

2658.

DOGS — BREEDING—KENNEL—HOBBY—ADVERTISING—  
APPLICATION, SECTIONS 5652-1, 5652-1a G. C.*SYLLABUS:*

1. *As long as the breeding of dogs remains purely a hobby activity and is done only for diversion and pleasure and not for gain, such breeding of dogs does not make one a kennel owner within Section 5652-1a, General Code.*

2. *Where a person breeds dogs avowedly as a hobby and yet permits sales to become such a factor that he advertises for sale his breeding activities and dogs, such a person is professionally engaged in the business of dog breeding within the provisions of Section 5652-1a, General Code, and should be required to register under Section 5652-1, General Code.*

COLUMBUS, OHIO, June 29, 1938.

HON. ELLIS W. KERR, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR: This will acknowledge the receipt of your recent communication. Your letter reads as follows:

"Please let us have your opinion as to whether or not a kennel owner as defined in Section 5652-1a includes any person who makes any sale of any dog.

The statute says that such person must be professionally engaged in the business of breeding dogs for hunting or for sale. If a man has a hobby, keeps dogs, but over a period of years breeds and sells dogs as a part of such hobby, and if he goes to the extent of advertising such dogs for sale, is he to be deemed a kennel owner?"

Section 5652-1, General Code, required "every owner of a kennel of dogs bred or kept for sale" to make application for the registration of such kennel and to pay a fee of \$10.00 for registration.

However, to become a kennel owner within the meaning of this section, you must necessarily be a professional breeder of dogs for hunting or for sale. The very clear definition given in Section 5652-1a, General Code, leaves no doubt regarding legislative intent. That section reads as follows:

"A kennel owner is hereby defined as being a person, persons, partnership, firm, company or corporation *professionally engaged in the business of breeding dogs for hunting or for sale.*" (Italics the writer's.)

In the commonly accepted usage of the word "a professional" is one who professes to have acquired some special knowledge of a calling or occupation and engages in that calling or occupation as a means of livelihood or for gain. Webster in the New International Dictionary defines "professional" (adj.) as "engaging in a profession or by extension any calling as a means of livelihood or for gain."

Applying this definition to the facts before us, we must conclude that only those persons who engage in breeding dogs on a business basis for hunting or for sale are kennel owners. As long as the breeding of dogs remains purely a hobby activity and is done only for diversion and pleasure and not for gain, such breeding of dogs does not make one a kennel owner within the definition set forth in Section 5652-1a, *supra*.

However, it is quite possible for one to have a hobby which is in reality a professional activity. Here the element of gain is decidedly a factor, even though one does not engage in and carry on that activity exclusively for a livelihood. Such a case is presented, I believe, by the circumstances related in your letter, where a person breeds dogs avowedly as a hobby and yet actually permits sales to become such a factor that he advertises for sale his breeding activities and his dogs. Such a person is without doubt engaging in dog breeding on a professional basis for gain. Where such circumstances are evidenced, that person should be required to register as a kennel owner under Sections 5652-1 and 5652-1a, General Code.

In specific answer to your inquiry, it is my opinion that—1. As long as the breeding of dogs remains purely a hobby activity and is done only for diversion and pleasure and not for gain, such breeding of dogs does not make one a kennel owner within Section 5652-1a, General Code. 2. Where a person breeds dogs avowedly as a hobby and yet permits sales to become such a factor that he advertises for sale his breeding activities and dogs, such a person is professionally engaged in the business of dog breeding within the provisions of Section 5652-1a, General Code, and should be required to register under Section 5652-1, General Code.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*