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July 22, 1981

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ATTORNEY GENERAL OPINION NO. 81-173

Ms. Karen L. McMillan
Dickinson County Zoning Office
Dickinson County Courthouse
Abilene, Kansas 67410

Re: Counties and County Officers -- Planning and
Zoning -- Greyhound Operations

Synopsis: Since state law has not determined whether greyhound operations, i.e., raising, breeding and training greyhounds to be sold for racing purposes, constitute "agriculture" for zoning purposes, a county may establish its own zoning classification pursuant to its zoning authority.

Feedlots are properly classified as agricultural pursuits for zoning purposes and, thus, are not subject to county zoning regulations. Cited herein: K.S.A. 14-1402, 19-2901 (as amended by L.1981, ch. 122, §1), 19-2908, 19-2913, 19-2914, 19-2926, 19-2927, 47-414, 47-1501, and 79-1301.

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Dear Ms. McMillan:

You have requested an opinion regarding the proper classification of greyhound operations for zoning purposes. As we understand it, "greyhound operations" or "farms" consist of the breeding, raising and training of greyhounds who will subsequently be sold as racing animals. You note that the Kansas Department of Revenue taxes greyhounds as livestock and because of this designation, there is disagreement as to whether greyhound operations constitute an agricultural use or a commercial use. You also ask whether county zoning laws are applicable to confined livestock operations, i.e., feedlots.

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The most recent definition of agriculture by the Kansas Supreme Court is found in Carp v. Board of County Commissioners, 190 Kan. 177 (1962). There, in considering whether a hog-raising operation fell within the definition of agriculture, the Court stated: "[W]e have to agree . . . that in Kansas, agriculture includes animal husbandry -- the raising and feeding of livestock." Id. at 179. However, neither this nor any other Kansas case of which we are aware gives a clear definition of "livestock."

Review of the Kansas Statutes Annotated for a legislative definition of "livestock" discloses that there is no uniform statutory definition thereof. K.S.A. 14-1402, 47-414 and 47-1501 do not include dogs in their respective definitions of this term; however, K.S.A. 79-1301 states:

"A dog shall be considered as personal property and have all the rights and privileges and be subject to like lawful restraints as other livestock." (Emphasis added.)

Thus, Kansas statutes and case law do not answer the question of whether greyhound operations are agricultural in nature.

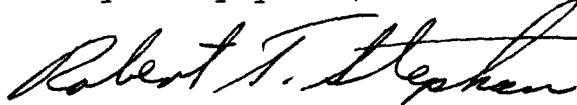
In reviewing case law from other jurisdictions we find authorities in disagreement. See Mioduszewski v. Town of Saugus, 148 N.E.2d 655 (1958) (breeding and training of greyhounds was determined to be commercial, not agricultural use); Development Association v. Wake City Board of Adjustment, 269 S.E.2d 700 (N.C. App. 1980) (dog breeding and boarding were held to be commercial uses and did not fall in zoning agricultural exemption); Harris v. Rootstown Township Zoning Board of Appeals, 338 N.E.2d 763 (1975) (breeding and raising dogs held to constitute animal husbandry and therefore agricultural, exempting such operations from zoning laws).

The legislature has given counties broad authority to zone lands within the county. See K.S.A. 19-2901 (as amended by L.1981, ch. 122, §1), 19-2914, 19-2927. Zoning classifications and uses are not prescribed by statute. Rather, K.S.A. 19-2913 and 19-2926 require that all acts and regulations made pursuant to the zoning authority in the acts of which they are a part must be reasonable. Therefore, because of the broad statutory authority imparting discretion to establish "reasonable" zoning regulations, and since there is no uniform Kansas law controlling or clear-cut persuasive precedent from other jurisdictions, it is our opinion that the county may determine whether greyhound operations should be classified as a commercial or agricultural use. We emphasize, however, that any classification so established must satisfy the "reasonable" standard.

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Your inquiry as to the proper zoning classification for feed-lots was answered by the Kansas Supreme Court in Fields v. Anderson Cattle Co., 193 Kan. 558 (1964) and was discussed in Attorney General Opinion No. 78-145 (copy enclosed). As that opinion states, the Kansas court determined in Fields that feed-lots are properly classified as agricultural pursuits. Since we find no case which changes that view we affirm that prior opinion.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:jm
Enclosure