

by Section 2649, General Code, it is provided that the office of the county treasurer shall be kept open for the collection of real property taxes and assessments from the time of the delivery of the duplicate to the treasurer until the 21st day of December, and from the first day of April until the 21st of June. It is recognized that the provisions of these sections are largely directory and that in many if not most of the counties of the state the tax duplicate in recent years has not been turned over to the county treasurer until long after October 1st and that payments of taxes by favor of extensions granted by the board of county commissioners or by the Tax Commission of Ohio have been received by the county treasurers months after the dates fixed for this purpose by the provisions of Section 2649, General Code. However, these statutory provisions are pertinent in arriving at the intention of the Legislature in enacting the refunding provisions of Section 1, above quoted, as the same is found in Amended Senate Bill No. 105. Looking to all the statutory provisions relating to this question, I am of the opinion, by way of specific answer to your first question, that the life insurance company referred to in your communication, was not entitled to the refund of penalties and interest on delinquent taxes for the years 1932 and 1933, paid by it under date of December 20, 1934, and this for the reason that it appears that the taxes and assessments for the year 1934 were not paid by the company at that time.

With respect to your second question, it follows from what has been said above that, assuming the constitutionality of the refunder provisions of this law—as to which, perhaps, some question may exist by reason of the decision of the Supreme Court of this state in the case of *Commissioners of Hamilton County vs. Rosche, Brothers*, 30 O. S., 103—if the Insurance Company pays or has paid all of the 1934 taxes on the property in question before September 1, 1935, it will be entitled to a refund of the penalties and interest paid by it on the delinquent taxes for the years 1932 and 1933.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4595.

COUNTY HUMANE SOCIETY—AUTHORITY OF COUNTY
AUDITOR TO ISSUE WARRANTS FOR SALARY OF AGENT
AND ATTORNEY UNTIL SOCIETY DISSOLVED OR
AGENT AND ATTORNEY DISCHARGED.

SYLLABUS:

1. *Where a county humane agent was legally appointed by a county*

humane society several years ago and his appointment properly approved by the probate judge, and facts have now been brought to the attention of county officials that might tend to show that such society is not functioning as such, the county auditor can still legally continue to issue warrants for his salary until such society is legally dissolved or some action is taken by such society to discharge the agent, or the probate court makes an independent finding that he be discharged for the reason that there is no necessity for the services of the agent such as would justify the payment of the expense out of the public treasury.

2. *Where a county humane society legally appointed an attorney several years ago and facts have now been brought to the attention of county officials that might tend to show that such society is not now functioning as such, the county auditor can still legally continue to issue warrants for his salary until such society is legally dissolved, or some action is taken by such society to discharge the attorney.*

3. *Where a county humane agent and attorney have been regularly appointed by a county humane society and are transacting their duties, and evidence is presented to county officials that might tend to show such society is not now functioning as such, the county commissioners, nevertheless, have the right to make an appropriation for the salaries of such humane officer and attorney unless the society is legally dissolved or the society discharges the said officials, and also, in the case of the humane agent, unless the probate court makes a finding that there is no necessity for the service of such agent as would justify the payment of the expense out of the county treasury.*

COLUMBUS, OHIO, August 29, 1935.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:— Your recent inquiry reads:

“Will you kindly render an opinion for me on the following question:

The Marion County Humane Society was organized in this county about 1904 and since that time J. F. U. has drawn a salary as humane officer and J. H. E. as attorney from the county treasurer. During the last examination of the county records by the Bureau of Inspection and Supervision of Public Offices, Irvin Young the examiner, made the following findings:

‘From a letter-head furnished by J. F. U. we gather the information that the following are the officials of the above named society:

R. C. M. L., M. D.....President
E. H. R., D. D. S.....Vice President

L. D. Z.....	Secy. & Treas.
M. F. D., M. D.....	Veterinarian
J. F. U.....	Humane Officer
J. H. E.....	Attorney
Mrs. E. F.....	Director
C. E. G.....	Director
W. L. S.....	Director
R. C. M. L.....	Director
E. H. R.....	Director
L. D. Z.....	Director

We find from the records of the Probate Court that R. C. M. L. departed this life Sept. 2nd, 1929. Mr. E. H. R. stated that he was supposed to be the president of the organization, but that, to the best of his knowledge, no meetings of the society had been held in the last two years. Mr. W. L. S. stated that he was a member of the society, but could not recall when he last attended a meeting of the board of directors; neither was he acquainted with Mrs. E. F., a fellow member of the board. We were informed by J. U. that L. D. Z. was the secretary and treasurer, and that he had moved from the county. We directed a letter to the address furnished, but received no reply, neither was the letter returned to us undelivered.

