STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5341

July 31, 1978

COUNTIES:

Operation of a spay and neuter clinic for dogs and cats

DOGS AND CATS:

Operation of a spay and neuter clinic by a county

A county is not authorized to operate a spay and neuter clinic for dogs and cats.

Honorable Richard J. Allen

State Senate

The Capitol

Lansing, Michigan

You have requested my opinion on the following three questions:

> (1) May a county legally operate a spay and neuter clinic for dogs and cats?
>
> (2) If the answer to the first question is yes, may a county advertise using the words 'low cost' spaying and neutering when these services are in fact available in the private sector for a lower fee than charged by the county?
>
> (3) If the answer to the first question is yes, may a county legally provide spay and neuter services upon animals belonging to out-of-county residents?

A County is a body corporate as provided in Const 1963, art 7, Sec. 1 and has those powers provided by law, although its powers are to be liberally construed. Const 1963, art 7, Sec. 34.

In Youngblood v Jackson County, 28 Mich App 361; 184 NW2d 290 (1970), the Court of Appeals considered the Dog Law of 1919 of the State of Michigan, 1919 PA 339; MCLA 287.261 et seq; MSA 12.511 et seq., within the context of Const 1963, art 3 Sec. 7, and art 7, Sec. 34. The Court there said:

> '. . . The ultimate enforcement of the licensing provisions of the dog law lies with the county, but the authority to kill unlicensed dogs must be exercised with some judgment. An element of that judgment is holding a dog for a period after obtaining it before disposing of it. This requires a place for confinement, namely: a pound. The authority to operate a pound may fairly be implied from the obligation placed on the county by the dog law.' (Citations omitted). Youngblood v Jackson County, 28 Mich App at 365; 184 NW2d at 291-292

The authority in Michigan to control dogs, as noted in Youngblood v Jackson County, supra, is provided by the Dog Law of 1919 of the State of Michigan, supra. The title to the Dog Law of 1919 of the State of Michigan indicates that the purpose of the law is:

> '. . . [protecting] livestock and poultry from damage by dogs; providing for the licensing of dogs; regulating the keeping of dogs, and authorizing their destruction in certain cases, . . . imposing powers and duties on certain state, county, city and township officers and employees. . . .'

In keeping with its title, the Dog Law of 1919 of the State of Michigan, supra, provides for protection of the public from damage

caused by dogs, for the licensing of dogs, for regulation of the keeping of dogs, and for destruction of dogs in certain cases. No provision of the act specifically or impliedly authorizes a county to establish and maintain a spay and neuter clinic and cats are not mentioned in either the title or body of the act. Therefore, this law may not be used as a source of authority by a county to operate a spay and neuter clinic for gods and cats.

It may also be noted that 1969 PA 287; MCLA 287.331 et seq; MSA 12.481(101) et seq, is an act to regulate pet shops, dog pounds and animal shelters. Section 1(a) of 1969 PA 287, supra, defines 'dog pound' as . . . any facility operated by a county, city, village or township to impound and care for animals found in streets or otherwise at large contrary to any ordinance of the county, city, village or township or state law. The same section defines 'animal' as any mammal other than rodents and livestock. Thus, a county is authorized to operate a pound to care for and hold dogs and cats. Again, however, there is nothing in this law, either explicitly or by reasonable implication, which allows a county to operate a neuter service on the animals within its control.

It is therefore my opinion, in response to your first question, that there is no authority for a county to operate a spay and neuter clinic for dogs and cats. This response obviates the necessity of answering questions two and three.

Frank J. Kelley

Attorney General

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6183

September 20, 1983

DOGS:

Recovery for loss or damage to livestock or poultry bitten by dogs within a city

The Dog Law of 1919 makes no provision for a person to file a claim or to recover for loss or damage to livestock or poultry arising from having been bitten by dogs within a city.

Fred R. Hunter, III

Prosecuting Attorney

Allegan County

Room 20

County Building

Allegan, Michigan 49010

You have requested my opinion on the following questions concerning the Dog Law of 1919; 1919 PA 339; MCLA 287.261 et seq; MSA 12.511 et seq, in light of the fact that the Dog Law of 1919, supra, Sec. 6, requires dog owners, including city residents, to license their dogs and pay license fees:

> 1. May a city assessor act in the stead of a township supervisor in regard to loss or damage to livestock or poultry by dogs which occurs within a city?
>
> 2. Are persons authorized to make claims for damage to poultry or livestock if the damage occurs within a city?

