

CAUSE NO. 99 466-B

In re
JACKI KING

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IN THE DISTRICT COURT

181 JUDICIAL DISTRICT

POTTER COUNTY, TEXAS

FILED
CAROLINE VOIGT
DISTRICT CLERK

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POTTER COUNTY, TX

BY _____ DEPUTY

PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **JACKI KING**, Relator and petitions this court for a Writ of Mandamus ordering Respondent, **POTTER COUNTY SHERIFF, HON. BRIAN THOMAS**, comply with Texas state law by revoking all certificates of registration issued to Carmel (Charles) Azzopardi d/b/a Texas Wildlife Center (previously known as Amarillo Wildlife Refuge), to keep dangerous wild animals in Potter County, Texas, issued by the Sheriff of Potter County pursuant to Chapter 822 of the Texas Health & Safety Code and county order adopted there-under.

I.

DISCOVERY

Discovery in this action will be conducted pursuant to Discovery Control Plan Level 1, Texas Rules of Civil Procedure, Rule 190.2.

II.

PARTIES

Relator, Jacki King, is a resident of Potter County, Texas who may be contacted through the offices of the undersigned counsel. The Dangerous Wild Animal Act is a public safety statute enacted for the purpose of ensuring as much protection as possible relevant to those keeping dangerous wild animals. Jacki King is a resident of the county

in which the dangerous wild animals are being kept and therefore her safety is threatened by violations of the Act.

Respondent, Sheriff of Potter County, Texas the Hon. Brian Thomas is a division of a local unit of government, specifically Potter County, Texas and service of suit may be had upon Hon. Arthur Ware, Potter County Judge, located at Santa Fe Building, 900 S. Polk, Amarillo, Texas 79101 or in the alternative, 500 S. Fillmore Street, Suite 102, Amarillo, Texas 79101.

III.

JURISDICTION

This court has jurisdiction in this matter. This action is brought to compel the Sheriff of Potter County, vested under the local law adopted by Potter County pursuant to Chapter 822 of the Texas Health & Safety Code with the duty to administer the Dangerous Wild Animal Act (Ch. 822, Tex. Health & Safety Code), to revoke certificates of registration issued to Carmel (Charles) Azzopardi d/b/a Texas Wildlife Center by which said person and organization is keeping dangerous wild animals, as defined in Ch. 822 within Potter County, Texas at 4401 Redding Road, Amarillo, Texas 79124.

District courts are vested with original mandamus jurisdiction over county officials. Vondy v. Commissioners Court, 620 S.W.2d 104, 109 (Tex.1981). (See Tex. Gov't Code Ann. §24.011 (Vernon 1988)). It is well established that a district court has authority to issue a writ of mandamus to compel a public official to perform a ministerial act. Sheppard v. Thomas, 101 S.W.3d 577, 580 (Tex.App. – Houston [1st Dist.] 2003) citing Anderson v. City of Seven Points, 806 S.W.2d 791, 793 (Tex.1991); Turner v.

Pruitt, 342 S.W.2d 422, 423 (Tex.1961); Bichsel v. Carver, 321 S.W.2d 284, 285 (Tex.1959).; Tex. Gov't. Code Ann., §24.011 (Vernon 1988), (A judge of the district court may, either in term time or vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs necessary to the enforcement of the court's jurisdiction.)

A party is entitled to mandamus relief when there is a legal duty to perform a nondiscretionary act, a demand for performance of that act, and a refusal. Doctors Hosp. Facilities, v. Fifth Court of Appeals, 750 S.W.2d 177, 178 (Tex.1988); Harris County v. Walsweer, 930 S.W.2d 659, 667 (Tex.App. – Houston [1st Dist.] 1996, writ denied). An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion." Anderson, 806 S.W.2d at 793; Walsweer, 930 S.W.2d at 667. A writ of mandamus may issue in a proper case to correct a clear abuse of discretion by a public official. Anderson, supra.

Relator seeks a writ of mandamus to compel a ministerial, non-discretionary act. When a public duty to act is present, a citizen may maintain the suit without showing any interest special and peculiar to himself. Wolf v. Petty, 414 S.W.2d 539, 540 (Tex.App. – Fort Worth 1967, reh denied).

In discussing the Act at issue herein, the Texas Attorney General has opined that "The manifest purpose of chapter 822, subchapter E is to protect the public's health and safety and provide a humane environment for dangerous wild animals." Tex. Atty. Gen Op. GA-0654, 2008 WL 3824012 (Tex.A.G.). In support of such a statement, the Attorney General cited the House Research Organization wherein it is shown that the legislative committee received testimony regarding the purpose of public health and

safety. Id. It has been made clear that a citizen of the county may maintain an action in mandamus to compel performance under the DWA. Tex. Atty. Gen. Op. JC-0552, 2002 WL 2018722 (Tex.A.G.). In that opinion, the Attorney General opined that any citizen of the county has a justiciable interest in compelling non-discretionary performance under the Act. Further support of Relator's right to bring this action is provided by the Texas Supreme Court in which another Act was discussed by which the Act itself gave the citizens a right to act (in the present Act exists the right of the citizens to maintain an action in mandamus to compel performance by the County Commissioners) and discussing that if the terms of the Act were not complied with, the citizens would have no adequate remedy at law and thus, have a right to a writ of mandamus. Kimberly v. Morris, 31 S.W. 808, 809 (Tex.1895). This case presents the same issue.

As shown above, Relator need not meet the usual requirement of particularized interest or injury to have standing, only be citizen of the county. As the Act under consideration herein is one of public safety, certainly any citizen has that standing when mandatory action is not taken to ensure strict compliance with the terms of the Act. Relator is clearly threatened with potential personal and property injury from a facility housing dangerous wild animals that is not being compelled to comply with the terms of the Act.

Sheriff of Potter County and Potter County (real party in interest) are both local governmental entities of Potter County, Texas.

IV.

FACTS OF THE CASE

House Bill 1362, enacted by the 77th Texas Legislature, amended Chapter 822 of the Health & Safety Code by adding subchapter E, Sections 822.101 through 822.116. (Dangerous Wild Animal Act...hereinafter "DWA").

Section 822.103 provides that "[a] person may not own, harbor, or have custody or control of a dangerous wild animal for any purpose unless the person holds a certificate of registration for that animal issued by an animal registration agency." Tex. Health & Safety Code Ann. §822.103(a) (Vernon Supp. 2002). (copy of 822.103 attached hereto as Exhibit "A"). Carmel (Charles) Azzopardi d/b/a Texas Wildlife Center owns, harbors or has custody or control of dangerous wild animals within Potter County, Texas, specifically, according to the 2010 certificates of registration, 8 tigers and 5 chimpanzees.

"Animal registration agency" is defined as the municipal or county animal control office with authority over the area where a dangerous wild animal is kept or a county sheriff in an area that does not have an animal control office." §822.101(1). (copy attached as Exhibit "B").

The Potter County Commissioners adopted an order, effective June 1, 2004, by which the Sheriff of Potter County is to enforce the provisions of the DWA. (copy attached hereto as Exhibit "C").

Thereafter and through the last annual issuance of certificates of registration to Carmel (Charles) Azzopardi d/b/a Texas Wildlife Center dated July 2, 2010, the Sheriff of Potter County, Texas has continuously (annually) issued certificates of registration to the said person and/or facility for the keeping of a number of dangerous wild animals

within Potter County, Texas. Said certificates were issued annually, as required by the DWA, for each and every animal named in the DWA, which said person/organization is keeping within Potter County, Texas. Respondent does not deny the issuance of current certificates, as set forth herein but rather takes the position that although there are and have been violations, revocation is discretionary.

Throughout the term of said certificates, Carmel (Charles) Azzopardi d/b/a Texas Wildlife Center (formerly Amarillo Wildlife Refuge), has flagrantly and repeatedly violated requirements of the DWA, as summarized below:

- In violation of Tex. Health & Safety Code §822.110(a), Azzopardi has twice deliberately failed to notify the Potter County Sheriff's Department of having been attacked by dangerous wild animals (a chimpanzee in June, 2010, and by a tiger in 2002). In fact, in both cases, Azzopardi lied to police to cover up the attacks, both of which were severe enough to require hospitalization, and admitted his lies only after the Sheriff's Department confronted him with evidence of his deception. Each violation of his requirement also constitutes a Class C misdemeanor under Texas law. (Tex. Health & Safety Code §822.113). This, of course, does not take into account having provided false information to a law enforcement agency.
- In violation of Tex. Health & Safety Code §822.109, Azzopardi has failed to report the transfer or disposition of 12 dangerous wild animals since 2005. As such, the Potter County Sheriff's Department does not know the whereabouts of two chimpanzees, two Bengal tigers, one jaguar, one lion, four white tigers, and two cougars. Each violation of this requirement also constitutes a Class C

misdemeanor. (See Potter County Commissioners' Court Order 9(a)). Thus, Azzopardi has committed 12 class C misdemeanors for failure to report the disposition of dangerous wild animals and more importantly, the governing agency that is charged with the safety of the public under the Act, has no way of knowing where such dangerous animals are.

- In violation of Tex. Health & Safety Code § 822.103(a), Azzopardi was without certificates of registration for the dangerous wild animals in his custody for periods totaling at least 322 days since 2005, including, most recently, a lapse of 102 days in 2010. During this time, the Potter County sheriff's Department had no record of the number or species of dangerous wild animals in Potter County. Each violation of this requirement also constitutes a Class C misdemeanor under Texas law. (Tex. Health & Safety Code §822.113).
- In violation of Tex. Health & Safety Code 822.106(b) Azzopardi has failed entirely to provide copies of certificates of registration to the Texas Board of Health since 2005. Thus, the state agency responsible for the control of zoonotic diseases, diseases transmitted by animals to humans, remains unaware of the presence of dangerous wild animals in Potter County. Each violation of this requirement also constitutes a Class C misdemeanor under Texas law. (Tex. Health & Safety Code §822.113).
- In violation of Tex. Health & Safety Code §822.107, Azzopardi has failed to have liability insurance coverage for periods totaling at least 220 days since 2006. Lack of this coverage seriously endangers the safety and economic

interest of the public, who could suffer serious injuries to their persons or property from dangerous wild animals.

Respondent does not deny violation events but rather asserts that revocation in the face of such violations is discretionary on the part of Respondent.

Pursuant to Ch. 822, §822.105, a renewal of a certificate of registration shall be denied or, an existing certificate shall be revoked, if it is found there has been a violation of provisions of the DWA. (copy of section 822.105 attached hereto as Exhibit "D").

On or about September 27, 2010 a written demand for revocation was made upon Respondent. Said demand set forth in great detail all violations then known which support the required revocation. (copy of demand letter attached hereto as Exhibit "E"). Thereafter a meeting was conducted at the offices of the Respondent to discuss said demand. During that meeting, Respondent, with counsel present, did not deny the existence of any of the violations but rather took the position that, in the opinion of Respondent, said violations were not serious enough to warrant revocation and any current violations could be remedied. In response to said meeting and demand, Respondent issued a letter which set forth that the violations were not considered serious enough to warrant revocation and, the term "shall" in the governing statute permitted discretion on the part of Respondent. (copy of response letter attached hereto as Exhibit "F"). Therefore, Respondent has refused the demanded revocation.

Relator now seeks this writ of mandamus.

V.

BRIEF IN SUPPORT OF WRIT – LAW APPLICABLE TO FACTS

Section 311.016(2) of the Texas Government Code declares that, “unless the context in which the word...appears necessarily requires a different construction or unless a different construction is expressly provided by statute...”[s]hall” imposes a duty.” Tex. Gov’t. Code Ann. §311.016(2) (Vernon 1998). Thus, a plain reading of the statute requires Respondent to revoke the existing certificates of registration.

Whether a statutory provision is mandatory or directory is a question of law. Texas Dept. of Public Safety v. Kimbrough, 106 S.W.3d 747, 750 (Tex.App. – Fort Worth 2003, no writ). The word “shall” is mandatory unless legislative intent suggests otherwise. Albertson’s Inc. v. Sinclair, 984 S.W.2d 958, 961 (Tex.1999).

“An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion.” Anderson v. City of Seven Points, 806 S.W.2d 791, 793 (Tex.1991). Here, the Legislature used the word “shall” and no other language within the section provides any discretion. The plain and common meaning controls and it is improper to look to extraneous matters for an intent the statute does not state. Nat’l Liab. & Fire Ins. Co. v. Allen, 15 S.W.3d 525, 527 (Tex.2000). There is no discretion in the plain and common meaning of the language the Legislature wrote.

In interpreting a statute, the court’s duty is to determine the legislative intent. Mid-Century Ins. Co. v. Ademaj, 243 S.W.3d 618, 621 (Tex.2007). “It is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent.” Fitzgerald v. Advanced Spine

Fixation Sys. Inc., 996 S.W.2d 864, 866 (Tex.1999). We presume the Legislature selected language in a statute with care and that every word or phrase was used with a purpose in mind. Texas Lottery Commission v. First State Bank of Dequeen, 325 S.W.3d 628, 635 (Tex.2009) citing In re Caballero, 272 S.W.3d 595, 599 (Tex.2008); Chastain v. Koonce, 700 S.W.2d 579, 582 (Tex.1985). It is not a stretch of logic to determine that the application of the word “shall” by the Legislature was intended to mean a mandatory act. Legislative intent as expressed within a statute must be given controlling importance. Citizens National Bank of Paris, Illinois v. Calvert, 527 S.W.2d 175 (Tex.1975). Thus, the application of the word “shall” in the statute, must be given controlling importance and in doing so, leaves Respondent in this case with no discretion.

Our Texas Supreme Court has narrowed the guidelines for statutory construction even further in stating that “[w]hen a statute’s language is clear and unambiguous, it is inappropriate to resort to rules of construction or extrinsic aids to construe the language.” Texas Lottery Commission v. First State Bank of Dequeen, 325 S.W.3d 628, 637 (Tex.2009) citing City of Rockwall v. Hughes, 246 S.W.3d 621, 626 (Tex.2008). We must not engage in forced or strained construction; instead, we must yield to the plain sense of the words the Legislature chose. St. Luke’s Episcopal Hosp. v. Agbor, 952 S.W.2d 503, 505 (Tex.1997). To read the word “shall” in any context other than mandatory, as written by the Legislature in this statute, would require a leap in forced and strained construction. “Ordinarily, when divining legislative intent, “the truest manifestation” of what lawmakers intended is what they enacted, “the literal text they voted on.” First American Title Co. v. Combs, 258 S.W.3d 627, 632 (Tex.2008) citing Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson, 2090 S.W.3d 644, 651 (Tex.2006).

Here, the Legislature enacted a statute applying the word “shall” and thus intended that literal text to have the meaning it has, which is mandatory.

If statutory language is unambiguous, the judge’s inquiry is at an end. Gonzales v. Guilbot, 315 S.W.3d 533, 540 (Tex.2010). The word “shall” is not ambiguous. It is mandatory. The inquiry should thus be at an end. Likewise, when the words are clear and unambiguous, the statute should be enforced as written. Balios v. Texas Dept. of Public Safety, 733 S.W.2d 308, 310 (Tex.App. – Amarillo 1987, reh denied) citing Anderson v. Penix, 161 S.W.2d 455, 459 (Tex.1942). Specifically in issue here is the meaning of “shall”. “It is an imperative term, by ordinary meaning, Black’s Law Dictionary 1233 (5th ed. 1979), and requires the performance of the act that is to be performed. Thus it should be treated as a mandatory term.” Balios, supra, citing Inwood North Homeowners’ Ass’n. Inc. v. Meier, 625 S.W.2d 742, 743-44 (Tex.Civ.App. – Houston [1st Dist.] 1981, no writ); State Board of Insurance v. Betts, 315 S.W.2d 279, 281 (1958). In the Balios case, the Amarillo court held; “Thus, applying the foregoing principles, and assigning to the quoted phrase its ordinary meaning, we conclude that “shall” as used in the statute is mandatory and that DPS must literally comply with the statute.” Id. at 311.

Respondent asserts in its written response to the demand to perform, that discretion is to be found even with the legislative adoption of the word “shall”. Respondent might wish such discretion exists but in applying the statute, that desire is insufficient to warrant this Court from finding such discretion. “Even when it appears the Legislature may have made a mistake, courts are not empowered to “fix” the mistake by

disregarding direct and clear statutory language that does not create an absurdity.” Texas Lottery Comm’n. v. First State Bank of Dequeen, 325 S.W.3d 628, 638 (Tex.2010).

While Petitioner has shown there was absolutely no intent by the Legislature to provide for discretion when it adopted the statute with the word “shall” applied, even if there is belief such discretion should be there, this Court is not empowered to expand the statute to provide for that discretion. It is presumed that the Legislature excluded words in a statute purposefully. Combs v. Metropolitan Life Ins. Co., 298 S.W.3d 793, 796 (Tex.App. – Austin 2009, reh overruled). Had the Legislature intended there be any discretion on the part of Respondent to enforce the statute as written, it could have easily included language such as “may” or “within the sound discretion of the agency”. It did not elect to do so. It is not within this court’s prerogative to go behind or around that language through the guise of construing it to reach what the parties or we might believe is a better result. Texas Lottery Comm’n. supra at 640 citing Harris Cnty. Hosp. Dist. v. Tomball Reg’l Hosp., 283 S.W.3d 838, 847 (Tex.2009). Even a liberal construction of a statute does not permit enlargement or alteration of the plain meaning of its language. Methodist Hosps.of Dallas v. Mid-Century Ins. Co. of Tex., 259 S.W.3d 358, 360 (Tex.App. – Dallas 2008, no pet.).

VI.

AFFIDAVITS IN SUPPORT

Attached hereto are three affidavits in support of Plaintiff’s petition. The affidavit of counsel for Plaintiff Jacki King has attached his affidavit hereto attesting to the fact that he received the response letter from Defendant, refusing to revoke the certificates in

question and that the copy of said letter attached hereto as an exhibit is a true and correct copy of that response letter. (Ex. "G" hereto).

The affidavit of Jeffrey S. Kerr, Esq. is attached hereto attesting to the fact that he obtained the information related to violations of the Act by Azzopardi which were shown in the documents he received pursuant to a request under the Texas Open Records Act from both the Defendant and Texas Department of State Health Services. (Ex. "H" hereto).

Finally, attached hereto is the affidavit of Plaintiff, Jacki King supporting this petition. (Ex. "I" hereto).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays this Court cite the Respondent to appear and answer herein and upon trial of this cause, issue an order (Writ of Mandamus) by which Respondent is to immediately revoke all certificates as set forth herein.

Petitioner prays for such other and further relief, both in law and equity, to which she may show herself justly entitled.

Respectfully submitted,



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V.T.C.A., Health & Safety Code § 822.103

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Effective: September 1, 2001

Vernon's Texas Statutes and Codes Annotated Currentness
 Health and Safety Code (Refs & Annos)
 Title 10. Health and Safety of Animals
 Chapter 822. Regulation of Animals
 Subchapter E. Dangerous Wild Animals
 → § 822.103. Certificate of Registration; Fees

(a) A person may not own, harbor, or have custody or control of a dangerous wild animal for any purpose unless the person holds a certificate of registration for that animal issued by an animal registration agency.

(b) A certificate of registration issued under this subchapter is not transferrable and is valid for one year after its date of issuance or renewal unless revoked.

(c) The animal registration agency may establish and charge reasonable fees for application, issuance, and renewal of a certificate of registration in order to recover the costs associated with the administration and enforcement of this subchapter. The fee charged to an applicant may not exceed \$50 for each animal registered and may not exceed \$500 for each person registering animals, regardless of the number of animals owned by the person. The fees collected under this section may be used only to administer and enforce this subchapter.

CREDIT(S)

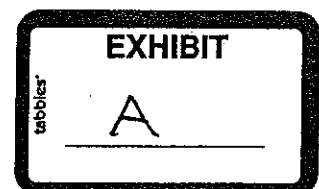
Added by Acts 2001, 77th Leg., ch. 54, § 1, eff. Sept. 1, 2001.

Current through the end of the 2009 Regular and First Called Sessions of the 81st Legislature

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Westlaw.

V.T.C.A., Health & Safety Code § 822.101

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C**Effective: September 1, 2001**

Vernon's Texas Statutes and Codes Annotated Currentness

Health and Safety Code (Refs & Annos)

Title 10. Health and Safety of Animals

▣ Chapter 822. Regulation of Animals

▣ Subchapter E. Dangerous Wild Animals

→ § 822.101. Definitions

In this subchapter:

(1) "Animal registration agency" means the municipal or county animal control office with authority over the area where a dangerous wild animal is kept or a county sheriff in an area that does not have an animal control office.

(2) "Board" means the Texas Board of Health.

(3) "Commercial activity" means:

(A) an activity involving a dangerous wild animal conducted for profit that is not inherent to the animal's nature;

(B) an activity for which a fee is charged and that is entertainment using or an exhibition of the animal; or

(C) the selling, trading, bartering, or auctioning of a dangerous wild animal or a dangerous wild animal's body parts.

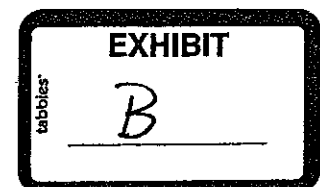
(4) "Dangerous wild animal" means:

(A) a lion;

(B) a tiger;

(C) an ocelot;

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- (D) a cougar;
- (E) a leopard;
- (F) a cheetah;
- (G) a jaguar;
- (H) a bobcat;
- (I) a lynx;
- (J) a serval;
- (K) a caracal;
- (L) a hyena;
- (M) a bear;
- (N) a coyote;
- (O) a jackal;
- (P) a baboon;
- (Q) a chimpanzee;
- (R) an orangutan;
- (S) a gorilla; or
- (T) any hybrid of an animal listed in this subdivision.

(5) "Owner" means any person who owns, harbors, or has custody or control of a dangerous wild animal.

V.T.C.A., Health & Safety Code § 822.101

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(6) "Person" means an individual, partnership, corporation, trust, estate, joint stock company, foundation, or association of individuals.

(7) "Primary enclosure" means any structure used to immediately restrict an animal to a limited amount of space, including a cage, pen, run, room, compartment, or hutch.

CREDIT(S)

Added by Acts 2001, 77th Leg., ch. 54, § 1, eff. Sept. 1, 2001.

Current through the end of the 2009 Regular and First Called Sessions of the 81st Legislature

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COMMISSIONERS COURT MINUTES

APR 12 2004
IN THE COMMISSIONERS COURT
OF
POTTER COUNTY, TEXAS

AN ORDER
REGULATING THE KEEPING OF DANGEROUS WILD ANIMALS, PURSUANT TO
CHAPTER 822, HEALTH & SAFETY CODE AND CREATING A CRIMINAL PENALTY

1. Authority and Purpose. The Potter County Commissioners Court ("Commissioners Court") adopts the following order, pursuant to Chapter 822, subchapter E, Texas Health & Safety Code. In adopting this order, the Commissioners Court determines that a prohibition of dangerous wild animals in the unincorporated areas of the county is not necessary, and that reasonable regulations will accomplish the purpose of protecting and enhancing the public's safety and providing a safe, health, and humane environment for the animal.

2. As of the effective date of this order, the Commissioners Court repeals that certain Order Prohibiting the Keeping of Dangerous Wild Animals adopted November 13, 2001 and amended January 26, 2004.

3. The Potter County Sheriff's Department ("Department") is authorized to enforce these regulations and is authorized to issue citations in the unincorporated area of Potter County, Texas to enforce these regulations pursuant to §121.003 (e) and Chapter 822 of the Texas Health & Safety Code.

4. Definitions

(a) "Animal Welfare Act" means the provision of 7 U.S.C. Section 2131 et seq.)

(b) "Dangerous wild animal" means a lion, tiger, ocelot, cougar, leopard, cheetah, jaguar, bobcat, lynx, serval, caracal, hyena, bear, coyote, jackal, baboon, chimpanzee, orangutan, gorilla, or any hybrid of one of these animals.

(c) "Owner" means any person who owns, harbors, or has custody or control of a dangerous wild animal.

(d) "Person" means an individual, partnership, corporation, trust, estate, joint stock company, foundation, or association of individuals.

5. Exemptions: These regulations do not apply to those entities exempt from the provisions of Chapter 822 of the Texas Health & Safety Code as specifically enumerated in §822.102.

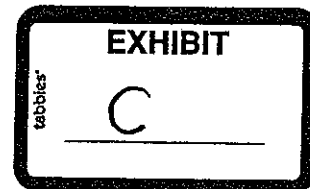
6. Certificate of Registration; Application.

(a) A person may not own, harbor, or have custody or control of a dangerous wild animal for any purpose unless the person holds a certificate of registration for that animal issued by this County.

(b) A certificate of registration issued under these regulations is not transferable and is valid for one year after its date of issuance or renewal unless revoked.

(c) The fee for the issuance of a certificate of registration will be \$50 for each animal registered up to a maximum of \$500 for each person registering animals, regardless of the number of animals owned by the person. The fees collected under this section may be used only to administer and enforce these regulations.

Dangerous Wild Animal Regulation
April 12, 2004



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- (d) An applicant for an original or renewal certificate of registration for a dangerous wild animal must file an application with the Potter County Judge on a form provided.
- (e) The applicant shall include with each application
- 1) the nonrefundable fee;
 - 2) proof that the applicant has liability insurance, as required by Section 822.107, Texas Health & Safety Code;
 - 3) a color photograph of each animal being registered taken not earlier than the 30th day before the date the application is filed;
 - 4) a photograph and a statement of the dimensions of the primary enclosure in which each animal is to be kept and a scale diagram of the premises where each animal will be kept, including the location of any perimeter fencing and any residence on the premises; and
 - 5) if an applicant holds a Class "A" or Class "B" dealer's license or Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments, a clear and legible photocopy of the license.
- (f) In addition to the items required under Subsection (e), an application for renewal must include a statement signed by a veterinarian licensed to practice in this state stating that the veterinarian:
- 1) inspected each animal being registered not earlier than the 30th day before the date of the filing of the renewal application; and
 - 2) finds that the care and treatment of each animal by the owner meets or exceeds the standards prescribed under these regulations.
- (g) If the Department finds that an application for an original or renewal certificate of registration under these regulations does not meet the requirements of or, after inspection, that an applicant has not complied with these regulations, the Department shall deny the applicant a certificate of registration and give the applicant written notice of the denial and the reasons for the denial.
- (h) If the Department finds, after inspection, that a registered owner provided false information in or in connection with the application or has not complied with these regulations, or with the provisions of Chapter 822, subchapter B, Texas Health & Safety Code, the Department shall revoke the certificate of registration and give the owner written notice of the revocation and the reasons for the revocation.
- (i) A person shall prominently display the certificate at the premises where each animal that is the subject of the certificate of registration is kept.

7. Appeal of Denial or Revocation of Certificate of Registration

- (a) A person may appeal the denial of an original or renewal certificate of registration or the revocation of a certificate of registration to the justice court for the precinct in which the animal is located not later than the 15th day after the date the certificate of registration is denied or revoked. Either party may appeal the decision of the justice or municipal court to a county court or county court at law in the county in which the justice or municipal court is located. The decision of the county court or county court at law may not be appealed.
- (b) The filing of an appeal of the denial or revocation of a certificate of registration stays the denial or revocation until the court rules on the appeal.

8. Inspection

An owner of dangerous wild animal, at all reasonable times shall allow the Department or a designated licensed veterinarian to enter the premises where the animal is kept and to inspect the animal, the

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primary enclosure for the animal, and the owner's records relating to the animal to ensure compliance with these regulations.

9. Miscellaneous Regulations

(a) Within 10 days after the relocation, death, sale, or other disposition of the animal, the owner of the animal shall notify the Department in writing of the relocation, death, sale, or other disposition.

(b) An owner of a dangerous wild animal shall notify the Department of any attack of a human by the animal within 48 hours of the attack.

