

## WARRANTLESS SEIZURE PROVISION OF ANIMAL CRUELTY STATUTE CONSTITUTIONAL

The Vermont Supreme Court, in *Hegarty v. Addison County Humane Society*, 2004 VT 33 (April 2, 2004), ruled a provision of the Vermont Animal Cruelty statute authorizing humane officers to seize animals without a warrant does not violate an individual's right to protection from an unreasonable search and seizure.

The case of *Hegarty v. Addison County Humane Society* first arose when a humane officer from the Addison County Humane Society ("ACHS") investigated complaints that a mare owned by the Hegartys, Paka, was in poor health and not receiving adequate care. According to the facts of the case, an ACHS humane officer made numerous trips to Paka's pasture to evaluate her health and care and observed "inadequate compliance with feeding and shelter requirements." When the humane officer informed Suzanne Hegarty of his observations and concerns she told him to not return to her property.

Later that day, the humane officer requested that an ACHS veterinarian go to the Hegartys' property to assess Paka's health. The veterinarian issued a report stating that Paka was in an emaciated condition and was either sick, had poor teeth, or was receiving an inadequate diet. Upon receipt of the veterinarian's report, the humane officer contacted the State's Attorney to discuss the possibility of removing Paka from the Hegartys' custody. The State's Attorney advised the humane officer to proceed with seizing the animal in accordance with the procedures outlined in Vermont's animal cruelty statute, 13 V.S.A. § 354(b)(3), which states that "if the humane officer witnesses a situation in which the humane officer determines that an animal's life is in jeopardy and immediate action is required to protect the animal's health or safety, the officer may seize the animal without a warrant." The ACHS removed the mare from the Hegartys' home and took custody of the animal on August 18, 2000. The mare was returned to the Hegartys 12 days later, after it received veterinary care and treatment from the ACHS.

In response to the ACHS's actions, the Hegartys filed suit against ACHS alleging among other things, that ACHS's action violated their constitutional right to be protected from unreasonable search and seizure, as well as their rights to due process.

The Hegartys argued that 13 V.S.A. § 354(b)(3) violates both the state and federal constitutions' protections against unreasonable search and seizure by authorizing seizures of property without a warrant. The Court explained that while warrantless seizures are generally deemed unreasonable, they are lawful under *exigent, or emergency, circumstances*. The Court ruled 13 V.S.A. § 354(b)(3) constitutional because it authorizes a humane officer to seize an animal without a warrant only if exigent circumstances exist, specifically if a humane officer "witnesses a situation in which he determines that immediate action is required to protect the animal's health and safety." The Court did caution, however, "each case should be evaluated individually and the determination of exigency must be closely examined."

The Hegartys also argued that 13 V.S.A. § 354 (b)(3) violated their constitutional right to due process by permitting ACHS to seize their horse without "a meaningful opportunity to be heard prior to the seizure." The Court rejected the due process claim explaining that although "the Hegartys' property interest in Paka was constitutionally protected...the degree of their deprivation was not serious, the procedures underlying the

deprivation adequately address the potential for errors, and they could have requested a post-deprivation hearing...”

This case is important for municipal officials because it upholds the authority of humane officers to take immediate action, by seizing animals without a warrant, in emergency situations where a humane officer reasonably believes that an animal’s life and safety is in danger. This authority, however, must be exercised cautiously and sparingly, and only when the circumstances outlined in the statute exist. The Court specifically cautioned that 13 V.S.A. § 354(b)(3)’s grant of authority to act without a warrant “is a narrow one which permits warrantless seizures only in the unusual situations where the humane officer makes a reasonable determination that an animal’s life is in jeopardy and immediate action is required.” Although the statutory authority exists to seize an animal under emergency circumstances, municipal officials and humane officers should exercise this power sparingly, and if at all possible, should obtain a warrant prior to seizing an animal if doing so is possible without jeopardizing the animal’s health, safety, and welfare.

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