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CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 2, 1997

The Honorable Donna Owens
Municipal Judge, City of Florence
City-County Complex DD
180 N. Irby Street
Florence, South Carolina 29501-3456

Re: Informal Opinion

Dear Judge Owens:

You inquired to whether pursuant to §47-3-760(C) of the Code a municipal court has jurisdiction to order a dangerous animal destroyed if the owner has been found guilty in Municipal Court for violating §47-3-730 or "is §47-3-760(C) considered more civil in nature thus vesting jurisdiction in the Magistrate Court only."

LAW / ANALYSIS

S.C. Code Ann. Sec. 47-3-710 et seq. provides for the regulation of dangerous animals. Section 47-3-710 defines the term "dangerous animal", among others. Section -720 provides that no person owning, harboring or having the custody of a dangerous animal may permit the animal to go unconfined on his or her premises. Section 47-3-730 further states that a dangerous animal may not go off the premises of the owner without safe restraint. Pursuant to Section 47-3-750, if a law enforcement agent, animal control officer or animal control officer under contract has probable cause to believe that a dangerous animal is being harbored or cared for in violation of §§47-3-720, 47-3-740 or 47-3-760(E), the agent or officer "may petition the court having jurisdiction to order the seizure and impoundment of the dangerous animal while the trial is pending." (emphasis added).

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Request Letter

In addition, Section 47-760 reads as follows:

> (A) A person who violates Section 47-3-720 or 47-3-730 or subsection (E) of this section or who is the owner of a dangerous animal is guilty of a misdemeanor and, upon conviction, for a first offense, must be fined not more than two hundred dollars or imprisoned not more than thirty days and, upon conviction of a subsequent offense, must be fined on thousand dollars more of which may be suspended or remitted.
>
> (B) A person who is the owner of a dangerous animal which attacks and injures a human being in violation of Section 47-3-710(A)(2)(a) or a person who violates Section 47-3-740;
>
> > (1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years; and
> >
> > (2) for a second or subsequent offense, is guilty of a felony and upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than five years.
>
> (C) A dangerous animal which attacks a human being or domestic animal may be ordered destroyed when in the court's judgment the dangerous animal represents a continuing threat of serious harm to human beings or domestic animals.
>
> (D) A person found guilty of violating this article shall pay all expenses, including, but not limited to, shelter, food, veterinary expenses for boarding and veterinary expenses necessitated by the seizure of an animal for the protection of the public, medical expenses incurred by a victim from the attack by a dangerous animal, and other expenses required for the destruction of the animal.
>
> (E) A person owning a dangerous animal shall register the animal with the local law enforcement authority of the county in which the owner resides. The requirements of the registration must be determined by the county governing body.

> However, the registration application must be accompanied by proof of liability insurance or surety bond of at least fifty thousand dollars insuring or securing the owner for personal injuries inflicted by the dangerous animal. The county governing body shall provide to the owner registering the dangerous animal a metal license tag and certificate. The metal license tag at all times must be attached to a collar or harness worn by the dangerous animal for which the certificate and tag has been issued.
>
> (F) Nothing in this chapter is designed to abrogate any civil remedies available under statutory or common law. (emphasis added).

A number of principles of statutory construction are pertinent to your question. First and foremost, is the time-honored tenet of interpretation that the intent of the General Assembly must prevail. State v. Harris, 268 S.C. 117, 232 S.E.2d 231 (1977). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Weston v. Bd. of Commrs. of Police Insurance and Annuity Fund, 196 S.C. 491, 13 S.E.2d 600 (1941). Absurd or unreasonable consequences are to be avoided. State ex vel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Words used should be given their ordinary meaning and terms within the statute applied according to their literal meaning. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979); Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977).

