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Court of Appeals of Michigan, Division No. 2.
 Audrey M. YOUNGBLOOD, Plaintiff-Appellant,
 and
 Frank J. Kelley, Attorney General of the State of
 Michigan, Intervening Plaintiff-Appellant,
 v.
 COUNTY OF JACKSON, Defendant-Appellee,
 and
 The Regents of the University of Michigan, Inter-
 vening Defendant-Appellee.

Docket Nos. 9280, 9316.

Dec. 2, 1970.


Leave to Appeal Denied Feb. 2, 1971.

Released for Publication March 5, 1971.

Action to restrain Jackson County from giving or selling dogs impounded by the county to the University of Michigan for experimental purposes. The Attorney General intervened as third-party plaintiff and filed a complaint in quo warranto to test the county's questioned authority to so act. The Board of Regents of the University of Michigan intervened as a third-party defendant. The Jackson County Circuit Court, John C. Dalton, J., dissolved temporary restraining order and dismissed the actions. The plaintiff and the third-party plaintiff appealed. The Court of Appeals, Quinn, P.J., held that Jackson County has authority to operate a dog pound and to sell impounded and unlicensed dogs to University of Michigan for experimental purposes.

Affirmed.


West Headnotes

Animals 28  **104**

[28](#) Animals

[28k103](#) Pounds

[28k104](#) k. Establishment and Maintenance. [Most Cited Cases](#)

Animals 28  **106**

[28](#) Animals

[28k103](#) Pounds

[28k106](#) k. Sale of Impounded Animals. [Most Cited Cases](#)

Jackson County has authority to operate a dog pound and to sell impounded and unlicensed dogs to University of Michigan for experimental purposes. M.C.L.A.Const.1963, art. 7, § 34; M.C.L.A. §§ 287.261 et seq., 287.277, 287.331 et seq., 287.381 et seq., 287.388, 287.389, 287.394.

****290 *362** Frank J. Kelley, Atty. Gen., Robert A. Derengoski, Sol. Gen., Mixine Boord Virtue and Milton I Firestone, Asst. Attys. Gen., Phillip C. Kelly, Kelly, Kelly & Kelly, Jackson, for appellant.

***363** Bruce A. Barton, Pros. Atty., Jackson, for Jackson County.

Domke, Marcoux, Allen & Beaman, Jackson, for Regents.

Before QUINN, P.J., and DANHOF and CARROLL [FN*](#), JJ.

[FN*](#) HOWARD R. CARROLL, Circuit Judge for the County of Macomb, appointed by the Supreme Court for the hearing month of November, 1970 pursuant to s 306, P.A.1964, No. 281.

QUINN, Presiding Judge.

April 11, 1969, plaintiff filed this action to restrain the county from giving or selling ****291** dogs impounded by the county to the University of Michigan for experimental purposes on the theory that the county had no authority to do so. On the filing of the complaint, a temporary restraining order issued restraining Jackson county from giving or selling dogs impounded by the county to the University of Michigan. The attorney general intervened as third-party plaintiff and filed a complaint in Quo warranto to test the county's questioned authority. Later, the Board of Regents of the University of Michigan was authorized to intervene as a third-party defendant. At the con-

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clusion of the proceedings in the trial court and on March 26, 1970, the temporary restraining order was dissolved, the actions were dismissed, and plaintiff and third-party plaintiff appeal.

During the pendency of these actions, P.A.1969, No. 224, M.C.L.A.1970 Cum.Supp. s 287.381 Et seq. (Stat.Ann.1970 Cum.Supp. ss 12,580(21) Et seq.) became the law effective March 20, 1970. M.C.L.A.1970 Cum.Supp. ss 287.388, 287.389 and 287.394 are pertinent to present decision. They read:

‘Neither a dealer nor a county, city, village or township operating a dog pound or animal shelter shall sell or otherwise dispose of any dog or cat within a period of five business days after the acquisition of such animal.

