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Retiring a Police K9

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ABSTRACT

Retiring a police K9 is relevant to contemporary law enforcement because any agency currently utilizing a police K9 needs to be prepared to make an informed decision that is legally defensible on what to do with the dog once it is retired from active duty. The police K9 field does not have as much documentation, literature, and study attached to it as other fields within law enforcement, like narcotics investigation and Special Weapons and Tactics (SWAT). With this being the case, more information needs to be available to agencies that do not have knowledge or experience in the field.

The purpose of this research is to provide a study that helps to document agency practices and industry standards on this topic in the absence of this information currently being published or documented. As previously stated, police K9 does not have as much formal coverage as other specialties within law enforcement, and more is needed within the field. The researcher hopes to provide a base of information on a topic that affects all agencies that employ a police K9 while at the same time stimulating additional research and commentary on the topic specifically, as well as the K9 field in general.

The method of inquiry used by the researcher included a review of literature from the field of police K9. This included texts and articles, a review of applicable state and federal laws, a review of a study conducted by the Plano Police Department, and an interview with an industry expert. The researcher discovered that there was little to no written documentation on what agencies do with their retired police K9's, but there was, in fact, an unofficial industry standard in place, where the agencies would divest themselves of the dog via transfer of ownership.

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INTRODUCTION

The problem or issue to be examined considers whether there is an industry standard as to what happens with a police K9 when it is retired. An agency has to determine if they will maintain care and control of the animal after its service retirement or attempt to pass that responsibility and liability on to another entity. There are several options open to agencies if they attempt to dissolve themselves of the financial and legal responsibilities of caring for the retired animal. The most evident possibility would be to sell the dog via contract to its handler or trainer. Beyond that, other options may be selling the dog to another member of law enforcement, a civilian, or finding a rescue shelter for the dog. The final option would be euthanizing the dog. There are several options currently available to agencies retiring a police K9. A secondary issue centers on whether any one particular option is more prevalent and defensible. For the purposes of this paper, defensible relates to whether the liability is reduced or eliminated for the agency while being responsible in dealing with an animal that has provided service to the agency and its community.

The relevance of what happens to retired K9's in law enforcement is a multifaceted issue. It has far reaching effects, from the liability and cost to the agencies to the liability and cost incurred by the person who cares for them after their retirement. Depending on the approach taken by a given agency, it may also be a public relations issue that can elicit commentary and judgment from average citizens or watch groups, such as PETA, as well as members of the agency itself.

The purpose of this research is to provide agencies that utilize police K9's some basis for making a decision regarding what to do with their retired dogs. Additionally, the

author hopes to spark further thought and research into this area. There are issues beyond the simple matter of agency liability, such as financial and liability burdens to the new owner even if it is the dog's agency handler.

The research question to be examined focuses on whether there is an official industry standard, unofficial industry standard, or, in the absence of either of these, whether there is a majority opinion on what is currently done by agencies that utilize police K9's when they retire a dog. Research will attempt to determine if there is any legal precedent or opinions that substantiate or defend any particular practice that that is utilized when making a decision on what to do with the retired K9. Also examined are the effects of these decisions on the agencies and those who are affected by the decision.

The intended method of inquiry includes: a review of articles, Internet sites, and periodicals. The author will also attempt to locate relevant federal and Texas State law relating to the liability surrounding police K9's. Finally, a survey conducted by the Plano Police Department with members of the Benchmark Cities Survey will be reviewed. Benchmark Cities Survey Data, 2008 described the survey in the following manner: "These chiefs sought to establish a measurement tool to help ensure their departments were providing the best service possible within their respective communities" (para 1). Police chiefs around the country designed the survey in 1997, and the surveys conducted by these agencies allow them to compare their actions with other law enforcement agencies across the country. This, in turn, gives them a broader base for gathering of information and making decisions that will help them establish "best practices."

The intended outcome or anticipated findings of the research will address an issue in law enforcement that carries much potential for negative impact. It will also provide the basis for discussion in coming up with a defensible industry standard that lends credibility to any agencies affected by this. Finally, the outcome will provide some additional information to assist in making a decision that may not have been considered previously. The field of law enforcement will benefit from the research because, presently, there is little published guidance or opinion within the law enforcement community on this issue. As stated previously, this topic has potential ramifications with reference to liability and financial cost as well as public and employee relations.

