



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

April 26, 1994

Honorable Mike Driscoll
County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 94-041

Re: Whether chapter 54 of title 7 of the United States Code requires county-owned pounds and animal shelters to hold all dogs and cats for five days, and related questions (RQ-534)

Dear Mr. Driscoll:

On behalf of the chief veterinarian for Harris County, you ask several questions about the proper interpretation of chapter 54 of title 7 of the United States Code. Section 2158 of that chapter provides in pertinent part:

(a) Holding period

(1) Requirement

In the case of each dog or cat acquired by an entity described in paragraph (2), such entity shall hold and care for such dog or cat for a period of not less than five days to enable such dog or cat to be recovered by its original owner or adopted by other individuals before such entity sells such dog or cat to a dealer.

(2) Entities described

An entity subject to paragraph (1) is--

(A) each State, county, or city owned and operated pound or shelter;

(B) each private entity established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city that operates as a pound or shelter and that releases animals on a voluntary basis; and

(C) each research facility licensed by the Department of Agriculture.

....

(c) Enforcement

(1) In general

Dealers who fail to act according to the requirements of this section . . . shall be subject to the penalties provided for under section 2149 of this title.

(2) Subsequent violations

Any dealer who violates this section more than one time shall be subject to a fine of \$5,000 per dog or cat acquired or sold in violation of this section.

(3) Permanent revocations

Any dealer who violates this section three or more times shall have such dealer's license permanently revoked.

(d) Regulation

Not later than 180 days after November 28, 1990, the Secretary [of Agriculture] shall promulgate regulations to carry out this section.

7 U.S.C. § 2158.

First, you ask if subsection (a)(1) of section 2158 requires "that a county-owned pound or shelter hold all dogs and cats for five days, regardless of whether they are sold to dealers." You also ask if the five-day holding period applies "to *all* animals acquired by the facility, or just those animals which are sold to dealers." (Emphasis in the original.) We agree that section 2158 is subject to varying constructions. We believe, however, that these questions are resolved by federal regulations promulgated by the United States Department of Agriculture ("USDA") pursuant to section 2158(d). See note 1 *infra*.

The USDA regulations provide that "[e]ach of the entities listed . . . that acquire any live dog or cat shall, before selling or providing the live dog or cat to a dealer, hold and care for the dog or cat for a period of not less than 5 full days after acquiring the animal . . ." 9 C.F.R. § 2.133(a). The USDA states in information provided with the final rule that "[a] number of commenters stated that if the intent of the proposal was to give owners the opportunity to recover pets, then the 5-day holding period should be

extended to all dogs and cats at pounds and shelters, not just to those sold to dealers." 58 Fed. Reg. 39125 (July 22, 1993). The USDA concluded, "We are making no changes based on these comments. The statute does not authorize imposition of such requirements." *Id.* Section 2158, as construed by the USDA, requires a pound or shelter to hold for five days only those cats and dogs that are sold to dealers. We also note, however, that we see nothing in chapter 54 which would preclude a city or county from requiring pounds and animal shelters within its jurisdiction to hold *all* cats and dogs for five days if it chose to do so.

Next you ask "[h]ow much time is actually involved in the five-day holding period under 7 U.S.C. § 2158(a)." The USDA regulations also answer this question. They require entities to hold cats and dogs "for a period of not less than 5 full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday." 9 C.F.R. § 2.133(a).¹

Finally, you ask whether the following entities are "dealers" under section 2158(a): "a county-owned shelter that sells animals to research facilities," "a public research facility that only uses animals for research purposes," and "a private research facility that uses animals for research purposes." We do not believe it is necessary for us to consider whether a county-owned shelter that sells animals to research facilities is a "dealer." Section 2158 applies to "entities" that sell dogs and cats to "dealers." A county-owned shelter is clearly an "entity" subject to section 2158. See 7 U.S.C. § 2158(a)(2) ("An entity subject to paragraph (1) is . . . each State, county, or city owned and operated pound or shelter"). Thus, the more pertinent question is, in our view, whether the county-owned shelter sells dogs and cats to "dealers."

Section 2158 does not define the term "dealer." Section 2132 defines the term "dealer," for the purposes of chapter 54, as follows:

The term "dealer" means any *person* who, in commerce, for *compensation or profit*, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include--

¹You state that your office "disagrees with the regulatory agency's interpretation that the five days include a Saturday." The Congress has delegated the authority to interpret section 2158 to the USDA, not to this office or to Harris County, Texas. See 7 U.S.C. § 2158(d). This office defers to the USDA's interpretation.

(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or

(ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year.

7 U.S.C § 2132(f) (emphasis added). This provision also defines the term "person" to include "any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity." *Id.* § 2132(a). You contend that a public research facility is not a "dealer" because it is not a "person" within the meaning of section 2132(a). You also contend that a research facility which uses animals solely for research purposes does not buy or sell animals for compensation or profit as required by section 2132(f).

It is not apparent to us that the omission of state and local governmental entities from the section 2132 definition of the term "person" is dispositive. Nor do the USDA regulations address these questions. We note, however, that you have submitted to this office correspondence from the USDA which states that it is that department's view that the term "person" as defined by section 2132(a) "is not intended to include public agencies or political subdivisions of State or municipal governments or their duly authorized agents." The letter goes on to suggest that because "a State University such as the University of Texas, is exempt from the definition of 'person,'" it is therefore not a "dealer."² The letter also states that if a research facility purchases animals from a city pound for its own use, rather than to resell or to provide to some other research facility, then it is not acting as a dealer.³

Although this letter from the USDA does not have the same legal significance as a USDA regulation, we believe that it should be given great weight. Moreover, we believe that the county and the research facilities to which it sells animals should be confident in relying on the letter's legal interpretation given that the USDA appears to have the sole authority to initiate the civil and criminal enforcement of section 2158. *See id.* § 2158(c); *see also id.* §§ 2146, 2149 (authorizing the secretary of the USDA to suspend licenses, impose civil penalties, and initiate criminal actions for violations of chapter 54).

²Letter from Richard L. Crawford, Acting Assistant Deputy Administrator for Animal Care, Regulatory Enforcement and Animal Care, USDA to Dr. Chris S. Smith, Associate Director, Center for Laboratory Animal Medicine and Care, University of Texas Medical School, Houston, Texas, dated March 19, 1993.

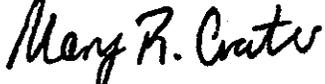
³*See id.*

S U M M A R Y

Section 2158 of chapter 54 of title 7 of the United States Code, as construed by regulations promulgated by the United States Department of Agriculture, requires a county-owned pound or animal shelter to hold for five days only those cats and dogs that are sold to dealers. See 9 C.F.R. § 2.133(a). These regulations require entities to hold cats and dogs sold to dealers "for a period of not less than 5 full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday." *Id.* Nothing in chapter 54 precludes a city or county from requiring pounds and animal shelters within its jurisdiction to hold *all* cats and dogs for five days.

According to the United States Department of Agriculture, a public research facility is not a "dealer" within the meaning of section 2158, nor is a public or private research facility which uses animals for its own purposes rather than for resale or to provide to another research facility.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee