S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 07-11

Offenses Against Animals: Tenn. Code Ann. § 39-14-201, *et. seq.*

QUESTIONS

1. May the term "officer" as it is used in Tenn. Code Ann. §39-14-202(c) refer to a local sheriff's officer, a city/county animal control officer, and a non-governmental humane society officer?

2. Tenn. Code Ann. §39-14-202(f)(2) states that a second or subsequent conviction for cruelty to animals is a Class E Felony. Does this hold true if either conviction involved a livestock animal?

3. Does Tenn. Code Ann. §39-14-207(a) include livestock confined within a fence without necessary food and water for more than twelve (12) hours?

4. Is an examination of livestock animals per Tenn. Code Ann. §39-14-211 required to determine if the animal is in fact without necessary food and water for more than twelve (12) hours prior to any person entering the property to supply it with necessary food and water per Tenn. Code Ann. §39-14-207?

5. Is an examination of livestock animals per Tenn. Code Ann. §39-14-211 required if the livestock animal is found at large and injured, diseased, suffering from the elements, or malnourished prior to any humane society causing adequate veterinary treatment or shelter or nourishment to be furnished to the animal as stated in §39-14-207(b)?

6. Tenn Code Ann. §39-14-210 states the powers of governmental agencies working with victimized animals. Does this refer to law enforcement agencies such as sheriff's departments, government-controlled animal control agencies, and non-governmental, privately funded humane societies?

7. What agencies can make arrests pursuant to Tenn. Code Ann. § 39-14-202 with regard to livestock animals?

8. Per Tenn. Code Ann. §39-14-210(f), custody of any animal victimized under this part shall be placed with any humane society chartered by the State immediately upon arrest of the person alleged to have violated this part. The statute further states the humane society shall assist the animal and preserve evidence for prosecution. Does a sheriff's department or police department

have authority to arrest or cite an individual who has been alleged to have violated Tenn. Code Ann. §39-14-202 with regard to livestock if the requirements of Tenn. Code Ann. §39-14-211 have been met?

9. If the owner of an animal alleged to have been victimized cannot be located in order to make an arrest or issue a citation immediately as per Tenn. Code Ann. §39-14-210(f), can the animal be placed into the care of a humane society to assist the animal and preserve evidence for prosecution while the investigating agency completes the investigation?

10. Who has the authority to make the request for examination as stated in Tenn. Code Ann. §39-14-211? (Individual, non-governmental humane society, sheriff's department, etc.)

OPINIONS

1. Yes. As used in Tenn. Code Ann. §39-14-202(c), "officer" would include a local sheriff's officer. [With regard to non-livestock animals, agents of city or county animal control, as well as a non-governmental humane societies are also considered "officers" pursuant to this statute.]

2. Yes. A second or subsequent conviction for cruelty to animals is considered a Class E Felony, regardless of whether either or both convictions involved livestock. *See* Tenn. Code Ann. § 39-14-202(f)(2).

3. Yes. Because Tenn. Code Ann. §39-14-207 merely refers to an "impounded animal," both livestock and non-livestock animals are included.

4. Before treatment can be rendered to an impounded or confined livestock animal, an examination of the animal by the proper official must be performed prior to, *or at the same time*, as aid is rendered.

5. No. An animal which is "at large" and is injured, suffering from the elements, or malnourished does not need to be examined before aid can be rendered.

6. Yes. Duly-appointed agents of government-funded animal control agencies, privately funded humane societies, and law enforcement officers, including sheriffs and sheriffs' deputies, may enforce Tenn. Code Ann. § 39-14-210 with regard to non-livestock. For livestock animals, only law enforcement officers may enforce this provision.

7. Only law enforcement officers may make arrests pursuant to Tenn. Code Ann. § 39-14-202 if the animal involved is considered livestock.

8. Yes. A sheriff's department or police department has authority to arrest or cite a person pursuant to Tenn. Code Ann. § 39-14-202.

9. Yes. Pursuant to Tenn. Code Ann. §39-14-210(f), an allegedly victimized animal may be placed with any state-chartered humane society prior to the offender's arrest.

10. There is no limitation set forth in Tenn. Code Ann. § 39-14-211 regarding who has the authority to make the request for examination of livestock.

ANALYSIS

1. Tenn. Code Ann. § 39-14-202(c) provides that whenever a person is taken into custody by any officer for the offense of transporting or confining an animal in a cruel manner pursuant to Tenn. Code Ann. § 39-14-202(a)(4), the officer may take charge of the vehicle or conveyance and its contents and place them in custody. The statute further provides for the expenses incurred as a result of taking the vehicle into custody. Tenn. Code Ann. § 39-14-202(c).

