

Note from the Attorney General's Office:

1991 Op. Att'y Gen. No. 91-054 was overruled in part
by 1994 Op. Att'y Gen. No. 94-012.

OPINION NO. 91-054**Syllabus:**

- R.C. Chapter 1717 does not authorize a county humane society to own and operate a spaying and neutering veterinary clinic, and employ a licensed veterinarian in that clinic.

**To: Linda S. Randall, D.V.M., President, Ohio Veterinary Medical Board,
Columbus, Ohio**

By: Lee Fisher, Attorney General, December 31, 1991

You have requested an opinion regarding the ownership and operation of a veterinary clinic by a county humane society. According to your letter and documentation furnished to me by the Board's investigative staff, a county humane society organized and incorporated pursuant to the provisions of R.C. Chapter 1717 (humane societies) owns and operates a clinic in which spaying and neutering services are performed. The clinic charges and collects fees for those services on behalf of the humane society. A licensed veterinarian employed at the clinic performs the surgical procedures of spaying and neutering.

The county humane society that is the focus of your inquiry was organized and incorporated in 1972. Its original articles of incorporation were amended in 1982. Paragraph two of those articles states that the purpose of the society is that set forth in R.C. 1717.02, and that the objects of the society are "the inculcation of humane principles and the enforcement of laws for the prevention of cruelty, especially to children and animals." Paragraph five elaborates further that the purpose of the society is "to provide humane care and treatment for all animals needing protection in the area served by the society; to seek to return lost animals to their owners; to seek suitable homes for animals without owners and then provide euthanasia where necessary; and to promote humane education." The articles also state that the society shall operate under those laws of Ohio that govern tax exempt nonprofit organizations. Currently, the society's officers consist of a president, vice-president, secretary, and treasurer, none of whom are licensed veterinarians, *see* R.C. 4741.11-13, or the holders of temporary permits to practice veterinary medicine, *see* R.C. 4741.14. The society is also comprised of individual members who contribute to the society's finances by way of membership fees. The society occasionally receives and accepts monetary donations from persons or organizations not affiliated with the society. You wish to know whether this county humane society may own and operate a veterinary clinic in the manner just described, and employ licensed veterinarians in conjunction therewith.¹

Humane Societies

R.C. Chapter 1717 authorizes the formation of humane societies at both the state and county level. R.C. 1717.03 (Ohio Humane Society); R.C. 1717.05 (county humane societies). As pertains herein, R.C. 1717.05 provides that, "[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. 1717.02 describes the objects of state and county humane societies, and the activities they may undertake in

¹ In your letter you indicate that this question has been prompted by the requirement set forth in R.C. 4741.28 that all partners or shareholders of a partnership or corporation that carries on the practice of veterinary medicine must be licensed under R.C. Chapter 4741, and certain conclusions in 1962 Op. Att'y Gen. No. 3031, p. 414 regarding the practice of a profession and the employment of licensed professionals by a corporation organized and incorporated other than as a professional association under R.C. Chapter 1785. In the discussion that follows I have been able to answer your question in terms of the authority conferred upon a county humane society by R.C. Chapter 1717 exclusively, rendering unnecessary an analysis of the extent to which the operation of a spaying and neutering veterinary clinic by a county humane society may implicate R.C. 4741.28 or the provisions of R.C. Chapter 1785.

accomplishing those objectives:

The objects of the Ohio humane society, and all societies organized under section 1717.05 of the Revised Code, shall be the *inculcation of humane principles* and the *enforcement of laws for the prevention of cruelty, especially to children and animals*. To promote those objects such societies may acquire property, real or personal, by purchase or gift. (Emphasis added.)

**The Operation of a Spaying and Neutering
Veterinary Clinic is Beyond the Scope of a
County Humane Society's Statutory Authority**

I conclude that a county humane society may not own and operate a veterinary clinic and employ therein a licensed veterinarian for the purpose of providing spaying and neutering services for county pet owners. The powers of humane societies "are specifically provided by statute, and they have only such powers as are granted by statute or which may be necessarily implied in order to carry out the powers specifically granted," 1918 Op. Att'y Gen. No. 998, vol. 1, p. 243, at 245. R.C. 1717.02 specifies that the two objects of all county humane societies organized under R.C. 1717.05 are the "inculcation of humane principles" and the "enforcement of laws for the prevention of cruelty," especially to children and animals. R.C. 1717.02 further provides that a county humane society may acquire, manage, and sell real or personal property in order to promote those two objects. Other provisions within R.C. Chapter 1717 grant county humane societies the authority to appoint agents who are to arrest and prosecute any person found violating any section in R.C. Chapter 1717 or any other law against cruelty to persons or animals, R.C. 1717.06; interfere to prevent the perpetration of any act of cruelty to animals, R.C. 1717.08; require various local law enforcement officers to arrest any person found violating the laws regarding cruelty to persons or animals, R.C. 1717.09; take possession of any animal subject to neglect or cruelty, R.C. 1717.13, *see State v. Osborn*, 63 Ohio Misc. 17, 409 N.E.2d 1077 (County Court Montgomery County 1980); 1986 Op. Att'y Gen. No. 86-055 at 2-300; and expend general fund moneys appropriated for their use by the boards of county commissioners, R.C. 1717.15.

Express authorization for a county humane society to own and operate a spaying and neutering veterinary clinic does not appear in any of the foregoing provisions of R.C. Chapter 1717. I also discern nothing within those provisions from which one should infer such authority on the part of a county humane society. In that regard prior Attorney General opinions have emphasized the specific statutory purposes and objects of county humane societies when considering the kinds of activities or undertakings those societies may pursue. As stated in Op. No. 86-055 at 2-299, for example, "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," and "[t]he authority of a county humane society and its agents is limited by such purpose." (Footnote omitted.) Accordingly, my predecessors that have addressed such questions have not been inclined to infer authority on the part of county humane societies to conduct certain activities, not explicitly mentioned in the pertinent statutory provisions, absent a close and demonstrable congruence between those activities and the foregoing purposes. *See, e.g.*, Op. No. 86-055 at 2-300 (R.C. Chapter 1717 provides no authority "whereby [a humane society] 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"); 1918 Op. No. 998 at 245 (a county humane society is not authorized to contract with a municipality to enforce ordinances or laws that regulate or prohibit the running at large of dogs or other animals, and any such contract "is beyond the powers granted to such society and is therefore *ultra vires*").

While it is probable that a humane society's provision of spaying and neutering services will help forestall the proliferation of unwanted dogs and cats within the county and an argument can be made that a causal link between that fact and a reduction or elimination of incidents of cruelty to animals within the county exists, I still cannot conclude that the operation of a spaying and neutering veterinary clinic and the employment therein of a licensed veterinarian are

activities within the scope of a county humane society's statutory authority. The relationship between the "inculcation of humane principles" or "the enforcement of" existing laws for the prevention of cruelty to animals and the actual operation of a spaying and neutering clinic is simply too attenuated. I do not believe any reasonable reading of the enabling statute for county humane societies could justify such a broad characterization of such an entity's power.

Conclusion

It is, therefore, my opinion, and you are advised that R.C. Chapter 1717 does not authorize a county humane society to own and operate a spaying and neutering veterinary clinic, and employ a licensed veterinarian in that clinic.