IS IT A STATUTORY OR POLITICAL DANGEROUS DOG CASE

By

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Let me preface my comments with the understanding that the opinions set forth herein are my own, drawn from many years of practicing animal law and specifically the many cases of dangerous dog defense. This paper does not represent any position of the Animal Law Section or the State Bar of Texas.

This presentation is not intended to provide cases useful for pleadings in dangerous dog cases, but rather to reveal some of the tactics employed by prosecutors. It will become clear that I believe many of such tactics are politically motivated to satisfy a goal the Legislature didn't place in the statute. In some cases, the conduct of the prosecution and ordinances adopted by cities rather than simply proceeding under the state dangerous dog statute, presents a picture of the ends justifies the means and that is based on the belief that dogs must be punished, especially so when a voting citizen of the community is raising hell.

The development of the dangerous dog prosecutions and related municipal ordinances, have created something I don't believe was ever intended. It has made almost every encounter between a human and dog, a dangerous dog case. It is easy to pursue and punish a dog and be seen as protecting the public even though it is likely in many, many cases that the dog isn't dangerous, was not attacking or, was provoked even though the conduct was not seen by the animal officers as provocation. This appears especially true when the citizen is demanding action by animal control and perhaps is even calling their elected representative. And any time a municipality can adopt its own language by ordinance, one can only conclude that is done to provide an opportunity to satisfy some politically based need not available under the language of the state statute. Otherwise, why would the city not just prosecute the dangerous dog cases under the state statute?

Determination of dangerous dog results, if upheld, to a life-long set of controls and expense. Consider this, if a dog scratches a person by jumping on them, the person complains that

it was an attack, and a dangerous dog determination is affirmed, the owner must obtain a 100k liability insurance policy. I sure hope 100k would cover the medical expenses to treat a scratch. While there are cases that involve significant physical injury, they are by no means the normal cases prosecuted but rather the unusual.

The dog must be kept in an enclosure. Some cities actually refuse to recognize a residential structure as a secure enclosure under the statute or ordinance. If you are renting or an apartment resident, it is unlikely that the condo, house or apartment owner is not likely to appreciate the dog owner putting in a fence on the property, all because of an arbitrary position that a house is not a secure enclosure. Unfortunately, in the case of dog owners renting, the dog is commonly surrendered.

And of course, there is the stigma of dangerous dog that results in it being unlawful in many cities to bring a dog previously deemed dangerous in another jurisdiction, into that city.

So, if a lawyer is dealing with the case and therefore recognizes the different ways municipalities handle/maneuver dangerous dog cases, that lawyer must first determine if the case entails a statutory dangerous dog prosecution, purely following the state law or, prosecution under as a political dangerous dog provision that is actually being done to satisfy some goal other than merely enforcing the law. A key giveaway in these cases is whether the case is being prosecuted under the statute or an ordinance.

If it is a statutory dangerous dog, it is easily determined. The case is brought pursuant to the Texas Health and Safety Code, Chapter 822 and if the city is following proper procedure, its notice letter to the owner that the dog has been deemed dangerous will reflect the Health and Safety Code chapter.

The Texas Legislature crafted the statute dealing with dogs that bite humans. Title 10. Health and Safety of Animals, Chapter 822. Regulation of Animals containing two subchapters relevant to dog bites; Subchapter A. Dogs Causing Death or Serious Bodily Injury and, Subchapter D. Dangerous Dogs. These provide definitions, notice by the animal control authority, restrictions on keeping dangerous dogs, seizure of dogs and appeal.

Any city or county may enforce this statute as written. However, many cities have written and adopted their own municipal dangerous dog ordinances, with quite a few even citing portions of the state statute for authority, making it clear the city has added something outside of the statute.

One must ask; if the Legislature went to all that trouble to adopt a detailed statute dealing with both serious and non-serious bites, why would a city have any reason to re-write the dangerous dog law as a municipal ordinance? The answer, in this author's opinion, is to provide for certain language that responds to local constituent demands or additional power to animal control officers and therefore, is nothing more than a political dangerous dog law.

