

HUMANE TREATMENT OF STRAY PETS

MICHAEL P. MCWEENY
VIRGINIA

MODEL BILL

ANIMALS; NEGLECTED OR ABANDONED; POLICE POWERS; DUTIES

Any sheriff, constable, village marshal, police officer or humane officer may remove, shelter and care for any horse, dog, cat, or any other domestic or other animal found to be cruelly exposed to the weather, starved, neglected, or abandoned, and may deliver such animal to another person to be sheltered, cared for, and given a sufficient supply of good and wholesome air, food, shelter and water, and medical attention, if necessary; but in all cases the owner, if known, shall be immediately notified; and such officer, or other person, having possession of the animal shall have a lien thereon for its care, keeping and medical attention and the expense of notice.

If the owner or custodian be unknown, a written notice containing a description of the animal, the time and place where the animal was found, and the place where the animal is being kept, shall be published in a newspaper of general circulation in the jurisdiction wherein such animal was found, for a period of five consecutive days, to enable said owner to reclaim the animal.

If said owner cannot with reasonable effort be ascertained, or shall not within five days after notice notify the officer or other person of an intention to redeem such animal by paying the expenses incurred as aforesaid, such animal may be sold at public auction, private sale, or destroyed as deemed proper by the humane officer.

Whenever in the opinion of any such humane officer an animal is hopelessly injured or diseased so as to be beyond the probability of recovery, it shall be lawful for such officer to destroy such animal and the owner thereof shall not recover damages for the destroying of such animal unless he shall prove that such killing was unwarranted.

COMMENT

MICHAEL P. MCWEENY

Man's best friend is supposed to be his dog, but a dog's best friend is rarely man. Perhaps one of the most surprising voids in the law today is in the area of humane treatment of animals. In view of man's propensity for the keeping of pets, the use of domestic animals, and his dependency on them for meat, it would seem probable that he would take care to see that all possible safeguards had been erected. While there has been an increasing interest in this field, the state laws are still woefully lacking. This is especially true in the field of stray animals.

Most states have some form of law relating to the punishment of any person who abandons an animal. A typical such statute is §355 of McKinney's New York Agriculture and Markets Law: "A person being the owner or possessor, or having charge or custody of an animal, who abandons such animal, or leaves it to die in a street, road, or public place, or who allows such animal, if it becomes disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both." This is a well worded statute which clearly sets both the misdemeanor and the punishment to be expected. There is no vagueness, and, indeed, no doubt could possibly arise as to its meaning. "An animal" would normally be read as "any animal", and as such, it covers all forms of pets. Yet, unfortunately, it does not fulfill its basic purpose. Each year fifty million pets are left to forage and/or die on public streets. Kittens which have become large cats, puppies which have grown into dogs, or any animal which seems to eat more than it should, are easily disposed of by driving to another town, or another part of town, letting the animal out, and driving away. The human's problems are solved. He no longer must support the animal, and he will never be prosecuted under a statute like §355 because no one can identify the animal, or him. But the lost pet's problems are just beginning.

One must avoid becoming overly sentimental. Stray animals are a health hazard. They upset garbage cans in their search for food; they may run in packs, endangering life; they are often carriers of disease. Society must dispose of the, or at least incarcerate them, in order to protect itself. Yet, few states have enacted any legislation regulating the means by which society is to accomplish this. And, when they have, the results are for the most part, far from laudatory. An example of the worst type of statute can be seen in this excerpt from West's California Codes, Annot., Penal Code, §597(f): "Every sick, disabled, infirm, or crippled animal which shall be abandoned in any city, city and county, or judicial district, may, if after due search no owner can be found therefor, be killed by such officer . . ." This section makes no provision for what would constitute a "due search" for the owner, and thus leaves an important point to the discretion of the officer. Further, it does not go into detail as to what care is to be provided to the impounded animal. "It shall be the duty (of the officer to) . . . care for the same . . ." And even more importantly, the disposal of the animal is left to the discretion of the individual police officer, who neither has the training, nor the time, to properly carry out this charge. While many states offer some points to be admired in handling this type of situation, a definite bill is needed combining the best elements of the best state statutes. It is for this reason that I propose this model bill.

I feel this bill offers all the elements which the others lack. Section (1) lists the officers who are to enforce this bill, to include

officers of the Society of the Prevention of Cruelty to Animals. Next, it defines the reasons for which an animal may be taken into custody, and specifies those commodities necessary to constitute "care" for the animal, including any necessary medical treatment. In doing so, it guarantees satisfactory shelter and humane treatment of any animal so impounded.

Section (2) is a difficult section to enforce, however there seems to be no other satisfactory means of notifying an owner as to the location of a lost pet. The requirement of "five consecutive days" also aids in this purpose. The publication in a newspaper of general circulation follows most statutory provisions for notification when the address of an owner is not available.

Section (3) accomplishes the practical, if unhappy, task of avoiding the impossible situation of vast numbers of unclaimed animals crowded together in the "pounds" and "animal shelters". The five day waiting period extends the minimum time allowable for final disposition to ten days, when added to the notification requirements of section (2). It further provides for the final decision to be made by an officer of the humane society, removing this burden from those who lack the time and training for such deliberation.

Lastly, section (4) permits a humane means of putting seriously injured animals out of their misery. It would be as unfair to force them to suffer as to unthinkingly deprive them of life. Once again, this section would place this decision in the hands of an officer of the humane society. It would, of course, be unfair to allow him to be penalized for making a decision for the animal's welfare, and for this reason section (4) provides tort protection to such officer.

In putting forth this bill, I do not see it as a panacea. It is perhaps not the ultimate answer, or even the best one. It is, however, the best possible balance between what can be done and what we should like to be done.