

1590.

COUNTY HUMANE SOCIETY—RESIDENCE REQUIREMENTS OF AGENT
IN RELATION TO DUTIES—APPOINTMENT, APPROVAL, AND
SALARY OF SAME.

SYLLABUS:

Where a qualified person resides in a county where a county humane society is organized and established, but such person resides outside of the limits of a particular municipal corporation situated in such county, he cannot be legally appointed by the county humane society of such county as an agent of such county humane society with authority to perform his duties as such agent within the limits of such municipal corporation only; but if the appointment of such agent is for the whole county, including any municipal corporation located therein, such agent may reside either in such city or in the county outside of the limits of such municipal corporation. Where such agent is appointed for the whole county his appointment is subject to approval both by the probate judge of the county and the mayor of the municipal corporation, and his salary is required to be provided for in the manner and within the limitations set out in Section 10072 of the General Code.

COLUMBUS, OHIO, January 17, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication requesting my opinion upon the following question:

“May the appointment of an agent of a county humane society who is not a resident of a city situated in such county be approved by the mayor of such city and compensation be paid such agent from the city treasury.”

I assume from your communication that the humane society referred to in your question is a society organized for enforcing the laws relating to cruelty to persons and animals throughout the whole of some particular county and not in a part of such county only outside of the limits of some municipal corporation or corporations therein.

As to such county humane societies, provision is made for their organization in any county by the association of not less than seven persons for this purpose. It is further provided that at a meeting called for the purpose the members shall elect not less than three of their number as directors (Sec. 10067, General Code).

By Section 10068, General Code, it is provided that the secretary or clerk of the meeting must make a true record of the proceedings and certify and forward same to the secretary of state. This record is required to state the name by which such association is to be known, and it is provided that from and after such filing, the directors and associates, and their successors, will be invested with the powers, privileges and immunities incident to incorporated companies.

Immediately applicable to the consideration of the question submitted by you, Sections 10070, 10071 and 10072, General Code, provide as follows:

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 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 and 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."

The several sections of the General Code above quoted are not only *in pari materia* but they were enacted in their present form in the same act and as one section thereof (98 O. L. 44). In consideration of the provisions of these sections every part thereof should be so construed that all of said provisions may be harmonized and given their proper effect.

In reading the provisions of these sections it appears to be within the contemplation thereof that a county humane society may appoint an agent or agents for the purpose of enforcing the laws relating to cruelty to persons or animals within the limits of some particular municipal corporation only. With respect to such appointments the persons so appointed are required to be residents of the municipal corporation for which they are appointed; and such appointments are subject to the approval of the mayor of such municipal corporation. Upon the appointment of such agent or agents and the approval thereof by the mayor, the council of such municipal corporation is required to provide a monthly salary for each of such agents in such sum as it deems just and reasonable, but in no event to be less than five dollars per month if the municipal corporation be a village and not less than twenty-five dollars per month if it be a city. Likewise such a county humane society may appoint agents for the purpose of enforcing the laws relating to cruelty to persons or animals in that part of the county outside of any municipal corporation or corporations. In such case the agents so appointed are required to be residents of the county and their appointments are subject to the approval of the probate judge of the county. Upon the appointment of such agent and its approval by the probate judge the commissioners of the county are required to provide a monthly salary for such agent in such sum as they deem just and reasonable, provided that such salary shall not be less than twenty-five dollars per month, limited to the payment of one such agent only.

It will be noted that Section 10072, General Code, above quoted, contains the following provision:

"The commissioners and the council of such city or village may agree upon the amount each is to pay such agent or agents monthly."

From this provision it appears that the legislature had in mind that such county humane society might appoint an agent with authority to perform his duties as such throughout the county and within some one or more municipal corporations in such county. In such case the appointment of the agent is subject to approval by the probate judge of the county and by the mayor of any municipal corporation in the county in which such agent is to perform his duties as such agent. When such agent is appointed by the humane society and the same is approved by the probate judge and the mayor of the municipal corporation the county commissioners and the council of such municipal corporation are authorized and required to provide a salary for such agent in the manner provided in Section 10072; General Code. and as above noted, the county commissioners and the council of such municipal corporation may in such case agree upon the amount of monthly salary that each is to pay such agent: provided, however, that the county commissioners shall not pay salary to more than one of such agents.

By way of specific answer to your question I am of the opinion that where a qualified person resides in a county where a county humane society is organized and established, but such person resides outside of the limits of a particular municipal corporation situated in such county, he cannot be legally appointed by the county humane society of such county as an agent of such county humane society with authority to perform his duties as such agent within the limits of such municipal corporation only; but if the appointment of such agent is for the whole county, including any municipal corporation located therein, such agent may reside either in such city or in the county outside of the limits of such municipal corporation. Where such agent is appointed for the whole county his appointment is subject to approval both by the probate judge of the county and the mayor of the municipal corporation, and his salary is required to be provided for in the manner and within the limitations set out in Section 10072 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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APPROVAL, BONDS OF MARION COUNTY, OHIO—\$8,070.00.

COLUMBUS, OHIO, January 17, 1928.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.