



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 02-001

COUNTIES:

Meaning of "Attack"
in Animal Control Act

The Honorable Jeff Tomczak
State's Attorney, Will County
14 West Jefferson Street, Room 2000
Joliet, Illinois 60432

Dear Mr. Tomczak:

I have your letter wherein you inquire regarding the meaning of the word "attack", as used in section 15 of the Animal Control Act (510 ILCS 5/15 (West 2000)), which defines the terms "vicious dog" and "dangerous dog" for purposes of the Act (510 ILCS 5/1 et seq. (West 2000)). For the reasons hereinafter stated, it is my opinion that the word "attack", as used in the Animal Control Act, is not limited to actual physical contact, but also encompasses aggressive, threatening or menacing behavior that does not culminate in biting or other injury.

Section 15 of the Animal Control Act provides, in part:

"(a) For purposes of this Section:

(1) 'Vicious dog' means:

(i) Any individual dog that when unprovoked inflicts bites or attacks a human being or other animal either on public or private property.

(ii) Any individual dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.

(iii) Any individual dog that has as a trait or characteristic and a generally known reputation for viciousness, dangerousness or unprovoked attacks upon human beings or other animals, unless handled in a particular manner or with special equipment.

(iv) Any individual dog which attacks a human being or domestic animal without provocation.

(v) Any individual dog which has been found to be a 'dangerous dog' upon 3 separate occasions.

No dog shall be deemed 'vicious' if it bites, attacks, or menaces a trespasser on the property of its owner or harms or menaces anyone who has tormented or abused it or is a professionally trained dog for law enforcement or guard duties. Vicious dogs shall not be classified in a manner that is specific as to breed.

If a dog is found to be a vicious dog, the dog shall be subject to enclosure.

(2) 'Dangerous Dog' means any individual dog which when either unmuzzled, unleashed, or unattended by its owner, or a member of its owner's family, in a vicious or terrorizing manner, approaches any person in an apparent attitude of attack upon streets, sidewalks, or any public grounds or places.

* * *

"

(Emphasis added.)

Section 16 of the Act (510 ILCS 5/16 (West 2000)) further provides:

"If a dog or other animal, without provocation, attacks or injures any person who is peaceably conducting himself in any place where he may lawfully be, the owner of such dog or other animal is liable in damages to such person for the full amount of the injury sustained." (Emphasis added.)

The word "attack" is not defined in the Act. Reported cases involving section 16 of the Act and common law tort liability principles do, however, provide insight into the meaning of the term as it has been used with reference to dogs.

For example, in McEvoy v. Brown (1958), 17 Ill. App. 2d 470, 478, the court pointed out that the phrase "attacks or injures" in section 16 is used in the disjunctive sense, so that the owner of a puppy which ran between the legs of the elderly plaintiff, causing her to fall and be injured, was held liable, even though the dog clearly had not attacked her.

Similarly, in Steichman v. Hurst (1971), 2 Ill. App. 3d 415, 418, regarding a common law count alleging negligence, it was observed that "it is not the law that an owner must have notice of an unjustifiable biting if he has knowledge of attacks upon persons without actual biting, sufficient to put him upon notice of a dog's vicious propensities [cite]." In that case, the plaintiff mail carrier was injured when she fell while dodging a small dog that was charging toward her leg, teeth bared. The dog had similarly "harassed" the plaintiff and others in the past, although it had apparently never bitten or otherwise injured anyone. The verdict for plaintiff was upheld under both the statutory and common law counts.

Conversely, in Aldridge v. Jensen (1970), 124 Ill. App. 2d 444, 445, recovery was denied to a child who was injured when she fell from her bicycle after being chased by dogs. The court noted that the evidence would not support a claim that the dogs attacked or bit the plaintiff. The court concluded that it was not necessary to determine whether the pertinent statute required that a dog come into contact with the injured person in order for liability to attach; there was adequate evidence upon which it could be concluded that the injury was caused by the child's own negligence in operating the bicycle.

In Partipilo v. DiMaria (1991), 211 Ill. App. 3d 813, the plaintiff, who had entered a darkened hallway in a friend's home in search of a bathroom, fell down a stairway located across the hallway from a room in which the friend's dog was secured after hearing the dog barking. The court concluded that where the dog was secured and could neither attack nor injure the plaintiff, there was no basis for imposing liability upon its owners. Summary judgment for defendant was affirmed.

From these cases, it is clear that the term "attack", when used with reference to a dog, means something more menacing than mere barking, chasing or puppy-like excitement, even if, by such activity, the dog inadvertently causes injury. Actual physical contact or biting is not necessary, however. Charging, teeth bared, for example, falls within the meaning of the term, even if no contact is made.

Apart from inferences concerning the meaning of "attack" which can be drawn from the cases cited above, traditional statutory construction principles support the conclusion that the term "attack" comprehends acts which do not extend to physical contact. Each undefined word in a statute is to be ascribed its ordinary and popularly understood meaning, and a statute should be construed, if possible, so that no term is rendered superfluous or meaningless. (Texaco-Cities Service Pipeline Co. v. McGaw

(1998), 182 Ill. 2d 262, 270.) In its ordinary and popularly understood sense, "attack" means to set upon or work against forcefully; to threaten with immediate capture; to assail with unfriendly or bitter words; to begin to injure, damage or eat. (Webster's Third New International Dictionary 140 (1993).)

Clearly some aggressive activity is contemplated.

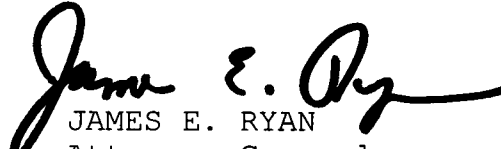
An examination of the rest of the statute, however, reveals that the word "attack" is used in the disjunctive with "inflicts bites", "to cause injury or otherwise endanger" and "menaces". Since no word in a statute is to be rendered superfluous or meaningless, "attack" must be construed to include behavior different from such other terms. A dog may "attack" without biting. Growling, baring teeth and threatening to bite or pounce, for example, would come within the general usage and definition of the term, as would charging, even if physical contact is not achieved. Merely chasing a person, however, could be interpreted either as an attack or more benignly, depending upon the surrounding circumstances. A dog seeking play or companionship may chase a person without intending to "set upon forcefully" or to cause injury.

For the reasons stated, it is my opinion that the word "attack", as used in section 15 of the Animal Control Act, includes threatening, aggressive behavior such as charging with

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the apparent intent to harm. Actual physical contact or biting is not a necessary element of an "attack". Injury or harm which a dog may inadvertently cause by playful or benign behavior, however, would not be considered an "attack" within the purview of the statute.

Sincerely,


JAMES E. RYAN
Attorney General