REVIEW OF LITERATURE

Research was examined relating to the tactics and training of dogs for police service. Bryson (1996) and Watson (1996) covered information ranging from selection of police dogs and handlers to training and tactics. These resources were very informative for gaining information about the implementation and operation of a K9 unit and the individuals involved. Neither of these sources covered the subject of what is to be done with the dog once its service life is over.

Stationery Office Books (1973) created a manual from the British Police that covered everything from raising a dog for eventual police service, initial training, operational training, kennel requirements to health and tactics. This manual also stopped short of providing information as to what to do with the dog once its service life is complete. Based on the conducted investigation, the researcher could not find a training manual or book that, at any point, related to the topic of what to do with the dog once it was retired from service.

Kanable (2007) described the work of a group called the Scientific Working Group on Dog and Orthogonal Detector Guidelines. SWGDOG is a nationally recognized peer-reviewed research group whose goal is to improve the performance of K9 teams using guidelines described as “best practice” (Kanable, 2007). SWGDOG is associated with and funded by the National Institute of Justice, the Federal Bureau of Investigation (FBI), and the Department of Homeland Security. With this relationship, SWGDOG hopes their work will lead to recognized national standards established from their findings and an accrediting body to oversee this field. Kanable (2007) related the mission of the group, and while its primary focus is based on operations and establishing industry standards, it also addressed ancillary issues such as “terminology, general guidelines, selection of serviceable dogs, kenneling and health care”(p. 3). As with the texts noted already, there is a common factor. Noticeably absent is what to do with the retired dogs as well as any pertinent issues that may have a bearing on a decision by any agency that is retiring a police K9.

One of the members of SWGDOG is Terry Fleck, a retired Deputy Sherriff from South Lake Tahoe, California. Fleck was a long time K9 handler and has become a full time lecturer and trainer in the police K9 field since his retirement. Fleck is recognized in the industry as an expert in field of K9 issues and, specifically, in K9 law. On October 7, 2008, the author conducted an interview with Fleck via telephone. During the course of the phone interview, Fleck addressed some of the author’s theories regarding retired K9’s. Fleck advised that, recently, he had completed an article on Homeowners Insurance in relation to police K9’s residing at their handler’s residence. As a result of this, he noted several things. He stated that it would be correct to state that there is an

industry standard regarding what is done with the retired dogs. The current industry standard is for the ownership of the agency owned dog to be transferred to a handler by execution of verbal or written contract. This is usually accomplished for a nominal sum; the most common sum is one dollar (\$1.00). At this point, the handler assumes the liability for the dog and its actions (T. Fleck, personal communication, October 7, 2008). This was also confirmed through a survey conducted by Lieutenant Glenn Cavin of the City of Plano, Texas police department in 2007. Lieutenant Cavin surveyed the Benchmark Cities and some surrounding agencies regarding their policy or practices on what they do with a police K9 when it is retired. Of the nine respondents to this survey, only one agency maintained ownership of the dog and continued funding its maintenance (G. Cavin, personal communication, October 8, 2008).

Included in the establishment of an industry standard is the defensibility of this standard. The author researched applicable laws and rulings regarding police K9 units in general and also those specifically addressing retired service dogs. An article by Franscell and Mauer (2002) dealt specifically with the most prevalent case rulings dealing with this industry and provided a summary of many court cases on varying aspects of police K9 units. The topics covered focused on the search and seizure related rulings and liabilities in relation to civil lawsuits related to the actions of the dogs and their handlers. There are numerous court cases that address dog bites in the use of the apprehension of a suspect and how and when a dog is to be deployed. Additionally, there are plenty of cases that relate to dog bites that occur outside the apprehension of a suspect. There is one area that is noticeably not addressed in these court cases and that surrounds incidents involving dogs that have been retired from service.

The author was able to locate a federal law related to the adoption of military working dogs upon their completion of service. Public Law 106-466 (2006) related specifically to a dog working for the United States military under the Department of Defense. It sets guidelines for the adoption, including a review of the suitability of the dog for adoption to those eligible to adopt the dog. It also stated clearly that once this adoption or transfer of ownership takes place, the liability of the United States for the dog and its actions is eliminated notwithstanding any other legal provision. The author was unable to locate any similar law that pertained to law enforcement agencies.

