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Chief Deputy Clerk

SUPREME COURT OF FLORIDA

COUNTY OF PASCO,

Appellant,

Case No. 82,098

vs.

CHRIS AND WENDY RIEHL,

Appellees.

\_\_\_\_\_ /

APPEAL FROM THE DISTRICT COURT OF APPEALS, SECOND DISTRICT

INITIAL BRIEF OF APPELLANT, COUNTY OF PASCO

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LACK OF A PRE-NOTICE HEARING WHERE  
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**JURISDICTION**

Jurisdiction of this Court is established by Art v. Sec.  
3(b)(1) Florida Constitution and Fla. R. App. P.  
9.030(a)(1)(A)(ii).

STATEMENT OF THE CASE AND FACTS

STATEMENT OF THE CASE

This action was commenced as an action seeking an injunction enjoining enforcement of the dangerous dog classification permitted by Section 767.12 Florida Statutes (R 1-5). In response to the complaint Appellant filed its answer on January 3, 1992. (R 6-7)

The matter was heard before the Honorable W. Lowell Bray, Jr. in March and May of 1992 and the Trial Court on June 17, 1992, entered its order finding that there has been provocation for the dog bite granting a permanent injunction enjoining enforcement of the classification attached to Appellee's dog. In addition the Court ruled that a pre-deprivation hearing had to take place before the notice could issue and because it didn't the statute was unconstitutional. (R 15-18)

Appellant filed a timely Notice of Appeal. (R 19)

On June 16, 1993, the Second District Court of Appeal filed its opinion affirming the Trial Court's determination that Section 767.12 Florida Statutes is unconstitutional.

On July 15, 1993, Appellant filed its Notice of Appeal to this Court.

STATEMENT OF FACTS

On October 20, 1991, Eric Fletcher and some friends were playing at Appellee's home. While Eric Fletcher was at Appellees' house he was bitten by a dog owned by Appellees, went home and informed his parents, and was taken to the hospital. Following the dog bite an investigation took place involving the Pasco County Sheriff's Department and the Department of Animal Control of Pasco County. Sheriff's Deputy James Prack investigated the dog bite and talked with the children present when the bite took place. Upon Pasco County Animal Control learning that the dogs rabies vaccination was not current, Appellees were advised of a required guarantene period. Pasco County Animal Control left several notices at Appellee's house and were finally contacted by Appellee. The only parties present at the time of the bite were the children. The parents of the child, bitten filed dangerous dog affidavits. Pasco County Animal Control on November 3, 1991, after discussing the incident with Appellee and with the parents of the boy bitten filed a dangerous dog classification.

Appellees through their complaint alleged that the controls placed on their dog were unreasonable and would cause them to incur additional expense. No claim was made that their dog would be taken away or had in fact been taken away from their control by virtue of enforcement of the notice and statute. No facts were ever set forth demonstrating that Appellees had been deprived of a substantial property interest.

### SUMMARY OF ARGUMENT

This case presents a situation in which the Trial Court declared a statute, Section 767.12 Florida Statutes to be unconstitutional because it violated procedural due process when such a determination was not necessary to a disposition of the case. Examination of the trial Court's decision will demonstrate that the Court had disposed of the case by finding that the dog had been provoked that there was an absolute defense to the classification which had been established and therefore the dog should be released from the restrictions. The Trial Court's determination that the statute was unconstitutional was not necessary to a resolution of the case.

Section 767.12 Florida Statutes by its terms does not deprive Appellees of a substantial interest in their property, so as to require a pre-deprivation hearing before the notice can issue. No substantial deprivation occurs unless actions by the dog create a violation of Section 767.13 Florida Statutes.

Procedural due process is only implicated and requires some form of hearing where a person has been deprived of life, liberty or property or the property interest has been significantly altered. There is nothing in the record of this cause, resulting from application of Section 767.12 Florida Statutes, to Appellees such as would support a conclusion that operation of the statute did in fact result in Appellee's being deprived of a substantial property right. Further, there is nothing on the face of the

statute such as supports a conclusion that the statute on its face deprives a person of a substantial property right.

Neither the Trial Court or the Court of Appeals have in fact identified the substantial property interest that the statute serves to take away from a property owner such that a pre-deprivation hearing is required.

The statute provides for investigation and notice to the owner that a dog has been classified. A property owner can have that determination reviewed in Circuit Court through a Petition for Writ of Certiorari or an action for injunction which is a hearing post the investigation and classification. This case demonstrates that such post process coupled with the remedies available more than adequately protects and in fact did protect Appellees and their property.

