

**OPINION NO. 89-091****Syllabus:**

1. "Pit bull dog" as used in R.C. 955.11(A)(4)(a)(iii) refers to those animals which display the general physical characteristics of a bullterrier.
2. Any individual charged with the enforcement of R.C. 955.11 and R.C. 955.22 is qualified to identify pit bull dogs in order to enforce the provisions of such sections against the owners, sellers or other transferors of such dogs. Any identification, however, must be reasonable.
3. Pursuant to R.C. 955.11(A)(4)(a)(iii), the ownership, keeping, or harboring of a pit bull dog is evidence sufficient to establish that an individual is the owner, keeper, or harborer of a vicious dog, unless overcome by other evidence to the contrary.
4. When there is a confinement violation and subsequent impoundment involving a pit bull dog, which is not preceded by a bite or an attempted bite, a county dog warden may not compel a pit bull dog owner to obtain an enclosed pen or liability insurance, pursuant to R.C. 955.22, before releasing the dog into the custody of its owner.
5. A county dog warden may require an owner of a pit bull dog to obtain an enclosed pen and liability insurance, pursuant to R.C. 955.22, even when there is neither a confinement violation nor a bite or attempted bite. However, such warden may not confiscate the dog, if the owner fails to comply with the mandates of R.C. 955.22.

**To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, November 6, 1989**

I have before me your request for my opinion regarding the language of R.C. 955.11(A)(4)(a)(iii) concerning pit bull dogs and the duties of the county dog warden under R.C. 955.22. Based upon the information provided, I have rephrased your questions as follows:

1. For purposes of R.C. 955.11(A)(4)(a)(iii), what type of dog is referred to by the phrase "pit bull dog"?
2. Who is qualified to identify a pit bull dog and what training, experience, or credentials should such identifier possess?
3. What does the term "prima-facie evidence" mean within the context of R.C. 955.11(A)(4)(a)(iii)?
4. When there is a confinement violation and subsequent impoundment involving a pit bull dog which is not preceded by a bite or an attempted bite, may a county dog warden compel the owner to obtain an enclosed pen and liability insurance before releasing the dog into the custody of its owner?
5. When there is neither a confinement violation nor a bite or attempted bite, may a county dog warden require an owner of a pit bull dog to obtain an enclosed pen and liability insurance, or confiscate such dog?

Your first question asks what type of dog is referred to by the phrase "pit bull dog." R.C. 955.11(A)(4), which defines vicious dog, provides that:

"Vicious dog" means a dog that, without provocation and subject

to division (A)(4)(b) of this section, meets any of the following:

- (i) Has killed or caused serious injury to any person;
- (ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog.

(iii) *Belongs to a breed that is commonly known as a pit bull dog.* The ownership, keeping, or harboring of such a breed of dog shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog.

(b) "Vicious dog" does not include either of the following:

(i) A police dog that has killed or caused serious injury to any person or that has caused injury, other than killing or serious injury, to any person while the police dog is being used to assist one or more law enforcement officers in the performance of their official duties;

(ii) A dog that has killed or caused serious injury to any person while a person was committing or attempting to commit a trespass or other criminal offense on the property of the owner, keeper, or harbinger of the dog. (Emphasis added.)

There is no statutory definition for "pit bull dog." Where the General Assembly has not provided or attached a specific meaning to a term, the common or plain meaning of the term is used. R.C. 1.42; e.g., *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) ("any term left undefined by statute is to be accorded its common, everyday meaning"); *Eastman v. State*, 131 Ohio St. 1, 1 N.E.2d 140 (syllabus, paragraph five) ("[w]ords in common use will be construed in their ordinary acceptation and significance and with the meaning commonly attributed to them"), *appeal dismissed mem. for the want of a final judgment*, 299 U.S. 505 (1936).

