



# COMMONWEALTH of VIRGINIA

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December 11, 2008

The Honorable Patricia S. Ticer  
Member, Senate of Virginia  
301 King Street  
Alexandria, Virginia 22314

Dear Senator Ticer:

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 what circumstances would authorize an animal control officer to enter a vehicle to rescue a companion animal that has been left unattended. Further, you inquire concerning the potential civil liability of such an officer.

## Response

It is my opinion that an animal control officer may act to prevent an act of cruelty upon any animal when that act occurs in his presence. It further is my opinion that the question of whether there is an occurrence of an act of cruelty is a factual determination to be made by the animal control officer. Finally, it is my opinion that an animal control officer is entitled to immunity for actions performed within the scope of his official duties, provided such actions were reasonable and in good faith.

## Applicable Law and Discussion

Section 3.2-6566 provides that “[e]ach animal control officer ... shall interfere to prevent the perpetration of any act of cruelty upon any animal in his presence.” Section 3.2-6570(A) provides that:

Any person who: (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, ... [on] any animal, whether belonging to himself or another; [or] (v) carries or causes to be carried by any vehicle, vessel or otherwise any animal in a cruel, brutal or inhumane manner, so as to produce torture or unnecessary suffering; ... is guilty of a Class 1 misdemeanor.

“*Humane*’ means any action taken in consideration of and with the intent to provide for the animal’s health and well-being.”<sup>1</sup> Inhumane means “not humane.”<sup>2</sup> Therefore, I conclude that if the animal

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<sup>1</sup>VA. CODE ANN. § 3.2-6500 (2008).

<sup>2</sup>MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 600 (10th ed 2001) [hereinafter “COLLEGIATE DICTIONARY”].

control officer reasonably determines that an animal may become overheated or may suffer from hypothermia or is suffering from a lack of food or water<sup>3</sup> due to being left in an automobile, he may rescue such animal to preserve its health and well-being.

An “animal control officer may *lawfully* seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an *apparent* violation of [Chapter 65] that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health.”<sup>4</sup> The term “apparent” means “appearing as actual to the eye or mind.”<sup>5</sup> “Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation.”<sup>6</sup> “The manifest intention of the legislature, clearly disclosed by its language, must be applied.”<sup>7</sup> The General Assembly affirmatively has authorized an animal control officer to seize an animal in the event of apparent cruelty.<sup>8</sup> Therefore, when an animal control officer observes an animal left alone in a vehicle under conditions such as extreme temperature or the animal otherwise appears to be in distress, he lawfully may remove the animal.

Section 3.2-6569 further provides a remedy for the owner of the animal. A hearing is required within ten days of the seizure of an animal to determine whether it should be returned to the owner.<sup>9</sup> You ask whether the animal control officer would be subject to civil liability for his actions if the court determines that the animal was not the subject of inhumane or cruel treatment.<sup>10</sup> As previously noted, § 3.2-6569(A) foresees situations where an animal control officer may act where there is apparent, but not actual, inhumane treatment. However, the officer must act reasonably and with good faith.<sup>11</sup> Specifically, if the animal control officer has a good faith, reasonable belief that an animal is subject to inhumane

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<sup>3</sup>Section 3.2-6503(A)(1)-(2) requires an owner to provide adequate feed and water for his companion animals. A violation of this statute is a Class 4 misdemeanor. *See* § 3.2-6503(B) (2008).

<sup>4</sup>Section 3.2-6569 (2008) (emphasis added); *see also* § 3.2-6565 (2008) (authorizing animal control officer to impound animal when he “finds that an apparent violation of [Chapter 65] has rendered an animal in such a condition as to constitute a direct and immediate threat to its life, safety or health”). I note that Chapter 65 includes both § 3.2-6565 and § 3.2-6569.

<sup>5</sup>COLLEGIATE DICTIONARY, *supra* note 2, at 55.

<sup>6</sup>Last v. Va. State Bd. of Med., 14 Va. App. 906, 910, 421 S.E.2d 201, 205 (1992).

<sup>7</sup>Barr v. Town & Country Props., Inc., 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting Anderson v. Commonwealth, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

<sup>8</sup>Section 3.2-6569(A).

<sup>9</sup>*Id.*

<sup>10</sup>*See* § 3.2-6569(D).

<sup>11</sup>*See* DeChene v. Smallwood, 226 Va. 475, 479, 311 S.E.2d 749, 751 (1984); *see also* Lentz v. Morris, 236 Va. 78, 82, 372 S.E.2d 608, 610 (1988) (noting that employee of county, which shares immunity of state, was entitled to sovereign immunity where his activities clearly involved exercise of judgment and discretion); Messina v. Burden, 228 Va. 301, 311, 321 S.E.2d 657, 662 (1984) (holding that government employee operating within scope of his employment and absent claim of gross negligence is entitled to sovereign immunity). *Cf.* James v. Jane, 221 Va. 43, 53, 282 S.E.2d 864, 869 (1980) (holding that state employee who acts wantonly, or in culpable or grossly negligent manner, is not protected; nor is employee who acts beyond scope of employment).

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treatment, he may act within his official capacity without being subject to civil liability.<sup>12</sup> The question of whether an animal control officer has acted reasonably in a particular circumstance is a factual determination for a trier of fact.<sup>13</sup>

### Conclusion

Accordingly, it is my opinion that an animal control officer may act to prevent an act of cruelty upon any animal when that act occurs in his presence. It further is my opinion that the question of whether there is an occurrence of an act of cruelty is a factual determination to be made by the animal control officer. Finally, it is my opinion that an animal control officer is entitled to immunity for actions performed within the scope of his official duties, provided such actions were reasonable and in good faith.

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, flowing style.

Robert F. McDonnell

6:231; 1:875; 1:941/08-068

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<sup>12</sup>*Dechene*, 226 Va. at 479, 311 S.E.2d at 751.

<sup>13</sup>*See, e.g.*, 2002 Op. Va. Att'y Gen. 144, 147.