



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB07/0087 - October 25, 2007

THE SITUATION

In the early evening hours one day in the summer of 2007, Officer #1, who was off duty and not in uniform, Officer #1's spouse, their child, and the family's dog were in a public park in a jurisdiction other than Boise. The dog was in their pickup truck, first in the bed of the truck and then in the cab. As Officer #1 and Officer #1's spouse were sitting on the tailgate of their parked truck, they were contacted by a park staff member. The staff member informed Officer #1 that dogs are not allowed in the park and that the dog needed to be taken out of the park. When the dog was not immediately removed from the park, the staff member asked another park staff member to contact the on-duty sheriff's deputy (the Complainant). The Complainant was told that a park patron had a dog in the park. The Complainant then made contact with Officer #1 and Officer #1's spouse. The Complainant informed the couple that a county ordinance prohibited dogs from being in the park and that the dog needed to be removed. Officer #1 repeatedly questioned the Complainant's explanation of the law and claimed that the dog was not violating the law because it was inside the pickup truck. The Complainant explained that the ordinance banned dogs from being inside the park boundaries, even inside a vehicle. The Complainant suggested that Officer #1 move his vehicle to a parking lot just outside the park and leave the dog there. Officer #1 continued to argue with the Complainant and asked to see the actual ordinance. The Complainant obtained a partial copy of the ordinance and showed it to Officer #1, who continued to argue that the ordinance did not apply if the dog was inside a vehicle. Following the arrival of a second deputy and a threat by the Complainant to issue Officer #1 a citation, Officer #1 and the dog left the park. During the encounter with the Complainant, Officer #1 verbally self-identified as a Boise Police Department (BPD) officer and gave the Complainant a BPD business card. Officer #1 had an open bottle of beer next to him.

Alcohol consumption is permitted in the park and there is no reason to believe that the Officer #1 was intoxicated at the time of the incident. I was unable to determine if Officer #1 was armed at the time.

THE COMPLAINT

The Complainant contacted the Office of the Community Ombudsman by telephone and filed a complaint against Officer #1. The Complaint alleged that Officer #1's behavior in a public place was such that BPD was brought into disrepute, and/or that this behavior reflected discredit upon Officer #1. If this were true, it would be a violation of BPD's Policy and Procedures Manual § 11.01.01 – Conduct Unbecoming an Employee.

The Complainant further alleged that Officer #1 violated a county ordinance by bringing a dog into the park, and that Officer #1 failed to take the dog out of the park until threatened with a citation. If this were true, it would be a violation of BPD's Policy and Procedures Manual § 11.01.02 – Conformance to Laws.

THE COMPLAINT INVESTIGATION

In the course of this investigation, I interviewed the Complainant, both park staff members, Officer #1, Officer #1's spouse, the second deputy who arrived to assist the Complainant, and the Sheriff of the county where the incident took place. I also reviewed a report written by the Complainant, audio and video recordings related to the incident, and county records relating to the incident. Finally, I personally visited the park and took photographs to document the "NO DOGS" sign at the entrance to the park.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on a preponderance of the evidence available in this investigation, I have issued the following findings of fact:

1. County code makes it a misdemeanor for a person to have a dog in the park.
2. On the date in question, a clearly visible sign with the words "NO DOGS" and a symbol indicating the same was affixed to the barrier arm at the entrance to the park.
3. On the day in question, Officer #1 entered the park in a personally owned pickup truck. A dog was in the truck with Officer #1.
4. As Officer #1 entered the park with a dog in this truck, Officer #1 saw and read the sign mentioned in Finding #2, above.
5. Officer #1 was told by a park staff member that the dog was not allowed in the park. Following this verbal notification, Officer #1 remained in the park with the dog.
6. The Complainant, an on-duty, uniformed sheriff's deputy, told Officer #1 that it was unlawful to have the dog in park. When asked if it was permitted to have a dog in the park if it remained inside a vehicle, the Complainant told Officer #1 that this, too, was unlawful. The Complainant further told Officer #1 that the dog needed to be removed from the park and suggested that Officer #1 move his vehicle to a parking lot just outside the park and leave the dog there.

7. Officer #1 did not immediately comply with the Complainant's order to remove the dog from the park.
8. Officer #1 questioned the truthfulness of the Complainant's assertion that it was unlawful to have a dog in the park, even if it was inside a vehicle. Officer #1 also requested to see the actual ordinance or code section that made it unlawful to have a dog in the car.
9. The Complainant obtained a copy of the county ordinance governing dogs in the park and showed it to Officer #1, again stating that Officer #1 was not allowed to keep the dog in the park.
10. Officer #1 did not immediately comply with the Complainant's order to remove the dog from the park, but continued to question the accuracy of the Complainant's statements regarding the law banning dogs from the park.
11. Officer #1 removed the dog from the park after a second deputy arrived on scene and the Complainant ordered Officer #1 and the dog to leave the park.
12. Officer #1 verbally self-identified as a BPD officer and gave the Complainant a BPD business card with Officer #1's name and position on it. This information was provided at Officer #1's own initiative and was not in response to any question or action by the Complainant that required Officer #1 to be identified as a police officer.
13. Officer #1 did not directly ask the Complainant for any special consideration, privilege, or amnesty on account of being a BPD officer.

