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## ATTORNEY APPOINTED BY COUNTY HUMANE SOCIETY:

1. HUMANE SOCIETY—DUTY OF ATTORNEY TO PROSECUTE PERSONS CHARGED WITH OFFENSES INCLUDING FILING OF COMPLAINT—NO COMPENSATION IN ADDITION TO SALARY PAID BY COMPLAINANT OR PERSON ALLEGED TO HAVE BEEN MISTREATED—SECTION 2931.18 RC.
2. ATTORNEY HAS NO AUTHORITY OR DUTY AS TO CONTEMPT PROCEEDINGS—PARENTS OF CHILDREN VIOLATING ORDER OF COURT IN DIVORCE PROCEEDINGS—SUPPORT OF CHILDREN.
3. DUTY OF ATTORNEY TO PROSECUTE CRIMINAL ACTIONS FOR VIOLATION OF SECTION 3113.01 RC—FAILURE OF PARENTS TO SUPPORT CHILDREN—NO DUTY OR AUTHORITY RELATIVE TO PROSECUTION FOR FAILURE OF HUSBAND TO SUPPORT PREGNANT WIFE.
4. ATTORNEY HAS NO AUTHORITY OR DUTY TO COLLECT DELINQUENT SUPPORT PAYMENTS DUE ANY PERSON BY ORDER OF COURT OR OTHERWISE—IF ANY SUCH MONEYS RECEIVED BY HIM AS ATTORNEY FOR COUNTY, HE WOULD HAVE NO RIGHT TO DEDUCT COLLECTION CHARGE.
5. POSITIONS, AGENT AND ATTORNEY OF SOCIETY—MAY BE HELD BY SAME PERSON—HE IS ENTITLED TO SALARY FIXED FOR EACH—COMPENSATION PAYABLE MONTHLY FROM PUBLIC TREASURY—NOT THROUGH APPLICATIONS MADE TO SOCIETY.

## SYLLABUS:

1. It is the duty of the attorney appointed by a county humane society under the provisions of Section 2931.18, Revised Code, to prosecute persons charged with the offenses therein referred to, including the filing of the necessary complaint, without any compensation, in addition to his salary being paid by the complainant or person alleged to have been mistreated.

2. The attorney appointed by a county humane society pursuant to Section 2931.18, Revised Code, has no authority or duty with reference to contempt proceedings against parents of children violating an order of court in divorce actions relative to the support of such children.

3. The attorney appointed by a county humane society has the duty to prosecute criminal actions for violation of Section 3113.01, Revised Code, in so far as it relates to the failure of parents to support their children, but has no duty or authority relative to prosecution for the failure of a husband to support his pregnant wife.

4. The attorney appointed by a county humane society has no authority or duty in reference to collection of delinquent support payments due any person by order of court or otherwise, but if any such moneys should come into his hands, as attorney for the county, he would have no right to deduct therefrom a collection charge.

5. The positions of agent and attorney of a county humane society may be held by the same person. If this is done, he is entitled to the salary fixed for each. In any event the compensation of such agent or attorney is payable monthly to him directly from the public treasury, and not through applications made to the society.

Columbus, Ohio, August 25, 1955

Hon. Ralph E. Carhart, Prosecuting Attorney  
Marion County, Marion, Ohio

Dear Sir:

I have before me your request for my opinion relative to the employment by a county humane society of an agent and attorney, and as to the duties and compensation of such employees.

Specifically, the questions propounded are:

"Is the attorney and agent for the Marion County Humane Society required to file without compensation by the complainant:

"ONE: Criminal affidavits in the Municipal Court of the City of Marion, Ohio, and in the Juvenile Court of Marion County, Ohio, for violation of Revised Code Sections 2931.18, 2903.08 and 3113.01?

"TWO: Civil actions for contempt against fathers or mothers or parents of children violating an order of the Common Pleas Court of Marion County, Ohio, previously made for the support of said child or children, in divorce actions?

"THREE: Criminal or civil complaints for mothers, whose children under the age of 18 years have not been supported by the father?

"FOUR: Complaints of a pregnant woman of the abandonment by her husband?

"FIVE: If the attorney and agent for the Marion County Humane Society, paid by said society, collects delin-

quent support payments, can said attorney, in addition to his compensation as paid by the Humane Society make a charge to the person receiving the money for said collection?"

Section 1717.02, Revised Code, states the general purpose of humane societies as follows:

"The objects of the Ohio humane society, and all societies organized under section 1717.05 of the Revised Code, shall be the inculcation of humane principles and the enforcement of laws for the prevention of cruelty, especially to children and animals." \* \* \*

It will be observed that the real purpose of such societies is the *prevention of cruelty*, and the enforcement of laws relating thereto.

