

Approved March 4, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Sen. Don Montgomery at
Chairperson

10:00 a.m./~~p.m.~~ on March 3, 1992 in room 423-S of the Capitol.

All members were present except:

Senators McClure and Harder

Committee staff present:

Raney Gilliland, Legislative Research
Lynne Holt, Legislative Research
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Carol Bonebrake, Attorney General's Office
Arnold Gideon, Paxico
Galen Rottinghaus, Seneca
Marilyn Rudolph, Ottawa
Margaret Kerr, Kerr Kennels, Silver Lake
Virginia M. Hinderer, Wakarusa
Marcia Gitelman, Helping Hands Humane Society

SB 720 - Concerning the Kansas Animal Dealers Act; relating to the inspection of premises and the seizure and impoundment of animals.

Carol Bonebrake of the Attorney General's office presented testimony in support of SB 720 for Camille Nohe, Assistant Attorney General. (Attachment 1).

Arnold Gideon, a kennel owner from Paxico, testified in opposition to the bill but offered amendments if the committee chooses to recommend the bill for passage. (Attachment 2).

Galen Rottinghaus of Seneca testified in support of parts of the bill but had two exceptions regarding search warrants and fines. (Attachment 3). He would recommend that the bill be amended to include language requiring a search warrant. Also, he feels the fines in the bill are exorbitant and that instead kennels should be given time to shut down without this tremendous cost. He concluded that kennel operators are not criminals and should not be treated as such.

Marilyn Rudolph of Ottawa testified further in opposition to SB 720. (Attachment 4).

Margaret Kerr, Kerr Kennels, followed with testimony in opposition to the bill. (Attachment 5). She added that she would like to see an educational program developed for repeat violators.

Virginia M. Hinderer of Wakarusa stated her opposition to the bill and expressed her agreement with the others testifying in opposition. She prefers that the bill be killed, but if it is recommended for passage, she feels the impoundment notice should be 72 hours or longer and that the animals should be seized only and not destroyed. Ms. Hinderer feels the bill will take away the constitutional rights of breeders.

Final testimony in opposition was given by Marcia Gitelman of the Helping Hands Humane Society. (Attachment 6).

Written testimony of Kathy McKee, who could not appear, Johnson County Humane Society, in opposition to SB 720 was submitted by Mary Ann Earp of Topeka. (Attachment 7).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE,
room 423-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 3, 1992

The chairman questioned Ms. Bonebrake regarding other laws where prior notice is given. Ms. Bonebrake explained that there is an emergency proceeding for nurses, but each particular agency has its own emergency procedure.

The chairman asked Ms. Bonebrake if she would object to putting in a longer notification time in the bill. She responded that she feels 24 hours is enough.

The chairman asked Ms. Bonebrake if animals presently confiscated must be spayed or neutered according to state law. She answered, "no". The Livestock Commissioner has authority over confiscated animals and determines if the animals are placed, sold or euthanized. The general rule is that if a veterinarian finds a skeletal deficiency, the decision to neuter is made.

The chairman asked for a definition of the language, "knowingly falsify". Ms. Bonebrake defined this as deliberately writing something untrue and noted that this is hard to prove.

Sen. Webb had questions regarding the authority given to levy a \$1000 fine. Ms. Bonebrake said that the law permits a \$1000 fine, however, the prosecuting attorney has discretion on how much to fine on each count, and fines are usually much less than \$1000. There are few petitions that have only a single count; usually there are four or five. The count normally would go towards the facility rather than to individual animals in the kennel, but a count could go for each animal.

Sen. Sallee questioned why confiscated animals are destroyed. Ms. Bonebrake answered that this is a policy decision made by the Livestock Commissioner, and the Attorney General's office is not involved in this decision. Dr. Dan Walker, Livestock Commissioner, stood to clarify noting one case where the confiscated animals were sold because it was felt they had no market value.

There being no further testimony, the hearing on SB 720 was concluded.

The minutes of February 26 were approved.

The meeting was adjourned at 11:00 a.m.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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Testimony on Behalf of
Attorney General Robert T. Stephan
Presented by
Camille Nohe
Assistant Attorney General

Committee on Agriculture
Re: Senate Bill No. 720
March 3, 1992

On behalf of Attorney General Stephan, I am here to testify in favor of Senate Bill No. 720.

