



P.O. Box 1335
e-mail: attorney@valornet.com

Phone 254-897-2277
Fax 254-897-2600

RECEIVED

February 4, 2010

FEB 09 2010

FILE # ML-46334-10
I.D. # 46334

OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of the State of Texas
P.O. Box 12548
Austin, TX 78711-2548

RQ-0863-GA

Re: Is a company or individual, who breeds birds, rats, mice, hamsters and other similar animals for sale to pet shops, authorized to register his commercial vehicles and/or trailers, which are used to transport these animals, as a "farm vehicle" under §502.163 of the Transportation Code, and related questions

Dear General Abbott:

Please accept this letter as a formal request for an opinion from your office concerning the authority of a company or individual, who breeds birds, rats, mice, hamsters and other similar animals for sale to pet shops, authorized to register his commercial vehicles and/or trailers, which are used to transport these animals, as a "farm vehicle" under §502.163 of the Transportation Code, and related questions. The facts surrounding the situation at hand are as follows:

The driver of a commercial vehicle, pulling a trailer registered under the provisions of §502.163(a)(1) of the Texas Transportation Code, received a ticket from the Texas Department of Public Safety for "Improper Use of Farm License Plate". The owner of the business, which owns the vehicle and trailer displaying such license plate, contends that his business qualifies for such registration.

Section 502.163 of the Texas Transportation Code provides (in pertinent part): "(a) The registration fee for a commercial motor vehicle as a farm vehicle is 50 percent of the applicable fee under Section 502.162 if the vehicle's owner will use the vehicle only to transport:

- (1) the person's own poultry, dairy, livestock, livestock products, timber in its natural state, or farm products to market or another place for sale or processing;..."

The business, which owns the vehicles, breeds birds (such as parakeets), rats, mice, hamsters and other similar animals. The business then transports said animals to various pet shops for sale to such shops, which, in turn, sells them to customers as "pets". The

The Honorable Greg Abbott
February 4, 2010

Page two

name of the business includes the word "exotic". The business owner claims that the provisions of the subject Code allow him to register his vehicles as "farm vehicles" and thus receive the 50 percent reduction in cost. He contends that the animals, which he is breeding, are "livestock", which includes the term "exotic livestock". Texas Agriculture Code, §1.003(3) defines "Livestock" as "...cattle, horses, mules, asses, sheep, goats, llamas, alpacas, exotic livestock, including elk and elk hybrids, and hogs, unless otherwise defined."

Section 142.001 of the Agriculture Code further defines "Exotic Livestock" as "grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families but not including a mammal defined by Section 63.001, Parks and Wildlife Code, as a game animal, or by Section 71.001, Parks and Wildlife Code, as a fur-bearing animal, or any other indigenous mammal regulated by the Parks and Wildlife Department as an endangered or threatened species. The term does not include nonindigenous mammals located on publicly owned land."

Since the owner of the business also breeds and hauls "birds", he claims that he falls under the definition of "Exotic Fowl" found under §142.001 of the Agriculture Code. That provision reads as follows: "(5) "Exotic fowl" means any avian species that is not indigenous to this state. The term includes ratites but does not include a bird defined by Section 64.001, Parks and Wildlife Code, as a game bird or any other indigenous bird regulated by the Parks and Wildlife Department as an endangered or threatened species. The term does not include nonindigenous birds located on publicly owned land."

Your office issued an opinion (No. V-258) in 1947, in which you held that "Operator of a minnow farm who uses his truck to haul minnows to his farm, where they are allowed to spawn and then are sold at wholesale to persons who haul them away from his place, is not using his truck solely for purpose of transporting "farm products" or "livestock" or for any of the other purposes named in this article, and he is not entitled to register such truck upon payment of reduced license fee prescribed in this article, since minnows are not either livestock or agricultural products."

It would seem that this opinion would be applicable to the question at hand. It also seems apparent that the law providing for the reduced registration fee was written strictly with "farmers" in mind and was intended to give them some small financial assistance. As plainly stated in §502.163, it is intended to apply only for vehicles used to transport "the person's own poultry, dairy, livestock, livestock products, timber in its natural state, or farm products ...". This provision is in keeping with §2.003 of the Agriculture Code "State Agricultural Policy", which states: "(a) The agricultural policy of this state must consider and address: ... (3) state regulatory issues, by ensuring the efficiency and

The Honorable Greg Abbott
February 4, 2010

Page three

profitability [emphasis provided] of agricultural enterprises ...". The term "agriculture" does not appear to be defined under the Agriculture Code, but is defined in Merriam-Webster Online Dictionary (2010) as: "the science, art or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation of the resulting products; FARMING."

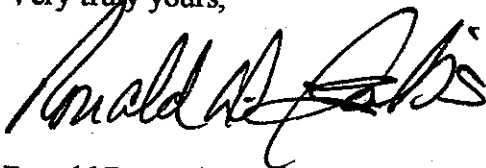
Merely from a reading of the applicable statutes, it is clear that all of the references to "animals" in connection with "agriculture" refer to those animals that are used for either food (human consumption), products harvested directly from the animals (such as wool or mohair from sheep or goats, and dairy products from cattle), or animals that may be used as "beasts of burden" (horses, mules, etc.) in connection with agricultural enterprises. There appears no intention in any of the applicable statutes passed by the state legislature to include other animals, that are not used in any of the preceding ways, as coming under the heading of "agriculture". Since the animals, bred and raised by the owner of the business in question, are not used for human consumption, nor for consumption by other forms of "livestock" as "feed", and there are no products produced by the animals for use by humans that would constitute them as "agricultural products", then it would necessarily follow that they are not to be considered "livestock" for the purposes of §502.163; nor qualify the owner of such a business to register his commercial vehicles as "farm vehicles".

SUMMARY

My question is therefore: (1) "Is a company or individual, who breeds birds, rats, mice, hamsters and other similar animals for sale to pet shops, authorized to register his commercial vehicles and/or trailers, which are used to transport these animals, as a "farm vehicle" under §502.163 of the Transportation Code?"

Should you require any further information concerning this matter, please feel free to contact me.

Very truly yours,



Ronald D. Hankins
County Attorney
Somervell County