*Webster's Third New International Dictionary* 1724 (3rd ed. 1971) defines "pit bull" or "pit bullterrier" as a "bullterrier." A "bullterrier" is "a short-haired terrier of a breed originated in England by crossing the bulldog with terriers to develop a dog of speed, hardihood, and powerful bite for use in dog fights, dogs of this breed having great courage and strength but being built on the trim lines of a terrier." *Id.* at 295. Additionally, the Twelfth District Court of Appeals in Ohio in *State v. Robinson*, 44 Ohio App. 3d 128, 132-33, 541 N.E.2d 1092, 1096-97 (Clermont County 1989), summarized that:

Although the formulation of a definition of "pit bull" may be as equally enigmatic, it is clear that such dogs have certain physical characteristics in common. *They are basically "bullterriers"....*

....  
We are convinced that the language of R.C. 955.11 does not refer to purebred pit bull dogs. Rather, the phrase "commonly known as a pit bull dog" refers to those animals which display the physical characteristics generally conforming to the various standards normally associated with pit bulls. It is apparent that "pit bull" does not refer to one particular breed, but encompasses several breeds or a cross-section thereof. (Emphasis added.)

*See also Lima v. McFadden*, No. 1-85-22 (Allen County June 30, 1986) (unreported) (pit bull means bullterrier). Accordingly, I find that the phrase "pit bull dog" as used in R.C. 955.11(A)(4)(a)(iii) refers to those animals which display the general physical characteristics of a bullterrier. *Accord State v. Robinson; Lima v. McFadden.*

Your second question asks who is qualified to identify a pit bull dog and what training, experience, or credentials should such identifier possess. R.C. Chapter 955 imposes various responsibilities upon the owners of pit bull dogs, the enforcement of which requires the ability to identify a pit bull dog. For example, R.C. 955.22, which is set forth, *infra*, mandates the manner in which vicious dogs are to be confined and the procurement of liability insurance by vicious dog owners. Pursuant to that section, vicious dog has the same meaning as in R.C. 955.11. R.C. 955.22(A). As stated above, vicious dog includes pit bull dogs. R.C. 955.11(A)(4)(a)(iii). As such, R.C. 955.22 mandates the manner in which pit bull dogs are to be confined and the procurement of liability insurance by pit bull dog owners.

Additionally, R.C. 955.11(D), which requires the filing of a form furnished by the county dog warden upon the transfer of a vicious dog, provides that:

Within ten days after the transfer of ownership or possession of any dog, if the seller or other transferor of the dog has knowledge that the dog is a dangerous or vicious dog, he shall give to the buyer or other transferee, the board of health for the district in which the buyer or other transferee resides, and the dog warden of the county in which the buyer or other transferee resides, a completed copy of a written form on which the seller shall furnish the following information:

- (1) The name and address of the buyer or other transferee of the dog;
- (2) The age, sex, color, breed, and current registration number of the dog.

The statute further requires a seller or other transferor of a dangerous or vicious dog to provide information as to whether the dog ever attacked, bit, injured, or killed a person. For purposes of division (D) of R.C. 955.11, vicious dog includes any dog which "[b]elongs to a breed that is commonly known as a pit bull dog." R.C. 955.11(A)(4)(a)(iii). Hence, a seller or other transferor of a dog, who has knowledge that a dog is a pit bull dog must complete a form furnished by the county dog warden and give completed copies of such form to the buyer or other transferee, and the appropriate board of health and county dog warden.

A county dog warden, pursuant to R.C. 955.12, is charged with the enforcement of R.C. 955.11 and R.C. 955.22. A county dog warden, therefore, is authorized to identify pit bull dogs in order to enforce the provisions of these sections against the owners, sellers or other transferors of such dogs. *See generally State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) ("[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed"), *aff'd sub nom. State of Ohio on Relation of Davis v. Hildebrant*, 241 U.S. 565 (1916). Further, any law enforcement officer charged with the duty to enforce R.C. 955.11 and R.C. 955.22 is authorized to identify pit bull dogs. Accordingly, I find that those individuals charged with the enforcement of R.C. 955.11 and R.C. 955.22 are authorized to identify pit bull dogs in order to enforce the provisions of such sections against the owners, sellers or other transferors of such dogs.