This paper is intended to point out some of the tactics used for enforcement of local ordinances so that the practitioner might be aware of pitfalls caused by adoption of local ordinance language.

Having listened to many arguments by municipal prosecutors and elected officials, the justification of adoption of ordinance language that deviates from the statutory language is typically a claim that the city must protect the citizens and fight against the onslaught of dangerous

dogs. Regularly it is argued the city must be able to destroy dogs in order to protect the public. I have yet to hear a city argue there must be a fair trial.

One of the more interesting arguments made by the prosecutor when I objected on the basis the ordinance conflicted with the statute which is prohibited by a provision of the Texas Constitution was "we are a home rule city and not governed by the Texas Constitution". This was the same city that argued that if the dog was deemed dangerous and had to comply with conditions, there was a right to appeal but if the dog was ordered killed, there was no appeal.

It cannot be fairly argued that there are not some dangerous dogs about in our kingdom. However, every dog that reacts in some manner deemed a threat, is not a dangerous dog. The problem is the state statute mandates conditions and restrictions for keeping a dog deemed dangerous thus not permitting the court to fashion a more just decision.

Notification of a determination of dangerous dog or, a seizure of a dangerous dog alleged to have cause serious bodily injury or death, initiates the dangerous dog case and necessity of a defense.

While in criminal cases the person is innocent until proven guilty, the same can't be said for dogs that are alleged to have bitten. Commonly animal control officers will admit that they deem dogs dangerous based only on the affidavit of the complainant. This forces the owner to hire an attorney and go to court when the officers haven't even attempted to confirm any bite at all even happened. If the determination is challenged, the owner has the right to have the case heard in court. The court sets the hearing date and if the owner has not retained an attorney, this is where the wheels start coming off the train. It is all too common for a court clerk to tell an owner; "O honey, you don't need an attorney, just go in and tell the judge what happened". Then one must ask, if you don't need an attorney, why does the city have one there?

Attorney Gets Discovery; Pro-Se and Owner Have to File a Public Information Request:

The owner has the right to see any statements or reports involved in the case. It is common for the dog owner to be told by the court clerk that a request pursuant to the Texas Public Information Act is required and must be in writing. Of course, the owner follows that information and files the request. What the owner does not know is that there are time provisions within the Act by which the city must respond and even then, a much longer delay can result by the city filing a request for an A.G. opinion as to whether the requested information must be released. In short, the upshot of all of this is that the hearing on dangerous dog will be long over before any response to the request is received. In contrast, I always file as part of my letter of representation, a request for production of the animal control file. I typically get it either with a few days or at maximum a couple of weeks and it is sent to my office by email.

If the local magistrate wishes to ensure a fair trial, he or she may inform the owner they can request a continuance in order to receive the requested material. But that only results if the owner brings knows to bring the matter to the court's attention in a timely manner. How likely is that without an attorney? This process can easily become trial by ambush.

If the dog is alleged to have caused serious bodily injury under Subchapter A, the court is supposed to conduct the hearing within ten days of issuance of a seizure warrant or owner surrender of the dog to animal control. Clearly the responsive documents will not likely have been received

by the owner within that time period and some judges will argue that they have no authority to continue the case to a later date. That, by the way, is not true.

In one case the court set the hearing for two days after the owner notified the court of a desire to challenge the dangerous dog determination. It did so even though a citizen is entitled to a minimum of three days' notice of a civil hearing.

No Dog No Case and, *Res Judicata* Applies:

In another case the dog in question had been removed from the jurisdiction. In fact, the dog was residing in another state when the case, serious bodily injury, was initiated. Now as we know, the dangerous dog proceedings are civil in nature. The Supreme Court of Texas has held on more than one occasion that dogs are personal property in Texas. Thus, the case is an *in rem* proceeding. And the cases provide that in order to gain jurisdiction, the court must have control over the *res* at initiation of the case.

