

County of El Dorado

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CINDY KECK.....CLERK OF THE BOARD



April 19, 2005

The Honorable Suzanne N. Kingsbury, Presiding Judge
Superior Court of El Dorado County
1354 Johnson Boulevard, Suite 2
South Lake Tahoe, CA 96150

Dear Judge Kingsbury:

Pursuant to Section 933(b) of the Penal Code, the Board of Supervisors of El Dorado County is herewith submitting its response to the applicable findings and recommendations, as set forth by the El Dorado County Grand Jury in its 2004-2005 Mid-Session Report, issued on February 8, 2005.

Sincerely,

A handwritten signature in cursive script that reads "Charlie Paine".

Charlie Paine, Chairman
El Dorado County Board of Supervisors

Cc: 2004-2005 Grand Jury Foreman
Gayle Erbe-Hamlin, Public Health

El Dorado County Board of Supervisors

Final Response To The 2004-2005 Grand Jury Mid-Session Final Report



Animal Control Division

Reason for the Report

The 2004/2005 Grand Jury received a complaint from a citizen regarding her belief that she was treated unfairly by the Animal Control Division.

Scope of the Investigation

People interviewed

- Director, Public Health Department
- Chief Animal Control Officer
- Complainant
- Citizens that adopted complainant's horses

Documents reviewed

- Animal control Policies and Procedures Manual
- Crime report for the incident
- Veterinary report
- Declaration of (previous Chief Animal Control Officer) in Superior Court Case P02CRM0653
- Copy of P.C. 597.1 (post seizure hearing) forms served on the complainant
- Copy of letter to complainant regarding Hearing Officer's decision (also established an initial billing of \$2,873.05, payable within 15 days, in order for the complainant to retain ownership of the horses).
- Copies of advertisements in the Mountain Democrat soliciting bids for horses
- Copies of bid forms for the horses
- Copies of animal adoption receipts (contracts)
- Copies of Superior Court minute order (jury decision in complainant's criminal case)
- Copies of the Motion for Return (of complainants' horses) and the Courts Ruling

Background

The complainant lives on 118 acres in a remote area of El Dorado County. She states that in February 2002 she had a total of thirteen horses in a large acreage pasture, which is not within view of her home. In early February 2002 she realized that three of the horses from the pasture were missing. Since the fences and gates were all intact, she originally believed the horses had been stolen. The Sheriff's Department was contacted and they referred her to Animal Control where, on 02/08/02, she located and identified the three horses missing from her pasture.

Animal Control states they seized the three loose horses on 02/05/02. They refused to return the horses (which were underweight) because of their concern that the owner had criminally neglected them. A chronology of subsequent events is as follows:

- February 8, 2002 – The complainant was served with a “Notice of Seizure of Animals” form and advised she had right to a post seizure hearing (597.1PC). The purpose of the hearing was to determine if the seizure was appropriate and to determine if the animals would continue to be held. The complainant exercised her right to a hearing.

Note: The Animal Control officer serving the notice observed the complainant’s remaining ten horses from a distance while he was at her home. He has advised he did not observe any signs of those ten animals being in danger.

- February 13, 2002 – A post-seizure hearing was conducted. Those in attendance included the complainant and her husband, an attorney from County Counsel, the Kennel Supervisor, the Chief animal Control Officer and the Hearing Officer. The Hearing Officer was a Public Health Department employee. The Hearing Officer decided that the seizure was appropriate and that the horses would be “held by Animal Control for care and safekeeping until the matter is adjudicated”.
- March 13, 2002 – Correspondence was sent to the complainant stating that the cost of seizing and boarding the horses currently totaled \$2,873.05. She had until March 28, 2002 to make payment. If payment was not made, the horses would be deemed to be abandoned and disposed of by the impounding officer.
- March 26 or 27, 2002 – complainant’s husband contacted the Chief Animal Control Officer at her office for the purpose of paying the bill. Complainant states her husband did not pay the bill because he was advised he would not get the horses back even if he did.

The Chief Animal Control Officer stated that “I advised Mr. (complainant’s husband) that if he and his wife wanted to maintain their ultimate right to retain the animals, should the criminal charges be withdrawn or should there be an acquittal at trial, they should pay the bill presented by the County”.

