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March 4, 2008

RQ-0685-GA

Attorney General of Texas
Opinion Division
P.O. Box 12548
Austin, Texas 78711-2548

Via Certified Mail, Return Receipt Requested

FILE # ML-45581-08
I.D. # 45581

Dear General Abbott:

Pursuant to Texas Government Code, Section 402.043, the Brazoria County District Attorney's Office respectfully submits this request for an Attorney General's opinion.

Chapter 822 of the Texas Health & Safety Code applies to the regulation of animals. Chapter 822, Subchapter D of the Texas Health & Safety Code allows an animal control authority to determine if a dog is "dangerous" and further provides the owner of the dog 15 days to appeal the determination of the animal control authority to a justice, county or ***municipal*** court of competent jurisdiction. *See Tex. Health & Safety Code Ann., Section 822.0421. See Exhibit "A" attached hereto.*

This office has received a question from the attorney for the City of Lake Jackson as to the City Municipal Court's jurisdiction to hear an appeal under Section 822.0421 of the Health & Safety Code. The City attorney is concerned about "competent jurisdiction." The City attorney maintains that the municipal court cannot hear the dangerous dog determination appeals because the hearing is civil in nature. She is seeking an explanation of "competent jurisdiction" and maintains that because the City's court is not a "court of record", it is not a court of "competent jurisdiction." The City attorney maintains that the matter must be "criminal in nature" before the municipal court has jurisdiction. The City attorney believes that the municipal court does not have jurisdiction in such matters because the authority does not come from the general statutes governing municipal courts. *See Exhibit "B."* Therefore, a citizen would not be able to appeal the municipality's dangerous dog determination to the City's court.

Municipal courts are statutory courts created pursuant to the legislature's constitutional authority to create "such other courts" as necessary. *See* Tex. Const. art. V, §1. Because the Constitution does not specifically provide for them or for their jurisdiction, municipal courts and municipal courts of record derive their jurisdiction from statute. *See* Tex. Gov't Code Ann. §§29.003 (municipal courts) and 30.00005 (municipal courts of record); Tex. Code Crim. Proc. Ann.

Art. 4.14 (Vernon Supp. 2004-05). As statutory courts, municipal courts and municipal courts of record have only limited jurisdiction that cannot exceed the jurisdiction expressly conferred by the legislature. *See* Op. Tex. Att'y Gen. No. DM-427 (1996) at 2 (municipal courts "have no jurisdiction other than that which the legislature prescribes").

Jurisdiction for municipal courts and municipal courts of record is found in the Government Code and the Code of Criminal Procedure. Both statutes grant "exclusive original jurisdiction" to municipal courts and municipal courts of record over all criminal cases arising under city ordinances that are punishable by fine. *See* Tex. Gov't Code Ann. §29.003(a) (Vernon 2004); Tex. Code Crim. Proc. Ann. Art. 4.14(a). Municipal courts and municipal courts of record have "concurrent jurisdiction with the justice court of a precinct in which the municipality is located" over certain state law violations. *Id.* Municipal courts of record have other jurisdiction as provided by the Government Code. *Id. at §30.00005(b)-(d).*

The Government Code and the Code of Criminal Procedure provide a limited right to appeal from municipal courts and municipal courts of record. The Code of Criminal Procedure gives a defendant in any criminal action the right to appeal. *See* Tex. Code of Crim. Proc. Ann. Art. 44.02. Appeal from a municipal court is a *de novo* trial in the county court. *Id.* at arts. 44.17, 45.042(b). In a municipal court of record, the defendant has a right to appeal "from a judgment or conviction in a municipal court of record" to the county criminal courts and it is not conducted as a *de novo* trial but as an appeal based on error reflected in the record. Tex. Code Crim. Proc. Ann. Arts. 44.17, 45.042(b), Tex. Gov't Code Ann. at § 30.00014(a).

The statutes provide municipal courts of record with limited civil jurisdiction. *See* Tex. Gov't Code Ann. §30.00005(d) (Vernon 2004). The Code of Criminal Procedure still contemplates that the appeals from municipal courts will involve solely criminal matters. *See* Tex. Code Crim. Proc. Ann. Art. 44.02. The Government Code does not appear to specifically provide for an appeal of a purely civil matter within a municipal court's jurisdiction. *See* Tex. Gov't Code Ann. §30.00014(a).

However, on April 13, 2005, your office issued Opinion No. GA-0316 that addresses the jurisdiction of municipal courts and municipal courts of record as it relates to unique matters such as "chapter 685 nonconsent tow hearing" and "Chapter 822 of the Texas Health & Safety Code." *See* Op. Tex. Att'y. Gen. No. GA – 0316 (2005 WL 859243), page 2 *attached hereto as Exhibit "C" and incorporated for reference.* It was the opinion of the Attorney General that the Code of Criminal Procedure and the Government Code would not supply the answer to the municipal court's jurisdiction in unique matters such as Chapter 822 of the Texas Health & Safety Code. *Id.* Opinion GA-0316 states that there are statutory proceedings that are uncommon and "Texas statutes provide a few ...examples of isolated grants of authority to conduct hearings for a particular purpose." *Id at 3.* One of the isolated grants of authority is Chapter 822 of the Texas Health & Safety Code providing the municipal courts jurisdiction to hear dangerous dog determination appeals. *Id.* The Opinion further cites Chapter 822 stating that "an owner or person filing the action may appeal the decision of the ***municipal court***, justice court or county court in the manner provided for the appeal of cases from the municipal, justice, or county court." *Id.*

The Opinion further analyzes the issue of party status and the necessity to determine if the party against whom the hearing is sought is a criminal defendant or not. The party would be the agency seeking the enforcement. *Id. at 2-3.* In the case of the dangerous dog appeal, the party against whom the hearing is sought would be the municipality seeking to remove the dangerous dog. Thus, it would not be a criminal case. An action under Chapter 822, Subsection D of the Health & Safety Code would not be a civil case because a hearing commences with an appeal from a notice to the dog owner. It is not begun with a petition or complaint as is expected in a civil case. The parties involved in the hearing are not a plaintiff and defendant, but the person who issued the dangerous dog notice and the owner of the dog.

Several hearings can occur under Chapter 822 regarding the findings of a dangerous dog. The owner of the dog has 15 days to appeal the determination of the dangerous dog. *See* Tex. Health & Safety Code §822.0421 (Vernon 1997). The statute also provides for a hearing to determine if the owner of the dog complied with the special requirements set forth in §822.042. *Id at 822.0423.*

This Office believes that a municipal court has authority coming from Chapter 822 of the Health & Safety Code. The legislature gave specific authority to municipal courts, through Chapter 822 of the Texas Health & Safety Code, to hear dangerous dog determination appeals and to determine if the dangerous dog requirements are being complied with. The municipal court jurisdiction relating to dangerous dog determinations in Chapter 822 does not come from the general statutes governing municipal courts and municipal courts of record, but specifically from the Health & Safety Code.

Based upon the Attorney General's Opinion's No. GA-0316 analysis of this issue, would your office please provide this office with a letter opinion setting forth answers to the following questions:

1. Does a municipal court have jurisdiction to hear dangerous dog determination appeals and compliance hearings for requirements of an owner of a dangerous dog as set forth in Chapter 822, Subchapter D of the Texas Health & Safety Code?

2. If a dog owner chooses to appeal the dangerous dog determination to the municipal court in Lake Jackson, Texas, can the city refuse to hear the appeal claiming no competent jurisdiction?

3. Once the dog owner files his/her notice of appeal in municipal court, may the city refer the appeal to another court, *i.e.* justice court or county court? Is the municipal court obligated to hear the appeal as requested by the dog owner?

4. Does the dog owner get to choose the location of appeal, *i.e.* municipal court, justice court, county court? Or, is the citizen required to file notice of appeal at the location as set forth in the dangerous dog determination notice or any other notice of hearing pertaining to a dangerous dog?

This office is looking forward to your response to this request for your opinion on the foregoing questions.

Thank you for your opinion.

Sincerely,

JERI YENNE

mc
enclosures

Library References

Animals ⇐57, 84.
Westlaw Topic No. 28.

C.J.S. Animals §§ 169, 202, 291 to 292, 294, 320, 324 to 332.

[Sections 822.036 to 822.040 reserved for expansion]

SUBCHAPTER D. DANGEROUS DOGS

§ 822.041. Definitions

In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area where the dog is kept or a county sheriff in an area with no animal control office.

(2) "Dangerous dog" means a dog that:

(A) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

(B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

(3) "Dog" means a domesticated animal that is a member of the canine family.

(4) "Secure enclosure" means a fenced area or structure that is:

(A) locked;

(B) capable of preventing the entry of the general public, including children;

(C) capable of preventing the escape or release of a dog;

(D) clearly marked as containing a dangerous dog; and

(E) in conformance with the requirements for enclosures established by the local animal control authority.

(5) "Owner" means a person who owns or has custody or control of the dog.

Added by Acts 1991, 72nd Leg., ch. 916, § 1, eff. Sept. 1, 1991.

American Law Reports

Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals, 1 ALR4th 994.

Construction of provisions of statute or ordinance governing occasion, time, or manner of summary destruction of domestic animals by public auth

Landlord's liability to third person for injury resulting from attack by dangerous or vicious animal kept by tenant, 81 ALR3d 638.

Landlord's liability to third person for injury resulting from attack off leased premises by dangerous or vicious animal kept by tenant, 89 ALR4th 374.

Landlord's liability to third person for injury resulting from attack on leased premises by

EXHIBIT A

dangerous or vicious animal kept by tenant, 87 ALR4th 1004.
Liability of owner of dog known by him to be vicious for injuries to trespasser, 64 ALR3d 1039.
Who "harbors" or "keeps" dog under animal liability statute, 64 ALR4th 963.

Library References

1 Texas Pl & Pr Forms, Animals §§ 24:28, 24:29.

Texts and Treatises

3 Texas Jur 3d, Ani § 29.

13 Am Jur Proof of Facts 2d 473, Knowledge of Animal's Vicious Propensities.
39 Am Jur Proof of Facts 3d 133, Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dogbite Case.

§ 822.042. Requirements for Owner of Dangerous Dog

(a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:

(1) register the dangerous dog with the animal control authority for the area in which the dog is kept;

(2) restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;

(3) obtain liability insurance coverage or show financial responsibility in an amount of at least $100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority for the area in which the dog is kept; and

(4) comply with an applicable municipal or county regulation, requirement, or restriction on dangerous dogs.

(b) The owner of a dangerous dog who does not comply with Subsection (a) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.

(c) If, on application of any person, a justice court, county court, or municipal court finds, after notice and hearing as provided by Section 822.0423, that the owner of a dangerous dog has failed to comply with Subsection (a) or (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions.

(d) The owner shall pay any cost or fee assessed by the municipality or county related to the seizure, acceptance, impoundment, or destruction of the dog. The governing body of the municipality or county may prescribe the amount of the fees.

