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Opinion No. 00-163

Humane Society Lien on Animals Lawfully In Custody

QUESTIONS

1. Does Tenn. Code Ann. § 39-14-210(e) grant to a humane society a lien on any animal lawfully in its custody, and what is lawful custody under the statute?

2. Is the lien granted by Tenn. Code Ann. § 39-14-210(e) curtailed by Tenn. Code Ann. §§ 39-14-202(c) and 39-14-207(b)?

3. May a humane society solicit a donation in lieu of payment of the liens authorized by Tenn. Code Ann. §§ 39-14-202(c), 39-14-207(b) and 39-14-210(e)?

OPINIONS

1. The statute grants to a humane society a lien on an animal lawfully in its custody, while separate statutory sections specify the circumstances, primarily involving neglect or abuse of an animal, in which an animal lawfully comes into custody.

2. No. The latter statutes supplement or provide an alternate remedy to the lien granted by Tenn. Code Ann. § 39-14-210(e).

3. Yes. As the lienor, a humane society may release a lien on any terms that it considers satisfactory.

ANALYSIS

1. The plain language of Tenn. Code Ann. § 39-14-210(e) grants to a humane society chartered by the state a lien on any animal that comes lawfully into its custody for the value of goods and services that the society reasonably provides to the animal. The section provides:

> Any humane society chartered by the state, into whose custody shall lawfully come any animal, shall have a lien on that animal for the reasonable value of the goods and services necessarily rendered by, or at the instance of, the society to that animal.

Id.

An animal may lawfully come into the custody of a humane society under several circumstances. One statutory section indicates that a humane society may take custody of any injured, diseased, malnourished or exposed animal found at large, providing in full:

> In case any animal is injured, diseased, suffering from the elements, or malnourished, and is found at large by any agent of any humane society chartered by the state, the agent may cause adequate veterinary treatment or shelter or nourishment to be furnished to the animal. The society shall have a right of action against the owner of the animal for all necessary and reasonable expenses so incurred. Within forty-eight (48) hours after taking custody of the animal, the society shall make reasonable efforts to notify the owner of the animal's whereabouts and condition. Nothing in this subsection shall affect the right of action of the veterinarian or furnisher of goods or services against the person or persons with whom such veterinarian or furnisher of goods or services contracted for payment of charges. Any such right of action by a humane society may be voided by an owner who elects to forfeit the animal to the society rather than pay for the goods or services rendered.

Tenn. Code Ann. § 39-14-207(b). A separate section provides that "custody of any animal victimized under this part shall be placed with any humane society chartered by the state immediately upon arrest of the person alleged to have violated this part." Tenn. Code Ann. § 39-14- 210(f). Finally, a person convicted of cruelty to an animal must forfeit the animal and surrender custody of the animal to a humane society. Tenn. Code Ann. § 39-14-202(d). It appears that an animal may come into custody under the circumstances set out in any of the three sections just cited.

2. Neither Tenn. Code Ann. §§ 39-14-202(c) nor 39-14-207(b) curtail the lien granted to a humane society pursuant to Tenn. Code Ann. § 39-14-210(e). Pursuant to Tenn. Code Ann. § 39-14-202(c), when a person is taken into custody by an officer for transporting or confining an animal in a cruel manner, the officer may take charge of the vehicle used to transport the animal and its "contents," and deposit these items in a "safe place" for custody. Any necessary expense incurred in taking and safeguarding the items is a lien to be paid before the items can lawfully be recovered, and any remaining unpaid expenses may be recovered by the person incurring the expenses from the owner of the animal in an action therefor. *Id.*

It is unclear whether the term "contents" in the lien just described includes the animal being transported, but it makes no difference to the analysis. If the term "contents" does not include the animal, the lien on the animal granted by Tenn. Code Ann. § 39-14-210(e) is obviously unaffected. If the term "contents" includes the animal being transported, the lien provided by Tenn. Code Ann. § 39-14-202(c) appears to be similar to the lien provided by Tenn. Code Ann. § 39-14-210(e), with added language that the lienholder may recover any remaining unpaid expenses in an action therefor. Thus, if a humane society is the "safe place" in which an animal is deposited as "contents" pursuant to Tenn. Code Ann. § 39-14-202(c), the humane society has a lien on the animal under both that section and Tenn. Code Ann. § 39-14-210(e) for expenses that the humane society incurs.

Similarly, Tenn. Code Ann. § 39-14-207(b), which is set forth in full above, operates not to curtail the lien provided by Tenn. Code Ann. § 39-14-210(e), but to supplement it. Pursuant to Tenn. Code Ann. § 39-14-207(b), an agent of a humane society may secure veterinary treatment, shelter or nourishment for any suffering animal that the agent finds at large. The humane society has a right of action against the owner of the animal for all necessary and reasonable expenses so incurred. *Id.* The right of action may be voided if the animal's owner elects to forfeit the animal rather than pay the expenses. *Id.* The right of action set out in Tenn. Code Ann. § 39-14-207(b) does not curtail the lien granted by Tenn. Code Ann. § 39-14-210(e) but simply provides a humane society with an alternate method to recover the expenses that it incurs in caring for an animal.

3. A lien "is a legal claim or charge on real or personal property used as security for the payment of some debt or obligation." *Keep Fresh Air Filters, Inc. v. Reguli*, 888 S.W.2d 437, 443 (Tenn. Ct. App. 1994). Obviously, payment of the debt satisfies a lien. *See, e.g.*, Tenn. Code Ann. § 66-21-101(providing that a lien may only be enforced "on affidavit that the debt is due and unpaid"). We can find no authority that would prevent a humane society, as a lienor, from releasing its lien and considering its debt satisfied on whatever terms it chooses, including a donation from the lienee.

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