

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3660

April 16, 1990

The Honorable Candy Y. Waites
Member, House of Representatives
310-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Waites:

As you are aware, your letter of March 15, 1990 to Attorney General Medlock was referred to me for response. You enclosed with that letter a copy of H.4409, a bill presently under consideration in the Agricultural and Natural Resources Committee of the House of Representatives. You then asked that this Office review the proposed bill with respect to its constitutionality.

In part, H.4409, a copy of which is attached to this opinion, would require that:

"Section 40-69-225. Before a licensed veterinarian may perform veterinary services at a temporary location, he must first enter into a written agreement with a licensed veterinarian practicing at a full service, permanent location within twenty miles of the temporary location to handle any emergencies which may arise in regard to animals treated at the temporary location."

The bill goes on to require that copies of the written agreement be provided to the State Board of Veterinary Examiners and to customers at the temporary location. In addition, the bill authorizes the Board to discipline veterinarians who violate its provisions.

In this Office's view, the most likely attack upon the constitutionality of H.4409 would be an argument based upon a denial of the guarantee of equal protection of the law

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contained in Article 1, Section 3 of the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution. Of course, the 14th Amendment's guarantee of equal protection is applicable to actions of the State, including legislative enactments. Joy v. Daniels, 479 F.2d 1236 (4th Cir. 1973).

An analysis of H.4409, under both the State and Federal constitutional provisions, would focus on the classification set up by the statute. South Carolina courts have long held that the "requirement of equal protection of the laws is fully complied with if the legislative classification bears a reasonable relation to the legislative purpose sought to be effected." Duke Power Co. v. Bell, 156 S.C. 299, 152 S.E. 865 (1930). Similarly, Federal courts construing the equal protection clause of the Fourteenth Amendment, have held that "social and economic legislation that does not employ suspect classification or impinge on fundamental rights must be upheld against equal protection attack when legislative means are rationally related to a legitimate governmental purpose." Hodel v. Indiana, 101 S.Ct. 2376, 452 U.S. 314, (1981); Prudential Property and Cas. Co. v. Insurance Commission of South Carolina Department of Insurance, 534 F.Supp. 571, aff. 699 F.2d 690, (1982).

The classification set up by H.4409, travelling veterinarians, does not appear to be suspect, i.e., it does not appear to be based upon race, religion, national origin, etc. Prudential Property, supra. Nor does the statute appear to impinge upon a fundamental right, such as the right to vote or the right to interstate travel. Ktsanes v. Underwood, 467 F.Supp. 1002 (1979). Consequently, it need only be shown that the requirements of H.4409 bear a reasonable or rational relation to a legitimate governmental purpose.

The intent and purpose of H.4409 appears to be to ensure that emergency medical care will be available for an animal treated by a veterinarian at a temporary location when, in all likelihood, that veterinarian may not be available to provide such care. It would seem beyond argument that the State may legitimately regulate the practice of veterinary medicine so as to protect the health of animals and, concomitantly, the health of humans with whom those animals may come into contact. Gwynette v. Myers, 237 S.C. 17, 115 S.E.2d 673, (1960).

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Accordingly, in order to accomplish its legitimate objective, the State, through H.4409, seeks to require that a travelling veterinarian have an agreement with a veterinarian practicing at a permanent location that provides for the handling of "any emergencies which may arise in regard to animals treated at the temporary location." While the requirement of a written agreement may not be the least onerous method of accomplishing the legislative purpose, it would appear, nonetheless, to meet the "rational relation" standard articulated in numerous court decisions. (See, for example: Meloon v. Helgemoe, 436 F.Supp. 528, aff. 564 F.2d 602, cert den. 98 S.Ct. 2858, 436 U.S. 950, 1977. "Under traditional due process and equal protection standard, courts do not determine whether the statute is wise or whether it is necessary but only whether it is rationally related to a legitimate governmental objective."). Thus, we conclude that H.4409 would, most probably, withstand scrutiny engendered by the most foreseeable challenge to its constitutionality.

It is worth noting that the enactment and enforcement of H.4409 may constitute a "restraint of trade", as that phrase is defined in antitrust law, to wit: "Acts, contracts, agreements or combinations which operate to the prejudice of the public interest by unduly obstructing the due course of trade." United States v. American Tobacco Co., 31 S.Ct. 632, 221 U.S. 106, (1911). However, it appears that the enactment and enforcement of H.4409 would probably constitute "state action" and, thus, would be exempt from antitrust scrutiny. (See: Parker v. Brown, 63 S.Ct. 307, 317 U.S. 341, (1943); California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 100 S.Ct. 937, 445 U.S. 97, 1980: "The challenged restraint must be one clearly articulated and affirmatively expressed as state policy; second, the policy must be actively supervised by the State itself.")

Finally, you should be advised that the analysis set forth hereinabove represents a consideration of various legal or constitutional challenges which might arise with respect to H.4409. Of course, whether to adopt the bill is a matter of policy, which must be considered by the General Assembly and upon which this Office offers no comment.

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I trust that you will find the foregoing information to be responsive to your inquiry. Please contact me if I may be of further assistance.

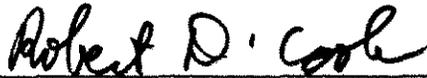
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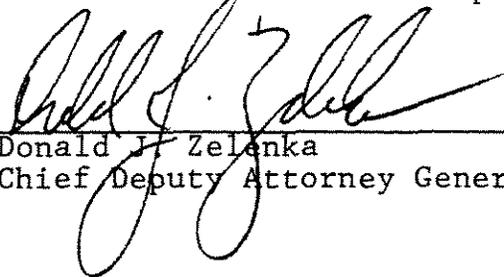
Wilbur E. Johnson
Assistant Attorney General

WEJ/fc

REVIEWED AND APPROVED:



Robert D. Cook
Executive Assistant for Opinions



Donald J. Zelenka
Chief Deputy Attorney General