Out of Context – The current Chief Animal Control Officer advised that if the complainant had paid the bill it would have preserved their ownership; however, they would have then been liable for the continuing costs of maintenance for the three horses regardless of the outcome of the criminal court case. If the complainant had retained ownership of the horses, their total bill would have exceeded \$18,000.00 by the time their trial concluded.

- June 2002 – The three horses were put up for bid and adopted out.
- February 20, 2003 – Jury trial decision – Complainant’s not guilty of cruelty to animals.
- April 4, 2003 – Complainant’s Motion for Return of Property (horses) submitted to the court.
- May 30, 2003 – A court hearing denied the Motion for Return and also made a judgment in favor of El Dorado County for the seizure and care of two horses for \$1,915.36 (The third horse seized did not belong to the complainant.)
- June 2, 2003 – animal Control submitted a “collection referral form” in the amount of \$2,873.05 against the complainant.

Note: The status of this collection is unknown to the Grand Jury.

Facts

1. Three of the complainants horses, running loose and significantly underweight, were seized by Animal Control.
2. Based on the fact that the three horses were loose and underweight, Animal Control prepared a 597.1PC crime report (permitting animals to go without care), naming the owners as suspects. (Note: The District Attorney’s Office subsequently upgraded the charge to 597(b)/PC Cruelty to Animals (which potentially carries more severe penalties.)
3. The complainant attempted to recover her horses from Animal Control and was denied by a hearing Officer (a county employee).
4. Animal Control demanded \$2,873.05 from the complainant in lieu of forfeiting ownership.
5. The complainant forfeited three horses with a total value of between \$4,000 and \$5,000 (complainants estimate).
6. Ownership of complainant’s three horses was transferred for high bids of \$425.00 and 300.00 and \$65.00.
7. The complainant and her husband were prosecuted for three counts of 597(b)/P.C. Cruelty to Animals. They were found not guilty on all counts by an El Dorado County jury.
8. Animal Control initiated a lien for \$2,873.05 against the complainant.
9. The complainant believes that ownership of her horses was transferred to county employees or their friends, and states that rumor exists in the community.
10. The new owners of the horses were contacted and they advised that Animal Control had conducted follow-ups to insure that the horses were receiving proper care.

Findings

1. Animal Control acted within their statutory and discretionary authority.

Response to Finding 1: The respondent agrees with the finding.

2. The Grand Jury has contacted the current owners of the three horses and finds no evidence of impropriety in the transfer of ownership.

Response to Finding 2: The respondent agrees with the finding.

3. There is no record of the discussions during the 597.1 hearing. Therefore, there is no indication that other options for handling this situation were considered.

Response to Finding 3: The respondent agrees with the finding.

4. The crime report prepared by Animal Control is extremely brief, making reference to loose horses and underweight horses. These two elements, standing alone, do not support a prosecution for cruelty to animals under any concept of fairness.

Response to Finding 4: The respondent disagrees wholly with the finding.

The crime report prepared by an Animal Control Officer references a nationally recognized Body Condition Scoring System for Horses which rated the horses in question extremely low in the scale of body condition, a statement by the Kennel Supervisor about the horses' poor condition, and a statement by the attending veterinarian that the horses were underweight by approximately 20%. The Officer that prepared the report states that she was taught the Body Condition Scoring System while attending a Horse Abuse Investigation School and was trained and knowledgeable in the proper care of horses. The sum of these observations and assessments were deemed sufficient to present the case to the District Attorney. Based on the information contained in the crime report, the District Attorney's office felt that there was probable cause to warrant a charge and prosecute the case. The prosecution was conducted referencing the following Penal Codes: PC 597 states "...every person who causes any animal...to be deprived of necessary sustenance... is, for every such offense, guilty of a crime punishable as a misdemeanor or a felony...". And Penal Code 597.1 states "...Every owner...who permits the animal to be in any street... without proper care ... is guilty of a misdemeanor".

5. The Policy and Procedures Manual for Animal Control is out dated and disorganized.

Response to Finding 5: The respondent agrees with the finding.

6. Animal Control has an adequate process for handling animal adoptions.

Response to Finding 6: The respondent agrees with the finding.

7. Grand Jury's contacts with Animal Control personnel indicate they are a conscientious and committed group of employees working in a difficult environment.