Dangerous dog is not an *in personam* proceeding as it does not regulate the owner but the dog; i.e., property. Rather than dismiss the case since without control over the dog denies the court of jurisdiction to proceed, the court, in that case, issued an order that the dog be returned to Texas even though it was owned by someone else at that point and, living in another state. Another attorney handled this case and was faced with trying a case without the dog made subject of the case and, as it turned out, without any complaining witness. The court permitted the case to be tried on the testimony of the animal control officer when the complainant failed to show for trial. Trial by hearsay! You only get one guess as to the outcome! The judge determined it was serious bodily injury but thankfully did not order the dog euthanized. While not having a complaining fact witness to testify didn't concern the court, neither did the fact that the dog was long gone, prior to initiation of the case. The court simply ordered the dog returned to the city. That did not happen. And, the judgement of the court was a finding that the injury was serious bodily injury but, there was no further order of the court insofar as the dog. That was essentially a judgment that did not accomplish anything.

Not to be thwarted, the city, having brought a case under the Subchapter A, serious bodily injury of the Texas Health and Safety Code, Chapter 822, simply initiated yet another case, over the same bite, same parties, same event but said it was under subchapter D which covers just bodily injury. It appears this was done to ensure conditions to control the dog which were not assessed by the first court, in case the dog was ever returned to that jurisdiction. Now on the face of it, it would appear any judgment arising out of the second hearing involving less than a serious bodily injury, would conflict with the judgment in the first prosecution of the same case. That didn't deter anyone either.

When the city deemed the dog dangerous initiating the second case I was retained and promptly filed the notice of appeal, requested discovery and, filed a very length motion of Plea to the Jurisdiction (still no dog), Motion to Dismiss and, the affirmative defense of *Res Judicata* as the case had already been tried once. The motion contained a brief and a number of exhibits.

During the delay between events, an attorney for the city asked me if the dog had been returned to the city as ordered. My response was it had not and would not be as there is no such thing as a Texas Dog Extradition Act and the location was decidedly far outside the city and state, thus outside of any jurisdiction of the city to control.

The discovery I requested failed to arrive and a hearing date had been set. Obviously, that was going to have to be re-set and we found that the discovery had been placed in the file of the first case, rather than the instant matter. This was not surprising due to the fact that the documents produced for the second case were identical to the documents used in the first case, including the sworn affidavit used in the first case, even though the notice of the second case served on the dog owner stated the animal control had received a sworn affidavit. Yes, but not in that case.

The day for hearing arrived and upon our arrival at court I was informed that the judge was dismissing the second case. Thus, while there is a judgment stating there had been serious bodily injury, there was no other language in the order to impact the dog or owner and with the second case dismissed.

Since the first case was tried without jurisdiction attaching to the court, the clients are considering whether to file an appeal on the basis of want of jurisdiction in that case as well.

No Fact Witness Needed to Prove the Case:

In yet another dangerous dog case, the prosecution announced it did not have the complainant available to testify. This should have resulted in an immediate dismissal or actually, and more appropriately, a reversal of the dangerous dog determination. However, the court permitted the State to try the case without an injured party or any witness with personal knowledge of the events alleged. The testifying witness was an animal control officer who, obviously, had not been present at the time and place of the alleged dangerous dog conduct. It was a trial by hearsay and equally termed trial by ambush since there clearly would be no opportunity to examine a fact witness. The judge announced that it fell to him to decide whether there was a dangerous dog uncontrolled in the city and therefore he could probably accomplish his duty under law and do so based on the investigation of animal control. Notice that there was no concern over due process for the owner and it made determination of facts much easier since they couldn't be challenged.

Delay Results in Denial of Fair Trial:

One of the more challenging cases was one in which the allegation was that the dog had been in a place of business and was alleged to have bitten a delivery man.

To the owner's benefit, he had many security cameras within and without the building. The delivery man did not report the bite to anyone at the place of business. The video evidence would have been available to the owner to show that no bite actually took place. But that was just too easy.

As stated, the delivery man did not report the alleged bite to anyone at the place of business even though there were literally dozens of employees present. So, the owner was not aware of any bite allegation. In fact, for reasons passing understanding, but of course animal control had some excuse for the delay, it took 6 months for the dangerous dog determination to be made and the owner served with the notice. Therein lies the problem.

The security system within the building, much like most security system cameras that record, over-writes every thirty days. So, the evidence was long gone before the owner even knew of the allegation. And six months later, no employee could even be sure if the delivery man was present in the building on the date he alleged. Interestingly the man reported the injury to his boss,

but no notice was made to animal control. And the man claimed he received medical treatment but no notice, as required by law, was made by the physician treating a dog bite.

Unfortunately, along with several other provisions of the dangerous dog statute, there are changes needed to make sure the dog owner is treated fairly since the emphasis seems to always be on the injured party claiming facts. One of these needed changes is a time element in which the case must be initiated and served. Some involved in the prosecution or defense of dangerous dog case believe the applicable statute of limitation is two years. Others argue no limitations. What is clearly needed to provide a fair process, is a very short period of time to report an alleged bite. I would argue 10 days to report to animal control. Then the procedure for animal control needs to require a decision within ten days as well. Today, they are under no time requirement.

Fortunately, for my client, the delivery man decided he didn't want to appear in court and could not be located by the prosecution on the day of the hearing. The court reversed the determination. What is concerning is that, even knowing their delay caused the loss of critical and fact determinative evidence, animal control had no hesitation to deem the dog dangerous based on only the statement of the delivery man who said nothing.

Provoked in Whose Eyes:

As we all know, in a Chapter 822, Subchapter D case, provocation is an element to be determined. The bite must be "unprovoked". The statute does not provide a definition of "provoked". Numerous cities have passed their own ordinances defining provocation. Unfortunately, the definitions are generally based on a human perception of what provokes and only limited to a couple of acts. Dogs do not function on the level of a human being. What provokes a dog must be seen from the dog's perspective.

It is the perception of a threat, not whether in human minds the threat existed. And what a dog perceives as threatening is not what humans, using human logic and fact determination thought, would consider provocation.

Cities have defined provocation and done so by application of human perception, not animal. One city defines provoked as limited to being hit with an object or being kicked by a person. Clearly this reasoning does not consider all of the things a person might do or present in such a manner as to cause the dog to perceive a threat. Ever heard of not staring into the eyes of a dog you do not know? Or not to reach down to pet a dog from above its head? Or grabbing a dog's snout no matter how playful? Then there is grabbing the dog's tail? All of these have resulted in a dangerous dog case. But when you provide an ordinance definition limiting provocation to human acts and perception, so limited as hitting or kicking is, it certainly makes for a nice clean ability to allege the bite was unprovoked.

In one dangerous dog case the animal control officer was the complainant. He received a call that a dog was loose on a residential street. Upon arrival he learned the dog was in the owner's backyard. This alone was cause for question as the dog lived in a stockade fenced back yard with a closed gate. So, if it got out, how did it get back in? The animal control officer relied on the argument that the dog jumped the six-foot stockade fence both ways.

At any rate the animal control officer entered the yard and reached into the dog house where the dog was feeding her new puppies. She bit him. Amazing! So, he deemed her a dangerous

dog arguing the bite was unprovoked. Thankfully, we were able to enjoy a few minutes of levity at the animal control officer's expense and the court declined to find the dog was a dangerous dog.

In another recent case, it was refreshing to read an order in a dangerous dog case wherein the judge stated he must look at the case from the perspective of the dog and what was being done to it. That is the only time in over twenty years that I have heard a judgment consider provocation in that manner.

Investigation Means Never Having to Say You're Sorry for Not Leaving the Office:

When there has been an allegation of dog bite, the animal control division may investigate and decide whether the facts support an unprovoked attack outside an enclosure. However, this author has yet to find a city that requires an actual, serious investigation past merely accepting a statement from the complainant and at most going by the owner's house to inform of the allegation.

