

OPINION NO. 87-043

Syllabus:

Neither the board of county commissioners nor the county humane society has a duty to purchase liability or accident insurance for an agent of the county

June 1987

humane society appointed under the authority of R.C. 1717.06.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 4, 1987

I have before me your request for my opinion regarding an agent of the county humane society. Your letter reads, in part, as follows:

A question has been referred to this office by the Geauga County Humane Society and Geauga County Commissioners with regards to who is responsible for liability and accident insurance for the county humane officer.

Before addressing your question, it is necessary to clarify several points. First, while your question refers to the county humane officer, the statutory title of the position in question is agent of a county humane society. See R.C. 1717.06. Second, during conversations with my staff you have indicated that by using the word "responsibility" you are asking whether or not the board of county commissioners or the county humane society has a duty to provide the insurance. Finally, you have indicated that by use of the term "accident insurance" you are referring to the various non-liability types of coverage such as medical coverage for driver and occupants, collision coverage, and other forms of insurance coverage for the automobile.¹

In answering your question, I first address the issue of liability insurance. County humane societies may be established under the authority of R.C. 1717.05 which provides:

A society for the prevention of acts of cruelty to animals may be organized in any county by the association of not less than seven persons.

The members of such society, at a meeting called for the purpose, shall elect not less than three of their members as its board of directors, and such directors shall continue in office until their successors are duly chosen.

The secretary or clerk of such meeting shall make a true record of the proceedings thereat and certify and forward such record to the secretary of state, who shall record it. Such record shall contain the name by which the association is to be known, and from and after its filing with the secretary of state the board of directors and the associates, and their successors, shall have the powers, privileges, and immunities incident to incorporate companies. A copy of such record, certified by the secretary of state, shall be taken in all courts and places in this state as evidence that such society is a duly organized and incorporated body.

¹ You indicate that the individual in question drives her own vehicle. I do not, therefore, intend to address the issue of providing insurance where either the county or the humane society owns the vehicle used by the agent.

Such society may elect such officers, and make such rules, regulations, and bylaws, as are deemed expedient by its members for its own government and the proper management of its affairs.

County societies are considered to be public entities performing public functions. See State ex rel. Brown v. Regional Public Safety Service Corp., 47 Ohio App. 2d 300, 353 N.E.2d 851 (1975). The agents are appointed pursuant to R.C. 1717.06, which reads as follows:

A county humane society organized under section 1717.05 of the Revised Code may appoint agents, who are residents of the county or municipal corporation for which the appointment is made, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals. Such agents may arrest any person found violating sections 1717.01 to 1717.14, inclusive, of the Revised Code, or any other law for protecting persons or animals or preventing acts of cruelty thereto. Upon making such arrest the agent forthwith shall convey the person arrested before some court or magistrate having jurisdiction of the offense, and there make complaint against him on oath or affirmation of the offense.

All appointments of agents under this section shall be approved by the mayor of the municipal corporation for which they are made. If the society exists outside a municipal corporation, such appointments shall be approved by the probate judge of the county for which they are made. Such mayor or probate judge shall keep a record of such appointments.

The only statute which authorizes the board of county commissioners to provide for the compensation of an agent of the county humane society is R.C. 1717.07. It requires the board of county commissioners to pay a minimum of twenty-five dollars per month toward the salary of one agent. R.C. 1717.07 reads as follows:

Upon the approval by the mayor of a municipal corporation of the appointment of an agent under section 1717.06 of the Revised Code, the legislative authority of such municipal corporation shall pay monthly to such agent, from the general revenue fund of the municipal corporation, such salary as the legislative authority deems just and reasonable. Upon the approval by the probate judge of a county of such an appointment, the board of county commissioners of such county shall pay monthly to such agent, from the general revenue fund of the county, such salary as the board deems just and reasonable. Such board and such legislative authority may agree upon the amount each is to pay such agent monthly. The salary to be paid monthly to such agent by the legislative authority of a village shall be not less than five dollars; by the legislative authority of a city, not less than twenty dollars; and by the board of county commissioners of a county, not less than twenty-five dollars. Not more than one such agent in each county shall receive remuneration from the board under this section.

