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DISTRICT 13

Arizona House of Representatives
Phoenix, Arizona 85007

JOINT LEGISLATIVE AUDIT

October 15, 2020

Beau Roysden, Solicitor
Attorney General's Office
2005 N Central Ave
Phoenix, AZ 85004-2926

RECEIVED

OCT 22 2020

RE: R20-013 Opinion Request

Appeals & Constitutional Litigation

Dear Solicitor:

I write to you today regarding the request for an opinion from your office as to whether a county board of supervisors may include livestock in its ordinances relating to the protection of animals. In my role as a State Representative, I value my responsibility to adhere to the plain reading of state statute and the intent of past members of this body that have enacted legislation. In both enacted language and intent, the Legislature has clearly preempted counties from prohibiting or restricting livestock activities through animal protection ordinances.

The plain language of A.R.S. § 11-251 and A.R.S. § 13-2910 clearly differentiate between companion animals and animals serving an economic purpose that are regulated by the Department of Agriculture. A.R.S. § 11-251 (47) allows a county board of supervisors to "make and enforce ordinances for the protection and disposition of domestic animals subject to inhumane, unhealthful, or dangerous conditions or circumstances... For the purposes of this paragraph, 'domestic animal' means an animal kept as a pet and not primarily for economic purposes." In criminal code relating to cruelty to animals, A.R.S. § 13-2910 (C) specifically preempts prohibiting or restricting "activities permitted by or pursuant to title 3."

Opinion request R20-03 states that "it can be inferred that since most protections provided in A.R.S. § 13-2910 use the term animal instead of domestic animal, that the protections apply to all animals, including livestock." In addition to the plain reading of this statute, both legislative history and intent on the record conflict with this faulty inference. In 2012, legislation regarding an arguable gray area of A.R.S. § 13-2910, whether dogs serving an agricultural purpose fell within a county's authority to regulate companion animals, the Legislature confirmed the bright lines that exist between livestock and domestic animals under a county's scope of authority. HB 2780 (animal cruelty; ranching dogs), sponsored by Representative Judd, sought to legislate on one variety of animal that could have either a domestic lifestyle or agricultural "occupation."

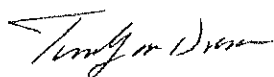
In enacting and signing legislation that confirmed the county preemption on dogs serving an agricultural purpose, the Legislature and Governor reconfirmed the long-existing statutory mandate in A.R.S. § 13-2910 (C) that prohibits county restriction of livestock for animal cruelty purposes. R20-03, however, asks the Attorney General to conclude that counties may restrict livestock, animals that do not have dual domestic applications like dogs. In the House Agriculture and Water Hearing on HB 2780 on February 16, 2012, Representative Judd shares that she and

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House staff initially believed the county preemption on livestock extended to dogs shepherding or herding livestock under existing law, but that overreach in Pima County necessitated further clarification. In representing the Pima County Attorney's Office, Kathleen Mayer likewise confirms the distinction between domestic animals and livestock. At 5:50 min into the hearing, Ms. Mayer explains that "there already is an exemption for animals who are being used in farming and ranching, rodeo pursuits, those kinds of things." Clearly, the exemption is unambiguous and has been acknowledged by county governments for years.

The Legislature has intended for animal cruelty of livestock to exist within Title 3 and remain enforceable by the Department of Agriculture. This statutory framework works in the best interest of both livestock, ranchers and animal agriculture producers. I encourage your office to preserve this policy framework that has served Arizona well for decades.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Dunn", written in a cursive style.

Representative Tim Dunn
AZ LD13