



ALAN WILSON  
ATTORNEY GENERAL

August 29, 2011

The Honorable David A. Hogue  
Mayor, Town of Blacksburg  
105 S. Shelby Street  
Blacksburg, South Carolina 29703

Dear Mayor Hogue:

We received your letter requesting an opinion of this Office concerning the validity of a county or municipal ordinance permitting animal shelters to dispose of unclaimed animals after they have been impounded for only three days, which you note is less than the five day statutory holding period set forth in S.C. Code Ann. § 47-3-60(b). You state it is your understanding that “the number of impoundment days could be changed to more than five, but not less than five, in accordance with the mandate that city or county laws can be more restrictive than state laws but not less restrictive.”

#### **Law/Analysis**

As our Supreme Court explained in Bugsy’s, Inc. v. City of Myrtle Beach, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000):

Determining whether a local ordinance is valid is a two-step process. The first is to determine whether the municipality had the power to adopt the ordinance. If no power existed, the ordinance is invalid. If the municipality had the power to enact the ordinance, the second step is to determine whether the ordinance is consistent with the Constitution and general law of the State.

The Legislature has granted counties and municipalities the authority to “enact ordinances and promulgate regulations for the care and control of dogs, cats, and other animals and to prescribe penalties for violations.” S.C. Code Ann. § 47-3-20. Clearly, counties and municipalities have the power to adopt ordinances regulating the “care and control” of animals.

The question then, as you indicate in your letter, is whether such an ordinance would conflict with State law. “In order for there to be a conflict between a state statute and a municipal ordinance, both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict.” Bugsy’s, 340 S.C. at 95, 530 S.E.2d at 894.

As provided in your letter, State law sets forth the conditions under which an impounded animal may be disposed of:

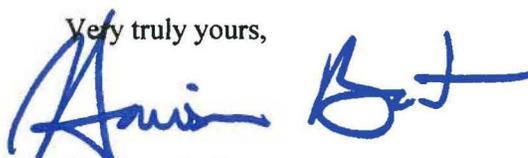
**After any animal has been impounded for five days and is unclaimed by its owner**, and after the animal shelter employees have made a good faith effort to contact the identified owner as required by Section 47-3-540, the animal shelter employees, unless the animal must be kept pending disposition of a criminal or civil trial involving the animal or a hearing on the disposition of the animal is held prior to the trial, 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 Human society.

S.C. Code Ann. § 47-3-60(b) (emphasis added). Assuming all other conditions in the statute have been met, § 47-3-60(b) clearly contemplates the disposition of animals after a period of no less than five days impoundment. Therefore, an ordinance that generally allows for the disposition of unclaimed animals after only three days would clearly conflict with State law.

#### Conclusion

The Legislature's enactment of S.C. Code § 47-3-20 undoubtedly provides counties and municipalities the power to enact ordinances regulating the "care and control" of animals. However, counties and municipalities cannot enact ordinances that conflict with State law. S.C. Code § 47-3-60(b) requires shelters to hold onto unclaimed animals for at least five days prior to disposition. Therefore, an ordinance allowing shelters to dispose of unclaimed animals after only three days would conflict with State law. Accordingly, it is the opinion of this Office that a court would find such an ordinance invalid.

Very truly yours,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General