

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4411.

COUNTY AUDITOR—DUTIES AS TO ISSUANCE OF KENNEL  
LICENSES.

*SYLLABUS:*

*Duties of the County Auditor in the issuance of kennel licenses discussed.*

COLUMBUS, OHIO, July 12, 1935.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“In our county it has become a habit for kennel owners to claim some sort of a partnership arrangement, one with the other, thereby reducing substantially the income from the sale of kennel licenses. The situation has become so serious that our dog fund will not carry through the year.

Query: Can the County Auditor require a positive showing of partnership, and if so, how far can he go in such requirement?”  
A subsequent communication reads in part as follows:

“Two or more owners of kennels have been in the habit of appearing before the Auditor and merely saying, in substance, ‘We are partners’; whereupon the Auditor has issued a kennel license. The actual basis for such an alleged partnership has never been known to the County Auditor nor has he been certain as to the extent to which he could go in demanding positive proof of such business relationship. So far as the Auditor actually knew, the men in question probably owned and operated separate kennels and used the partnership scheme to cut down on license expenses.

It occurs to me that the mere declaration of a partnership is insufficient, and that the Auditor would be acting within his rights in requesting some positive showing, as for example, vendor’s license;

partnership income tax report; receipts for the sale or purchase of dogs, and the like.”

Sections 5652-1, 5652-1a and 5652-3, General Code, read as follows:

Section 5652-1.

“Every owner of a kennel of dogs bred or kept for sale shall in like manner as in G. C. §5652 provided, make application for the registration of such kennel, and pay therewith to the county auditor a registration fee of \$10 for such kennel. Provided, however, that the payment of such kennel license fee shall entitle the holder thereof to not more than five tags to bear consecutive numbers and to be issued in like manner and have like effect when worn by any dog owned in good faith by such licensee, with the tags provided for in G. C. §5652-4.”

Section 5652-1a.

“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.”

Section 5652-3.

“Upon the filing of such application for registration and the payment of such registration fee, the county auditor shall assign a distinctive number to every dog or dog kennel described in such application and deliver a certificate of registration bearing such number to the owner thereof. A permanent record of all certificates of registration issued, together with the applications therefor, shall be kept by such county auditor in a dog and kennel register, which shall be open to the inspection of any person during reasonable business hours.”

The County Auditor, being a public officer, has such powers and only such powers as are expressly granted by statute and such implied powers as are necessary to effectuate the express powers. *Elder vs. Smith*, 103 O. S., 369; *State ex rel. Copeland vs. State Medical Board*, 107 O. S. 20.

There is nothing in the statutes quoted supra or in any other sections of the dog registration laws which would assist in a proper determination of your question. Likewise I am unable to find any reported cases in this state or any opinion of this office which would indicate the extent of the duties of the county auditor in determining the identity of applicants for dog or kennel licenses.

Your inquiry relates to whether or not the County Auditor may require

additional proof concerning an alleged partnership other than the statement of the applicant that such partnership actually exists. From your inquiry it is not clear whether the County Auditor has actual knowledge that a partnership does not in reality exist or is merely suspicious of the non-existence of such partnership. If the County Auditor has actual knowledge that an application is false and fraudulent it could hardly be contended that it is his duty to issue the license. Certainly we could not be required to assist in the execution of a fraud upon the taxpayers of his county. In such a situation the County Auditor would be within his legal rights in requiring positive proof of the existence of such partnership before issuing the license. Where the County Auditor has facts which lead him to question the existence of such partnership it could likewise be said to be within his implied powers to require additional proof of the existence of such partnership. By virtue of Section 5652-1a, supra, it is his duty to issue a kennel license to a partnership. Certainly it is reasonable to say he may satisfy himself that he is issuing a license to the proper party. As to just what additional proof he may require it is obvious that this is a question of fact to be determined from the circumstances of each particular case. It might very well be that he could require more facts in one case than in another case. In general the County Auditor may require such reasonable proof as the circumstances of the particular case warrants.

In view of the nature of the question, it is believed that a more specific answer to your inquiry may not be given at this time.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4412.

APPROVAL, BONDS OF CITY OF WELLSTON, JACKSON  
COUNTY, OHIO, \$59,083.86.

COLUMBUS, OHIO, July 12, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*