

January 24, 2024

The Honorable Matthew J. Muzic
Holmes County Prosecuting Attorney
164 East Jackson Street
Millersburg, Ohio 44654

SYLLABUS:

2024-001

1. Pursuant to R.C. 955.50(A), a dog under the age of eight weeks old cannot be sold, offered for sale, or exposed for sale if the dog is to then be resold or placed in retail commerce.
2. R.C. 955.50(A) does not apply to high volume dog breeders as defined in R.C. Chapter 956 if the high volume dog breeder is selling dogs directly to consumers.
3. Because R.C. 955.50(A) directly prohibits both the sale and certain activities that occur prior to the sale of a dog, and because the statute does not mention payment, whether payment is made does not impact the applicability of this statute.



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OPINION NO. 2024-001

The Honorable Matthew J. Muzic
Holmes County Prosecuting Attorney
164 East Jackson Street
Millersburg, Ohio 44654

Dear Prosecutor Muzic:

You have requested an opinion regarding the interpretation of R.C. 955.50(A) and its applicability to high volume dog breeders. I have framed your questions as follows:

1. Does advertising a dog for sale before it is eight weeks old, but requiring that it is not actually transferred to the purchaser until it is older than eight weeks of age, violate R.C. 955.50(A)?
2. Is the analysis of R.C. 955.50(A) changed if the seller is a high volume dog breeder under R.C. Chapter 956?
3. Is the analysis of R.C. 955.50(A) changed if the seller receives a payment in full or a partial refundable or nonrefundable hold payment prior to the dog being eight weeks of age, with the understanding that the dog

will not be transferred to the purchaser until it is older than eight weeks of age?

I

Before answering the questions presented, I must determine what this provision in the statute means. R.C. 955.50(A) states that:

No person shall sell, offer to sell, or expose for sale, for the purpose of resale or receive for delivery within this state, or ship from any point within this state to any point outside this state, for sale to the general public at retail, any dog under the age of eight weeks.

A

R.C. 955.50(A) is not clear on its face, which is largely due to its punctuation. *See, e.g.*, 1922 Op. Att’y Gen. No. 3290, vol. I, 610, p. 615.

Ohio statutes are to be interpreted “according to the rules of grammar and common usage,” and “without resorting to subtle and forced construction.” R.C. 1.42; *Slingluff v. Weaver*, 66 Ohio St. 621, 627, 64 N.E. 574 (1902), quoting *McCluskey v. Cromwell*, 11 N.Y. 593, 601 (1854). In particular, “[i]t is well-established that ‘[t]he placement of commas matters, and it can change the meaning of a sentence.’” *State v. Frost*, 12th Dist. Fayette No. CA2018-11-023, 2019-Ohio-3540, ¶36,

quoting *State v. Hart*, 2d Dist. Montgomery No. 26517, 2016-Ohio-317, ¶12, 58 N.E.3d 487.

The entirety of R.C. 955.50(A) is one long, difficult sentence. The subject is “[no] person,” and the object is “any dog under the age of eight weeks.” “Person” is not defined in R.C. Chapter 955. “R.C. 1.59, which defines terms used in the Revised Code that are not defined in a particular statute, defines a ‘person’ as ‘an individual, corporation, business trust, estate, trust, partnership, and association.’” *City of Centerville v. Knab*, 162 Ohio St.3d 623, 2020-Ohio-5219, 166 N.E.3d 1167, ¶28; R.C. 1.59(C). But what exactly the subject (person) may or may not do with or to the object (a dog under eight weeks old) is obscured by multiple commas and clauses.

To break R.C. 955.50(A) down: “shall” is an auxiliary (or helping) verb that goes with each of the other verbs in the statute: “sell,” “offer [to sell],” “expose [for sale],” “receive [for delivery],” and “ship [from any point].” *Stephan v. State Veterinary Med. Bd.*, 113 Ohio App. 538, 540, 173 N.E.2d 389 (1st Dist.1960) (“Let us look, therefore, at this word, ‘shall.’ Grammatically, it is what is known as an auxiliary verb ... By itself (as an auxiliary verb), it is no part of speech at all. It must be used as a part of another verb”); *see also* Jane E. Aaron, *The Little, Brown Compact Handbook*, Section IV, 157 (4th Ed.2001). The word “or” in the phrase “for the purpose of resale or receive” simultaneously separates these verbs into two groups *and* operates as a coordinating conjunction that joins these two groups. *See* 2016 Op. Att’y Gen. No. 2016-007, Slip Op. at 4; 2-69 (“The word ‘or’ is a coordinating conjunction that

connects words or phrases of equal rank”). Here, because “resale” is a noun and “receive” is a verb, each “perform[s] a distinct grammatical function from the other” and indicates that the sentence is to be split. *See O’Connor v. Oakhurst Dairy*, 851 F.3d 69, 74-75 (1st Cir.2017). Thus, R.C. 955.50(A) can be parsed out as follows:

“No person shall

1. sell, offer to sell, or expose for sale, for purpose of resale

or

2. receive for delivery within this state, or ship from any point within this state to any point outside this state, for sale to the general public at retail

any dog under the age of eight weeks.”