When a person sustains loss or damage to livestock or poultry by dogs, the person may make a complaint to the township supervisor or appointed township trustee within the township in which the damage occurred. Upon filing of the complaint, the township supervisor or township trustee is required to make an investigation to determine whether any damage has been sustained and, if so, the amount of the damage. The Dog Law of 1919, supra, Sec. 20.

If such investigation determines that damage has been sustained by the complainant, the supervisor or trustee is required to deliver a report of the examination and all papers related to the case to the county board of commissioners. The Dog Law of 1919, supra, Sec. 21.

The Dog Law of 1919, supra, Sec. 23, provides:

> '(1) When the county board of commissioners of the county receives a report of the township supervisor or other person designated by the township board pursuant to section 21, if it appears from the report that a certain amount of damage has been sustained by the claimant, the county board of commissioners shall immediately draw their order on the treasurer of the county in favor of the claimant for the amount of loss or damage which the claimant has sustained, together with all necessary and proper costs incurred. If the claim filed with the board appears from the report filed to be illegal or unjust, the board may make an investigation of the case and make its award accordingly.
>
> '(2) An amount awarded pursuant to this section shall be paid by the county out of its general fund. A payment shall not be

made for any item which has already been paid by the owner of the dog or dogs doing the injury. If a payment is made by the county for any livestock or poultry bitten by a dog or dogs, the payment shall not exceed the amount allowed by the county board of commissioners.' [Emphasis added.]

The legislative history of the Dog Law of 1919, Sec. 20, supra, indicates that it was amended by 1968 PA 38 to substitute the term 'township supervisor or appointed trustee of the township' for 'justice of the peace' throughout that section. See, OAG, 1979-1980, No 5654, p 620 (February 15, 1980), which discussed the constitutional problem of the justice of the peace as a judicial officer carrying out administrative functions, and concluded that a legislative amendment to section 21 was required if the county board of commissioners is to make payment for the loss or damage. Thereafter, 1980 PA 223 was enacted to amend the Dog Law of 1919, Sec. 21, supra, to substitute 'township supervisor or other person designated by the township board' for 'justice of the peace.'

The Dog Law of 1919, supra, makes reference to both cities and townships. The title to the Dog Law of 1919, supra, states, in part:

> 'AN ACT relating to dogs and the protection of livestock and poultry from damage by dogs . . . imposing powers and duties on certain state, county, city and township officials and employees, . . .'

The Dog Law of 1919, supra, Sec. 16, states, in part:

> 'The supervisor of each township and the assessor of every city; . . .'

The Dog Law of 1919, supra, Sec. 19, distinguishes between cities and other areas of the state by stating:

> 'Any dog that enters any field or enclosure which is owned by or leased by a person producing livestock or poultry, outside of a city, unaccompanied by his owner or his owner's agent, shall constitute a trespass, . . .' [Emphasis added.]

Therefore, it is clear that the Legislature dealt with both cities and townships in the Dog Law of 1919, supra, and chose to treat cities differently from townships. In the event the Legislature determines there is a need to authorize the filing of claims for loss or damages to livestock or poultry where such loss or damage occurs within a city, the Legislature should make an appropriate amendment to the Dog Law of 1919, supra.

It is my opinion, therefore, that the Dog Law of 1919, supra, does not authorize city assessors to act in the stead of township supervisors or appointed township trustees to investigate and report on complaints for loss or damage sustained by claimant for injury to livestock or poultry from having been bitten by a dog within a city. It is my further opinion that the Dog Law of 1919, supra, does not authorize the filing of a claim for loss or damage to livestock or poultry where such loss or damage was sustained within a city.

Frank J. Kelley

Attorney General

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6024

January 12, 1982

COUNTIES:

Killing of dog running at large by county animal officer

DOGS AND CATS:

Killing by county animal control officer

A county animal control officer may not summarily kill a dog because the dog is running at large and unaccompanied by its owner.

