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OPINION	:	No. 79-1117
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of	:	<u>July 2, 1980</u>
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SUBJECT: DANGEROUS DOGS ON PARK PROPERTY—The Board of Directors of the East Bay Regional Park District does not have legislative authority to authorize its employees to kill, injure or impound a dog found on park property by ordinance if the owner has complied with Division 15 of the Food and Agricultural Code by placing a metal license or identification tag on the dog's collar because such an ordinance would conflict with Food and Agricultural Code section 30953.

The Honorable Daniel E. Boatwright, Assemblyman for the Tenth District, has requested an opinion on a question which we have phrased as follows:

Does the Board of Directors of the East Bay Regional Park District have authority to enact an ordinance allowing District employees to capture or kill dangerous dogs on park property?

CONCLUSION

The Board of Directors of the East Bay Regional Park District does not have legislative authority to authorize its employees to kill, injure or impound a dog found on park property by ordinance if the owner has complied with Division 15 of the Food and Agricultural Code by placing a metal license or identification tag on the dog's collar

because such an ordinance would conflict with Food and Agricultural Code Section 30953. If an ordinance of the district provided for the control of dogs on park lands in a manner not in conflict with the constitution or state statutes, such an ordinance would be authorized and valid.

ANALYSIS

The East Bay Regional Park District (the district) was formed under and is governed by Article 3, Chapter 3, Division 5 (Section 5500 *et seq.*) of the Public Resources Code.¹ The district includes territory in Alameda and Contra Costa Counties and more than 20 municipalities. Problems with dogs running at large on park lands have prompted this opinion request regarding the legislative authority of the board of directors of the district to authorize district employees to capture or kill dangerous dogs found on park lands.

The Legislature has granted the boards of directors of regional park districts certain powers over the park lands owned by such districts by statute. These include Section 5558, the pertinent portions of which read:

“The board shall superintend, control, and make available to all of the inhabitants of the district, subject to its rules and regulations, all public parks, playgrounds, beaches, parkways, scenic drives, boulevards, open spaces, and other facilities for public recreation belonging to the district or under its control.

“It shall regulate, restrain, and control the kind of vehicles, and the time and conditions of travel or parking on such public parks, playgrounds, beaches, parkways, scenic drives, boulevards, open spaces, and other facilities for public recreation, and it shall employ a suitable police force and shall make ‘all rules and regulations for the government and use of all the lands under its care.

“It shall, in general, do all acts necessary to the proper execution of the powers and duties granted to, and imposed upon, the board by the provisions of this article, and to manage and control the business and affairs of the district. . . .”

Section 5558.1 supplements the foregoing powers for the East Bay Regional Park District as follows:

¹ Section references are to the Public Resources Code unless otherwise specified.

“The Board of Directors of the East Bay Regional Park District shall superintend, control, and make available to all of the inhabitants of the district, subject to its rules and regulations, all vehicular recreational areas and trails belonging to the district or under its control.

“The Board of Directors of the East Bay Regional Park District shall regulate, restrain, and control the kind of vehicles, and the time and conditions of travel or parking on such vehicular recreational areas and trails.”

Former doubt regarding the Legislature’s power to confer legislative authority on special districts was resolved in *People ex tel. Younger v. County of El Dorado* (1971) 5 Cal. 3d 480. So long as the Legislature reserves to itself the function of determining the penalty for the violation of the rules and regulations it authorizes a district to enact, it may authorize the district to enact rules and regulations germane to its purpose. *Id.*, p. 496. The Legislature has prescribed the penalties for violation of regional park district ordinances, rules and regulations in section 5560.

We believe the authority granted to “make all rules and regulations for the government and use of all the lands under its care” includes the power to adopt such ordinances or regulations controlling dogs on park lands as are not in conflict with state law or constitutional provisions, particularly where the board of directors has determined that such measures are necessary to make the park available to all of the inhabitants of the district. Section 5547 authorizes the board of directors to enact ordinances.

Of course any legislative act must comport with constitutional requirements, and we assume that any ordinance adopted will pass constitutional muster.

“Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates, contradicts or enters an area fully occupied by general law, either expressly or by legislative implication.” *Danville Fire Protection District v. Duffel Financial & Cons It. Co.* (1976)58 Cal. App. 3d 241, 249.

The general state statutes governing the licensing and control of dogs are set forth in Division 14 (section 30501 *et seq.*) of the Food and Agricultural Code. The statutory scheme makes it unlawful to own or keep any dog over four months of age or to allow such dog to run at large unless the dog has a collar to which is attached a metal license tag issued by the city or county or a metal tag bearing the owner’s name and post office address. (Food & Agr. Code § 30951.) It is unlawful to permit any female dog in heat to run at large. (Food & Agr. Code § 30954.) It is unlawful to permit any dog to run at large on any farm

where livestock or domestic fowls are kept. Under specified circumstances any person may kill a dog found in the act of killing, wounding or persistently pursuing livestock or poultry. (Food & Agr. Code §§ 31102, 31152.) Any dog found running at large without the required license or identification tag may be seized and impounded by any peace officer. (Food & Agr. Code § 31101.) Any dog entering property outside a city on which livestock or poultry are confined may be seized or killed by the landowner, tenant or the employee of either. (Food & Agr. Code §§ 31103, 31104.) The county is required to provide for impounding and disposal of dogs running at large in violation of the law. (Food & Agr. Code § 31105.)

