

“One who undertakes to transact some business, or to manage some affair for another by the authority and on account of the latter and to render an account of it.”

The same authority defines the term, “agency” as:

“A relation between two or more persons by which one party usually called the agent or attorney is authorized to do certain acts for or in relation to the rights or property of the other, who is denominated the principal, constituent or employer.”

There is no relationship of master and servant between the Tax Commission of Ohio and employees in the office of the County Auditor of Hamilton County. At best, there can be only a mutual working agreement which serves the best interests of all parties concerned. In the instant case the Tax Commission of Ohio has no authority or direction over any of these classified civil service employees in the office of the County Auditor of Hamilton County, and therefore, it is my opinion that the Tax Commission of Ohio has no authority to appoint tax clerks or other employee under civil service rules and regulations in the County Auditor's office, as agents of the Tax Commission of Ohio, for the purpose of administering oaths on tax returns which are required by law to be filed with the County Auditor of Hamilton County, the Tax Commission of Ohio, or otherwise.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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1804.

DOGS—REGISTRATION AND FEE—WHEN SECTION 5652 G. C. AUTHORIZES COUNTY AUDITOR TO ASSESS PENALTY—FAILURE TO APPLY FOR REGISTRATION.

*SYLLABUS:*

*Section 5652, General Code, authorizes county auditors to assess the penalty therein provided only in cases where a person who owns, keeps or harbors a dog more than three months of age before the first day of January of any year fails to apply for the registration of such*

*dog on or before January 20th of the ensuing year. (Opinion No. 1720 of the Opinions of the Attorney General for 1928, Volume I, page 414, approved and followed.)*

COLUMBUS, OHIO, January 26, 1938.

HON. A. ROSS SIVERLING, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"I am requesting an opinion on the following question to interpret G. C. 5652, concerning applications for registration of dogs and fees pertaining thereto.

Question: If an unlicensed dog more than four months old is sold, or title transferred, is the new owner required to pay the penalty? Does the last provision in G. C. No. 5652 mean that there is no penalty assessed for an unlicensed dog more than three months old if bought outside the State *and if* the registration is made within thirty days after the sale is consummated, and in all other such cases must the penalty be assessed?"

Both of your questions, I assume, refer to the penalty mentioned in Section 5652 of the General Code. However, for the purpose of clarification, reference also will be made to Section 5652-2 of the General Code, which pertains to the duties of a person becoming the owner of a dog, and to Sections 5652-7c and 5652-14 of the General Code, providing criminal penalties. Section 5652 of the General Code, provides in part as follows:

"Every person who owns, keeps or harbors a dog more than three months of age, annually, before the first day of January of each year, shall file, together with a registration fee \* \* \* in the office of the county auditor of the county in which such dog is kept or harbored, an application for registration for the following year beginning the first day of January of such year \* \* \*. And provided further that if such application for registration is not filed and said fee paid on or before the twentieth day of January of each year, the county auditor shall assess a penalty of one dollar upon such owner, keeper or harborer, which must be paid with registration fee. Provided, however, no person shall be charged a penalty where the dog is bought from outside of the State of Ohio or becomes three

months of age after January twentieth of any year, and provided said license shall be applied for within thirty days after said dog is bought or becomes three months of age.”

By the terms of Section 5652, quoted in part supra, every person who owns, keeps or harbors a dog more than three months of age, annually, before the first day of January of each year is required to file an application for registration for such dog for the following year in the office of the county auditor of the county in which such dog is kept or harbored. In the event such application for registration is not filed and the fee therefor paid on or before the twentieth day of January of the following year, the county auditor is directed to assess a penalty of one dollar upon such owner, keeper or harborer, which must be paid with the registration fee. The section further provides that no person shall be charged a penalty where the dog is bought from without the State of Ohio, or becomes three months of age after January twentieth of any year, provided the license shall be applied for within thirty days after said dog is bought or becomes three months of age.

