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Susan West
Bureau of Dog Law Enforcement
Pennsylvania Department of Agriculture
2301 North Cameron Street, Room 102
Harrisburg, PA 17110

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Dear Ms. West:

This letter represents my response to the Department's request for public comments on the Canine Health Board Standards for Commercial Kennels as published in the Pennsylvania Bulletin on September 12, 2009.

The Canine Health Board should be congratulated for its hard work, dedication and understanding of its mandate as represented by the proposed regulations. As is widely known, the complex issues addressed in the regulations were the subject of intense debate among the members of the Dog Law Advisory Board (of which I was a member), the effected industry, and the General Assembly for several years prior to the publication of the proposed standards.

The short answer to critics of the precise standards proposed by the Canine Health Board is that Canine Health Board did exactly what it was mandated to do under the legislation which was passed by the overwhelming majority of the members of the General Assembly— the Canine Health Board created standards based on animal husbandry practices to provide for the welfare of dogs dealing with ventilation under PaCS 459-207(h)(7), heating PaCS 459- 207(h)(8) and flooring PaCS 459-207(i)(3).

My remarks primarily are in response to the criticisms of the proposed standards made by Senator Brubaker and his colleagues in a letter dated October 27, 2009.

1. FISCAL IMPACT

The General Assembly established the Canine Health Board to determine the standards based on animal husbandry practices "to provide for the welfare of dogs" under three specific subsections described above. This mandate made no reference to the financial welfare of the commercial dog breeding industry. We cannot forget that the long-needed changes to the status quo in the Commonwealth arose, in substantial part, due to the numerous instances in which Pennsylvania commercial dog breeding facilities, while often compliant with then existing laws, were regarded as cruel and inhumane by the general public. As a result of the adverse publicity concerning Pennsylvania's commercial dog breeding industry in local, state and national media, the Pennsylvania Legislature finally passed a significant overhaul of the comprehensive Dog Law.

On the issue of costs, most of the structural changes do not apply to small kennel operators, but only apply to commercial kennels; i.e., those kennels that breed or whelp

dogs and either sell or transfer more than 60 dogs per calendar year or sell or transfer any dog to a dealer or pet shop kennel 3 PaCS 459-102. The costs of compliance will be borne by those whose operations produce the most puppies and, presumably, profit the greatest. In many instances, these operations were responsible for the inhumane practices whose existence in the Commonwealth could no longer be tolerated in their present form. But for these inhumane practices, there would have been no Public Law 1450 and no Canine Health Board. The mere fact that some may regard the standards as unwise or burdensome does not mean that the Canine Health Board exceeded its mandate. Housing Authority of Chester v. PA Civil Service Commission, 730 A.2d 935 (Pa. 1999).

The amendments to the Dog Law and the regulations promulgated by the Department of Agriculture, when implemented, may require that some commercial kennel owners make extensive changes to their operations in order to comply; however, the Legislature clearly took into account the fiscal impact by providing a three year window for commercial kennels to comply with structural changes under certain circumstances and by providing a mechanism to obtain a waiver of the requirement for access to outside exercise runs under certain circumstances. See 3 PaCS 259-207(j) and 3 PaCS 259-207(i)(5).

Enforcement of the standards will require the expenditure of Commonwealth funds for training and equipment. The same statement can be made for any new enactment. Regulation has its costs but so does the continuation of the status quo. Those costs are visible to the many with an awareness of the abuses of the dog breeding industry and the misery suffered by animals whose welfare is now the special responsibility of the Department of Agriculture and the Canine Health Board. The public costs are also reflected in the enforcement of other statutes, such as the Dog Purchaser Protection Act, or Puppy Lemon Law, that are necessary to address another range of problems caused, in substantial part, by the same industry. Finally, there is presently a private cost to citizens of the Commonwealth who have attempted to mitigate the abuse through the rescue and placement of unwanted dogs whose lives have been made wretched by kennel operators who view them as mere commodities.

2. THE CANINE HEALTH BOARD PROMULGATED NO REGULATIONS

Critics of these regulations have claimed that the Canine Health Board has exceeded its authority by issuing these proposed regulations. This criticism is based on the false premise that the Canine Health Board promulgated these regulations. Rather, the Canine Health Board, in keeping with its mandate, issued temporary guidelines. The newly enacted Dog Law requires the Department of Agriculture to promulgate regulations based on the guidelines that were prepared by the Canine Health Board. The Department of Agriculture, as the agency responsible for the enforcement of the Dog Law, promulgated the regulations. Therefore, the issue is not whether the Canine Health Board exceeded its authority. Rather, the legal issue is whether the Department of Agriculture exceeded its authority by promulgating these regulations based on the temporary guidelines established by the Canine Health Board.

Pursuant to 3 PaCS 459-207(b), *all kennels must be maintained in a sanitary and humane condition in accordance with standards and sanitary codes promulgated by the secretary [of the Department of Agriculture] through regulations.* I note that the legislation granted the secretary broad powers to promulgate regulations to ensure sanitation and humane conditions in all kennels. The proposed regulations, based on Canine Health Board's temporary guidelines, clearly conform to the legislative intent. Moreover, these regulations were reviewed and cleared for form and legality by the State Attorney General's Office before the proposed regulations were submitted for public comment. In addition, the Department of Agriculture approved these regulations before the proposed regulations were released for public comments.