(e) The court shall order the animal control authority to humanely destroy the dog if the owner has not complied with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority. The court shall order the authority to return the dog to the owner if

complies with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority.

(f) The court may order the humane destruction of a dog if the owner of the dog has not been located before the 15th day after the seizure and impoundment of the dog.

(g) For purposes of this section, a person learns that the person is the owner of a dangerous dog when:

(1) the owner knows of an attack described in Section 822.041(2)(A) or (B);

(2) the owner receives notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog under Section 822.0423; or

(3) the owner is informed by the animal control authority that the dog is a dangerous dog under Section 822.0421.

Added by Acts 1991, 72nd Leg., ch. 916, § 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 99, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 96, § 1, eff. May 17, 1999.

Historical and Statutory Notes

Sections 4 and 5 of Acts 1997, 75th Leg., ch. 99 provide:

"Sec. 4. The change in law made by Section 1 of this Act applies only to a serious bodily injury to a person by a dog that occurs on or after September 1, 1997. A serious bodily injury that occurs before September 1, 1997, is covered by the law in effect at that time, and the former law is continued in effect for that purpose.

"Sec. 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date [Sept. 1, 1997] of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Library References

Animals ⇐4, 66.1, 68, 70.
Westlaw Topic No. 28.
C.J.S. Animals §§ 11 to 14, 172, 176 to 183, 186 to 193, 198 to 200, 286 to 289.

39 Am Jur Proof of Facts 3d 133, Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dogbite Case.

Texts and Treatises

3 Texas Jur 3d, Ani § 30.

§ 822.0421. Determination That Dog is Dangerous

(a) If a person reports an incident described by Section 822.041(2), the animal control authority may investigate the incident. If, after receiving the sworn statements of any witnesses, the animal control authority determines the dog is a dangerous dog, it shall notify the owner of that fact.

(b) An owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control authority to a justice, county, or municipal court of competent jurisdiction. An owner may appeal the decision of the justice,

county, or municipal court in the same manner as appeal for other cases from the justice, county, or municipal court.

Added by Acts 1997, 75th Leg., ch. 99, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

Sections 4 and 5 of Acts 1997, 75th Leg., ch. 99 provide:

"Sec. 4. The change in law made by Section 1 of this Act applies only to a serious bodily injury to a person by a dog that occurs on or after September 1, 1997. A serious bodily injury that occurs before September 1, 1997, is covered by the law in effect at that time, and the former law is continued in effect for that purpose.

"Sec. 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date [Sept. 1, 1997] of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Library References

Animals ⇐68, 70.
Westlaw Topic No. 28.

C.J.S. Animals §§ 172, 176 to 183, 186 to 193, 198 to 200.

§ 822.0422. Reporting of Incident in Certain Counties and Municipalities

(a) This section applies only to a county with a population of more than 2,800,000, to a county in which the commissioners court has entered an order electing to be governed by this section, and to a municipality in which the governing body has adopted an ordinance electing to be governed by this section.

(b) A person may report an incident described by Section 822.041(2) to a municipal court, a justice court, or a county court. The owner of the dog shall deliver the dog to the animal control authority not later than the fifth day after the date on which the owner receives notice that the report has been filed. The authority may provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

(c) If the owner fails to deliver the dog as required by Subsection (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog. The owner shall pay any cost incurred in seizing the dog.

(d) The court shall determine, after notice and hearing as provided in Section 822.0423, whether the dog is a dangerous dog.

(e) The court, after determining that the dog is a dangerous dog, may order the animal control authority to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog under Section 822.042 and the dog is returned to the owner or destroyed

(f) The owner shall pay a cost or fee assessed under Section 822.042(d).

Added by Acts 1997, 75th Leg., ch. 99, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 96, § 2, eff. May 17, 1999.

Historical and Statutory Notes

Sections 4 and 5 of Acts 1997, 75th Leg., ch. 99 provide:

"Sec. 4. The change in law made by Section 1 of this Act applies only to a serious bodily injury to a person by a dog that occurs on or after September 1, 1997. A serious bodily injury that occurs before September 1, 1997, is covered by the law in effect at that time, and the former law is continued in effect for that purpose.

"Sec. 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date [Sept. 1, 1997] of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Library References

Animals ⇐68.
Westlaw Topic No. 28.
C.J.S. Animals §§ 186 to 193, 199.

§ 822.0423. Hearing

(a) The court, on receiving a report of an incident under Section 822.0422 or on application under Section 822.042(c), shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner of the dog has complied with Section 822.042. The hearing must be held not later than the 10th day after the date on which the dog is seized or delivered.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.

(d) An owner or person filing the action may appeal the decision of the municipal court, justice court, or county court in the manner provided for the appeal of cases from the municipal, justice, or county court.

Added by Acts 1997, 75th Leg., ch. 99, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

Sections 4 and 5 of Acts 1997, 75th Leg., ch. 99 provide:

"Sec. 4. The change in law made by Section 1 of this Act applies only to a serious bodily injury to a person by a dog that occurs on or after September 1, 1997. A serious bodily injury that occurs before September 1, 1997, is covered by the law in effect at that time, and the former law is continued in effect for that purpose.

"Sec. 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date [Sept. 1, 1997] of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Library References

Animals ⇐74(.5).
Westlaw Topic No. 28.

§ 822.043. Registration

(a) An animal control authority for the area in which the dog is kept shall annually register a dangerous dog if the owner:

(1) presents proof of:

(A) liability insurance or financial responsibility, as required by Section 822.042;

(B) current rabies vaccination of the dangerous dog; and

(C) the secure enclosure in which the dangerous dog will be kept; and

(2) pays an annual registration fee of $50.

