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 pregnancy 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 pregnancy tests on cattle herds in Kansas violates the express provisions of the Kansas Veterinary Practice Act when tests and diagnosis 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 medicine" 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
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 render-
ing 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) pro-
vides that the act shall not be construed to prohibit "[a] person
advising with respect to or performing acts which are accepted live-
stock 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 pregnancy 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 encom-
passes 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 destr-
y 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
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. (Munziker 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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