

2241.

DOG LAW—DIFFERENCE IN DUTIES OF DOG WARDEN AND POLICE OFFICER DISCUSSED—DOG WARDEN AND DEPUTIES MAY ONLY IMPOUND DOG WHEN NOT WEARING LICENSE TAG—POLICE OFFICER MAY SEIZE ANY DOG RUNNING AT LARGE.

SYLLABUS:

Under the statutes of Ohio, it is the duty of a dog warden and his deputies to enforce the statutes relative to the licensing of dogs and in so doing seize and impound any dogs found not wearing a valid license tag, and it is the duty of the police officer to enforce the statutes which make it a violation for the owner or person in charge of a dog permitting such dog to run at large in the public road, highway, street, lane or alley or upon uninclosed land.

COLUMBUS, OHIO, August 18, 1930.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

“Quite a bit of controversy has arisen over the respective duties of the county dog warden and city police. Dogs are running at large within the confines of the city of Marietta to the nuisance and disturbance of certain residents who have protested. Some of these dogs wear tags, others wear none. The complaint is that the dogs should not be permitted to run at large but should be confined to their respective homes.

The police department contends that it is the duty of the county dog warden to take care of these stray dogs and the dog warden contends that it is the duty of the police department. I have been requested to write you asking that your department define the respective duties of these officers relative to the control of these dogs running at large in the municipality.”

The powers and duties of dog wardens and their deputies are set forth in Section 5652-7 of the General Code, which provides, in so far as it is pertinent to your inquiry, as follows:

“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 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."

You will note from a reading of this section that the purpose of the appointment of a dog warden and deputies by county commissioners is clearly set forth in the first paragraph of the section, which provides that the county commissioners shall employ a county dog warden and deputies 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. While a dog warden has authority to seize and impound, upon sight and upon complaint, all dogs over three months of age found not wearing a valid registration tag, Section 5652-7 does not authorize the dog warden or his deputies to seize or impound dogs running at large that are wearing a valid registration tag. The powers of a dog warden are limited to the enforcement of the statutes relative to the licensing of dogs and nowhere is there imposed upon a dog warden the duty to enforce the statutes which make it a violation for the owner or person in charge of a dog permitting it to run at large. While it is true that Section 5652-7 provides that the county dog warden and his deputies have the same police powers as are conferred upon sheriffs and police officers in the performance of their duties as prescribed by this act, this language does not confer any additional duties upon dog wardens and their deputies other than those provided in this section, but merely confers police powers upon dog wardens and their deputies for the purpose of enforcing the duties enumerated in the section. I am of the view, therefore, that a dog warden in this capacity has no authority to seize a dog running at large if such dog is wearing a valid registration tag.

Coming now to the authority of a police officer relative to his duties with respect to the matter about which you inquire, your attention is directed to Sections 5809 and 5810, General Code. Section 5809 provides in part:

"A person, firm or corporation being the owner or having the charge of horses, mules, cattle, sheep, goats, swine, dogs or geese, shall not permit them to run at large in the public road, highway, street, lane or alley, or upon uninclosed land, * * * "

Section 5810 provides:

"Whoever violates the provisions of the next preceding section shall forfeit and pay for each violation not less than one dollar nor more than five dollars. Continued violation, after notice of prosecution, shall be an additional offense for each day of such continuance."

Section 4378 of the General Code provides that the police force shall preserve the peace, protect persons and property and obey and enforce all ordinances of council and all criminal laws of the state and the United States. Therefore, it is the duty of a police officer to enforce the provisions of Section 5809 of the General Code, which prohibits the owner or person having charge of a dog permitting it to run at large in the public road, highway, street, lane or alley or upon uninclosed land.

I believe that the sections of the Code which I have mentioned herein clearly set forth the respective duties of a dog warden and a police officer relative to the control of dogs running at large in the municipality. You will note, however, that I have not considered in my discussion any ordinances that the city of Marietta may have with reference to your inquiry, nor have I discussed the applicability of the provisions of Section 5817 of the General Code which authorizes any person to impound any

animal mentioned in Section 5809 of the General Code that runs at large contrary to law. My discussion deals solely with the powers and duties of a dog warden and police officer in their respective capacities, as such, under the statutes of Ohio.

Therefore, in specific answer to your inquiry, I am of the opinion that under the statutes of Ohio it is the duty of a dog warden and his deputies to enforce the statutes relative to the licensing of dogs and in so doing seize and impound any dogs found not wearing a valid license tag, and it is the duty of the police officer to enforce the statutes which make it a violation for the owner or person in charge of a dog permitting such dog to run at large in the public road, highway, street, lane or alley or upon uninclosed land.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2242.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND R. S. URSPRUNG, BEREA, OHIO, FOR CONSTRUCTION AND COMPLETION OF OHIO NATIONAL GUARD ARMORY, BEREA, OHIO, AT AN EXPENDITURE OF \$47,000.00—SURETY BOND EXECUTED BY THE AETNA CASUALTY AND SURETY COMPANY, OF HARTFORD, CONNECTICUT.

COLUMBUS, OHIO, August 18, 1930.

HON. A. W. REYNOLDS, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by and through Arthur W. Reynolds, Adjutant General and Director of State Armories, and R. S. Ursprung, of Berea, Ohio. This contract covers the construction and completion of the Ohio National Guard Armory, Berea, Ohio, and Alternates 3, 4 and 14 of the form of proposal, July 7, 1930. Said contract calls for an expenditure of forty-seven thousand dollars (\$47,000.00).

You have submitted 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. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained, as required by Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond, upon which the Aetna Casualty and Surety Company, of Hartford, Connecticut, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies have been complied with. The certificate of the Industrial Commission as to compliance with the laws pertaining to the Workmen's Compensation has expired and I am informed that a new certificate cannot be furnished at the present time, for the reason that the said Mr. Ursprung has not yet been billed by the Industrial Commission. A new Industrial Certificate should be obtained before the contractor is permitted to proceed with the work.

Finding said contract and bond in proper legal form, with the exception noted in the last paragraph, I hereby approve the same, conditioned upon the obtaining of