

**OPINION NO. 86-064**

**Syllabus:**

1. An ostrich and a rhea are not "domestic fowl or poultry" for purposes of R.C. 955.29, unless they are raised as a source of meat, eggs, or feathers.
2. The determination of the fair market value of fowl or poultry claimed to have been injured or killed as described in R.C. 955.29 is a matter of discretion vested in the board of county commissioners, subject to the limitation set forth in R.C. 955.35.

To: Phillip S. Schneider, Champaign County Prosecuting Attorney, Urbana, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, August 21, 1986

I have before me your request for my opinion, in which you ask whether an ostrich and a rhea may be classified as "domestic fowl or poultry" for purposes of R.C. 955.29, which reads, in part, as follows:

Any owner of horses, sheep, cattle, swine, mules, goats, domestic rabbits, or domestic fowl or poultry that have an aggregate fair market value of ten dollars or more and that have been injured or killed by a dog not belonging to the owner or harbored on his premises, in order to be eligible to receive compensation from the dog and kennel fund, shall notify a member of the board of county commissioners or dog warden within three days after the loss or injury has been discovered. (Emphasis added).

See R.C. 955.20 (establishing the dog and kennel fund from which the payment of animal claims as provided in R.C. 955.29-.38 may be made). Further, you have inquired as to how the fair market value of an ostrich or a rhea is to be determined if a claim for the injury or death of such animal is found to be compensable under R.C. 955.29.

In 1974 Op. Att'y Gen. No. 74-090, my predecessor adopted a test, based on the common meaning of the terms "poultry" and "domestic fowl" and on prior opinions of this office, for determining whether a particular bird may be considered, for purposes of R.C. 955.29, domestic fowl or poultry: "domestic fowls [means] the class of fowls which normally make their home on a farm, and...[which] are propagated and fattened for the table and for their eggs, feathers, etc." (emphasis in original). Op. No. 74-090 at 2-371, citing 1954 Op. Att'y Gen. No. 3607, p. 105, 107. When a type of bird does not clearly come within the common meaning of "domestic fowl or poultry," it is necessary to consider the purpose for which the bird is being raised in order to determine whether such purpose justifies its classification as domestic fowl or poultry for purposes of R.C. 955.29. See Op. No. 74-090 (the death of a peacock, a type of bird which does not clearly come within the term "domestic fowl or poultry," is compensable only if it is raised as a source of meat, eggs, or feathers); 1961 Op. Att'y Gen. No. 2079, p. 144 (pheasants held for the sole intent of releasing them for hunting season are not domestic fowl or poultry because they were not raised directly for food or some by-product thereof); 1954 Op. No. 3607 (homing pigeons, kept for the sole purpose of racing, are not domestic fowl or poultry because they do not normally make their home on a farm, nor are they propagated and fattened for their meat, eggs, or feathers).

My research has revealed no change in meaning of the terms considered in the above opinions, and, therefore, I see no reason to vary from the interpretation of the phrase "domestic fowl or poultry" as set forth in those opinions. See generally Webster's New World Dictionary 552, 1116 (2d college ed. 1978) (defining "fowl, in part, as "any of the larger domestic birds used as food; [specifically] a) the chicken b) the duck, goose, turkey, etc. c) a full-grown chicken, as distinguished from a springer, etc." and "poultry" as "domestic fowls raised for meat or eggs").

It does not appear that in the United States the ostrich or rhea are common farm animals propagated for their food value.

See generally 16 Encyclopaedia Britannica 959 (1961) (describing the "ostrich" as native to Africa); 19 Encyclopaedia Britannica 246 (1961) (describing the "rhea" as a bird confined to South America). Thus, it is necessary to examine the purpose for which they were raised to determine whether they may be considered, for purposes of R.C. 955.29, as domestic fowl or poultry. Unless the ostrich and rhea in the situation you pose were being raised as a source of meat, eggs, or feathers, I conclude that they are not, for purposes of R.C. 955.29, "domestic fowl or poultry." See 16 Encyclopaedia Britannica 959 (1961) and 19 Encyclopaedia Britannica 246 (1961) (indicating that an ostrich or a rhea may be grown for the value of its feathers).

