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OPINION 13-0164

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16 CRIMINAL LAW
88 POLICE JURIES

La. Const. Art. VI, Sec. 7; La. Const. Art. VI, Sec. 9; La. R.S. 14:102.23; 33:1236; La. Atty. Gen. Op. Nos. 77-1243; 99-18A.

The current taxonomic classification of the domestic chicken proves that all chickens are within the genus and species *Gallus gallus*, which, pursuant to La. R.S. 14:102.23, may not be used for any commercial or private cockfight.. Therefore, the Police Jury is prohibited from issuing a license to Evangeline Parish residents requesting a license to open an organized cockfighting operation, as such an activity is prohibited by Louisiana law.

Dear Mr. Vidrine:

You have requested an opinion from this office regarding a request made by Evangeline Parish residents to the Evangeline Parish Police Jury ("Police Jury") for a license to open an organized cockfighting operation in the Parish. Your request further recognizes that La. R.S. 14:102.23 prohibits cockfighting. That statute reads, in pertinent part:

A. It shall be unlawful for any person to:

(1) Organize or conduct any commercial or private cockfight wherein there is a display of combat or fighting among one or more domestic or feral chickens and in which it is intended or reasonably foreseeable that the chickens would be injured, maimed, mutilated, or killed; or

(2) Possess, train, purchase, or sell any chicken with the intent that the chicken shall be engaged in an unlawful commercial or private cockfight as prohibited in Paragraph (1) of this Subsection.

B. As used in this Section, the following words and phrases have the following meanings ascribed to them:

(1) "Chicken" means any bird which is of the species *Gallus gallus*, whether domestic or feral.

(2) "Cockfight" means a contest wherein chickens are set against one another with the intention that they engage in combat.

In your request, you further provide that the interested parties (*i.e.*, those applying for a license to operate a cockfighting operation ("Applicants")) maintain that the "chickens" they intend to fight are of a "species" other than *Gallus gallus*.¹ As a result, you have specifically request an opinion regarding whether there is a legal prohibition to the Police Jury licensing a cockfighting operation wherein the participating chickens are alleged to be of a species other than *Gallus gallus*.

A police jury is a creature and subordinate political subdivision of the State and as such only possesses those powers conferred by the State's Constitution and statutes. La. Const. art. VI, § 7(A); *see also Rollins Environmental Services of Louisiana, Inc. v. Iberville Parish Police Jury*, 371 So.2d 1127 (1979). The powers of the police jury are generally set forth in La. R.S. 33:1236, and as it specifically relates to the authority to issue a license for certain commercial operations, La. R.S. 33:1236(36)(a) provides:

[t]o regulate the height, area, number of stories, and fire safety requirements of buildings and structures, the percentage of the lot that may be occupied, the size of the yards, courts and other open spaces, the set back, the density of population and the location and use of the buildings, structures and land for trade, industry, residence or other purposes.

Notwithstanding the above-referenced powers, when a police jury has authority to regulate by ordinance in a particular field, the exercise of that authority is dependent upon whether the State legislature has enacted general laws on the same subject and thereby preempted that field of regulation. *Rollins*, 371 So.2d 1131. Furthermore, Louisiana's Constitution grants the Legislature the power to enact laws consistent with the State's police powers, and also specifically prohibits local governmental subdivisions from enacting any ordinance that would abridge the police power of the State. La. Const. art. VI, § 9(B).

