

Memorandum

DATE: April 27, 2010
TO: Dog Sellers Advisory Committee
FROM: Attorney Cheryl Daniels
SUBJECT: Questions about who is licensed under s. 173.41

There were some questions that were raised after our meeting last Wednesday concerning the issue of who might be licensed under the definitions in s. 173.41(1), Wis. Stats. In particular, a memo from Legislative Council Attorney Mary Matthias to Senator Kreitlow was circulated to members. Staff at the Department had not seen this memo prior to circulation but I think there was some concern that what I spoke to at the meeting might contradict the following information in the memo:

A question has been raised regarding the bill's applicability to an individual who is a co-owner of several dogs and combined, these dogs produce more than 25 puppies that are all sold in a year. In this situation, only to the person who actually "bred and raised" any dogs that are sold would need a license. This person would need a license only if they sold more than 25 dogs in a year that they bred and raised. The other co-owners, i.e., individuals who did not "breed and raise" the dogs, would not be required to be licensed based on the sale of these dogs.

If a person is co-owner of several dogs, and none of the offspring of the dogs are sold and none of the dogs that are sold were bred and raised by a person, or at a place where more than 25 dogs are sold in a year, then no license is needed for the sale of any of the dogs.

Conversely, if 25 or more dogs are sold from the same home or other premises, the person in control of the facility must be licensed regardless of how many different owners there are of the dogs in the facility. The individual owners of the dogs at the licensed facility would not need licenses.

After reading this, my professional opinion is that what I stated at the meeting was not contradictory to this memo. My main point in that discussion was that, depending on any particular situation concerning the ownership and control of the breeding, raising and selling of puppies, a person may end up being a licensed person under the statute and the premises where the breeding, raising and selling of the puppies take place could be subject to inspection. Using the term "co-ownership" when, in fact, one or more persons are really contract managers for the true breeder, does not allow the true breeder to avoid the reach of the statute.

Dr. Bellay thought it might be best if I use some examples to illustrate how different specific fact situations may or may not lead to the need for licensing:

1. Individual owns X number of bitches. Those bitches are each "farmed out" to X number of persons. These individuals agree to keep the bitch during gestation, whelp the litter, and be responsible for the care of bitch and puppies until they can be sold at 7 weeks of age for some compensation. The puppies may be sold from the same home or the owner may sell the pups from another location.

This is a situation where the issue of the exact relationship between the parties is very important. In order for it to be a legal “co-ownership”, the persons who are managing the gestation, whelping and care must show facts of co-ownership such as:

- (a) Not being directed, in main part, as to how the bitch and pups are to be cared for.
- (b) Paying, in whole or part, for costs during the time the bitch and pups are in their care.
- (c) Being listed as an owner on the pups papers, and
- (d) Being compensated for the pups themselves, either by the other co-owners or outside sales.

If any of the farming out doesn't really give rise to true “co-ownership”, then the person with actual ownership and control, who has at least 3 litters and sells 25 puppies in a year, is a dog breeder under s. 173.41(1)(c), Stats. One or more premises where the puppies are bred, raised and sold may be inspected.

2. An individual who owns no dogs but has arrangements to buy all or part of litters from a variety of individuals to sell and pays the breeder of the litter a set price.

This is a situation where the individual will be a dog dealer under s. 173.41(1)(e), Stats., if he or she sells, distributes or trades or offers for sale, distribution or trade 25 or more dogs in a year. The individuals from whom the pups were purchased do not need to be licensed or inspected, unless they raise, breed and sell 25 pups from 3 litters so they need to be licensed as a dog breeder under our statute.

3. A person has a bitch but has no intention to breed her. Another person wants to breed the bitch and get a litter from her. The owner of the bitch may lease the dog to the person who wants the litter. Papers can be filed with the AKC to record the person who leased the dog as the breeder of the litter. The person who leased the dog breeds her, keeps her during gestation, and whelps the litter. She/he cares for the bitch and puppies until the litter is 7 weeks old and sells them. The bitch is then given back to the owner who collects a pre-determined compensation.

In this specific fact situation, neither party is licensed under our statute. However, if the person takes 3 or more bitches under leasing agreements, who produce 25 or more puppies that he or she sells, then that person is deemed a “dog breeder” under s. 173.41(1)(c), Stats.

4. Two people co-own a dog; both names are on the registration papers. These arrangements can involve any arrangement the two parties agree to. For example, a person breeds a litter and sells a puppy. The breeder may agree to co-own the pup until complete payment is made. Or, co-owners get a set number of puppies or litters over time. Or, a co-owning relationship may improve the chances of getting a dog shown and campaigned, improving the opportunities for good breedings and prices.

These are the fact needed to be considered:

- (a) First, will any person be selling, distributing or trading 25 or more puppies from at least 3 of the co-ownership litters? If yes, that person is a dog dealer if the other co-owners do the breeding and raise the puppies. Only the selling premises are open for inspection.
- (b) Does any co-owner have control over the breeding, raising and selling of 25 puppies from at least 3 litters, even at different premises? If yes, that person is a dog breeder and the premises (one or more) where the breeding, raising and selling the puppies may be inspected.