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ATTORNEY GENERAL OPINION NO. 86- 24

The Honorable Ginger Barr
Representative, Fifty-First District
State Capitol Building, Room 112-S
Topeka, Kansas 66612

Re: Crimes and Punishments -- Animals and Nuisances --
Unlawful Sales or Injections of Live Brucella
Abortus Strain 19 Vaccine or Animal Rabies Vaccine

Synopsis: Pursuant to K.S.A. 1985 Supp. 21-1213, only a licensed veterinarian may lawfully inject live brucella abortus strain 19 vaccine and only a licensed veterinarian or a person under his supervision may lawfully inject animal rabies vaccine into an animal. The statute permits the sale of either vaccine to persons not authorized to inject the vaccines only when the purchaser is a distributor of veterinarian supplies. Further, K.S.A. 1985 Supp. 21-1213 does not subject an authorized seller to the criminal penalties of K.S.A. 21-1214 if he sells either vaccine to a person who purchases the vaccines and subsequently injects them without legal authority to do so. Cited herein: K.S.A. 1985 Supp. 21-1213; K.S.A. 21-1214.

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Dear Representative Barr:

As State Representative for the Fifty-First District, you request our opinion on the interpretation of K.S.A. 1985 Supp. 21-1213. Specifically, you ask the following questions:

1. Does K.S.A. 1985 Supp. 21-1213 prohibit anyone except a licensed veterinarian from injecting live brucella abortus strain 19 vaccine into any animal in Kansas?
2. Does K.S.A. 1985 Supp. 21-1213 prohibit anyone except a licensed veterinarian or a person acting under the supervision of a licensed veterinarian from injecting animal rabies vaccine into any animal in Kansas?
3. If these two vaccines are restricted in terms of who may inject them, does the statute permit the sale of the vaccines other than to those who may inject them?
4. If the statute restricts those who may inject the vaccines, is a seller responsible (liable) for selling the vaccine to someone who subsequently injects but is not one of the authorized individuals? What type of responsibility (liability) does a non-authorized injector have?

K.S.A. 1985 Supp. 21-1213 provides:

"It shall be unlawful:

"(a) For any person, except a licensed veterinarian, to inject into any animal any live brucella abortus strain 19 vaccine; or

"(b) for any person, except a licensed veterinarian or a person acting under the direct supervision of a licensed veterinarian, to inject any animal rabies vaccine into an animal; or

"(c) for any person to sell, or offer for sale, animal rabies vaccine or the live brucella abortus strain 19 vaccine to another unless the vendor is:

"(1) A manufacturer thereof;

"(2) a distributor of veterinarian supplies; or

"(3) a veterinarian licensed in Kansas under the provisions of article 8 of chapter 47 of the Kansas Statutes Annotated and acts amendatory of the provisions thereof and supplemental thereto, and unless the purchaser is a licensed veterinarian or a distributor of veterinarian supplies.

"(d) As used in this section, 'direct supervision' means that an employee of a veterinarian or a student at a school of veterinary medicine shall be in personal contact with a veterinarian for each individual case.

Your first two questions are easily answered. It is clear under K.S.A. 1985 Supp. 21-1213 that only a licensed veterinarian may lawfully inject live brucella abortus strain 19 vaccine into any animal. In addition, only a licensed veterinarian or a person acting under the direct supervision of a licensed veterinarian, as defined in subsection (d), may lawfully inject any animal rabies vaccine into an animal.

The question as to who may purchase these vaccines can be answered after the principles of statutory construction are applied. Prior to amendment in 1984, K.S.A. 21-1213 read as follows:

"It shall be unlawful: (a) For any person, except an accredited licensed veterinarian, to inject into any animal any live brucella abortus strain 19 vaccine; or

"(b) For any person to sell, or offer for sale, the live brucella abortus strain 19 vaccine to another unless the vendor is (1) a manufacturer thereof, (2) a distributor of veterinarian supplies or (3) a veterinarian registered in Kansas under and in conformity with the provisions of article 8 of chapter 47 of the Kansas Statutes Annotated, and acts amendatory thereof, and unless the purchaser is an authorized licensed

veterinarian or a distributor of
veterinarian supplies."

As the statute read before the 1984 amendment, live brucella abortus strain 19 vaccine could only be lawfully sold or offered for sale if two conditions were met: (1) the vendor was a manufacturer of the vaccine, a distributor of veterinarian supplies, or a licensed veterinarian; and, (2) the purchaser was a licensed veterinarian or a distributor of veterinarian supplies.

K.S.A. 21-1213 was amended to add language restricting the sale of animal rabies vaccine and who may inject it into an animal. See Session 1984 House Bill No. 2891. In amending the statute, the structure of the provisions of subsection (c), formerly subsection (b), was altered. The restrictive clause "and unless the purchaser is a licensed veterinarian or a distributor of veterinarian supplies" is placed under the subsection concerning a veterinarian as the seller. Thus, if this subsection were literally construed, a manufacturer of either vaccine or a distributor of veterinarian supplies could sell the live brucella abortus strain 19 vaccine or any animal rabies vaccine to any person while a veterinarian could only sell the vaccines to another veterinarian or a distributor of veterinarian supplies.

