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WHERE A BOARD OF HEALTH OF A GENERAL HEALTH DISTRICT DESIRES TO REQUIRE THAT DOGS IN THE DISTRICT BE VACCINATED FOR RABIES—PROCEDURE SPECIFIED BY SEC. 955.26, R.C. MUST BE FOLLOWED IN THE ADOPTION OF SUCH REQUIREMENT—§§955.26, 3709.21, R.C.

SYLLABUS:

1. Section 955.26, Revised Code, is a specific provision of law dealing with the vaccination of dogs for rabies and, as such, constitutes an exception to the provisions of Section 3709.21, Revised Code, which is a general statute pertaining to the powers of the board of health of a general health district, so far as said Section 3709.21, Revised Code, would allow a board of health to require vaccination of dogs for rabies.

2. Where a board of health of a general health district desires to require that dogs in the district be vaccinated for rabies, the procedure specified by Section 955.26, Revised Code, must be followed in the adoption of such requirement.

Columbus, Ohio, April 14, 1960

Hon. Forrest H. Bacon, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“On the Eighteenth day of December, 1957, the Board of Health of Wyandot County, Ohio, adopted an ordinance requiring that all dogs within the County be vaccinated against rabies. This measure was passed under authority of Section 3709.21 of the Revised Code of Ohio.

“The General Assembly at the last legislative session amended Section 955.26 of the Revised Code of Ohio and stated therein certain procedures that must first be complied with before such an order could be issued.

“My question is that in light of Section 955.26 of the Revised Code of Ohio, does the Board of Health of a general health district have the authority to pass such a regulatory measure as noted above requiring that all dogs within the district be vaccinated against rabies under Section 3709.21 of the Revised Code of Ohio or must the Board of Health follow only the procedure as outlined in said Section 955.26 of the Revised Code of Ohio.

"I make reference to 1928 Attorney General Opinion No. 2359 and *Stubbs v. Mitchell*, 65 O.L.A. 204."

You state that on December 12, 1957 the board of health adopted an ordinance requiring that all dogs within the county be vaccinated against rabies; such regulation being adopted pursuant to the general authority of Section 3709.21, Revised Code, which reads in part as follows:

"The board of health of a general health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. * * *"

In the case of *Stubbs v. Mitchell*, 65 O.L.A. 204, (1952), the Court of Appeals held that Section 1261-42, General Code (now Section 3709.21, *supra*), permitting the board of health to make such orders as it deems necessary for the prevention and restriction of disease, did not conflict with Section 5652-16, General Code, (now Section 955.26, Revised Code), which became operative only when, in the opinion of the board, rabies was prevalent, in which case the board had the duty to declare quarantine on all dogs in the district.

In Opinion No. 2359, Opinions of the Attorney General for 1928, page 1748, to which you refer, paragraph 3 of the syllabus reads:

"3. A district board of health, if it deems it necessary for the public health, or the prevention or restriction of disease, or the prevention, abatement or suppression of a nuisance may order the vaccination of all dogs within such district with anti-rabic serum."

This conclusion was based mainly on the provisions of the then existing Section 1261-42, General Code (now Section 3709.21, *supra*), permitting the board of health to make such orders as it deemed necessary for the prevention and restriction of disease. At page 1752 of the opinion, referring to the then existing Section 5652-16, General Code (now Section 955.26, Revised Code), it was stated:

"* * *

"I am of the opinion that the provisions of this section are not exclusive in so far as determining or restricting the power of a board of health. If the exigencies of the situation, in the judgment of the board of health, require other or different precautions to safeguard the health of the citizens of the community, I am of the opinion that such board may enact any ordinance which is reasonably commensurate with the conditions then prevailing.

"* * *"

At the time the conclusions in the *Stubbs case, supra*, and Opinion No. 2359, *supra*, were issued, Section 5652-16, General Code, read as follows:

“Whenever in the judgment of any city or general health district board of health, or person or persons performing the duties of a board of health, rabies shall be declared to be prevalent, such board of health, or person or persons performing the duties of such board of health, shall declare a quarantine of all dogs in such health district, or part thereof. The quarantine so declared shall consist of the confinement of any dog or dogs on the premises of the owner or in a suitable pound or kennel if a pound or kennel is provided by the city or county; provided, a dog may be permitted to leave the premises of the owner if under leash or under the control of the owner or other responsible person. The quarantine order herein authorized shall be considered an emergency and need not be published.