(b) The animal control authority shall provide to the owner registering a dangerous dog a registration tag. The owner must place the tag on the dog's collar.

(c) If an owner of a registered dangerous dog sells or moves the dog to a new address, the owner, not later than the 14th day after the date of the sale or move, shall notify the animal control authority for the area in which the new address is located. On presentation by the current owner of the dangerous dog's prior registration tag and payment of a fee of $25, the animal control authority shall issue a new registration tag to be placed on the dangerous dog's collar.

(d) An owner of a registered dangerous dog shall notify the office in which the dangerous dog was registered of any attacks the dangerous dog makes on people.

Added by Acts 1991, 72nd Leg., ch. 916, § 1, eff. Sept. 1, 1991.

Library References

Animals ⇐4.
Westlaw Topic No. 28.
C.J.S. Animals §§ 11 to 14, 286 to 289.

Texts and Treatises

39 Am Jur Proof of Facts 3d 133, Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dogbite Case.

§ 822.044. Attack by Dangerous Dog

(a) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to the other person.

(b) An offense under this section is a Class C misdemeanor, unless the attack causes serious bodily injury or death, in which event the offense is a Class A misdemeanor

(c) If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by a person listed in Section 822.003.

(d) In addition to criminal prosecution, a person who commits an offense under this section is liable for a civil penalty not to exceed $10,000. An attorney having civil jurisdiction in the county or an attorney for a municipality where the offense occurred may file suit in a court of competent jurisdiction to collect the penalty. Penalties collected under this subsection shall be retained by the county or municipality.

Added by Acts 1991, 72nd Leg., ch. 916, § 1, eff. Sept. 1, 1991.

Cross References

Punishment, Class C misdemeanor, see V.T.C.A., Penal Code § 12.23.

Library References

Animals ⇐76.
Westlaw Topic No. 28.
C.J.S. Animals § 203.

39 Am Jur Proof of Facts 3d 133, Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dogbite Case.

Texts and Treatises

3 Texas Jur 3d, Ani § 30.

§ 822.045. Violations

(a) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with Section 822.042 or Section 822.0422(b) or an applicable municipal or county regulation relating to dangerous dogs.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

Added by Acts 1991, 72nd Leg., ch. 916, § 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 99, § 2, eff. Sept. 1, 1997.

Historical and Statutory Notes

Sections 4 and 5 of Acts 1997, 75th Leg., ch. 99 provide:

"Sec. 4. The change in law made by Section 1 of this Act applies only to a serious bodily injury to a person by a dog that occurs on or after September 1, 1997. A serious bodily injury that occurs before September 1, 1997, is covered by the law in effect at that time, and the former law is continued in effect for that purpose.

"Sec. 5. (a) The change in law made by this Act applies only to an offense committed on or after the effective date [Sept. 1, 1997] of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose."

Cross References

Punishment, Class B misdemeanor, see V.T.C.A., Penal Code § 12.22.

Library References

Animals ⇐75, 76.
Westlaw Topic No. 28.
C.J.S. Animals §§ 202 to 203.

Texts and Treatises
3 Texas Jur 3d, Ani § 30.

39 Am Jur Proof of Facts 3d 133, Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dogbite Case.

§ 822.046. Defense

(a) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.

(c) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code.

Added by Acts 1991, 72nd Leg., ch. 916, § 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.809, eff. Sept. 1, 2001.

Library References

Animals ⇐68, 74(.5).
Westlaw Topic No. 28.
C.J.S. Animals §§ 186 to 193, 199.

Texts and Treatises
39 Am Jur Proof of Facts 3d 133, Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dogbite Case.

§ 822.047. Local Regulation of Dangerous Dogs

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.

Added by Acts 1991, 72nd Leg., ch. 916, § 1, eff. Sept. 1, 1991.

Library References

Animals ⇐4.
Westlaw Topic No. 28.
C.J.S. Animals §§ 11 to 14, 286 to 289.

Texts and Treatises
3 Texas Jur 3d, Ani § 29.

39 Am Jur Proof of Facts 3d 133, Plaintiff's Negligence, Provocation, or Assumption of Risk as Defense in Dogbite Case.

da-maryc

From: Sherri Russell [srussell@ci.lake-jackson.tx.us]
Sent: Friday, February 22, 2008 12:12 PM
To: da-maryc
Subject: brief for AG on dangerous dog

<<brief dangerous dog da.doc>> Mary,

The information you requested is attached. Please let me know if I can be of further help.

Sherri Russell

City Attorney

City of Lake Jackson

25 Oak Drive

Lake Jackson, Texas 77566-5289

(979) 297-1076

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EXHIBIT B

Whether a municipal court that is not a court of record has jurisdiction to hold a dangerous dog hearing under § 822.0421 of the Health & Safety Code.

Section 822.0421 of the Health & Safety Code states that after an animal control authority determines a dog is dangerous, the owner of the dog may "appeal the determination of the animal control authority to a justice, county, or municipal court of competent jurisdiction." TEX. HEALTH & SAFETY CODE § 822.0421(b) (Vernon 2003). There is no further explanation in the Health & Safety Code as to the procedures of the hearing, including timing of the hearing. There is also no explanation of "competent jurisdiction."

A dangerous dog hearing under§ 822.0421 of the Health & Safety Code is not a criminal hearing. The hearing is initiated by the owner of the dog, rather than by a complaint, and neither the person requesting the hearing nor the animal control authority are criminal defendants. Further, at the end of the hearing, no fine or term of incarceration is imposed. Therefore, the case is a civil, rather than a criminal case.

