

Justice for all

By Randy Sellers

This may come as quite a shock to the majority of public health and animal control officials in this country but even ferret owners have basic constitutional rights! "Of course they do." they will respond. Just not when it comes to ferret ownership. Lately as I have been in contact with ferret groups across the country I am being constantly bombarded with horror stories of the abuses these pet owners are subjected to. This, coupled with people saying that there's nothing they can do because they live in fear that their pets will be seized and destroyed, has pushed me over the edge. I cannot accept people living in fear of governmental retribution which they are clearly and expressly protected against.

Before I talk about constitutional protections and how they effect you and your pet(s) I want to remind you not to treat public health and animal control as the enemy. Beginning from an adversarial or combative posture is usually not the way to create open communication or cooperation. Remember, the vast majority of these people are not evil. They are well-meaning, dedicated individuals who, based on what they believe to be true, are doing what they feel is in the best interest of the public good. The problem lies not with these people, but with the information (or lack thereof) that they are operating under. On my desk I have a quote "Never attribute to Malice any act which can easily be explained by Stupidity" or in this case ignorance. Keep this in mind when dealing with these people and know the difference. Then there are those individuals who really are evil. But I'll deal with them in a later article. Right now let's focus on the issues.

The fundamental rights I see most often abused are:

- Right to ownership of private property
- Search and Seizure protections
- Due process of law
- Compensation for private property taken for public use

I will address each of these individually (probably with a great deal of overlap). But first I want to, once again, preach on a seemingly favorite topic of mine. Know the rules! I cannot emphasize just how important this is. Find out the laws, ordinances and public health rules governing ferrets that affect you. Don't just call and ask. Have a copy of the actual law sent to you. Many times these people are operating under their interpretation of what the law says or under a policy or rule which does not carry the force of law. Policies and recommendations are wonderful guidelines, but it is what's in written law that they are required to follow.

Right to ownership of private property

The idea that livestock, pets and other domestic creatures are considered to be privately held property in the eyes of the law is a concept which goes back to English Common Law and predates our own constitution. The idea is that wild animals are the property of the King (government) and are managed in trust for the welfare of the common people. Domestic animals including livestock, working animals and pets are privately owned. The government can regulate the use of private property so long as those regulations do not infringe upon the owner's rights to use his property. Ferrets, being a domestic animal and, depending on how you classify them, a pet or a working animal, are private property. As such they are subject only to regulation and are not, as many government officials believe, the State's to do with as they please. Often the argument will be used that the government has the freedom to classify ferrets any way they want and because they classify them as " non-domestic" these protections don't apply. To answer this we need to look at another basic principle of law. A government cannot pass a law which contradicts natural law. In other words the State of Minnesota cannot pass a law which states that as of January 1, 1996 all water in the state will be required to run uphill and then expect to prosecute tickets against people whose water will not cooperate. By the same token just calling a ferret a wild animal will not invalidate the hundreds of pages of scientific data which says it is domestic. As I have told many a city attorney, "You can call a refrigerator a helicopter all you want. But let's see you get it off the ground."

Search and Seizure protections

Once we have established that pets are private property we move on to the subject of search and seizure. One of the most frustrating things I deal with is the fear ferret owners have that animal control will come to their door, seize and destroy their pets. Animal control and public health officers encourage this belief. Most believe they actually have that authority. Again because they believe they are protecting the public welfare. This fear is directly responsible for paralyzing legalization efforts in many ferret free zones. Let's look at the facts. I have reviewed a lot of laws and ordinances. I have never seen possession of a prohibited animal ranked any higher than a misdemeanor, which carries a fine of up to \$700-1000 and/or a jail sentence of up to 6 months to a year. Most are usually only a petit misdemeanor, which carries a fine only. In either case, unless the law is specifically written in such a way as to allow for the impounding of the property, the actions of the government through its representatives (animal control and public health) are limited to issuing a citation. This is done because only a court of law can deprive you of your property legally. Animal control may order you to get rid of the animal but this is mostly an idle threat because the most they can legally do if you refuse is to write you a ticket and possibly impound the pet until the court decides your case. Given the overwhelming data contradicting the "wild" status of the ferret it is unlikely the Court will levy a heavy penalty even if you are found guilty. Whether or not they have the authority to impound and what the limitations of their actions are things you need to find out. This is why I harp on people to get copies of the law and become familiar with it. Another point is that if animal control comes knocking at your door to check to see if you are harboring ferrets, ask for a search warrant. You have the constitutionally guaranteed right to not have your home (office, barn, toolshed, etc.) searched without being presented with a proper warrant stating what exactly they are looking for, where they are going to look, and why they have probable cause to believe they will find what they are looking for where they are looking. You also must be given time to read this document and to determine if it is valid. Exercising this right (or any other) cannot be held against you. The argument "It was obvious he was hiding something, otherwise why wouldn't he let us search?" is not valid (although it has been tried).

