

Opn. No. 2001-4

AGRICULTURE AND MARKETS LAW, ART. 26, §§ 371, 373; CRIMINAL PROCEDURE LAW §§ 2.10(7), 150.20; NOT-FOR-PROFIT CORPORATION LAW § 1403(a)(1).

Neither a society for the prevention of cruelty to animals nor its agents or officers is authorized to issue appearance tickets, summon, or arrest a person for violating any of the provisions of article 26 of the Agriculture and Markets Law, or to seize lost, stolen, strayed, homeless, abandoned or improperly confined animals as set forth in section 373 of the Agriculture and Markets Law, within an adjacent county that is served by its own duly incorporated society.

June 18, 2001

M. Mark Howden, Esq.
City Attorney
City of Olean
Olean Municipal Building
P. O. Box 668
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Informal Opinion
No. 2001-4

Dear Mr. Howden:

You have asked whether an agent or officer of a society for the prevention of cruelty to animals of an adjacent county may exercise, within your City, his authority as a peace officer and his other powers. This includes the authority to issue appearance tickets, or to summon or arrest a person offending any of the provisions of article 26 of the Agriculture and Markets Law. You have also asked whether such an agent or officer may seize, within your City, any lost, stolen, strayed, homeless, abandoned or improperly confined animals as set forth in Agriculture and Markets Law § 373. Because the county in which your City is located is served by its own society for the prevention of cruelty to animals, we conclude that an agent or officer of a society of an adjacent county has no authority to perform these acts within your City.

Section 371 of article 26 of the Agriculture and Markets Law, entitled "Powers of peace officers," provides that police officers, constables and "any agent or officer of any duly incorporated society for the prevention of cruelty to animals" are authorized to arrest, summon or issue appearance tickets pursuant to Criminal Procedure Law § 150.20 for violations of article 26. Agents or officers of a duly incorporated society for the prevention of cruelty to animals are "peace officers." See Criminal Procedure Law § 2.10(7).

The jurisdiction of a local society for the prevention of cruelty to animals is generally limited to its own county. However, a society is authorized to operate in an adjacent county where there is no society in that county. Specifically, section 1403(a)(1) of the Not-for-Profit Corporation Law provides that:

Any corporation for the prevention of cruelty to animals may exercise its powers and conduct its operations in any adjacent county in which no such corporation exists until the establishment of such a corporation therein.

Your municipality, the City of Olean, is located within Cattaraugus County. You advise that Cattaraugus County is served by a duly incorporated society for the prevention of cruelty to animals. Under Not-for-Profit Corporation Law § 1403(a)(1), once Cattaraugus County set up its own society, no other society for the prevention of cruelty to animals, or, by extension, its agents or officers, could exercise its powers or conduct its operations within Cattaraugus County.

Nevertheless section 373(1) of the Agriculture and Markets Law provides:

Any police officer or agent or officer of the American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals, may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place.

Thus, despite the principle that police officers and peace officers have no power outside of their geographical jurisdiction, section 373(1) manifests an intent to provide to any agent or officer of a society for the prevention of cruelty to animals State-wide limited jurisdiction to seize a lost, strayed, homeless or abandoned animal. In other words, regardless of whether a particular society for the prevention of cruelty to animals is authorized to exercise its general powers and conduct its operations in an adjacent county, its agents or officers are authorized to take possession of any lost, strayed, homeless or abandoned animal found in any public place within the State. This limited authorization furthers both public safety and the humane treatment of animals by removing unsupervised distressed animals from public places wherever they are found.

We conclude that an agent and/or officer of a society for the prevention of cruelty to animals cannot exercise general powers within an adjacent county which is already served by a duly incorporated society. Such general powers include issuing appearance tickets, summoning, or arresting and bringing before a court or magistrate, any person offending any of the provisions of article 26 of the Agriculture and Markets Law. Such an officer may, however, seize lost, stolen, strayed, homeless, abandoned or improperly confined cats or other animals wherever encountered within the State, as set forth in section 373 of the Agriculture and Markets Law.

The Attorney General renders formal opinions only to officers and departments of the State government. This perforce is an informal and unofficial expression of views of this office.

Very truly yours,

JAMES D. COLE
Assistant Solicitor General
In Charge of Opinions