Municipal courts are statutory courts created by the legislature. These courts derive their jurisdiction strictly from statute. OP. TEX. ATT'Y GEN. No. GA-0316, *2 (2005). The jurisdiction for the municipal courts not of record is found in the Code of Criminal Procedure and the Government Code. In art. 4.14 of the Code of Criminal Procedure, municipal courts are granted exclusive criminal jurisdiction in criminal cases that arise under the city's ordinances and concurrent criminal jurisdiction with justice courts. TEX. CODE CRIM. PROC. ANN. art. 4.14 (Vernon 2005). Section 29.003 of the Government Code mirrors article 4.14 of the Code of Criminal Procedure with one exception. The Government Code confers upon municipal courts "exclusive appellate jurisdiction . . . in a case arising under Chapter 707, Transportation Code." TEX. GOV'T CODE ANN. § 29.003 (Vernon Supp. 2007). Chapter 707 of the Transportation Code regulates photographic traffic signal enforcement systems, i.e., red light cameras. The Transportation Code states that local authorities may impose civil penalties for running red lights. TEX. TRANSP. CODE ANN. § 707.002 (Vernon Supp. 2007). The Transportation Code also provides for an administrative adjudication hearing and an appeal from the hearing. The statute explicitly states that the petition for appeal "must be filed with . . . if the local authority is a municipality, the municipal court of the municipality." *Id.* at § 707.016(a). Therefore, this statue grants civil jurisdiction for red light camera appeals to municipal courts.

There is no such explicit language in § 822.0421 of the Health and Safety Code. Instead, the language merely states that the appeal is to "a justice, county, or municipal court of competent jurisdiction." TEX. HEALTH & SAFETY CODE § 822.0421(b) (Vernon 2003). Again, there is no explanation of "competent jurisdiction".

Case law in this area is sparse. Justice Price, in *Timmons v. Pecorino* discussed hearings under § 822.002 in relation to whether the Court of Criminal Appeals had jurisdiction for appeals from such hearings. *See* Timmons v. Pecorino, 977 S.W.2d 603, 605 (Tex. Crim. App. 1998) (Price, J., concurring) (stating that Texas Court of Criminal Appeals had no jurisdiction to hear appeal of dangerous dog case because relator had not been charged with or convicted of crime). The Second Court of Appeals declared there was no avenue of appeal for a dangerous dog hearing due to the hearing's civil nature. *See* In re Labon, 2008 WL 110521 (Tex. App. – Ft. Worth, Jan. 4, 2008, n.w.h.). The discussion in this case is not

EXHIBIT B

helpful, though because the Court was addressing an ordinance that conferred civil jurisdiction on a municipal court of record. *Id.* at *2.

Therefore, guidance is needed from the Attorney General as to whether a municipal court that is not a court of record has jurisdiction to hold a dangerous dog hearing under § 822.0421 of the Health & Safety Code.

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2005

The Honorable Kent Grusendorf Chair, House Committee on Public Education Texas House of Representatives Post Office Box 2910 Austin, Texas 78768-2910 The Honorable Mike Krusee Chair, House Committee on Transportation Texas House of Representatives Post Office Box 2910 Austin, Texas 78768-2910	Opinion No. GA-0316 Re: Post-hearing procedure in cases involving nonconsent tows (RQ-0278-GA)

Dear Representatives Grusendorf and Krusee:

Together you inquire about post-hearing procedure in nonconsent tow hearings conducted under chapter 685 of the Texas Transportation Code. (1) You inform us that in three separate nonconsent tow hearings in the City of Arlington Municipal Court, a municipal court of record, the judge serving as a magistrate determined that there was no probable cause for challenged nonconsent tows. *See* Request Letter, *supra* note 1, at 2. After the hearings, attorneys for the tow companies and apartment complexes, as the parties who initiated the nonconsent tows, submitted various documents (motion for rehearing, motion for new trial, and notice of appeal) seeking to reverse the decisions of the court. *See id.* At the same time, the parties whose vehicles had been towed sought reimbursement for their costs or return of their vehicles. *See id.* You state that it "is unclear under the law how the court can proceed in these matters," *id.*, and ask

> [i]s the decision final, after a hearing in a municipal court under [section] 685.003 of the Texas Transportation Code, if the hearing results in a finding of no probable cause for the nonconsent tow? If not, what is the post-hearing procedure?

Id. at 1.

I. Nonconsent Tow Hearings

Pursuant to chapter 685, a person whose vehicle has been towed without consent is entitled to a hearing on whether probable cause existed for the removal of the vehicle. *See* Tex. Transp. Code Ann. § 685.003 (Vernon 1999). The primary issue at a hearing conducted under chapter 685 is whether probable cause existed for the removal and placement of the vehicle. *See id.* § 685.009(c)(1) (Vernon Supp. 2004-05). If the court conducting the hearing finds there was probable cause for the authorization of the removal and storage of the vehicle, the "person who requested the hearing shall pay the costs of the removal and storage." *Id.* § 685.002(a) (Vernon 1999). On the other hand, if the court finds no probable cause for the removal and storage of the vehicle, the "person or law enforcement agency that authorized the removal shall" pay the costs of removal and storage or reimburse the owner or operator for removal and storage costs already paid by the owner or operator. *Id.* § 685.002(b). Jurisdiction to conduct these probable cause tow hearings is given to the justice of the peace or magistrate in the jurisdiction from which the vehicle was removed. (2) *See id.* § 685.004(a) (Vernon Supp. 2004-05). Your inquiry pertains specifically to tow hearings that are conducted before a magistrate (3) of a municipal court. See Request Letter, *supra* note 1, at 1.

