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Opinion No. 13-79

Authority of Humane Society Under Tenn. Code Ann. §§ 39-14-207 and -210

## QUESTIONS

1. How does a society become "incorporated for the prevention of cruelty to animals" as set forth in Tenn. Code Ann. § 39-14-210(a)?

2. What is the meaning of a "humane society chartered by the state" as referenced in Tenn. Code Ann. § 39-14-210(e) & (g)?

3. How does a corporation become a "humane society chartered by the state"?

4. What societies are included within the language "the president of such society in any county" as set forth in Tenn. Code Ann. § 39-14-210(a)?

5. What criteria allows an organization's representatives to make arrests under Tenn. Code Ann. § 39-14-210(a) or to remove animals under Tenn. Code Ann. §§ 39-14-207(b) and -210(f)?

## OPINIONS

1. A society may be "incorporated for the prevention of cruelty to animals" by complying with all conditions for incorporation delineated by Tennessee law as administered by the Tennessee Secretary of State and including specification within the society's corporate charter or other organizational documents that its purpose is for the "prevention of cruelty to animals."

2. A "humane society chartered by the state" is the equivalent of a "society which is incorporated for the prevention of cruelty to animals" for purposes of Tenn. Code Ann. § 39-14-210(a).

3. A humane society is chartered by Tennessee in the manner described in response to Question 1.

4. The term "society" as used in Tenn. Code Ann. § 39-14-210(a) means any society "incorporated for the prevention of cruelty to animals" operating in any county. Thus, the

president of such a society may appoint agents of that society to make arrests for animal cruelty violations within that county.

5. If an organization is a properly incorporated and chartered by the Tennessee Secretary of State for the prevention of cruelty to animals, its duly appointed agents are authorized by Tenn. Code Ann. § 39-14-210(a) to arrest and bring before a court offenders found violating the provisions of the animal cruelty statutes as to non-livestock animals. If not, its agents have no arrest power beyond that possessed by private persons generally. Neither Tenn. Code Ann. § 39-14-210(f) nor Tenn. Code Ann. § 39-14-207(b) grants agents of private humane societies authorization to remove animals from the custody of another.

## ANALYSIS

1. The questions posed by this opinion request concern the proper application of Tenn. Code Ann. § 39-14-210, which is part of Tennessee's law outlining criminal offenses for cruelty to animals, codified at Tenn. Code Ann. §§ 39-14-201 to -217.[1] This statute empowers agents of private humane societies to make arrests for criminal offenses involving non-livestock animals, stating in pertinent part:

> [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 a society in any county, may, within that 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) (emphasis added).

A society may be incorporated for the prevention of cruelty to animals by complying with all conditions for incorporation delineated by Tennessee law as administered by the Tennessee Secretary of State. *See* Tenn. Code Ann. §§ 48-12-101 to -107 (for-profit corporation), 48-52-101 to -107 (nonprofit corporation). Corporations are formed by the adoption of a corporate charter, also referred to as articles of incorporation. *See id.* The required contents of a corporate charter in Tennessee are set forth in Tenn. Code Ann. §§ 48-12-102 and 48-52-102. Corporate existence begins when the charter is filed by the Secretary of State, which serves as conclusive proof that the incorporators have satisfied all conditions precedent to incorporation. Tenn. Code Ann. §§ 48-12-103(a), 48-52-103(a).

In general, it is not necessary to include a corporation's purpose or to enumerate its powers within the corporate charter, since all Tennessee corporations have "the purpose of engaging in any lawful business unless a more limited purpose is set forth in the charter." Tenn. Code Ann. §§ 48-13-101, 48-53-101. However, to qualify as a society possessing the authority set forth under Tenn. Code Ann. § 39-14-210(a), the organization's charter or other organizing documents must demonstrate that the corporation is "incorporated for the prevention of cruelty to animals." This functional limitation protects the public and the corporation's officers, agents,

[1] The provisions of Tenn. Code Ann. § 39-14-210 were recently amended by Chapter 157 of the 2013 Tennessee Public Acts.

and members by clearly identifying those entities that fall within the provisions of Tenn. Code Ann. § 39-14-210.

2 & 3. The reference to a "humane society chartered by the state" in Tenn. Code Ann. §§ 39-14-210(e) & (f) is the equivalent to a society "incorporated for the prevention of cruelty to animals" referenced in Tenn. Code Ann. § 39-14-210(a). A common rule of statutory construction is that statutes, and separate provisions in a single statute, that relate to the same subject or share a common purpose should be constructed together ("in pari materia") in order to advance their common purpose or intent. *Kite v. Kite*, 22 S.W.3d 803, 804 (Tenn. 1997); *Faust v. Metropolitan Government of Nashville*, 206 S.W.3d 475, 490 (Tenn. Ct. App. 2006). The statutes in question address criminal offenses against animals. *See* Tenn. Code Ann. §§ 39-14-201 to -217. In furtherance of this statutory scheme, the General Assembly empowered private humane societies to take actions aimed at enforcing animal cruelty laws and relieving the suffering of animals victimized under those laws. For example, under Tenn. Code Ann. § 39-14-210(a), duly appointed agents of "any society which is incorporated for the prevention of cruelty to animals" may arrest suspected offenders. Other sections of this part refer variously to a "humane society chartered by the state" and a "humane society chartered under the laws of this state." *See, e.g.*, Tenn. Code Ann. § 39-14-202 (providing that custody of victimized animals forfeited as part of a criminal sentence imposed for a violation of animal cruelty statute shall be given to "a humane society incorporated under the laws of this state"); Tenn. Code Ann. § 39-14-207(b) (stating that where an animal is injured, diseased, suffering from the elements, or malnourished, and is found at large by an 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.).

