

1975 WL 28934 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 17, 1975

*1 Mr. Thomas E. Ingram
P. O. Box 47
Cheraw, S. C. 29320

Dear Mr. Ingram:

Your letter of June 9 has been referred to me for reply. I take it that you, as a dog owner, are concerned for the most part as to whether the proposed ordinance would inhibit your enjoyment of any pet you might have occasion to own. Without question, the proposed ordinance is vague and overbroad in several particulars. Moreover, the ordinance is chock-full of inconsistencies. It may prove helpful if the provisions of Article II were addressed *seriatim* in the hope that the pitfalls of the ordinance might be brought to the fore.

Section 3-5 (Definitions) is the first problem area Subsection (a) of the above-referenced provision could be read as allowing one to harbor a 'domesticated' timber wolf as a pet, since a timber wolf is a member of the canine family. Subsection (b) provides that 'the term pet shall mean all domestic animals including but not limited to dogs and cats. Might a python be considered a domestic animal? Subsection (b) seems to suggest that a pet may be some domestic animal other than a dog or cat. The upshot of this departure is that Subsection (b) offers little guidance as to what animals fall within the permissive scope of Article II. Subsection (e) provides that if one chose to keep 'five (5) or more dogs or other four-legged animals' on his premises it is conclusively presumed (emphasis added) that one is operating a Kennel. Do not horses and cattle fall within this definition? Does a horse farm suddenly become a Kennel if the number of horses on the premises exceed five (5)?

A more glaring pitfall of the ordinance is found by examining jointly Section 3-5, subsection (d) and the provisions of Section 3-7. It has already been noted that possession of five (5) or more dogs or four-legged animals raises the presumption that one is operating a Kennel. Section 3-7 provides:

'In no event shall a person keep more than eight (8) four-legged animals of any type on his premises within the Town, and any animals in excess of eight (8) may be impounded pursuant to the provisions of Section 3-9.'

The effect of the above-cited provisions is that one could not operate a Kennel unless there were at least five (5) but not more than eight (8) animals on the premises without being in violation of the Ordinance. No pet store could be in operation under these circumstances, Moreover, properly of such pet store would be subject to seizure by operation of Section 3-7 of the proposed ordinance.

The operation of the remaining sections of the proposed ordinance would lead to harsh results in many instances. It is rather doubtful that the separability clause (Section 3-15) would save what otherwise is a very severe ordinance.

It goes without saying that the treatment of the proposed ordinance has not been an exhaustive one. The views expressed herein are offered for informational purposes only. It is hoped that you have been enlightened as to the possible problem areas that might arise.

Sincerely,

*2 Herman L. Moore

Law Clerk

1975 WL 28934 (S.C.A.G.)

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.