I note that neither R.C. 955.11 nor R.C. 955.22 sets forth any training, experience, or credentials required for identifiers of pit bull dogs. Thus, the General Assembly requires no training, experience, or credentials in order to identify pit bull dogs. As the court in *Vanater v. Village of South Point*, No. C-1-87-708, slip op. at 9 (S.D. Ohio, W.D. June 29, 1989) (*Lexis*, Genfed library, Courts file), stated while discussing the constitutionality of an ordinance of the Village of South Point prohibiting the owning or harboring of pit bullterriers or other vicious dogs within the limits of the village:

An ordinary person could easily refer to a dictionary, a dog buyer's guide or any dog book for guidance and instruction; also, the American Kennel Club and United Kennel Club have set forth standards for Staffordshire Bull Terriers and American Staffordshire [sic] Terriers to help determine whether a dog is described by any one of them.

Hence, identifiers of pit bull dogs are not required to have any special training, experience, or credentials.

I caution, however, that "[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878); *see also* 1988 Op. Att'y Gen. No. 88-087; 1987 Op. Att'y Gen. No. 87-051. Consequently, I further conclude that any identification of a pit bull dog by an individual charged with the enforcement of R.C. 955.11 and R.C. 955.22 must be reasonable.

Question number three asks what does the term "prima-facie evidence" mean within the context of R.C. 955.11(A)(4)(a)(iii). Pursuant to this section, the

ownership, keeping, or harboring of a pit bull dog "shall be prima-facie evidence of the ownership, keeping, or harboring of a vicious dog."

*Black's Law Dictionary* 1071 (5th ed. 1979) defines prima facie evidence as:

Evidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Prima facie evidence is evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence....

Prima facie evidence is evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue....

Prima facie evidence, thus, is evidence which establishes a fact in issue, unless overcome by other evidence to the contrary. As stated above, it is held that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42; e.g., *State v. Dorso*; *Eastman v. State*. Consequently, the ownership, keeping, or harboring of a pit bull dog is evidence sufficient to establish that an individual is the owner, keeper, or harbinger of a vicious dog, unless overcome by other evidence to the contrary.

Your fourth question asks whether a county dog warden may compel a pit bull dog owner to obtain an enclosed pen<sup>1</sup> and liability insurance before releasing an impounded pit bull dog into the custody of its owner, when there has been no bite or attempted bite. A county dog warden has only those powers which are prescribed by statute or necessarily implied therefrom, in order to perform the duties entrusted to him. *Perkins v. Hattery*, 106 Ohio App. 361, 362, 155 N.E.2d 73, 75 (Hardin County 1958) (per curiam); 1960 Op. Att'y Gen. No. 1574, p. 527 at 530.

R.C. 955.18, which authorizes the release of impounded dogs, provides that:

*Any dog that is seized and impounded under sections 955.12, 955.15, and 955.17 of the Revised Code may be redeemed by its owner, keeper, or harbinger at any time prior to the expiration of the applicable redemption period as specified in sections 955.12 and 955.16 of the Revised Code, upon payment to the dog warden or poundkeeper of all costs assessed against the animal and upon providing the animal with a valid registration tag if it has none. (Emphasis added.)*

The language of R.C. 955.18, explicitly states that any dog may be redeemed by its owner at any time before the expiration of the applicable redemption period, provided the owner of such dog pays all costs and receives a valid registration tag if his dog has none. Since R.C. 955.18 neither requires nor authorizes a county dog warden to retain custody over a pit bull dog until its owner furnishes an enclosed pen or liability insurance, I find that a county dog warden must release an impounded pit bull dog to its owner upon payment of all costs and upon providing such dog with a valid registration tag if the dog has none. See generally *State ex rel. Celebrezze v. Allen Cty. Bd. of Comms.*, 32 Ohio St. 3d 24, 27, 512 N.E.2d 332, 335 (1987) ("It is a cardinal rule of construction that where a statute is clear and unambiguous, there is 'no occasion to resort to the [sic] other means of interpretation'" (quoting *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph two))); *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite

<sup>1</sup> A vicious dog such as a pit bull dog, R.C. 955.11, while on the premises of its owner, is required to be securely confined "at all times in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top." R.C. 955.22(D)(1). Therefore, for purposes of this opinion, I assume that an "enclosed pen" means "a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top." *Id.*

meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted"). I conclude, accordingly, that when there is a confinement violation and subsequent impoundment involving a pit bull dog, which is not preceded by a bite or an attempted bite, a county dog warden may not compel a pit bull dog owner to obtain an enclosed pen or liability insurance, pursuant to R.C. 955.22, before releasing the dog into the custody of its owner.

Your final question asks whether a county dog warden may require an owner of a pit bull dog to obtain an enclosed pen and liability insurance, or confiscate such dog, when there is neither a confinement violation nor a bite or attempted bite. R.C. 955.12 charges a county dog warden and his deputies with the enforcement of R.C. 955.01 to R.C. 955.27, R.C. 955.29 to R.C. 955.38, and R.C. 955.50. *See generally* 1985 Op. Att'y Gen. No. 85-042; 1974 Op. Att'y Gen. No. 74-084. Pursuant to R.C. 955.12, a county dog warden and his deputies "have the same police powers as are conferred upon sheriffs and police officers in the performance of their duties as prescribed by sections 955.01 to 955.27, 955.29 to 955.38, and 955.50 of the Revised Code." A county dog warden, accordingly, is responsible for the enforcement of R.C. 955.22, which provides in part:

(A) As used in this section, "dangerous dog" and "vicious dog" have the same meanings as in section 955.11 of the Revised Code.

....  
(D) *No owner, keeper, or harbinger of a dangerous or vicious dog shall fail to do either of the following, except when the dog is lawfully engaged in hunting or training for the purpose of hunting, accompanied by the owner, keeper, harbinger, or a handler:*

(1) While that dog is on the premises of the owner, keeper, or harbinger, *securely confine it at all times in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top, except that a dangerous dog may, in the alternative, be tied with a leash or tether so that the dog is adequately restrained;*

(2) While that dog is off the premises of the owner, keeper, or harbinger, keep it on a chain-link leash or tether that is not more than six feet in length and additionally do at least one of the following:

(a) Keep that dog in a locked pen which has a top, locked fenced yard, or other locked enclosure which has a top;

(b) Have the leash or tether controlled by a person who is of suitable age and discretion or securely attach, tie, or affix the leash or tether to the ground or a stationary object or fixture so that the dog is adequately restrained and station such a person in close enough proximity to that dog so as to prevent it from causing injury to any person;

(c) Muzzle that dog.

(E) *No owner, keeper, or harbinger of a vicious dog shall fail to obtain liability insurance with an insurer authorized to write liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of interest and costs, of not less than fifty thousand dollars because of damage or bodily injury to or death of a person caused by the vicious dog. (Emphasis added.)*

Vicious dog, as defined in R.C. 955.11(A)(4), includes pit bull dogs. As such, R.C. 955.22 requires an owner of a pit bull dog to secure such dog in an enclosed pen and obtain liability insurance. *See generally Dorrian v. Scioto Conserv. Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage"). Clearly, since a county dog warden is charged with the enforcement of R.C. 955.22, he may require an owner of a pit bull dog to obtain an enclosed pen and liability insurance. If a pit bull dog owner fails to furnish an enclosed pen or liability insurance, as required by R.C. 955.22, a county dog warden may arrest such owner. *See generally* Op. No. 74-084 at 2-349 ("R.C. 955.12 confers the power to arrest violators, of the provisions which he is charged with enforcing, upon the county dog warden"). Further, a pit bull dog owner who is arrested and convicted for failure to comply with the confinement and insurance provisions of R.C. 955.22 is subject to the penalties prescribed in R.C. 955.99.

