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REQUESTED BY: THE HONORABLE JAMES F. HONLEY
State Representative

OPINION BY: ROBERT W. PICKRELL
The Attorney General

- QUESTIONS:
1. Does the passage of House Bill 235 (Chapter 16, Session Laws of 1964) providing for the licensing and regulation of beef cattle feed lots by the Livestock Sanitary Board, prescribing powers and duties of the board; prescribing exemptions; prescribing penalties and amending Title 24, Chapter 2, Arizona Revised Statutes by adding Article 9, thereby place the State in a position of preempting this field?
 2. If the answer to Question One is in the negative, may a municipality still, by ordinance pass supplemental, more stringent, regulatory measures?
 3. If the answer to Question One is in the affirmative, may a municipality still use the powers granted it in Section 9-240 B. 21. (a), Arizona Revised Statutes, to abate the operation of a beef cattle feed lot as a nuisance?

- ANSWERS:
1. See body of Opinion
 2. " " " "
 3. " " " "

Article 4, Part 2, Section 19 of the Arizona Constitution requires the Legislature to refrain from the passage of "local or special laws" when a "general law can be made applicable." A general law was defined by the Arizona Supreme Court, in the case C.E. Clayton vs. State, 38 Ariz. 466, 468, 300 P. 1010, as a law having state-wide concern. A reading of the 1964 "Beef Cattle Feed Lots" Act, A.R.S. § 24-391 et. seq., clearly reveals a general law in com-

pliance with the constitutional requirement.

Recently, the City of Tempe, became a charter city government as authorized by Article XIII of the State Constitution; therefore, this opinion will be limited to charter city application.

The questions raised can be paraphrased for clarity in this way: If the state passes a general act regulating property rights, can a charter city increase, decrease or do away with this regulation by imposing its own regulation. The answer is clearly no and has been ruled on many times in the past by the State Supreme Court. A good statement of this conflict can be found in the Clayton case, *Supra*. In that case we find a Charter City, Phoenix, attempting to regulate the drunken operation of motor vehicles on the city streets. The court said that if the state had not, in the Highway Code, taken over and appropriated to itself the power and right to prescribe the qualifications of drivers, and to punish them for driving under the influence of intoxicating liquor that the city could under its general welfare clause legally legislate on the subject. The Court then described the problem of concurrent regulation by state and city in these words:

"...The requirement that drivers of motor vehicles be free from the influence of liquor and narcotics might be legally incorporated into the cities ordinances, notwithstanding it is a state law, if the charter or the general laws affecting the powers of cities authorize it. It is not a novelty in the law to find the same act punishable by statute and by city ordinance. Indeed it is quite common for the two jurisdictions to legislate concurrently on the same subject. Where the subject is one of local interest or concern, or where though not of local concern the charter or legislation confers on the city express power to legislate thereon, both jurisdictions may legislate on the same subject. Where, however, the subject is of state-wide concern, and the legislature has appropriated the field and declared the rule, its declaration is binding throughout the state."

The foregoing quotation is taken from the decision on the motion for rehearing. In the main opinion Clayton, *Supra*, 38 Ariz. 135, 144, 297 P. 1037, the Court further clarified

the legislative position of charter cities in relation to the state in these terms:

"The general powers conferred on the city by the freeholders' charter are those concerning municipal or local affairs...The city does not assume under its charter all the powers that the state may exercise within its limits but only powers incident to a city government. 'Rightful subjects' of legislation thereunder are therefore local or municipal concerns of the city. Under this grant of power the city cannot enter the field of general legislation, but must confine itself to the making of by-laws for its local government. In the latter field under the Constitution so long as the legislation is in harmony with that instrument and the laws of the state it is valid and...prevails over state legislation conflicting therewith. If, however, a city by-law is not about a matter of municipal concern, ...it would not be a 'rightful subject' of legislation, as defined by the general grant of power in the charter. The police power inheres in the state and not in its municipalities. The latter are agencies of the state and exercise police and other powers only by grant given either directly or by necessary implication."

Of similar effect is City of Phoenix vs. Sun Valley Bus, 64 Ariz. 319, 325, 170 P 2d. 289. There the city imposed a license fee on busses carrying passengers within the city. The busses were regulated by the State Corporation Commission and already subject to state taxation. The Court held that every phase of the relation between a public utility and the public rests in the State Corporation Commission to supervise and regulate and, "...it operates to deprive municipalities of such power, and when it attempts to interfere with such delegated power of the Commission its ordinances and acts are void." In City of Phoenix vs. Brenniger, 50 Ariz. 372, 72 P 2d. 580, regulation of dairy

and dairy products was ruled of state-wide concern and beyond a cities regulatory power. In American-LeFrance, etc. vs. City of Phoenix, 47 Ariz. 133, P 2d. 258, the state budget law prohibiting the creation of public obligation on any one year in excess of the amount specified in the budget for that year was binding upon Phoenix because the state act constituted a declaration of a broad public policy of general interest. In State vs. Jaastad, 43 Ariz. 458, 32 P 2d. 799, the minimum wage law was held to bind home rule cities. City of Tucson vs. Arizona Alpha of Sigma Alpha Epsilon, 67 Ariz. 330, 336, 195 P 2d. 562, illustrates a local law as opposed to a general state-wide law. The question in issue dealt with a charter city's method of disposing of its real property and whether or not Section 16-801 of the state statutes applied to such disposal. The Supreme Court held that the statute did not apply because "the sale or disposition of property by charter cities is not a matter of general or public concern..."

Finally, the case of Board of Regents et al vs. City of Tempe, 88 Ariz. 299, 356 P 2d. 399 illustrates again an attempt to regulate a general state function. In that case the City attempted to enforce its various building codes, regulations and permits against new construction at Arizona State University. The Court held that they could not do this and reasoned at page 311, Arizona Reports, as follows:

"The Essential point is that the powers, duties and responsibilities assigned and delegated to a state agency performing a governmental function must be exercised free of control or supervision by a municipality within whose corporate limits the state agency must act. The ultimate responsibility for higher education is reposed by our Constitution in the State. The legislature has empowered the Board of Regents to fulfill that responsibility subject only to the supervision of the legislature and the governor. It is inconsistent with this manifest constitutional and legislative purpose to permit a municipality to exercise its own control over the Board's performance of these functions."

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In conclusion, the "Beef Cattle Feed Lots" Act, in the words of the City of Tempe case, Supra, consists of the state legislature assigning powers, duties and responsibilities to the Livestock Sanitary Board (A.R.S. § 24-395) which is performing a governmental function of state-wide concern - the regulation of beef cattle feed lots. The rationale of the cases cited heretofore is that Tempe can enact the same legislation, but they cannot pass more stringent legislation or interfere in any way with the state regulation of Feed Lots. Consequently, the first question is answered no, as modified heretofore; Question numbered two is answered no, unqualified; Question numbered three is inapplicable for the reason that a charter city looks to its charter for authority and not to A.R.S. § 9-240.

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