

1321

1. DOG WARDEN—COUNTY COMMISSIONERS—MAY DESIGNATE AND APPOINT OFFICER REGULARLY EMPLOYED BY HUMANE SOCIETY TO ACT AS DOG WARDEN OR DEPUTY COUNTY DOG WARDEN—DUTIES PRESCRIBED BY LAW—PROVISO, SOCIETY OWNS OR MAINTAINS SUITABLE PLACE TO KEEP AND DESTROY DOGS—SECTIONS 5652-8, 10062, 10067 G. C.
2. AMOUNTS EXPENDED BY COUNTY COMMISSIONERS—DOG AND KENNEL FUND—REIMBURSE HUMANE SOCIETY FOR EXPENSES TO SEIZE, IMPOUND AND DESTROY DOGS—LIMITED TO EXTENT THAT THERE BE RESERVED FOR PAYMENT OF ANIMAL CLAIMS FILED IN CALENDAR YEAR A CERTAIN SUM—SECTIONS 5652-13, 5653 G. C.
- 3(a). COUNTY COMMISSIONERS—APPROPRIATION FOR COUNTY AUDITOR—REGISTRATION TAGS, BLANKS, RECORDS AND CLERK HIRE—CERTAIN LIMITATION NOT MORE THAN THREE-TENTHS OF 50%.
- 3(b). ANIMAL CLAIMS—WITNESS FEES—HEARINGS—SECTIONS 5840 THROUGH 5849, 5653, 5845 G. C.
- 3(c). DECEMBER SESSION—COUNTY COMMISSIONERS—IF MORE THAN \$2,000.00 IN DOG AND KENNEL FUND—ANY PAYMENT TO HUMANE SOCIETY CAN ONLY BE MADE AFTER DETERMINATION OF AMOUNT OF EXCESS IN FUND.
4. MOTOR VEHICLES AND OTHER EQUIPMENT FOR USE OF HUMANE SOCIETY—OFFICER—APPOINTED TO ACT AS DOG WARDEN—TITLE—DISPOSITION OF PROPERTY.
5. BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—PUBLIC PROPERTY ILLEGALLY DISPOSED OF—DUTY TO REPORT FACTS.

6. COUNTY COMMISSIONERS—MAY NOT AGREE TO APPOINT ANY AGENT OF HUMANE SOCIETY TO ACT AS COUNTY DOG WARDEN—MAY NOT AGREE TO REVOKE APPOINTMENT UPON WRITTEN REQUEST OF CHIEF AGENT OF HUMANE SOCIETY—ILLEGAL AND UNLAWFUL DELEGATION OF POWER.

7. COUNTY COMMISSIONERS—AUTHORITY OF SECTION 5652-8 G. C.—MAY DESIGNATE AND APPOINT OFFICER OR OFFICERS REGULARLY EMPLOYED BY HUMANE SOCIETY TO ACT AS COUNTY DOG WARDEN OR DEPUTY COUNTY DOG WARDENS—SECTIONS 10062 THROUGH 10067 G. C.—APPOINTMENT NEED NOT BE MADE FROM LIST CERTIFIED BY STATE CIVIL SERVICE COMMISSION.

SYLLABUS

1. Section 5652-8, General Code, grants authority to county commissioners to designate and appoint an officer or officers regularly employed by a humane society organized as provided by Sections 10062 and 10067, General Code, to act as county dog warden or deputy county dog wardens, to perform all the duties prescribed by law to be performed by such dog warden and deputies in seizing, impounding, redeeming and destroying unlicensed dogs, if such society owns or maintains a suitable place for keeping and destroying dogs.

2. Where an officer or officers of a humane society are designated and appointed by a board of county commissioners, pursuant to Section 5652-8, General Code, to act as county dog warden or deputy dog wardens, the amounts that may be expended by the county commissioners from the dog and kennel fund to reimburse such society for the expenses incurred in seizing, impounding and destroying dogs are only limited by the provisions of Section 5652-13, General Code, to the extent that there be reserved for the payment of animal claims referred to in Section 5653, General Code, a sum equal to the total amount of animal claims filed in said calendar year, or an amount equal to the total amount of animal claims paid or allowed the preceding year, whichever amount is larger.

