

Sec. 24 requires a county to pay into its pension fund such amounts as are necessary to fund financial benefits which arise on account of service rendered in that fiscal year.

FRANK J. KELLEY,  
*Attorney General.*

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**DOG LAW: License.**

County is excluded from selling dog licenses to residents of City of Lansing, which has its own ordinance providing for sale of licenses in accord with the state dog law.

No. 4353

December 1, 1964.

Mr. Leo A. Farhat  
Ingham County Prosecuting Attorney  
County Building  
Lansing, Michigan

You have asked my opinion on the effect of the dog ordinance of the City of Lansing upon the right and duty of the county to sell dog licenses in the City of Lansing, under the provisions of the dog law of 1919, Act 339, P.A. 1919, as amended.<sup>1</sup>

Section 30 of the 1919 dog law provides in pertinent part as follows:

"All cities in this state having a population of 250,000 or more, according to the latest . . . decennial census . . . and townships having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances, with the exception of the provisions of sections 10, 10a and 11 of this act, are hereby excepted from the other provisions of this act. Any city . . . in a county of 150,000 population or more . . . shall be authorized by action of the city . . . governing body to adopt an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances. . . ."<sup>2</sup>

You state that the City of Lansing had in 1960 a population of 113,058 and the County of Ingham a population of 211,296 according to the 1960 federal census. You point out that the City of Lansing therefore does not fall within the cities expressly excepted from all provisions of the 1919 dog law except Sections 10, 10a and 11, as set forth in the first quoted sentence of Section 30, since the city does not have a population of 250,000.

You further point out that the population of Ingham County exceeds 150,000, so that any city in the county, including the City of Lansing, may adopt a dog ordinance as provided by the second quoted sentence of Section 30.

Finally, you point out that the City of Lansing has adopted a dog

<sup>1</sup> C.L. '48 and C.L.S. '61 §§ 287.261 *et seq.*; M.S.A. 1958 Rev. Vol. 1963 Cum. Supp. §§ 12.511 *et seq.*

<sup>2</sup> C.L.S. '61 § 287.290; M.S.A. 1963 Cum. Supp. § 12.541.

ordinance providing for the sale of city dog licenses to city residents owning dogs.

Your specific question is whether the county is excluded from selling dog licenses to city residents, or, in the alternative, whether both the city and the county may impose and collect dog license fees from the same owner for the same dog.

The purpose of the 1919 dog law, as stated in its title, is in pertinent part as follows:

“AN ACT relating to dogs and the protection of live stock and poultry from damage by dogs; *providing for the licensing of dogs. . .*”<sup>3</sup>  
(Emphasis supplied)

The Court points out in *Finley v. Barker*<sup>4</sup> that the county treasurer is the responsible licensing officer of his county under general supervision of the state agency, assisted by township and city treasurers (p. 451 and 452). This case also holds that the control of dogs is a proper exercise of the police power, and that the intent of the statute is to remedy faulty administration of former dog laws by independent local officials by providing State control (p. 446). Statutes previous to the present law having as their objective the control of dogs, the protection of domestic animals from vicious dogs, and the licensing of dogs, have been held to be an exercise of State police power rather than revenue measures.<sup>5</sup>

The operative rule of statutory construction requires such reading as will give effect to the intent of the legislature and harmonize all provisions of the statute.<sup>6</sup> In construing statutes, absurd results are to be avoided.<sup>7</sup>

Turning to the legislative history of the Michigan dog law, and specifically that of Section 30, we find that during the days when Michigan was a territory, a tax was imposed on dogs, payable by the owner or possessor.<sup>8</sup> This law was repealed in 1806.<sup>9</sup>

The act of April 9, 1825, permitted the killing of vicious dogs and made the owner liable in damages for the killing or wounding of certain livestock by dogs.<sup>10</sup> Sections 7 through 10 of Chapter 12, Title 9 of the Revised Statutes of 1838 authorized any township or incorporated village to make bylaws concerning the licensing, regulating and restraining of dogs.<sup>11</sup> Sections 7 and 8 of the foregoing act continued in effect until 1929 when they were repealed by Act 309.<sup>12</sup> Section 9 was repealed by Act 161, Laws of 1850. We find no provision repealing Section 10.

Act 198, P.A. 1877, imposed a tax on dogs in all townships and wards

<sup>3</sup> Act 339, P.A. 1919.

<sup>4</sup> 219 Mich. 442, 449 *et seq.*

<sup>5</sup> *Van Horn v. People*, 46 Mich. 183, 185; *Hendrie v. Kalthoff*, 48 Mich. 306; *Fremont Canning Co. v. Waters*, 209 Mich. 178, 182.

<sup>6</sup> *Kales v. City of Oak Park*, 315 Mich. 266; *Mason County Civic Research Council v. Mason County*, 343 Mich. 313.

<sup>7</sup> *Webster v. Rotary Electric Steel Co.*, 321 Mich. 526, *inter alia*.