In both new phrases, the words that follow “for” compose a qualifying phrase and cannot stand alone. “[T]he natural starting point in construing the effect of any modifying clause in a statute is by reference to the standard rules of grammar.” *In re Monroe*, 282 B.R. 841, 844 (Bankr.N.D. Ohio 2002); *see also Keller v. Foster Wheel Energy Corp.*, 163 Ohio App.3d 325, 2005-Ohio-4821, 837 N.E.2d 859, ¶14 (10th Dist.), citing *Bryan Chamber of Commerce v. Bd. of Tax Appeals* (1966), 5 Ohio App.2d 195, 200, 214 N.E.2d 812. Specifically, “[e]vidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the

immediately preceding one may be found in the fact that it is separated from the antecedents by a comma.” *Averback v. Montrose Ford, Inc.*, 2019-Ohio-373, 120 N.E.3d 125, ¶20 (9th Dist.), citing Singer, *Statutes and Statutory Construction*, Section 47:33 at 369; accord *Carter v. Div. of Water*, 146 Ohio St. 203, 209, 65 N.E.2d 63 (1946), citing 2 Sutherland on Statutory Construction (3 Ed.), 448, Section 4921 (“referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent”). Because there are commas before both instances of the term “for,” the ensuing phrase applies to all antecedents that precede the “for.”

Rearranging the components of R.C. 955.50(A) in this manner for a clearer reading of its intended meaning results in the following: no person shall do *any* of the following “for the purpose of resale”: “sell, offer to sell, or expose for sale” a dog under eight weeks old; nor shall any person do *any* of the following “for sale to the general public at retail”: “receive for delivery within this state, or ship from any point within this state to any point outside this state” a dog under eight weeks old.

Therefore, R.C. 955.50(A) is necessarily limited in its application to a person who seeks to transport or place the dogs that were bought or received into commerce for resale or retail and would *not* apply if a dog is sold to a pet owner/consumer who is not seeking to resell the dog. This is reinforced by reading R.C. 955.50 to give effect to all sections of the statute: section (B) addresses transporting healthy dogs and is grammatically structured in the same way, and sections (C) and

(D) focus purely on issues relating to the transportation of dogs. R.C. 1.47(B); *see, e.g., Dana Corp. v. Testa*, 152 Ohio St.3d 602, 2018-Ohio-1561, 99 N.E.3d 393, ¶28 (relying on structural parallelism of two divisions of the same section to interpret a statute).

B

Even if there is disagreement about this specific grammatical interpretation, or if one believes generally that “[p]unctuation may aid in arriving at the meaning of a statute, but does not control,” *Albright v. Payne*, 43 Ohio St. 8, 14, 1 N.E. 16 (1885), the legislative history and “[t]he circumstances under which the statute was enacted” support my reading of the statute. R.C. 1.49(B); *see State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St.3d 508, 513, 1996 Ohio 376, 668 N.E.2d 49 (“courts seek to interpret the statutory provision in a manner that most readily furthers the legislative purpose as reflected in the wording used in the legislation”). The backdrop against which R.C. Chapter 955 was enacted in the 1970s provides context for this statute.

During this time, “[t]he pet industry’s overbreeding and aggressive sales” led to an increased national interest in dog welfare, spay/neuter programs, and regulation of puppy sales. Christine Stevens, *Animals and Their Legal Rights*, Chapter VI, 112 (4th Ed.1990). Accordingly, in 1976, Congress amended the Animal Welfare Act, 7 U.S.C. §2131, with the intent “to increase the protection afforded animals in transit” and “to assure the humane treatment of animals during transportation in commerce.” P. L. No. 94-279, caption, 90

Stat. 417 (1976); *Id.* at Section 1(b)(2), 90 Stat. 417. Specifically, it added sections stating that no animals shall be transported unless a veterinarian has certified that they are healthy and that:

No dogs or cats, or additional kinds or classes of animals designated by regulation of the Secretary, shall be delivered by any person to any intermediate handler or carrier for transportation in commerce except to registered research facilities *if they are less than such age as the Secretary may by regulation prescribe.* The Secretary shall designate additional kinds and classes of animals *and may prescribe different ages for particular kinds or classes of dogs, cats, or designated animals, for the purposes of this section, when he determines that such action is necessary or adequate to assure their humane treatment in connection with their transportation in commerce.*

(Emphasis added.) *Id.* at Section 10(c), 90 Stat. 419.

Addressing the same issues as the federal Animal Welfare Act amendments, the General Assembly enacted R.C. 955.50 via Amended S.B. No. 256 in 1976 “to prohibit the shipment of dogs under eight weeks of age and unless healthy enough to withstand transportation.” Ultimately, this context and statement of legislative intent again shows that the focus of R.C. 955.50 is on transporting and selling dogs that will be resold or placed into retail commerce.

There have been no changes or modifications of R.C. 955.50 since 1976, despite the General Assembly enacting other Revised Code provisions relating to the sale of dogs, including R.C. Chapter 956 in 2012. R.C. Chapter 956 was designed to regulate high volume dog breeders, dog brokers, pet stores, and kennels, and it requires the Ohio director of agriculture to adopt rules to govern the operation and licensing of dog brokers and high volume dog breeders. 2012 Sub. S.B. 130, 6-8; R.C. 956.03. In 2015, R.C. Chapter 956 was amended in relevant part to add R.C. 956.051 and R.C. 956.20, which set forth clearer parameters through which the dog brokers and pet stores may acquire, sell, offer for sale, deliver, broker, or transfer dogs. 2015 Sub. S.B. 331, at 6 and 9-10. Since then, R.C. Chapter 956 has been amended, but the changes do not significantly alter the meaning or operation of the provisions therein.

II

Having established the meaning of the statute in question, I will now address your questions.

A

You first ask whether R.C. 955.50(A) prohibits the advertising of a dog for sale when it is under the age of eight weeks. I answer in the affirmative, *if* the dog is sold for resale or placement in retail commerce by the purchaser.

The language in R.C. 955.50(A) states that “[n]o person shall sell, offer to sell, or expose for sale, for the purposes of resale ... any dog under the age of eight weeks.” These acts—sell, offer, expose, and resale—are not defined in R.C. Chapter 955, so “we accord the words used their usual, normal, or customary meaning.” *State ex rel. Wolfe v. Delaware Cty. Bd. of Elections*, 88 Ohio St.3d 182, 184, 724 N.E.2d 771 (2000); R.C. 1.42.

“Sell” means “1. [t]o exchange or deliver for money or its equivalent ... 2. [t]o offer or have available for sale.” *The American Heritage Dictionary* 1591 (5th Ed.2016). “Offer” means “1a. [t]o present for acceptance or rejection ... 2b. [t]o present for sale.” *Id.* at 1222. And “expose” means “1b. [t]o subject or allow to be subjected to an action, influence, or condition,” “2a. to offer publicly for sale.” *Id.* at 625; *Webster’s Third New International Dictionary* at 802 (1993); *accord Webster’s Second New International Dictionary* at 898 (1948). “Sale” is “1a. [t]he exchange of goods or services for an amount of money or its equivalent; the act of selling.” *The American Heritage Dictionary* 1547 (5th Ed.2016). “Re-” is a prefix meaning “1. [a]gain.” *Id.* at 1463. Together, then, “resale” means to sell again.

From the plain meanings of these words, R.C. 955.50(A) encompasses a broad range of activities involving dogs under eight weeks old, not just their physical transfer. Had the General Assembly intended to restrict persons *only* from the actual sale and transfer of a dog under eight weeks, it would have used that narrow language; but instead, it

included the precursors to the sale—offering and exposing. A synonym for “expose” is “advertise.” William C. Burton, *Burton’s Legal Thesaurus*, 254 (5th Ed.2013). And so, advertising a dog for sale before it is eight weeks old, regardless of its at time of the actual transfer, is violative of R.C. 955.50(A)—but only if the purpose of such is for resale.

It follows that this section does *not* apply if the dog is being advertised with the intent to sell *directly* to an end consumer and not to be resold. Therefore, if a person were to advertise a dog under eight weeks old for sale directly to the end consumer, this would not be a violation of R.C. 955.50(A).

B

Your next question asks whether the analysis of R.C. 955.50(A) changes if the seller is a high volume dog breeder. The answer here depends on to whom and for what purpose the dogs are sold.

