

Richland County Corporation Counsel

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Derek Kalish
Richland County Clerk
181 W. Seminary St.
Richland Center, WI 53581
RE: Wis. Stat. §§ 174.11-174.12

Dear Clerk Kalish:

Pursuant to our recent telephone conversation I have researched the issue of the County's liability to the owner of a domestic animal in the event it is attacked by someone's dog. While this hopefully remains an uncommon occurrence, if it should happen again this memorandum may be useful.

Analysis

As you discovered in your own review of the statute, a Claimant can recover from the County's dog license fund ("Fund") in the event their domestic animal is harmed by someone else's dog. Wis. Stat. § 174.11. Doing so requires strict adherence to the statutory procedure. *44 Op. Atty. Gen. 14* (1995) ("A person making a claim under this section for damage done by dogs must comply strictly with the provision thereof; a county board has no authority to waive defects in a claim which does not comply with the provisions of this section."). The procedure is as follows:

1. Within 3 days of the attack, the Claimant must file a written claim ("Claim") for damages with the clerk, chairperson, or president of the town, village, or city ("Town") in which the damage occurred.
2. The Town will investigate the incident and within 30 days of receipt of the Claim file the Claim, a report of the investigation, the testimony taken, and the amount of damages to the County Clerk ("Report"). The Report must be signed and certified by the Town. (**Attachment 1 – "Claim for Damage to Animals" form from Chippewa County**).
3. At the next County Board meeting, the Clerk will present the claim to the Board and the Board shall act upon it. By default, the contents of the Report are presumed to be true and accurate representations of the damages, but the Board may take evidence to the contrary. If all has been done correctly up until this point, and the Claimant has paid the dog tax (if applicable), the Board is to award damages equal to "the total costs resulting from the injury..." in the event of injury, or fair market value if the domestic animal is killed. This amount may be limited by ordinance, though it is unclear if such an ordinance is in effect

in the County. Once the order to pay the Claim is issued by the County, the Claimant cannot take any private action (i.e., file their own lawsuit).

4. The County can then sue the offending dog's owner ("Owner") for damages. Wis. Stat. 174.12. This would be a normal civil suit, prosecute by the Office of the Corporation Counsel. The amount recovered is not limited to the amount paid to the Claimant, so any administrative or other costs associated with filing the suit are potentially recoverable.

Summary

So long as the Claimant follows the procedure and no contrary evidence is presented, the County shall pay the Claimant the amount of the Claim. If there is any defect, the County must reject the Claim. If the County does end up paying the Claimant, it may then sue for recovery from the Owner.

Follow-Up Questions

While researching this issue, a number of questions arose could be worth pursuing:

- Does the County have an ordinance as allowed under Wis. Stat. § 174.11(5) limiting the maximum claim and/or establishing different maximums for different species?
- How would the County go about determining the fair market value of an animal if it became relevant?
- What is the process to verify if the Claimant has paid their dog tax?

Possible Action Items

The following actions are worth consideration, in case this issue should arise in the future:

- If the County does not have a maximum damage ordinance, it should consider the adoption of one to minimize its potential liability.
- The County should draft its own version of Attachment 1.
- The County should consider, if it isn't already, tracking these incidents and the offending dogs. Wis. Stat. § 174.02 grants additional penalties in the form of double damages if the Owner has notice that the dog had previously caused damage or injury. It is unclear at this time if, when a County pays a Claim and sues for recovery, the County is obligated to pass that added amount along to the Claimant.

As always, I am available to answer any questions which may remain. If it should prove useful, this memorandum may be shared with municipal clerks or other appropriate officials if they should find themselves faced with this issue, though obviously some portions would be inapplicable to them. However, this document would remain confidential if so shared and should not be shared further without prior authorization.

Sincerely,

/s/

Michael S. Windle

Richland County Corporation Counsel

Attachments:

1. Claim for Damage to Animals Form, with Excerpts – Chippewa County
2. 44 Op.Atty.Gen. 14 (1995)