

OPINION NO. 81-037

Syllabus:

1. A county may contract with a municipality to enforce municipal animal control ordinances and issue citations for violations of such ordinances. The county may employ the person acting as

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county dog warden to assume the additional duties which the county has assumed pursuant to such contract, provided that it is physically possible for one person to discharge the duties of both positions and provided that there are no local or charter provisions or other regulations which would bar a person from holding both positions.

2. If a municipality is empowered to house, sell, or dispose of animals in connection with the enforcement of a municipal ordinance, the board of county commissioners may contract with such municipality to use the county-operated pound to house, sell, or dispose of animals brought there by the municipal dog warden.
3. A county-operated dog pound may accept licensed dogs directly from their owners for housing, sale, or disposition and may charge the owners a fee for such service, but may not also accept cats. Unlicensed dogs may be seized and impounded for not wearing valid registration tags, and the fees as outlined in R.C. 955.17 may be assessed against the owners.
4. The board of county commissioners is not required to place the money paid to it by a municipality pursuant to a contract for the exercise of any municipal power relating to animal control in the dog and kennel fund as described in R.C. 955.19. The county may place such revenue in the general fund pursuant to R.C. 5705.10 or may, pursuant to R.C. 5705.12 and subject to the approval of the Bureau of Inspection and Supervision of Public Offices, establish a separate fund for such money, and thereby limit the use of such money to a specific purpose.
5. Money received by a county for the housing, sale, and disposition of licensed dogs brought to the pound directly by their owners pursuant to R.C. 955.16-.18 must be placed in the dog and kennel fund.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William J. Brown, Attorney General, July 10, 1981

I have before me your request in which you ask several questions concerning animal control and operation of a dog pound within the county. In light of the additional information you have since provided this office, I have restated your questions as follows:

1. Pursuant to R.C. 307.15, may a board of county commissioners contract with a municipality within the county to enforce the municipality's animal control ordinances within such municipality and issue citations for violations of such ordinances?
2. Pursuant to R.C. 307.15, may a board of county commissioners contract with a municipality within the county to house, sell, or otherwise dispose of animals brought to the county-operated dog pound by the municipal dog wardens as a result of violations of municipal animal ordinances?
3. May a county accept cats and licensed and unlicensed dogs at a county-owned dog pound directly from the owners of these animals and house, dispose, and sell same per pertinent provisions of R.C. Chapter 955, charging the owners a reasonable fee to defray the actual expense of such service?

4. If the answer to question one, two or three is in the affirmative, then must the fees received by the board of county commissioners from municipalities contracting with said board per questions one and two, or from animal owners per question three, be placed in the dog and kennel fund, or may they be deposited in a separate fund established for the purpose of making county expenditures necessitated by either the terms of the municipal contracts or the owner release services?

Your first question deals with the power of a board of county commissioners to contract with a municipality to assume the authority of enforcing the municipality's animal control ordinances and issuing citations to those violating such ordinances. As a creature of statute, a board of county commissioners possesses only those powers either expressly granted by statute or necessarily implied from its express powers. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). General authority for the county commissioners to contract with a municipality is contained in R.C. 307.15, which reads in part as follows:

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. . . . (Emphasis added.)

R.C. 307.15 gives a board of county commissioners broad authority to contract with a municipality. It is permitted to contract with a municipality "to exercise any power, perform any function, or render any service" which such municipality may "exercise, perform, or render." Whether the county may contract with a municipality to enforce municipal animal control ordinances and issue citations to those violating such ordinances depends, therefore, on the extent of the municipality's authority in this area.

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." In the interest of the health and safety of its citizens, a municipality may, therefore, enact ordinances concerning animal control. Additional authority for municipal regulation of animals is contained in R.C. 715.23, which authorizes municipalities to regulate, impound, and sell animals found running at large and also to "dispose" of dogs found running at large. Kovar v. City of Cleveland, 60 Ohio Law Abs. 579, 102 N.E.2d 472 (Ct. App. Cuyahoga County 1951). Assuming that a municipality has validly enacted ordinances concerning animal control and the imposition of fines for violations of such ordinances, R.C. 307.15 authorizes a board of county commissioners to contract with a municipality to perform such service. 1976 Op. Att'y Gen. No. 76-042. Upon execution of such contract and within the limitations prescribed by it, the county acquires all powers necessary or

incidental to enforcing such ordinances to the same extent such powers are possessed and exercised by the municipality. R.C. 307.15.¹

