

**OPINION NO. 825**

**Syllabus:**

A county auditor has no authority to require proof of vaccination for rabies before issuing a dog registration in the absence of a declaration of quarantine and order of vaccination of all dogs by a director of health pursuant to Section 955.26, Revised Code.

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**To: Ralph A. Hill, Clermont County Pros. Atty., Batavia, Ohio**  
**By: William B. Saxbe, Attorney General, January 24, 1964**

I have before me your request for my opinion which reads in

substance as follows:

"Section 955.26 of the Revised Code, when a rabies quarantine is in effect in all or part of the county, authorizes the county auditor to require proof of vaccination before issuing a dog license.

"The Board of Health of Clermont County, Ohio, on November 13, 1963, adopted a rule and regulation, under the authority of Section 3709.20 and Section 3709.21 of the Revised Code to require dogs in Clermont County to be vaccinated for rabies. A rabies quarantine does not exist in Clermont County at this time, and there is no order for vaccination under the provisions of Section 955.26 of the Revised Code as such.

"The query presented is whether the Auditor has authority, under these conditions, to require the furnishing of proof of vaccination as provided in Section 955.26 of the Revised Code before issuing a license."

Section 3709.21, Revised Code, provides in material part:

"The board of health of a general health district may make such orders and regulations as are necessary \* \* \* for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. \* \* \* All orders and regulations \* \* \* of the board \* \* \* intended for the general public, shall be adopted, recorded, and certified as are ordinances of municipal corporations and the record thereof shall be given in all courts the same effect as is given such ordinances, \* \* \*."

Section 3709.20, Revised Code, delegates like powers to the board of health of a city health district and is not pertinent to this discussion.

Section 955.26, Revised Code, is a more specific delegation of power to a health board. In material part this section provides:

"Whenever in the judgment of the director of health, any city or general health district board of health, or persons performing the duties of a board of health, rabies is prevalent, the director of health, the board or persons performing the duties of such board, shall declare a quarantine of all dogs in the health district, or part thereof. During such quarantine, the owner, keeper, or harbinger of any dogs shall keep the dogs confined to the premises of the owner, keeper, or harbinger or in a suitable pound or kennel, if such a pound or kennel is provided by the city or county; provided, a dog may be permitted to leave the premises of the owner, keeper, or harbinger if under leash or under the control of a responsible person. The

quarantine order shall be considered an emergency and need not be published.

"When the quarantine has been declared, the director of health, city or general health district board of health, or persons performing the duties of a board of health may require vaccination for rabies of all dogs within the health district or parts thereof. Proof of such vaccination within a satisfactory period prior to registration, as provided in section 955.01 of the Revised Code shall be demonstrated to the county auditor before such registration is issued for any dog required to be vaccinated.

\* \* \* \* \*

"Notwithstanding the provisions of this section, a board of health of a general health district or city board of health may make orders pursuant to sections 3709.20 and 3709.21 of the Revised Code requiring the vaccination of dogs." (Emphasis added)

The last paragraph of this section expressly declares that this section does not prohibit a board of health from making orders pursuant to Sections 3709.20 and 3709.21, Revised Code, requiring the vaccination of dogs. It does not follow, however, that the county auditor may require proof of vaccination, pursuant to an order under either of these sections, before issuing a registration for a dog.

Section 955.26, Revised Code, supra, was construed by the Court of Appeals in Stubbs v. Mitchell, 65 Ohio Law Abs. 204, (1952). Therein the court stated that this section:

"\* \* \* becomes operative only when in the opinion of the Board rabies becomes prevalent, and then it imposes a duty upon the Board to declare a quarantine of all dogs in the district. The powers of the Boards of Health are statutory and they are limited to those expressly conferred or fairly implied from those expressly granted. \* \* \*"

Once a quarantine is declared the board may require vaccination of all dogs. But once vaccination of dogs is required by the board under these conditions, it then becomes mandatory upon the county auditor to require proof of such vaccination before he may issue a dog registration certificate. Thus, Section 955.26, Revised Code, is a special statute imposing a mandatory duty upon the county auditor when certain conditions of that section are met.

It was stated by the Ohio Supreme Court in the case of State ex rel. Kuntz v. Zangerle, 130 Ohio St., 84 (1935), that since the office of county auditor is a creature of statute it "can exercise only such powers as are expressly delegated by statute \* \* \*." I find no other authority than that expressed in Section 955.26, Revised Code, supra, authorizing a county auditor to require proof of dog vaccination before issuing a dog registration.

Therefore, it is my opinion and you are accordingly advised that a county auditor has no authority to require proof of vaccination for rabies before issuing a dog registration in the absence of a declaration of quarantine and order of vaccination of all dogs by a director of health pursuant to Section 955.26, Revised Code.