Anthony A. Monton

Prosecuting Attorney

Oceana County

Hart, Michigan 49420

You have requested my opinion on the following question:

> May a county animal control officer who observes a dog running at large and unaccompanied by its owner or keeper, who has been unsuccessful in determining the owner or keeper of the dog and unable to catch the dog after reasonable efforts, legally kill the dog without a court order?

The Dog Law of 1919, 1919 PA 339; MCLA 287.261 et seq; MSA 12.511 et seq, provides for the licensing and regulation of dogs. Pursuant to that statute the owner of a dog is required to obtain an annual license for the dog by paying the applicable fee. (1) A dog owner who fails to obtain the requisite license may be prosecuted and suffer imposition of a fine or imprisonment, or both, pursuant to 1919 PA 339, supra, Sec. 26, which provides in pertinent part:

> 'Any person or police officer, violating or failing or refusing to comply with any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall pay a fine not less than $10.00 nor more than $100.00, or shall be imprisoned in the county jail for not exceeding 3 months, or both such fine and imprisonment. . . .'

See OAG, 1952-1954, No 1761, p 321 (April 15, 1954).

A county animal control officer may be employed by the county to enforce the provisions of 1919 PA 339, supra. In 1919 PA 339, supra, Sec. 4, the Legislature has conferred the following authority:

> '[An] animal control officer or a law enforcement officer of the state shall issue a citation, summons or appearance ticket for a violation of this act.'

There is no provision in 1919 PA 339, supra, which empowers an animal control officer summarily to kill a dog merely because it is running at large, unaccompanied by its owner. (2)

Youngblood v Jackson County, 28 Mich App 361; 184 NW2d 290 (1970), lv den, 384 Mich 810 (1971), considered the authority of a county with respect to stray dogs, pursuant to 1919 PA 339, supra, as follows:

'[t]he authority to kill unlicensed dogs must be exercised with some judgment, . . . An element of that judgment is holding a dog for a period after obtaining it before disposing of it. . . .

'[d]efendant's pleadings indicate that unclaimed, unlicensed dogs found running at large are disposed of but licensed stray dogs are held for the owners. This conduct we find to be in compliance with the county's statutory obligation as interpreted by Finley, supra. Both courses of action require a place for confining dogs pending their disposition.' [Emphasis added.] 28 Mich App at 365.

Thus, 1919 PA 339, supra, as interpreted in Youngblood v County of Jackson, supra, contemplates holding a stray dog for some period prior to disposing of it.

A procedure for an animal control officer to follow is set forth in 1919 PA 339, supra, Sec. 26a(1)(a), (e) and (2):

'(1) A district court magistrate or the district or common pleas court shall issue a summons similar to the summons provided for in section 20 to show cause why a dog should not be killed, upon a sworn complaint that any of the following exist:

'(a) After January 10 and before June 15 in each year a dog over 6 months old is running at large unaccompanied by its owner or is engaged in lawful hunting and is not under the reasonable control of its owner without a license attached to the collar of the dog.

(e) A dog duly licensed and wearing a license tag has run at large contrary to this act.

'(2) After a hearing the district court magistrate or the district or common pleas court may either order the dog killed, or confined to the premises of the owner. . . .' [(3)]

Consideration must also be given to the definition of 'owner' as set forth in 1919 PA 339, supra, Sec. 1(2)(c) as follows:

'(2) For the purpose of this act:

(c) 'Owner' when applied to the proprietorship of a dog means every person having a right of property in the dog, and every person who keeps or harbors the dog or has it in his care, and every person who permits the dog to remain on or about any premises occupied by him.'

An unlicensed dog found to be running at large may also constitute a public nuisance, 1919 PA 339, supra, Sec. 17. If the owner failed to claim the dog after it had been held for a period of time in accordance with Youngblood v Jackson County, supra, such an unlicensed dog may be killed after observing the procedures in 1919 PA 339, Sec. 26a, supra.

It is my opinion, therefore, that an animal control officer is not authorized summarily to kill a dog merely because it is running at large unaccompanied by its owner. However, a summons may be issued pursuant to the 1919 PA 339, supra, to show cause why the dog should not be killed. After a hearing, the court may either order the dog confined to the premises of its owner or killed.