Senate Bill No. 720 was introduced by this committee at the request of the Attorney General's office. This bill amends three sections of the Kansas animal dealers act: (1) the section authorizing inspections of unlicensed facilities, (2) the section authorizing impoundment of animals from unlicensed facilities, and (3) the section authorizing the adoption of rules and regulations.

The Attorney General requested these amendments to the Kansas animal dealers act in response to a decision from the Kansas Court of Appeals in State v. Marsh, No. 66, 336, decided December 31, 1991. In that decision the court identified certain constitutional deficiencies in the act,

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Attachment 1

which, unless statutorily corrected, will jeopardize further department inspections of unlicensed facilities and any necessary impoundment of animals from those facilities.

Specifically the court found that a warrantless administrative search and seizure would be permitted if the statutory inspection and impoundment program: (a) advised the owner of the commercial premises that the property would be subject to periodic inspections undertaken for specific purposes, and (b) the discretion of the inspecting officers was carefully limited as to the time, place and scope of the inspection.

The court found that the inspection and impoundment provision of the Kansas animal dealers act in relation to unlicensed facilities did not meet these criteria.

The amendments proposed in Senate Bill No. 720 are designed to meet the deficiencies identified by the Court of Appeals.

Section 2(c), K.S.A. 1991 Supp. 47-1709(c), authorizes inspections of unlicensed premises. The amendment would require notice to owners prior to such an inspection and would limit the time, place and scope of the inspection.

Section 1(c), K.S.A. 1991 Supp. 47-1707(c), authorizes the impoundment of animals from unlicensed premises if the animals' health, safety or welfare is endangered. The amendment would require prior notice that such an impoundment could occur

if the animals were determined to be endangered. In addition, the amendment would limit the time, place and scope of such an impoundment.

Section 3(b), K.S.A. 1991 Supp. 47-1712(b), provides rule and regulation authority regarding animal dealer premises. (Section 3(a) provides rule and regulation authority regarding other types of facilities regulated under the act.) The amendment would authorize the animal health commissioner to adopt regulations pertaining to inspections, investigations, training and impoundments for animal dealer premises as is presently authorized for other types of facilities under his jurisdiction.

The Attorney General urges this committee to act favorably on Senate Bill No. 720 in order to bring the Kansas animal dealers act into compliance with constitutional principles as articulated by the Kansas Court of Appeals.

OPPOSITION TO SB 720

Presented by Arnold Gideon

Kansas shipped approximately 50,000 puppies from the state last year. The total wholesale value would be approximately five million dollars. If 40 per cent of the puppies shipped came from out of state, then 30,000 puppies, or 3 million dollars worth of puppies were produced in the state of Kansas. If there are 750 licensed kennels, then the average Kansas kennel produces 40 puppies per year, or receives \$3,000. per kennel for their efforts. An average of \$3,000. per year gross income explains why we do not have the money to lobby in an extensive way; and many of us would rather go out of business than to run the chance of indiscriminately being fined the usual \$15,000. in case our kennel was confiscated.

Most Kansas kennel operators are intimidated by the possibility that they will be raided if they voice opposition to actions propagated by the Attorney General or Livestock Commissioner. SB 720 is designed solely for the purpose of making confiscation and the destruction of animals easier. No animals seized so far have been returned to production. All have been destroyed production-wise.

A \$1,000. per violation fine, which usually exceeds by ten times the value of the animals confiscated, usually destroys kennel owners financially.

The health, safety and welfare of animals in any person's possession cannot be guaranteed. As an example, if a bird carrying coccidiosis flies over a kennel, the kennel may be infected with coccidiosis. The safety cannot be guaranteed. As an example, what do you do in case of a tornado or a fire? So, according to the terms of SB 720, a kennel can be raided and disposed of at the discretion of the Attorney General or Livestock Commissioner. Should we, in fact, have laws which allow the livestock commissioner to confiscate any kennel at any time so desired?

SB 720 requires the operator of a licensed kennel to guarantee that health, safety, or welfare of the animals maintained at the premises, are not endangered. The animals are subject to seizure and impoundment under this act.

Ladies and gentlemen, we cannot make such a guarantee any more than you can that it won't rain, that you won't have a car wreck or that your house won't burn down. In other words, under the terms, the Livestock Commissioner or the Attorney General has legal right to confiscate any kennel at will.

To have notice previous to confiscation with only animals required to be licensed involved sounds great; but it is little compensation for the loss of the requirement of a search warrant. We cannot accept the dog bones which are offered. Opposing SB 720 will be one way to help maintain Kansas kennels.

