

OPINION NO. 84-034

Syllabus:

1. R.C. 955.12 requires a county dog warden to patrol within the municipalities contained within the county and to impound dogs found running at large within such municipalities.
2. Under R.C. 307.15 a county and a municipality may contract to have the county dog warden enforce municipal animal control ordinances within the municipality. (1981 Op. Att'y Gen. No. 81-037, approved and followed.)

3. Pursuant to R.C. 307.15 a county and a municipality may contract whereby the municipality assumes responsibility for performing the duties of the county dog warden within the municipal limits.
4. Under R.C. 307.15 a county and a municipality may contract to have the county dog warden transport to the county dog pound dogs which have been seized by municipal officers, if the municipality has enacted an ordinance for the housing of dogs which have been impounded.

To: R. David Picken, Madison County Prosecuting Attorney, London, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1984

I have before me your request for my opinion as to whether R.C. 955.12 requires a county dog warden to patrol within the municipal limits of a county and impound dogs found running at large in violation of R.C. Chapter 955. Your letter states that this question arises from a situation which exists in Madison County, where the county commissioners question whether the county dog warden has jurisdiction to impound dogs running at large within the city of London. Your letter indicates that the commissioners' view is that such activity would amount to county enforcement of a city of London ordinance which prohibits dogs from running at large, and that this ordinance should be enforced by the city's part-time humane officers. The city's position is that county dog wardens are required by R.C. 955.12 to impound any dog found running at large within the county including within municipal boundaries. Your letter also states that, at present, the county dog warden will transport dogs to the county dog pound once such dogs have been seized by the city's part-time humane officers, but the county dog warden will not patrol within the municipal limits or impound dogs found running at large within the municipal limits.

R.C. Chapter 955 deals with the control of dogs by the various counties. R.C. 955.12 provides in part:

The board of county commissioners shall appoint or employ a county dog warden and deputies in such number, for such periods of time, and at such compensation as the board considers necessary to enforce sections 955.01 to 955.27, 955.29 to 955.38, and 955.50 of the Revised Code.

. . .The warden and deputies. . .shall patrol their respective counties and seize and impound on sight all dogs found running at large and all dogs more than three months of age found not wearing a valid registration tag. . . .

In requiring county dog wardens to patrol their respective counties, this statute requires county dog wardens to patrol the municipalities included within such counties. This conclusion is necessary because the Ohio Supreme Court has held that a county embraces the territory within the municipalities located within the county. State ex rel. Ranz v. City of Youngstown, 140 Ohio St. 477, 45 N.E.2d 767 (1942) (syllabus, paragraph four). If the General Assembly had intended that county dog wardens patrol only the territory within their respective counties which is outside of municipal limits, it would have been a simple matter to state such intent. As the statute is presently worded, county dog wardens have the duty to patrol all of the territory within their respective counties in order to impound any dog found running at large or not wearing a valid registration tag and in order otherwise to enforce R.C. Chapter 955, regardless of whether such territory is contained within a municipality. Cf. In Re Sulzmann, 125 Ohio St. 594, 597, 183 N.E. 531, 532 (1932) (the county sheriff "is the chief law enforcement officer in the county, with jurisdiction coextensive with the county, including all municipalities and townships"). See 1974 Op. Att'y Gen. No. 74-084 (a county dog warden is vested, pursuant to R.C. 955.12, with the same police powers as are vested in sheriffs and police officers, and thus may arrest without a warrant violators of provisions he is charged with enforcing, subject to R.C. 2935.03).

The county's concern that a dog warden who impounds dogs found within a municipality's boundaries may be enforcing a municipal ordinance appears to arise from the fact that although county dog wardens have the authority pursuant to R.C. 955.12 to impound dogs running at large, the authority to prevent dogs from running at large is not vested exclusively in county dog wardens and their deputies. Municipalities also have the power to enact ordinances concerning animal control. Kovar v. City of Cleveland, 60 Ohio L.Abs. 579, 102 N.E.2d 472 (Ct. App. Cuyahoga County 1951). Ohio Const. art. XVIII, §3 empowers municipalities to enact "such local police, sanitary and other similar regulations, as are not in conflict with general laws." Additional authority is contained in R.C. 715.23, which provides that a municipality "may regulate or prohibit the running at large of dogs, provide against injury and annoyance therefrom, and authorize the disposition of such dogs when running at large contrary to any ordinance."

Because a municipality may enact animal control ordinances, it is clear that a municipality may hire persons to enforce any such ordinances which have been passed. 1981 Op. Att'y Gen. No. 81-037 at 2-144. However, a county dog warden has no authority to enforce municipal animal control ordinances. In Op. No. 81-037 at 2-144, my predecessor stated that since the position of county dog warden is created by statute, a county dog warden possesses only such powers as are expressly given by statute or follow necessarily therefrom, and noted that in the statutes defining the duties of county dog wardens there is no grant of authority to enforce municipal animal control ordinances. Cf. R.C. 2935.03(A) (granting sheriffs and their deputies the power to make warrantless arrests of persons within the county found violating a municipal ordinance or a state statute). However, a dog warden's duty to patrol and impound dogs within the county, including within municipal corporations, is required by R.C. 955.12 and not by municipal ordinance. In carrying out his duties pursuant to R.C. 955.12 within a municipal corporation, a dog warden is enforcing the provisions of R.C. Chapter 955, rather than a municipal ordinance. The fact that a municipality has enacted animal control ordinances does not alter the county dog warden's duty pursuant to R.C. 955.12 to patrol within the municipality.

