

MAINE STATE LEGISLATURE

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July 26, 1957

To: S. F. Dorrance, Livestock Specialist Agriculture
Re: Proper enclosure for dogs--Sec. 10, Chap. 100, R. S. of 1954

We have your memorandum of July 10, 1957, in which you ask for an opinion with respect to Section 10 of Chapter 100 of the Revised Statutes of 1954, as amended.

The said section refers to special dog kennel licenses and authorizes an owner or keeper of dogs to keep said dogs provided he keeps them "within a proper enclosure". You inquire as to what constitutes "proper enclosure".

We are of the opinion that the words used require a fence or such other suitable material as would prevent the dogs from escaping, and prevent other dogs from gaining entrance to the enclosure. To be enclosed as by an enclosure means shut up, encompassed, or cloistered, or the separation of land from common ground by a fence or barrier. "Within a proper enclosure" would mean that the dogs should be in an area around which is a fence or barrier.

It has been suggested that the tying of dogs is a compliance of the statute. In other words the tying of dogs would result in an area becoming a "proper enclosure" within which dogs may be kept. Such a construction would mean that any area, wherever situated would become a "proper enclosure" if the animals were tied.

We do not think such is the law. Rather we would apply the law that relates to the keeping of dogs in pounds; where a suitable enclosure has been interpreted to mean something built of sufficient construction to restrain an ordinary animal of its kind. Thus it has been said that a municipality is liable to the same extent as a private person for the negligent construction of the pound by its agents--
3 C. J. S. 1358.

While a person having such dogs might not be responsible for injuries caused by the dogs which were confined in an ordinarily sufficiently constructed enclosure, we believe he would be negligent were he to have dogs under the statute we are considering, and restrain them merely by tying them.

It should be understood by the kennel licensee that he must not only comply with the statute if he desires to retain his license, but also, having elected to use the statute, failure to comply with the requirements of that law places upon him an additional burden in the event a civil action were to be brought for injuries caused by the dogs.

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The statute places upon the licensee a duty owed to others, and failure to comply with the terms of the statute would in all probability be considered a breach of that duty, with the result that the licensee would in law be negligent and injuries caused by such dogs attributed to such negligence.

For the above reasons we advise that tying is not contemplated by the statute but that fencing or some such similar barrier is required.

James G. Frost
Deputy Attorney General

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