In a moment of unbridle truth, and because he was no longer employed at the major city, a former animal control officer in a major city admitted that the investigation consisted solely of the complainant filing a sworn affidavit. And then, as if to make it all fair, most animal control departments provide an opportunity for the owner to submit their side of the story. As with most communications with allegations made by a governmental entity, I strongly suggest my clients not submit anything in response to that kind offer. I have yet to see any such submission change the notice of determination.

That same former officer also stated that an allegation of bite, unless absolutely absurd and impossible, will be taken as fact without question. When I questioned why this was the common practice, his response was politically, the department needs to keep the citizens happy and just let it play out in court.

Shortly before this Institute I tried a dangerous dog case in which the alleged attack was by several dogs, took place in the middle of the street and the complainant was screaming. The testifying animal control officer had to admit that she had never been out to the scene and, it is not their procedure to go to the neighbors to see if anyone saw or heard anything or, in this day and time, had a ring doorbell. I then asked how they define an investigation and she responded the parties have a chance to tell them who witnesses were. They rely on the owner and complainant to do their investigative work. When the complainant files their sworn statement, that is the investigation. We don't see the animal control officers typically go to the hospital with a medical release to get the alleged injured parties' medical records.

In a recent case the complainant alleged injuries at three different parts of her body. However, the very minimal medical the complainant provided, not obtained by animal control, did not reveal an injury at one of the locations on her body. This didn't cause any concern.

Dog Parks- A Good Way to Get People and Dogs Hurt:

We have all heard of municipal dog parks. But the little-known secret is how many dog on dog and dog on human injuries occur in dog parks.

It might be informative to read the signs commonly found at the entrance to municipal dog parks. In almost every city, the sign warns the people they enter at their own risk and by doing so waive any claim against the city.

Now exactly why does it amaze anyone when two dogs who don't know each other, and may even be of significantly different sizes, get into a fight? And how amazing is it that one or more owners are bitten trying to stop the fight?

What is amazing is that cities actually file dangerous dog cases on such events in dog parks. It is interesting to hear exactly how they determined which dog was the aggressor. Sometimes it is just which dog bit the injured person when he or she reached down between the mouths of the two dogs.

The city charges dangerous dog alleging the dog was outside an enclosure, unrestrained and without provocation bit someone. Isn't the dog park chain link fence with a closed gate, a secure enclosure?

Some cities have adopted aggressive dog ordinances to cover one dog attacking another dog. This came about because cities were unable to charge dangerous dog when it was only dog on dog and no human injury.

Then, to add insult to injury, those cities charge the dog that they have somehow determined was the aggressor, with being an aggressive dog. Interestingly, most of those ordinances I have read seem to have the same findings and restrictive conditions and penalties that are found in the dangerous dog statute. They just call it something different.

<u>Catchall To Satisfy an Angry Citizen Demanding Action:</u>

And then there is the political tool provided in the second paragraph of Subchapter D wherein a dangerous dog may be determined by; a dog that commits unprovoked acts in a place other than an enclosure and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to the person. In my experience any belief held by a complainant will be found to be reasonable.

Citizens will complain about the neighbor's dog or just some dog they saw on the block where they live. The animal control officer tells the citizen that they can't do anything without a bite but…. if the citizen will swear they thought the dog would attack, a dangerous dog case can be initiated.

While not generally a provision of a municipal ordinance, this paragraph in the dangerous dog statute is the most politically useful tool to satisfy an irate citizen that is demanding action and, requires absolutely no proof other than the allegation. It permits the animal control authority to make the citizens happy and yet requires no evidence of conduct.

In one case the man complained about the neighbor's dog that he just knew would attack. At the hearing his evidence was that the dog was walking down the sidewalk in front of his house and while he was in his garage going toward the door leading into his house, he could see the dog was acting like he would attack. When asked how far apart he and dog were, since the law requires "a reasonable belief", his response was 80 feet. Obviously, the dog could not have been a threat nor did the man claim the dog did anything. Yet the dog was found to be dangerous by the municipal court.

Attack is in the Eyes of the Beholder:

Unfortunately, too many dangerous dog cases result from two people walking their dogs down the street on the sidewalk. The dogs approach each other, sniff each other and then, because we don't have a clue on what sets a dog off, they get into a fight. Which one provoked the other? Which one attacked as opposed to defended?

Then, one of the owners reaches down to pull his or her dog away from the other. As difficult to anticipate as it may be, that is a good way to get bit! So, animal control has to decide during its extensive investigation, previously described, which dog was the attacker that bit the person. In most cases, truth be told, there is no way under those circumstances to tell which dog actually bit the person. It could easily have been his or her own dog. But the easy way out is for animal control to deem the dog the injured person said bit him or her, as deemed a dangerous dog.

One of the issues for an injury alleged in these cases is that the statute requires "an unprovoked attack". If two dogs are fighting each other and someone reaches in between them and is bitten, neither of the dogs was "attacking" the person. They were fighting and a hand came in between them and was bitten. Even the owner's own dog didn't know he was biting his owner. So, in reality, it is impossible to prove one of the necessary elements of dangerous dog under the facts; the attack.

Call It Something Else:

As we know, the state statute prohibits adoption of breed specific requirements or restrictions in dangerous dog ordinances. The cities, however, have taken a rather unique view of the intent of this portion of the statute.

Some have completely re-written the definition of dangerous dog, claiming that is permitted by the statute in that the adopted municipal language complements and is in addition to the statutory language, not in conflict with it and thus not prohibited by that section of the statute.

The Constitution of the State of Texas, Art. XI, § 5 has a provision prohibiting the adoption of any ordinance which contains a provision inconsistent with a provision of a state statute. Seems clear!

There is at least one city that seems to take the position that a law isn't a law unless you call it a law and an ordinance isn't an ordinance unless you call it an ordinance. If a city adopts a controlling act, whether called ordinance, law, or otherwise, it falls within the language of the statute. However, that city has adopted, not a law governing pit bulls (breed specific) but what it calls a "directive". It even listed all the potential breeds of pit bulls and crossbreeds thereof, but a "department directive" which by its own language states; "…this directive is intended to clarify the type of enclosures necessary to adequately maintain American Staffordshire Terriers, pit bull dogs, American Bull Dogs or crossbreeds thereof…". The "directive" goes on to state; "For the purpose of this directive, all of the aforementioned breeds or crossbreeds thereof will be referred to as pit bulls." Then, as if to escape a prohibition against such adoption, the directive goes on to set forth; "This directive does NOT apply to dangerous dogs as defined by Sec. 822.041(2), Tex. Health Code." No, it just makes them dangerous dogs before they do anything.

Then, to throw salt on the injury, the "directive" sets out that Animal Service Officers should only consider a dog as a pit bull dog if the animal exhibits traits listed by the American

Kennel Club for American Staffordshire Terriers. And then states the directive is to address enclosure requirements based on the physical capabilities of the pit bull breed. Perhaps that city could benefit by learning that a number of large dogs with wide jaws and extreme strength, equal or exceed the "physical capabilities" of the pit bull breeds. So, the "trait" language permits the animal control officer to judge on a basis of their individual beliefs as to the "traits".

By adopting specific requirements or restrictions naming various breeds of pit bulls, and then calling it a "department directive" setting out secure enclosure requirements for that or those breeds, and claiming it doesn't violate the prohibition against breed specific legislation must be met at least with a wink and grin. Such a claim insults the intent of the statute as adopted by the Legislature and, the prohibition announced in the Texas Constitution. The result of the "directive" is that the dogs are deemed dangerous without doing anything other than being a dog that may look like some other dog. And the animal control officer did not receive any training as to breed identification because any such training would not withstand a challenge.

Dog Cases Don't Require Due Process – At Least They Didn't:

As stated, a regularly used reason to support euthanizing dangerous dogs is to protect the population and it plays well with the public. One out of the ordinance and horrendous case is usually referenced to justice the position even if it was many years before. In one such case, a municipal court ordered the dog euthanized. As it was serious bodily injury, the city argued there was no appeal because while Subchapter D, dangerous dog, provided for a right to appeal, Subchapter A, serious bodiliy injury had no appeal language. This meant, according to the prosecutor, the municipal court judge was court of first and last resort.

