

**Note from the Attorney General's Office:**

1930 Op. Att'y Gen. No. 2385, vol. II, p. 1512,  
syllabus, paragraph modified by 1979 Am.

Sub. H.B. 760, 138 Ohio Laws, Part II, 3544,  
3548-3549 (notice requirements).

2385.

IMPOUNDING OF DOG—DOG WARDEN MAY SEIZE AND IMPOUND WHEN FOUND RUNNING AT LARGE—NOTICE NEED NOT BE GIVEN BEFORE DOG IS SOLD OR DESTROYED—SALE PRICE NEED NOT NECESSARILY EQUAL COSTS ASSESSED—REDEMPTION BY OWNER DISCUSSED.

**SYLLABUS:**

1. *A dog warden who seizes and impounds on sight a dog, found running at large in violation of the registration statutes, is not required to give any notice to the owner of such dog before such dog is sold or destroyed in the manner provided by Section 5652-9 of the General Code. However, notice must be given as required by the provisions of Section 5652-7 of the General Code if the dog is seized and impounded as a result of a complaint filed in a court of competent jurisdiction.*

2. *When a dog warden seizes and impounds a dog more than three months of age, found not wearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel, the owner in redeeming such dog may only be assessed such costs enumerated in Section 5652-10 of the General Code as are actually incurred and authorized in the seizure and impounding of such dog.*

3. *When a dog impounded is sold as provided in Section 5652-9 of the General Code such dog may be sold for the best price obtainable and the amount of such sale need not be equal to or more than the costs assessed for the impounding and seizure of the dog.*

COLUMBUS, OHIO, September 29, 1930.

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

GENTLEMEN:—I am in receipt of your letter of recent date, which is as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

Section 5652-7 of the General Code provides for the powers and duties of the dog warden. Among other things, it provides that he shall seize and impound on sight all dogs more than three months of age found not bearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel. It also provides that whenever any person shall file an affidavit in a court of competent jurisdiction that there is a dog more than three months of age running at large, not wearing a valid registration tag, such court shall forthwith order the county dog warden to seize and impound such animal and thereupon such dog warden shall immediately seize and impound such dog so complained of. Such officer shall forthwith give notice to the owner of such dog, if such owner be known to the officer, that such dog has been impounded, and that the same will be sold or destroyed if not redeemed within three days.

If the owner of such dog be not known to the dog warden, he shall post a notice in the county court house describing the dog and the place where seized and advising the unknown owner that such dog will be sold or destroyed if not redeemed within three days. Section 5652-10, G. C., provides for the costs which shall be assessed against every dog seized and impounded under the provisions of this act.

Question 1: Is the notice required to be given or posted by Section 5652-7, G. C., in all cases where a dog is seized by the warden upon his own

motion, or through an order from a court of competent jurisdiction, as provided in that section?

Question 2: When a dog warden seizes and impounds a dog, which he finds running at large without a valid tag, and the owner desires to redeem the dog, what items mentioned in Section 5652-10, G. C., may be charged to such owner?

Question 3: When an impounded dog is sold, may such dog be sold for any amount which can be obtained, or is it required that at least the costs assessed under Section 5652-10, G. C., be received from such sale?"

Section 5652-7 of the General Code, which sets forth in detail the powers and duties of dog wardens and their deputies, provides that dog wardens and deputies "shall patrol their respective counties, seize and impound on sight all dogs more than three months of age, found not wearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel". No provision is made in this section as to the giving of notice to owners of dogs seized by dog wardens unless the provision in this section referring to notice to owners of dogs seized by dog wardens by virtue of an order issued by a court of competent jurisdiction applies to all dogs seized and impounded by dog wardens. The provision in Section 5652-7 of the General Code pertaining to notice to owner of dog seized is as follows:

"Whenever any person shall file an affidavit in a court of competent jurisdiction that there is a dog more than three months of age, running at large that is not kept constantly confined in a registered dog kennel, and not wearing a valid registration tag, or is kept or harbored in his jurisdiction, such court shall forthwith order the county dog warden to seize and impound such animal. Thereupon such dog warden shall immediately seize and impound such dog so complained of. Such officer shall forthwith give notice to the owner of such dog, if such owner be known to the officer, that such dog has been impounded, and that the same will be sold or destroyed if not redeemed within three days. If the owner of such dog be not known to the dog warden, he shall post a notice in the county court house describing the dog and place where seized and advising the unknown owner that such dog will be sold or destroyed if not redeemed within three days."

You will note that Section 5652-7 provides that if the court orders the dog to be seized, thereupon the warden shall seize and impound the dog complained of and that such officer shall give notice to the owner of *such* dog. "Such dog" refers, I believe, to a dog seized by virtue of a court order and does not refer back to the provisions with reference to the seizure and impounding of dogs on sight while the officers are patrolling their respective counties. It has been held with great unanimity by the courts that provisions for the summary destruction of dogs kept in violation of law are entirely within legislative power, and free from constitutional objection though the property of the owner is destroyed without notice or hearing in the execution of the law. See 1 Ruling Case Law, page 1129; 8 A. L. R. 75. Since the Legislature made no provision for the giving of notice to the owners of dogs seized and impounded on sight by wardens patrolling the highways of a county, I am of the belief that in such cases the giving of notice is not required.

