

It is quite apparent to me that the holding in the case of *State, ex rel. The Southern Surety Co. vs. Schlesinger*, supra, does not go so far as the bonding company is claiming. The law of the case is set forth in the syllabus, and a reading of the same will clearly reveal that the legal principle there laid down was based upon facts which placed the surety in the same position as the state would have been had it completed the work after a forfeiture of the contract, instead of the bonding company completing same.

The holding in that case is therefore not applicable to the facts at hand, and the principle of law therein enunciated can be pertinent only in those cases where a bonding company acting as surety completes work upon the contractor's failure to perform.

Therefore, it is my opinion that where a receiver has been appointed for a contractor after he has performed all of the work required of him under a contract with the state for a road improvement, and there remains certain funds by virtue of a final estimate due the contractor, the amount so remaining due should be paid by the Director of Highways and Public Works to such receiver, and the surety upon the bond of the contractor has no claim to said fund by reason of the fact that certain labor claims or material bills in connection with said contract have not been paid.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1265.

DOG REGISTRATION TAG—VALID IN ANY COUNTY OF THE STATE—
HOUSE BILL NO. 164, 87TH GENERAL ASSEMBLY, DISCUSSED.

SYLLABUS:

A dog registration tag issued under the provisions of House Bill No. 164, (112 Ohio Laws, p. 347), is valid in any county of the state.

COLUMBUS, OHIO, November 16, 1927.

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

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

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

Under House Bill No. 164, passed at the recent session of the General Assembly, if the owner of a dog residing in one county sells such dog to a person residing in another county of the state, would the new owner of such dog be required to register such dog in the county of his residence and pay the registration fee required, or are the dog licenses and tags issued in one county good in any county of the state?”

Section 5652 of the General Code, 112 Ohio Laws, p. 347, provides 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 to-

gether 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 harbored, 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."

The above section provides that every person who owns, keeps or harbors a dog more than three months of age shall pay a proper registration fee and 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." Said section also provides that if this is not done within the time provided, the auditor shall require the payment of an extra dollar on the fee fixed by law. The only exemption in said section is where such dog is "bought from outside the State of Ohio or becomes three months of age after January twentieth."

Section 5652-7 of the General Code, 112 Ohio Laws, p. 348, relates to dog wardens and their duties and in part provides:

"They 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."

As hereinbefore stated, the only provision for obtaining a valid registration tag is found in Section 5652, supra. Section 5652-7, supra, also provides a penalty to be imposed upon any one who "steals a dog which has been registered under the provision of this chapter."

The provision for registering a dog "under this chapter" is found in Section 5652, supra. In that connection, however, we must consider Section 5652-7b, General Code, 112 Ohio Laws, p. 349, which reads as follows:

"The license fee for any dog, becoming three months of age, after July 1st of any year and the license fee 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."

This section refers to dogs which have become three months of age after July 1st or which have been purchased without the State of Ohio after July 1st of any year.

The act is general in its provisions and applies to all dogs in the State of Ohio, and Section 5652, supra, requires the dog to be registered in the county "in which such dog is kept or harbored." This language means the county in which such dog is kept

or harbored at the time of registration. The only provision for registering a dog after January 1st without a penalty is in case the dog is not three months of age at the time specified in said section or has been bought from outside the State of Ohio after said time.

If the owner of a dog who complies with the provisions of Section 5652, *supra*, obtains a tag from the county auditor when registration is made, such tag will constitute a "valid registration tag."

Section 5652-9, General Code, 112 Ohio Laws, p. 350, 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."

The registration tag should contain information relative to the county issuing the same, in order that the dog may be identified in connection with its registration.

There is no provision of law providing for a transfer of registrations from one county to another. Neither is there any provision of law requiring a person who registered his dog, as provided in Section 5652, *supra*, to again register the same during that year.

Your question also requires consideration of transfer of ownership of a dog which has been registered. In such case there must be a transfer of ownership certificate filed as provided in Section 5652-7c of the General Code, 112 Ohio Laws, p. 349. This section 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."

The above section was construed in Opinion No. 1225, issued by this department under date of October 31, 1927, the syllabus of which reads as follows:

"A transfer of ownership certificate as provided for in House Bill No. 164, passed by the 87th General Assembly, (112 O. L. 347) should be recorded with the auditor of the county in which such dog is duly registered, even though the buyer thereof may reside in a different county."

· Answering your question specifically, it is my opinion that a tag issued under the provisions of House Bill No. 164, (112 Ohio Laws, p. 347), is valid in any county of the state.

Respectfully,
EDWARD C. TURNER,
Attorney General

1266.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN FAYETTE, GEAUGA, MIAMI, MORGAN, MONROE AND SCIOTO COUNTIES.

COLUMBUS, OHIO, November 17, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

1267.

APPROVAL, BONDS OF THE VILLAGE OF MIAMISBURG, MONTGOMERY COUNTY, OHIO—\$3,731.40.

COLUMBUS, OHIO, November 17, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1268.

APPROVAL, BONDS OF MONTGOMERY COUNTY—\$14,800.00.

COLUMBUS, OHIO, November 17, 1927.

Industrial Commission of Ohio, Columbus, Ohio.