

Approved: 3-23-96
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Chairperson David Corbin at 10:00 a.m. on February 16, 1996 in Room 423-S of the Capitol.

All members were present.

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

George Teagarden, Livestock Commissioner, Animal Health Department
Jennifer Colder, DVM, Assist. State Epidemiologist, Health and Environment
Debra Duncan, Director, of the Animal Facilities Inspection program, Animal Health Department

Others attending: See attached list

Senator Sallee asked if it would be appropriate to call for the question on the motion on the table concerning **SB 507**. Chairperson Corbin said it was appropriate, but he had two bills scheduled and he thought there would be time to do so after the bills were heard. Senator Sallee said he would be happy to delay his request until after the hearings on **SB 540** and **SB 659**.

Testimony presented to the Senate Agriculture Committee by Dale Sutton on behalf of Stevens County Commissioners on **SB 600** at the February 14, 1996 (Attachment 1) and testimony presented by Dallas Bressler on behalf of Morton County Commissioners on **SB 600** (Attachment 2) was distributed.

Fiscal note for **SB 540** was distributed.

SB 540 - concerning rabid mammals.

George Teagarden told the Committee as Livestock Commissioner, he had requested the introduction of the bill. He called on Debra Duncan, Director of the Animal Facilities Inspection program for the State of Kansas to explain why the bill was necessary.

Debra Duncan stated they supported the bill because this issue has always been handled by the Department of Health and Environment since it is the responsibility of local law enforcement or the local health officer to impound an animal suspected of rabies. **SB 540** officially transfers this responsibility to the Department of Health and Environment. It does not affect the Livestock Commissioner's ability to regulate rabies or other infectious diseases (Attachment 3).

Jennifer Calder presented testimony supporting **SB 540** and moving the responsible for enforcement to the Kansas Department of Health and Environment (Attachment 4)

Chairperson Corbin suggested that **SB 540** was not controversial in nature and he thought it could be placed on the consent calendar. Senator Morris moved that SB 540 because it was non controversial be passed and placed on the Consent Calendar. The motion was seconded by Senator Wisdom. Motion carried.

SB 659 - concerning public livestock markets; relating to occasional sales.

George Teagarden said he asked that the legislation be introduced because of confusion whether organizers needed a state license for occasional sales. They requested an Attorney General opinion and this bill was introduced as a result of the Attorney General's opinion, which is attached (Attachment 5 & 6).

A motion was made by Senator Sallee that SB 659 be passed. Senator Downey seconded the motion. Motion carried.

SB 507 - abolishing the Agricultural Value Added Center and the Leadership Council

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE Room 423-S-Statehouse, at 10:00 a.m. on February 16, 1996.

Chairperson Corbin distributed information regarding the budget that he received from Governor Graves (Attachment 7, and information on the preliminary FY 1997 Budget for the Agricultural Product and Market Promotion Program (Attachment 8). The Committee discussed the Substitute Motion on the floor from the meeting of February 15. The question was called for, and the substitute motion carried.and SB 507 was amended by substituting a new bill to be designated as Substitute for Senate Bill 507, and that Substitute for SB 507 be passed.

During the Committee discussion, the consensus of the Committee was to transfer KVAC's arrangements with K-State and others and all KVAC programs to the Department of Commerce and Housing and it should be moved as intact as possible. The holding company should be left with KVAC, and the ultimate decision on how to access these best would be left with the Secretary of Commerce and Housing.

The meeting adjourned at 11:00.

The next meeting is scheduled for February 19, 1996.

TESTIMONY PRESENTED

TO THE

**SENATE
AGRICULTURE
COMMITTEE**

BY

DALE SUTTON

ON BEHALF OF

**STEVENS COUNTY
COMMISSIONERS**

ON

SB 600

FEBRUARY 14, 1996

*Senate Ag Co
2-16-96
Attachment 1
1-1*

Dear Chairman and members of the Committee:

This is an impromptu presentation as I am not properly prepared, but Stevens County did not enter into the resolution to open our county to corporate farming blindly. This decision was made after considering the value to our county by:

1. Creating jobs
2. Providing a market for grain which is the product of the first industry in this part of the state which is farming.
3. We are located over a depleting gas field. I came to Stevens County from Texas in 1969 as supervisor of a large compressor station. Our pressure to the plant at that time ranged from 150 lb. PSIG to 200 lb. PSIG and collected the allocated allowable as set by the state Corporation Commission. Now, from those same sources additional facilities have been installed to draw the pressure to 10 - 20 PSIG to collect the allowables.

