

LEGAL OPINION ON THE DISPOSITION OF STATE-OWNED ANIMALS

March 21, 1994

TO: Dr. John E. Harkness, University Laboratory Animal Veterinarian

FROM: Johnnie M. Haley, Assistant University Counsel

RE: Disposing of State-Owned Animals

I. Your basic question is: "Under what circumstances, if any, may CVM/ MSU/ MS-owned animals be given to (i.e., adopted by) MSU students, staff, or faculty?"

A. My legal opinion is:

1. No adoption is permissible by any state employee (full-time or part-time) who was in a position to decide, or to influence any decision, regarding the acquisition, use, or disposal of the animal;
2. No person may adopt an animal unless that person gives the animal's market value in return for the animal or incurs a personal monetary obligation equivalent to or greater than the market value of the animal;
3. No animal may be disposed of by MSU by adoption unless it is "cost effective", as described below, for MSU to do so;
4. No animal may be disposed of by adoption until the animal is, for MSU purposes, obsolete or no longer needed for use by MSU;
5. No animal may be disposed of by adoption under circumstances which violate the May, 1985 policy (i.e., disposition procedures may be more restrictive than the policy requires, but never less restrictive); and,
6. No animal may be disposed of by adoption if the animal is of a nature to reasonably anticipate the receiver (adopter) will receive a profit from ownership of the animal.

B. The basis of my opinion is set forth below.

1. In response to your question, two of the groups of individuals you identify as potential "adopters" [MSU staff and faculty] have an initial hurdle to clear before an individual within those groups may adopt an animal. Section 25-4-105(1) of the Mississippi Ethics In Government Act states:

No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.

2. Therefore, extreme care must be exercised by both the officials who would authorize an adoption and the MSU staff or faculty member who is desirous of adopting the animal.

Otherwise, a violation of Section 25-4-105(1), Mississippi Code, Annotated, may occur. In essence, if one is in a position to influence decisions regarding the disposal and adoption of the animals, then that person may violate the Ethics law by adopting an animal or otherwise receiving animals unless that person pays full value for the animal.

3. Of course, if a student is employed by the state and is in a position to influence, as identified above, then the same restriction would apply to the student (not because he/she is a student but instead because he/she is a state employee).
4. Presuming the potential recipient of the animal is not in the prohibited category described above, then we get to what I believe is the primary impact of your basic question. Section 29-9-, Mississippi Code, Annotated, provides that "personal property" which has been acquired, or which is owned, by state institutions may be disposed of when it becomes "obsolete or is no longer needed or required for the use of the institution." The authorized means of disposition are: "may be sold for cash", "traded", or "exchanged for other property....". Advance written approval from the "state general services office" and the "state auditor" is required by the statute before disposition of the property can be made.
5. Although there is merit to the proposition that the University, as a component of the ILL, is not required to comply with certain types of legislative mandates (as the ILL is a body deriving its authority for the state constitution and not from the state legislature), I recommend the disposition of your (obsolete or no longer needed) property have the advance approval of at least the state auditor's office. Further, I recommend your local disposition procedures utilize the disposition methods (sale for cash or trade) set forth in the statute.
6. With the above requirements in mind, the following issues must be addressed:
 - (a) Have you received advance approval from the state auditor for the disposition of animals as state property?
 - (b) Are they being disposed of properly?
7. In my opinion, the June 4, 1985 letter from the Director of the Division of Property, Office of the State Auditor, provides the advance approval required. As that approval is based upon the May 20, 1985 policy, subsequently signed by the appropriate MSU official on June 18, 1985, the approval is limited to the policies, and reasonable applications thereof, set forth in the June 18, 1985 policy statement.
8. As far as the second issue (i.e., proper disposition), the disposition options shown in your minutes as I. C. 1-5 certainly are within the approved parameters. However, numbers 4 and 5 are more restrictive than required by the approval letter. Further, if number 4 is intended to create a policy that those enumerated animals can be "given away", it would be erroneous. [The term "donated" in the 1985 policy appears to be erroneously used. Certainly, the use of that term was not intended to attempt to authorize a violation of the law. Therefore, the term "donated" was likely meant to generally describe the process of transfer of ownership rather than to mean a "gift" to a student.]
9. Section 66 of the Mississippi Constitution has been interpreted by the Mississippi Supreme Court to prohibit the granting of a donation or gratuity by the state to any person without concurrence of 2/3 of the members of the legislature (e.g., Christmas bonuses to county hospital employees was an illegal act by the hospital trustees). Therefore, the

issue arises: Are the “adoptions” referred to in your correspondence, as well as in the state auditor’s correspondence and the 1985 MSU policy, in reality prohibited donations or gratuities? In my opinion, so long as the adoption of animal is “cost-effective” for MSU (e.g., costs more to humanely kill the animal and dispose of the remains, than it will cost to allow the adoption of the animal), and so long as the market value of the animal is de minimus (i.e., less than what will cost MSU to market, sell, and transfer the animal from MSU ownership), then the adoption of the animal is not a “donation.” To the contrary, the adoption is a fiscally responsible act as it is not giving something away--it is a process of saving expense. However, the “gratuity” issue is more complex. When analyzing a gratuity, the emphasis is on the value of something “received” by the other party (i.e., the receiver of the animal). As the person who receives an animal under the umbrella of “adoption” with no further requirements is in fact receiving something of value, then obviously a “gratuity” is made by MSU unless something of equal value is received in return by MSU from the receiver. What do we receive in return from the individual when we allow animal adoptions? We receive a commitment, which is clearly in furtherance of a general public policy, that the person will provide housing, care, and medical treatment for the animal (i.e., a public interest is served when animals are cared for properly). The individual, by asking that commitment, is obviously promising to expend personal funds for that housing, care, and medical treatment, the long-term value of which will usually exceed the monetary (market) value of the animal upon receipt of the animal when adopted. Obviously, where the animal is of a value exceeding that described above, or of a nature to generate a profit for the person receiving the animal, the adoption would likely not be permissible.

