

In this connection Section 2293-1, General Code, provides that:

“ ‘Permanent improvement’ or ‘improvement’ shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways.”

Sections 3298-1 et seq., General Code, authorize the board of township trustees of any township to construct, reconstruct, resurface or improve any public road or roads or part thereof under the jurisdiction of such township.

Assuming therefore, in answer to your second question, that the proposed township road construction or reconstruction therein referred to is a permanent improvement within the meaning of the provisions of Section 2293-1, General Code, above quoted, the trustees of the township would have power to issue the bonds of the township for the purpose of constructing such improvement under the authority of Section 2293-2, General Code. It therefore follows that in such case the road construction or improvement referred to in your question would be the construction of a permanent improvement for which the board of township trustees as the taxing authority of the subdivision could submit to the electors the question of a tax levy outside of the fifteen mill limitation for the purpose of paying the compensation, damages, costs and expenses of such improvement. Your second question is therefore accordingly answered in the affirmative.

The conclusions reached by me in this opinion are in accord with those of Opinion No. 2404 addressed to Honorable J. R. Pollock, Prosecuting Attorney, Defiance, Ohio, under date of July 30, 1928, a copy of which is herein enclosed.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2407.

DOGS—PENALTY PRESCRIBED UNDER SECTION 5652-7c, GENERAL CODE, APPLIES ONLY TO SELLERS—WHEN SUBJECT TO PENALTY

SYLLABUS:

1. *The penalty prescribed in Section 5652-7c, General Code, does not apply to the purchaser of a dog but only to the seller.*
2. *The county auditor or county dog warden may not examine and require an applicant for dog registration to divulge the name of the person from whom he purchases the dog.*
3. *Neither the county auditor nor county dog warden may require an applicant for dog registration to sign an affidavit that he did not own said dog on January 1, 1928.*
4. *Every person who owns, keeps or harbors a dog more than three months old prior to January 1, 1928, and fails to register such dog before January 1, 1928, is guilty of a misdemeanor and is subject to the penalty prescribed in Section 5652-14, General Code.*
5. *The owner, keeper or harbinger of a dog more than three months old prior to January 1, 1928, who registers the same after January 1, 1928, either before or after January 20, 1928, is still subject to the fine and costs as provided in Section 5652-14, General Code, if convicted.*

COLUMBUS, OHIO, June 30, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, with which you enclosed a letter from one of your examiners asking five questions with reference to the construction of the dog registration law. The letter from the examiner reads as follows:

“We find that many of the people making application for the registration of dogs since January 20, 1928, state that they purchased the dog since January 1, 1928, and that such dog was not purchased from outside the state.

We understand from the Attorney General's Opinion No. 1720 that no penalty can be collected in such cases and that the auditor must register such dogs. We understand that the owner on January 1, 1928, (usually an unknown person) is subject to a fine for failure to register as provided in Section 5652-14 G. C. and we also understand that the person who sells the dog (usually an unknown person) is subject to a fine for failure to comply with the provisions of Section 5652-7c in not furnishing a transfer certificate.

We believe that many of the persons stating that they did not own the dog on January 1, are telling falsehoods for the purpose of escaping the penalty of \$1.00 and we wish to know what may be done in the way of obtaining truthful information.

Question 1. Does the penalty prescribed in Section 5652-7c apply to the purchaser of a dog as well as to the seller?

Question 2. Can the county auditor or the county dog warden require an applicant for dog registration to divulge the name of the person from whom he purchased the dog?

Question 3. Can the county auditor or the county dog warden require an applicant to sign an affidavit that he did not own the dog on January 1, 1928?

Question 4. Is every person who owns, keeps or harbors a dog more than three months old on January 1, 1928, and who fails to register such dog before January 1, 1928, guilty of a misdemeanor and subject to the penalty prescribed by Section 5652-14, General Code?

Question 5. If as in No. 4, such dog is registered after January 1, 1928, either before or after January 20, 1928, would the owner, keeper or harborer of such dog be subject to fine after such dog was registered?”

1. In the above letter it is stated that persons making application for the registration of dogs since January 20, 1928, say that they purchased the dog after January 1, 1928, and that the dog was not purchased from outside the state. The letter then refers to Opinion No. 1720, rendered under date of February 16, 1928, to your Bureau, holding that no penalty can be collected in such case and that the auditor must register such dogs. The belief is then suggested that many of the persons stating that they did not own the dog on January 1st are telling falsehoods for the purpose of escaping the penalty and the question is asked : (1) “Does the penalty prescribed in Section 5652-7c, General Code, apply to the purchaser of a dog as well as to the seller?”

Section 5652-7c, General Code, reads as follows:

“Upon the transfer of ownership of a dog the person selling such dog shall give the buyer a transfer of ownership certificate which shall be signed by the seller, such certificate shall contain the licensed number of such dog,

the name of the person selling the dog and a brief description of the dog sold. Blank forms of such certificate may be obtained from the county auditor, a transfer of ownership shall be recorded by the county auditor upon presenting a transfer of ownership certificate signed by the former owner and accompanied by a fee of twenty-five cents. Whoever fails to comply with the provisions of this section upon conviction shall be fined not less than five dollars, nor more than twenty-five dollars."

You will note that under the provisions of this section the person selling such dog shall give the buyer a transfer of ownership certificate, the section expressly providing what such certificate shall contain and that the transfer of ownership certificate shall be recorded by the county auditor upon presentation. The section concludes with the provision that upon conviction a person failing to comply with the provisions of said section shall be fined.

There is nothing in this section requiring the buyer of a dog to do anything except to pay a fee of twenty-five cents when he presents the transfer of ownership certificate, but if he has received no transfer of ownership certificate this provision evidently does not apply. As this is a penal section, it must be construed strictly and under a strict construction of the statute the penalty prescribed therein does not apply to the purchaser of a dog.

