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OHIO AG LAW
2120 Fyffe Road, Room 228
Columbus, Ohio 43210-1099
(614) 422 2641

OHIO LAW WHEN LIVESTOCK IS KILLED OR INJURED BY DOGS

Paul L. Wright, Extension Economist, Agricultural Law
Thomas E. Muth, Legal Research Assistant

Recently ORC 955, Ohio's dog law, has undergone quite a few changes, the most recent is HB 454 signed by the governor on August 1, 1985 and effective November 1, 1985. This article will examine the current procedure and penalties imposed by statute when dogs kill livestock.

What Are Dogs?

Dogs are personal property and as such have all the rights, privileges and are subject to restraint requirements the same as other livestock.¹ The breeding, raising, and care of dogs constitutes animal husbandry.² The mind set that a dog is just a cute family pet is dangerous given the tendency of dogs to revert to their savage state. Uncontrolled dogs have become a public nuisance and Ohio has seen fit to exercise its police powers to regulate, control and protect dogs and their owners.³

Registration of Dogs

Every person, with few exceptions⁴, who owns, keeps, or even harbors a dog which is more than 3 months of age is required to apply for registration of the dog. A registration fee of \$2.00 shall accompany the application, unless a greater fee has been established by the county commissioners.⁵

The county auditor may authorize agents to receive applications for registration of dogs and to issue certificates of registration. Each agent may charge an additional administrative

¹ORC 955.03.

²Harris v. Rootstown Twp. Zoning Bd. of Appeals, 44 OS 2d 144, 338 NE 2d 763 (1975).

³OJur 3d: 3, Animals section 71.

⁴ORC 955.011 provides for seeing eye dog or guide dog exemption and ORC 955.16 provides for exemptions of impounded dogs.

⁵ORC 955.01. See the accompanying map of Ohio showing the breakdown of county fees for 1985. More than 1/2 of Ohio counties charged \$6.00 or more for dog registration fees.

fee of \$.50 for compensation.⁶ If the application for registration is not filed and the fee paid before January 20th, the county auditor shall assess a penalty in an equal amount to the registration fee; the penalty must be paid with the registration fee.⁷

All dogs running at large shall be impounded on sight by the county dog warden, who is appointed by the board of county commissioners. All dogs more than 3 months of age found not wearing a valid registration tag shall also be impounded even if the dog is under control and on the premises of the owner.⁸

In addition to the penalty for not registering and/or the impoundment of the dog for not wearing the registration tag the owner may be assessed a fine for violating ORC 955.20 9. The fine will be not less than \$25.00 nor more than \$100.00 for the first offense. For subsequent offenses the fine shall be not less than \$75.00 nor more than \$250.00 and the owner may be imprisoned not more than 30 days.¹⁰

Dog Owner Liability

"The owner or keeper shall be liable for any damage or injuries caused by a dog unless such damage or injury was to the body or property of a person who, at the time of such damage or injuries were sustained, was committing a trespass on the property of the owner, or was teasing, tormenting, or abusing such dog on the owner's property."¹¹ The owner has absolute liability, scienter, fault, negligence or contributory negligence are not to be considered.¹²

The liability of the owner of a dog is absolute. Damages to a truck following a collision with a dog are the responsibility of dog's owner.¹³ The owner of an uncontrolled dog that strays

6ORC 955.14 (E).

7ORC 955.01.

8ORC 955.12.

⁹ORC 955.20 states "... The owner or keeper of every dog shall at all times keep such dog either confined upon the premises of the owner or under reasonable control of some person, except when lawfully engaged in hunting accompanied by an owner or handler."

¹⁰ORC 955.99 (D).

¹¹ORC 955.28.

¹²Dragonette v. Brandes, 135 OS 223, 20 NE2d 367 (1939).