In this instance, La. R.S. 14:102.23 prohibits several activities relating to cockfighting, including the organization of a fight and the possession, training, purchasing, or selling of a chicken with the intent of engaging in cockfighting. As such, any local ordinance that conflicts with this provision, such as an ordinance that would authorize issuance of a license to open a cockfighting operation,

¹ It is important to note here that, although La. R.S. 14:102.23 identifies the proscribed "species" as "*Gallus gallus*," the law does not follow the proper taxonomic nomenclature conventions in that the creature, which is properly named by the statute (*i.e.*, "*Gallus gallus*"), is improperly referred to under the Linnaean system of classification. The name given by the statute, *Gallus gallus*, is, in fact, a reference to both the genus ("Gallus") and the species ("gallus"). Thus, although the statute technically contains the requisite prohibition and information to identify the proscribed creature, it mischaracterizes the Linnaean classification as merely a species when it is, in fact, a genus and species.

would be invalid and unenforceable. See also La. Atty. Gen. Op. Nos. 77-1243 and 99-18A (the Constitution prohibits preemption of State law by a local ordinance).

Here, it appears that the Applicants propose to bypass the conflict between State law and local law by alleging that the “chickens” they intend to fight are not of the “species” *Gallus gallus*. This is an important suggestion, theoretically, because La. R.S. 14:102.23 specifically defines chickens, for purposes of the cockfighting prohibition, as “any bird which is of the species *Gallus gallus*...” Thus, in order to determine whether La. R.S. 14:102.23 prohibits the Police Jury from issuing the license requested here, we must determine whether the prohibition in La. R.S. 14:102.23 applies to a situation whereby the “chickens” sought to be used do not belong to the *Gallus gallus* genus and species.

The starting point in the interpretation of any statute is the language of the statute itself. *Theriot v. Midland Risk Insurance Company*, 95–2895 (La.5/20/97), 694 So.2d 184. Further, the interpretation of the language of a criminal statute is governed by the rule that the articles of the Criminal Code,

cannot be extended by analogy so as to create crimes not provided for herein; however, in order to promote justice and to effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

La. R.S. 14:3; see also *State v. Skipper*, 04–2137, p. 3 (La.6/29/05), 906 So.2d 399, 403. Criminal statutes are subject to strict construction under the rule of lenity, but the rule is not to be applied with “such unreasonable technicality as to defeat the purpose of all rules of statutory construction, which purpose is to ascertain and enforce the true meaning and intent of the statute.” *State v. Shaw*, 2006-2467 (La. 11/27/07), 969 So.2d 1233, 1242 (internal citations omitted). A criminal statute should be interpreted so as to preserve and effectuate the manifest intent of the Legislature, and an interpretation should be avoided that would operate to defeat the object and purpose of the statute. *Id.*

With these rules of statutory construction in mind, it is critical that, in order to ascertain the true meaning and intent of the La. R.S. 14:102.23, we undertake a basic analysis of the taxonomy of the chicken. Taxonomically, the creature *Gallus gallus* (also known as the red junglefowl) is one of six subspecies belonging to the genus and species *G. gallus*.² Further, “[c]omparative research

² All of the subspecies, which could be covered by the proscription in La. R.S. 14:102.23 as being members of the genus and species *G. gallus*, are: *G. g. bankiva*, *G. g. gallus*, *G. g. jabouillei*, *G. g. murghi*, *G. g. spadiceus*, and *G. g. domesticus*. Sriramana Kanginakudru, Muralidhar Metta,

of the four representatives of the *Gallus* genus and chicken breeds showed that the *G. gallus* is the closest species to chickens for most traits studied in comparison with other jungle fowls.³ The domestic chicken is classified as one of six sub-species of *G. gallus* (i.e., *G. g. domesticus*).⁴ The results of this research indicate that the Applicants' allegations that they have "chickens" of a species other than *G. gallus* is contrary to the current taxonomic classification of the domestic chicken.

