



The Senate of The State of Texas

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Senator John Whitmire

Dean of the Texas Senate

December 12, 2022

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The Honorable Ken Paxton
Attorney General of Texas
P.O. Box 12548
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Dear General Paxton:

I am aware of the recent request for an Attorney General opinion, RQ-0485-KP, regarding the legality of a Texas municipality or local government engaging in a "trap-neuter-release" ("TNR") program in accordance with Sec. 42.092 of the Texas Penal Code.

As you may recall, I was a Senate Sponsor of House Bill 2328 in 2007, which was eventually passed and codified in Texas Penal Code Sec. 42.092. During that time, I was Chair of the Senate Criminal Justice Committee which heard testimony regarding HB 2328 and its committee substitute. As a result, I am familiar with the language of the bill and Penal Code section, as well as the corresponding intent and history behind the reasoning for introduction and ultimate passage of the bill.

Based upon my knowledge of that process, I believe that Sec. 42.092 of the Texas Penal Code on its face does not prevent, and was never intended to prevent, a municipality or local government from engaging in a TNR program. I also believe the language of the bill accurately effectuates that intent.

The section was added to existing laws at the time to clarify what constitutes cruelty to non-livestock animals in Texas. At the time, the existing law created a situation in which certain acts of violence toward non-livestock animals had escaped prosecution. Specific examples of acts intended to be targeted and banned by the bill were mutilating live kittens; staking dogs and leaving them to die without food, water or shelter; and killing a puppy with a lawn mower.

The section's plain language accurately reflects the bill's intent: to strengthen protections for non-livestock animals in Texas, and not to prevent municipalities and local governments from utilizing programs to address stray animal populations. The language of Sec. 42.092 was crafted to prevent unreasonable abandonment of a non-livestock animal. The term "unreasonably" was included in the statutory language to modify "abandon." This was done specifically to prevent an overly broad interpretation of "abandon" that would potentially undermine the intent of the bill.

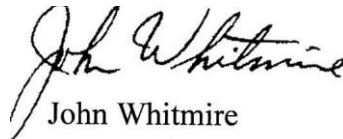
Programs such as TNR mentioned in the Attorney General Opinion request exemplify why "unreasonably" was included in the statute. Such programs do not violate the plain language of Sec. 42.092 because they do not constitute *unreasonable* abandonment of cats which are part of the program.

Further, it would undermine the plain language and legislative intent of Sec. 42.092 to find that a healthy cat returned to its outdoor location after a veterinary exam, sterilization and vaccination against rabies is a criminally punishable unreasonable abandonment of that cat. TNR programs protect communities and animals, which is likewise the goal of Sec. 42.092. Criminalizing such programs would run opposite to those goals and contradict the section's plain language.

I believe that TNR programs engaged in by municipalities and local governments, as referenced in the Attorney General opinion request, are in harmony with state statutes and do not violate the plain language of Sec. 42.092 of the Texas Penal Code.

I appreciate your attention to this matter. Please do not hesitate to contact me for any additional information or clarification.

Sincerely,

A handwritten signature in cursive script that reads "John Whitmire". The signature is written in black ink and is positioned above the printed name.

John Whitmire