



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 2, 1999

The Honorable Glenn F. McConnell
Senator, District No. 41
311 Gressette Senate Office Building
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator McConnell:

You have asked for an opinion on the following:

The South Carolina Code provides in section 47-1-160 that if a trial court finds that a nonprofit animal humane organization in the county or municipality was materially involved in or aided in the prosecution of a violation, then one-half of the fine must be distributed to the nonprofit animal humane organization.

I have been informed that courts have been denying the distribution of this share of fines to animal agencies that house the animals during the pendency of these cases. A period of time that sometimes lasts several months. I assume that the reasoning of the courts is that these groups housing the animals are not involved in or aiding the prosecution of the violation. However, a common sense reading of 47-1-160 would seem to indicate that an agency's involvement in the care and housing of these animals while the charges of abuse are pending and until they are disposed of would make the animal agency materially involved in the prosecution of a violation. I would appreciate your legal opinion as to whether the housing of an animal and care of an animal while a violation of our animal protection laws is being prosecuted does in fact entitle an agency to share in the disposition of any fine

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collected.

Chapter 1 of Title 47 is entitled "Cruelty to Animals." The chapter contains, among other things, several different criminal provisions regarding animal cruelty and penalties for violating these provisions. Section 47-1-160 governs the distribution of fines collected under the chapter. This section reads as follows:

All fines collected for violations of this chapter must be distributed as follows:

(1) If the trial court finds that there was a nonprofit animal humane organization in the municipality or county materially involved in or aiding in the prosecution of the violation, one-half of the fine must be distributed to the nonprofit animal humane organization and the remaining one-half must be distributed as is otherwise provided by law. (emphasis added).

(2) If there is no finding of material involvement or aiding in the prosecution of the violation by a nonprofit animal humane organization, the fine must be distributed as is provided by law.

A number of principles of statutory construction are important in resolving your inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The Court must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Under Section 47-1-160, if the trial court determines there was a nonprofit animal humane organization in the municipality or county materially involved in or aiding in the prosecution of a violation, that organization is entitled to a portion of the fine levied by the court. Unfortunately, the statute does not define what is meant by the phrase "materially involved in or aiding in the prosecution." Therefore, attention must be turned to the plain and ordinary meaning of the relevant terms. "Materially" is defined as "[t]o a significant extent or degree; substantially." The American Heritage Dictionary 837 (3rd ed. 1993). "Prosecution" is defined as "[t]he institution and conduct of a legal proceeding." The American Heritage Dictionary 1098 (3rd ed. 1993). Applying the aforementioned rules of

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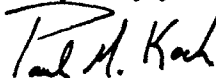
statutory construction leads to the following: the trial court, in its discretion, must determine whether a nonprofit animal humane organization in the municipality or county was substantially involved in or aided in the institution and conduct of a legal proceeding.

Whether the housing and care of an animal while a violation of Chapter 1 of Title 47 is being prosecuted constitutes substantial involvement in or aid in the institution and conduct of a legal proceeding and thus entitles the nonprofit organization to share in the disposition of the fine collected is a decision that must be made by the trial court based on the particular facts of the case before it. Therefore, I cannot give you a blanket answer that would cover every case brought under the chapter. There may be numerous instances in which the trial court determines, based on the facts of the case, that the nonprofit organization's activities rise to the level of material involvement and aid in the prosecution of a violation. In reaching this decision, deference must be paid to the wisdom of the trial court.¹

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General

¹ Since there seems to be varying interpretations of the language contained in Section 47-1-160, the General Assembly may wish to clarify what is meant by the phrase "materially involved in or aiding in the prosecution of the violation" by legislative act.