



HENRY McMASTER  
ATTORNEY GENERAL

August 28, 2008

Honorable J. David Weeks  
Member, House of Representatives  
2 Marlborough Court  
Sumter, South Carolina 29154

Dear Representative Weeks:

In a letter to this office you requested an opinion regarding S.C. Code Ann. § 47-1-40 as last amended by Act No. 259 of 2008 which states:

(A) [w]hoever 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 silvacultural practices, wildlife management practices, or activity authorized by Title 50, including an activity authorized by the

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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.

Referencing such, you have questioned 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 silvacultural 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)?

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

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 silvacultural 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.

You also questioned 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? 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

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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 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 4<sup>th</sup> 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.

If there are any further questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson



REVIEWED AND APPROVED BY:



ROBERT D. COOK  
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