



COMMONWEALTH of VIRGINIA

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September 1, 2016

The Honorable Paul B. Ebert
Commonwealth's Attorney
Prince William County
9311 Lee Avenue, Suite 200
Judicial Center
Manassas, Virginia 22110-5555

Dear Mr. Ebert:

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 inquire whether an animal control officer (an "ACO") has discretion as to whether to request a dangerous dog summons once he learns that a dog has bitten, attacked, or inflicted injury on a person. The crux of your inquiry is whether an ACO, through additional investigation, may determine that even if the dog has engaged in such behavior, a summons will not be requested because of one of several statutory exceptions or defenses.

Applicable Law and Discussion

Virginia Code § 3.2-6540, a statute in Title 3.2, Chapter 65 ("Comprehensive Animal Care"),¹ governs the control of dangerous dogs.² With an exception for a police dog engaged in the performance of its duties,³ subsection A of the statute defines the term "dangerous dog" as "a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat."⁴

Under subsection B of the statute, any ACO "who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog *shall* apply to a magistrate serving the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general

¹ VA. CODE ANN. §§ 3.2-6500 to 6590 (2016).

² See VA. CODE ANN. § 3.2-6540.

³ VA. CODE ANN. § 3.2-6540(C).

⁴ VA. CODE ANN. § 3.2-6540(A).

district court at a specified time.”⁵ The use of the word “shall” in a statute generally indicates that the procedures are mandatory, rather than permissive.⁶ Thus, once the ACO has an objective reason to believe⁷ the canine is a dangerous dog under the statutory definition in subsection A— that is, that the dog has bitten a person or displayed one of the other behaviors listed—all discretion is removed, and the ACO must go to the magistrate and request a summons.⁸

There are, however, a number of statutory exceptions in subsection A to the general definition of “dangerous dog.”⁹ One is if the dog has not caused serious injury to a dog or cat “as determined by a licensed veterinarian.” Another is “for other good cause as determined by the court.”¹⁰ The express language of these exceptions indicates that their application may not be determined by an ACO: one is to be determined by a licensed veterinarian—presumably in evidence presented to the court—and the other is to be determined only by the court. The doctrine of *in pari materia* means that statutes—or parts of a statute—that have the same general or common purpose or are parts of the same general plan are to be read as a whole.¹¹ It is also well-established that the several parts of a statute should be interpreted as a consistent and harmonious whole so as to effectuate the legislative goal.¹² It would be inconsistent to say that some of the statutory exceptions may be applied by an ACO while others may not. For this reason, I conclude that application of all the statutory exceptions listed in subsection A are intended to be determined solely by the court after consideration of the evidence. Put differently, the statute does not authorize an ACO to determine if they apply before deciding whether to request a summons from a magistrate.

In addition to the exceptions in subsection A of § 3.2-6540, there are also certain defenses in subsection C of that statute to a dangerous dog charge. In setting forth the defenses, the statute provides, “No canine or canine crossbreed shall be *found* to be a dangerous dog” based on certain factual

⁵ VA. CODE ANN. § 3.2-6540(B) (emphasis added).

⁶ *Andrews v. Shepard*, 201 Va. 412, 414 (1959).

⁷ *See Rector & Visitors of the Univ. of Va. v. Cuccinelli*, 80 Va. Cir. 657, 659 (Va. Cir. Ct. 2010) (“In order for the Attorney General to have a “reason to believe,” he has to have some objective basis to [act] . . . which the Court has the power to review.”).

⁸ This conclusion is consistent with the applicable legislative history. There have been numerous amendments of the “dangerous dog” statute over the years. One amendment was in 2006, and it enacted the requirement that an ACO “shall” request a summons when he learns of what may be a “dangerous dog.” The 2006 Department of Planning and Budget Fiscal Impact Statement for the bill in question (HB340) states, “The proposed legislation expands the authority to petition a court to find a dog dangerous to any law enforcement officer *and makes the petition mandatory.*” (Emphasis added.)

⁹ “When a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous (i) if no serious injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite; (ii) if both animals are owned by the same person; (iii) if such attack occurs on the property of the attacking or biting dog’s owner or custodian; or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part lawful hunting or participating in an organized, lawful dog handling event. No dog that has bitten, attacked, or inflicted injury on a person shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, that the dog is not dangerous or a threat to the community.” VA. CODE ANN. § 3.2-6540 (A).

¹⁰ *Id.*

¹¹ *See, e.g., Prillaman v. Commonwealth*, 199 Va. 401, 405 (1957).

¹² *Va. Electric & Power Co. v. Bd. of County Supervisors*, 226 Va. 382, 388 (1983).

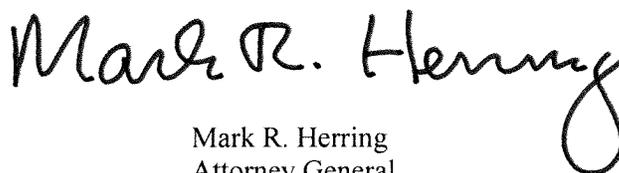
situations.¹³ The word “finding” refers to “finding of fact,” which is defined as “[a] determination by a judge, jury, or administrative agency of a fact supported by the evidence in the record, [usually] presented at the trial or hearing.”¹⁴ The requirement of a “finding” thus indicates that this determination is to be made by the court after consideration of all relevant facts, not an ACO before deciding whether to request a summons. Thus, as with the exceptions to the definition of “dangerous dog,” set forth in subsection A, I conclude that the defenses set forth in subsection C may be applied only by the court, not by an ACO.

Conclusion

Accordingly, it is my opinion that where an ACO has an objective reason to believe that a dog has bitten, attacked, or inflicted injury on a person, he must apply to a magistrate for issuance of a summons for violation of the dangerous dog statute. It is my further opinion that only a court, and not an ACO, may determine, after consideration of the evidence, whether the exceptions and defenses found in subsections A and C of § 3.2-6540 are applicable.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping final flourish.

Mark R. Herring
Attorney General

¹³ Emphasis added. “No canine or canine crossbreed shall be found to be a dangerous dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog if the threat, injury, or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal’s owner or custodian; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal’s owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. . . . No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner’s or custodian’s property, shall be found to be a dangerous dog.” VA. CODE ANN. § 3.2-6540 (C).

¹⁴ See BLACK’S LAW DICTIONARY 749 (Bryan A. Garner et al. eds., 10th ed. 2014).