

**Note from the Attorney General's Office:**

1960 Op. Att'y Gen. No. 1574, syllabus  
overruled by 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) and at pp. 528-529, overruled  
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).

1574

POWERS AND DUTIES OF COUNTY DOG WARDEN — AUTHORITY TO CONFINE DOG RUNNING AT LARGE WHEN DOG IS WEARING A VALID REGISTRATION TAG—§§955.12, 951.02, R.C., Chapter 955., R.C.

## SYLLABUS:

A county dog warden appointed pursuant to Section 955.12, Revised Code, is limited in his powers and duties to those listed in that section and in other provisions of Chapter 955., Revised Code, and is without authority in his capacity as dog warden to take and confine a dog running at large in violation of Section 951.02, Revised Code, where such dog is wearing a valid registration tag issued under Chapter 955., Revised Code.

Columbus, Ohio, July 25, 1960

Hon. Randall Metcalf, Prosecuting Attorney  
Washington County, Marietta, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have been asked by the County Commissioners of Washington County to seek your opinion on the following proposition:

“Under the above captioned section the law clearly states that the Dog Wardens are hired to enforce Section 955.01 and 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code.

“These sections pertain only to unlicensed dogs for the most part. Our question: Is the Dog Warden allowed to act under and enforce Section 951.02 which would allow him to pick up ‘licensed’ dogs running at large in the public road, highway, street, lane, or alley, or upon enclosed land.

“We are experiencing a grave problem in this County, both in the city and suburban areas, where *licensed* dogs are being allowed to run at large destroying property, etc. Our present Dog Warden contends that he cannot operate under Section 951.02. Your early attention and opinion on this matter will be greatly appreciated.

“My own opinion is that Section 951.02 would permit the dog warden to apprehend even licensed dogs running at large for this is a violation not connected with licensing, but is a

menace to property. However, since by the nature of his office, the dog warden is chiefly concerned with enforcing licensing provisions, the matter is not definite and your opinion would be appreciated."

Section 951.02, Revised Code, to which you refer, provides:

"A person, firm, or corporation which is the owner or has 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 unenclosed land.

"No such person, firm, or corporation shall cause such animals to be herded, kept, or detained for the purpose of grazing on premises other than those owned or occupied by the owner or keeper thereof, except as provided in section 951.04 of the Revised Code.

"The running at large of any such animal in or upon any of the places mentioned in this section is prima-facie evidence that it is running at large in violation of this section." (Emphasis added)

Section 951.11, Revised Code, provides for the taking and confining of an animal running at large, reading:

"A person finding an animal at large in violation of section 951.02 of the Revised Code, may, and a constable of a township, township trustee or township highway superintendent, or the street commissioner in a township, or village, or a police officer of a city or a marshal of a village, on view or information, shall, take and confine such animal, forthwith giving notice thereof to the owner, if known, and, if not known, by posting notices describing such animal therein in at least three public places within the village, city, or township wherein the animal was found. If the owner does not appear and claim the animal and pay all charges for so taking, advertising, and keeping it within ten days from the date of such notice, such person or official shall have a lien therefor and the animal may be sold at public auction as provided in section 1311.49 of the Revised Code, and the residue of the proceeds of sale shall be paid and deposited by the treasurer in the general funds of the said village, city, or township."

Under this section, therefore, any person finding a dog running at large in violation of Section 951.02, *supra*, may take and confine such dog; and constables, township trustees, township highway superintendents, street commissioners of townships and villages, and police officers of municipal corporation *must* take and confine a dog so running at large. It will be

noted, however, that the county dog warden is not one of the officers mentioned in the section.

Under Section 955.12, Revised Code, each county has a dog warden who is appointed by the board of county commissioners. This section also defines the duties of the dog warden, reading, in part, as follows:

“The board of 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 board deems necessary to enforce sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code.

“\* \* \* Such warden and deputies shall make a record of all dogs owned, kept, and harbored in their respective counties. *They shall patrol their respective counties and 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, and except dogs acquired by, and confined on the premises of, an institution or organization of the type described in section 955.16 of the Revised Code.* \* \* \* Such 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 sections 955.01 to 955.27, inclusive, and 955.29 to 955.38, inclusive, of the Revised Code. \* \* \* *Whenever any person files 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 either in a registered dog kennel or on the premises of an institution or organization of the type described in section 955.16 of the Revised Code, and not wearing a valid registration tag, or that a dog is kept or harbored in his jurisdiction without being registered as required by law, such court shall forthwith order the warden to seize and impound such animal. Thereupon such 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 unless such dog is redeemed within three days, it may thereafter be sold or destroyed according to law.* If the owner of such dog be not known to the warden, he shall post a notice in the county courthouse describing the dog and place where seized and advising the unknown owner that unless such dog is redeemed within three days, it may thereafter be sold or destroyed according to law.” (Emphasis added)

The duties of dog wardens under Section 955.12, *supra*, are mainly limited to the enforcement of the dog registration statutes (Section 955.01 *et seq.*, Revised Code), but also include duties pertaining to damages to livestock inflicted by dogs. The section does not impose a duty to take and

confine dogs which are running at large in violation of Section 951.02, *supra*. The question is, therefore, whether a county dog warden would be authorized to take and confine a registered dog running at large in violation of Section 951.02, *supra*.

As discussed above, a county dog warden may take and confine dogs not wearing registration tags. He has no specific duty or authority, however, to take and confine dogs which *are* wearing registration tags. In this regard, it is stated in Opinion No. 550, Opinions of the Attorney General for 1945, page 710 at page 713 (referring to the sections of law which are now Sections 955.10, 955.12 and 955.15, Revised Code) :

“It will be noted from the above sections that the authority of the county dog warden to seize and impound dogs is limited to dogs found not wearing valid registration tags. It is likewise noteworthy that no dogs except those found not wearing valid registration tags may be impounded in the county dog pound.”

While under Section 951.11, *supra*, any person may take and confine a dog running at large in violation of Section 951.02, *Supra*, it would appear that a dog warden, when acting as such, has only such powers and duties as are specifically given by statute or necessarily implied. On this point, it is stated in 14 Ohio Jurisprudence 2d, Section 52, page 238:

“\* \* \* Since county offices are created by the legislature, the determination of the powers and duties of the incumbents of these offices is likewise wholly a matter for the legislature. In other words, county officials have only such powers and duties as are expressly given them by statute, or as are naturally and necessarily implied from the language of the statute. \* \* \*”

In spelling out the powers and duties of county dog wardens the legislature did not include a duty to take and confine dogs running at large in violation of Section 951.02, *supra*. Significantly, this duty was imposed on certain police officers and other officials (Section 951.11, *supra*). It would appear that if the legislature had intended that county dog wardens be given this duty it would have so provided, as was done in these other cases. Moreover, Section 955.12, *supra*, relating to the powers and duties of county dog wardens, specifically states that wardens are appointed to enforce Chapter 955., Revised Code, and makes no reference to Section 951.02, Revised Code. I conclude, therefore, that county dog wardens are without authority to take and confine dogs which are running at large except those included within the purview of Chapter 955., *supra*.

Accordingly, it is my opinion and you are advised that a county dog warden appointed pursuant to Section 955.12, Revised Code, is limited in his powers and duties to those listed in that section and in other provisions of Chapter 955., Revised Code, and is without authority in his capacity as dog warden to take and confine a dog running at large in violation of Section 951.02, Revised Code, where such dog is wearing a valid registration tag issued under Chapter 955., Revised Code.

Respectfully,

MARK McELROY

Attorney General