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VIA FIRST CLASS MAIL and
EMAIL: rwillig@attorneygeneral.gov

May 6, 2021

Office of Attorney General
Mr. Robert A. Willig, Senior Deputy Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222

Re: ACRE Request for Review – Chanceford Township, York County; Complaint by [redacted] under the Agricultural Commodities and Rural Environment ("ACRE") Act, Act 39 of 2005

Dear Senior Deputy Attorney General Willig:

As Solicitor for Chanceford Township (the "Township"), and at Township's direction, I respectfully submit this letter-brief regarding your March 30, 2021 correspondence and the ACRE Complaint asserted against the Township by [redacted] (the "Landowners"), related to the Township's zoning ordinance section 427 regulating placement of kennels for dog raising within the Township (the "Ordinance").

It is the Township's position that the ordinance in question does not unlawfully prohibit or limit normal agricultural operations under ACRE because, under ACRE statutory and caselaw as well as all other relevant laws of the Commonwealth, dogs are not defined as livestock, but are considered pets, and the raising of dogs in kennels is not a normal agricultural operation.

A. Factual Background. The Township offers the following summary of the facts. When Landowners first moved to their property in the Township in 2017, they inquired with the Township on the requirements to operate a kennel. At that time they were advised that such use requires a special exception under section 427 of the Township's zoning ordinance. Rather than comply with the requirement of obtaining a special exception under the Ordinance, Landowners instead began to operate a kennel without a zoning permit. The operation only came to the attention of the Township when neighbors complained of the frequent barking of dogs. On December 14, 2020, the Township zoning officer issued Landowners a formal enforcement notice in regard to the zoning violation for the kennel.

Landowners then applied for the required special exception and a hearing was held. The Township Zoning Hearing Board denied the application. Landowners did not appeal the zoning decision but instead filed the current allegation of a violation under ACRE.

B. Argument.

1. Because raising and selling dogs as pets is not a "normal agricultural operation" under ACRE, Landowner's challenge of the ordinance in question is without merit.

In regard to cases involving ACRE, our Commonwealth Court has stated:

> "[t]he threshold issue in any Act 38 case is what constitutes a "normal agricultural operation." As noted, the term generally includes the following: The activities, practices, equipment and procedures *that farmers adopt, use or engage in the production and preparation for market of* poultry, *livestock* and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities.... The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Section 2 of the Right–to–Farm Act, 3 P.S. § 952. Neither the Right–to–Farm Act nor Act 38 specifies what are normal 'activities, practices, equipment and procedures.'"

Com., Off. of Atty. Gen. ex rel. Corbett v. E. Brunswick Twp., 956 A.2d 1100, 1114 (Pa. Commw. Ct. 2008) (emphasis added). See also 3 Pa. Stat. Ann. § 952.

A review of the extant ACRE case law indicates that there are no cases or holdings addressing or finding that a kennel or dog breeding activity constitutes a "normal agricultural operation" under ACRE. The issues presented in the limited case law have been mostly in regard to application of biosolids or regulation of concentrated animal feed operations (CAFOs). However, these cases often address the question of whether a particular use meets ACRE's definition of "normal agricultural operation".

In order for Landowner's challenge to the ordinance to have merit, the Attorney General's office, and the courts, must find either that dogs fit the definition of "livestock" under ACRE, or that kennels and raising and selling dogs as pets fits the statutory definition of a "normal agricultural operation".

Landowners' website, [redacted] depicts in its photo gallery and other pages that the dogs the Landowners breed, market, and sell serve the purpose of pets. On Landowners' facebook page, [redacted] identifies their kennel operation as a "pet service". As a pet, there is no logical connection to the dogs' use in farming operations as opposed to dogs that are, for example, bred and used for herding purposes. Moreover, the Landowners themselves identify their kennel operation as a "pet service" on Facebook. Further, as discussed herein, Pennsylvania law is clear that dogs are not defined as or treated as "livestock" under the law. Because the dogs being raised and sold by Landowners are not livestock, Landowners' kennel operation is not a "normal agricultural operation" protected by ACRE. Thus, the Township ordinance in question does not unlawfully prohibit or limit a normal agricultural operation under ACRE, and Landowner's complaint should be dismissed.

2. Dogs Are Not Livestock Under Pennsylvania Law.

While neither ACRE nor the Right–to–Farm Act defines or specifies what animals are included as livestock, other Pennsylvania laws do. Chapter 14A, Section 903 of the Ag law Code, in defining "livestock", states: "livestock and livestock products...include but are not limited to: (5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs." 3 Pa. Stat. Ann. § 903. Elsewhere in the same Code, a "Pet" is defined as "[a]ny domesticated animal normally maintained in or near the household of the owner thereof." 3 Pa. C.S.A. § 5102.

The above makes it clear that the Pennsylvania Legislature recognized and intended a distinction between, on the one hand, dogs, and on the other, the animals commonly defined as livestock. Had the Pennsylvania Legislature intended for dogs to be included in livestock, they could have explicitly provided for it, which they did not.