Frank J. Kelley

Attorney General

(1) The details of the licensing procedure need not be reviewed to answer your question. Moreover, those details may vary from one locality to another as the Dog Law of 1919, supra, Sec. 30 authorizes a city, village or township to adopt its own animal control ordinance to license and regulate dogs.

(2) You have not raised, and this opinion does not address, the situation where a dog is attacking or molesting livestock or wildlife or is attacking people. See Dog Law of 1919, supra, Secs. 18 and 19.

(3) 1969 PA 287, MCLA 287.331 et seq; MSA 12.481(101) et seq, provides for the registration of 'animal shelters' defined by Section 1(d) as:

'A facility operated by a person, humane society, a society for the prevention of cruelty to animals or any other nonprofit organization for the care of homeless animals.'

If, for example, no owner of a dog may be located, it would presumably be within the discretion of the court to permit the voluntary surrender of the dog to an animal shelter as an alternative to killing it.

Appendix E

State of Michigan, Department of Attorney General
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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5654

February 15, 1980

DOGLAW:

Reimbursement by county for damages to livestock caused by dogs

COUNTIES:

Reimbursement for damages to livestock caused by dogs

JUSTICE OF PEACE:

Abolishment of office

No member of the executive or legislative branch of a township government may exercise powers of the Justice of the Peace conferred by the Dog Law.

Unless the Legislature amends the Dog Law to designate a township officer to exercise the power of determination of damages to be paid to the owner of livestock damaged by dogs, the county board of commissioners may not reimburse the owner of livestock for damages caused by dogs.

Honorable Thomas Guastello

State Senator

The Capitol

Lansing, Michigan

You have requested my opinion on the following question:

> May a county board of commissioners establish a standard maximum value of all injuries to livestock caused by dogs in the county?

The Dog Law of 1919, 1919 PA 339; MCLA 287.261 et seq; MSA 12.511 et seq, provides for the protection of livestock and poultry from damage by dogs and for the determination and payment of money damages from county funds for losses caused by an attack on livestock by dogs.

A person sustaining any loss or damages to any livestock or poultry by dogs may complain in writing to the township supervisor or a trustee of the township in accordance with 1919 PA 339, supra, Sec. 20, as last amended by 1972 PA 349. Under this section of the statute, the township supervisor or a township trustee appointed by the township board is required to examine the place where the alleged damage was sustained and the livestock or poultry injured or killed, examine any witness, and determine whether any damage has been sustained and the amount thereof. It also provides that if the appropriate township officer learns of the identity of the owner of the dog causing the damage to the livestock or poultry, the township official may request the district court judge to issue a summons commanding the owner to appear before the township officer and show cause why the dog should not be killed. Upon the return day fixed in the summons, this section further provides that the township officer shall determine whether the loss or damage to the livestock was caused by the dog, and upon such determination the sheriff or animal control officer shall kill the dog wherever found. Finally, 1919 PA 339, Sec. 20, supra, states that any owner or keeper of the dog or dogs shall be liable to the county in a civil action for all damages and costs paid by the county on any claims as hereinafter provided.

The legislative history of this section indicates that it was also amended by 1968 PA 38 to substitute the term 'township supervisor or appointed trustee of the township' for 'justice of the peace' throughout the section.

1919 PA 339, supra, Sec. 21 provides:

> 'Upon making the examination required in the preceding section, if the justice of the peace shall determine that any damage has been sustained by the complainant, he shall, upon payment to him of his costs up to that time, by the complainant, deliver his report of such examination, and all papers relating to the case to the board of supervisors of the county in which the loss was sustained, which report shall be filed in their office. In case the complainant has not paid the costs the justice shall so state in said report and the amount thereof.'

