March 24, 1994

OPINION NO. 94-012

Thomas W. Liggett, D.V.M., President
Ohio Veterinary Medical Board
77 South High Street, 16th Floor
Columbus, Ohio 43266-0116

Dear President Liggett:

In response to a request from the Ohio Veterinary Medical Board for an opinion regarding the operation by a county humane society of a veterinary clinic in which spaying and neutering services were performed, 1991 Op. Att'y Gen. No. 91-054 concluded that the operation of such a clinic by a county humane society was outside the scope of the society's statutory authority as set forth in R.C. 1717.02. That conclusion was based on such information as was available to this office at the time, which indicated that there existed only a tenuous causal link between the spaying and neutering of companion animals such as dogs and cats and the accomplishment of a county humane society's statutory objects.[1]

Subsequent to the issuance of that opinion, this office has been provided with various statistical data demonstrating a substantial causal link between the spaying and neutering of such animals and the furtherance of a county humane society's statutory objects of preventing cruelty to animals and inculcating humane principles. In light of that new information, it is appropriate to reexamine the issues raised by the Board's earlier request, and reconsider the conclusions set forth in Op. No. 91-054.

Statistical Information Demonstrates a Relationship Between the Objects of a County Humane Society and the Provision of Spaying and Neutering Services

Since the issuance of Op. No. 91-054, various humane societies in Ohio and other states, as well as the Humane Society of the United States, have provided information that documents the magnitude of the animal overpopulation problem, the cruelty that results from that overpopulation (whether from neglect or intentional inhumane actions), and the positive effect of spaying and

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[1] The statutory objects of all humane societies organized under R.C. Chapter 1717 "shall be the inculcation of humane principles and the enforcement of laws for the prevention of cruelty, especially to children and animals." R.C. 1717.02.

neutering programs on this problem. The statistical information indicates that a causal link exists between animal overpopulation and incidents of cruelty and suffering that occur within the overall animal population. This causal link has led other governmental agencies to recognize that the spaying and neutering of companion animals help prevent cruelty to animals.[2] Additionally, the spaying and neutering of these animals help inculcate the basic humane principle that pet overpopulation must be curbed to prevent cruelty and suffering.

For example, Animal Charity of Youngstown, Ohio tracked the number of dogs euthanized by the county dog pound between 1978 and 1983, prior to the time that Animal Charity established its own spaying and neutering program. Animal Charity also tracked the number of dogs so euthanized between 1984 and 1991, after it had established its spaying and neutering program. The study indicates that, on average, approximately a third fewer dogs were euthanized by the county dog pound after the spaying and neutering program was established. Additionally, the Michigan Humane Society estimates that in a one-year period it sterilized over 12,000 companion animals. According to its data, a conservative estimate would be that a sterilized companion animal produces six fewer offspring over its lifetime than does an unsterilized animal. Extrapolating from those figures, it follows that spaying and neutering procedures provided at this single humane society in the course of one year reduced overpopulation among companion animals by approximately 72,000 offspring in the first generation alone.

From such data and the other statistical information provided to this office, one may reasonably conclude that, by helping to reduce the rate of animal reproduction, and thus the total size of the animal population, the spaying and neutering of companion animals do prevent cruelty to animals. A reduction in animal reproduction rates means that fewer animals will be subjected to cruelty such as abandonment by their owners, the denial of adequate food, shelter, or medical care, or other mistreatment. It is likely, moreover, that the wider availability and use of such services tends to inculcate among the general public the basic humane principle that overpopulation among companion animals can and should be curbed to prevent cruelty and suffering. I conclude, therefore, that the spaying and neutering of such animals help prevent cruelty to animals and advance the inculcation of humane principles in that regard. To the extent that it concludes to the contrary on this issue, I hereby overrule Op. No. 91-054.[3]

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[2] For example, the Internal Revenue Service has recognized the link between spaying and neutering and the prevention of cruelty to animals. *See* Rev. Rul. 74-194, 1974-1 C.B. 129. In particular, the Internal Revenue Service has indicated that a program conducted to reduce animal overpopulation by sterilizing dogs and cats is sufficiently related to the charitable purposes of a nonprofit organization formed and operated to prevent cruelty to animals that it will have no adverse effect on the tax-exempt status of the organization. Priv. Ltr. Rul. 78-43-120 (July 31, 1978).

[3] It also bears noting that this construction of the applicable law further advances the important public policy objective of controlling pet overpopulation, as identified by one of my predecessors, who recognized that "a construction of statutes which will aid pet owners in controlling the reproduction of their dogs and cats should be favored as sound public policy," in part because it will help prevent "cruelty to the animals themselves." 1974 Op. Att'y Gen. No. 74-064 at

Operation of Spaying and Neutering Clinics

In view of the conclusion reached herein that the spaying and neutering of companion animals such as dogs and cats is related to the statutory objects for which a county humane society is organized, it is necessary to consider the circumstances in which a county humane society might offer those services to the public in accomplishing those statutory objects. This particular issue was not addressed in Op. No. 91-054.