A county dog warden, however, does not have the authority to confiscate an owner's pit bull dog for failure to comply with the confinement and insurance provisions of R.C. 955.22. A county dog warden and his deputies are required, pursuant to R.C. 955.12, to:

make a record of all dogs owned, kept, and harbored in their respective counties. They shall patrol their respective counties and seize and impound on sight all dogs found running at large and all dogs more than three months of age found not wearing a valid registration tag, except any dog that wears a valid registration tag and is: on the premises of its owner, keeper, or harborer, under the reasonable control of its owner or some other person, hunting with its owner or its handler at a field trial, kept constantly confined in a registered dog kennel, or acquired by, and confined on the premises of, an institution or organization of the type described in section 955.16 of the Revised Code. A dog that wears a valid registration tag may be seized on the premises of its owner, keeper, or harborer and impounded only in the event of a natural disaster. If a dog warden has reason to believe that a dog is being treated inhumanely on the premises of its owner, keeper, or harborer, the warden shall apply to the court of common pleas for the county in which the premises are located for an order to enter the premises, and if necessary, seize the dog. If the court finds probable cause to believe that the dog is being treated inhumanely, it shall issue an order.... Whenever any person files an affidavit in a court of competent jurisdiction that there is a dog running at large that is not kept constantly confined either in a registered dog kennel or on the premises of an institution or organization of the type described in section 955.16 of the Revised Code or that a dog is kept or harbored in his jurisdiction without being registered as required by law, the court shall immediately order the warden to seize and impound the animal. Thereupon the warden shall immediately seize and impound the dog complained of.

The language of R.C. 955.12, explicitly sets forth the circumstances under which a county dog warden is to impound a dog. A dog on the premises of its owner, keeper, or harborer is subject to confiscation only in the event of a natural disaster, if a court finds probable cause to believe that a dog is being treated inhumanely, or if a dog does not have a valid registration tag. Under the doctrine of *expressio unius est exclusio alterius*, "the express mention of a person, thing or consequence in a statute is tantamount to an express exclusion of all others." *State v. Amman*, 78 Ohio App. 10, 12-13, 68 N.E.2d 816, 818 (Hamilton County 1946); *accord State ex rel. Boda v. Brown*, 157 Ohio St. 368, 372, 105 N.E.2d 643, 646 (1952) (per curiam). The General Assembly has provided the specific instances when a county dog warden is to impound a dog. As a result, a county dog warden has no authority to confiscate a pit bull dog, when its owner fails to provide an enclosed pen or liability insurance.<sup>2</sup>

Therefore, it is my opinion and you are hereby advised that:

1. "Pit bull dog" as used in R.C. 955.11(A)(4)(a)(iii) refers to those animals which display the general physical characteristics of a bullterrier.
2. Any individual charged with the enforcement of R.C. 955.11 and R.C. 955.22 is qualified to identify pit bull dogs in order to enforce the provisions of such sections against the owners, sellers or other transferors of such dogs. Any identification, however, must be reasonable.

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<sup>2</sup> Pursuant to R.C. 955.221, counties, townships, and municipal corporations may adopt and enforce local ordinances or resolutions to control dogs. I assume, for purposes of this opinion that there are no local ordinances or resolutions which allow a county dog warden to confiscate a pit bull dog when its owner fails to provide an enclosed pen or liability insurance.

3. Pursuant to R.C. 955.11(A)(4)(a)(iii), the ownership, keeping, or harboring of a pit bull dog is evidence sufficient to establish that an individual is the owner, keeper, or harbinger of a vicious dog, unless overcome by other evidence to the contrary.
4. When there is a confinement violation and subsequent impoundment involving a pit bull dog, which is not preceded by a bite or an attempted bite, a county dog warden may not compel a pit bull dog owner to obtain an enclosed pen or liability insurance, pursuant to R.C. 955.22, before releasing the dog into the custody of its owner.
5. A county dog warden may require an owner of a pit bull dog to obtain an enclosed pen and liability insurance, pursuant to R.C. 955.22, even when there is neither a confinement violation nor a bite or attempted bite. However, such warden may not confiscate the dog, if the owner fails to comply with the mandates of R.C. 955.22.