

Note from the Attorney General's Office:

2007 Op. Att'y Gen. No. 2007-009 overruled
by 2015 Am. Sub. H.B. 64, 585-586, which
repealed R.C. 955.29-.38

OPINION NO. 2007-009**Syllabus:**

An owner of a llama that has been killed by a dog not belonging to the owner or harbored on his premises may not be compensated for the loss of the llama from the dog and kennel fund as provided in R.C. 955.29-.38.

To: Robert B. Watson, Noble County Prosecuting Attorney, Caldwell, Ohio

By: Marc Dann, Attorney General, May 14, 2007

You have requested an opinion whether an owner of a llama that has been killed by a dog not belonging to the owner or harbored on his premises may be compensated for the loss of the llama from the dog and kennel fund as provided in R.C. 955.29-.38. Based on the following analysis, the owner of the llama may not be compensated for the loss of the llama from the dog and kennel fund.

Under R.C. 955.20, dog and kennel registration fees collected by the county

auditor in accordance with R.C. 955.01-.14¹ constitute a special fund known as the dog and kennel fund. *See also* R.C. 955.19 (“[a]ll funds received by the county dog warden or poundkeeper in connection with the administration of [R.C. 955.01-.18] shall be deposited in the county treasury and placed to the credit of the dog and kennel fund”); R.C. 955.44 (“[a]ll fines collected for violations of [R.C. 955.11, R.C. 955.21, R.C. 955.22, R.C. 955.23, R.C. 955.25, and R.C. 955.261] shall be deposited in the county treasury to the credit of the dog and kennel fund”). This statute requires dog and kennel registration fees to be deposited in the county treasury for use in defraying “the cost of furnishing all blanks, records, tags, nets, and other equipment, for the purpose of paying the compensation of county dog wardens, deputies, poundkeepers, and other employees necessary to carry out and enforce [R.C. 955.01-.261], and for the payment of animal claims as provided in [R.C. 955.29-.38] and in accordance with [R.C. 955.27²].” R.C. 955.20.

R.C. 955.29-.38 authorize a board of county commissioners to make payments from the dog and kennel fund to owners of animals, fowl, or poultry that have been injured or destroyed by dogs when R.C. 955.29 applies. R.C. 955.29 provides that an owner of animals, fowl, or poultry may claim compensation for such injury or loss from the dog and kennel fund as follows:³

¹ R.C. 955.01-.14 set forth provisions governing the payment of a fee when registering dogs and dog kennels with the county auditor.

² R.C. 955.27, which provides for the distribution of surplus monies in the dog and kennel fund, states:

After paying all necessary expenses of administering the sections of the Revised Code relating to the registration, seizing, impounding, and destroying of dogs, including the purchase, construction, and repair of vehicles and facilities necessary for the proper administration of such sections, 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, if there remains more than two thousand dollars in the dog and kennel fund for such year in a county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized by law, and having one or more agents appointed pursuant to law, or any other society organized under [R.C. Chapter 1717], that owns or controls a suitable dog kennel or a place for the keeping and destroying of dogs which has one or more agents appointed and employed pursuant to law, may pay to the treasurer of such society, upon warrant of the county auditor, all such excess as the board deems necessary for the uses and purposes of such society.

³ When an owner of an animal, fowl, or poultry makes a claim for compensation from the dog and kennel fund under R.C. 955.29, the claim is investigated by the dog warden. R.C. 955.29. If the dog warden finds the claim to be correct and agrees with the owner on the fair market value of the animal, fowl, or poultry, the warden shall certify the claim to the board of county commissioners. *Id.* If the dog warden

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.)

The plain language of R.C. 955.29 limits its application to owners of horses, sheep, cattle, swine, mules, goats, domestic rabbits, and domestic fowl and poultry that have been injured or killed by dogs. The statute does not explicitly list llamas.

Moreover, the common, ordinary meanings of the terms “horse,” “sheep,” “cattle,” “swine,” “mule,” “goat,” “rabbit,” “fowl,” and “poultry” do not include llamas. *See generally* R.C. 1.42 (words not legislatively or judicially defined for purposes of a statutory scheme are to “be read in context and construed according to the rules of grammar and common usage”). *Merriam-Webster’s Collegiate Dictionary* 196, 495-96, 536, 600, 815, 972, 1023, 1146, 1264 (11th ed. 2005) defines these terms as follows:

cattle ... domesticated quadrupeds held as property or raised for use; *specif*: bovine⁴ animals on a farm or ranch...⁵

....

does not certify the claim to the board of county commissioners, the owner of the animal, fowl, or poultry may appeal to the board of township trustees for a determination of the claim. *Id.* A claim approved in full or in part by a board of township trustees is submitted “to the board of county commissioners in care of the county auditor, who shall enter each claim reported upon a book to be kept for that purpose in the order of its receipt.” R.C. 955.33.