Not only are Applicants' chickens properly classified as members of the genus and species *Gallus gallus*, your opinion request specifically states that the Applicants have requested that they be licensed to open an organized cockfighting operation and that they intend to fight chickens. As was set forth above, from a taxonomic perspective (the perspective of the Legislature in La. R.S. 14:102.23), all "chickens" belong to a subspecies variant of *G. gallus*. From a genetic and morphological standpoint, there is, currently, no way for a "chicken" not to be a member of the proscribed *G. gallus* genus and species.⁵

Additionally, although they claim to have chickens not covered by the genus and species proscription in La. R.S. 14:102.23, *G. gallus*, Applicants clearly intend to engage in operations involving "combat or fighting among...chickens,"⁶ and to possess chickens with the intent of engaging in cockfighting. "Cockfighting" is

R.D. Jakati, and J. Nagaraju, *Genetic evidence from Indian red jungle fowl corroborates multiple domestication of modern day chicken*, 8 BMC EVOLUTIONARY BIOLOGY 174 (2008).

³ Irina Moiseyeva, Michael N. Romanov, Andrey A. Nikiforov, Antonino A. Sevastyanova, and Serafima K. Semyenova, *Evolutionary relationships of Red Jungle Fowl and chicken breeds*, 35 GENETICS SELECTION EVOLUTION 403 (2003). See also Michèle Tixier-Boichard, Bertrand Bed'homb, and Xavier Rognon, *Chicken domestication: From archeology to genomics*, 334(3) COMPTES RENDUS BIOLOGIES 197 (2011).

⁴ Dong Niu, Yan Fu, Jing Luo, Hui Ruan, Xu-Ping Yu, Gong Chen, and Ya-Ping Zhang, *The origin and genetic diversity of Chinese native chicken breeds*, 40(5-6) BIOCHEMICAL GENETICS 163 (2002). In fact, recent genetic analyses of the relationships of members of the subspecies of the genus and species *G. gallus* suggest that the domestic subspecies is a direct monophyletic descendant of *G. g. gallus*. Akishinomiya Fumihito, Tetsuo Miyake, Masaru Takada, Ryosuke Shingu, Toshinori Endo, Takashi Gojobori, Norio Kondo, and Susumu Ohno, *Monophyletic original and unique dispersal patterns of domestic fowls*, 93 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 6792 (1996). See also Akishinomiya Fumihito, Tetsuo Miyake, Shin-Ichiro Sumi, Masaru Takada, Susumu Ohno, and Norio Kondo, *One subspecies of the red junglefowl (*Gallus gallus gallus*) suffices as the matriarchic ancestor of all domestic breeds*, 91 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 12505 (1994). It is important to note that this classification is not new. Rather Carl Linné first classified the red junglefowl as *G. gallus* in his seminal work, *SYSTEMA NATURÆ* in 1758. This classification has been bolstered in recent years by genetic tests such as the ones discussed in the sources cited herein. Thus, the *G. gallus* classification has remained constant and unquestioned for 255 years.

⁵ This opinion is limited to the application of the current taxonomic classification of the chicken. Should the scientific community, in the future, change this taxonomic classification, and such change becomes generally accepted, it may be possible for a chicken to fall outside of the definition provided by La. R.S. 14:102.23. However, under the current scenario, all chickens fall within this definition.

⁶ La. R.S. 102.23(A)(1).

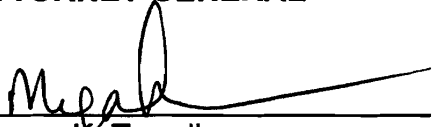
also defined as "a contest wherein chickens are set against one another with the intention that they engage in combat." *Id.* Thus, even if there was some ambiguity regarding the proper species classification of Applicants' chickens (which there is not), it would be contrary to the clear intent of the legislation (*i.e.*, to prevent the fighting of chickens) to license a cockfighting operation on the basis of ambiguity. Such an interpretation would defeat the purpose of La. R.S. 14:102.23 and, therefore, would be contrary to the rules of statutory construction.

Based on the information provided above, it is the opinion of this office that La. 14:102.23 applies to the Applicants' chickens and prohibits the Police Jury from issuing a license to open an organized cockfighting operation, as such an activity is prohibited by Louisiana law.

We hope that this sufficiently answers your inquiry, however, if we may be of further assistance please do not hesitate to contact our office.

Yours truly,

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