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SYLLABUS:

Under the authority of Sections 951.02, 951.11 and 955.26, Revised Code, dog wardens or a humane society acting as such pursuant to a contract have authority to seize and impound stray dogs, both licensed and unlicensed, within the areas where a rabies quarantine is in effect.

Columbus, Ohio, March 21, 1963

Hon. Earl W. Allison
Prosecuting Attorney
Franklin County
Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“On July 25, 1960, your predecessor in office, in 1960 O.A.G. No. 1574, ruled that county dog wardens have no authority to seize and impound dogs validly registered under the provisions of Sections 955.01 to 955.27, Revised Code, commonly referred to as ‘licensed dogs.’

“While we agree with the basis interpretations of the *existing* state law set forth in that opinion, I respectfully request your opinion on the following additional question.

“ In the event that a county board of health has imposed a rabies quarantine pursuant to Section 955.26 of the Revised Code, as currently exists in Franklin County, do the county dog wardens, (or a humane society acting as county dog wardens pursuant to a contract) have authority to seize and impound stray dogs, both licensed or unlicensed, within the areas where such rabies quarantine is in effect?”

“We have learned that this problem is also confronting other counties in the state of Ohio, and therefore request your opinion so that we may have a uniform interpretation and enforcement of the ‘dog laws’ throughout this state.”

Your question must be answered by a consideration of the numerous statutes bearing upon the rights, duties and powers of dog wardens, police officials and individuals and their application in situations of emergency.

Section 955.15, Revised Code, provides:

“The board of county commissioners shall provide nets and other suitable devices for the taking of dogs in a humane manner, provide a suitable place for impounding dogs, make proper provision for feeding and caring for the same, and provide humane devices and methods for destroying dogs. In any county in which there is a society for the prevention of cruelty to children and animals, having one or more agents and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs, the board need not furnish a dog pound, but the county dog warden shall deliver all dogs seized by him and his deputies to such society at its animal shelter, there to be dealt with in accordance with law. The board shall provide for the payment of reasonable compensation to such society for its services so performed out of the dog and kennel fund. The board may designate and appoint any officers regularly employed by any society organized under sections 1717.02 to 1717.05, inclusive, of the Revised Code, to act as county dog warden or deputies for the purpose of carrying out sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code, if such society whose agents are so employed owns or controls a suitable place for keeping and destroying dogs.”

Section 955.12, Revised Code, provides in part:

“The board of 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 board deems necessary to enforce sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code.

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Section 951.02, Revised Code, provides in part:

“A person, firm, or corporation which is the owner or has charge of horses, mules, cattle, sheep, goats, swine, dogs, or geese, shall not permit them to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land.

“No such person, firm, or corporation shall cause such animals to be herded, kept, or detained for the purpose of grazing on premises other than those owned or occupied by the owner or keeper thereof, except as provided in section 951.04 of the Revised Code.

“The running at large of any such animal in or upon any of the places mentioned in this section is prima-facie evidence that it is running at large in violation of this section.”

Section 951.11, Revised Code, provides:

“A person finding an animal at large in violation of section 951.02 of the Revised Code, may, and a constable of a township, township trustee or township highway superintendent, or the street commissioner in a township, or village, or a police officer of a city or a marshal of a village, on view or information, shall, take and confine such animal, forthwith giving notice thereof to the owner, if known, and, if not known, by posting notices describing such animal therein in at least three public places within the village, city, or township wherein the animal was found. If the owner does not appear and claim the animal and pay all charges for so taking, advertising, and keeping it within ten days from the date of such notice, such person or official shall have a lien therefor and the animal may be sold at public auction as provided in section 1311.49 of the Revised Code, and the residue of the proceeds of sale shall be paid and deposited by the treasurer in the general funds of the said village, city, or township.”

Section 955.26, Revised Code, as amended effective September 29, 1961, reads in part as follows:

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

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(Emphasis added)

Without attempting to disturb the basic principles established in Opinion No. 1574, Opinions of the Attorney General for 1960, I believe that the provisions of Sections 951.02 and 951.11 considered together would empower *any person* to take into custody a stray dog whether or not it was licensed.

The excerpt from Section 955.26, Revised Code, *supra*, squarely places the dog wardens in a position to assist in enforcement of quarantine orders. To construe otherwise would seriously impair the power of health officials to carry out the intended purpose of the quarantine and would not be in consonance with well established principles relating to community health, safety and welfare. I believe that such assistance would include the seizing and impounding by dog wardens of stray dogs whether licensed or unlicensed. I further believe that this provision of Section 955.26, Revised Code, distinguishes the situation contained in your request from Opinion No. 1574, Opinions of the Attorney General for 1960.

I therefore conclude and you are so advised that under the authority of Sections 951.02, 951.11 and 955.26, Revised Code, dog wardens or a humane society acting as such pursuant to a contract have authority to seize and impound stray dogs, both licensed and unlicensed, within the areas where a rabies quarantine is in effect.

Respectfully,

WILLIAM B. SAXBE

Attorney General