A claim submitted to a board of county commissioners by the dog warden or a board of township trustees is examined by the county commissioners pursuant to R.C. 955.35, which provides in pertinent part:

The board of county commissioners, at the next regular meeting after claims in accordance with [R.C. 955.29-.34] have been submitted, shall examine the same 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.

R.C. 955.37 authorizes a claimant to appeal to the probate court from a final allowance made by the board of county commissioners.

⁴ *Merriam-Webster’s Collegiate Dictionary* 147 (11th ed. 2005) defines “bovine” to mean “of, relating to, or resembling bovines and esp. the ox or cow ... any

fowl ... a bird of any kind ... a cock or hen of the domestic chicken (*Gallus gallus*); *esp* : an adult hen ... any of several domesticated or wild gallinaceous birds...

....

goat ... any of various hollow-horned ruminant mammals (*esp.* of the genus *Capra*) related to the sheep but of lighter build and with backwardly arching horns, a short tail, and usu. straight hair; *esp* : one (*Capra hircus*) long domesticated for its milk, wool, and flesh...

....

horse ... a large solid-hoofed herbivorous ungulate mammal (*Equus caballus*, family Equidae, the horse family) domesticated since prehistoric times and used as a beast of burden, a draft animal, or for riding...

....

mule ... a hybrid between a horse and a donkey; *esp* : the offspring of a male donkey and a mare...

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poultry ... domesticated birds kept for eggs or meat

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rabbit ... any of a family (Leporidae) of long-eared short-tailed lagomorph mammals with long hind legs : any of various lagomorphs that are born furless, blind, and helpless, that are sometimes gregarious, and that include *esp.* the cottontails of the New World and a small Old World mammal (*Oryctolagus cuniculus*) that is the source of various domestic breeds ... HARE...

....

sheep ... any of various hollow-horned typically gregarious ruminant mammals (genus *Ovis*) related to the goats but stockier and lacking a beard in the male; *specif* : one (*O. aries*) long domesticated *esp.* for its flesh and wool...

....

swine ... any of various stout-bodied short-legged omnivorous artiodactyl mammals (family Suidae) with a thick bristly skin and a long flexible snout; *esp* : a domesticated one descended from the wild boar[.] (Footnotes added.)

of a subfamily (Bovinae) of bovids including oxen, bison, buffalo, and their close relatives.”

⁵ According to *The World Book Encyclopedia*, vol. 3, p. 306 (2000), “[i]n the United States, the word *cattle* usually means cows, bulls, steers, heifers, and calves.”

In contrast to the vertebrates listed in R.C. 955.29, a “llama” is “any of a genus (*Lama*) of wild or domesticated long-necked So. American ruminants related to the camels but smaller and without a hump; *esp* : a domesticated llama (*L. glama*) descended from the guanaco and used *esp*. in the Andes as a pack animal and a source of wool.” *Merriam-Webster’s Collegiate Dictionary* 729 (11th ed. 2005). While llamas may have certain physiological characteristics that are similar to those of some of the vertebrates listed in R.C. 955.29, llamas are distinguishable from those vertebrates insofar as llamas are of the genus *Lama* whereas none of the vertebrates listed in R.C. 955.29 is of that genus.

The General Assembly has thus specifically limited the application of R.C. 955.29 to owners of horses, sheep, cattle, swine, mules, goats, domestic rabbits, and domestic fowl and poultry that have been injured or killed by dogs. Because the list of animals set forth in R.C. 955.29 does not include llamas, it follows that the General Assembly did not intend to authorize the payment of compensation from the dog and kennel fund to the owner of a llama injured or killed by a dog.⁶ *See* 1936 Op. Att’y Gen. No. 5841, vol. II, p. 1073, at 1074 (from the history of G.C. 5840

⁶ Various statutes, when addressing the payment of claims from the dog and kennel fund, use the word “livestock” or “animal” in lieu of the phrase “horses, sheep, cattle, swine, mules, goats, domestic rabbits.” *See, e.g.*, R.C. 955.14(A) (the amount of the dog and kennel “fees shall not exceed an amount that the board, in its discretion, estimates is needed to pay all expenses for the administration of this chapter and to pay claims allowed for animals, fowl, or poultry injured or destroyed by dogs”); R.C. 955.14(B) (“[n]ot later than the fifteenth day of October of each year, the board of county commissioners shall determine if there is sufficient money in the dog and kennel fund, after paying the expenses of administration incurred or estimated to be incurred for the remainder of the year, to pay the claims allowed for animals, fowl, or poultry injured or destroyed by dogs”); R.C. 955.27 (“[a]fter paying all necessary expenses of ... making compensation for injuries to livestock inflicted by dogs..., the board of county commissioners, at the December session, if there remains more than two thousand dollars in the dog and kennel fund for such year” may disburse money from the dog and kennel fund to a society for the prevention of cruelty to children and animals or other society organized under R.C. Chapter 1717). While the words “livestock” and “animal” may be read to include llamas that are kept as property, the use of these words in the dog and kennel fund statutes does not indicate that the General Assembly intended for an owner of a llama that has been injured or killed by a dog to be compensated from the dog and kennel fund for the injury or loss of the llama. *See generally Merriam-Webster’s Collegiate Dictionary* 49 (11th ed. 2005) (“animal” means “one of the lower animals as distinguished from human beings ... MAMMAL; *broadly* : VERTEBRATE”); *Merriam-Webster’s Collegiate Dictionary* 728 (11th ed. 2005) (“livestock” means “animals kept or raised for use or pleasure; *esp* : farm animals kept for use and profit”); *Merriam-Webster’s Collegiate Dictionary* 729 (11th ed. 2005) (defining a “llama” as an animal). *See generally also Bowlin v. Deschutes County*, 91 Ore. App. 155, 158, 754 P.2d 30 (1988) (“[l]ivestock’ commonly refers to ‘domestic animals used or raised on a farm, especially those kept for profit.’ *Webster’s New*

