

Local Authority not unreasonable to impound horse found untethered on road reserve

Legislation	Ombudsmen Act 1975, Impounding Act 1955
Agency	Regional Council
Ombudsman	David McGee
Case number(s)	312372
Date	May 2013

Whether a local authority was unreasonable to impound a horse found untethered on a road reserve—Ombudsman concluded the Regional Council acted reasonably in the circumstances

The complainant owned a horse which she had left on a road reserve to graze. She claimed that the horse had been allowed to graze this way for four years and that it posed no hazard to the public. The complainant accepted that the area was not fenced off (as required under the Impounding Act 1955 – ‘the Act’) but stated that the horse did not leave the area and that there had been no complaints made to her about the horse being there.

Acting on behalf of the Council, which allegedly had received complaints about the horse, an animal control officer impounded the horse which was found untethered and grazing on a road reserve. The horse was seized and impounded under section 33 of the Act initially at the Council pound and then on privately owned land.

The Ombudsman sought information about this matter from the Council, which advised that it had received a number of complaints over the previous 12 months about this horse wandering freely on the street. Furthermore, when the animal control officer arrived on the scene and was addressed by the complainant, a confrontation ensued. The Ombudsman concluded that on the basis of these facts, it was not unreasonable for the animal control officer to exercise the discretion he had under section 33 of the Act in the way that he did. That is – to impound the horse rather than return it to the owner.

The complainant believed that the Council should have issued her with a Notice under the Act before impounding the horse. However the Ombudsman noted section 41(1) of the Act

prohibits the driving of ‘...any stock from the land or out of the herds of any other person without first giving not less than 24 hours notice in writing to [that person], his overseer, or person in charge, of the time he intends to drive away the stock.’ Section 41(2) provides that every person who fails to give that notice commits an offence under the Act. The Ombudsman took the view that section 41 does not apply where stock is found straying or wandering on a road and, as was the case here, is impounded under section 33.

The Ombudsman was satisfied from the evidence he considered and from his consideration of the relevant provisions of the Act, that the Council acted lawfully and not unreasonably, when it impounded the horse. The complaint was therefore not sustained.

The Ombudsman also considered that the Council’s willingness to return the horse on payment of the sum of \$500.00 was fair and reasonable having regard to: the actual costs which the Council had already incurred for float hire (\$50.00); veterinarian’s bill (31/05/11) \$158.60; travel (\$51.80); the impound fee (\$36); altogether amounting to \$296.40, plus the approximate cost of returning the horse to the owner (\$130.00); and the costs which the Council had already incurred in feeding and sustaining the horse since it was impounded.

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