



HENRY McMASTER
ATTORNEY GENERAL

September 10, 2009

Michael S. Pitts, Esquire
Anderson County Attorney
P. O. Drawer 10648
Greenville, South Carolina 29603-0648

Dear Mr. Pitts:

In a letter to this office you requested an opinion regarding Anderson County's authority to establish and fund an animal shelter for the purpose of impounding, caring for, adopting and euthanizing animals other than dogs and cats.

In your first question you asked whether a county or municipality may establish and fund an animal shelter for the purposes of impounding, caring for, adopting and euthanizing all animals. You commented that your review of the relevant statutes indicates that if these provisions are taken literally, a county or municipality would be prohibited from housing any animals but cats and dogs. Referencing such literal interpretation, you also questioned whether if county and municipal animal shelters can only house dogs and cats, are counties and municipalities prevented from establishing any other type of facility for housing animals. You also questioned whether if a county or municipality can establish another type of facility for housing animals other than dogs and cats, can the personnel operating the animal shelter also operate this type facility.

As referenced by you, S.C. Code Ann. § 47-1-10 defines the term "animal" for purposes of S.C. Code Ann. §§ 47-1-10 et seq., which deal with cruelty to animals, as "...a living vertebrate creature except a homo sapien." S.C. Code Ann. §§ 47-3-10 et seq., which deal with the regulation by counties and municipalities of animals, defines "animal" in the same terms as Section 47-1-10. The term "animal shelter" is defined by Section 47-3-10 as "...any premises designated by the county or municipal governing body for the purpose of impounding, care, adoption, or euthanasia of dogs and cats held under authority of this article..." (emphasis added). Sections 47-3-10(3) states that the term "dog" "...includes all members of the canine family, including foxes and other canines."

Mr. Pitts
Page 2
September 10, 2009

Pursuant to subsection (6) of such provision, the term “cat” “...includes all members of the feline family.” Section 47-3-30 provides that

[t]he governing body of the county or municipality is authorized to establish an animal shelter for the county or municipality for the purpose of impounding and quarantining dogs and quarantining cats and shall employ such personnel, including enforcement personnel, as may be necessary to administer the provisions of this article. If an animal shelter is established, funds to establish and operate the shelter and employ necessary personnel may be established in the annual county or municipal appropriations. (emphasis added).

Generally, as stated in another prior opinion of this office dated December 5, 1990,

[c]ounties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment. Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision. McKenzie v. City of Florence, 234 S.C. 428, 108 S.E.2d 825 (1959). In so doing, however, political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws. Central Realty Corp. v. Allison, 218 S.C. 435, 63 S.E.2d 153 (1951); Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928). (emphasis added).

Therefore, counties are given implied powers beyond those granted expressly by statutory authority.

As to animals generally, S.C. Code Ann. § 47-1-150(C) provides that

[a]ny law enforcement officer or any agent of any county...may move before a magistrate for an order to: (1) lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location if deemed by the court that removal is necessary to prevent further suffering or ill-treatment. (emphasis added).

Section 47-3-20 states that “[t]he governing body of each county or municipality in this State may enact ordinances and promulgate regulations for the care and control of dogs, cats, and other animals and to prescribe penalties for violations.” (emphasis added).

Mr. Pitts
Page 3
September 10, 2009

Counties are granted specific authority by Section 47-3-70 dealing with the control of rabies. Such provision states that

[n]othing in this article may be construed to limit the power of any municipality or county to prohibit animals from running at large, whether or not they have been inoculated as provided in this article; and nothing in this article may be construed as to limit the power of any municipality or county to regulate and control further in the county or municipality to enforce other and additional measures for the restriction and control of rabies. (emphasis added).

Additionally, as to euthanasia of animals, Section 47-3-60 states that

(A) [a]fter any animal has been quarantined pursuant to South Carolina Rabies Control Act and is unclaimed by its owner, after the animal shelter employees have made a good faith effort to contact the identified owner as required..., the animal shelter employees...may dispose of the animal by adoption or by euthanasia or the animal may be turned over to any organization established for the purpose of caring for animals, such as the Humane Society

(B) [a]fter any animal has been impounded for five days and is unclaimed by its owner, and after the animal shelter employees have made a good faith effort to contact the identified owner...the animal shelter employees...may dispose of the animal by adoption or euthanasia.... (emphasis added).

Also, pursuant to the provisions authorizing animal euthanasia practices, S.C. Code Ann. §§ 47-3-410 et seq., the term “animal shelter” as used in such statutes is defined as

...any place or premises kept for the care, keeping, impounding, housing or boarding of any animal, whether the premises are owned or operated by a municipality, county, private association, institution, humane organization, or any other business or corporation.

Again, Section 47-1-10 defines the term “animal” for purposes of S.C. Code Ann. §§ 47-1-10 et seq., which deal with cruelty to animals, as “...a living vertebrate creature except a homo sapien.” Sections 47-3-10 et seq. which deal with the regulation by counties and municipalities of animals defines “animal” in the same terms as Section 47-1-10.

Referencing the above, in the opinion of this office, a county or municipality would be authorized to establish and fund an animal shelter for the purposes of impounding, caring for or housing, adopting and euthanizing all animals. Additionally, in the opinion of this office, a county

Mr. Pitts
Page 4
September 10, 2009

or municipality can establish a facility for housing animals other than cats or dogs and employ personnel to operate such facility.

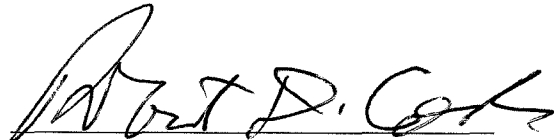
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General