



RECEIVED

JAN 18 2002

OPINION COMMITTEE

Toby Goodman
STATE REPRESENTATIVE
DISTRICT 93

P.O. Box 2910
Austin, Texas 78768-2910
512/463-0562
Fax: 512/475-1178

January 15, 2002

1600 E. Lamar Blvd.
Suite 250
Arlington, Texas 76011
817/460-8290
Fax: 817/861-2125

RQ-0499-JC

The Honorable John Cornyn
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-42384-02
I.D. # 42384

RECEIVED

JAN 18 2002

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

2622

Dear Attorney General Cornyn:

This letter is to request an Attorney General Opinion as to whether or not the enactment of Chapter 823, Texas Health and Safety Code (commonly known as the Animal Shelter Act) superceded and/or rendered moot the requirement of Chapter 826, Texas Health and Safety Code (commonly known as the Rabies Control Act of 1981 and herein referred to as the Rabies Control Act) that the Texas Board of Health adopt rules to establish minimum standards for impoundment facilities and for the care of impounded animals.

Background and Discussion

Section 826.051 of the Rabies Control Act reads as follows (emphasis added):

826.051. Minimum Standards for Quarantine and Impoundment Facilities

(a) The board* shall adopt rules governing the types of facilities that may be used to quarantine animals.

(b) The board by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

COMMITTEES:

Chairman, Juvenile Justice and Family Issues
Pensions and Investments

(c) In accordance with board rules, a local rabies control authority may contract with one or more public or private entities to provide and operate a quarantine facility.

*The term board as used in Section 826.051 refers to the Texas Board of Health. See Section 826.002(2) of the Rabies Control Act.

Pursuant to various requirements elsewhere in the Rabies Control Act, the board has adopted numerous rules which are currently contained in Chapter 169 of Title 25 of the Texas Administrative Code. In Section 169.26 of those rules, the board set out standards for quarantine facilities but not for impoundment facilities. It is not known if this was intentional, an oversight, or based on the belief that the standards set forth in Section 169.26 were to apply to both quarantine facilities and impoundment facilities. Nonetheless, there is currently no board rule specifically addressing the minimum standards for impoundment facilities and for the care of impounded animals as mandated by Section 826.051(b) of the Rabies Control Act. Further, the Texas Department of Health, has stated that it does not interpret Section 169.26 as applicable to an impoundment facility unless the impoundment facility is either: 1) also a quarantine facility, or 2) also an animal shelter subject to the Animal Shelter Act which applies only to animal shelters in counties with a population of 75,000 or more. Thus, there are presently impoundment facilities in over 200 Texas counties which are not regulated by either the Rabies Control Act or the Animal Shelter Act.

Section 823.003(a) of the Animal Shelter Act reads as follows (emphasis added):

823.003. Standards for Animal Shelters; Criminal Penalty

(a) Each animal shelter operated in this state shall comply with the standards for housing and sanitation existing on September 1, 1982 and adopted under Chapter 826 (Rabies Control Act of 1981).

It is uncertain what is meant by the phrase "adopted under Chapter 826 (Rabies Control Act of 1981)" as used in Section 823.003(a) of the Animal Shelter Act. The Texas

Department of Health believes it refers to Section 169.26 of the Department's rules dealing with quarantine facilities.

The Texas Department of Health also is of the opinion that the enactment of the Animal Shelter Act superceded and/or rendered moot the requirement in the Rabies Control Act that the board establish minimum standards for impoundment facilities and the care for impounded animals (presumably because of the reference in Section 823.003(a) of the Animal Shelter Act to the rules adopted under the Rabies Control Act). That opinion (or interpretation) appears incorrect for two reasons. First, as mentioned above it is unclear as to exactly what, if any, part of Chapter 169 of the Department's rules, Section 823.003(a) of the Animal Shelter Act is referencing by the phrase "adopted under Chapter 826 (Rabies Control Act of 1981)." Second, and more importantly, the Animal Shelter Act does not apply to animal shelters located in counties having a population of less than 75,000. (See Section 823.002 of the Animal Shelter Act).

Thus, the failure of the Texas Board of Health to establish minimum standards for impoundment facilities and the care of impounded animals as mandated by Section 826.051(b) of the Rabies Control Act has left impoundment facilities located in counties with a population of less than 75,000 which are not also quarantine facilities unregulated and without any established minimum facility standards or standards for the care of the animals impounded therein. That result was clearly not intended by the legislature when it enacted the Rabies Control Act and mandated the board by rule to establish minimum standards for impoundment facilities and for the care of the animals impounded in these facilities.

Conclusion

Given all of the above, it seems clear that proper statutory construction would lead to the conclusion that the Animal Shelter Act did not in any way supercede or conflict with the Rabies Control Act, nor did it render moot the requirement of the Rabies Control Act that the Texas Board of Health, by rule, establish minimum standards for impoundment facilities and for the care of impounded animals. That being so, the Texas Board of Health should remedy its failure to do so and adopt those rules. This could easily be done by merely

expanding Section 162.26 of Title 25 of the Texas Administrative Code to specifically include both quarantine and impoundment facilities.

Thus, as noted above, your opinion is requested as to whether or not the passage of the Animal Shelter Act superceded or in anyway rendered moot the mandate of the Rabies Control Act that the Texas Board of Health by rule establish minimum standards for impoundment facilities and for the care of impounded animals.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Toby Goodman". The signature is written in a cursive, slightly slanted style.

Representative Toby Goodman
Chair, Committee on Juvenile Justice and Family Issues

cc: Department of Health