

## June 22, 2010 Service Animals

Honorable Brian F. Egolf  
State Representative  
128 Grant Ave., Suite 301  
Santa Fe, NM 87501

**Re:** Advisory Letter--Service Animals

Dear Representative Egolf:

You have requested our advice upon the following question:

Does Section 28-11-5 (B)(2) of the Assistance Animal Act, NMSA 1978, Sections 28-11-1 to 5 (2005), require the owners or operators of privately-owned business establishments, such as shops, which are open to the public, to keep their own dogs on leashes while those establishments are visited by persons who rely on service animals?

As discussed below, we conclude that Section 28-11-5 (B)(2) is silent insofar as imposing any specific “leashing” requirement upon the business owner with respect to that owner’s dog. However, because the statute forbids the intentional failure or refusal to control one’s own unrestrained dog, and that dog thereafter interferes with or obstructs a service animal or the owner or trainer of that service animal, it would be incumbent upon the business owner to consider the extent to which leashing or other form of restraint or avoidance technique might be necessary so as to avoid violating the statute.

As used in the Assistance Animal Act, a “qualified assistance animal” means any assistance dog or other animal that has been or is being trained to provide assistance to an individual with a disability and includes:

- A. an assistance dog that has been or is being trained as a guide dog, hearing dog or service dog;
- B. a guide dog that has been or is being trained to aid a blind or visually impaired person;
- C. a hearing dog that has been or is being trained to aid a deaf or hearing-impaired person; and
- D. a service dog that has been or is being trained to aid a person with a disability other than a sight or hearing impairment.

See NMSA 1978, Section 28-11-2 (2005). A “qualified assistance animal” must be “admitted to any building open to the public and to all public accommodations such as restaurants, hotels, hospitals, swimming pools, stores, common carriers and theaters;

provided that the qualified assistance animal is under the control of an owner or a trainer of the qualified assistance animal.” See NMSA 1978, Section 28-11-3 (A) (2005).

Section 28-11-5 applies to anyone, including an owner of a business establishment that is open to the public, and that statute provides:

A. The legislature finds that unrestrained dogs constitute a danger to qualified assistance animals and public safety. The purpose of this section is to protect persons with disabilities and qualified assistance animals from attack by unrestrained dogs.

B. It is unlawful for any person, with no legal justification, to:

(1) intentionally interfere with the use of a qualified assistance animal by harassing or obstructing the owner or trainer of the qualified assistance animal or the qualified assistance animal; or

(2) intentionally fail or refuse to control the person’s unrestrained dog, and that dog interferes with or obstructs the owner or trainer of the qualified assistance animal or the qualified assistance animal.

C. The provisions of this section shall not apply to unrestrained dogs on private property not open to the public.

D. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978. A person convicted under this section may be ordered to pay restitution, including the cost of veterinary bills and replacement and training costs of a qualified assistance animal, if such costs are incurred as a result of the violation.

E. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978.

(Emphasis added).

Statutes are to be read with common sense, and a narrow or over-strict construction should not be applied which would defeat the obvious intent of the legislature. See, e.g., State v. Romero, 119 N.M. 195, 198, 889 P.2d 230, 233 (Ct. App. 1994). A business owner whose premises are open to the public and who maintains a dog on his or her business premises must remain mindful of the entitlement of an individual, who requires and relies on the services of an assistance animal, to enter that owner’s business premises accompanied by that assistance animal, provided proper control of the assistance animal is maintained. A business owner, as anyone, who intentionally fails or refuses to control his unrestrained dog and that dog interferes with or obstructs the owner or trainer of a qualified assistance animal or the qualified assistance animal would be in violation of Section 28-11-5 (B)(2).

Section 28-11-5 (B)(2) is silent insofar as imposing any specific “leashing” requirement upon a business owner’s dog located on the owner’s business premises at the time those premises are visited by persons who use and rely on service animals. However, a common sense reading of the statute forbids the intentional failure or refusal to control one’s own unrestrained dog if the dog thereafter interferes with or obstructs a service animal or the owner or trainer of that service animal. Thus, we believe it is prudent for the business owner to consider the extent to which leashing or other form of restraint or avoidance technique might be necessary so as to avoid violating the law.

Your request to us was for a formal Attorney General Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

ANDREA R. BUZZARD  
Assistant Attorney General

cc: Albert J. Lama, Deputy Attorney General