(c) An owner of a dangerous wild animal shall immediately notify the animal registration agency and the local law enforcement agency of any escape of the animal. An owner of a dangerous wild animal that escapes is liable for all costs incurred in apprehending and confining the animal. An animal registration agency, a law enforcement agency, or an employee of an animal registration agency or law enforcement agency is not liable to an owner of a dangerous wild animal for damages arising in connection with the escape of a dangerous wild animal, including liability for damage, injury, or death caused by the animal during or after the animal's escape, or for injury to or death of the animal as a result of apprehension or confinement of the animal after escape.

(d) An owner of a dangerous wild animal shall keep and confine the animal in accordance with the caging requirements and standards established by the Texas Board of Health. Those requirements may be found in the Texas Administrative Code, at 29 TAC § 169.31.

(e) The Department may approve a deviation from the caging requirements and standards established by the Texas Board of Health, if:

- 1) the Department has good cause for the deviation; and
- (2) the deviation:
 - (A) does not compromise the public's health and safety;
 - (B) does not reduce the total area of the primary enclosure below that established by the board; and
 - (C) does not otherwise adversely affect the overall welfare of the animal involved.

10. Criminal Penalty

(a) A person commits an offense if the person violates the provisions of Sections 6, 8, or 9 above. Each animal with respect to which there is a violation and each day that a violation continues is a separate offense.

(b) An offense under this section is a Class C misdemeanor.

11. Civil Enforcement

(a) Potter County may recover from a person who violates 6 (a) a civil penalty of not less than \$200 and not more than \$2,000 for each animal with respect to which there is a violation and for each day the violation continues.

(b) Potter County may also recover the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the animal registration agency in the civil action. Costs or fees recovered under this subsection shall be credited to the operating account from which payment for the animal registration agency's expenditures was made.

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COMMISSIONERS COURT MINUTES

12. Severability


APR 12 2004

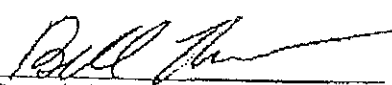
If any provision of these regulations or its application to any person or circumstances is held invalid for any reason, the invalidity does not affect any other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

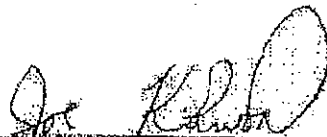
13. Effective Date.

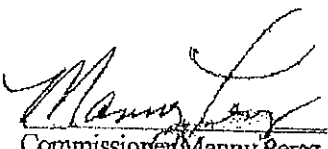
These regulations shall be effective on June 1 2004.


Adopted April 12, 2004


Arthur Ware
County Judge


Commissioner Bill Thomas
Precinct 1



Commissioner Joe Kirkwood
Precinct 3


Commissioner Manny Perez
Precinct 2


Commissioner Jim Lawrence
Precinct 4

ATTEST:




MRS. SUE DANIEL
POTTER COUNTY CLERK

Westlaw

V.T.C.A., Health & Safety Code § 822.105



Effective: September 1, 2001

Vernon's Texas Statutes and Codes Annotated Currentness
 Health and Safety Code (Refs & Annos)
 Title 10. Health and Safety of Animals
 Chapter 822. Regulation of Animals
 Subchapter E. Dangerous Wild Animals
 → § 822.105. Denial or Revocation of Certificate of Registration; Appeal

(a) If the animal registration agency finds that an application for an original or renewal certificate of registration under this subchapter does not meet the requirements of Section 822.104 or, after inspection, that an applicant has not complied with this subchapter, the animal registration agency shall deny the applicant a certificate of registration and give the applicant written notice of the denial and the reasons for the denial.

(b) If the animal registration agency finds, after inspection, that a registered owner provided false information in or in connection with the application or has not complied with this subchapter, the animal registration agency shall revoke the certificate of registration and give the owner written notice of the revocation and the reasons for the revocation.

(c) A person may appeal the denial of an original or renewal certificate of registration or the revocation of a certificate of registration to the justice court for the precinct in which the animal is located or the municipal court in the municipality in which the animal is located not later than the 15th day after the date the certificate of registration is denied or revoked. Either party may appeal the decision of the justice or municipal court to a county court or county court at law in the county in which the justice or municipal court is located. The decision of the county court or county court at law may not be appealed.

(d) The filing of an appeal of the denial or revocation of a certificate of registration under Subsection (c) stays the denial or revocation until the court rules on the appeal.

CREDIT(S)

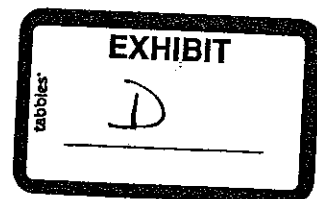
Added by Acts 2001, 77th Leg., ch. 54, § 1, eff. Sept. 1, 2001.

Current through the end of the 2009 Regular and First Called Sessions of the 81st Legislature

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**LAW OFFICES OF
DONALD D. FEARE
ATTORNEY AND COUNSELOR AT LAW**

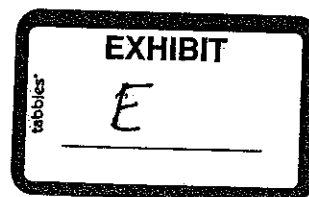
721 W. Division Street
Arlington, Texas 76012

Tel: (Metro) (817) 543-2202
Facsimile: (817) 861-7611

September 27, 2010

Via Hand-Delivery/ Exhibit Notebook

The Honorable Brian Thomas
Potter County Sheriff
608 S. Pierce Street
Amarillo, TX 79101



Re: Revocation of Carmel ("Charlie") Azzopardi's Dangerous Wild Animal
Registration Certificates

Dear Sheriff Thomas:

This letter is written on behalf of PETA and its over 2 million members and supporters, to request that you immediately revoke Carmel ("Charlie") Azzopardi's dangerous wild animal certificates of registration as mandated by order of the Potter County Commissioners Court and the Texas Dangerous Wild Animals Act ("DWA").¹

When Potter County opted to allow "dangerous wild animals"² in the unincorporated areas of its jurisdiction, the Potter County Commissioner's Court determined that "reasonable regulations will accomplish the purpose of protecting and enhancing the public's safety and providing a safe, healthy, and humane environment for the animal."³ In the case of Charlie Azzopardi, this assumption has been proven false. In the six years that Azzopardi has held certificates of registration for dangerous wild animals, he has operated in violation of the DWA on *hundreds* of days, with many of the violations placing both the public and the animals at risk.

The DWA provides specific requirements registrants must follow to obtain and retain certificates of registration. Where a registrant does not comply with these requirements,

¹ The Potter County Commissioners Court Order and the Texas Dangerous Wild Animals Act, TEX. HEALTH & SAFETY CODE ANN. § § 822.101 *et seq.*, are attached as Exhibits 1 and 2, respectively. The Order mirrors the DWA in most respects and for simplicity all further references in this letter to the DWA also refer to the Order.

² The definition of "dangerous wild animal" under the DWA includes chimpanzees and tigers. TEX. HEALTH & SAFETY CODE ANN. § 822.101

³ *Order Regulating the Keeping of Dangerous Wild Animals Pursuant to Chapter 822, Health & Safety Code and Creating a Criminal Penalty*, 8, COMMISSIONER'S COURT OF POTTER COUNTY TEXAS, Apr. 12, 2004.

the statute provides that the registration agency *shall* revoke a registrant's certificates. Azzopardi's violations to date include a repeated failure to maintain current certificates of registration for the dangerous wild animals in his possession; repeated failure to possess liability insurance; repeated failure to notify the animal registration agency of an attack on a human within 48 hours; repeated failure to notify the animal registration agency of the death, sale, or other disposition of animals within 10 days; and repeated failure to provide copies of certificates of registration to the Texas Board of Health. As such, the DWA imposes a non-discretionary duty upon the Potter County Sheriff's department to revoke Azzopardi's certificates of registration.

The Dangerous Wild Animals Act

The DWA requires that all persons who "own, harbor, or have custody or control" over dangerous wild animals hold a certificate of registration for each animal possessed.⁴ According to the most recent certificates of registration, dated July 2, 2010, Azzopardi possesses 13 "dangerous wild animals:" five chimpanzees and eight tigers.⁵ Azzopardi's facility, the Texas Wildlife Center, is located at 4401 Reding Road in Amarillo, Texas, and the Potter County Sheriff's Department is the "animal registration agency," charged with enforcing the DWA and its implementing regulations in that jurisdiction.⁶

The DWA requires that:

1. An applicant for a new or renewal certificate of registration file an application with the animal registration agency on a form provided by that agency.⁷ The application must include:
 - a. Name, address, and telephone number of the applicant;
 - b. Complete identification of each animal, including species, sex, age, if known, and any identifying marks or coloration that would aid in the identification of the animal;
 - c. The exact location where each animal is to be kept;
 - d. A sworn statement that:
 - i. all information is complete and accurate; and
 - ii. the applicant has read the DWA and that all facilities used by the applicant to confine or enclose the animal comply with its requirements; and
 - e. Any other information the animal registration agency may require.
2. Along with the application, the applicant must include:
 - a. A nonrefundable application fee;⁹

⁴ TEX. HEALTH & SAFETY CODE ANN. § 822.103(a); *Commissioner's Order*, *supra* note 3, 6(a).

⁵ *Potter County, Texas Application for Certificate of Registration for Dangerous Wild Animals*, May 28, 2004 – July 7, 2010. Exhibit 3. Azzopardi's original and renewal applications are attached as exhibits 3-8.

⁶ *Commissioner's Order*, *supra* note 3, 3.

