



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

May 13, 1975

Opinion No. 75-213

Mr. James L. Sweet
Saline County Attorney
300 West Ash
City-County Building
Salina, Kansas 67401

Dear Mr. Sweet:

K.A.R. 28-5-4 provides in pertinent part thus:

"The following conditions and practices are declared to be public nuisances hazardous to public health and local boards of health and are directed to order their abatement whenever they are called to their attention by the state department of health or any citizen of the state:

* * *

(3) Any domestic animal pen that pollutes a domestic water supply, underground water-bearing formation; or stream in a manner that is hazardous to human health; or is maintained in a manner that creates a fly attraction or breeding place for flies or mosquitoes; or is a rodent harborage or breeding place; or is located within 300 feet of a dwelling other than that of the owner of the animal pen."

You advise that approximately six miles south of Salina there is a rural development where many owners have horses in enclosures ranging in size from 100 by 100 feet, to approximately five acres.

Mr. James L. Sweet
Page Two
May 13, 1975

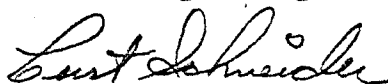
On complaint, the Board of Health has issued a directive, providing that the animals must be removed within 30 days because most, if not all, of the pens are located within 300 feet of the dwelling of another person.

You point out that the regulation sets forth no definition of the term "domestic animal pen," and question whether this portion of the regulation is so vague and indefinite that it fails to give notice of what conduct is prohibited, and is therefore void.

The phrase "domestic animal pen" is not, in our view, on its face hopelessly vague and indefinite. A domestic animal pen is an enclosure for keeping domestic animals. A pasture of several acres is, of course, ordinarily enclosed. Surely, few citizens would fail to distinguish between a pen and a pasture. A one-hundred-acre corn field may be enclosed for the grazing of cattle in the fall after harvest. Few, however, would surely argue that such a field was a "domestic animal pen." Apparently, it is argued that the phrase "domestic animal pen" is ambiguous because the term is not defined, preferably by fixed dimensions, in order that citizens may distinguish an enclosed field or pasture from a "pen."

Many enclosures may readily be denominated pens. In some rare cases, circumstances may be such that the owner of animals may argue with some plausibility, perhaps, that the enclosure is not a pen, but a pasture, or the like. In those few cases, the court will be called upon to determine the clarity of the statute as applied to the particular fact situation before it. However, in our view, the phrase "domestic animal pen" is not one which is vague or ambiguous, or lacking in common usage that reasonable men in the community may not be on notice of conduct or practices which may be deemed to constitute public nuisances under the regulation.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:jj