

1720.

DOG—WHEN PENALTY MAY BE ASSESSED FOR FAILURE TO REGISTER—SALE OF IMPOUNDED DOG.

SYLLABUS:

1. *Section 5652, General Code, authorizes county auditors to assess the penalty therein provided only in cases where a person, who owns, keeps or harbors a dog more than three months of age before the first day of January of any year, fails to apply for the registration of such dog on or before January twentieth of such year.*

2. *Section 5652-7c, General Code, does not apply to dogs bred or kept for sale in a duly registered kennel.*

3. *When an impounded dog is sold a transfer of ownership certificate is not required. By the terms of Section 5652-9, General Code, the purchaser of an impounded dog must provide such animal with a valid registration tag before such dog is discharged from the pound.*

COLUMBUS, OHIO, February 16, 1928.

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

GENTLEMEN:—This will acknowledge your letter dated January 31, 1928, which reads:

“You are respectfully requested to furnish this department with your written opinion upon the following questions involving the interpretation of certain provisions of House Bill No. 164, 112 O. L. 347:

Question 1. When a dog is purchased from outside of the state, between January 1st and January 20th, is the owner subject to the penalty of one dollar if not registered by January 20th, or can he register without penalty within thirty days from the date of purchase?

Question 2. When a dog becomes three months of age between January 1st and January 20th, is the owner subject to the one dollar penalty, if not registered before January 20th, or can he register without penalty within thirty days from the date the dog became three months of age?

Question 3. When a dog is purchased from outside the state after January 20th, is the owner subject to the one dollar penalty if not registered within thirty days whether purchased before or after July 1st?

Question 4. When a dog becomes three months of age after January 20th is the owner subject to the one dollar penalty if not registered within thirty days, whether the dog became three months of age before or after July 1st?

Question 5. What fee is to be charged for the registration of a dog purchased from a kennel located in Ohio, and may any penalty be charged for failure to register such dog?

Question 6. When the owner of a registered kennel sells a dog to a resident of Ohio, is such kennel owner required to register such dog in the county where the kennel is located and give the purchaser a transfer of ownership certificate?

Question 7. In ‘A’ county, there has been a material increase in the registration fee, while in ‘B’ county there has been no increase. A person residing in ‘A’ county gives his dog to a resident of ‘B’ county, may such dog be registered in ‘B’ county if the gift was consummated after January 1st, or may the auditor of ‘B’ county refuse to register?

Question 8. When an impounded dog is sold, is a transfer of ownership required, and if so, who is to make and sign same?"

Your first five questions require consideration of Sections 5652 and 5652-2, General Code, which, in so far as pertinent to your inquiry, provide:

Sec. 5652. "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, shall file * * * 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, * * * . 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 harbored, 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 such license shall be applied for within thirty days after said dog is bought or becomes three months of age."

Sec. 5652-2. "Every person immediately upon becoming the owner, keeper or harbored of any dog more than three months of age or becoming the owner of a dog kennel, during any year, shall file like applications, with fees, as required by Sections 5652 and 5652-1 for registration for the year beginning January first prior to the date of becoming the owner, keeper or harbored of such dog or owner of such dog kennel."

By the terms of Section 5652, supra, 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 is required to file an application for registration for such dog for the following year in the office of the county auditor of the county, in which such dog is kept or harbored. In the event such application for registration is not filed and the fee therefor paid on or before the twentieth day of January of such year, the county auditor is directed to assess a penalty of one dollar upon such owner, keeper or harbored, which must be paid with the registration fee. Section 5652, supra, further provides that no person shall be charged a penalty where the dog is bought from outside of the State of Ohio, or become three months of age after January twentieth of any year, provided the license shall be applied for within thirty days after said dog is bought or becomes three months of age.

It is a well settled rule of statutory construction that statutes which impose penalties must be strictly construed and that, in order to enforce a penalty against a person, he must be brought clearly within both the letter and the spirit of the statute.

As stated in 36 Cyc. 1183.

"It is a fundamental rule in the construction of statutes that penal statutes must be construed strictly. By this rule, however, it is not meant that they should be subjected to any strained or unnatural construction in order to work exemption from their penalties. Such statutes are to be interpreted by the aid of all the ordinary rules for the construction of statutes, and with the cardinal object of ascertaining the intention of the Legislature. But, if the acts alleged do not come clearly within the prohibition of the statute, its scope will not be extended to include other offenses than those which are clearly described and provided for; and if there is a fair doubt as to whether the act charged is em-

braced in the prohibition, that doubt is to be resolved in favor of the defendant.
* * * In order to enforce a penalty against a person, he must be brought clearly within both the spirit and the letter of the statute; * * * ”

The courts have repeatedly held that penal statutes must be strictly construed, and never extended by implication. *Andrews vs. U. S.* 2 Story 203; *Strinson vs. Pond*, 2 Curt. 502; *U. S. vs. Ten Cases of Shawls*, 2 Paine 162; *Ferris vs. Atwill*, 1 Blatch, C. C. R. 151.

