



STATE OF KANSAS

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February 25, 1977

ATTORNEY GENERAL OPINION NO. 77- 62

Honorable James L. Francisco
Kansas State Senator
State Capitol Building
Topeka, Kansas 66612

RE: Cities -- Animals -- Disposition

SYNOPSIS: A city may not provide by ordinance for the disposition of animals prior to three (3) days following the day of receipt of delivery of such animal at a city animal pound or shelter as required by K.S.A. 47-1710.

* * *

Dear Senator Francisco:

You inquire whether a city animal pound has the authority to dispose of live animals within less than three (3) days pursuant to a city ordinance even though in violation of K.S.A. 47-1710. Generally, a city is empowered to determine their own local affairs and government and as such can enact a charter ordinance which exempts a city from the whole or any part of an enactment of the legislature, and alternatively provide substitute and additional provisions on the same subject. The only exception to this general rule is where the enactment of the legislature is of statewide concern applicable uniformly to all cities. Kansas Constitution Article 12, Section 5 (1960). In such a situation the cities must abide by the legislative enactment.

K.S.A. 47-1710 refers to the governing body of a political subdivision in the first paragraph, and thus would control over a city ordinance contrariwise. The problem centers around whether the phrase "governing body of a political

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subdivision" controls throughout the section, particularly the third paragraph which states:

"An animal shall not be disposed of by an animal dealer, or the operator of a pound, or by the operator of an animal shelter as a pound until after expiration of a minimum of three (3) days following the day of receipt of delivery of such animal. Such an animal may at any time be released to the legal owner; moved to a veterinary hospital for treatment in case of injury, sickness or observation in case the animal is a rabies suspect; or released in any manner if such animal was a gift animal to an animal shelter; or euthanized for humane reasons as promulgated in rules and regulations by the livestock commissioner."

To answer this question one must look at the general rules of statutory construction. The various provisions of a statute in *pari materia* must be construed together with a view of reconciling and bringing them into workable harmony if it is possible to do so [*Callaway v. City of Overland Park*, 211 Kan. 646, 508 P.2d 902 (1973)]. In construing a statute the legislative intent is to be determined by a general consideration of the whole act. Effect should be given, if possible, to the entire statute and every part thereof. [*Fleming Company v. McDonald*, 212 Kan. 11, 509 P.2d 1162 (1973)]. See *Farm and City Ins. Co. v. American Standard Ins. Co.*, 220 Kan. 325 (1976); *Kansas Commission on Civil Rights v. Howard*, 218 Kan. 248 (1975); 2A *Sutherland Statutory Construction* §46.05 (1973). In drafting a section the general rule is to first identify the person who must act and then set forth the action which the statute directs. If the legislative action is not of uniform application, the limitation upon the operation of the statute should be expressed as a condition upon which it will operate. 1A *Sutherland Statutory Construction* §21.05 (1973).

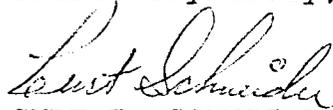
Applying these principles there is no justifiable reason why the phrase "governing body of a political subdivision" would not apply throughout K.S.A. 47-1710. This phrase identifies the legal subject that must act along with "the board of directors of any incorporated humane society operating an animal shelter as a pound, under contract with a municipality." If the legislature had intended to limit these legal subjects they would

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have imposed a condition thereon. Construing the section itself as a whole and in relation to the whole article the legislature intended to apply K.S.A. 47-1710 uniformly to all cities and thus, the cities in operating an animal pound must comply with the three (3) day minimum for the disposal of an animal.

If you have any further questions pertaining to this matter, please feel free to contact me.

Yours, very truly,


CURT T. SCHNEIDER
Attorney General

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