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## DOG LICENSE—HOUSE BILL NO. 164, 87TH GENERAL ASSEMBLY, DISCUSSED—TAG GOOD FOR ONE YEAR—TRANSFER OF OWNERSHIP.

## SYLLABUS:

1. *The tag worn by a dog duly registered in accordance with the provisions of Section 5652, General Code, as amended in House Bill No. 164, passed by the 87th General Assembly, is valid for the entire year for which it is issued; and, if such dog be sold during such year, upon the giving and recording of a transfer of ownership certificate as prescribed in Section 5652-7c, General Code, and the payment of the fee therefor, the sale does not terminate the registration and the license tag may still be worn by said dog for the balance of the year.*

2. *The dog kennel license provided for in Section 5652-1 of the General Code does not amount to a registration of any of the dogs bred or kept for sale in such kennel.*

3. *Section 5652-7c of the General Code, as enacted in House Bill No. 164, passed by the 87th General Assembly, applies only to the transfer of ownership of a dog duly registered or required to be registered and has no application in case of the transfer of ownership of a dog bought from another state, or of a dog not over three months of age, or of a dog bred or kept for sale in a duly registered kennel.*

COLUMBUS, OHIO, September 8, 1927.

HON. WILLIAM B. JAMES, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

“Will you kindly give me your official opinion in the interpretation of Section 5652-7c House Bill 164 upon the following questions, to-wit:

- a. Does the transfer of ownership of a dog as provided in Section 5652-7c H. B. 164 include the transfer of the license tag?
- b. If so, how should a kennel license tag be transferred?
- c. If not, should the purchaser pay \$1.00 license fee in addition to the 35¢ transfer of ownership fee?”

House Bill No. 164, passed by the 87th General Assembly, is entitled “An act—To amend Sections 5652, \* \* \* and to enact supplemental Sections 5652-7a, \* \* \* of the General Code, relative to the licensing and regulation of dogs and providing for the payment of damages to live stock caused by dogs.” The act became effective August 10, 1927.

Section 5652, General Code, as amended, reads as follows:

“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 registration 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, stating the age, sex, color, character of hair,

whether short or long, and breed, if known, of such dog, also the name and address of the owner of such dog. Provided that an affidavit shall be made to the county auditor and filed with application for registration of each spayed female dog, stating that said female dog has been effectively spayed. 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. Provided, however, no person shall be charged a penalty where the dog is bought from outside of the state of Ohio or becomes three months of age after January twentieth of any year, and provided said license shall be applied for within thirty days after said dog is bought or becomes three months of age."

Section 5652-1, General Code, reads as follows:

"Every owner of a kennel of dogs bred or kept for sale shall in like manner as in Section 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 Section 5652-4 of the General Code of Ohio."

These sections require that persons who own, keep or harbor dogs must have the dog or the kennel registered.

Section 5652-4 of the General Code provides that the county auditor shall issue to every person making application for such registration and paying the fee therefor, a metal tag for each dog so registered, and section 5652-5 provides that the certificate of registration and registration tag shall be valid during the year for which they were issued.

Section 5652-6 provides that every dog shall at all times wear such tag.

Section 5652-7c, to which you refer, relates to transfer of ownership of dogs and reads as follows:

"Upon the transfer of ownership of a dog the person selling such dog shall give the buyer a transfer of ownership certificate which shall be signed by the seller, *such certificate shall contain the licensed number of such dog*, the name of the person selling the dog and a brief description of the dog sold. Blank forms of such certificate may be obtained from the county auditor, a transfer of ownership shall be recorded by the county auditor upon presenting a transfer of ownership certificate signed by the former owner and accompanied by a fee of twenty-five cents. Whoever fails to comply with the provisions of this section upon conviction shall be fined not less than five dollars, nor more than twenty-five dollars." (Italics the writer's.)

These sections clearly disclose that the registration required, except the registrations of kennels provided for in Section 5652-1, *supra*, relates to the particular dog for which application for registration is filed and the tag issued in connection therewith is evidence of such registration. It can not lawfully be placed on any other dog. Section 5652-7c, just quoted, clearly discloses that one of the things which must be set forth in the "transfer of ownership certificate" shall be "the licensed number of such dog."

Therefore, in answer to your first inquiry, it is my opinion that upon compliance with the provisions of Section 5652-7c, supra, the transfer of the ownership of a dog so provided in said section includes the transfer of the registration certificate and registration tag issued for such dog.

