

February 21, 1949

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ARIZONA ATTORNEY GENERAL

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Phoenix, Arizona

Dear Sir:

In reply to your letter of February 16, 1949, requesting the Attorney General's opinion and interpretation of Section 17-1607 A.C.A. 1939, as amended by Chapter 16 of the 1945 Session Laws, and particularly part (e) of the above section, in which you state:

"I would appreciate an interpretation of the meaning of Section (e) under Section 1 of the above mentioned reference numbers. I have assumed, whether correctly or incorrectly, that the Act in question would free incorporated cities or towns that had a law as strict or stricter than the Act itself provides for, referring to the tax on dogs. I also assumed that the law in question would require that such city ordinance would fully provide for rabies vaccination of all dogs in the state whether they be under a city ordinance or the Act itself."

Section (e) is as follows:

"This act shall not apply to incorporated cities or towns which impose by ordinance, as prescribed by law, a tax on

dogs."

The trouble seems to be over this clause, "as prescribed by law". The word "as" is defined as "like, similar to, of the same kind, in the same manner, in the manner in which" (Words and Phrases, Vol. 4, p. 286). The word "as" means "like"; it does not mean the thing itself but something like it.

The court in the case of Union Free School District #6 of Town of Greenburg vs. Town of Greenburg, 13 N.E. 2d 768-770, interpreted the phrase "as prescribed by law" as follows:

"'As prescribed by law' used in statutes refer exclusively to statute law of the State, unless, by purposes of the statute where words are used, a broader significance is required."

All cities and towns in the State of Arizona are organized under the Constitution and laws of the State of Arizona and only have such powers as are directly and reasonably impliedly given to them by law. It seems to us a reading of the case decided by our Supreme Court on July 15, 1948, Mayor and Common Council of City of Prescott vs. Randall, recorded in 196 P. 2d at page 477, would clarify this entire question. The court here seemingly has reviewed nearly all of the cases that have a bearing on this type of legislation. The court in the case of City of Tucson vs. Arizona Alpha of Sigma Alpha Epsilon, 195 P. 2d 562, said:

"! * * * The law is well settled that, where the method of exercising powers conferred by statute upon municipal corporations is specifically prescribed, that method must be followed. * * *!"

Then reading from page 565, supra, the court said:

"Briefly, the rule is that where the legislature enacts

a law of state-wide concern and when it is apparent that the legislature has appropriated the field and declared the rule, its declarations are binding throughout the state, and all cities and municipalities, including charter cities, are precluded from legislature upon the same subject matter * * * though they are not precluded from enacting provisions on the same subject matter which go beyond and are more stringent or restrictive than those provided for in the state statutes.
* * * "

General powers of common council of cities and towns as enacted in Section 16-207 provides:

"16. * * *; to regulate, restrain and prohibit the running at large of dogs and to authorize their destruction when at large contrary to any ordinance of the town, and to impose penalties upon the owners thereof; * * *

24. To provide regulations to prevent the introduction or spread of contagious, loathsome or infectious diseases within the town and within two (2) miles thereof, and to provide pest houses and hospitals necessary therefore; * * *

26. To do all other acts, and prescribe all other regulations, which may be necessary or expedient for the prevention or suppression of disease; * * * "

As we understand, the City of Nogales has an ordinance providing that the owners of dogs must buy a

license tag for the dog and pay a prescribed fee per year for each tag but does not make any provisions for vaccination as provided for in Section 17-1607 A.C.A. 1939, as amended by Chapter 16, Session Laws of 1945.

It is our opinion that under these facts and the general law that this Section 17-1607, relating to rabies, does apply within the City of Nogales and other cities until such time as their ordinance requires that dogs be vaccinated as provided by the state statute. It is further our opinion that the cities or towns may charge more for the license than the state law provides for and not be in conflict with our state statute, thereby complying with the Supreme Court's ruling that municipal legislation cannot contradict the state law but may parallel it or even go beyond it so long as the two are not in conflict.

We understand that the City of Nogales is writing a new ordinance to comply with the state statute. We so recommend similar action to all cities and towns.

Respectfully,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

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