

MEMORANDUM

To: Professor Jeffery B. Welty
From: J. Mark Payne
Date: May 2, 2006
Re: Concerns and observations regarding N.C. Gen. Stat. § 19A-70

On February 24, 2006 the Johnston County Sheriff's Department was called to an incident reported within its jurisdiction in rural Johnston County. Upon arrival to the scene, it was noted that a large number of pit bulldogs were located on the property; the Johnston County Animal Control was called to assist with the dogs in order to allow the Sheriff's Department to properly secure and investigate the crime scene. Further observation found several adult dogs, very aggressive in nature, attached to logging chains; breaking sticks, scales and medicine for treatment of injuries and wounds on some of the dogs were also found at the scene. An individual, later the Defendant in the subject action, informed authorities that the dogs were his and that he was responsible for taking care of them. Johnston County Animal Control lawfully removed 47 pit bulldogs, adults and puppies, from the subject property on the night of February 24 into the early morning of February 25. On February 25, 2006, a warrant for the Defendant was issued for violation of N.C. Gen. Stat. § 14-362.2.

On March 6, 2006, a Petition for Bond pursuant to N.C. Gen. Stat. § 19A-70 was filed in the criminal matter. On March 28, 2006, a hearing was held and evidence presented by both parties pursuant to the statute as to whether the Defendant was obligated to post a bond for the reasonable expense of keeping the dogs in the animal shelter. The hearing was continued until an additional hearing on April 6, 2006 during which the county presented the court with an affidavit by Kelli K. Ferris, DVM as to her inspection and assessment of all the dogs currently being held by the animal shelter.

On April 10, 2006, an Order was issued by the court in regards to the Petition. Pursuant to the Order, 9 of the remaining 46 dogs were order to remain in the custody of the Johnston County Animal Shelter and the Defendant was ordered to pay a bond of \$2,500.00 per month to the Johnston County Animal Shelter for the upkeep of the 9 dogs pursuant to N.C. Gen. Stat. § 19A-70. Pursuant to the Order, the remaining dogs were returned to the Defendant resident pursuant to N.C. Gen. Stat. § 19A-70(f); the dogs were required to receive the necessary food, water, shelter and medial care at the resident. This was the first attempt for a bond pursuant to this statute. This memo is intended to highlight some of the lessons learned and concerns I encountered in attempting to get a bond pursuant to the statute.

First of all, the bond is an important tool for a local animal shelter. Attempting to house and care for 47 pit bulls is a serious challenge; however, the more significant issue comes in the lack of space to handle other dogs. It is very important to have a tool such as the bond to help address a serious problem.

The primary conflict in pursuing a bond under the statute is that the statute is, essentially, a civil procedure grafted onto a criminal procedure. Although the statute is not specific, it clearly

anticipates that the petition will be filed, as was this petition, in the criminal action. Since the matter is filed by the Johnston County Animal Shelter, a division of the county government, this matter is a civil matter and should be pursued, in my opinion, by the County Attorney rather than the District Attorney. An early issue in prosecuting this bond was the standard of proof required to meet the burden necessary for an order requiring the bond. In the instant case, the court looked upon this matter as a proceeding similar to a probable cause hearing. It was the opinion of the county that pursuant to the statute a showing that the owner or care taker of the dogs had been arrested for dog fighting under N.C. Gen. Stat. § 14-362.2 was all the showing necessary to require a bond be posted or disposition of the dogs pursuant to N.C. Gen. Stat. § 19A-70(f). However, the level of evidence finally required in the court proceedings was significantly higher. This was partly due to a vigorous evidentiary dispute from the Defendant that there was another owner or co-owner of the dogs who was the other resident of the house located on the subject property.

The hearing also addressed the conditions of the dogs-- as to whether or not, in fact, any of the dogs had been engaged in dog fighting; evidence as to whether it was necessary for the dogs to be removed in order to secure the crime scene; and whether sufficient basis existed for the underlying charge of dog fighting. The contention being that if there was not sufficient basis for the underlying charge then the removal of the dogs was improper and, therefore, the bond provisions would be inapplicable. The statute would be greatly improved with specific language setting out the standard that must be shown in order to require a bond.

Another concern was under what circumstances the dogs should be kept at the animal shelter and under what circumstances the dogs may be ordered to return to the control of the defendant. Evidence that the maintenance of the dogs at the animal shelter can be argued to mitigate against keeping the dogs and returning them to the owner's property. However, returning the dogs to the owner's property raises several issues concerning the level of treatment and care the dogs will receive, the ability to have any final disposition of the animals.

It is noted that a great deal of the burden placed on animal control shelters is not from dogs seized due to dog fighting but other instances such as abuse and, increasingly, animal hoarders. Since no criminal action is likely to occur in the seizure of animals under these circumstances, it would be necessary to have separate proceedings where the statute expanded to include bond requirements under these circumstances. Two proceedings for a bond under N.C. Gen. Stat. § 19A-70 would appear to be problematic. A separate civil proceeding under all bond circumstances may be an approach to consider in reviewing this statute. This statute is also silent as to matters where ownership of the dogs is in dispute. For example, if the defendant forfeits his/her rights to the animals by operation of the statute by failure to deposit funds within 5 business days of the hearing, would a separate hearing be required for the deposition of the dogs with relationship to any other owners? What should be done if ownership of the dogs is difficult to ascertain?

Although the statute provides very helpful timetables designed to insure prompt resolution of these matters, it does not anticipate difficulties raised by continuances and appeals.