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HENRY MCMASTER
ATTORNEY GENERAL

July 27, 2006

Don H. Arnold, Director
Spartanburg County Environmental Enforcement Department
298 Broadcast Drive
Spartanburg, South Carolina 29303

Dear Mr. Arnold:

We issue this opinion in response to your request concerning the interpretation of section 47-5-60 of the South Carolina Code. In your letter, you stated you believe section 40-69-270 of the South Carolina Code "appears to specifically authorize a veterinarian to delegate the performance of veterinary procedures as long as two conditions are met." However, you note section 47-5-60 of the South Carolina Code only refers to veterinarians with regard to the procedures for completing certificates of inoculation and issuing tags for rabies vaccinations. You informed us that you inquired to the South Carolina Department of Health and Environmental Control ("DHEC") as to "whether the legislature meant that the veterinarian should be the person physically completing each regulation set forth in the statute." DHEC issued an opinion, which you enclosed, "stating that because of the wording of the statute, only a licensed veterinarian may administer an inoculation against rabies." However, you added:

> In the opinion, DHEC attempts to ascertain the intent of the legislature by applying a plain meaning rule to section 47-5-60, and thereby determined that the statute is clear and unambiguous in its requirement that only a licensed veterinarian may administer a rabies vaccination. However, in applying the same rule to 40-69-270(C), the legislature also appears to have been clear that such procedures may be delegated (subject to the restrictions set forth in the statute).

Thus, you request an opinion "regarding the interpretation of these statutes, specifically, as to whether or not vaccinating an animal against rabies may be delegated . . . ."

Law/Analysis

Initially, we address the interpretation of section 47-5-60 of the South Carolina Code (Supp. 2005). This section requires pet owners to inoculate their pets against rabies using a vaccine

Request Letter

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approved by DHEC and licensed by the United States Department of Agriculture. Furthermore, this statute requires:

> Evidence of rabies inoculation is a certificate signed by a licensed veterinarian. The rabies vaccination certificate forms may be provided by the licensed veterinarian or by the department or its designee. The veterinarian may stamp or write his name and address on the certificate. The certificate must include information recommended by the National Association of State Public Health Veterinarians. The licensed veterinarian administering the vaccine shall provide one copy of the certificate to the owner of the pet and must retain one copy in his files for not less than three years . . . .

S.C. Code Ann. § 47-5-60.

This Office addressed the interpretation of this provision on several occasions with regard to who may administer a rabies vaccination. In 1978, we issued an opinion finding the language contained in this provision

> appears to permit individuals other than a veterinarian to actually administer the rabies inoculation to an animal. However, since a licensed veterinarian must certify that the animal has been properly inoculated, the practical impact of the section seems to require that either the veterinarian administer the vaccine himself or observe the inoculation when done by someone else. An inoculation administered by a non-veterinarian which is not certified by a licensed graduate veterinarian would not meet the requirements of Section 47-5-60.

Op. S.C. Atty. Gen., May 23, 1978.

We reiterated our finding in the 1978 opinion in a subsequent opinion issued in 1980. Op. S.C. Atty. Gen., March 7, 1980. We cited to our prior opinion finding "for the licensed graduate veterinarian to certify the administration of the inoculation, he must personally either administer the inoculation or observe the inoculation." Id. Moreover, we noted our impression of the intent of the requirements set forth in section 47-5-60: "It is clear that the requirements set forth in § 47-5-60 are intended to provide a procedure utilizing licensed graduate veterinarians to control the inoculation of pets against rabies." Id. We concluded "it is the opinion of this Office that § 47-5-60 requires that licensed graduate veterinarians administer rabies inoculations or that licensed graduate veterinarians observe the administration of the inoculations." Id.

Generally, this Office recognizes the principle that we will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed. Op. S.C. Atty. Gen., March 17, 2006.

Since the issuance of the two opinions reference above, the Legislature amended section 47-5-60 twice. See 2002 S.C. Acts 3777; 1992 S.C. Acts 3447. However, we do not believe either of these amendments affect our opinions. Additionally, in our review of our prior opinions, we do not find them clearly erroneous. Thus, generally we would not be inclined to overrule these opinions.

However, our courts, as well as, this Office recognize: "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). See also, Ops. S.C. Atty. Gen., January 26, 2006 (stating deference should be given to an agency's interpretation of a statute); January 20, 2006 ("Typically, so long as an administrative agency's interpretation of a statutory provision is reasonable, we defer to that agency's construction.").

