

July 6, 2009

Mr. Jeffrey A. Noble  
City Prosecutor  
P.O. Box 910  
Miles City, MT 59301

Dear Mr. Noble:

You have requested my advice on the following question:

Is the City of Miles City authorized to adopt new ordinances that would allow the City Pound staff to destroy vicious dogs?

Your request is prompted by the consideration of new municipal dog control ordinances by the Miles City Mayor and City Council. The Mayor and City Council are interested in learning about their options in implementing said ordinances.

As a city that has not adopted a self-government charter, Miles City has limited authority under the Montana Constitution. The Montana Constitution provides that incorporated cities and towns without self-government charters have legislative, administrative, and other powers provided or implied by law. Mont. Const. art. XI, § 4(1)(a). Miles City thus only has such powers as have been granted to it, explicitly or implicitly, by the state legislature. D & F Sanitation Serv. v. Billings, 219 Mont. 437, 445, 713 P.2d 977, 982 (1986). These powers are to be liberally construed. Mont. Const. art. XI, § 4(2).

Montana's specific statutes referring to dog control do not give municipalities the authority to regulate all vicious dogs. Municipalities have explicit authority to provide for the killing or destruction of dogs if found running at large without license. Mont. Code Ann. § 7-23-4102. On the other hand, counties have explicit authority to adopt ordinances which provide for the killing of any vicious dog. Mont. Code Ann. § 7-23-2109. Under these specific provisions, Custer County can have (and does have) an ordinance which allows any vicious dog to be destroyed, whereas Miles City's explicit statutory authority extends only to regulation of vicious dogs running at large without license.

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Notably, these provisions do not prohibit municipalities from adopting ordinances that allow for destroying all vicious dogs (in contrast, for example, to Mont. Code Ann. § 45-8-351, which explicitly limits municipal regulation of guns). Had the legislature wished to give counties exclusive authority to provide for vicious dog control, it could have done so. The Attorney General is not permitted to insert what has been omitted, or vice versa. Mont. Code Ann. § 1-2-101. Thus, if municipalities are granted the implicit power to regulate vicious dogs elsewhere, these specific provisions do not prohibit such regulation.

Municipalities have been granted more general authority to legislate in several instances. A municipality has the legislative power to adopt, amend, or repeal ordinances that are required to “secure and promote the general public health and welfare.” Mont. Code Ann. § 7-1-4123(2). This power is granted *in addition* to any other specific grants of authority. Mont. Code Ann. § 7-1-4123. Destroying rabid dogs is considered within the public health power. Ruona v. City of Billings, 136 Mont. 554, 323 P.2d 29 (1958). Vicious dogs do not pose the same threat of spreading disease as rabid dogs, but do create a threat of serious injury and even death. Accordingly, I conclude that vicious dogs can also be regulated under the public health power. The public welfare power gives municipalities the authority to destroy vicious dogs as well. Public welfare is defined as “[a] society’s well-being in matters of health, safety, order, morality, economics, and politics.” Black’s Law Dictionary 1625 (8th ed. 2004). Dog control to prevent vicious dogs from injuring people advances public health, safety, and order.

The City Council also has the power to define and abate nuisances. Mont. Code Ann. § 7-5-4104(a). Nuisance is defined as “[a]nything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . .” Mont. Code Ann. § 27-30-101(1). Many municipalities have defined aggressive and violent dogs as nuisances. See, e.g., City of Billings Code § 4-405; City of Bozeman Code § 6.04.010(J); City of Great Falls Code § 6.8.1150(B)(1)(c). In a case involving the killing of a young girl by a Siberian Husky, the Montana Supreme Court held that the keeping of a dog cannot be a nuisance unless there is a law making it illegal. State ex. rel. Fields v. District Court, 168 Mont. 126, 541 P.2d 66 (1975). This implies that cities are indeed able to define vicious dogs as nuisances. Miles City can adopt ordinances that regulate vicious dogs as nuisances.

In addition, should Miles City wish to coordinate vicious dog control with Custer County, the City is able to enter into an interlocal agreement with Custer County to do so. Local governments may cooperate in the exercise of any local government function with another local government unit, providing it is not prohibited by law. Mont. Const. art. XI § 7(1); Mont. Code Ann. § 7-11-104. The legislature has not prohibited local

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government units from making agreements regarding vicious dog control. Miles City can regulate vicious dogs by entering into an interlocal agreement with Custer County pursuant to the Interlocal Cooperation Act. Moreover, coordination between Miles City and Custer County on this issue may allow for greater efficiency and less confusion than if Miles City were to act alone.

Custer County and Miles City entered into an agreement concerning dog control in 1982, but this agreement does not extend to all vicious dogs. The agreement, therefore, does not limit the city's power to regulate vicious dogs as described above. The city and county remain free to address that issue as an amendment to the existing agreement or in a future agreement.

Any or all of the aforementioned rationales permit Miles City to regulate vicious dogs. These conclusions are consistent with the constitutional principle that "[t]he powers of incorporated cities and towns and counties shall be liberally construed." Mont. Const. art. XI, § 4(2).

I hope this is responsive to your question. This letter may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS TWEETEN

Chief Civil Counsel

cdt/se/bjh