

**Note from the Attorney General's Office:**

1927 Op. Att'y Gen. No. 802, vol. II, p. 1411,  
syllabus overruled by 2013 via Am. Sub.  
H.B. 59, which enacted R.C. 955.121.

This language might well have been applied to the sale of the interests concerning which you inquire.

I am therefore of the opinion that any instrument evidencing an interest in oil and gas leases and mineral rights and royalties, which property is held in the name of certain designated trustees acting for and on behalf of an association of individuals, is a security within the definition of Section 6373-1 of the General Code of Ohio and the solicitation of subscriptions to membership in such an association is a sale of securities.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

802.

COUNTY SHERIFF—CANNOT LEGALLY BE APPOINTED DOG WARDEN.

SYLLABUS:

*The sheriff of a county can not legally be appointed to the position of dog warden.*

COLUMBUS, OHIO, July 28, 1927.

HON. J. E. PATRICK, *Prosecuting Attorney, New Philadelphia, Ohio.*

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

“House Bill 164, passed April 21, 1927, provides for the appointment of a dog warden and the establishment of a dog pound by the commissioners.

If in your opinion it can be properly done, our officials would like to appoint the sheriff as dog warden and have the duties performed by his deputies. Will you please advise me whether or not this can be done?”

Prior to the enactment of House Bill No. 164 by the Eighty-seventh General Assembly, Section 5652-7, General Code, provided as follows:

“County sheriffs shall patrol their respective counties, seize and impound on sight all dogs more than three months of age, except dogs kept constantly confined in a registered dog kennel found not wearing valid registration tags. Whenever any person shall make an affidavit before a justice of the peace, mayor or a judge of the municipal court that a dog more than three months of age and not kept constantly confined in a registered dog kennel is not wearing a valid registration tag and is at large, or is kept or harbored in his jurisdiction, such justice of the peace, mayor or a judge of the municipal court shall forthwith order the sheriff of the county to seize and impound such animal. Thereupon such sheriff shall immediately seize and impound such dog so complained of. Such sheriff shall forthwith give notice to the owner of such dog if such owner be known to the sheriff, 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 sheriff, 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.”

By the provisions of House Bill No. 164, Section 5652-7, General Code, was amended to read as follows:

"County commissioners shall appoint or employ a county dog warden and deputies to such number, for such period 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 Sections 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 provision 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."

It will be observed that prior to the enactment of House Bill No. 164 sheriffs were charged with certain duties relative to the administration of the law relating to the licensing and registration of dogs. By the amendment the legislature created new positions, those of dog warden and deputy dog warden, and provided for the incumbents of these new positions, the same duties which formerly devolved on the sheriff with respect to the dog registration law. At the same time the legislature specifically re-

pealed the law (formerly Section 5652-7), which had charged the sheriff with these duties.

The cardinal rule for construction of all laws is to determine and give effect to the intention of the legislature which enacted the law. It seems to me that when the legislature in specific terms repeals a law which provides that certain duties shall be performed by a certain public officer and simultaneously enacts a law charging another officer with the performance of these same duties, we can get no other meaning from its action in so doing than that it intended that the two offices should be filled by two different distinct persons.

It will also be noted that House Bill No. 164 apparently contemplates the placing of the responsibility for the administration of the dog registration law on the county commissioners who are empowered to appoint or employ a county dog warden and such deputy dog wardens as they shall deem necessary, and to fix their compensation, whereas under the previous law the sheriff appointed his deputies, with the approval of the Common Pleas Court. Section 2830, General Code.

It also seems apparent from an examination of the act that it was intended thereby to provide that the expense incident to the administration of the act, including the compensation of the county dog warden, is to be paid from the special fund known as the dog and kennel fund consisting of the money received from the registration fees provided for in the act, whereas formerly the sheriff for his duties in the administration of the law was paid from the general county fund.

In connection with the question here under discussion, your attention is directed to two former opinions of the Attorney General, namely, an opinion rendered under date of May 15, 1915, reported in the Opinions of the Attorney General, 1915, Vol. I, page 758, the other being rendered under date of January 14, 1918, reported in the Opinions of the Attorney General, 1918, Vol. I, page 120.

In the latter of these opinions it was held that "the sheriff of a county may not be appointed or act as probation officer."

In an earlier opinion it was held that:

"It is against public policy for a person acting as sheriff to be appointed as humane officer."

In the opinion it was said as follows:

"There are various duties placed upon the humane officer which are also placed upon the sheriff of the county. There are, however, other duties placed upon the humane officer which cannot be performed by the sheriff of the county, as for instance, under Section 10081 the humane officer, if he deems it for the best interest of a child, because of cruelty inflicted upon it, or of its surroundings, may remove it from the possession and control of the parents or persons having charge thereof summarily. Such a right is in no way granted by statute to the sheriff of the county.

There are also various duties that may be performed by the sheriff that cannot be performed by a humane officer.

There is no statutory inhibition against a sheriff acting as humane officer, nor against a humane officer acting as sheriff; nor am I able to find that the one office is in any way a check upon the other.

However, under the provisions of Section 2833 G. C., the sheriff is required to 'preserve the public peace.' In view of the fact that the sheriff is made the conservator of the public peace of his county, he should be accessible both day and night and be at all times subject to call.

The law making it the duty of the sheriff to preserve the public peace, and, therefore, be at all times subject to call differentiates said officer from the other county officers, and being so subject I am of the opinion that it is against public policy that he should hold any other public office which would interfere with his duties as sheriff, as above indicated.

Under the provisions of the statutes governing humane societies it is provided that the compensation for the humane agent shall be fixed, so far as the county is concerned, by the county commissioners at a monthly salary of not less than twenty-five dollars. Since the sheriff has certain duties to perform which are likewise placed upon the humane agent, it could be well said that in a given case he was receiving double compensation for the services performed and this, I believe, is against public policy.

I am, therefore, of the opinion that it is against public policy for a sheriff to be appointed as humane officer."

There is no specific statutory inhibition upon a sheriff acting as dog warden or upon a dog warden acting as sheriff; nor do I think the duties of the two positions are such as to make them incompatible at common law. Upon consideration, however, of the apparent intent of the legislature, I am constrained to the opinion that a county sheriff can not legally hold the position of dog warden, and it of course follows that the deputy sheriffs as such are not empowered to perform the duties of dog warden or deputy dog warden.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

803.

SCHOOLS—RELATIVE TO THE DIVISION OF THE FUNDS OR INDEBTEDNESS OF A RURAL SCHOOL DISTRICT AND A CITY OR VILLAGE SCHOOL DISTRICT WHEN SUCH RURAL DISTRICT IS ANNEXED TO SUCH CITY OR VILLAGE SCHOOL DISTRICT.

SYLLABUS:

*There is no provision of law whereby a division may be made of the funds or indebtedness of a rural school district, and a city or village school district, when a portion of the rural school district automatically becomes a part of the city or village school district, by reason of the annexation by the municipality comprising the city or village school district of a portion of the territory comprising the rural school district, unless there is indebtedness on the school property located in the territory annexed, in which event the board of education of the city or village school district shall assume such indebtedness.*

COLUMBUS, OHIO, July 28, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

"In July, 1926, a portion of Van Buren township was annexed to the village of Oakwood in Montgomery county. No revision was made in the tax duplicate with the result that the Oakwood school district did not receive any benefits from either the December, 1926 or June, 1927 tax collections.