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February 20, 1975

John A. Smiley, Director, Division
of Animal Industry
David Roseman, Assistant

Agriculture
Attorney General

(1) Inspection of certain records; (2) Boarding Kennels

I am writing in response to your memo of January 10, wherein you ask two questions. I understand your first question to be the following: Are you under an obligation to forward to a particular person, certain information requested by that person, or should you make the records containing that information available for inspection in your office? The information which has been requested is the amount of money disbursed in the years 1973 and 1974 by the State to individual shelters, veterinarians and humane societies pursuant to the program of reimbursement under 7 M.R.S.A. § 3406.

1. According to your memo to me of January 28, this information is contained in the office of the Department of Agriculture in two separate places. It is indicated on the claim form itself (The claim form is reviewed by the Department's Animal Husbandry Specialist, who approves or disapproves the claim, signs the form, and indicates the amount approved thereon.), which is filed in an individual folder maintained by the Department for each shelter, society or veterinarian, and the amount paid is also recorded in a loose-leaf book.

The issue here is whether either the loose-leaf book or the claim forms or both are public or confidential records. Upon request by a citizen, a public record must be made available for inspection. 1 M.R.S.A. § 405. A public record under this Maine statute has been defined as one which is made as the result of agency action itself. (See 1961-62 Attorney General Rep. 82). It seems clear, therefore, that the record contained in the loose-leaf book, having been made as the result of agency action, is a public record. The claim form, too, is a public record. By examining the claim form, the Animal Husbandry Specialist decides whether to pay the claim, and if so, for how many dollars. Thus, no meaningful examination of his "deliberations" could take place without access to these claim forms. (See Formal Opinion of the Attorney General, June 11, 1974, to State Tax Assessor re: Citizen access to local tax assessor's property record cards.)

Therefore, the citizen referred to in your memo has the right to inspect these public records on the premises of the Department and during the regular business hours of the Department. She, furthermore, has the right to make memoranda abstracts or photographic or photostatic copies of these records. 1 M.R.S.A. § 405. You are under no obligation to forward the information contained in these records to her, although you may do so if you wish.

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2. Your second question asks generally whether veterinarians are included in the definition of "boarding kennel" under 7 M.R.S.A. § 3451, and whether, therefore, veterinarians must obtain a boarding kennel license. You have indicated that this question is asked with reference to the following specific problem: There are some licensed veterinarians who are boarding dogs, but while boarding dogs, they perform some minor veterinary care on the animal. Are those veterinarians required to get a boarding kennel license, or are they exempt from this licensing requirement because they are veterinarians. 7 M.R.S.A. § 3451 states in applicable part:

"'Boarding kennel' means any place, building, tract of land, abode or vehicle wherein or whereon privately owned dogs or other pets, or both, are kept for their owners in return for a fee. Any person, firm or corporation maintaining a boarding kennel shall obtain from the Commissioner of Agriculture a license therefor ... and the fee for such license shall be \$25."

A person becomes licensed to practice veterinary medicine, surgery or dentistry pursuant to 32 M.R.S.A. § 4802. A person is regarded as practicing veterinary surgery, medicine or dentistry if he treats sick or injured animals and receives a fee for such services, after having publicly professed to be a veterinarian or after having attached the titles D.V.M., V.M.D. or V.S. to his name. 32 M.R.S.A. § 4801. From our conversations I understand that it has been your interpretation that a veterinarian who is performing veterinary services upon an animal, but who must as an incident thereto keep the animal overnight and feed it, is not maintaining a "boarding kennel" as that phrase was used by the Legislature in 7 M.R.S.A. § 3451. This interpretation is a reasonable one and would seem to be correct. Such a veterinarian would not be receiving a fee for keeping an animal (7 M.R.S.A. § 3451), but would be receiving a fee for providing medical or surgical care. (32 M.R.S.A. § 4801).

If, however, a veterinarian merely keeps dogs for their owners in return for a fee (while providing no veterinary services), he would be maintaining a boarding kennel and would need a license therefor. He is not exempt from the license requirement of 7 M.R.S.A. § 3451 by the mere fact that he holds a veterinary license pursuant to 32 M.R.S.A. § 4802. Each license serves a separate purpose. Furthermore, if a veterinarian is keeping dogs for their owners in return for a fee, the fact that he happens to render some minor veterinary care to the dogs while boarding them would not make him exempt from obtaining a boarding kennel license. The statute is clear that he has "... kept [dogs] for their owners in return for a fee," 7 M.R.S.A. § 3451, and it makes no exception for him.

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The answer to your second question thus depends upon the facts in each particular case.

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