

Note from the Attorney General's Office:

1945 Op. Att'y Gen. No. 550, p. 710, 713
modified by 1979 Am. Sub. H.B. 760, 138
Ohio Laws, Part II, 3544, 3545-3546
(expanding the dog warden's enforcement
authority to include registered dogs, with
limitation)

550

1. HEALTH, BOARD OF—REGULATION—PROVISION ANY DOG, CAT OR OTHER ANIMAL INFLECTING A BITE OR INJURY SHALL BE CONFINED IN COUNTY DOG POUND OR PLACED UNDER CARE OF VETERINARIAN—DOES NOT AUTHORIZE COUNTY DOG WARDEN TO IMPOUND AND MAINTAIN AT COUNTY EXPENSE SUCH AN ANIMAL IN COUNTY DOG POUND.
2. PERSON IN PURSUANCE OF SUCH REGULATION, WHO PLACES AN ANIMAL UNDER CARE OF VETERINARIAN, IS PERSONALLY RESPONSIBLE FOR EXPENSE OF SUCH CARE.

SYLLABUS:

1. A regulation of a board of health which provides that any dog, cat or other animal inflicting a bite or injury shall be confined in a county dog pound or placed under the care of a veterinarian does not authorize the county dog warden to impound and maintain at county expense, such an animal in the county dog pound.

2. A person who, acting in pursuance of such regulation, places an animal under the care of a veterinarian, is personally responsible for the expense of such care.

Columbus, Ohio, November 8, 1945

Hon. Herbert R. Freeman, Prosecuting Attorney
Norwalk, Ohio

Dear Sir:

This will acknowledge receipt of your communication, which reads as follows:

“I would like your opinion on the following questions:

Regulation 2C of the Huron County Health District provides as follows: ‘Whenever a veterinarian shall be called upon to examine a dog, cat or other animal that has bitten or injured a person, he shall promptly report the result of his examination to the health commissioner within whose jurisdiction the dog, cat or other animal is found. Any dog, cat or other animal inflicting a bite or injury shall be confined in the county dog pound or be placed under the care and supervision of a veterinarian until it shall be determined that the animal is not afflicted with rabies. The isolation period hereby required shall not be less than ten (10) days from the date the person was bitten or injured.’

Assuming that the health commissioner places the animal inflicting the bite or injury in the County Dog Pound for the isolation period provided by this regulation, is the County Dog Warden required to accept such animal in the County Dog Pound and to maintain it for the isolation period?

If he is so required to accept and maintain such animal in the County Dog Pound for the isolation period, who is charged with the expense of such maintenance?

Assuming that instead of placing it in the County Dog Pound, the health commissioner places the animal under the care and supervision of a veterinarian for such isolation period, who or what authority bears the expense of the veterinarian in such a case?”

The provisions of law dealing with the seizing and impounding of dogs are set out in Sections 5652-6, 5652-7 and 5652-8 of the General Code, which respectively read:

Section 5652-6:

“Every registered dog, except dogs constantly confined to registered kennels, shall at all times wear a valid tag issued in connection with the certificate evidencing such registration. Fail-

ure at any time to wear such a valid tag shall be prima facie evidence of lack of registration and shall subject any dog found not wearing such valid tag to impounding, sale or destruction as hereinafter provided."

Section 5652-7:

"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 county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of compensation for damages to live stock inflicted by dogs.

Such county dog 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 to be filed with the county auditor of their respective counties. Such county dog warden and deputies shall make a record of all dogs owned, kept and harbored in their respective counties. 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. They shall also investigate all claims for damages to live stock inflicted by dogs. They shall make weekly reports, in writing, to the county commissioners of their respective counties of all dogs seized, impounded, redeemed and destroyed, also, all claims for damage to live stock inflicted by dogs. County dog 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 this act. 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 the provisions of this act. County auditors may deputize such county dog wardens or deputies to issue dog licenses as provided in Section 5652 and 5652-7a of the General Code. Whenever any person shall file 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, such court shall forthwith order the county dog warden to seize and impound such animal. Thereupon such dog 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 dog warden, he shall post a notice in the county court house 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.

Whoever steals a dog which has been registered under the provisions of this chapter shall be fined not less than \$50.00 nor more than \$500.00 or be sentenced to not less than ten days nor more than thirty days in the county jail."

Section 5652-8:

"County commissioners shall provide nets and other suitable devices for the taking of dogs in a humane manner, and except as hereinafter provided, also provide a suitable place for impounding dogs, and make proper provision for feeding and caring for the same, and shall also provide humane devices and methods for destroying dogs. Provided, however, that in any county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, and having one or more agents appointed in pursuance to law, and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs, the county commissioners shall not be required to furnish a dog pound, but the county dog warden shall deliver all dogs seized by him and his deputies to such society for the prevention of cruelty to children and animals at its animal shelter, there to be dealt with in accordance with the law, and the county commissioners shall provide for the payment of reasonable compensation to such society for its services so performed out of the dog and kennel fund. Provided, further, that the county commissioners may designate and appoint any officer or officers regularly employed by any society organized as provided by Sections 10062 to 10067, inclusive, of the General Code, to act as county dog warden or deputies for the purpose of carrying out the provisions of this act, if such society whose agent or agents are so employed, owns or controls a suitable place for keeping and destroying dogs."

It will be noted from the above sections that the authority of the county dog warden to seize and impound dogs is limited to dogs found not wearing valid registration tags. It is likewise noteworthy that no dogs except those found not wearing valid registration tags may be impounded in the county dog pound.

From this it follows that unless authority therefor exists elsewhere in the statutes, a dog which has inflicted a bite or injury may not be lawfully placed in the county dog pound if such dog is properly registered

and is wearing a valid registration tag. Furthermore, since said sections contain no reference to cats or other animals, it is obvious that they may not be placed in the county dog pound.

Additional authority for the impounding of dogs is contained in Section 5652-16 of the General Code, which reads:

“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.”

Your letter, however, does not state that a quarantine has been declared, and it is also my understanding from information furnished by you that no quarantine exists. Manifestly, therefore, the above section would have no application.

While a board of health has, under various provisions of law, general authority to adopt regulations, it does not follow that in adopting regulations such boards can go beyond the authority of law.

The General Assembly having preempted the field by providing under what circumstances a dog may be seized and impounded, any attempt by a board of health to provide by regulation for impounding contrary to the statutory provisions therefor, would amount to an invalid exercise of authority and such regulation would consequently be without force and

effect in law. Therefore, since the regulation in question purports to confer upon the health commissioner the authority to impound or order the impounding of an animal under circumstances not provided for in the statute, it would necessarily follow that such regulation is invalid and consequently any expense incurred in the impounding of animals pursuant thereto would have to be borne by the person who contracted for such impounding. If the animal in question is committed to the care of a veterinarian by the owner for the isolation period provided for in the regulation, obviously, the owner would be personally responsible for the expense thereof, and since the regulation in question is beyond authority in law, it must be concluded that the health commissioner, if he contracted with a veterinarian for such care and maintenance, he would also be personally obligated to pay the costs thereof.

You are therefore advised that in my opinion:

1. A regulation of a board of health which provides that any dog, cat or other animal inflicting a bite or injury shall be confined in the county dog pound or placed under the care of a veterinarian does not authorize the county dog warden to impound and maintain at county expense, such an animal in the county dog pound.

2. A person who, acting in pursuance of such regulation places an animal under the care of a veterinarian, is personally responsible for the expense of such care.

Respectfully,

HUGH S. JENKINS

Attorney General