There are approximately 926 municipal courts in Texas. Of those, approximately 158 are courts of record. As judges of courts of record, by statute, must be licensed attorneys, that means that almost all municipal court judges are not licensed attorneys. Yes, they must attend certain training each year, but making legal arguments in municipal courts all too often falls on deaf ears. Do you want your dog's life to hang on the opinion of someone who is not comfortable with understanding and applying what is seen in appellate cases? There are certainly good municipal judges that are not attorneys, but if a few hours of training are sufficient to be proficient in the law, we could have all gotten that training instead of three years of law school.

In the case above, which was a court of record and to this author's mind one of the best municipal judges in Texas, the fact remained that the position of the city attorney was that there was no appeal from an order to euthanize. This meant a very quick and easy disposition by death.

We took the case on appeal, prevailed in the court of appeals and eventually ended up at the Texas Supreme Court, appealed by the city and resulted in what is today the law of the land; all dangerous dog cases under either sub-chapter, are entitled to an appeal. While not scientific by any means, merely from discussions around the state, it would appear since that case was decided, the result of Subchapter A serious bodily injury cases has been fewer orders to be euthanized. One might be forgiven for assuming that is because the appeals process for those case are both time consuming and expensive for the city.

They Really Didn't File That Case?

Four dogs are walking down the street. A person passing by in a car stops and lets the dogs jump in the car. The dogs are then taken to the person's home and let inside the house. Amazingly,

this starts to go wrong and, the person was bitten. The dogs were deemed dangerous; serious bodily injury. Now which part of picking up strange dogs, enticing them into your car, taking them into your house and then trying to control them, sounds like a good idea? Do we refuse to hold people accountable when they choose to interact with animals?

In another case, a veterinarian was treating a dog and the tech gave it several shots. It reacted in pain when the tech gave the shots. Then the vet came in and began to give more shots. The dog reacted by biting the vet. A dangerous dog case was initiated. In my investigation I found that the vet notes for that dog, which had been seen in the past by that same vet and clinic, was noted to require a muzzle and the dog would respond negatively to both pain and fear. No muzzle was used. It was undisputed that the dog was reacting to pain as well as being frightened. Could that possibly be provocation? It was not in the view of the animal control officer who filed the case. And then, while Texas doesn't have an actual assumption of the risk in these cases, common sense would tell us the bite was not "unprovoked" and any vet clinic should recognize the potential of being bitten. As it turned out, the vet refused to participate in the prosecution so the dangerous dog determination by animal control was not affirmed by the court.

Enforcement of dog laws has many comical and interesting, if not sad, tales. In one case, the animal control officers decided a person had too many dogs. That city has its officers wearing body cameras. When two officers went to the owner's house, one body-cam captured the other officer climbing over and through shrubs, up to closed windows, to see and photograph inside the house. The cases were dismissed.

In another case a man had to return a dog he had adopted because it was tearing up his apartment. He put the material received at adoption together to return everything. Because he had a doctor's appointment, he had to drop the dog off and items at the shelter a few minutes before it opened. He secured the dog to the front door of the shelter along with the bag containing the material. This apparently angered the animal control supervisor and the man was promptly charged with abandonment.

In a Justice of the Peace case the owners of the animals represented themselves. As I believe Abraham Lincoln once said; "A man who represents himself in a court of law, has a fool for a client". If that is an incorrect quote or credited to the wrong person, please forgive me.

When the owner approached the clerk prior the day of trial to obtain statements and reports, he was told he could only see and have whatever the investigating officer would allow at the time of trial. The clerk followed that with the declaration that only an attorney can seek and obtain the supporting affidavit.

