

**OPINION NO. 86-055****Syllabus:**

1. The agent of a county humane society may not impound all animals found running at large. An agent may impound only those animals found to be suffering from neglect or cruelty, as set forth in R.C. Chapter 1717.
2. A county humane society may not contract with a municipality whereby the humane society agrees to enforce the municipality's animal control ordinance regulating or prohibiting the running at large of animals. (1918 Op. Att'y Gen. No. 998, vol. I, p. 243, approved and followed.)

**To: Frederick D. Pepple, Auglaize County Prosecuting Attorney, Wapakoneta, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, July 29, 1986**

I have before me your request that I review 1918 Op. Att'y Gen. No. 998, vol. I, p. 243, and consider the following questions:

1. May a county humane society agent lawfully pick up stray animals found running at large?
2. May a county humane society contract with local municipalities to provide the services of picking up such animals?

In order to respond to your questions, I must examine the provisions of R.C. Chapter 1717, which provides for the creation of county humane societies: "[a] society for the prevention of acts of cruelty to animals may be organized in any county by the association of not less than seven persons," R.C. 1717.05. The object of such societies is "the inculcation of humane principles and the enforcement of laws for the

prevention of cruelty, especially to children and animals." R.C. 1717.02. See generally 1983 Op. Att'y Gen. No. 83-050. R.C. 1717.06 authorizes county humane societies to appoint agents to prosecute persons guilty of cruelty to persons or animals and authorizes such agents to arrest persons found violating R.C. 1717.01-.14 or any other law for the protection of persons or animals or preventing acts of cruelty thereto.

Thus, the purpose of a county humane society with regard to animals is to prevent acts of cruelty to animals and to enforce the laws prohibiting cruelty to animals. The authority of a county humane society and its agents is limited by such purpose.<sup>1</sup> See 1918 Op. Att'y Gen. No. 998, vol. I, p. 243 (the powers of a humane society are specifically provided by statute and a humane society has only those powers expressly granted by statute or necessarily implied therefrom).

You have noted in your request that stray animals running at large "have an apparent need of shelter, food, and are otherwise neglected." There is no statutory provision expressly authorizing a county humane society agent to impound animals found running at large. An agent, however, may, under particular circumstances, take possession of an animal that has been neglected or mistreated.

As noted above, an agent "may arrest any person found violating [R.C. 1717.01-.14], or any other law for protecting persons or animals or preventing acts of cruelty thereto," R.C. 1717.06. R.C. Chapter 959 sets forth various criminal offenses, relating to the mistreatment of animals, for which violators may be arrested by a county humane society agent pursuant to R.C. 1717.06. See, e.g., R.C. 959.01 (prohibiting an owner or keeper of a domestic animal from abandoning the animal); R.C. 959.02 (prohibiting a person from maliciously or willfully killing or injuring a domestic animal that is the property of another); R.C. 959.13 (prohibiting specific acts of cruelty against animals). It is reasonable to conclude that, if a humane society agent should discover a neglected or mistreated animal in the course of investigating and prosecuting a violation of law, he may impound such animal. I note, however, that in seizing an animal, a humane society agent is subject to the fourth amendment to the United States Constitution, prohibiting unreasonable searches and seizures. State v. Durch, 17 Ohio App. 3d 262, 479 N.E.2d 892 (Trumbull County 1984); State v. Osborn, 63 Ohio Misc. 17, 409 N.E.2d 1077 (County Court Montgomery County 1980).

Further, R.C. 1717.13 provides, in part:

When, in order to protect any animal from neglect, it is necessary to take possession of it, any person may do so. When an animal is impounded or confined, and continues without necessary food, water, or proper attention for more than fifteen successive hours, any person may, as often as is necessary, enter any place in which the animal is impounded or confined and supply it with necessary food, water, and attention, so long as it remains there, or, if necessary, or convenient, he may remove such animal;

<sup>1</sup> See R.C. 1717.01(B) (defining "cruelty" to include "every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief").

and he shall not be liable to an action for such entry. In all cases the owner or custodian of such animal, if known to such person, immediately shall be notified by him of such action. If the owner or custodian is unknown to such person, and cannot with reasonable effort be ascertained by him, such animal shall be considered an estray and dealt with as such.... (Emphasis added.)

See State v. Osborn, (agents of humane society who act pursuant to R.C. 1717.13 to enter property to observe the conditions of animals are subject to the fourth amendment of the United States Constitution). Thus, R.C. 1717.13 empowers a humane society agent to take possession of a neglected animal. Such action serves the purpose of a county humane society to prevent acts of cruelty to animals. See note 1, supra.

R.C. 1717.09 also provides that a member of a county humane society may require a law enforcement officer or an agent of the society to "arrest any person found violating the laws in relation to cruelty to persons or animals, and to take possession of any animal cruelly treated...and deliver such animals to the proper officers of the society."

