



STATE OF KANSAS

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September 4, 1980

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ATTORNEY GENERAL OPINION NO. 80-186

The Honorable Don L. Dicks
Enterprise Municipal Court
P.O. Box 103
Enterprise, Kansas 67441

Re: Livestock and Domestic Animals--Animal Dealers--
Definition of "Dog Warden"

Cities and Municipalities--Code of Procedure for
Municipal Courts; Commencement of Prosecution--
Filing of Complaint

Synopsis: The term "dog warden" is defined by K.S.A. 1979 Supp. 47-1701(o) to include employees of a municipality, as well as law enforcement officers, whose duties in whole or in part involve the seizure and taking into custody of any animal. As there are no Kansas statutes which restrict the employment of a minor by a city in occupations which have not been found to be dangerous, a 16 year-old individual may be employed as a dog warden. Additionally, he or she may file complaints with the court concerning violations of city ordinances relating to animal control. However, as such an individual is not a law enforcement officer, he or she may not serve complaints and notices to appear upon the persons named therein. Cited herein: K.S.A. 12-4202, 12-4203, 12-4207, K.S.A. 1979 Supp. 22-2202(11), K.S.A. 36-602, K.S.A. 1979 Supp. 44-640, 47-1701(o), K.S.A. 47-1711, K.A.R. 49-1-50.

* * *

Dear Judge Dicks:

As Judge of the Municipal Court in Enterprise, Kansas, you request the opinion of this office on several inter-related questions stemming from the employment by the city of a 16 year-old boy as "dog catcher."

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You wish to know intially whether such an appointment was proper, and, if so, whether the youth is therefore a law enforcement officer who may initiate complaints on the owners of the dogs he picks up. You inform us that as a result of complaints already filed, notices to appear have been issued for certain individuals for September 9, 1980. While you do not know if the above questions may be raised at that time, you would appreciate our reply prior to then should the question arise.

From your letter, it appears that the duties of the position involved here are those of "dog warden," as that post is defined by K.S.A. 1979 47-1701(o). There, the following description is given:

"[A]ny person employed, contracted or appointed by the state, or any political subdivision thereof, for the purpose of aiding in the enforcement of this law, or of any other law or ordinance, relating to the licensing of animals, control of animals, or seizure and impoundment of animals; and includes any state or municipal peace officer, animal control officer, sheriff, constable or other employee, whose duties in whole or in part, include assignments which involve the seizure or taking into custody of any animal."

It may be noted that in neither this statute nor any of those in the rest of the chapter are there any age qualifications for a person serving as dog warden. In addition, there are no general restrictions on the power of a city to hire minors as employees. This is in contrast to positions, such as on the police force, which are termed city offices, and as such must be held by qualified electors, i.e., at least 18 years of age. While there do exist statutes limiting the type of work which minors may engage in (K.S.A. 36-602, K.S.A. 1979 Supp. 44-640), both these statutes and regulations promulgated thereunder (K.A.R. 49-1-50 et seq.) would appear to allow this kind of employment.

We would also note that while a dog warden may be a law enforcement officer, under K.S.A. 1979 Supp. 47-1701(o) the duties may be performed by a city employee as well. While these duties admittedly involve the enforcement of a city ordinance regarding stray animals, it is our opinion that an employee of the city does not, merely by so doing, become a law enforcement officer. Rather, as is seen in the definition of this latter term [at K.S.A. 1979 Supp. 22-2202(11)], something more is required. There, it is stated:

"'Law enforcement officer' means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make

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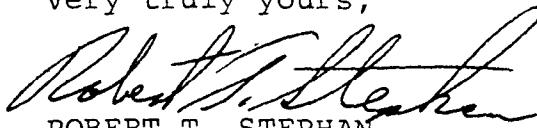
arrests for violation of the laws of the state of
Kansas or ordinances of any municipality thereof or
with a duty to maintain or assert custody or supervision
over persons accused or convicted of crime . . ."
(Emphasis added.)

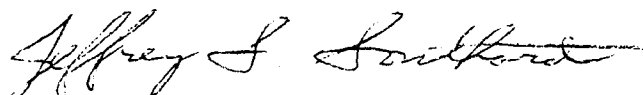
As none of these duties are included within the scope of Enterprise's youthful dog warden, he would not appear to be a law enforcement officer.

This does not mean, however, that he is unable to initiate the procedure for violations of the ordinance. Any citizen is permitted by K.S.A. 12-4202 to file a complaint with the municipal court, thus commencing prosecution for the violation of the ordinance in question, and there appears to be no limit as to the age of the complainant. Once a complaint is filed and notarized, a copy is served together with a notice to appear upon the accused person (K.S.A. 12-4203). It is true that at this point the fact that the employee is not a law enforcement officer prevents him from serving these documents (K.S.A. 12-4203, 12-4207). This, however, is a procedural matter which in no way limits the ability of the employee to enter the complaint initially, leaving the service to someone else. As an aside, we note that much, if not all, of the information required for the complaint would be available from the tag of any dog which is picked up wearing such. This information is required to be recorded in any event by K.S.A. 47-1711.

In conclusion, the term "dog warden" is defined by K.S.A. 1979 Supp. 47-1701(o) to include employees of a municipality, as well as law enforcement officers, whose duties in whole or in part involve the seizure and taking into custody of any animal. As there are no Kansas statutes which restrict the employment of a minor by a city in occupations which have not been found to be dangerous, a 16 year-old individual may be employed as a dog warden. Additionally, he or she may file complaints with the court concerning violations of city ordinances relating to animal control. However, as such an individual is not a law enforcement officer, he or she may not serve complaints and notices to appear upon the persons named therein.

Very truly yours,


ROBERT T. STEPHAN
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Jeffrey S. Southard
Assistant Attorney General