Section 1717.05, Revised Code, authorizes the organization in any county of a county humane society. That section provides 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." (Emphasis added.)

Section 1717.06, Revised Code, provides as follows:

"A county humane society organized under section 1717.05 of the Revised Code may appoint agents, who are residents *of the county or municipal corporation for which the appointment is made*, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals. Such agents may arrest any person found violating sections 1717.01 to 1717.14, inclusive, of the Revised Code, *or any other law for protecting persons or animals or preventing acts of cruelty thereto*. Upon making such arrest the agent forthwith shall convey the person arrested before some court or magistrate having jurisdiction of the offense, and there make complaint against him on oath or affirmation of the offense.

"All appointments of agents under this section shall be approved by the mayor of the municipal corporation for which they are made. If the society exists outside a municipal corporation, such appointments shall be approved by the probate judge of the county for which they are made. Such mayor or probate judge shall keep a record of such appointments." (Emphasis added.)

Section 1717.05 *supra*, would appear to limit the activities of a county society to preventing cruelty to "animals." But that purpose is broadened by the next section, to include "persons." The duties of such agent are set

out further in very general terms. It may be noted that Sections 1717.01 to 1717.14 do not describe any offenses, and that the other laws which the agent is to enforce relate only to *acts of cruelty* to animals and persons. One specific power that is given to such agent is that found in Section 1717.14, Revised Code, whereby if he "deems it for the best interest of a child because of cruelty inflicted upon it, or because of its surroundings, that it be removed," he is authorized to take possession of the child summarily, and file a complaint in the juvenile court.

Section 1717.07, Revised Code, authorizes the payment of the salary of such agent by a municipality, in case he is appointed for the municipality and by the county commissioners, in case he is appointed for the territory outside of the municipality.

Aside from the obvious assistance which he may give the attorney in preparing his cases for prosecution, the above references practically cover all the duties of the agent, and it is for the performance of those duties that he is to receive the salary provided by Section 1717.07, Revised Code.

As to the appointment, duties and compensation of the attorney, I call attention to Section 2931.18, Revised Code, which provides:

"A humane society or its agent may employ an attorney to prosecute violations of law relating to:

"(A) Prevention of cruelty to animals or children;

"(B) Abandonment, nonsupport, or ill-treatment of a child by its parent;

"(C) Employment of a child under fourteen years of age in public exhibitions or vocations injurious to health, life, or morals or which cause or permit such child to suffer unnecessary physical or mental pain;

"(D) Neglect or refusal of an adult to support destitute parent.

"Such attorney shall be paid out of the county treasury in an amount approved as just and reasonable by either a judge of the court of common pleas, the probate judge, or the board of county commissioners of that county."

It will be observed that the attorney may be employed by the society *or by its agent*, and the duties of the attorney so employed are set forth in the above quoted statute. He is to be paid by way of compensation out of the county treasury such amount as is approved by either a judge of

the court of common pleas, the probate judge or the board of county commissioners.

1. Taking up your first question, as to the duties of the agent and attorney, respectively, in the matter of prosecution under Sections 2931.18, 2903.08 and 3113.01, Revised Code, I again call attention to the provisions of Section 2931.18 which has already been quoted. That section sets forth the classes of cases which it is the specific duty of the attorney to prosecute. A slight addition to these cases is made by Section 2903.08, Revised Code, which reads as follows:

“No person having the control of or being the parent or guardian of a child under the age of sixteen years shall willfully abandon such child, or torture, torment, or cruelly or unlawfully punish him, or willfully or negligently fail to furnish him necessary and proper food, clothing, or shelter.”

As to the attorney, let it be observed that his duties are confined to prosecution of offenses against the criminal law. “Prosecution” in its ordinary and well understood meaning certainly comprehends every step necessary to bring a violator of a criminal law to justice. It is well defined by the Supreme Court of California in *Wong v. Anthony*, 199 Cal., 15: “‘Prosecution’ includes every step in action from its commencement to its final determination.” Accordingly, I have no hesitancy in holding that it is the duty of an attorney employed by a humane society to file all criminal affidavits required in the prosecutions begun by him pursuant to these sections referred to, and to do so as a part of the duty for which he is paid a salary, and certainly without any additional compensation from the complainant.

Section 3113.01 to which you refer, reads as follows:

“No parent or other person charged with the maintenance of a legitimate or illegitimate child under eighteen years of age, or of a physically or mentally handicapped child under twenty-one years of age, nor the husband of a pregnant woman, living in this state, shall fail to provide such child or woman with the necessary or proper home, care, food, and clothing.”

