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January 6, 2020

The Honorable Angie Chen Button
Chair, Committee on Urban Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0284

Re: Construction of statutes related to procedures for addressing dangerous dogs under chapter 822 of the Health and Safety Code (RQ-0294-KP)

Dear Representative Button:

You ask multiple questions about the construction of provisions in chapter 822 of the Health and Safety Code, which governs the regulation of dogs that attack persons or are a danger to persons.[1] Section 822.002 establishes a procedure for authorizing an animal control authority to seize a dog in certain circumstances:

> A justice court, county court, or municipal court shall order the animal control authority to seize a dog and shall issue a warrant authorizing the seizure:
>
> (1) on the sworn complaint of any person, including the county attorney, the city attorney, or a peace officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and
>
> (2) on a showing of probable cause to believe that the dog caused the death of or serious bodily injury to the person as stated in the complaint.

TEX. HEALTH & SAFETY CODE § 822.002(a). You first ask about the meaning of "sworn complaint" in that section. Request Letter at 1. Specifically, you question whether this statute requires "the affiant to have personal knowledge of the facts contained therein." *Id.*

The plain language of subsection 822.002(a) requires the person making the sworn complaint to affirm that the dog caused death or serious injury to a person. However, the statute does not expressly require that the affiant have "personal knowledge" of those facts. *Compare*

[1]*See* Letter from Honorable Angie Chen Button, Chair, House Comm. on Urban Affairs, to Honorable Ken Paxton, Tex. Att'y Gen. at 1–2 (July 9, 2019), https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs ("Request Letter").

TEX. HEALTH & SAFETY CODE § 822.002(a), *with* TEX. R. CIV. P. 166a(f) (requiring supporting and opposing affidavits to a summary judgment motion "be made on personal knowledge"), *and* TEX. R. EVID. 602 (allowing a witness to testify "only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter"). Moreover, subsection 822.002(a) expressly authorizes a county or city attorney or a peace officer to file the sworn complaint. TEX. HEALTH & SAFETY CODE § 822.002(a). Such individuals typically will not have personal knowledge of the facts underlying a dog attack, and yet the Legislature authorized those officers to file the complaints. *See id.* In addressing a similar question about whether a formal complaint by the Texas Medical Board needed to be based on personal knowledge, the Texas Supreme Court explained that it "would make little sense if personal knowledge were required because board representatives typically will not have such knowledge of the facts underlying" an alleged violation. *Aleman v. Tex. Med. Bd.*, 573 S.W.3d 796, 801 (Tex. 2019). Emphasizing that the statute at issue did not give the formal complaint evidentiary value in the proceedings on the merits, the Court concluded that personal knowledge was not required to file the complaint. *See id.* Likewise, here, the plain language of section 822.002(a)(1) does not require that the sworn complaint be based on personal knowledge, and a court is unlikely to imply such a requirement. *See id.*; TEX. HEALTH & SAFETY CODE § 822.002(a)(1).

With regard to your second question, you ask whether non-provocation constitutes an element which one must prove before a court may order a dog destroyed under section 822.003 of the Health & Safety Code. Request Letter at 1. In connection with that question, you point to subchapter D of chapter 822, which governs "Dangerous Dogs." *See id.* Section 822.041 defines the phrase "dangerous dog" as a dog that

> (A) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or
>
> (B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

TEX. HEALTH & SAFETY CODE § 822.041(2). The Legislature authorized animal control authorities to determine that a dog is dangerous, and upon such determination, the owner of the dangerous dog must comply with multiple statutory requirements, including registration of the dangerous dog, restraint, and carrying additional insurance. *See id.* § 822.042.[2] Under the Legislature's definition of "dangerous dog," an owner could raise the issue that a dog's attack or act was provoked and therefore does not support a dangerous dog determination.

[2]A dog owner may appeal an animal control authority's dangerous dog determination to a justice, county, or municipal court. TEX. HEALTH & SAFETY CODE § 822.0421(b)–(d).

But apart from subchapter D, subchapter A includes general provisions governing the regulation of animals and dogs that attack persons or are a danger to persons. *See id.* §§ 822.001–.007. Sections 822.002 and 822.003 establish a procedure by which courts address allegations that a dog "caused the *death of or serious bodily injury* to a person," a level of harm beyond that required for a dangerous dog determination under subchapter D. *Id.* §§ 822.002–.003 (emphasis added). Under section 822.003(d), a court must order "the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person." *Id.* § 822.003(d). Notably, neither section 822.002 nor 822.003 utilizes the phrase "dangerous dog." Instead, the procedures in section 822.003 apply to any dog that "caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person," regardless of whether the dog has been designated previously as dangerous through the procedure outlined in subchapter D. *Id.* §§ 822.002–.003; *cf. id.* § 822.041(2) (defining "dangerous dog" as one that causes *any* bodily injury or that is reasonably believed will do so). Thus, if a court finds the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person, the fact that a dog's attack was unprovoked is not an element a court must find before ordering a dog destroyed under section 822.003. *See id.* §§ 822.002–.003.

