



HENRY McMASTER
ATTORNEY GENERAL

June 23, 2009

The Honorable David Hogue
Mayor, Town of Blacksburg
P. O. Box 487
Blacksburg, South Carolina 29702

Dear Mayor Hogue:

In a letter to this office you referenced that Cherokee County is in the process of revising its policies and procedures regarding the Cherokee County Animal Shelter. You stated that the Humane Society of Cherokee County, Inc. provides volunteers who manage all adoption and rescue services at the animal shelter at no cost to the County. You further stated that

“The Humane Society of Cherokee County, Inc. has requested the current policy be amended to allow for the direct release of animals from the shelter following the mandatory five-day hold to the Humane Society in accordance with S.C. Code Ann. § 47-3-60 as the Shelter’s final disposition.

The County Administrator and County Attorney believe that according to S.C. Code Ann. § 47-3-480 that they must maintain records on the sterilization status of each animal released to the Humane Society and the Humane Society contends that upon release of the formerly impounded animal to their care, custody and control that the responsibility for assuring compliance with Section 47-3-480 for that animal belongs to the Humane Society as well as the maintenance of all corresponding records.

Cherokee County Administrator and Attorney maintain that the County has potential liability and possible legal consequences if they do not oversee the sterilization of each animal released to the Humane Society of Cherokee County, Inc.

The Humane Society of Cherokee County, Inc. contends that since these formerly impounded animals are sterilized at the Humane Society’s expense that all veterinary records remain their property and while the organization will be willing to make certain information available to the County on an as-needed basis, that the final

disposition for county records, according to Section 47-3-60 is “release to Humane Society.”

Referencing such, you have raised the following questions:

1. What is the extent of Cherokee County’s legal liability and what are the potential legal consequences to the County if intact animals are released directly to the Humane Society as the Animal Shelter’s final disposition?
2. Is Cherokee County required to maintain sterilization records on animals released directly to the Humane Society as their final disposition, or is the County’s release of impounded animals to the Humane Society of Cherokee County, Inc. sufficient documentation of the County’s compliance with these standards?

S.C. Code Ann. § 47-3-60 states that:

(A) [a]fter any animal has been quarantined pursuant to South Carolina Rabies Control Act and is unclaimed by its owner, after the animal shelter employees have made a good faith effort to contact the identified owner as required by Section 47-3-540, the animal shelter employees, unless the animal must be kept pending disposition of a criminal or civil trial involving the animal or unless a hearing on the disposition of the animal is held prior to the trial, may dispose of the animal by adoption or by euthanasia or the animal may be turned over to any organization established for the purpose of caring for animals, such as the Humane Society.

(B) After any animal has been impounded for five days and is unclaimed by its owner, and after the animal shelter employees have made a good faith effort to contact the identified owner as required by Section 47-3-540, the animal shelter employees, unless the animal must be kept pending disposition of a criminal or civil trial involving the animal or unless a hearing on the disposition of the animal is held prior to the trial, may dispose of the animal by adoption or by euthanasia or the animal may be turned over to any organization established for the purpose of caring for animals, such as the Humane Society.

(C) Complete records must be kept by shelter officials as to the disposition of all animals impounded. (emphasis added).

Section 47-3-480 referenced above provides that:

(A) [a] public or private animal shelter, animal control agency operated by a political subdivision of this State, humane society¹, or public or private animal refuge shall make provisions for the sterilization of all dogs or cats acquired from the shelter, agency, society, or refuge by:

(1) providing sterilization by a licensed veterinarian before relinquishing custody of the animal; or

(2) entering into a written agreement with the person acquiring the animal guaranteeing that sterilization will be performed by a licensed veterinarian within thirty days after acquisition of a sexually mature animal or no later than six months of age except upon a written statement issued by a licensed veterinarian stating that such surgery would threaten the life of the animal.

(B) This section does not apply to a privately owned animal which the shelter, agency, society, or refuge may have in its possession for any reason if the owner of the animal claims or presents evidence that the animal is his property.

(C) All costs of sterilization pursuant to this section are the responsibility of the person acquiring the animal and, if performed before acquisition, may be included in the fees charged by the shelter, agency, society, or refuge for the animal.

(D) A person acquiring an animal from a shelter, an agency, a society, or a refuge which is not sterile at the time of acquisition shall submit to the shelter, agency, society, or refuge a signed statement from the licensed veterinarian performing the sterilization required by subsection (A) within seven days after sterilization attesting that the sterilization has been performed. (emphasis added).

As to the failure to comply with the mandate for sterilization, Section 47-3-490 states that

[a] person who fails to comply with Section 47-3-480(A)(2) or 47-3-480(D) must forfeit ownership of the dog(s) or cat(s) acquired from the shelter, agency, society, or refuge which adopted the animal to the owner. In addition to forfeiting ownership, the person who acquired the animal must pay to the shelter, agency, society, or refuge the sum of \$200.00 as liquidated damages. Such remedies shall be in addition to any other legal or equitable remedies as may be available to the shelter, agency, society,

¹The term “humane society” is defined by S.C. Code Ann. § 47-3-470 as “...an unincorporated nonprofit organization existing for the purpose of prevention of cruelty to animals.”

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or refuge for breach of the written agreement as provided for in Section 47-3-480(A)(2) or failure to comply with Section 47-3-480(D).

As to your question of the extent of Cherokee County's legal liability and potential legal consequences if intact animals are released directly to the Humane Society as the Animal Shelter's final disposition, in the opinion of this office, there would be no liability or consequences as to the County inasmuch as Section 47-3-60 specifically authorizes turning over an animal in the appropriate circumstances to the Humane Society. Moreover, Section 47-3-480 states that the humane society "shall make provisions for the sterilization of all dogs or cats acquired from the...society...." by either providing sterilization prior to relinquishing custody of the animal or entering into a written agreement with the individual acquiring the animal which guarantees sterilization as specified.

Concerning your question as to whether the County is required to maintain sterilization records on animals released directly to the Humane Society or is the County's release of impounded animals to the Humane Society sufficient compliance with the referenced standards, in the opinion of this office, the County would not be required to maintain sterilization records on such animals and the release of the animals to the Humane Society would constitute sufficient compliance with the required standards.

With kind regards, I am,

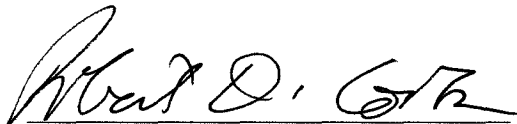
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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