2. Your second question is: "Can the county auditor or the county dog warden require an applicant for dog registration to divulge the name of the person from whom he purchased the dog."

Section 5652, General Code, provides as follows:

"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, * * * 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. * * * 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 harborer, 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."

This section defines the duties of the owners of dogs applying for registration and does not require the applicant to state the name of the person from whom he purchased the dog.

The duties of the county auditor and of the dog warden and his deputies with respect to the administration of the dog registration law, are set forth in Sections 5652 to 5652-16, inclusive, of the General Code. The sections also define the powers and authority of such officers in the enforcement of such law. It is deemed unnecessary to quote herein these sections, as an examination thereof discloses, that in none of these sections or any other section of the Code, is any one of the officers in question authorized to require persons, whether they be applicants to register dogs or not, to answer questions pertaining to the registration of dogs, either under oath or otherwise. Statutory officers have such powers, and only such powers, as are conferred by

statute; and it is therefore my opinion that neither the county auditor nor the county dog warden may require said applicant to divulge the name of the person from whom said dog was purchased.

3. In your third question you inquire if the county auditor or the county dog warden can "require an applicant for registration to sign an affidavit that he did not own the dog on January 1, 1928." There is nothing in Section 5652, General Code, or any other section requiring an applicant to state under oath that he did not own the dog January 1, 1928. For the reason given in the preceeding paragraph, therefore, I am of the opinion that this statement can not be required, and that the requiring of an affidavit as to same would be beyond the power of the county auditor or county dog warden. This seems especially true since said section does require an affidavit in one specific instance.

4. Your fourth question is as to whether "every person who owns, keeps or harbors a dog more than three months old on January 1, 1928, and who fails to register such dog before January 1, 1928, is guilty of a misdemeanor and subject to the penalty prescribed in Section 5652-14, General Code." I assume from the form of your question that the dog is more than three months old prior to January 1st. Said Section 5652-14, General Code, reads in part as follows:

"Whoever, being the owner, keeper or harbinger 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."

This section provides that whoever fails to file the application for registration required by law, or to pay the legal fee therefor, shall be fined not less than ten dollars nor more than twenty-five dollars and the costs of prosecution and must be read with Section 5652, General Code, above quoted.

It is noted that Section 5654, General Code, *supra*, imposes a penalty of one dollar upon each owner, keeper or harbinger of a dog who fails to file the application for registration on or before the 20th day of January of each year. This provision, however, refers to the penalty, which is required to be collected by the county auditor at the time of making the registration, while Section 5652-14, General Code, provides for the imposition of a fine of not less than ten nor more than twenty-five dollars and the costs of prosecution, in each case where one is convicted of being the owner, keeper or harbinger of a dog more than three months of age, who fails to file the application for registration required by law or to pay the legal fee therefor. This section is general and makes no exceptions, and the only limitation is that the application for registration is required by law. It therefore seems evident that said section applies to each person who owns, keeps or harbors a dog more than three months old on January 1, 1928, and that if such person does not file the application for registration required by law, and pay the fee prescribed, he is guilty of a misdemeanor and is subject to the penalty prescribed in Section 5652-14, General Code.

5. In your fifth question you ask if such dog is registered after January 1, 1928, either before or after January 20, 1928, would the owner, keeper or harbinger of such dog be subject to fine after such dog is registered. As stated in the answer to your question No. 4, the penalty of one dollar provided in section 5652 has no connection with the fine and costs provided in Section 5652-14, and the fact that a person pays a penalty of one dollar to the county auditor when registering a dog does not relieve said person from prosecution and the imposition, if convicted, of a fine and costs under the provisions of section 5652-14, General Code.

Summarizing, it is my opinion that:

1. The penalty prescribed in Section 5652-7c does not apply to the purchaser of a dog but only to the seller.
2. The county auditor or county dog warden may not examine and require an applicant for dog registration to divulge the name of the person from whom he purchases the dog.
3. Neither the county auditor nor county dog warden may require an applicant for dog registration to sign an affidavit that he did not own said dog on January 1, 1928.
4. Every person who owns, keeps or harbors a dog more than three months old prior to January 1, 1928, and fails to register such dog before January 1, 1928, is guilty of a misdemeanor and is subject to the penalty prescribed in Section 5652-14, General Code.
5. The owner, keeper or harbinger of a dog more than three months old prior to January 1, 1928, who registers the same after January 1, 1928, either before or after January 20, 1928, is still subject to the fine and costs as provided in Section 5652-14, General Code, if convicted.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2408.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WEGE MARBLE & TILE COMPANY, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF MARBLE AND TERRAZZO WORK FOR ADDITIONS TO MUSEUM AND LIBRARY BUILDING AT AN EXPENDITURE OF \$9,455.00—SURETY BOND EXECUTED BY THE INDEMNITY INSURANCE COMPANY OF NORTH AMERICA.

COLUMBUS, OHIO, July 30, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for The Ohio State Archaeological and Historical Society, and The Wege Marble & Tile Company, of Columbus, Ohio. This contract covers the construction and completion of all work included under the title of Base Bid as indicated on the drawings and mentioned in the specifications for the Marble and Terrazzo Contract for Additions to Museum and Library Building and Equipment, and calls for an expenditure of nine thousand four hundred fifty-five and no/100ths (\$9,455.00) dollars.

You have also submitted an encumbrance estimate bearing No. 3017, and bearing the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. I note that the amount of the contract is \$9,455.00 while the amount of the encumbrance estimate is \$10,208.00. You have, however, informed me that you are at the present time preparing and having approved a credit encumbrance estimate for the difference between the above amounts. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th