



COMMONWEALTH OF VIRGINIA

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January 13, 2010

The Honorable H. Morgan Griffith
Member, House of Delegates
P.O. Box 406
Richmond, Virginia 23218

Dear Delegate Griffith:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a locality may enact an ordinance authorizing a pound to initiate and enforce policies that place restrictions or requirements upon the adoption of animals beyond those required by § 3.2-6546.

Response

It is my opinion that a locality may adopt an ordinance that authorizes a pound to initiate and enforce policies that place restrictions or requirements upon the adoption of animals beyond those required by § 3.2-6546.

Applicable Law and Discussion

Article 6, Chapter 65 of Title 3.2, §§ 3.2-6537 through 3.2-6554, governs the authority of local governing bodies regarding regulation of dogs, certain animals, and pounds. Section 3.2-6546(D) enumerates the ways for disposing of an animal, including adoptions, and provides that:

2. Adoption by a resident of the county or city where the pound is operated and who will pay the required license fee, if any, on such animal, provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;

3. Adoption by a resident of an adjacent political subdivision of the Commonwealth, if the resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;

4. Adoption by any other person, provided that such person has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and provided that no dog or cat may be adopted by any person, who is not a resident of the county or city where the pound is operated, or of an adjacent political subdivision, unless the dog or cat is first sterilized, and the pound may require that the sterilization be done at the expense of the person adopting the dog or cat[.]

When a statute is clear and unambiguous, the rules of statutory construction dictate that the statute is interpreted according to its plain language.¹ In addition, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.² Section 3.2-6546(D) provides that “[s]uch animal may³ be euthanized ... or disposed of by the methods set forth in subdivision 1 through 5.” However, § 3.2-6543(A) authorizes a local governing body to adopt a more “stringent” ordinance that parallels § 3.2-6546. The General Assembly has not defined the term “stringent” in this context. In the absence of a statutory definition, the plain and ordinary meaning of a term is controlling.⁴ The term “stringent” means “marked by rigor, strictness, or severity esp. with regard to rule or standard.”⁵

Statutes that pertain to the same subject matter are to be construed as *in pari materia*.⁶ Where possible, the two should be harmonized in order to give effect to both.⁷ “If both the statute and the ordinance can stand together and be given effect, it is the duty of the courts to harmonize them and not nullify the ordinance.”⁸ Consistent with Dillon’s Rule, the local ordinance must be supported by adequate enabling legislation.⁹ An ordinance is inconsistent with state law if state law preempts local regulation in the area, either by expressly prohibiting local regulation or by enacting state regulations so comprehensive that the state may be considered to occupy the entire field.¹⁰ In this matter, the statutory

¹ Va. Polytechnic Inst. & State Univ. v. Interactive Return Serv., Inc., 271 Va. 304, 309, 626 S.E.2d 436, 438 (2006).

² See 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47:23 (7th ed. 2007) (explaining maxim “*expressio unius est exclusio alterius*”); Op. Va. Att’y Gen.: 2002 at 109, 111; 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 210.

³ “Unless it is manifest that the purpose of the legislature was to use the word ‘may’ in the sense of ‘shall’ or ‘must,’ then ‘may’ should be given its ordinary meaning—permission, importing discretion.” *Masters v. Hart*, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949), *quoted in* Bd. of Supvrs. v. Weems, 194 Va. 10, 15, 72 S.E.2d 378, 381 (1952); *see also* Op. Va. Att’y Gen.: 2000 at 29, 32 n.2, 1999 at 193, 195 n.6, 1997 at 10, 12, (noting that use of “may” in statute indicates statute is permissive and discretionary, rather than mandatory).

⁴ See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980).

⁵ MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 1162 (10th ed. 2001).

⁶ See *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957); Op. Va. Att’y Gen.: 1983-1984 at 135, 135; 1982-1983 at 343, 344; 1981-1982 at 273, 274.

⁷ *Id.*

⁸ *King v. County of Arlington*, 195 Va. 1084, 1091, 81 S.E.2d 587, 591 (1954).

⁹ *Va. Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999) (holding that, under Dillon’s Rule, local governing bodies have only those powers expressly granted by legislature, “those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable”; where legislature grants power to local government, but does not specify method of implementing power, local government’s choice regarding implementation of conferred power will be upheld, provided method chosen is reasonable).

¹⁰ See *Lynchburg v. Dominion Theatres, Inc.*, 175 Va. 35, 40, 7 S.E.2d 157, 159 (1940); Op. Va. Att’y Gen.: 2007 at 59, 60; 1983-1984 at 86, 87; *see also* *Hanbury v. Commonwealth*, 203 Va. 182, 185, 122 S.E.2d 911, 913 (1961) (noting that ordinance conflicting with state law of general character and state-wide application is invalid); *cf. King*, 195 Va. at 1089-90, 81 S.E.2d at 591 (noting that state did not occupy entire field; therefore, locality could govern by ordinance).

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language is clear that localities are not preempted in the regulation of animal law. The General Assembly authorizes localities to regulate animal law in their jurisdictions by enacting regulations concerning leash laws¹¹ and nuisance and running at large laws.¹² Further, in enacting § 3.2-6543(A), the General Assembly has demonstrated its intent to allow localities to regulate animal law by specifically providing that a locality may adopt more stringent standards than that provided by state law in certain circumstances.

Conclusion

Accordingly, it is my opinion that a locality may adopt an ordinance that authorizes a pound to initiate and enforce policies that place restrictions or requirements upon the adoption of animals beyond those required by § 3.2-6546.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims", with a stylized flourish at the end.

William C. Mims

1:213; 1:941/09-100

¹¹ See VA. CODE ANN. § 3.2-6539 (2008).

¹² See § 3.2-6538 (2008).