It is my understanding that, pursuant to the proposed plan, upon contracting with a municipality for enforcement of the municipality's animal control ordinances, the county would impose upon the county dog warden the additional duties undertaken by the county pursuant to such contract, and that you are concerned with the question whether imposition of such duties upon the county dog warden is proper. R.C. 955.12 states that a 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." This statute authorizes the county to appoint or employ a dog warden for a specific purpose—to enforce certain provisions of R.C. Chapter 955. The statute does not authorize the county to enlarge the county dog warden's duties. As one of my predecessors stated, the position of county dog warden itself is created by statute and, therefore, a county dog warden possesses only such powers as are expressly given by statute or follow necessarily from such express powers. 1960 Op. Att'y Gen. No. 1574, p. 527. Nowhere in the statutorily defined duties of the county dog warden is there authority to enforce municipal animal control ordinances.

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. 1958 Op. Att'y Gen. No. 2292, p. 390. 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.

Your second question deals with the power of a board of county commissioners to contract with a municipality pursuant to R.C. 307.15 to use its dog pound to house, sell, or dispose of animals brought to such pound by a municipal dog warden upon violation of a municipal animal ordinance. It is my understanding that, in the situation contemplated, once the municipal dog warden has seized animals found to be in violation of a municipal ordinance, he will bring such animals to the county-operated pound for housing, sale, or disposition. As discussed in the first question, whether the county may contract with a municipality to house, sell, and dispose of animals brought to the county facility by the municipal dog warden depends on whether the municipality itself possesses such power. It seems clear, as outlined in the first question, that in adopting animal control ordinances a municipality could also provide for the housing, sale, and disposition of the animals. Assuming that a municipality has validly enacted such ordinances, R.C. 307.15 authorizes a board of county commissioners to contract with a municipality to perform those services.

¹For purposes of answering questions one and two, I am assuming that the municipal powers to be exercised by the county have not been limited by the contract.

Part of your second question appears to be whether the county dog pound could be used to house, sell, and dispose of animals brought there by the municipal dog warden. As noted above, R.C. 307.15 confers broad powers on the board of county commissioners to exercise all powers "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. The county would, therefore, have the authority to provide a facility for the animals it has contracted to accept from the municipality. I see no reason why an existing county-operated dog pound may not be used for such purpose, if it is available.

R.C. 955.15, concerning the establishment of a county dog pound, merely requires that the facility be "a suitable place for impounding dogs." The county could, therefore, provide a single facility for the housing, sale and disposition of animals pursuant to a contract with a municipality under R.C. 307.15 and for use as a county dog pound so long as such facility was "a suitable place for impounding dogs."

Your third question asks whether a county dog pound may be used to accept cats and licensed and unlicensed dogs directly from their owners for housing, sale, and disposition pursuant to R.C. Chapter 955 and whether the county may charge the owner a fee for such service.² R.C. 955.16, governing the disposition of dogs seized and impounded by the county dog warden, provides for the sale of dogs to institutions for use in teaching or research under certain circumstances. R.C. 955.16 also states that, "[a]n owner of a dog that is wearing a valid registration tag, who presents a dog to the dog warden or poundkeeper, may specify in writing that the dog shall not be offered to a nonprofit institution or organization, as provided in this section." This provision implies at least that the owner of a dog wearing a valid registration tag may bring the dog to the pound for disposition. The owner may also limit the means the pound may use to dispose of the dog by specifying that it not be sold to a research or teaching institution. I note, however, that there is no provision authorizing the county dog warden to seize, impound, or accept cats at a county pound. 1945 Op. Att'y Gen. No. 550, p. 710. There is also no provision specifically authorizing a county pound to accept unlicensed dogs directly from their owners, although such dogs may be seized and impounded for not wearing valid registration tags. R.C. 955.12, .15, .17, .18.

You have also asked whether the county may charge a fee for accepting dogs from their owners. R.C. 955.17 prescribes the costs which "shall be assessed against every dog seized and impounded under sections 955.12, 955.15, and 955.16 of the Revised Code. . . . The costs shall be a valid claim in favor of the county against the owner, keeper, or harbinger of a dog seized and impounded under such sections and not redeemed or sold. . ." (emphasis added). Because R.C. 955.16 provides the authority for a county pound to accept a dog wearing a valid registration tag directly from its owner, it appears that the appropriate fees as set forth in R.C. 955.17 may be assessed against the owner of such animal. Such fees may also be assessed against the owner, harbinger, or keeper of an unlicensed animal

²In 1945 Op. Att'y Gen. No. 550, p. 710, my predecessor stated that because the express authority of a county dog warden to seize and impound animals was then limited to seizing and impounding dogs found not wearing valid registration tags, no other dogs or animals could be impounded in the county dog pound. I believe, however, that 1945 Op. No. 550 applies to the scope of the county dog warden's statutory authority to seize and impound animals, and does not imply any limitation on the permissible uses of a county dog pound in the exercise of authority obtained by a county pursuant to contract with a municipality.

³Unlike the plans outlined in questions one and two, the plan proposed in this question does not contemplate a contract between the county and a municipality for the provision of the additional services.

which is seized and impounded pursuant to R.C. 955.12, .15, or .16. In the event a dog is not redeemed or sold, the costs constitute a valid claim against the owner. 1966 Op. Att'y Gen. No. 66-126.

Your last question asks whether the money the county receives from a municipality pursuant to contract in the circumstances described in questions one and two and the costs assessed against owners in question three must be placed in the dog and kennel fund, or whether such money may be placed in a separate fund to be used to pay the costs of providing the additional services. R.C. 955.19, concerning the funds to be placed in the dog and kennel fund, reads as follows: "[A]ll funds received by the county dog warden or poundkeeper in connection with the administration of sections 955.01 to 955.18, inclusive, of the Revised Code, shall be deposited in the county treasury and placed to the credit of the dog and kennel fund" (emphasis added). R.C. 955.01 to 955.18 provide generally for dog registration and the seizure, impoundment and disposition of dogs by the county dog warden. The fees collected in the circumstances outlined in question three are collected pursuant to R.C. 955.16 through 955.18 and, therefore, must be placed in the dog and kennel fund.

Money paid to the county in the circumstances described in questions one and two is paid pursuant to a contract whereby the county enforces municipal animal control ordinances. Such money, not being paid in connection with the administration of R.C. 955.01 to 955.18, need not be deposited in the dog and kennel fund.

R.C. 307.16, providing for payments made to a county pursuant to a contract entered into under R.C. 307.15, states that such agreement shall provide "for any payments to be made by the contracting subdivision into the county treasury." R.C. 5705.10, setting forth the moneys to be placed in the general fund, reads in part as follows:

All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund. (Emphasis added.)

According to this section, where the law does not prescribe the particular purpose for which the moneys should be used, the revenue paid to the county by the municipality pursuant to contract will be paid into the general fund. If, however, the county wished to limit the use of the contract revenue to a particular purpose, it might establish a special fund for that purpose pursuant to R.C. 5705.12. R.C. 5705.12 provides generally that, in addition to establishing the funds provided for in R.C. 5709.09 and R.C. 5709.13, a county "may establish, with the approval of the bureau of inspection and supervision of public offices, such other funds as are desirable." This statute, therefore, authorizes the county, with the approval of the Bureau of Inspection and Supervision of Public Offices, to establish a separate fund for the purpose of paying the costs incurred by the county's undertaking to enforce the municipal ordinances.

It is, therefore, my opinion and you are advised, that:

1. A county may contract with a municipality to enforce municipal animal control ordinances and issue citations for violations of such ordinances. The county may employ the person acting as county dog warden to assume the additional duties which the county has assumed pursuant to such contract, provided that it is physically possible for one person to discharge the duties of both positions and provided that there are no local or charter provisions or other regulations which would bar a person from holding both positions.

2. If a municipality is empowered to house, sell, or dispose of animals in connection with the enforcement of a municipal ordinance, the board of county commissioners may contract with such municipality to use the county-operated pound to house, sell, or dispose of animals brought there by the municipal dog warden.
3. A county-operated dog pound may accept licensed dogs directly from their owners for housing, sale, or disposition and may charge the owners a fee for such service, but may not also accept cats. Unlicensed dogs may be seized and impounded for not wearing valid registration tags, and the fees as outlined in R.C. 955.17 may be assessed against the owners.
4. The board of county commissioners is not required to place the money paid to it by a municipality pursuant to a contract for the exercise of any municipal power relating to animal control in the dog and kennel fund as described in R.C. 955.19. The county may place such revenue in the general fund pursuant to R.C. 5705.10 or may, pursuant to R.C. 5705.12 and subject to the approval of the Bureau of Inspection and Supervision of Public Offices, establish a separate fund for such money, and thereby limit the use of such money to a specific purpose.
5. Money received by a county for the housing, sale, and disposition of licensed dogs brought to the pound directly by their owners pursuant to R.C. 955.16-.18 must be placed in the dog and kennel fund.