The State of Texas was not represented by an attorney in that case, as required, but by a volunteer deputy sheriff from another county who also serves as a cruelty investigator for a local non-profit group. This young man managed to get the Justice of the Peace to sign off on a seizure warrant giving the sheriff's department in another county the right to seize out of its county. And the address in the order was not even in that Justice of the Peace' precinct.

The Health & Safety Code provision requires the warrant be obtained by someone with animal control authority where the animal is located. Obviously, that wasn't the case. The seizure must be undertaken by an officer with authority in that precinct as well. That was not the case.

It was necessary to appeal. Then, as stated, there was no attorney representing the State of Texas, who do I serve with the pleading? My county doesn't have a county attorney so it falls to the district attorney who declined to get involved. So, I contacted the Attorney General, understandably that office did not get involved. I obtained a setting on my motion to dismiss for violation of all I have set forth above and that hearing is upcoming later this month. I am looking forward to prevailing in the case as it is wrong on so many levels.

In a sad case, a homeless man was arrested. He had his companion dog with him which, to him, was his family. The police had animal control take the dog. The dog is personal property and the arresting agency has the duty to protect all property taken from a person they arrest. As it turns out, the grand jury, after some time, declined to indict the man and he was released with no charges. When he went to animal control, he was told they had already adopted his dog to someone and refused to tell him to whom. It was the position of animal control they could adopt out a dog after a certain period of time per the Texas Health and Safety Code. There is no such provision and the city violated its duty to protect personal property taken from a citizen.

Municipalities Redefining Terms of the State Statute:

Ignoring the constitutional prohibition against adopting municipal provisions inconsistent with statutory provisions, some municipalities try to assert that the Health and Safety Code, Ch. 822, actually permits them to do so.

Subchapter A defines dangerous dog as having the meanings assigned by Section 822.041 (Subchapter D-Dangerous Dogs). That definition is "(2) "Dangerous dog" means a dog that: (A) makes an unprovoked attack on a person that causes bodily injury…"

So, both subchapters of the statute governing dog bites, define the element of dangerous dog as being a dog that attacks a "person".

Municipalities will argue that Subchapter A, General Provisions; Dogs that Attack Persons or Are a Danger to Persons contains §822.007. Local Regulation of Dogs which states "This subchapter does not prohibit a municipality or county from adopting leash or registration requirements applicable to dogs." And they rely on Subchapter D. Dangerous Dogs, which contains §822.047 providing "A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions: (1) are not specific to one breed or several breeds of dogs; and (2) are more stringent than restrictions provided by this subchapter."

Clearly neither subchapter or section permits a municipality to redefine what the statute prohibits or regulates…. dogs that bite persons. But municipalities argue that §822.007 and/or §822.047 are broad enough to permit the city to define a dangerous dog differently.

The different definitions most favored by municipalities are to add language such as "a dangerous dog is one that makes an unprovoked attack on a person or another animal". Some make it another domestic animal. Leaving the provision as "another animal" can easily be construed as any other animal such as the doggy attacks a cat that unfortunately drops into the backyard. Or a cat, rat, opossum, skunk, squirrel, mole or snake. So, the owner might have to get a 100K liability insurance policy because his dog killed a skunk.

These ordinances are typically justified because of citizen outcry about dogs attacking pet cats that are running around unrestrained. I've even heard it said that if the dog will kill a domestic pet, it is a threat to small children.

If the practitioner wishes to challenge the ordinance on the basis of conflict with the Constitution (ordinance is unconstitutional) the Attorney General of Texas must be served a copy of the pleading, and have an opportunity to appear. There is a specific email address for serving the A.G. in these cases.

Since a dog cannot speak, complain or, defend and, is seen as property not to be regarded as highly and as protected as humans, dangerous dog cases will remain, in too many instances, as political dangerous dog cases often with the issue of provocation ignored in the decision-making process of deciding whether or not to bring a dangerous dog case and with a less than effective investigation. It is so much easier to act against a dog than it is to act against the owner. After all, the owner has rights under our law, the dog does not!

I hope this paper has been entertaining and if not, at least informative by providing some issues to be aware of.
