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By Opinion Committee at 8:36 am, Nov 14, 2022

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RQ-0485-KP

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FILE# **ML-49196-22**

November 10, 2022

I.D.# **49196**

Via email opinion.committee@oag.texas.gov

Office of the Attorney General
Attn: Opinion Committee
PO Box 12548
Austin, TX 78711-2548

RE: Utilizing "Trap, Neuter, Release" programs in compliance with Texas Penal Code §42.092 Animal Cruelty Laws

Dear Attorney General Paxton:

Pursuant to Texas Government Code section 402.043, Brazoria County respectfully submits this formal request for an Attorney General opinion on:

1. Whether a municipality or local government entity may engage in a Trap, Neuter, Release (hereinafter "TNR") program in compliance with Texas Penal Code §42.092

BACKGROUND

The City of Pearland is considering options to control its stray animal population, in particular, stray cats. One approach is a Trap/Neuter/Release-style program, or TNR. Under TNR, the local government or private animal rescue group would capture a stray cat; have a medically-licensed individual sterilize the cat; and release said cat back into the stray animal population. The purpose of TNR is to limit animal breeding in the stray population and possibly provide vaccinations to limit the spread of feline diseases.

Multiple communities are faced with a feral cat problem and are attempting to find efficient solutions. TNR programs intend to control the feral cat population in a humane manner for the benefit of the local community and government. The City of Pearland does not currently have an ordinance regarding TNR-style programs and would like to know if a TNR program, once instituted, will comply with animal cruelty laws under Penal Code §42.092.

ANALYSIS

COUNTY COURTHOUSE, 111 E. LOCUST, SUITE 408A, ANGLETON, TEXAS 77515

Angleton Area
(979) 864-1233

Houston Area
(281) 756-1233

Brazosport Area
(979) 864-1525

Fax-Criminal Division
(979) 864-1525

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The nature and practice of TNR-style programs may be in conflict with Penal Code §42.092, due in large part to the statute's definition of "abandon" and "custody".

Texas Penal Code §42.092 states in part:

(b) A person commits an offense if the person intentionally, knowingly, or recklessly:

(4) abandons unreasonably an animal in the person's custody;

Tex. Penal Code Ann. § 42.092 (West 2017). An offense under subsection § 42.092(b)(4) is classified a Class A misdemeanor. *Id.* § 42.092(c).

The term "animal" includes a "domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured". *Id.* § 42.092(a)(2). One "abandons" an animal if: (1) the animal is in their custody, and (2) they fail to make reasonable arrangements for another individual to take custody of said animal. *Id.* § 42.092(a)(1). Furthermore, an individual has "custody" if the responsibility of the animal's "health, safety, and welfare" are "subject to the person's care and control, *regardless of ownership of the animal.*" *Id.* § 42.092(a)(4) (emphasis added).

If we apply the typical TNR-style program under the scope of §42.092(b)(4), releasing the stray into the wild may be seen as abandonment.

First, the initial capture or trap of the stray or feral cat places the animal in custody of the individual because the cat is then under their care and control. Said custody is further evident when the individual takes responsibility for the animal's health and seeks medical treatment, such as sterilization and vaccination, by a veterinarian or other licensed-professional.

At this point of the scenario, returning the animal into the wild, without making reasonable arrangements for another individual to take custody of said animal, operates as a form of abandonment, by letter of the law. If the abandonment is made unreasonably, such as leaving the stray in an open and unsafe environment, then that may support a conviction under Tex. Penal Code §42.092(b)(4).

CONCLUSION

A typical TNR-style program appears to be in violation of Penal Code §42.092(b)(4). Trapping an animal under a person's care and control would place the animal under their custody. Releasing said animal back into the stray population can be

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labeled as an unreasonable abandonment. Therefore, this act could be considered an offense under §42.092(b).

We appreciate your assistance on this matter and look forward to your opinion. If you have any questions, please, do not hesitate to contact our office at (281) 756-1233.

With kind regards, I remain

Very truly yours,



Tom Selleck

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