With reference to your two questions and the penalty provided in Section 5652, supra, your attention is directed to an opinion of one of my predecessors to be found in the Opinions of the Attorney General for 1928, Volume I, page 414, the first branch of the syllabus reading as follows:

“Section 5652, General Code, authorizes county auditors to assess the penalty therein provided *only* in cases where a person, *who owns keeps or harbors a dog more than three months of age before the first day of January of any year*, fails to apply for the registration of such dog on or before January twentieth of such year.” (Italics, the writer’s.)

The reasoning on which the opinion is based is stated on pages 415, 416 and 417, as follows:

“It is a well settled rule of statutory construction that statutes which impose penalties must be strictly construed and that, in order to enforce a penalty against a person, he must be brought clearly within both the letter and the spirit of the statute.

\* \* \* \*

Where a statute is incomplete or defective, whether as a result of inadvertence or otherwise it is beyond the province of the courts to supply the omissions even though as a result

the statute is a nullity in whole or in part. See 36 Cyc. 1106 et seq.

Applying the foregoing rules of construction it is my opinion that *the only case in which a county auditor is authorized to assess a penalty, under the provisions of Section 5652, supra, is that of a person who owns, keeps or harbors a dog more than three months of age before the first day of January of any year and who fails to file an application for registration of such dog for such year on or before the 20th day of January.* The Legislature may have intended a penalty to be imposed in other cases. That it did so intend is indicated by the fact that Section 5652, supra, provides an 'exception' in cases where a dog is bought from outside the State of Ohio, or becomes three months of age after January 20th of any year, provided such license shall be applied for within thirty days after said dog is bought or becomes three months of age. *Although Section 5652, supra, provides an 'exception' in the last above mentioned cases, said section fails to contain language imposing a penalty in such cases. In other words, the Legislature has provided an exception in certain cases but, through inadvertence or otherwise has failed to use language to impose a penalty in such cases.*

\* \* \* \*

In any event, however, there is no language in the statute specifically imposing a penalty, *except where a dog is owned prior to January 1st, and in view of the statutory rules above set forth, I do not feel that the statute should be extended by implication to cover cases not within its express terms.*" (Italics, the writer's.)

Section 5652-2 of the General Code, provides as follows:

"Every person immediately upon becoming the owner, keeper or harbourer of any dog more than three months of age or becoming the owner of a dog kennel, during any year, shall file like applications, with fees, as required by Sections 5652 and 5652-1 for registration for the year beginning January first prior to the date of becoming the owner, keeper or harbourer of such dog or owner of such dog kennel."

Referring to Section 5652-2, supra, in the aforementioned opinion it is stated at page 417:

"This section (referring to Section 5652-2, G. C.) does not authorize a county auditor to impose a penalty for failure to

comply with the provisions thereof." (Words in parentheses, the writer's.)

See Section 5652-14 of the General Code, for criminal penalties.

In connection with your first question it should also be noted that Section 5652-2, supra, mentions only "fees" and makes no reference whatsoever to any "penalty" to be assessed by the county auditor on the purchaser of a dog that was not licensed by the seller.

In order to get the full import of the opinion of the Attorney General heretofore referred to, reference is here made to a later request for an Attorney General's opinion by the Bureau of Inspection and Supervision of Public Offices, such request reading in part as follow:

"We find that many of the people making application for the registration of dogs since January 1st, \* \* \* state that they purchased the dog since January 1st, \* \* \* and that such dog was not purchased from outside the state.

We understood from the Attorney General's opinion, No. 1720 (Opinions of the Attorney General for 1928, Vol. I, page 414), that no penalty can be collected in such cases and that the auditor must register such dogs. We understood that the owner on January 1st \* \* \* (usually an unknown person) is subject to a fine for failure to register as provided in Section 5652-14, G.C.," (Words in first parentheses, the writer's.)

In an opinion reported in the Opinions of the Attorney General for 1928, Volume III, page 1844, at page 1845, one of my predecessors in answer to the request of the Bureau of Inspection and Supervision of Public Offices, quoted in part herein, reaffirmed his opinion to be found in Opinions of the Attorney General for 1928, Volume I, page 414, cited hereinbefore, and the "understanding" of the Bureau of Inspection and Supervision of Public Offices with respect to the proper interpretation of Section 5652 of the General Code.

