

Respectfully submitted this 6th day of June 2007.

SCHIFF HARDIN LLP



Walter H. Bush
Georgia Bar No. 098825
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CHESLEY V. MORTON and JENNIFER
ROBINSON,

Plaintiffs,

v.

STATE OF GEORGIA DEPARTMENT OF
AGRICULTURE and TOMMY IRVIN, in
His Official Capacity as Commissioner,

Defendants.

CIVIL ACTION
FILE NO: 2007 CV 130839

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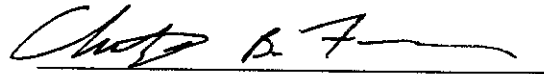
CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing **PLAINTIFFS'**
MOTION FOR CONTEMPT to be served upon all parties to this action by placing a copy of
same in the United States Mail in an envelope with adequate postage affixed thereon, properly
addressed as follows:

John E. Hennelly, Esq.
Senior Assistant Attorney General
State of Georgia, Department of Law
40 Capitol Square, S.W.
Atlanta, Georgia 30334

This 6th day of June 2007.

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Department's knowledge of violations of the Humane Euthanasia Act by Cobb County for at least twelve years, and recent complaints made to the Department after the injunction was entered, on May 25, 2007, the Department has blatantly flouted the Court's Order. It did so when its inspector visited Cobb County's shelter and approved the shelter's use of an illegal gas chamber, even though Defendants knew Cobb County was gassing dogs and cats in direct violation of the law. This approval was in direct violation of the Court's Order, as it expressly approved a known violation of the Humane Euthanasia Act.

Based on the Department's *ultra vires* acts and its violation of the Court's Order, Plaintiffs move for the entry of an order finding Defendants in contempt, and remedying Defendants' acts by ordering them to undertake enforcement action against Cobb County, which is acting in violation of the Humane Euthanasia Act every day it gasses dogs and cats in its shelter.

II. FACTUAL BACKGROUND

On March 26, 2007, after an extended evidentiary hearing which included the presentation of multiple live witnesses and the submission of documentary evidence, the Honorable Cynthia Wright granted Plaintiffs' motion for a preliminary injunction through an Interlocutory Order. (A true and correct copy of the Order is attached hereto as Exhibit "A" and is specifically incorporated herein by reference.) In issuing the Order, the Court found that Mr. Irvin, as Commissioner of the Department: "not only failed to enforce but actually encouraged non-compliance with a duly enacted unambiguous statutory mandate of the Georgia General Assembly [, the Humane Euthanasia Act, O.C.G.A. § 4-11-5.1]. Such conduct is *ultra vires* and can be restricted." Based on those findings, as stated above, the Court entered the Order, which barred any further "sanction" of a violation of the Humane Euthanasia Act.

Plaintiffs subsequently confirmed, based on correspondence from representatives with the Cobb County Animal Shelter, that for twelve years Cobb County has been operating a gas chamber – a gas chamber which was not purchased until 1995 – in direct violation of the Humane Euthanasia Act.¹ This is undisputed. (See letter from Debra Cook to Venessa Sims-Green dated March 9, 2007, a true and correct copy of which is attached hereto as Exhibit “B,” and is specifically incorporated herein by reference.) Ms. Cook’s letter asserts that the Department has been “aware,” since 1995, that Cobb County began using a “new carbon monoxide chamber” that year. *Id.* Cobb County has been licensed by the Department every year for each of the twelve years it has been in violation of the Humane Euthanasia Act, and the Department’s inspectors have visited the shelter on multiple occasions, up to and including a visit on May 25, 2007. (See Inspection Report filed by Belindah Thompson, dated May 25, 2007, a true and correct copy of which is attached hereto as Exhibit “C,” and is specifically incorporated herein by reference.)