¹³Hirschauer v. Davis, 130 NE2d 386 (1954) affirmed 163 OS 105, 126 NE2d 337 (1955).

upon the public highways is held to strict liability for the damage or harm caused by the stray¹⁴, unless the person injured was a trespasser on the owner's property or was teasing the dog.¹⁵ The old common law rule that a dog is entitled to one bite is not in effect in Ohio. Ignorance of the dog's propensities is no defense.¹⁶

Animals Killed or Injured

"A dog that chases, worries, or kills a person, sheep, lamb, goat, kid, domestic fowl, or domestic animal except a cat or another dog can be killed at any time or place."¹⁷ However, when killing any dog evidence must be present to show that the dog was the killer. A warden was not permitted to kill a duly licensed dog following a complaint that the dog had killed sheep nine hours before the complaint.¹⁸

Any owner of domestic livestock¹⁹ that have an aggregate fair market value of ten dollars or more which have been injured or killed by a dog not belonging to the owner or harbored on his premises must notify a member of the board of county commissioners or the dog warden within three days after the loss or injury has been discovered.

The commissioner shall immediately notify the dog warden of the loss or injury. The warden shall investigate promptly and shall provide and assist the owner in filling out duplicate copies of the claims form.²⁰

The fair market value of the animal shall be the market value on the date of the death of the animal or on the date of the injury. Any fetus aborted because of the stress of the attack shall be considered to have been killed by the dog,

¹⁴Ohio Casualty Insurance Co. v. Robison, 451 NE 2d 253 (Champaign 1982). This case also establishes the issues to be decided by the trier of facts in an action under ORC 955.28. Ownership or keeping of the dog, proximate cause of the damage by the dog, and the monetary amount of the damage are the three issues.

¹⁵Garrard v. McComas, 450 NE 2d 730 (Franklin 1982).

¹⁶Mehmert v. Kelso, 26 CC(NS) 350, 28 CD 515 (1915).

¹⁷ORC 955.28.

¹⁸Perkins v. Hattery, 155 NE 2d 73 (1958).

¹⁹ORC 955.29 lists horses, sheep, cattle, swine, mules, goats, domestic rabbits, domestic fowl and poultry.

²⁰ORC 955.29.

NOTE: No claimant who owned or harbored an unregistered dog on the date of the kill may recover from the dog and kennel fund.²²

Valuation Appeal Procedure

If the livestock owner does not agree with the value estimate he may appeal to the board of township trustees for a determination. In that case the owner shall secure statements as to the nature and amount of the loss from at least two witnesses who viewed the results of the attack. The information must be submitted to the board of township trustees not later than 20 days after the discovery of the loss.²³ See form attached.

"The board of township trustees shall receive any other information or testimony that will enable it to determine the fair market value of the animals..."²⁴

The proceeding of the hearing of the board of township trustees is not rigidly controlled by the statute. The attendance of a court reporter is not required, but if it is reasonably necessary payment of a court recorder may be made from the dog and kennel fund.²⁵ The board of township trustees may allow the claim in full or in part to a maximum of \$500.00 per animal or the uninsured amount of the loss.²⁶

The board shall transmit its findings with the testimony taken to the board of county commissioners in care of the county auditor.²⁷

The board of county commissioners shall examine the township trustees record and may hear additional testimony and order the claim paid.²⁸ The board of county commissioners shall examine the claims from the township trustees and may allow the amount certified by the dog warden or the amount allowed by the township trustees or any amount in addition to the allowances. The

²¹ORC 955.29.

²²Id.

²³Id.

²⁴ORC 955.31.

²⁵OAG # 83 066, November 7, 1983.

²⁶Id.

²⁷ORC 955.33.

²⁸ORC 955.35.

restriction of \$500.00 per animal or the uninsured amount applies to the commissioners also.²⁹

In the event the county commissioners decision is not acceptable to the livestock owner an appeal from the final allowance may be taken. Within 30 days after the allowance, the appeal shall be made to the probate court.³⁰ The probate court shall hear the appeals and shall determine the fair market value of the animals. The amount found shall be final and the judge shall certify the finding to the board of county commissioners.³¹

Summary

Dogs are personal property and must be registered by their owners.

The owner of a dog must keep the dog confined on the premises or under reasonable control. An exception for hunting is allowed if the dog is accompanied by its owner or handler.

An owner may be fined and could be sentenced to prison for failing to register his dog or for failing to keep the dog controlled.

The owner is absolutely liable for any damage his dog causes.

Ohio provides recovery for livestock owners whose animals have been killed by dogs. The recovery is paid out of the dog and kennel fund and recovery is limited to no more than \$500.00 per animal or the amount of the uninsured value, whichever is less. An appeals process for the valuation is provided for in the statutes.

29ORC 955.35.

30ORC 955.37.

31ORC 955.38.