The postponement of judicial inquiry in a situation such as is presented by Section 767.12 Florida Statutes, where only property is involved, does not deprive due process because there exists an opportunity for ultimate determination of liability.

The statute with such a procedure and ability for review does not in fact violate procedural due process guarantees of the Fourteenth Amendment.



## ARGUMENT

WHETHER, SECTION 767.12 FLORIDA  
STATUTES IS UNCONSTITUTIONAL FOR  
LACK OF A PRE-NOTICE HEARING WHERE  
APPELLEES HAVE NOT BEEN DEPRIVED OF  
ANY SUBSTANTIAL PROPERTY RIGHT AND  
REVIEW OF THE CLASSIFICATION IS  
AVAILABLE IN CIRCUIT COURT

The Due Process Clause of the 14th Amendment only requires that a hearing take place before a person can with finality be deprived of life, liberty or property. Armstrong v. Manzo, 380 US 545, 14 L.Ed.2d 62 (1965); Parratt v. Taylor, 451 US 527, 68 L.Ed.2d 420 (1981).

The key word in the clause that triggers the requirement that a Due Process hearing take place is a deprivation of property. There is no question in the instant case that we are talking about property. Appellant has never contended that Appellee's dog was not property. According to the American Heritage Dictionary, New College Edition, the term deprive means:

"1. To take something away from; dispossess;  
divest. 2. To keep from the possession or  
enjoyment of something; deny \*\*\* "

Thus, it would appear that the Due Process Clause is limited to direct actions of an intentional nature whereby a person does or potentially can be dispossessed or divested of some property, or some substantial right in property. Smith v. Travis County Educ. Dist., 791 F.Supp. 6171, 1177-1178 (W.D. Tex. 1992) and Paul v. Davis, 424 U.S.693, 710-711, 47 L.Ed.2d 405 (1976).

Examination of Section 767.12 Florida Statutes either in its present form or in that which becomes effective October 1, 1993,<sup>1</sup> does not disclose that the statute on its faces grants any official power to dispossess or divest anyone of their animal. In other words, an official acting under the statute does not have the power to permanently dispossess an owner of physical possession of a dog as opposed to temporarily restrict the use and enjoyment of the dog. The official, after investigation, can notify the owner that new regulations will apply to the animal but at no time is the owner divested or dispossessed of the animal. In the instant case there is nothing in the record or in the complaint filed by Appellees such as would demonstrate that they were deprived or about to be deprived of their animal or any substantial interest in their animal. Neither the Trial Court or the District Court of Appeals identified the property right that was or could be deprived and certainly there is nothing in the Trial Court's Judgment such as indicates that Appellees were in fact deprived of any substantial property right by operation of the statute.

Parties such as Appellees had full right to challenge any notification under the statute, which they did, and such challenge, either by certiorari or complaint for injunction, provided a complete remedy and hearing before any deprivation of a substantial nature would occur. In other words, through the vehicle of post

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<sup>1</sup>Section 767.12 Florida Statutes has been amended by the Legislature and in its new form as contained in CS/HB 103 becomes effective October 1, 1993; however, even the new statute could be questioned under the instant decision which is requiring a pre-classification.

classification review there exists an adequate means to determine the extent or manner in which owners can use and enjoy property classified. Thus, with only property involved procedural due process is not violated. Levy v. City of New York, 726 F.Supp. 1446, 1452 (SD NY 1989). Here on the classification, Appellees had an adequate opportunity to be heard in Circuit Court and that hearing overturned the classification. While the Trial Court quoted the three part test set out in Mathews v. Eldridge, 424 US 319, 335, 47 L.Ed.2d 18 (1976) the Trial Court and the District Court of Appeals did not apply the factors as the Supreme Court has done. See Smith v. Organ. of Foster Families for E. & Reform., 431 U.S. 816, 851-852, 53 L.Ed.2d 14 (1973).

When the rights implicated by Section 767.12 Florida Statutes are considered, namely the property right of Appellee and the right of Appellant to protect the public against a dangerous animal, then, it is quite clear that review as occurred in this case through an action for injunction is more than adequate to provide any process that is due.

Section 767.12 Florida Statutes is a statute that does not on its face deprive a property owner of such a substantial property right that before it can be enforced a more formal hearing must be held. Further, there are adequate state remedies to vindicate any right regulated by the statute, and in light of both factors no procedural due process problem is presented by the statute. The Trial Court's decision ignores the fact that there were adequate state law remedies always available to Appellees and because of

that fact a procedural due process problem of constitutional significance was not presented by Section 767.12 Florida Statutes. McKinney v. Pate, 985 F.2d 1502, 1514 (11th Cir. 1993); Mitchell v. W.T. Grant Co., 416 US 600, 611 40 L.Ed.2d 406 (1974). Nothing in the record of this cause or on the face of the statute supports the conclusion that the statute took away from Appellees some property right such as to require a pre-deprivation hearing. Taylor by and through Walker v. Ledbetter, 818 F.2d 791, 794 (11th Cir. 1987).