The term "officer," as used in Tenn. Code Ann. § 39-14-202(c), refers to any law enforcement officer who, under the laws of this State, can take a person into custody for violating Tenn. Code Ann. §39-14-202(a)(4). This would include state and local law enforcement officers able to make arrests. Further, Tenn. Code Ann.§ 38-3-103 states that the judicial and ministerial officers of justice in the state, and the mayor, aldermen, marshals and police of cities and towns, and the director, commissioner, or similar head of any metropolitan or municipal police department, whether elected or appointed, are also conservators of the peace, and are required to aid in the prevention and suppression of public offenses, and for this purpose may act with all the power of the sheriff. Also, a "peace officer" is "an officer, employee or agent of government who has a duty imposed by law to: (i) Maintain public order; (ii) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and (iii) Investigate the commission or suspected commission of offenses." Tenn. Code Ann. § 40-7-118(a)(3)(A). *See Op. Tenn. Att'y Gen. 06-149* (Tenn. AG 2006). In addition, the sheriff and the sheriff's deputies are empowered to make arrests when an offense has been committed. Tenn. Code Ann. § 8-8-213(a). Thus, an officer, as used in Tenn. Code Ann. § 39-14-202(c) includes a local sheriff or sheriff's deputy.

Furthermore, Tenn. Code Ann. § 39-14-210(a) provides that "[t]he agents of any society which is incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any county, may, *within such county*, make arrests, and bring before any court thereof offenders found violating the provisions of this part with regard to non-livestock animals." (Emphasis added). This provision empowers city or county animal control organizations, which are incorporated for the prevention of cruelty to animals, as well as non-governmental humane societies, to appoint agents who have the ability to make arrests, in that county, when violations involving non-livestock animals occur. Thus, in cases where a non-livestock animal is involved, an animal control officer or humane society officer qualifies as an "officer" pursuant to Tenn. Code Ann. § 39-14-202(c).

2. Cruelty to animals is a Class A misdemeanor. Tenn. Code Ann. § 39-14-202(f)(1). A second or subsequent conviction for cruelty to animals is a Class E felony. Tenn. Code Ann. § 39-14-202(f)(2). "'Animal' means a domesticated living creature or a wild creature previously

captured. Tenn. Code Ann. §39-14-201(1). "'Livestock' means all equine as well as animals which are being raised primarily for use as food or fiber for human utilization or consumption including, but not limited to, cattle, sheep, swine, goats, and poultry." Tenn. Code Ann. §39-14-201(2). "'Non-livestock animal' means a pet normally maintained in or near the household or households of its owner or owners, other domesticated animal, previously captured wildlife, an exotic animal, or any other pet, including but not limited to, pet rabbits, a pet chick, duck, or pot bellied pig that is not classified as "livestock" pursuant to this part." Tenn. Code Ann. § 39-14-201(3). Both "livestock" and "non-livestock" are considered animals under the animal cruelty statute. Black's Law Dictionary defines an "animal" as any living creature other than a human being. *Black's Law Dictionary*, (8th ed. 2004). Therefore, a second or subsequent conviction for cruelty to either livestock or non-livestock animals is a Class E Felony. *See* Tenn. Code Ann. § 39-14-202(f)(2).

3. Tenn. Code Ann. §39-14-207 provides for the care of impounded animals and the recovery of expenses for that care. Part (a) provides:

> In case any impounded animal is without necessary food and water for more than twelve (12) successive hours, it is lawful for any person, as often as necessary, to enter any place in which any animal is so confined, and to supply it with necessary food and water so long as it remains so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected from the owner or keeper of the animal. The animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Tenn. Code Ann. § 39-14-207(a). Because this provision merely refers to an "impounded animal," both livestock and non-livestock animals are included. *See* question 2 (concluding that "animal", as used in this part, includes livestock and non-livestock).

4 and 5. As stated previously, Tenn. Code Ann. § 39-14-207 provides that aid may be rendered to impounded animals who have gone without food and water for more than twelve successive hours. However, in the case of livestock, Tenn. Code Ann. §39-14-211 provides as follows:

> No entry onto the property of another, arrest, interference with usual and customary agricultural or veterinary practices, confiscation, *or any other action authorized by this part* or any other provision of law shall be taken in response to an allegation that this part has been violated *with regard to livestock unless, prior to or at the same time as such action*, the livestock in question is examined by the county agricultural extension agent of such county, a graduate of an accredited college of veterinary medicine specializing in livestock practice or a graduate from an accredited college of agriculture with a specialty in livestock. If the extension agent, veterinary college graduate specializing in livestock practice or livestock specialist does not have probable cause to believe that a violation of this part has occurred with regard to such livestock, no action against the owner of such livestock described in this section shall be taken. If a person authorized by this section does not make an inspection

> within twenty-four (24) hours of receipt of a complaint, then a licensed veterinarian may make such inspection.

