



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider,
Attorney General

July 27, 1976

ATTORNEY GENERAL OPINION NO. 76- 229

James P. Sellars
Crawford County Sheriff
Girard, Kansas 66743

RE: Crimes and Punishment - Cruelty to Animals - Abandonment

SYNOPSIS: The abandonment of animals does not constitute cruel mistreatment or cruel neglect to animals as defined by K.S.A. 1975 Supp. 21-4310.

* * *

Dear Mr. Sellars:

We are in receipt of your letter of July 12, 1976, inquiring as to whether the dumping and abandonment of animals constitute cruel mistreatment or cruel neglect to animals as provided for within K.S.A. 1975 Supp. 21-4310.

A review of Kansas statutes reveals that prior to 1969, K.S.A. 21-1201 to 21-1203 provided for the treatment of animals. K.S.A. 12-1201 and 12-1202 covered abandonment and permitting suffering or cruelty of any kind, and provided a penalty for the violation of either of these two statutes. K.S.A. 12-1203 authorized any duly incorporated humane society to take into their possession any abandoned animal within specified requirements.

The legislature in 1969 repealed the above statutes and replaced them by K.S.A. 1975 Supp. 21-4310. The present statute states:

- "1) Cruelty to animals is:
- a) Subjecting any animal to cruel mistreatment; or
 - b) Having custody of any animal and subjecting such animal to cruel neglect."

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It is the opinion of this office that the abandonment of animals does not constitute cruelty to animals as defined by K.S.A. 1975 Supp. 21-4310 for the following reasons.

First, prior to 1969 abandonment of animals and a penalty therefore was specifically provided for by statute. The provision was repealed in 1969 and the new provision did not refer to the abandonment of animals. "The intent to repeal all former laws upon a subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things, and relationships ordinarily associated with that subject." 1A Sutherland Statutory Construction, Repealing Acts, §23.13. By excluding a provision for abandonment, implication can be drawn the legislature did not intend to include abandonment of animals within the definition of cruelty to animals.

Second, Section 1(a) would be the only section applicable because Section 1(b) refers to those persons "having custody" of the animals. By Black's Law Dictionary, custody has been defined as in "possession" thereof while abandonment is the "surrender and relinquishment of property and/or rights." Thus, an abandoned animal would not be in custody of the original owner.

K.S.A. 1975 Supp. 21-4310(1)(a) refers to cruel mistreatment of animals. Although, Kansas has not defined "cruel mistreatment" or "cruelty to animals" persuasive authority from other jurisdictions has as follows:

"Every willful act, omission, or neglect, whereby unjustifiable physical pain, suffering, or death is caused or permitted."
People v. Davy, N.Y., 32 N.Y.S. 106; New Jersey Society for Prevention of Cruelty to Animals v. Board of Ed. of City of East Orange, N.J.Co., 219 A.2d 200, 91 N.J. Super. 81; James V. States, 57 S.E. 959, L Ga. App. 779; Bates' Ann. St. Ohio 1904 §3721; Mills' Ann. St. Colo. 1891 §117; Waters v. People, 46 P. 112, 23 Colo. 33, 33 L.R.A. 836, 58 Am. St. Rep. 215.

The mere act of abandoning does not per se cause unjustifiably physical pain, suffering or death and thus does not constitute cruel mistreatment.

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The act of abandonment of animals would not fall within
K.S.A. 1975 Supp. 21-4310 as cruelty to animals.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:DLW:BAW:en