I note for your information that Op. No. 81-037 went on to find that a county dog warden may be authorized to enforce municipal animal control ordinances when the county commissioners and the legislative authority of the municipal corporation enter into an agreement pursuant to R.C. 307.15. I now turn to a discussion of that statute insofar as it is relevant to your inquiry.

R.C. 307.15 provides, in part:

The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation. . . and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render; or whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board, to exercise any power, perform any function, or render any service, in behalf of the county or the board, which the county or the board may exercise, perform, or render. . . .

Upon the execution of such agreement and within the limitations prescribed by it, the board may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivisions directly; and the legislative authority of any municipal corporation may exercise the same powers as the county possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers

necessary or incidental thereto, as amply as such powers are possessed and exercised by the county directly. . . .

In concluding that R.C. 307.15 authorizes a board of county commissioners to contract with the legislative authority of a municipality to enable the county to enforce a municipal animal control ordinance, my predecessor stated in Op. No. 81-037 at 2-144:

R.C. 307.15, however, authorizes the county to exercise all powers which are necessary or incidental to the service or function being performed for the municipality to the extent such powers are possessed or exercised by the municipality, within any limits specified by the contract. . . . Because a municipality may enact animal control ordinances, it is clear that the municipality may hire someone to enforce such ordinances. The county, therefore, would have authority under R.C. 307.15 to hire someone to carry out the duties undertaken by the county pursuant to contract with the municipality. I see no reason why the county could not hire the county dog warden, in a capacity apart from his position as county dog warden, to enforce the municipal animal ordinances, so long as both positions are compatible. See generally 1979 Op. Att'y Gen. No. 79-111. Provided that it is physically possible for one person to discharge the duties of both positions, and in the absence of local or charter provisions or other regulations which would bar a person from holding both positions, I believe that a county has authority to employ the person acting as county dog warden to enforce the municipal animal control ordinances which the county undertakes to enforce pursuant to contract.

Cf. 1958 Op. Att'y Gen. No. 2292, p. 390 (a board of county commissioners may, pursuant to R.C. 307.15, contract with a township to furnish the township police protection, but may not impose such a duty upon deputy sheriffs, who are solely within the control of the sheriff). See R.C. 311.29 (empowering a sheriff to contract with other government units to provide such entities police protection). Thus, although a county dog warden has no authority under R.C. 955.12 to enforce municipal animal control ordinances, a county and a city may enter into a contract pursuant to R.C. 307.15 in order to have the county dog warden enforce the municipality's animal control ordinances.

Under R.C. 307.15 it is also possible for a board of county commissioners and the legislative authority of a municipality to enter into an agreement whereby the municipality assumes responsibility for performing the county dog warden's duties, as set forth in R.C. 955.12, of patrolling within municipal limits. Upon the execution of such a contract and within the limitations prescribed by it, a municipality acquires all powers necessary or incidental to performing that county function to the same extent as such powers are possessed and exercised by the county. Until such an agreement is entered into, however, the county dog warden continues to have the responsibility to patrol within municipal limits.

In your letter you state that, "the City has no facilities to impound dogs and, as a practical matter, [city humane officers] have simply held the dog until the county dog warden could transport [it] to the dog pound." Op. No. 81-037 discussed the ability of a municipality to contract with a county for the use of a county dog pound upon the violation of a municipal animal ordinance, and concluded that a county could contract with a municipality to house, sell and dispose of dogs brought to the county dog pound by the municipal dog warden, as long as the municipality had an ordinance providing for the housing, sale, and disposal of dogs. Since a city may contract with a county for the use of a county dog pound in connection with the violation of a municipal animal control ordinance, and since a city may contract with a county to have the county dog warden enforce municipal animal control ordinances, it is clear that a municipality may contract with a county to have the county dog warden transport to the county dog pound dogs which have been seized by city officers under a municipal animal control ordinance, if the city has an ordinance dealing with the housing of such animals.

In conclusion, it is my opinion and you are advised, that:

1. R.C. 955.12 requires a county dog warden to patrol within the municipalities contained within the county and to impound dogs found running at large within such municipalites.
2. Under R.C. 307.15 a county and a municipality may contract to have the county dog warden enforce municipal animal control ordinances within the municipality. (1981 Op. Att'y Gen. No. 81-037, approved and followed.)
3. Pursuant to R.C. 307.15 a county and a municipality may contract whereby the municipality assumes responsibility for performing the duties of the county dog warden within the municipal limits.
4. Under R.C. 307.15 a county and a municipality may contract to have the county dog warden transport to the county dog pound dogs which have been seized by municipal officers, if the municipality has enacted an ordinance for the housing of dogs which have been impounded.