Georgia Department of Agriculture

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Tommy Irvin
Commissioner

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Ms. Sharon A. Coleman
President
The Animal Council
Post Office Box 168
Millbrae, California 94030

Dear Ms. Coleman:

The comments in your letter of July 27, 1998, to Dr. Lee Myers relative to the proposed adoption of amendments to the Rules of the Georgia Department of Agriculture relating to Animal Protection, were received and duly considered.

This response is given within thirty days of the adoption of the Amendments to the Rules of the Department of Agriculture relating to Animal Protection.

Sitting in my capacity as the Rules Hearing Officer for the Commissioner, to conduct the public hearing, receive comments and make recommendations to the Commissioner, I am not persuaded that that your organization is an "interested person" as the term is used within the context of paragraph (a) (2) of Section 50-13-4 of the Official Code of Georgia Annotated. Notwithstanding the general definition of "person" for the Chapter, this Section specifically distinguishes between "persons" and "associations having not less than 25 members." The right to request a concise statement of the principal reasons for and against its [the rule's] adoption and incorporate therein its [the agency's] reason for overruling the considerations urged against its adoption" is specifically given to "an interested person," not an interested association. It is noted that your entity is not registered to do business in Georgia with the Georgia Secretary of State and, that although there was an allusion to you having "constituents" in Georgia, no affirmative statement or offering of proof that there were Georgia members was made, that you had any authority to represent any person in Georgia, or that you were, in fact, representing any person in Georgia. There was no showing that your organization is an "interested party" under the relevant laws of this state. Accordingly, I am not convinced that response is required under Section 50-13-4(a)(2).

Notwithstanding this lack of persuasion, as a courtesy, the following statements are given relative to the positions you urged:

Rule 40-13-13-.01. Definitions.

(12) "Garbage:" The definition was adopted as paragraph "(13)" with the wording as proposed with the addition of another sentence, which reads: "For the purposes of this chapter, garbage shall not include home prepared food given to an animal living on the property of the person caring for the animal." The wording was not found to be "overly broad or vague." The first portion of the definition generally tracts O.C.G.A. Section 4-4-20, the first section of Title 4, Article 1,Part 2 relating to the feeding of garbage to animals. It is also noted that pet food in Georgia is also regulated through other Georgia laws. In general, this definition brings into the rules governing animal protection other rules regarding the feeding of garbage to animals that has been applied to pets but were not included *per se* in the former Animal Protection rules. This is an attempt to bring under one roof all rules that affect this portion of the animal industry.

(13) "Humane care:" The definition was adopted as paragraph "(14)" with the wording as proposed. The criminal code of Georgia (O.C.G.A. Title 16) has provisions for animal cruelty. The definition for this paragraph is "Humane care." It is felt that the sentence regarding "Inhumane care" should be included as illustrative of what is not "Humane care."

(16) "Intermediate handler:" This definition was eliminated from the final rule.

(17) "Kennel:" The definition was adopted with the wording as proposed. Your "Comments" do not seem to require response as no change was urged; however, lack of comment does not indicate agreement with your statement or interpretation.

(17)(a) "Similar purposes:" The definition was adopted with the wording as proposed. "Similar purposes" is determined to include activities of maintaining animals for purposes similar to "boarding, holding, [and] training." The limitation was determined not to be the 'keeping" element of the activity, although this might be an integral part. The named activities in this definition are not all-inclusive, but are given by way of illustration of examples of activities in which an animal is placed in the control of a second party, who, in turn, for a fee or compensation, exercises a level of control over its care and welfare. Although the activities illustrated do, indeed, involve the "keeping" of the animal, whether that "keeping" is incidental or substantial, the proposition that the level of "keeping" is the controlling element of the primary definition is rejected in favor of the controlling element being in the level of control over the care and welfare of the animal. Accordingly, it was determined that the activities listed in this definition as examples are demonstrative of activities that rise to a similar level of control over the care and welfare of pets as do the activities of "boarding, holding, [and] training."

(17)(a)(i) "Breeding establishment:" The definition was adopted as paragraph "(17)(a)(1)" with the wording as proposed with the words "not owned by the kennel" eliminated. See the statement given for paragraph "(17)(a)" above which is adopted herein by reference thereto. The position urged in your "Comment" is based on the "keeping" of the animal. Even in a short period of maintaining or "keeping" of an animal the level of control over the care and welfare of the animal can, and in the instance of breeding is, sufficiently substantial to justify inclusion. The key is the level of control over the care and welfare of the animal, not the amount of time the animal is maintained or "kept."