II. Municipal Courts

Municipal courts are statutory courts created pursuant to the legislature's constitutional authority to create "such

EXHIBIT C

other courts" as necessary. *See* Tex. Const. art. V, § 1 (vesting judicial power in "one Supreme Court, in one Court of Criminal Appeals, in Courts of Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law"); *see also* Tex. Att'y Gen. Op. No. DM-427 (1996) at 2. There are two kinds of municipal courts in Texas: municipal courts and municipal courts of record. [4] *See* Tex. Gov't Code Ann. §§ 29.002 (Vernon 2004) (creating a municipal court in each municipality), 30.00003(a) (permitting the governing body of certain municipalities to create a municipal court of record); *see also id.* §§ 30.00851-.00856 (pertaining to a municipal court of record for the City of Arlington); *cf. id.* § 30.00003(e) (stating a municipal court of record of a municipality may not exist concurrently with a municipal court of the same municipality).

Because the constitution does not specifically provide for them, or for their jurisdiction, municipal courts and municipal courts of record derive their jurisdiction from statute. *See id.* §§ 29.003 (municipal courts), 30.00005 (municipal courts of record); Tex. Code Crim. Proc. Ann. art. 4.14 (Vernon Supp. 2004-05) (municipal courts and municipal courts of record). As statutory courts, municipal courts and municipal courts of record have only limited jurisdiction that cannot exceed the jurisdiction expressly conferred by the legislature. *See* Tex. Att'y Gen. Op. No. DM-427 (1996) at 2 (municipal courts "have no jurisdiction other than that which the legislature prescribes"); *see also* Tex. Att'y Gen. Op. No. JC-0216 (2000) at 2 (stating a municipal court is one of limited jurisdiction). Jurisdiction for municipal courts and municipal courts of record is found in the Government Code and the Code of Criminal Procedure. Both statutes grant "exclusive original jurisdiction" to municipal courts, including municipal courts of record, over all criminal cases arising under city ordinances that are punishable by fine. [5] Tex. Gov't Code Ann. § 29.003(a) (Vernon 2004); Tex. Code Crim. Proc. Ann. art. 4.14(a) (Vernon Supp. 2004-05). In addition to this criminal jurisdiction, municipal courts and municipal courts of record have "concurrent jurisdiction with the justice court of a precinct in which the municipality is located" over certain [6] state law violations. Tex. Gov't Code Ann. § 29.003(b) (Vernon 2004); Tex. Code Crim. Proc. Ann. art. 4.14(b) (Vernon Supp. 2004-05). Municipal courts of record, in addition to the jurisdiction of municipal courts, see Tex. Gov't Code Ann. § 30.00005(a) (Vernon 2004), have other jurisdiction as provided by the Government Code. *See id.* § 30.00005(b)-(d); *cf. Prince v. Garrison*, 248 S.W.2d 241, 243 (Tex. Civ. App.-Eastland 1952, no writ) (the legislature fixes the jurisdiction of corporation [municipal] courts by statute).

III. Appeal from Municipal Court

The Government Code and the Code of Criminal Procedure provide a limited right to appeal from municipal courts and municipal courts of record. The Code of Criminal Procedure gives a defendant in any criminal action the right to appeal. *See* Tex. Code Crim. Proc. Ann. art. 44.02 (Vernon 1979 & Supp. 2004-05). Appeal from a municipal court, other than a municipal court of record, is a *de novo* trial in the county court. *See id.* arts. 44.17, 45.042(b) (Vernon Supp. 2004-05). The Government Code provides a defendant a right of appeal "from a judgment or conviction in a municipal court of record." Tex. Gov't Code Ann. § 30.00014(a) (Vernon 2004). Appeal from a municipal court of record is to the county criminal courts or county criminal courts of appeal, *see id.*, and is not conducted as a *de novo* trial but as an appeal based on error reflected in the record. *See* Tex. Code Crim. Proc. Ann. arts. 44.17, 45.042(b) (Vernon Supp. 2004-05), Tex. Gov't Code Ann. § 30.00014(b) (Vernon 2004).

A. Necessity of Criminal Case

It has been said that matters appealed from municipal courts must involve a criminal case. *See City of Lubbock v. Green*, 312 S.W.2d 279, 282 (Tex. Civ. App.-Amarillo 1958, no writ) (stating an appeal from municipal court "would lie only if the proceedings constituted a criminal case."); *see also* 23 David Brooks, Texas Practice: Municipal Law and Practice § 15.19 (1999). The holding in the *Green* case, that there was no appeal from a municipal court where the matter was not a criminal case, was premised on the fact that municipal courts had no civil jurisdiction. *See Green*, 312 S.W.2d at 282 ("Since [the statute] limits the jurisdiction of corporation courts to criminal cases . . . ."). The statutes now provide municipal courts of record with limited civil jurisdiction. *See* Tex. Gov't Code Ann. § 30.00005(d) (Vernon 2004) (providing that governing body of municipality may provide that municipal court of record may have specified civil jurisdiction). The Code of Criminal Procedure still contemplates that appeals from municipal courts will involve solely criminal matters. *See* Tex. Code Crim. Proc. Ann. art. 44.02 (Vernon 1979 & Supp. 2004-05). Likewise, the Government Code does not appear to specifically provide for an appeal of a purely civil matter within a municipal court's jurisdiction. *See* Tex. Gov't Code Ann. § 30.00014(a) (Vernon 2004). However, we do not address whether there is a general right of appeal of civil matters within a municipal court's jurisdiction. Because of the unique nature of a chapter 685 nonconsent tow hearing, we do not think the Code of Criminal Procedure and Government Code provisions supply the answer to your question.