From the information furnished we are of the opinion that the Marion County Humane Society has ceased to function and as a consequence thereof no longer exists. We are therefore compelled to hold that any future payments from the county treasury as salary of the Humane Agent is not warranted in law. We would further hold that due to the failure of this society to function, there is no authority for the employment of an attorney, and all such cases brought in the City of Marion Municipal Court should be prosecuted by the City Solicitor of the City of Marion.'

QUESTION: Under the above stated facts can the County Auditor continue to issue warrants for the salaries of the humane officer and attorney?

QUESTION: Under the present status of the society as found by the examiner, can the county commissioners make an appropriation for the salary of the humane officer and the attorney for the year 1936?"

In order fully to understand the nature of the county humane society which you mention and its powers and authority in the appointment of an agent and attorney, and their tenure of appointment, it is believed essential

to set forth sections 10067, 10068, 10069, 10070, 10071, 10072, 10073 and 13424-8, General Code. These sections read as follows:

Sec. 10067. "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."

Sec. 10068. "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."

Sec. 10069. "Such societies may elect such officers, and make such rules, regulations, and by-laws, as are deemed expedient by their members for their own government, and the proper management of their affairs."

Sec. 10070. "Such societies may appoint agents who are residents of the county or municipality for which the appointment is made, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals, who may arrest any person found violating any provision of this chapter, or any other law for protecting persons or animals or preventing acts of cruelty thereto. Upon making such arrest, such agent shall convey the person so arrested before some court or magistrate having jurisdiction of the offense, and there forthwith make complaint on oath or affirmation of the offense."

Sec. 10071. "All appointments by such societies under the next preceding section shall have the approval of the mayor of the city or village for which they are made. If the society exists outside of a city or village, appointments shall be approved by the probate judge of the county for which they are made. The mayor or probate judge shall keep a record of such appointments."

Sec. 10072. "Upon the approval of the appointment of such an agent by the mayor of the city or village, the council thereof shall pay monthly to such agent or agents from the general revenue fund of the city or village, such salary as the council deems just and

reasonable. Upon the approval of the appointment of such an agent by the probate judge of the county, the county commissioners shall pay monthly to such agent or agents, from the general revenue fund of the county, such salary as they deem just and reasonable. The commissioners, and the council of such city or village may agree upon the amount each is to pay such agent or agents monthly. The amount of the salary to be paid monthly by the council of the village to such agent shall not be less than five dollars, by the council of the city not less than twenty dollars, and by the commissioners of the county not less than twenty-five dollars. But not more than one agent in each county shall receive remuneration from the county commissioners under this section."

Sec. 10073. "An officer, agent, or member of such a society may interfere to prevent the perpetration of any act of cruelty to animals in his presence, use such force as is necessary to prevent it, and to that end may summon to his aid any bystanders."

Sec. 13424-8. "A humane society or its agent may employ an attorney to prosecute the following cases, who shall be paid for his services out of the county treasury in such sum as the judge of the court of common pleas or the probate judge of such county or the county commissioners thereof may approve as just and reasonable:

1. Violations of law relating to the prevention of cruelty to animals or children;
2. Violations of law relating to the abandonment, non-support or ill-treatment of a child by its parent;
3. Violations of law relating to the employment of a child under fourteen years of age in public exhibitions or vocations injurious to health, life or morals or which cause or permit such child to suffer unnecessary physical or mental pain;
4. Violations of law relating to neglect or refusal of adult to support destitute parent."

In an opinion of the Attorney General, reported in *Annual Report of the Attorney General for 1914*, Vol. I, page 503, it was stated at page 504, after quoting several of the foregoing sections of the General Code:

"It will be observed that by these sections the humane society is a corporation organized by volunteers. It is engaged in public work but it is nevertheless a private corporation in the sense that it is controlled by private individuals. Such a society is invested with the powers, privileges and immunities incident to incorporated companies. They may select their own officers and make rules, regula-

tions and by-laws. *These societies have all the incidents of a private corporation.*" (Italics mine.)

It may be pointed out with reference to section 13424-8, General Code, supra, that the attorney appointed by a humane society may be appointed "to prosecute the following cases"; in other words, an appointment may be made which is indefinite as to time. The attorney appointed continues during the pleasure of the appointing power.

As for the appointment of an agent, it is seen from a reading of the foregoing sections that an agent appointed by a humane society has no definite term of office. In *Annual Report of the Attorney General for 1910-1911*, at page 891, appears an opinion on the question of the term of office of humane society agents, and it is therein stated:

"Nowhere in the General Code have I been able to find any provision as to the tenure of office of these agents. The mere fact that their appointment must be approved by certain local officers is inconclusive. The general rule is that appointments authorized to be made for terms not limited are at the pleasure of the appointing authority.

I am therefore of the opinion that unless otherwise provided at the time of appointment, a humane society agent holds his position at the pleasure of the society appointing him, and of the mayor or probate judge, as the case may be."

