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State Senate
 Minority Leader

Committees:
 Rules

August 21, 2020

Mark Brnovich
 Attorney General
 State of Arizona
 1275 W. Washington Street
 Phoenix, AZ 85007

Dear Attorney General Brnovich,

Pursuant to A.R.S. § 41-193, I am writing to request an opinion from your office concerning the statutory authority of county governments to include livestock in animal protection ordinances.

Except where preempted by state law, Arizona grants county boards of supervisors the broad authority to pass ordinances on issues where statute is silent. A.R.S. § 11-251.05 states that the board of supervisors may:

In the conduct of county business, adopt, amend and repeal all ordinances necessary or proper to carry out the duties, responsibilities and functions of the county which are not otherwise specifically limited by section 11-251 or any other law or in conflict with any rule or law of this state.

A.R.S. § 11-251, which predates A.R.S. § 11-251.05 and is referenced therein, lists dozens of specific, though not exhaustive, subjects which county boards of supervisors are expressly authorized to legislate. Among them is the power to enact and enforce ordinances to protect domestic animals from "inhumane, unhealthful or dangerous conditions or circumstances." The confusion on the subject stems from the final two sentences of this paragraph, which seem to contradict each other. They read:

This paragraph does not limit or restrict the authority granted to cities, towns or counties pursuant to section 13-2910. For the purposes of this paragraph, "domestic animal" means an animal kept as a pet and not primarily for economic purposes.

It appears that the language in this section excludes from the powers expressly granted to county boards of supervisors the inclusion of animals kept for economic purposes, or livestock, in animal protection ordinances. However, A.R.S. § 11-251 is not the only section of statute that details the powers of county boards of supervisors as they relate to animal protections. In fact, the paragraph gives deference to A.R.S. § 13-2910, which in addition to the broader authority granted to counties pursuant to the more recently

¹ A.R.S. § 13-2910 (F) states "An incorporated city or town or a county may adopt an ordinance with misdemeanor provisions at least as stringent as the misdemeanor provisions of this section, except that any ordinance adopted shall not prohibit or restrict any activity involving a dog, whether the dog is restrained or not, if the activity is directly related to the business of shepherding or herding livestock and the activity is necessary for the safety of a human, the dog or livestock or is permitted by or pursuant to title 3."

² Pima County Code of Ordinances § 6.04.110 contains several provisions relating to cruelty and neglect of animals that apply to all animals, including livestock. Some provisions have been in effect since 1986.

enacted A.R.S. § 11-251.05, grants permission to a county to penalize animal cruelty with provisions at least as stringent as the provisions in state law¹. 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.

Historically, county boards of supervisors have exhibited varying interpretations of their authority to include livestock in animal protection ordinances. While some counties have avoided the subject altogether, others have enacted and enforced animal protection ordinances that include livestock for decades². Recent amendments to the statutes mentioned above have caused further confusion on the matter and in the absence of any caselaw, legal opinions, interpretations or statements of enforcement policy from your office, disparities in local protection ordinances will likely continue.

As noted above, there is a lack of clear precedent on the issue. Therefore, I am asking an opinion from your office addressing the following question:

May a county board of supervisors include livestock in its ordinances relating to the protection of animals?

I believe the answer to the question should be "yes," based on my interpretation of the timeline and intent of the statutes mentioned above.

Sincerely,

A handwritten signature in cursive script that reads "Dave Bradley".

Senate Minority Leader David Bradley

Arizona State Senate