(17)(a)(ii) "Cattery:" The definition was adopted as paragraph "(17)(a)(2)" with the wording as proposed. See the statements given for paragraph "(17)(a)" and "(17)(a)(i)" [actually "(17)(a)(1)"] above which are adopted herein by reference thereto.

(17)(a)(iii) "Grooming Shop:" The definition was adopted as paragraph "(17)(a)(3)" with the wording as proposed except that the words "an intermediate handler receives custody of" were deleted and the words "a person maintains a" have been substituted in lieu thereof. See the statements given for paragraph "(17)(a),"(17)(a)(i)" [actually "(19)(a)(1)"] and "(17)(a)(ii)" [actually "(17)(a)(2)"] above which are adopted herein by reference thereto. Even in the possibly short time that the second party has the animal, the party would exercise a level of control over the care and welfare of the animal that can, and would, be sufficiently substantial to justify inclusion of this category. Again, the key is the level of control over the care and welfare of the animal, not the amount of time the animal is maintained or "kept." It is highly doubtful that this business would rise to the level required for legislation under the laws that govern the establishment of new regulated professions in Georgia and established the Georgia Occupational Regulatory Council.

(18) "Kitten:" This definition was eliminated from the final rule.

(24) "Pet breeder:" The definition was adopted as paragraph "(23)" with the wording as proposed, except: that the words "for any type of compensation or commercial purposes" were added between the words "adoption" and "pets" and the words "they have produced" were substituted in lieu of the words "that they produced" following the word "pets" in the first sentence; and the words "those produced" were substituted in lieu of the words "animals that are sold or transferred for any type of compensation or commercial purpose, including those" in the second sentence. The arguments regarding the number of animals in your "Comment" speaks to any exemptions to and not the definition of, breeders as a subset of dealers, and are addressed later. As there was no urging for change in this definition, no further response is required.

(25) "Pet dealer:" The definition was adopted as paragraph "(24)" with the wording as proposed except that the words "have produced," have been substituted in lieu of the words "did not produce but have." The statute upon which this definition is based, paragraph (7) of Section 4-11-2, specifically speaks to "licensed for business," "Georgia sales tax number," and "bred and sold for commercial purposes" in the exceptions of what is defined as a "Pet dealer." These words do, indeed, justify the wording "for any type of compensation or commercial purposes" in the definition proposed. Read in its total context, as opposed to the partial context urged by the arguments in your "Comments," the law justifies the proposed definition.

(27) "Primary enclosure:" The definition was adopted as paragraph 26 with the wording as proposed. The arguments regarding the relative size of the confining enclosure in your "Comment" speak to the standards for, and not the definition of, the enclosure, and are covered under Rule 40-13-13-.04 (Premise requirements and Performance Standards for Owner and/or Operator). As there was no urging for change in this definition, no further response is required.

(29) "Proper veterinary care:" The definition, as such, was eliminated from the final rule and replaced with a definition (paragraph "(28)") which reads "Proper animal health care means a program of disease control and prevention, veterinary care, and humane euthanasia. The animal health care should be sufficient to prevent unnecessary physical pain or suffering." The USDA standard, the fact that pets may enjoy adequate health care without the assistance of a veterinarian, and the proposition that pets may have less than "general good health" even with the assistance of veterinary care were the prime reasons for the change. The urging in your "Comments" has been upheld.

(30) "Puppy:" This definition was eliminated from the final Rule.

(31) "Rescue Group:" The definition was adopted as paragraph "(29)" with the wording as proposed except that the word "and" was substituted in lieu of the comma in the first sentence thereof. A rescue group would be considered an animal shelter if it were duly incorporated and accepting compensation for adoptions or possibly as a pet dealer if not incorporated and accepting such compensation. Although your "Comment" did not seem to urge any change, it is correct.

Rule 40-13-13-.02. Licenses.

