

June 23, 2014

The Honorable Brigham M. Anderson
Lawrence County Prosecuting Attorney
Lawrence County Courthouse
111 South 4th Street
Ironton, Ohio 45638

SYLLABUS:

2014-025

1. Pursuant to R.C. 955.99(E)(1), the penalty for failure to register a dog, a violation of R.C. 955.21, is a fine between \$25 and \$150 for a first offense or a fine between \$75 and \$250 and a possible imprisonment of up to 30 days for each subsequent offense. A first-time violation of R.C. 955.21 is a minor misdemeanor pursuant to R.C. 2901.02(G)(2). Each subsequent violation of R.C. 955.21 is an unclassified misdemeanor pursuant to the terms of R.C. 2901.02(F).
2. A county dog warden is required by R.C. 2935.26(A) to issue citations for failure to register a dog, a violation of R.C. 955.21, when the offense is a first offense and thus a minor misdemeanor pursuant to R.C. 955.99(E)(1) and R.C. 2901.02(G)(2). For subsequent violations of R.C. 955.21, the offense is an unclassified misdemeanor, for which there is no statutory authority for a county dog warden to issue a citation in lieu of an arrest.



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OPINION NO. 2014-025

The Honorable Brigham M. Anderson
Lawrence County Prosecuting Attorney
Lawrence County Courthouse
111 South 4th Street
Ironton, Ohio 45638

Dear Prosecutor Anderson:

You have requested an opinion concerning the penalty and degree of misdemeanor for failure to register a dog and the authority of a county dog warden to issue citations for failure to register a dog.

Failure to Register a Dog: Offense and Penalty Provisions

We will address your first question, what the penalty and degree of misdemeanor are for failure to register a dog, beginning with a brief overview of the relevant laws. R.C. Chapter 955 concerns the regulation, ownership, and treatment of dogs, and the offenses and penalties for violating those provisions, in the state of Ohio. Your particular question concerns R.C. 955.01 and R.C. 955.21. R.C. 955.01 requires every person who owns, keeps, or harbors a dog that is more than three months old to file an application for registration of that dog. R.C. 955.01(A)(1). A registration fee of two dollars for each year of registration for a one-year or three-year registration or twenty dollars for a permanent registration, per dog, must accompany the application. *Id.* R.C. 955.21 prohibits violation of R.C. 955.01: “[n]o owner, keeper, or harbinger of a dog more than three months of age, nor owner of a dog kennel, shall fail to file the application for registration required by [R.C. 955.01], nor shall he fail to pay the legal fee therefor.”

R.C. 955.99 sets forth the penalties for violation of various provisions of R.C. Chapter 955. In particular, R.C. 955.99(E)(1) declares that

[w]hoever violates [R.C. 955.21], violates [R.C. 955.22(B)], or commits a violation of [R.C. 955.22(C)] that involves a dog that is not a nuisance dog, dangerous dog, or vicious dog shall be fined not less than twenty-five dollars or more than one hundred dollars on a first offense, and on each subsequent offense shall be fined not less than seventy-five dollars or more than two hundred fifty dollars and may be imprisoned for not more than thirty days.

Thus, in answer to the first part of your question, the penalty for failure to register a dog, a violation of R.C. 955.21, is a fine between \$25 and \$150 for a first offense or a fine between \$75 and \$250 and a possible imprisonment of up to 30 days for each subsequent offense.¹ R.C. 955.99(E)(1).

Classification of Misdemeanor Offenses

You also ask what degree of misdemeanor this offense constitutes. While R.C. 955.99 explicitly states the degree of misdemeanor for various other offenses, it does not do the same for R.C. 955.21. R.C. 955.99(E)(1); *see, e.g.*, R.C. 955.99(A)(1) (whoever violates R.C. 955.11(E) for failure to comply with R.C. 955.11(B) is guilty of a minor misdemeanor); R.C. 955.99(A)(2) (whoever violates R.C. 955.11(E) for failure to comply with R.C. 955.11(C) or (D) is guilty of a minor misdemeanor for a first offense and a fourth degree misdemeanor for each subsequent offense); R.C. 955.99(B) (whoever violates R.C. 955.10, -.23, -.24, or -.25 is guilty of a minor misdemeanor); R.C. 955.99(C) (whoever violates R.C. 955.261, -.39, or -.50 is guilty of a minor misdemeanor for a first offense and a fourth degree misdemeanor for each subsequent offense); R.C. 955.99(D) (whoever violates R.C. 955.16(F) or R.C. 955.43(B) is guilty of a fourth degree misdemeanor). Rather, R.C. 955.99(E)(1) only sets forth a range of penalties that a person may be subject to without designating a particular degree of misdemeanor. Nonetheless, Ohio's criminal statutes offer some guidance on how to characterize an unclassified offense such as R.C. 955.21.

