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Opinion No. 06-161

County regulation of dogs and cats

QUESTIONS

1. Does Tenn. Code Ann. § 68-8-104 allow counties to require owners of dogs or cats to register or license their pets and collect fees for this registration or license, as long as the fees are dedicated for an animal control program?

2. If so, would action by the county legislative body be sufficient to enact such ordinance, or would it take a private act of the Tennessee General Assembly?

3. May counties additionally charge a license or registration fee for any person who engages in the business of boarding, breeding, or selling dogs or cats?

4. Does a county have the authority to issue notice of a violation and impose a civil monetary penalty for each offense?

5. If so, is there a statutory cap as to the amount of the civil monetary penalty?

OPINIONS

1. Yes.

2. Action by the county legislative body would be sufficient, and a private act would not be necessary.

3. This is not as clear as the answer to Question 1. We have found no explicit statutory authority for counties to charge a license or registration fee for any person who engages in the business of boarding, breeding, or selling dogs or cats. Arguably, however, Tenn. Code Ann. §§ 5-1-118(c)(1) and -120 implicitly authorize a county to regulate businesses that involve the keeping of dogs or cats and to charge a reasonable regulatory fee.

4. & 5. Tenn. Code Ann. § 5-1-121 authorizes counties to adopt a civil penalty not to exceed $500 for violation of county regulations.

ANALYSIS

1. This opinion concerns local regulation of dogs and cats. The first question is whether Tenn. Code Ann. § 68-8-104 allows counties to require the owners of these animals to register or license their pets and to collect a fee, as long as the fee is dedicated for an animal control program. Section 68-8-104 is part of the Tennessee Anti-Rabies Law. Section -103 makes it unlawful for a person to own any dog or cat that is six months of age, or older, that has not been vaccinated for rabies. Section -104 provides:

> (a) In addition to but not as a substitute for or in any way detracting from the vaccination requirements of this chapter, authorization is granted for the adoption of local laws or ordinances to require the registration of dogs or cats in counties or municipalities.
>
> (b) Any local laws or ordinances implementing animal registration shall include methods for the collection of registration fees and shall require the expenditure of these funds to establish and maintain a rabies control program, also commonly known as an animal control program. In addition to various animal control activities, the rabies control program shall ensure that dogs and cats are properly vaccinated in accordance with this chapter and that biting animals or rabies suspects are observed or confined in accordance with this chapter and rules of the department [of health].

Tenn. Code Ann. § 68-8-104(a) & (b). Under this statute, therefore, a county may require dog and cat owners to register their pets. The county may charge a registration fee, but the fee must be spent to establish or maintain a rabies or animal control program. The statute gives further guidance on use of this revenue:

> (d) All fees collected for registration shall become part of the county or municipality rabies control fund and shall be disbursed by the appropriate trustee in a manner prescribed by the local legislative body for the sole purpose of the payment of salaries, for the establishment and operation of an animal shelter, for the establishment and operation of an animal control program, or for other expenses incidental to the enforcement of this chapter in the jurisdiction to which the registration requirement applies.
>
> (e) Any funds remaining at the end of any fiscal year shall be carried over to the next fiscal year, and its expenditure authorized by the local legislative body only for the purpose of rabies and animal control.

Tenn. Code Ann. § 68-8-104(d) & (e).

2. Your next question is whether a county legislative body may require dog and cat registration for a fee by enacting an ordinance, or whether the county must seek a private act from the General Assembly. Because Tenn. Code Ann. § 68-8-104 authorizes counties to require dog and

cat registration for a fee, it is not necessary for the county to seek a private act from the General Assembly in order to adopt such a program. County legislative bodies generally act by resolution. *See* Tenn. Code Ann. §§ 5-5-101, *et seq.* (county legislative bodies). A majority of all the members constituting the county legislative body, not merely a majority of the quorum, is necessary to "[t]ransact all . . . business coming before the county legislative body in regular or special sessions." Tenn. Code Ann. § 5-5-109(a)(4). Thus, a county may require dog and cat registration for a fee in accordance with Tenn. Code Ann. § 68-8-104 by proper action of its legislative body under Tenn. Code Ann. § 5-5-109.

