

DOGS AS DOMESTIC ANIMALS : Dogs are domestic animals. Sec-
WITHIN MEANING OF Sec. 4556, : tion 4556, R.S.Mo. 1939, is appli-
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animals specifically mentioned
therein.

December 16, 1948



Honorable James Glenn
Prosecuting Attorney
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Dear Sir:

This will acknowledge your letter in which you request an opinion of this department. Your letter is as follows:

"Your opinion is requested as to whether Section 4556, R. S. Mo. 1939, refers to dogs as well as the specific animals named therein."

The section referred to is as follows:

"Every person who shall willfully administer any poison to any cattle, hog, sheep, goat, horse, mule, ass or other domestic animal or to any domestic fowl, or shall maliciously expose any poisonous substance, with intent that the same shall be taken or swallowed by any cattle, hog, sheep, goat, horse, mule, ass or other domestic animal or domestic fowl shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years or in the county jail not less than six months, or by fine not less than two hundred and fifty dollars or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months."

In considering this question, we believe that it is necessary to determine first whether a dog is a domestic animal in contemplation of Missouri law, and, second, whether the specific mention of the animals named by the statute renders the phrase "or other domestic animal" inoperative in accordance with the rule of statutory construction expressed by the maxim: "expressio unius est exclusio alterius"; and in considering this question we shall also

Honorable James Glenn

bear in mind the fact that this is a penal statute, and as such must be strictly construed. (State v. Bartley, 304 Mo. 58; State ex rel. Luther Spriggs v. E. F. Robinson et al. 253 Mo. 271, l.c. 284, 285.)

We shall first discuss the question as to whether or not a dog is a domestic animal. The following is a quotation from Corpus Juris Secundum, Vol. 3, p. 1084-85:

"Domestic animals include those which are tame by nature, or from time immemorial have been accustomed to the association of man or by his industry have been subject to his will, and have no disposition to escape his dominion."

We are of the opinion that a dog comes within the meaning of the above definition. Courts in some jurisdictions however have held that dogs are not domestic animals, but that on the contrary they are animals ferae naturae.

In the case of State of Maine v. Harriman, 75 Mo. 562, it was held that dogs are not domestic animals and the court refused to uphold a conviction for the killing of a dog as a violation of a statute making it a crime to kill or wound a domestic animal. One judge, however, vigorously dissented from this opinion and held that a dog is a domestic animal, and contended that the conviction should stand.

We have been unable to find an opinion by the Supreme Court of Missouri on the question as to whether a dog is a domestic animal, but we are of the opinion that the question is settled by the case of Merritt v. Matchett, 135 Mo. App. 176, in which the Kansas City Court of Appeals not only directly holds that dogs are not "ferae naturae" in the following language:

"Dogs are not classed as ferae naturae* * *."
(l.c. 183),

but in referring to the dog there involved, used the following language:

"Not only was he prone to attack dogs and other domestic animals* * *";

thus holding by such use of the phrase "other domestic animals" that a dog is a domestic animal. We are, therefore, of the opinion that a dog is a domestic animal under the Missouri law, in view of the opinion last above quoted.

Honorable James Glenn

Since we hold that a dog is a domestic animal, we shall now discuss the question as to whether the specific mention of certain animals in the statute above referred to renders the general phrase "or other domestic animals" inoperative. While the maxim "expressio unius est exclusio alterius" is frequently applicable in statutory construction, it is modified by the doctrine of "ejusdem generis" and does not apply where the thing of which the general language is claimed to be descriptive is of the same class as the specific thing or things mentioned by the statute. The substance of the doctrine of "ejusdem generis" is stated in State ex rel. Robinson, 253 Mo. 271, l.c. 287, as follows:

"There is a well recognized rule that where a law specifically designates several matters or things which shall be governed by its provisions, and then by general language undertakes to include other acts and things not specifically named, such law must be so construed as to apply only to things or acts of the same general nature as those definitely set out * * *. This is but the restatement of the rule of common sense and everyday experience of mankind. When a man is speaking only of bonds and promissory notes his mind is not supposed to be dwelling on wagons and threshing machines, and we do not apply his words uttered on that occasion to any such subjects. If a man speak of wild animals his mind is not likely at the selfsame time to dwell upon domestic animals, and it would be silly to give his words such a construction."

Pursuing the same thought, we suggest that where as in the statute under consideration the Legislature specifically mentioned cattle, horses, hogs, mules and asses, all of which are domestic animals, and then used the words "or other domestic animal", it is entirely reasonable to deduce that it intended the general phrase "or other domestic animal" to apply to any animal falling within the class of domestic animals to which class the animals specifically mentioned belong, and since a dog is a domestic animal that it intended the phrase to apply thereto. In other words, we hold that the doctrine of "ejusdem generis" applies to the statute under construction, and since we hold that dogs are domestic animals, we are of the opinion that the above-quoted phrase "or other domestic animal" is sufficient to bring the poisoning of a dog within the scope of the above-quoted statute.

Honorable James Glenn

A similar statute of the State of Iowa was similarly construed in State v. Enslow, 10 Ia. 115. This statute provided as follows:

"If any person maliciously kill, maim or disfigure any horse, cattle, or other domestic beast of another; or maliciously administer poison to any such animal * *".

Enslow was indicted under this statute for killing a hog. The phrase "or any domestic beast of another" was held sufficient to bring the hog within the provisions of this statute.

Furthermore, there is a well known rule of statutory construction to the effect that if possible a statute should be so construed as to give effect to every part thereof, and while it is true that penal statutes are to be strictly construed, the rule means only that the application of the statute shall not be broadened beyond the literal meaning of the words used. In this connection we quote as follows from the opinion of the court in Moore v. Telegraph Company, 164 Mo. 165, l.c. 171:

"* * But by the expression 'strict construction' is meant that the scope of the statute shall not be extended by implication beyond the literal meaning of the terms employed, and not that the language of the terms shall be unreasonably interpreted. Courts should neither enlarge nor narrow the true meaning of penal statutes by construction, but should give effect to the plain meaning of the words, and where they are doubtful, should adopt the sense in harmony with the context and the obvious policy and object of the enactment."

CONCLUSION

We are, therefore, of the opinion that Sec. 4556, R. S. Mo. 1939, applies to dogs as well as to the specific animals named therein.

Respectfully submitted,

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APPROVED:

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