The Supreme Court of Ohio, in the case of *State ex rel. vs. Colwell*, 123 O. S. 535, stated at page 540, with reference to the term of office of a humane society agent, that "the statute places no limitations upon the length of the incumbency." It further held in this case that the probate judge has power to discharge a county humane agent at any time if he finds that there is no necessity for the service of such agent as would justify the payment of the expense out of the county treasury.

Inasmuch as you state in your letter that the county humane agent and attorney have been serving since the organization of the humane society, around 1904, I presume that the society did not limit the tenure of their appointment at the time they were originally appointed. Of course, I am also assuming that the society instead of the agent originally appointed the attorney. It is to be noted that section 3718a, Revised Statutes, provided in 1904, as is now provided by section 13424-8, General Code, that a humane society or agent may appoint an attorney. It is also to be noted that section 3718, Revised Statutes, as it read in 1904, provided as sections 10070 and 10071 now provide, that the humane society may appoint agents, and the mayor of a municipality or probate judge, as the case may be, had to approve the appoint-

ment. Therefore, under the opinion of the Attorney General rendered in 1910 and the Supreme Court case above referred to, it would appear that the humane society agent and attorney may lawfully continue to serve until either the humane society requests their discharge, or the probate judge makes a finding that the services of the said humane agent are no longer needed.

It is true that the humane society agent and attorney are the employes of the humane society, and undoubtedly if the society was legally dissolved the employer being no longer in legal existence, the employes could no longer serve without a principal. This raises the question of whether or not the facts you mention about the humane society not holding any meetings for the last two years, and other matters tending to show that the society does not appear to be active, are sufficient to conclude that the society no longer exists.

As shown by the opinion of the Attorney General in 1914, quoted in part in the first portion of this opinion, a humane society has all the incidents of a private corporation. The general rule of law appears to be that neither a neglect to exercise corporate powers, nor an abuse of them, *ipso facto*, works a dissolution of a private corporation. See 10 Ohio Jurisprudence, 1018, "Corporations", Section 779, entitled "Abuse, Misuse and Nonuse of Powers."

At page 1031 of 10 Ohio Jurisprudence, under Section 782 of the topic "Corporations", it is stated:

"Although a corporation may forfeit its charter by non-use, misuse, or abuse of its franchises, or by flagrant violation of law, it nevertheless is well settled that a forfeiture can only take effect upon the judgment of a competent tribunal decreeing a forfeiture; in other words, that nonuse or misuse of corporate franchises and privileges does not *ipso facto* work a forfeiture."

It would therefore appear that while the facts you mention might be held by a court to have the effect of dissolving the society, a matter upon which it is unnecessary for one to pass for the purposes of the questions you raise, yet there can be no *ipso facto* dissolution by mere evidence of neglect to exercise corporate powers.

Coming now to answer your first specific question, it would appear that since the humane society agent and attorney have an indefinite term of office, the former continuing to serve until either discharged by the society or probate judge, or the society becomes legally dissolved, and the latter continuing to serve until dismissed by the society, or such society becomes legally dissolved, the county auditor may legally continue to issue warrants for the salaries of the humane officer and attorney. Of course, it is assumed that there is sufficient moneys in the general fund of the county to satisfy the warrants and that there has been made a valid appropriation by the county commissioners for the year 1935.

As for the second specific question, I might say that if the status of the society remains the same at the time that the county commissioners pass the annual appropriation measure for 1936, and the probate judge makes no finding before that time that the services of the agent are not needed, the said county commissioners can lawfully make an appropriation for the salaries of the said officials during 1936.

It is believed that the foregoing constitutes a sufficient answer to your questions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4596.

APPROVAL, ABSTRACT OF TITLE, ETC., TO LAND IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO, FOR PUBLIC HUNTING GROUNDS—CLINTON M. SEARL.

COLUMBUS, OHIO, August 30, 1935.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, certain deeds, contract encumbrance record No. 8, and Controlling Board's certificate relating to the proposed purchase by the State of Ohio, and from one Clinton M. Searl of a tract of land in Nile Township, Scioto County, Ohio, which tract of land as the same is described in prior deeds in the chain of title and in one of the deeds tendered to the state, is more particularly delineated and described as being part of survey No. 15423-15424, Virginia Military District, and set off by metes and bounds, as follows:

“Beginning at a point in the S. line of the Turkey Creek Pike half way between the South Western corner of the superstructure of the wooden covered bridge across Turkey Creek and the wire fence running S. 37° W. on the westerly end of a corn field. Said fence being about 407 ft. more or less, from said corner of said bridge; thence in a line parallel with said wire fence, S. 37 W. 400 ft.; thence in a south easterly direction with an irregular line parallel with the S/W lines of Turkey Creek Pike, about 1300 ft., more or less, to the middle of steep gut; thence down the said steep gut to the S/W line of said Turkey Creek Pike; thence up said Turkey