

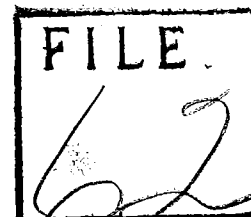
ANIMALS: Slaughter of horses and mules not unlawful if  
done in humane manner.

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Hon. Edwin W. Mills  
Prosecuting Attorney  
St. Clair County  
Osceola, Missouri



Dear Sir:

We are in receipt of your request, dated December 17, 1941, for an opinion from this office, which request reads as follows:

"I am informed that one or two persons are making a business of buying up old and disabled horses, shooting them in this County, and then hauling them to Rich Hill where they are skinned and the carcasses sold for soap, fertilizer, etc.,

"Provided this killing is skillfully and properly performed, I personally do not believe such killing is malicious and prohibited by Sec. 4557, R. S. Mo., 1939.

"Malice, in its legal sense means a wrongful act done intentionally, without just cause or excuse.

"Two members of the local bar made informal complaints about this horse-killing, or I would not ask the opinion of your office regarding it. Would appreciate your views."

In reply we wish to state that we do not find that the State Legislature has ever seen fit to enact statutes regulating the slaughter of horses and mules for the purposes indicated in your opinion request. At the outset we assume that the manner and method used by the persons in the business described in your opinion request could not in anywise be committing a nuisance.

Of course, if they were committing a nuisance, we think that they would be subject to be enjoined for permitting same. Further, we call attention to the case of *McCrory v. Fisher*, 108 S. W. (2d) 413, 1. c. 417, Par. 5, where the court said:

" \* \* \* The exercise of a governmental power which regulates the public health, welfare, and the general property rights of the people, belongs to the police power of the state, in the regulation of which due process of law is not denied, merely because the various steps required to be taken in the carrying out of regulatory provisions do not require formal court proceedings. \* \* \* "

Now, turning to the portion of your opinion request wherein you suggest that Section 4557 R. S. Missouri, 1939, might be applicable, which section reads as follows:

"Every person who shall willfully and maliciously or cruelly kill, maim, wound, beat or torture any dumb animal, whether belonging to himself or another, shall upon conviction be punished by imprisonment in the county jail for not more than three months, or by a fine of \$50.00 or by both such fine and imprisonment: Provided, that nothing herein contained shall be construed to prohibit or interfere with any scientific experiments or investigations: Provided further, that nothing in this sections shall apply to the hunting or trapping of wild animals."

We call attention to 3 C. J. Pars. 203,204, Page 65, which paragraphs we do not copy for the sake of brevity, but call special attention to the case of *People v. Downs*,

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136 N. Y. S. 440, l. c. 444, where the court had this to say in part:

"The infliction of pain alone is insufficient for the purpose of such a prosecution as this; but the question is: Was unjustifiable pain inflicted? The statute itself contemplates and permits the infliction of a certain amount of pain. Certain physical pain may be necessary and justifiable in given cases. I would call it a legal license permitting the infliction of unavoidable pain. Many are the cases where animals suffer, or are permitted to suffer physical pain, but it is insufficient in law to warrant a holding by a committing magistrate. \*

\* \* "

Also, in the case of Horton v. State, 124 Ala. 80, l. c. 81, 25 S. 468, where the court said:

"The word 'cruelly' as employed in the statute must have some significance, and when taken in connection with such other words as 'torture,' 'torments,' 'mutilates,' or 'cruelly beats' found therein, as well as with the manifest purpose of the statute, evidently means something more than to kill. \* \* \*"

Again, in the case of State v. Pugh, 15 Mo. 509, l.c. 511, the court said:

"The torture here alluded to must consist in some violent, wanton and cruel act necessarily producing pain and suffering to the animal. \* \* \*"

And, in the case of State v. Grise, 37 Ark. 456, where the court said:

"The term 'needless' cannot be reasonably construed as characterizing an act which might by care be avoided. It simply means an act done without any useful motive, in a spirit of wanton cruelty, or for the mere pleasure of destruction."

See 3 C. J. S. P. 1190, Par. 7.

From the reading of the aforesaid cases, and from the reading of Section 4557, supra, we are of the opinion that said section would not apply, assuming that the persons in all instances killed the horses and mules in a most skillful and humane manner, and that said section is applicable when a person commits a cruel, wanton and malicious act in the killing or mutilating of animals.

#### CONCLUSION

We are of the opinion that in the absence of any statute controlling the slaughter of horses and mules, so long as the slaughter is performed in a skillful manner and for a useful purpose, so as to not commit a nuisance or in anywise done in a malicious, wanton or cruel manner it is lawful in Missouri and Section 4557, supra, has no application.

Respectfully submitted

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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(Acting) Attorney General