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OPINION COMMITTEE

COMMITTEE ON HOUSE ADMINISTRATION

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February 13, 2002

RQ-0512-gc

The Honorable John Cornyn
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42447-02
I.D. # 42447

Dear General Cornyn:

This letter is to request an Attorney General Opinion as to the following:

1. Does Chapter 149 of the Texas Agriculture Code apply to horse slaughter plants in Texas which process, possess, sell and transport horsemeat to foreign countries as food for human consumption in those countries? If so, is prosecution for violations under Chapter 149 preempted or in any way limited by federal law?
2. Does the Texas Department of Agriculture have the power to enforce violations of Chapter 149 of the Texas Agriculture Code? If not, which state agency has that power?

BACKGROUND

There are currently two horse slaughter plants located in Texas that slaughter horses, process their meat and export the meat to foreign countries (principally Europe) as food for human consumption. Since this horsemeat is intended as food for human consumption, the processing, packaging and labeling of this horsemeat is inspected by the U.S. Department of Agriculture (USDA) pursuant to Chapter 12, Title 21 of the U.S. Code.

Sections 149.002, 149.003 and 149.005 of the Texas Agriculture Code provide as follows:

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149.002. Sale or Possession of Horsemeat

A person commits an offense if:

- (1) the person sells, offers for sale, or exhibits for sale horsemeat as food for human consumption; or
- (2) the person possesses horsemeat with the intent to sell the horsemeat as food for human consumption.

149.003. Transfer of Horsemeat

A person commits an offense if the person:

- (1) transfers horsemeat to a person who intends to sell the horsemeat, offer or exhibit it for sale, or possess it for sale as food for human consumption; and
- (2) knows or in the exercise of reasonable discretion should know that the person receiving the horsemeat intends to sell the horsemeat, offer or exhibit it for sale, or possess it for sale as food for human consumption.

149.005. Penalty

(a) An offense under this chapter is punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in jail for not less than 30 days nor more than two years; or
- (3) both the fine and confinement.

(b) A second or subsequent offense under this chapter is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for not less than two years nor more than five years.

Recently a request was made to the Texas Department of Agriculture asking that Department to investigate and assist in the prosecution of these violations. The Department declined: 1) citing a lack of jurisdiction "with respect to the sale of horsemeat"; and 2) stating that state law regarding "the sale of horsemeat [as food for human consumption], particularly with respect to foreign commerce, is largely preempted or otherwise limited by federal law." The Department gave no reason and cited no authority for its conclusion that it had no jurisdiction "with respect to the sale of horsemeat." The Department referenced Sections 602, 610, 619, 644, 645 and 661 of Title 21, U.S. Code, as the basis for its conclusion that state enforcement is "largely preempted or otherwise limited by federal law," but provided no analysis of the issue.

DISCUSSION

Regarding the Department's jurisdiction to enforce Chapter 149 of the Agriculture Code, Section 12.001 of the Agriculture Code specifically states that "the Department shall execute all applicable laws relating to agriculture." Since Chapter 149 is a law relating to agriculture, it would seem that the Department has jurisdiction.

Regarding the preemption issue, none of the sections of the U.S. Code referenced by the Department appears to support federal preemption. For the most part, those sections deal with meat inspection and inspection of slaughter house operations; and nowhere do those sections imply that federal law preempts a state law prohibiting possession, sale and transport of horsemeat for human consumption.

CONCLUSION

It is undisputed from the plain language in Sections 149.002 and 149.003 of the Agriculture Code that these two horse plants are in violation of one or both of those sections. The sole questions remaining are whether federal law preempts or otherwise limits the enforcement of this law and whether the Texas Department of Agriculture has jurisdiction to do that. I therefore request an Attorney General Opinion regarding these questions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Goolsby". The signature is stylized with a prominent initial "T" and a long horizontal stroke.

Tony Goolsby, Chair
Committee on House Administration