Dogs and cats shall not be offered for sale or sold to a research facility at public auction or by weight; or purchased by a research facility at public auction or by weight. A research facility shall not purchase any dogs or cats except from a licensed dealer, public dog pound, humane society, or from a person who breeds or raises dogs or cats for sale. Any county, city, village or township operating a dog pound or animal shelter may sell for an amount not to exceed \$10 per animal or otherwise dispose of unclaimed or unwanted dogs and cats to a Michigan research facility.

The provisions of this act shall be in addition to and not in contravention of the provisions of act No. 339 of the Public Acts of 1919, as amended, being ss 287.261 to 287.290 of the Compiled Laws of 1948.’ ^{FN*}

^{FN*} See also P.A.1969, No. 287, M.C.L.A.1970 Cum.Supp. s 287. 331 Et seq. (Stat.Ann.1970 Cum.Supp. ss 12.481 (101) Et seq.).

On the basis of P.A.1969, No. 224, the trial court held that the county had authority to sell impounded and unlicensed dogs to the University of Michigan and that the questions raised by these actions were moot.

If Jackson county has authority to operate a dog pound, the trial court was correct in holding that P.A.1969, No. 224 authorized the sale of impounded and unlicensed dogs to the University of Michigan by

the county.

At the outset, we disagree with the view of plaintiff and third-party plaintiff that counties have only those powers which have been conferred on them by constitution and statutes insofar as that view implies that such powers are limited to Express powers. *364 Our disagreement arises from Const.1963, art. 7, s 34, which provides that the constitution and law concerning counties shall be liberally construed in their favor and that powers granted to counties by the constitution and by law shall include those fairly implied and not prohibited by the constitution.

It is apparent from the language employed in M.C.L.A.1970 Cum.Supp. s 287.394, *Supra*, that the provisions of P.A.1969, No. 224, must be read in context with M.C.L.A. s 287.261 et seq. (Stat.Ann.1967 Rev. ss 12.511 et seq.), which is generally referred to as ‘the dog law’. The ultimate enforcement of the licensing provisions of the dog law lies with the county, M.C.L.A.1970 Cum.Supp. s 287.277 (Stat.Ann.1970 Cum.Supp. s 12.527), but the authority to kill unlicensed dogs must be exercised with some judgment, [Finley v. Barker \(1922\), 219 Mich. 442, 189 N.W. 197](#). An element of that judgment is **292 holding a dog for a period after obtaining it before disposing of it. This requires a place for confinement, namely: a pound. The authority to operate a pound may fairly be implied from the obligation placed on the county by the dog law.

There is no testimonial record in this case but unrefuted factual allegations in defendant's pleadings indicate that unclaimed, unlicensed dogs found running at large are disposed of but licensed stray dogs are held for the owners. This conduct we find to be in compliance with the county's statutory obligation as interpreted by *Finley, supra*. Both courses of action require a place for confining dogs pending their disposition.

This conclusion obviates discussion of the validity of the county's dog ordinance.

Affirmed without costs, a public question being involved.

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C

Supreme Court of Michigan.
 FINLEY
 v.
 BARKER et al.

No. 60, April Term, 1922.
 July 20, 1922.

Appeal from Circuit Court, Van Buren County, in Chancery; L. Burget Des Voignes, Judge.

Suit for injunction by Lucian Finley against Dwight C. Barker and others. Decree granting plaintiff part of the relief prayed for, and defendants appeal. Affirmed.

Argued before FELLOWS, C. J., and WIEST, McDONALD, CLARK, BIRD, SHARPE, MOORE, and STEERE, JJ.

Fellows, C. J., and Bird, J., dissenting in part.

