

Upon examination of this lease, which is one executed by you under the authority of the DeArmond Act, 114 O. L., 546, 552, I find that the lease has been properly executed by you, as Superintendent of Public Works and as Director of said Department, and by W. E. Whipp, the lessee, therein named.

Upon examination of the terms of provisions of this lease, and of the conditions and descriptions therein contained, I find that the same are in conformity with the above noted act of the General Assembly, and with other statutory provisions relating to leases of state land.

Assuming, as I do, that no part of the above described tract of land covered by this lease has been designated by the Director of Highways for highway purposes under the authority conferred upon this official to this end, by the DeArmond Act, above referred to, and, assuming further that no municipal corporation or other political subdivision has made application for the lease of this tract of land, or of any part thereof, for park purposes, under the authority conferred upon such political subdivision by the DeArmond Act and by the Farnsworth Act, 114 O. L., 518, this lease is hereby approved by me as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6009.

RABIES—BOARD OF HEALTH MAY DECLARE QUARANTINE
OF ALL DOGS—IMMATERIAL WHETHER DOGS HAVE
BEEN IMMUNIZED AGAINST RABIES.

SYLLABUS:

A board of health may, under the provisions of Section 5652-16. General Code, declare a quarantine of all dogs within the territory under its jurisdiction or part thereof, regardless of whether or not the dogs have been immunized against rabies, whenever in its judgment rabies shall be declared to be prevalent and such step is deemed necessary for the prevention or restriction of disease.

COLUMBUS, OHIO, August 28, 1936.

HON. WALTER H. HARTUNG, *Director of Health. Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication for my opinion which reads as follows:

"By the terms of Sections 1261-26, 1261-30, and 1261-42, General Code, a district board of health may make such orders and regulations as it deems necessary for the public health, the prevention or restriction of disease, and the prevention, abatement or suppression of nuisances, etc. In your Attorney General Opinion No. 3894, dated February 1, 1926, the syllabus of which herewith follows, 'A board of health may under the provisions of Section 1261-42 and 5652-16, General Code, declare a quarantine of all dogs which have not been immunized against rabies, within the territory under its jurisdiction or part thereof, whenever in its judgment rabies shall be declared to be prevalent and such step is deemed necessary for the prevention or restriction of disease.'

It is implied in this opinion of yours that only dogs not immunized should be quarantined and it is the opinion of most authorities on the subject of rabies that the immunization of dogs against rabies is not one hundred per cent effective and considerable doubt exists in the minds of many as to whether all dogs are protected. In view of this situation, with the prevalence of rabies in many counties in the state of Ohio, and the prevailing difference of opinion as to the manner of procedure, will it be possible for you to render an opinion that all dogs shall be quarantined when in the judgment of the board of health of either a general health district or a city health district it be deemed necessary, regardless of whether these dogs are immunized or not?

In my judgment, such an opinion from you will certainly clarify the situation for our boards of health and health commissioners all over the state and is much to be desired. As further evidence of my position in the matter, I will state that on many occasions dogs' heads have been examined in our laboratory from dogs that had been immunized and six months after immunization, negri bodies were found in the heads of these dogs just examined."

Section 5652-16, General Code, is particularly pertinent to your inquiry. This section reads as follows:

"Whenever in the judgment of any city or general health district board of health, or person or persons performing the duties of a board of health, rabies shall be declared to be prevalent, such board of health, or person or persons performing the duties of such board of health, shall declare a quarantine of all dogs in such health district, or part thereof. The quarantine so

declared shall consist of the confinement of any dog or dogs on the premises of the owner or in a suitable pound or kennel if a pound or kennel is provided by the city or county; provided, a dog may be permitted to leave the premises of the owner if under leash or under the control of the owner or other responsible person. The quarantine order herein authorized shall be considered an emergency and need not be published.

When a quarantine of dogs has been declared in any health district, or part thereof, it shall be the duty of the dog warden and all other persons having the authority of police officers to assist the health authorities in enforcing the provisions of the quarantine order.

The penalty for the violation of the rabies quarantine order shall be the same as provided for the violation of other orders or regulations of the board of health.”

The above quoted section is directly dispositive of the question you present. It is to be observed that the language of the statute is clear and unambiguous and provides that a board of health under certain circumstances may declare a quarantine of *all* dogs within the health district. No limitation is placed on the board of health with reference to whether or not the dogs are immunized. As stated in the case of *Slingluff v. Weaver*, 66 O. S., 621 :

“1. The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law making body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted.

2. But the intent of the lawmakers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

In your letter you refer to my Opinion No. 3894, rendered February 1, 1935. The syllabus of that opinion is quoted in full in your letter of inquiry. In your letter you state that it is implied from the opinion that only dogs which have not been immunized should be quarantined. It will be observed that the specific question presented in the 1935 opinion was whether or not a board of health could legally declare a quarantine of only such dogs as have not been immunized against rabies. In other words, the opinion was limited to the specific inquiry presented and cannot be considered as limiting the authority of a board of health to declare a quarantine of only such dogs as have not been immunized. The 1935 opinion, after referring to Section 5652-16, General Code, *supra*, called attention to Section 1261-42, General Code, and an opinion to be found in the Opinions of the Attorney General for 1928, Volume III, page 1748, and concluded that Section 5652-16, General Code, was not exclusive in determining or restricting the power of a board of health and that a board of health could require other or different precautions to safeguard the health of the citizens of the community. There is no conceivable basis for drawing the inference that the 1935 opinion in any way is authority for the proposition that a board of health may not declare a quarantine of all dogs within the district. A mere reading of Section 5652-16, General Code, as well as of the 1935 opinion, clearly indicates the negative of such a proposition. In fact, the 1935 opinion clearly recognizes the authority of a board of health to declare a quarantine of all dogs, whether immunized or not, when the following observation was made in the body of the opinion:

“In view of the foregoing, if the board of health has power to require the immunization of all dogs against rabies, it follows that such board has authority to require the quarantine of all dogs, which have not been so immunized, in the district or part thereof under its jurisdiction, when a prevalence of rabies has been declared therein.”

In view of the above and without extending this discussion, it is my opinion, in specific answer to your inquiry, that a board of health may, under the provisions of Section 5652-16, General Code, declare a quarantine of all dogs within the territory under its jurisdiction or part thereof, regardless of whether or not the dogs have been immunized against rabies, whenever in its judgment rabies shall be declared to be prevalent and such step is deemed necessary for the prevention or restriction of disease.

Respectfully,

JOHN W. BRICKER,
Attorney General.