The so-called "Dangerous Animal" Act was enacted in 1992, having originated as legislation regulating dangerous dogs in 1988. The original legislation contained a provision which stated that "all violations of this article are within the magistrate's jurisdiction." In accord with such provision, in Op. Atty. Gen., Op. No. 89-138 (Dec. 5, 1989) we concluded that a magistrate would possess jurisdiction to award an amount greater than the ordinary jurisdictional limits of a magistrate for such items as shelter, food, veterinary expenses, etc., pursuant to §47-3-760(C). We stated that;

> [i]n the opinion of this Office, a magistrate would have jurisdiction to render a judgment in an amount greater than $2,500.00 for the referenced expenditures in association with a criminal proceeding brought pursuant to Sections 47-3-710 et seq. Otherwise, there would be the situation where the magistrate would have trial jurisdiction over the criminal case but any relief for expenses would have to be sought from another court. It appears to be the legislative intent to make

> all proceedings pursuant to such provisions within the jurisdiction of a magistrate's court.

In that same opinion, we also addressed the question of whether municipal courts would have jurisdiction to try second or subsequent "dangerous dog" criminal cases. In concluding that municipal courts would possess such jurisdiction our reasoning was in part as follows:

> ...pursuant to Section 14-25-45 of the Code, a municipal court judge has "...all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." Such provision further states that municipal court judges have no jurisdiction over civil cases.... Reading Sections 14-25-45 [giving municipal courts criminal jurisdiction] and 47-3-760 together results in the construction that municipal courts would have the same jurisdiction as magistrates as to "dangerous dogs" criminal cases. See, State ex vel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). Therefore, municipal courts would appear to have jurisdiction to try second or subsequent offense "dangerous dog" cases.

In 1992, the "dangerous dog" law was broadened to encompass "dangerous animals" as defined. As part of the revamping of the law, however. the above-referenced provision relating to magistrates having jurisdiction over all violation of the law was removed from the statute. Clearly, under the present law, the Court of General Sessions would have jurisdiction over criminal prosecution brought pursuant to §47-3-760(B).

This does not mean, however, that magistrates and municipal courts would not continue to possess jurisdiction over certain offenses committed in violation of the "dangerous criminal" laws. See, §47-3-760(A). Where a municipal court does possess criminal jurisdiction pursuant to the law, it is my opinion that, consistent with the referenced 1989 opinion, the municipal court would also possess jurisdiction under §47-3-760(C) where necessary to order destruction of the dangerous animal. Section 47-3-760 speaks of "the court's judgment" without any reference to any specific court. Moreover, Subsection (C) does not distinguish between instances where a dangerous animal attacks a human being or a "domestic animal", but instead treats both such situations the same. In light of the fact that no such distinction is made, and no reference is provided to any specific court, it is evident that the "court" being referenced is the same court possessing criminal jurisdiction. Moreover, I would note that §47-3-750 authorizes an officer to "petition the court having jurisdiction" to order seizure and impoundment of the dangerous animal while "the trial is pending." Again, such authorization would go hand-in-hand with the court which possesses criminal jurisdiction. This reading is

consistent with the conclusion reached in Op. No. 89-138 wherein we found that it was consistent with legislative intent to give the same court jurisdiction to destroy the dangerous animal [the dog] as possessed jurisdiction to try the criminal case. As we found there, it would make no sense to require such relief as expenses of the destruction or the dangerous animal in a court different from the one which tried the criminal case. In short, it appears that the legislature bestowed certain additional jurisdiction such as the destruction of a dangerous animal where necessary in conjunction with the court's criminal jurisdiction.

I must advise you that I have found no case in South Carolina which specifically addresses your question. In light of the lack of guiding authority in this case, as well as the irrevocability of the destruction of an animal, it may be best to seek legislative guidance or at least obtain a definitive ruling from the circuit or Supreme Court in this area. You may also wish to advise the owner of the animal of the right to appeal in the event destruction is ordered. In the absence of further clarification, however, it is my opinion that the municipal court would have jurisdiction under §47-3-760(C) to order the destruction of a dangerous animal where the court possesses jurisdiction to try the criminal case. Of course, it would be a matter of the court's discretion as to whether in a particular case to order a dangerous animal to be destroyed.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/elb