The established rules of statutory construction are stated in Baker v. R.D. Andersen Constr. Co., 7 Kan.App.2d 568, 571 rev. denied 231 Kan. 797 (1982):

"[T]he fundamental rule of statutory construction is that the intent of the legislature must control; all other rules of construction are subordinate. The legislative intent should govern even though it does not follow the literal words of the statute; words, phrases or clauses may be omitted or inserted in appropriate places to achieve this result. When a statute is susceptible to more than one construction, it should be considered in its entirety and in light of the legislative intent; a statute should never be construed so as to produce uncertainty, injustice or confusion if it is possible to construe it otherwise.

"It is also clear that, in determining legislative intent, the courts should look to the purpose, necessity and effect of the statute. [Citation omitted.] Consideration should be given to the causes of a statute's adoption, the historical background and the effect the statute may have under the various constructions suggested. [Citation omitted.]"

It is presumed that the legislature intends to change the law when it amends a statute. Moore v. City of Lawrence, 232 Kan. 353, Syl. ¶7 (1982). It has also been stated, however, that "[e]rrors plainly clerical in character, mere inadvertencies of terminology, and other similar inaccuracies or deficiencies will be disregarded or corrected where the intention of the legislature is plain and unmistakable." State ex rel. Stephan v. Martin, 230 Kan. 747, Syl. ¶4 (1982).

It is clear that the legislature did not intend to change K.S.A. 21-1213 so that a manufacturer of either vaccine or a distributor of veterinarian supplies could sell the vaccine to any person while a veterinarian could only sell the vaccines to another veterinarian or a distributor of veterinarian supplier. Session 1984 House Bill No. 2891 shows that K.S.A. 21-1213 was amended only by adding the language concerning animal rabies vaccine. The Revisor of Statutes altered the structure of subsection (c), formerly subsection (b), only by listing the three classes of authorized purchasers in paragraph form and using semicolons instead of commas. The intent of the legislature controls statutory construction. Therefore, live brucella abortus strain 19 vaccine may only be lawfully sold or offered for sale if two conditions are met: (1) the vendor is a manufacturer of the vaccine, a distributor of veterinarian supplies, or a licensed veterinarian; and, (2) the purchaser is a licensed veterinarian or a distributor of veterinarian supplies. A distributor of veterinarian supplies is not a person authorized to inject the vaccines. Therefore, to answer your third question, K.S.A. 1985 Supp. 21-1213 permits the sale of the designated vaccines to persons not authorized to inject the vaccines only if the purchaser is a distributor of veterinarian supplies.

The last question concerns the liability involved when an unauthorized person injects one of the vaccines. You ask

whether an unauthorized injector may be held liable and whether a seller may be held liable for selling the vaccine to someone who injects the substance but is not authorized to do so. The penalties for violating K.S.A. 1985 Supp. 21-1213 are stated in K.S.A. 21-1214:

"Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than twenty-five (\$25) nor more than five hundred dollars (\$500), or shall be imprisoned in the county jail for not more than six (6) months, or by both such fine and imprisonment."

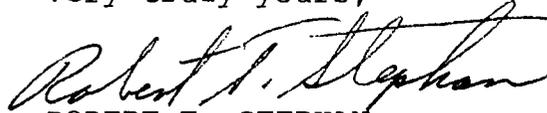
Persons who violate K.S.A. 1985 Supp. 21-1213 may also be subject to civil tort liability.

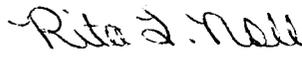
It is clear under K.S.A. 1985 Supp. 21-1213 that it is unlawful for an unauthorized person to inject either vaccine. If found guilty, such person is subject to the penalties provided in K.S.A. 21-1214. As discussed earlier in this opinion, the sale of the vaccines to persons other than those who may inject them is permitted. A manufacturer or a distributor as authorized vendors may sell to any person. A veterinarian who sells the vaccines to a person who is not a veterinarian or a distributor has violated the law and is subject to the penalties under K.S.A. 21-1214. There is no provision under K.S.A. 1985 Supp. 21-1213, however, which makes a seller criminally liable for selling live brucella abortus strain 19 vaccine or any animal rabies vaccine to a person who may purchase the vaccine but who subsequently inject the vaccine and is not authorized to do so. According to the statute, the unauthorized injector, and not the vendor, is the party who would be guilty of violating the law.

In summary, under K.S.A. 1985 Supp. 21-1213 only a licensed veterinarian may lawfully inject live brucella abortus strain 19 vaccine and only a licensed veterinarian or a person under his supervision may lawfully inject animal rabies vaccine into an animal. These vaccines may only be lawfully sold or offered for sale if two conditions are met: (1) the vendor is a manufacturer, distributor, or veterinarian; and, (2) the purchaser is a licensed veterinarian or a distributor. Only when the purchaser is a distributor of veterinarian supplies is a person not authorized to inject either vaccine permitted to purchase the vaccines. We also

conclude that K.S.A. 1985 Supp. 21-1213 does not subject an authorized seller to the criminal penalties of K.S.A. 21-1214 if he sells either vaccine to a person who purchases the vaccines and subsequently injects them without legal authority to do so.

Very truly yours,


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