3(a) Under the provisions of Section 5652-13, General Code, the county commissioners may appropriate out of the dog and kennel fund in any calendar year, for the use of the county auditor, for registration tags, blanks, records and clerk hire not more than three-tenths of 50% of the gross receipts of said dog and kennel fund in any calendar year.

3(b) The amount to be retained by the county commissioners out of the dog and kennel fund to pay animal claims as provided in Sections 5840 to 5849, both inclusive, of the General Code, and in accordance with the provisions of Section 5653 of the General Code, is to include the witness fees allowed by Section 5845, General Code, on the hearing of claims for animals killed or injured by dogs.

3(c) After providing for items (a) and (b) above, if the county commissioners, at their December session, find that there remains of said dog and kennel fund more than \$2,000.00, they may pay to a humane society having the qualifications set out in Section 5653, General Code, so much of the excess as the county commissioners deem necessary for the uses and purposes of such society. Such payment can only be made after determination of the amount of the excess in such fund at the December meeting of the county commissioners.

4. The county commissioners may, under the authority of Sections 2412-1 and 2412-2, General Code, provide motor vehicles and other equipment for the use of the dog warden and his deputies or for the use of the humane society or the officer thereof who has been duly appointed to act as such dog warden, but may not convey the title to such vehicle or equipment to the humane society, and such humane society would have no authority to dispose of such property so provided.

5. The Bureau of Inspection and Supervision of Public Offices is authorized and required by Section 286, of the General Code, in case it finds upon examination of any public office, that the public property has been illegally disposed of, to report such facts, together with the names of the officers involved in such action.

6. An agreement by a board of county commissioners with a humane society, whereby the board of county commissioners agrees to appoint any agent of the humane society to act as county dog warden or deputy county dog wardens and agrees to revoke any such appointment upon written request of such chief agent of the humane society, is illegal as an unlawful delegation of power by the board of county commissioners.

7. Where county commissioners, acting under authority of Section 5652-8, General Code, designate and appoint an officer or officers regularly employed by a humane society organized in accordance with Sections 10062 to 10067, General Code, to act as county dog warden or deputy county dog wardens, such appointment need not be made from a list certified by the Civil Service Commission of the State of Ohio.

Columbus, Ohio, April 4, 1952

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

This will acknowledge receipt of your request for my opinion, which reads as follows :

“Through adoption of a resolution, copy of which is hereto attached, a board of county commissioners accepted the proposal of a humane society to assume and perform the duties and functions prescribed by law to be performed by the dog warden and deputy dog wardens appointed by the county commissioners under the provisions of Section 5652-7, General Code. The acceptance of this proposal has given rise to the following questions :

"1. Does Section 5652-8, General Code, grant sufficient authority to county commissioners to permit them to designate, or appoint agents of a humane society, organized as provided by Sections 10062 to 10067, General Code, to perform all of the duties prescribed by law for seizing, impounding, redemption and destruction of unlicensed dogs?

"2. If such agents may be appointed, and the county commissioners determine to pay a portion of the dog and kennel receipts to the humane society to reimburse the society for expense incurred in fulfilling their agreement, would such payments to the society come within the meaning of Section 5652-13, General Code, and as such be limited to the amount designated by this section to be used for seizing, impounding and destroying dogs?

"3. If you determine that the payments referred to in question (2) do not come within the provisions of Section 5652-13, General Code, would the county commissioners have authority to take the following steps:

"(a) Appropriate not to exceed three-tenths of fifty per cent of the gross receipts of the dog and kennel fund in any calendar year for the use of the county auditor for registration tags, blanks, records and clerk hire.

"(b) Retain a sufficient amount of said fund to pay animal claims and witness fees currently on file.

"(c) After providing for items (a) and (b) above, may the county commissioners legally pay to the humane society all money remaining to the credit of the dog and kennel fund each month, or will Section 5653, General Code, operate to permit payments to such society only after determination of the excess in such fund at the December meeting of the county commissioners?

"4. May county commissioners legally turn over to a humane society county owned property, such as motor vehicles and other equipment previously purchased for the use of the dog warden and his deputies? (In this particular case the transfer was effected prior to the enactment of Section 2447-2, General Code in 1947, and its amendment in 1949.)

"5. May a humane society legally dispose of such personal property, or does this power rest with the county commissioners?

