

In specific answer to your inquiries, I am of the opinion that:

1. The Ohio Liquor Control Commission cannot promulgate a rule and regulation requiring class C and class D permittees to purchase beer only from class A and class B permittees.

2. The Ohio Liquor Control Commission, by a rule and regulation promulgated by that administrative body, cannot prohibit holders of class A, class B and class C permits from delivering beer nor can the Commission adopt a rule and regulation which allows only class C permittees who are grocers to deliver beer.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1008.

DOG WARDEN—MAY CARRY CONCEALED WEAPON UPON GIVING BOND.

SYLLABUS:

A dog warden appointed in pursuance of law, being a specially appointed police officer within the meaning of section 12819, General Code, may carry a concealed weapon upon giving a bond as required by that statute.

COLUMBUS, OHIO, June 30, 1933.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge the receipt of a letter from your office over the signature of James B. Miller, Assistant Prosecuting Attorney, requesting my opinion as to whether a county dog warden can carry a concealed weapon.

Sections 5652-7 and 12819, General Code, are pertinent to your inquiry and read:

Sec. 5652-7.

“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 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 livestock 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 provisions 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."

Sec. 12819.

"Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G. C. 12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the authority of said sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the state of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond."

The authority or right to carry a concealed weapon in this state exists only by virtue of the provisions of section 12819, General Code. Opinions of the Attorney General for 1929, pages 767, 768, and Opinions of the Attorney General for 1930, pages 636, 637. A reading of section 12819, General Code, clearly in-

dicates that dog wardens are not included in the police officers expressly designated by the legislature as authorized to carry concealed weapons. Thus, any authority for a dog warden to carry a concealed weapon must be derived from that part of section 12819, General Code, which provides that specially appointed police officers may go armed upon giving a bond as required by that section.

Whether a dog warden is a specially appointed police officer within the meaning of that phrase as contained in section 12819, General Code, is to be determined by the duties and powers conferred upon that officer by the legislature in section 5652-7, General Code. The paramount duty of a dog warden is to enforce the provisions of the dog registration law of this state by keeping a record of all the dogs owned, kept or harbored in a county and to seize and impound all dogs found not wearing a registration tag as required by law. A dog warden, in addition to those and other enumerated duties, is empowered to serve writs and other legal processes issued by a court for the purpose of enforcing the provisions of the dog registration law. The legislature, for the purpose of enforcing and carrying out the duties enumerated in section 5652-7, General Code, has also clothed dog wardens and deputies with police powers similar to those conferred upon sheriffs and police officers. A dog warden, in view of the provisions of section 5652-7, General Code, is in a sense a police officer for certain limited purposes and, being on the same footing as other police officers in the exercise of police powers in the enforcement of the provisions of the dog registration law, it follows that such an officer must be deemed to be a specially appointed police officer within the meaning of that phrase as used in section 12819, General Code.

This conclusion finds support in the Opinions of the Attorney General for 1929, page 767, wherein it was the opinion of the then Attorney General that a probation officer of a juvenile court is a specially appointed police officer within the meaning of section 12819, General Code. That opinion recognized a probation officer of a juvenile court as being a specially appointed police officer having the right to carry a concealed weapon under section 12819, General Code, because that officer, among other duties and powers, had the right to serve legal processes and to make arrests without a warrant or upon view of a violation of any of the provisions of the chapter relating to juvenile courts. Powers similar to those conferred upon probation officers have been conferred upon dog wardens for the purpose of enforcing the dog registration law.

Specifically answering your question, I am of the opinion that a dog warden appointed in pursuance of law, being a specially appointed police officer within the meaning of section 12819, General Code, may carry a concealed weapon upon giving a bond as required by that statute.

Respectfully,

JOHN W. BRICKER,

Attorney General.