“When a quarantine of dogs has been declared in any health district, or part thereof, it shall be the duty of the dog warden and all other persons having the authority of police officers to assist the health authorities in enforcing the provisions of the quarantine order.

“The penalty for the violation of the rabies quarantine order shall be the same as provided for the violation of other orders or regulations of the board of health.”

It will be noted that the section, as then existing, did not contain any references to vaccination for rabies. Since then, however, the law has been substantially changed.

As noted earlier, Section 5652-16, General Code, has been recodified as Section 955.26, Revised Code. Further, the section was specifically amended by Amended Senate Bill No. 232 of the 103rd General Assembly, effective September 18, 1959 and now reads as follows:

“Whenever in the judgment of the director of health, any city or general health district board of health, or persons performing the duties of a board of health, rabies is prevalent, the director of health, the board or persons performing the duties of such board, shall declare a quarantine of all dogs in the health district, or part thereof. During such quarantine, the owner, keeper, or harbinger of any dogs shall keep the dogs confined to the premises of the owner, keeper, or harbinger, or in a suitable pound or kennel, if such pound or kennel is provided by the city or county; provided, a dog may be permitted to leave the premises of the owner, keeper, or harbinger if under leash or under the control of a responsible person. The quarantine order shall be considered an emergency and need not be published.

“When the quarantine has been declared, the director of health, city or general health district board of health, or persons performing the duties of a board of health may require vaccination for rabies of all dogs within the health district or part thereof. Proof of such vaccination within a satisfactory period prior to registration, as provided in section 955.01 of the Revised Code, shall be demonstrated to the county auditor before such registration shall be issued for any dog required to be vaccinated.

“A satisfactory period shall be interpreted to be twelve months in the case of nervous-tissue vaccine, and thirty-six months in the case of Flury strain chicken-embryo vaccine, or any other period or method approved by the public health council.

“When a quarantine of dogs has been declared in any health district, or part thereof, the county dog warden and all other persons having the authority of police officers shall assist the health authorities in enforcing the quarantine order.

“When vaccination has been declared compulsory in any health district, or part thereof, the dog warden shall assist the health authorities in enforcing the vaccination order.”

Thus, the section now contains a specific procedure for the required vaccination of dogs for rabies, which procedure definitely applies to the board of health of a general health district.

On reviewing the September 18, 1959 amendment to Section 955.26, Revised Code, I am of the opinion that the legislature intended that the vaccination of dogs for rabies by order of a board of health should be limited to the method prescribed by this section. Strengthening my belief on this point is the fact that the amendment included insertion of the words:

“Proof of such vaccination within a satisfactory period prior to registration, as provided in section 955.01 of the Revised Code, shall be demonstrated to the county auditor before such registration shall be issued for any dog required to be vaccinated.”

Requiring vaccination before registration is issued strengthens the vaccination law as it assists in the enforcement of the vaccination requirement. Since all dogs must be registered, the legislature clearly intended that, where a vaccination requirement is needed, the procedure of Section 955.26, Revised Code, should be followed.

In any event, however, Section 955.26, *supra*, as a specific provision of law dealing with vaccination for rabies, constitutes an exception to Section 3709.21, *supra*, so far as that section would allow a board of health to require vaccination for rabies. The general rule in this regard is that

a special statute which applies to a specific subject matter constitutes an exception to a general statute covering other subject matter as well as the specific subject matter. (See *State, ex rel, Stellar v. Zangerle*, 100 Ohio St., 414; *Fisher Bros. Co. v. Bowers*, 166 Ohio St., 191 at page 196.)

Accordingly, it is my opinion and you are advised :

1. Section 955.26, Revised Code, is a specific provision of law dealing with the vaccination of dogs for rabies and, as such, constitutes an exception to the provisions of Section 3709.21, Revised Code, which is a general statute pertaining to the powers of the board of health of a general health district, so far as said Section 3709.21, Revised Code, would allow a board of health to require vaccination of dogs for rabies.

2. Where a board of health of a general health district desires to require that dogs in the district be vaccinated for rabies, the procedure specified by Section 955.26, Revised Code, must be followed in the adoption of such requirement.

Respectfully,

MARK McELROY
Attorney General