

## Opinion No. 65-57

April 5, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. J. E. Kleck, Staff Veterinarian, 113 Third Street, S.W., Cattle Sanitary Board, Albuquerque, New Mexico

### QUESTION

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What is the definition of the word "animals" as referred to in Section 47-19-1, N.M.S.A., 1953 Compilation.

#### CONCLUSION

See analysis.

### OPINION

#### {\*96} ANALYSIS

The Supreme Court of this State has had but one occasion to define the word "animal". In **State v. Buford**, 65 N.M. 51, 331 P.2d 1110 the Court defined the word as follows:

{\*97} "Animal" has been defined to include 'every living creature except men,' or 'the human race,' or 'human beings;' 'every living dumb creature;' 'the whole brute creation,' or 'any domestic animal.'"

The term has been defined in its broadest sense as follows:

"An animal is an organized living being, endowed with sensation, power, and voluntary motion, and also characterized by taking its food in to an internal cavity or stomach, by giving off carbonic acid to the air, and taking oxygen into the process of respiration by a motive power or aggressive force with progress to maturity. The term is properly applied, however, only so long as the animal is alive, and after its death it ceases to be an animal, but is an inanimate mass or carcass."

**Reed v. State**, 16 Fla, 564, 656. Some exceptions however, have been made to this broad definition. It has been held that chickens are not animals within the ordinary sense of the word. See **State ex rel Del Monte v. Woodmansee**, Ohio Appellate, 72 N.E. 2nd 789, 791. Further it has been held to exclude animals classified as "ferae naturae" or being of a wild nature or disposition. See **Gillet v. Mason**, N.Y. 7 Johns 16,

17. Likewise the term has been construed to exclude fish. See **U.S. Board and Paper Co. v. State**, 174 Ind. 460, 91 N.E. 953.

In conclusion therefore, we may say that an animal is any organized living being as defined above except humans, fish, fowl or animals of a wild nature or disposition.

We note in passing that the word "animal" would include "sheep" which is dealt with by another board, namely the Sheep Sanitary Board. However, an examination of the statutes dealing with sheep, reveals that there is no similar provision licensing any person subject to the provisions of 47-19-1. We must conclude, therefore, that the Legislature vested in the Cattle Sanitary Board the duty of requiring all people subject to this section to obtain licenses from the Cattle Sanitary Board.