West Headnotes

[1] Constitutional Law 92 4311

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)13 Animals and Plants, Regulation of
92k4311 k. Domestic animals and pets. [Most Cited Cases](#)
 (Formerly 92k320)

Though dogs are recognized as property which may be the subject of larceny, they are a proper subject for legislative regulation under the police power, and the Legislature can authorize, as it did by Pub.Acts 1919, No. 339, the summary killing of unlicensed dogs without depriving the owner of his property without due process of law.

[2] Animals 28 43.1

28 Animals
28k43 Injuring or Killing Animals in General
28k43.1 k. In general. [Most Cited Cases](#)
 (Formerly 28k4)

The provision of Pub.Acts 1919, No. 339, § 17, making it the duty of the sheriff or members of the state constabulary to locate and kill unlicensed dogs, does not require the officers to trespass upon private premises of the owner of the dogs for the purpose of killing them.

[3] Animals 28 49

28 Animals
28k47 Running at Large
28k49 k. Statutory regulations in general. [Most Cited Cases](#)

The provision of Pub.Acts 1919, No. 339, § 17, requiring the sheriff to kill on complaint from the prosecuting attorney any dog that is in the habit of running at large, which is defined, as applied to unconfined stock, as strolling without restraint, goes beyond reasonable regulation, and is invalid.


[4] Animals 28 2.5(3)

28 Animals
28k2.5 Licensing
28k2.5(3) k. Licenses, permits and tags. [Most Cited Cases](#)
 (Formerly 28k4)

Under Pub.Acts 1919, No. 339, requiring owners of dogs to apply for a license by January 10th of each year, and fixing subsequent dates on which the officers are to perform certain acts, but neither expressly permitting or prohibiting the issuance of licenses after the specified date, the treasurer can issue a license on application made even after June 15th, when he is required to furnish to the sheriff a list of unlicensed dogs, but such license will not protect the owner from prosecution for failure to apply for the license in time, and the owner runs the risk of his dogs being killed

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before the sheriff receives notice of the issuance of the license.

Animals 28  **3.5(2)**

[28](#) Animals
[28k3.5](#) Regulation in General
[28k3.5\(2\)](#) k. Power to regulate in general; preemption. [Most Cited Cases](#)
 (Formerly 28k4)

Animals 28  **43.1**

[28](#) Animals
[28k43](#) Injuring or Killing Animals in General
[28k43.1](#) k. In general. [Most Cited Cases](#)
 (Formerly 28k4)

Though dogs are recognized as property which may be the subject of larceny, they are a proper subject for legislative regulation under the police power, and the Legislature can authorize, as it did by Pub.Acts 1919, No. 339, the summary killing of unlicensed dogs.

***443 **198** James E. Chandler, of Paw Paw (Merlin Wiley, Atty. Gen., of counsel), for appellants.

Harry C. Howard, of Kalamazoo, for appellee.

STEERE, J.

Defendants are county officers of Van Buren county, Duncombe being county treasurer, Barker sheriff, and Chandler prosecuting attorney. Upon each duties are imposed in the administration and execution of Act No. 339, Pub. Acts 1919. In former years various so-called dog laws of the state and territory of Michigan have been enacted from time to time, beginning as early as 1805, but this one the Legislature introductorily declared in its section 1 'shall be known and may be cited as the Dog Law of 1919 of the state of Michigan.'

Plaintiff resided upon and owned a farm in Almena ***444** township, in said county. He kept there, and owned, five dogs of various ages, whose lives were put in jeopardy by defendants' activities in performance of their respective duties under said act, impelled thereto by the fact that plaintiff had neglected to timely pay license fees for the current year and

procure protective insignia for his dogs to wear as required by said Dog Law. Failing in a belated effort to pay the license fees and save his dogs before the sheriff located and destroyed them as public nuisances, he filed this bill of complaint and secured a temporary injunction protecting his dogs pending the hearing. When the case was heard the court denied plaintiff's attack upon the constitutionality of the law, but construed the act as permitting him to obtain licenses for his dogs at the time he made application to the county treasurer and tendered payment therefor. With this he was apparently content. Questioning the court's construction of the act, defendants appealed.