While a county humane society may operate a clinic in which spaying and neutering services are performed, it may only do so as long as it observes the requirements of R.C. Chapter 4741, which governs the practice of veterinary medicine in this state. In particular, R.C. 4741.28 provides as follows:

> Whenever the practice of veterinary medicine is carried on by a partnership or a corporation, other than a nonprofit corporation as defined in section 1702.01 of the Revised Code, all partners or shareholders of the corporation must either be licensed or the holders of temporary permits issued by the state veterinary medical licensing board. *Whenever the practice of veterinary medicine is carried on by a nonprofit corporation, a majority of the members of the trustees must be either licensed or the holders of temporary permits issued by the board.* (Emphasis added.)

The mere fact that spaying and neutering services may be provided at a clinic operated by a county humane society does not mean that the society itself is engaged in the practice of veterinary medicine for purposes of this provision. In this regard, the "practice of veterinary medicine" is defined in R.C. 4741.01(F) as:

...the practice of any person who:

(1) For hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly, diagnoses, prognoses, treats, administers to, prescribes for, operates on, manipulates, or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound, or physical condition of any animal, or for the prevention of or to test for the presence of any disease of any animal, or who holds himself out as being able or legally authorized to act in such manner, or who holds himself out as being a veterinarian involved in environmental health, public health, food hygiene, preventive medicine, space medicine, or other special areas, or who engages in the practice of embryo transfer;

(2) Practices dentistry or surgery on any animal;

(3) Represents himself as engaged in the practice of veterinary medicine as defined in divisions (B)(1) and (2) of this section;

(4) Uses any words, letters, or titles in such connection and under such circumstances as

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to induce the belief that a person using them is engaged in the practice of veterinary medicine.

It is clear that the practice of veterinary medicine includes the performance of spaying and neutering services.[4] If the performance of such services is "engaged in" by the county humane society itself, then the requirements of R.C. 4741.28 must be met. In that circumstance, a majority of the members of the trustees of the county humane society must be licensed as veterinarians or the holders of temporary permits issued by the Ohio Veterinary Medical Board. *See* R.C. 4741.11; R.C. 4741.14. But as long as any agreement entered into between a county humane society and one or more veterinarians is structured so that the humane society itself is not engaged in the practice of veterinary medicine, then the foregoing requirement of R.C. 4741.28 does not apply to the humane society. This means, at a minimum, that the spaying and neutering services must actually be performed by a veterinarian who has operational autonomy over the performance of such services. If the veterinarian has such autonomy, then the specific details of the relationship between the county humane society and the veterinarian may be subject to substantial variation to meet the parties' requirements. It would appear, however, that the veterinarian providing the spaying and neutering services should not be hired simply as an ordinary employee of the humane society. *See, e.g.*, 1962 Op. Att'y Gen. No. 3031, p. 414; 1974 Op. Att'y Gen. No. 74-064 at 2-265 ("[g]enerally speaking, there is no employer-employee relationship unless there is a contract of hire, and valuable compensation is paid to the employee by the employer"). But the requirements of R.C. 4741.28 would not appear to be implicated if a veterinarian were to use or rent space provided by the humane society, receive referrals from the humane society, provide his services as an independent contractor, or enter into various other kinds of relationships or agreements to provide spaying and neutering services, as long as the agreement does not contemplate that the county humane society itself will be engaged in the practice of veterinary medicine. *Cf.* Op. No. 74-064 (consistent with Ohio law, nonprofit corporation may advertise spaying and neutering services and may agree to refer owners of companion animals to veterinarians who agree to provide such services at a reduced rate). Subject to these considerations, I conclude that a county humane society may operate a spaying and neutering clinic pursuant to an agreement under which one or more veterinarians are responsible for performing the spaying and neutering services.

Conclusion

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

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[4] This opinion is limited to addressing the performance of spaying and neutering services at a clinic operated by a county humane society. Broader issues such as those raised by the involvement of humane societies in clinics that provide a full range of veterinary services are thus beyond the scope of this opinion. *See generally Virginia Beach S.P.C.A., Inc. v. South Hampton Rds. Veterinary Ass'n*, 329 S.E.2d 101 (Va. 1985).

1. The spaying or neutering of animals contributes to a reduction in the number of incidents of cruelty that occur within the overall animal population of a county, and thus advances the objects of a county humane society as set forth in R.C. 1717.02. (1991 Op. Att'y Gen. No. 91-054, overruled in part.)

2. Pursuant to R.C. Chapter 1717, a county humane society may operate a spaying and neutering clinic, and enter into an agreement with a licensed veterinarian for such purpose, provided that the licensed veterinarian maintains operational control over the performance of the spaying and neutering services in accordance with the requirements of R.C. Chapter 4741.

Respectfully,

LEE FISHER
Attorney General

March 24, 1994

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Syllabus: 94-012

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2. Pursuant to R.C. Chapter 1717, a county humane society may operate a spaying and neutering clinic, and enter into an agreement with a licensed veterinarian for such purpose, provided that the licensed veterinarian maintains operational control over the performance of the spaying and neutering services in accordance with the requirements of R.C. Chapter 4741.