



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

*Prayer*

Mr. A. B. Conner, Director  
Texas Agricultural Experiment Station  
College Station, Texas

Dear Sir:

Opinion No. 9-1817  
Re: Article 1489, R. C. S. --  
Feeding stuffs -- Farm  
livestock -- Legal Authority  
to regulate the manufacture  
and sale of dog and cat foods.

We beg to acknowledge receipt of your letter of  
January 3, 1940, requesting a legal opinion from this de-  
partment as follows, to-wit:

"The dog and cat food industry is con-  
tinually increasing in importance and dur-  
ing the past few years has become a major  
industry. According to the Bureau of the  
Census, 412 million pounds of canned dog  
foods, having a value of more than twenty  
million dollars, were produced during 1937,  
the most recent year for which official  
figures are available. In addition there  
is a considerable volume of dry dog and  
cat food produced.

"These products are found on sale in  
practically every town and city in Texas;  
much of it is manufactured in the State and  
a great deal is shipped from without the  
State. One firm in Houston, for instance,  
manufactures and sells approximately one  
million cans per month not all of which is  
consigned to Texas points.

"In order to standardize the quality  
and weights of dog and cat food through  
the registration, labeling, and enforcement

of adequate definitions and standards, considerable pressure is brought to bear upon the Division of Feed Control Service of this Station for the adoption of such a program as a part of our regulatory activities in connection with the administration of the Pure Feed Law.

"Article 1489, chapter 13, Revised criminal Statutes, 1925, provides, in part, that 'Every lot or parcel of feeding stuff, used for feeding farm live stock, sold, offered or exposed for sale in this State, for use within the State, shall have attached a tag described in article 1492.' We will appreciate an opinion from you as to whether dogs and cats can be classified as 'farm live stock' and whether we have the legal authority to regulate the manufacture and sale of dog and cat foods, canned and dry, under the provisions of the Pure Feed Law referred to above."

It is the opinion of this department that dogs and cats cannot be classified as "farm livestock", within the meaning of the statutes under consideration, and that, therefore, the statute does not confer authority to regulate the manufacture and sale of dog and cat food, under the provisions of the Pure Feed law of this State.

The first rule of construction laid down by our statutes is that the ordinary signification shall be applied to words, except words of art or words connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such art or trade, with reference to such subject matter. (Rev. Civ. Stat. Art. 10). This is the rule specially prescribed with respect to civil statutes.

The Penal Code provides:

"This code and every other law upon the subject of crime which may be enacted shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the con-

struction of penal laws and laws upon other subjects; and no person shall be punished for an offense which is not made penal by the plain import of the words of a law." (P.C.Art.7)

Now, Article 1489 of the Penal Code is a part of Chapter 13, entitled "Protection of Stock Raisers." The term "farm livestock", as used in this statute, is not to be construed or interpreted in a strictly etymological sense, but rather in the sense in which the Legislature used the words. In the popular understanding "livestock" is used in the sense of animals bred and raised for market or use by the owner. Indeed, the stock industry is a term of well-defined meaning throughout the country. The use of the word "farm" in connection with livestock in the Article under consideration, of course, narrows the subject from that comprehended by the general term of stock raising or stock industry. It limits it to the livestock usually found on the farm.

The words "farm livestock", therefore, embrace such livestock as cattle, horses, mules, sheep, goats, hogs and the like -- those animals usually found on farms, bred and raised for use or sale by the owner. This comports with the popular understanding of the term "farm livestock", and is the sense in which the Legislature meant to employ the words as we interpret the legislative intention.

This conclusion is accentuated by the fact that the statute is a criminal statute, and it is not the plain import of the words of the statute that the Legislature meant to punish as an offense the failure to label dog food and cat food, as it has required with respect to the ordinary farm livestock feeds.

Following these ordinary and accepted rules of construction it has been held that a dog was not an animal within the meaning of a statute requiring a lookout to be kept for animals, or other obstructions upon the railroad tracks. (Howard v. Nashville, Chattanooga & St. Louis Ry. Co., 284 S. W. 894). The construction of the word indicated by us not only comports with the common understanding and the judicial decisions, but it likewise comports with the definition given by our standard dictionaries. Thus, Funk & Wagnals defines the word "livestock" as "domestic animals kept for farm purposes, especially marketable animals, as cattle, horses and sheep". This precise

definition is adopted by Corpus Juris, vol. 38, p. 70.

Our Court of Appeals has held that a dog was not "stock", within the meaning of a statute requiring a railroad to fence its right-of-way. (Texas & Pacific Ry. Co. v. Scott, 4 Tex. Apps. Civ. Cases (Willson) 476, 17 S. W. 1113.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

APPROVED JAN 12, 1940

OS-MR

*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

