Animal Control, city contracting with private entity

Number: AGO 2008-48

Date: September 23, 2008

Subject:
Animal Control, city contracting with private entity

Mr. Daniel S. McIntyre
County Attorney
St. Lucie County
2300 Virginia Avenue
3rd Floor Administration Annex
Fort Pierce, Florida 34982-5652

RE: PUBLIC RECORDS – MUNICIPALITIES – RABIES VACCINATION – ANIMAL CONTROL – authority of city to contract with private entity to administer animal control ordinance. s. 828.30, Fla. Stat.

Dear Mr. McIntyre:

You have asked substantially the following question:

Does section 828.30(5), Florida Statutes, prohibit a local government from entering into a contract with a private entity to assist in the administration of its animal registration ordinance?

You state that the St. Lucie County Board of County Commissioners has adopted a county ordinance requiring the registration of dogs and cats in the unincorporated area of the county.[1] Section 1-4-30(a), St. Lucie County Code of Ordinances, requires all owners of cats and dogs in the unincorporated area of the county to obtain a registration identification tag for each animal over the age of four months. The registration tags are available through participating veterinarians, the Humane Society of St. Lucie County, directly from the county's animal control division, or through a private firm which the county has contracted to assist with the administration of the program. You indicate, however, that the contractual arrangement with the private firm has been suspended until resolution of this issue. Owners are required to produce proof of current vaccination in order to purchase a tag. There is some question as to whether a private firm may possess information relating to rabies vaccination records which is otherwise exempt from disclosure under the Public Records Act.

The ability of the county to contract with a private entity for the administration of the registration program has been questioned in light of section 828.30(5), Florida Statutes, and a previous informal opinion from this office. Section 828.30(5), Florida Statutes, provides:

"An animal owner's name, street address, phone number, and animal tag number contained in a rabies vaccination certificate provided to the animal control authority is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, any person who has been bitten,

scratched, or otherwise exposed to a zoonotic disease or the physician of such person; a veterinarian who is treating an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease; or the owner of an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease shall be provided with any information contained in a rabies vaccination certificate but only with respect to the particular animal biting, scratching, or otherwise causing exposure. Any person with an animal tag number may receive vaccination certificate information with regard to that animal. Law enforcement and prosecutorial agencies; other animal control authorities; emergency and medical response and disease control agencies; or other governmental health agencies shall be provided information contained in the rabies vaccination certificate for the purpose of controlling the transmission of rabies; however, the receiving agencies and authorities must not release the exempt information."

Violation of this section is a civil infraction punishable as provided in section 828.27(2), Florida Statutes.[2]
This office was previously asked if a private non-profit pet rescue organization was authorized to receive information contained in rabies vaccination certificates.[3] The organization, known as the Pet Owners Alliance (POA), maintained a computer database showing the ownership of tattooed and microchipped animals in Florida. The POA served as legally appointed animal cruelty investigators, trainers of problem pets, and a rescue and rehabilitation source for abandoned, abused, or lost pets. It also operated a computerized "lost and found" service in Broward, Palm Beach and Dade Counties which was utilized by law enforcement agencies.

In reviewing the terms of section 828.27(2), Florida Statutes, this office recognized that the statute exempts from public disclosure any information in rabies vaccination certificates identifying the owner of the animal vaccinated. While the statute permits copies of the database to be released, the owner's name, street address, phone number and animal tag number may not be made available. The statute, however, enumerates several individuals and entities who may have access to the otherwise exempt information, including "other animal control authorities" for the purpose of controlling rabies. While the opinion indicated that the POA could possibly be considered an "animal control authority" if it were properly appointed so by the appropriate governing body, it was problematic to conclude that the release of the privileged information in order to return lost pets would be necessary for the control of the transmission of rabies.

When a public agency delegates authority to maintain certain records necessary to perform its function to a private entity, such records are subject to the provisions in Chapter 119, Florida Statutes.[4] In the instant situation, the city is contracting with the private entity to administer the city's animal registration program. The private entity would be acting on behalf of the city and would stand in the "shoes" of the city when applying section 828.30(5), Florida Statutes, as well as the provisions of the Public Records Act. Thus, the private entity would be required to recognize and enforce the exemption afforded certain owner identifying information contained in rabies records as prescribed in section 828.30(5), Florida Statutes.

While section 828.30(5), Florida Statutes, restricts the release of certain information contained in rabies vaccination records, it does not prohibit or impede a city's authority to contract with a private entity to assist in the operation of its animal registration program. As an agent of the city, the private entity would maintain the registration records subject to the provisions of the Public

Records Act.

Accordingly, it is my opinion that section 828.30(5), Florida Statutes, does not prohibit a local government from entering into a contract with a private entity to assist in the administration of its animal registration ordinance. To the extent the public entity carries out a public function on behalf of the local government, however, it would be subject to the provisions of the Public Records Act.

Sincerely,

Bill McCollum
Attorney General

BM/tals

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[1] Ordinance No. 07-010, St. Lucie County Code of Ordinances.

[2] Section 828.30(6), Fla. Stat. Section 828.27(2), Fla. Stat., authorizes the governing body of a county or municipality to enact ordinances relating to animal control or cruelty, which may include a maximum civil penalty not to exceed $500.00.

[3] Informal Op. of Att'y Gen. to The Honorable Debbie Wasserman Schultz, dated December 28, 1998.

[4] *See News-Journal Corporation v. Memorial Hospital-West Volusia, Inc.,* 695 So. 2d 418 (Fla. 5th DCA 1997), *approved,* 729 So. 2d 373 (Fla. 1999) (business records of entities contracting to relieve a public body form the operation of a public obligation subject to the open government laws); *Stanfield v. Salvation Army*, 695 So. 2d 501, 501-503 (Fla. 5th DCA 1997) (Salvation Army subject to the Public Records Act when providing misdemeanor probation services pursuant to a county contract); *Putnam County Humane Society, Inc. v. Woodward*, 740 So. 2d 1238 (Fla. 5th DCA 1999) (where county humane society assumed the governmental function of investigating acts of animal abuse pursuant to statutory authority, records created and maintained relative to that function are governed by Public Records Act).