



Dog Federation of Wisconsin
742 S. Indiana Ave.
West Bend, WI 53095

We own dogs and we vote!

November 3, 2011

Dog Federation of Wisconsin has had serious concerns regarding the rules that were written for the administration of 2010 Act 90. We expressed our concerns throughout the rule making process. The rules reach outside of the scope of the original intent of Act 90; proven with documentation from WI Legislative Council.

Concerns were expressed at the public hearings, on DATCP's comments website for the rules, as well as communications sent to the Advisory Board, Secretary and Board members of the Department of Agriculture, Trade and Consumer Protection. Included in those concerns was the interpretation of DATCP's attorney, Cheryl Daniels, regarding co-ownerships and foster homes. In a communication sent out by Ms. Daniels to the Advisory Board, she basically stated that her interpretation of Act 90 was not the same as Legislative Council's, that her interpretation was correct; co-owners and fosters would have to be included on the documentation for the licensee.

We ask that you read the following 3 pages of this document, which is a communication between Attorney Shelia Kessler and DFOW President Joy Brand. You will see how DATCP will be using the system to harass individuals that would never be subject to licensing.

In addition, DATCP can and will selectively use sections of code at will. In our November, 2010 alert, we stated *"Though DFOW had been assured by WI legislative council that there was no need for an false accusation clause in the bill as breeders would be protected by Section one of ATCP rules, we find that this may not be true. The only reference to dogs in existing DATCP rules is 10.80. Because of this, dog breeders will not have access to The Farm Mediation and Arbitration program. According to this document, 93.50(1)(d)*

(d) "Farmer" means a farmer, as defined in s. 102.04 (3), 102.04(3)

(3) "Farmer" means any person engaged in farming as defined. Operation of farm premises shall be deemed to be the planting and cultivating of the soil thereof; the raising and harvesting of agricultural, horticultural or arboricultural crops thereon; the raising, breeding, tending, training and management of livestock, bees, poultry, fur-bearing animals, wildlife or aquatic life, or their products,.....

As dog breeders are not specifically mentioned in 102.04 (3), there is a possibility that they will not have any recourse against over zealous ATCP inspectors or false complaints."

Representative Pridemore has tried to help hobbyists and small rescues in the State with his bill draft that raises the limits before licensing kicks in. It appears to be for naught as no matter what numbers are used, DATCP appears to be following their own agenda.



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11/3/11

Ms. Joy Brand
Dog Federation of Wisconsin

Dear Joy,

As a follow up to our telephone conversation, I am providing you with the information I was able to discover pertaining to the Departments interpretations of Sec. 173.41 Wis Stats.

In a recent telephone conversation with Attorney Daniels of the DATCP Dog Sellers Program, I was told that the Department interprets the statutes to permit the inspection of anyone who sells dogs in Wisconsin even if they are under the 25 dog limit. This inspection and demand for records would be to determine if the breeder/dog seller were subject to licensing. They require no evidence to establish that 25 or more dogs were sold to do this inspection. If you passed their inspection, you would be issued an "exception" document of some sort along with a stern warning that if you exceeded the exception you would face penalties.

Ms. Daniels indicated that sec. 93.08 of the statutes permitted such inspections and access by law enforcement. It is her interpretation that a home where a breeder conducts the "business" of dog breeding is open to inspection under this provision. She claimed this has been upheld in court decisions. The only court case cited under this section is the Raw milk case in Wisconsin, Lundeen v WDATCP, 189 Wis.2d 255. This case was a constitutional challenge to a search of a Dairy barn without notice or warrant. The court allowed this search based on a number of factors including the finding that the Dairy industry has a history of extensive regulation and that the mere fact of

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obtaining a license permits the random inspections. The court went further to say that an inspection of the personal residence would not be permitted under the 4th Amendment of the Constitution.

Since Ms. Daniels is arguably advising the department in implementing sec. 173.41 stats. (the ACT 90 Anti-Puppy Mill law), I think this raises serious concerns for private citizens engaged in a legal hobby being subject to warrantless entries into their homes. Additionally, Ms. Daniels believes that the Department can demand that individuals not subject to licensure be required to submit documentation or written statements to “prove” they are not operating outside the mandates of licensure. Some of these documents would include the personal tax returns of the breeders. I would argue that this is an impermissible shift of the burden of proof in a criminal matter from the State to the individual and an unreasonable invasion of privacy.

Failure to obtain a license under 173.41 is an unclassified misdemeanor punishable by up to 9 months in jail and a \$10,000.00 fine. Unlike the circumstances in Lundeen, where the inspection occurred on a property already subject to licensing, and in an industry that has a long history of regulation, most hobby breeders will not be required to be licensed. They are not businesses, but hobbies. Most of the activity is conducted in personal residences and has not been the subject of past regulation. A person’s home should never be subject to government intrusion without warrant. Especially if the intrusion is for the purpose of determining if criminal conduct is occurring. Determining if a non-licensed hobby breeder should have applied for or obtained a license is an investigation into potential criminal conduct.

It is hard to believe that the Anti-puppy mill law would be utilized to invade the privacy of an individual who decided to breed their purebred pet and sell a puppy or two. But, this seems to be the position the Department has taken with respect to the implementation of Act 90.

I believe that some breeders have issues pertaining to a local ordinance limiting the number of dogs permitted per household. Usually these dogs also lack municipal dog licenses. Failure to have a dog license is a basis for seizure of the animal.

I think that many hobby breeders felt that the law would eliminate puppy mills but not affect their operations and was therefore a good thing. Unfortunately that appears not to be the case. No puppy mills have been uncovered, but hobby breeders and small rescue organizations are being singled out for inspection. My guess is that the implication of this law will only ferret out hobby breeders who are over their municipal limit on the number of pets they are permitted to have.

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If you have any other questions regarding this please let me know.

Sincerely,

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