

OPINION NO. 1067

Syllabus:

The owner, keeper, or harbinger of a dog who files an application for registration after January twentieth of

any year, together with the registration fee, and who pays the penalty of one dollar for late filing is not in violation of Section 955.21, Revised Code.

To: Homer B. Gall, Jr., Athens County Pros. Atty., Athens, Ohio
By: William B. Saxbe, Attorney General, May 21, 1964

Your request for my opinion reads as follows:

"I would like your opinion as to whether a criminal affidavit may be filed against the owner, keeper or harbinger of a dog under Section 955.21 R.C. when the owner keeper or harbinger of a dog has failed to purchase a registration for his dog under Section 955.01 R.C. on or prior to the 20th day of January but has obtained a license after that date and has paid the penalty of \$1.00. And may the owner, keeper or harbinger of a dog be fined under Section 955.21 R.C.?"

Section 955.01, Revised Code, provides:

"Except as otherwise provided in section 955.16 of the Revised Code, every person who owns, keeps, or harbors a dog more than three months of age, shall, before the twentieth 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 twentieth 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 harbinger, which must be paid with the registration fee."

Your primary concern, however, is centered around Section 955.21, Revised Code, which reads as follows:

"No 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 section 955.01 of the Revised Code, nor shall he fail to pay the legal fee therefor." (Emphasis added)

To become an offense within the meaning of the above section, it is clear that there must be a failure either to file the application for registration or to pay the legal fees required. There is nothing to indicate that the mere failure to do these things mentioned above by January twentieth constitutes the type of offense contemplated within Section 955.21, supra. Furthermore, it should be noted that Section 955.01, supra, provides a penalty of one dollar for the late registration and payment of legal fees. In order to avoid any conflict between these two sections it must be concluded that a late registration plus payment of the penalty of one dollar is tantamount to a compliance with Section 955.01, supra.

Based upon the foregoing considerations, it is my opinion and you are advised that the owner, keeper, or harborer of a dog who files an application for registration after January twentieth of any year, together with the registration fee, and who pays the penalty of one dollar for late filing is not in violation of Section 955.21, Revised Code.