While the legislature, by means of 1968 PA 38, eliminated the reference to the justice of the peace in 1919 PA 339, Sec. 20, supra, it made no such change in 1919 PA 339, Sec. 21, supra. (1)

In Titus v Chase, 126 Mich 621; 86 NW 137 (1901), judicial review was sought of the determination of the justice of the peace as to the amount of damages sustained to livestock killed or wounded by dogs pursuant to 1897 CL 5600. The court found that the statute provided for no trial of the question of fact before the justice of the peace, the determination being made on viewing of the injured or dead livestock. Thus, the proceeding for the determination of damages was summary and not open to review by the courts. A predecessor statute, 1917 PA 347, came before the Michigan Supreme Court in Fremont Canning Co v Waters, 209 Mich 178; 176 NW 577 (1920), on the ground, inter alia, that the provisions deprived the township of property without due process of law. The court noted that the authority to determine the damages had been vested in the township board, but by 1917 PA 347, it was reposed in a justice of the peace of the township, and upheld the power of the legislature to transfer such authority. The court found that the monies in the fund to pay for damages to livestock was not the property of the township and, therefore, the township was not deprived of its property without due process of law.

Implicit in these holdings is the conclusion that a justice of the peace, in determining the amount of damages, is exercising an administrative function. Township of Dearborn v Dearborn Township Clerk, 334 Mich 673; 55 NW2d 201 (1952), held the justice of the peace to be a judicial officer and it was unconstitutional to fix duties of a legislative or administrative character in such judicial office. It must follow that 1919 PA 339, supra, Sec. 21, violates Const 1963, art 3, Sec. 2, which prohibits a person exercising powers in one branch to exercise powers properly belonging under another branch, except as expressly provided in the Constitution.

Assuming, arguendo, that the legislature conferred a judicial function upon the justice of the peace by means of 1919 PA 339, Sec. 21, supra, that office no longer exists and no member of the executive or legislative branch of the township may exercise powers conferred in this portion of the Dog Law of 1919, supra. Consequently, the legislature should consider amending 1919 PA 339, Sec. 21, supra, to designate the township officer to exercise the duty of determining damages to be paid the owner of dead or wounded livestock if the county board of commissioners is to discharge its duties as specified in 1919 PA 339, Sec. 23, supra.

In view of this response, it is not necessary to address the question of whether a county board of commissioners may establish a standard maximum value of compensation to owners of livestock killed or injured by dogs.

Frank J. Kelley

Attorney General

(1) It must be observed that in accordance with Const 1963, art 6, Sec. 26, the people have abolished the office of justice of the peace.

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5566

September 24, 1979

MUNICIPALITIES:

Adoption of animal control ordinance

COUNTIES:

Adoption of animal control ordinance by municipalities within county

ANIMALS:

Adoption of animal control ordinance by municipalities

A city, village or township that enacts its own animal control ordinance is responsible for its own enforcement expenses and may not charge the county for such expenses.

Joseph T. Barberi, Esq.

Isabella County Prosecuting Attorney

200 North Main Street

Mt. Pleasant, Michigan 48858

County Building

Marquette, Michigan 49855

You have asked whether a city may establish an animal control program without adopting an ordinance, and then charge the county the reasonable expense of maintaining it. 1919 PA 339, Sec. 25, MCLA 287.285; MSA 12.535, provides:

> 'Any valid claims for loss or damage to live stock which have accrued under any general or local laws, prior to the taking effect of this act, shall not abate by reason of the repeal of such laws by the operation of this act, but all such claims, and all claims arising under this act and all expense incurred in any county in enforcing the provisions of this act shall be paid out of the general fund of the county. At the time this act takes effect, all moneys then in the 'dog fund' in the hands of township or city treasurers, derived from the taxation of dogs under existing laws, shall be turned into the county general fund: Provided, In all cities having a well regulated dog department, the reasonable expense of maintaining the same, shall be borne by said county, duly audited by the board of supervisors, (1) and in any county having a board of county auditors, said board of county auditors shall audit said reasonable bills, to be paid out of the general fund of the county.'

This section indicated that 1919 PA 339 operated to repeal prior general and local laws, with the proviso that '[i]n all cities having a well regulated dog department, the reasonable expense of maintaining the same, shall be borne by the said county.'

At the time that section 25 was first enacted, the only exception from the provisions of said act were cities having a population of 250,000 or more. See 1919 PA 339, Sec. 30 as originally enacted; MCLA 287.290; MSA 12.541. (2) The legislative history of this section, discussed in OAG, 1963-1964, No 4353, pp 513, 517 (December 1, 1964), reflects the legislative intention to increasingly broaden the exceptions from the application of said act. That opinion states:

> 'The foregoing recitals demonstrate that Section 30 has always been treated by the legislature as a medium for delineating exclusionary exceptions to state enforcement where local enforcement machinery exists and is satisfactory to the

legislature. . . .'