We believed this would ^{not} be a positive impact on economic development.

Stevens County has established zoning. This was not established to target Seaboard as we were in the establishing process prior to their starting development. Seaboard has complied with the zoning regulations and I have toured a part of their facilities and they have high-tech installations.

I would not speculate on the outcome of a vote, but four weeks ago if the issue was put to a vote it would ^{not} have probably been defeated. There are definite indications now that the mind set seems to be changing to a more positive nature.

Thank you for the opportunity to address this issue.

TESTIMONY PRESENTED

TO THE

**SENATE
AGRICULTURE
COMMITTEE**

BY

DALLAS BRESSLER

ON BEHALF OF

**MORTON COUNTY
COMMISSIONERS**

ON

SB 600

FEBRUARY 14, 1996

Senate Ag. C
2-16-96
Attachment 2 2-1

Dear Chairman and members of the Committee:

My name is Dallas Bressler, Commissioner from Morton County. My fellow Commissioner, Claudine Davidson, who is present at this meeting supports my position. I'm here to put a different slant on this meeting. I am opposed to House Bill 600, due to the fact that our gas and oil is a wasting asset and in time we need something to compensate for this loss. For our county that leaves us with agriculture and corporate farming which may help fill that void.

We can't live under a tax lid with this scenario because we have to maintain the service for the county that our people demand. If our gas and oil continue to decline, our county can't stand another hit. Passing this bill would eliminate the one possibility we have of raising enough tax money.

We do appreciate the fact that you did not allow a tax exemption for corporate farms. That was a wise decision on your part. Thank you for allowing us to present the tax side of the corporate farming issue.

STATE OF KANSAS
KANSAS ANIMAL HEALTH DEPARTMENT

George Teagarden, Livestock Commissioner

712 South Kansas Avenue Suite 4-B Topeka Kansas 66603-3808
Phone 913/296-2326 FAX 913/296-1765

February 15, 1996

Mr. Chairman and members of the Senate Agriculture Committee, I am Debra Duncan, Director of the Animal Facilities Inspection program for the State of Kansas. I am here today to ask for your support for S.B. 540.

S.B. 540 concerns the management or quarantine of mammals suspected or known to have rabies. Current law places the management of this issue under the authority of the Livestock Commissioner. Realistically this issue has always been handled by the Department of Health and Environment since it is the responsibility of local law enforcement or the local health officer to impound an animal suspected of rabies. S.B. 540 officially transfers this responsibility to the Department of Health and Environment. This change does not affect the Livestock Commissioner's ability to regulate rabies as an infectious and contagious disease.

Thank you for your consideration. I will be happy to answer any questions you may have.

Senate Ag Co
2-16-96
Attachment 3

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Agriculture Committee

by

The Kansas Department of Health and Environment

Senate Bill 540

The Department of Health and Environment appreciates the opportunity to present testimony related to S.B. 540.

The bill proposes to repeal K.S.A. 47-125 and replace it with a new statute that defines "exposed to rabies". The bill also contains provision for the impounding of mammals having exposed to rabies a person or other mammal and reserves the management of the animal to the rules and regulations adopted by the Secretary of Health and Environment.

The Department of Health and Environment supports this bill for several reasons. First, it defines what "exposed to rabies" means. K.S.A. 47-125 referred only to bite exposures. Rabies can be transmitted through bite and non-bite exposures. This definition follows the current national definition for exposure to rabies and is consistent with national recommendations. Second, the bill gives a law enforcement officer or local health officer the right to impound a known or suspected rabid mammal having exposed a person or other mammal to rabies. Third, the bill eliminates rabies control recommendations that conflict with current state regulations and are inconsistent with current national recommendations.

Thank you for this opportunity to provide testimony.

Testimony presented by: Jennifer Calder, D.V.M., M.P.H., Ph.D.
Assistant State Epidemiologist and
State Public Health Veterinarian
February 16, 1996

*Senate Ag Co
2-16-96
Attachment 4*

STATE OF KANSAS
KANSAS ANIMAL HEALTH DEPARTMENT

George Teagarden, Livestock Commissioner
712 South Kansas Avenue Suite 4-B Topeka Kansas 66603-3808
Phone 913/296-2326 FAX 913/296-1765

February 16, 1996

S.B. 659 Occasional Sales

Mr. Chairman and members of the Senate Agriculture Committee, I am George Teagarden, Livestock Commissioner for the State of Kansas. I appear before you today as a proponent of S.B. 659.