6. If your answers to questions (4) and (5) above are in the negative, is the Bureau of Inspection and Supervision of Public Offices authorized by Section 286, General

Code, to make findings for recovery against the officials or board authorizing such transfer or disposition of county-owned property?

"7. In view of the ruling in Opinion of the Attorney General, No. 4460, in 1932, that dog wardens must be selected from certified lists of the State Civil Service Commission for such positions, may the county commissioners legally agree to appoint persons to, or discharge them from the positions of dog warden and deputy dog wardens upon the written request of an agent of the humane society?"

For the sake of brevity, I shall discuss the questions in the order in which you have presented them, and without repeating the questions individually as worded.

1. Your first question involves the authority of a board of county commissioners under Section 5652-8, General Code, to designate and appoint an agent or agents of a humane society organized under Sections 10062 to 10067, inclusive, General Code, to perform the duties prescribed by law for seizing, impounding, redeeming and destroying unlicensed dogs.

Section 5652-8, General Code, provides as follows:

"County commissioners shall provide nets and other suitable devices for the taking of dogs in a humane manner, and except as hereinafter provided, also provide a suitable place for impounding dogs, and make proper provision for feeding and caring for the same, and shall also provide humane devices and methods for destroying dogs. Provided, however, that in any county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, and having one or more agents appointed in pursuance to law, and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs, the county commissioners shall not be required to furnish a dog pound, but the county dog warden shall deliver all dogs seized by him and his deputies to such society for the prevention of cruelty to children and animals at its animal shelter, there to be dealt with in accordance with the law, and the county commissioners shall provide for the payment of reasonable compensation to such society for its services so performed out of the dog and kennel fund. Provided, further, that the county commissioners may *designate and appoint* any officer or officers *regularly employed by any society organized as provided by sections 10062 to 10067, inclusive*, of the General Code, to *act as county dog warden or deputies* for the purpose of carrying out the provisions of this act, if such society whose agent or agents are so employed, owns or controls a suitable place for keeping and destroying dogs."

(Emphasis added.)

You will note the second proviso of this section provides for the designation and appointment of "an officer or officers regularly employed by any society organized as provided by Sections 10062 to 10067, inclusive, of the General Code, to act as county dog warden or deputies for the purpose of carrying out the provisions of this act, if such society whose agent or agents are so employed, owns or controls a suitable place for keeping and destroying dogs." Assuming that the agents so designated in this instance are regularly employed officers of such humane society in accordance with this proviso, and the board of county commissioners determines that such society owns or controls a suitable place for the keeping and destroying of dogs, it clearly appears from the wording of Section 5652-8, General Code, that a board of county commissioners has sufficient authority to designate and appoint such agents to act as county dog wardens or deputy county dog wardens and to perform the duties of such office prescribed by law for the seizing, impounding, redeeming and destroying of unlicensed dogs.

One of my predecessors in Opinion No. 338, Opinions of the Attorney General for 1933, page 360, held that the office of county dog warden was compatible with the position of agent for a humane society. In view of this former opinion, in which I concur, and the clear terms of Section 5652-8, General Code, there is nothing improper or unlawful involved in the appointment inquired of in this instance.

2. Your second question concerns the applicability of Section 5652-13, General Code, in limiting the amount of payment made by a board of county commissioners to a humane society under the above arrangement to reimburse such society for the expense incurred in seizing and impounding dogs. This section as amended effective October 25, 1949, reads as follows:

"The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and to be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment, also paying the compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in sections 5840 to 5849, both inclusive, of the General Code, and in accordance with the provisions of section 5653 of the General Code. Provided, however, that the county commissioners by resolution

shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expense of registering, seizing, impounding and destroying dogs in accordance with the provisions of section 5652 and supplemental sections of the General Code.

“Provided, further, that if the funds so appropriated in any calendar year are found by the county commissioners to be insufficient to defray the necessary cost and expense of the county dog warden in carrying out the provisions of section 5652 and supplemental sections, of the General Code, the county commissioners may, by resolution so provided, after setting aside a sum equal to the total amount of animal claims filed in said calendar year, or an amount equal to the total amount of animal claims paid or allowed the preceding year, whichever amount is larger, appropriate further funds in excess of 50% of the gross receipts of the dog and kennel fund for the use and purpose of the county dog warden in administering the provisions of section 5652 and supplemental sections of the General Code.”