In its opinion, DHEC focused on language in section 47-5-60 referring to a "licensed veterinarian administering the vaccine . . . ." DHEC referenced the plain meaning rule, if a statute is clear and unambiguous its plain meaning should be used to ascertain the intent of the Legislature. Pursuant to this rule, DHEC determined: "DHEC, like a court, may not impose another meaning or apply a forced construction to expand the meaning of the section to permit employees of a licensed veterinarian to administer the rabies vaccine." Although the statute does not specifically mandate that only a veterinarian administer the vaccine, the statute does refer to the "veterinarian administering the vaccine." Thus, we believe this construction of section 47-5-60 to be reasonable. Furthermore, given that this interpretation is reasonable, a court is likely to give it great deference. Although we generally do not overrule our prior opinions, given that DHEC provides a reasonable interpretation of this provision, we find in this instance we must do so. Accordingly, we believe a court would find section 47-5-60 to mandate only a licensed veterinarian administer rabies vaccination.

Next, we look to section 40-69-270(C) of the South Carolina Code to determine what, if any, impact this provision may have on our interpretation of section 47-5-60. 2006 S.C. Act No. 294. The Legislature recently enacted this provision, along with numerous other amendments to the provisions of the Code pertaining to the practice of veterinary medicine. Id. Section 40-69-270 generally requires a person to have a license issued by the South Carolina State Board of Veterinary Medical Examiners to practice veterinary medicine in this State. Id. However, this section also provides an enumerated list of persons who do not satisfy this requirement, but who are not prohibited from engaging in this practice. Id. Your letter indicates you are particularly concerned with subsection (C), which provides:

> (C) Nothing in this chapter affects the practice of qualified persons to whom a licensed veterinarian has delegated the performance of procedures, therapeutic options, and alternate therapies. The delegating veterinarian must verify the qualifications of these persons

> and their competencies before delegation. The delegating veterinarian remains responsible for the general care of the patient.

Id.

In interpreting this provision and its impact on section 47-5-60, we follow the rules of statutory interpretation. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). "If a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Id. (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Hodges v. Rainey, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000).

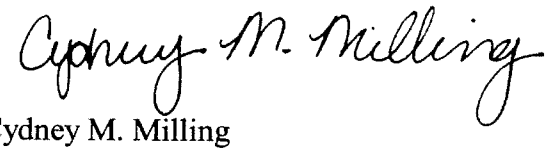
Based on the plain wording of section 40-69-270(C), this provision appears to allow a veterinarian to delegate the performance of certain procedures to a person not licensed as a veterinarian. We would presume these procedures include administration of vaccinations. Because this section could pertain to the administration of rabies vaccinations, which is directly dealt with by the Legislature in section 47-5-60, these two statutes seem to deal with similar subject matter and therefore, we will attempt to read them in concert with one another.

Section 47-5-60 appears to be more restrictive. However, we believe these two provisions can be read to give effect to both. First, section 40-69-270(C) specifically states: "Nothing in this chapter . . . ." prohibits certain practices by a non-veterinarian. Thus, the Legislature rendered this provision applicable only to conflicting provisions contained within chapter 69 of title 40 of the South Carolina Code. Therefore, conceivably such activities may be prohibited outside the provisions of the Code dealing with the practice of veterinary medicine. Second, these two provisions regulate different things. Section 47-50-60 is aimed at the regulation of rabies inoculations. Whereas, section 40-69-270 is aimed at the regulation of the practice of veterinary medicine. Thus, the Legislature presumably found it necessary to place control over the administration of rabies vaccinations in the hands of licensed veterinarians although, section 40-69-270 generally allows non-veterinarians to perform many aspects of veterinary medicine. This presumption is further supported by "well-established principle of statutory interpretation that subsequent legislation should be construed in harmony with existing laws." B & A Dev. Inc. v. Georgetown County, 361 S.C. 453, 605 S.E.2d 551 (Ct. App. 2004). Because the Legislature enacted section 47-5-60 prior to its enactment of section 40-69-270, we presume the Legislature was aware of section 47-5-60 of the South Carolina Code when it enacted section 40-69-270(C). Thus, further indicating the Legislature did not intend to change the law governing rabies vaccinations when it amended the law governing the practice of veterinary medicine.

In conclusion, in deference to DHEC's opinion as to the interpretation of section 47-5-60 of the South Carolina Code, which we believe to be reasonable, we find a person not licensed as a

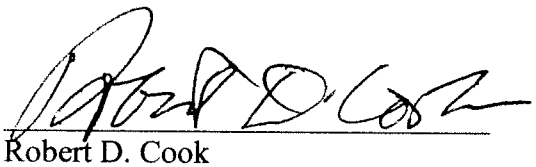
veterinarian may not administer a rabies vaccination. Additionally, we find section 40-69-270(C) does not impact our conclusion with regard to our interpretation of section 47-5-60 because this section, although more restrictive, may be reconciled with 47-5-60 to render both operative.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General