⁷ TEX. HEALTH & SAFETY CODE ANN. § 822.107.

⁸ *Id.*

⁹ The amount of which is established by the animal registration agency. *See id.* § 822.103. The fee in Potter County is \$50 for each animal, up to a maximum of \$500. *Commissioner's Order*, *supra* note 3.

- b. Proof that the applicant has liability insurance in an amount not less than \$100,000 for each occurrence, for liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the wild animal;¹⁰
 - c. A color photograph of each animal being registered taken not earlier than the 30th day before the date the application is filed;¹¹
 - d. A photograph and statement of the dimensions of the primary enclosure in which each animal is to be kept and a scale diagram of the premises where each animal will be kept, including the location of any perimeter fencing and any residence on the premises;¹² and
 - e. A statement signed by a veterinarian licensed to practice in Texas stating that the veterinarian:¹³
 - i. Inspected each animal being registered not earlier than the 30th day before the date of the filing of the renewal application; and
 - ii. Finds that the care and treatment of each animal by the owner meets or exceeds the standards prescribed under this subchapter.
3. Registrants must renew registration certificates each year.¹⁴
 4. Registrants must prominently display the certificate at the premises where each animal that is the subject of the certificate of registration is kept.¹⁵
 5. Registrants must notify the animal registration agency, *in writing*, within 10 days after the death, sale, or other disposition of a dangerous wild animal.¹⁶
 6. Registrants may not permanently relocate dangerous wild animals without notifying the animal registration agency, *in writing*, of the exact location to which the animal will be relocated.¹⁷
 7. Registrants must notify the animal registration agency of an attack of a human within 48 hours of the attack.¹⁸
 8. Registrants must immediately notify the animal registration agency and local law enforcement of an escape of an animal.¹⁹
 9. Registrants must provide the Texas Board of Health with a copy of each registration certificate within ten days of issuance.²⁰
 10. Registrants must comply with the caging requirement regulations established by the Texas Board of Health.²¹
 11. Registrants must comply with all applicable standards of the Animal Welfare Act (AWA), 7 USC §§ 2131-2159, related to: facilities and operations, animal health and husbandry, and veterinary care.²²

¹⁰ TEX. HEALTH & SAFETY CODE ANN. § 822.107; *Commissioner's Order*, *supra* note 3.

¹¹ *See id.* § 822.104(c)(3); *Commissioner's Order*, *supra* note 3, 6(e)(3).

¹² *See id.* § 822.104(c)(4); *Commissioner's Order*, *supra* note 3, (e)(4).

¹³ *See id.* § 822.104(d); *Commissioner's Order*, *supra* note 3, 6(f).

¹⁴ *See id.* § 822.103; *Commissioner's Order*, *supra* note 3, 6(b).

¹⁵ *See id.* § 822.106; *Commissioner's Order*, *supra* note 3, 6(i).

¹⁶ *See id.* § 822.109; *Commissioner's Order*, *supra* note 3, 9(a).

¹⁷ *See id.* § 822.109

¹⁸ *See id.* § 822.110; *supra* note 3, 9(b).

¹⁹ *Id.*; *Commissioner's Order*, *supra* note 3, 9(c).

²⁰ *See* TEX. HEALTH & SAFETY CODE ANN. § 822.106

²¹ *See id.* § 822.111; Tex. Admin. Code tit. 25, § 169.131; *Commissioner's Order*, *supra* note 3, 9(d). Exhibit 9.

²² *See* TEX. HEALTH & SAFETY CODE ANN. § 822.112. *See* Exhibit 10.

12. Registrants must keep a written log for each animal documenting that animal's veterinary care, and must make a copy available to the animal registration agency, or its agent upon request.²³
13. When transporting a dangerous wild animal, registrants must comply with all transportation standards that apply to that animal under the AWA.²⁴

Without exception, the DWA requires that the animal registration agency “shall revoke the certificate of registration” when it finds that a registrant “has not complied with this subchapter,”²⁵ as is the case with Azzopardi. Under Texas law, use of “shall” imposes a duty unless the context in which the term is used “necessarily” requires a different construction.²⁶ Here, given the intent of the statute, and absence of qualifying language, there is a non-discretionary duty on the part of the County to revoke Azzopardi's certificates of registration.

Violations of the DWA by Azzopardi

Azzopardi's current certificates of registration, dated July 2, 2010, indicated that he possesses five chimpanzees and eight tigers.²⁷ However, at least 13 animals remain unaccounted for, and the certificates have repeatedly lapsed, as has the insurance intended to reimburse the public in the event of an accident. Azzopardi's history of poor animal care and violations of federal animal protection statutes, as discussed below, and his lies to local authorities lay bare the need to remove these animals from his possession without further delay, for the sake of the public and for the sake of the animals.

Failure to Provide Notice Within 48 Hours of an Attack on a Human

Twice, Azzopardi has denied attacks by animals covered by the DWA that occurred on his premises and has deliberately misled authorities as to the origin of injuries that were so severe that hospitalization was required. In both instances, Azzopardi's deceit was uncovered only when third-parties stepped forward to set the record straight. This conduct is in clear violation of TEX. HEALTH & SAFETY CODE ANN. § 822.110.

June 9, 2010, Attack by a Chimpanzee

On June 9, 2010, the Potter County Sheriff's department was dispatched to Baptist St. Anthony's Hospital in Amarillo, Texas, in response to a report of a gunshot wound victim, Azzopardi.²⁸ Doctors determined that a bullet entered Azzopardi's lower leg and became lodged in his ankle.²⁹ Azzopardi claimed that he was injured when he was shooting at a rattlesnake and a bullet ricocheted off a piece of metal and into his leg.³⁰

²³ See *Id.*

²⁴ *Id.* See Exhibit 10.

²⁵ See *id.* § 822.105 (emphasis added)

²⁶ See *id.* § 311.016 (emphasis added)

²⁷ Exhibit 3.

²⁸ *Incident Report 2010-009964, POTTER COUNTY SHERIFF'S DEPARTMENT, June 30, 2010. Exhibit 11.*

²⁹ *Id.*

³⁰ *Id.*

On June 11, 2010, a whistleblower reported to PETA that Azzopardi had lied to police and was actually injured when he shot and killed a chimpanzee who attacked him.³¹ On June 16, after PETA obtained all information available from the whistleblower, the Potter County Sheriff's Department received a letter from PETA containing this information.³²

On June 17, 2010, three Potter County deputies went to Azzopardi's compound to question him about the whistleblower's allegations.³³ They made contact with his fiancé, Paula Reams, requesting that she call Azzopardi, who was off the premises.³⁴ A deputy spoke with Azzopardi on the phone, informed him of the allegations and requested that he come home to clarify what happened.³⁵ Prior to Azzopardi's arrival, an inventory of the chimpanzees revealed that one animal, a female named "Candy Angel," was missing.³⁶ Deputies asked Reams what happened to her, and she admitted that Azzopardi shot and killed Candy Angel, but maintained that he was injured shooting at a snake – even using the stress of the snake incident as an excuse for failing to report an attack within 48 hours, as required by the DWA.³⁷

When Azzopardi arrived, he told the deputy that Candy Angel attacked him while he was cleaning the chimpanzee enclosure; that he shot and killed her, and buried her on the grounds of the compound.³⁸ He insisted that his injuries resulted from the snake incident, and that he and Reams simply forgot to report Candy Angel's death.³⁹ A deputy told Azzopardi that the incident was suspicious and that Azzopardi needed to tell the truth.⁴⁰ Azzopardi then finally admitted that he was injured when he shot Candy Angel and a bullet ricocheted into his leg.⁴¹ He admitted that the snake incident was a fabrication, and claimed that he lied because he didn't want to get "bad press" as a result of Candy Angel's attack and death.⁴² As such, Azzopardi is in violation of the 48 hour notice requirement for attacks on humans, a Class C misdemeanor.⁴³

January 27, 2002 Attack by a Tiger

The above incident was not the first time Azzopardi lied to authorities regarding a dangerous wild animal attack, however. Azzopardi previously violated this provision when, on January 27, 2002, he lied to deputies, claiming that he sustained severe puncture wounds from a dog, when in fact, he was attacked by a tiger.⁴⁴ In that case,

³¹ Note: Texas law requires holders of dangerous animal registrations to notify the animal registration agency within 48 hours if a registered animal attacks a human. See TEX. HEALTH & SAFETY CODE ANN. § 822.110

³² *Incident Report 2010-009964*, POTTER COUNTY SHERIFF'S DEPARTMENT, June 30, 2010

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See, TEX. HEALTH & SAFETY CODE ANN. § 822.110

⁴⁴ *Incident Report 2002-001332*, POTTER COUNTY SHERIFF'S DEPARTMENT, Jan. 27, 2002. Exhibit 12.

