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Agriculture: Authority to destroy animals
17 MRSA, 1226-1228

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September 23, 1977

To: Stanley T. Brown, Department of Agriculture
From: Sarah Redfield, Assistant Attorney General
Re: P.L. 1977, c. 445.

This is in response to your request for an opinion concerning certain provisions of Title 17 M.R.S.A. §§ 1226-1228, as enacted by P.L. 1977, c. 445. Specifically, you have asked the following questions, the answers to which are discussed herein.

1. Does the term "authorized agencies" in § 1226 indicate that the provisions of Chapter 445 apply only to approved shelters? Yes.

2. Does the reference to T-61 in § 1227.5 constitute unfair advertising via state statute? No.

Should this drug be referred to by generic term? It would perhaps be preferable, however, the current language may be construed to include all drugs of the same type regardless of the trade name referred to in § 1227.5.

3. Is the observation responsibility referred to in § 1227.6 that of veterinarians or the Commissioner of Agriculture? This responsibility is primarily that of the veterinarians.

4. Is the inspection responsibility referred to in § 1228 that of the operating agency or the Commissioner of Agriculture? This responsibility is primarily that of the operating agency.

5. Does "death by single shot", as required by § 1228.3.B, mean one bullet or single shot ammunition rather than scatter shot? It means one bullet.

Discussion:

1. Title 17 M.R.S.A. § 1226 provides that:

"No cat or dog shall be destroyed by any authorized agency or licensed veterinarian by any method, agent or device except as described in this subchapter." (emphasis supplied)

As it was originally presented to the Legislature, this section provided that "No cat or dog shall be destroyed by any method, agent or device except as described in this subchapter," L.D. 1092. The Statement of Fact for the amended version indicated that "the provisions of this bill apply to authorized agencies such as humane shelters and licensed veterinarians," Committee Amendment "A" to L.D. 1092. Apparently the Legislature did not intend this statute to bind all individuals. It also appears that the Legislature assumed that all animal and humane shelters were authorized or approved in some way by the State under existing law. This is not the case.

The only reference to animal shelters approved by the Commissioner appears to be Title 7 M.R.S.A. § 3451 providing an exemption from dog licensing requirements for humane societies and shelters approved by the Commissioner pursuant to § 3406. Section 3406 provides that a person may take a sick cat or dog to a shelter providing the shelter is approved by the Commissioner of Agriculture. Approval is apparently a condition of obtaining funds for the keeping of such animals. There appear to be no direct licensing or prohibitory provisions concerning the operation of animal shelters.

While the basic principle of statutory construction is that statutes are to be construed to accomplish the intent of the legislature, the power to authorize or license agencies cannot reasonably be implied from § 1226; 17 M.R.S.A. § 1226, compare 7 M.R.S.A. § 3451 as to licensing and revocation of licensing of pet shops, kennels, and boarding kennels. Nor can the modifying language of the statute be treated as surplusage.

Accordingly, section 1226 by its own terms applies only to agencies approved by the Commissioner. However, Title 7 M.R.S.A. § 3451 provides "humane societies, shelters and shelters approved by the commissioner under section 3406 shall be subject to any rules and regulations promulgated by the commissioner as to sanitation, enclosure, records, health requirements and such other procedures as he may deem necessary." (emphasis supplied) Pursuant to this section, it would appear that the Commissioner could, by regulation, apply the substantive provisions of Chapter 445 to all shelters.

2. The use of a trade name in a statute is not within the purview of the regulation of unfair advertising or trade practices, see generally Title 10 M.R.S.A. § 1152, et seq. The use of the specific name for "euthansia solution, T-61" does, however, raise the question as to whether drugs of identical composition which may be manufactured under different labels are permitted pursuant to § 1227.5. To consider the statute as limiting the permitted euthansia solutions to T-61 would not be the most effective way to accomplish the legislative intent, see generally, e.g., Finks v. Maine State Highway Commission, 328 A.2d 791 (1974). So long as the content of other drugs is synonymous with that of the named drug, they would be acceptable, see State v. Alley, 263 A.2d 66 at 70 (1970).

3. The language of § 1227.6 indicates that a veterinarian or a trained person who is subject to supervision by a veterinarian, may administer drugs, consistent with this chapter. This interpretation is consistent with the provisions of Title 32 M.R.S.A. § 4853.7.A defining the practice of veterinary medicine and limiting such practice to certain categories of persons, including "animal and humane shelters under the supervision of a licensed Maine veterinarian," 32 M.R.S.A. § 4860.12.

4. The obligation imposed by § 1228.1.d(4)(a) to maintain and inspect gas generation machinery is imposed on the "authorized agency or licensed veterinarian," by virtue of the general prohibitory language of § 1226. Nevertheless, the Commissioner retains the authority to inspect any such facility consistent with § 1230.

5. It appears that the language "a single shot" (emphasis supplied) does not necessarily contemplate single shot ammunition rather than scatter shot. Any ammunition "suitable" to produce instantaneous death with one shot is allowed, though this certainly should not be construed to mean that if such ammunition is used and the animal only wounded, a second shot would not be allowed. Again, the overall intent of the Legislature, to accomplish this killing as humanely as possible, controls.


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