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SURPLUS FUND IN DOG AND KENNEL FUND CANNOT BE DISTRIBUTED TO PROPERLY ORGANIZED HUMANE SOCIETY IF BOARD OF COUNTY COMMISSIONERS FAILS TO APPROVE SUCH A MOVE—§§955.27, 305.07, R.C.

## SYLLABUS:

Where there is a surplus fund in the dog and kennel fund in excess of \$2000 at the time of a December session of the board of county commissioners and the board at said session has before it a request that said funds be distributed to a properly organized humane society under the provisions of Section 955.27, Revised Code, and said board of county commissioners fails at said December session to grant said request, said board is by reason of the provisions of Section 305.07, Revised Code, precluded from acting on said request at a subsequent regular or special session of the board.

Columbus, Ohio, September 15, 1961

Hon. Thomas R. Spellerberg, Prosecuting Attorney  
Seneca County, Tiffin, Ohio

Dear Sir:

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

"On Saturday, August 12, 1961, I called your office relative to the interpretation of Revised Code Section 955.27 and 1954 Ohio Attorney General's Opinion 4660 at Page 683, specifically the third syllabus.

"To repeat the question :

"If there remains as surplus in the dog and kennel fund after making all payments authorized by law therefrom, a sum of over \$2000.00 for the year 1960; and at the December, 1960, meeting the County Commissioners consider the request of the Humane Society for the payment of such surplus but do not rule either favorably or unfavorably upon such request at the December, 1960, meeting; can the County Commissioners during the year 1961 pay the 1960 surplus to the Humane Society, it being understood that the County Commissioners can not pay "current" surplus; that is to say, money paid into the fund during the year 1961 since it is impossible to determine whether or not there is a surplus in 1961 until the December, 1961, meeting.

"It is possible that Syllabus 3 is to be limited strictly to 'current surplus' for the current year and thereby permit the paying during the succeeding year of any surplus from the preceding year. Your attention to this matter will be great appreciated as the Humane Society has a great need for this money at this time in order to construct a shelter, and a December allowance may be too late."

I have examined Opinion No. 4660, Opinions of the Attorney General for 1954, page 683, and I find that the question answered by said opinion is not analogous to the question raised in your letter. I therefore conclude that said opinion is not dispositive of the instant question.

It is, of course, a basic proposition that boards of county commissioners have only such powers as are expressly conferred by statute and those which are necessarily implied therefrom. 14 Ohio Jurisprudence, 2d, 258, Counties, Section 81.

Section 955.27, Revised Code, referred to in your inquiry, reads in pertinent part as follows :

"After paying all necessary expenses of administering the sections of the Revised Code relating to the registration, licensing, seizing, impounding and destroying of dogs, making compensation for injuries to livestock inflicted by dogs, and after paying all horse, sheep, cattle, swine, mule and goat claims, the board of county commissioners *at the December session, \* \* \**" (Emphasis added)

The boards of county commissioners transact their business at regular or special sessions. Regular sessions of said boards are held in accordance with the provisions of Section 305.06, Revised Code, which reads as follows :

“There shall be four regular sessions of the board of county commissioners each year, at the office of the board at the county seat, commencing, respectively, *on the first Monday of March, June, September and December.* At each meeting the board shall transact such business as required by law.” (Emphasis added)

Special sessions of boards of county commissioners are provided for by Section 305.07, Revised Code, which reads as follows :

“Special sessions of the board of county commissioners may be held as often as the commissioners deem it necessary. At a regular or special session, the board may make any necessary order or contract in relation to the building, furnishing, repairing, or insuring the public buildings or bridges, the employment of janitors, the improvements or enclosure of public grounds, the maintenance or support of idiots or lunatics, the expenditure of any fund, or provide for the reconstruction or repair of any bridge destroyed by fire, flood, or otherwise, and *do any other official act not, by law, restricted to a particular regular session.*”

(Emphasis added)

It will be noted that the board of county commissioners is specifically authorized to take action in connection with the disposition of the surplus funds as set forth in Section 955.27, *supra*, at the December session of said board. Said December session is, of course, a regular session of said board in accordance with the provisions of Section 305.06, *supra*. Since the action of the board of county commissioners necessary under Section 955.27, *supra*, for the disposition of surplus funds being therein required to be taken at a regular session, the December session of said board, I am constrained to find that, by reason of the prohibition found in the last clause of Section 305.07, *supra*, said action may not be taken at any other regular or special session of the board of county commissioners. The request for distribution of the surplus funds in question, therefore, cannot now be granted by the board of county commissioners and such board may not take action on a similar request prior to its December, 1961 session at which time the board may deal with a request based on the facts as are then shown to exist.

It is, therefore, my opinion and you are advised that where there is

a surplus fund in the dog and kennel fund in excess of \$2000 at the time of a December session of the board of county commissioners and the board at said session has before it a request that said funds be distributed to a properly organized humane society under the provisions of Section 955.27, Revised Code, and said board of county commissioners fails at said December session to grant said request, said board is by reason of the provisions of Section 305.07, Revised Code, precluded from acting on said request at a subsequent regular or special session of the board.

Respectfully,

MARK McELROY

Attorney General