

August 11, 2023

The Honorable Jenny Wells  
Licking County Prosecuting Attorney  
20 South Second Street  
Newark, Ohio 43055

SYLLABUS:

2023-008

1. The county dog warden has no mandatory duty to accept and impound unregistered dogs voluntarily brought to the county-operated dog shelter by a non-owner.
2. The county dog warden has the discretion to accept and impound registered or unregistered dogs voluntarily brought to the county-operated dog shelter by a non-owner.



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OPINION NO. 2023-008

The Honorable Jenny Wells  
Licking County Prosecuting Attorney  
20 South Second Street  
Newark, Ohio 43055

Dear Prosecutor Wells:

You have requested an opinion regarding the authority of the county dog warden to accept and impound unregistered dogs dropped off by non-owners. I have framed your questions as follows:

1. Does a dog warden have a mandatory duty to accept and impound unregistered dogs that are brought to the county-operated dog shelter by non-owners?
2. Does the dog warden have the discretion to accept and impound registered or unregistered dogs brought to the county-operated dog shelter by non-owners?

For the reasons that follow, I find that the dog warden has no mandatory duty to accept and impound an unregistered dog from a non-owner. Rather, the warden has the discretion whether to accept or reject receipt of registered or unregistered dogs from a non-owner for impoundment at the county-operated dog shelter.

## I

To answer this question, it is helpful to first outline the duties of the dog warden.

The dog warden is a creature of statute and has both the powers expressly enumerated by statute and those that are “implied as necessary in order to carry out an express power.” 2018 Op. Att’y Gen. No. 2018-007, Slip Op. at 2; 2-62 to 2-63; *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917); *Perkins v. Hattery*, 106 Ohio App. 361, 362, 155 N.E.2d 73 (3d Dist.1958) (dog warden is a creature of statute); (2007 Op. Att’y Gen. No. 2007-009 *overruled* by 2015 Am. Sub. H.B. 64, 585-586, which repealed R.C. 955.29-.38 (dog warden’s investigation into and board of county commissioners’ reimbursement for animals killed by dogs at large)).

The board of county commissioners appoints the dog warden and deputies to enforce R.C. Chapter 955 within the territorial boundaries of the appointing county, including the municipalities within the county. R.C. 955.12; 1984 Op. Att’y Gen. No. 84-034, syllabus, paragraph 1. Alternatively, the board of county commissioners may appoint the county sheriff or a humane society agent to act as the dog warden. R.C. 955.121 (statute enacted in 2013 via Am. Sub. H.B. 59, *overrules* 1927 Op. Att’y Gen. No. 802, vol. II, p. 1411, syllabus, which held that “[t]he sheriff of a county can not [sic] legally be appointed to the position of dog warden”); R.C. 955.15.

Pursuant to R.C. 955.12, the dog warden is primarily responsible for making a record of all dogs “owned, kept, and harbored” in the county and for patrolling the county to seize and impound both registered and un-registered dogs under the following circumstances:

1. On sight for “all dogs found running at large and all dogs more than three months of age found not wearing a valid registration tag”;
2. Pursuant to a court order:
  - a. On application to the court by the dog warden when the warden has reason to believe a dog, on its owner’s property, is being treated inhumanely, and the court finds probable cause for the warden or deputies to enter property and seize a dog; or
  - b. When *any* person files an affidavit in the appropriate court alleging that a dog is “running at large that is not kept constantly confined either in a dog kennel registered under this chapter or one licensed under [R.C. Chapter 956]” or on the premises of a nonprofit special agency, institution, or organization that trains assistance dogs or obtains dogs for teaching or research purposes under R.C. 955.16; or, is in the dog warden’s jurisdiction without being registered.

The dog warden may seize and impound a registered dog that is on the property of its owner, keeper, or harborer only in the event of a natural disaster. R.C. 955.12; (1979 Am. Sub. H.B. 760, 138 Ohio Laws, Part II, 3544, 3545-3546 (expanding the dog warden's enforcement authority to include registered dogs, with limitation) *overrules* 1960 Op. Att'y Gen. No. 1574, syllabus (states that the dog warden has no authority to seize and impound registered dogs), *modifies* 1954 Op. Att'y Gen. No. 4660, syllabus, paragraph 1 (limits authority to unregistered dogs), and *modifies* 1945 Op. Att'y Gen. No. 550, p. 710, 713 (only unregistered dogs may be impounded); and 1979 Am. Sub. H.B. 760, 138 Ohio Laws, Part II, 3544, 3548-3549 *modifies* 1930 Op. Att'y Gen. No. 2385, vol. II, p. 1512, syllabus, paragraph 1 (notice requirements for seized dogs)).

To enforce R.C. 955.01-.27 and 955.50-.53, the dog warden "shall have the same police powers as are conferred upon sheriffs and police officers in the performance of their duties" and may "serve writs and other legal processes issued by any court in their respective counties." R.C. 955.12; *accord In re Compatibility of Cty. Dog Warden & Village Marshal*, 19 Ohio Misc.2d 12, 12, 482 N.E.2d 1355 (C.P.1984).

