

MAINE STATE LEGISLATURE

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NOT A FORMAL OPINION

March 14, 1972

John M. Smiley, Asst. Director

Agriculture

Lee M. Schepps, Assistant

Attorney General

Licensing Pet Shops and Boarding Kennels

You asked four questions in your memorandum of February 23, 1972 and I answer them in the order in which they were asked.

1. Pet shops which breed dogs for resale are required to license individual dogs which are six months or over, or else are required to secure a proper kennel license. Title 7 M.R.S.A. § 3451.

2. You inquired as to the definition of a "humane societies shelter". I assume that you meant to inquire as to the definition of a "humane society or shelter" as those words are used in Title 7 M.R.S.A. § 3406. Neither of those expressions are defined in the statute and there is no well established legal definition of them. For that reason, I would resort to the dictionary definitions and the meanings attributed to them in common parlance. In other words, persons who operate sanctuaries or refuges for dogs for charitable or benevolent purposes would generally be considered to be operating a shelter. The same definition would apply to a "humane society" except that the word "society" implies an organization or association of individuals for the common purpose of humane treatment to animals.

3. You inquired whether or not the Department of Agriculture has jurisdiction over individual persons who do not seek reimbursement under Title 7 M.R.S.A. § 3406, who own and keep numerous dogs but who are not part of any organized group and who do not sell but only give away pets. These persons appear to be operating "shelters" and, as such, are not required to be licensed as such. However, such persons are required to license each dog which they keep and which attain the age of six months or more, unless the dogs are kept under a kennel license as provided by Title 7 § 3451. Even if such persons occasionally accept donations in order to feed or support their dogs, I would regard them as essentially "dog lovers" and not subject to the licensing requirements imposed upon pet shops, boarding kennels and others similarly situated.

4. Title 7 § 3406 provides that a humane society or shelter may take in sick, stray or abandoned dog and, under certain conditions, can receive a daily compensation for a certain amount of time for keeping such dogs. Proceeds from the sale of any such dog are to be deducted from claims made to the State for boarding the dogs under that statute. You stated in your memorandum that some humane societies and shelters are not giving the State credit for sums of money received when dogs are disposed of. You stated that the dogs are not sold, as such, but instead are given away and the donee is asked for a contribution to the shelter. To the extent that you are able to prove that (i) the dog has a value and (ii) the "gift" of the dog would not be made unless a donation were received, then I believe you can establish that the dog has been sold in which event the State is entitled to a credit on its bill regardless of the name given to the transaction by the humane society or the shelter. On the other hand, where there is no contractual obligation by a person to pay a consideration for dogs and where sums of money which are paid by the recipient of the dog are paid voluntarily to the shelter or humane society, such sums must be considered contributions and the State is entitled to no credit, under the existing statute, against sums paid by the State to the shelter for maintaining the dogs.

Please let me know if you need further assistance in connection with this matter.

LS/mf