In your final question, you ask about the requirement in subsection 822.003(a) that a court conduct a hearing within ten days after the date on which a warrant is issued to seize a dog that caused death or serious bodily injury to a person. Request Letter at 2. You ask whether this provision limits "the court's inherent authority to control its docket." *Id.* Courts possess inherent power to control the disposition of the causes on their docket with economy of time and effort for themselves, counsel, and the litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). And the separation-of-powers doctrine prohibits one branch of government from exercising power inherently belonging to another branch. TEX. CONST. art. II, § 1; *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 600 (Tex. 2001). But "[o]nly when the executive or legislative branch interferes with the functioning of the judicial process in a field constitutionally committed to the control of the courts does a constitutional problem arise." *Hebert v. Hopkins*, 395 S.W.3d 884, 900 (Tex. App.—Austin 2013, no pet.).

The Texas Constitution authorizes the Legislature to prescribe the manner in which courts function: "The Court . . . shall hold the regular terms . . . in such manner as may be prescribed by law." TEX. CONST. art. V, § 7 (referring to district courts); *see also id.* art. V, § 16 (giving county courts "judicial functions as provided by law"). Consistent with this authority, in various contexts the Legislature has established nondiscretionary court deadlines to ensure efficient resolution of legal matters. *See, e.g.*, TEX. FAM. CODE § 84.001(a) (requiring court to set a hearing for a protective order within a specific time period); TEX. ELEC. CODE § 232.012(d) (requiring court to set a trial for a contest of office within a set period). Courts regularly uphold such statutory deadlines as a valid exercise of legislative power. *See, e.g., Tex. Dep't of Family & Protective Servs. v. Dickensheets*, 274 S.W.3d 150, 154–59 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (upholding, against a separation-of-powers challenge, a statute that required dismissal after a set period of time of any case involving a child in the care of the Department of Family and Protective Services). Thus, the deadline by which a court must conduct a hearing under section 822.003 is not an unlawful statutory restriction on the court's authority to control its docket.

You also ask whether this provision allows a court to "call the case on the docket and immediately continue the case to a later date on its own authority." Request Letter at 2. Section 822.003 requires that the "hearing must be *held* not later than the 10th day after the date on which the warrant is issued." TEX. HEALTH & SAFETY § 822.003(a) (emphasis added). In this context, "to hold" means "to conduct or preside at." BLACK'S LAW DICTIONARY 848 (10th ed. 2009). Thus, the plain language of section 822.003 requires not simply setting a hearing but also conducting a hearing within the statutory time period. However, the statute does not set a time by which the court shall rule, nor does it limit a court's ability to otherwise manage its docket. *Cf.* TEX. CODE CRIM. PROC. art. 46C.262(b), (e) (requiring court, within 14 days, to hold a hearing and rule on a request to modify treatment orders following acquittal by reason of insanity).

Finally, you ask if it would "impact prosecution of the case for the court to grant a motion for continuance filed by a party." Request Letter at 2. In reviewing deadlines imposed on a court to conduct hearings in various types of cases, the U.S. Supreme Court has explained that often "a deadline seeks speed by creating a time-related directive that is legally enforceable but does not deprive a judge . . . of the power to take the action to which the deadline applies if the deadline is missed." *Dolan v. United States*, 560 U.S. 605, 611 (2010); *see also United States v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990) (explaining that a missed deadline for holding a bail detention hearing does not require the judge to release the defendant). Consistent with this authority, no provision in chapter 822 deprives a court of jurisdiction if the hearing required by section 822.003(a) is held outside of the ten-day period. *See Dolan*, 560 U.S. at 611 (explaining that where a statute does not specify a consequence for noncompliance with a timing provision, courts will not ordinarily impose their own coercive action). That conclusion, however, does not prevent a party from seeking mandamus to compel a court's compliance with a statutory deadline.

SUMMARY

The plain language of section 822.002 of the Health and Safety Code does not require an affiant of a sworn complaint alleging that a dog caused death or serious injury to a person to have personal knowledge of that event, and a court is unlikely to imply such a requirement.

If a court finds that a dog caused death or serious bodily injury to a person, the fact that the dog's attack was unprovoked is not an element a court must find before ordering a dog destroyed under section 822.003.

The Legislature's imposition of a ten-day deadline by which a court must conduct a hearing under section 822.003 is not an unlawful statutory restriction on the court's inherent authority to control its docket. The plain language of section 822.003 requires that the case be called and a hearing conducted within the ten-day statutory deadline, but it does not set a deadline by which the court must rule or otherwise limit the court's authority to continue a hearing once called. No provision in chapter 822 deprives a court of jurisdiction if the hearing required by subsection 822.003(a) is held outside of the ten-day period, but a party could seek mandamus to compel a hearing if a court does not hold a hearing within that period.

Very truly yours,

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