A penalty for violation of that section is provided by Section 3113.99, Revised Code. In so far as it relates to support by parents of their children, it appears to fall within the scope of the duties of the attorney appointed by the humane society, and it would be a part of his duty to prosecute criminal actions for its violation. But as to prosecution of a husband for

non-support of his pregnant wife, I am unable to find any connection with the duties imposed on the attorney of the humane society. There is a slight connection with the humane society in that under Section 3113.10, Revised Code, when a delinquent parent or husband has given bond for support, the humane society may be appointed trustee of the funds paid in for such support.

2. As to proceedings for contempt against parents of children violating an order of the court for the support of a child in a divorce action, the humane society certainly has no powers and duties, and its agent and attorney have no duty or authority to intervene in any manner. Such actions are civil and not criminal; private persons are the sole parties to such actions. The state is not a party in any respect.

3. You raise a question as to the duty of the attorney of the humane society to commence criminal or civil actions for mothers whose children, under the age of eighteen years have not been supported by the father. In so far as it seems proper to proceed under Section 3113.01, *supra*, or under any other penal section of the law by criminal proceedings against the father for non-support of his children, such proceeding is unquestionably a part of the duty of the attorney employed by the society. But he is a prosecutor and not a collection attorney, and I do not consider that he is paid by the county to maintain civil suits for any private person. If he does file a criminal action, it is not a suit for the mother, but rather for the child, who is the particular concern of the law.

4. Your fourth question as to the complaint of a pregnant woman who has been abandoned by her husband, has been sufficiently covered in answer to an earlier question.

5. You pose a fifth question, as to the right of the attorney and agent of the humane society, who may collect delinquent support payments, to make a charge to the person receiving the money for such collection. As I have already indicated, neither the humane society nor its agent and attorney have any authority in such matters, and the agent and attorney for the society would have no right, as such, to make any such collection, and any representation on their part that they are acting for the humane society in that connection would appear to me to be tantamount to a fraud. However, I do not consider that it is within my province to pass on the ethical conduct of an attorney at law.

Your letter raises a final question as to the payment of the compensation of the attorney and agent, particularly when one person holds both appointments. It appears to me that the salaries of the two positions are quite independent of each other. Under Section 1717.07 Revised Code, which is part of the Title relating to corporations, municipal council, with the approval of the mayor, fixes an amount to be paid the agent by the municipality "from the general revenue fund of the municipality," and the county commissioners, with the approval of the probate judge determine the amount to be paid him "from the general revenue fund of the county, and it is further provided that the council and the commissioners may agree on the amount to be paid by each. Such compensation is to be paid monthly. Coming to the compensation of the attorney it is provided in Section 2931.18 supra, which is a part of the criminal code, that his salary is to be paid "out of the county treasury" in an amount approved by a judge of the court of common pleas, the probate judge, or the board of county commissioners. The statute is silent as to the time of payment, but in my opinion it should be paid monthly, as provided in the case of the agent.

Accordingly, if the same person is appointed to both positions, which appears to me to be allowable, he would be entitled to the compensation fixed for each. As to the payment, there is no provision in the law for an appropriation of these funds to the use of the humane society. On the contrary it appears clear that the agent and attorney are to receive the compensation allowed, payable monthly directly from the treasuries of the municipality and county, respectively.

In specific answer to the questions submitted, it is my opinion:

1. It is the duty of the attorney appointed by a county humane society, under the provisions of Section 2931.18, Revised Code, to prosecute persons charged with the offenses therein referred to, including the filing of the necessary complaint, without any compensation, in addition to his salary being paid by the complainant or person alleged to have been mistreated.

2. The attorney appointed by a county humane society pursuant to Section 2931.18, Revised Code, has no authority or duty with reference to contempt proceedings against parents of children violating an order of court in divorce actions relative to the support of such children.

3. The attorney appointed by a county humane society has the duty to prosecute criminal actions for violation of Section 3113.01, Revised

Code, in so far as it relates to the failure of parents to support their children, but has no duty or authority relative to prosecution for the failure of a husband to support his pregnant wife.

4. The attorney appointed by a county humane society has no authority or duty in reference to collection of delinquent support payments due any person by order of court or otherwise, but if any such moneys should come into his hands, as attorney for the county, he would have no right to deduct therefrom a collection charge.

5. The positions of agent and attorney of a county humane society may be held by the same person. If this is done, he is entitled to the salary fixed for each. In any event the compensation of such agent or attorney is payable monthly to him directly from the public treasury, and not through applications made to the society.

Respectfully,

C. WILLIAM O'NEILL

Attorney General