

Service Dogs, The Handicapped and Restaurants: Something Has Got To Give!

*By Ralph B. Strickland, Jr.
Of Counsel, Of Course*

With Assistance from that Merry Band of Boys in Sherwood Forest - Kevin "Friar Tuck Your Shirt In" Smith, Greg "Will Scarlet Marry Rhett" Rodgers, and Reece "Little John" Trimmer. [Editor's Note: Reece received his nickname after being stuck in a PortaPotty one weekend.]

Now To The Point

Let us suppose that you answer a routine call to a disturbance at a restaurant in your district. Upon arrival, you exit your vehicle (as you know, only citizens and subjects actually "get out of a car"). As you enter you notice that a man who is actually the manager of the eating establishment is telling a man who is actually a handicapped patron to get his dog out of the restaurant. And a headache begins to come on.

Wisdom of Solomon:

Now that the Wisdom of Solomon has arrived in your personage, it is clear that they want you to acknowledge their rights individually and do exactly what they individually say.

Bad Day:

You look out the window. It is cloudy and dark, cold and raining. Your Sergeant is directing traffic at a seven car pile-up on the by-pass while State Troopers sort it all out, and every other car has calls stacked. Your cell phone battery is as dead as the moths in Trimmer's wallet and your radio is at best intermittent due to sun spot activity 93 million miles away. Your feet are wet and your nose is running. You are totally alone, and you wish you had stayed in bed. But you didn't, and this is your radio call to handle alone.

Been there? Yep, bet you have. Well, fortunately for you the law on this issue is clear and you know it cold, having previously been briefed by your long-suffering Sergeant. **ALL** Sergeants are long-suffering, actually.

Are We Insensitive?

However, for those of you who haven't been briefed, here 'tis. The laws regulating sanitation in eating establishments prohibit animals from being brought into the building. I am quite certain they do, anyway, because there exists a statutory exception for service dogs accompanying a **handicapped** person in restaurants. It reads this way:

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The Statute:

§ 168 4.2. May be accompanied by service animal.

Every mobility impaired person, as defined in this section, visually impaired person, as broadly defined to include visual disability, hearing impaired person, as defined in G.S. 8B 1(2), or person with a seizure disorder has the right to be accompanied by a service animal especially trained for the purpose of providing assistance to a person with the same impairing condition as the person wishing to be accompanied, in any of the places listed in G.S. 168 3, and has the right to keep the service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, under G.S. 168 4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. The service animal may accompany a person in any of the places listed in G.S. 168 3 but may not occupy a seat in any of these places. The service animal may accompany that animal's trainer during training sessions in any of the places listed in G.S. 168 3.

A mobility impaired person is a person with a physiological deficiency, regardless of its cause, nature, or extent, that renders the individual unable to move about without the aid of crutches, a wheelchair, or other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any other related function.

Let's Ramble a Bit:

This statute is clear. It comes from Article 1, Rights, of Chapter 168, Handicapped Persons.

In order for a handicapped person to have the right to have a service animal travel and live with him, the person must have some sort of impairment as stated in the first sentence of GS 168-4.2. The service animal, usually a dog, must have an appropriate tag issued by the NC Department of Health and Human Services, under G.S. 168 4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number. There is a second way that the dog may be an official service animal: a showing that the animal is being trained or has been trained as a service animal (which would require some form of documentation issued by an organization that trains such animals. Use your best judgment on that, unless you happen to be a client of SR&S, and you can call us in real time for an answer.)

Where Can the Dog Go?

GS 168-3 tells us:

The handicapped and physically disabled are entitled to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

You Might Want to Explain:

Tell both parties the law, and explain to each that the North Carolina Department of Health and Human Services has the authority to file a lawsuit to enforce the rights of a handicapped or impaired person. Instruct the manager that he should contact his legal counsel before making what may be a very bad decision on his part. Of course, if

the person is not handicapped by definition or the dog is not a service animal as defined by statute, the dog and/or non-handicapped person must leave or be evaluated for trespassing.

It's A Misdemeanor:

GS 168-4.5 makes it a Class 3 misdemeanor for the manager of a facility to deny any services to a handicapped person with a service animal.

It is unlawful to disguise a dog as an assistance dog, or to deprive a visually impaired person, a hearing impaired person, or a mobility impaired person of any rights granted the person pursuant to G.S. 168 4.2 through G.S. 168 4.4, or of any rights or privileges granted the general public with respect to being accompanied by dogs, or to charge any fee for the use of the assistance dog. Violation of this section shall be a Class 3 misdemeanor.

Uncle Ralph's Very Serious Tips:

1. DO NOT MAKE A WARRANTLESS ON-SCENE ARREST OF THE PERSON WHO BY DEFINITION IS NOT HANDICAPPED OR IMPAIRED, OR DOES NOT HAVE AN APPROPRIATE SERVICE ANIMAL.
2. YES, THERE IS A CRIME OF TRESPASSING IN YOUR PRESENCE IF HE REFUSES TO LEAVE, BUT LET THE MANAGER SECURE THE WARRANT FROM A JUDICIAL OFFICIAL, AND THEN YOU MAKE THE ARREST.
3. YOU HAVE THE LEGAL DISCRETION TO DO IT YOUR WAY HERE.
4. THINK ABOUT HOW YOU WANT TO HAVE TOMORROW'S NEWSPAPER HEADLINE READ, BECAUSE THIS ONE IS GOING TO BE ABOVE THE FOLD ON THE FRONT PAGE, I PROMISE.

Now You Know:

OK. You solved everybody's problem. You may now exit the restaurant. [Only citizens and subjects leave a building.]



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