The exceptions were further broadened by 1972 PA 349, which amended section 30 to authorize all cities, villages and townships to adopt their own animal control ordinances, without regard to their population. Section 30 now provides:

> 'A city, village or township by action of its governing body may adopt an animal control ordinance to regulate the licensing, payment of claims and providing for the enforcement thereof. . . .'

1972 PA 349 also added section 29a, MCLA 287.289a; MSA 12.540(1), limiting a county's jurisdiction for enforcement, expense, etc., to animal control programs in cities, villages and townships which do not have their own animal control ordinances:

> '. . . The [county] animal control agency shall have jurisdiction to enforce this act in any city, village or township which does not have an animal control ordinance. The county's animal control ordinance shall provide for animal control programs, facilities, personnel and necessary expenses incurred in animal control. The ordinance is subject to sections 6 and 30.' [Emphasis added]

In letter opinions to Senator John Toepp, dated March 7, 1978, and Mr. Gary L. Walker, Marquette County Prosecuting Attorney, dated January 3, 1979, (see appendices A and B) I concluded that a home rule city that enacted its own animal control ordinance is responsible for its own enforcement expenses, and may not charge the county for such expenses. The Toepp opinion quoted at length from OAG, 1963-1964, No 4353, and explained how the growth of the exceptions to section 30 has eroded the application of section 25.

While OAG, 1949-1950, No 968, p 255 (June 30, 1949) held that a city with a population under 5,000 may be charter provision or ordinance, establish a well regulated dog department and charge the county the reasonable expense of maintaining the same, that opinion was issued before section 29a was added to 1919 PA 339 to except cities, villages and townships from county control and reimbursement with their own ordinances. In light of changes made from time to time to section 30, and the addition of section 29a, the responsibility for the expense of such city programs has been changed by the legislature. The recent opinions reflect the changes in the scope of local enforcement and the more limited jurisdiction and responsibility of counties for enforcement and the expense of animal control programs subsequent to the issuance of OAG, 1949-1950, No 968, supra, and should therefore be deemed controlling.

Cities, villages and townships are presently authorized to establish dog departments by adoption of animal control ordinances. When such ordinances are adopted, county enforcement is precluded by section 29a, supra. If a local ordinance is not adopted, the county animal control agency has jurisdiction for enforcement, personnel, expenses, etc., under the same provision. It is my opinion that a city, village or township may not establish its own animal control program unless a local ordinance is adopted by the city, village or township as provided for by section 30, supra, and that such municipalities may not charge counties for the expenses of animal control programs when they have adopted their own ordinances.

Frank J. Kelley

Attorney General

March 7, 1978.

Honorable John F. Toepp

State Senator

The Capitol

Lansing, Michigan 48909

Dear Senator Toepp:

You have requested my opinion on the following questions relating to the Dog Law of 1919, 1919 PA 339, as last amended by 1972 PA 349; MCLA 287.261 et seq; MSA 12.511 et seq:

> 1. May the City appoint its own dog warden and maintain its own dog control program if the county elects to appoint a dog warden for the city as provided in Sec. 16 of the dog law?
>
> 2. If the answer to No. 1 is yes, is the county still responsible for the salary of the city's dog warden and other expenses?

In responding to your questions it is first necessary to review the history of this act for only a detailed review of its legislative history can explain why the growth of the exceptions contained in 1919 PA 339, supra, Sec. 30 has eroded the rule stated in section 25. As such a review was comprehensively set forth in OAG, 1963-1964, No 4353, p 513, 514-517 (December 1, 1964),

I quote the following at length from that opinion:

'Act 339, P.A. 1919 is the present dog law. Reviewing only the amendments to Section 30 thereof, we find that in the original act, the section read as follows:

"All cities in this State having a population of two hundred fifty thousand, according to the last federal census, or that shall hereafter attain such a population, are hereby excepted from all the provisions of this act.'