The Department has been on notice for twelve years that Cobb County was acting in violation of the Humane Euthanasia Act, and that it was regularly and illegally gassing unwanted puppies, kittens, dogs and cats. In fact, subsequent to the issuance of the Order, the Department also received complaints about Cobb County’s ongoing unlawful conduct. (See letter from Leana Stormont to Mr. Irvin, dated April 25, 2007, and letter from Leana Stormont to John Hennelly, dated May 10, 2007, true and correct copies of which are attached hereto as Exhibits “D” and “E,” respectively, and are specifically incorporated herein by reference.)

For twelve years the Department has approved and sanctioned the use of the illegal gas chamber in Cobb County. In response to the most recent complaints, the Department, through its legal counsel, the Office of the Attorney General, did not address its legal responsibility to

¹ O.C.G.A. § 4-11-5.1(b)(1) allows the continued use of a *specific* gas chamber (subject to multiple conditions on the type of gas used and other factors) *if* it was in use prior to July 1, 1990. Since Cobb County is using a gas chamber that was first purchased in 1995, the shelter is in plain violation of the statute.

enforce the law and did not address the merits of the complaint. Instead, the Department responded to a complaint about illegal gassing by misrepresenting its obligations under the Order. Even so, the Department's counsel, in response to the complaints, specifically acknowledged that the Order was intended to "prohibit, rather than compel, action." (See letter from John Hennelly to Leana Stormont dated April 30, 2007, a true and correct copy of which is attached hereto as Exhibit "F," and is specifically incorporated herein by reference.)

Simultaneous with the complaints about the illegal gassing of animals in Cobb County that were made to the Department, the Department was also asked on May 10, 2007, to provide or make available for inspection all records pertinent to the Cobb County shelter. (See Exhibit D.) Although such requests, by law, must receive a response within three business days,² the Department withheld its production of documents for nearly two weeks, until May 25, 2007. On that day, the Department did several things. First, it sent its inspector out to the Cobb County shelter. (See Exhibit "C.") Second, the inspector reviewed the Cobb County shelter, including the illegal gas chamber, and gave the shelter a "passing" grade for its euthanasia program.³ (*Id.*) Third, its inspector completed a detailed report without even *mentioning* the fact that the shelter was operating an illegal (or any) gas chamber, without verifying that the gas chamber was being used in a manner expressly authorized by the very limited exemptions provided under the Humane Euthanasia Act, and without initiating any enforcement action with respect to the use of the illegal chamber. (*Id.*) Finally, after the inspection and approval of the illegal gassing that morning, a copy of the Inspection Report was transmitted to the Department via facsimile at

² See O.C.G.A. § 50-18-70(f), which provides in pertinent part that "the individual in control of such public . . . records shall have a reasonable amount of time to determine whether or not the . . . records requested are subject to access under this article and to permit inspection and copying. In no event shall this time exceed three business days."

³ The Department's inspection reports define a "passing" score as follows: "Pass - met all elements of the particular requirement." See, e.g., Exhibit C at p. 1.

10:38 AM.⁴ See Exhibit C at p. 1. The Department then responded to the Open Records Act request, enclosing the Inspection Report issued that day. (*Id.*)

Thus, the evidence establishes the Department knew that:

1) Cobb County bought its gas chamber in 1995 and the Department approved the use of that chamber in violation of the Humane Euthanasia Act. (*See* Exhibit B);

2) the Department received additional, recent complaints that the Cobb shelter's gas chamber was purchased in 1995 and that Cobb County was therefore illegally killing dogs and cats. (*See* Exhibit "D" and "E"); and

3) the Department acknowledged that the Order was intended to prohibit further sanctioning of violations of the Humane Euthanasia Act, which included approval of facilities acting in violation of the law. (*See* Exhibit "F").

Nevertheless, the Department, on May 25, 2007, actively sanctioned and encouraged a violation of the law by approving the method of euthanasia being used. (*See* Exhibit "C").

III. ARGUMENT AND CITATION OF AUTHORITY

A. Defendants Are In Contempt Of Court.

This Court has the authority "[t]o compel obedience to its judgments, orders, and process" and "[t]o control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it... ." O.C.G.A. § 15-1-3(3), (4). *See also* O.C.G.A. § 15-6-8(5), (6) (courts have powers to punish contempt and exercise other powers).