The second paragraph of this section was added by an amendment effective October 25, 1949. As provided in this section, before and after amendment, the moneys collected as registration fees shall constitute a special fund known as the dog and kennel fund. Such fund is to be used for the purpose of defraying the cost of “furnishing all blanks, records, tags, nets and other equipment, also for paying the compensation of county dog wardens, deputies, pound keeper and other employes necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims * * * in accordance with the provisions of Section 5653 of the General Code.” Prior to this amendment, the maximum portion of the dog and kennel fund that could be used for the expenses incident to the functions of the dog warden was fifty per cent. The amendment removes that limitation, subject to a reservation of a sufficient amount to take care of “animal claims.”

3. Your third question embraces three propositions: (a) the amount that may be appropriated out of the dog and kennel fund for the expense of registration, tax blanks, records and clerk hire; (b) the amount that must be retained to pay animal claims and witness fees, and (c) the payment of a surplus of such fund to the humane society.

(a) In Section 5652-13 supra, it is provided that the county commissioners may appropriate out of the dog and kennel fund not to exceed 50% of its gross receipts in any calendar year. Then follows the following language :

“* * * not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of section 5652 and supplemental sections of the General Code.”

This provision is ambiguous, in that it is difficult to determine whether the three-tenths is intended to limit only the expenditures for tags, blanks, records and clerk hire, or to limit the entire appropriation. One of my predecessors in Opinion No. 1017, Opinions of the Attorney General for 1927, page 1782, called attention to the ambiguity of the language and the want of punctuation, and said that the purpose of the law could only be clarified by putting in parenthesis, the words, “not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire.” This would give the entire sentence the sense of permitting the appropriation of 50% for all the expenses of the office of the dog warden’s functions, but limiting the particular expenses for tags, etc. to three-tenths of the 50%. I am in accord with this interpretation.

(b) This question assumes that it may have been found necessary to appropriate from the dog and kennel fund more than 50% originally allowed for the office of dog warden. The last paragraph of Section 5652 supra, authorizes an additional appropriation, if the original 50% is found insufficient, but undertakes to protect the animal claims by authorizing the commissioners to make the additional appropriation, with the following qualifications :

“* * * the county commissioners may, by resolution so provided, after setting aside a sum equal to the total amount of animal claims filed in said calendar year, or an amount equal to the total amount of animal claims paid or allowed the preceding year, whichever amount is larger, appropriate further funds in excess of 50% of the gross receipts of the dog and kennel fund for the use and purpose of the county dog warden in administering the provisions of section 5652 and supplemental sections of the General Code.”

Although witness fees are not here mentioned, a reference to the statutes relating to the determination and payment of animal claims makes it clear, in my opinion, that witness fees should be included in determining the amount to be withheld. Section 5845, General Code, relates to the hearing of claims for animals killed or injured by dogs, and authorizes the payment of fees of fifty cents each to not more than four witnesses, together with their mileage, going and returning, at the rate of five cents per mile.

Accordingly, it is my opinion that in determining the amount of excess appropriation that may be made, the commissioners should set aside an amount sufficient to equal the total of animal claims filed in the current calendar year or an amount equal to the total amount of animal claims paid or allowed the preceding year, whichever amount is larger. It is my further opinion that since it is impossible to determine the total amount of animal claims filed in said calendar year until the end of the year, this additional appropriation would have to be withheld until the end of the calendar year.

(c) Section 5653 of the General Code provides in part, as follows:

“After paying all of the necessary expenses of administering the sections of the General Code, relating to the registration, licensing, seizing, impounding and destroying of dogs and making compensation for injuries to livestock inflicted by dogs, also after paying all horse, sheep, cattle, swine, mule and goat claims, at the December session of the county commissioners, if there remain more than two thousand dollars of the dog and kennel fund arising from the registration of dogs and dog kennels for such year in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized by law, and having one or more agents appointed in pursuance to law, or any other society organized as provided in sections 10062 to 10067, inclusive, General Code, that owns or controls a suitable dog kennel or a place for the keeping and destroying of dogs which has one or more agents appointed and employed in pursuance to law, all such excess as the county commissioners deem necessary for the uses and purposes of such society by order of the county commissioners and upon the warrant of the county auditor shall be paid to the treasurer of such society * * *.”