'The section was amended by Act 310, P.A. 1921, to insert and add, after the words 'such a population,' the words:

"and all cities and villages located entirely within the limits of any such city of two hundred fifty thousand population'

The words 'are hereby excepted from the provisions of this act' then followed the insertion.

'The section was amended by Act 239, P.A. 1929, by inserting after the words 'two hundred fifty thousand population' the words:

"and all villages located within twenty miles of the corporate limits of such cities of two hundred fifty thousand population.'

'Act 189, P.A. 1933, expanded the language by adding the words 'or more' after the words 'two hundred fifty thousand population' in the three places where the words occur, and excepting cities within twenty miles.

'Act 288, P.A. 1941, amended Section 30 to read:

"All cities in this state having a population of 250,000 or more, according to the last federal census, or that shall hereafter attain such a population, and all cities and villages entirely within the limits of such city of 250,000 population or more, or located within twenty miles of the corporate limits of such cities of 250,000 or more, [and all townships in the county lying within a radius of 20 miles or the corporate limits of such cities of 250,000 or more and having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances], are hereby excepted from the provisions of this act. [Any such township shall be authorized by action of its township board to adopt an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances.]'t 209, P.A. 143, further expanded Section 30 by changing 'the county' and subsequent phrase in the seventh line of the section as quoted above to read: 'counties having a city of 250,000 population or more.'

'Act 22, P.A. 1949, amended the section by adding the words 'or townships contiguous to cities having a population of 250,000 or more' before the words 'and having an ordinance. . . .'

'Act 125, P.A. 1952, amended the section by adding after 'such ordinances' a proviso as follows:.

"Provided, however, In counties which have or may hereafter by resolution of the board of supervisors adopted rabies vaccination requirements as set forth in Act No. 35 of the Public Acts of 1949, any city, village, or township adopting a dog licensing ordinance or ordinances shall also require that such application for a license shall be accompanied by proof of vaccination of the dog for rabies within the year preceding the date of the application.'

'Act 172, P.A. 1953, further amended Section 30 of the 1919 dog law so that it reads as follows:

"All cities in this state having a population of 250,000 or more, according to the [latest or each succeeding federal decennial census,] or that shall hereafter attain such a population, and all cities and villages entirely within the limits of such city of 250,000 population or more, or located within 20 miles of the corporate limits of such cities of 250,000 or more, and all townships in counties having a city of 250,000 population [or more] or township contiguous to cities having a population of 250,000 or more and having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances, [with the exception of the provisions in section 10, 10a and 11 of this act,] are hereby excepted from the other provisions of this act. Any such [city, village or] township shall be authorized by action of the [city, village or] township board to adopt an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances: Provided, however, In counties which have or may hereafter by resolution of the board of supervisors adopted rabies vaccination requirements as set forth in Act No. 35 of the Public Acts of 1949, any city, village or township adopting a dog licensing ordinance or ordinances shall also require that such application for a license, [except kennel licenses,] shall be accompaned by proof of vaccination of the dog for rabies within the year preceding the date of the application.'t 211, P.A. 1959, amended the section to read, and it currently reads, as follows:

"All cities in this state having a population of 250,000 or more, according to the latest or each succeeding federal decennial census, and all cities and villages located within 20 miles of the corporate limits of such cities of 250,000 or more, and townships having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing

> for the enforcement of such ordinances, with the exception of the provisions in sections 10, 10a and 11 of this act, are hereby excepted from the other provisions of this act. Any city, village, or township [in a county of 150,000 population or more according to the latest or each succeeding federal decennial census] shall be authorized by action of the city or township [governing body] to adopt an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances. In counties which have or may hereafter by resolution of the board of supervisors adopted rabies vaccination requirements as set forth in Act No. 35 of the Public Acts of 1949, any city, village, or township adopting a dog licensing ordinance or ordinances shall also require that such application for a license, except kennel licenses, shall be accompanied by proof of vaccination of the dog for rabies within the year preceding the date of the application.' (C.L.S. 1961 Sec. 287.209; M.S.A. 1963 Cum. Supp, Sec. 12.541) [(a1)]
>
> 'The foregoing recitals demonstrate that Section 30 has always been treated by the lagislature as a medium for delineating exclusionary exceptions to state enforcement where local enforcement machinery exists and is satisfactory to the legislature. The dog law being a regulatory measure under the police power and not a tax or revenue measure, it seems appropriate to conclude that no duality of regulation was intended by the legislature and accordingly the 1959 amendment should be construed as excepting dog owners from the requirements of purchase of a county license if they reside in and own dogs in cities, villages or townships within counties of 150,000 population or more which have adopted ordinances regulating the licensing of dogs.' [Footnotes omitted]

