December 5, 1994

OPINION NO. 94-086

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park
Mansfield, Ohio 44902

Dear Prosecutor Mayer:

You have requested an opinion on the following question: "Can the Richland County Board of Commissioners use monies in the Dog and Kennel Fund to pay for the expansion and renovation of the Richland County Dog Pound?"

Duty of County Commissioners to Provide Place for Impounding Dogs

R.C. 955.15, which imposes certain duties upon boards of county commissioners with respect to the seizing and impounding of dogs, states:

> The board of county commissioners *shall* 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. In any county in which there is a society for the prevention of cruelty to children and animals, having one or more agents and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs, the board need not furnish a dog pound, but the county dog warden shall deliver all dogs seized by him and his deputies to such society at its animal shelter, there to be dealt with in accordance with law. (Emphasis added.)

Thus, among the obligations imposed upon a board of county commissioners by R.C. 955.15 is the duty to provide a suitable place for impounding dogs.[1] However, where there is in the same county

[1] *But see* 1918 Op. Att'y Gen. No. 1123, vol. I, p. 522 (concluding that, based upon G.C. 5652-8 (now at R.C. 955.15), if there exists a county humane society in the county that will render the required services for a reasonable fee and in a suitable manner, the county commissioners are without authority to provide and maintain a dog pound).

a society for the prevention of cruelty to children and animals "having one or more agents and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs, the board need not furnish a dog pound." *Id.*

Permitted Uses of Dog and Kennel Fund

You specifically question whether, in a situation where a county has already established a dog pound, the board of county commissioners may use moneys from the dog and kennel fund to expand and renovate that facility. R.C. 955.20, which establishes in each county a dog and kennel fund, states:

> The registration fees provided for in [R.C. 955.01-.14] constitute a special fund known as "the dog and kennel fund," which shall be deposited by the county auditor in the county treasury daily as collected, and 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 [R.C. 955.01-.261], and for the payment of animal claims as provided in [R.C. 955.29-.38], *and in accordance with [R.C. 955.27]*. 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 [R.C. 955.01-.27].
> 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 such sections, 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 [R.C. 955.01-.27]. (Emphasis added.)

Thus, R.C. 955.20 defines several purposes for which moneys in the dog and kennel fund may be used, and also states that such moneys may be used "in accordance with [R.C. 955.27]." Further, R.C. 955.20 imposes upon the board of county commissioners a duty to appropriate "sufficient funds *out of the dog and kennel fund* ... for the purpose of defraying the necessary expenses of ... impounding ... dogs in accordance with [R.C. 955.01-.27]." (Emphasis added.) *See generally* R.C. 955.12 (duty of county dog warden to seize and impound dogs). The duty to appropriate sufficient funds from the dog and kennel fund for impounding dogs remains the same whether the dogs are impounded in a county dog pound or elsewhere.

R.C. 955.20, therefore, requires the board of county commissioners to appropriate from the dog and kennel fund sufficient funds as are necessary to defray the expense of, among other things, impounding dogs. The expense of adequately maintaining an existing dog pound certainly appears

to be, for purposes of R.C. 955.20, a necessary expense of impounding such dogs. Thus, should the board of county commissioners find that the expansion and renovation of the county dog pound is necessary to carry out the county's duty to impound dogs, R.C. 955.20 authorizes the board to use moneys from the dog and kennel fund for such expansion and renovation.

In addition, R.C. 955.27, in accordance with which moneys from the dog and kennel fund may be used, states:

> 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 necessary for the proper administration of such sections*, ... the board of county commissioners, at the December session, if there remains more than two thousand dollars in the dog and kennel fund for such 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 [R.C. Chapter 1717], that owns or controls a suitable dog kennel or a place for the keeping and destroying of dogs which has one or more agents appointed and employed pursuant to law, may pay to the treasurer of such society, upon warrant of the county auditor, all such excess as the board deems necessary for the uses and purposes of such society. (Emphasis added.)

Since its amendment in 1973 Ohio Laws, Part I, 1266 (Am. Sub. H.B. 152, eff. Nov. 21, 1973), R.C. 955.27 has expressly included, as a necessary expense of administration of the statutory scheme governing registering, seizing, impounding, and destroying dogs, "the purchase, construction, and repair of ... facilities necessary for the proper administration of" those statutes. Because R.C. 955.27 recognizes that moneys in the dog and kennel fund may be used for the construction of facilities necessary for impounding dogs, the expansion and renovation of such a facility would certainly come within that permitted use of dog and kennel fund moneys.