The evidence submitted demonstrates grounds for a contempt finding. *See, e.g., Kace Investments, L.P. v. Hull*, 278 Ga. App. 477, 629 S.E. 2d 26, 31 (2006); *Smith v. Smith*, 281 Ga. 204, 636 S.E.2d 519, 522 (2006) (plaintiff must show by preponderance of the evidence that

⁴ None of the other inspection reports responsive to the Open Records Act request appear to have been transmitted to the Department via facsimile.

defendant has willfully violated court order). The Court has before it evidence which establishes (1) the Court's unambiguous Order; (2) Defendants' knowledge (for more than twelve years, but most notably since the issuance of the Court's Order) of Cobb County's violation of the Humane Euthanasia Act; and (3) the Department's violation of that Order by not prohibiting, and in fact approving, the use of the illegal gas chamber in Cobb County. Thus, Defendants have clearly and willfully, violated the Court's Order, and should be held in contempt.

B. This Court Should Enter An Order Holding Defendants In Contempt And Making Them Institute Enforcement Action Against Cobb County's License In Order To Ensure Future Compliance With the Preliminary Injunction.

Defendants have made it clear that they have no intention of complying with the Court's Order. In fact, while the evidence shows a blatant breach of the injunction, the *absence* of evidence of any kind of enforcement activity further demonstrates Defendants have paid no attention to the Court's Order whatsoever. Thus, the Court should fashion a remedy that compels Defendants to follow the Order, and which prevents the harm that has been caused by Defendants' attempts to both violate the Court's decision and provide a shield for the illegal gassing of dogs and cats occurring in Cobb County on a daily basis.

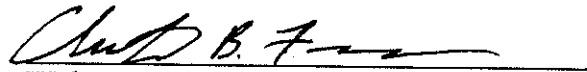
The only appropriate remedy for Defendants' violation of the Court's Order – which also constitutes an *ultra vires* act in breach of Defendants' obligations under the Humane Euthanasia Act – is to compel Defendants to undertake enforcement activities with respect to the illegal gassing that is ongoing at the Cobb County shelter, and to award Plaintiffs the costs of filing and preparing this motion. This sanction is completely within the Court's discretion as part of its inherent powers to invoke the contempt remedy to compel obedience to its order, *see, e.g., Cook v. Thomas*, 175 Ga. App. 836, 837, 334 S.E.2d 727, 727 (1985), and it is clearly the only remedy that will force the Defendants to follow the Court's Order.

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court find Defendants in contempt of the Court's Order, direct Defendants to comply with the Order, and to begin enforcement proceedings to compel Cobb County to cease illegal gassing in violation of the Humane Euthanasia Act.

Respectfully submitted this 6th day of June 2007.

SCHIFF HARDIN LLP



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Christopher B. Freeman
Georgia Bar No. 140867

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Attorneys for Plaintiffs

Exhibit "A"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
FAMILY DIVISION

FILED IN OFFICE

MAR 26 2007

Deputy Clerk Superior Court
Fulton County, Georgia

CHESLEY V. MORTON and)
JENNIFER ROBINSON,)
Petitioners,)

CIVIL ACTION FILE

v.)

No. 2007CV130839

STATE OF GEORGIA DEPARTMENT)
OF AGRICULTURE and TOMMY IRVIN,)
in His Official Capacity as Commissioner,)
Respondents.)

INTERLOCUTORY ORDER

The above matter came before the Court on March 23, 2007 for a hearing on Plaintiff's Motion for Temporary Restraining Order and Permanent Injunctive Relief. Defendants were properly noticed of the hearing in accordance with the law. Prior to the commencement of the hearing, the parties agreed that the Court should hear evidence regarding this matter.

Accordingly, this matter was heard as a request for an interlocutory injunction pending final trial on the merits of the case.