Please oppose SB 720.

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SUGGESTED AMENDMENTS TO SB 720

Presented by Arnold Gideon

If you find it absolutely necessary to pass SB 720, please amend it as follows:

Pg. 1, line 20 -- change \$1,000. to \$10.

Line 29 -- intentionally violated any provision of the Kansas animal dealer act or any rule

Line 32 -- intentionally endangered thereby, the commissioner shall seize and impound such

Line 35 -- ment is authorized only upon 72 hours prior notice, in accordance with

Pg. 2, insert between lines 8 & 9 -- Cost per day shall not exceed two times the daily average feed cost.

Line 14 -- Use value of all animals must be maintained during seizure. Animals not returned must be sold and moneys from sale of said animals applied to cost incurred.

Pg. 3, line 11 -- to be licensed or registered. Such inspections shall occur only after 72 hours.

Line 31 -- tigungen under this section who knowingly falsifies the results or

Committee Members:

To shorten time and reading material, I would like the committee to consider these points. I support the bill and would like consideration of these 2 points:

1. Search Warrants
2. Fines

Galen Rottinghaus
R.R. 3
Seneca, Kansas

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Attachment 3

Senate Agricultural Committee
Senator Don Montgomery, Chairman
Senate Bill #720

Opposing Testimony
by
Marilyn Rudolph
March 3, 1992

I certainly thank you this morning for the opportunity to speak to this committee.

As I understand, this bill is straight out of the Attorney General's office designed specifically to strengthen the ability of the State to raid kennel operations as well as hobby breeders, to terrorize and kill animals and to prosecute individuals in total disregard to an individuals rights to due process of law accorded by the Constitution of the United States. A bill designed to strengthen the ability to destroy more individual's lives and livelihoods, placing them in all likelihood onto an already overburdened welfare system. Spending the taxpayers money to put other taxpayers out of business creating more debt for the already overburdened taxpayer.

I believe that this is just another way to challenge constitutional law, another way to test if an administrative order can have more power than rights given to Americans by the Constitution of the United States. Just putting these clauses into the law does not make it constitutional, it still has to be tested in court. The creators of these amendments hope that breeders will not have the courage nor the fortitude to continue the long road of legal entanglements to prove that it is in fact unconstitutional, especially after the emotional duress of seeing their animals terrorized hauled off and killed. And for those individuals that do decide to fight, - after all it is just the taxpayers money. I think that this attitude needs to be checked at the outset. Taxpayers money is and has already been wasted in huge amounts to put hard-working Kansans out of their homes and enterprises at great expense to the State. I suggest that you are the keepers of the welfare of the taxpayers dollar. The money wasted to raid and kill animals and to label animal breeders as "criminals" is outrageous. Interesting to note that indeed the emphasis IS on animal confiscation and not on upgrading the kennel industry.

You are sworn to uphold the Constitution of the United States as well as of Kansas when you take your oath of office. You have therefore as part of your responsibility to uphold and safeguard the constitutional rights of every Kansas citizen as well as to keep the system of "checks and balances" balanced. YOU are the safeguard for all of us, YOU are the "keepers of the flame" so to speak. When legislation comes through the system that would demean, weaken or attack the constitutional rights of any Kansas citizen, it is your responsibility to "check" or stop that imbalance from happening. We seem to have a preponderance of legislation coming through that gives the administrative branches more and more power, taking that power away from the legislators and trying to diminish the strength of the Constitution. It is your responsibility to safeguard this balance as well as Kansas citizens against the individuals and special interest groups that would destroy individuals and the free enterprise system, that would weaken and in time destroy the right to own and manage ones own property.

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These special interest groups are attacking the animal industry in the name of "humane treatment for animals!" And yet these special interest groups are in large part so-called "Humane Societies" which advertise and collect monies for the specific goal of attacking and putting animal breeders out of business as well as running their own "humane societies" which are the biggest killers of dogs and cats in America today.

These "humane societies" also operate as a retail outlet placing pet animals back into the communities which certainly is to be commended. However, how did these groups that operate as a retail outlet and in direct competition to animal breeders exempt themselves from the bulk of the rules and regulations and inspections of the Animal Dealer Act?

There seems to be a lot of power in destruction instead of construction. Three times, the raid and confiscation parts are mentioned in the Animal Dealers Act, and yet nowhere in the bill is mentioned any program to upgrade the industry as touted. And now along comes Bill #720 to try to strengthen the more destructive sections of the Animal Dealers Act.