R.C. 2901.02 sets forth a classification of offenses for purposes of the entire Revised Code.

As used in the Revised Code:

...

(F) Any offense not specifically classified is a misdemeanor if imprisonment for not more than one year may be imposed as a penalty.

¹ These are the penalties for the criminal offense created by R.C. 955.21—failure to comply with the application requirements of R.C. 955.01. In addition to these penalty fines set forth in R.C. 955.99(E)(1), the county auditor is required to assess a fee in addition to the regular registration fee for anyone who does not file a registration application and pay the registration fee on time. R.C. 955.01(B).

(G) Any offense not specifically classified is a minor misdemeanor if the only penalty that may be imposed is ...

...

(2) For an offense committed on or after January 1, 2004, a fine not exceeding one hundred fifty dollars, community service under [R.C. 2929.27(D)], or a financial sanction other than a fine under [R.C. 2929.28].

As we state above, the penalty for a first-time violation of R.C. 955.21 is a fine between \$25 and \$150. Thus, a first-time violation of R.C. 955.21 is a minor misdemeanor pursuant to R.C. 2901.02(G)(2). The penalty for a repeat violation of R.C. 955.21 is an increased fine between \$75 and \$250 and also the possibility of up to 30 days imprisonment. Thus, each subsequent violation of R.C. 955.21 is a misdemeanor pursuant to the terms of R.C. 2901.02(F). R.C. 2901.02(F) does not specify a degree of misdemeanor, and so any offense not specifically classified by another statute is an unclassified misdemeanor pursuant to R.C. 2901.02(F). *But see State v. Smith*, Huron App. Nos. H-08-006, -008, 2009-Ohio-6681, 2009 WL 4893385, at ¶1 (Dec. 18, 2009) (“[t]he jury also found appellant guilty of one count of failure to register for dog license, in violation of R.C. 955.21, a misdemeanor of the fourth degree” (emphasis added)); *Beavercreek v. Ride*, Greene App. No. 06CA0082, 2007-Ohio-6898, 2007 WL 4465065, at ¶2 (Dec. 21, 2007) (“[i]nitially Ride was charged with a fourth degree misdemeanor violation of R.C. 955.22(C), failure to confine—second offense. [R.C. 955.22(C) is grouped with R.C. 955.21, failure to register, in the penalty provision at R.C. 955.99(E)(1).] However, the morning of trial, the State determined that there had been no prior offense and the charge was amended to a minor misdemeanor” (emphasis added)).

The term “unclassified misdemeanor” is not defined in the Revised Code, but both the General Assembly and the courts have considered the existence of unclassified misdemeanors in various statutory provisions and court opinions unrelated to your questions. *See, e.g.*, R.C. 2152.20(A)(1)(a) (concerning dispositions of juveniles adjudicated delinquent, a court may order, “[f]or an act that would be a minor misdemeanor or an unclassified misdemeanor if committed by an adult, a fine not to exceed fifty dollars” (emphasis added)); R.C. 2945.38(C)(4) (concerning length of treatment for incompetent defendants, the maximum time is “[t]hirty days, if the most serious offense with which the defendant is charged is a misdemeanor of the third or fourth degree, a minor misdemeanor, or an unclassified misdemeanor”); R.C. 4507.02(A)(1) (“whoever violates this division is guilty of an unclassified misdemeanor”); *State v. Ricks*, 194 Ohio App. 3d 511, 2011-Ohio-3866, 957 N.E.2d 63, at ¶20 (Montgomery County) (“the penalty for Ricks’s offense makes it analogous to an unclassified misdemeanor”); *State v. Williams*, Mahoning App. No. 01-CA-221, 2002-Ohio-5022, 2002 WL 31117067, at ¶17 (Sept. 18, 2002) (“[t]he legislative body typically leaves an offense unclassified when it assigns penalties which vary from those in the general penalty-listing statute. Various state offenses are of unclassified degrees” (citations omitted)); *State v. Talameh*, Portage App. No. 2011-P-0074, 2012-Ohio-4205, 2012 WL 4054811, at ¶¶31, 37 (Sept. 17, 2012) (“[i]t appears that the General Assembly singled out division (A) and left it unclassified, while it designated offenses proscribed by the other divisions of R.C. 4301.69 as a misdemeanor of the first degree” and “the penalty for the offense ... made it analogous to an unclassified misdemeanor, not a first-degree misdemeanor”).