Seventeen years ago, in 1990, the Georgia General Assembly duly enacted a law codified as OCGA § 4-11-5.1 which specified sodium pentobarbital as the exclusive method of euthanasia of dogs and cats by animal shelters, with certain exceptions. The exceptions include shelters in counties of less than 25,000; dangerous animals; and gas chambers in use as of July 1, 1990 provided that the shelter filed their notice of exemption with the Department of Agriculture by August 1, 1990.

The Commissioner of Agriculture, Tommy Irvin, stated that he understood that his Department was the exclusive agency to inspect and license animal shelters, including ensuring compliance with the humane euthanasia provisions of the law. According to the Commissioner,

if certain standards, primarily cleanliness, were not met, a citation would issue. The Commissioner indicated that the inspectors check several categories but euthanasia was not high on the priority list. The Commissioner also testified that he had some doubt as to whether or not the Department had the ability to enforce the humane euthanasia portion of the law. The Commissioner of Agriculture testified that although he knew that the Department was vested with regulatory authority over shelters, he always considered animal control to be a local matter.

Reginia Wells, the Director of the Tifton/Tift County Animal Shelter testified that her shelter acquired a gas chamber in 2006; that the population of Tift County exceeds 25,000; and that prior to acquisition of the gas chamber that the shelter was taking the dogs and cats to the veterinarian for lethal injections. According to an Mary Greer, an Agriculture employee who also testified at the hearing, it was the Commissioner of Agriculture that told Ms. Wells in 2006 that the Tifton/Tift County Animal Shelter could build and use a gas chamber for the euthanasia of dogs and cats. Commissioner Irvin testified that although he did not recall such a meeting, that it could have occurred.

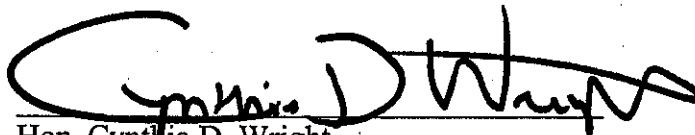
The Commissioner of Agriculture opined that the 1990 law was unclear. The Court disagrees. The legislature could not have been more clear in prohibiting euthanasia using gas chambers for dogs, cats, puppies and kittens except in very limited circumstances. It was abundantly clear at the hearing that the Commissioner and the Department employees have virtually ignored the clear statutory mandate. Indeed, the evidence at the hearing for injunctive relief showed that Commissioner Irvin even personally encouraged shelters to build new gas chambers - a clear violation of the law.

The State argues that this case is not properly before the Court from a procedural perspective. The Court agrees that the pleadings as filed request forms of relief that cannot be granted. However, injunctive relief can be granted when an agent of the State commits wrongful

acts. In this case, the Court finds on a preliminary basis, that the Commissioner not only failed to enforce but actually encouraged non-compliance with a duly enacted unambiguous statutory mandate of the Georgia General Assembly. Such conduct is ultra vires and can be restricted. Failure to restrain the Commissioner from encouraging violations of the humane euthanasia law could result in needless suffering and irreparable injury to the dogs, cats, puppies and kittens that unfortunately find themselves at animal shelters. The General Assembly sought to end such suffering seventeen years ago.

Until the case can be fully heard on its merits, this Court issues an interlocutory injunction enjoining and restraining the Commissioner of the Department of Agriculture, the Department of Agriculture and employees of the Department of Agriculture from advocating and sanctioning violation of OCGA § 4-11-5.1 by state-licensed animal shelters.

So ORDERED this 26 day of MARCH 2007.



Hon. Cynthia D. Wright
Fulton County Superior Court
Atlanta Judicial Circuit

cc: Walter H. Bush Jr., Esq.
Schiff Hardin LLP
One Atlantic Center, Suite 2300
1201 West Peachtree Street, N.E.
Atlanta, GA 30309

John Edward Hennelly, Esq.
State of Georgia
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, GA 30334-9003

Exhibit "B"



**Cobb County
Department of Public Safety**

G. M. Lloyd
Director

100 Cherokee Street, Suite 460
Marietta, GA 30090-9682

March 9, 2007

Ms. Venessa Sims – Green, Manager
Georgia Department of Agriculture
Animal Protection Section, Room 128
Atlanta, Ga. 30334

