

Note from the Attorney General's Office:

1969 Op. Att'y Gen. No. 69-078 was overruled by
1989 Op. Att'y Gen. No. 89-067.

OPINION NO. 69-078

Syllabus:

The raising and care of dogs is not animal husbandry and therefore not agriculture within the meaning of Section 519.01, Revised Code, and such activity does not constitute the use of land or buildings for agricultural purposes within the meaning of Section 519.21, Revised Code.

To: Robert Webb, Ashtabula County Pros. Atty., Jefferson, Ohio
By: Paul W. Brown, Attorney General, July 3, 1969

I am in receipt of your request for my opinion as to whether the raising and care of dogs can be properly classified as "animal husbandry" and therefore "agriculture" within the meaning of Section 519.01, Revised Code, so as to constitute an exception to the Township Zoning Law, Chapter 519, Revised Code.

Section 519.21, Revised Code, provides, in pertinent part, as follows:

"Sections 519.02 to 519.25, inclusive, of the Revised Code confer no power on any board of township trustees or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, and no zoning certificate shall be required for any such building or structure."

(Emphasis supplied)

Section 519.01, Revised Code, defines "agriculture" as follows:

"As used in sections 519.02 to 519.25, inclusive, of the Revised Code, 'agriculture' includes agriculture, farming, dairying, pasturage, api-

culture, horticulture, floriculture, viticulture, and animal and poultry husbandry."
(Emphasis supplied)

Section 519.21, supra, was construed in Opinion No. 3607, Opinions of the Attorney General for 1954, insofar as the raising of mink was concerned. The second syllabus of that Opinion reads as follows:

"2. The provision of Section 519.21, Revised Code, forbidding the zoning of any land in a township, so as to prohibit its use for agricultural purposes, does not prevent the adoption of zoning regulations limiting the use of such land for raising minks."

The holding in the Opinion, supra, was based on a definition of animal husbandry which limited the term to such animals as are usually incidental to the operation of a farm.

The term "animal husbandry" was construed four years later in the case of Mentor Lagoons, Inc. v. Zoning Board, 168 Ohio St. 113 (1958). The Court in Mentor Lagoons, Inc. held that the keeping of horses in a residential district for use in polo constituted "animal husbandry" within the meaning of Section 519.01, supra, and consequently could not be prohibited by a township zoning resolution, even though under proper circumstances such stabling of horses could be considered a nuisance and could be subject to injunction as such.

The Court in Mentor Lagoons, Inc., supra, adopted the definition of "animal husbandry" contained in Webster's New International Dictionary (2d Ed.) as follows:

"* * * the branch of agriculture which is concerned with farm animals, esp. as regards breeding, judging, care, and production * * *"

An "animal husbandman" is defined as:

"* * * one who keeps or tends livestock."

The Court of Appeals for Butler County, in Davidson v. Abele, 2 Ohio App. 2d 106 (1965) considered the business of a mink ranch or farm in light of Chapter 303, Revised Code, which authorizes county rural zoning. Sections 303.01 and 303.21, Revised Code, are identical to Sections 519.01 and 519.21, supra. The Court recognized Opinion No. 3607, Opinions of the Attorney General for 1954, supra, but held that the phrase "animal husbandry" does include the operation of a mink ranch as an agricultural pursuit and, consequently, it is not within the authority of county commissioners to zone. The holding was based on the definition of the term "animal husbandry" given by our Supreme Court in Mentor Lagoons, Inc., supra.

The question therefore becomes whether the raising and care of dogs can properly be considered "animal husbandry" within the definition of the term set forth in Mentor Lagoons, Inc., supra, and followed in Davidson, supra.

An "animal husbandman", as stated above, is one who keeps or

tends "livestock". Livestock is defined in Section 943.01 (A), Revised Code, for purposes of Chapter 943, Revised Code, as follows:

"(A) 'Animals' or 'livestock' includes horses, mules, cattle, calves, swine, sheep, or goats."

Section 955.29, Revised Code, establishes the procedure whereby an owner of the therein statutorily enumerated kinds of animals may recover when such animal has been injured or killed by a dog not belonging to such owner nor harbored on his premises. The enumerated animals are: horses, sheep, cattle, swine, mules, goats, domestic rabbits, and domestic fowls or poultry.

A review of the statutes cited, supra, as well as other pertinent provisions of the Revised Code, reveals a legislative intent to separate dogs from those classes of animals normally thought of as livestock or farm-related. See also Mioduszewski v. Saugus, 337 Mass. 140, 148 N.E. 2d 655 (1958). The Court in Mentor Lagoons, Inc. broadened the purposes to which the enumerated animals could be put and still be considered part of animal husbandry. Horses, for example, may be used for recreation and need not be used on a farm or farm-related operation, and the zoning exemption will still apply. The Court did not, however, intend to so broaden the category of animals included within animal husbandry as to place every animal raised commercially therein. The Court in Davidson did include mink as part of animal husbandry, under the theory that the definition of "animal husbandry" should include more than what might ordinarily be thought of as domestic animals. However, mink have, for some years, been considered agricultural products by statute, even though the Court in Davidson did not rest its decision on such statute. Section 901.35, Revised Code, provides, in pertinent part, as follows:

"For the purpose of all classification and administration of acts of the general assembly, executive orders, administrative orders, and regulations pertaining to mink, the following rules apply:

"(A) Mink raised in captivity for breeding or other useful purposes are deemed domestic animals.

"(B) Mink are deemed agricultural products.

"(C) The breeding, raising, producing, or marketing of mink or their products by the producer is deemed an agricultural pursuit."

Our General Assembly has never included dogs in the general category of livestock or farm animals, and, in fact, has segregated them as a type of animal apart from all others pursuant to the provisions of Chapter 955, Revised Code, which Chapter is entirely devoted to dogs.

It is therefore my opinion and you are hereby advised that the raising and care of dogs is not animal husbandry and therefore not agriculture within the meaning of Section 519.01, Revised Code, and such activity does not constitute the use of land or buildings for agricultural purposes within the meaning of Section 519.21, Revised Code.