



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

September 25, 2007

The Honorable Edward T. Scott
Delegate, House of Delegates
206 South Main Street, Suite 203
Culpeper, Virginia 22701

Dear Delegate Scott:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a Virginia locality may dictate veterinary procedures within its jurisdiction. Specifically, you ask whether an ordinance enacted by the city of Norfolk (“Norfolk”) declaring unlawful certain conduct regarding cosmetic alterations of companion animals exceeds the authority granted to a locality.

Response

It is my opinion that a Virginia locality has no authority to regulate veterinary medicine within its borders absent a specific grant from the General Assembly. It further is my opinion that an ordinance declaring that cosmetic alterations of companion animals are unlawful exceeds the authority granted to a locality.

Applicable Law and Discussion

Norfolk enacted ordinance 6.1-78.1 on November 21, 2006 (the “Ordinance”) to provide that:

It shall be unlawful for any person to cosmetically alter any companion animal. The only exception to this shall be for procedures performed under proper anesthesia, by a veterinarian licensed in the Commonwealth. For purposes of this section, “tail docking”, “ear cropping”, “debarking” and “declawing” shall be considered cosmetic alterations. “Microchipping”, “tattooing”; and “ear tipping” shall not be considered cosmetic alterations.^[1]

¹NORFOLK, VA., CODE, § 6.1-78.1 (2007), available at http://library2.municode.com:80/mcc/home.htm?view=home&doc_action=setdoc&doc_keytype=toCID&doc_key=b8acde812b014e5ef124eca5916ee762&infobase=10121. You note that the phrase “and certified to be medically necessary to preserve the animal’s health and safety by said veterinarian” was deleted from the end of the second sentence by amendment dated January 30, 2007.

Chapter 38 of Title 54.1, §§ 54.1-3800 through 54.1-3813, and regulations promulgated thereunder² govern the practice of veterinary medicine in the Commonwealth. Section 54.1-3800 provides that “[a]ny person shall be deemed to be practicing veterinary medicine who performs the diagnosis, treatment, correction, *change*, relief or prevention of animal disease, deformity, defect, injury, or other physical or mental conditions; including the performance of surgery or dentistry.” (Emphasis added.) Additionally, “[n]o person shall practice veterinary medicine ... unless such person has been licensed by the Board [of Veterinary Medicine].”³ By regulation, “[s]urgery” means treatment through revision, destruction, *incision or other structural alteration of animal tissue*.⁴ Therefore, the practice of veterinary medicine includes performing surgical procedures on animals. The cosmetic alterations declared unlawful by the Ordinance constitute veterinary surgical procedures pursuant to state regulations governing the practice of veterinary medicine⁵ (“veterinary regulations”).

Section 54.1-3801(1) provides an exemption from the requirements of Chapter 38, including the license requirement in § 54.1-3805, for “[t]he owner of an animal and the owner’s full-time, regular employee caring for and treating the animal belonging to such owner.” Therefore, an owner or an employee caregiver of a companion animal meeting such criteria may practice veterinary medicine, including surgery, on such owned animal without violating the veterinary regulations.

The Ordinance declares that cosmetic alterations, including surgical alterations, of companion animals by “any person” except licensed veterinarians is unlawful. Because “any person” would include an owner or an employee caregiver of an animal meeting the criteria in § 54.1-3801, the Ordinance contradicts Virginia law statutorily permitting such conduct. Localities may not enact ordinances that are “inconsistent with the Constitution and laws of the United States or of the Commonwealth.”⁶ If, however, both a statute and ordinance on a particular topic “can stand together, courts are obliged to harmonize them, rather than nullifying the ordinance.”⁷ However, the Ordinance declares acts unlawful that expressly are permitted by §§ 54.1-3801 and 54.1-3805. “[A] local government may ‘not forbid what the legislature has expressly licensed, authorized, or required.’”⁸ Thus, state law preempts the Ordinance with respect to an owner or an employee caregiver of an animal.

Further, the Commonwealth follows the Dillon Rule of strict construction “that municipal corporations possess and can exercise only those powers expressly granted by the General Assembly,

² See VA. CODE ANN. § 54.1-3804 (2005) (requiring Board of Veterinary Medicine to establish requirements and standards for veterinary programs).

³ Section 54.1-3805 (2005).

⁴ 18 VA. ADMIN.CODE § 150-20-10 (2007) (emphasis added).

⁵ See 18 VA. ADMIN. CODE §§ 150-20-10 to 150-20-210 (2007) (codified in scattered sections).

⁶ VA. CODE ANN. § 1-248 (2005).

⁷ Bd. of Supvrs. v. Pumphrey, 221 Va. 205, 207, 269 S.E.2d 361, 362 (1980); see also King v. County of Arlington, 195 Va. 1084, 1091, 81 S.E.2d 587, 591 (1954) (noting that where statute and ordinance can “stand together,” court has duty to harmonize, not nullify).

⁸ Blanton v. Amelia County, 261 Va. 55, 64, 540 S.E.2d 869, 874 (2001) (quoting cases for which court did not provide citations).

The Honorable Edward T. Scott
September 25, 2007
Page 3

those necessarily or fairly implied therefrom, and those that are essential and indispensable.”⁹ As previously noted, Chapter 38 governs the practice of veterinary medicine, and the Board of Veterinary Medicine has exclusive authority to regulate this practice in the Commonwealth.¹⁰ Chapter 38 does not expressly grant localities the right to further regulate such practice. Thus, the Ordinance violates the Dillon Rule since it constitutes the regulation of the practice of veterinary medicine. That regulatory authority has not been expressly or impliedly granted to localities under the Constitution of Virginia or by the General Assembly.

Conclusion

Accordingly, it is my opinion that a Virginia locality has no authority to regulate veterinary medicine within its borders absent a specific grant from the General Assembly. It further is my opinion that an ordinance declaring that cosmetic alterations of companion animals are unlawful exceeds the authority granted to a locality.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:1133/07-070

⁹City of Richmond v. Confrere Club, 239 Va. 77, 79, 387 S.E.2d 471, 473 (1990), *quoted in* 2007 Op. Va. Att’y Gen. No. 07-038, *2, *available at* <http://www.vaag.com/OPINIONS/2007opns/07-038-Katz.pdf>; *see also* Commonwealth v. Arlington County Bd., 217 Va. 558, 573-74, 232 S.E.2d 30, 40 (1977); Winchester v. Redmond, 93 Va. 711, 714, 25 S.E. 1001, 1002 (1896).

¹⁰*See* § 54.1-2400 (2005) (noting general powers and duties of health regulatory boards); § 54.1-3804 (noting specific powers of Board of Veterinary Medicine).