WHETHER THE DISTRICT COURT OF  
APPEALS SHOULD HAVE ADDRESSED THE  
CONSTITUTIONAL QUESTION WHERE THERE  
EXISTED OTHER GROUNDS THAT WOULD  
DISPOSE OF THE CASE

Florida Courts including this Court have very consistently followed the proposition that where a case can be disposed of on grounds that do not reach a constitutional question, then, the Court will avoid the constitutional issue. Singletary v. State, 322 So.2d 551, 552 (Fla. 1975) wherein this Court stated:

"\*\*, we adhere to the settled principal of constitutional law that courts should not pass upon the constitutionality of statutes if the case in which the question arises may be effectively disposed of on other grounds." See also, Friedman v. State Bd. of Accountancy, 370 So.2d 1168, 1169 (Fla. 4th DCA 1979); and Diaz v. Board of County Commissioners of Dade County, 502. F.Supp. 190, 193 (S.D. Fla. 1980).

In the instant case, it is clear from the decision of the Trial Court that the case could be and was disposed of on grounds wholly apart from the constitutional issue relating to procedural due process. The Trial Court found that there was substantial competent evidence that the dog had been provoked into biting the boy and enjoined enforcement of the notice. The Court to reach this conclusion did not have to confront whether or not a hearing should have taken place before the notice was issued.

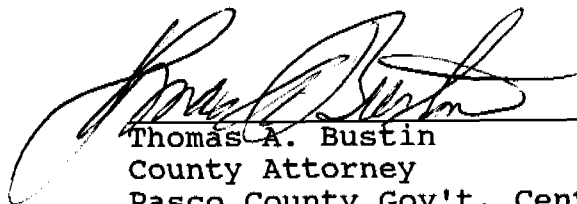
The present case presents a good example of a case where the above principle should have controlled but did not.

The opinion by the District Court of Appeals should be reversed because it took up and decided a constitutional question when the record demonstrated that the case could be disposed of on reasons wholly apart from the constitutional issue.

CONCLUSION

Appellant, submits that the decision of the Second District Court of Appeals declaring Section 767.12 Florida Statutes unconstitutional should be reversed for the reasons set forth herein.

Respectfully submitted this 30th day of July, 1993.

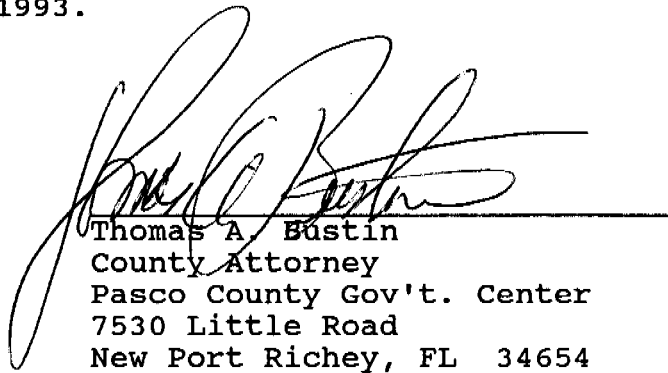


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CERTIFICATE OF SERVICE

I hereby Certify that a true and correct copy of the foregoing Initial Brief of Appellant has been sent by regular U.S. Mail to Lee Cannon, Esquire, 7510 Ridge Road, Port Richey, FL 34668, this 30th day of July, 1993.

A large, stylized handwritten signature in black ink, appearing to read 'Thomas A. Bustin', is written over a horizontal line.

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SUPREME COURT OF FLORIDA

COUNTY OF PASCO,

Appellant,

Case No. 82,098

vs.

CHRIS AND WENDY RIEHL,

Appellees.

\_\_\_\_\_ /

APPENDIX OF APPELLANT, COUNTY OF PASCO

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County of Pasco

APPENDIX

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Order Granting Permanent Injunction as to Classification of "Dangerous Dog" and Determining that Section 767.12, Florida Statutes is Unconstitutional . . . . .	1
Opinion filed on June 16, 1993 by the District Court of Appeal of Florida, Second District. . . . .	.5
Florida Statutes, Section 767.12 . . . . .	.12
Florida Statutes, Section 767.13 . . . . .	.13

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT IN AND FOR  
FOR PASCO COUNTY, FLORIDA

CHRIS and WENDY RIEHL

Plaintiffs,

vs.

Case No. 91-6366 CA

PASCO COUNTY FLORIDA  
(PASCO COUNTY ANIMAL CONTROL)

Defendant.

---

**ORDER GRANTING PERMANENT INJUNCTION AS TO  
CLASSIFICATION OF "DANGEROUS DOG" and  
DETERMINING THAT SECTION 767.12, FLORIDA STATUTES IS UNCONSTITUTIONAL**

This cause came on to be heard on Plaintiff's Complaint for Injunction requesting that this Court permanently enjoin Defendant from enforcing its "Notice of Dangerous Dog Classification". The following facts were presented to this Court:

On October 20, 1991, teenagers at their neighbor's, the Riehls, home were playing pool. One of the teenagers, Eric, was bitten by the neighbor's dog. On that same day, Eric's mother, Mrs. Tracy, reported the incident to the local sheriff's department. Mrs. Riehl was contacted. The deputy's report indicates that Mrs. Riehl advised the deputy that it was her dog who bit Eric. The report indicates that upon learning that the dog's rabies vaccination was not current, Mrs. Riehl was advised of the necessary quarantine period. Those present at the house at the time of the bite included Eric, John and Daniel, friends of Eric's, and Mrs. Riehl. Mrs. Tracy, the mother of the bitten teenager was not present. On October 22, 1991, Mrs. Tracy completed a general affidavit describing the incident. On October 23, 1991, an animal bite/ quarantine notification was issued. On October 28, 1991, Mrs. Tracy filed a dangerous dog affidavit stating that Sheba, the dog in question, aggressively bit, attacked or endangered or has inflicted severe injury to a human being, describing the incident by stating that her son was playing pool with the children and upon petting the dog, Sheba bit Eric. On November 23, 1991, a Notice of Dangerous Dog Classification was issued.

The Riehl's came before the Court requesting the Court to enjoin Pasco County Florida, (Pasco County Animal Control) from issuing the classification based upon the defense that the animal is not dangerous and that Sheba was provoked, that is, Sheba bit the teenager after the teenager had struck Sheba several times with the pool stick, that Sheba, being prodded again by the pool stick, then moved away from the pool table area, and upon the teenager approaching Sheba once more with pool stick in hand, Sheba bit the teenager.

Chapter 767, Fla. Stat., Damage by Dogs, was amended in 1990. Prior to that amendment, the relatively short chapter provided in pertinent part, that dog owners were liable for damages done by their dog. By the 1990 amendment, the legislature, seeking to deal with "increasing serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks" by dogs, set forth uniform requirements for owners of dangerous dogs. (§ 767.10, F.S.) Briefly, the statutory scheme is that there is an incident, the dog is classified as "dangerous", the owner is then subjected to requirements and restrictions substantially more rigid than prior to the classification, and upon an additional incident, the dog shall be destroyed, unless an appeal regarding the latter is successful. As to the "classification" stage, the statute provides in § 767.12(1), F.S. that "a dog shall not be declared dangerous if the threat, injury, or damage was sustained by a person who . . . while lawfully on the property, was tormenting, abusing or assaulting the dog or its owner." The statute expressly provides in § 767.13(1), F.S. that before a dog declared dangerous bites again, without provocation, is destroyed, and in § 767.13(2), F.S. that before a dog not previously been declared dangerous but aggressively attacks and causes severe injury to a human being, is thereafter destroyed, the owner shall have 10 days to apply to a court of jurisdiction for any available remedies. In contrast, the statute provides no time to be heard, before or after, the appropriate authorities issue a classification of "dangerous". Succinctly, even though the statute sets forth an absolute defense to the classification, it provides no forum to speak it.

Implementation of the statute is delegated to the local animal control authority. Where there is a reported incident, the animal control authority shall investigate and require sworn affidavits from individuals desiring to have a dog classified as dangerous. The animal control authority shall determine if a dog is to be classified as dangerous and shall immediately provide written notification to the owner of a dog that has been classified as dangerous. Importantly, a dangerous dog, as used in the act, means any dog that according to the records of the

appropriate authority, has bitten, attacked . . . (§ 767.11(1), F.S.) At the hearing of this case, the defendant placed its pertinent documents into evidence, which presumably were the entire result of its investigation, together with the (hearsay) affidavit of Mrs. Tracy. On the basis of that evidence, the records which the appropriate authority had on this matter, Sheba was properly classified as a dangerous dog. There was no hearing prior to classification, and no indication that Mrs. Riehl was informed of the potential classification prior to its issuance or was asked about the circumstances surrounding the biting.

Procedural due process requires that there be opportunity to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed 2d 18 (1976). The "extent of due process required varies with the character of the interest and nature of the proceeding involved". Hadley v. Department of Administration, 411 So. 2d 184 (Fla. 1982) citing, In Interest of D.B., 385 So. 2d 83, 89 (Fla. 1980). In turn, this determination requires consideration of three factors: "first, the private interest that will be affected by the official action; second, the risk of deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." Mathews v. Eldridge, 424 U.S. at 319, 336. However, where there is no opportunity for a hearing whatsoever, prior to (or even after) substantial restrictions and penalties are placed upon the owner's use and enjoyment of his property, the statute on its face and in its operation, constitutes an unconstitutional denial of due process.

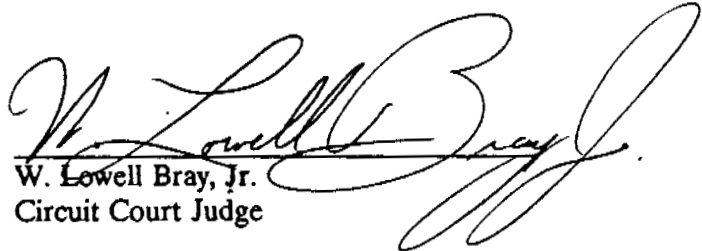
The Court, upon review of the pleadings, all the evidence before the Court, and applicable law, and having heard argument of counsel, finds by the preponderance of the evidence the dog, Sheba, bit Eric as a result of Sheba being struck and prodded several times by Eric with a pool stick. No substantial evidence was presented showing that prior to that final

moment when Eric again approached Sheba did Sheba exhibit any aggressive behavior whatsoever. Accordingly, pursuant to § 767.12(1), Fla. Stat., evidence of such conduct by Eric constitutes an absolute defense to the classification of "dangerous dog". Therefore, it is

**ORDERED AND ADJUDGED**, that, as to the matter before this Court, defendant is permanently enjoined from issuing to Plaintiffs its "classification of dangerous dog", and it is further

**ORDERED AND ADJUDGED** that Section 767.12, Florida Statutes is unconstitutional by its failure to provide for any hearing.

**DONE AND ORDERED** in Chambers, New Port Richey, Pasco County, Florida, this 17<sup>th</sup> day of June, 1992.

  
W. Lowell Bray, Jr.  
Circuit Court Judge

Copies To:  
Lee H. Cannon, Esq.  
Maureen Jones, Esq.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

COUNTY OF PASCO, )  
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 Appellant, )  
 )  
 v. )  
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 CHRIS and WENDY RIEHL, )  
 )  
 Appellees. )  
\_\_\_\_\_ )

CASE NO. 92-02705

Opinion filed June 16, 1993.

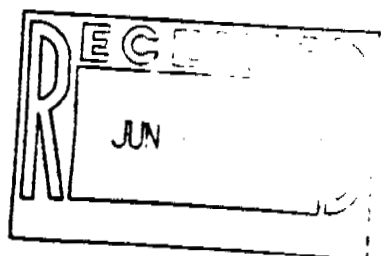
Appeal from the Circuit  
Court for Pasco County;  
W. Lowell Bray, Jr., Judge.

Thomas A. Bustin,  
County Attorney,  
New Port Richey,  
for Appellant.

No Appearance for Appellees.

HALL, Judge.

The appellant, the County of Pasco, challenges a trial court order permanently enjoining it from enforcing a dangerous dog classification pursuant to section 767.12, Florida Statutes (1991). The county contends the trial court erred in finding section 767.12 unconstitutional. We disagree with the county and affirm.



The trial court, in its well-reasoned final order, has done an excellent job setting forth the facts of the instant case and explaining why section 767.12 is unconstitutional. We therefore quote extensively from the final order as follows:

On October 20, 1991, teenagers at their neighbor's, the Riehls, home were playing pool. One of the teenagers, Eric, was bitten by the [Riehls's] dog. On that same day, Eric's mother, Mrs. Tracy, reported the incident to the local sheriff's department. Mrs. Riehl was contacted. The deputy's report indicates that Mrs. Riehl advised the deputy that it was her dog who bit Eric. The report indicates that upon learning that the dog's rabies vaccination was not current, Mrs. Riehl was advised of the necessary quarantine period. Those present at the house at the time of the bite included Eric, John and Daniel, friends of Eric's, and Mrs. Riehl. Mrs. Tracy, the mother of the bitten teenager was not present. On October 22, 1991, Mrs. Tracy completed a general affidavit describing the incident. On October 23, 1991, an animal bite/quarantine notification was issued. On October 28, 1991, Mrs. Tracy filed a dangerous dog affidavit stating that Sheba, the dog in question, aggressively bit, attacked or endangered or has inflicted severe injury to a human being, describing the incident by stating that her son was playing pool with the children and upon petting the dog, Sheba bit Eric. On November 23, 1991, a Notice of Dangerous Dog Classification was issued.