3. THE SPECIFIC STANDARDS OF CARE

Although the Legislature knew that the former dog law was woefully inadequate to protect the dogs used in commercial kennels, they could not reach consensus or compromise with respect to standards of care for the welfare of dogs with respect to the dogs' need for ventilation, lighting and flooring. Therefore, the legislature created the Canine Health Board, to be composed of experts on animal husbandry, to develop the appropriate standards and regulations in these three areas.

The Canine Health Board consists of nine veterinarians who are experts in small animal medicine and in the caring for and treating of canines. 3 PaCS 459.221(b), (f). These recognized experts in animal husbandry, from varied backgrounds and appointed by the Governor and legislative leadership, unanimously approved these temporary guidelines after painstakingly researching these issues and after numerous discussions. It was only after these temporary guidelines were approved that some members of the Canine Health Board chose to criticize their own work in the creation of these guidelines.

Senator Brubaker and his colleagues claimed that the Canine Health Board exceeded its authority by addressing the issue of temperature in its recommendations of appropriate ventilation systems. Senator Brubaker has taken the position that the proposed regulations regarding ventilation, which was based on the Canine Health Board's temporary guidelines, are invalid since Canine Health Board's recommendations regarding the proper ventilation depended on the ambient temperature. This criticism fails to recognize the intimate connection between ventilation and temperature.

The Canine Health Board was given the responsibility of developing guidelines that would keep all dogs sufficiently ventilated at all times to provide for their health and well-being and to minimize odors, drafts, ammonia levels and prevent moisture condensation. 3 PaCS 207(h)(7). The relative humidity must be maintained at a level that ensures the health and well-being of the dogs housed therein. Appropriate ventilation, humidity and ammonia ranges shall be determined by the Canine Health Board. 3 PaCS 207(h)(7).

Senator Brubaker's claim that the Canine Health Board has no authority to address temperature is unfounded because one of the primary purposes of effective ventilation is

to control temperature. Effective ventilation is essential to control temperature and humidity and so reduce the likelihood of heat stress. A proper ventilation system is also the major determinant of air quality. It follows that the design of the ventilation systems has a major influence on the dogs' health and welfare. The systems should provide air containing sufficient oxygen to allow normal growth and development and should maintain an air-flow sufficient to remove excess ammonia, carbon monoxide, carbon dioxide, moisture, dust and heat. In hot weather, the system should have capacity to prevent temperature levels rising significantly above the ambient temperature of 85 degrees. For the Canine Health Board to recommend auxiliary ventilation for the dogs' health and welfare without taking into consideration how the ventilation systems affect ambient temperature is nonsensical.

Senator Brubaker also suggests that the Canine Health Board does not have authority to establish a limit for particulate matter, carbon monoxide, air changes and air velocity; i.e., that the Canine Health Board can not prohibit excessive dog odor, noxious odors, stale air, moisture condensation on surfaces and lack of air flow within its limited authority to establish appropriate ventilation systems. Correctly, the Canine Health Board decided to use a performance standard for determining proper ventilation, i.e., a proper ventilation system must effectively reduce excessive dog odor, noxious odors, stale air, moisture condensation on surfaces and lack of air flow. Since the Canine Health Board is charged by statute with developing guidelines that would keep all dogs sufficiently ventilated at all times to provide for their health and well-being and to minimize odors, drafts, ammonia levels and prevent moisture condensation, the Canine Health Board was clearly within its mandate to make such requirements.

Research has shown that rate of disease transmission is significantly increased in animals who live in structures without proper ventilation. The Canine Health Board, once again, used the prevalence of certain symptoms/diseases, as a performance standard by which to determine whether the ventilation system was effective in reducing disease transmission. By providing dog wardens and kennels with a list of symptom/illnesses that are often associated with improper ventilation, the Canine Health Board provided notice to kennel owners and dog wardens as to when the ventilation systems should be evaluated, i.e., when the dogs are exhibiting these symptoms. Since the Canine Health Board's mandate is to provide for the health and well being of the dogs, it is incumbent upon them, as experts in animal husbandry, to require that the kennel owners be aware of symptoms/illnesses that are likely to occur in the dogs if their kennels lack proper ventilation.

Senator Brubaker is correct that the legislature determined that either natural or artificial light was acceptable in creating a regular diurnal lighting system. However, the Canine Health Board was mandated to consider the range of light necessary for the dogs' health and welfare. The Canine Health Board determined that dogs must have some exposure to natural light at least part of the day is necessary to ensure the dogs' health and wellbeing. This recommendation does not contradict the Legislature's mandate that the diurnal lighting system may be created by artificial or natural light. If the Legislature had not intended the Canine Health Board to be able to recommend exposure to natural light, they

would have specifically prohibited the Department of Agriculture or the Canine Health Board from making recommendations regarding the need for natural light.

In my view, the Canine Health Board did not exceed its authority in issuing these reasonable, humane temporary guidelines. I hope that the proposed regulations based on the Canine Health Board's guidelines are implemented quickly in their present form for the health and welfare of the dogs living in commercial kennels.

Thank you for considering my comments.

Patti Bednarik

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From: Bednarik, Patti [Patti.Bednarik@pacourts.us] RE: [REDACTED]
Sent: Monday, November 30, 2009 10:32 PM
To: IRRC
Subject: Comments on Canine Health Board Standards for Commercial kennels
Attachments: Comments on Proposed Regulations.doc