

OPINION NO. 83-066**Syllabus:**

Pursuant to R.C. 955.27, when the county prosecutor arranges to have a court reporter prepare a transcript of testimony taken in a hearing provided for by R.C. 955.33, the cost of such transcript shall be paid by the board of county commissioners from the dog and kennel fund described in R.C. 955.20.

To: Richard B. Hauser, Huron County Prosecuting Attorney, Norwalk, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 7, 1983

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

Please issue an opinion as to who bears the costs of a court reporter's transcript of testimony taken in a hearing pursuant to 955.33 of the Ohio Revised Code.

R.C. 955.29 provides a mechanism by which an owner of certain types of domesticated animals that have been injured or killed by a dog not belonging to

such owner, may apply to the board of county commissioners, through the dog warden whose position is created by R.C. 955.12, for compensation for his loss. Pursuant to R.C. 955.29 the owner must fill out a claim form prescribed by R.C. 955.36, and must further attest in a statement that his account of the events leading to the loss is true and that he did not own or harbor an unregistered dog on the date of the loss or injury. Following the owner's submission of this information to the dog warden, R.C. 955.29 specifies in part that:

If the warden finds all the statements that the owner made on the form to be correct and agrees with the owner as to the fair market value of the animals, fowl, or poultry, he shall promptly so certify and send both copies of the form, together with whatever other documents, testimony or information he has received relating to the loss or injury, to the board of county commissioners.

If the warden does not find all the statements to be correct or does not agree with the owner as to the fair market value, the owner may appeal to the board of township trustees for a determination as provided in section[s] 955.30 to 955.34 of the Revised Code.

A hearing of the appeal mentioned in R.C. 955.29, quoted above, is provided in R.C. 955.33, which states:

The board of township trustees shall hear such claims as are submitted to it pursuant to section 955.29 of the Revised Code in the order of their filing and may allow them in full or such parts thereof as the testimony shows to be just. The board shall transmit its findings with the testimony taken and the fees due witnesses in each case over the official signatures of the board members to the board of county commissioners in care of the county auditor, who shall enter each claim reported upon a book to be kept for that purpose in the order of its receipt. (Emphasis added.)

Pursuant to R.C. 955.35, the findings of the board of township trustees are subject to examination and modification by the board of county commissioners. See also R.C. 955.37 (providing for appeal to probate court).

While R.C. 955.33 does not specify the means by which testimony is to be taken, the statute does make clear that the township trustees shall transmit to the board of county commissioners "the testimony taken" at the claims hearing. See generally R.C. 955.31 (providing that the board of township trustees shall receive "any other information or testimony that will enable it to determine the fair market value of the animals" injured or killed by a dog). A representative of your office has informed me that the office of the prosecuting attorney, not the board of township trustees or the claimant, arranges for the attendance of a court reporter at each claims hearing. You have further informed me that a transcript of testimony is ordinarily produced following the hearing before the board of township trustees, for use by the board of county commissioners in its consideration of the claim pursuant to R.C. 955.35.

Your question, then, concerns the issue of who is liable for payment of the expense of a court reporter's preparation of a transcript of testimony taken pursuant to arrangement by the county prosecutor in a hearing provided for by R.C. 955.33.

R.C. 955.01 through R.C. 955.14 provide for the payment of various registration fees pertaining to dogs and dog kennels, which fees constitute a county fund known as "the dog and kennel fund." R.C. 955.20. R.C. 955.27 states that:

¹ While I must limit myself to answering your question in the form in which you have posed it, I nevertheless note that R.C. 955.33 requires neither the attendance of a court reporter at these hearings nor the preparation of a transcript of testimony for the transmittal to the board of county commissioners.

After paying all necessary expenses of administering the sections of the Revised Code relating to the registration, seizing, impounding, and destroying of dogs, including the purchase, construction, and repair of vehicles and facilities necessary for the proper administration of such sections, making compensation for injuries to livestock inflicted by dogs, and after paying all horse, sheep, cattle, swine, mule, and goat claims [the board of county commissioners shall pay moneys in excess of two thousand dollars in the dog and kennel fund to a society for the prevention of cruelty to children and animals]. (Emphasis added.)

Assuming that the preparation of a transcript of testimony taken in a hearing conducted pursuant to R.C. 955.33 is reasonably necessary for the proper administration of that section and related provisions, I conclude that R.C. 955.27 constitutes authority for the payment by the board of county commissioners of the expense of such preparation, the payment to be made from the dog and kennel fund described in R.C. 955.20.² See generally R.C. 955.20 (the dog and kennel fund shall be used for, among other purposes, the payment of animal claims under R.C. 955.29-.38 and in accordance with R.C. 955.27). The costs of the transcript will, thus, be borne in the same manner as witness fees. See R.C. 955.33.

In conclusion, it is my opinion, and you are advised, that pursuant to R.C. 955.27, when the county prosecutor arranges to have a court reporter prepare a transcript of testimony taken in a hearing provided for by R.C. 955.33, the cost of such transcript shall be paid by the board of county commissioners from the dog and kennel fund described in R.C. 955.20.

² See also R.C. 955.14(A) (providing for the payment of the expenses of administration of R.C. Chapter 955 from the dog and kennel fund prior to the payment of allowable claims for animals injured or destroyed by dogs and providing for steps to be taken if the amounts in the fund are not sufficient to pay all expenses and allowable claims). See generally R.C. 955.30 (authorizing the county prosecutor to bring an action against the owner of the dog that caused the loss or injury to recover "whatever compensation is paid from the dog and kennel fund for the loss or injury").