Article 1, Chapter 3, Division 3 (section 1900 *et seq.*) of the Health and Safety Code provides for the control of rabies. In counties declared rabies areas (Health & Saf. Code § 1901.2) certain designated areas may be quarantined (Health & Saf. Code § 1903), and during the quarantine period any dog found in the quarantine area not held in restraint may be killed or captured by any officer. (Health & Saf. Code § 1907.) In those counties declared rabies area the county and cities within the county are required to provide for the licensing and impounding of unlicensed dogs and require as a condition to licensing the vaccination of dogs for rabies. (Health & Saf. Code § 1920.)

The killing and capture of dogs is also governed by provisions in the Penal Code designed to prevent cruelty to animals. Thus malicious killing of another's animal (Pen. Code § 597) or subjecting any domestic animal to unnecessary torture, suffering or cruelty of any kind (Pen. Code § 597a) are crimes. Killing dogs by use of carbon monoxide (Pen. Code § 597u) or nitrogen (Pen. Code § 597x) is regulated, and the use of a high altitude compression chamber to kill dogs is prohibited (Pen. Code § 597w). Newborn pups may only be killed by use of chloroform or barbiturates (Pen. Code § 597v). The disposition of injured dogs is governed by Penal Code Section 597f.

We must examine the impact of these general state statutes upon the legislative power of a regional park district to regulate dogs within its parks. As we have noted, a local regulation which conflicts with general law is void. (*Danville Fire Protection District v. Duffel Financial & Constr. Co., supra.*) If the state law fully occupies the field, any local regulation of the same field is in conflict therewith and is therefore void. (*Danville Fire Protection District v. Duffel Financial & Constr. Co., supra.*) In *Markus v. Justice's Court* (1953) 117 Cal. App. 2d 391 the court held that the general state law providing for the licensing and control of dogs (the predecessor to Division 14 of the Food and Agricultural Code) did not fully occupy the field of dog regulation and upheld a county ordinance which prohibited the owner from 'allowing tagged dogs to run at large in the county.

While Division 14 of the Food and Agricultural Code does not fully occupy the field of dog regulation, a local regulation concerning dogs may nevertheless conflict with the general law if it duplicates or contradicts state law. A local regulation contradicts state law where it prohibits what the state law expressly authorizes (*People v. Orozco* (1968) 266 Cal. App. 2d 507, 511) or where it authorizes what the state law expressly prohibits.

Food and Agricultural Code section 30953 expressly prohibits any person from killing, injuring or impounding any dog if the owner has complied with Division 14 of that code. It follows that a local ordinance which purports to authorize the killing, injuring or impounding of such a dog would be void because it would contradict and thus be in conflict with section 30953. A local ordinance which purported to authorize the killing or impounding of dogs under the same circumstances as authorized in Division 15 of the Food and Agricultural Code would also be void as it would duplicate and thus be in conflict with state law. (*Danville Fire Protection District v. Duffel Financial Constr. Co.*, *supra*.)

Accordingly, we conclude that the board of directors of the district does not have authority to permit its employees to kill, injure or impound a dog found on park property by ordinance or regulation if the owner of the dog has complied with Division 14 of the Food and Agricultural Code by placing the requisite metal license or identification tag on a substantial collar attached to the dog.

If an ordinance or regulation of the district provided for the control of dogs on park lands in a manner which did not conflict with state law, we conclude that such an ordinance would be authorized and valid. Thus a district ordinance authorizing the killing of dogs on park land where the owner had not complied with Division 14 of the Food and Agricultural Code by placing the requisite metal tag on the dog's collar in a manner which does not violate any state statute would be authorized and valid. On the other hand, a district ordinance which purports to authorize members of the district's police force to impound untagged dogs found on district lands would duplicate Food and Agricultural Code Section 31101 and therefore be void because it conflicts with state law.

Members of the district's police force are peace officers under Penal Code Section 830.3(h). As peace officers they are authorized by Food and Agricultural Code Section 31101 to seize and impound any dog found running at large within the district without the required license or identification tag. Further, such officers are authorized by Health and Safety Code Section 1907 to kill dogs found running at large on public lands within the district which is subject to a rabies quarantine order. It should be emphasized, however, that in so acting the district's police officers are authorized and governed by the applicable state law and not by any legislative action of the district.