II. In response to your second question (“Which state-owned animals may be given to private parties for pet use or to be eaten?”), Section I above, of this review addresses the transfer of ownership aspect for “pet use”. As far as disposing of animals for the designed purpose “to be eaten”, such a disposition must adhere to five of the six principles set forth in Section I above (specifically IA, 1, 3, 4, 5, and 6) and there must be an “arms-length sale for value.” No animals may be “given” to any person or entity. If the intended recipient’s purpose is to use the animal for food (whether for human consumption or otherwise), there must be a sale of the animal for its market value by MSU.

III. Now to address your other related questions from page 2 of your letter:

- A. “Animals may bite, kick, press, or serve as a source of allergens or infectious agents. If an animal’s ownership is transferred from CVM to a person, and that person suffers as a result of contact with that animal, what is the CVM’s responsibility?” I presume you are referring to liability as “responsibility.” As you can imagine, issues of liability are totally dependent upon the unique facts and circumstances of each case. If the facts and circumstances show that: 1) CVM, as an entity, or one of CVM’s employees or agents, failed to perform a turn send to the recipient of the animal; and , 2) as a result of that failure, the recipient is damaged; then, either CVM, or its employee/agent, or both, will be liable. However, in an extremely generalized statement, I will state that presuming the damage resulted from the employee/agent properly performing his state duties, liability would be absorbed by the University and the IHL.
- B. “May the CVM alter a research project or teaching endeavor or other intended, approved use to render an animal more suitable for adoption?”

- C. If doing so would contravene the purpose for which the animal was acquired, or if the alteration will result in additional expense to CVM in order to accomplish the project of endeavor, the answer is no also, if another use of the animal by CVM is prevented, then the answer is no.
- D. “If the CVM spends money housing and for an animal with real economic value, does that CVM investment reduce the real value of that animal and make it (e.g, a horse) adoptable as an animal of no or minimal economic value?”

No. To the contrary, as CVM funds are invested in the animal, disposal value of the animal would increase if any of the expenditures resulted in an increased market value of the animal. However, the CVM expenditures would never reduce the value of the animal per se, though anticipated “future” expenses for care and housing may be considered for other purposes.

- IV. You mention several persons are interested (have petitioned) to adopt “client-donated” animals. I noted that paragraph 2 of the 1985 policy states”

“No animals previously client-owned and designated ‘euthanasia only’ by the client will be donated to students or used in teaching or research.”

That restriction seems to indicate that the restriction applies only to those “animals previously client-owned AND designated “euthanasia only” by the client...”. However, you may make your policy more restrictive if you desire.

Of course, all of the other restrictions and prohibitions in the 1985 policy letter, as well as the other limitations I have discussed in this review, apply to the “pony” situation.

- V. Section II of your minutes identifies five related concerns you have:

- A. Section IIA is a legitimate policy, but the section in parenthesis is unnecessary and without further verification and clarification could be misleading. The impact of IRS regulations on potential donors should be for the donor to determine, not for CVM to determine or provide advice about.
- B. As you point out, the issue in Section IIB of your minutes is a public relations decision. You have the prerogative to impose that additional limitation if you desire.
- C. A donation to CVM intended solely for later disposition without any intended use of the animal by CVM would in essence result in an action, which is outside the parameters of CVM authority (unless CVM is authorized by its mission to serve as an intermediary between animal owners who desire to transfer their animal to a third party).
- D. Without more information, I cannot address this concern. However, absent a contractual obligation to the contrary (which contract cannot avoid the state law and state constitutional limitations regarding disposition of state property), the same limitations would apply to the disposition of animals purchased from vendors.
- E. Any CVM faculty, staff, or even students employed by CVM may violate Section 25-4-105(1) by partaking in sustenance resulting from a donation to MSU. A donation makes the property state property. Once it is state property, Section 25-4-105(1) would prohibit the

consumption by CVM faculty, staff, or any other state employee resulting from their status as CVM or state employees.

VI. Options A, B, and C of Section III of your minutes are within your propogative. Option D implies you are aware of a state prohibition against allowing adoption of an animal if “hospital charges are not paid.” If such a state regulation exists, then certainly we must abide thereby with it. However, absent such a requirement, the outstanding hospital charges are one of many factors to consider in determining the proper disposition of the animal.

VII.Areas not addressed by this review.

This review addresses your questions and concerns from a legal perspective. Issues related to the medical and health requirements and regulations which affect the sale or disposition of animals for consumption must be further identified and dispositions must be in compliance therewith.

JMH:for