
Coates' Canons Blog: Find a Pig? Local Government Responsibilities Related to Found Livestock

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It is a crime to allow livestock to run at-large in North Carolina, with the exception of some remarkable horses on the Outer Banks. G.S. 68-16; G.S. 68-42. What's a local government's role with respect to these wandering animals? State law sets out some requirements that apply and some procedures that must be followed when a local government or any other person impounds found livestock. Below is a summary of this body of law as well as a brief discussion of the important changes that were enacted this past legislative session.

What is "livestock?"

The statutory definition of the term "livestock" is fairly intuitive. It includes a non-exclusive list of the types of farm animals that are usually mentioned in children's songs: horses, cows, sheep, goats, and pigs. G.S. 68-15. It also expressly includes llamas, which is a class of animals of particular interest to our state's legislature (see G.S. 106-22.4, expressing legislative intent to have llamas treated as livestock). While the definition does not provide an exclusive list of the types of animals that would be considered livestock, the term most likely does not include poultry because both the law and practice tend to address these categories separately. Also, the livestock definition would probably not include the beautiful peacock found wandering around Apex earlier this month.

Are local governments required to impound livestock running at-large?

Local government officials may be called on for assistance when a cow is found in the road or a horse appears to be lost. No state law *requires* the local government to impound the animal, but officials may want to do so. Why would it want to impound the animal? Local government officials may:

- Be concerned about public safety if, for example, an animal keeps entering a busy road or is otherwise putting people at risk;
- Have questions about the animal's welfare if it appears to be neglected or unhealthy; or
- Be interested in impounding the animal in connection with criminal charges to be brought against the animal's owner.

In such situations, state law authorizes a local government or any person to impound livestock found at-large or "straying." G.S. 68-17. Once an animal is impounded, a person who willfully releases the animal without the impounder's permission may be charged with a Class 3 misdemeanor. G.S. 68-21.

If a local government or person decides to impound livestock, the impounder must provide the animal with "a reasonably adequate quantity of good and wholesome feed and water." Failure to do so constitutes a Class 3 misdemeanor. The impounder is allowed to recover from the owner any costs incurred in caring for the animal. G.S. 68-22. Interestingly, if an animal is impounded but is *not* receiving adequate food and water, any person is authorized by law to enter the property to care for the animal. That person is also allowed to recover from the owner any costs incurred and may not be charged with trespass. G.S. 68-23.

Must the local government try to return the animal to its owner?

A local government must take certain steps to provide notice to the owner before it is authorized to sell the animal at public auction. The notice and sale requirements differ depending on whether the local government knows who owns the animal at the time of impoundment.

Owner is known

Sometimes a local government will know exactly who owns the stray animal. A particularly adventurous cow, for example, who regularly saunters out of a broken fence on his owner's property. If the owner is known, the local government must immediately notify the owner that the animal has been impounded. At the same time, the local government must let the owner know how much money is owed for (a) the care of the animal and (b) compensation for any damages caused by the animal. G.S. 68-18. If the owner and the impounder cannot agree on the amount of money owed, there is an interesting and somewhat old-fashioned process set out in the statute that allows "three disinterested landowners" to determine the amount owed. If a majority of those three are not able to agree, the clerk of superior court is required to appoint a referee to decide the matter. G.S. 68-19.

If the owner does not redeem the animal within 3 days of either (a) receiving notice or (b) the final determination of how much is owed (as decided by the three landowners or a referee), the local government can sell the animal at auction. Legislation enacted in 2015 changed and streamlined this sale process in several ways. The first step in the revised process is to notify the sheriff's office in the county where the animal was found so that office can post a notice of sale on its website. The notice must describe the animal and specify the place, date, and hour of sale. Ten days after the notice is posted, the local government is allowed to sell the animal at public auction. G.S. 68-20 (as amended by S.L. 2015-263).

The proceeds from the auction may be used to cover the "reasonable costs" incurred in caring for the animal and also to compensate for any damages it may have caused. Any balance must be paid to the owner.

Owner is not known

If, at the time of impoundment, the local government does not know who owns the animal, it must provide notice of impoundment to the sheriff. The notice must include a full description of the animal, including all marks or brands, and specify when and where the animal was picked up. G.S. 68-18.1. The law does not require the sheriff to post this notice on its website or in any other place but it seems that it would be reasonable and appropriate to do so.

If the owner has not come forward three days after the sheriff's office was notified of the animal's impoundment, the local government is required to ask the sheriff's office to post a notice of sale on its website. Ten days after the notice is posted, the local government is allowed to sell the animal at public auction. The only significant difference between this auction process and the one described above relates to managing the proceeds of the sale. After the local government has been reimbursed for reasonable costs incurred and compensated for any damage caused, the law requires that any balance be directed to the "school fund" for the county in which the animal was found. As with many other sections of the livestock law, the term "school fund" is antiquated. My colleague, Kara Millonzi, explained the approach for directing funding will vary depending on the number of local school administrative units in the county. If there is only one unit, the balance may be provided directly to that unit or to the county finance office with instructions to distribute it to the school unit. If there are multiple units in the county, any balance should be sent to the county's finance office with instructions to apportion it among the units based on the number of children attending (i.e., the school unit's "average daily membership"). This blog post explains the legal analysis behind this approach.

What if no one buys the animal at the auction?

Let's assume a local government follows all of the steps outlined above after finding a stray horse with no known owner. The local government provides notice to the sheriff and waits 3 days. No owner comes forward. It asks the sheriff to post notice of the sale and waits 10 days. During this entire period of time, it provides food and shelter for the animal. At the end of the 10 day period, the local government offers the horse for sale at a public auction. No one buys the horse. Sigh.

This situation appears to be fairly common. The law is silent about how the local government should proceed at that point. Some local governments enlist foster homes or farms to help care for the animal and try to sell the animal again later.

Others adopt the animal out to rescue organizations, who then care for the animal and may be able to find it a new home. The cost of maintaining most livestock for an extended period can be significant so local governments have a strong incentive to transfer responsibility for the animal as quickly as possible.

I would be particularly interested in hearing if any local governments have crafted creative approaches to managing found livestock or developed good working relationships with livestock rescue groups. Please share your thoughts or suggestions in the comments field or send them to me directly so I can share them with other jurisdictions when the need arises.

Links

- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_68/GS_68-16.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_68/GS_68-42.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_68/GS_68-15.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_106/GS_106-22.4.pdf
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- ipm.ces.ncsu.edu/ipm-poultry-livestock/
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- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_68/GS_68-17.pdf
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