<sup>8</sup> Act of September 10, 1805, § 3, *Territorial Laws*, Vol. 1, p. 69.

<sup>9</sup> Act of December 11, 1806, § 8, *Territorial Laws*, Vol. 4, pp. 12, 13.

<sup>10</sup> *Territorial Laws*, Vol. 2, p. 258.

<sup>11</sup> See page 220.

<sup>12</sup> See pages 834, 835. And see *Revised Statutes* (1846) Ch. 49, p. 201.

of the cities of the State. As enacted it was a comprehensive statute consisting of 10 sections compiled as Sections 2123 through 2132 C.L. 1882. Sections 11, 12, 13 and 14 were added by Act 214, P.A. 1889, and created a special fund for the payment of losses to livestock caused by dogs. These four added sections were repealed by Act 141, P.A. 1891. The remaining original 10 sections were repealed by Act 48, P.A. 1901. Act 48, P.A. 1901, authorized townships and cities to tax dogs to create a special fund to pay for injuries to livestock.<sup>13</sup> It was repealed by Act 347, P.A. 1917, Section 11.

Act 347, P.A. 1917, required registration and licensing of dogs by owners with the clerk of the village or township where the owner resided. This was repealed by Act 339, P.A. 1919, § 32.

Act 339, P.A. 1919 is the present dog law.<sup>14</sup> Reviewing only the amendments to Section 30 thereof, we find that in the original act, the section read as follows:

“All cities in this State having a population of two hundred fifty thousand, according to the last federal census, or that shall hereafter attain such a population, are hereby excepted from all the provisions of this act.”

The section was amended by Act 310, P.A. 1921, to insert and add, after the words “such a population,” the words:

“and all cities and villages located entirely within the limits of any such city of two hundred fifty thousand population”

The words “are hereby excepted from the provisions of this act” then follow the insertion.

The section was amended by Act 239, P.A. 1929, by inserting after the words “two hundred fifty thousand population” the words:

“and all villages located within twenty miles of the corporate limits of such cities of two hundred fifty thousand population.”

Act 189, P.A. 1933, expanded the language by adding the words “or more” after the words “two hundred fifty thousand population” in the three places where the words occur, and excepting cities within twenty miles.

Act 288, P.A. 1941, amended Section 30 to read:

“All cities in this state having a population of 250,000 or more, according to the last federal census, or that shall hereafter attain such a population, and all cities and villages entirely within the limits of such city of 250,000 population or more, or located within twenty miles of the corporate limits of such cities of 250,000 or more, [and all townships in the county lying within a radius of 20 miles or the corporate limits of such cities of 250,000 or more and having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances], are hereby excepted from the provisions of this act. [Any such township shall be authorized by action of its township board to adopt an

<sup>13</sup> Compiled as Sections 4366 through 4376, C.L. 1915.

<sup>14</sup> Compiled as C.L. '48 and C.L.S. '61 §§ 287.261 *et seq.*; M.S.A. 1958 Rev. Vol. and 1963 Cum. Supp. §§ 12.511 *et seq.*

ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances.]"\*

Act 209, P.A. 1943, further expanded Section 30 by changing "the county" and subsequent phrase in the seventh line of the section as quoted above to read: "counties having a city of 250,000 population or more."

Act 22, P.A. 1949, amended the section by adding the words "or townships contiguous to cities having a population of 250,000 or more" before the words "and having an ordinance. . . ."

Act 125, P.A. 1952, amended the section by adding after "such ordinances" a proviso as follows:

"Provided, however, In counties which have or may hereafter by resolution of the board of supervisors adopted rabies vaccination requirements as set forth in Act No. 35 of the Public Acts of 1949, any city, village, or township adopting a dog licensing ordinance or ordinances shall also require that such application for a license shall be accompanied by proof of vaccination of the dog for rabies within the year preceding the date of the application."

Act 172, P.A. 1953, further amended Section 30 of the 1919 dog law so that it reads as follows:

"All cities in this state having a population of 250,000 or more, according to the [latest or each succeeding federal decennial census,] or that shall hereafter attain such a population, and all cities and villages entirely within the limits of such city of 250,000 population or more, or located within 20 miles of the corporate limits of such cities of 250,000 or more, and all townships in counties having a city of 250,000 population [or more] or townships contiguous to cities having a population of 250,000 or more and having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances, [with the exception of the provisions in sections 10, 10a and 11 of this act,] are hereby excepted from the other provisions of this act. Any such [city, village or] township shall be authorized by action of the [city, village or] township board to adopt an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances: Provided, however, In counties which have or may hereafter by resolution of the board of supervisors adopted rabies vaccination requirements as set forth in Act No. 35 of the Public Acts of 1949, any city, village or township adopting a dog licensing ordinance or ordinances shall also require that such application for a license, [except kennel licenses,] shall be accompanied by proof of vaccination of the dog for rabies within the year preceding the date of the application."\*

Act 211, P.A. 1959, amended the section to read, and it currently reads, as follows:

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\* The added language is indicated by brackets.

