

**OPINION NO. 68-053****Syllabus:**

A dog warden is permitted to sell a dog pursuant to Section 955.16, Revised Code, only to an organization or institution or servant of such institution or organization which has been certified by the Ohio public health council.

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**To: Richard O. Harris, Champaign County Pros. Atty., Urbana, Ohio**  
**By: William B. Saxbe, Attorney General, March 21, 1968**

I have before me your letter expressing your concern over the interpretation to be given a recent opinion ren-

dered by this office. Opinion No. 68-016, Opinions of the Attorney General for 1968 (limited circulation), held in pertinent part that Section 955.16, Revised Code, does not authorize a county to contract with an individual or firm for the destruction of dogs.

Your letter insofar as it concerns the interpretation of the above mentioned opinion is set out below:

" \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*"

"The same individuals and firms who were interested in contracting with the county commissioners for the destruction of those dogs are now presenting themselves to the dog warden as agents of the institutions and organizations certified by the Ohio Public Health Council as being engaged in teaching or research concerning the prevention and treatment of diseases of human beings or animals, to which the dog warden or pound-keeper is authorized to sell dogs pursuant to Section 955.16, Revised Code.

"Therefore, I request your opinion whether Section 955.16, Revised Code, authorizes a dog warden or pound-keeper to sell dogs to a person who represents himself as an agent of an Ohio institution or organization not for profit certified by the Ohio Public Health Council as being engaged in teaching or research concerning the prevention and treatment of diseases of human beings or animals."

Your question requires an examination of the power of a dog warden to sell dogs. The authority of the dog warden to act is controlled by statutes and by the public policy to be implemented by the statute. Unfortunately, there have been no judicial opinions interpreting Section 955.16, Revised Code, which would be helpful in answering your question. Likewise, legislative history is unavailable; therefore, the legislative interest must be abstracted from the language itself from the former above mentioned opinion of this office.

Section 955.16, Revised Code, provides in part as follows:

" \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*"

"Any dog not redeemed within three days from the time it is seized and impounded may, upon payment to the dog warden or pound-keeper of the sum of three dollars, be sold to any Ohio institution or organization not for profit which is certified by the Ohio public health council as being engaged in teaching or research concerning the prevention and treatment of diseases of human beings or animals. Any dog so sold to any such institution or organization shall be discharged from said pound without

registration, and may be kept by such institution or organization without registration so long as said dog is used for such teaching and research purposes.

"Any institution or organization certified by the Ohio public health council which obtains dogs for teaching and research purposes pursuant to the provisions of this section, shall at all reasonable times make such dogs available for inspection by agents of the Ohio humane society, appointed pursuant to section 1717.04 of the Revised Code \* \* \*

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Among the policies expressed in Section 955.16, Revised Code, is that of insuring the humane treatment of dogs. The fact that unclaimed dogs may face certain and imminent death in no way detracts from the potency of this expressed policy. Therefore, it is appropriate to take appropriate precautions to insure the humane treatment of dogs. In this respect the actual physical handling or treatment of dogs is important.

Furthermore, Section 955.16, Revised Code, anticipates transfer directly from the dog warden to the certified institution or organization. There is no expression in that statute indicating that it would be appropriate for an independent contractor to purchase the dogs from the warden and then sell the same dogs to the certified institutions. Likewise, any profit obtained from dealings in the commodity of unclaimed dogs would be unwarranted.

Your letter implies that the existence of a true agency relationship between those actually purchasing the dogs and the certified organizations may be doubtful.

"An agent may be a servant or not a servant. An agent who is not a servant is one type of independent contractor. A servant is an agent in whose physical conduct the employer normally has the right to control." Seavey, Law of Agency, page 8, (1964). Thus, a servant is a member of that class of persons referred to as agents, while an independent contractor may or may not be an agent, but may not be a servant. "Included in the group of independent contractors who are agents are attorneys, auctioneers, brokers, factors \* \* \* the other group which includes buyers, sellers, \* \* \* are not within that class referred to as agents." Seavey, supra, page 8.

Because an agent may be an independent contractor not subject to the physical control of a principal and therefore not subject to inspection "by agents of the Ohio humane society, appointed pursuant to Section 1717.04", it is my opinion that a dog warden is permitted to sell a dog pursuant to Section 955.16, Revised Code, only to an organization or institution or servant of such institution or organization which has been certified by the Ohio public health council.