During the interview with Fleck, the legal issues surrounding the transfer of ownership and liability from the agency to the handler or person taking ownership of the dog was addressed. Fleck was asked about the legal standing of agencies divesting themselves of liability by sale of the dog. Fleck advised that, as part of his preparation for a training session, he researches the laws of the state that he will be instructing in. His research showed that all of the states he has visited have laws that establish the owner of the dog as the one liable for its actions. Fleck admitted that he has not been to all fifty states, but he has instructed in or researched a majority of them, including Texas (T. Fleck, personal communication October 7, 2008). With this being said, it appears that once the ownership of the dog is transferred from the agency to the handler or other party adopting the dog, the agency has eliminated its liability. While the elimination of liability is not covered in a federal statute, as with the military working dogs, individual states have appeared to cover this issue in a general law regarding dog ownership. The state of Texas is no different and covers this area of law in Vernon's

Civil Statutes (Title 6: Article 1) and the Texas Health and Safety Code Chapter 822 (Chapter 822: Health and Safety Code, 2003).

One last area examined was some of the effects of the decisions that are made regarding the retired service dog. In talking with several handlers, one area of concern with taking ownership of the dog was centered on the financial aspect. The most common reason a dog is retired is due to age and health. Simply put, the dog is no longer able to work at a level that is effective or safe due to health concerns. With that stated, when the agency sells the dog, the new owner is now responsible for the maintenance of that dog, which is already in a declined state. Another factor revolves around homeowners insurance. While the dog is in active status, it is generally accepted that the agency's insurance will cover incidents involving dog. The handler is responsible for following prescribed departmental policies and procedures for the handling of the dog. This changes once the ownership has been transferred. As such, handlers who take ownership of the retired dog have concern surrounding their homeowners insurance. According to Fleck (2008), this is an issue that can vary from state to state and among insurance companies. He stated, "Every insurance agency I contacted was different from the other. In addition, every insurance company has different rules for every state. Therefore, one cannot make a blanket statement about an insurance company's coverage" (p. 2). It is clear at this point that insurance is needed in this situation. The cost though, now, becomes the burden of the person taking ownership of the dog.

One other area of concern discussed in the interview with Fleck involved some of Texas' communities instituting vicious dog statutes. It should be noted that this is not a

State of Texas statute set out in Chapter 822 of the Texas Health and Safety Code (Chapter 822: Health and Safety Code, 2003); these are municipal or local government codes. In some cases, monetary bonds are required to be posted by the owner of a dog that is, by breed, listed in this category. According to Fleck, Texas is one of the only places he has heard of this type of action. He believes this to be unnecessary as it is not unusual for insurance companies to address this within their policies and adjust their rates accordingly (T. Fleck, personal communication, October 7, 2008).

METHODOLOGY

The research question to be examined considers whether or not there is an industry standard within the police K9 field as to what to do with the dog after it is retired from service. Also to be questioned is whether this standard can be seen as legally defensible. Finally, the author questions the effects of the decision made and how it affects these persons.

The researcher hypothesizes that there is some sort of industry standard in which police agencies divest themselves of services dogs after they are retired. The researcher also feels that there is not much formal documentation of this standard, and this will be shown by the lack of information available to an agency facing this decision. The researcher believes that some, if not all, of these decisions will be in some way legally defensible. Additionally, the researcher believes that there will be several issues that will be found that are not readily known to those in a position to make the final disposition of the retired K9. These issues should have bearing on future decisions made relating to this issue.

The method of inquiry will include: a review of periodicals and articles from journals, magazines, and Internet sites. It will also include personal interviews with experts in related areas. Finally, a survey conducted by the City of Plano Police Department, related to this topic, will be compared to information garnered from the review of literature and interviews of field experts.

The instrument that will be used to measure the researcher's findings regarding the subject of what is done with retired K9's once their service life is over will include a comparison of information obtained by the researcher from the listed method of inquiry. This compilation of material should give the researcher a basis for coming to a conclusion on the hypothesis presented. The survey will be used to confirm or deny the presence of, at minimum, an unofficial industry standard.

The size of the survey will consist of four questions, distributed to 18 survey participants from agencies in North Texas as well as agencies across the United States that feature similar demographics to the City of Plano, Texas. The response rate to the survey instrument resulted in nine agencies responding to the inquiry. This is a small number, but it is enough to be utilized to gain a perspective of agency practices. The information obtained from the survey will be analyzed by the researcher and by those who review this research. It should be noted that the City of Plano Police Department has already reviewed this information and incorporated it into its decision making process on this topic.