In Potter's *Dwarris on Statutes and Constitutions*, the rule is stated thus :

“A penal law then, shall not be extended by equity; that is, things which do not come within the words, shall not be brought within it, by construction. The law of England does not allow of constructive offenses, or of arbitrary punishments. No man incurs a penalty unless the act which subjects him to it, is clearly both within the spirit and the letter of the statute imposing such penalty. * * * ”

Of course the fundamental rule in all statutory construction is to ascertain and give effect to the intention of the Legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority. Where a statute is incomplete or defective, whether as a result of inadvertence or otherwise it is beyond the province of the courts to supply the omissions even though as a result the statute is a nullity in whole or in part. See 36 Cyc. 1106 et seq.

Applying the foregoing rules of construction it is my opinion that the only case in which a county auditor is authorized to assess a penalty, under the provisions of Section 5652, supra, is that of a person who owns, keeps or harbors a dog more than three months of age before the first day of January of any year and who fails to file an application for registration of such dog for such year on or before the 20th day of January. The Legislature may have intended a penalty to be imposed in other cases. That it did so intend is indicated by the fact that Section 5652, supra, provides an “exception” in cases where a dog is bought from outside the State of Ohio, or becomes three months of age after January 20th of any year, provided such license shall be applied for within thirty days after said dog is bought or becomes three months of age. Although Section 5652, supra, provides an “exception” in the last above mentioned cases, said section fails to contain language imposing a penalty in such cases. In other words, the Legislature has provided an exception in certain cases but, through inadvertence or otherwise has failed to use language to impose a penalty in such cases.

That this section is incomplete is apparent from the fact that no provision whatever is made to cover the case of a dog bought after January 20th within the State of Ohio. That is to say, while the exception contained in Section 5652 provides that where a dog is bought from outside the State of Ohio, or becomes three months of age after January 20th of any year, and the necessary license is applied for within thirty days, no person is to be charged a penalty, no similar provision is contained in this section or any other section of the Code covering the case where a dog is purchased after January 20th, from a duly licensed kennel within the state. While it is possible that the Legislature may have intended to make different provisions relating to cases where dogs are purchased within the State of Ohio, it is hardly reasonable to assume that it was intended that the owner of a dog should have thirty days in which to secure a license in the two cases covered by the exception and yet not have such period of time in case the dog were purchased from a duly licensed kennel in Ohio.

In any event, however, there is no language in the statute specifically imposing a penalty, except where a dog is owned prior to January 1st, and in view of the statutory rules above set forth, I do not feel that the statute should be extended by implication to cover cases not within its express terms.

Section 5652-2, *supra*, imposes the duty upon every person immediately upon becoming the owner, keeper, or harbinger of any dog more than three months of age during any year, to file a like application, with the proper fees, as required by Section 5652, *supra*, for registration for the year beginning January 1st, prior to the date of becoming such owner, keeper or harbinger of such dog. This section does not authorize a county auditor to impose a penalty for failure to comply with the provisions thereof.

In view of the foregoing and answering your first question specifically it is my opinion that, where a dog is purchased from outside of the state between January 1st and January 20th, and brought into some county of the state between those dates, a county auditor is not authorized to assess a penalty upon the owner, keeper or harbinger of such dog in the event such owner, keeper or harbinger fails to apply for registration of such dog within thirty days from the date of purchase.

Answering your second question specifically it is my opinion that when a dog becomes three months of age between January 1st and January 20th of any year, a county auditor is not authorized to assess a penalty upon the owner, keeper or harbinger of such dog, if such dog is not registered before January 20th, nor is such owner subject to such penalty if he fails to register such dog within thirty days from the date such dog became three months of age.

Answering your third question specifically it is my opinion that when a dog is purchased from outside the state after January 20th, the owner, keeper or harbinger of such dog is not subject to the one dollar penalty if such dog is not registered within thirty days whether such dog be purchased before or after July 1st.

Answering your fourth question specifically it is my opinion that when a dog becomes three months of age after January 20th, the owner, keeper or harbinger of such dog is not subject to the one dollar penalty if such dog is not registered within thirty days. The fact that such dog became three months of age before or after July 1st is immaterial.

Your fifth question involves consideration of Sections 5652 and 5652-2, *supra*. As above stated, by the terms of Section 5652-2, *supra*, every person *immediately* upon becoming the owner, keeper or harbinger of any dog more than three months of age is required to file the prescribed application, with the fees required by Section 5652, *supra*, for registration for the year beginning January 1st, prior to the date of becoming the owner, keeper or harbinger of such dog.

As above indicated, Section 5652, *supra*, authorizes a county auditor to impose the penalty therein provided only in the case of a person who owns, keeps or harbors a dog more than three months of age before the first day of January of any year and who fails to apply for registration of such dog on or before the 20th day of January of such year. Obviously, if the dog in question was purchased from a kennel after the first day of January, the penal provision of Section 5652, *supra*, would not apply.

