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HUMANE SOCIETY—COUNTY COMMISSIONERS—MAY ORDER PAYMENT OUT OF EXCESS IN DOG AND KENNEL FUND FOR USES AND PURPOSES OF HUMANE SOCIETY—ONE OR MORE AGENTS—HUMANE SOCIETY NOT REQUIRED TO OWN OR CONTROL DOG KENNEL OR A PLACE TO KEEP AND DESTROY DOGS—SECTIONS 5653, 10068 G.C.

## SYLLABUS:

The county commissioners, acting within their sound discretion, are authorized by Section 5653, General Code, to order payment out of the excess in the dog and kennel fund for the uses and purposes of a humane society, incorporated under Section 10068, General Code, and having one or more agents appointed in pursuance to law, notwithstanding the fact that such humane society does not own or control a dog kennel or a place for keeping and destroying dogs.

Columbus, Ohio, February 5, 1952

Hon. John Rossetti, Prosecuting Attorney  
Stark County, Canton, Ohio

Dear Sir:

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

“We respectfully request an opinion under Section 5653 of the General Code. This section has reference to the use of the duly incorporated humane society to a portion of the surplus from the Dog & Kennel Fund as determined by the county commissioners. This corporation was duly organized by law as a society for the prevention of cruelty to children and animals and maintains a humane agent who was appointed in pursuance to law.

“The society has raised a fund of \$2,000 for the construction of an animal shelter but as yet it does not own or control such shelter. The officers of the organization are desirous to accumulate additional funds with which to erect a more suitable shelter for the animals. In the absence of a shelter they were renting facilities for boarding and destroying the animals, but in 1950 the Stark County Commissioners afforded them the facilities of a dog pound for that service.

“Our question is whether or not this society in the absence of the ownership or control of an animal shelter is entitled to a portion of the surplus of a dog and kennel fund as provided in Section 5653 of the General Code.”

Section 5653, General Code, to which you refer, makes provision as follows :

“After paying all of the necessary expenses of administering the sections of the General Code relating to the registration, licensing, seizing, impounding and destroying of dogs and making compensation for injuries to livestock inflicted by dogs, also after paying all horse, sheep, cattle, swine, mule and goat claims, at the December session of the county commissioners, if there remain more than two 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 sections 10062 to 10067, inclusive, General Code, that owns or controls a suitable dog kennel or a place for the keeping and 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.

“Provided that in a county in which there is such society organized by law, after the county commissioners have paid such society such excess as they deem necessary; or in any county in which there is no such society organized as provided by law, if there should remain in such fund a sum in excess of ten thousand dollars, after all legitimate expenses chargeable to such fund have been paid, any sum in excess of such ten thousand dollars shall be transferred to the county general fund.” (Emphasis added.)

The answer to the question you have presented by your request depends on the interpretation to be given the language emphasized above. The Legislature has, by this language, recognized two distinct classes of humane societies; the one class embracing those societies incorporated according to law, the other class including all other humane societies organized as provided in Sections 10062 to 10067, inclusive, of the General Code. Specifically, the question raised is whether humane societies coming within either classification must own or control a suitable dog kennel or a place for the keeping and destroying of dogs, before they are eligible to participate in any distribution of surplus moneys from a dog and kennel fund, or whether this requirement applies only to that class of societies organized under Sections 10062 to 10067, inclusive, General Code.

Sections 10062 to 10065, General Code, provide that the Ohio state society for the prevention of cruelty to animals shall remain a body corporate under the name of the "Ohio Humane Society," set out the powers and objects of such society and its agents and make provision for its officers and the rules, etc., for its government and management. Section 10066, General Code, authorizes the establishment of branch societies of the Ohio Humane Society. Under Section 10067, General Code, the Legislature has provided for the organization of other societies for the prevention of acts of cruelty to animals. That section reads as follows :

"Societies 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 thereof, at a meeting called for the purpose, shall elect not less than three of their members directors, who shall continue in office until their successors are duly chosen."

Section 10068, General Code, permits incorporation of these societies organized under Section 10067, supra. It is provided therein :

"The secretary or clerk of the meeting must make a true record of the proceedings thereat, and certify and forward it to the secretary of state, who shall record it. This record shall contain the name by which such association is to be known, and from and after its filing, the directors and associates, and their successors, will be invested with the powers, privileges, and immunities incident to incorporated companies. A copy of such record, duly 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."

While this section would seem to make it necessary that all societies organized under Section 10067, supra, follow the procedure it sets out for incorporation, the Legislature has indicated a contrary intent under Section 5653, supra. This latter section, as shown above, separates humane societies organized and incorporated by law and those organized under Sections 10062 to 10067, inclusive, General Code. As Section 10068, supra, provides for incorporation of humane societies, it must have been contemplated that some societies organized under Section 10067, supra, would not incorporate under Section 10068. In this regard it should be pointed out at this time that incorporation under Section 10068, supra, is apparently the only method of incorporation for humane societies, the

General Corporation Act not being applicable to such societies by the force of Section 8623-132, General Code, which provides :

“In cases where special provision is made in the General Code for the incorporation, organization, conduct or government of any class of corporations, such special provision shall govern to the exclusion of the provisions of this act on the same subject, unless it clearly appears that the special provision is cumulative, in which case the provisions of this act also shall apply.

“No banking, safe deposit, trust or insurance corporation shall be authorized to issue shares without par value.”

The laws of Ohio, therefore, authorize the organization of three types of humane societies: the Ohio Humane Society and its branches; societies organized under Section 10067, supra; societies organized under Section 10067, supra, and incorporated under Section 10068, supra.

Section 10063, General Code, provides in part :

“The objects of such society (Ohio Humane Society) and all other societies organized under sections ten thousand and sixty-seven and ten-thousand and sixty-eight, shall be the inculcation of humane principles, the enforcement of laws for the prevention of cruelty, especially to children and animals, to promote which objects such societies may respectively acquire property, real or personal, by purchase or gift. \* \* \*”

It will thus be seen that by this section the objects of all societies organized under Section 10067, supra, whether incorporated or unincorporated, and the Ohio Humane Society, are deemed to be the same. In addition, all societies organized under Section 10067, supra, whether or not incorporated, are treated in the same manner under Sections 10069 to 10076, General Code, which sections make provision in general for the officers and by-laws of societies organized under Section 10067, supra, the appointment of agents for such societies, and the police powers of such officers and agents. If it is held, therefore, that the Legislature does not require that a humane society, incorporated and organized by law (which, as shown above, is incorporated under Section 10068, supra,) own or control a suitable dog shelter before it can acquire funds under Section 5653, supra, a distinction will be drawn between humane societies solely on the basis of whether the individual society is or is not incorporated. Whether or not this distinction should be made, I can but conclude, based on the language of the statute, that the Legislature has in fact made a distinction between the two classes.

Prior to the latest amendments of Section 5653, *supra*, that section provided:

“After paying all such sheep claims, at the June session of the county commissioners, if there remain more than one thousand dollars of such fund, the excess at such June session, shall be transferred and disposed as follows: in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, which has one or more agents appointed in pursuance of law, all such excess as the county commissioners deem necessary for uses and purposes of such society by order of the commission and upon warrant of the county auditor shall be paid to the treasurer of such society, and any surplus not so transferred shall be transferred to the county board of education fund at the direction of the county commissioners.”

At the time that Section 5653 contained the above quoted language, Sections 10067 and 10068, *supra*, were in their present form. There was, therefore, provision, under the latter sections, for the organization of humane societies which could be incorporated or not as the membership so determined. However, only societies incorporated under the laws were entitled to participate in funds distributed under Section 5653, *supra*, and it was not necessary to such participation that the incorporated society own or control a suitable dog kennel or place for the keeping and destroying of dogs. The subsequent addition of the provision now found in Section 5653, *supra*, allowing “any other society organized as provided in Sections 10062 to 10067, inclusive, of the General Code, that owns or controls a suitable dog kennel or a place for keeping and destroying dogs which has one or more agents appointed and employed in pursuance to law,” to qualify under this section, would seem to have for its sole purpose the authorization of participation of an additional class of societies, having a suitable dog kennel, etc., and not in any way to limit the previously granted right of incorporated societies to participate.

Coming back to the actual language used in Section 5653 *supra*, I think a correct reading requires the same conclusion, i.e., that it is not necessary that an incorporated society own or control a suitable dog kennel. To reach a contrary conclusion it would have to be held that the Legislature intended an elliptical construction to be given to the limiting phrase “owns or controls a suitable dog kennel,” i.e., omitted this limitation in the first clause referring to societies organized and incorporated in pur-

suance to law to avoid repetition, but intending it to apply nevertheless to both classes of societies. That such a construction was not intended is indicated by the fact that the limiting phrase, "having one or more agents appointed in pursuance to law," was repeated in both clauses. Where one of two qualifying phrases are repeated after each clause referring to a different subject matter and the other qualifying phrase is found after only one such clause, it must be concluded that in the latter case the qualifying phrase was intended to be a qualification only on the clause which it follows.

Subsequent to the receipt of your letter, I requested on several occasions that you supply me additional information as to the details of the arrangements between the society and the county commissioners as to the use by the society of county owned facilities for a dog pound. From such information I might have been able to determine whether the society *controlled* such a dog pound within the purview of the statute. This information has not been forthcoming. However, it appearing that the society in question is incorporated, and having concluded that a humane society incorporated under Section 10068, *supra*, is eligible, under Section 5653, *supra*, to a portion of the surplus of a dog and kennel fund, it is not necessary to give further consideration to the question of whether this particular society, using county owned facilities for a dog pound, "controls" a suitable dog shelter, etc., within the meaning of Section 5653, *supra*.

In specific answer to your question, therefore, it is my opinion that the county commissioners, acting within their sound discretion, are authorized by Section 5653, General Code, to order payment out of the excess in the dog and kennel fund for the uses and purposes of a humane society, incorporated under Section 10068, General Code, and having one or more agents appointed in pursuance to law, notwithstanding the fact that such humane society does not own or control a dog kennel or a place for keeping and destroying dogs.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General