3. The next question is whether a county may also require people engaged in the business of boarding, breeding, or selling dogs or cats to pay a registration fee. It is well settled in this State that cities and counties have only those powers expressly granted by or necessarily implied from the Constitution or through acts of the Legislature. *See, e.g., Bayless v. Knox County*, 199 Tenn. 268, 286 S.W.2d 579 (Tenn. 1956); *Maury County v. State Bd. of Equalization*, 117 S.W.3d 779, 785 (Tenn. Ct. App. 2003). We have not found any provision in the Tennessee Code Annotated expressly authorizing a county to charge a registration fee for people engaged in the business of boarding, breeding, or selling dogs or cats.[1]

Under Tenn. Code Ann. § 5-1-120, counties, by resolution of their respective legislative bodies, may license and regulate dogs and cats. Further, Tenn. Code Ann. § 5-1-118(c)(1) allows counties to exercise within the unincorporated parts of a county powers granted to municipalities under Tenn. Code Ann. § 6-2-201(22) and (23), upon adoption of a resolution by a two-thirds vote of the county legislative body. Subdivision (22) of the statute authorizes the exercise of general police powers. Arguably, these statutes could supply a county with implicit authority to charge a fee in conjunction with regulating businesses that involve the keeping of dogs and cats. It is generally recognized that reasonable regulations may be enacted under the police power concerning the keeping and housing of animals, because such businesses may or may not present a public health hazard or pose a public nuisance, depending upon the manner in which they are carried out. *See generally* 4 Am.Jur.2d *Animals* §§ 20 & 24 (2nd ed., database updated May 2006); McQuillin *The Law of Municipal Corporations* § 26:70 (database updated July 2006).

Only a court of competent jurisdiction could give a definitive opinion on the validity of any particular county resolution seeking to regulate businesses engaged in the keeping of dogs and cats, and charging a regulatory fee. Important to the court's decision would be whether the resolution was reasonable and whether the means employed are necessary to accomplish a legitimate governmental interest. *See generally* 3B C.J.S. *Animals* § 14 (database updated May 2006). Further, any fee charged under such a resolution should bear some reasonable relation to services rendered by the county to avoid analysis as a tax. *See generally S & P Enterprises, Inc. v. City of Memphis*, 672 S.W.2d 213 (Tenn. Ct. App. 1983) *p.t.a. denied* (1984). Finally, the State Department of Agriculture

[1] The private acts pertaining to any particular county should be consulted, as the General Assembly may have granted this power by private act. Further, because the request concerns a registration fee, not a tax, this opinion does not consider county taxation of these businesses under the Business Tax Act, Tenn. Code Ann. §§ 67-4-701, *et seq.*

licenses dog and cat dealers under Tenn. Code Ann. §§ 44-17-101, *et seq.*, and Tenn. Comp. Rules & Regs, Chapter 0080-2-15. Thus, county dog and cat regulations could not contravene state law, and § 44-17-122 expresses a legislative intent to avoid duplicative licensing requirements and costs for dealers.

4. The next question is whether a county has the authority to issue notice of a violation and impose a civil monetary penalty for each offense. Tenn. Code Ann. § 5-1-121 provides that, "[c]ounties, by resolution of their respective legislative bodies, may establish a monetary penalty not to exceed five hundred dollars ($500) for each violation of a rule or regulation that the county legislative body is authorized to adopt." Because a county may regulate dogs and cats, a county may also adopt a resolution establishing a monetary penalty for violation of its dog and cat regulations.

5. The final question is whether there is a statutory cap on the amount of a civil monetary penalty. Tenn. Code Ann. § 5-1-121 allows a county to set a monetary penalty not to exceed five hundred dollars ($500). In Op. Tenn. Att'y Gen. 03-024 (March 3, 2003), however, we recognized that it is unlikely under *City of Chattanooga v. Davis,* 54 S.W.3d 248 (Tenn. 2001), that a county will be able to impose a fine of more than fifty dollars for a resolution violation without a jury trial.

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