There seems to be a ludicrous amount of the taxpayers dollar spent to create a program that was never meant to work to upgrade at all, but to raid and kill animals and put people out of business when a fraction of the money now spent in these endeavors as well as the legal entanglements could be spent on an educational program through the Extension Department at Kansas State University, targeted not only towards the commercial kennel industry but to serve the needs of the smaller breeders and individual pet owners as well, thereby creating an extensive service to the Kansas public at much less burden to the Kansas taxpayer. In 3-5 years we could have one of the best pet programs in the United States as well as creating a communications pipeline to the REAL industry and not to just a few individuals with special interests. I would charge you this committee with the responsibility of repealing the Animal Dealers Act in its entirety and creating an educational program for the industry in Kansas thereby not only saving the Kansas taxpayer an immense amount of money today, but in creating a better and brighter Kansas for tomorrow.

If the Animal Dealers Act program continues it will be the jumping off point for the rest of the livestock industry. Efforts are now being switched in other states from the pet industry towards the animal food industry in an attempt to damage and destroy.

We have been a great country only because we have first been able to not only feed our own nation but to literally help feed the world. Because of our great agricultural capabilities and the men and women who labor unceasingly within them, we have also become great industrial and military leaders. We need to collectively strengthen our interests, instead of allowing special interests to weaken our constitutional rights. We are being attacked in every corner. I suggest that not only Bill #720 be struck down, but that ANY bill coming across your desks be eyed in the light of "does this bill strengthen or weaken the constitutional rights and interests of Kansans?" and "what does this bill contribute toward the balancing of the 3 branches of government?, balance or imbalance?" We are in a time period when there are many people in the executive branches fighting for more administrative powers than was ever intended, thereby unbalancing the whole process. I am

I am glad we have the right to free speech and the legislative processes that we have, to allow all of us to be heard. Where we differ is that I believe that special interest groups should not be allowed to legislate for the public at large, no matter how vocal or well organized. What has happened in the kennel industry is akin to a group of suburbanites with a few steers in their back yards writing legislation for the Cow-calf man. YOU are the safeguards for us all.

I resent these animal activists using my animals as pawns in their power plays. I resent them using all animals as pawns. All of these animals are innocent victims be they dogs and cats today or cows and chickens tomorrow. I resent their emotional ploys, their terrorist tactics-be they emotional or physical.

Any law which allows special interest groups or an administrator to use said law in an irresponsible manner needs to be struck in its entirety. This Animal Dealers Act is certainly such a law. Instead of creating another issue within the law to be challenged this bill #720 certainly needs to be killed as well as the Animal Dealers Act repealed. The Livestock Commissioner and the special interest groups that seem to be able to sway this department decide ahead of time who is to be put out of business and then set out to accomplish just that. Any law which allows this perpetuation of evil upon hardworking Kansas people whether it is in the agricultural sector or business or in any other, needs to be eliminated. Instead of creating another dimension of challenge, I ask that you kill Senate Bill #720.

Do not allow what has happen to me and others in Kansas to continue.

I certainly thank you for your time not only in just listening but in considering my input in this matter.

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Senate Bill 720
Committee on Agriculture,

I urge this committee to vote no on Senate Bill 720. I feel this takes our rights of owning property away by not giving people due process. It gives the commissioner the right to seize and impound on his signature. With all the pressure, and special interest groups hanging on to him, this would not be a very good idea. Every person should have the chance for a hearing, or his day in court before his livelihood is taken. At least a search warrant requires a certain amount of proof before they can seize and kill.

The present law allows raids and several have been made. Hundreds of animals have been killed in this state. This is an extreme amount of power the state has. It may take a little more time for due process, we as tax paying citizens deserve this. We are average American citizens trying to make a living raising animals, we are not drug dealers or murderers. We are innocent until proven guilty.

I am asking you to realize with each raid you are putting another family out of work and some even on welfare. Please remember the kennel people bought and paid for their animals. They were not given to them by the State.

I would hope the State of Kansas would be promoting businesses or kennels instead of raiding and killing. It is time to quit listening to humane special groups whose goals are quote, "lets get rid of that trash". There are 50 less licensed kennels now, than last year. How many less before they are happy? 80, 90, 100 or all of the kennels in Kansas. I think you know the answer as well as I do.