FINDINGS

Through the research of literature, interviews, and survey, the author is comfortable in stating that there is an established industry standard as to retiring a

police K9. This industry standard would be for the agency to sell the dog upon its retirement from service. In most instances the dog is sold to its handler or trainer, usually for a nominal fee, and this transaction is documented through a legally binding document or contract. While the author is comfortable stating that an industry standard has been established, the research showed that this standard is not readily documented. The author found little to no guidance on this matter in two texts related to the training and use of police K9's, two trade magazine related articles, three legal websites, and one municipal website. Only one website, a trade website, offered any firm relevance on the topic as noted in the Review of Literature. The main source for documenting this standard was a survey of agencies and confirmation from a police K9 industry expert.

Based on current state law in Texas and many other states, at this point, the agency would have divested itself of liability surrounding the dog and its actions. While state law may have this area covered, the author noted that there does not appear to be any case law to support that the agency has truly divested itself of all liability. It is possible that an individual could still sue the agency for the actions of the retired dog, even though ownership has been transferred. The federal law pertaining to retired military working dogs, Public Law 106-466 (2006) 2582, addressed this issue and spelled out, specifically, that the military is no longer responsible legally for the actions of the dog once the ownership is transferred. There is no corresponding law for law enforcement working dogs on the federal level or state level.

The author also noted that while the main goal of the agency to relieve itself of liability surrounding the actions of the retired dog is accomplished, the agency, in most

cases, is passing on this liability and fiscal responsibility to one of its employees. This also causes an increased financial burden on the handler or trainer, who takes ownership of the dog the majority of the time. This financial burden is in the form of increased homeowners insurance, medical bills for a dog that agency has used until it was no longer deemed feasible to work, and other expenses that may be required by governing bodies where the new owner lives. This needs to be known by the agency when determining what process they will use to retire the dog from service.

One last thought on agency considerations is that once the agency transfers ownership, it loses any control over how the dog is handled, maintained, or cared for. This could potentially prove costly for the agency if future case law shows that current statutes do not totally absolve the agency of any or all liability for the dog's actions after transfer of ownership. While this has not come to pass at this point, the possibility still exists as only the United States military has formal law relieving itself of liability once ownership is transferred.

The results of the survey conducted by the Plano Police Department and referenced by the author in this article are provided below. A summary of the results is posted below the table.

Table 1. Actions taken by agencies when retiring police K9.

AGENCY	DISPOSITION OF CANINE UPON RETIREMENT	CONTRACT EXECUTED TO TRANSFER OWNERSHIP	VETERINARY EXPENSES PAID BY DEPARTMENT	FOOD EXPENSES PAID BY DEPARTMENT	COMPENSATION PROVIDED FOR HANDLER'S TIME WITH RETIRED CANINE
Fremont, CA	Handler is given option to purchase the Canine for \$1.00. No procedures were cited for alternate placement.	Yes	No	No	No
Dallas, TX	Handler is given option to purchase the Canine for \$150.	Unknown	No	No	No
Garland, TX	Handler is given option to assume ownership of the Canine. No handlers have declined, so no procedures exist for alternate placement.	Yes	No	No	No
Irving, TX	Handler is given option to take ownership of the Canine. No handlers have declined, so no procedures exist for alternate placement.	No - Only documentation is a receipt for \$1.00 paid by officer. Canine is treated as a depreciated asset.	No	No	No
Bellevue, WA	Handler is given option to purchase the Canine for \$1.00. If the handler declines, the Canine is offered to other officers in the department.	Yes	Yes - Up to \$5000 and five years maximum, with care provided by same clinic as active duty Canines.	Yes - One bag per month for maximum of five years or life of Canine (whichever is shorter).	No
Olathe, KS	Handler is given option to assume ownership of the Canine. If the handler declines, the Canine is euthanized.	Unknown	No	No	No
Naperville, IL	Handler is given option to purchase the Canine for \$1.00. If the handler declines, the Canine Supervisor makes a determination what to do with the Canine.	Yes	No	No	No
Fort Collins, CO	Handler is given option to assume ownership of the Canine. No procedures were cited for alternate placement.	Unknown	Yes, but limited to those necessary due to line-of-duty injuries.	No	No
Edmond, OK	Handler is given option to assume ownership of the Canine. No procedures were cited for alternate placement.	Deputy Chief Steve Thompson advised that they have not used a contract in the past; however, he sent one that was just drafted for future use.	Yes, but discussions are currently in progress to determine if this will continue	No	No

In summary, a poll of several police departments with active canine units was taken to determine how other agencies routinely handled the retirements of canines. Of the nine agencies that responded, only three continued to pay for canine veterinary care

after retirement; one paid for food; and none compensated the officer for care of the retired canine. At least four of the agencies have the officer sign a legal contract assuming ownership of the canine.