As you know KSA 47-1001, et al, gives the Kansas Animal Health Department and the Livestock Commissioner authority to enforce laws and rules and regulations governing livestock markets in the state. Today, there are many types of livestock markets (auctions) being held in the state, ranging from pure livestock auctions to "exotic" auctions to bird auctions. Our department was concerned about what we were to do in many instances. Many of the organizers of the various auctions ask us whether they needed a state license or not and what specific license would be required, if any; some auctions were held without any communication with our department.

In light of our confusion about this issue, we asked the Kansas Attorney General for an opinion as to what type of sales (auctions) are required by law to have market licenses, pet shop licenses or livestock dealers licenses. You have a copy of the AG's opinion in front of you. In general, the opinion said, any premise from where livestock is sold at auction for a commission or fee is required to be licensed as a livestock market. Individuals selling animals may also be required to be licensed as livestock dealers. Those premises which sell pet animals at auctions, fairs or breed shows should be licensed as a pet shop.

After discussions at board meetings, the Kansas Animal Health Board suggested that I request this change of statute to accommodate for the variety of livestock auctions that are occurring. This does not affect exotic animal auctions or domestic small animal sales which will still be required to obtain a pet shop license.

In section 1, page 2, lines 24 and 25, of the bill, KSA 47-1001 is amended to define occasional sales (means livestock auctions of sales, that are held 12 or less times per year). In section 2, page 2, beginning on line 26, KSA 47-1001d is amended to strike language pertaining to federally licensed (terminal) markets. We currently have none in the state and do not anticipate any in the future. New language is inserted beginning on line 40 of page 2 to allow the livestock commissioner, through rules and regulations, to exempt

*Senate Ag Co
2-16-96
Attachment 53-1*

occasional livestock sales or issue a license for such occasional livestock sales at a fee of not more than \$100 without a hearing.

Under this proposed law, we would exempt certain sales upon application and set a sliding scale for those not exempt depending on the number of sales held. The license fee would be different than a regular livestock market license, but we would drop the inspection fee and a hearing (which costs the applicant \$325) would not be necessary. Proper health requirements would be required; completed prior to the actual sale and verified by a accredited veterinarian. Possible exemptions would include 4-H sales at the county and state shows.

Thank you for your attention. I will stand for questions.

SB659



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

July 24, 1995

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Mr. George Teagarden
Livestock Commissioner
Kansas Animal Health Department
712 S. Kansas Ave., Suite 4-B
Topeka, Kansas 66603-3808

Dear Mr. Teagarden:

Being mindful of the problematic situation created by our conclusions in Attorney General Opinion No. 95-76, in relation to exotic animal markets and dog, cat or bird shows, we offer the following remedial suggestion: under authority of K.S.A. 47-1712, as amended by 1995 SB 260, § 8 and K.S.A. 47-1832, the livestock commissioner has authority to establish regulations in relation to pet shops and exotic animals. As commissioner you may wish to consider establishing two categories of pet shops: (1) a fixed place of business wherein animals are sold on a continual basis and (2) a temporary premises wherein animals are sold on an occasional basis. The latter would then cover animal shows and consignment auction sales of exotic animals. While the operator of the pet shop would be required to be licensed to operate either kind of pet shop, regulations could address differing requirements for each type of premises.

Another way to remedy the situation would be by a statutory exception in the definition of pet shop for exotic animal consignment auctions and animal shows.

Very truly yours,

Handwritten signature of Carla J. Stovall in cursive.

