



COMMONWEALTH of VIRGINIA

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October 30, 2006

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The Honorable Kenneth Cooper Alexander
Member, House of Delegates
7246 Granby Street
Norfolk, Virginia 23505

Dear Delegate Alexander:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether it is lawful for publicly funded animal shelters to euthanize dogs based solely upon breed.

Response

It is my opinion that publicly funded animal shelters or “pounds”¹ may not euthanize dogs based solely upon breed.

Applicable Law and Discussion

Chapter 27.4 of Title 3.1, §§ 3.1-796.66 through 3.1-796.129, contains Virginia’s “Comprehensive Animal Laws.” Under § 3.1-796.76(A), an animal² may be euthanized when it “is sick or injured and the owner of such animal cannot be immediately located.” Section 3.1-796.114 permits a humane investigator to destroy any animal “found abandoned or not properly cared for when ... the animal appears to be injured, disabled or diseased, past recovery, or the injury, disease or disability is such that a reasonable owner would cause the animal to be destroyed.”

¹“*Animal shelter*’ means a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity[.]” VA. CODE ANN. § 3.1-796.66 (Supp. 2006). “*Pound*’ means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with any county, city, town, or incorporated society for the prevention of cruelty to animals.” *Id.* For purposes of this opinion, the term “pound” refers to a “publicly funded animal shelter.”

²Consistent with the definition of “animal” under § 3.1-796.66, the term animal as used herein refers to dogs unless otherwise indicated.

Similarly, “[a]ny humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated,” or has not received adequate care that renders the animal in a condition that constitutes “a direct and immediate threat to its life, safety or health.”³ Upon a finding by a general district court that the impounded animal is abandoned, has been cruelly treated, or has not received adequate care, it may order that the animal be humanely destroyed.⁴

Under certain circumstances, an animal may be euthanized if it is not claimed by its owner from a licensed veterinarian or boarding establishment.⁵ Pursuant to § 3.1-796.119, a companion animal⁶ of unknown ownership “found running at large” may, among other things, be euthanized pursuant to the provisions of § 3.1-796.96. Section 3.1-796.96 sets forth the general requirements and criteria for humanely disposing of animals held in pounds. Animal shelters and releasing agencies also may dispose of animals pursuant § 3.1-796.96.⁷ Additionally, an animal found in the act of killing or injuring livestock or poultry may be destroyed.⁸

Pursuant to § 3.1-796.93:1(B), if a general district court finds that an animal is a “vicious dog,”⁹ the general district court shall order the animal euthanized in accordance with § 3.1-796.119. Most relevant to the inquiry addressed herein is § 3.1-796.93:1(C), which provides that “[n]o canine or canine crossbreed shall be found to be a dangerous dog or vicious dog *solely because it is a particular breed*, nor is the ownership of a particular breed of canine or canine crossbreed prohibited.” (Emphasis added.)

Although vicious dogs may be destroyed, there are exceptions where the dog’s actions are not considered dangerous or vicious if the threat, injury, or damage was sustained by a person committing a crime upon the premises of the animal’s owner, committing a willful trespass, or in some form provoking or abusing the animal.¹⁰ Other exceptions include when the dog is responding to pain or injury, protecting itself, its offspring or a person, or its owner’s property.¹¹ Clearly, there are requirements that must be met before a dog is deemed vicious and can be euthanized.¹²

³ See § 3.1-796.115(A) (Supp. 2006).

⁴ See § 3.1-796.115(D).

⁵ See § 3.1-796.75 (1994).

⁶ Section 3.1-796.66 defines a “companion animal” to include a domestic or feral dog.

⁷ See § 3.1-796.96.2(A) (Supp. 2006) (authorizing animal shelters to dispose of animals pursuant to § 3.1-796.66(B)-(F)); § 3.1-796.96.5 (authorizing releasing agencies, other than pounds, to dispose of animals pursuant to § 3.1-796.66(B)-(F)).

⁸ See § 3.1-796.116 (Supp. 2006).

⁹ The term “vicious dog” “means a canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person ...; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or ... by an animal control officer ... that it is a dangerous dog.” Section 3.1-796.93:1(A) (Supp. 2006).

¹⁰ See § 3.1-796.93:1(C).

¹¹ *Id.*

¹² Although local governing bodies may under certain circumstances adopt more stringent animal control rules, the General Assembly did not intend to permit local governments to adopt ordinance provisions more stringent than those set forth in § 3.1-796.93:1. See § 3.1-796.93:1(M); 1996 Op. Va. Att’y Gen. 17, 18-19.

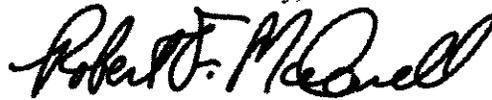
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Conclusion

Accordingly, it is my opinion that publicly funded animal shelters or “pounds”¹³ may not euthanize dogs based solely upon breed.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink that reads "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert F. McDonnell

1:1107; 1:941/06-078

¹³ See *supra* note 1.