

## The General Assembly adopts a New Tool for Animal Shelter

In 2005, the General Assembly passed HB 1085, “An Act to Require a Defendant Arrested for Using Dogs for Fighting to Post a Deposit to the Animal Shelter to Pay for the Dog’s Keep during the Period prior to Adjudication of the Charges” which created a new statute, N. C. Gen. Stat. 19A-20. Not surprisingly, the act is intended to require a bond in dog-fighting (N. C. Gen. Stat. 14-362.2) cases for the benefit of the animal shelter responsible for the care and maintenance of the dogs.

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, officials found 47 pit bull dogs, many were very aggressive in nature and 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. Johnston County Animal Control seized the dogs and a warrant was issued for dog-fighting.

With 47 pit bulls filling the Johnston County Animal Shelter, the resources of the shelter’s resources were severely tested. It would cost more than \$15,000 per month to care for the dogs. As long as the animal were housed in the shelter, it would be impossible to keep any other dogs, most of which were eligible for adoption. The pit bulls, being evidence in an on-going criminal action; the property of someone who has not surrendered the animal to the shelter and being either too aggressive or breed for aggressive, were decidedly not adoptable. The timing of HB 1085 was serendipitous.

The Johnston County Anima Shelter filed a Petition for a bond for care of all dogs. Two hearings later, an Order was issued granting custody of 9 adults dogs to the shelter; placing the remaining dogs at the Defendant’s residence to be treated in full accord with state and local animal welfare restrictions and monitored by shelter staff (pursuant to 19A-20(f)); and requiring Defendant to post a \$2500 bond. Pursuant to the statute, if the bond is not paid within 5 days of the bond order (it wasn’t), the dogs are, by operation of law, forfeited to the shelter. The shelter could return to the pet adoption business and the drain on the budget was plugged.

The statute is not without problems. 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. This is even more complicated when the shelter is run by a non-profit.

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. However, the level of evidence finally required in the court proceedings was significantly higher.

The legislature is likely to look at this statute again. The statute may be expanded to allow bonds for other animals seized for fighting or other valid reasons, such as hoarding. The practical issues in enforcement will also be reviewed. Further updates will be included in this newsletter as they develop.