

***What procedures should a town follow when considering whether an unlicensed dog needs to be destroyed?***

*“Even the most soulful eyed canine has rights, privileges and protection only within his master’s shadow as provided by law.” Thiele v. Denver, 312 P.2d 786, 789 (Colo. 1957)*

State law authorizes the selectboard to, at any time, issue warrants to a police officer, constable or pound keeper, directing them to humanely destroy all unlicensed dogs within the town (except those brought into the state for a period not to exceed 90 days). 20 V.S.A. § 3621. Such action, without affording their owners the requisite notice and opportunity to be heard, may constitute an unconstitutional taking of property in violation of the Due Process Clause of the Fourteenth Amendment. (See *Lamare v. North Country Animal League*, 170 Vt. 115 (1999). The Vermont Supreme Court conducted a due process analysis to determine whether the Town of Wolcott’s Dog Control Ordinance violated the plaintiffs’ constitutional right to due process.)

One step a town can take to mitigate this action is to maintain a list of *all* dogs with the town clerk as required by 20 V.S.A. § 3590. The clerk could notify owners or keepers of dogs who are not licensed or inoculated of the need to do so. If these dogs remain unlicensed or uninoculated, the clerk could present the selectboard with a revised list and send notice to the owners that their dogs may be destroyed. 20 V.S.A. § 3590. Presumably, this would aid in meeting the notice requirements.

Additionally, VLCT recommends that unlicensed dogs should be impounded if they are found running at large in town. If the address or identity of an impounded dog is not known, a town should provide notice by posting “in the municipal clerk’s office and other usual places for public notice for a one week period.” 20 V.S.A. § 3806(b). VLCT further recommends that a town wishing to humanely destroy or otherwise dispose of an unlicensed dog afford its owner additional procedural due process protection by holding a hearing, at a date and time specified, for the selectboard to determine the dog’s fate. If the selectboard decides to humanely dispose of the dog it could issue a warrant for its destruction at this time.

Alternatively, the selectboard could heed the words of the Vermont Supreme Court, “(r)ecognizing . . . the substantial value that society places on domestic animals, it is proper that the law encourage finders to take in and care for lost pets” *Morgan v. Kroupa*, 167 Vt. 99, 103 (1997), and place the dog in the custody of an animal shelter, humane society or rescue league.

- *Garrett Baxter, Associate, Municipal Assistance Center*