


When May an Animal Control Officer Enter Private Property?



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Roadmap

- What laws should we consider?
 - Fourth Amendment
 - Trespass
 - Local ordinance
 - Statutory right of entry for public health



Fourth Amendment

- “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Fourth Amendment

- Search must be “reasonable”
 - Balance personal privacy with public interest in enforcing the law
- Not a violation of the Fourth Amendment
 - Consent
 - Warrant
 - Exigent circumstances
 - No reasonable expectation of privacy

Fourth Amendment

□ Consent

- Who may consent? A person with a legitimate privacy interest in the property to be searched
- What is valid consent?
 - Voluntary
 - Need not be in writing
- Must limit search to scope of the consent

Fourth Amendment

□ Warrant

■ Two types

- Search warrant/probable cause
- Administrative search and inspection warrant

■ Search warrant

- Non-sworn ACO cannot execute a search warrant

Fourth Amendment

□ Warrant

■ Administrative inspection warrant (GS 15-27.2)

- Who issues it? Usually a magistrate; may also be judge, clerk, or deputy clerk.
- What types of warrants?
 - Probable cause: PC for believing that there is a condition, object, activity or circumstance which legally justifies search/inspection
 - Inspection program: Property is part of a legally authorized program of inspection

Fourth Amendment

- Administrative warrant (cont.)
 - How?
 - Affidavit (sworn statement)
 - Appear before the magistrate to be examined
 - Only valid for 24 hours
 - AOC Forms

Fourth Amendment

- Exigent circumstances
 - Not sure what NC courts would consider to be exigent circumstances in context of animal control
 - E.g., disappearing evidence
 - Officers reasonably believe that taking the time to obtain a warrant would allow evidence to disappear
 - Search must be limited in scope

Fourth Amendment

- Not a violation of the Fourth Am. (cont.)
 - No reasonable expectation of privacy
 - Open fields/Not in the curtilage
 - Curtilage: Area immediately surrounding the home that is intimately tied to the home
 - Four factors
 - Proximity to home
 - Whether enclosed with the home
 - Nature and use to which area is put
 - Resident's efforts to protect area from observation by passersby



Fourth Amendment

- Not a violation of the Fourth Am. (cont.)
 - No reasonable expectation of privacy (cont.)
 - Common entranceway to residence
 - Plain view
 - Public places
 - Abandoned property (limited)

Fourth Amendment

- Not a violation of the Fourth Am. (cont.)
 - No reasonable expectation of privacy (cont.)
 - *State v. Nance*: PROBLEM CASE
 - ACO seized w/out warrant cruelly treated horses in open field
 - Court of Appeals held that exigent circumstances required before
 - officers could enter property and
 - seize animals
 - Conflicts with traditional Fourth Am. Analysis on open fields and plain view doctrines

Trespass

□ Criminal

- First degree: ACO without authorization (consent, warrant, exigent circumstances) enters or remains
 - On premises of another so enclosed or secured as to demonstrate an intent to keep out intruders or
 - In a building of another.
- Second degree: ACO without authorization enters or remains on the premises of another
 - After having been notified not to enter or remain or
 - When premises are posted with notice not to enter

Trespass

□ Civil

- Homeowner could sue county or individual officer
- Elements
 - Plaintiff in possession of the land
 - ACO made an unauthorized entry onto land
 - Plaintiff was damaged by the alleged invasion of his rights of possession

Local Ordinance

- Local ordinance cannot modify Fourth Amendment or state trespass law but may supplement it with additional procedures
- Charlotte
 - Two code provisions addressing seizure of animals
 - Sec. 3-133: Dangerous animals
 - Sec. 3-134: General provisions
- Catawba County
 - Code provision addressing seizure of dangerous exotic animals (Sec. 6-204)

Statutory Right of Entry for Public Health

□ G.S. 130A-17

- The Secretary (of DHHS) and a local health director shall have the right of entry upon the premises of any place where entry is necessary to enforce the provisions of (Chapter 130A, state public health regulations or a local board of health rule).
 - If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to G.S. 15-27.2.
 - However, if an imminent hazard exists, no warrant is required for entry upon the premises.

Statutory Right of Entry

- May come into play
 - Rabies enforcement
 - Board of health rules related to animal control
 - Exercise caution with BOH AC rules
- Inspection authorized in three cases
 - Consent
 - Warrant
 - Imminent hazard
- Consent and warrant analyses are the same but imminent hazard analysis is new

Statutory Right of Entry

□ Imminent hazard

■ Definition (GS 130A-2)

- A situation which, if no immediate action is taken, is likely to cause:
 - immediate threat to human life
 - immediate threat of serious physical injury
 - immediate threat of serious adverse health effects; or
 - serious risk of irreparable damage to the environment



Questions?

