MEMORANDUM

Date: March 28, 2014

To: Jan Lesher
Deputy County Administrator
for Medical and Health Services

From: C.H. Huckelberry
County Administrator

Re: Legal Opinion No. 14-01 from the County Attorney Regarding Retail Sales of Dogs and Cats

I understand that the City of Tucson, in discussing their ordinance to prevent the retail sale of dogs and cats, asked why Pima County had not pursued such regulations. Attached is County Attorney Opinion No. 14-01, which indicates the County lacks statutory authority to enact any such ordinance, rule, or regulation.

CHH/anc

Attachment

c: The Honorable Chair and Members, Pima County Board of Supervisors
To: C.H. Huckelbery  
Pima County Administrator

From: Paula Perrera  
Deputy County Attorney

Date: March 20, 1014

RE: Retail Sale of Dogs and Cats

Question presented: You have asked whether or not the Board of Supervisors has the authority to enact an ordinance preventing the retail sale of dogs and cats that are not sourced from a pound, shelter or rescue organization.

Answer: No. But the County has limited authority to regulate the conditions under which dogs and cats are bred and raised.

Discussion:

Counties are a limited form of government and may only exercise those powers that have expressly, or by necessary implication, been delegated to them by the legislature or Constitution.¹

The broadest grant of county authority in relation to animals is found in A.R.S. § 11-251 (47), which provides that the board of supervisors, under such limitations and restrictions as are prescribed by law, may:

(47) Make and enforce ordinances for the protection and disposition of domestic animals subject to inhumane, unhealthful or dangerous conditions or circumstances, provided that nothing in this paragraph limits or restricts the authority granted to incorporated cities and towns or counties pursuant to §13-2910.² An ordinance enacted pursuant to this paragraph shall not restrict or limit

² A.R.S. §13-2910 relates to procedural disposition of alleged vicious dogs and is not relevant to this analysis.
the authority of the game and fish commission to regulate the taking of wildlife.
For the purposes of this paragraph, "domestic animal" means an animal kept as a
pet and not primarily for economic purposes.

(emphasis added).

Additional, more narrowly drafted county authority for the control and handling of animals is
found in Title 11, Chapter 7, articles 6 and 6.1. None of these grants of authority allow the
county to regulate pet stores in any way.

The grants of authority relating to a county’s regulation of animals do not expressly provide the
county with the authority to mandate the source of a pet store’s animal inventory. Nor can any
such authority be implied from these grants of authority. “Implied powers do not exist
independently of the grant of express powers and the only function of an implied power is to aid
in carrying into effect of a power expressly granted.” Associated Dairy Products Co., 68 Ariz. at
395, 206 P.2d at 1043. While there may be animal breeders who subject their dogs and cats to
inhumane, unhealthful or dangerous conditions or circumstances it does not necessarily follow
that those animals are or will be subject to those same conditions while in the possession of a pet
store. Nor does it follow that restricting the source of a pet store’s animal inventory will
necessarily prevent such inhumane treatment by pet stores or breeders. Counties do have the
authority to impound animals within their jurisdiction that are inhumanely maintained, wherever
they are located. Thus, if pet stores or breeders subject their animals to inhumane treatment, the
county could impound those animals for proper care, treatment, and potential adoption.

Accordingly, because there is neither express nor implied authority for counties to regulate the
source of a pet store’s animal inventory, any ordinance enacted by a county purporting to do so
would be invalid and unenforceable.

Respectfully submitted,

BARBARA LaWALL
PIMA COUNTY ATTORNEY

APPROVED:

Paula Perrella
Deputy County Attorney

Christopher L. Straub
Chief Civil Deputy

city or town to enforce the provisions of any ordinance enacted by such city or town for the control of dogs; §11-
1005(A)(4) prohibit the running at large of dogs; §11-1005(A)(5) prohibit the excessive barking of dogs; §11-
1006(A) appointment of hearing officers; §11-1008 license dogs and set a license fee; §11-1013 establish a county
pound and impound and dispose of dogs and cats; §11-1014 quarantine of biting animals; §11-1018 adopt its own
ordinance regulating the running at large of dogs.