CARLA J. STOVALL
ATTORNEY GENERAL OF KANSAS

CJS:CN:bas

Senate Ag Co
2-16-96
Attachment 6 6-1



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

July 24, 1995

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

ATTORNEY GENERAL OPINION NO. 95- 76

Mr. George Teagarden
Livestock Commissioner
Kansas Animal Health Department
712 S. Kansas Avenue, Suite 4-B
Topeka, Kansas 66603-3808

Re: Livestock and Domestic Animals--Public Livestock
Markets--Definitions; Public Livestock Market;
Ratites and Domesticated Deer; License Requirements

Livestock and Domestic Animals--Animal Dealers--
Definitions; Pet Shop; Exotic Animals; License
Requirements

Synopsis: Ratites and domesticated deer, which are
statutorily defined as livestock, are implicitly
excluded from the class of animals subject to pet
shop operator regulations and consequently are
placed within laws regulating livestock. Thus a
pet shop operator's license is not required to
operate premises where only ratites or domesticated
deer are sold at retail. In addition, if these
animals are sold for resale to another, i.e.
wholesale, the operator is not required to be
licensed as a pet shop operator.

If livestock, including ratites or domesticated
deer, are sold on behalf of a producer or consigner
at premises which fall within the definition of
public livestock market, the operator of that
market is required to be licensed as a public
livestock market operator. If ratites or
domesticated deer are sold at premises not falling
within the statutory definition of a public
livestock market, the person engaging in the

business of selling is required to be registered as a livestock dealer.

Any person who operates premises where there are sold, or offered or maintained for sale, at retail and not for resale to another, any vertebrate animal, exotic or otherwise which is not exempted, is required to be licensed as a pet shop operator. Thus operators of exotic animal consignment auctions are necessarily included within the pet shop operator licensing requirement, as are operators of dog, cat and bird shows at which retail sales of animals occur.

The mere fact that a public livestock market operator is a not-for-profit organization does not create an exemption from the public livestock market operator licensing requirement, livestock dealer registration requirement or pet shop operator license requirement. Cited herein: K.S.A. 1994 Supp. 47-1001; K.S.A. 47-1001a; 47-1701, as amended by 1995 SB 260, § 5; 47-1703; 47-1712, as amended by 1995 SB 260, § 8; 47-1713; K.S.A. 1994 Supp. 47-1804; K.S.A. 47-1832; K.S.A. 1994 Supp. 47-2201; K.A.R. 9-20-1; 9-20-2; 9-20-3; 115-20-3; 9 C.F.R. §1.1.

* * *

Dear Mr. Teagarden:

As Kansas livestock commissioner you pose a number of questions relating to the Kansas animal health department's regulation of various methods of selling exotic and domesticated animals. The regulatory framework concerning the sale of animals is complex with the type of license or registration required, if any, dependent on a number of factors including the legal definition and classification(s) of the animal, whether the sale is wholesale or retail, and the setting of the sale.

You inform us that an "exotic animal market" refers to a consignment auction which an individual or organization has arranged for the sale of exotic animals. This type of market typically occurs at a temporary site such as a rented building (e.g. a fairgrounds building) or outdoors under a large tent. Generally a sale of this type is held by the organizer once or twice a year, and lasts one to three days. Purchasers of the exotic animals are usually animal breeders or other private individuals. You appear to use the term "exotic animals" to refer to a wide variety of unusual animals not

indigenous to this geographic area or not usually possessed as pets.

The term "exotic animal" is statutorily defined for several purposes. For instance, the livestock commissioner is authorized to establish rules and regulations on disease control programs for farm animals and exotic animals, including their sale and importation into the state. K.S.A. 47-1832. For purposes of this statute "exotic animal" means "any animal . . . that is native to a foreign country or of foreign origin or character, is not native to the United States, or was introduced from abroad." K.S.A. 47-1832; See 9 C.F.R. § 1.1. To date, rules and regulations have not been adopted under this grant of authority.

In another context, the Kansas department of wildlife and parks requires a game breeder's permit in order to raise and sell "exotic wildlife." In this context "exotic wildlife" means:

"non-migratory wildlife, not native or indigenous to Kansas, or not presently existing in Kansas as an established wild population." K.A.R. 115-20-3.

A third statute, without defining exotic animals, authorizes the livestock commissioner to prohibit the sale or gift of exotic animals that constitute a hazard to human health or safety or to animal health or safety. K.S.A. 47-1713. To date the commissioner has not prohibited the sale or gift of any animal considered exotic.

The first question you pose in effect asks what, if any, licensing requirements are applicable to "exotic animal markets." You pose questions concerning ratites (large flightless birds such as ostrich, rhea and emu), domesticated deer and other unspecified exotic animals. The above-referenced statutes unfortunately do not provide any guidance in reaching an answer. Consequently, for reasons discussed herein, the response to this question is necessarily divided into two sections: (1) ratites and domesticated deer, and (2) other exotic animals.

