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DOG WARDEN OR OTHER LOCAL OFFICER — NO AUTHORITY TO SHOOT AND MAIM OR KILL A DOG FOUND RUNNING AT LARGE IN VIOLATION OF RABIES QUARANTINE ORDER.

SYLLABUS:

A dog warden or other local officer does not have the authority to shoot and maim or kill a dog found running at large in violation of a rabies quarantine order.

Columbus, Ohio, December 30, 1942.

Hon. Meryl B. Gray, Prosecuting Attorney,
Lebanon, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“In our county a quarantine has been declared in connection with the confinement and disposition of dogs as provided by General Code Section 5652-16. In the enforcement of the quarantine, our officials have been experiencing a great deal of difficulty in confining dogs running at large in violation of the quarantine. My question is as follows: ‘Assuming that a local officer has exercised every reasonable and proper effort to apprehend a dog found running at large in violation of a rabies quarantine and has been unsuccessful, can said officer go to the extreme of actually shooting at and perhaps killing said dogs in the enforcement of said quarantine?’ ”

Section 5652-16 of the General Code, which you cite in your letter, reads as follows:

“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 The quarantine order herein authorized shall be considered an emergency and need not be published.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."

The powers and duties of a dog warden are set out in Section 5652-7 of the General Code which, in so far as is pertinent hereto, reads as follows:

"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."

The authority of a dog warden to destroy a dog was the subject of an opinion of a former Attorney General, which opinion is found in Opinions of the Attorney General, 1937, Volume I, Page 410, and which is directly dispositive of the question which you present. It was pointed out therein that the only authority for the seizure and destruction of a dog is that expressly conferred by statute and that the only statutes providing for such action are Section 5652-6 of the General Code, authorizing the seizure and subsequent possible destruction of a dog found not wearing a valid registration tag, and Section 5838 of the General Code, authorizing the killing of a dog that chases, worries, injures or kills a sheep, lamb, goat, kid, domestic fowl, domestic animal or person.

Furthermore, Section 5652-16, hereinbefore quoted, provides that the rabies quarantine order, "shall consist of the confinement of any dog or dogs on the premises of the owner or in a suitable pound or kennel * * *" and that the penalty for a violation of such rabies quarantine order "shall be the same as provided for the violation of other orders or regulations of the Board of Health." The penalty for the violation of such orders and regulations of the Board of Health is set forth in Section 4414 of the General Code, which section provides:

"Whoever violates any provision of this chapter, or any order or regulation of the board of health made in pursuance thereof, or obstructs or interferes with the execution of such order, or wilfully or illegally omits to obey such order, shall be fined not

to exceed one hundred dollars or imprisoned for not to exceed ninety days, or both, but no person shall be imprisoned under this section for the first offense, and the prosecution shall always be as and for a first offense, unless the affidavit upon which the prosecution is instituted, contains the allegation that the offense is a second or repeated offense.”

I fail to find any authority in the statutes which authorize the destruction of a dog for the sole reason that such dog is running at large in violation of a rabies quarantine order. On the contrary it appears that the Legislature has provided that the penalty for such a violation shall be a fine or imprisonment of an owner of a dog so running at large.

It is, therefore, my opinion that a dog warden or other local officer does not have the authority to shoot and maim or kill a dog found running at large in violation of a rabies quarantine order.

Respectfully,

THOMAS J. HERBERT
Attorney General.