Denying certain of plaintiff's inferences and legal conclusions, defendants admit in their answer the material facts stated in his bill of complaint sufficient to fairly present the questions argued. The case was submitted without proofs by stipulation of counsel on the pleadings.

It is shown by plaintiff's bill that he has been a resident of Van Buren county for over 50 years, has during that time owned and kept at his home in Almena township many dogs, for which he always paid taxes and secured licenses as the laws required, in all respects complying with existing acts upon that subject; that the dogs he now owns are valuable animals, for which he intended and was desirous of securing licenses and complying with the law as to them; for that purpose he went to defendant Duncombe, the county treasurer, on or about both July 11 and 12, 1921, and unsuccessfully made application ***445** to him for licenses for the five dogs he kept on his farm, stating age, breed, markings, etc., and on July 14, 1921, he again made application to the county treasurer for such licenses in writing, tendering him \$21 in lawful money of the United States therefor, but on each of said dates the treasurer refused to accept his tender or to favorably consider his application; therefore he brings into court the said sum of \$21, being the lawful fees for such licenses, and 'stands ready and willing to pay any other or further sum required by law as fees for licenses for said dogs'; that as a result of the county treasurer's refusal his dogs are without licenses and liable to be killed, and he to be prosecuted for keeping them; that defendant Chandler threatens as prosecuting attorney to institute proceedings against him for violating said act, and defendant Barker, as sheriff, threatens to kill his unlicensed dogs, which he fears and has good reason to

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believe they will do. Finding himself and his dogs in that uncomfortable situation without adequate remedy at law, he appeals to the chancery court for relief.

Plaintiff concedes the facts stated in paragraph 9 of defendants' answer, which fairly presents their position as follows:****199**

'Answering the ninth paragraph of said bill of complaint, defendants admit the allegations therein contained, and say that on the 10th day of January, 1921, and on each and every day between that day and, to wit, the 15th day of June, 1921, when the county treasurer of said county made his return to the sheriff and the prosecuting attorney of said county of the dogs therein on which license fees had not been paid, and for which licenses had not been applied, the said Lucian Finley was the owner of the dogs described in paragraph 7 of said bill of complaint, and had not applied for or paid the license fees on any of said dogs up to said 15th day of June, 1921, and, on making the aforesaid reports to ***446** the said sheriff and prosecuting attorney of the unlicensed dogs within the limits of the county of Van Buren, the said county treasurer thereafter refused to accept license fees and issue license on dogs after said day, for the reason that, under the so-called Dog Law of 1919, he was without authority to receive the money of the said Lucian Finley and issue him licenses applied for on the aforesaid dogs.'

The act under consideration indicates legislative recognition that former dog laws administered by independent local officials were often more honored in the breach than in observance and enforcement, which it was the intent to remedy by providing state control. Section 4 of the act gives supervision over licensing and regulation of dogs to the State Live Stock Sanitary Commission, with authority to employ all proper means for enforcement of the act, and 'all public offices of the state, county, municipality or township' are put at its disposal for that purpose. By section 26 police officers failing or refusing to comply with any provision of the act are made guilty of a misdemeanor, and subject to fine and imprisonment.

License tags, blank forms, and books for registration are to be furnished by the state treasurer under direction of the commission to each county treasurer before the first of the year, who is himself authorized to issue licenses and, on application, to furnish tags,

blanks, etc., to city and township treasurers for issuance by them. They are required to account and report to him. He is required to keep a complete record of all licenses issued in the county during the year, with specific data as to locality, description of dog, owner, etc. Every supervisor and city assessor is required when making his assessment to take a census of dogs and dog owners in his assessment district, and make a complete report of the same, on blank forms furnished by the Live Stock Commission, ***447** to the county treasurer on or before June 1 of each year, for which such assessor receives a fee for each dog reported. Owners of dogs are required to apply for licenses on or before January 10. While in default for not so doing, with their unlicensed dogs outlawed, the act does not in express terms forbid issue of licenses to them thereafter on proper application and payment therefor. The program providing for conducting and rounding up the business gives color to the contention that a belated owner may save his dog if yet alive by proper application and payment of the annual license fee until at least June 15, when the open season for unlicensed dogs and imperative action by the officers to make it effectual appears to be provided by section 17 of the act, as follows:

'On June fifteenth of nineteen hundred twenty and each year thereafter, each county treasurer shall make a comparison of his records of the dogs actually licensed in each city or township of his county with the report of the supervisor of said township or assessor of said city, to determine and locate all unlicensed dogs, On and after June fifteenth of each year every unlicensed dog, subject to license under the provisions of this act, is hereby declared to be a public nuisance and the county treasurer shall immediately thereafter list all such unlicensed dogs, as shown by the returns in his office of the supervisors and assessors, and shall deliver copies of such lists to the sheriff and prosecuting attorney of said county. On receiving from the county treasurer the name of any owner of any unlicensed dog, the prosecuting attorney shall at once commence the necessary proceedings against the owner of said dog, as required by the provisions of this act. It shall also be the duty of the sheriff or any member of the state constabulary to locate and kill, or cause to be killed, all such unlicensed dogs. Failure, refusal or neglect on the part of any sheriff to carry out the provisions of this section shall constitute non-feasance in office. The sheriff shall also kill, on complaint from the prosecuting attorney, any dog that is in the habit of ***448** running at large unaccompanied by

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owner or his agent.’

This section is complained of by plaintiff as drastic, harsh, unreasonable, and unconstitutional, because it gives officers power to locate and kill an unlicensed yet valuable and harmless dog even if in charge of or confined on the premises of its owner, and thereby deprive him of his property without due process of law.

[1] Statutory authority to kill unlicensed dogs, which necessarily deprives the owner of them, does not in itself render unconstitutional a law enacted under the police power of the state for their regulation and license. Though not at common law regarded as subjects of larceny, dogs have by statutory provision and court construction come to be quite generally recognized as in their nature and relations with man ‘goods or chattels,’ and in a qualified sense property which may be subject to larceny as defined by statute.

‘Property in dogs is of an imperfect or qualified nature and they may be subjected to peculiar and drastic police regulations by the state without depriving their owner of any federal right.’ [Nicchia v. New York, 254 U. S. 228, 41 Sup. Ct. 103, 65 L. Ed. 235, 13 A. L. R. 826.](#)

**200 In [Sentell v. New Orleans, etc., Ry., 166 U. S. 698, 17 Sup. Ct. 693, 41 L. Ed. 1169](#), the subject is instructively discussed by Justice Brown in part as follows:

‘The very fact that they are without the protection of the criminal laws shows that property in dogs is of an imperfect or qualified nature, and that they stand, as it were, between animals *ferae naturae* in which, until killed or subdued, there is no property, and domestic animals, in which the right of property is perfect and complete. * * * * They have no intrinsic value, by which we understand a value common to all dogs as such, and independent *449 of the particular breed or individual. Unlike other domestic animals, they are useful neither as beasts of burden, for draught (except to a limited extent), nor for food. They are peculiar in the fact that they differ among themselves more widely than any other class of animals, and can hardly be said to have a characteristic common to the entire race. While the higher breeds rank among the noblest representatives of the animal kingdom, and are justly esteemed for their intelligence, sagacity, fidelity,

watchfulness, affection, and, above all, for their natural companionship with man, others are afflicted with such serious infirmities of temper as to be little better than a public nuisance. All are more or less subject to attacks of hydrophobic madness. * * * Acting upon the principle that there is but a qualified property in them, and that, while private interests require that the valuable ones shall be protected, public interests demand that the worthless shall be exterminated, they have, from time immemorial, been considered as holding their lives at the will of the Legislature, and properly falling within the police powers of the several states.’