Ratites and Domesticated Deer

Under the Kansas animal dealer act (with some exceptions not applicable to this discussion) a pet shop is defined as:

"any premises where there are sold, or offered or maintained for sale, at retail and not for resale to another: (A) Any

dogs or cats, or both; or (B) any other animals. . . ." K.S.A. 47-1701(t).

Within this act the term "animals" is broadly defined:

"(d)(1) 'Animal' means any live dog, cat, rabbit, rodent, nonhuman primate, bird or other warm-blooded vertebrate or any fish, snake or other cold-blooded vertebrate.

"(2) Animal does not include horses, cattle, sheep, goats, swine or domestic fowl." K.S.A. 47-1701, as amended by 1995 SB 260, § 5.

While this definition does not distinguish between exotic and non-exotic animals, it does differentiate between animals commonly considered as livestock and all other vertebrate animals (excluding humans).

Under the act, any premises (other than those excluded) upon which the retail sale of animals, exotic or otherwise, occurs must be operated by a licensed pet shop operator in a facility which complies with department rules and regulations. K.S.A. 47-1703; K.S.A. 47-1712, as amended by 1995 SB 260, § 8. In addition, any animal, exotic or otherwise, sold by a licensed pet shop operator must be accompanied by a health certificate verifying that such animal is in sound health. K.S.A. 47-1713.

Pursuant to the animal dealers act, ratites and domesticated deer appear to be animals whose retail sale is required to occur on premises operated by a licensed pet shop operator. However, by virtue of K.S.A. 1994 Supp. 47-2201, ratites are made subject to appropriate regulations relating to livestock. In addition ratites and domesticated deer are specifically included within the definition of livestock in the public livestock market laws (along with cattle, swine, sheep, goats, horses and mules), K.S.A. 1994 Supp. 47-1001(b), and in the definition of livestock in the livestock dealer laws (along with cattle, swine, horses, sheep, goats, and poultry), K.S.A. 1994 Supp. 47-1804(b). Therefore, at least some of the animals typically sold in exotic animal markets (ratites, domesticated deer and pot-bellied pigs) are within the legal definitions of "livestock."

Construing the above provisions found within the livestock and domestic animals chapter of the Kansas statutes in pari materia, *In re: Adoption of Baby Girl H*, 12 Kan.App.2d 223 (1987), in our opinion ratites and domesticated deer,

which are statutorily defined as livestock, are implicitly excluded from the class of animals subject to pet shop operator regulation. Rather, they are placed within laws regulating livestock. Consequently in our opinion a pet shop operator's license is not required to operate premises where only ratites or domesticated deer are sold at retail. If these animals are sold for resale to another, i.e. wholesale, the operator is not required to be licensed as a pet shop operator by virtue of K.S.A. 47-1701(t), the definition of "pet shop." Thus for purposes of discussing your questions, we consider ratites and domesticated deer as livestock.

Regarding the sale of livestock, regulation occurs within two statutory schemes, public livestock market operators and livestock dealers. The former has to do with livestock sold at particular premises:

"'Public livestock market' means any place, establishment or facility . . . which includes any business conducted or operated for compensation or profit as a public market for livestock, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment except that this term shall not apply to any livestock market where federal veterinary inspection is regularly maintained." K.S.A. 1994 Supp. 47-1001(f). (Emphasis added.);

and

"Public livestock market operator" means any person who, in this state, receives on consignment, or solicits from the producer or consigner thereof, or holds in trust or custody for another, any livestock for sale or exchange, on behalf of such producer or consigner at a public livestock market, or sells, or offers for sale, at a public livestock market, for the account of the producer or consignor thereof, any livestock or directly or indirectly owns, conducts or operates a public livestock market. . . ." K.S.A. 1994 Supp. 47-1001(g). (Emphasis added.)

Thus if livestock, including ratites or domesticated deer, are sold on behalf of a producer or consigner at a premises which falls within the definition of public livestock market, the operator of that market is required to be licensed as a public livestock market operator. K.S.A. 47-1001a. Assuming the premises at issue consist of "pens, or other enclosures" in which ratites or domesticated deer are maintained for sale, the sales operator is required to be licensed as a public livestock market operator.