Dear Ms. Sims-Green:

This letter is in response to your letter dated March 8, 2007 requesting documentation on our Carbon Monoxide Euthanasia Chamber. Attached is a document dated July 24, 1990 fulfilling the requirement stated in OCGA 4-11-5.1(b):

“A chamber using commercially bottled carbon monoxide gas which was used on July 1, 1990, for euthanasia of dogs and cats by any animal shelter or facility may continue to use for such purpose by such animal shelter or facility if such animal shelter or facility notifies the Commissioner of Agriculture, in writing on or before August 1, 1990, that such chamber was in use by such animal shelter or facility on July 1, 1990.”

The document is a letter that was written by Mr. John McClure, former Animal Control Manager, who is now deceased. I worked with Mr. McClure during this time and remember personally typing this letter. Cobb County Animal Control had converted the euthanasia chamber from an internal combustion engine with a water scrubber type filter to produce carbon monoxide to a euthanasia chamber that ran off of bottled carbon monoxide. This change was made prior to July 1, 1990. The letter Mr. McClure sent to Mr. Irvin was two fold. The letter was first written to comply with State Law 4-11-5.1(b) to notify State Agriculture Chairman Irvin that we were using a bottled carbon monoxide euthanasia chamber prior to July 1, 1990 and secondly to let Mr. Irvin know that he was still fighting to revert back to the combustion engine producing carbon monoxide euthanasia chamber because of the cost.

Cobb County Animal Control moved into our new facility in the summer of 1995. Mr. McClure was a driving force to get the new facility, but he did not live long enough to see it completed. Mr. McClure and retired Cobb County Lt. Ron LeCroy (Mr. McClure's replacement) had conversations with State Agriculture Inspectors while the new shelter was under construction about the new carbon monoxide chamber. State Agriculture was aware that the new shelter was being constructed and that once we moved in we would continue to use a carbon monoxide euthanasia chamber, but we would be using a new one. When we moved from the old building to the new building (located on the same property) we went from using the euthanasia chamber that was converted to a carbon monoxide chamber to a new state of the art euthanasia chamber professionally designed to use carbon monoxide.

There is nothing in the law that states that a shelter can not move into another facility and continue to use a carbon monoxide euthanasia chamber. In our case we moved to a new facility on the same property. We moved to improve the housing and to improve the euthanasia chamber for the animals. The Georgia Department of Agriculture was aware of the new facility (located on the same property) and the new euthanasia chamber at that time. We have had many inspections from State Agriculture since we moved into this facility and each time the euthanasia method has been discussed and documented.

If you need any additional information from me please contact me at 770-590-5601.

Respectfully,

Debra Cook
Animal Control Manager
Cobb County Animal Control

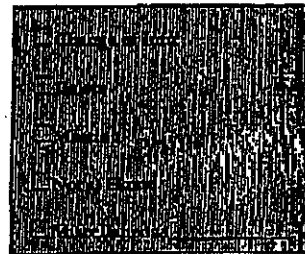
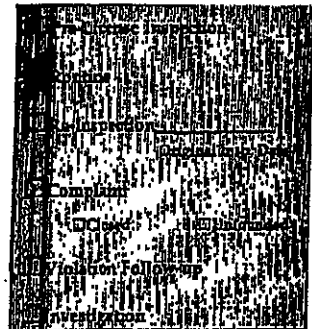
Cc: Lt. Prince
Mr. Rich Frazier
County Attorney's Office

Exhibit "C"

GEORGIA DEPARTMENT OF AGRICULTURE
 COMMISSIONER TOMMY IRVIN
 ANIMAL PROTECTION SECTION

INSPECTION REPORT

Date: 05-25-07



Establishment Name Cobb County Animal Control
 Establishment # 707 License # A081
 Address 1060 Al Bishop Drive
 City Marietta Zip 30008 County Cobb
 Phone # 7705905600 Fax # _____

