

# OFFICE OF THE DISTRICT ATTORNEY

## FIRST JUDICIAL DISTRICT

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### **NO CRIMINAL CHARGES TO BE FILED IN ALLEGED ABUSE AT CHEYENNE ANIMAL SHELTER.**

Cheyenne, Wyoming – On September 5, 2018, an incident occurred at the Cheyenne Animal Shelter concerning the pepper spraying of a dog after the dog had viciously attacked a shelter volunteer the previous day. Following the spraying incident, the dog was destroyed on September 6, 2018, per Cheyenne Animal Shelter policy, so that its remains could be sent to the University of Wyoming for rabies testing. This incident was reported to the Cheyenne Police Department on September 7, 2018, resulting in an investigation into the incident. The investigative report along with supportive affidavits were submitted to the District Attorney's Office on September 25, 2018. The investigating agency recommended that charges be sought for misdemeanor cruelty to an animal pursuant to W.S. §6-3-203(a). However, the investigative report unequivocally clears the alleged perpetrators – Animal Control Officer (ACO) Smale, ACO Johnson and CEO Fecht – of any criminal wrongdoing.

W.S. §6-3-203(a) requires both that the actor unnecessarily commits the forbidden act with the specific intent to cause death, injury or undue suffering of the animal and that death, injury or undue suffering actually results from the commission of the forbidden act. Neither the report nor the accompanying affidavit contain any evidence that ACO Smale harbored the specific intent to cause death, injury or undue suffering to the dog in question, when he deployed the pepper spray in a short 1 second burst across the nose of the animal, at the direction of CEO Fecht.

Under current Wyoming law, an actor may not be held liable for the acts of another (vicarious liability) unless specifically provided for by statute. W.S. §6-3-203 contains no such *vicarious liability* provision, nor does the general law of *accessory before the fact* attach to misdemeanor crimes in Wyoming. Because there can be no vicarious liability under the specific circumstances

found in this incident, neither ACO Johnson nor CEO Fecht can be held criminal liable for ACO Smale's action.

It should also be noted that the pepper spray deployed in this incident was found to be commonly sold on Amazon, carried by law enforcement, the postal service, animal control officers and civilians for use against aggressive dogs, and did not contain the tear gas agents that many other pepper sprays would have contained. The investigation also revealed that the dog was not baited, nor was there any confirmed injury to the dog as a result of being sprayed.

Although there has been great public outcry concerning the ethics of what occurred during this incident, Rule 3.8 of the Wyoming Rules of Professional Conduct forbids a prosecutor from prosecuting a charge that the prosecutor knows is not supported by probable cause. Given the current status of Wyoming law and the particular facts found in this incident, it is the decision of the District Attorney's Office that there is no evidence to support a finding of probable cause to file criminal charges in this matter.

As is so often the case in the modern world of social media, there will be the temptation by some to shoot the messenger rather than take productive steps of fixing the holes in Wyoming law. It may come as a shock to many that had this dog been raped, rather than sprayed, there would also likely be no criminal liability under current Wyoming law (bestiality is not a criminal offense in Wyoming).

The District Attorney's Office expresses its concern about the wide range of animal abuse that currently falls outside Wyoming law, and urges the Wyoming Legislature to act to address the current holes in the law governing the ethical treatment of animals. However, the Cheyenne City Council need not wait on the Wyoming Legislature to act. The Cheyenne City Council can and should consider passing city ordinances concerning the ethical treatment of animals currently missing from Wyoming law.