A livestock dealer, on the other hand, is defined as:

"any person engaged in the *business of buying or selling livestock in commerce*, either on that person's own account or as the employee or agent of the seller or purchaser, or any person engaged in the business of buying or selling livestock in commerce on a commission basis and shall include any person who buys or sells livestock with the use of a video. 'Livestock dealer' does not include any person who buys or sells livestock as part of that person's own breeding, feeding or dairy operation, nor any person who receives livestock exclusively for immediate slaughter." K.S.A. 1994 Supp. 47-1804(c).

Thus if ratites or domesticated deer are sold at premises not falling within the statutory definition of a public livestock market, the person engaging in the business of selling is required to be registered as a livestock dealer.

The statutory definitions of "public livestock market" and "livestock dealer" indicate that the determinative factor is not whether livestock are sold by consignment auction or by a set price, but rather whether the sale occurs at a business premises which is a "public livestock market" operated by a person who sells livestock on behalf of a producer or consigner. If such is the setting in which a ratite or domesticated deer auction is held, the operator is required to be licensed as a "public livestock market operator." Conversely, if the sales transaction does not take place in that setting, the person who is engaged in the business of selling the ratites or domesticated deer should be registered as a "livestock dealer."

Other "Exotic" Animals

The above discussion relates only to exotic animals which also fall within the category of livestock under Kansas law. We now turn to non-livestock exotic animals, such as tigers, hedgehogs or bears. (For the sake of simplicity, in the balance of this opinion non-livestock exotic animals will be referred to as exotic animals.) You ask whether the operator of an exotic animal market who sells these kinds of exotic animals at a consignment auction as described above is required to be licensed as a pet shop operator in order to lawfully sell the animals.

As noted above, the animal dealer act presents a very broad definition of pet shop as "any premises where there are sold, or offered or maintained for sale" dogs, cats, or any other animals. K.S.A. 47-1701(t), as amended by 1995 SB 260, § 5. The operator of a pet shop must be licensed, and to become licensed the shop must be in compliance with department regulations, specifically K.A.R. 9-20-1 (facilities), K.A.R. 9-20-2 (animal health and husbandry standards) and K.A.R. 9-20-3 (records). While not stated explicitly, these regulations appear based on an understanding of a pet shop as a fixed premises in which the regular and continual business of selling animals takes place. Consequently application of these regulations to the described exotic animal markets may preclude the operator of the market from becoming licensed as a pet shop operator. Nevertheless, pursuant to the current statutory definition of "pet shop," we are constrained to find that any person who operates a premises where there are sold, or offered or maintained for sale, at retail and not for resale to another, any vertebrate animal, exotic or otherwise, which is not exempted, is required to be licensed as a pet shop operator. Thus operators of exotic animal consignment auctions are necessarily included within the pet shop operator licensing requirement.

Bird, Dog and Cat Shows

You also inform us that birds, dogs and cats are frequently sold or exchanged at bird shows, dog shows and cat shows. We understand these shows to be exhibitions by owners of birds, dogs and cats at which prizes are awarded in various categories such as best of breed. You ask whether the operator of such a show is required to be licensed as a pet shop operator with the consequent obligation that the premise comply with applicable pet shop regulations. As with the preceding discussion of exotic animal markets, based on the broad definition of pet shop we find no statutory provision

which would exclude the sale of dogs, cats or birds at shows from the pet shop operator license requirement.

Non-profit Organization as Sponsor of Exotic Animal Auction

One of the organizations which sponsors an exotic animal market by holding a consignment auction is the game breeders association, a not-for-profit organization. You ask whether the operator of this auction is required to be licensed as a public livestock market operator. If so, you also ask whether a not-for-profit organization is exempt from the licensing requirement.

Under the public livestock markets act, "person" means an individual as well as a partnership, corporation or association. K.S.A. 47-1001(c). Thus a not-for-profit organization, such as the game breeders association, is considered a "person" for purposes of operating a public livestock market. One of the defining criteria of a public livestock market is ". . . any business conducted or operated for compensation or profit. . . ." We presume that the game breeders association holds its annual auction in order to raise funds to support its corporate purposes and therefore in relation to its exotic animal auction is conducting business for compensation. Consequently, the mere fact that a public livestock market operator is a not-for-profit organization does not create an exemption from the public livestock market operator licensing requirement. By the same reasoning the not-for-profit status of any organization does not create an exemption from otherwise applicable pet shop operator license requirements or livestock dealer registration requirements.

