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January 11, 2008

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Honorable Greg Abbott  
Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

RQ-0666-GA

FILE # ML-45515-08  
I.D. # 045515

Re: *Penal Code 42.092: Cruelty to Nonlivestock Animals*

Dear Honorable Greg Abbott:

I hereby request an Attorney General Opinion concerning the meaning of certain language contained in Article 42.092, Texas Penal Code, which became effective September 1, 2007. This statute was rewritten during the 80<sup>th</sup> Legislature. Specifically, I need to know what the phrase "previously captured" means in the statutory definition of "Animal" and how that phrase relates to wildlife creatures such as deer.

Under the prior version of §42.09, "animal" was defined as:

(2) "Animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

PENAL CODE § 42.09, Cruelty to Animals  
(for offenses committed prior to 9/1/2007)

Under the current version of §42.092, "animal" is defined as:

(2) "Animal" means a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal.

PENAL CODE § 42.092, Cruelty to Nonlivestock Animals  
(for offenses committed after 9/1/2007)

In December, the Texas Parks & Wildlife Department in my jurisdiction investigated the beating and subsequent death of two young deer at the hands of four students (two juveniles and two adults). The teens chased the deer into the School District's baseball batting cage which measures approximately 90 feet x 15 feet, with a fence approximately 9 feet in height. After trapping the deer, the teens left the baseball field and then returned with a shovel and a bat. The teens then beat the two deer to death. Investigators believe the event occurred within the time span of 60-90 minutes.

Under the prior version of §42.09, the action could not be prosecuted as a felony due to the final portion of the definition of "animal" which expressly excluded "uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section."

Under the current version of §42.092, the term "previously captured" is vague and open to interpretation. The word "previously" connotes some prior action, such as a zoo or game preserve. Under the specific facts from my jurisdiction, one could say the deer were "previously captured" for a short time before the teens killed them. One could equally argue that "previously captured" requires a more formal sort of captivity.

I have been unable to find any case law or Attorney General's Opinion concerning this newly enacted statute. I have enclosed copies of the legislative notes, etc from the 80<sup>th</sup> legislature concerning revisions to this statute.

Thank you in advance for your kind assistance in this matter.

Sincerely,



Laurie K. English

Enclosures, Legislative History, 80<sup>th</sup> Legislature