

OPINION NO. 74-084

Syllabus:

1. A county dog warden has the power to make an arrest without a warrant, subject to the provisions of R.C. 2935.03.

2. A county dog warden has the legal authority to carry a concealed weapon on his person while he is about his duty.

To: David D. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio
By: William J. Brown, Attorney General, October 2, 1974

I have before me your request for my opinion concerning the following questions:

"* * *whether or not a Dog Warden has the power to make an arrest without a warrant and whether the Dog Warden has the additional legal authority to carry a concealed weapon on his person while he is about his duty."

It is well-settled that authority or right to carry a concealed weapon exists only by virtue of statutory authorization concerning concealed weapons. Opinion No. 508, Opinions of the Attorney General for 1929, pages 767, 768, Opinion No. 1778, Opinions of the Attorney General for 1930, pages 636, 637; and cf., the exceptional authority noted in Opinion No. 73-036, Opinions of the Attorney General for 1973. R.C. 2923.12 provides, in pertinent part, as follows:

"(A) No person shall knowingly carry or have, concealed on his person or concealed ready at hand, any deadly weapon or dangerous ordnance.

"(B) This section does not apply to officers, agents, or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance, and acting within the scope of their duties." (Emphasis added.)

It is important to note that Opinion No. 1008, Opinions of the Attorney General for 1933, expressed the opinion that "a dog warden, being a specially appointed police officer within the meaning of Section 12819, General Code, may carry a concealed weapon upon giving a bond as required by that statute." (Section 12819 required such specially appointed police officers to post a bond before they carry concealed weapons.) However, today the Revised Code no longer recognizes the concept of a "specially appointed police officer." Thus, the question arises whether a county dog warden still possesses such power under the present revised Criminal Code.

Under R.C. 2923.12 a dog warden's authority to carry a concealed weapon depends upon whether he is a "law enforcement officer."

R.C. 2901.01(K), subdivision two, defines "law enforcement officer" as follows:

"(K) 'Law enforcement officer' means any of the following:

* * * * *

"(2) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to ar-

rest violators is conferred, within the limits of such statutory duty and authority;

* * * * *

Thus, the ultimate question is whether the county dog warden has the authority to arrest violators.

The county dog warden's duties are to enforce Sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code.

With regard to the warden's authority in enforcing such provisions, R.C. 955.12 reads in pertinent part as follows:

"* * * the wardens and deputies shall have the same police powers as are conferred upon sheriffs and police officers in the performance of their duty as prescribed in section 955.01 to 955.27 and 955.29 to 955.38 of the Revised Code. They shall likewise have the power to summon the assistance of bystanders in performing their duties and may serve writs and other legal papers issued by any court in their respective counties with reference to enforcing such actions."

(Emphasis added.)

R.C. 2935.03 states the basic power to make arrests without a warrant for misdemeanors. It reads, in part, as follows:

"A sheriff, deputy sheriff, marshal, deputy marshal or police officer shall arrest and detain a person found violating a law of this state or an ordinance of a municipal corporation until a warrant can be obtained. * * *"

Thus, R.C. 955.12 confers the power to arrest violators, of the provisions which he is charged with enforcing, upon the county dog warden.

Further support is found in Opinion No. 1008, Opinions of the Attorney General for 1933, at 1019, where it is stated that "a dog warden in view of the provisions of Section 5652-7, General Code, is in a sense a police officer for certain limited purposes and being on the same footing as other police officers in the exercise of police powers. * * *" (Emphasis added.) General Code 5652-7 and R.C. 955.12 are substantially the same.

All of the violations for which a county dog warden can arrest are minor misdemeanors. (Violations of R.C. 955.11, 955.21, 955.22, 955.23, 955.24, and 955.25.)

The definition of a minor misdemeanor is set forth in Rule 4.1(B) of the Ohio Rules of Criminal Procedure. It is as follows:

"(B) Definition of minor misdemeanor. A minor misdemeanor is an offense for which the potential penalty does not exceed a fine of fifty dollars. With respect to offenses committed on and after January 1, 1974, a minor misdemeanor is an offense for which the poten-

tial penalty does not exceed a fine of one hundred dollars."

It should be noted that Rule 4.1, Ohio Rules of Criminal Procedure, does establish an optional procedure in minor misdemeanor cases whereby a citation is issued for the violation. However, this procedure in no way detracts from the authority or power to arrest.

I conclude, therefore, that a county dog warden, being vested with the same police powers as are conferred upon sheriffs and police officers, has the power to arrest without a warrant violators of the provisions which he is charged with enforcing, subject to the provisions of R.C. 2935.03. Furthermore, since a county dog warden has the authority to arrest violators within the limits of his statutory duty, he is included in the definition of a "law enforcement officer." Thus, he can carry a concealed weapon on his person while he is about his duty.

It is my opinion and you are so advised that:

1. A county dog warden has the power to make an arrest without a warrant, subject to the provisions of R.C. 2935.03.
2. A county dog warden has the legal authority to carry a concealed weapon on his person while he is about his duty.