

**OPINION NO. 75-058****Syllabus:**

The statutory obligations of the county commissioners, to be exercised through the county dog warden, and those of the board of health which relate to rabies control are distinct and separate and may not, by agreement, be delegated from one to the other.

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**To: Nicholas A. Carrera, Greene County Pros. Atty., Xenia, Ohio**  
**By: William J. Brown, Attorney General, September 11, 1975**

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

"The Greene County Health Department is responsible for Rabies Control under Section 3707.04, and the Greene County Commissioners are in charge of Dog Control under Section 955.12 of the Ohio Revised Code. The two departments feel that there is overlap in this area and envision a contract where one department would furnish the services to the other. Our question then is, may the Greene County Health Department and the Greene County Commissioners make a contract for the furnishing of services in regard to Rabies Control and Dog Control?"

At the outset it is necessary to point out that the primary function of a county health department (i.e. a general health district board of health) relative to the control of dogs is different than the primary function of a county dog warden. The county dog warden is appointed or employed by the county commissioners pursuant to R.C. 955.12 and his principal duty is to control dogs mainly through registration procedures and without regard to disease. This is apparent from the provisions of R.C. 955.12, which read in pertinent part:

"The warden and deputies shall make a record of all dogs owned, kept, and harbored in their respective counties. They shall patrol their respective counties and seize and

impound on sight all dogs more than three months of age found not wearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel and dogs acquired by, and confined on the premises of, an institution or organization of the type described in section 955.16 of the Revised Code. They shall also investigate all claims for damages to livestock inflicted by dogs. They shall make weekly reports, in writing, to the board in their respective counties of all dogs seized, impounded, redeemed, and destroyed, and of all claims for damage to livestock inflicted by dogs."

On the other hand, 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. Specifically, however, it is R.C. 955.26 which outlines the precise duties of the board of health as well as the county dog warden and others in a situation where rabies has been determined prevalent. R.C. 955.26 provides:

"Whenever in the judgement of the director of health, any city or general health district board of health, or persons performing the duties of a board of health, rabies is prevalent, the director of health, the board or persons performing the duties of such board, shall declare a quarantine of all dogs in the health district, or part thereof. During such quarantine, the owner, keeper, or harbinger of any dogs shall keep the dogs confined to the premises of the owner, keeper, or harbinger, or in a suitable pound or kennel, if such pound or kennel is provided by the city or county; provided, a dog may be permitted to leave the premises of the owner, keeper or harbinger if under leash or under the control of a responsible person. The quarantine order shall be considered an emergency and need not be published.

When the quarantine has been declared, the director of health, city or general health district board of health, or persons performing the duties of a board of health may require vaccination for rabies of all dogs within the health district or part thereof. Proof of such vaccination within a satisfactory period prior to registration, as provided in section 955.01 of the Revised Code, shall be demonstrated to the county auditor before such registration is issued for any dog required to be vaccinated.

A satisfactory period is twelve months in the case of nervous-tissue vaccine, and thirty-six months in the case of Flury strain chicken embryo vaccine, or any other period or method approved by the public health council.

When a quarantine of dogs has been declared in any health district, or part thereof, the county dog warden and all other persons having the authority of police officers shall assist the health authorities in enforcing the quarantine order.

When vaccination has been declared compulsory in any health district, or part thereof, the dog warden shall assist the health authorities in enforcing the vaccination order.

Notwithstanding the provisions of this section a board of health of a general health district or city board of health may make orders pursuant to section 3709.20 and 3709.21 of the Revised Code requiring the vaccination of dogs."

(Emphasis added.)

From a review of R.C. 955.26, it is clear that the county dog warden must aid in the enforcement of health board orders in a situation where rabies are prevalent. That is not to say, however, that the board of health and the county dog wardens have overlapping authority relative to dog control. Both the board of health and the county dog warden have separate, specified duties.

At best, then, an agreement between the county commissioners (who employ and control the county dog warden) and the board of health as suggested in your request would be a delegation of responsibilities which have been specifically assigned by statute. I can find no implied or expressed powers in the relevant statutes to support such a proposition. Inasmuch as the county commissioners have only such powers as are granted by statute, it is apparent that a contractual arrangement to either delegate or undertake duties without statutory authorization is prohibited. In 1953 Op. Atty. Gen. 53-3063 my predecessor stated at 464:

"In ascertaining the powers that may be exercised by a county or by any of its boards or commissions we are not permitted to indulge, in any degree, to the consideration of convenience or desirability, or even the goal of greatest efficiency. Counties are strictly creatures of the legislature and the county commissioners and other officers of the county have only those powers which the legislative has seen fit to grant and those which are clearly implied and essential to the carrying out of the powers granted."

See also Elder v. Smith, 103 Ohio St. 369 (1971); Reike v. Hogan, 34 Ohio L. Abs. 311 (Cuyahoga Cty. Ct. App. 1940); 1973 Op. Att'y Gen. No. 73-126.

These same limitations on contractual authority apply to the board of health as well. In construing R.C. 955.26 the court in Stubbs v. Mitchell, 65 Ohio L. Abs. 204 (Franklin Cty. App. 1952) stated that this statutory provision operates:

"[O]nly when in the opinion of the Board rabies becomes prevalent, and then it imposes a duty upon the Board to declare a quarantine of all dogs in the district. The powers of the Boards of Health are statutory and they are limited to those expressly conferred or fairly implied from those expressly granted."

Based upon the foregoing it is my opinion and you are so advised that the statutory obligations of the county commissioners, to be exercised through the county dog warden, and those of the

board of health which relate to rabies control are distinct and separate and may not, by agreement, be delegated from one to the other.