

ANIMALS: The stealing of a dog is subject to a charge of larceny.

October 24, 1941

11-7
Hon. James L. Paul
Prosecuting Attorney
McDonald County
Pineville, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of October 22, 1941, which is as follows:

"A, a man with a wife and small child, which child has been sickly all its life, owned a shepherd dog. The dog became quite attached to the child and developed vicious propensities in and about the premises, which the owner A well knew. The dog in the past month has been viciously barking at passer bys, and has bitten two or three persons who attempted to enter the yard.

"On Friday afternoon, the Mayor of this town went to A's property to inform him that it would be necessary for him to do something with the dog, inasmuch as the school board was complaining to the city council of this dog and another scaring school children. A. was not at home, and the dog attacked the Mayor and bit him, not seriously, but painfully. The Mayor then called the sheriff's office Saturday morning, and the sheriff went to the home of A. and A. not being at home, the sheriff informed the boy that he would have to keep the dog tied up at all times. Later, Saturday, the Mayor

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called upon the deputy sheriff of Pineville Township to come to Lanagan; and upon his arrival, gave him an order signed by the Mayor appointing him, the deputy constable, city marshal, the town not having a marshal, and ordering him to go to A's home and take the dog and dispose of it. The deputy constable, in company with the Mayor, drove to A's home and upon arrival there, told the boy to untie the dog, which he had tied up pursuant to the sheriff's order, and put him in the back of the constable's car, which the boy did.

"The constable, acting as special appointed marshal, together with the Mayor, then drove off and the dog has not been seen or heard of since; although I am informed by grapevine, that the dog was killed by the constable pursuant to the order of the Mayor. A. has sworn out a warrant against the Mayor and constable for stealing this dog, alleged to have a value of \$100.

"I would appreciate your opinion, if, after considering the above and foregoing facts, you think a criminal charge lies and if so, what is the proper charge? A preliminary hearing has been scheduled for the first of November, and I would like to know by that time, if possible, your opinion."

In a careful research of the statutes of Missouri in reference to the condemnation of dogs of vicious character, we only find Article 12, Chapter 103, which would be considered applicable. If the procedure described in that Article has been followed by the Mayor and the Constable, acting as special appointed Marshal, they have not committed the crime of larceny. From a reading of the facts in your request, it appears to this department that the taking of the dog by the Constable and the Mayor was an unlawful act.

The sections authorizing the killing of dogs under Article 12, Chapter 103 are Section 14541 and 14543. Under neither of these sections, nor under the facts as set out in your request, can we say that the dog was lawfully taken away.

Section 4456, R. S. No. 1939, reads as follows:

"Every person who shall be convicted of feloniously stealing, taking and carrying away any money, goods, rights in action, or other personal property, or valuable thing whatsoever of the value of thirty dollars or more, or any horse, mare, gelding, colt, filly, ass, mule, sheep, goat, hog or neat cattle, belonging to another, shall be deemed guilty of grand larceny; and dogs shall for all purposes of this chapter be considered personal property."

This section specifically states that dogs are personal property. In the case of Gerhart v. City of St. Louis, 270 S. W. 680, para. 2,3, the court in holding that a dog was subject to larceny said:

"The plaintiff in this case had an adequate and complete remedy at law. When we began the practice of law, our first case was a dog case, and we were as proud as the small boy with his first pair of red-topped boots when we recovered for our client the sum of \$50 for a dog (pure-bred Collie) which had been shot by a neighbor. We have kept in touch with dog law ever since. Dogs are property in Missouri. 'It has long been the settled law that dogs are property in Missouri, and that no one has the right to kill them except for just cause.' Reed v. Goldneck, 112 Mo.

App. loc. cit. 312, 6 S. W. 1105. To like effect are *Penton v. Bisel*, 80 Mo. App. loc. cit. 138; *Woolsey v. Haas*, 65 Mo. App. loc. cit. 199, bottom of page; *State v. Mease*, 69 Mo. App. loc. cit. 582; *Gillum v. Sisson*, 53 Mo. App. loc. cit. 516. This court in the early case of *Burden v. Hornsby*, 50 Mo. 238, sustained a judgment of damages for the killing of 'Old Drum,' mentioned, supra. Not only so, but we have made the dog a subject of grand larceny, just the same as other property worth more than \$30. R. S. 1919, Sec. 3312; R. S. 1909, Sec. 4535; R. S. 1899, Sec. 1898; R. S. 1889, Sec. 3535. So at least as early as R. S. 1889, dogs have been classed as property, with a value."

CONCLUSION.

In view of the above authorities, it is the opinion of this department that under the facts set out in your request the Mayor and the Constable had no authority to take the dog from the premises of the owner.

It is further the opinion of this department that the proper procedure is the filing of a complaint or information for larceny.

Respectfully submitted,

APPROVED:

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WJB:CP