

FILE

- Subject City's Ordinance
Enactment and
Copy to Enforcement



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 22, 1974

Opinion No. 74- 68

Gene H. Sharp
Vance, Hobble, Neubauer,
Nordling & Sharp
Attorneys, City of Kismet
P.O. Drawer 1
Liberal, Kansas 67901

Dear Mr. Sharp:

You advise that the City of Kismet is considering the adoption of an ordinance permitting city authorities to capture dogs running at large, and impound them for a given period of time and authorizing the destruction of such animals if the owner cannot be found, or if the owner refuses to license the dog and have it properly vaccinated for rabies. As you point out, such ordinances have commonly been held to be within the police power of the city. 7 McQuillin, Municipal Corporations, §24.289 (1968 ed.)

You inquire whether such an ordinance conflicts with K.S.A. 47-646a, which states thus:

"It shall be lawful for any authorized representative of the livestock sanitary commissioner, any sheriff, any city marshal, any police officer or any highway patrolman at any time to kill any dog which may be found unconfined in violation of any rabies quarantine or other quarantine order issued by the state livestock sanitary commissioner, or issued by the state board of health."

In our view, there is no conflict between this statute and the proposed ordinance in question as described above. K.S.A. 46-646a authorizes the killing of a dog which is unconfined in violation of any rabies or other quarantine order issued by the state livestock sanitary commissioner or issued by the state board of health.

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The fact that a city has enacted legislation on a subject does not necessarily deprive a city of the power to deal with the same subject by ordinance. A municipality may legislate the same subject as long as the municipal ordinance does not conflict with the state law, and if there is no conflict, both laws may stand. City of Garden City v. Miller, 181 Kan. 360, 311 P.2d 306 (1957). K.S.A. 46-646a authorizes the killing of dogs under certain conditions. It does not by implication forbid the destruction of dogs under such other lawful conditions as a municipality may prescribe, and we find no necessary or even potential conflict between the authority for destruction of dogs which the proposed city ordinance might provide, and that authority provided by the statute.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm