



ALAN WILSON
ATTORNEY GENERAL

October 10, 2013

G.P. Callison, Jr., Esquire
McCormick County Attorney
215 Park Ave.
Greenwood, SC 29646

Dear Mr. Callison:

By your letter dated July 2, 2013, you have asked for the opinion of this Office regarding the interpretation of Section 47-3-40 of the South Carolina Code.¹ Per your letter you explain:

McCormick County has not adopted an Ordinance pursuant to S.C. Code Ann. § 47-3-20 and does not fund an animal shelter. The only animal shelter is operated by the Humane Society—a non-profit organization.

Recently, we had an issue come up when, apparently, a humane society employee or volunteer picked up an animal, which they assumed was running at large and was abandoned. However, this animal was owned by someone. A few weeks later while the owner was at another location, her dog ran and jumped in her truck. Apparently, the dog had been released for adoption and had actually been adopted by another individual even though it was still the owner's dog. She wanted to file a warrant against the Humane Society personnel for "stealing her dog".

Continuing, you state:

I realize that S.C. Code Ann. § 47-3-40 states that the county or municipal animal shelter personnel of governmental animal control officer shall pick up and impound any dog running at large. The question is: Does this authorize employees and/or personnel of a non-profit humane society to pick up animals running at large? Do employees and/or personnel of a non-profit humane society have the legal authority to pick up and dispose of animals on their own or can they only receive animals that have brought to them by others—including law enforcement?

¹ We note there is currently pending legislation which, if passed, could amend certain portions of Title 47, Chapter Three. See 2013 S.C. Sen. Bill No. 194. We have included this legislation with our letter.

Law/Analysis

As you are well aware, Title 47, Chapter One of the South Carolina Code generally deals with cruelty to animals while Title 47, Chapter Three of the Code is specific to regulations regarding dogs and other domesticated animals. Both chapters contain provisions which essentially criminalize conduct akin to abandoning an animal or letting the animal run at large. For example, Section 47-1-70(A) of the Code prohibits “abandoning” an animal while Section 47-3-50(A)(1) of the Code specifically restricts dog owners from allowing their dogs to run “at large.” Compare S.C. Code Ann. § 47-1-70(A) (West 2012 Supp.) (“A person may not abandon an animal.”) with S.C. Code Ann. § 47-3-50(A)(1) (West 2012 Supp.) (“It is unlawful . . .for any dog . . . owner. . .or keeper to allow his dog to run at large off of property owned, rented or controlled by him[.]”). While both of these provisions generally define the offenses, state that they are misdemeanors and provide for criminal penalties, neither statute includes a self-contained provision explaining who can take custody of an animal that is believed to be abandoned or running at large. We believe these omissions to be the source of your questions in this matter.

A. Question One

In determining whether Section 47-3-40 of the Code expressly authorizes “employees and/or personnel of a non-profit humane society to pick up animals running at large” we must first look to legislative intent. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.”). When ascertaining legislative intent, South Carolina’s appellate courts have stated, “[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “courts are bound to give effect to the expressed intent of the legislature.” Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). Indeed, “[t]here is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states.” Jones v. South Carolina State Highway Dep’t, 247 S.C. 132, 137, 146 S.E. 2d 166, 168 (1966).

Section 47-3-40 of the South Carolina Code states, in pertinent part, that “county or municipal animal shelter personnel or governmental animal control officers shall pick up and impound or quarantine any dog running at large . . .” S.C. Code Ann. § 47-3-40 (West 2012 Supp.). It is clear the statute designates no one other than the aforementioned personnel to do so. In light of this, the rule of statutory construction known as “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*” meaning “to express or include one thing implies the exclusion of another, or of the alternative” applies. See e.g. Hodges v. Rainey, 341 S.C. at 86, 533 S.E.2d at 582.

Utilizing this rule of statutory construction, the intent of the legislature is clear. Section 47-3-40, by exclusively authorizing “county or municipal animal shelter personnel or

governmental animal control officers” to “pick up and impound or quarantine” dogs believed to be running at large, necessarily prohibits others from doing so absent authority to the contrary. Accordingly, we believe Section 47-3-40 of the Code simply cannot be read as authorizing employees or personnel of a non-profit humane society to pick up animals they believe to be running at large absent authority to the contrary.

B. Question Two

Understanding that Section 47-3-40, by its terms, impliedly prohibits employees or personnel of a non-profit humane society from picking up and disposing of animals believed to be abandoned or running at large, we must next determine whether there is any authority which provides an exception to this general rule. Put simply, we believe that there is. Specifically, we believe that in certain circumstances, South Carolina law allows employees or personnel of a non-profit humane society to pick up and dispose of animals they believe are abandoned pursuant to the provisions of Section 47-1-150 of the Code. Likewise, we believe that in circumstances such as those mentioned in Section 47-1-75 of the Code, there is legal authority implying that one may take an animal believed to be abandoned into custody. Finally, we believe that if a county, by contracting with a non-profit humane society, were to delegate the operation of a county animal shelter to a non-profit humane society and further contracted with such a shelter to employ personnel “to administer the provisions of this article,” pursuant to Section 47-3-30, employees or personnel of such a society could legally take custody of an animal believed to be abandoned or running at large.

