

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

May 3, 1974

Maynard C. Dolloff, Commissioner

Agriculture

John W. Benoit, Jr., Deputy

Attorney General

Cruelty to Animals Law

We have your recent memo asking a number of questions having to do with State Humane Agents and 17 M.R.S.A. § 1051-1216, as amended. The numbered questions are lengthy, so we have attached a copy of your memo reciting the questions, in lieu of repeating them.

1. There is no statutory conflict resulting from the fact that enforcement of the prohibition against cruelty-to-animals law is vested both in the Commissioner of Agriculture and in law enforcement officers who are not subject to the direction of the Commissioner. You ask further "what is the Commissioner's responsibility should the court refuse to issue a complaint filed by an agent, or a sheriff or other proper officer refuses to serve a complaint on an owner charged with cruelty to animals?" It is impossible to give you a categorical answer. There are too many variables involved, such as: (1) reasons for the court's refusal; (2) the particular statute by which court process was sought; etc. Under 17 M.R.S.A. § 1211 a humane agent, acting under the direction of the Commissioner, must make application to the court giving reasons why there should be a hearing by the court to determine whether possession of an animal should be taken from the owner and given to the humane agent for any of the reasons stated in § 1211. If the court is convinced that cruelty, etc., is probably taking place, a court order will be issued to the owner, if known, or notice will be posted if the owner is unknown, ordering the owner to appear in court at a particular time for a hearing. This is not a criminal proceeding. It is a civil proceeding that may result in taking an animal from its lawful owner. Alternatively, 17 M.R.S.A. § 1212 is authority for a humane agent (again, acting under direction of the Commissioner, as his agent; see § 1214) to begin a criminal prosecution for cruelty to animals. The humane agent would go to the appropriate county attorney and give his reasons why there should be a prosecution.

2. If a humane agent wrongfully refuses to act at the direction of the Commissioner, he may be discharged as agent, or at least directed to perform no more acts on behalf of the Commissioner at State expense.

3. There is no responsibility (and more importantly there is no authority) for any humane agent to seize dogs running at large, as described in 7 M.R.S.A. § 3455-57.

AN INFORMAL OPINION

4. (a) There is no provision for emergency taking of an animal prior to obtaining a court order. Humane agents have no power of arrest. Under § 1212 a humane agent acting for the Commissioner might call a sheriff or other law enforcement officer in an emergency to prevent continued cruelty.

(b) If the court finds the owner has violated none of the provisions of § 1211, the court-appointed person providing care of the animal (e.g., humane agent acting at the direction of the Commissioner) bears the expense. Where the agent has acted at the direction of the Commissioner, the Commissioner should reimburse the agent for his expense.

If you wish, a conference can be set up for unresolved questions.

JOHN W. BENOIT, JR.
Deputy Attorney General

JWBJr./ec

AN INFORMAL OPINION