Prior Attorney General Opinions

Your opinion request refers to 1938 Op. Att'y Gen. No. 2671, vol. II, p. 1321, which concludes in the syllabus that "[m]oney for the construction of a dog pound by county commissioners should be taken from the general fund and not from the dog and kennel fund." 1938 Op. No. 2671 based its conclusion upon the provisions of G.C. 5652-13[2] (now at R.C. 955.20), and stated:

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[2] G.C. 5652-13 stated:

> The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets, and other equipment, also paying the

> From the language used in the first part of this section it appears that the dog and kennel fund is to sustain all the *administration and upkeep expenses* necessitated under these sections. However, by express provision in the latter part of Section 5652-13, supra, expenditures from the dog and kennel fund for administration expenses are specifically limited and it is provided that they shall not exceed 50% of the gross receipts of this fund.
> It is observed that with such a limitation upon expenditures, the construction of a dog pound would be impracticable, if not impossible. It is also observed that a dog pound can not be included under "the cost of furnishing all blanks, records, tags, nets, and other equipment," for the construction of a dog pound in its nature is a permanent improvement rather than equipment, and as such should be made under the general authority to construct and build conferred by Section 2433, General Code.

1938 Op. No. 2671 at 1322 to 1323 (emphasis added). Based upon the fifty percent annual limitation on the appropriation of money from the dog and kennel fund, 1938 Op. No. 2671 concluded that the General Assembly must have been aware that such a small sum would not be sufficient to construct a dog pound, and, therefore, could not have intended any of such money to be used for the construction of a dog pound.

Currently, however, R.C. 955.20 requires the board of county commissioners to appropriate from the dog and kennel fund 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]," with the only limitation being that "not more than fifteen per cent of [such appropriation] shall be expended by the auditor for registration tags, blanks, records, and clerk hire." (Emphasis added.) R.C. 955.20 does not otherwise limit the amount of money in the dog and kennel fund that is available for appropriation by the county commissioners. Further, R.C. 955.27 now includes as a

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> compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in [G.C. 5840 through G.C. 5849 (payment for injuries to animals by dogs)], and in accordance with [G.C. 5653 (now at R.C. 955.20)]. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, *said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year*, not more than three-tenths of which shall be expended by the county 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 the provisions of section 5652 and, supplemental sections of the General Code. (Emphasis added.)

1927 Ohio Laws 347 (H.B. 164, filed May 12, 1927).

necessary expense of administering the statutory scheme for registering, seizing, impounding, and destroying dogs, the purchase, construction, and repair of facilities for such purposes. It is clear, therefore, that dog and kennel fund moneys now may be used to provide a facility for impounding dogs. Thus, the expense of expanding and renovating an existing county dog pound appears to fall squarely within the purposes for which R.C. 955.20 authorizes moneys in the dog and kennel fund to be spent.

A conclusion similar to that set forth in 1938 Op. No. 2671 was reached in 1918 Op. Att'y Gen. No. 1123, vol. I, p. 522, 523, which examined G.C. 5652-13 (now at R.C. 955.20) and G.C. 5652-8 (now at R.C. 955.15), and concluded:

> From a consideration of these statutory provisions I am clearly of the opinion that any expenditure of money made by the county commissioners for the purpose of erecting and maintaining a suitable place for impounding dogs should be made out of the general county fund, and not out of the special "dog and kennel fund" created by the collection of registration fees provided for in said act. Moneys in this special fund can be expended only for the purposes mentioned in section 5652-13 [(now at R.C. 955.20)] and in section 5653 [(now at R.C. 955.27)] of the General Code.[3] (Footnote added.)

Because both R.C. 955.20 and R.C. 955.27 now contemplate the use of moneys in the dog and kennel fund for the provision of a facility suitable for impounding dogs, 1938 Op. Att'y Gen. No. 2671, vol. II, p. 1321 and 1918 Op. Att'y Gen. No. 1123, vol. I, p. 522, are hereby overruled.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 955.20, should a board of county commissioners find that the expansion and renovation of the county dog pound is necessary to carry out the county's duty to impound dogs, the board may use moneys from the dog and kennel fund for such expansion and renovation. (1938 Op. Att'y Gen. No. 2671, vol. II, p. 1321 and 1918 Op. Att'y Gen. No. 1123, vol. I, p. 522, overruled.)

Respectfully,

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[3] *See* 1917 Ohio Laws 534 (Am. H.B. 4, filed March 31, 1917) (G.C. 5652-13 and G.C. 5653, as discussed in 1918 Op. Att'y Gen. No. 1123, vol. I, p. 522).

LEE FISHER
Attorney General

December 5, 1994

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
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SYLLABUS: 94-086

Pursuant to R.C. 955.20, should a board of county commissioners find that the expansion and renovation of the county dog pound is necessary to carry out the county's duty to impound dogs, the board may use moneys from the dog and kennel fund for such expansion and renovation. (1938 Op. Att'y Gen. No. 2671, vol. II, p. 1321 and 1918 Op. Att'y Gen. No. 1123, vol. I, p. 522, overruled.)