RABIES CONTROL:
COUNTY HEALTH OFFICER:
COUNTY COURT:

In the absence of a county health commissioner, the county court has no power to prepare regulations with regard to dog control for protection against rabies.

OPINION NO. 193

April 2, 1968

FILED
193

Honorable Omar J. Dames
State Representative
104th District
Route 3, P. O. Box 76
O'Fallon, Missouri 63366

Dear Representative Dames:

This opinion is written in response to your question as to whether or not the County Court in St. Charles County, in the absence of a County Health Commissioner, may set up rules and regulations with regard to dog control for protection against rabies.

The controlling statute with regard to these regulations is Section 322.090, RSMo 1959, made applicable to certain counties of the second class by Section 322.120, RSMo Cum. Supp. 1967.

Section 322.090 provides:

> "For the purpose of promoting the public health and safety and to prevent the transmission of rabies and to control rabies and to carry into effect the purposes and provisions of sections 322.090 to 322.130, the county court is hereby empowered to adopt by order, rules and regulations which shall include provisions for licensing, catching, impounding, confinement, redemption and isolation and destruction of dogs; * * * " (Emphasis added)

Section 322.100 provides:

> "The county health commissioner shall prepare the regulations authorized to be adopted under the provisions of sections 322.090 to 322.130 * * * " (Emphasis added)

Read together these statutes give the county court the power to adopt by order the regulations prepared by the county health commissioner. This is not the power to create these regulations.

To adopt means:

> "To take or receive as one's own (esp. what is not so naturally); to select and take or approve; as to adopt the view or policy of another * * * "
> Webster's New International Dictionary, Second Edition, 1950, p. 35.

It is a general rule that public officers have only such power and authority as is clearly conferred by law or necessarily implied from the powers granted. 67 C.J.S., Officers, Section 102, p. 366.

A look at the underscored portions of the previously cited sections indicates that the legislature was specific in saying that the county health commissioner shall prepare the regulations and the county court shall enforce the regulations by adopting them.

These sections were enacted at a time when the counties were not required to have a health commissioner, yet the legislature made no alternative provision for creating these regulations, thus they must have intended that the county health commissioner be the exclusive source of the regulations. In the absence of a county health commissioner, there is no person authorized to prepare the regulations and, consequently, there is nothing for the county court to adopt. This being the only power granted to the county court, they are without authority to act in this area.

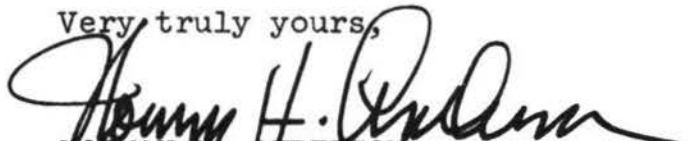
If the county court does wish to adopt a dog control law, they could, under Section 192.260, appoint a county health commissioner at the nominal salary of a dollar per year. This would put them in a position to proceed to act within Sections 322.090 and 322.100. However, such health officer would be subject to all the duties imposed upon him by Section 192.280 and not merely limited to dog control.

CONCLUSION

Therefore, it is the opinion of this office that in the absence of a county health commissioner, the county court has no power to prepare regulations with regard to dog control for protection against rabies.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas J. Downey.

Very truly yours,



NORMAN H. ANDERSON
Attorney General