



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-78

March 12, 1985

The Honorable Joe H. Hardegree
Prosecuting Attorney
507 Hickory Street
Mena, Arkansas 71953

Dear Mr. Hardegree:

This office acknowledges receipt of your request for an opinion concerning the destruction of stray dogs. You inquire whether any agency of State or county government has the right and authority to destroy stray dogs which have not been vaccinated for rabies.

Act No. 171 of 1945, §4 (compiled at Ark. Stat. Ann. 78-204) provides in pertinent part:

Any dog termed a stray that is not vaccinated is subject to destruction.

The Act does not specifically place responsibility for the destruction of stray unvaccinated dogs on the State Veterinary or any other officer. The foregoing statute must be read in light of general legal principles which treat dogs as "property" and which make the person who injures or kills a dog liable to the dog's owner. 145 A.L.R. 993. This Act must also be considered in light of recent court decisions which hold that property rights cannot be taken without a hearing. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); G.A.C. Transworld Acceptance Corp. vs. Jaynes Enterprises, Inc., 255 Ark. 752, 502 S.W.2d 651 (1973). It is the opinion of this Office that §4 of Act No. 171 of 1945 does not invest any governmental agency with the right and authority to kill stray dogs at random.

Under common law principles, one is not liable for killing a dog which is dangerous to persons or other animals. Kanis v. Rogers, 119 Ark. 120, 177 S.W. 413 (1915). Because of the

34
The Honorable Joe H. Hardegree
March 12, 1985
Page 2

potentiality for liability, it is the opinion of this office that governmental officials should only kill dogs which clearly constitute a danger to persons or other animals.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Arnold M. Jochums.

Sincerely,


STEVE CLARK
Attorney General

3
JSC:AMJ:jkb