B. Nonconsent Tow Hearing Is Neither a Criminal Nor Civil Matter

Chapter 685 tow hearings are clearly not criminal matters. Nonconsent tow hearings contemplated by chapter

685 are not designed to secure a conviction and punishment for a crime. *See Timmons v. Pecorino*, 977 S.W.2d 603, 604 (Tex. Crim. App. 1998). The hearings are not initiated by complaint, but rather by written request from the person whose vehicle has been towed. *See* Tex. Transp. Code Ann. § 685.007(a) (Vernon 1999). The party against whom the hearing is sought is not a criminal defendant but "the person or law enforcement agency that authorized the removal of the vehicle." *Id.* § 685.009(b). Moreover, a chapter 685 hearing involves no crime or criminal punishment but only an award of specified costs based on the findings of fact and conclusion of law made by the court. *See id.* §§ 685.002(b), .009(d). A chapter 685 hearing does not result in a conviction from which an appeal will lie. *See Hardin v. State*, 248 S.W.2d 487, 487 (Tex. Crim. App. 1952) ("The accused has not . . . been found guilty of anything, and no punishment has been assessed; therefore, this is not a criminal case . . . .").

Nor do the provisions for a chapter 685 nonconsent tow hearing suggest a civil adjudication in the traditional sense. A chapter 685 hearing commences with a request, *see* Tex. Transp. Code Ann. § 685.007(a) (Vernon 1999), instead of a petition or complaint as is expected in a civil case. The parties involved in the hearing are not a plaintiff and defendant, but the person who authorized the tow and the owner or operator of the vehicle that was towed. *See id.* §§ 685.002(a), .003, .009(b). The chapter authorizes a magistrate to make findings of fact and a conclusion of law, *see id.* § 685.009(d), but not to issue a final judgment. Instead, it merely states who "shall pay" certain costs. *See id.* § 685.002. Appeals do not lie from findings of fact and conclusions of law but from final judgments. *See N. E. Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893, 895 (Tex. 1966).

C. Similar Statutory Hearing Procedures

A chapter 685 nonconsent tow hearing is a kind of statutory proceeding that is uncommon. Texas statutes provide a few other examples of isolated grants of authority to municipal courts to conduct hearings for a particular purpose. Chapter 822 of the Texas Health and Safety Code creates a hearing process to determine whether a dog is dangerous. *See* Tex. Health & Safety Code Ann. § 822.0423 (Vernon 2003). The hearing is authorized to occur in a justice court, county court, or municipal court. *See id.* § 822.042(c). In such a hearing, the court is directed to determine whether the dog is a dangerous dog as defined by the statute or whether the owner of the dog has complied with certain requirements under the chapter. *See id.* § 822.0423(a); *see also Pecorino*, 977 S.W.2d at 604 (a hearing under Health and Safety Code chapter 822 is not criminal because the dog owner is not charged with or convicted of a criminal offense). The statute expressly provides for an appeal of the court's determination. *See id.* § 822.0423(d) ("An owner or person filing the action may appeal the decision of the municipal court, justice court, or county court in the manner provided for the appeal of cases from the municipal, justice, or county court."). Similarly, hearings conducted to determine the disposition of property alleged to have been stolen are authorized to be conducted before, among others, a "municipal judge having jurisdiction as a magistrate in the municipality." Tex. Code Crim. Proc. Ann. art. § 47.01a(a) (Vernon Supp. 2004-05). The hearing is conducted to determine the superior right to possession of the property. *See id.* The statute expressly provides for an appeal from the hearing. *See id.* § 47.12(b) ("Appeals from a hearing in a municipal court or justice court . . . shall be heard by a county court or statutory county court."). The statute further prescribes the applicable rules of procedure that govern the appeal. *See id.* Both of these hearing procedures are similar to a chapter 685 nonconsent tow hearing in that they contemplate a hearing before a magistrate. However, of these statutory hearings, chapter 685 is the only hearing in which the statute does not provide for an appeal.

D. Legislature Has Not Provided for Appeal

Municipal court jurisdiction over a chapter 685 nonconsent tow hearing comes not from the general statutes governing municipal courts and municipal courts of record but from the Transportation Code. The specific grant of jurisdiction to conduct a nonconsent tow hearing is limited. *See* Tex. Transp. Code Ann. §§ 685.004(a) (Vernon Supp. 2004-05) (the hearing is limited to a justice of the peace or magistrate in specified territory), 685.009(c) (the hearing is limited to deciding issues specified in the statute). Chapter 685 does not contain a provision authorizing an appeal from the magistrate's determination. We think the few examples of similar statutory hearings, *see* discussion *supra*, clearly indicate that when the legislature creates a statutory hearing and wishes to grant a right of appeal, it knows how to do so. [(7)] *See* Tex. Att'y Gen. Op. No. GA-0271 (2004) at 2 (stating that when "it wishes to require immunizations for specific categories of persons, the legislature knows how to do so"), Tex. Att'y Gen. Op. No. GA-0144 (2004) at 5 (stating that when "legislature intends to confer on a licensing board [certain] authority . . . , it knows how to do so"); *see also Thorne v. Moore*, 105 S.W. 985, 987 (1907) ("The Constitution leaves the regulation of appeals very largely to the Legislature."), *Equitable Life Assur. Soc'y v. Murdock*, 219 S.W.2d 159, 164 (Tex. Civ. App.-El Paso 1949, writ ref'd n.r.e.) (stating the right of appeal "is a privilege only and does not exist as a matter of right"). The Texas Constitution provides that appellate jurisdiction is subject to regulations as may be prescribed by law. *See* Tex. Const. art. V, § 5. Thus, appeals are within the control of the legislature and are dependent on statute. *See Thorne*, 105 S.W. at 987; *Murdock*, 219 S.W.2d at 164. Because the legislature did not expressly provide for an appeal of a magistrate's determination in a statutory nonconsent tow hearing, we conclude that the magistrate's determination is final and that no appeal exists.