(emphasis added). This provision makes clear that "the county agricultural extension agent of such county, a graduate of an accredited college of veterinary medicine specializing in livestock practice or a graduate from an accredited college of agriculture with a specialty in livestock" must evaluate the livestock animal *prior to or at the same time* as entry onto the property is made for an arrest, confiscation, or aid.

However, when an agent of humane society chartered by the state locates an animal which is "at large" and is "injured, diseased, suffering from the elements, or malnourished," the agent "may cause adequate veterinary treatment or shelter or nourishment to be furnished to the animal." Tenn. Code Ann. § 39-14-207(b). Thereafter, the agency may have a right of action against the owner for "all necessary and reasonable expenses so incurred." *Id.* Based on the foregoing, before treatment can be rendered to a livestock animal, (1) the animal must be considered "at large" and be injured, suffering from the elements, or malnourished; or (2) confined, and subjected to an examination by the proper official prior to, or at the same time, as aid is rendered. *See* Tenn. Code Ann. §§ 39-14-107, 111.

6. Tenn. Code Ann. § 39-14-210 sets forth the "[p]ower of governmental agencies working with victimized animals." The statute provides, in pertinent part,

> The agents of any society which is incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any county, may, within such county, make arrests, and bring before any court thereof offenders found violating the provisions of this part with regard to non-livestock animals.

Tenn. Code Ann. § 39-14-210(a). The plain language of this statute indicates that "any society," (whether privately or governmentally funded), "which is incorporated for the prevention of cruelty to animals" may enforce this part. Thus, both government-funded animal control agencies and privately-funded humane societies, which are incorporated for the prevention of cruelty to animals, are included and may enforce these provisions regarding non-livestock animals. In addition to the officers outlined in this section, any law enforcement officer who is empowered to take a person into custody for violating the laws of this State may likewise enforce the provisions of this part. *See* Question 1. This would include a sheriff and sheriff's deputy. *See* Tenn. Code Ann. § 8-8-213(a).

7. Tenn. Code Ann. § 39-14-202 lists the offenses and penalties involving animal cruelty. As explained in question 1, any state or local law enforcement officer is able to make arrests for violations of the statute involving both livestock and non-livestock animals. Because there is no special provision allowing for this statute to be enforced by agents of societies incorporated for the prevention of cruelty to animals with regard to livestock animals, such duties are left to officers empowered by the laws of this State to make arrests. *See* Tenn. Code Ann. § 39-14-210 (stating that with regard to non-livestock animals only, certain societies incorporated for the

prevention of animal cruelty may enforce the provisions in this chapter). This would include sheriffs and sheriffs' deputies. *See* Tenn. Code Ann. § 8-8-213(a).

8. Tenn. Code Ann. § 39-14-210(f) provides:

> Custody of any animal victimized under this part shall be placed with any humane society chartered by the state immediately upon arrest of the person alleged to have violated this part. The humane society shall assist the animal and preserve evidence for prosecution.

As stated previously, officers empowered by this State, including sheriffs and sheriffs deputies, may make arrests pursuant to this statute. *See* question 1. In addition, if the offense involves a non-livestock animal, duly appointed agents of societies incorporated for the prevention of animal cruelty may also enforce the provisions in this chapter. *See* Tenn. Code Ann. § 39-14-210. Thus, Tenn. Code Ann. § 39-14-210 does not limit the authority of police officers and sheriffs. Rather, it only adds an additional "officer" that may enforce those particular statutes regarding non-livestock.

9. Pursuant to Tenn. Code Ann. § 39-14-210(f), an allegedly victimized animal *shall* be placed with any humane society chartered by the state upon the immediate arrest of the person who allegedly violated §39-14-210. This statute does not limit placement until after an arrest is made. Instead, it merely mandates that once an arrest is made, the animal must be placed with a state-chartered humane society. *See* Tenn. Code Ann. § 39-14-210(f).

Moreover, Tenn, Code Ann. §39-14-207(b), provides that when any animal is injured, diseased, suffering from the elements, or malnourished, and is found at large by any agent of any humane society chartered by the state, the agent may cause adequate veterinary treatment, shelter, or nourishment to be furnished to the animal. Within forty-eight (48) hours after taking custody of the animal, the society shall make reasonable efforts to notify the owner of the animal's whereabouts and condition. *Id.* This provision further indicates that a humane society may provide shelter prior to the arrest of the offender.

10. Tenn. Code Ann. § 39-14-211 provides that when an "allegation" is made that the animal cruelty provisions have been violated and that violation involves a livestock animal, the animal must be examined by certain enumerated persons prior to any arrest or action authorized by this part. The statute does not, however, provide for who may make an allegation of abuse. Thus, anyone may make a complaint and request an examination of livestock under Tenn. Code Ann. §39-14-211.

ROBERT E. COOPER, Jr.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

CAMERON L. HYDER
Assistant Attorney General

Requested by:

Honorable Mike McDonald
22 Legislative Plaza
Nashville, Tennessee 37243