14. At the time of this incident, Officer #1 was in possession of a fanny pack style holster. Based on the evidence available, it cannot be determined if the holster contained a firearm.
15. Officer #1 was in possession an open bottle of beer at the time of the incident. Possession of an open container of an alcoholic beverage in the park is lawful.
16. Officer #1 was neither on duty nor on call as a BPD officer at the time of the incident.
17. As a result of this incident, Officer #1 was charged with a misdemeanor for having a dog in the park, subsequently entered a plea of "guilty" to the charge, and paid a fine.

OMBUDSMAN'S ANALYSIS

Conduct Unbecoming an Employee

The Boise Police Department's policy (§ 11.01.01) Conduct Unbecoming an Employee states:

Each employee shall conduct himself/herself in such a manner as to reflect most favorably on the Department at all times. Conduct unbecoming an employee shall include that which brings the Department into disrepute or reflects discredit upon the individual as a Department employee or that which impairs the operation or efficiency of the Department or any of its employees.

In this incident, there are three elements of Officer #1's behavior that present themselves as acts which may have brought BPD into disrepute and/or reflected discredit on Officer #1 as a BPD officer. The first is the act of bringing a dog into a park that was clearly posted with a

“NO DOGS” sign. The second is Officer #1’s failure, over several minutes, to take the dog out of the park despite clear statements from the camp staff and a uniformed sheriff’s deputy that dogs are not allowed in the park, even if they are inside a vehicle. The third is that set of behaviors by which Officer #1 challenged the sheriff’s deputy’s authority to make Officer #1 take the dog out of the park. I will examine each of these three elements in turn.

While bringing the dog into the park in the first place was a violation of the county ordinance and, as such, a misdemeanor criminal offense, it was a relatively minor offense. Such an act, in and of itself, hardly constitutes one that, “brings the Department into disrepute or reflects discredit upon the individual as a Department employee or that which impairs the operation or efficiency of the Department or any of its employees.” In addition, the benefit of the doubt can be given to Officer #1 in response to the argument that Officer #1 thought the prohibition communicated in the “NO DOGS” sign at the park’s entrance did not apply to a dog that remained inside a vehicle.

However, Officer #1 was clearly told by two different persons in authority that the dog was not allowed to stay in the park. These two personal notifications should have corrected any misunderstanding Officer #1 had regarding the meaning of the “NO DOGS” sign at the park entrance. Nonetheless, and despite repeated statements by the park staff person and the Complainant (a uniformed law enforcement officer) that the dog was not allowed in the park, Officer #1 failed to act immediately on this information. Officer #1 chose, instead, to keep the dog in the park. It was not until Officer #1 was threatened with a citation and explicitly ordered to leave the park that Officer #1 took the dog out of the park and complied with the law.

Both Officer #1 and the second deputy who arrived to assist characterized Officer #1’s behavior as questioning and seeking to clarify and understand. On the other hand, the Complainant said that Officer #1 was being argumentative. The first park staff person said that Officer #1 was acting like a high school kid. The in-car video from the assist deputy’s

patrol car shows Officer #1 and the Complainant “squared off” with each other. Officer #1 is gesturing in an animated fashion, with a raised and agitated voice. Officer #1 admitted to being agitated by the encounter with the Complainant. Officer #1 asked to see “in black and white” where the ordinance specifically prohibited dogs in vehicles from being in the park. Taken as a whole, the preponderance of the evidence reasonably leads to the conclusion that Officer #1 challenged the Complainant’s understanding of the ordinance and his authority to compel Officer #1 to take the dog out of the park. In summary, Officer #1 displayed a disregard for the law, as well as for the law enforcement officer charged to enforce it.

In the midst of this behavior, Officer #1 verbally self-identified as a BPD officer and gave the Complainant a BPD business card. By self-identifying as a BPD officer in the context of the behavior discussed above, Officer #1 brought discredit on self and, by extension, on BPD. As proof of such discredit, Officer #1’s failure to immediately comply with a uniformed deputy’s direction to take the dog out of the park, combined with a behavioral display of disrespect for the deputy’s position as a law enforcement officer, resulted in a formal notice of trespass from the park by the county commission.

For the reasons stated above, I have issued a sustained finding for the allegation that Officer #1 violated § 11.01.01 Conduct Unbecoming an Employee.

Conformance to Laws

The Boise Police Department’s policy (§ 11.01.02) Conformance to Laws states:

Each employee shall obey all laws of the United States and of any state and local jurisdiction in which they are present. A conviction for the violation of any law shall be prima facie evidence of a violation of this section.

Officer #1’s plea of guilty to a misdemeanor violation of a county ordinance is prima fascia evidence that, on the date in question, Officer #1 violated the laws of a local jurisdiction. For

this reason, I have issued a sustained finding for the allegation that Officer #1 violated § 11.01.02 Conformance to Laws.

POLICY FINDINGS

Officer #1:

P.M. § 11.01.01 – Conduct Unbecoming an Employee – Based on the preponderance of the evidence, a finding of sustained is recommended.

P.M. § 11.01.02 – Conformance to Laws – Based on a preponderance of the evidence, a finding of sustained is recommended.



Pierce Murphy
Community Ombudsman
P.O. Box 500
Boise, Idaho 83701-0500
(208) 395-7859
mailbox@boiseombudsman.org