1. Section 47-1-150 of the South Carolina Code

Section 47-1-150 of the Code permits individuals to seek a search warrant where “the complainant believes and has reasonable cause to believe that the laws in relation to cruelty to animals have been or are being violated *in any particular building or place.*” S.C. Code Ann. § 47-1-150(A) (emphasis added). In particular, Section 47-1-150(A) explains that if a search warrant is issued and a search is carried out by “any sheriff, deputy sheriff, deputy state constable, constable or police officer” the “South Carolina Society for the Prevention of Cruelty of Animals or other society incorporated for that purpose” may seize the animal and provide for its care pending the disposition of a criminal trial. S.C. Code Ann. § 47-1-150(A).

Section 47-1-150(C)(1) of the Code also provides guidance as to who may take custody of an abandoned animal. Specifically, Section 47-1-150(C)(1) of the Code allows, among other things, for “the South Carolina Society for the Prevention of Cruelty to Animals, or any society incorporated for that purpose” to move, before a magistrate, to “lawfully take custody of any animal found neglected or cruelly treated *by removing the animal from its present location* if deemed by the court that removal is necessary to prevent further suffering or ill-treatment.” S.C. Code Ann. § 47-1-150(C)(1) (emphasis added). Thus, because Section 47-1-70, the statute criminalizing abandonment of an animal, is part of the statutory scheme related to “cruelty to animals” it is apparent that Sections 47-1-150(A) and 47-1-150(C) of the Code both allow

employees or personnel acting on behalf of a non-profit humane society to, in certain circumstances, take abandoned animals into custody.

2. Section 47-1-75 of the South Carolina Code

Additionally, Section 47-1-75 of the South Carolina Code, although primarily appearing to be a statute granting civil and criminal immunity to those who aid “abandoned, ill, injured or . . . distress[ed]” animals, may also be viewed as implicitly authorizing non-profit humane society employees or personnel to take custody of such animals. Section 47-1-75 states:

Any person, including a person licensed to practice veterinary medicine, or an animal control officer or agent of the South Carolina Society for the Prevention of Cruelty to Animals or any society incorporated for that purpose, who in good faith and without compensation for services provided, acting without malice, recklessness, or gross negligence, renders emergency care or treatment to a domestic animal which is abandoned, ill, injured, or in distress related to an accident or disaster shall not be liable or subject to any civil or criminal liability for any injuries or harm to such animal resulting from the rendering of such care or treatment, or any act or failure to act to provide or arrange for further medical treatment or care for such animal.

S.C. Code Ann. § 47-1-75 (West 2002).

We believe one could read this statute, which is clearly intended to provide civil and criminal immunity in limited circumstances, as also impliedly authorizing a person who is an agent “of the South Carolina Society for the Prevention of Cruelty to Animals or any society incorporated for that purpose” to take custody of an “abandoned animal” so long as that person is acting “in good faith” and for the limited purpose of providing “emergency care or treatment” to the animal. That said, we re-emphasize Section 47-1-75 of the Code would only authorize doing so when the individual is acting “without malice, recklessness, or gross negligence” *and* is providing the apparently abandoned animal, “emergency care or treatment . . . related to an accident or disaster.”

3. Delegation

Finally, this Office has previously opined that, under the terms of Section 47-3-30, a county may delegate its authority to operate a county animal shelter to that county’s Sheriff’s Office so long as such a delegation is formalized by county ordinance. See Op. S.C. Atty. Gen., 2011 WL 3346428 (July 29, 2011) (“[I]t is our opinion that the [county] Council’s delegation of the operation of the animal shelter to the Sheriff’s Office is consistent with the language contained in § 47-3-30, but that such delegation of authority should be formalized by county ordinance.”). Similarly, this Office has previously opined that a governmental body may, via contract, “delegate the performance of administrative and ministerial duties” to “a private

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corporation.” Op. S.C. Atty. Gen., 1985 WL 166051 (August 8, 1985). However, when a governmental body contractually delegates its’ authority to a private corporation we have consistently cautioned that the government “cannot divest itself of the essential attributes of sovereignty and its governmental powers.” Op. S.C. Atty. Gen., 1985 WL 166051 (August 8, 1985). Understanding this, we believe that McCormick County, pursuant to our previous opinions and the terms of Section 47-3-30, could elect to “establish an animal shelter for the county” by designating the humane society as such, and further contracting with the humane society, to employ “personnel . . . as may be necessary to administer the provisions of this article.” In other words, it is the opinion of this Office, that since McCormick County possesses the authority to establish a county animal shelter, and further has the authority to delegate, via contract, its authority to employ personnel “to administer the provisions of this article,” McCormick County could contractually designate the humane society as the “animal shelter for the county” and further authorize employees or personnel of such a humane society to take custody of an animal believed to be running at large.

Conclusion

In conclusion, it the opinion of this Office that employees or personnel of a non-profit humane society generally do not possess the authority to pick up animals that are abandoned or running at large under Section 47-3-40 of the Code, but, in certain circumstances, may pick up animals under other authority. In particular, in narrow circumstances such as where a magistrate has determined there is probable cause to believe “the laws in relation to cruelty to animals have been or are being violated” pursuant to Section 47-1-150, or in an emergency situation consistent with that described in Section 47-1-75, we believe, employees or personnel of a non-profit humane society possess limited authority to pick up animals that are believed to be abandoned. Likewise, if a county, by contracting with a non-profit humane society, were to delegate the operation of a county animal shelter to a non-profit humane society and further contracted with such a shelter to employ personnel “to administer the provisions of this article,” pursuant to Section 47-3-30, and consistent with the aforementioned authorities, it our opinion that employees or personnel of such a society could legally take custody of an animal believed to be abandoned or running at large.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General