

Opinion No. 68

Dogs—Regulations—Montana State College—College Housing—Federal Housing, Transfer of.

Held: The president of each of the various institutions comprising the University of Montana has the power and authority to promulgate such regulations as are reasonable to protect the best interests of the institution, the public, and the students, subject to the general control of the State Board of Education. In the case of Montana State College, where sheep and other livestock are kept and maintained, and are necessary for educational purposes, a more strict control of dogs and other pets kept in the college grounds and college housing area would undoubtedly be held reasonable.

February 28th, 1952.

Dr. P. C. Gaines
Acting President
Montana State College
Bozeman, Montana

Dear President Gaines:

You have requested my opinion as to the right of the authorities in charge of Montana State College to make and enforce regulations relative to the control of dogs owned by residents of the College housing project, which dogs are kept on the College area. You have informed me that the dogs have caused considerable destruction and have killed several sheep belonging to the College.

At the outset I wish to call your attention to Section 46-1916, Revised Codes of Montana, 1947 (enacted Chapter 142, Section 1, Session Laws of 1933):

"Any dog, whether licensed or not, which, while off the premises owned or under control of its owner, shall kill, wound, or injure any livestock not belonging to the master of such dog, shall be deemed to be a public nuisance and may be killed forthwith by any person, or the owner, when notified, shall kill such dog within twenty four (24) hours and if he fails to do so an officer may

be notified and shall kill or cause to be killed such dog; provided, that nothing contained herein shall apply to any dog acting under the direction of its master, or the agents or employees of such master."

In the relatively recent case of *Granier v. Chagnon*, 122 Mont. 327, 203 Pac. (2d) 982, 987, the term "livestock" as used in the above cited statute was held to mean domestic animals or beasts generally collected, used, or raised on a farm or ranch as cattle, sheep, swine, goats, horses, mules, donkeys, and so forth.

Although the remedy as provided by Section 46-1916 is rather drastic, the fact remains that in answer to your question as to whether dogs may be destroyed when caught in the act of killing, wounding, or destroying any livestock, the answer is in the affirmative. As provided in the statute it makes no difference whether the dog is or is not licensed.

It must be borne in mind that there is a property interest in a household pet which makes it necessary that care must be exercised in the destruction thereof. Thus, the statute cited requires that the animal be actually observed in the act of injuring livestock. It thus becomes a valid exercise of police power. The destruction of any pet in the absence of some clear showing of reasonable and specific basis for such destruction would be difficult to justify.

You ask further whether the College may make regulations prohibiting residents of the College Housing Area from keeping dogs on the premises.

Under Chapter 41, Session Laws of 1951, the local agencies are empowered to acquire and operate temporary and emergency war and veteran housing facilities. Section 4 of this act provides:

"The local agency shall administer any housing facility acquired pursuant to this act and shall let or lease accommodations therein to such veterans and families of servicemen upon such terms and for such rentals as is reasonable." (emphasis supplied)

On July 26, 1948, the State Board of Education approved, seconded and carried the following item (Vol. 9, Board of Education Minutes, p. 5026):

"Item 12727, Transfer of Federal Housing, Montana State College:

Authorizing Application by Montana State College to Public Housing Administration for transfer of Title to and control of temporary housing designated as Project U-24054, Contract No. H A (V-24054) m p h-1, including 275 family dwelling units; Project VN-24075, Contract H A (VN-24075) m p h-1, including 131 trailers, 125 family trailers, 5 toilet trailers, 1 office trailer; and project VN-24071, Contract H A (VN-24071) m p h-1; including the Men's Dormitory 386 dormitory units.

"Be It Resolved, that George A. Selke, Chancellor of the University of Montana and Roland R. Renne, President of the Montana State College, be authorized to make all preliminary arrangements for the State Board of Education with the Administrator of the Public Housing Administration to relinquish and transfer to the State of Montana for Montana State College, Bozeman, Montana, all property right, title and interest of the United States in and with respect to all temporary housing located on land owned or controlled by Montana State College, in P. H. A. Projects U-24054, m p h-1, VN 24075, m p h-1, and VN 24071, all under the terms and provisions of Section 505 of the Lanham Act (Public Law 849, 76th Congress) as amended by Public Law 796, 80th Congress."

"Be It Further Resolved, that the President of the State Board of Education, the Secretary of the Board and the Attorney General be authorized to sign, execute and deliver for the State Board of Education, all applications, statements and representatives which may be requested and required by the Administrator of the Public Housing Administrator of the United States, and to submit such document or documents for further and final execution by the State Board of Examiners."

On September 15, 1948, the transfer of the above described property was in fact effected.

By the provisions of Sections 75-408 and 75-502, Revised Codes of Montana, 1947, the president of an institution constituting a unit in the University

of Montana has the immediate direction, management and control of the institution, subject to the general supervision, direction and control of the State Board of Education.

In connection with the management and control of the institution and for the guidance of students there in attendance, the college has the authority to promulgate such rules as may be deemed necessary for the best interests of the institution, the students, and the general public.

It was stated in State ex rel. Ingersoll v. Clapp, et al., 81 Mont. 200, 263 Pac. 433:

"That the courts will not interfere with the discretion of school officials in matters which the law has conferred to their judgment, unless there is a clear abuse of that discretion, or arbitrary or unlawful action, seems to be the unanimous holding of the authorities, some of which are (citing cases) * * *."

The language used in the Ingersoll case was also cited in Kelsey v. School District No. 25, 84 Mont. 453, 276 Pac. 26.

Since sheep and other livestock are kept and maintained at the college and are necessary for educational purposes, a more strict control of dogs and other pets would undoubtedly be held more reasonable at the State College than at other institutions.

In establishing regulations, however, it should be borne in mind that there are limitations of reasonableness in the administration thereof. For instance, a remedy for failure to abide by regulations prohibiting dogs which contemplated destruction of the dogs would be unreasonable, whereas a reasonable and proper remedy would be the giving notice to vacate the premises.

It is, therefore, my opinion that the President of the institution may make such reasonable regulations as he deems necessary in order to control the keeping of dogs and other pets in the college area, and that such area includes the emergency housing area.

Very truly yours,
ARNOLD H. OLSEN
Attorney General