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Opinion No. 516
ARIZONA ATTORNEY GENERAL

REQUESTED BY: The Honorable Norman
Justice of the Peace
Pima County, Arizona

OPINION BY: ROBERT MORRISON,
The Attorney General

H. B. Daniels
Assistant Attorney General

QUESTION: Is Ordinance No. 1947-2, relating
to drunk or intoxicated persons and
fixing a penalty for violation thereof,
enacted by the Board of Supervisors
of Pima County, valid?

CONCLUSION: No.

Article 12, Section 4, Arizona Constitution, provides:

"The duties, powers, and qualifications of
such officers shall be as prescribed by
law. . ." (Emphasis supplied)

The Legislature has made the following prescriptions regard-
ing the powers of counties and their officers:

A.R.S. § 11-202 provides:

"A. Each county is a body politic and
corporate, possessing all the powers
expressly provided in the Constitution
or laws of this state and such powers as
are necessarily implied therefrom.

* * * * *

A.R.S. § 11-201, entitled "Powers of county", provides as
follows:

"The powers of a county shall be exercised
only by the board of supervisors or by
agents and officers acting under its au-
thority and authority of law. It has
power to:

1. Sue and be sued.
2. Purchase and hold lands within its
limits.

3. Make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
4. Make such orders for the disposition or use of its property as the interests of the inhabitants of the county require.
5. Levy and collect taxes for purposes under its exclusive jurisdiction as are authorized by law."

and A.R.S. § 11-251 provides in part:

"The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

* * * * *

29. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.
30. Make and enforce all local, police, sanitary and other regulations not in conflict with general law."

In two related opinions, No. 57-22 and No. 57-23, this office concluded that the Board of Supervisors could not legislate on the particular matter in question therein. An inquiry was made to this office as to whether the Board of Supervisors could enact an ordinance regulating palmistry. The question was answered in the negative. The reason given was that the authority, impliedly or expressly, was lacking. (See Opinion No. 57-22). In a second opinion, the question was whether the Board of Supervisors could enact an ordinance requiring owners of land adjoining the highway to erect fences to keep their livestock on their premises. This question, too, was answered in the negative. The conclusions to both opinions were based upon the rule in Associated Dairy Products Co. v. Page, 68 Ariz. 393, 206 P.2d 1041. (See Opinion No. 57-23).

The rule in the Associated Dairy case, supra, is that subsections 29 and 30 of A.R.S. § 11-251 do not grant express or implied powers to the Board of Supervisors to enact ordinances of a criminal nature. The Court said, at page 398 of the Arizona Reports:

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" . . . Certainly there is nothing in the granting of power in any of these sections A.R.S. § 11-251 (29) (30) that would warrant the board of supervisors in passing a criminal statute and fixing a penalty for its violation."

It is unnecessary to belabor this point. We are satisfied that the rule expressed in the prior opinions, as well as the above case, is applicable to the ordinance in question.

It is therefore the opinion of this office that Ordinance No. 1947-2 is invalid.

ROBERT MORRISON
The Attorney General



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