Your question relative to this action appears to be whether the county commissioners may make such payment monthly, or only after determination of the excess in such fund at the December meeting of the

county commissioners. In view of the clear language of this section, providing that this action may be taken at the December session, and in view of the obvious fact that until that time, they cannot determine that there is such a balance, or its amount, the answer to your question appears to me to be very clear that such payments cannot be made monthly, but only after the December meeting of the county commissioners.

4 and 5. It is evident from a reading of the resolution of the board of county commissioners accompanying your request, that the "turning over" of the county-owned property to the humane society implies more than merely making such property as motor vehicles and other equipment previously purchased for the use of the dog warden and his deputies, available for the use of the society. You will note that Section 5652-8, General Code, hereinbefore quoted, provides that the commissioners "* * * shall provide nets and other suitable devices for the taking of dogs in a humane manner * * *," and that Section 5652-13, General Code, as quoted above, provides that the dog and kennel fund shall be used "* * * for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment * * *."

Section 2412-1, General Code, provides in part as follows:

"* * * If the board of county commissioners deem it necessary to purchase a motor vehicle or vehicles for their use or for the use of any department under their direct control, application shall be made by them to a judge of the court of common pleas of said county, who, if upon the hearing thereof finds it necessary and expedient to purchase such vehicle or vehicles shall so order, fixing the number and kind of such vehicles, and the amount to be expended for each."

Section 2412-2, General Code, provides that the use of such vehicles is to be subject to the regulation of the county commissioners.

That these statutes may be invoked as supporting the purchase of an automobile for use of the dog warden was held in Opinion No. 1553, Opinions of the Attorney General, for 1928, page 63.

There is no question concerning the authority of the county commissioners to make use of a county-owned motor vehicle and other suitable equipment available for the use of an officer or agent of a qualified humane society who has been properly designated to act as county dog warden, such use being subject to the regulation of the county com-

missioners. However, the copy of the resolution of the board of county commissioners which you have submitted with your request, suggests that it was the intention to convey the legal title thereof, with the right on the part of the society to dispose of the same. Unquestionably, such a transfer is unauthorized and illegal. It is evident that the county commissioners would have no authority to make such a transfer to a regularly employed dog warden, and there is no distinction in this regard, between a regularly employed dog warden and a humane society whose agent has been designated to act as the county dog warden.

It seems hardly necessary to consider Section 2447-2, General Code, which authorizes the sale by the county commissioners of county-owned personal property, including motor vehicles, road machinery, equipment and tools "which is not needed for public use or is obsolete or unfit for the use for which it was acquired." Plainly, that section would have no application to the case you present, and the facts stated do not indicate that any attempt was made to invoke its provisions.

Having concluded that the county commissioners may not legally convey to the humane society title to such personal property, it necessarily follows that such humane society would have no legal authority to dispose of it.

6. The authority of the Bureau of Inspection and Supervision of Public Offices to report "findings" as noted in your sixth question, is found in Section 286, General Code, which is quoted in pertinent part, as follows:

"The report of the examination shall set forth, in such detail as may be deemed proper by the bureau, the result of the examination with respect to each and every matter and thing inquired into and shall be made and signed by the state examiner in charge of the examination or by a deputy inspector, and shall be filed in the office of the bureau of inspection and supervision of public offices and certified copies thereof filed as follows: one in the office of the auditing department of the taxing district reported upon, and one in the office of the attorney general, prosecuting attorney, city solicitor, or mayor of a village as hereinafter provided. * * *

"If the report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated, the officer receiving such certified copy of such re-

port, other than the auditing department of the taxing district, may, within ninety days after the receipt of such certified copy of such report, institute or cause to be instituted, and each of said officers is hereby authorized and required so to do, civil actions in the proper court in the name of the political subdivision or taxing district to which such public money is due or such public property belongs, for the recovery of the same and shall prosecute, or cause to be prosecuted the same to final determination.
* * *” (Emphasis added.)

