

Agriculture & Markets Law §§ Article 7, 106, 109, 111, 114, 117, 117(7), 117(7-a), 122, 122(1), 377(a), 377-a, 377-a(1), 377-a(2), 377-a(5); Municipal Home Rule Law §§ 10, 10(1)(ii), 10(1)(ii)(a)(12)

A town may adopt a local law that would allow its animal shelter to spay and neuter dogs and cats after the expiration of the applicable redemption period but before they are selected for adoption.

September 10, 2014

Robert F. Quinlan  
Town Attorney  
Town of Brookhaven  
One Independence Hill  
Farmingville, New York 11738

Informal Opinion  
No. 2014-6

Dear Mr. Quinlan:

Your office has requested an opinion relating to the Town's authority over certain dogs and cats in custody of the Town's animal shelter. Specifically, the question is whether the Town can adopt a local law that would allow the shelter to spay or neuter dogs and cats after the expiration of the applicable redemption period but before they are selected for adoption. The question arises because state law specifically authorizes a local law requiring spaying or neutering dogs and cats as a condition of adoption, *see* Agriculture & Markets Law § 117(7),(7-a); *see also id.* § 377-a, and the Town wishes to spay or neuter dogs and cats in the shelter when they become eligible for adoption, even if there are no specific plans for adoption.

While the analysis is somewhat different for dogs and for cats, because there are more relevant state statutes relating to dogs, we are of the opinion, as explained below, that the Town may adopt the proposed local law with respect to both dogs and cats.

Article 7 of the Agriculture & Markets Law (hereinafter "Ag & Mkts") governs the licensing and control of dogs and contains certain provisions relating to cats as well. With respect to dogs, the purposes of Article 7 are to provide for the licensing and identification of dogs, control and protect the dog population, and protect people, property, domestic animals and deer from dog attack and damage. Ag & Mkts § 106. State law gives the Town the responsibility for issuing licenses and identification tags for dogs harbored within it and confirming that they have been vaccinated against rabies. Ag & Mkts §§ 109, 111. State law also requires the Town to establish and maintain or contract for use of a pound or shelter for unidentified, unlicensed, or dangerous dogs that are seized by a dog control, peace, or police officer. Ag & Mkts §§ 114, 117. Seized animals must be kept at the shelter for the redemption period

specified by law, after which they may be adopted or euthanized,<sup>1</sup> or released to another animal shelter if such transfer of custody is reasonably likely to improve the animal's opportunity for adoption. Ag & Mkts § 117(7), (7-a).

As an initial matter, Municipal Home Rule Law § 10 authorizes the Town to adopt a local law relating to the health, safety and well-being of persons or property in the town. Municipal Home Rule Law § 10(1)(ii)(a)(12). Reproductive alteration of dogs and cats to control animal population and reduce aggressive animal behavior, the purposes of the proposed local law, appears to fall squarely within this authority. Therefore, we believe that the proposed local law falls in the first instance within the Town's home rule authority.

This authority is not unlimited. A local law cannot be inconsistent with the Constitution or a general law. Municipal Home Rule Law § 10(1)(ii). And a local government cannot adopt a local law where the Legislature has expressed an intent to preempt local legislation with respect to a given subject. *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 96-97 (1987).

With respect to dogs, we previously have opined that Article 7 preempts local regulation in the field of dog control except in specifically-delineated areas. Op. Att'y Gen. No. 83-F12. One of the unpreempted areas is identified in section 122, which specifically authorizes the Town to enact a local law or ordinance relating to the "keeping" of dogs, as long as the enactment does not vary state law provisions governing rabies vaccination or euthanization. Ag & Mkts § 122(1). The proposed local law sensibly falls within the Town's authority to regulate the "keeping" of dogs. The dogs are in the custody of the shelter, which has exclusive right to the dogs once the redemption period has passed. Ag & Mkts § 117(7) (owner forfeits title to dog upon expiration of redemption period). Until a dog is adopted, transferred, or euthanized, it is kept by the shelter.

With respect to cats, we previously have opined that the field of cat control is not preempted, Op. Att'y Gen. (Inf.) No. 94-27, and thus there is no issue with respect to cats and regulating their keeping as opposed to their control.

The proposed local law is not inconsistent with a general state law. State law requires that a shelter release a dog or cat to an adopting owner only if the animal already is altered or if the new owner commits in writing and financially to having it altered within 30 days. Ag & Mkts § 377-a(2). State law does not require that a dog or cat not already spayed or neutered when brought to a shelter *only* be altered at these times but instead establishes the latest point at which an animal must be altered. The proposed local law will simply permit alteration at an earlier time than that required by section 377-a. Cf. Ag & Mkts § 377-a(5) (local government can enact local law

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<sup>1</sup> Your office has advised that the shelter has chosen not to euthanize unwanted animals.

requiring spaying or neutering at an earlier, but not later, age than six months established by state law). In addition to being consistent with the language of state law, the proposed local law is consistent with the public policy of reducing the production of unwanted puppies and kittens, *see* Ag & Mkts § 377-a(1), which would be at risk of growth by those dogs and cats that are not adopted immediately and remain longer-term at the shelter.

For these reasons, we are of the opinion that the Town is authorized to adopt the proposed local law.

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD  
Assistant Solicitor General  
in Charge of Opinions