



HENRY McMASTER
ATTORNEY GENERAL

August 26, 2009

Tiffany B. Raines, Staff Attorney
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Ms. Raines:

As I indicated in our telephone conversation on Tuesday, this office has received inquiries as to a prior opinion of this office dated August 28, 2008 regarding S.C. Code Ann. § 47-1-40 which states:

(A) Whoever knowingly or intentionally overloads, overdrives, overworks, ill-treats any animal, deprives any animal of necessary sustenance or shelter, inflicts unnecessary pain or suffering upon any animal, or by omission or commission knowingly or intentionally causes these things to be done, for every offense is guilty of a misdemeanor and, upon conviction, must be punished by imprisonment not exceeding sixty days or by a fine of not less than one hundred dollars nor more than five hundred dollars, or both, for a first offense; by imprisonment not exceeding ninety days or by a fine not exceeding eight hundred dollars, or both, for a second offense; or by imprisonment not exceeding two years or by a fine not exceeding two thousand dollars, or both, for a third or subsequent offense. Notwithstanding any other provision of law, a first offense under this subsection shall be tried in magistrate's or municipal court.

(B) Whoever tortures, torments, needlessly mutilates, cruelly kills, or inflicts excessive or repeated unnecessary pain or suffering upon any animal or by omission or commission causes the acts to be done for any of the offenses is guilty of a felony and, upon conviction, must be punished by imprisonment of not less than one hundred eighty days and not to exceed five years and by a fine of five thousand dollars.

(C) This section does not apply to fowl, accepted animal husbandry practices of farm operations and the training of animals, the practice of veterinary medicine,

agricultural practices, forestry and silvicultural practices, wildlife management practices, or activity authorized by Title 50, including an activity authorized by the South Carolina Department of Natural Resources or an exercise designed for training dogs for hunting, if repeated contact with a dog or dogs and another animal does not occur during this training exercise. (emphasis added).

The question raised in the opinion was whether agricultural pursuits and activities involving fowl, accepted animal husbandry practices of farm operations and the training of animals, the practice of veterinary medicine, agricultural practices, forestry and silvicultural practices, wildlife management practices, or activity authorized by Title 50 are exempted from prosecution under Section 47-1-40 by the language set forth in subsection (C). The opinion commented that

Section 47-1-40 provides for a criminal penalty for the violation of its provisions. However, subsection (C) explicitly provides that the criminal penalties are inapplicable to "...fowl, accepted animal husbandry practices of farm operations and the training of animals, the practice of veterinary medicine, agricultural practices, forestry and silvicultural practices, wildlife management practices, or activity authorized by Title 50..." Therefore, the penalty provisions are inapplicable to such practices. See: Op. Atty. Gen. dated March 15, 1993.¹

¹The question was also specifically raised as to whether the rearing of livestock and ranching businesses which would include but not be limited to cattle, sheep, horses, goats, dairying, hogs, and other similar agricultural pursuits would be included in the term "agricultural practices" as set forth in subsection (C) of Section 47-1-40? The opinion stated that:

In considering your question, it should be noted that also exempted are "accepted animal husbandry practices of farm operations". However, neither that term or the term "agricultural practices" is separately defined in the Code.

The Oregon Court of Appeals in Eugene Sand & Gravel v. Lane County, 74 P.3d 1085 at 1091(2003) noted the definition of the term "accepted farm practice" as set forth in the Oregon statutes as "...a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." The term "farm use" was defined as

...the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural

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Reference has been made to a letter from you dated June 23, 2009 which was in response to a request that magistrates be advised that “veterinarians and veterinarian technicians are not immune from prosecution under...(Section 47-1-40)...strictly by color of their chosen occupation.” Apparently, the controversy arises from a case in which a magistrate in 2000 dismissed a charge against a veterinarian which presumably arose from an allegation of mistreatment of an animal. You stated in your letter

A 2008 Attorney General opinion issued upon a request to define “agricultural practices” seems to indicate that criminal prosecutions are inapplicable to such practices, and therefore exempt from the prohibitions of Section 47-1-40...The 2008 Opinion seems to support the interpretation of the magistrate who dismissed the charges at the preliminary hearing. Certainly a plain reading of the statute supports his decision as well.

As I indicated in our telephone conversation, the 2008 opinion of this office simply quoted the provisions of Section 47-1-40 which provides that criminal penalties are inapplicable to “the practice of veterinary medicine.” While the opinion did not go further and attempt to define what is considered “the practice of veterinary medicine”, and while this office cannot read specifically defined standards into a statute as such remains within the discretion of the legislature, certainly such phrase must be read to mean what is considered “acceptable” or “ordinarily recognized” standards of veterinary practice. As a result, this office would conclude that the exception from criminal

¹(...continued)

use or animal husbandry or any combination thereof.

In an opinion dated January 17, 1991, the Vermont Attorney General defined the term “agricultural practice” as “...an activity pertaining to agriculture.” The term “agriculture” is defined by Black's Law Dictionary, rev'd 4th Ed. as “[t]he art or science of cultivating the ground, including the harvesting of crops, and in a broad sense, the science or art of production of plants and animals useful to man, including in a variable degree, the preparation of these products for man's use.” The term “agricultural” is defined by that same source as “pertaining to, or dealing with, agriculture; also, characterized by or engaged in farming as the leading pursuit.”

Consistent with the above, in the opinion of this office, the rearing of livestock and ranching businesses which would include but not be limited to cattle, sheep, horses, goats, dairying, hogs, and other similar agricultural pursuits would be included in the term “agricultural practices” as set forth in subsection (C) of Section 47-1-40. Therefore, such practices would be exempt from the prohibitions of Section 47-1-40.

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penalties for "the practice of veterinary medicine" would not exempt veterinarians from criminal prosecutions following allegations of intentional abuse or mistreatment of an animal.

If there are any questions, please contact me.

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

cc: The Honorable Larry Grooms
The Honorable Daniel B. Verdin, III