Responding now to you first question, a reading of the entire statute indicates that 1919 PA 339, supra, Sec. 16 authorizes a county to appoint an animal control officer to act within a city only where a city does not have its own effective ordinance regulating dogs. Accordingly, it is my opinion that, by virtue of its home rule powers and pursuant to 1919 PA 339, supra, Sec. 30 a city in a county with a population of 150,000 or more may adopt an animal control ordinance and may appoint its own dog warden or animal control officer; further, a county of a population of 150,000 persons or more may not enforce its dog ordinance within a city which has adopted its own ordinance pursuant to 1919 PA 339, Sec. 30, supra.

As to your second question, it is my opinion that a city which adopts its own ordinance is responsible for the full cost of implementing that ordinance and that, conversely, the county has no financial responsibility for enforcement of the city's ordinance.

I recognize that 1919 PA 339, supra, Sec. 25 contains a proviso which states:

> '. . . In all cities having a well regulated dog department, the reasonable expense of maintaining the same, shall be borne by said county, . . .'

However, this proviso must be read in conjunction with 1919 PA 339, Sec. 30, supra, excepting certain cities from the act, the legislative history of which reveals that the section 25 proviso is only intended to apply to such cities, villages and townships not included within section 30.

Thus, for the purposes of illustration, the proviso should be read as though the underlined portions were included:

> '. . . In all cities having a well regulated dog department, except those which have their own ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances, the reasonable expense of maintaining the same shall be borne by said county. . . .'

It is therefore my opinion that a home rule city that enacts its own animal control ordinance pursuant to 1919 PA 339, Sec. 30, supra, is responsible for its own enforcement expenses payable from fees collected thereunder.

Very truly yours,

Frank J. Kelley

Attorney General.

January 3, 1979.

Mr. Gary Walker

Marquette County Prosecuting Attorney

Dear Mr. Walker:

Your correspondence indicates that the County of Marquette does not have an animal control ordinance or program and that the City of Marquette has submitted a bill to Marquette County for reimbursement of the city's expenses for its animal control program for the fiscal year beginning July 1, 1978. You request my opinion on the following question:

> Is a county required by 1919 PA 339 Sec. 25; MCLA 287.285; MSA 12.535, to reimburse a city in the county for the

expenses of the city's administration of an animal control program under the city's ordinance?

Your question has previously been answered in the negative in a letter opinion to Senator John F. Toepp dated March 7, 1978, which discussed section 30, supra, and the proviso of section 25, as follows:

> 'However, this proviso must be read in conjunction with 1919 PA 339, Sec. 30, supra, excepting certain cities from the act, the legislative history of which reveals that the section 25 proviso is only intended to apply to such cities, villages and townships not included within section 30.
>
> 'Thus, for the purposes of illusatration, the proviso should be read as though the underlined portions were included:
>
> '. . . In all cities having a well regulated dog department, except those which have their own ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances, the reasonable expense of maintaining the same shall be borne by said county. . . .'
>
> 'It is therefore my opinion that a home rule city that enacts its own animal control ordinance pursuant to 1919 PA 339, Sec. 30, supra, is responsible for its own enforcement expenses payable from fees collected thereunder.'

Very truly yours,

Frank J. Kekket

Attorney General.

(1) Now entitled county board of commissioners pursuant to 1966 PA 261 as added by 1969 PA 137; MCLA 46.416; MSA 5.359(16).

(2) Section 30 has since been amended by 1921 PA 310, 1929 PA 239, 1933 PA 189, 1941 PA 288, 1943 PA 209, 1949 PA 22, 1952 PA 125, 1953 PA 172, 1959 PA 211, 1969 PA 195, 1971 PA 229 and 1972 PA 349.

(a1) The added language is indicated by brackets'