You did not inform us of the types of animals which are sold at the game breeders' annual auction. As discussed, the applicable state regulatory framework in part depends on the kinds of animals sold. If the animals are livestock, depending on the sale setting, a public livestock market operator license or livestock dealer registration is required; if non-livestock, a pet shop operator license is required for any retail sales, but not those for re-sale to another, *i.e.* wholesale transactions.

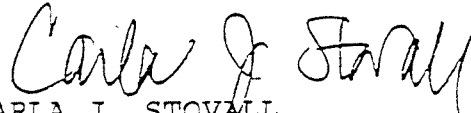
In conclusion, ratites and domesticated deer, which are statutorily defined as livestock, are implicitly excluded from the class of animals subject to pet shop operator regulations and consequently are placed within laws regulating livestock. Thus a pet shop operator's license is not required to operate premises where only ratites or domesticated deer are sold at retail. In addition, if these animals are sold for resale to another, *i.e.* wholesale, the operator is not required to be licensed as a pet shop operator.

If livestock, including ratites or domesticated deer, are sold on behalf of a producer or consigner at premises which fall within the definition of public livestock market, the operator of that market is required to be licensed as a public livestock market operator. If ratites or domesticated deer are sold at premises not falling within the statutory definition of a public livestock market, the person engaging in the business of selling is required to be registered as a livestock dealer.

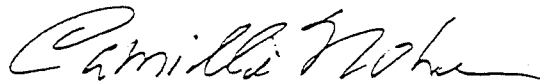
Any person who operates premises where there are sold, or offered or maintained for sale, at retail and not for resale to another, any vertebrate animal, exotic or otherwise which is not exempted, is required to be licensed as a pet shop operator. Thus operators of exotic animal consignment auctions are necessarily included within the pet shop operator licensing requirement, as are operators of dog, cat and bird shows at which retail sales of animals occur.

The mere fact that a public livestock market operator is a not-for-profit organization does not create an exemption from the public livestock market operator licensing requirement, livestock dealer registration requirement or pet shop operator license requirement.

Very truly yours,



CARLA J. STOVALL
ATTORNEY GENERAL OF KANSAS



Camille Nohe
Assistant Attorney General

CJS:JLM:CN:bas

STATE OF KANSAS



BILL GRAVES, Governor
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590

(913) 296-3232
1-800-432-2487
TDD: 1-800-992-0152
FAX: (913) 296-7973

OFFICE OF THE GOVERNOR

February 15, 1996

The Honorable Dave Kerr, Chairperson
Senate Committee on Ways and Means
Room 120-S, Statehouse

and

The Honorable Robin Jennison, Chairperson
House Committee on Appropriations
Room 514-S, Statehouse

Dear Senator Kerr:

I amend my budget for FY 1997 to transfer from the Department of Agriculture to the Department of Commerce and Housing a total of 4.0 FTE positions and \$263,599, of which \$198,509 is from the State General Fund, \$41,491 is from the Economic Development Initiatives Fund, and \$23,599 is from fees collected from entities participating in the Market Development Program. With this transfer, the total number of FTE positions transferred from the Agriculture Marketing and Promotion Program in the Department of Agriculture to the Department of Commerce and Housing is 8.0 FTE positions. This will allow the marketing and promotions of the agricultural industry to be served more effectively and efficiently in the future.

Department of Agriculture:

	<u>FY 1996</u>	<u>FY 1997</u>
State General Fund	\$ --	\$ (198,509)
All Other Funds	<u> --</u>	<u> (65,090)</u>
All Funds	\$ --	\$ (263,599)

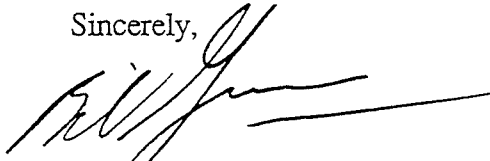
*Senate Ag Co
2-16-96
Attachment 77-1*

Governor Dave Kerr
February 15, 1996
Page 2

Department of Commerce and Housing:

	<u>FY 1996</u>	<u>FY 1997</u>
State General Fund	\$ --	\$ 198,509
All Other Funds	<u>--</u>	<u>65,090</u>
All Funds	\$ --	\$ 263,599