A humane society may, therefore, impound animals which have been neglected or mistreated, under the circumstances set forth above. There is no authority, however, whereby an agent may impound all animals found running at large on the basis that such animals are necessarily in need of food or shelter or otherwise neglected. Such action is beyond the purpose of the humane society and the statutory powers granted a humane society agent.

This conclusion is supported by 1918 Op. No. 998, which you have asked me to consider in connection with your second question to which I now turn. You wish to know whether a humane society may contract with local municipalities in order to provide the service of picking up animals found running at large.

A municipality has the power under Ohio Const. art. XVIII, §3 to "adopt and enforce within [its] limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." A municipality may, under this authority, enact ordinances concerning animal control. See Kovar v. City of Cleveland, 60 Ohio L. Abs. 579 (App. Cuyahoga County 1951); 1984 Op. Att'y Gen. No. 84-034; 1981 Op. Att'y Gen. No. 81-037. Further, R.C. 715.23 reads as follows:

Any municipal corporation may regulate, restrain, and prohibit the running at large, within such municipal corporation, of cattle, horses, swine, sheep, goats, geese, chickens, and other fowl and animals, and, on notice to the owners, authorize the sale of such fowl and animals for the penalty imposed by any ordinance, and the cost and expenses of the proceedings.

Such municipal corporation may regulate or prohibit the running at large of dogs, provide against injury and annoyance therefrom, and authorize the disposition of such dogs when running at large contrary to any ordinance.

Thus, a municipality has the authority under the constitution and R.C. 715.23 to enact ordinances regulating or prohibiting the running at large of animals. The purpose of such

ordinances is to protect the health and safety of the public. Kovar v. City of Cleveland; Op. No. 81-037.

1918 Op. No. 998 considered the question whether a humane society may contract to enforce G.C. 3633, now R.C. 715.23. The opinion notes, on the basis of the statutory predecessors of R.C. 1717.02 and R.C. 1717.06, that picking up stray animals running at large is beyond the purposes of a county humane society. The opinion states that an ordinance enacted by a municipality pursuant to the authority conferred by G.C. 3633 to regulate animals running at large is a police regulation which does not necessarily include the prevention of cruelty to animals, and that since the purpose for which humane societies are formed is the "inculcation of humane principles and the enforcement of laws for the prevention of cruelty" to children and animals, R.C. 1717.02, the regulation of animals running at large is not within the defined purposes of humane societies. The opinion concludes that a humane society has no authority to contract with a municipality to enforce ordinances or laws which regulate or prohibit the running at large of dogs or other animals, and any such contract entered into between a city and a humane society "is illegal as being ultra vires of the purposes for which such humane society is organized" (syllabus). Cf. 1954 Op. Att'y Gen. No. 4660, p. 683 and 1938 Op. Att'y Gen. No. 2614, vol. II, p. 1234 (a county has no authority to contract with a humane society whereby the humane society agrees to exercise the county's power to license and seize dogs under R.C. Chapter 955).

I concur in the conclusion reached in 1918 Op. No. 998. As discussed above, a county humane society has only those powers relative to the prevention of cruelty. Ordinances enacted by a municipality regulating animal control are for the purpose of protecting the health and safety of the public, a purpose beyond the scope of that for which the humane society is organized. Thus, I conclude that a humane society may not contract with a municipality to enforce the municipality's animal control ordinances and pick up animals found running at large.<sup>2</sup>

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<sup>2</sup> A humane society agent may, under limited circumstances, act to impound animals found running at large. Pursuant to R.C. 955.12, a county dog warden and his deputies are required to patrol the county and impound all dogs found running at large and all dogs more than three months old not wearing a valid registration tag. See 1984 Op. Att'y Gen. No. 84-034; 1981 Op. Att'y Gen. No. 81-037. If a county humane society owns or controls a suitable place for keeping and destroying dogs, then pursuant to R.C. 955.15, "the board [of county commissioners] may designate and appoint any officers regularly employed by any society organized under sections 1717.02 to 1717.05, inclusive, of the Revised Code, to act as county dog warden or deputies for the purpose of carrying out [all duties prescribed by law to be performed by dog wardens in seizing, impounding, and destroying unlicensed dogs]." See 1952 Op. Att'y Gen. No. 1321, p. 263. If a humane society agent is designated as the county dog warden or a deputy dog warden, he may act to pick up and impound dogs found running at large.

Additionally, under R.C. 307.15, a county and a municipality may contract whereby the county agrees to enforce the municipality's animal control ordinances; the county may then hire the county dog warden to perform such service. See Op. No. 81-037. See also Op. No. 84-034. In

In conclusion, it is my opinion, and you are so advised, that:

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such an instance, a humane society agent who had been appointed county dog warden under R.C. 955.15 would have the authority to enforce the municipality's animal control ordinance, as well as R.C. Chapter 955.

I note that in the situations set forth above, a humane society agent would not be impounding stray animals in his capacity as agent, but in his capacity as an employee of the county.