Statutory Duties and Police Powers of County Dog Wardens

We now turn to your second question, and we begin by examining the powers and duties of a county dog warden. A county dog warden is appointed or employed by a board of county commissioners to enforce R.C. 955.01-.27, R.C. 955.29-.38, and R.C. 955.50-.53. R.C. 955.12. A county dog warden's responsibilities include making a record of all dogs owned or kept in the county, patrolling the county to seize and impound all dogs found running at large and all dogs more than three months old found not wearing a valid registration tag. *Id.* In order to fulfill these and other responsibilities prescribed by R.C. Chapter 955, a county dog warden has "the same police powers as are conferred upon sheriffs and police officers." *Id.* A county dog warden also "may serve writs and other legal processes issued by any court in [the county]" in order to enforce the provisions of R.C. Chapter 955. *Id.* Further, "[n]o county dog warden shall willfully fail to perform his duties under [R.C. 955.12] or other duties required of dog wardens." R.C. 955.23.

The Attorney General considered the authority of a county dog warden to make arrests in 1974. 1974 Op. Att'y Gen. No. 74-084. That opinion cited to the language of R.C. 955.12 that grants a county dog warden "the same police powers as are conferred upon sheriffs and police officers in the performance of their duties as prescribed" by R.C. 955.01-.27, R.C. 955.29-.38, and R.C. 955.50-.53. R.C. 955.12; 1974 Op. Att'y Gen. No. 74-084, at 2-349; *see also* 1930 Op. Att'y Gen. No. 2241, vol. II, p. 1325, at 1326 (the General Code section "provides that the county dog warden and his deputies have the same police powers as are conferred upon sheriffs and police officers in the performance of their duties").

R.C. 2935.03(A)(1) sets forth the basic power to make arrests without a warrant for misdemeanors:

A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint police district, ... shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, ... in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

Thus, R.C. 955.12 confers the power to arrest—for violations of the provisions which he is charged with enforcing—upon the county dog warden. 1974 Op. Att'y Gen. No. 74-084, at 2-349.

We have established that a county dog warden has the authority to arrest violators of the provisions enumerated in R.C. 955.12. Pursuant to R.C. 2935.26(A), "when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation," unless one of several exceptions

applies.² R.C. 2935.26(A); *see also* Ohio R. Crim. P. 4.1. We therefore conclude that a county dog warden is required by R.C. 2935.26(A) to issue citations for failure to register a dog, a violation of R.C. 955.21, when the offense is a first offense and thus a minor misdemeanor pursuant to R.C. 955.99(E)(1) and R.C. 2901.02(G). For subsequent violations of R.C. 955.21, the offense is an unclassified misdemeanor, for which there is no statutory authority for a county dog warden to issue a citation in lieu of an arrest.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 955.99(E)(1), the penalty for failure to register a dog, a violation of R.C. 955.21, is a fine between \$25 and \$150 for a first offense or a fine between \$75 and \$250 and a possible imprisonment of up to 30 days for each subsequent offense. A first-time violation of R.C. 955.21 is a minor misdemeanor pursuant to R.C. 2901.02(G)(2). Each subsequent violation of R.C. 955.21 is an unclassified misdemeanor pursuant to the terms of R.C. 2901.02(F).
2. A county dog warden is required by R.C. 2935.26(A) to issue citations for failure to register a dog, a violation of R.C. 955.21, when the offense is a first offense and thus a minor misdemeanor pursuant to R.C. 955.99(E)(1) and R.C. 2901.02(G)(2). For subsequent violations of R.C. 955.21, the offense is an unclassified misdemeanor, for which there is no statutory authority for a county dog warden to issue a citation in lieu of an arrest.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

² An exception exists if the offender requires medical care, is unable to provide for his own safety, cannot or will not provide evidence of his identity, refuses to sign the citation, or has previously been issued a citation for the commission of the same misdemeanor and failed to either appear at the time and place stated in the citation or otherwise fulfill the terms of the citation. R.C. 2935.26(A)(1)-(4).