A high volume dog breeder is defined in R.C. 956.01 as

an establishment that keeps, houses, and maintains six or more breeding dogs and does at least one of the following:

- (1) In return for a fee or other consideration, sells five or more adult dogs or puppies in any calendar year to dog brokers or pet stores;

- (2) In return for a fee or other consideration, sells forty or more puppies in any calendar year to the public; or
- (3) Keeps, houses, and maintains, at any given time in a calendar year, more than forty puppies that are under four months of age, that have been bred on the premises of the establishment, and that have been primarily kept, housed, and maintained from birth on the premises of the establishment.

Although high volume dog breeders are licensed and regulated in R.C. Chapter 956, “[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent.” *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 466, 132 N.E.2d 191 (1956); *see* R.C. 956.031; R.C. 956.04; *see also* R.C. 956.03; Ohio Adm. Code 901:1-6 (rules for high volume dog breeders). Thus, R.C. 955.50(A) and R.C. Chapter 956 must be read together, if possible. *See* R.C. 1.51 and 1.52.

Following the above analysis in Section II.A of this opinion, R.C. 955.50(A) only applies if the establishment would qualify as a high volume dog breeder because it “sells five or more adult dogs or puppies in any calendar year to dog brokers or pet stores” under subsection (1). And this could include selling the dogs within the state of Ohio or by “ship[ping] from any point within this state to any point outside this

state, for sale to the general public at retail.” R.C. 955.50(A). In this situation, the dogs are sold for resale or placement in retail commerce: if sold to the dog brokers, they are then sold to the pet stores; and if sold to the pet stores, they are then sold to the consumer. R.C. 956.01; R.C. 956.051 (dog broker transferring dogs to pet stores); R.C. 956.20 (pet stores selling, delivering, and transferring dogs).

But, if an establishment is classified as a high volume dog breeder under subsection (2) of the definition in R.C. 956.01 because it “sells forty or more puppies in any calendar year *to the public*,” (Emphasis added) then the dogs are *not* being sold for resale, and so they are not subject to the prohibition in R.C. 955.50(A).

Finally, whether R.C. 955.50(A) applies to a high volume dog breeder that qualifies as such under subsection (3) of the definition in R.C. 956.01 because it keeps over forty puppies under four months old on its premises depends on the purpose of its operation (e.g., selling to a dog broker or selling to the public). This “is a factual determination, which must be considered on a case by case basis, and is not appropriate for determination through the opinion-rendering function of the Attorney General.” 2019 Op. Att’y Gen. No. 2019-011, syllabus at paragraph 2.

To summarize: if a high volume dog breeder sells directly to “the public,” under sections (2) or (3) of the definition of high volume dog breeder in R.C. 956.01, it is not subject to the prohibition in R.C. 955.50(A), because the dogs are not intended for resale; but, if the

high volume dog breeder sells to a dog broker or pet store, or ships the dogs out of state for retail, the purpose is specifically for resale or commerce and the prohibition applies.

C

Your final question asks whether the analysis of R.C. 955.50(A) is modified if payment is made by the purchaser prior to the dog being eight weeks old, with the purchaser taking possession of the dog after it has attained that age.

The nature of the prohibited conduct in R.C. 955.50(A)—the sale, offer for sale, or exposure for sale of a dog that is under eight-weeks-old for the purpose of resale, or the receipt or shipment of a dog for retail purposes—does not address or require any payment. Because the statute is silent, the question of whether any payment, partial down payment, or deposit was made before possession of the dog occurs is irrelevant. *E.g., Columbus-Suburban Coach Lines v. Pub. Util. Comm.*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969) (“it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used”); *accord Cyan, Inc. v. Beaver Cty. Emples. Retirement Fund*, 583 U.S. 416, 426, 138 S.Ct. 1061, 200 L.Ed.2d 332 (2018) (“The statute says what it says – or perhaps better put here, does not say what it does not say”).

Additionally, whether a refundable partial payment or deposit, non-refundable payment or deposit, or full payment constitutes a sale is a question of fact and is likely dependent on the terms of the sale agreement.

See, e.g., R.C. Chapter 1309. The Attorney General is unable to opine on specific contractual questions or make factual determinations. 1983 Op. Att’y Gen. No. 83-087, at 2-342; 2005 Op. Att’y Gen. No. 2005-033, at 2-347.

Conclusions

Accordingly, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 955.50(A), a dog under the age of eight weeks old cannot be sold, offered for sale, or exposed for sale if the dog is to then be resold or placed in retail commerce.
2. R.C. 955.50(A) does not apply to high volume dog breeders as defined in R.C. Chapter 956 if the high volume dog breeder is selling dogs directly to consumers.
3. Because R.C. 955.50(A) directly prohibits both the sale and certain activities that occur prior to the sale of a dog, and because the statute does not mention payment, whether payment is made does not impact the applicability of this statute.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D".

DAVE YOST
Ohio Attorney General