(now R.C. 955.29) “it would seem that the legislature by enumerating in detail, as it did in 1917, the specific classes of animals, did not intend that there should be damages allowed for loss of animals not included therein”). See generally *State v. Droste*, 83 Ohio St. 3d 36, 39, 697 N.E.2d 620 (1998) (under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more things implies the exclusion of those not identified); *Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997 (1997) (the rule of *expressio unius est exclusio alterius*, or the naming of a specific thing, implies the exclusion of those not named).

Our conclusion is buttressed further when R.C. 955.29 is examined in conjunction with language used by the General Assembly in another statute concerning dogs that injure or kill a vertebrate that is the property of a person. See generally *State ex rel. Thurn v. Cuyahoga County Bd. of Elections*, 72 Ohio St. 3d 289, 294, 649 N.E.2d 1205 (1995) (it “is a fundamental rule of statutory construction that statutes relating to the same subject matter should be construed together”). R.C. 955.28(A) reads, in part:

Subject to divisions (A)(2) and (3) of [R.C. 955.261], a dog that is chasing or approaching in a menacing fashion or apparent attitude of attack, that attempts to bite or otherwise endanger, or that kills or injures a person or a dog that *chases, injures, or kills livestock, poultry, other domestic animal, or other animal, that is the property of another person, except a cat or another dog*, can be killed at the time of that chasing, approaching, attempt, killing, or injury. (Emphasis added.)

The language of R.C. 955.28(A) authorizes the killing of a dog that is chasing livestock. *Collegiate Dictionary* 492. Even the common definition is not free from ambiguity, however. Llamas may or may not fit the usual understanding of “livestock”).

R.C. 1.42 decrees that words are to “be read in context.” Also, “[s]tatutes concerning the same subject matter must be construed in *pari materia*.” *In re C.W.*, 104 Ohio St. 3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, at ¶7 (2004); accord *State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) (“[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law”). Employing these basic rules of statutory construction here, we are of the opinion that the use of the words “livestock” and “animal” in the dog and kennel fund statutes refer to the specific animals described in R.C. 955.29. See generally R.C. 955.20 (the registration fees provided for in R.C. 955.01-.14 “shall be used ... for the payment of animal claims as provided in [R.C. 955.29-.38] and in accordance with [R.C. 955.27]”); R.C. 955.29 (using the phrase “animals, fowl, or poultry” to refer to “horses, sheep, cattle, swine, mules, goats, domestic rabbits, or domestic fowl or poultry”); R.C. 955.32 (“[i]f the animals, fowl, or poultry described in [R.C. 955.29] are registered in any accepted association or registry, the owner, or his employee or tenant, shall submit with the claim form the registration papers showing the lines of breeding, age, and other matters”).

ing, injuring, or killing any “animal,” other than a cat or dog, that is the property of a person. Because a llama is an animal that may be the property of a person, *see Merriam-Webster’s Collegiate Dictionary* 729 (11th ed. 2005), R.C. 955.28(A) authorizes the killing of a dog that is chasing, injuring, or killing a llama that is the property of a person.

It is significant that while R.C. 955.28(A) applies to llamas that are the property of persons, R.C. 955.29 contains no such language applying to llamas. It is thus apparent that if the General Assembly had intended for R.C. 955.29 to apply to llamas, it could have used express language similar to that used in R.C. 955.28(A). *See generally Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, “it would not have been difficult to find language which would express that purpose,” having used that language in other connections); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 67, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). Moreover, the absence of similar language in R.C. 955.29 indicates that the General Assembly did not intend for an owner of a llama that has been killed by a dog not belonging to the owner or harbored on his premises to be compensated for the loss of the llama from the dog and kennel fund as provided in R.C. 955.29-.38. *Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (“[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended”).

It is, therefore, our opinion, and you are hereby advised that an owner of a llama that has been killed by a dog not belonging to the owner or harbored on his premises may not be compensated for the loss of the llama from the dog and kennel fund as provided in R.C. 955.29-.38.