

MAINE STATE LEGISLATURE

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Animal Sheltering Program
STATE OF MAINE
Proposed Animal Sheltering Program

Inter-Departmental Memorandum Date October 5, 1977

To Stanley Browne

Dept. Agriculture

From Sarah Redfield, Assistant

Dept. Attorney General

Subject _____

This is in response to your oral request for an opinion as to whether animal shelters are or could be authorized under State and Federal law to draw and use barbituate drugs without the supervision of licensed veterinarians. While employees of animal shelters who are trained for the administration of barbituate overdoses for euthanasia of cats and dogs or for the administration of euthanasia solution T-61 and who are "subject to the regular observation concerning continued efficiency" may administer such drugs in the manner provided by statute, they are not specifically authorized to possess controlled substances under State law and thus it appears could not be registered for these purposes, pursuant to Federal law.*

The Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 prohibits the administration of controlled substances except by persons authorized or registered to do so pursuant to 21 U.S.C. § 822. Regulations promulgated pursuant to this statute provide that "Every person who manufactures, distributes or dispenses any controlled substance shall obtain annually a registration unless exempted by law . . . , " 21 C.F.R. § 1301.21.**

"Practitioners" may be registered to dispense controlled substances "if they are authorized to dispense or conduct research under the law of the state in which they practice," 21 U.S.C. § 823(f). (emphasis supplied) The term "practitioner" is itself defined as including a ". . . veterinarian . . . or other person licensed, registered or otherwise permitted, by the United States or the jurisdiction in which he practices . . . to dispense . . . a controlled substance in the course of professional practice or research," 21 U.S.C. § 802(20) (emphasis supplied).

* I have reviewed the applicable provisions of federal law and attempted to discuss them herein for your information. I would point out, however, that interpretation of federal law is within the purview of the relevant federal agencies and appropriate federal officials should be contacted as to questions of applicability and enforcement and ultimately decide who is a qualified registrant.

** "Controlled substance" is defined by Title 21 U.S.C. § 802(6) as "The term 'controlled substance' means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of Part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954."

In summary, animal or humane shelters may qualify and register as "practitioners" under Federal law to the extent that they are authorized by State law to possess and administer the controlled drugs.

Maine law on the authorization for the possession or dispensation of drugs is derived from several sources as follows:

Title 17-A M.R.S.A. § 1007 provides that it is unlawful to possess scheduled drugs, as defined by § 1102 unless authorized by the provisions of Title 22.

Pursuant to Title 22 M.R.S.A. § 2207-A concerning the permissive use of drugs, veterinarians are authorized to deal professionally with dangerous substances as defined by § 2207-A.3. Specifically they are authorized to prescribe, administer, deliver or possess dangerous substances for animals under professional treatment, 22 M.R.S.A. §§2207-A.1, 2207-A.2.B.

The practice of veterinary medicine is defined by the Maine Veterinary Practice Act of 1975 as:

"Practice of veterinary medicine. 'Practice of veterinary medicine' means:

"A. To diagnose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental conditions; including the prescription or administration of any drugs, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique and the use of any manual or mechanical procedure for artificial insemination, for testing for pregnancy or for correcting sterility, or infertility, or to render advice or recommendation with regard to any of the above:" 32 M.R.S.A. § 4853.7.A.

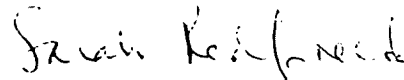
Such practice is limited to licensed veterinarians and trained animal technicians with certain limited exceptions, see 32 M.R.S.A. §§ 4860, 4866. Among these exceptions is the authorization for animal or humane shelters to practice veterinary medicine "under the supervision of a licensed Maine veterinarian," 32 M.R.S.A. § 4860.12.

In addition, Title 17 M.R.S.A. § 1227.6, as enacted by P.L. 1977, § 445, provides that preferred methods of euthanasia defined as including barbiturate overdoses or administration of euthanasia solution, may be administered "only by a licensed veterinarian or by a person trained for this purpose and subject to regular observation concerning continued efficiency."

Where several statutes address the same subject, they are to be construed, where possible, in connection and harmony with each other in order to accomplish the legislative intent, see generally Finks v. Maine State Highway Commission, 328 A.2d 791 (1974). In the present situation, it appears that the Legislature intends to generally limit by criminal sanction the possession of scheduled drugs, Title 17-A M.R.S.A. § 1107, § 1102. At the same time, the Legislature specifically intends to authorize trained persons to use two euthanasia methods involving drugs, Title 17 M.R.S.A. § 1227.6.

The criminal code provides clear and explicit exemptions for those persons authorized by Title 22 to possess dangerous substances. This exemption does not incorporate the exceptions of Title 32 nor the authorization of Title 17 as discussed herein. That is, animal shelters are not specifically authorized to possess such drugs; nor does it appear that the exemption of such shelters from the prohibition against the unlicensed practice of veterinary medicine can be seen as an affirmative authorization to possess scheduled drugs or dangerous substances.

Accordingly, it appears that in the present context only veterinarians are authorized under Maine law to possess scheduled drugs; however other persons "trained for this purpose and subject to regular observation concerning continued efficiency" would be able to administer such drugs for euthanasia as provided by Title 17.



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