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ATTORNEY GENERAL OPINION NO. 86- 77

Allen T. Kimmell, DVM
Livestock Commissioner
Animal Health Department
217 East 4th, 4th Floor
Topeka, Kansas 66603-3501

Re: Livestock and Domestic Animals -- Public Livestock
Markets -- Contractual Arrangements Between
Veterinarian Inspector and Public Livestock Market
Operator

Synopsis: The potential of compromise of veterinarian
inspectors by livestock market operators is
precluded by proper application of K.S.A. 47-1008.
K.S.A. 47-1008 mandates that veterinarians shall
inspect all livestock of market operators prior to
sale, and that the employment contract between the
veterinarian and the operators must be approved by
the Livestock Commissioner. To avoid a potential
compromise of the veterinarian-employee by the
operator-employer, the Commissioner may approve
contracts which allow for veterinarian dismissal
only for cause and with the Commissioner's
approval. Cited herein: K.S.A. 47-1008; L. 1973,
ch. 2, §22.

* * *

Dear Dr. Kimmell:

As Livestock Commissioner of the Animal Health Department for
the State of Kansas, you request our opinion on a question
concerning K.S.A. 47-1008. Specifically, you inquire as to

possible compromise of veterinarian inspectors by livestock market operators resulting from the contractual schematics of K.S.A. 47-1008.

K.S.A. 47-1008 states in part:

"All livestock consigned and delivered on the premises of any licensed public livestock market, before being offered for sale, shall be inspected by an authorized veterinarian who shall examine or test each animal consigned to such market, for the purpose of determining its condition of health and freedom from infectious or contagious animal diseases. Such veterinary services shall be contracted for by market operators, under contracts approved by the livestock commissioner, and such services shall be performed under the direction of the commissioner. . . . A copy of any agreement or contract shall be on file with the commissioner."

Considered in isolation, the foregoing portion of K.S.A. 47-1008 is in itself evidence of legislative intent. It is a fundamental rule of statutory construction that where no ambiguity exists, it is presumed conclusively that the clear and explicit terms of the statute expressing legislative intent and the plain terms of the statute are to be applied and given effect. Johnson v. General Motors Corp., 199 Kan. 720 (1967) and State v. Bagemehl, 213 Kan. 210 (1973). No exceptions or meanings may be added not suggested by the statute's language. Southwestern Bell Telephone Company v. Employment Security Board of Review, 210 Kan. 403 (1972). However, to ascertain legislative intent, courts are required to construe all parts of legislation in pari materia Brown v. Keill, 224 Kan. 195 (1978). Thus, the legislative history of a statute often reveals legislative intent, as demonstrated by L. 1973, ch. 2, §22:

"K.S.A. 1972 Supp. 47-1008 is hereby amended to read as follows: 47-1008. All livestock consigned and delivered on the premises of any licensed public livestock market, before being offered for sale, shall be inspected by an authorized veterinarian who shall examine or test each animal consigned to such market, for

the purpose of determining its condition of health and freedom from infectious or contagious animal diseases. Such veterinarian shall be employed by or under the direction of the commissioner and may be employed at one or more sales. Such veterinary services shall be contracted for by market operators, under contracts approved by the livestock commissioner, and such services shall be performed under the direction of the commissioner. Such veterinarian shall be authorized to make all required examinations and tests, and to issue certificates of inspection at the public livestock market where he is employed. Such veterinarian shall be in the unclassified service if and when employed by the state, and shall not be subject to the Kansas civil service act, when employed by or under the direction of the commissioner, pay for his services shall be from funds received by the public livestock market operator for such purposes and from funds supplied by such operator under the direction of the commissioner, and when the statutory inspection fees for such sale are not sufficient to provide the amount required for the minimum per diem service charge of said veterinarian.

"Such operator shall not discharge such veterinary inspector during the license year, except for cause, and with the approval of the commissioner, and except when such operator and the employed veterinary inspector mutually agree or such inspector resigns serves."

Three accomplishments of the 1973 amendment were deletion, creation and intent. The legislature deleted the employment of the veterinarian by the Commissioner and placed the power to contract for veterinary services with the market operators. The legislature also deleted the restriction upon the market operators to discharge veterinarians only for cause and with commission approval. Then, in the same bill, the

legislature gave the Commissioner power to approve such contracts, and to direct the veterinarian services.

The intent behind the amendments appears primarily to be to remove the veterinarian from State employ, and to place the veterinarian employ with another party. In this case, the other party happens to be the market operators.

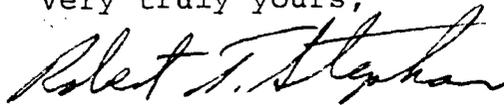
In other words, the deletions and additions appear to contradict each other unless read in toto with the change in employer. The intent was not to allow operators to control the veterinarian who is to inspect and approve the operators' livestock. This would contradict the essence of having a veterinarian's approval in the first place. The intent of the legislature was to create a self-supporting market, not a self-directing market. This conclusion is buttressed by the fact that the Commissioner retained power to approve employment contracts entered into by a market operator and a veterinarian.

Any misuse of contractual rights by the operators against the veterinarians may be remedied by the Commissioner. The Commissioner may approve contracts between operators and veterinarians only when the contracts have a clause stating the veterinarian may be discharged only for cause and with the Commissioner's approval.

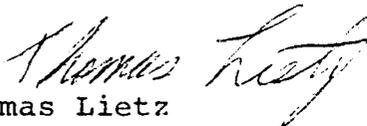
Reading the statutory changes in this way preserves the integrity of the inspector-inspectee relationship, while explaining the removal of the veterinarian from the state payroll and the power of the Commissioner to approve contracts entered into pursuant to K.S.A. 47-1008.

In conclusion, proper application of K.S.A. 47-1008 as drafted precludes any potential of compromise by operators in excess of legislative intent.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General