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Chapter 767, Fla. Stat., Damage by Dogs, was amended in 1990.<sup>1</sup> Prior to that amendment, the relatively short chapter provided in pertinent part, that dog owners were liable for damages done by their dog. By the 1990 amendment, the legislature, seeking to deal with "increasing serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks" by dogs, set forth uniform requirements for owners of dangerous dogs. (§ 767.10, F.S.) Briefly, [if a] dog is classified as "dangerous", the owner is then subjected to requirements and restrictions substantially more rigid than prior to the classification, and upon an additional incident, the dog shall be destroyed, unless an appeal regarding the latter is successful. As to the "classification" stage, the statute provides in § 767.12(1), F.S. that "a dog shall not be declared dangerous if the threat, injury, or damage was sustained by a person who . . . while lawfully on the property, was tormenting, abusing or assaulting the dog or its owner." The statute expressly provides in § 767.13(1), F.S. that before a dog [who has been] declared dangerous bites

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<sup>1</sup> We note that the legislature has again amended this chapter in 1993. Though the amended version is not before us, it may be infected with the same infirmity described herein.

again, without provocation, is destroyed, and in § 767.13(2), F.S. that before a dog[, which has] not previously been declared dangerous but aggressively attacks and causes severe injury to a human being, is . . . destroyed, the owner shall have 10 days to apply to a court of jurisdiction for any available remedies. In contrast, the statute provides no time to be heard, before or after, the appropriate authorities issue a classification of "dangerous". Succinctly, even though the statute sets forth an absolute defense to the classification, it provides no forum to speak it.

Implementation of the statute is delegated to the local animal control authority. Where there is a reported incident, the animal control authority shall investigate and require sworn affidavits from individuals desiring to have a dog classified as dangerous. The animal control authority shall determine if a dog is to be classified as dangerous and shall immediately provide written notification to the owner of a dog that has been classified as dangerous. Importantly, a dangerous dog, as used in the act, means any dog that according to the records of the appropriate authority, has bitten, attacked . . . .)§ 767.11(1), F.S.) At the hearing of this case, the [county] placed its pertinent documents into evidence, which presumably were the entire result of its investigation, together with the (hearsay) affidavit of Mrs. Tracy. On the basis of that evidence, the records which the appropriate authority had on this matter, Sheba was properly classified as a dangerous dog. There was no hearing prior to classification, and no indication that Mrs. Riehl was informed of the potential classification prior to its issuance or was asked about the circumstances surrounding the biting.

Procedural due process requires that there be opportunity to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The "extent of due process required varies with the character of the interest and nature of the proceeding involved". Hadley v. Department of Administration, 411 So. 2d 184 (Fla. 1982) citing, In Interest of D.B., 385 So. 2d 83, 89 (Fla. 1980). In turn, this determination requires consideration of three factors: "first, the private interest that will be affected by the official action; second, the risk of deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." Mathews v. Eldridge, 424 U.S. at 319, 335. However, where there is no opportunity for a hearing whatsoever, prior to (or even after) substantial restrictions and penalties are placed upon the owner's use and enjoyment of his property, the statute on its face and in its operation, constitutes an unconstitutional denial of due process.

The Court, upon review of the pleadings, all the evidence before the Court, and applicable law, and having heard argument of counsel, finds by the preponderance of the evidence the dog, Sheba, bit Eric as a result of Sheba being struck and prodded several times by Eric with a pool stick. No substantial evidence was presented showing that prior to that final moment when Eric again approached Sheba did Sheba exhibit any aggressive

behavior whatsoever. Accordingly, pursuant to § 767.12(1), Fla. Stat., evidence of such conduct by Eric constitutes an absolute defense to the classification of "dangerous dog". Therefore, it is

ORDERED AND ADJUDGED, that, as to the matter before this Court, defendant is permanently enjoined from issuing to Plaintiffs its "classification of dangerous dog", and it is further

ORDERED AND ADJUDGED that Section 767.12, Florida Statutes[,] is unconstitutional by its failure to provide for any hearing.

