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1. DOG AND KENNEL LICENSES—DUTIES OF COUNTY AUDITOR—MINISTERIAL—CHAPTER 955. RC.
2. COUNTY AUDITOR—NOT CHARGED WITH DUTY TO MAKE DETERMINATION OR REQUIRE PROOF OF PARTNERSHIP—REPRESENTATION BY APPLICANT FOR KENNEL LICENSE—SECTION 955.04 RC—PROVISO, UNLESS OFFICER HAS REASONABLE DOUBT AS TO EXISTENCE OR NONEXISTENCE OF PARTNERSHIP.
3. LAW ENFORCEMENT DUTIES—SECTION 955.12 RC—INVESTIGATION BY COUNTY DOG WARDEN—PARTNERSHIP IN DOG KENNEL—EXISTENCE IN DOUBT—VALIDITY OF DOG REGISTRATION TAG.

SYLLABUS:

1. As defined in Chapter 955. of the Revised Code of Ohio, the duties of the county auditor in the issuance of dog and kennel licenses are ministerial in character.
2. The county auditor is not charged, under this chapter, with the duty of making a determination, or requiring positive proof, as to the existence of a partnership where such is represented in an application for a kennel license filed under Section 955.04, Revised Code, unless such officer has a reasonable doubt as to the existence of a partnership or actual knowledge of its nonexistence.

3. As a part of his law enforcement duties, under Section 955.12, Revised Code, the county dog warden is required to investigate into the existence of a partnership in a dog kennel whenever its existence is in doubt and is pertinent to the question of the validity of a dog registration tag.

Columbus, Ohio, November 19, 1955

Hon. W. H. Lohr, Prosecuting Attorney
Vinton County, McArthur, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is requested on the following factual situation:

“‘A’ made application for the registration of a kennel in accordance with R. C. 955.04, claiming that he and ‘B’ were partners in a kennel, and accordingly was issued a kennel license by the County Auditor for the ‘A and B Kennel’.

“The Dog Warden was furnished a list of the kennel owners which list included the ‘A & B Kennel’. In checking this list the Dog Warden found A and B not a partnership ‘professionally engaged in the business of breeding dogs for hunting or for sale’ (R.C. 955.02) and accordingly required B to purchase license tags for three female dogs. B objected to the purchase of individual license tags for his dogs saying that he had paid one-half of the fee for the kennel license issued to A for the ‘A and B Kennel’.

“The only basis on which the Auditor issued a kennel license to A for the ‘A & B Kennel’ was on A’s application stating that he and B were partner-owners of the A & B Kennel and in so doing was acting in a ministerial capacity.

- Query: 1. Was the Auditor correct in issuing the kennel license to A on his application stating he and B were the owners of the ‘A & B Kennel’ or should he have required positive proof from A that there was actually a partnership between A and B in the kennel before issuing a kennel license?
2. If the issuing of a kennel license is a ministerial duty of the auditor then upon whom rests the duty of determining whether or not kennel owners are partners and thus entitled to a kennel license in accordance with R. C. 955.04?”

The provisions for the registration of dogs and dog kennels are contained in Chapter 955. of the Revised Code of Ohio, Section 955.01, Revised Code, provides in pertinent part:

“Every person who owns, keeps, or harbors a dog more than three months of age, shall, before the first 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 first 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.”

The registration of dog kennels is the subject of Section 955.04, Revised Code. It is provided therein that:

“Every owner of a kennel of dogs bred or kept for sale shall, in like manner as provided in section 955.01 of the Revised Code, make application for the registration of such kennel, and pay to the county auditor a registration fee of ten dollars for each such kennel. The payment of such kennel license fee shall entitle the licensee 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 as the tags provided for in section 955.08 of the Revised Code. Upon application to the county auditor, additional tags, in excess of said five tags, may be issued upon payment of an additional fee of one dollar per tag.”

A “kennel owner” is defined in Section 955.02, Revised Code, as follows:

“A kennel owner is a person, partnership, firm, company, or corporation professionally engaged in the business of breeding dogs for hunting or for sale.”

The question which you raise as to the duties of the county auditor in the issuance of kennel licenses was the subject of consideration by one of my predecessors in office in Opinion No. 4411, Opinions of the Attorney General for 1935. The following pertinent language is taken from this opinion at page 798 of Volume II:

“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.”

Upon examination of the material statutes, I find myself in accord with the conclusion reached by the writer of the 1935 opinion.