(13) "Separate license:" Although numbered in your letter as if it were paragraph "(13)" of Rule 40-13-13-.01, this "Comment" appears to address paragraph "(13)" of Rule 40-13-13-.02, and is addressed as such. This paragraph of this Rule was adopted with the wording proposed. The Rules are promulgated under the authority of Chapter 4-11 of the O.C.G.A. The special definitions applicable to

this chapter are contained in Section 4-11-2. "Person" is defined in paragraph "(6)" of Section 4-11-2 as "any person, firm, corporation, partnership, association, or other legal entity, any public or private institution, the State of Georgia, or any county, municipal corporation, or political subdivision of the state." This definition was not refined in the "Definitions" rule of Rule Chapter 40-13-13 and therefore applies to the term as used throughout the Chapter, unless a more restrictive definition is indicated. Nothing in this Rule (40-13-13-.02) would indicate a different definition. Therefore, a member of the Rescue Group is covered under the Rescue Group's license or exemption while working as a member of the group. Likewise, a husband and a wife (or other *de facto* or *de jure* partnership or "person," as defined), operating as a single concern in a regulated operation, would be covered under the same license (or, for that matter, exception). Further, the urging of consideration of impact on "small business" is without merit as "small business is defined in O.C.G.A. Section 50-14-4, paragraph (3) as "independently owned and operated, are not dominant in their field, and employ 100 employees or less." Testimony at the public hearing demonstrated that all the rules considered at that hearing were specifically designed with "small business" in mind, as "small business" were the primary licensees under the law. As the urging in the "Comment" is based on a lack of application of a proper definition of the terms, no further response is required.

Rule 40-13-13-.04. Premise Requirements ...

(1)(g) "Record keeping:" This paragraph of this Rule was adopted with the wording proposed. In the context used the term is not considered vague, but is customary language in animal health production to include viviparous and oviparous species. Feral cats or other stray animals briefly or even regularly cared for do require record keeping by licensees.

(1)(o) "Tethering of dogs:" This paragraph of this Rule was adopted with the wording proposed. It was considered that the language regarding the presumption of "permanent tethering" was sufficiently clear. The language does not state "continuous tethering for more than three days", but rather "tethering for more than three consecutive days." It was decided that the creation of any circumstance that would defeat the presumption would lead to numerous others. As tethering is not considered a means of primary enclosure, simply the movement to a primary enclosure for a limited period of time is not deemed to be sufficient to defeat the presumption.

Rule 40-13-13-.07. Exemptions.

(2)(d)(1) "sells of more than 15 puppies or kittens:" This sub-paragraph of this Rule was adopted with new wording, to wit: "sells more than one litter in any twelve (12) month period." When viewed in light of entirety of paragraph (2), this is not an arbitrary licensing exception considering that there are provisions

defining both "Litters" and "Minimum age to sell" (40-13-13-.01(20) and (18)) and the exemption is within the Commissioner's authority under O.C.G.A. Section 4-11-2(7). I found it reasonable to limit the number of animals being sold by non-licensees to prevent the proliferation of sales of immature animals which were not subject to adequate health controls. The question of impact on "small business" has been addressed elsewhere in these statements, and such explanation is incorporated herein by reference.

(2)(e) "sells to pet shops:" This portion of the paragraph was eliminated from the final Rule.

(2)(f) "produces animals that pose a health risk...:" This sub-paragraph of this Rule was adopted as proposed with the words "chronic pain and suffering" substituted in lieu of the words "animal pain and suffering, including, but not limited to, genetic maladies." The final language is not vague or beyond the statutory scope. The urging in your comment regarding the use of the word "maladies" was satisfied by the elimination of that wording. The question of impact on "small business" has been addressed elsewhere in these statements, and such explanation is incorporated herein by reference.

(2)(g) "has been determined by the Department...:" This sub-paragraph of this Rule was adopted as proposed. The Commissioner or Department is not given the job of issuing licenses as a ministerial task but must exercise a certain, albeit small, amount of discretion. If a person has been determined under the administrative procedures of this State, which do afford a full adversarial proceeding, to not treat animals humanely, the Department has an obligation to not license the person under the Animal Protection laws in order to help prevent a crime under the color of a license. Conviction should not be and is not the exclusive determination of fitness.

All Comments presented have been addressed.

Sincerely,

Earl D. Harris
Assistant Commissioner, Administration

cc: Dr. Lee M. Myers, DVM
The Honorable Henry L. Reaves
The Honorable Harold J. Regan