allow time for owner redemption pursuant to R.C. 955.18. If the dog is not redeemed within the applicable holding period, the dog must be donated to a requesting special agency that trains dogs to assist persons with handicaps. R.C. 955.16(A) next provides that, if the applicable holding period has expired and no special training agency has requested a dog, the dog "may" be sold to a person or to a certified teaching or research facility.

See also R.C. 955.16(A) (an impounded dog "may be sold"). One of the common, everyday meanings of the term "sell" is "to give up (property) to another for something of value (as money)." *Merriam-Webster's Collegiate Dictionary* 1129 (11th ed. 2005). And while R.C. 955.16(A) uses the language "may be sold," these transactions are often referred to as adoptions. *See* 1990 Op. Att'y Gen. No. 90-107, at 2-476 n.2. Thus, R.C. 955.16 authorizes charging a fee in connection with the adoption of a dog. Because such a fee is received in connection with the administration of R.C.

955.16, it must be credited to the dog and kennel fund. R.C. 955.19; *see also* 1981 Op. Att'y Gen. No. 81-037 (syllabus, paragraph 5).

Finally, we examine the fines that either may or must be credited to the dog and kennel fund. Your opinion request does not identify specific fines in the same way it identifies specific fees. Based on a conversation between you and a member of my staff, I understand you are interested in the proper treatment of fines collected for violations of both state laws and local laws.

R.C. 955.44 provides that "[a]ll fines collected for violations of [R.C. 955.11, R.C. 955.21, R.C. 955.22, R.C. 955.23, R.C. 955.25, and R.C. 955.261] shall be deposited in the county treasury to the credit of the dog and kennel fund."[4] This language is clear and unambiguous and requires that all categories of fines identified in R.C. 955.44 be credited to the dog and kennel fund.

R.C. Chapter 955 also addresses the authority of local governments to enact local laws relating to dogs. R.C. 955.221(B) authorizes counties, townships, and municipal corporations to adopt and enforce resolutions or ordinances "to control dogs" so long as those laws do not conflict with any other provision of the Revised Code. *See* R.C. 955.221(B)(1) (board of county commissioners); R.C. 955.221(B)(2) (board of township trustees); R.C. 955.221(B)(3) (municipal corporation). "No person shall violate any resolution or ordinance adopted under this section." R.C. 955.221(C). In addition, R.C. 955.99(I) states that "[f]ines levied and collected for violations of [R.C. 955.221(C)] shall be distributed by the mayor or clerk of the municipal or county court in accordance with [R.C. 733.40(F)] or [R.C. 1907.20(C)] to the treasurer of the county, township, or municipal corporation whose resolution or ordinance was violated." Neither R.C. 733.40(F) nor R.C. 1907.20(C) provides for the crediting of fines to the dog and kennel fund. Thus, fines collected for a violation of a resolution or ordinance enacted by a county, township, or municipal corporation to control dogs must be distributed in accordance with R.C. 955.99(I) and are not credited to the dog and kennel fund.

---

[4] R.C. 955.11 imposes obligations on the seller or transferor of a dog. *See* R.C. 955.11(E) ("[n]o seller or other transferor of a dog shall fail to comply with the applicable requirements of [R.C. 955.11(B)-(D)]"). R.C. 955.21 prohibits the owner, keeper, or harborer of any dog over three months of age, or the owner of a dog kennel, from failing to register the dog under R.C. 955.01 and pay the applicable fee. R.C. 955.22 imposes a variety of obligations relating to confinement of female dogs in heat, R.C. 955.22(B), the confinement of dogs generally, R.C. 955.22(C), special requirements for "dangerous" or "vicious" dogs, R.C. 955.22(D), liability insurance for vicious dogs, R.C. 955.22(E), and debarking or surgically silencing a dog, R.C. 955.22(F)-(G). R.C. 955.23 prohibits a county dog warden from willfully failing to perform the duties required of him under law. R.C. 955.25 prohibits a person from owning or harboring a dog with an invalid registration tag. R.C. 955.261 restricts transporting a dog after it has bitten an individual and imposes a quarantine period. R.C. 955.99 sets forth the penalties for a violation of R.C. 955.11, R.C. 955.21, R.C. 955.22, R.C. 955.25, and R.C. 955.261, or the divisions thereof.

In sum, it is my opinion, and you are hereby advised as follows:

1. A county dog warden has no authority to receive by gift, devise, or bequest money or other property. If the terms of a gift or bequest of moneys specify that the moneys are to be placed to the credit of the dog and kennel fund or are for the benefit of the county dog warden, a board of county commissioners may accept the moneys and have them deposited in the county treasury to the credit of the dog and kennel fund.

2. Money received by a county for the housing, sale, and disposition of licensed dogs brought to the pound directly by their owners pursuant to R.C. 955.16-.17 must be credited to the dog and kennel fund. (1981 Op. Att'y Gen. No. 81-037 (syllabus, paragraph 5), approved and followed.)

3. Money received by a county for the redemption of a dog pursuant to R.C. 955.18 must be credited to the dog and kennel fund.

4. Money received by a county for the sale or adoption of a dog pursuant to R.C. 955.16 must be credited to the dog and kennel fund.

5. Fines collected for violations of R.C. 955.11, R.C. 955.21, R.C. 955.22, R.C. 955.23, R.C. 955.25, and R.C. 955.261 must be deposited in the county treasury to the credit of the dog and kennel fund.

6. Fines collected for a violation of a resolution or ordinance enacted by a county, township, or municipal corporation to control dogs must be distributed in accordance with R.C. 955.99(I) and are not credited to the dog and kennel fund.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General