



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1994

Honorable John Whitmire
Chair
Criminal Justice Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 94-095

Re: Whether the activity known as "horse tripping" is prohibited by section 42.09 of the Penal Code (ID# 29575)

Dear Senator Whitmire:

You have requested our opinion as to whether the activity known as "horse tripping" is prohibited by section 42.09 of the Penal Code. You have submitted with your request an article from the July, 1994, issue of *Horse Illustrated* magazine, which describes the practice, as

an event in which a usually young, usually Arabian, underweight horse bound for slaughter is whipped and shouted into a run, so that it can then be tripped with a lariat by a man, a *charro*, either on horseback or on the ground

The article continues:

The goal is to make the horse fall. The horse's rear legs may be pulled out from under it while at a dead run, or its front legs are roped, causing it to tumble forward. The horses' lives end in misery and the injuries they sustain--both physical and emotional--have horrified the handful of veterinarians who have been called in to treat the few horses who have been rescued from this fate.

At the time the article was written, the state of California was considering a bill which would specifically criminalize this activity. On September 19, 1994, the governor signed the bill into law.¹

¹That bill, enacting section 597g of the California Penal Code, provides:

(a) Poling a horse is a method of training horses to jump which consists of (1) forcing, persuading, or enticing a horse to jump in such manner that one or more of its legs will come into contact with an obstruction consisting of any kind of wire, or a pole, stick, rope or other object with brads, nails, tacks or other sharp points imbedded therein or attached thereto or (2) raising, throwing or moving a pole, stick, wire, rope or other object, against one or more of the legs of a horse while it is jumping an obstruction so that the horse, in either case, is induced to raise such leg or legs higher in order to clear the obstruction.

Section 42.09 of the Penal Code proscribes injury to “an animal . . . belonging to another,” but excepts from this prohibition the injuring of “cattle, horses, sheep, swine [and] goats.” Penal Code § 42.09(a)(5). Another portion of the statute, however, provides that “[a] person commits an offense if he intentionally or knowingly: (1) tortures or seriously overworks an animal.” *Id.* § 42.09(a)(1). “Animal” is broadly defined to mean “a domesticated living creature and wild living creature previously captured.” *Id.* § 42.09(c). Thus, the question you pose is whether the practice of “horse tripping,” as described, would constitute “torture.”

In Attorney General Opinion H-56 (1973), this office considered whether particular conduct violated article 1374, V.T.C.S. That statute, the source law for article 42.09 of the Penal Code, provided that

[w]hoever . . . tortures, torments . . . or needlessly mutilates or kills any animal . . . shall be fined not exceeding two hundred dollars.

The practice at issue in Attorney General Opinion H-56 was “a pigeon shoot, in which the birds are released as targets, after first having their tail feathers plucked out to effect an erratic mode of flight.” The opinion declared that

[i]n common parlance “torture” and “torment” have virtually the same meaning, *i.e.*, to cause intense suffering.

Attorney General Opinion H-56 at 2. Although the opinion correctly stated that “[w]hether or not people participating in a particular pigeon shoot violate the law ultimately will be a question for jury determination,” it did hold that the statute was “sufficiently specific and . . . constitutional insofar as it outlaws the torturing, tormenting, and needlessly mutilating of animals.” *Id.* at 3. Furthermore, the opinion concluded that the conduct described by the requestor “would be sufficient . . . to uphold a conviction of violation of Article 1374 . . .”² *Id.*

(footnote continued)

Tripping a horse is an act that consists of the use of any wire, pole, stick, rope, or other object or apparatus whatsoever to cause a horse to fall or lose its balance. The poling or tripping of any horse is unlawful and any person violating the provisions of this section is guilty of a misdemeanor.

(b) It is a misdemeanor for any person to intentionally trip or fell an equine by the legs by any means whatsoever for the purposes of entertainment or sport.

(c) This section does not apply to the lawful laying down of a horse for medical or identification purposes, nor shall the section be construed as condemning or limiting any cultural or historical activities, except those prohibited herein.

²At the time Attorney General Opinion H-56 (1973) was issued, “torture of an animal” was defined in article 180, V.T.C.S., as “every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue when there is a reasonable remedy or relief.” Portions of article 180 have been codified as chapter 821, Health and Safety Code, but the use of the word

In our opinion, the activity about which you inquire--"horse tripping"--as depicted in the article from *Horse Illustrated*, is sufficiently cruel and sadistic that a jury could reasonably conclude that it constitutes "torture." Since "torture" is no longer defined in Texas law, *see infra* note 2, we believe that a jury would be obliged to construe the term in accordance with its commonly understood meaning.

The verb "torture" means "[t]o inflict severe pain or suffering upon; to torment; to distress or afflict grievously." OXFORD ENGLISH DICTIONARY (2d ed. 1989), v. 18, at 278.³ In a case whose facts are similar to those you present here, a Maryland court considered whether the intentional burning of a dog was unlawful under state law. The court declared "that the burning of a dog to the extent that he had to be destroyed constitutes torture, torment and cruelty," and that no "person of ordinary intelligence" could conclude otherwise. *In re William G.*, 447 A.2d 493, 496 (Md. Ct. Spec. App. 1982). Although, as the author of Attorney General Opinion H-56 indicates, whether a defendant's act constitutes "torture" must ultimately be resolved by a jury, we believe that a jury finding that a defendant had intentionally engaged in the conduct you have described 'would be held sufficient to uphold a conviction of violation of' section 42.09(a)(1) of the Penal Code.⁴

footnote continued)

torture," as well as its definition, have been omitted from the codification. See Health & Safety Code § 821.004 revisor's note.

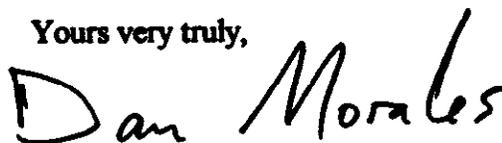
³In other jurisdictions, the word "torture," as applied to humans, has been held to denote, *e.g.*, infliction of a considerable amount of pain and suffering on a victim which is unnecessarily heinous, atrocious, or cruel manifesting exceptional depravity," *Pennsylvania v. Pursell*, 495 A.2d 183, 196 (Pa. 1985); "infliction of severe physical or mental pain upon the victim while he or she remains alive and unconscious," *State v. Williams*, 690 S.W.2d 517, 529 (Tenn. 1985); and "sadistic violence," *California v. Proctor*, 842 P.2d 1100, 1106 (Cal. 1991), *aff'd*, *Tuilaepa v. California*, 114 S.Ct. 2630 (1994).

⁴Section 821.022 of the Health and Safety Code provides that a sheriff, constable, deputy constable, or animal control officer may apply to justice court for a warrant to seize and impound any animal that "has been or is being cruelly treated." "Cruelly treated" is defined to include "tortured, cruelly overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal." Health & Safety Code § 821.021.

S U M M A R Y

A finding that a person has intentionally engaged in the activity known as "horse tripping" is sufficient to support a conviction for "torturing an animal" under section 42.09(a)(1) of the Penal Code.

Yours very truly,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive style with a large, looped "D" and "M".

Dan Morales
Attorney General of Texas