Various authorities are cited and reviewed in that opinion supporting the general proposition that destruction of unlicensed dogs pursuant to specific statutory requirement is not in violation of the owner's constitutional property protection, but to regulate and control the use and keeping of such property in a manner deemed by the Legislature reasonable and expedient in the public interest. The police power has been said to include regulations which authorize killing unlicensed dogs running at large, without notice to the owner. [Julienne v. Jackson, 69 Miss. 34, 10 South. 43, 30 Am. St. Rep. 526](#); [Leach v. Elwood, 3 Ill. App. 453](#); [Morey v. Brown, 42 N. H. 373](#). But in [Kerr v. Seaver, 11 Allen \(93 Mass.\) 151](#), it was said a provision in a dog law that ‘any person may, and every police officer and constable shall, kill or cause to be killed all such [unlicensed] dogs whenever*450 and wherever found,’ did not authorize entering upon the owner's premises without leave and pursuing such dog into the house to capture it for that purpose.

In this state they have long been recognized as a proper subject for special and peculiar legislative regulation under its police power. [Van Horn v. People, 46 Mich. 183, 9 N. W. 246, 41 Am. Rep. 159](#). In [Heisrodt v. Hackett, 34 Mich. 283, 22 Am. Rep. 529](#), where a dog license law, was under consideration which provided that ‘any person may, and it shall be the duty of any police officer and constable of any township or city to kill any all dogs going at large and not licensed or collared according to the provisions of this act,’ it was appropriately suggested:

‘The Legislature, undoubtedly, in adopting this statute, contemplated that at least some judgment would be exercised by the person before killing the dog.’

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In [Hagerstown v. Witmer, 86 Md. 293, 37 Atl. 965, 39 L. R. A. 649](#), where it was held provisions for summary destruction of dogs found running at large contrary to statute or ordinance were within the police power of the state, and constitutional, the court said in commenting on the law under consideration:

‘But while this is true, an ordinance embracing such drastic features should be very cautiously enforced. As many of the provisions of the one before us are, to say the least, severe, it should be construed liberally in favor of the owners of dogs, if any cases arise under it, and it ought not to be extended beyond what is absolutely required by its terms.’

[2] The provision in section 17 of this act making it the duty of officers to locate and kill or caused to be killed unlicensed dogs is of the class where ‘at least *451 some judgment’ should be exercised in executing it, and by fair construction within constitutional bounds its reasonable execution does not require trespassing upon or invading the private premises of its owner for the purpose of killing his unlicensed but otherwise unoffending dog. We cannot agree with defendants’ contention that such construction draws the teeth of the act, and renders it ineffectual, for in the same section it authorizes and requires the prosecuting attorney to commence proceedings against the owner of the dog as required by the act, and the act makes the owner who has violated it by keeping an unlicensed dog guilty of a misdemeanor involving a fine of \$100 and ninety days’ imprisonment.

[3] The closing provision of section 17, requiring the sheriff on the ipse dixit of the prosecuting attorney to kill any dog that is in the habit of running at large unaccompanied by an owner or his agent, if taken, as it reads, to include licensed dogs, goes beyond reasonable regulations. ‘Running at large’ is an idiomatic phrase of varied meaning. It is said to mean, as applied to unconfined stock, ‘strolling without restraint or confinement; rambling at will.’ [Eklund v. Toner, 121 Mich. 687, 80 N. W. 791](#). A law which ipso facto forfeits for so doing without notice to his owner the life of a licensed dog otherwise well behaved and harmless is unreasonable and unconstitutional. **201 Only under special conditions are wellbroken dogs of good disposition kept in confinement. A presumption of value attends a licensed dog. The owner who has complied with the law, paid for and obtained a license

entitling his dog to live, is at least entitled to notice and a hearing before the dog is killed.

[4] The act does not in exact words say that the county treasurer may or may not issue licenses to all applicants throughout the year. It gives him the power to license and makes him the responsible licensing *452 officer of his county, under general supervision of the State Live Stock Sanitary Commission, assisted by township and city treasurers made accountable to him. It provides that at stated times during the year certain things shall be done which, standing alone, give room for the contention that the time for issuing licenses then terminates. But, when taken in connection with other provisions, and considered in the light of the plain purpose of the act, such is not the necessary inference. The indicated intent running through the act is not to provide a period of the year in which owners of valuable or valued dogs cannot protect their lives by registering and procuring licenses for them, but rather by an early beginning of liability and increasing hazards make death of the dog an inevitable finality of failure to secure a license for him. As a spur to prompt action the owner is required to get a license for his dog by January 10th, in default of which he is liable to criminal prosecution for keeping it without a license; annually, on January 25th, the township and city treasurers are required to account to the county treasurers for the licenses furnished them and fees collected; thereafter, when taxes are assessed in the spring, the tax assessors are required to take a census of dogs subject to license, with their owners, and report the same to the county treasurer by June 1st; on June 15 the treasurer is required to determine from his records and locate dogs then remaining unlicensed, and furnish a list of them to the sheriff and prosecuting attorney, whose duties to prosecute and exterminate are then made imperative. The power to license, which was vested in the county treasurer, is not even then terminated by any express provision in the act, but, on the contrary, the treasurer is required to keep a record of all licenses ‘issued during the year,’ and by section 8 provision is made for his licensing after-acquired dogs *453 over four months old during the entire year. Puppies under that age being exempt, the owner is required to secure licenses for them when they are four months old, ‘and in case of application made at any time after the 10th day of July of any year, the license fee shall be one-half the amount fixed as the annual license fee for such dog.’

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The severe and drastic features of this law are for a worthy purpose. Former experience with milder dog laws points to the necessity of such provisions for their enforcement, but liberal construction and discreet enforcement of the more drastic features are permissible within the imperative requirements of its terms and efficient enforcement to accomplish its purpose.

In [State v. Tripp](#), 84 Conn. 640, 81 Atl. 247, where a dog law specified on or before the 1st day of May in which application should be made to the town clerk for a license, the court said:

‘Although the owner of a dog or kennel may be subjected to a penalty for not having applied for a license on or before May 1st of each year, his failure to do so would not render it illegal for the town clerk to afterward issue a license, as was done in this case, for the year following the 1st of May, upon payment of the full license fee for that year.’

Although plaintiff may be subject to fine and imprisonment for previously keeping unlicensed dogs, we conclude that his failure to do so would not affect the right of the county treasurer to issue him the licenses he later applied for on his payment of full license fees for that year, and are satisfied that, under a fair construction of the law considered in its entirety, authority yet remained with the treasurer to accept the fees and issue the licenses. The purpose of the law was accomplished and the reason for killing the dogs no longer existed, although plaintiff by his *454 delinquency laid himself liable to prosecution and took the hazard of the officers performing their duty and exterminating his dogs until they were duly notified that licenses for them had been issued.

Owing to the somewhat obscure wording of the statute as applied to the position in which plaintiff's delay put them, defendants, as public officials, were justified in appealing for an interpretation of the act as to their rights and duties under it.

The decree will therefore stand affirmed, without costs.

MOORE, SHARPE, CLARK, WIEST, and McDONALD, JJ., concur.

FELLOWS, C. J. (dissenting in part).

Dogs have been recognized as property and the subject of larceny in this state. [Rockwell v. Oakland Circuit Judge](#), 133 Mich. 11, 94 N. W. 378. In my judgment the state may not destroy the property of its citizens upon the sole ground that taxes, either general or specific, upon it or license fees exacted have not been paid. In so far as this law authorizes the killing of dogs whose owners have not paid the exacted fee, I think it is invalid.

BIRD, J., concurs.

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