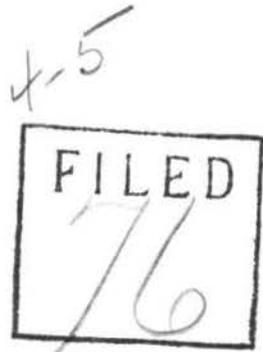


ANIMALS: Under Section 12862, R. S. Mo. 1929, a person has the authority to kill dogs in the act of maiming or seizing hogs. He does not have authority to kill the dogs on the premises of the owner of the dogs

March 31, 1937

Mr. John W. Robertson
Steward
Missouri State Sanatorium
Mount Vernon, Missouri



Dear Sir:

This Department is in receipt of your letter of March 29 requesting an opinion based on the following facts:

"We are feeding approximately one hundred hogs here at this institution at all times and have been bothered considerably with dogs coming in the feed lot and killing them.

"I will appreciate the favor if you will give me a legal opinion as to whether or not we have the right to shoot these dogs when they attack our stock. I would like to put a man out in the feed lot to shoot the dogs when they come in but certainly don't want to get in trouble over it.

"Thanking you in advance for your assistance in the above matter, I remain."

Section 12862, Revised Statutes Missouri 1929, relates to the killing of sheep or other domestic animals and is pertinent to the question which you present. This section was interpreted and the scope of the same, in the case of Reed v. Goldneck 112 Mo. App. 310, l. c. 313. As the section is quoted in the decision we merely refer to the same:

"In 1899, the Legislature furnished us a new section on the subject of dogs in this State. It is as follows:

" 'If any person shall discover any dog or dogs in the act of killing, wounding or chasing sheep in any portion of this State, or shall discover any dog or dogs under such circumstances as to satisfactorily show that such dog or dogs has or have been recently engaged in killing or chasing sheep or other domestic animal or animals, such person is authorized immediately to pursue and kill such dog or dogs; provided, however, that such dog or dogs shall not be killed in any enclosure belonging to or being in lawful possession of the owner of such dog or dogs'. (Sec. 6976, R. S. 1899.)

"This section has come into our law since any of the above cases on this subject have been decided. The statute went into effect a few months only after the decision of the case of Fenton v. Bissell, 80 Mo. App. 185, by the Kansas City Court of Appeals, and, therefore, was not noticed in the opinion in that case. Under the rule of the common law which obtained prior to the statute as announced in the cases supra, one was not justified in killing a dog even though it was on his premises, unless the dog was actually doing injury or attempting to do injury to his domestic animals, and in the latter case, the danger from the dog must have been so apparent as to threaten imminent peril. (Gillum v. Sisson, 53 Mo. App. 516; Fenton v. Bissell, 80 Mo. App. 135; Woolsey v. Haas, 65 Mo. App. 198.) This being the settled law at the time the statute was enacted, we must presume that the Legislature knew the law as it existed, and sought to make some change

therein by statutory innovation. We are to understand then, that the Legislature intended to change the rules. In interpreting the statute with this in mind, we must be guided by the intent of the law-makers as it appears from the language employed. With this before us, it is apparent from the very terms of the statute that it was not the purpose of the Legislature to make the rule more stringent in favor of the dog and against the person charged with the killing thereof, while in a threatening attitude. The old statute authorizing the killing of the dog which had killed or maimed sheep, was said by our Supreme Court in the case of *Carpenter v. Lippitt*, 77 Mo. 246, to be an act of outlawry against sheep-killing dogs. To hold the new statute above quoted did no more than reassert the common law on the subject, would be equivalent to holding that its provisions accomplished no purpose whatever. It seems clear, when viewed from this standpoint, that we must construe it to mean that it is in part a further act of outlawry against the dog and that it not only outlaws a sheep-killing dog but outlaws as well the dog discovered under suspicious circumstances or under circumstances reasonably suspicious, by its provisions 'or shall discover any dog or dogs under such circumstances as to satisfactorily show that the dog or dogs has or have been recently engaged in killing or chasing sheep or other domestic animal or animals, such person is authorized,' etc., to kill such dog. It appears that the first clause of the section is declaratory of the common law on the subject. The second clause is a new act of outlawry against the dog, and one who kills a dog and undertakes to justify his act under it,

must show to the reasonable satisfaction of the jury, by the facts and circumstances surrounding the killing, that the dog had recently been engaged in killing or chasing sheep or other domestic animals, and hence one who kills a dog under the suspicious circumstances mentioned in the second clause, does so at the risk of paying the owner the value of the dog, or of satisfying the court or jury, as the case may be, the trier of the facts, that he was outlawed under the second clause of the statute, and if the dog be found either killing or chasing the animal or under such circumstances as would make it appear satisfactorily to the jury that the dog had been engaged either in killing or chasing the animals, then the killing of the dog is justifiable. Then, too, this statute authorizes any person to kill the dog under the circumstances mentioned; it is immaterial whether he be the person owning the animals or not. The evidence shows that respondent and his neighbor as well had recently lost animals by the ravages of dogs. This dog was discovered by him in the very midst of his goats and rabbits in the night, under very suspicious circumstances indeed. It seems to us that there is substantial evidence to support the judgment of the trial court to the effect that the dog was either then or had recently been engaged in chasing the animals and this is sufficient in law, if it was sufficient to satisfy the court who tried the facts."

CONCLUSION

We are of the opinion that if the dogs in question are maiming or killing the hogs which you are feeding you are within your rights in killing the same. However, bearing in mind the proviso contained in said section to the effect 'that such dog or dogs shall not be killed in

Mr. John W. Robertson

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any enclosure belonging to or in the lawful possession of the owner of such dog or dogs.†

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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