Azzopardi continued to lie until a family friend, who had claimed to be a witness to the fabricated dog attack, confessed to deputies that Azzopardi had actually been bitten on the leg by a tiger.⁴⁵

Possession of Dangerous Wild Animals Without Certificates of Registration

Public records obtained from the Potter County Sheriff's Department reflect a pattern of lapses in Azzopardi's certificates of registration from the time of his first renewal in 2005, in clear violation of TEX. HEALTH & SAFETY CODE ANN. § 822.103(a).⁴⁶

- Renewal application for the original certificates of registration that expired on May 31, 2005:
The renewal application was dated July 11, 2005, though the renewed certificates were back-dated June 1, 2005.
Azzopardi was without certificates of registration for 14 animals for 40 days.
- Renewal application for certificates of registration that expired on May 31, 2006:
The renewal application was dated November 8, 2006. Renewed certificates are dated November 10, 2006.
Azzopardi was without certificates of registration for 12 animals for 160 days.
- Renewal application for certificates that expired on November 9, 2007:
The renewal application was dated November 14, 2007 though the renewed certificates were back-dated November 10, 2007.
Azzopardi was without certificates of registration for 12 animals for four days.
- Renewal application for certificates of registration that expired on November 9, 2008:
The renewal application was dated November 26, 2008. Renewed certificates were dated March 27, 2009.
Azzopardi was without certificates of registration for 17 animals for 16 days.
- Renewal application for certificates of registration that expired on March 26, 2010:
The renewal application was dated July 7, 2010 though the renewed certificates were back-dated July 2, 2010.
Azzopardi was without certificates of registration for 13 animals for 102 days. Chimpanzee Candy Angel was unregistered for 74 days, from March 27, 2010 until she was killed by Azzopardi on June 9, 2010.

Azzopardi should not have been allowed to continue possession of these animals once the certificates lapsed. During that time he was in noncompliance with the most fundamental requirement of the DWA. As a result, the animal registration agency and the public did not have access to current information such as the species and numbers of dangerous wild animals at the Texas Wildlife Center, or assurances that the animals' cages were secure and that a veterinarian had examined each animal and determined that the animals were being treated in accordance with the minimum standards required by the DWA. During

⁴⁵ *Id.*

⁴⁶ *Potter County, Texas Application for Certificate of Registration for Dangerous Wild Animals*, May 28, 2004 – July 7, 2010. Exhibits 3-8.

these lengthy lapses, the purpose of the DWA was completely undermined, Azzopardi's possession of dangerous wild animals was completely unregulated, and the public was placed in danger as a result

Failure to Maintain Liability Insurance

Public records reveal lapses in Azzopardi's liability insurance policies for the following periods: April 5, 2006 - April 18, 2006; April, 20, 2008 - June 23, 2008; June 25, 2009 - November 17, 2009.⁴⁷ This coverage is intended to protect individual members of the public who could suffer injuries to their persons or property from dangerous wild animals. Azzopardi's repeated lapses in insurance coverage seriously jeopardize the economic interests of the public, and are clear violations of TEX. HEALTH & SAFETY CODE ANN. § 822.107.

Failure to Provide Notice Within 10 Days of Death, Sale, or Other Disposition of Dangerous Wild Animals

Public records indicate that at least 13 dangerous wild animals have left Azzopardi's possession since 2005: 6 tigers, 1 lion, 1 jaguar, 2 cougars, and 3 chimpanzees, and that Azzopardi has failed to notify the Potter County Sheriff's Department, in writing, of the disposition of these animals, in violation of TEX. HEALTH & SAFETY CODE ANN. § 822.109. Given Azzopardi's predisposition to be dishonest with authorities, the County has no assurance that these animals do not reside, unregistered, somewhere in the county or perhaps may even have escaped.

This violation also raises additional concerns in light of the fact that Azzopardi pled guilty to illegal trafficking of endangered species in 2006, after he sold two clouded leopards, in violation of the federal Endangered Species Act, to an undercover agent with the United States Fish & Wildlife Service (USFWS).⁴⁸ This incident resulted in a conviction and a fine of \$2,000.⁴⁹ Azzopardi was also cited by the USFWS in 2004 for the unlawful possession of raptors in violation of the federal Migratory Bird Treaty Act and fined \$4,200.⁵⁰

As a result of the 2006 ESA conviction, the United States Department of Agriculture (USDA) revoked Azzopardi's license to exhibit animals, which he had held pursuant to the federal Animal Welfare Act (AWA) despite repeated violations of the AWA, as discussed more fully below.⁵¹ Subsequently, the USDA has refused to grant licenses to

⁴⁷ *Potter County, Texas Application for Certificate of Registration for Dangerous Wild Animals*, May 28, 2004 – July 7, 2010. Exhibits 3-8.

⁴⁸ *United States v. Azzopardi*, Factual Resume, Case No. 2:06-cr-00004-BB, March 29, 2006. Exhibit 13.

⁴⁹ *Id.*

⁵⁰ *Lemis 2000 Investigations Subsystem: Case Summary Data*, Case Number: 2004200877, Case Title: Azzopardi, Carmel, Feb. 9, 2004. Exhibit 14.

⁵¹ *In re: Amarillo Wildlife Refuge, Inc.*, UNITED STATES DEPARTMENT OF AGRICULTURE BEFORE THE SECRETARY OF AGRICULTURE, AWA Docket No. 07-0077, March 24, 2008. Exhibit 15.

former employees and associates of Azzopardi, in apparent recognition that these efforts amount to a ploy by Azzopardi to circumvent the revocation.⁵²

Azzopardi has a history of violations of animal protection statutes, at least one of which involved the illegal transport and sale of an endangered species – and a species covered by the DWA. At this time, 13 animals remain unaccounted for. Yet, apparently Azzopardi has continued to operate for years in violation of the DWA's requirement that all deaths, sales, and other dispositions of the animals in his possession be reported to Potter County.

Failure to Provide Copies of Certificates of Registration to the Texas Board of Health

According to documents provided to PETA pursuant to a public records request to the Texas Board of Health, Azzopardi has failed to provide copies of certificates of registration to the Board since 2005, in clear violation of TEX. HEALTH & SAFETY CODE ANN. § 822.111.⁵³ Thus, the state agency responsible for the control of zoonotic diseases, diseases transmitted by animals -- including exotic animals -- to humans, remains largely if not wholly unaware of the presence of these animals in Potter County.

Violations of the Federal Animal Welfare Act

Despite repeated non-compliance with the minimal standards of care imposed by the federal Animal Welfare Act, in violation of TEX. HEALTH & SAFETY CODE ANN. § 822.112, Azzopardi continued to hold certificates of registration even after his license was revoked by the USDA in 2008.⁵⁴

The facilities and animals held by AWA licensees are subject to inspections by the USDA for compliance with the requirements of the AWA. In general, USDA inspections are conducted once a year and often on a predictable schedule, and in the case of Azzopardi a PETA investigator who worked at his facility in 2003, reported that Azzopardi was provided advance notice of inspections by USDA personnel on at least once occasion.⁵⁵ Yet, despite the lax regulatory regime under the AWA, Azzopardi was continually cited for AWA violations, including several violations that he failed to correct, during the time that he held a license:

- USDA Inspection Report dated 11/28/06⁵⁶
 - A capuchin pen had “an accumulation of grime, dirt, and other debris that have not been washed or sanitized for a period of time and [are] no longer impervious to moisture.” (Violation of 9 C.F.R. § 3.75(c)(1))

⁵² E-mail from Robert M. Gibbens, Director, Western Region, United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Care, to Lisa Wathne, Senior Captive Animal Specialist, PETA (August 17, 2010) (on file with PETA).

⁵³ *Texas Department of State Health Services Daily Remittances*, Aug. 5, 2005. Exhibit 16.

⁵⁴ *Id.*

⁵⁵ Documentation on file with PETA.

⁵⁶ *USDA Inspection Report, Certificate: 74-C-0486*, Nov. 28, 2006. Exhibit 17.

- USDA Inspection Report dated 8/11/05⁵⁷
 - A tiger enclosure lacked sufficient “shade to allow animals to protect themselves from direct sunlight and possible overheating or discomfort.” (Violation of 9 C.F.R. § 3.127)
 - An “insufficient number of employees to maintain the professionally acceptable level of husbandry practices” established by the AWA. (Violation of 9 C.F.R. § 3.132)
- USDA Inspection Report dated 3/16/04⁵⁸
 - Failure to have adequate barriers between animal exhibitions and the general viewing public. (Violation of 9 C.F.R. § 2.131(b)(1))
- USDA Inspection Report dated 1/14/04⁵⁹
 - Failure to obtain a veterinarian with sufficient primate training or experience, or sufficient training in exotic cat medicine. (Violation of 9 C.F.R. § 2.40)
 - Failure to provide environmental enhancement to promote psychological well-being for the non-humane primates at the facility, including chimpanzees.⁶⁰ (Violation of 9 C.F.R. § 3.181(a) and (c))
- USDA Inspection Report dated 12/14/03⁶¹
 - No current program for veterinary care. (Violation of 9 C.F.R. § 2.40(a)).
 - Chimpanzees with moderate to severe alopecia. One chimpanzee, Edith, “also has what appear to be abrasions or some kind of skin lesions along with hair loss.”⁶² (Violation of 9 C.F.R. § 2.40)
 - An elderly leopard displayed stiffness in walking, reluctance to move in a normal fashion, and displayed a hunched position. (Violation of 9 C.F.R. § 2.40)
 - Inspectors discovered that Azzopardi was feeding dog food as the main component of the primate diet, which is inadequate. (Violation of 9 C.F.R. § 3.82)
 - Expired drugs. (Violation of 9 C.F.R. § 2.40)
- USDA Inspection Report dated 5/13/02⁶³
 - Failure to provide adequate veterinary care. (Violation of 9 C.F.R. § 2.40(a)).

⁵⁷ *USDA Inspection Report*, Certificate: 74-C-0486, Aug. 11, 2005. Exhibit 18.

⁵⁸ *USDA Inspection Report*, Certificate: 74-C-0486, March 16, 2004. Exhibit 19.

⁵⁹ *USDA Inspection Report*, Certificate: 74-C-0486, Jan. 14, 2004. Exhibit 20.

