

OPINION NO. 90-035**Syllabus:**

Pursuant to R.C. 955.261, the board of health for the district in which a dog bite occurs must pay any costs associated with the quarantine of a stray dog which has bitten someone. If such dog has been seized and impounded by the county dog warden and held for three days pursuant to R.C. 955.12 and R.C. 955.16(A), and that three-day period also serves as a period of quarantine, the board must pay the costs of the additional days to complete the quarantine period pursuant to R.C. 955.261.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 25, 1990

I have before me your request for my opinion as to whether the county board of health or the county dog warden is obligated to pay the costs associated with the final seven (7) days of the ten (10) day quarantine period for stray dogs housed at the animal shelter which have bitten someone.¹

Your question is based upon R.C. 955.261(A) which mandates that when a dog has bitten any person, no person shall remove such dog from the county in which the bite occurred nor shall any person transfer such dog, except to the county dog warden or other animal control authority, until a quarantine period as specified in R.C. 955.261(B) has been completed. R.C. 955.261(B) provides that "[t]he quarantine period for a dog that has bitten any person shall be ten days or another period that the board of health for the district in which the bite occurred determines is necessary to observe the dog for rabies." Thus, any dog which has bitten any person must be quarantined for a period of ten days or another period determined by the appropriate board of health. Since your question is phrased in terms of a ten-day quarantine, I assume that the county board of health has not determined that another period of time is required for such quarantine.

Although the quarantine period is ten days, you have limited your question to the final seven days of this period. Presumably, you limited your question in this manner because any dog which is found running at large and which is seized and impounded by the dog warden must, in the absence of obvious disease or injury that necessitates its immediate destruction, be kept, housed, and fed for a minimum of

¹ A member of your staff has informed me that by "county board of health" you mean the board of the general health district which is, pursuant to R.C. 3709.01, comprised of all townships and villages in Montgomery County, and that by "animal shelter" you mean the dog pound furnished by the board of county commissioners pursuant to R.C. 955.15.

three days² for the purpose of redemption. R.C. 955.12; R.C. 955.16(A).³

R.C. 955.261 reads as follows:

(A)(1) No person shall remove a dog that has bitten any person from the county in which the bite occurred until a quarantine period as specified in division (B) of this section has been completed. No person shall transfer a dog that has bitten any person until a quarantine period as specified in division (B) of this section has been completed, except that a person may transfer the dog to the county dog warden or to any other animal control authority.

(2)(a) Subject to division (A)(2)(b) of this section, no person shall kill a dog that has bitten any person until a quarantine period as specified in division (B) of this section has been completed.

(b) Division (A)(2)(a) of this section does not apply to the killing of a dog in order to prevent further injury or death or if the dog is diseased or seriously injured.

(3) No person who has killed a dog that has bitten any person in order to prevent further injury or death or if the dog is diseased or seriously injured shall fail to do both of the following:

(a) Immediately after the killing of the dog, notify the board of health for the district in which the bite occurred of the facts relative to the bite and the killing;

(b) Hold the body of the dog until the board of health claims it to perform tests for rabies.

(B) The quarantine period for a dog that has bitten any person shall be ten days or another period that the board of health for the district in which the bite occurred determines is necessary to observe the dog for rabies.

(C)(1) To enable persons to comply with the quarantine requirements specified in divisions (A) and (B) of this section, boards of health shall make provision for the quarantine of individual dogs under the circumstances described in those divisions.

(2) Upon the receipt of a notification pursuant to division (A)(3) of this section that a dog that has bitten any person has been killed, the board of health for the district in which the bite occurred shall claim the body of the dog from its killer and then perform tests on the body for rabies.

When a stray dog which has bitten someone is in the custody of the county dog warden, it may not be transferred, except to another animal control authority, until after the completion of the quarantine period. R.C. 955.261(A)(1). Thus it appears that the legislature intended that the county dog warden or any other animal control authority is an appropriate person to maintain a dog during the quarantine period pursuant to R.C. 955.261.

Although the statute does not expressly state who shall pay the costs associated with the quarantine, division (C) provides that "[t]o enable persons to comply with the quarantine requirements specified in divisions (A) and (B) of this

² If the owner, keeper, or the harbinger of such dog can be determined from the current year's registration list (which is kept by the county auditor pursuant to R.C. 955.07) the dog may be held for redemption for such longer period of time as permitted by statute. However, the "stray bite dog" which you have described in your question is a dog which, running at large, bites a person, and its owner, keeper or harbinger cannot be determined.

³ Since you have not asked, I do not offer an opinion as to whether the three-day period for which a dog is kept, housed and fed for the purpose of redemption may also serve as the first three days of a quarantine pursuant to R.C. 955.261. For purposes of this opinion, however, I will assume that the three-day holding period may simultaneously serve as the first three days of the quarantine period.

section, boards of health shall *make provision* for the quarantine of individual dogs under the circumstances described in those divisions." R.C. 955.261(C)(1) (emphasis added). Thus, the determination of whether the board of health must pay the costs associated with such quarantine depends on the intent of the legislature in its use of the term "make provision."