DISCUSSION/CONCLUSIONS

The problem or issue examined by the researcher sought to determine if there was a definite common practice among police agencies regarding the retiring of a police K9 from service. Also examined was whether there was any legal standing for any established industry standard. The researcher attempted to locate federal, state, and case law that would provide backing to the majority decision of these agencies. The last thing the author looked to determine was if there were any identifiable secondary issues that resulted from an established industry standard or majority decision. Specifically, the researcher was looking at how these decisions affected all parties involved in the action.

The purpose of this research was to provide agencies with the knowledge to make an informed decision when deciding what to do with the dog when it comes time to retire an active K9. The author also looked to provide a starting point for discussion on this topic that could be expanded on by others with expertise in the K9 field. This, in turn, could lead to further documentation on this topic within the K9 field.

The researcher hypothesized that, at minimum, there was an unofficial industry standard as to how agencies dealt with the dog after it had been retired from active K9 service. Defensibility was the next issue that needed to be researched, and this defensibility was both from a legal standpoint as well as a public relations standpoint. The researcher hypothesized that there were some laws that would support the standard but was unsure at what level there was support. He also believed that

euthanasia was a possible option that was considered a last resort solution due to its public relations ramifications.

The researcher concluded from the findings that the industry standard was for the agency to sell the dog to another entity, usually the dog's handler or trainer. This was usually accomplished via contract for a nominal fee. It was found that under state of Texas law, the owner of a dog is liable for its actions, thus with this transaction the agency divested itself of liability. The researcher also found that, while state law may say the owner is liable for a dog's actions, there is no corresponding case law or federal law that absolves the agency of all liability like what is provided for the United States military in Public Law 106-466 (2006) 2582. This law absolves the military of liability after the ownership transfer takes place.

The findings of the research did support the hypothesis. The reason why the findings did support the hypothesis is probably due to one main factor. One of the primary goals of a public entity, such as a law enforcement agency, is to not expose itself to unnecessary liability. With the state laws indicating that the owner of the dog is liable for the dog's actions, it makes sense that the agency would attempt to no longer maintain ownership of the dog once its working life was completed. This very much simplifies the decision making for the agency. Additional information, though, needs to be considered as learned from the research. The researcher found, from the research and the interview with Terry Fleck, that it is rare that the dog's handler or trainer will not take possession of the dog to care for it once it is retired. (T. Fleck, personal communication, October 7, 2008). However, this adds an additional financial burden to this handler in the form of insurance and medical bills. Additionally, on the outside

chance the handler is not able to take the dog; a contingency plan needs to be in place. Euthanasia is not an option for most agencies and is, potentially, a public relations nightmare.

The researcher had several limitations regarding this study. The first limitation dealt with the lack of published material on this subject. As stated earlier, most manuals and texts on police K9 training and maintenance do not include any information as to what to do with the dog when it is ready to be retired from service. Additionally, within the police K9 industry, there is not much in the way of documentation on what is done with the retired dogs. However, Terry Fleck did have research that dealt with homeowners insurance and the police dog. Another limitation to this study was a lack of case law on the subject. Case law is seen as an excellent tool for decision making if there is any related to the topic in question. To this point, the researcher has not been able to find any case law related to retired K9 issues.

The study of retiring a police K9 is relevant to contemporary law enforcement because this is an issue that faces any agency that currently employees a police K9. It is especially important for those agencies that have not yet retired a police K9 or do not have some sort of policy currently in place regarding this issue. As a public entity, the law enforcement agency is tasked with making decisions that affect not only the citizens it serves and its employees but also the industry as a whole. These decisions need to be made considering all of those affected.

Law enforcement in general, but specifically the police K9 field, stands to benefit from the results of this research. The researcher believes that additional study on this topic is warranted. While the industry standard has been established, there needs to be

confirmation that this is the correct way to proceed when an agency is faced with retiring a police K9. Additionally, follow-up and an expanded research of the legal ramifications and liability standards would be beneficial.

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