Name Delinda Thompson
 Inspector # 5301
 Facility: Inside Outside Both
 Begin Time: _____
 End Time: _____
2007 # of Enclosures
N/A # of Breeding Animals

Animal Shelter Pet Dealer Res Dealer Kennel

REQUIREMENTS								
	Pass	Fail	N/A		Pass	Fail	N/A	
Premise				Performance				
1. Current License Displayed	X	<input type="checkbox"/>	<input type="checkbox"/>	12. Record keeping	X	<input type="checkbox"/>	<input type="checkbox"/>	
2. Housekeeping	X	<input type="checkbox"/>	<input type="checkbox"/>	13. Storage	X	<input type="checkbox"/>	<input type="checkbox"/>	
3. Lighting	X	<input type="checkbox"/>	<input type="checkbox"/>	14. Pest Control	X	<input type="checkbox"/>	<input type="checkbox"/>	
4. Adequate Temp. Control	X	<input type="checkbox"/>	<input type="checkbox"/>	15. Sanitation	X	<input type="checkbox"/>	<input type="checkbox"/>	
5. Adequate Ventilation	X	<input type="checkbox"/>	<input type="checkbox"/>	16. Waste Disposal	X	<input type="checkbox"/>	<input type="checkbox"/>	
6. Fire Extinguisher	X	<input type="checkbox"/>	<input type="checkbox"/>	Animal Care				
Enclosures				17. Classification & Separation	X	<input type="checkbox"/>	<input type="checkbox"/>	
7. Space Requirements	X	<input type="checkbox"/>	<input type="checkbox"/>	18. Adequate Food	X	<input type="checkbox"/>	<input type="checkbox"/>	
8. Interior Surfaces	X	<input type="checkbox"/>	<input type="checkbox"/>	19. Adequate Water	X	<input type="checkbox"/>	<input type="checkbox"/>	
9. Structural Strength	X	<input type="checkbox"/>	<input type="checkbox"/>	20. Selling or adoption of injured/ diseased/abnormal animals	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Shelter from the Elements	X	<input type="checkbox"/>	<input type="checkbox"/>	21. Minimum Age to Sell & Adopt	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Drainage	X	<input type="checkbox"/>	<input type="checkbox"/>	22. Tethering	X	<input type="checkbox"/>	<input type="checkbox"/>	
				23. Euthanasia	X	<input type="checkbox"/>	<input type="checkbox"/>	
				24. Humane Care	X	<input type="checkbox"/>	<input type="checkbox"/>	

Pass - met all elements of the particular requirement
 Fail - failed to meet one or more elements of the particular requirement

REMARKS:

Drove to the above location of a county Animal Shelter
Requiring a \$200.00 ANNUAL license fee. Renewal due
01-31-08 for a Routine inspection.

R/E
 I have read and understood the contents of this report
 Signature Owner Manager Employee

[Signature]
 Inspector's Signature
[Signature]
 Assisting Inspector's Signature

Printed Name RAITH E. TATE Page 1 of 3

- 1) CURRENT LICENSE is posted in the front lobby AREA of the shelter entry.
- 2) The building grounds lawn well maintained. Sealed areas clear of weeds and debris.
- 3) Lighting is commercial and sufficient for cleaning and animal observation.
- 4) Temperature controlled by commercial units.
- 5) Ventilation controlled by commercial fans.
- 6) Fire extinguishers hand held available in each area of the shelter.
- 7) All animals have adequate space to move about freely.
- 8) All interior surfaces are sealed, impervious to moisture and are easily sanitized and disinfected.
- 9) All enclosures are in a good state of repair for proper welfare and safety from injury of the animals housed in the enclosures.
- 10) All animals are housed indoors in a climate controlled setting, sheltered from the elements. All animals are away from direct sunlight.
- 11) DRAINAGE All enclosures are wiped, squeezed dry after cleaning. Drainage system equipped installed traps to prevent sewage backup.
- 12) Records are kept on computer, containing the required information. Paper is also used for compartment tags. Again containing the department's required information. All are accurate and current.
- 13) Food is stored in covered containers. Unopened bags stored on pallets off the floor. All chemicals are stored away from any possible animal.

