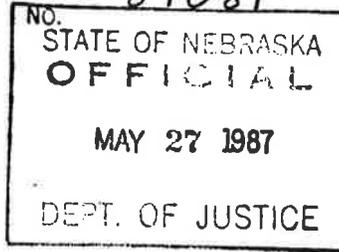


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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87081



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: May 27, 1987

SUBJECT: Whether LB 104, Which Deals With the Vaccination of Domestic Animals for Rabies, Is Unconstitutionally Vague.

REQUESTED BY: Senator Loran Schmit
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Dale Comer, Assistant Attorney General

You have requested our opinion as to the constitutionality of certain aspects of LB 104. Specifically, you note the definitional provision in the bill for "household pet," and you ask whether, in light of the bill's criminal sanctions, that definition is unconstitutionally vague. We have reviewed the bill and the applicable law. In our view, the definitional section which you have referenced does not violate constitutional prohibitions against vagueness.

LB 104 pertains generally to the vaccination of animals for rabies, and to the seizure and disposition of certain animals which may have the disease. The main thrust of the legislation is to amend the current statutes dealing with vaccination for rabies which deal primarily with dogs so as to make those statutes pertain to domestic animals. Domestic animal is defined in the bill as "any dog or cat, and cat shall mean a cat which is a household pet." You are concerned that the term "household pet" is unduly vague, particularly since violation of these various statutes would constitute a class V misdemeanor.

It is clear in Nebraska that a criminal statute must define a crime with sufficient definiteness, and that there must be ascertainable standards of guilt to inform those subject thereto as to what conduct will render them liable to punishment under the statute. State v. Hamilton, 215 Neb. 694, 340 N.W.2d 397 (1983). The dividing line between what is lawful and unlawful cannot be left to conjecture, and a citizen cannot be held to answer to charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different

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constructions. Id. A penal statute must express the crime and the elements constituting it so clearly that an ordinary person can intelligently choose in advance what course is lawful for him to pursue. Id. The test for determining whether a statute is vague is whether it forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. State v. Sprague, 213 Neb. 581, 330 N.W.2d 739 (1983).

While a penal statute must be drafted with precision, our Supreme Court has indicated that it is not necessary for a penal statute to be written so as to be beyond the mere possibility of more than one construction, and difficulty in determining the meaning of the language of a statute does not automatically render it unconstitutionally vague and ambiguous. State v. Soddors, 208 Neb. 504, 304 N.W.2d 62 (1981); State v. Robinson, 202 Neb. 210, 274 N.W.2d 553 (1979). Moreover, the constitutional prohibition against undue vagueness does not invalidate every statute which a reviewing court might believe could have been drafted with greater precision; all that due process requires is that a statute give sufficient warning that men may conform their conduct so as to avoid that which is forbidden. State v. Robinson supra. Our Supreme Court has also cited language from the United States Supreme Court to the effect that if the general class of offenses to which a statute is directed is plain within its terms, the statute cannot be struck down as vague, even though marginal cases could be raised where doubts might arise. Richardson v. City of Omaha, 214 Neb. 97, 333 N.W.2d 656 (1983).

In our view, "household pet", as it is used in LB 104, is not unconstitutionally vague. The term itself would appear to be one of commonly understood meaning, and the term has been defined in caselaw. For example, in Town of Atlantic Beach v. Young, 58 N.C. App. 597, 293 S.E.2d 821 (N.C. Ct. App 1982), the North Carolina Court of Appeals stated that the common meaning of "pet" is a domesticated animal kept for pleasure rather than utility. The court then construed the term "house pets" to encompass all domesticated animals kept for pleasure in or around a house. On the basis of this construction, the court held that the facts material to a determination of whether a person's animals are "house pets" are: the kind of animals they are, the reason for which they are kept, and the place where they are kept.

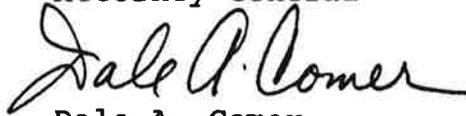
We also believe that the general class of cats to which "household pets" in LB 104 applies is plain within the terms of the proposed statute. In other words, the vast majority of persons who have cats which might be household pets subject to the terms of the rabies vaccination statutes would be aware that their animals would be covered under the plain language of the

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statute. As you have indicated, there might be hypothetical and marginal cases where the definition of "household pets" would be unclear, such as which cats in a farm environment, if any, would constitute "household pets." However, we believe that the term as it is used in LB 104 is generally of such common understanding that the bill would not be struck down as unconstitutional for vagueness.

Sincerely,

ROBERT M. SPIRE
Attorney General



Dale A. Comer
Assistant Attorney General

DAC/pa

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:


Attorney General