The duties of the county auditor with respect to the registration and licensing of dogs and dog kennels are detailed in Sections 955.07 and 955.08, Revised Code. Section 955.07 provides:

“Upon the filing of the application for registration required by section 955.01 of the Revised Code and upon the payment of the registration fee, the county auditor shall assign a distinctive number to every dog or dog kennel described in such application, and shall 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 auditor in a dog and kennel register, which shall be open to the inspection of any person during reasonable business hours."

Section 955.08 provides in turn that:

"In addition to the certificate of registration provided for by section 955.07 of the Revised Code, the county auditor shall issue to every person making application for the registration of a dog and paying the required fee therefor a metal tag for each dog so registered. The form, character, and lettering of such tag shall be prescribed by the bureau of inspection and supervision of public offices. If a tag is lost, a duplicate shall be furnished by the auditor upon proper proof of loss and the payment of twenty-five cents for each duplicate tag issued."

At/outlined in the above quoted sections, the duties of the county auditor are limited, to the extent material here, to the registration of dogs and dog kennels and the issuance of dog licenses or tags upon application and payment of the required fees. There is nothing therein which can be construed as placing upon the auditor the duty of determining the correctness of the assertions or representations made in an application. Nor do I feel that such a duty can be implied as one fairly within the scope of the auditor's office or necessary to the accomplishment of the main purposes thereof.

In answer to your initial question, then, I am of the opinion that the duties of a county auditor in issuing dog and kennel licenses are ministerial in nature and a county auditor is not required to make a determination, or require positive proof, as to the existence of a partnership where such is represented in an application for a kennel license, in the absence of knowledge or a reasonable belief that an application is in fact false or fraudulent.

You next ask who is, under the circumstances presented, charged with the responsibility of determining whether A and B are partners in the operation of a kennel and entitled to a kennel license as a partnership.

The existence of a partnership takes on materiality only with respect to the question of the validity of dog registration tags. It would logically follow, then, that the person charged with the duty of determining the validity of registration tags in the first instance would likewise be the one to conduct any inquiry into the existence of a partnership. In this regard, Section 955.12, Revised Code, provides:

“The board of county commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such compensation as such board deems necessary to enforce sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code.

“Such warden and deputies shall each give bond in a sum not less than five hundred dollars and not more than two thousand dollars conditioned for the faithful performance of their duties. Such bonds shall be filed with the county auditor of their respective counties. Such warden and deputies shall make a record of all dogs owned, kept, and harbored in their respective counties. They shall patrol their respective counties and 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. They shall also investigate all claims for damages to livestock inflicted by dogs. They shall make weekly reports, in writing, to the board in their respective counties of all dogs seized, impounded, redeemed, and destroyed, and of all claims for damage to livestock inflicted by dogs. Such wardens and deputies shall have the same police powers as are conferred upon sheriffs and police officers in the performance of their duties as prescribed by sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code. They shall, likewise, have power to summon the assistance of bystanders in performing their duties and may serve writs and other legal processes issued by any court in their respective counties with reference to enforcing such sections. County auditors may deputize such wardens or deputies to issue dog licenses as provided in sections 955.01 and 955.14 of the Revised Code. Whenever any person files 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 without being registered, such court shall forthwith order the warden to seize and impound such animal. Thereupon such 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 warden he shall post a notice in the county courthouse 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.”

It will be seen that this section authorized the appointment of a county dog warden, or wardens, by the board of county commissioners

and charges such dog warden with the enforcement of Sections 955.01 to 955.27, inclusive, Revised Code. As a part of his law enforcement duties, the dog warden is responsible for the patrol of his county and the seizure and impoundage of dogs not wearing valid registration tags. It would thus be the duty of the county dog warden to investigate into the existence of a partnership in a dog kennel whenever its existence is in doubt and is germane to the question of the validity of a dog registration tag.

In specific answer to your questions, therefore, I am of the opinion that :

1. As defined in Chapter 955. of the Revised Code of Ohio, the duties of the county auditor in the issuance of dog and kennel licenses are ministerial in character.

2. The county auditor is not charged, under this chapter, with the duty of making a determination, or requiring positive proof, as to the existence of a partnership where such is represented in an application for a kennel license filed under Section 955.04, Revised Code, unless such officer has a reasonable doubt as to the existence of a partnership or actual knowledge of its nonexistence.

3. As a part of his law enforcement duties, under Section 955.12, Revised Code, the county dog warden is required to investigate into the existence of a partnership in a dog kennel whenever its existence is in doubt and is pertinent to the question of the validity of a dog registration tag.

Respectfully,

C. WILLIAM O'NEILL

Attorney General