contact. 14) Pest control done on a Routine and as
on as needed basis if necessary. 15) All enclosures are sanitized and disinfected
as needed daily for optimum health and
wellness of the animals. 16) Waste is bagged
for commercial service pickup. 17) All animals
are housed in separate enclosures. 18) Food
is provided to each animals in amounts needed
to maintain optimum health. 19) Water is
provided at all times. 20) N/A 21) N/A No
injured, diseased, abnormal, or unsheltered
animals adopted by this facility. 22) N/A
Tethering does not apply. 23) Euthanasia
Records contain the Required information
kept on paper and on computer all are
accurate and current. Euthanasia protocols
as required per the Statutes are followed.
24) It appears at the time of this inspection
the animals at this facility are receiving
humane care.

Exhibit "D"

April 25, 2007

VIA FACSIMILE AND ELECTRONIC MAIL

The Honorable Tommy Irvin
Commissioner
Georgia Department of Agriculture
(404) 651-8206 (facsimile)
TIrvin@agr.state.ga.us (email)

Re: Unlawful gassing of dogs and cats in Cobb County

Dear Commissioner Irvin:

I am writing on behalf of PETA and our more than 1.6 million members and supporters dedicated to the protection of animals. It has come to our attention that Cobb County Animal Control is operating an illegal carbon monoxide gas chamber for the routine killing of dogs and cats in violation of O.C.G.A. § 4-11-5.1 ("the Humane Euthanasia Act"). As you are already aware, in 1995 Cobb County replaced the gas chamber in use at the time of the passage of the Humane Euthanasia Act and, therefore, became ineligible for continued use of a carbon monoxide gas chamber pursuant to O.C.G.A. 4-11-5.1(b)(1).¹

The Humane Euthanasia Act provides that "a chamber using commercially bottled carbon monoxide gas which was used on July 1, 1990 ... may continue to be used for such purposes by such animal shelter or facility if such animal shelter or facility notifies the Commissioner of Agriculture, in writing, on or before August 1, 1990, that such a chamber was in use by such animal shelter or facility on July 1, 1990." O.C.G.A. § 4-11-5.1(b)(1) (emphasis added). Because the gas chamber currently operated by Cobb County was not in use on July 1, 1990, Cobb County's routine use of its gas chamber is in violation of the Humane Euthanasia Act. We have received correspondence from Cobb County indicating its intention to continue this practice. (A copy of the correspondence is enclosed for your convenience).

In light of the Department's obligation to enforce the Humane Euthanasia Act, and the injunction issued by the Honorable Cynthia Wright in *Morton, et al. v. State of Georgia Department of Agriculture, et al.* (Civil Action File No. 2007CV130839), we urge the Department to undertake appropriate investigative and enforcement action to ensure swift compliance with the law.

Thank you for your time and attention. Please do not hesitate to contact me by phone at 757.962.8327 or email at LeanaS@peta.org if you have any questions or wish to discuss this matter further.

Very truly yours,



Leana Stormont

Encl.

cc: John Hennelly, Esq., JHennelly@law.ga.gov (via electronic mail only)

¹ In a letter to the Department dated March 9, 2007, Debra Cook, Manager, Cobb County Animal Control, states that Cobb County acquired a new gas chamber in 1995 when the shelter relocated to its current facility. (A copy of the correspondence is enclosed for your convenience).



PETA

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS

501 FRONT ST.
NORFOLK, VA 23510
757-622-PETA
757-622-0457 (FAX)

PETA.org
Info@peta.org

AN INTERNATIONAL
ORGANIZATION DEDICATED
TO PROTECTING
THE RIGHTS OF ALL ANIMALS

Exhibit "E"

May 10, 2007

VIA FACSIMILE 404/651-6341 AND ELECTRONIC MAIL

John E. Hennelly, Esq
Senior Assistant Attorney General
Department of Law
State of Georgia
E-mail: jhennelly@law.ga.gov

Dear Mr. Hennelly:

I am in receipt of your correspondence of April 30, 2007 acknowledging PETA's complaint regarding the illegal gassing of dogs and cats in Cobb County. As you know, PETA is not a party to the litigation you referenced, *Morton, et al. v. Georgia Department of Agriculture*; Fulton County, Georgia Superior Court case (Civil Action No. 2007CV130839), and we contacted the Department in order to inform it of these ongoing violations of the Georgia Animal Protection Act.

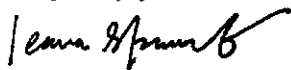
PETA's complaint regarding Cobb County's gas chamber was sent to the Department directly as has been our habit for many years whenever we are in receipt of information about violations of the laws the Department is charged with upholding. Nevertheless, based on your request I will gladly direct future correspondence regarding the illegal gassing of dogs and cats to you directly.

In light of that professional courtesy, please consider this letter as a request pursuant to O.C.G.A. § 50-18-70 for copies of any and all public records, as that term is defined by O.C.G.A. § 50-18-70(a), in the Department's custody or possession related to the Cobb County Animal Control facility generated between May 1, 2006 and May 10, 2007. I look forward to your response to this request within three (3) business days as provided by O.C.G.A. § 50-18-70(f).

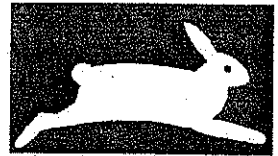
Lastly, it is my understanding that the interlocutory relief granted by the Hon. Cynthia Wright in *Morton, et al. v. Georgia Department of Agriculture* restrains the Department and the Commissioner from advocating and sanctioning violations of O.C.G.A. § 4-11-5.1. PETA interprets the Court's order as an expectation that the Department will take *some* action in response to violations of which it is made aware. Cobb County is gassing dogs and cats in blatant violation of the Animal Protection Act and has notified the Department of this conduct. We believe Judge Wright's order prohibits the Department from standing idly by and acquiescing when violations are brought to its attention, especially when those violations may cause thousands of dogs and cats to suffer and die in illegal gas chambers. As Judge Wright concluded, "The General Assembly sought to end such suffering seventeen years ago." The Department does not have the discretion to ignore the law and is in fact obligated to uphold it.

Please feel free to contact me if you wish to discuss these matters further.

Very truly yours,



Leana Stormont



PETA

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS

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AN INTERNATIONAL
ORGANIZATION DEDICATED
TO PROTECTING
THE RIGHTS OF ALL ANIMALS

Exhibit "F"



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April 30, 2007

VIA FACSIMILE (757) 628-0781 AND U.S. MAIL

Leana Stormont, Esq.
Counsel
PETA
501 Front Street
Norfolk, VA 23510

Re: *Morton, et al. v. Georgia Department of Agriculture*; Fulton County, Georgia Superior
Court case (Civil Action No. 2007CV130839)

Dear Ms. Stormont:

This is in response to your correspondence to Commissioner Irvin of April 25, 2007. It is apparent from your letter that you are aware that the Commissioner is represented by this office with respect to both the subject matter of your letter and the active court case cited in the letter. The purpose of this correspondence is to advise you that all further correspondence, contacts, or inquiries of whatever nature touching on or concerning the subject matter of that litigation by you should be directed to me rather than to the Commissioner or to any employee of the Georgia Department of Agriculture.

With respect to the subject matter of your letter to the Commissioner, the interlocutory order that was issued in the above-referenced case was an injunction. It was not a mandamus order. As an interlocutory order aimed at maintaining the status quo, the effect of the order is to prohibit, rather than compel, action. Finally, if the concerns you have identified with the operation of the Cobb County facility are relevant to the existing litigation, they will no doubt be addressed in the context of that proceeding.

Please let me know if you have any questions.

Sincerely,


JOHN E. HENNELLY
Senior Assistant Attorney General
JEH/jh

cc: Commissioner Tommy Irvin

