

Dog attacks, owner's liability

Number: INFORMAL

Date: January 29, 1997

The Honorable Stan Bainter
Representative, District 25
301 West Ward Avenue
Eustis, Florida 32726-4024

Dear Representative Bainter:

Thank you for considering this office as a source for assistance. A constituent has contacted your office expressing his concern about the lack of penalties for dog attacks. You ask this office for information on the current law regarding the penalties for dog attacks.

Chapter 767, Florida Statutes, provides for the liability of dog owners for damages caused by their dogs. Section 767.04, Florida Statutes, makes the owner of a dog that bites a person liable for damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness. There are, however, exceptions. As stated by the Florida Supreme Court in *Noble v. Yorke*,^[1]

In Florida, the dog-bite statute supersedes the common law and provides the exclusive remedy in dog-bite actions brought by an economic invitee against a business establishment which owns the dog.^[2] Section 767.04 imposes absolute liability upon the owner of a dog for any injury caused by the dog regardless of scienter and provides absolute defenses by which a dog owner may escape liability from a dog bite injury inflicted by his dog. One of those absolute defenses, and the one at the center of the instant dispute, is that a dog owner may escape liability if an easily readable sign with the words "Bad Dog" is displayed in a prominent place on the premises.

Chapter 767, Florida Statutes was amended in 1990 to set forth uniform requirements for owners of "dangerous" dogs.^[3] Section 767.12, Florida Statutes, provides for the classification of certain dogs as "dangerous" and imposes on the owner of such dogs more rigid requirements and restrictions than those required before classification.^[4] If a dog that has been declared dangerous attacks or bites a person or domestic animal without provocation, the owner is guilty of a misdemeanor of the first degree.^[5] If a dog that has been declared dangerous attacks and causes serious injury or death to any human, the owner is guilty of a felony of the third degree.^[6]

Even if the dog has not been declared dangerous, the owner may be criminally liable if the dog causes severe injury to or the death of any human if the owner of the dog had prior knowledge of the dog's dangerous propensities, under the circumstances. In such cases the owner is guilty of a misdemeanor of the second degree.^[7] The determination, however, of whether the owner had prior knowledge of the dog's dangerous propensities under the circumstances presents questions of law and fact that this office cannot resolve.

I trust that the above informal comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] 490 So. 2d 29 (Fla. 1986).

[2] *Belcher Yacht, Inc. v. Stickney*, 450 So.2d 1111 (Fla. 1984).

[3] Chapter 90-180, Laws of Florida.

[4] The Supreme Court of Florida in *County of Pasco v. Riehl*, 635 So. 2d 17 (Fla. 1994), held the s. 767.12, Fla. Stat. (1991), unconstitutionally deprived dog owners of their property without opportunity to be heard, and thus their due process rights were violated, where their dog was subject to physical confinement, tattooing or electric implantation, and muzzling, pursuant to dangerous dog statute, without benefit of hearing. The statute, however, was amended in 1993, and again in 1994. Justice McDonald, in his concurring opinion in *County of Pasco v. Riehl*, *supra*, stated that while he concurred with the majority's decision, he hastened "to note that section 767.12, Florida Statutes (1991), was amended in 1993 and the present statute does not suffer the same infirmities as the 1990 one did."

[5] Section 767.13(1), Fla. Stat. The statute also provides for the confiscation and destruction of the animal.

[6] Section 767.13(3), Fla. Stat. The statute also provides for the confiscation and destruction of the animal.

[7] Section 767.13(2), Fla. Stat.