



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
 ATTORNEY GENERAL

January 14, 1998

Jimmy Jones, Director  
 Kershaw County Detention Center/Special Services/Vector  
 Room 202 Court House  
 Camden, South Carolina 29020

Re: Informal Opinion

Dear Mr. Jones:

You have asked whether "any state law provide[s] for an individual to legally own a wild animal in this case a cougar as a pet or in any other case?" You have enclosed a Kershaw County ordinance which prohibits any person from keeping or permitting to be kept on his premises any wild or vicious animal for display or exhibition purposes with certain exceptions and prohibiting any person from keeping or permitting to be kept any wild animal as a pet except as allowed under state law. You wish to know whether "any state law prohibit[s] us from [enforcing] ... our Kershaw County ordinance Section 3-6 (a) and (b) keeping of animals?"

**Law / Analysis**

I am advised that no state law expressly prohibits the activity which the Kershaw County Ordinance seeks to ban. While certain state statutes prohibit related activities such as the sale of wild animals, see e.g. S.C. Code Ann. Section 47-5-50 (prohibition upon the sale of wild carnivores as pets), no statute specifically forbids the possession or keeping on one's premises a wild animal.

An ordinance, like a statute, is presumed valid and will not be declared invalid by a court unless such invalidity is clear. Rothschild v. Richland County Board of Adjustment, 309 S.C. 194, 420 S.E.2d 853 (1992). Moreover, so long as an activity is

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not preempted by state law or is not in conflict therewith, such ordinance is generally deemed valid.

Our State Supreme Court recently upheld a wild animal ordinance adopted by a municipality in Peoples Program For Endangered Species v. Sexton, \_\_\_ S.C. \_\_\_, 476 S.E.2d 477 (1996). There, the Ordinance in question made it unlawful to possess any "vicious or dangerous domesticated animal or any other animal ... of wild, vicious or dangerous propensities." Such Ordinance was challenged as unconstitutional on the basis of deprivation of due process, preemption by federal and state law, and violation of the Equal Protection Clause. The Supreme Court rejected each of these arguments. Specifically, the Court held that the Ordinance was a valid exercise of the police power because it was not arbitrary or unreasonable in its scope or application. Further, the Court reasoned that the Ordinance was not preempted by either the Federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.) or the S.C. Nongame and Endangered Species Conservation Act (S.C. Code Ann. §§ 50-15-10 et seq.). In rejecting this contention, the Court noted that "[t]he ordinance does not run contrary to the permitting of animals, but regulates the conditions under which certain animals can be kept in the town." With respect to the alleged Equal Protection violation, the Court held that the classification of wolves as wild animals was entirely reasonable and not arbitrary and the Ordinance thus did not present a case of unconstitutionally unequal treatment.

In summary, the Court concluded that

[t]he exercise of police powers under a municipal ordinance is subject to judicial correction only if the action is arbitrary and has no reasonable relation to a lawful purpose .... Appellants have not met their burden of proving beyond a reasonable doubt the ordinance is unconstitutional.

I believe this case is a good guide for adoption of any ordinance relating to wild animals by Kershaw County. I am thus enclosing a copy thereof. In addition, I am advised that Mr. Henry Brzezinski of the SPCA would be happy to speak with you regarding such an ordinance. He is an authority in this area. His telephone number is (803) 783-1149 and his address is 121 Humane Lane, Columbia, SC 29209.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to be 'RDC', written over a horizontal line.

Robert D. Cook  
Assistant Deputy Attorney General

RDC/an  
Enclosure