⁶⁰ According to the Association of Zoos and Aquarium’s (AZA) Chimpanzee Care Manual, “lack of appropriate enrichment has been associated with an increase in social aggression and abnormal behaviors in apes.” The AZA recommends that chimpanzee enclosures should “promote species appropriate behavior, physical/mental development, social interactions, environmental complexity, psychological well-being, behavioral enrichment, ... and the opportunity for the chimpanzees to have as much control over their environment as possible,” and recommends climbing structures, trees, large rocks, termite mounds, shade and weather shelters, and hiding places or dens to reduce boredom. *Chimpanzee Care Manual*, Association of Zoos and Aquariums, Dec. 8, 2009.

⁶¹ *USDA Inspection Report*, Certificate: 74-C-0486, Dec. 14, 2003. Exhibit 21.

⁶² See Exhibit 22.

⁶³ *USDA Inspection Report*, Certificate: 74-C-0486, May 13, 2002. Exhibit 23.

- Failure to provide environmental enrichment to promote psychological well-being. (Violation of 9 C.F.R. § 3.81)
- Inspectors found foul-smelling meat, covered with flies, and fly larvae in two animal enclosures. (9 C.F.R. § 3.131(c))
- USDA Inspection Report dated 9/16/01⁶⁴
 - Failure to provide environmental enhancement to promote psychological well-being. (Violation of 9 C.F.R. § 3.81)
 - Providing insufficient space for normal postural and social adjustments to exotic cats. (9 C.F.R. § 3.128)
 - Inspectors found that exotic cats were being fed meat that looked discolored, was covered with dirt, and was not being eaten. (9 C.F.R. § 3.129(a))

In addition to the AWA violations, photographs and video obtained during a 2003 investigation in which a PETA employee worked at the so-called "refuge" for 3 months, reveal filthy and overcrowded primate enclosures, littered with trash and feces, and lacking psychological enrichment for these complex, social creatures.⁶⁵ Video also reveals animals suffering without veterinary care, mildewed water buckets, and one employee violently handling a white tiger cub who was being used as a photo opportunity for visitors to Azzopardi's facility.⁶⁶

Azzopardi's deplorable animal welfare record creates grave concerns for the health and safety of the animals currently in Azzopardi's custody. We urge the immediate inspection of the Texas Wildlife Center by the Potter County Sheriff's Department, in cooperation with an exotic animal expert who is qualified to examine the chimpanzees and tigers, and the conditions in which they are held.

Criminal and Civil Penalties

In addition to revocation of Azzopardi's certificates of registration, PETA would like to draw your attention to the criminal and civil penalties available to Potter County under the Potter County Commissioners Order and the DWA. Given Azzopardi's flagrant, repeated violations of the law, PETA urges Potter County to seek criminal prosecution, as well as the imposition of fines that have the potential to amount to millions of dollars.

Criminal Penalties

TEX. HEALTH & SAFETY CODE ANN. § 822.113 provides for the following conduct to be prosecuted as Class C misdemeanors with associated fines of up to \$500 per animal per day of violation:

⁶⁴ *USDA Inspection Report*, Certificate: 74-C-0486, Sept. 18, 2001. Exhibit 24.

⁶⁵ Photographs attached as Exhibit 24. See also *PETA Investigation Reveals Horrific Conditions at Pseudo-Sanctuary*, available at

<http://features.peta.org/AmarilloWildlifeRefuge/default.asp>; video available at:

<http://www.petatv.com/tvpopup/video.asp?video=amarillo&Player=qt>

⁶⁶ *Id.*

1. Failure to hold certificates of registration for all dangerous wild animals in a person's possession, custody, or control.
2. Failure to prominently display certificates of registration at the premises where each animal that is the subject of the registration is kept.
3. Failure to submit copies of certificates of registration to the Texas Board of Health within 10 days of issuance.
4. Failure to report an attack by a dangerous wild animal on a human within 48 hours of the attack.
5. Failure to immediately report the escape of a dangerous wild animal to the animal registration agency and local law enforcement authorities.
6. Selling or otherwise transferring a dangerous wild animal to a person who does not have a certificate of registration for that animal.

The Potter County Commissioners Order provides for the following additional conduct to be prosecuted as Class C misdemeanors with associated fines of up to \$500 per animal per day of violation:

1. Failure to notify the animal registration agency within 10 days of the death, sale, or other disposition of a dangerous wild animal.⁶⁷
2. Failure to keep and confine animals in accordance with the caging requirements and standards established by the Texas Board of Health.⁶⁸

The statute of limitations for the misdemeanors perpetrated by Azzopardi is two years.⁶⁹

Possessing Dangerous Wild Animals Without Certificates of Registration and Failure to Prominently Display Certificates of Registration

Azzopardi has allowed his certificates of registration to lapse for approximately 118 days in the past two years, and at all times that he failed to possess certificates of registration it follows that he failed to display those certificates on his premises. Although the number of animals in Azzopardi's possession has varied from time to time, he is subject to prosecution for approximately 1,672 violations of each of these provisions, depending on the date criminal charges are filed. If the maximum fine were imposed, the amount could total as much as \$836,000.

Failure to Provide Copies of Certificates of Registration to the Texas Board of Health

Azzopardi has been in violation of this provision since May 31, 2006. And although the statute of limitations is two years from the date of the commission of the offense, Azzopardi remains subject to prosecution for more than 8,000 violations of this provision, depending on the date criminal charges are filed. If the maximum fine were imposed, the amount could total in the millions of dollars.

Failure to Provide Notice Within 48 Hours of an Attack on a Human

⁶⁷ Commissioner's Order, *supra* note 1, 9(a).

⁶⁸ *Id.* at 9(d).

⁶⁹ TEX. CODE CRIM. PROC. Art. 12.02

Azzopardi is subject to prosecution for the 2010 violation of this provision because he failed to notify the animal registration agency of the attack by Candy Angel. Only when pressed by Potter County sheriff's deputies a full 8 days after the attack, did Azzopardi admit to the attack. Azzopardi violated this provision for 6 days. If the maximum fine were imposed, the amount would total \$ 3,000. Though Azzopardi did admit to the attack on June 17, 2010, he has yet to provide the animal registration agency with the written notice required by the DWA.

Failure to Provide Notice Within 10 Days of Death, Sale, or Other Disposition

As discussed above, 13 animals remain unaccounted for since Azzopardi's initial certificates of registration were issued on June 1, 2004. Given the statute of limitations, Azzopardi is subject to prosecution for approximately 65 violations of this provision. If the maximum fine were imposed, the amount could total more than \$30,000.

Thus, Azzopardi could face millions of dollars in criminal penalties for the violations of the Potter County Commissioners Order and the DWA that he has committed just in the past two years. While the potential fines are significant, PETA firmly believes that Azzopardi should be punished to the fullest extent of the law for his flagrant disregard of the DWA, irrespective of any fines that may be imposed.

Civil Penalties

Pursuant to TEX. HEALTH & SAFETY CODE ANN. § 822.114, a person who owns, harbors, or has custody or control over a dangerous wild animal without holding a certificate of registration, is subject to suit by the county in which the animals are held for a civil penalty of not less than \$200 nor more than \$2,000 for each animal with respect to which there is a violation, and for each day the violation continues. The statute of limitations for civil actions in Texas where no other limitations period is prescribed by statute, as is the case here, is four years after the day the cause of action accrues.⁷⁰

Thus, Azzopardi can be held liable to Potter County for approximately 2,356 violations of TEX. HEALTH & SAFETY CODE ANN. § 822.103(a), one for each day that he failed to have a current certificate of registration for each animal in his custody, in the past four years. If Potter County seeks and is awarded the maximum \$2,000 penalty for each violation, it is entitled to a judgment that could reach over \$4 million.

Conclusion

Azzopardi's documented disrespect for the DWA coupled with the fact that so many violations of the statute are apparent from no more than an examination of the few public records that are available, indicates that additional violations of the DWA likely exist.

For years, Azzopardi has repeatedly failed to comply with the mandates of the DWA, placing both the public and the animals in his possession in jeopardy. He has a history of

⁷⁰ TEX. CIVIL PRACTICE AND REMEDIES CODE § 16.051

violations of the federal AWA, and has been convicted of violations of the federal ESA. Azzopardi has lied to police about animal attacks on at least two occasions and continually flouts even the most rudimentary requirement of the DWA – that he maintain current certificates of registration for the animals he possesses. Azzopardi's refusal to comply with the law jeopardizes the safety and economic interests of the public and as the Potter County animal registration agency, Texas law requires that the Potter County Sheriff's Department revoke Azzopardi's dangerous wild animal certificates of registration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Donald D. Feare". The signature is written in dark ink and is positioned above the printed name.

Donald D. Feare



OFFICE OF THE COUNTY ATTORNEY
Potter County, Texas

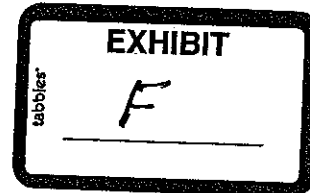
SCOTT BRUMLEY
COUNTY ATTORNEY

CIVIL DIVISION

DAVID G. KEMP
First Assistant County Attorney
C. WADE OVERSTREET
Civil Division Chief
PHILLIP M. CARTER
CHARLES GRIFFIN
SHIRLEY VESSEL, AVIS SNYDER
Paralegals

Writer's direct e-mail:
davidkemp@co.potter.tx.us

Mr. Donald D. Feare
721 W. Division Street
Arlington, Texas 76012



Re: Dangerous Wild Animals
Certificate of Registration of Carmel Azzopardi

Dear Mr. Feare:

We write as a result of your letter of September 27, 2010, and the related meeting between representatives of PETA and the Sheriff and the Potter County Attorney. At the conclusion of that meeting, we indicated we would provide a response on behalf of the County to PETA's request to revoke Mr. Azzopardi's certificate, and we provide that response now.