In its order, the trial court quotes extensively from the United States Supreme Court decision in Mathews v. Eldridge. In addition, we must emphasize that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. at 332. "[T]he degree of potential deprivation that may be created by a particular decision is a factor to be considered in assessing the validity of any administrative decisionmaking [sic] process." Id. at 341. "[T]he possible length of [a] wrongful deprivation . . . is [also] an important factor in assessing the impact of official action on . . . private interests." Id., citing Fusari v. Steinberg, 419 U.S. 379, 95 S. Ct. 533, 42 L. Ed. 2d 521 (1975).

It is undisputed in the law that dogs and other domestic animals, commonly referred to as pets, are subjects of property or ownership. Levine v. Knowles, 197 So. 2d 329 (Fla. 3d DCA 1967). In fact, once any animal has been legitimately

reduced to private control, confinement, and possession, it becomes private property. Barrow v. Holland, 125 So. 2d 749, 751 (Fla. 1960). When that occurs, the owner thereof cannot be deprived of the use thereof, except in accord with all of the elements of due process. Id.

Under section 767.12, a dangerous dog classification, as well as its attendant restrictions, can conceivably obtain without a legitimate basis therefor, as there are no specific guidelines to which the classifying agency must conform or specific findings it must articulate in making its final determination. The fact that the statute fails to provide an alleged dangerous dog owner with an opportunity to be heard prior to a final determination, further exacerbates that potential for error.

A dangerous dog classification under the statute places many onerous restrictions on dog owners with so-called dangerous dogs. Those restrictions serve to deprive such owners of legal property interests within the meaning of the Fifth and Fourteenth Amendments. Thus, to allow the enforcement of such restrictions before a dog owner is given an opportunity to be heard is clearly a violation of due process. We must therefore agree with the trial court that section 767.12 is unconstitutional.

Accordingly, the order of the trial court is affirmed.

DANAHY, A.C.J., and ALTENBERND, J., Concur.

(3) "Severe injury" means any physical injury that results in broken bones, multiple punctures, or disfiguring lacerations requiring sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and shall also provide protection from the elements.

(5) "Animal control authority" means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. In those areas not served by an animal control authority, the sheriff shall carry out the duties of the animal control authority under this act.

(6) "Animal control officer" means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this act or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal.

(7) "Owner" means any person, firm, corporation, or organization possessing, harboring, keeping, or having control or custody of an animal or, if the animal is owned by a person under the age of 18, that person's parent or guardian.

History.—s. 2, ch. 90-180.

**767.12 Classification of dogs as dangerous; certification of registration; notice requirements; confinement of animal; exemption; unlawful acts.—**

(1) An animal control authority shall investigate reported incidents involving dogs that may be dangerous and shall require sworn affidavits from individuals desiring to have a dog classified as dangerous. The animal control authority shall determine if a dog is to be classified as dangerous and shall immediately provide written notification by registered mail or certified hand delivery to the owner of a dog that has been classified as dangerous. A dog shall not be declared dangerous if the threat, injury, or damage was sustained by a person who, at the time, was unlawfully on the property or, while lawfully on the property, was tormenting, abusing, or assaulting the dog or its owner.

(2) Within 30 days after a dog has been classified as dangerous, the owner of the dog must obtain a certificate of registration for the dog from the animal control authority serving the area in which he resides, and the certificate shall be renewed annually. Animal control authorities are authorized to issue such certificates of registration, and renewals thereof, only to persons who are at least 18 years of age and who present to the animal control authority sufficient evidence of:

(a) A current certificate of rabies vaccination for the dog.

(b) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign at all entry points that informs both children and adults of the presence of a dangerous dog on the property.

(c) Permanent identification of the dog, such as a tattoo on the inside thigh or electronic implantation.

The appropriate governmental unit may impose an annual fee for the issuance of certificates of registration required by this section.

(3) The owner shall immediately notify the appropriate animal control authority when a dog that has been classified as dangerous:

(a) Is loose or unconfined.

(b) Has bitten a human being or attacked another animal.

(c) Is sold, given away, or dies.

(d) Is moved to another address.

Prior to a dangerous dog being sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the animal control authority. The new owner must comply with all of the requirements of this act and implementing local ordinances, even if the animal is moved from one local jurisdiction to another within the state. The animal control officer must be notified by the owner of a dog classified as dangerous that the dog is in his jurisdiction.

(4) It is unlawful for the owner of a dangerous dog to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal. When being transported, such dogs shall be safely and securely restrained within a vehicle.