Sincerely,

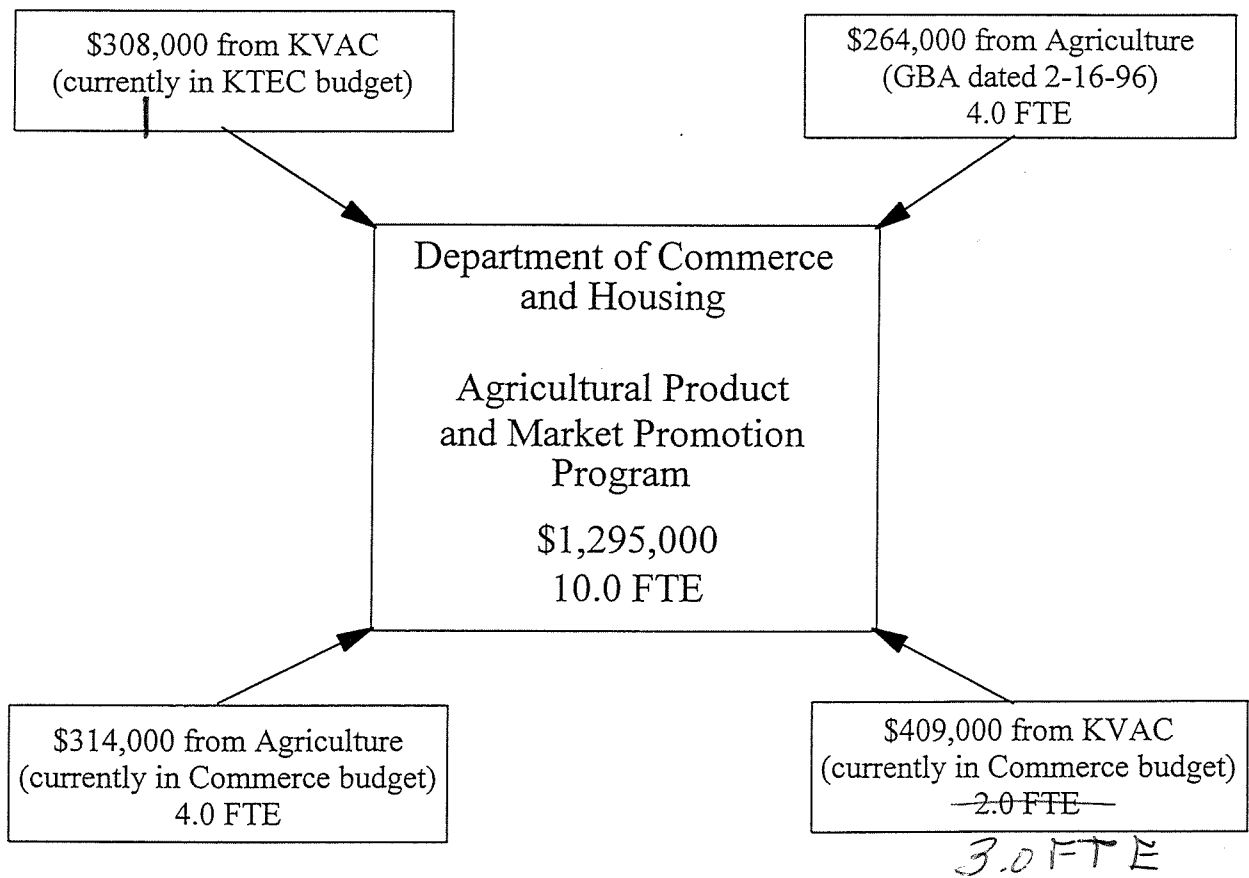


BILL GRAVES
Governor

GBAAGR13.KER

Preliminary FY 1997 Budget
Agricultural Product and Market Promotion Program

Program Director and Appropriate Specialists (10.0 FTE)	\$370,000
Operating Support	280,000
Performance Contract with KTEC (see notes)	308,000
Total OOE	\$588,000
Total Operating Budget	\$958,000
Commercialization and development grants (see notes)	\$337,000
Total Program Budget	\$1,295,000



NOTES:

This would provide \$44,000 more than the grant support that KVAC provided for industrial agriculture in FY 1996.

The commercialization grant support comparable to the amount in the above table for FY 1996 in KVAC's budget is \$327,700.

*Senate Ag Co
2-16-96
Attachment 8*