As a law-enforcement officer, the dog warden is required to "take and confine" an animal found running at large and may enforce abuse and neglect laws involving companion animals under cruelty and abuse laws. R.C. 951.11; (1960 Op. Att'y Gen. No. 1574, at 528-529 *overruled* by 1978 Am. H.B. 531, 137 Ohio Laws, Part II, p. 2910, 2911, which modified language in R.C. 951.11 to apply to all law enforcement officers);

R.C. 959.08 (duty to report); R.C. 959.132(B) (authority to seize and impound a companion animal); *see generally* 1974 Op. Att’y Gen. No. 1974-084 (the dog warden is able to make warrantless arrests and carry a concealed weapon while on duty); 1933 Op. Att’y Gen. No. 1008, vol. II, p. 1017; *State v. Fluhart*, 12th Dist. Clermont No. CA2020-12-068, 2021-Ohio-3560, ¶54-58 (a dog warden is an officer for purposes of R.C. 959.132). However, the dog warden is not a peace officer and therefore cannot seize fighting dogs under R.C. 959.161(B). 1988 Op. Att’y Gen. No. 88-071, syllabus (dog warden is not a peace officer under R.C. 109.71(A) and does not need to be certified). Although dogs are registered with the county auditor, the county auditor may “deputize the wardens or deputies to issue dog licenses.” R.C. 955.12.

To allow for the impoundment of dogs seized, the board of county commissioners is required to provide a “suitable place,” which may be either a county-operated dog shelter or an “animal shelter for dogs,” pursuant to a contract with the operating entity. R.C. 955.15(A)-(B); R.C. 956.01 (“Animal shelter for dogs’ means a facility that keeps, houses, and maintains dogs such as a dog pound operated by a municipal corporation, or by a county under [R.C. Chapter 955], or that is operated by a humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization that is devoted to the welfare, protection, and humane treatment of dogs and other animals”); *see also* R.C. 307.01-.02 (board of county commissioners to provide equipment and buildings to county officers); *see generally*, 2023 Op. Att’y Gen. No. 2023-005.

In the situation that you have presented to me, the dog warden is neither the county sheriff nor a humane agent; and the facility in question is a county-operated dog shelter instead of one operated by a humane society. I limit my analysis to these facts.

## II

Your first question asks whether the dog warden has a mandatory duty to accept and impound unregistered dogs brought to the county-operated dog shelter by a non-owner. For the reasons set forth below, I answer in the negative.

## A

“In any case concerning the meaning of a statute,” the “focus is the text.” *State v. Bortree*, \_\_\_ Ohio St. 3d \_\_\_, 2022-Ohio-3890, ¶10; Scalia & Garner, *Reading Law*, §2, 56 (2012) (“The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means”). The plain language of R.C. 955.12 is clear and contains no mandatory duty for the dog warden to accept unregistered dogs from non-owners.

In fact, there are no provisions in R.C. Chapter 955 or elsewhere in the Revised Code that specifically require a dog warden to accept receipt of any dog—registered or unregistered, from an owner or non-owner—for impoundment. *See, e.g.*, 1969 Op. Att’y Gen. No. 69-026, at 2-47 (“county officials have only such powers and duties as are expressly [sic] given them by statute”). A previous opinion analyzing R.C. 955.16(D), which

permits an owner to “specify in writing that the dog shall not be offered to a nonprofit institution or organization,” found that the statute *implied* that dog owners could drop off registered dogs with the dog warden. 1981 Op. Att’y Gen. No. 81-037, at 2-145. But, this places no *mandatory* duty upon the dog warden to accept the dog.

To faithfully interpret statutory text “we must ... abstain from inserting words where words were not placed by the General Assembly.” *State ex rel. Carna v. Teays Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶18; *accord Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50, 524 N.E.2d 441, syllabus, paragraph 3 (“it is the duty of this court to give effect to the words used, not to delete words used or insert words not used”). Thus, I cannot read into R.C. 955.12 a mandatory duty where one has not been assigned by the General Assembly.

## B

I note further that there is no way to logically read the language of R.C. 955.12 to reach a different conclusion. R.C. 1.47(C); R.C. 1.49(A).

Absent a court order, the dog warden is required to “seize and impound on sight” only “all dogs *found running at large* and all dogs more than three months of age found not wearing a valid registration tag” while on patrol. (Emphasis added.) R.C. 955.12. Does the dog warden “seize” a dog “found running at large” if the dog is brought by an individual to the county-operated



dog shelter? No, so the mandatory duty does not reach that far.

### III

Your second question asks whether the dog warden has the discretion to accept registered or unregistered dogs dropped off by non-owners and impound the dogs in the county-operated dog shelter. Yes, he does.

### A

Examination of R.C. Chapter 955 reveals that the “General Assembly has legislated concerning [the dog warden] in a very general way.” 1994 Op. Att’y Gen. No. 94-018, 2-85. There is no language in this chapter that either requires, as discussed above, or prohibits the dog warden from accepting registered or unregistered dogs from non-owners, and therefore no limitation on the dog warden’s authority should be inferred. 2013 Op. Att’y Gen. No. 2013-026, at 2-255; *accord* 1983 Op. Att’y Gen. No. 83-049, at 2-195 *but see* 1981 Op. Att’y Gen. No. 81-037, at 2-145 (the dog warden cannot impound any animal other than dogs).