At this time, we will not pursue a revocation of Mr. Azzopardi's certificate of registration. We are satisfied with Mr. Azzopardi's compliance with the Potter County's registration requirements. Based on our current knowledge, if any violations exist, they are not serious enough to warrant cancellation of the license. We understand that your position is that the licensing agency has a mandatory duty to revoke a certificate of registration upon violation of Chapter 822, Subchapter E of the Texas Health & Safety Code ("the Act"). The Act states in relevant part:

If the animal registration agency finds, after inspection, that a registered owner provided false information in or in connection with the application or has not complied with this subchapter, the animal registration agency shall revoke the certificate of registration and give the owner written notice of the revocation and the reasons for the revocation.
--Health & Safety Code § 822.105 (b)(emphasis added).

Although the statute contains the mandatory word "shall," compliance is measured not by whether a certificate holder has violated a single provision or provisions of the Act, but rather whether the licensee is in compliance "with this subchapter." We are uncomfortable with the concept that all violations of the Act are created equal, and that even one violation is enough to justify revocation. In short, we believe the animal registration agency still exercises some discretion in the enforcement of the Act.

At our meeting with you, we discussed the failure to report the attack of the chimpanzee that occurred on or about June 9, 2010. An investigation of that event occurred, and no criminal

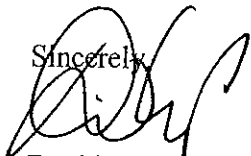
charges were filed. In the opinion of the Sheriff's Department and the Potter County Attorney, though this was a violation of the Act, it is not sufficient to justify revocation. We do agree with PETA, as we indicated by earlier e-mails and during our meeting that Mr. Azzopardi has not reported as required when he has disposed of an animal subject to the Act. While we will discuss this issue with Mr. Azzopardi, and will expect his compliance in the future, if this violation has happened during the current registration period, it is not enough to justify revocation of the registration.

Second, while there are other incidents reported, all of them are past incidents, i.e., during a previous licensing period. In our view, any incidents occurring during the period of a prior registration cannot be used to revoke a current license.

Finally, while we appreciate PETA's interest in the safety and welfare of the animals, we are satisfied that as of this writing Mr. Azzopardi is in compliance with the Act, and that the animals in his care are not being mistreated. Having said that, the Sheriff's Department continues to monitor and inspect the Texas Wildlife Center. The Department is experienced in cases involving animals of many kinds, ranging from dogs to stray cattle to dangerous animals, and will take appropriate action when any violations affecting animals occur. For example, if any mistreatment of animals were to occur, regardless of the status of the registration under the Act, such incident would be investigated by the Sheriff as a possible violation of section 42.092, Texas Penal Code (Cruelty to Nonlivestock Animals), and any other relevant offenses.

We welcome any comments or suggestions you might have in the future, but please be aware that enforcement of the Act, like other law enforcement responsibilities, is a matter within the discretion of the Sheriff's Department.

Sincerely,



David Kemp
First Assistant County Attorney

c: Sheriff Brian Thomas



POTTER COUNTY ATTORNEY

SCOTT BRUMLEY

CIVIL DIVISION

500 South Fillmore Street, Room 303

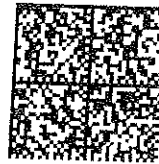
Amarillo, Texas 79101

RETURN SERVICE REQUESTED

Mr. Donald D. Feare
721 W. Division Street
Arlington, Texas 76012

19 WFBZMM 76012

PRESORTED
FIRST CLASS



PHENIX BOOKS

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OCT 14 2010

MAILED FROM ZIP CODE 79101



AFFIDAVIT OF DONALD D. FEARE

COUNTY OF TARRANT §
§
STATE OF TEXAS §

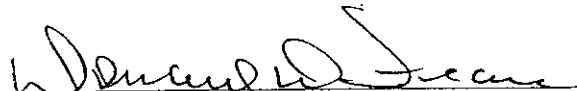
BEFORE ME, the undersigned authority, personally appeared Donald D. Feare, a person known to me and who, upon his oath, did swear that the following facts are within his personal knowledge, true and correct.

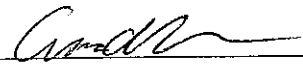
“My name is Donald D. Feare. I am over the age of twenty-one years and in all respects competent to make this affidavit.

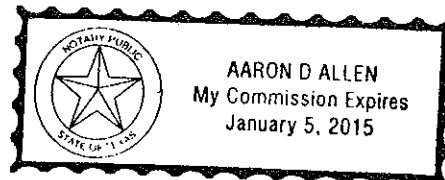
I am the attorney to whom Potter County sent its response letter dated October 14, 2010 regarding the demand that it revoke the certificates for dangerous wild animals which it had issued to Carmel Azzopardi and setting forth its refusal to revoke said certificates. The letter, attached to this petition as an exhibit, is a true and correct copy of the letter received from Potter County.”

FURTHER, Affiant sayeth not.

SIGNED this 2nd day of March, 2011.


DONALD D. FEARE


Notary Public in and for the State of Texas



AFFIDAVIT OF JEFFREY S. KERR, ESQ.

BEFORE me, the undersigned authority, personally appeared Jeffrey S. Kerr, Esq., a person known to me and upon his oath did swear that the following information is within his personal knowledge and is true and correct.

“My name is Jeffrey S. Kerr. I am over the age of twenty-one years and in all respects competent to make this affidavit.

I am an attorney representing People for the Ethical Treatment of Animals (PETA) in its inquiry into the conduct of Carmel (Charles) Azzopardi in relation to his possession of dangerous wild animals in Potter County, Texas and, his failure to comply with provisions of the Dangerous Wild Animal Act (DWA).

Pursuant to the Texas Open Records Act, PETA requested the records in the possession of the Potter County Sheriff's Office and the Texas Department of State Health Services related to Mr. Azzopardi and his dangerous wild animal operation known at times as the Texas Wildlife Center. The Sheriff's Office and the Department of State Health Services produced a number of records in response to those requests. Those records reflect the violations of the DWA contained in the petition seeking a writ of mandamus to which this affidavit is attached.”

FURTHER, affiant sayeth not.

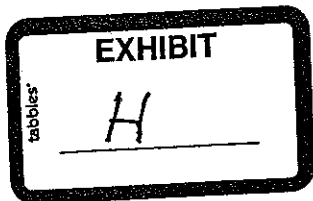
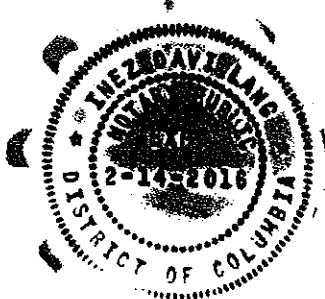
Signed this 7th day of March, 2011.

District of Columbia: SS

Subscribed and sworn to before me, in my presence,
this 7th day of March, 2011

Inez Davi Lang
Inez Davi Lang, Notary Public, D.C.

My commission expires February 14, 2016.



Jeffrey S. Kerr
JEFFREY S. KERR, ESQ.

Inez Davi Lang
Notary Public

INEZ DAVI LANG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 14, 2016

AFFIDAVIT OF JACKI KING

STATE OF TEXAS §
 §
COUNTY OF POTTER §

BEFORE ME, the undersigned authority, personally appeared Jacki King, a person known to me and upon her oath did swear as follows:

“My name is Jacki King. I am over the age of twenty-one years and in all respects competent to make this affidavit.

I reside in Amarillo, Potter County, Texas. My residence is just a few miles from the facility owned by Mr. Azzopardi upon which he keeps a number of large dangerous animals. I am aware of the existence of the Texas Dangerous Wild Animal Act which is suppose to govern the operation and oversight of such facilities, to protect the public. I am also aware of documentation found setting forth the numerous violations of that Act by Mr. Azzopardi and that he still has certificates which permit him to keep dangerous wild animals in Potter County. Those violations are alleged in the petition for a writ of mandamus to which this affidavit is attached. I am very concerned for my safety. The Act is designed to ensure that dangerous wild animals are kept in a safe manner. I feel, since no one is making Mr. Azzopardi comply with each and every portion of the Act that the Texas Legislature thought was necessary, that my safety is at real risk and I am threatened by such violations and am subject to being harmed by the dangerous wild animals Mr. Azzopardi is keeping. I believe the range which any of the dangerous animals Mr. Azzopardi has, should they escape or in any manner gain their freedom, is far greater than the distance from his facility to my house. I am asking that the court order the Sheriff of Potter County, Texas to revoke the certificates issued to Mr. Azzopardi which permit him to keep dangerous wild animals in Potter County, Texas.”

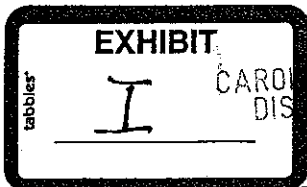
FURTHER, affiant sayeth not.

Jacki L King

JACKI KING

Kimberly Ann Dunn

Notary Public in and for the State of Texas



FILED
CAROLINE WOODBURN
DISTRICT CLERK

2011 MAR 30 A 10 26
POTTER COUNTY, TX

BY _____ DEPUTY

