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PARTNERSHIP:

BUSINESS, BREEDING DOGS FOR HUNTING OR FOR SALE — PART OF DOGS KEPT AT HOME OF EACH PARTNER IN DIFFERENT COUNTIES — KENNEL LICENSE REQUIRED IN EACH COUNTY — WHERE PART OF DOGS KEPT AT HOME OF EACH PARTNER IN SAME COUNTY, ONLY ONE KENNEL LICENSE REQUIRED.

SYLLABUS:

1. *Where a partnership is engaged in the business of breeding dogs for hunting or for sale and part of the dogs are kept at the home of each of the partners in different counties, a kennel license is required in each county where such dogs are kept.*

2. *Where a partnership is engaged in the business of breeding dogs for hunting or for sale and part of the dogs are kept at the home of each of the partners in the same county, only one kennel license is required.*

Columbus, Ohio, April 11, 1941.

Hon. Charles Varner, Prosecuting Attorney,
Ottawa, Ohio.

Dear Sir:

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

"I should like your opinion on the following questions.

1. Where two persons are in partnership raising dogs and each partner keeps part of the dogs at their separate residences which are located in different counties, should two kennel licenses be required of the partnership, that is, a license from each county in which the dogs are kept?

2. Where two persons are in partnership raising dogs and each partner keeps part of the dogs at their separate residences which are located in the same county, is one kennel license issued to the partnership sufficient?"

Section 5652-1, General Code, provides 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."

Section 5652, General Code, provides inter alia that the application for the registration of a dog shall be filed with the county auditor of the county in which such dog is kept or harbored. Therefore, inasmuch as Section 5652-1, General Code, provides that the application for a kennel license shall be filed in the same manner as the application provided for

in Section 5652, General Code, the application for a dog kennel license shall be filed in the county where such kennel is located. In 35 C.J. 900, the term "kennel" is defined as:

"A house for a dog or for dogs, or for a pack of hounds; but the term is sometimes used in the sense of a pack or collection of dogs usually kept or bred for hunting, or for sale."

The latter meaning was adopted by the then Attorney General in an opinion reported in Opinions of the Attorney General for 1918, Vol. I, page 75, where in the first branch of the syllabus reads:

"The term 'kennel' as used in Section 5652-1 G. C. (107 O. L., 534), means any pack or collection of dogs, over the age of three months, kept together for the purposes of hunting or for sale."

Supporting this conclusion is the case of *State vs. Tripp*, 84 Conn. 640, wherein it was ruled as disclosed by the syllabus:

"A kennel license is not vitiated because part of the dogs which formed the licensed kennel were kept at the house of each of the owners in the same town.

The word 'kennel' as used in the statute (Public Acts of 1909, Chapt. 55, Section 2) does not mean the house or place in which the dogs are kept, but a pack or collection of dogs usually kept or bred for hunting or for sale."

Section 5652-1a, General Code, in defining the term "kennel owner" emphasizes the pack of dogs rather than the place where they are kept. Said section provides:

"A kennel owner is hereby defined as being a person, persons, partnership, firm, company or corporation professionally engaged in the business of breeding dogs for hunting or for sale."

Based on the above observations, I am of the opinion that the term "kennel" as used in Sections 5652-1, et seq., General Code, means the pack or collection of dogs, rather than the place where such dogs are kept.

Before proceeding to answer your specific questions I believe it advisable to consider the purpose of the laws requiring the registration of

dogs and kennels. Section 5652-13, General Code, provides:

“The registration fees provided for in this act shall constitute a special fund known as the dog and kennel fund which shall be deposited by the county auditor in the county treasury daily as collected and be used for the purpose of defraying the cost of furnishing all blanks, records, tags, nets and other equipment, also paying the compensation of county dog wardens, deputies, pound keeper and other employees necessary to carry out and enforce the provisions of the laws relating to the registration of dogs, and for the payment of animal claims as provided in sections 5840 to 5849, both inclusive, of the General Code, and in accordance with the provisions of section 5653 of the General Code. Provided, however, that the county commissioners by resolution shall appropriate sufficient funds out of the dog and kennel fund, said funds so appropriated not to exceed 50% of the gross receipts of said dog and kennel fund in any calendar year, not more than three-tenths of which shall be expended by the county auditor for registration tags, blanks, records and clerk hire for the purpose of defraying the necessary expenses of registering, seizing, impounding and destroying dogs in accordance with the provisions of section 5652 and, supplemental sections of the General Code.”

It will be noted that after paying the expenses of administration such registration fees are used in paying for injuries caused by dogs to certain animals. The general object of such statutes is clearly expressed in the case of *Arnold v. Ford*, 53 App. Div. (N. Y.) 25, wherein it was stated at page 27:

“The entire law seems to form a scheme of taxation wholly different from the general scheme of taxation of personal or real property, and the tax when collected forms a special fund to defray the depredations of dogs upon sheep. A fair construction of the law, it seems to me, discloses a clear intention to compel the owner or possessor of a dog to pay the tax into this sheep fund in the town where the dog is kept, and to pay the tax once each year. If the payment cannot be enforced, then it is made the duty of the collector to kill the dog. This clearly shows the intention of the Legislature to make the situs of the dog, for the purposes of this tax, to be the place or town where he is kept or harbored. That this differs from the provisions of the law which require assessment for personal property to be made at the residence of the person assessed, and not elsewhere, does not affect the construction to be given to the law where a different purpose and a different scheme is apparent, as here. It is not intended to be a personal property tax, but a tax upon the keeping or harboring of dogs and for the benefit of the locality where they are kept or harbored, the locality exposed to their semi-ferocious depredations.”

It is obvious that the county is the registration or taxing district for the dogs and kennels located therein. The fund realized from such registrations is used to pay the expenses of administering the law within the county and claims for injuries caused by dogs to animals within the county. In short, the law is for the benefit of the county in which the dogs are located.

Considering the foregoing fact, together with the further proposition that the term "kennel" means the pack of dogs owned by the kennel owner in the particular county, I am constrained to the view that if the dogs are located in two counties a kennel registration is required in each county.

With reference to your second inquiry, however, I am of the opinion that only one kennel license is required. In the light of the law and the definition of the term "kennel," it appears that the pack of dogs owned by the kennel owner must be registered in the county where located. Consequently, inasmuch as all of the dogs constitute the pack owned by the partnership only one kennel license is required.

Therefore, in specific answer to your questions I am of the opinion that: (1) Where a partnership is engaged in the business of breeding dogs for hunting or for sale and part of the dogs are kept at the home of each of the partners in different counties, a kennel license is required in each county where such dogs are kept. (2) Where a partnership is engaged in the business of breeding dogs for hunting or for sale and part of the dogs are kept at the home of each of the partners in the same county, only one kennel license is required.

Respectfully,

THOMAS J. HERBERT,

Attorney General.