

OPINION NO. 66-126**Syllabus:**

1. The authority of the board of county commissioners under Section 955.15 of the Revised Code of the State of Ohio, to contract with the county humane society for sheltering, caring for, and disposing of dogs delivered to the humane society pounds by the dog wardens, is not limited in amount by the statutory fees set forth in Section 955.17 of the Revised Code of the State of Ohio.

To: Robert A. Jones, Clermont County Pros. Atty., Batavia, Ohio
By: William B. Saxbe, Attorney General, July 21, 1966

I have before me your request for my opinion reading as follows:

"Our specific question is whether

or not the Board of County Commissioners are limited by the statutory fees as set forth in Section 955.17 of the Revised Code of the State of Ohio in contracting with the Clermont County Humane Society for sheltering, caring for and disposing of dogs delivered to the Humane Society pounds by the dog wardens."

Section 955.15 of the Revised Code of the State of Ohio provides:

"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. The board shall provide for the payment of reasonable compensation to such society for its services so performed out of the dog and kennel fund. The board may designate and appoint any officers regularly employed by any society organized under sections 1717.02 to 1717.05, inclusive, of the Revised Code, to act as county dog warden or deputies for the purpose of carrying out sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code, if such society whose agents are so employed owns or controls a suitable place for keeping and destroying dogs."

Due to the board of county commissioners being an agency of the state, it has certain defined duties and a correspondingly limited authority to delegate given portions of those duties. In relation to Section 955.15 of the Revised Code of the State of Ohio, *supra*, the board of county commissioners' authority to delegate certain duties by contract has been limited in scope to those duties of "* * * sheltering, caring for, and disposing of unlicensed dogs delivered to it /In this case the Clermont County Humane Society/ by the county's dog warden and deputy wardens", as was set out in syllabus number one (1) found in Opinion No. 4660, Opinions of the Attorney General for 1954, page 683.

Such contractual expenses incurred are to be paid for out of a special fund known as "the dog and kennel fund."

This proposition finds support in Opinion No. 4660, Opinions of the Attorney General for 1954, page 683, where it was said that "Section 955.20, Revised Code of the State of Ohio, * * * provides for the expenditures from the dog and kennel fund, to wit, payment of the * * * amount paid by contract with the society for its services above specified * * *."
 (Emphasis added)

It then appears to be clear that a board of county commissioners has within its authority the right to contract with a humane society to shelter, care for and dispose of unlicensed dogs delivered to it by the county's dog warden and deputy wardens, and consideration for such contracts is provided for by the dog and kennel fund.

The main question to be dealt with is whether or not Section 955.17, of the Revised Code of the State of Ohio, acts as a ceiling price above which the board of county commissioners is not permitted to contract.

Section 955.17, of the Revised Code of the State of Ohio, reads as follows:

"Costs shall be assessed against every dog seized and impounded under sections 955.12, 955.15, and 955.16 of the Revised Code as follows:

"(A) Filing affidavit and issuing order to seize dog \$ 0.50;

"(B) Seizing dog and delivering to pound 2.00;

"(C) Serving or posting of notice to owner25;

"(D) Housing and feeding dog per day50;

"(E) Selling or destroying dog50

"Such costs shall be a valid claim in favor of the county against the owner, keeper, or harbinger of a dog seized and impounded under such sections and not re-deemed or sold, and such costs shall be recovered by the county treasurer in a civil action against the owner, keeper, or harbinger."
 (Emphasis added)

Since Section 955.17, supra, makes express reference to the creation of a legal claim of a defined statutory amount against the "owner, keeper, or harbinger" of every dog seized and impounded, one of the purposes of this statute appears to be the creation of statutory prima facie evidence in favor of the county and against the owner, keeper or harbinger. Thus, the mere fact that the county dog warden has seized and impounded an unlicensed dog is prima facie evidence creating a

legal claim against the owner, keeper or harborer of the dog if the dog is not redeemed or sold.

Secondly, this statute (Section 955.17, supra,) places a limit on what the board of county commissioners can charge a person upon the sale or redemption of the dog.

At no point does the General Assembly suggest that Section 955.17, supra, is intended to function as a limiting factor upon ~~the~~ contractual powers of the board of county commissioners as set out in Section 955.15, supra. Since such a limitation would seriously curb the right and freedom to bargain for consideration in relation to such contracts, it would have been necessary for the General Assembly to have expressly mentioned the limiting function of Section 955.17, supra, as related to Section 955.15, supra.

In view of the fact that the General Assembly has made no express mention of the statutory fees set out in Section 955.17, supra, as being limiting factors upon the contractual rights set out in Section 955.15, supra, then it is my opinion that the General Assembly did not intend Section 955.15, supra, to be limited by Section 955.17, supra.

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

1. The authority of the board of county commissioners under Section 955.15 of the Revised Code of the State of Ohio, to contract with the county humane society for sheltering, caring for, and disposing of dogs delivered to the humane society pounds by the dog wardens, is not limited in amount by the statutory fees set forth in Section 955.17 of the Revised Code of the State of Ohio