Section 286, General Code, was considered by my immediate predecessor in Opinion No. 2244, Opinions of the Attorney General for 1950, page 594, from which the following language is quoted:

“It is apparent from a reading of Section 286 of the General Code that the examiner is required to report each and every matter inquired into, and if said examiner inquires into a contract between a county and a private person, such should be reported. However, I must conclude that such report may go no further than setting forth the contract, the proper fund against which the contract is chargeable and balance in said fund. Whether or not the contract has been fully complied with would be a question of fact to be determined by the court and not the examiner in charge.”

The following proposition of law is found in the first paragraph of the syllabus in the case of Heiser Brothers Company v. City of Cleveland, 44 Ohio App., 560:

“In an action instituted under provisions of Section 274, et seq., General Code, when a certified copy of any portion of a finding and report made by examiners under the Bureau of Inspection and Supervision of Public Offices is offered in evidence as provided in Section 286-1, General Code, such report is competent in so far as it sets forth findings of fact. Arguments, deductions, inferences and conclusions of law, incorporated in such report, are incompetent, and the admission in evidence as a whole or a report containing such incompetent evidence is erroneous and prejudicial.”

In view of the foregoing, it appears that the report of the examination made by the Bureau of Inspection and Supervision of Public Offices should fully set forth the facts revealed by such examination, including the authorization by the board of county commissioners of a transfer and disposition of county owned property, which is believed to be illegal, together with the names of the members of the board as they appear on

the journal authorizing such alleged illegal transfers. However, I do not find in the statutes any authority for your Bureau to make "findings for recovery" against any officer or other person. That would be the duty of a court if action is brought by the proper officer.

7. Your seventh question is apparently prompted by the fifth paragraph of the copy of the resolution of the board of county commissioners which accompanies your letter requesting my opinion, and which reads as follows:

"5. Upon the written request of the chief agent of the Humane Society the Board of County Commissioners will appoint any agent or agents of the Humane Society, designated by him as County Dog Warden or Deputy Dog Warden respectively, and also upon such written request will revoke such appointments."

At the very outset, I think it may be asserted, and without argument, that the board of county commissioners may not lawfully agree or contract with a private organization or individual to appoint to, or discharge persons from county employment upon the written request or bidding of such private organization or individual. The board of county commissioners would have no authority by such an agreement to circumscribe its judgment and discretion to be exercised in the important function of engaging competent and trustworthy employes for county service or of removing incompetent, unqualified or untrustworthy employes. Such an arrangement would unquestionably constitute an illegal delegation of the authority of the commissioners. 32 Ohio Jurisprudence, Public Officers, Section 86, page 946. The statute does not appear to contemplate that the county commissioners may enter into a contract of any sort that would control their action. It merely authorizes them, if they deem proper, to *appoint* an officer of a humane society as dog warden, and it would appear that they might revoke such appointment at any time.

The syllabus of Opinion No. 4460, Opinions of the Attorney General, for 1932, referred to in your request, reads as follows:

"It is the mandatory duty of the board of county commissioners to appoint a dog warden from the list certified by the Civil Service Commission of the State of Ohio for such position."

In the ordinary instance of the appointment of a dog warden under Section 5652-7, General Code, this is a correct statement of the law, and

I concur therein. However, I find a distinction in the case of the designation and appointment of an officer of a society organized under Sections 10062 to 10067, General Code, to act as county dog warden.

Section 5652-7, General Code, providing for the appointment of a county dog warden and deputies, reads in pertinent part as follows :

“County commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs.”

Section 5652-8 supra, providing for the designation and appointment of an officer of a qualified humane society to act as county dog warden, provides in part as follows :

“* * * Provided further, that the county commissioners may designate and appoint any officer or officers regularly employed by any society organized as provided by sections 10062 to 10067, inclusive, of the General Code, to act as county dog warden or deputies for the purpose of carrying out the provisions of this act, if such society whose agent or agents are so employed, owns or controls a suitable place for keeping and destroying dogs.”

Article XV, Section 10 of the Ohio Constitution, dealing with the subject of civil service, specifies that “appointments and promotions in the civil service of the state, the several counties and cities, shall be made according to merit and fitness, to be ascertained *as far as practicable*, by competitive examinations.” The statute dealing with the subject, Section 486-8 (b), General Code, provides in part as follows :

“The classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

“1. The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities and city school districts thereof, *for which it is practicable to determine the merit and fitness of applicants by competitive examination.* * * *” (Emphasis added.)