"All cities in this state having a population of 250,000 or more, according to the latest or each succeeding federal decennial census, \*\* and all cities and villages \*\* located within 20 miles of the corporate limits of such cities of 250,000 or more, and \*\* townships \*\* having an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances, with the exception of the provisions in sections 10, 10a and 11 of this act, are hereby excepted from the other provisions of this act. Any \*\* city, village, or township [in a county of 150,000 population or more according to the latest or each succeeding federal decennial census] shall be authorized by action of the city \*\* or township [governing body] to adopt an ordinance or ordinances regulating the licensing of dogs, payment of claims and providing for the enforcement of such ordinances. \*\* In counties which have or may hereafter by resolution of the board of supervisors adopted rabies vaccination requirements as set forth in Act No. 35 of the Public Acts of 1949, any city, village, or township adopting a dog licensing ordinance or ordinances shall also require that such application for a license, except kennel licenses, shall be accompanied by proof of vaccination of the dog for rabies within the year preceding the date of the application." (C.L.S. 1961 § 287.290; M.S.A. 1963 Cum. Supp. § 12.541)\*

The foregoing recitals demonstrate that Section 30 has always been treated by the legislature as a medium for delineating exclusionary exceptions to state enforcement where local enforcement machinery exists and is satisfactory to the legislature. The dog law being a regulatory measure under the police power and not a tax or revenue measure, it seems appropriate to conclude that no duality of regulation was intended by the legislature and accordingly the 1959 amendment should be construed as excepting dog owners from the requirements of purchase of a county license if they reside in and own dogs in cities, villages or townships within counties of 150,000 population or more which have adopted ordinances regulating the licensing of dogs.

Such construction leaves no gap in the pattern of enforcement of the objectives sought by the state legislature, for the Lansing dog ordinance includes provision for rabies vaccination, issuance of licenses, handling of complaints of damages and payment of claims therefor, and control of noisy, vicious and destructive dogs as well as protection of licensed animals.<sup>15</sup>

Since Lansing has provided for the payment of claims for damage caused by dogs, it seems absurd to contend that the legislature intended to compel dual payment of compensatory damages for injuries caused by dogs by requiring that such payment be made both under the state dog law and under the pertinent provision of the local ordinance.

Therefore, it is my conclusion that compliance with the Lansing dog ordinance is itself compliance with the objectives of the state law, and that owners of dogs in Lansing are excepted from the provisions of the

\* Additions indicated by brackets, deletions by asterisks.

<sup>15</sup> O.A.G. No. 0-3981, October 3, 1945, 1945-46, page 476.

state law requiring purchase of a county license, having accomplished the purpose by compliance with the ordinance.

It is well established that the legislature may carry out the exercise of state police power through municipalities.<sup>16</sup>

Therefore, I am brought to the conclusion that the City of Lansing, in selling licenses to dog owners resident in the city, is carrying out the state police power in a manner prescribed by the legislature, and that no duality of regulation is perceptible in the legislative intent. It therefore follows that the county is no longer required or permitted to sell licenses to Lansing dog owners.

To the extent that O.A.G. No. 87, dated July 16, 1935, is in conflict herewith, it is hereby superseded.

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*Attorney General.*

641201-4

**COUNTIES:** Authority to bill school districts for bond premiums.  
**SCHOOLS:** Districts—Duty to pay for bond premiums.

County treasurer may bill school districts for allocated share of bond premiums charged for surety bonds for school taxes, but only for the current tax year for which school taxes the surety bond is secured and the premium is paid by the county treasurer.

No. 4368

December 1, 1964.

Mr. Francis D. Brouillette  
Prosecuting Attorney  
Dickinson County  
Iron Mountain, Michigan

You advise that the Dickinson County Treasurer has just recently billed school districts within Dickinson County the prorata share of the bond premium, pursuant to Section 43 of Act 206, P.A. 1893, as amended, for the years 1959, 1960, 1961, 1962 and 1963, and several school districts have refused to pay the charges claiming that failure to make claim during the year of the bond charge amounted to a waiver of the charge for that year. Apparently claim for the aforesaid years was first made in 1964.

Based upon these facts, you request opinion upon the following question:

May the county treasurer lawfully bill school districts for the allocated share of the cost of bond premiums required by law for all past years which are not barred by the statute of limitations?

Section 43 of Act 206, P.A. 1893, as last amended by Act 103, P.A. 1951, being C.L.S. 1961 § 211.43; M.S.A. 1960 Rev. Vol. § 7.84, requires a township treasurer to give annually to the county treasurer a bond running to the county in the actual amount of county and school taxes to be collected by him with sufficient sureties as required by law. Where the bond

<sup>16</sup> See, for example, *Wetherby v. City of Jackson*, 264 Mich. 146, 148 (burial). The cases are collated in *Tower Realty v. City of East Detroit*, 196 F 2d 710.