Response to Finding 7: The respondent agrees with the finding.

8. There has been no reconciliation between the \$1,915.36 court judgment for the county and the \$2,873.05 collection referral form initiated by Animal Control

Response to Finding 8: The respondent disagrees wholly with the finding.

At the time of the court's adjudication of the case, the judge ruled that the cost of the seizure and care should only be attributed to two of the three horses seized. The \$2,873.05 was the amount identified by Animal Control as owed for three horses (\$957.69 per horse). The \$2,873.05 was reduced by \$957.69, to \$1,915.36, to reflect the charge for two horses. The County Revenue Recovery Division (County Collections at the time) was informed in writing (after the court's judgment) that the amount of \$1,915.36 was the amount owed to the County.

Recommendations

1. Develop a formal structured process for determining the reasonableness of returning (or not returning) animals to their owner.

Comment: The Grand Jury cannot identify any reasons why these horses, upon payment of seizure and maintenance charges, should not have been returned to the owners. A return in an incident such as this could be made contingent on an agreement that Animal Control be permitted to make inspections. Such an arrangement would be consistent with stated goals of animal control, such as reuniting animals with their owners and the education of owners. This arrangement would of course not be appropriate if overt abuse was suspected, or the owner simply did not have the means to care for the animals. However, that does not appear to be the case in this incident.

Response to Recommendation 1: The recommendation has not been implemented, but will be implemented in the future.

The Chief Animal Control Officer adheres to CA Penal Code 597.1 when making a determination on whether to return or not return animals to their owners. The Chief Animal Control Officer consults with the attending veterinarian about the neglect and if the animal is physically fit. Then they review the case to see if the owner can and will provide the necessary care if the animal is returned to them. A policy and procedure will be developed which outlines the specific elements the

Chief takes into consideration in making their decision. This will be completed by July 2005.

2. Use non-county employees as Hearing Officers in 597.1 hearings.
Comment: While the statute allows the use of employees to perform the duties of hearing Officer, this clearly does not have the appearance of fairness.

Response to Recommendation 2: The recommendation has been implemented.

The Animal Control Division has contracted for a non-county employee to be the hearing officer for the 597.1 hearings. This person is a local attorney.

3. Prepare a formal record of 597.1 hearings.
Comment: For all practical purposes, the decision of the hearing officer was a decision to permanently confiscate the property of the complainant. That level of government action requires documentation.

Response to recommendation 3: The recommendation has been implemented.

Every 597.1 hearing is tape-recorded and the Animal Control Division staff takes supplemental notes.

4. Provide additional training to Animal Control Officers relative to the preparation of crime reports and identification of the elements of the crimes they are likely to encounter.

Response to recommendation 4: The recommendation has been implemented.

All Animal Control Officers attend training pursuant to CA Penal Code 832 which is an introductory course prescribed by the Commission of Peace Officer Standards and Training. This course identifies the elements of a crime and details the powers of arrest. All Animal Control Officers also attend a two-week Animal Law Enforcement Academy that includes the preparation of crime reports and evidence collection as well as the elements of a crime. Additionally, officers attend the Advanced Animal Law Enforcement Academy or similar training presented by nationally recognized agencies that encompass all aspects of animal crimes. The Chief Animal Control Officer and Supervising Animal Control Officer review all crime reports prior to submittal to the District Attorney's office. Both have extensive training and experience in writing crime reports.

5. Update and organize the Animal Control Policies and Procedures manual

Response to recommendation 5: The recommendation has not yet been implemented, but will be implemented in the future.

The Animal Control Division and the Public Health Department are currently in the process of updating the Policies and Procedures manual and this project will be completed by July 2005.

6. Animal Control needs to reconcile the Court judgment against the complainant for \$1,915.36 and the \$2,873.05 collection referral form they initiated.

Response to recommendation 6: The recommendation has been implemented.

At the time of the court's adjudication of the case the judge ruled that the cost of the seizure and care should only be attributed to two of the three horses seized. The \$2,873.05 was the amount for the three horses and the \$1,915.36 was the amount for the two horses. The County Revenue Recovery Division (County Collections at the time) was informed in writing (after the court's judgment) that the amount of \$1,915.36 was the amount owed to the County.