



COMMONWEALTH of VIRGINIA

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The Honorable Robert D. Orrock, Sr.
Member, Virginia House of Delegates
Post Office Box 458
Thornburg, Virginia 22565

The Honorable Adam P. Ebbin
Member, Senate of Virginia
Post Office Box 26415
Alexandria, Virginia 22313

Dear Delegate Orrock and Senator Ebbin:

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 animal control officers in Virginia have statutory authority to remove an animal from private property in response to a complaint from the property owner.

Applicable Law and Discussion

The Comprehensive Animal Care Law (the “Animal Care Law”)¹ authorizes localities to employ animal control officers to enforce its provisions and any ordinance enacted pursuant to it.² It includes one mandatory and two permissive provisions regarding the seizure of companion animals by animal control officers. The power of an officer to seize animals depends on: (i) the type of animal; (ii) the circumstances in which the officer finds the animal; and (iii) local ordinances enacted pursuant to the Animal Care Law.

In a defined set of circumstances, an animal control officer is required to seize and hold companion animals under § 3.2-6562 of the *Code of Virginia*. For these companion animals,³ “it is the duty of animal control officers ‘to *capture and confine* any companion animal of unknown ownership

¹ VA. CODE ANN. §§ 3.2-6500 to 6590 (2008 & Supp. 2014).

² See § 3.2-6555 (2008).

³ See § 3.2-6500 (Supp. 2014) (defining the term “companion animal” as “any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals . . .”).

found running at large on which the license fee has not been paid.”⁴ Each provision must be met before the animal control officer is required to confine such a companion animal under this section: there must be a companion animal of unknown ownership for which licensure is required, the license fee must be unpaid, and the animal must be running at large.

The Animal Care Law provides for mandatory licensure of all dogs four months of age or older,⁵ but it requires licensure of cats only upon adoption of a local ordinance requiring the same.⁶ It does not authorize licensure of any other category of companion animal. Accordingly, animal control officers are not under a duty to exercise capture authority under § 3.2-6562 unless the animal is an unlicensed dog four months of age or older or a cat required to be licensed by applicable local ordinance.⁷ The animal control officer may presume to be unlicensed any dog of the requisite age, or any cat in a jurisdiction where cats must be licensed, so long as the animal is not wearing a collar bearing a valid license tag.⁸

“Running at large” is not a term for which the Animal Care Law provides a general definition in § 3.2-6500. However, in authorizing localities to adopt certain ordinances prohibiting dogs from running at large, it defines running at large to mean “roaming, running or self-hunting off the property of its owner or custodian and not under its owner’s or custodian’s immediate control.”⁹ It is reasonable to infer that this definition would guide a court’s evaluation of a seizure decision under § 3.2-6562, such that only a dog (or, in an appropriate local jurisdiction, a cat) which is found “roaming, running or self-hunting off the property of its owner or custodian” would be subject to seizure by the animal control officer.

Because the central element of “running at large” is being off the owner’s property, it is my opinion that, absent special circumstances, a companion animal on the property of some other person would be “running at large.”

Therefore, if an animal control officer receives a complaint from a property owner of a companion animal of unknown ownership for which licensure is required on the owner’s property, and if the officer determines the animal to be unlicensed, it is my opinion that he must seize and take control of the animal under § 3.2-6562.

⁴ 2013 Op. Va. Att’y Gen. 29, 31 (quoting VA. CODE ANN. § 3.2-6562 (2008) (emphasis added)). Section 3.2-6562 does not afford the animal control officer any discretion in capturing and confining such animals, as it “shall be the duty” of the officer to do so. *See Andrews v. Shepherd*, 201 Va. 412, 414 (1959) (“In its ordinary signification, ‘shall’ is a word of command, and is the language of command, and is the ordinary, usual, and natural word used in connection with a mandate.” (citation omitted)).

⁵ Section 3.2-6524(A) (2008).

⁶ Section 3.2-6524(B).

⁷ Although § 3.2-6543 allows a locality to “make more stringent” ordinances that parallel the Animal Care Law, there is no provision in the Animal Care Law permitting the adoption of an ordinance for licensure of any other category of companion animal other than dogs or cats. Under the Dillon Rule of strict construction, it does not appear a locality would have the ability to expand the categories of animals subject to licensure. *See Bd. of Supv’rs v. Countryside Inv. Co.*, 258 Va. 497, 503 (1999) (quoting *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 246 (1997)) (“[T]he Dillon Rule of strict construction . . . provides that municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.”)

⁸ Section 3.2-6533 (2008) (“Any dog or cat not wearing a collar bearing a valid license tag shall prima facie be deemed to be unlicensed . . .”).

⁹ Section 3.2-6538 (2008).

Two other provisions of the Animal Care Law provide animal control officers with discretionary authority, but not a duty, to seize certain companion animals in certain situations. First, an animal control officer “may take” a dog or cat on the premises of a person other than its legal owner, notify the legal owner of the seizure and hold the animal pending its return to the owner.¹⁰ By its terms, this statute allows, but does not require, an animal control officer to seize a companion animal for which the proper licensure fee has been paid if that cat or dog is not on the premises of its legal owner.

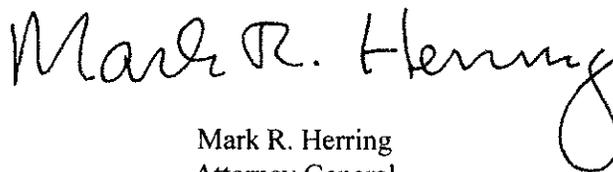
Second, an animal control officer may “lawfully seize and impound any animal that has been abandoned, has been cruelly treated” or, because of an apparent violation of the Animal Care Law, is in “such a condition as to constitute a direct and immediate threat to its life, safety or health.”¹¹ Should an animal control officer receive a report of an abandoned, cruelly treated or immediately threatened animal and, after investigating the circumstances, determine the animal to be in such condition, the officer may seize the animal pursuant to § 3.2-6569 and commence the judicial process required thereunder.¹² Such seizure done in accordance with § 3.2-6569 is, by the terms of the statute, permissive and is not dependent upon the licensure status, type of animal, ownership, or location of the animal.

Conclusion

Accordingly, it is my opinion that an animal control officer is under a duty to remove an unlicensed companion animal from a property owner’s property upon complaint from the property owner, where the animal is not owned by the property owner. Removal is to be by capture and confinement. In order to be deemed unlicensed, the animal must be a dog or a cat. If a dog, the animal must be four months of age or older, and, if a cat, only if the locality has adopted an ordinance requiring licensure of cats. If the companion animal is licensed, the officer has the discretion, but not the duty, to capture and confine it. If an officer captures and confines an animal, the officer must notify the owner. If any animal, whether a companion animal or not, and whether or not owned by the property owner, has been abandoned, cruelly treated, or immediately threatened because of an apparent violation of the Animal Care Law, the officer may seize it and commence the appropriate judicial process for abandoned animals.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹⁰ Section 3.2-6585 (2008) (But “[t]he presence of a dog or cat on the premises of a person other than its legal owner shall raise no presumption of theft against the owner, and the animal control officer may take such animal and notify its legal owner.”)

¹¹ Section 3.2-6569(A) (Supp. 2015). “Abandon” is defined by the Animal Care Law to mean “to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.2-6503 for a period of five consecutive days.” Section 3.2-6500 (Supp. 2015).

¹² Section 3.2-6569(C), (D).