Our Legislature has written extensive laws and regulations regarding both the protection of agricultural activities, and of dogs. The inclusion of laws related to dogs in Title 3 is not dispositive of whether raising dogs to sell as pets constitutes an "ordinary agricultural activity" under ACRE. In fact, the Pennsylvania Legislature treats dogs and agriculture as separate areas of law. The Dog Laws found in Chapter 8 of Title 3 define a dog as "[t]he genus and species known as *Canis familiaris*", and a domestic animal as "[a]ny equine animal or bovine animal, sheep, goat, pig, poultry, bird, fowl, confined hares, rabbits and mink, or any wild or semiwild animal maintained in captivity." 3 Pa. Stat. Ann. § 459-102.

These definitions support a finding that the Pennsylvania Legislature intended dogs to be defined and treated differently from common livestock, defined as domestic animals in this part of the Code. This conclusion is reinforced in 3 Pa. Stat. Ann. § 459-501 where, for example, it is legal to kill a dog that is "in the act of pursuing or wounding or killing any domestic animal, [or] wounding or killing other dogs." The Dog Laws also define various types of kennels. In those kennel definitions, the word agriculture or agriculture purposes is not mentioned or referenced in any way.

Landowners also urge reliance on the term "animal husbandry" which, as Landowners correctly point out, is not found in ACRE or the Right-to-Farm Act. Landowners' dictionary definition of animal husbandry and its application to Pennsylvania law again supports an interpretation that dogs should not to be included as normal agriculture operations because the definition states that animal husbandry is concerned with the production and care of "domestic animals." As discussed above, the term domestic animal is defined in Title 3 under the Dog Laws and it does not include dogs because dogs are defined separately. Lastly, animal husbandry is not a defined term in Title 3 nor does it appear in a way that supports a finding that the Pennsylvania Legislature would have intended a broad stroke interpretation, suggested by Landowners, that the animal husbandry of dogs should be included in and protected by ACRE.

3. Landowners' Reliance on the *Lowney* Case is Without Merit.

In their complaint, Landowners rely on the case *Appeal of Lowney*, 46 Pa. Cmwlth. 213, 406 A.2d 1160 (1979) as supporting their position that the Ordinance in question violates ACRE. In actuality, the facts and holding of *Lowney* support the Township's position that dogs are not livestock and thus not agriculture. In *Lowney* the residents at issue wanted to build a kennel on five acres of land located in an industrial zone for the purpose of boarding and grooming dogs. After an initial denial by the township and a subsequent appeal, the township then changed its position to approve the permit for the kennel with several conditions including that there be no commercial sale of animals on the property. Neighbors appealed this determination.

Landowners have inaccurately quoted the holding of *Lowney* for the proposition that the breeding and raising of dogs is animal husbandry and thus agriculture. The *Lowney* court actually stated that "[i]n our view, *a kennel cannot be classified as a traditional agricultural use* which is a permitted use in an industrially-zoned area, but can be said to be a "use of the same general character" *within the meaning of the ordinance*." *Id.* at 217-18 (emphasis added). Thus, the only Pennsylvania case the Landowners assert to support their Complaint actually supports an opposite interpretation: that a kennel is not an ordinary agricultural use protected by ACRE, but rather is a use of the same general character of the impactful uses allowed by the ordinance in the industrial zone.

The *Lowney* case is further interpreted in *Serafin v. Cordorus Twp. Zoning Hearing Bd.*, No. 1185 C.D. 2014, 2015 WL 5436827 (Pa. Commw. Ct. Apr. 22, 2015) (opinion not published). In *Serafin*, neighbors opposed the township granting a property owner the ability to operate a horse riding school, arguing that the horse riding school should not be a permitted agricultural use. The Commonwealth Court stated,

> [w]e reject Neighbors' strained interpretation of the 2012 amendments as forbidding the boarding of horses but permitting commercial dog kennels in the Agricultural District. It is horses, not dogs, that have been used in agriculture. *Zoning Hearing Board of Mahoning Township v. Zlomsowitch*, 486 A.2d 568, 569 (Pa.Cmwlth.1985) ("A stable is a familiar structure used for farm and agricultural purposes"); Appeal of Lowney, 406 A.2d 1160, 1162 (Pa.Cmwlth.1979) ("In our view, a kennel cannot be classified as a traditional agricultural use....")."

Serafin, at 4 (Pa. Commw. Ct. Apr. 22, 2015) (internal quotations omitted). Thus, contrary to Landowners' claim, the Commonwealth Court in *Serafin* applied *Lowney* as supporting the conclusion that a kennel or dog raising is not an ordinary agricultural use.

C. Conclusion.

In accord with the forgoing applicable facts and cited law, Chanceford Township avers that, because kennels and the raising and selling of dogs as pets does not fit the ACRE definition of "normal agricultural activities", Landowner's challenge to the ordinance as violative of ACRE is without merit. The Township therefore respectfully requests that the Office of Attorney General dismiss and close Landowner's ACRE Compliant.

Respectfully submitted,

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cc: [redacted]