Thus, viewing the statutory scheme as a whole, the General Assembly intended to grant private humane societies certain authority to assist the State in enforcing animal cruelty laws. The term "humane society chartered by the state" is the equivalent of a society "incorporated for the prevention of cruelty to animals" for purposes of Tenn. Code Ann. § 39-14-210(a), with the latter phrase more specifically defining the former. Indeed, Tennessee courts and this Office have generally recognized that Tenn. Code Ann. § 39-14-210 grants agents of "humane societies" the authority to implement the General Assembly's goals. *See State v. Webb*, 130 S.W.3d 799, 835-38 (Tenn. Crim. App. 2003) (finding that a humane society was required by Tenn. Code Ann. § 39-14-210(f) to care for victimized animals and thus qualified as a "victim" that could obtain restitution for any such costs incurred by the humane society); Tenn. Att'y Gen. Op. 07-11, at 4-5 (Jan. 31, 2007) (recognizing that "the plain language of this statute [Tenn. Code Ann. § 39-14-201(a)] indicates that 'any society, (whether privately or governmentally funded), which is incorporated for the prevention of cruelty to animals'" may exercise the authority granted by the statute) (quoting Tenn. Code Ann. § 39-14-210(a)).

4. The provisions of Tenn. Code Ann. § 39-14-210(a) specifically provide that 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 that county, make arrests, and bring before any court thereof offenders found violating the provisions of this part with regard to non-livestock animals." A plain reading of the statute indicates that the phrase, "the president of *such society* in any county," refers directly to "[t]he agents of *any society* which

is incorporated for the prevention of cruelty to animals." Tenn. Code Ann. § 39-14-210(a). (emphasis added) Thus, by its terms, the statute allows only the president of a society, which is incorporated for the prevention of cruelty to animals and qualified to operate in a particular county, to appoint agents of that organization to make arrests for violations of Title 39, Chapter 14, Part 2, within that county. *See also* Tenn. Att'y Gen. Op. 94-079 (July 11, 1994) (opining under the specific facts presented that the Tennessee Humane Association did not qualify to make appointments pursuant to the statute).

5. The Tennessee General Assembly has defined the necessary criteria to empower duly appointed agents of private humane societies to make arrests for criminal offenses involving animals under Chapter 14, Part 2, of Title 39 of the Tennessee Code and to take actions to relieve the suffering of animals victimized under those laws. If the organization in question is a society properly incorporated and chartered by the Tennessee Secretary of State for the prevention of cruelty to animals, its duly appointed agents are authorized by Tenn. Code Ann. § 39-14-210(a) to arrest and bring before any court offenders found violating the provisions of the animal cruelty statute as to non-livestock animals. If the organization does not meet those criteria, its agents have no arrest power beyond that possessed by private persons generally. *See* Tenn. Code Ann. § 40-7-109 (describing circumstances under which a private person may make arrests).

As for the "removal" of animals, neither Tenn. Code Ann. § 39-14-210(f) nor Tenn. Code Ann. § 39-14-207(b) provide authorization for removal of animals from the custody of another by agents of private humane societies. When construing statutes, Tennessee courts will determine the General Assembly's intent by examining the text of the statute and giving "the words their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose." *Britt v. Dyer's Employment Agency, Inc.*, 396 S.W.3d 519, 523 (Tenn. 2013). If the statute's language is clear and unambiguous, a court will "look no further to ascertain the statute's meaning." *Id.*

The provisions of Tenn. Code Ann. § 39-14-210(f) provide as follows:

> Upon seizure by law enforcement, custody of any animal victimized under this part shall be placed with any governmental animal control agency, law enforcement agency, or their designee. The governmental animal control agency, law enforcement agency, or their designee shall assist the animal and preserve evidence for prosecution.

Animals seized "by law enforcement" may be placed into the custody of "any governmental animal control agency, law enforcement agency, or their designee." Tenn. Code Ann. § 39-14-210(f). Neither of these provisions provide express authorization for agents of private humane societies to remove an animal from the custody of another.

Finally, Tenn. Code Ann. § 39-14-207(b) permits a humane society to take custody of any injured, diseased, malnourished or exposed animal found "at large" and to provide necessary veterinary care, shelter, or nourishment, specifically providing:

> In case 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 or shelter or nourishment to be furnished to the animal. The society shall have a right of action against the owner of the animal for all necessary and reasonable expenses so incurred. 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.

(Emphasis added). The Tennessee Supreme Court has defined an animal "at large" to mean free and unrestrained or not "under control" of its master. *Dalton v. Dean*, 175 Tenn. 620, 623, 136 S.W.2d 721, 722 (1940).

This Office has previously defined the circumstances under Tenn. Code Ann. §§ 39-14-210(f)[2] and 39-14-207(b) whereby an animal may lawfully "come into the custody" of a humane society. *See* Tenn. Att'y Gen. Op. 00-163, at 1-2 (Oct. 19, 2000). However, neither this opinion nor the operative statutes authorize agents of private humane societies to remove animals independently from the custody of another. Notwithstanding, when any impounded animal is without necessary food and water for more than twelve successive hours, Tenn. Code Ann. § 39-14-207(a) does allow "any person" to enter any place where the animal is so confined and to "supply it with necessary food and water so long as it remains so confined."

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[2] Before its amendment in 2013, Tenn. Code Ann. § 39-14-210(f) provided: "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 the part." Tenn. Code Ann. § 39-14-210(f) (2010) (emphasis added). This provision was revised to now provide that "custody of any animal victimized under this part shall be placed *with any governmental animal control agency, or their designee.*" 2013 Tenn. Pub. Acts ch. 157, § 1, *amending* Tenn. Code Ann. § 39-14-210 (emphasis added).

Requested by:

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