I believe a reading of the herein quoted constitutional provision and the statutory expression reveals that it was not intended by the legislature that the civil service provisions should apply where an officer of an eligible and duly qualified humane society is to be designated and appointed to act as county dog warden. It would appear that the separate and distinct statutory provision found in Section 5652-8 dealing with the designation and appointment of such an officer for this purpose constitutes an exception to the usual method of appointment and does not fall within the civil service provisions, as to appointment from an eligible list submitted by the Civil Service Commission.

Manifestly, it would be impracticable to determine the merit and fitness of applicants by competitive examination under Section 5652-8 because their qualifications depend not only upon their individual capacities but also upon the question as provided in this section, whether the humane society, of which they are officers, "owns or controls a suitable place for keeping and destroying dogs." Further, I think it is fair to assume that the legislature considered an officer of an eligible humane society to be qualified to act as county dog warden, without the necessity of undergoing competitive examination.

Therefore, in specific answer to your inquiries it is my opinion :

1. Section 5652-8, General Code, grants authority to county commissioners to designate and appoint an officer or officers regularly employed by a humane society organized as provided by Sections 10062 and 10067, General Code, to act as county dog warden or deputy county dog wardens, to perform all the duties prescribed by law to be performed by such dog warden and deputies in seizing, impounding, redeeming and destroying unlicensed dogs, if such society owns or maintains a suitable place for keeping and destroying dogs.

2. Where an officer or officers of a humane society are designated and appointed by a board of county commissioners, pursuant to Section 5652-8, General Code, to act as county dog warden or deputy dog wardens, the amounts that may be expended by the county commissioners from the dog and kennel fund to reimburse such society for the expenses incurred in seizing, impounding and destroying dogs are only limited by the provisions of Section 5652-13, General Code, to the extent that there be reserved for the payment of animal claims referred to in Section 5653, General Code, a sum equal to the total amount of animal claims filed in

said calendar year, or an amount equal to the total amount of animal claims paid or allowed the preceding year, whichever amount is larger.

3 (a) Under the provisions of Section 5652-13, General Code, the county commissioners may appropriate out of the dog and kennel fund in any calendar year, for the use of the county auditor, for registration tags, blanks, records and clerk hire not more than three-tenths of 50% of the gross receipts of said dog and kennel fund in any calendar year.

3 (b) The amount to be retained by the county commissioners out of the dog and kennel fund to pay animal claims as provided in Sections 5840 to 5849, both inclusive, of the General Code, and in accordance with the provisions of Section 5653 of the General Code, is to include the witness fees allowed by Section 5845, General Code, on the hearing of claims for animals killed or injured by dogs.

3 (c) After providing for items (a) and (b) above, if the county commissioners, at their December session, find that there remains of said dog and kennel fund more than \$2,000.00, they may pay to a humane society having the qualifications set out in Section 5653, General Code, so much of the excess as the county commissioners deem necessary for the uses and purposes of such society. Such payment can only be made after determination of the amount of the excess in such fund at the December meeting of the county commissioners.

4. The county commissioners may, under the authority of Sections 2412-1 and 2412-2, General Code, provide motor vehicles and other equipment for the use of the dog warden and his deputies or for the use of the humane society or the officer thereof who has been duly appointed to act as such dog warden, but may not convey the title to such vehicle or equipment to the humane society, and such humane society would have no authority to dispose of such property so provided.

5. The Bureau of Inspection and Supervision of Public Offices is authorized and required by Section 286 of the General Code, in case it finds upon examination of any public office, that public property has been illegally disposed of, to report such facts, together with the names of the officers involved in such action.

6. An agreement by a board of county commissioners with a humane society, whereby the board of county commissioners agrees to

appoint any agent of the humane society to act as county dog warden or deputy county dog wardens and agrees to revoke any such appointment upon written request of such chief agent of the humane society, is illegal as an unlawful delegation of power by the board of county commissioners.

7. Where county commissioners, acting under authority of Section 5652-8, General Code, designate and appoint an officer or officers regularly employed by a humane society organized in accordance with Sections 10062 to 10067, General Code, to act as county dog warden or deputy county dog wardens, such appointment need not be made from a list certified by the Civil Service Commission of the State of Ohio.

Respectfully,

C. WILLIAM O'NEILL
Attorney General