Coming to your second inquiry relative to the kennel fees, Section 5652-1, supra, provides that any person owning a kennel of dogs bred or kept for sale shall pay "a registration fee of \$10 for such kennel." In such case the kennel is registered and not the dogs bred or kept therein. The section provides, however, that the owner of the kennel so registered shall be provided with five tags to bear consecutive numbers, which the owner may place on any dog owned in good faith by such licensee, and when so worn such tag shall have the same effect as though it were such a tag as is provided for in Section 5652-4, General Code. It will be noted in connection with the kennel license that neither the dogs in the kennel nor the dogs upon which the kennel tags are placed are registered and the five tags issued in connection with the kennel registration can only be worn by dogs "owned in good faith by such licensee."

In answer to your second question, it is my opinion that the tags issued in connection with the kennel registration may only be worn by dogs owned in good faith by the owner of such kennel and that such tags are not transferable.

With reference to your third question, when Section 5652-7c, supra, is read in connection with Sections 5652, 5652-1 and 5652-7b of the General Code, it would seem that it was intended that the provisions of Section 5652-7c were to be applicable only to dogs which were duly registered or required to be registered. It will be noted that this section requires the transfer of ownership certificate to "contain the licensed number of such dog." Obviously if the dog has not been registered it would be impossible for the transfer of ownership certificate to contain the dog's licensed number. Dogs not over three months of age are not required to be registered; neither are dogs bred or kept for sale in a duly registered kennel, nor dogs owned in another state. A dog in any of these three classes would not be registered and would have no "licensed number," and on the transfer of ownership of such a dog it would be impossible for the seller to give to the buyer a transfer of ownership certificate, signed by the owner, containing "the licensed number of such dog."

Where a dog is bought from another state or where a dog becomes three months of age after January 20th of any year, by the terms of Section 5652, supra, the owner has thirty days after said dog is bought or becomes three months of age in which to have such dog registered; and by the terms of section 5652-7b, General Code.

"The license fee for any dog, becoming three months of age, after July 1st of any year and the license of any dog purchased from outside of the state of Ohio after July 1st of any year, shall be one-half of the original fee."

The proviso of Section 5652, to the effect that "no person shall be charged a penalty where the dog is bought from outside of the state of Ohio or becomes three months of age after January twentieth of any year, \* \* \* provided said license shall be applied for within thirty days after said dog is bought or becomes three months of age" and Section 5652-7b, supra, do not include dogs from duly registered kennels. It would seem, therefore, that, since as above pointed out, the five tags given to the owner of a duly registered kennel are incident to the kennel and not registration tags for any particular dogs, the purchaser of a dog from a kennel would be required immediately to register the same. And since a dog from a duly registered kennel is not required to be registered and would have no "licensed number," Section 5652-7c, supra, would have no application thereto.

As an additional reason for my conclusion that Section 5652-7c relates only to dogs that have been duly registered, or required to be registered, it will be noted that

Section 5652-7c is a penal section, it being provided therein that "whoever fails to comply with the provisions of this section, on conviction shall be fined not less than five dollars, nor more than twenty-five dollars." It is too well-settled to require the citation of any authority that the provisions of a penal section are to be strictly construed, and that in order to enforce a penalty against a person he must be brought clearly within both the spirit and the letter of the statute. As stated in 36 Cyc. 1185:

"But, if the acts alleged do not come clearly within the prohibition of the statute, its scope will not be extended to include other offenses than those which are clearly described and provided for; and if there is a fair doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the defendant."

For these reasons, in answer to your third question it is my opinion that Section 5652-7c of the General Code, as enacted in House Bill No. 164, passed by the 87th General Assembly, applies only to the transfer of ownership of a dog duly registered or required to be registered and has no application in case of the transfer of ownership of a dog bought from another state, or of a dog not over three months of age, or of a dog bred or kept for sale in a duly registered kennel.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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COMMON PLEAS JUDGES—JUDGES IN OFFICE PRIOR TO AUGUST 10, 1927, NOT ENTITLED TO INCREASED COMPENSATION AS PROVIDED BY HOUSE BILL NO. 61, 87TH GENERAL ASSEMBLY.

*SYLLABUS:*

*The increased compensation for common pleas judges as provided by House Bill No. 61, passed by the 87th General Assembly, can not be paid to judges, who were in office August 10, 1927, for the remaining portion of their present terms.*

COLUMBUS, OHIO, September 8, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

"House Bill No. 61, passed at the recent session of the General Assembly, by amending Section 2252 G. C., increased the compensation of Common Pleas Judges payable out of the county treasury.

QUESTION 1. May this increased compensation be paid to judges holding office at the time the act became effective?

Section 2253 of the General Code, as amended by the same act, provides that each judge of the court of common pleas, who is assigned by the Chief Justice on business in some county other than that of his residence, shall receive \$20.00 per day for each day of such assignment and his actual and