

funds appropriated by the Legislature, excepting only moneys specifically appropriated to your Bureau. I see no difference between moneys required to be paid under the Workmen's Compensation Law and moneys required to be paid under the Public Employes' Retirement Law. Both in my opinion should be paid from the Bureau's administrative fund.

Specifically answering your question, it is my opinion that, for the reasons above set forth:

Moneys required to be paid by the Bureau of Unemployment Compensation to the Public Employes' Retirement System to cover the employes of such Bureau, are required, under the law, to be paid out of the administrative fund of the Bureau created under the provisions of Section 1345-3 of the General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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977.

COUNTY HUMANE SOCIETY—WHERE DISSOLVED—DISPOSITION, ASSETS—WHERE FUNDS GIVEN BY COUNTY COMMISSIONERS—SECTIONS 5652-8, 5653, G. C.—DOG AND KENNEL FUND—COURT JURISDICTION.

**SYLLABUS:**

*A County humane society has authority to dispose of its assets upon dissolution only in pursuance of the court's direction, when such assets consist of funds given such society by the county commissioners by virtue of Sections 5652-8 and 5653, General Code.*

COLUMBUS, OHIO, August 2, 1939.

HON. RALPH FINLEY, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR: Your request for my opinion reads as follows:

"The Tuscarawas County Humane Society is planning to disband.

They have about \$3,000.00 in their treasury, nearly all of which was paid to them from the dog and kennel fund by the county commissioners of this county, under authority of law. Should the Humane Society disband without disposing of this fund, what disposition should be made thereof? Would it be lawful for the Humane Society, before disbanding, to pay this to the two general hospitals in this county for the purchase of baby incubators and other equipment used in obstetric cases?"

You have stated in your letter that nearly all of the \$3,000.00 in the treasury of the Tuscarawas County Humane Society was paid to it by the county commissioners from the county dog and kennel fund. That such societies shall receive certain funds is provided in Sections 5652-8 and 5653 of the General Code.

Section 5652-8, General Code, provides in part:

“\* \* \* 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. \* \* \*”

Section 5653, General Code, provides in part:

“\* \* \* at the December session of the county commissioners, if there remains more than one 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 G. C. Sections 10062 to 10067, inclusive, that owns or controls a suitable dog kennel or a place for the keeping or 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.

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It will be seen that such aid is predicated on the society having agents, a dog pound and devices for humanely destroying dogs. In other words, the county commissioners give the society funds because of the fact that such society has the means for taking care of dogs and the commissioners are thereby relieved of certain responsibilities in connection therewith. Therefore, it may be said that such funds were given to the society for

certain definite purposes. The question then arises as to what should be done with the money when such society disbands and can no longer carry out such purposes.

Inasmuch as such funds were given to the society for definite purposes, essentially charitable, then it appears that such funds were given in trust. In other words, such society would, in contemplation of law, be a trustee of such funds.

In Vol. 65 C. J., at pages 212, et seq., a trust is defined as "an obligation upon a person arising out of a confidence reposed in him to apply property faithfully and according to such confidence; a holding of property, subject to a duty of employing it or applying its proceeds according to directions given by the person from whom it was derived".

Also in 40 O. J., Section 2, it is stated:

"A trust is a creature of equity. It arises where property is conferred upon, and accepted by, one person on the terms of holding, using, or disposing of it for the benefit of another."

In Bogert on Trusts, Section 1, the following statement is made:

"A trust is a relationship in which one person is the holder of the title to property, subject to an equitable obligation to keep or use the property for the benefit of another."

In the light of the tests above laid down, it appears that in the instant situation there exists a trust relationship. The county commissioners have given money to the humane society to be used for the care or disposal of dogs. The humane society, upon its dissolution, will no longer be in a position to carry out such intent and purpose.

It is well settled that when a trustee can no longer carry out the terms and conditions of the trust, upon proper application the court will direct what shall be done with the trust fund.

In view of the above discussion, it appears that the Tuscarawas County Humane Society has no authority to decide what shall be done with such fund upon the dissolution of the society. Rather, such society should apply to the court for direction as to what disposition should be made of its funds.

You do not state from what source or sources the balance of the fund was derived. It may be that the rest of the fund came from contributions from private individuals or from organizations. If this is true, then the court's instruction should be requested as to the disposition of the entire fund, inasmuch as the funds have been given to the society in trust for certain purposes.

Therefore, in specific answer to your inquiry, I am of the opinion that a county humane society has authority to dispose of its assets upon

dissolution only in pursuance of the court's direction, when such assets consist of funds given such society by the county commissioners by virtue of Sections 5652-8 and 5653, General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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978.

BONDS—CITY OF EUCLID, CUYAHOGA COUNTY, \$3,625.00.

COLUMBUS, OHIO, August 2, 1939.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of the City of Euclid, Cuyahoga County, Ohio,  
\$3,625.00.

The above purchase of bonds appears to be part of a \$466,500.00 issue of special assessment refunding bonds of the above city dated October 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission of Ohio under date of January 24, 1938, being Opinion No. 1802.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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979.

BONDS—CITY OF EUCLID, CUYAHOGA COUNTY, \$7,500.00.

COLUMBUS, OHIO, August 2, 1939.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of the City of Euclid, Cuyahoga County, Ohio,  
\$7,500.00.

The above purchase of bonds appears to be part of a \$530,000.00 issue of refunding bonds of the above city dated October 1, 1932. The