Now referring to your second inquiry, Section 5652-10 of the General Code is pertinent and provides as follows:

"Costs shall be assessed against every dog seized and impounded under the provisions of this act as follows:

Filing affidavit and issuing order to seize dog.....	\$0.50
Seizing dog and delivering to pound.....	2.00
Serving or posting of notice to owner.....	.25
Housing and feeding dog per day.....	.50
Selling or destroying dog.....	.50

Such costs shall be a valid claim in favor of the county against the owner, keeper or harbinger of a dog seized and impounded under the provisions of this act and not redeemed or sold as hereinafter provided, and such costs shall be recovered by the county treasurer in a civil action against the owner, keeper or harbinger."

While this section provides that costs shall be assessed against every dog seized and various items of costs are enumerated in this section, it does not follow that all of the items enumerated must be assessed in every case. It must be remembered that in some cases of seizure affidavits are not filed and in some cases no notice is authorized so that if all the items enumerated in this section were assessed in every case in which a dog was seized persons would be charged with costs for services which were not rendered or authorized. The costs provided for in this section are not assessed as punishment but merely to reimburse the county for expenses incurred for seizing and impounding dogs under the provision of the act. This leads me to conclude that the owners may be assessed only such items of cost enumerated in this section which are actually incurred and authorized in the seizure and impounding of the dogs.

Now coming to your last inquiry, Section 5652-9 of the General Code is pertinent and provides as follows:

"Dogs not wearing valid registration tags which have been seized by the county dog warden and impounded as hereinbefore provided, shall be kept, housed and fed for three days, at the expiration of which time, unless previously redeemed by the owners thereof, such animals shall either be sold or be humanely destroyed; provided, however, that no dogs so sold shall be discharged from said pound until such animal shall have been registered and furnished with a valid registration tag as hereinbefore provided. A record of all dogs impounded, the disposition of the same, the owner's name and address where known, and a statement of costs assessed against such dogs as hereinafter provided, shall be kept by the pound keeper and a transcript thereof by him furnished to the county treasurer quarterly."

There is nothing in the act, of which the section quoted above is a part, which makes express provision that a dog is to be sold for an amount equal to the costs assessed for seizure and impounding. The statute merely provides that the animal shall either be sold or humanely destroyed. The purpose of sale or destruction of a dog, as provided in the section under consideration, is to obviate the burden of keeping the animal if such animal is not redeemed by the owner. Therefore, if this section is given a construction that the sale price must be at least the amount of the costs, then if the dog is not redeemed and cannot be sold for an amount equal to the costs the purpose of this legislation could only be carried out by the destruction of the animal. This I do not believe was the intention of the Legislature for it is not only humane to sell the dog for such price as is obtainable to prevent its destruction, but the county would receive the benefit of whatever amount can be obtained for it. Keeping in mind that the purpose of the sale or destruction of a dog impounded is to obviate the expense of keeping the dog, and the Legislature making no express

provision that the sale price of the dog should be equal to or more than the costs assessed, I am inclined to hold that the Legislature intended that a dog may be sold for the best price obtainable even though the amount of such sale is less than the costs assessed against such dog.

Specifically answering your inquiries, I am of the opinion :

1. A dog warden who seizes and impounds on sight a dog found running at large in violation of the registration statutes, is not required to give any notice to the owner of such dog before such dog is sold or destroyed in the manner provided by Section 5652-9 of the General Code. However, notice must be given as required by the provisions of Section 5652-7 of the General Code if the dog is seized and impounded as a result of a complaint filed in a court of competent jurisdiction.

2. When a dog warden seizes and impounds a dog more than three months of age found not wearing a valid registration tag, except dogs kept constantly confined in a registered dog kennel, the owner in redeeming such dog may only be assessed such costs enumerated in Section 5652-10 of the Genral Code as are actually incurred and authorized in the seizure and impounding of such dog.

3. When a dog impounded is sold as provided in Section 5652-9 of the General Code, such dog may be sold for the best price obtainable and the amount of such sale need not be equal to or more than the costs assessed for the impounding and seizure of the dog.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2386.

STREET SIGNS—TOWNSHIP TRUSTEES HAVE NO AUTHORITY TO  
ERECT SIGNS INDICATING NAMES OF ROADS OR STREETS.

*SYLLABUS:*

*Township trustees have no legal authority to erect signs indicating the names of roads or streets.*

COLUMBUS, OHIO, September 29, 1930.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication requesting my opinion as follows :

“I wish an unofficial opinion as to whether the trustees of a township have the right to erect street signs in an unincorporated village or city.

The last Federal census of Rossford, which is unincorporated and located in Ross Township, showed Rossford to have a population of nearly 7,000 people. They are unable to obtain free delivery of mail service unless street signs are erected.

The township trustees are asking me if they have authority to erect these street signs.

I have checked the Code and the only section I have been able to find is section 7196, which gives the authority to the county commissioners to erect suitable road signs on inter county highways and main market roads at intersection with other roads, subject to the approval of the State Highway Director.”