



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

January 14, 2010

The Honorable Ben Ysursa
Idaho Secretary of State
STATEHOUSE MAIL

Re: Certificate of Review
Proposed Initiative Related to Animal Cruelty

Dear Secretary of State Ysursa:

An initiative petition was filed with your office on December 15, 2009. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. Given the strict statutory timeframe within which this office must review the petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only." The petitioners are free to "accept or reject them in whole or in part." The opinions expressed in this review are only those that may affect the legality of the initiative. This office offers no opinion with regard to the policy issues raised by the proposed initiative.

BALLOT TITLES

Following the filing of the proposed initiative, this office will prepare short and long ballot titles. The ballot titles must impartially and succinctly state the purpose of the measure without being argumentative and without creating prejudice for or against the measure. While our office prepares titles for the initiative, petitioners may submit proposed titles for consideration. Any proposed titles should be consistent with the standard set forth above.

MATTERS OF SUBSTANTIVE IMPORT

A. Amendment is Consistent With the Statute

The proposed initiative ("Initiative") seeks to amend the definition of animal cruelty in chapter 35, title 25, Idaho Code. At the outset, I note that there is a citation error in the Initiative. While the intent of the Initiative sponsor is to amend the definition of "cruel" or "cruelty" in Idaho Code § 25-3502(5), the citation in the Initiative is to the definition of "animal" in Idaho Code § 25-3502(2). The sponsors should correct this citation.

Chapter 35, title 25, Idaho Code, currently defines "cruel" or "cruelty" as:

- (a) The intentional and malicious infliction of pain, physical suffering, injury or death upon an animal;
- (b) To maliciously kill, maim, wound, overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, drink or shelter, cruelly beat, mutilate or cruelly kill an animal;
- (c) To subject an animal to needless suffering, inflict unnecessary cruelty, drive, ride or otherwise use an animal when same is unfit;
- (d) To abandon an animal;
- (e) To negligently confine an animal in unsanitary conditions or to negligently house an animal in inadequate facilities; to negligently fail to provide sustenance, water or shelter to an animal.

Idaho Code § 25-3502(5) (Supp. 2009). The Initiative proposes amending the definition of "cruel" or "cruelty" by the addition of a new paragraph:

- (f) For any person other than a licensed veterinarian to perform the following medical procedures: Cropping, trimming or cutting off the ear of a dog; Debarking by cutting or injuring the vocal cords of a dog; Docking or cutting off the tail of a dog over five days of age; Surgically birthing or performing a Caesarian section on a dog; and Removing the dewclaws from a dog over five days of age.

Initiative at 1.

The amendment to the definition of cruel or cruelty is consistent with the statutory scheme in chapter 35, title 25, Idaho Code. The statute's prohibitions on animal cruelty are dependent on the definition of cruel or cruelty in the statute. See *e.g.*, Idaho Code §§ 25-3504 and 25-3505 (Supp. 2009). By amending the definition of cruel or cruelty to include other prohibited conduct, the Initiative does not conflict with the statutory scheme.

B. Technical Terms Should Be Defined

The Initiative seeks to amend the definition of "cruel" or "cruelty" by reference to several "medical procedures," including, "cropping," "debarking," "docking," "surgically birthing," and "Caesarian section." However, the Initiative does not define the meaning of the medical procedures.

Idaho Code § 73-113 governs the construction of words and phrases in statutes, and provides in part:

Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in the law, . . . are to be construed according to such peculiar and appropriate meaning or definition.

If a statute is unambiguous, a court will give the language of a statute its plain meaning. Purco Fleet Services, Inc. v. Idaho State Dept. of Finance, 140 Idaho 121, 124, 90 P.3d 346, 349 (2004) (citations omitted). Common words are given "the same meaning in a statute as they have among the people who rely on and uphold the statute." *Id.* (citations omitted). Moreover, when interpreting a statute "words and phrases are to be assumed to have been used in their popular sense, if they have not acquired a technical meaning." Filer Mut. Telephone Co. v. Idaho State Tax Comm'n, 76 Idaho 256, 261, 281 P.2d 478, 480-481 (1955).

The medical procedures set forth in the Initiative may be common terms in the field of veterinary science, but the procedures may not be common terms "among the people who rely on and uphold" the provisions of chapter 35, title 25, Idaho Code. Purco Fleet Services, 140 Idaho at 124, 90 P.3d at 349. In other words, a dog owner may not know the meaning of the medical procedures addressed in the Initiative. Since the medical procedures likely have a technical meaning that may not be commonly known, the Initiative sponsors should consider defining the medical terms to eliminate any ambiguity in the Initiative.

C. Amendment Should Be Printed In Full

Article III, Section 18 of the Idaho Constitution prohibits any act from being "revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length." See Golconda Lead Mines v. Neill, 82 Idaho 96, 99-101, 350 P. 2d 221, 222-23 (1960). We, therefore, recommend that the full text of Idaho Code § 25-3502 be reproduced in the proposed Initiative, with amendments indicated appropriately by underscoring for additions and strikeouts for deletions. These underscoring and strikeouts, while not required constitutionally, may facilitate informed decision-making by those who would be considering whether to sign the petition.

Secretary of State Ysursa

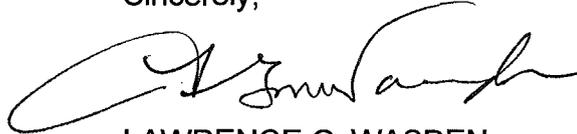
January 14, 2010

Page 4 of 4

CERTIFICATION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import. The recommendations set forth above have been communicated to petitioner via a copy of this Certificate of Review, deposited in the U.S. Mail to Talitha Neher, 11322 W. Hinsdale Ct., Boise, ID 83713.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Wasden", written in a cursive style.

LAWRENCE G. WASDEN
Attorney General

Analysis by:

TYSON K. NELSON
Deputy Attorney General