



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 12, 2013

Sarah Lochner
Office of Senate President Peter Courtney
900 Court St. NE, S-201
Salem, OR 97301

Dear Sarah:

An employer or owner can be criminally liable for the conduct of another person if the owner or employer, **with the intent to promote or facilitate the commission of the crime:** 1) aided and abetted in planning or committing the crime; 2) commanded or solicited the other person to commit the crime; or 3) had a legal duty to prevent the commission of the crime and failed to do so (ORS 161.155).

To be convicted of animal abuse or animal neglect that was actually committed by the employee, the owner or employer would have to intend to promote or facilitate the abuse or neglect and take the action or have the duty mentioned above. Therefore the owner or employer would have to have some culpable mental state; at the very least the owner or employer would have to know that the abuse or neglect was going on and, with the intent to have it continue, do nothing to stop it.

Also, criminal penalties are specific to the defendant, so if it was the actual employee that was prosecuted and convicted, the punishment (not being able to have certain types of animals anymore) would not extend to the employer or owner.

One other thing to note that might be relevant here: a corporation can be convicted of a misdemeanor offense (and conceivably can be punished with the animal ownership restrictions) if the offense was committed by an agent of the corporation acting within the scope of employment and on behalf of the corporation (161.170). There is very little case law on this specific statute (only one appellate case, in fact), because I don't think it is used very often, but in order to be acting "within the scope of employment," the act must be of the type the employee was hired to perform; the act must occur within the normal time/location of the employment; and the employee must have been at least partially motivated to serve the employer (*Stanfield v. Laccoarce*, 284 Ore. 651, 655 (1978)). Employment law is not my area of expertise, but I think it would probably be difficult to prove that neglecting or abusing an animal was the type of thing an employee was hired to do. The state would further have to prove that the employee was acting on the corporation's behalf, which implies permission or authorization from the corporation to abuse or neglect the animal.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink, appearing to read "Dexter A. Johnson", written in a cursive style.

By
Jessica L. Minifie
Deputy Legislative Counsel