E. No Inherent Right to Appeal

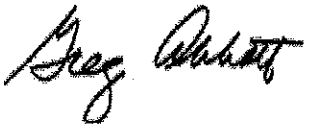
We received briefing that argues where a vested property right is involved there is an inherent right of appeal that overrides any legislative restrictions on appeals. [8] The cases cited in support of this proposition are distinguishable on the basis that they involve challenges to adverse rulings of state administrative agencies. *See* Pierson Behr Brief, *supra* note 8, at 2 (citing *City of Amarillo v. Hancock*, 239 S.W.2d 788, 790 (Tex. 1951) (Civil Service Commission); *Tex. Optometry Bd. v. Lee Vision Ctr., Inc.*, 515 S.W.2d 380, 382 (Tex. Civ. App.-Eastland 1974, writ ref'd n.r.e.) (Texas Optometry Board); *Martine v. Bd. of Regents, State Senior Colls. of Tex.*, 578 S.W.2d 465, 472 (Tex. Civ. App.-1979, no writ) (Board of Regents, State Senior Colleges of Texas)). It is well established in administrative law jurisprudence that "courts should recognize an inherent right of appeal from an administrative body created by an act silent on the question of appeal only where the administrative action complained of violates a constitutional provision." *Hancock*, 239 S.W.2d at 790; *see also Brazosport Savs. & Loan Ass'n v. Am. Savs. & Loan Ass'n*, 342 S.W.2d 747, 750-51 (Tex. 1961), *Bd. of Ins. Comm'rs v. Title Ins. Ass'n of Tex.*, 272 S.W.2d 95, 97-98 (Tex. 1954). We have found no judicial authority for the application of this rule outside the administrative law context. [9] Accordingly, the cited cases are inapplicable to the action being challenged here - this is an action of a court and not of an administrative agency.

A nonconsent tow hearing conducted before a magistrate of a municipal court or municipal court of record pursuant to chapter 685, Texas Transportation Code, results in a final probable cause determination from which there is no appeal. Because we have concluded the magistrate's determination is final, we do not address the second part of your inquiry about post-hearing procedure.

SUMMARY

Where a nonconsent tow hearing authorized by chapter 685 of the Texas Transportation Code is conducted before a magistrate of a municipal court or municipal court of record, the magistrate's determination is final, and there is no appeal.

Very truly yours,



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Footnotes

1. Letter from Honorable Kent Grusendorf and Honorable Mike Krusee, Texas House of Representatives, to Honorable Greg Abbott, Texas Attorney General (Sept. 24, 2004) (on file with Opinion Committee, *also available at* http://www.oag.state.tx.us) [hereinafter Request Letter].

2. In municipalities with a population of 1.9 million or more, the hearing is to be conducted by the judge of "a municipal court in whose jurisdiction is the location from which the vehicle was removed." Tex. Transp. Code Ann. § 685.004(b) (Vernon Supp. 2004-05).

3. Among other officers, justices of the peace, mayors and judges of municipal courts are magistrates. *See* Tex. Code Crim. Proc. Ann. art. 2.09 (Vernon Supp. 2004-05).

4. As one court explained:

Prior to September 1, 1999, each municipality authorized to have a municipal court of record had its independent subchapter of chapter 30 of the [G]overnment [C]ode, which authorized the governing body of the municipality to create a municipal court of record and established certain provisions for the court. With the legislation effective September 1, 1999, subchapter A authorizes all municipalities listed in chapter 30 to create municipal courts of record and sets out provisions governing all the municipal courts of record. Each municipality then has a separate subchapter containing provisions specific to that municipality.

Martin v. State, 13 S.W.3d 133, 136 n.1 (Tex. App.-Dallas 2000, no pet.) (citations omitted).

5. Permissible fines are not to exceed:

(A) $2,000 in all cases arising under municipal ordinances or resolutions, rules, or orders of a joint board that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) $500 in all other cases arising under a municipal ordinance or a resolution, rule, or order of a joint board.

Tex. Gov't Code Ann. § 29.003(a)(1) (Vernon 2004).

6. State law violations must arise within the territorial limits of the municipality and must be punishable by fine only. *See id.* § 29.003(b)(1)-(2).

7. *See also* Tex. Transp. Code Ann. §§ 471.001-.008 (Vernon 1999 & Supp. 2004-05) (chapter 471, Transportation Code, creating the right to a hearing regarding the blocking of a railroad crossing but providing no mechanism for appeal).

8. *See* Brief from Grey Pierson, Pierson Behr Attorneys, to Honorable Greg Abbott, Texas Attorney General (Nov. 10, 2004) (on file with Opinion Committee) [hereinafter Pierson Behr Brief].

9. Of course, we recognize that where a party has been deprived of property without due process, the party may have a separate cause of action under the Due Process Clause of either the state or federal constitution. *See Boddie v. Conn.*, 401 U.S. 371, 378-79 (1971). We received no briefing on this issue and the question does not inquire about such a cause of action, so we do not consider it in this opinion. We do point out, however, that a party given an opportunity to participate in a chapter 685 nonconsent tow hearing is likely afforded sufficient due process.

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