It is up to you to demand a warrant and to not allow the search of your property or the removal of your pet(s) without the proper paperwork. Do not be bullied! Know what the limitations of their authority are and don't let them go beyond them.

Due Process of Law

Due process of law is a constitutional guarantee which seems to be overlooked by public health most often when dealing with a bite incident. Again it is usually in a well-intentioned attempt to resolve the issue of whether or not to start post-exposure treatment as quickly as possible. The essence of due process is that no governmental agency can take action against an individual or his property without taking steps to insure that the action is proper. The steps are as follows;

The person has to be informed of the actions being taken against him or his property. The person has to be given adequate time to prepare a defense.

The person has to be given an opportunity to not only respond to the allegations against him or his property but also to bring any counter actions.

The person has to be confronted by the witnesses and evidence used against him or his property and have the opportunity to examine and refute it.

The case has to be decided by an impartial tribunal.

In dealing with the way public health generally handles a bite incident we see that they fail to meet most, if not all, of the above criteria. While the pet owner may be directly or indirectly informed that his pet needs to be tested for rabies, rarely is the fact that such testing is fatal to the pet mentioned.

Most pets are destroyed and tested within 24-72 hours of public health becoming aware of the bite incident. Hardly enough time to mount any kind of defense. There is rarely any kind of hearing therefore no chance to be heard or to examine and refute the evidence. They believe the ferret bit so it is tested. End of story.

On those rare occasions when there is a chance to plead the animal's case it is usually to the public health officer who has ordered the destruction of the animal. This does not constitute an

impartial hearing.

In those cases where the attempt to save the animal actually reaches a court it is usually done after the animal has been destroyed and the owner is seeking retribution (see next section). The public health official will often use the argument that he was invoking emergency provisions which allow the department to make judgment calls when the public health is endangered. Pah-leese. Even if the ferret in question were absolutely rabid, one bite to one individual hardly constitutes an emergency threat to the entire general public severe enough to warrant suspending individual constitutional rights. If that is all it takes to deprive us of our rights why even have them?

It is up to you to demand a hearing and to see to it that the information you present is heard by someone who will give you a fair, unbiased judgment.

Compensation for private property taken for public use

A little known aspect of constitutional law is that of "**Eminent Domain**". Eminent Domain states that no governmental agency (public health or animal control) can take private property (your pet) from an individual (you) for public use (rabies testing) without compensating (paying) the owner (you) of the property (the pet) the fair market value (average replacement cost) of the property (your pet). Simply put, this is your guarantee that, if your pet ferret is tested for rabies following a bite incident, the governmental agency which ordered the testing must pay you the cost of replacing your pet at a local pet store or local breeder. Many state constitutions go even further and require that the compensation must be paid, or at least agreed upon, before the property is taken. The bad news is that this is such a new concept in regards to pets that many government officials are unaware of it and you will have to take them to court to collect it. While it is obvious that the replacement cost will not begin to compensate you for the loss of your pet it is very important that you pursue this compensation. If for no other reason than the chilling effect it will have on future testing of pets. The cost of your ferret may be insignificant to them but what if next time it is a \$600 dog or a \$2500 horse. Not to mention a lot of little costs will eventually add up to a large burden (as we all know from our household budgets). How many animals do they test in a year?

It is your right to this compensation. But only if you pursue it.

These are just a few of the rights that ferret owners are currently being routinely denied. Remember they are not required to inform you of your rights. It is up to you to know and exercise them. If you are in doubt as to how to protect yourself seek competent legal counsel.

In closing let me remind you that the author of this article is not an attorney and cannot give legal advice. The information contained here is culled from years of experience as an advocate and working closely with attorneys both in the ferret community and other areas. If any attorneys reading this wish to add, correct, or dispute the information provided, your input is welcome. By the way, if you are an attorney and are reading this, I assume you are pro-ferret. Why aren't you actively doing more to help protect the rights of ferret owners?

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