



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 5, 1977

ATTORNEY GENERAL OPINION NO. 77-327

Mr. Stan Martin
Dickinson County Attorney
Dickinson County Courthouse
Abilene, Kansas 67410

Re: Crimes and Punishment--Code; Cruelty to Animals--
Coursing

Synopsis: Coursing, dog racing with a rabbit decoy, constitutes cruelty to animals as defined in 1977 Senate Bill No. 227, except when and as conducted by owners and occupiers of real property pursuant to K.S.A. 32-167.

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Dear Mr. Martin:

You have inquired as to whether coursing, dog racing with a rabbit decoy, is considered cruelty to animals under the new Senate Bill 227 redefining this Class B misdemeanor, L. 1977 ch. 116.

Section 2(1) of ch. 116, L. 1977, amending K.S.A. 1976 Supp. 21-4310 defines the offense of cruelty to animals thus:

"(a) Intentionally killing, injuring, maiming, torturing or mutilating any animal;

(b) having physical custody of an animal and acting or failing to act when the act or failure to act causes or permits pain or suffering to such animal;

(c) abandoning or leaving any animal in any place without making provisions for its proper care; or

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(d) having physical custody of any animal or failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal."

Subsection (2) of this section describes certain conduct which shall not be deemed to constitute cruelty to animals. Subsection (2)(c), pertinent here, exempts the following:

"killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas statutes annotated . . . "

Chapter 32, K.S.A., specifies the conditions under which a variety of game may be trapped, hunted or otherwise taken. K.S.A. 32-167 provides in pertinent part thus:

"Wild rabbits and hares are hereby declared to be game animals in the state of Kansas, and it shall be unlawful for any person or persons . . . to pursue, injure, take or attempt to take, trap, capture, hunt, possess, or kill any wild rabbit or hare except during the legal open season, which shall be from December 15 to October 15 . . . (and during certain other periods) . . . And provided further, that rabbits and hares may be trapped, taken or shipped, at any time, for training dogs for coursing meets and field trials, under a permit obtained from the director of the . . . commission . . . "

The trapping or taking of rabbits and hares for coursing meets is thus specifically exempted from the offense of cruelty of animals. However, the use of rabbits and hares in coursing meets themselves is not governed by chapter 32, K.S.A., only the trapping or taking of animals for that purpose. Nothing in either chapter 32 or chapter 47, K.S.A., governs the use of animals in coursing meets, and the killing of a rabbit or hare in coursing cannot be said to be "in accordance with the provisions of" either of those chapters. The use of rabbits or hares for coursing falls, prima facie, within the offense of

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cruelty to animals, as defined by both subparagraphs (a) and (b) of section 2(1), and it does not fall prima facie within any of the express exemptions therefrom. It may be argued that inferentially, the legislature intended to permit the use of rabbits and hares for coursing, by exempting from the cruelty offense any killing which is "in accordance with the provisions of chapter 32 or chapter 47," K.S.A. The cited chapters, however, do not govern the use of rabbits and hares in coursing practices, but only the taking of animals for that purpose. The 1977 amendment redefining the offense of cruelty to animals defines the offense more broadly than the previous statute, and on its face, in my judgment, the use of rabbits and hares for coursing falls prima facie within the offense as defined in section 2(1) of chapter 116, L. 1977.

As pointed out above, ch. 116, § 2(2)(c), L. 1977, exempts from the offense of cruelty to animals any "killing, attempting to kill, trapping, catching or taking of any animal in accordance with . . . chapter 32 or chapter 47," K.S.A. K.S.A. 32-167 permits owners and legal occupants of land to kill rabbits or hares at any time on such land so owned or legally occupied. Thus, the owner, lessee or other person legally occupying real property may engage in coursing at any time on land so owned, leased or otherwise legally occupied. The practice of coursing is prohibited to all other persons, however.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:jj