Legislative intent is to be determined primarily from statutory language. *Stewart v. Board of Elections*, 34 Ohio St. 2d 129, 296 N.E.2d 676 (1973). The term "make provision," however, is not defined in R.C. Chapter 955 or elsewhere in the Revised Code.⁴ Absent statutory definition, words generally should be accorded their natural, literal, common or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). "Provision" is defined by the dictionary as "[t]he providing or supplying of something, especially food or other necessities" and as "a measure or other means for meeting a need." *The Random House Dictionary of the English Language* (unabridged ed. 1973). Pursuant to such definition, boards of health are obligated to take some measure to provide that which is necessary for persons to comply with the quarantine requirements. The statute does not direct the board of health in the precise manner in which it is to exercise such power; however, in the absence of such direction, it is to be presumed that the board may exercise its power in a reasonable manner. 1988 Op. Att'y Gen. No. 88-087; *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878).⁵

The question then becomes whether the board of health is authorized to spend money in order to make provision for the quarantine of dogs pursuant to R.C. 955.261. As a "creature of statute," the board of health has only those powers expressly granted by statute or necessarily implied therefrom. *Verberg v. Board of Education*, 135 Ohio St. 246, 20 N.E.2d 368 (1939); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916); see also 1973 Op. Att'y Gen. No. 73-057. The authority to expend public money must be clear, and any doubt must be resolved in favor of the public and against the expenditure. *State ex rel. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917). I find that the power of the board of health to spend money for the quarantine of stray dogs which have bitten someone is clearly implied by the statute. Logic dictates that if expenses are incurred in the exercise of the board's duty to make provision for the quarantine of individual dogs, the board may pay such expenses. Thus, the authority to spend money in order to fulfill its duty pursuant to R.C. 955.261 has been granted, by necessary implication, to the board of health. Such authority is limited, however, to spending only that amount of money which is necessary to "make provision" for the quarantine of individual dogs. Thus, if the board must incur expenses in order to make provision for the quarantine of stray dogs which have bitten someone, it has the authority to pay such expenses.⁶

⁴ The term "make provision" or a similar term is, however, used in various Revised Code sections. See, e.g., R.C. 907.32, R.C. 1725.01, R.C. 3921.17.

⁵ Your question is limited to who shall pay the costs associated with the quarantine pursuant to R.C. 955.261 of a stray dog which has bitten someone. You have not asked, and I therefore do not offer an opinion, as to what measures a board of health may take in order to "make provision for the quarantine of individual dogs..." R.C. 955.261(C)(1).

⁶ I note that the regulations of the public health council, promulgated pursuant to R.C. 3701.34, include regulations with respect to the quarantine of dogs which have bitten someone. 4 Ohio Admin. Code 3701-3-29. The public health council requires that "[w]henver it is reported to the health commissioner of a health district that any dog...has bitten a person, that dog...shall be quarantined under an order issued by the health commissioner of the health district in which the bite was inflicted." 4 Ohio Admin. Code 3701-3-29(A)(1). The dog shall be quarantined in a pound or kennel, and the expense of the quarantine shall be the responsibility of the owner or harbinger. *Id.* However, the regulation does not address the question of who suffers the expense of the quarantine of a dog which has bitten someone when neither the owner nor harbinger is known or can be determined.

This construction of R.C. 955.261, which places the responsibility for the payment of the costs associated with the quarantine of a stray dog which has bitten someone upon the board of health, reflects the differences in the primary functions of the county dog warden and the board of health and their roles with respect to dog control. The county dog warden's principal responsibility with respect to dog control is "to control dogs mainly through registration procedures and without regard to disease." 1975 Op. Att'y Gen. No. 75-058 at 2-228. However, "a board of health's relationship to dog control is, pursuant to R.C. 3707.04, through the control of dangerous communicable diseases (such as rabies) and the publication and enforcement of rules, regulations, and orders of quarantine to prevent the spread of these diseases." *Id.* at 2-229. By making provision for the quarantine of dogs pursuant to R.C. 955.261, the board of health is fulfilling its function of controlling the spread of rabies.

Accordingly, it is my opinion, and you are hereby advised, that, pursuant to R.C. 955.261, the board of health for the district in which a dog bite occurs must pay any costs associated with the quarantine of a stray dog which has bitten someone. If such dog has been seized and impounded by the county dog warden and held for three days pursuant to R.C. 955.12 and R.C. 955.16(A), and that three-day period also serves as a period of quarantine, the board must pay the costs of the additional days to complete the quarantine period pursuant to R.C. 955.261.