

OPINION NO. 74-090

**Syllabus:**

The death of a pea-fowl is compensable under R.C. 955.29 only if the peacock is being raised as a source of meat, eggs or feathers.

To: Jerry A. Petersen, Geauga County Pros. Atty., Chardon, Ohio  
By: William J. Brown, Attorney General, October 25, 1974

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

"Recently, the Geauga County Board of County Commissioners was presented with an animal claim for the killing of a peacock by a dog. The County Commissioners requested our opinion with regard to their obligation to pay for same.

"We advised them, in accordance with opinions of your predecessor numbered 1961 - 2079 and 1954 - 3607, that the subject claim cannot be honored.

"Inasmuch as those opinions deal with pigeons used for racing purposes and pheasants held in pens to be used for hunting purposes, we are receiving vociferous complaints regarding that conclusion.

"Accordingly, we hereby request your opinion as to whether the death of a peacock is compensable in accordance with Revised Code Section 955.29."

R.C. 955.29 provides in pertinent part as follows:

"Any owner of horses, sheep, cattle, swine, mules, goats, domestic rabbits, and domestic fowls or poultry, having an aggregate value of ten dollars or more which have been injured or killed by a dog not belonging to such owner or harbored on his premises, in order to be entitled to enter a claim for damages must notify a member of the board of county commissioners or dog warden. \* \* \*"

The history of this legislation is traced in Opinion No. 3607, Opinions of the Attorney General for 1954, and Opinion No. 2079, Opinions of the Attorney General for 1961. The language of the statute was amended in 1973 by Amended Substitute House Bill No. 152 which changed the word unlicensed and licensed dog to unregistered and registered dog. However, this amendment does not relate to the part of the statute pertinent to your inquiry.

Opinion No. 3607 discusses the intent of the legislature in the enactment of this statute. That Opinion states:

"\* \* \* the law has been intended from the beginning to protect the owners of livestock and other domestic animals, including at present, 'domestic fowls and poultry,' and that the purpose of the act was to protect them against injury to those animals which are ordinarily reared either for food, or for some valuable by-product, such as wool, or feathers, or for assistance in producing it, such as horses and mules."

Opinion No. 3607 held that the phrase "domestic fowl or poultry" in R.C. 955.29 referred to one class of fowls. The Opinion then discussed the definition of the terms domestic fowl and poultry. It cites Webster's Unabridged Dictionary (1940) as defining poultry as follows: "Domestic fowls which are propagated and fattened for the table, such as chickens, turkeys, guinea fowls and geese." Webster's New International Dictionary (1971) now defines poultry as "domesticated birds that serve as a source of eggs or meat and that include among commercially important kinds chickens, turkeys, duck and geese and among kinds chiefly of local interest guinea fowl, peafowl [a peacock is a male peafowl], pigeons, pheasants, and others."

As did my predecessor who wrote Opinion No. 3607, I have examined the various definitions for the term poultry and domestic fowl. While differing in language, substantively they are identical. That substantive definition was expressed in Opinion No. 3607, page 107, as follows:

"\* \* \* 'domestic fowls', meaning, as I see it, the class of fowls which normally make their home on a farm, and, as indicated by the above definitions are propagated and fattened for the table and for their eggs, feathers, etc."

On the basis of this definition Opinion No. 3607 held that homing pigeons, which were kept for the sole purpose of racing, were not "domestic fowls or poultry" within the context of the statute. This decision was reached because the pigeons were not fowls which normally make their home on a farm, nor were they being propagated and fattened for their meat, eggs or feathers.

Similarly, Opinion No. 2079, *supra*, held that pheasants were not "domestic fowls or poultry" within the scope of the statute if they were held for the sole intent of releasing them for hunting season. However, this Opinion indicates that this holding was reached because the pheasants were not raised directly for food or some by-product thereof.

In Opinions Nos. 3607 and 2079, it was necessary to consider the purpose for which the fowls were being raised because neither pigeons nor pheasants came clearly within the substantive definition of "domestic fowl or poultry." Thus, while it is obvious that chickens and turkeys are poultry, pheasants and pigeons are often considered game birds. See Opinion No. 3607. Therefore, the purpose for which such fowls are being raised must be examined to determine if that purpose justifies their being classified as domestic fowls.

The peacock is similar to a pheasant and does not clearly come within the definition of "domestic fowl or poultry." The peacock is not native to the United States nor has it been as widely introduced into this country as the pheasant. Therefore, the purpose for which such bird is being raised must be considered.

Your letter does not indicate for what purpose the peacock in question was being kept. However, while authorities indicate that peacocks were once prized for their meat and are still raised in India for their meat and eggs, I am unable to

find any indication that they are so used in this country. 17 Encyclopedia Britanica 417 (1961), Lincoln Library 1048 (1961), 7 Compton's Encyclopedia 146 (1970). The most likely agricultural value for which a peacock might be raised in this country is for its feathers. If it were raised for this purpose it would be classified as a domestic fowl since it comes within the substantive definition of "domestic fowl or poultry"--a fowl propagated for its feathers. Unless a peacock is being raised for its feathers, meat, or eggs, the latter two being highly unlikely in this country, it would not be a "domestic fowl or poultry" within R.C. 955.29.

I reach this decision even though Webster's New International Dictionary (1971) included peafowl within its definition of poultry. That definition indicated that peafowl were poultry of local interest. From the various definitions of peacock and poultry that I have examined, it seems clear that while a peacock may indeed be poultry of local interest in India, the fowl has not been so used in this country to any great degree.

In specific answer to your question it is my opinion, and you are so informed, that the death of a peacock is compensable under R.C. 955.29 only if the pea-fowl is being raised as a source of meat, eggs or feathers.