

"To ask for with earnestness; to make petition to; to apply to for obtaining something."

The same authority defines a "drummer" to be:

"One who solicits custom." (For reasons above noted in considering the term "capper" the meaning of the word "drummer" as to one who beats a drum in a band or orchestra is disregarded in this opinion).

Bouvier's Law Dictionary defines a drummer to be "a traveling salesman; one who solicits custom."

After this search for the meaning of these terms, which is to be attributed to the general assembly, we have to decide whether the employment of a man to distribute advertising circulars prepared by a physician, such circulars to be distributed from house to house and to men working in the shops in industrial plants, of itself constitutes the employment of a capper, solicitor or drummer, as prohibited by section 1275.

It is believed these words mean more than the mere mechanical act of passing a circular; some persuasion exerted or alleged information imparted. Some personal appeal or solicitation on the part of the person employed is necessary before such employe would be regarded as coming within the terms used in this statute. It should be noted that this question is considered on the fact of there being no further acts on the part of the employe other than the distribution of the circulars. It may be conceivable that under some special conditions the employment stated in your letter might come within the meaning of these terms, but the general rule would be to the contrary.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1184.

DOG REGISTRATION LAW—DOG TAKEN FROM ONE COUNTY TO ANOTHER FOR TRAINING PURPOSES REQUIRED TO BE REGISTERED—KENNEL LICENSE NOT REQUIRED UNLESS PARTY PROFESSIONALLY ENGAGED IN BUSINESS OF BREEDING DOGS FOR HUNTING OR FOR SALE.

1. *Where a dog is taken from one county to another to remain for a time for training purposes, the law requires that it should be properly registered in the county where it is being kept or harbored, notwithstanding it has been properly registered in the county where the owner resides.*

2. *One is not a kennel owner within the meaning of the statutes and required to pay the kennel license who keeps a number of hunting dogs, unless professionally engaged in the business of breeding dogs for hunting or for sale.*

COLUMBUS, OHIO, April 27, 1920.

HON. HUGO N. SCHLESINGER, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—In your communication of recent date you submit for opinion the following questions:

"Under section 5652 of the General Code and the 1919 Amendments, is it necessary to secure an additional license if a dog, owned and licensed in Franklin county, is sent to another county for three or four months' training?"

Is a kennel license compulsory when one owns five or six hunting dogs?"

The sections of the General Code material in connection with your inquiries are as follows:

"Section 5652 (108 O. L. 534). 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 together with a registration fee of one dollar for each male or spayed female dog, and a registration fee of two dollars for each female dog unspayed, 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, stating the age, sex, color, character of hair, whether short or long, and breed, if known, of such dog, also the name and address of the owner of such dog. Provided that for the calendar year 1920 and thereafter the registration fee for each female dog unspayed shall be three dollars. And provided further that an affidavit shall be made to the county auditor and filed with application for registration of each spayed female dog stating that said female dog has been effectively spayed."

"Section 5652-1 (108 O. L. 534). Every owner of a kennel of dogs bred or kept for sale shall in like manner as in section 5652 provided, make application for the registration of such kennel, and pay therewith to the county auditor a registration fee of \$10 for such kennel. Provided, however, the owner of such dog kennel shall, in addition to paying such kennel fees, comply with all of the requirements of section 5652 with respect to every dog more than three months of age belonging to such dog kennel not kept constantly confined in such kennel."

"Section 5652-1a (108 O. L. 534). A kennel owner is hereby defined as being a person, persons, partnership, firm, company or corporation professionally engaged in the business of breeding dogs for hunting or for sale."

"Section 5652-2 (107 O. L. 534). Every person immediately upon becoming the owner, keeper or harbourer 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 harbourer of such dog or owner of such dog kennel."

In the consideration of your first inquiry your attention is invited to the language used in section 5652-2 supra, which it is believed is pertinent to the question. Under the provisions of this section it is clear that "every person becoming the owner, keeper or harbourer of any dog" shall make application to have it registered in the manner provided in section 5652 supra.

It is further believed that a person who takes into his custody a dog for training purposes becomes a harbourer or keeper of a dog within the meaning of said statute, notwithstanding the owner of said dog has had it registered in the county in which the said owner resides.

Your attention is further invited to an opinion issued by my predecessor, found in 1918 Opinions of the Attorney-General, Vol. I, page 135, wherein it was held:

"From the provisions of section 5652 General Code it appears that the registration of dogs and the payment of fees therefor must be done in the office of the county auditor of the county in which such dogs are kept or harboured, and these provisions require your second question to be answered in the affirmative if the dog or dogs involved in the transaction are of the required age, and the registration of such dog or dogs in one county will not exempt them from liability to registration in another county where they may be taken and kept."

It therefore is the opinion of this department that where a dog is taken from one county to another to remain for a time for training purposes, the law requires that it should be properly registered in the county where it is being kept or harboured, notwithstanding it has been properly registered in the county where the owner resides.

In considering your second inquiry, it is believed that section 5652-1a supra, which defines a "kennel owner," must furnish the answer. It is clear that the owner of a kennel within the meaning of the statute is a "person, persons, partnership, firm, company or corporation professionally engaged in the business of breeding dogs for hunting or for sale."

While it is not the intentment of this opinion to definitely state the facts that would constitute a kennel owner under all circumstances, it is intended to hold that the fact that a person keeps a number of dogs for hunting purposes does not necessarily constitute a "kennel owner" in view of the statute. In other words, the statute requires the payment of the kennel license where the owner or keeper of the dogs is professionally engaged in the business of breeding dogs for hunting or for sale.

In specific answer to your second inquiry it is the opinion of this department that when one owns a number of hunting dogs he is not a "kennel owner" and required to pay the kennel license unless professionally engaged in the business of breeding dogs for hunting or for sale.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1185.

STATE BUILDING CODE—ROOF GARDEN—WHEN SAME IS OVER GARAGE WITHIN MEANING OF SECTION 12600-42 G. C.—SPECIFIC CASE.

Where three lower floors of a five story building are being used for the storage of automobiles and no repair work of any kind whatsoever is allowed or permitted on the premises; the two upper stories of the building are being used for the storage of crude rubber and other merchandise, it is proposed to place a roof garden on the roof of the building. HELD, that the three lower floors are being used as a "garage," and that the proposed roof garden, if constructed, would be "over or above" the garage, within the meaning of section 12600-42 G. C.

COLUMBUS, OHIO, April 27, 1920.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date relative to section 12600-42 G. C., and