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1. KENNEL OF DOGS — REGISTRATION — FAILURE, APPLICATION, REQUIRED BY SECTION 5652-1 GENERAL CODE DOES NOT PENALIZE OWNER — SECTION 5652 GENERAL CODE.
2. FAILURE TO APPLY FOR REGISTRATION — PROSECUTION — CONVICTION — FINE AND COSTS — SECTION 5652-14 GENERAL CODE.

## SYLLABUS:

1. Failure to make application for the registration of a kennel of dogs, as required by Section 5652-1, General Code, does not subject the owner of such kennel to the penalty imposed by Section 5652, General Code.

2. A person who fails to make application for the registration of a kennel of dogs may be prosecuted therefor, and upon conviction shall be fined not less than ten dollars nor more than twenty-five dollars and the costs of prosecution, as provided in Section 5652-14, General Code.

Columbus, Ohio, January 14, 1942.

Hon. Theodore Tilden, Prosecuting Attorney, Portage County,  
Ravenna, Ohio.

Dear Sir:

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

“The Dog Warden and County Auditor of our county are in dispute as to the penalty that should be assessed against the owner of a kennel of dogs, who fails to make application for the registration of such kennel in accordance with the provisions of 5652-1 of the General Code of Ohio, and should like to have your opinion on that question.”

Section 5652-1, General Code, provides:

“Every owner of a kennel of dogs bred or kept for sale shall in like manner as in G. C. 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 G. C. Section 5652-4.”

Section 5652, General Code, provides:

“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 together 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."

Section 5652-14, General Code, provides:

"Whoever, being the owner, keeper or harbored of a dog more than three months of age or being the owner of a dog kennel fails to file the application for registration required by law, or to pay the legal fee therefor, shall be fined not less than ten nor more than twenty-five dollars, and the costs of prosecution. Whoever obstructs or interferes with any one lawfully engaged in capturing an unlicensed dog or making examination of a dog wearing a tag shall be fined not less than ten dollars nor more than one hundred dollars."

An examination of the pertinent statutes reveals that the only provision imposing a penalty, other than the criminal penalty set out in Section 5652-14, General Code, for failure to register dogs as provided by law, is contained in Section 5652, General Code. There is no specific provision assessing a similar penalty for failure to register a kennel.

If the penalty imposed by Section 5652, General Code, is applicable to a situation where a dog kennel has not been registered as provided by law, it applies by virtue of that provision of Section 5652-1, General Code, which states that application for a kennel license shall be made in like manner as the application for a dog registration. However, this provision refers merely to the manner of making the application and does not mention assessment of a penalty for failure to register a kennel as provided by law.

In 37 O.Jur. at pages 747, et seq., the following rule is announced:

“It has been declared to be a well-established rule of construction that a statute should, if possible, be so construed as to avoid a penalty. Moreover, penal statutes are not to be extended in their operation by inference, implication, or construction beyond the manifest intention of the legislature. They are not to be extended by implication or construction to persons or things not within their descriptive terms, even though such cases appear to be of equal atrocity, or within the reason and spirit of the statute, or within the mischief intended to be avoided. It has been declared that only those transactions are included within penal statutes which are within both their spirit and letter. There is also authority in Ohio, to the effect that all doubts in the interpretation of the penal statutes are to be resolved in favor of the accused.”

Inasmuch as there is no specific penalty, other than the criminal penalty, for failure to make application for a kennel license, it is clear that no such penalty may be imposed. As stated in the rule above quoted, penal statutes may not be extended in their operation to include persons and things not clearly within their scope.

Furthermore, a penalty may not be justified in this situation on the theory that registration of a kennel is equivalent to the registration of the dogs therein. In Opinion No. 967, Opinions of the Attorney General for the year, 1927, Vol. III, page 1689, the second branch of the syllabus reads:

“The dog kennel license provided for in Section 5652-1 of the General Code does not amount to a registration of any of the dogs bred or kept for sale in such kennel.”

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that:

1. Failure to make application for the registration of a kennel of dogs, as required by Section 5652-1, General Code, does not subject the owner of such kennel to the penalty imposed by Section 5652, General Code.

2. A person who fails to make application for the registration of a kennel of dogs may be prosecuted therefor, and upon conviction shall be fined not less than ten dollars nor more than twenty-five dollars and the costs of prosecution, as provided in Section 5652-14, General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General.