I turn now to your second question regarding the determination of the fair market value of an animal for which compensation is sought under R.C. 955.29. The procedure for determining whether a claim shall be paid and the amount to be paid is set forth in R.C. 955.29-.38. Although R.C. 955.29 specifies the date as of which the fair market value is to be determined, it does not set forth specific criteria to be used in making such determination. Pursuant to R.C. 955.29, in making a claim for the loss or injury of an animal, an "owner shall set forth the kind, grade, quality, and fair market value of the animals, fowl, or poultry...and all other facts...that will enable the [county dog] warden to fix responsibility for the loss or injury." If the warden finds the owner's statements to be true and agrees with the owner as to the fair market value, he shall certify and send to the board of county commissioners copies of the claim form, together with any other information relevant to the loss or injury. If the warden does not find all of the owner's statements to be correct or disagrees with the fair market value, the owner may appeal to the board of township trustees for a determination as provided in R.C. 955.30-.34. R.C. 955.29. The board of township trustees shall then receive "any other information or testimony that will enable it to determine the fair market value of the animals, fowl, or poultry injured or killed as described in [R.C. 955.29]." R.C. 955.31. See generally R.C. 955.32 (concerning claims for registered stock or their offspring); R.C. 955.34 (testimony of witnesses).

The allowance of claims submitted under R.C. 955.29-.34 is left to the board of county commissioners which examines the claims, and "may hear additional testimony or receive additional affidavits in regard thereto and may allow the amount previously certified by the dog warden or allowed by the board of township trustees, or a part thereof, or any amount in addition thereto, as it may find to be just, but in no event shall the amount allowed exceed the lesser of five hundred dollars per animal or the uninsured amount of the loss or injury" (emphasis added). R.C. 955.35. Accordingly, the board of county commissioners has authority to determine whether a claim shall be paid and the amount to be paid.<sup>1</sup> R.C. 955.35.

It is well established under Ohio law that a board of county commissioners has only those powers expressly delegated

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<sup>1</sup> An owner of animals, fowl, or poultry killed or injured by a dog, if the fair market value is at least ten dollars, may appeal from a final allowance made by the board of county commissioners. R.C. 955.37. The appeal shall be made to the probate court, and its determination shall be final. R.C. 955.38.

by statute or necessarily implied from powers so delegated. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Moreover, where an officer or board of officers is directed by statute to do a particular thing, in the absence of specific directions regarding the manner and method of performance, it is presumed that the officer or board will "in the exercise of a fair and impartial official discretion...fairly and honestly discharge his duties." State ex rel. Hunt v. Hildebrandt, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), aff'd, 241 U.S. 565 (1916); see also 1981 Op. Att'y Gen. No. 81-026. It must be assumed, therefore, that the board of county commissioners, will, after considering all the evidence before it, act in a reasonable manner to ascertain the appropriate fair market value of animals, fowl, or poultry claimed to have been injured or killed. The only limitation placed upon the board's discretion in determining valuation is the maximum amount set forth in R.C. 955.35. Thus, I conclude that the determination of the fair market value of poultry claimed to have been injured or killed is a matter of discretion vested in the board of county commissioners, subject to the limitation on such valuation prescribed by R.C. 955.35.

It is, therefore, my opinion, and you are advised, that:

1. An ostrich and a rhea are not "domestic fowl or poultry" for purposes of R.C. 955.29, unless they are raised as a source of meat, eggs, or feathers.
2. The determination of the fair market value of fowl or poultry claimed to have been injured or killed as described in R.C. 955.29 is a matter of discretion vested in the board of county commissioners, subject to the limitation set forth in R.C. 955.35.