

MAINE STATE LEGISLATURE

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March 23, 1945

To Ralph A. Gallagher, Judge, Lincoln Municipal Court
Re: Enforcement of Court Order on Vicious Dog

. . . I have examined the statute under which you acted, now Chapter 88, Section 23. This provides that if, upon hearing, the court or trial justice is satisfied that the complaint is true, he may order the dog to be killed or to be muzzled, or to be restrained and confined to the premises of the owner or keeper. It further provides that if the order of the court or magistrate is not complied with within the time fixed in that order, then upon application by the complainant or other person, the court or magistrate may issue its warrant directed to the sheriff or any of his deputies or any police officer or constable in the town where the dog is found, to kill said dog. The last paragraph makes the owner or keeper liable for treble damages for any damage caused by the dog, resulting from non-compliance with the order of the magistrate. Without specific authority to punish for contempt, I don't see how the judge can assume such power; but the statute lays down the specific remedy and that is by a warrant to kill the animal.

In connection with this, you might consider the fact that your finding did not fix any time in which the owner was to comply, as provided by the statute. On the assumption that, where no time is fixed, a reasonable time is meant, then such time has now elapsed.

However, I think that if the dog is dangerous or vicious, or commits an assault, it would be best to issue a new warrant and have the owner brought in. If you find the allegations in the warrant to be true, you may then order the dog destroyed, as you are authorized to make an alternative finding, to have the dog killed or direct it to be muzzled or restrained and confined upon the premises of the owner or keeper.

Abraham Breitbard
Deputy Attorney General

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