Answering your fifth question specifically it is my opinion that the same fees should be charged for registration of a dog purchased from a kennel located in Ohio as are charged for any other dog. A county auditor is without authority to assess a penalty upon the applicant for registration of a dog so purchased, except in case such dog was so purchased prior to the first day of January of the year in which registration is sought.

In answer to your sixth question, your attention is directed to Opinion No. 967, dated September 8, 1927, addressed to the Prosecuting Attorney of Wood County, Ohio, the second and third paragraphs of the syllabus of which read:

"2. The dog kennel license provided for in Section 5652-1 of the General Code, does not amount to a registration of any of the dogs bred or kept for sale in such kennel.

3. Section 5652-7c of the General Code, as enacted in House Bill No. 164, passed by the 87th General Assembly, applies only to the transfer of ownership of a dog duly registered or required to be registered and has no application in case of the transfer of ownership of a dog bought from another state, or of a dog not over three months of age, or of a dog bred or kept for sale in a duly registered kennel."

In that opinion the following language appears :

"With reference to your third question, when Section 5652-7c, supra, is read in connection with Sections 5652, 5652-1 and 5652-7b of the General Code, it would seem that it was intended that the provisions of Section 5652-7c were to be applicable only to dogs which were duly registered or required to be registered. It will be noted that this section requires the transfer of ownership certificate to 'contain the licensed number of such dog.' Obviously if the dog has not been registered it would be impossible for the transfer of ownership certificate to contain the dog's license number. Dogs not over three months of age are not required to be registered; neither are dogs bred or kept for sale in a duly registered kennel, nor dogs owned in another state. A dog in any of these three classes would not be registered and would have no 'licensed number,' and on the transfer of ownership of such dog it would be impossible for the seller to give to the buyer a transfer of ownership certificate, signed by the owner, containing 'the licensed number of such dog'."

Answering your sixth question specifically, it is my opinion that Section 5652-7c, General Code, has no application to dogs bred or kept for sale in a duly registered kennel. In other words, when the owner of a duly registered kennel sells a dog therefrom, such kennel owner is not required to give to the purchaser of such dog a transfer of ownership certificate.

In answer to your seventh question your attention is directed to Opinion No. 1680, dated February 6, 1928, addressed to the Prosecuting Attorney of Highland County, Ohio, the syllabus of which reads: *

"Section 5652, General Code, requires an application for registration of any dog, subject to the provisions thereof, to be filed in the office of the county auditor of the county in which such dog is kept or harbored. Any registration tag otherwise issued would not constitute a valid registration tag."

The following language appears therein :

"In connection with the above it should be pointed out that it is not meant to hold herein, that a dog should in all events be registered in the county where it happens to be at the time of registration. The test is, in what county of the state is the dog actually and in good faith 'kept and harbored.' And what is the proper county is a question of fact in each particular case."

Your attention is also directed to an opinion of this office which appears in Vol. I, Opinions, Attorney General for 1918, at page 368, the syllabus of which reads as follows:

"It is the duty of the county auditor to accept registration during the year of unregistered dogs which were subject to registration prior to the first day of January for the following year and which have not been seized or impounded. In registering such dogs, the auditor is authorized to receive only the proper fees provided for in Section 5652, G. C."

Although Sections 5652 and 5652-2, supra, have been amended since this opinion was rendered, such amendment does not affect the conclusions therein reached.

In view of the foregoing and answering your seventh question specifically it is my opinion that Section 5652, General Code, requires an application for registration to be filed in the office of the county auditor of the county in which such dog is kept or harbored and it is the duty of the auditor of such county to accept an application for registration of such dog.

In answer to your eighth question, your attention is directed to Sections 5652-9 and 5652-11, General Code, which in so far as pertinent, provide:

Sec. 5652-9. "Dogs not wearing valid registration tags which have been seized by the county dog warden and impounded as hereinbefore provided, shall be kept, housed and fed for three days, at the expiration of which time, unless previously redeemed by the owners thereof, such animals shall either be sold or be humanely destroyed; provided, however, that no dogs so sold shall be discharged from said pound until such animal shall have been registered and furnished with a valid registration tag as hereinbefore provided."

Sec. 5652-11. "The owner, keeper or harbinger of any dog not wearing a valid registration tag, seized and impounded under the provisions of this act, at any time prior to the expiration of three days from the time such animal is impounded, may redeem the same by paying to the dog warden or pound keeper all of the costs assessed against such animal and providing such animal with a valid registration tag."

By the terms of Section 5652-9 and 5652-11, supra, you will note that no impounded dogs sold or redeemed shall be discharged from said pound until the purchaser or redeemer provides such animal with a valid registration tag. The duty of providing such tag is upon such purchaser or redeemer.

Answering your eighth question specifically, it is my opinion that when an impounded dog is sold, a transfer of ownership certificate is not required. By the terms of Section 5652-9, General Code, the purchaser of an impounded dog must provide such animal with a valid registration tag.

Respectfully,
EDWARD C. TURNER,
Attorney General.