

Opinion No. 31-224

July 30, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. J. H. Jackson, City Attorney, Artesia, New Mexico.

{*92} Your letter of July 25th is not exactly clear, but we assume that reference therein is to a city ordinance relating to the sale of animals impounded under same, which provides for sale of any and all unclaimed animals impounded after five days notice of such sale. You desire to know if such provision for notice is legal in the face of Chapter 8 of the Laws of 1931.

Chapter 8, 1931 Session Laws is as follows:

Section 1. That hereafter when personal property shall be sold under execution issued out of any justice court, when the judgement does not exceed Three Hundred Dollars (\$300.00), notice of such sale may be given by posting written or printed notices of such sale at least ten days prior to the date of sale in at least five public places in the county, one of which places shall be at the court house in said county, and one at the place where said sale is to be held.

Section 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

The authority for cities to prevent animals from running at large, impound, sell or kill same is found in Chapter 22 of the 1931 Session Laws and is as follows:

Section 1. That Section 11 of Article 4 of Chapter 90 (also designated and known as Section 90-411) New Mexico Statutes, Annotated, 1929 Compilation, be and same is hereby amended to read as follows:

90-411. Animals running at large -- Impounding. That every municipal corporation or incorporated city or town in the state of New Mexico, incorporated under any general or special act, shall have power by ordinance to regulate, restrain and prohibit the running at large within the limits of such corporation, of horses, cattle, burros, swine, sheep and goats, and to provide for the impounding and the sale of said animals so found running at large. Provided, however, that all municipal corporations may provide by ordinance that impounded animals which cannot be sold or which are not claimed may be killed by the poundmaster upon order of the Mayor after a written notice describing the animals to be killed, the time and place when and where the same are to be killed, shall have been posted for five (5) days in three (3) conspicuous places within such municipality one of which places shall be the Postoffice, and that the owner may regain possession of said animals before the time fixed for the killing thereof by paying to said poundmaster all costs in connection with the impounding of said animals.

Our opinion is that the two laws are unrelated and that any ordinance, passed by a city council in accord with said Chapter 22, is in no way controlled by said Chapter 8. You will note that Chapter 8 refers only to "personal property" "sold under execution issued out of any justice court, or from the district court," having a value of not more than \$ 300.00, and in such cases only is there required to be a 10 day notice of sale.

Chapter 22 allows municipal corporations to sell the animals impounded, provided the city passes such an ordinance, to satisfy costs, etc., to the city caused by such impounding, such sale being to satisfy a lien and not a judgment under execution from either justice or district courts. The right to impound is given municipalities to control stray animals and prevent damage, {^93} and such animals may be sold to satisfy the necessary regulatory costs to accomplish such purpose. The city ordinance might, in our opinion, provide for the giving of notice of such sale for only three days or might provide for a longer period, because, as we have stated, there is no relation between the statutes mentioned.