



Office of the Attorney General
State of Texas

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September 21, 1994

Honorable John Whitmire
Chair
Committee on Criminal Justice
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 94-071

Re: Whether staging fights between dogs
and hogs is a criminal offense (ID# 28813)

Honorable Bill Sims
Chair
Committee on Natural Resources
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Dear Senators Whitmire and Sims:

Senator Whitmire asks whether "publicly staged fights between penned dogs and hogs" would violate Penal Code section 42.09 "or any other provision of the law." Senator Sims asks:

Does it constitute a violation of section 42.09 of the Penal Code if a person holds an event, which is open to the public and for which admission is charged, at which a dog or group of dogs is released into a small enclosure with a domesticated living creature or wild living creature, previously captured, ostensibly for the purpose of "training" the dog or dogs, and a fight ensues between the dog or dogs and the other creature.

Section 42.09 provides in part:

(a) A person commits an offense if he intentionally or knowingly:

....

(6) causes one animal to fight with another

We will first address Senator Whitmire's question. Based on the facts described, we believe that the "staging" of the activities in question constitutes an offense under

section 42.09(a)(6). “Staging” certainly indicates the presence of the requisite “knowledge” or “intent” to “cause” the fights in question. *See* Penal Code § 6.03 (Definitions of Culpable Mental States).¹ “[F]ights between penned hogs and dogs” would certainly appear to involve “one animal [] fight[ing] with another.” Subsections (a)(1) and (a)(4) of the section--making it a crime, respectively, to “torture[] . . . an animal” or “confine[] an animal in a cruel manner”--may apply as well.

We note that subsection (c) defines “animal,” for purposes of the section, to include a “domesticated living creature and wild living creature previously captured.” The hogs and dogs in question, in order to fight, must of course be alive at the beginning of the “staged” event. Senator Whitmire’s use of the word “penned” indicates that any feral animal which participates in the staged event has been “previously captured.”²

Senator Sims’s request also sets out the elements of an offense under section 42.09(a)(6). Even if the defendant’s purpose in releasing the “dog or group of dogs . . . into a small enclosure with a domesticated living creature or wild living creature previously captured” were that of “‘training’ the dog or dogs,” the facts described state an offense under the statute. Although we cannot be certain that a judge or jury would *not* accept a defendant’s assertion that, in placing the animals “into a small enclosure” from which there is no immediate possibility of retreat, he did not thereby *intend* to “cause a fight” between the creatures, we believe it is obvious that such conduct establishes on its face an awareness by the defendant that his “conduct is reasonably certain to cause the result,” *i.e.*, a “fight” between the dog or dogs and the other animal.³

¹Penal Code section 6.03 provides in pertinent part:

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstance exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

²Section 42.09 sets out a number of defenses to prosecution: where the “actor was engaged in bona fide experimentation for scientific research,” or where the animal was “discovered on the person’s property in the act of or immediately after injuring or killing the person’s” livestock and “the person killed or injured the animal at the time of this discovery.” Senator Whitmire’s description of the event does not indicate that any of these defenses would be available to a defendant prosecuted under section 42.09 for “staging” the fight.

³If the only participants in the fight are dogs, section 42.10 of the Penal Code is also relevant. That statute prohibits a number of acts which are not included in section 42.09.

Thus, we can state with confidence that the scenario described by Senator Sims describes an offense under section 42.09 of the Penal Code.

S U M M A R Y

Based on the facts presented, "staging" fights between dogs and hogs would constitute an offense under Penal Code section 42.09.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee