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1. DOGS—ANNUAL REGISTRATION—EFFECTIVE ONLY TO END OF CALENDAR YEAR FOR WHICH REGISTRATION ACCOMPLISHED—PERIOD OF GRACE—DOES NOT HAVE EFFECT TO EXTEND PERIOD OF VALID REGISTRATION—SECTION 955.01 RC.
2. DOG REGISTERED FOR CALENDAR YEAR 1953—NOT REGISTERED FOR 1954—LOSS AND DAMAGE SUSTAINED BY OWNER OF SHEEP KILLED BY DOG JANUARY 16, 1954—BOARD OF TOWNSHIP TRUSTEES MAY PROPERLY BRING ACTION AGAINST OWNER OF DOG—SECTION 955.30 RC.

SYLLABUS:

1. The annual registration of dogs for which provision is made in Section 955.01, Revised Code, is effective only to the end of the calendar year for which such registration is accomplished, and the provision in such section for a period of grace to the twentieth day of January in each year within which registration for the current year may be effected without payment of the one dollar penalty does not have the effect of extending the period of valid registration theretofore effected for the calendar year immediately preceding.

2. Where a dog has been registered for the calendar year 1953 but not so registered for the calendar year 1954, the loss and damage sustained by the owner of sheep killed by such dog on January 16, 1954, may properly be made the subject of an action prosecuted by the board of township trustees against the owner of such dog as provided in Section 955.30, Revised Code.

Columbus, Ohio, March 24, 1954

Hon. Ralph E. Carhart, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would like to have your opinion on Section 5652, Revised Section 955.01 pertaining to the application for dog licenses.

“The section states that 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 reg-

istration fee of one dollar for each male or spayed female dog, and a registration fee of three dollars for each female dog unspayed, 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, etc.; the section further states that if such application for registration is not filed and said fee paid on or before the 20th day of January of each year, the County Auditor shall assess a penalty of one dollar upon each owner, etc.

“This question arises over the killing of some sheep on the 16th day of January of this year and the owner of the dog had not made application for a license. According to Section 5841, Revised Section 955.30, ‘If the owner of the dog or dogs causing such loss or injury is known, it shall be the duty of the trustees to bring an action to recover such damage from the owner of said dog or dogs, if in their opinion said damages could be collected,’ etc.

“The Dog Warden has contacted me relative to this claim and I have ruled that the trustees should bring action against the owner to recover damages, but my opinion does not seem to satisfy the trustees as they contend that as long as the law states that if said fee is not paid on or before the 20th day of January the old license would be valid until that time.”

In Section 955.29, Revised Code, general provision is made for presenting claims to a board of township trustees based on losses of certain domestic animals and poultry where such have been injured or killed by dogs. In the matter of allowing such claims Section 955.30, Revised Code, provides:

“Before any claim is allowed by the board of township trustees pursuant to section 955.29 of the Revised Code, it shall be proved to the satisfaction of the board:

“(A) That the loss or injury complained of was not caused in whole or in part by a dog kept or harbored on the owner’s premises;

“(B) If the dog causing such loss or injury was kept or harbored on such owner’s premises, that such dog was registered and that it was destroyed within forty-eight hours from the time of the discovery of the fact that the injury was so caused.

“If the owner of the dog causing such loss or injury is known, the board shall bring an action to recover such damage from the owner of said dog if in its judgment said damage could be collected, unless it is shown to said board that said dog was registered and that it was destroyed within forty-eight hours after discovery of the fact that the loss was so caused.”

Your reference to the final paragraph of this section and to the fact that the loss occurred on January 16 implies that the dog involved was in fact registered for the year 1953 and that the sole question presented is whether such dog, solely by virtue of such registration, should be deemed to be "registered" within the meaning of Section 955.30, supra, on January 16, 1954.

The provision in this section relating to a "registered" animal quite evidently has reference to one of the provisions in Section 955.01, Revised Code. This section reads:

"Every person who owns, keeps, or harbors a dog more than three months of age, shall, before the first day of January of each year, file, 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*, stating age, sex, color, character of hair, whether short or long, breed, if known, and the name and address of the owner of such dog. A registration fee of two dollars for each dog shall accompany such application.

"If such application for registration is not filed and said fee paid on or before the twentieth day of January of each year, the auditor shall assess a penalty of one dollar upon such owner, keeper, or harborer, which must be paid with the registration fee. No person shall be charged a penalty if the dog is brought from outside the state or becomes three months of age after the twentieth day of January of any year and a license is applied for within thirty days after the dog is brought in or becomes three months of age." (Emphasis added.)

The language emphasized above is so free of ambiguity as to suggest the impropriety of any attempt at interpretation in such a way as to extend the period of registration beyond the calendar year for which it is accomplished. Such would appear to be the view of the writer of Opinion No. 1048, Opinions of the Attorney General for 1918, p. 368, in which it was said:

"With reference to unregistered dogs subject to registration prior to the first day of January for the following year, and which have not been seized and impounded, it is sufficient to observe, with respect to your question, that the duty of the owner, keeper, or harborer of a dog subject to registration, to procure registration of the same, is continuing, and it is the duty of such person during the year to procure the registration of such dog by payment of the registration fee provided in section 5652 G. C., such registration

to be for the year beginning January first prior to the date of such registration. * * *

At the time this opinion was written, of course, there was no provision in the statute for a registration on or before January 20 of each year without payment of a penalty. Indeed, no provision was set out in the then existing statute for the payment of a monetary registration penalty of any sort. Such provision was added as a second proviso by the enactment of House Bill No. 164, 87th General Assembly, 112 Ohio Laws, 347 (1927). Such proviso thus added was as follows:

“* * * 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 harbinger, which must be paid with the registration fee. * * *”

The provisions relating to registration and penalty thus made the subject of consideration in the 1918 opinion, and added by the 1927 enactment, are now set out without pertinent substantive change in Section 955.01, Revised Code, as quoted above.

I do not conceive it to have been the legislative intent in the 1927 enactment, actually to extend the period of valid registration so clearly designated in the initial language of this section. It is to be recalled that long prior to the time of this enactment there was to be found in Section 5841, General Code, substantially the same provision pointed out above in the final paragraph of Section 955.30, Revised Code, whereby the trustees were required to bring an action against the owners of offending dogs to recover the amount of damages they had caused. This, of course, is a penalty provision of a different sort from that imposing an additional fee upon registration, and it is quite clear that as originally enacted, 108 Ohio Laws, Pt. I, p. 538, such provision had reference to such a registration as would expire at the end of each calendar year. It would seem, therefore, that the purpose and effect of the 1927 amendment was not to provide an additional period within which a registration should be valid but rather was intended to place a limit on the period of grace within which registration could be effected in any calendar year without payment of a monetary penalty for tardiness in making such registration. In such view of the matter the provision in Section 955.30, Revised Code, relative to the bringing of an action by the trustees is applicable in any instance

where the injury is caused on a date on which the animal involved has not been registered for the current calendar year.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. The annual registration of dogs for which provision is made in Section 955.01, Revised Code, is effective only to the end of the calendar year for which such registration is accomplished, and the provision in such section for a period of grace to the twentieth day of January in each year within which registration for the current year may be effected without payment of the one dollar penalty does not have the effect of extending the period of valid registration theretofore effected for the calendar year immediately preceding.

2. Where a dog has been registered for the calendar year 1953 but not so registered for the calendar year 1954, the loss and damage sustained by the owner of sheep killed by such dog on January 16, 1954, may properly be made the subject of an action prosecuted by the board of township trustees against the owner of such dog as provided in Section 955.30, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General