(5) Hunting dogs are exempt from the provisions of this act when engaged in any legal hunt or training procedure. Dogs engaged in training or exhibiting in legal sports such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials are exempt from the provisions of this act when engaged in any legal procedures. However, such dogs at all other times in all other respects shall be subject to this and local laws. Dogs that have been classified as dangerous shall not be used for hunting purposes.

(6) This section does not apply to dogs used by law enforcement officials for law enforcement work.

(7) Any person who violates any provision of this section is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500.

History.—s. 3, ch. 90-180.

**767.13 Attack or bite by dangerous dog; penalties; confiscation; destruction.—**

(1) If a dog that has previously been declared dangerous under this act attacks or bites a person or a domestic animal without provocation, the owner of the dog, upon conviction, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed

(3) "Severe injury" means any physical injury that results in broken bones, multiple punctures, or disfiguring lacerations requiring sutures or cosmetic surgery.

(4) "Proper enclosure of a dangerous dog" means, while on the owner's property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and shall also provide protection from the elements.

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(7) "Owner" means any person, firm, corporation, or organization possessing, harboring, keeping, or having control or custody of an animal or, if the animal is owned by a person under the age of 18, that person's parent or guardian.

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(b) A proper enclosure to confine a dangerous dog and the posting of the premises with a clearly visible warning sign at all entry points that informs both children and adults of the presence of a dangerous dog on the property.

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Prior to a dangerous dog being sold or given away, the owner shall provide the name, address, and telephone number of the new owner to the animal control authority. The new owner must comply with all of the requirements of this act and implementing local ordinances, even if the animal is moved from one local jurisdiction to another within the state. The animal control officer must be notified by the owner of a dog classified as dangerous that the dog is in his jurisdiction.

(4) It is unlawful for the owner of a dangerous dog to permit the dog to be outside a proper enclosure unless the dog is muzzled and restrained by a substantial chain or leash and under control of a competent person. The muzzle shall be made in a manner that will not cause injury to the dog or interfere with its vision or respiration but shall prevent it from biting any person or animal. When being transported, such dogs shall be safely and securely restrained within a vehicle.

(5) Hunting dogs are exempt from the provisions of this act when engaged in any legal hunt or training procedure. Dogs engaged in training or exhibiting in legal sports such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials are exempt from the provisions of this act when engaged in any legal procedures. However, such dogs at all other times in all other respects shall be subject to this and local laws. Dogs that have been classified as dangerous shall not be used for hunting purposes.

(6) This section does not apply to dogs used by law enforcement officials for law enforcement work.

(7) Any person who violates any provision of this section is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500.

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(1) If a dog that has previously been declared dangerous under this act attacks or bites a person or a domestic animal without provocation, the owner of the dog, upon conviction, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the dangerous dog shall be immediately confiscated by an animal control authority, placed

in quarantine, if necessary, for the proper length of time, or impounded and held for 10 business days, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to apply to a court of competent jurisdiction for any remedies that may be available. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

(2) If a dog that has not been declared dangerous under this act aggressively attacks and causes severe injury to or death of any human, the owner of the dog, upon conviction, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days, and thereafter destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to apply to a court of jurisdiction for any remedies that may be available. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

(3) If a dog that has previously been declared dangerous under this act aggressively attacks and causes severe injury to or death of any human, the owner of the dog, upon conviction, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days, and thereafter

destroyed in an expeditious and humane manner. This 10-day time period shall allow the owner to apply to a court of jurisdiction for any remedies that may be available. The owner shall be responsible for payment of all boarding costs and other fees as may be required to humanely and safely keep the animal during any appeal procedure.

**History.**—s. 4, ch. 90-180.

**767.14 Additional local restrictions authorized.**

Nothing in this act shall limit any local government from placing further restrictions or additional requirements on owners of dangerous dogs or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed and that the provisions of this act are not lessened by such additional regulations or requirements. This section shall not apply to any local ordinance adopted prior to October 1, 1991.

**History.**—s. 5, ch. 90-180.

**767.15 Other provisions of ch. 767 not superseded.**

Nothing in this act shall supersede chapter 767, Florida Statutes 1989.

**History.**—s. 6, ch. 90-180.

**767.16 Bite by a police or service dog; exemption from quarantine.**

Any dog that is owned, or the service of which is employed, by a law enforcement agency or any dog that is used as a service dog for blind, hearing impaired, or disabled persons, and that bites another animal or human is exempt from any quarantine requirement following such bite if the dog has a current rabies vaccination that was administered by a licensed veterinarian.

**History.**—s. 1, ch. 91-228.

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