



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER  
ATTORNEY GENERAL

November 28, 1978

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78-375

The Honorable James L. Prickett  
Municipal Judge  
Arlington, Kansas 67514

Re: Cities--Animal Control--Enforcement

Synopsis: Only the municipal judge, clerk of the municipal court, city attorney or a law enforcement officer of the city may sign notices to appear in the municipal court, under K.S.A. 12-4112(f). A minor sixteen years of age who is employed as a part-time animal control officer is not legally disqualified by minority from signing a complaint and subscribing an oath thereto alleging a violation of the city's animal control ordinance. An animal must be held in the municipal pound not less than three business days before the animal may be destroyed.

\* \* \*

Dear Judge Prickett:

We have your letter of November 15, 1978, concerning animal control in the City of Arlington, Kansas.

You advise that the city employs a part-time animal control officer who is sixteen years of age. He has asked whether he may sign complaints against dog owners, because the general public is reluctant to sign complaints and to appear in court. In addition, he would like to issue notices to appear to those in violation. K.S.A. 12-4204 of the Code of Procedure for Municipal Courts provides that a "notice to appear may be signed by a municipal judge, the clerk of the municipal court, the city attorney, or any law enforcement officer of the city." K.S.A. 12-4112(f) of that same Code defines the term "law enforcement officer" as

The Honorable James L. Prickett  
Page Two  
November 28, 1978

"any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof."

From the facts you indicate in your letter, it is clear that the young man in question is not a law enforcement officer, and thus is not among those authorized by the Code to sign a notice to appear.

The further question remains whether a minor is legally qualified to sign a complaint. K.S.A. 12-4113(g) defines "complaint" as a "sworn written statement of the essential facts constituting a violation of an ordinance." A person executing a complaint must, thus, be legally capable of subscribing an oath regarding the truth of the facts stated therein. At 70 C.J.S., *Perjury*, § 28, the writer states that the "[g]eneral rules governing the capacity of persons to commit crimes apply in the determination of the capacity of a person to commit the crime of perjury or false swearing." At 43 C.J.S., *Infants*, § 196, the writer states thus:

"[E]xcept as otherwise provided by statute, and except for, or apart from, any presumption of incapacity to commit crime, . . . an infant who has developed sufficient intelligence and moral perception to distinguish between right and wrong, and to comprehend the legal consequences of his acts, is, as in the case of an adult, subject to the criminal law, and may be prosecuted and convicted thereunder."

At common law, a minor who has reached his fifteenth birthday is generally presumed to be capable of committing crime and of being responsible therefor in the same manner as in the case of an adult. 43 C.J.S., *Infants*, § 204. I can find no statutory incapacity or disqualification which would prevent a minor who is sixteen years of age from subscribing an oath to the truth of facts stated in a complaint executed by him. In short, although I am unable to find any reported case specifically in point, applying the general rules quoted above, a person sixteen years of age is legally eligible to execute a complaint and subscribe an oath thereto, in my opinion.

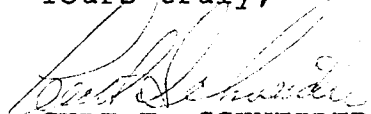
The Honorable James L. Prickett  
Page Three  
November 28, 1978

You also ask how long a stray dog must be kept in the city impoundment before the animal may be destroyed. K.S.A. 1977 Supp. 47-1710 provides in pertinent part thus:

"An animal shall not be disposed of by an animal dealer, operator of a pound or operator of an animal shelter as a pound until after expiration of a minimum of three (3) days of custody during which the public has clear access to inspect or recover the animal through time periods ordinarily accepted as usual business hours."

If further questions should arise, please do not hesitate to contact us.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj