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Spotlight on City of Springdale Animal Services

Springdale Animal Services has the spotlight in this edition of *The M.A.P.* and is located at 321 Randall Wobbe Lane. Courtney Kremer is the Director of Animal Services, which has 11 employees including caretakers, animal specialists and animal control officers.

The current facility contains offices, kennels, a laundry room, and a visitation room where prospective animal parents can interact with the dog or cat at the shelter in a quiet environment to get to know one another prior to the adoption taking place. This facility is also currently going through some changes, more specifically there will be a renovated room for cats and smaller dogs.

The older building which previously housed the department many years ago is getting a facelift. In this building, there will be remodeled offices as well as a room with kennels especially for holding animals awaiting the outcome of a court case. Animals being observed for rabies and cruelty to animal's court cases will also be held in this room.

For more information on Springdale Animal Services, see the full article on pages 1 through 3, or go to the City of Springdale website at www.springdalear.gov, select "Departments" and "Animal Services" from the heading.

Article prepared by
Brooke Lockhart
Deputy City Attorney



Until one has loved an animal, a part of one's soul remains unawakened.
Anatole France

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Spotlight on City of Springdale Animal Services



The City of Springdale Animal Services department otherwise known as the animal shelter is located at 321 Randall Wobbe Lane in Springdale in a building they moved into in April of 1994. They have 11 employees including caretakers, animal specialists and animal control officers. Additionally, there are several volunteer workers and "foster" homes in which animals fit for adoption are sent to acceptable homes until they are adopted, making more room in the shelter itself. The shelter currently has approximately 30 dog kennels and 32 cat rooms which constantly remain full of animals. One animal in particular, "Maggie", is a 15 year old sheltie mix dog that has been at the shelter for 13 years and greets people as they walk in the door.



The Animal Services Director, Courtney Kremer, has been in the department since September of 2012. Courtney had previously been employed as a scientist and made vaccines in her line of work. She also had

previously done volunteer work at animal shelters. Courtney has a Bachelor of Science Degree in General Biology from Westminster College in Pennsylvania. She also has a Master's Degree in Animal Science from Ohio State University.



Nick Lawson is one of the three animal control officers for Springdale. He has worked as an animal control officer before and he came back in October of 2012. He had also worked in Little Rock as a volunteer animal control officer and went on ride-a-longs with his father there when he was visiting from California. Interestingly, he also worked animal control in Afghanistan.

Russell Ray began work as an animal control officer in February of 2010. As an animal lover who had worked in retail for over 10 years, he wanted to change his career path to one that was in line with his strong feelings about the mistreatment of animals. Russell states the biggest challenge they face as animal control officers in the field is the spaying and neutering of dogs and cats. He stated it is a never ending battle of free roaming cats in the city.

Jamie Hollingsworth has worked as an animal control officer for 19 1/2 years. She began her career before that with Adopt-A-

Pet as a caretaker for thirty years. Jamie has been to level one cruelty investigator school and will be attending the level two school in March. She is certified in chemical immobilization, pepper spray, euthanasia, bite stick, and animal behavior. She is in this line of work to be a voice for animals and to educate the public. She also believes one of the biggest challenges is getting people to understand the importance of spaying and neutering.

One of the employees, Teresa Johnson, has been with the department 23 years, 20 years with the city of Springdale and three years before that before the animal services department was taken over by the city. Teresa remembers when the "city dog pound" as it was called only had one animal control officer. As such, when a call came in that a dog was running loose in the city; the one officer had to lock up the building to go out to the call for service.



The current facility and the previous building next to it are going through some changes. Due to a donation from the Dollins' family, there will be a renovated room for cats and smaller dogs. The older building that previously housed the department many years ago is also getting a facelift. There will be remodeled offices as well as a room with kennels especially for holding animal

on "court holds" [animals awaiting the outcome of a court case and whether the animal is awarded to the shelter or given back to the owner]. Also held in this new room will be rabies observation animals and animals held from cruelty to animals court cases.

The current facility also has a laundry room with a huge 50 pound capacity washer and dryer donated by the humane society. Also located in the building is an Adoption and Education Center provided for by "Keely's Fund" and dedicated in memory of Brandon and Keely Trusell, Lisa Ottaviano and Gary Bowen. This room is where prospective animal parents can interact with the dogs and cats at the shelter in a quiet atmosphere to get to know each other before the adoption takes place.

One of the questions asked by the public is about the microchipping of animals that is required by the Springdale city ordinance. The reason this is required is simple and amply demonstrated as the author of this article was doing interviews, a couple walked in with a dog they had found running around the streets. The dog was friendly and went with them to the shelter where a shelter employee scanned the dog to see if the dog was microchipped and it was, and in a matter of less than two minutes, the shelter employee had the owner on the phone ready to get her dog back. The dog had been stolen some time before and the owner did not know where the dog was. The owner was happily reunited with her dog that afternoon.

The adoption fee for animals in the shelter is \$40, which covers the cost of a rabies vaccine voucher, a microchip, and the standard vaccines and dewormer given upon arrival at the shelter. There is an additional fee for the cost of a spay or neuter surgery. The spay/neuter fees range in price from \$25

to \$65 depending on the size, sex, and species of the animal being adopted.



The animal shelter welcomes donations not only monetary, but also stainless steel bowls and buckets, old towels and blankets, cat litter, cleaning supplies such as bleach, dog and cat food and treats.

For more information on Springdale Animal Services and shelter, you may go to the City of Springdale website at www.springdaleark.org, go to the heading "Departments" and "Animal Services" and you will find more information on the Animal Services department as well as beautiful pictures of the animals in the shelter ready for adoption.

Brooke Lockhart
Deputy City Attorney



City Council Given Legislative Immunity for Eliminating Human Resources Position

On January 29, 2013, the United States Court of Appeals for the 8th Circuit issued its opinion in the case of *Leapheart v. Williamson, et al.* This case began in February 2010 when the City of Russellville posted a job advertisement for a Director of

Human Resources, a department head position. Since it was a department head position, the Mayor (Williamson) had the final decision-making authority on who to appoint to the position. Twenty people, including Leapheart, applied for the position. After conducting interviews, Mayor Williamson hired Leapheart for the position on Friday, March 5, 2010.

However, on Sunday, March 7, 2010, the Russellville City Council held a special meeting and passed an ordinance eliminating the Department of Human Resources and creating a non-department head position called "Human Resources". Since the position was no longer a department head position, the City Council had the authority to hire and fire for the position. In other words, the March 7, 2010, ordinance shifted authority over the human resources position from the Mayor to the City Council.

Unaware of the Council's action, Leapheart showed up for work on Monday, March 8, 2010. Later that same day, Mayor Williamson vetoed the ordinance passed by the Council the day before. After learning of the Mayor's veto, the Council called another special meeting for that afternoon, wherein the Council unanimously voted to override the Mayor's veto of the ordinance. Thereafter, Mayor Williamson notified Leapheart that the Council had eliminated her department head position.

The next day, March 9, 2010, the Council held another special meeting and voted to override the Mayor's hiring of Leapheart. The Council then wrote a letter to Leapheart explaining that her position no longer existed, and that the new non-department head human resources position would be reposted. The City then reposted the position as a human resources position under

control of the City Council. Leapheart did not apply for that position.

Leapheart filed a charge of discrimination with the EEOC and later filed suit in United States District Court against each member of the Russellville City Council. The Council moved for summary judgment, asserting that it was entitled to legislative immunity for its actions. The District Court disagreed. The Council then appealed the District Court's decision to the 8th Circuit Court of Appeals.

In its decision, the 8th Circuit discussed the application of legislative immunity. It noted that the hiring and firing of specific individuals generally is not protected by legislative immunity because it is an administrative action. On the other hand, however, the elimination of a position is considered legislative action protected by legislative immunity because it may have prospective implications that reach well beyond the particular occupant of the office. Most often, "elimination of position" cases involve situations where the employing governmental body terminates many positions at once, typically through budget reduction legislation.

The Court noted that Leapheart's case is not a typical "elimination of position" situation because the Council not only eliminated her department head position, but created a seemingly identical non-department head position. The Court concluded that this action was legislative in nature, in that the Council's action moved control over the position from the Mayor to the City Council. As such, moving control over this human resources position has "implications beyond the occupant of a particular office".

Based on the conclusion that the Council's action was legislative in nature, the Court held that the Council was entitled to

legislative immunity in this case, and reversed the decision of the District Court.

Ernest Cate
City Attorney



Action for Damage to Landowner's Property was Negligence, Not Breach of Contract, so Statutory Immunity Applied

On January 31, 2013, the Arkansas Supreme Court issued its opinion in the case of *City of Malvern v. Jenkins*. This case began when Patsy and Leon Jenkins filed suit in Hot Springs County Circuit Court on April 20, 2010, alleging that the City of Malvern had erected a sewer line across their property (pursuant to a water and sewer easement), and that in the course of installing this sewer line the City had damaged a water pipe owned by the Jenkins. The damage to the water pipe resulted in several washouts of the Jenkins' property. The Jenkins asked for damages to repair their property, damages for an uncompensated condemnation to their property, and attorney fees.

The City of Malvern answered the complaint and filed a motion for summary judgment claiming that it was immune from liability for negligence in this case, pursuant to Ark. Code Ann. §21-9-301, which provides:

[i]t is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, public charter schools, special improvement districts, and all other political subdivisions of the state

and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.

The trial court, however, disagreed with the City, and held that the issue of whether or not the City had fulfilled its obligations under the easement (to keep the premises in a condition that would not interfere with the Jenkins' use of the land) was an issue of contract, not one of tort negligence, and was therefore not barred by statutory immunity. The City asked for reconsideration from the trial court, pointing out that the Jenkins had not actually pled a contract claim, and that accordingly, the City was entitled to immunity. The trial court denied the City's reconsideration motion, and the City appealed to the Arkansas Supreme Court.

On appeal, the City maintained that the Jenkins were clearly claiming negligence for the damage done to the drainage pipe by the City, and that the damages sought were for tort damages, and not those that ordinarily and naturally result from a taking and use of a right-of-way. In short, the City maintained that the trial court erred when it ruled that the Jenkins' claim was for breach of contract and not negligence.

On appeal, the Arkansas Supreme Court noted that at no point did the Jenkins' complaint mention a contract with the City, nor did it mention or allege any breach of contract at all. Instead, the Court noted that the complaint alleged that the City had damaged the Jenkins' property resulting in washouts on the property. As such, the Court held that the Circuit Court erred in finding that the Jenkins' complaint was for breach of contract and not tort negligence. Given that the Jenkins' claim was for tort

negligence, the City had statutory immunity except to the extent that the City may be covered by liability insurance. It was noted that the City of Malvern did not have insurance coverage for the tort claim alleged by the Jenkins, and therefore, was entitled to statutory immunity as to the negligence cause of action filed against the City by the Jenkins.

Ernest Cate
City Attorney



Attorney General Opinion Defines Role of Mayor at Civil Service Commission Meetings

On February 13, 2013, Arkansas Attorney General Dustin McDaniel issued Attorney General Opinion No. 2012-147. This Opinion was issued in response to the following question:

Under Arkansas law, is the mayor of a city of the first class with a mayor-city council form of government legally permitted to attend Civil Service Commission meetings and ask applicants questions when the hiring of a fire or police chief is being considered?

As to the first part of the question, the Opinion stated that the mayor may attend a public meeting of the Civil Service Commission. It concluded that since the Civil Service Commission is a governmental entity covered by the Arkansas Freedom of Information Act, then its meetings are open to the public, and anyone (including a Mayor) is entitled to attend.

The Opinion also concluded, however, that if the Civil Service Commission decides to go in to executive session, the Mayor may not remain in attendance. Ark. Code Ann. §25-19-106(c) provides that a governing body may hold an executive session for the purpose of considering employment or appointment to a position. Executive sessions are closed to the public, and "only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body". Furthermore, "any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board".

The Opinion concluded that the Mayor does not hold the top administrative position in the police or fire department and cannot attend an executive session under that part of the statute. In addition, with respect to the language allowing the immediate supervisor of the employee involved to attend an executive session, the Opinion assumed:

[T]hat all job applicants fall into one of two categories. First, some applicants are not current city employees. The mayor clearly is not the immediate supervisor of a person who is not employed by the city. Second, the other applicants are current city employees but are lower-level departmental employees seeking advancement to the top departmental job. Any such person's immediate supervisor may be the current departmental chief or a departmental

employee of middle rank, but is not the mayor. The mayor is not, accordingly, the immediate supervisor of any assumed applicant and cannot attend an executive session as such.

Finally, the Opinion stated that the Mayor is neither "the employee" nor the person being interviewed and therefore cannot attend an executive session. As such, the Opinion concluded that the Mayor is not one of the people permitted by law to attend an executive session of the Civil Service Commission.

The last part of the question posed to the Attorney General was whether or not the Mayor had the right to participate in the interview/hiring process, and whether or not the Mayor had the right to ask questions of the applicant during the Civil Service Commission meeting. The Opinion concluded that the Mayor did not have that right:

"Because the [Act] requires that meetings be open to the public, anyone has the right to attend The right to attend a meeting, however, does not carry with it the right to participate." I know of no other law giving the mayor authority to participate in board meetings. It follows that while the mayor may attend a public meeting, the mayor may not, in my opinion, ask questions without the board's consent, whether that consent might be embodied in a board rule or given informally. As discussed above, the mayor may not attend a board's executive session, so obviously may not participate therein.

This Opinion would apply to the City of Springdale, in that the City of Springdale has delegated to the Civil Service

Commission the authority to appoint and remove the police chief and fire chief. Specifically, on October 14, 1997, the City Council passed Ordinance No. 2775, which granted authority to the Springdale Civil

Service Commission to appoint and remove the police chief and fire chief.

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