

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**

December 3, 1974

Stanley Browne, Director, Division
of Animal Welfare
David Roseman, Assistant

Agriculture
Attorney General

Cruelty to Animals

This memorandum is written in response to your request for a clarification of certain laws which relate to animal welfare. You ask first what "lawfully interfere" means in regard to state humane agents acting pursuant to 17 M.R.S.A. § 1212. This section of the statute provides that,

"The commissioner (The word 'commissioner' includes state humane agents. 17 M.R.S.A. §§ 1051, 1214) or any person authorized to make arrests may lawfully interfere to prevent the perpetration of any act of cruelty upon an animal in his presence, and whoever interferes with or obstructs such officer or agent in the discharge of his duty is guilty of a misdemeanor." (Parenthesis mine)

It is not possible to give a single answer that will cover all possible situations which could arise. The specific action a state humane agent may permissibly take will depend in each instance on the particular circumstances involved. It may be stated in a general way, however, that a humane agent may take, what can be called, certain protective or preventive measures to put an end to an act of cruelty which is occurring in his presence. As examples, a humane agent might give food to an animal which has been deprived of necessary sustenance, reduce the load of an overloaded animal, or stop the torture of an animal.

Before a humane agent may "lawfully interfere", the statute provides that (1) there must be an act of cruelty and (2) it must be occurring in the agent's presence. 17 M.R.S.A. § 1051 defines "cruelty" as an "act, omission or neglect, whether by owner or other person, whereby unjustifiable physical pain, suffering or death is caused or permitted." 17 M.R.S.A. § 1091 sets forth certain acts of cruelty more specifically.

It is important to mention some actions the agent cannot take. Since the agent would not be protecting his own property, he must not use any physical force against the owner or other person having charge or custody of the animal (unless he himself is in danger and force is reasonably necessary to protect himself). Nor may the humane agent take the animal into his own possession over objection of the owner. There can be no such taking prior to obtaining a court order. And the humane agent does not have the power to arrest the person committing the act of cruelty.

When a state humane agent observes the owner or other person having the custody of an animal committing an act of cruelty, but the situation is such that the agent could not take immediate protective measures because to do so would involve the use of physical force against such person, the agent could do the following: (a) identify himself, (b) warn the person that the agent believes he is committing an act of cruelty in violation of 17 M.R.S.A. § 1091, (c) state that this act involves criminal conduct for which, upon conviction, the statute provides as punishment a fine of not more than \$500 or imprisonment for not more than 11 months or both, (d) state that if the cruelty does not cease the agent will seek to have the person prosecuted. In addition, where there is an emergency, the agent might call a sheriff or other law enforcement officer to prevent continued cruelty.

Your next question concerns a part-time agent who also serves as a deputy sheriff. You ask whether there is a conflict of interest when the summons is served by the same person who has observed what he feels to be an act of cruelty and who has sworn out a complaint. There is nothing in the Rules of Criminal Procedure or in the statutes specifically prohibiting this procedure. However, the deputy sheriff will presumably be a witness at the trial. And since the deputy sheriff will have received a fee for serving the summons, his credibility as a witness might be adversely affected. This practice should, therefore, be avoided.

Your third question is in reference to 7 M.R.S.A. § 3406. You ask who it is that has the authority to determine that an injured animal should be destroyed, which has been found by a state humane agent and taken to a veterinarian and whose owner is not known. 7 M.R.S.A. § 3406 provides in part:

"Any person finding a sick, stray, injured or abandoned dog may take the same to any licensed veterinarian, humane society or shelter within the State, who may accept the same. . . . Upon the expiration of said 10 days if the owner of the dog has not appeared to claim the same then said licensed veterinarian, humane society or shelter may give away, sell or otherwise humanely dispose of said dog."

Provided that the clerk of the municipality has been notified as required by this section of the statute, the veterinarian, humane society or shelter may humanely destroy the dog upon the expiration of 10 days

after accepting the dog. If it is desired to destroy the dog prior to that 10 day period, a court order, pursuant to 17 M.R.S.A. § 1211, must be obtained.

You have also asked who is responsible for veterinarian fees when the owner is known, and conversely, when the owner is unknown. This question is also in reference to 7 M.R.S.A. § 3406. In the situation where the owner is unknown, the statute provides that the veterinarian, humane society or shelter is entitled to receive from the State \$1.50 per day for a maximum of 10 days for providing food and shelter. If the veterinarian, society or shelter sells the dog, the proceeds of the sale are to be deducted from the claim against the State.

If the owner is known and claims the dog, the statute provides that ". . . the owner may have and receive the same upon payment of all charges provided for in this section." (\$1.50 per day for a maximum of 10 days for providing food and shelter). If the veterinarian, society or shelter has provided some service other than providing the food and shelter mentioned in the statute (performing a necessary operation, for example), that veterinarian might in addition have a private civil remedy, for restitution for the value of the services performed, against the owner of the dog. That is something, however, the veterinarian would have to determine with his own, private attorney.

DAVID ROSEMAN
Assistant Attorney General

DR:mfe