The opinions cited above are to the effect that the only case in which the county auditor may assess the penalty provided for in Section 5652 of the General Code, is where a person before January 1st of a particular year owned, harbored or kept a dog more than three months of age and failed to apply for the registration of and pay the fee therefor on or before the ensuing January twentieth. Consequently, by following the above cited opinion, the conclusion is inescapable in answer to your first question, that a person who purchases or acquires title to an unlicensed dog more than three months of age on or after January first of a particular year is not required to pay the penalty provided in

Section 5652 of the General Code, for that particular year or any preceding year. However, although such new owner is not required to pay such penalty, he must by the terms of Section 5652 of the General Code, immediately register such dog for the year beginning January 1st, prior to the date of becoming owner, and pay the fee provided for in Section 5652 of the General Code (unless the dog became three months of age after July 1st of the year or was purchased from outside the state after July 1st of the year, in which case by the terms of Section 5652-7b, General Code, the fee is one-half) or he is subject to the fine as provided for in Section 5652-14 of the General Code.

In passing it should also be noted that the vendor of such unlicensed dog more than three months of age is subject to two penalties, namely, the fine provided for in Section 5652-14 of the General Code, for failure to register such dog, and the fine provided for in Section 5652-7c of the General Code, for failure to give the buyer a transfer of ownership certificate. It should be pointed out that the penalty prescribed in Section 5652-7c of the General Code does not apply to the purchaser of a dog but only to the seller. (See Opinions of the Attorney General for 1928, Volume III, page 1844, first branch of the syllabus.)

I come now to a consideration of your second question as to whether "the last provision of Section 5652, General Code, means that there is no penalty for an unlicensed dog more than three months of age if bought outside the state *and if* the registration is made within thirty days after the sale is consummated and in all other such cases must the penalty be assessed." Rephrasing your question, the question is, must a person who purchases a dog more than three months of age from outside the state register the dog within thirty days after the sale is consummated, and if he does not, is he subject to the penalty of one dollar, provided for in Section 5652, General Code?

The opinions heretofore cited also serve to answer this question in the negative.

In Opinions of the Attorney General for 1928, Volume I, page 414, two of the questions in the request read as follows:

"Question 1. When a dog is purchased from outside the state, between January 1 and January 20, is the owner subject to the penalty of one dollar if not registered by January 20th, or can he register without penalty within thirty days from the date of purchase?"

Question 3. When a dog is purchased from outside the state after January 20th, is the owner subject to the one dollar penalty, if not registered within thirty days whether purchased before or after July 1st?"

After reaching the conclusion that the *only* case in which a county auditor could lawfully assess the penalty provided for in Section 5652 of the General Code, is where a person before January 1st of a particular year owned, harbored or kept a dog more than three months of age and failed to apply for the registration of and pay the fee therefor on or before January 20th of the ensuing year, the then Attorney General at page 417, in answer to these two questions stated:

“In view of the foregoing and answering your first question specifically it is my opinion that, where a dog is purchased from outside of the state between January 1st and January 20th, and brought into some county of the state between those dates, a county auditor is not authorized to assess a penalty upon the owner, keeper or harbinger of such dog in the event such owner, keeper or harbinger fails to apply for registration of such dog within thirty days from the date of purchase.

\* \* \*

Answering your third question specifically it is my opinion that when a dog is purchased from outside the state after January 20th, the owner, keeper or harbinger of such dog is not subject to the one dollar penalty if such dog is not registered within thirty days whether such dog be purchased before or after July 1st.”

In view of the foregoing, and in specific answer to both of the questions contained in your request, it is my opinion that:

Section 5652, General Code, authorizes county auditors to assess the penalty therein provided *only* in cases where a person who owns, keeps or harbors a dog more than three months of age before the first day of January of any year fails to apply for the registration of such dog on or before January 20th of the ensuing year. (Opinion No. 1720 of the Opinions of the Attorney General for 1928, Volume I, page 414, approved and followed.)

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*