

ANGIE CHEN BUTTON



The State of Texas
House of Representatives

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July 9, 2019

The Honorable Ken Paxton
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

RQ-0294-KP
FILE # ML-48578-19
I.D. # 48578

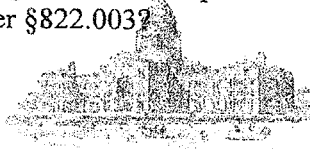
Re: Construction of provisions in Title 10, Texas Health and Safety Code, Chapter 822, Subchapter A

Dear General Paxton:

I am requesting an opinion regarding questions as to the construction and application of certain language contained in the above-referenced statute and the application of §822.041 (contained in Subchapter D) in construing provision of Subchapter A. Subchapter A deals with serious bodily injury by a dog bite and Subchapter D deals with a dog that bites a human or places a person in fear of being bitten. It appears that the two must be construed together and thus arises a question as to the construction to be given in regard to certain language contained in certain sections of Subchapter A. A copy of Subchapter A, §§822.001, 822.002 and 822.003 are attached hereto as Exhibit "A", and a copy of Subchapter D, §822.041 is attached hereto as Exhibit "B". The questions are as follows:

1. In obtaining a warrant to seize a dog under Subchapter A, §822.002, how is the term "sworn complaint" to be defined? No definition is provided in the statute. Does the sworn complaint require the affiant to have personal knowledge of the facts contained therein such that perjury may attach or, can the sworn complaint recite what the affiant was told by others? Must probable cause for the issuance of a warrant to seize personal property (a dog) be based solely on facts sworn to by someone with personal knowledge of the facts?

2. Subchapter A, §822.001 provides the definitions to be applied in a serious bodily injury case and, they are set out in paragraph (2) "Serious bodily injury", followed by paragraph (3) "Dangerous dog", "dog", "owner", and "secure enclosure" as assigned by Subchapter D, §822.041. Since the definition of "dangerous dog" is listed in the definitions in Subchapter A dealing with a case alleging serious bodily injury, does "... makes an unprovoked attack on a person" provision found in §822.041(2)(A) constitute an element which must be proven in a hearing under §822.003? If the dog's attack was proven to have been provoked, would that constitute a defense in a hearing under §822.003?



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3. Subchapter A, §822.003 provides in paragraph (a) that the hearing must be held not later than the 10th day after the date on which the warrant is issued. Does this provision limit the court's inherent authority to control its docket? Can the court call the case on the docket and immediately continue the case to a later date on its own authority? Would it impact prosecution of the case for the court to grant a motion for continuance filed by a party?

Your consideration of these issues is respectfully requested and appreciated.

Respectfully,

A handwritten signature in cursive script that reads "Angie Chen Button".

Angie Chen Button
Chair, Urban Affairs Committee

