



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 9, 1976

ATTORNEY GENERAL OPINION NO. 76- 213

L. D. Jernigan, D.V.M.
Secretary, Board of Veterinary
Examiners
Rural Route 3
Council Grove, Kansas 66486

Re: Livestock and Domestic Animals--Registration of
Veterinarians--Pregnancy Testing and Diagnosis

Synopsis: Individuals in this state not licensed pursuant to
the Kansas Veterinary Practice Act are prohibited
from testing for and diagnosing the state of preg-
nancy in livestock and domestic animals unless they
are the owners of said animals.

* * *

Dear Dr. Jernigan:

You have requested an opinion from this office inquiring whether
a non-licensed individual conducting manual and mechanical preg-
nancy tests on cattle herds in Kansas violates the express pro-
visions of the Kansas Veterinary Practice Act when tests and diag-
nosis are conducted on animals which are not owned by such individual.

With specific exceptions the practice of "veterinary medicine" is
prohibited by persons in this state who are not licensed veterinarians
or who do not hold valid temporary permits issued by the Kansas Board
of Veterinary Examiners. K.S.A. 47-817. The term "veterinary medi-
cine" is defined in part by K.S.A. 47-816 (f)(3) as:

"To use any manual or mechanical procedure
for testing for pregnancy, or for correcting or

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testing for sterility or infertility, or to render advice or recommendation with regard to any of the same on any animal."

The language proscribing the above quoted activity is at once broad and precise. We find neither ambiguity nor question as to those acts which the legislature intended to be controlled. Applied to the circumstances precipitating the instant inquiry there is no question that animal pregnancy testing and diagnosis or rendering advice thereon is prohibited by the plain language of the act. However, as aforementioned, some exceptions to the licensure requirement to practice veterinary medicine are provided in K.S.A. 47-817, one of which has been suggested as providing lawful authority to engage in the activities now questioned. K.S.A. 47-817(b) provides that the act shall not be construed to prohibit "[a] person advising with respect to or performing acts which are accepted livestock management practices." Thus, this argument proposes that an individual testing for and diagnosing animal pregnancy qualifies under the above exception inasmuch as he or she would be performing acts which are "accepted livestock management practices." We are not so persuaded.

We understand that in the generic sense pregnancy diagnosis is in fact a widely "accepted livestock management practice," and that it is based upon detection of the physiological changes of the genital organs associated with pregnancy¹ through the employment of either manual or mechanical testing procedures. To contend that this scientific examination of cattle should be considered within the exception granted per K.S.A. 47-817(b) carries the resultant, logical corollary that since the diagnosis and treatment of injuries to cattle is also an accepted livestock management practice, the unlicensed layperson should be permitted to perform this function as well. In other words by using the broad exception under K.S.A. 47-817(b) the provisions of the Kansas Veterinary Practice Act may be circumvented in the name of "accepted livestock management practices." Such an interpretation is untenable.

The term "livestock management practice" as used in the act encompasses a broad spectrum of activities employed in the control of livestock. However, to go so far as to construe this term to encompass *in toto* the practice of veterinary medicine would destroy the purpose of the act. In my judgment the legislature has clearly identified what is not to be included in the term "livestock

1. Zemjanis, R., D.V.M., Ph.D. *Diagnostics and Therapeutics in Animal Reproduction*, (1970) p. 29.

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management" by delineating specifically the activities to be controlled under the act. But, even assuming arguendo that the term "livestock management practice" creates ambiguity or uncertainty as to its meaning we are constrained to follow the guidelines for statutory construction apposite to such deficiencies as set forth by the Kansas Supreme Court in *Natural Gas Pipeline Co. v. Commission of Revenue and Taxation*, 163 Kan. 458, 183 P.2d 234 (1947):

"When it appears the meaning of language used in a statute is indefinite, uncertain or ambiguous, the cardinal rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature in enacting it governs when that purpose and intent is ascertainable from the language to be found therein. (*Hunziker v. School District*, 153 Kan. 102, 109 P.2d 115.)" p. 466.

As previously mentioned the purpose and intent of the act is clearly identified for the purpose of the instant inquiry by the definition provided in K.S.A. 47-816 (f) (3): only a licensed veterinarian is permitted in this state to test for and diagnose animal pregnancy.

Accordingly, it is the opinion of this office that the Kansas Veterinary Practice Act specifically prohibits non-licensed individuals from testing for and diagnosing the state of pregnancy in animals which they do not own.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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