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OPINION	:	No. 79-805
	:	
of	:	November 20, 1979
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SUBJECT: TRANSPORTING A DOG OR CAT—Violation of Penal Code section 597a by transporting a dog or cat on the unenclosed back of a truck without properly caging or securing the animal would depend on the facts of the particular situation.

The Honorable Mike Roos, Assemblyman for the Forty-Sixth District, has requested an opinion on the following question:

Does transporting a cat or dog on a freeway in the unenclosed portion of a vehicle designed or intended for the transportation of property, without caging or properly securing the animal to the vehicle or enclosing the vehicle in such a manner as to prevent the animal from falling off the vehicle, constitute transporting an animal in a cruel or inhuman manner or subjecting it to torture, suffering or cruelty as prohibited by section 597a of the Penal Code?

CONCLUSION

Transporting a cat or dog on a freeway in the unenclosed portion of a vehicle designed or intended for the transportation of property, without caging or securing the

animal to the vehicle or enclosing the vehicle in such a manner as to prevent the animal from falling off, may, but does not necessarily violate Penal Code section 597a.

ANALYSIS

To the extent pertinent, Penal Code section 597a provides that:

“Whoever carries or causes to be carried in or upon any vehicle or otherwise any domestic animal in a cruel or inhuman manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, is guilty of a misdemeanor;”

The question presented here is whether carrying an animal in the unenclosed part of the back of a truck, while the truck is traveling down a freeway without properly securing the animal to the vehicle, amounts to transporting the animal in a “cruel or inhuman manner” or subjecting it to “torture, suffering, or cruelty” as prohibited by Penal Code section 597a.¹

The resolution of the question requires at the outset a determination of the meaning of the terms “cruel,” “inhuman,” “torture,” and “suffering.”

In this regard we note first that Penal Code section 599b defines the words “torture” and “cruelty” to “include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted;”² (The term “suffering” is thus included in the terms “torture” and “cruelty.”)

The word “cruel” has been similarly defined on several occasions by the Supreme Court.

For example, in construing Penal Code section 361 which prohibits “cruel” treatment of insane persons, the Supreme Court declared: ‘The word ‘cruel’ has a commonly accepted meaning. It means ‘[d]isposed to give pain to others; willing or pleased to hurt or afflict’ ‘Cruel treatment’ as used in a criminal statute has been defined to mean the intentional infliction of pain for the mere purpose of causing pain or indulging vindictive passions.’ (*People v. McCaughan* (1957) 49 Cal. 2d 409, 415.)

¹ We note that there is presently pending before the Legislature a bill which specifically prohibits carrying upon a freeway cats or dogs in the unenclosed portion of a vehicle without properly securing or enclosing the animal. (Assem. Bill No. 214 (1979–1980 Reg. Sess.))

² The definitions in Penal Code section 599b are applicable to the defined terms as used in title 14, part 1 of the Penal Code which includes Penal Code section 597a.

Similarly, in *People v. Anderson* (1972) 6 Cal. 3d 628, the Supreme Court stated: ‘The term cruel in its ordinary meaning—[refers to] causing physical pain or mental anguish of an inhumane or torturous nature. (*Id.* at p. 646.)³

It would therefore appear that the terms “cruel,” “inhuman,” “torture” and “suffering,” as used in Penal Code section 597a, which prohibits transporting animals in a “cruel or inhuman manner,” etc., denotes a transporting of animals in such a manner that causes or permits, without necessity or justification, “physical pain or suffering,” or, at least in such a manner as to indicate that one is “willing or pleased” to have pain or injury or anguish inflicted upon the animal.

In view of this statutorily and judicially delineated content of these terms, it is certainly conceivable that an animal could be transported unsecured in the back of a truck in a manner that subjected it to injury or suffering or to torture and thus come within the prohibitions of Penal Code section 597a. For example, such prohibited inflictions upon the animal could occur if one purposely transports the animal on an extremely cold or rainy day without adequate protection, or so transports it for unduly extended periods of time without food or drink. However, it is equally conceivable that an animal could be transported on the back of a truck in a manner where the actual and apparent effect upon the animal is completely benign, not subjecting it to any injury, anguish or torture even though the animal is not secured or enclosed. Under such circumstances the animal would not be transported in a “cruel or inhuman manner” or “subjected to unnecessary torture [or] suffering” as prohibited by Penal Code section 597a.

The mere fact that such unsecured transporting of an animal might subject it to the risk of injury is not sufficient in itself to render such transporting as “cruel or inhuman” since, as noted, the statutory definition required an “act, omission or neglect” which “caused or permitted” “physical pain or suffering” (Pen. Code § 599b), or in the absence of that, at least, in view of the Supreme Court’s definition, a malevolent intent to inflict injury, pain or suffering upon the animal. (*People v. McCaughan, supra*, 49 Cal. 2d at p. 415.) Therefore merely transporting an animal in a negligent manner does not necessarily constitute transporting it in a “cruel or inhuman manner” or subjecting the animal to “torture or suffering.” Thus whether or not Penal Code section 597a is violated by transporting a cat or dog on the unenclosed back of a truck without properly caging or securing the animal to the vehicle is essentially a factual question. Consequently, unless the facts of the particular situation indicated that the transporting was of such a nature that

³ The meaning of the term “inhuman” is essentially the same as “cruel.” In the sense pertinent here, “inhuman” is defined in Webster’s Third New International Dictionary (Unabr.), page 1163, as follows: “lacking the qualities of mercy, pity, kindness or tenderness: cruel, barbarous, savage”

it subjected the animal to “torture” or to “cruelty” as those terms have been defined by the courts and by Penal Code section 599b, such transporting would not constitute a violation of Penal Code section 597a.