In order to determine whether or not the board of county commissioners has a duty to provide insurance for the agent of

the county humane society, it is necessary to review the statutes which define the powers and duties of that board. With the exception of the provision in R.C. 1717.07, I can find no statute imposing any duties upon the board to compensate or provide for such an agent. The board of county commissioners, as a creature of statute, has only such authority as may be conferred upon it by statute, or such authority which may necessarily be implied therefrom. State ex rel. Clark v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921). Your question presents an even narrower issue. You do not ask whether the board of county commissioners has authority to provide such insurance, but whether it has a duty to do so.

In reviewing the various statutory provisions related to the powers and duties of the board of county commissioners, it appears that the board has authority to purchase liability insurance for county employees. See R.C. 307.441. Similar authority is granted in R.C. 2744.08, which permits political subdivisions to purchase liability insurance for their employees, officers and agents. However, these statutes are permissive. Both provide that a county may purchase such insurance. Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (the word "may" shall be construed as permissive unless there is a clear and unequivocal legislative intent to the contrary). Since R.C. 307.441 and R.C. 2744.08 are permissive, it is not necessary to determine whether or not the agent of a county humane society is an employee within the contemplation of either statute.

My predecessor concluded, in 1979 Op. Att'y Gen. No. 79-084, that absent express statutory authority, the board of county commissioners lacked authority to purchase liability insurance. A logical corollary to this rule is that absent a specific statutory directive, the board of county commissioners is not duty bound to purchase liability insurance for any officer or agent. Since no statute imposes such a duty upon the board of county commissioners with respect to an agent of the county humane society, I conclude that the board of county commissioners has no duty to do so.

Having concluded that the board of county commissioners is under no duty to purchase liability insurance for such agents, I next turn to the issue of whether the humane society itself must purchase liability insurance for its agent. After reviewing R.C. Chapter 1717, which allows for establishment of a county humane society, I can find no section which imposes such a duty. R.C. 1717.05 does give to humane societies "the powers, privileges and immunities incident to incorporated companies." The powers of corporations related to the purchase of liability insurance are listed in R.C. 1701.13, subsection (E)(7) of which reads:

(7) A corporation may purchase and maintain insurance or furnish similar protection, including but not limited to trust funds, letters of credit, or self-insurance, on behalf of or for any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, trustee, officer, employee, or agent of another corporation, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as

such, whether or not the corporation would have the power to indemnify him against such liability under this section. Insurance may be purchased from or maintained with a person in which the corporation has a financial interest. (Emphasis added).

This statute is phrased in permissive terms. Dorrian v. Scioto Conservancy District, supra. While the county humane society has the authority to purchase insurance for its employees, officers, and agents, it is under no statutory duty to do so. In specific answer to your question, I must therefore conclude that a county humane society is not obligated to purchase liability insurance for its agents acting under the authority of R.C. 1717.06.

I next turn to the issue of accident insurance for the agent of the county humane society, or for the agent's vehicle. There is no statute which enjoins the board of county commissioners to purchase such accident insurance. R.C. 1715.07 does permit the board to provide for the compensation of the agent beyond the mandatory minimum of twenty-five dollars per month, and the board could, in its discretion, provide compensation sufficient to pay such costs under that statute. Moreover, under R.C. 1717.15, the board is authorized as follows:

The board of county commissioners may, at the end of each year, make a yearly appropriation to the county humane society from the general fund of the county of such funds as the board deems reasonable. Such funds are to supplement any gifts, funds received from the dog and kennel fund, and any other funds received by the society and are to be used to carry out the activities of the society.

Under this statute money could be appropriated to the county humane society in order to obtain accident insurance. However, while the board of county commissioners may have the authority to purchase such insurance, there is no statute which imposes a duty upon the board to do so. Therefore, I conclude that the board of county commissioners has no duty to purchase accident insurance for the agent of the county humane society acting under authority of R.C. 1717.06.

As is the case with the board of county commissioners, there is no specific statutory directive which imposes a duty upon the county humane society to purchase accident insurance for an agent of the society acting under R.C. 1717.06. In the absence of an express statutory command, I must conclude that the county humane society has no duty to purchase such insurance.²

It is, therefore, my opinion, and you are hereby advised that neither the board of county commissioners nor the county humane society has a duty to purchase liability or accident insurance for an agent of the county humane society appointed under the authority of R.C. 1717.06.

² The county humane society does have the authority to purchase such insurance if it chooses to do so. R.C. 1717.05 grants corporate powers to the society. Among those powers is the authority to enter contracts. See R.C. 1701.13(F). This authority includes insurance contracts.