The dog warden is a public official and, even though appointed by the board of county commissioners, “is not subject to the direction and control of the board of county commissioners or any other superior authority in his performance of the duties of county dog warden.” 2016 Op. Att’y Gen. No. 2016-025, Slip Op. at 6; 2-283; *State ex rel. Keating v. Skeldon*, 6th Dist. Lucas No. L-08-1414, 2009-Ohio-2052, ¶18; *In re Compatibility of Cty. Dog Warden & Village Marshal*, 19 Ohio Misc.2d

12, 12-13, 482 N.E.2d 1355 (C.P.1984) (the dog warden is “clothed with part of governmental sovereignty”).

When there are no specific statutory directives for how a public official is to discharge enumerated duties, “it necessarily follows that the officer who is required to perform this duty has the implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded.” *State ex rel. Hunt v. Hildebrant*, 93 Ohio St.1, 11-12, 112 N.E. 138 (1915). Additionally, as a law enforcement officer, the dog warden’s duties to seize and impound dogs, enforce registration laws, and classify dangerous dogs “requires the exercise of judgment and discretion in order to safeguard the public.” 2000 Op. Att’y Gen. No. 2000-024, at 2-165; R.C. 955.22, *et seq.*

It is therefore within the dog warden’s discretion to determine if accepting registered and unregistered dogs from non-owners facilitates the accomplishment of the warden’s statutorily-required duties; or, if the dog warden’s duties are best effectuated by impounding only the dogs that the dog warden or deputies seize on patrol or pursuant to statute. R.C. 955.23 (“No county dog warden shall willfully fail to perform his duties under [R.C. 955.12] or other duties required of dog wardens”).

## B

In addition to dogs running at large and seized by the dog warden or deputies under R.C. 955.12, other provisions of the Revised Code address the impoundment of

dogs in the county-operated dog shelter. This necessarily impacts the dog warden's discretion to accept dogs dropped off by non-owners (or owners, as considered in 1981 Op. Att'y Gen. No. 81-037, for that matter) because of the space limitations that may exist at the county-operated dog shelter. For example, R.C. 955.99 requires the dog warden to impound certain dangerous dogs pursuant to court order and R.C. 955.26-.261 permit dogs to be quarantined at the county-operated dog shelter if there is an emergency rabies quarantine declared or if a dog has bitten a person.

Further, the board of county commissioners, based on its general authority over county-owned buildings and its specific authority to provide the dog warden with a facility for impoundment, may expand the use of the county-operated dog shelter. *E.g.*, R.C. 307.01-.02; R.C. 955.15(A). The board of county commissioners is also authorized to contract with the department of agriculture to impound dogs seized from high-volume dog breeders or dog brokers; to contract with the legislative authorities of municipalities and townships to enforce their animal control ordinances and to allow dogs seized by the municipal dog warden to be impounded; and to pass resolutions allowing law enforcement officers (besides the dog warden or deputies) to impound dogs seized under R.C. Chapter 959. R.C. 956.11(A); R.C. 307.15(A)(1); 1981 Op. Att'y Gen. No. 81-037, syllabus, paragraphs 1 and 2; *accord* 1984 Op. Att'y Gen. No. 84-034, syllabus, paragraph 2; R.C. 956.11(A); R.C. 959.132.

Because the board of county commissioners is required to provide a "suitable place" for the dog warden to

impound dogs, both public offices must work together to determine what constitutes a “suitable place” in light of the dog warden’s discretion and these additional statutory provisions. R.C. 955.15(A); 1995 Op. Att’y Gen. No. 95-021, syllabus (a suitable place “must, at a minimum, be a place where it is possible to keep impounded dogs for the periods of time required by law, to provide care for the dogs in a manner that does not constitute cruelty to animals as defined at R.C. 959.13 and R.C. 1717.01(B), and when necessary, to provide for the humane destruction of dogs by a method consistent with R.C. 955.16(F)”; *see also State ex rel. Ohio SPCA, Inc. v. Bd. of Commrs.*, 7<sup>th</sup> Dist. Harrison No. 10 HA 2, 2011-Ohio-6029, ¶¶22-33 and ¶69; *State ex rel. Lewis v. Bd. of Cty. Commrs.*, 4<sup>th</sup> Dist. Jackson No. 98CA830, 2002-Ohio-1424, ¶16; *see also* R.C. 955.221 (board of county commissioners’ authority to pass resolutions for dog control).

However, whether a particular county-operated dog shelter is suitable is a question of fact beyond the scope of the Attorney General’s opinion-rendering function. 2005 Op. Att’y Gen. No. 2005-002, at 2-12.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. The county dog warden has no mandatory duty to accept and impound unregistered dogs voluntarily brought to the county-operated dog shelter by a non-owner.
2. The county dog warden has the discretion to accept and impound registered or unregistered dogs voluntarily brought to the county-operated dog shelter by a non-owner.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D".

DAVE YOST  
Ohio Attorney General