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# MEMORANDUM

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Date: March 28, 2014

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

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

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



OFFICE OF THE  
**Pima County Attorney**  
**Civil Division**

**Barbara LaWall**  
PIMA COUNTY ATTORNEY

32 N. STONE  
SUITE 2100

**Tucson, Arizona 85701-1412**

(520) 740-5750  
FAX (520) 620-6556

**OPINION NO. 14-01**

To: C.H. Huckelbery  
Pima County Administrator

From: Paula Ferrera  
Deputy County Attorney

Date: March 20, 1014

RE: Retail Sale of Dogs and Cats

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**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.<sup>1</sup>

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.<sup>2</sup> An ordinance enacted pursuant to this paragraph shall not restrict or limit

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<sup>1</sup> A.R.S. §11-202; *Associated Dairy Products Co. v. Page*, 68 Ariz. 393, 395, 206 P. 2d 1041, 1043 (1949).

<sup>2</sup> A.R.S. §13-2910 relates to procedural disposition of alleged vicious dogs and is not relevant to this analysis.

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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.<sup>3</sup> 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



Paula Perrera  
Deputy County Attorney

APPROVED:



Christopher L. Straub  
Chief Civil Deputy

<sup>3</sup> See A.R.S. §§ 11-1005(A)(1) designation of an enforcement agent; §11-1005(A)(3) ability to contract with any 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.