Margaret Kerr

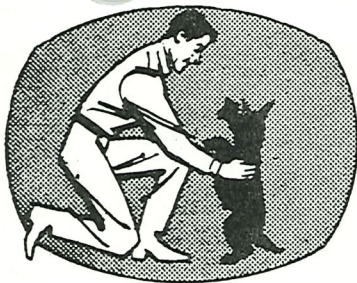
Margaret L. Kerr
Member Companion Animal Advisory Board.

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Attachment 5*

Amendment for Senate Bill 720

A person voluntarily going out of buisness will have no fines for past violations.

Margaret L. Kerr



Helping Hands Humane Society, Inc.

OFFICE AND ANIMAL SHELTER
2625 Rochester Road
Topeka, Kansas 66617
Telephone 233-7325

March 3, 1992

TO: Senator Montgomery and committee members

RE: SB 720

The bill before you was written to correct some flaws faced by the Animal Health Department when using the Animal Dealers Act. Some of these changes were recommended by the Kansas Court of Appeals in it's opinion No. 66,336: State of Kansas vs. Marilyn Marsh.

Although SB 720 addresses certain concerns pointed out by the Court of Appeals, it goes beyond the scope and recommendations outlined in their opinion. On section page 1, line 34, SB 720 would have the state giving advanced warning to persons of a pending seizure and impoundment of animals. This is tantamount to forewarning a drug dealer of an upcoming raid. Although in the Appeals Court opinion it stated that according to the record the defendant did not know that she had to be licensed, according to statute (K.S.A. 14-2709 (c)) it clearly states that premises required to be licensed under state law shall be subject to inspection.

Ignorance of the law is no excuse for illegal breeding operations to be allowed the convenience of prior notice for seizure and impoundment of animals. In most cases it would be very likely that if the state were to warn these people in advance of an upcoming action, the breeder would hide or sell off all of their animals, rendering the state's case against them moot. This has already happened in recent cases in the owner's attempt to evade the law. Since the Court of Appeals did not recommend giving advanced warning of seizure and impoundment of animals and even agreed

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"Paws for Pleasure"

that alerting persons subject to regulation could frustrate the purposes of conducting inspections, we would urge you to vote against this bill as long as it contains provisions for advanced warnings of seizure and impoundment. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Marcia Gitelman". The signature is written in dark ink and is positioned above the typed name and title.

Marcia Gitelman
Assistant Executive Director



JOHNSON COUNTY HUMANE SOCIETY
P.O. Box 23508 • Overland Park, Kansas 66223
(913) 829-2505



March 2, 1992

The Honorable Don Montgomery
Chairman, Senate Agriculture Committee
State Capitol
Topeka, KS 66612

RE: Testimony in Opposition to SB-720

Dear Senator:

Since I am testifying in another hearing at the same time as the hearing on SB-720, please accept my written testimony in opposition to SB-720.

SB-720 was obviously drafted in response to the decision rendered by the Kansas Court of Appeals in State of Kansas v. Marsh, Case No. 66336. SB-720 goes significantly beyond what the Court mandated in its opinion in that case. The Court's syllabus couldn't be any clearer that the sole basis for finding that the Marsh search and seizure were illegal was that the emergency order in the case failed to limit the scope of the search and seizure. Thus, the language in SB-720 that deals with limiting the scope of any order for search or seizure is appropriate.

Our opposition comes from the requirement SB-720 imposes that violators of the Kansas Animal Dealer Act be given advance notice of inspections and/or impoundments. Twice on page 11 of the Marsh opinion, the Court states it is "convinced that warrantless inspections might very well be necessary to further the regulatory scheme" So, while the Court endorses certain, limited instances of warrantless searches, the drafter of SB-720 inserts language prohibiting even "noticeless" searches.

Further, the Court does not state that the statute in question (i.e., the Animal Dealers Act) fails to provide notification to unlicensed dealers that they are subject to inspection and seizures, only that the record in the instant case does not support that. The fact is that the statute DOES cover the situation with unlicensed dealers, such as Marsh, in K.S.A. 47-1709(c). The failure of the Assistant AG to enter this in the record is not a failure of the statute which would need addressing.

Attorney General Stephan himself has said numerous times on TV, in newspaper articles, and certainly in my presence that he is totally against giving advance notice of inspections, much less impoundments. This Committee needs to insist that the Marsh decision be revisited by someone else other than the drafter of SB-720. Then this bill needs to be amended so as not to needlessly weaken this state's fledgling puppy mill program.

Sincerely,

KATHY MCKEE, President

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Attachment 7