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| OPINION                 | : | No. 79-826             |
|                         | : |                        |
| of                      | : | <u>January 4, 1980</u> |
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SUBJECT: MAINTENANCE OF POUND SYSTEM—In a county which has been declared to be a rabies area, it is the responsibility of the city to maintain or provide for the maintenance of a pound system for the city. If there is no such ordinance or resolution by the city, such responsibility transfers to the county.

The Honorable Charles R. Imbrecht, Assemblyman for the Thirty-Sixth District, has requested an opinion on the following question:

In a county which has been declared to be a rabies area, is it the responsibility of the city or the county to maintain or provide for the maintenance of a pound system for the city under section 1920(e) of the Health and Safety Code?

CONCLUSION

In a county which has been declared to be a rabies area, it is the responsibility of the city to maintain or provide for the maintenance of a pound system for the city as required

by section 1920(e) of the Health and Safety Code, in the absence of an ordinance or resolution by the city, pursuant to section 476 of the Health and Safety Code, transferring such responsibility to the county.

## ANALYSIS

The control of rabies in California has been addressed by the Legislature in sections 1900 to 2000 of the Health and Safety Code,<sup>1</sup> i.e., the so-called “Rabies Control Act.” (See *Dept. Pub. Health v. Board of Supervisors* (1959) 171 Cal. App. 2d 99, 105; 38 Ops. Cal. Atty. Gen. 176, 177 (1961).)

The Rabies Control Act provides, among other things, for the State Director of Health Services to declare an ‘area not less than a county’ to be a “rabies area” if he has found, after consultation with and approval of the “regional advisory committee,” that the “existence of rabies [in that area] constitutes a public health hazard.” (§ 1901.2.)

When an area is thus declared to be a rabies area, section 1920, which sets forth the requirements for licensing, impounding, and vaccinating dogs, becomes operative. Under that section dogs over four months old are to be licensed as provided by local ordinance (§ 1920(a)) and vaccinated as prescribed by the State Department of Health Services. (§ 1920(b).) Dogs under four months old are to be kept under restraint. (§ 1920(c).)

Dogs which are found to be in violation of the statute and pertinent local regulations “shall be impounded as provided by local ordinance.” (§ 1920(d).)

Section 1920(e) (which is referred to in the present opinion request) provides:

“(e) It shall be the duty of the governing body of each city, city and county, or county to maintain or provide for the maintenance of a pound system and a rabies control program for the purpose of carrying out and enforcing the provisions of this section.”

The question we consider here is whether it is the responsibility of the city or the county to provide a pound for the city in a “rabies area” as required by section 1920(e).

The general rule specified in the Health and Safety Code regarding the respective responsibilities of counties and cities for the protection of public health is that counties have such responsibilities in unincorporated territory (§§ 450, 452) and the cities have such

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<sup>1</sup> Hereafter all section references are to the Health and Safety Code.

responsibilities within the city's boundaries (§§ 500, 504). (*City of Pasadena v. County of L.A.* (1965) 235 Cal. App. 2d 153, 155.)

Thus, as a basic scheme, the Legislature has established mutually exclusive areas of responsibility as between cities and counties for the enforcement of health laws.

However, the Legislature has also provided procedures for altering this basic division of health law enforcement responsibility. (See §§ 476–485; see also *City of Pasadena v. County of L.A.*, *supra*, 235 Cal. App. 2d at p. 155.)

With respect to the enforcement of state health laws within a city, section 476 provides:

“When the governing body of a city in the county consents by resolution or ordinance, the county health officer shall enforce and observe in the city all of the following:

“(a) Orders, quarantine regulations, and rules prescribed by the state department and other rules and regulations issued under the provisions of this code.

“(b) Statutes relating to the public health.”

With regard to the enforcement of city health ordinances within a city, section 480 provides:

“The board of supervisors may contract with a city in the county, and the city, through its governing body, may contract with the county for the performance by health officers or other employees of the county of any or all functions relating to, the enforcement in the city of all ordinances thereof relating to public health and sanitation, and the making of all inspection and the performance of all functions in connection therewith.”

With respect to the enforcement of health laws in unincorporated areas of a county adjacent to a city, section 483 provides:

“The board of supervisors may contract with a city in the county, through its governing body, to secure the performance by the health officer or other health employees of the city, in any unincorporated territory adjacent to the city, of any or all functions relating to public health.” (See *City of*

*Pasadena v. County of L.A.*, *supra*, 235 Cal. App. 2d at pp. 155–156.)

In comparing section 476 with sections 280 and 483, it can be seen that a contract between the city and county is required for the county to undertake enforcement of city health ordinances within the city or for a city to enforce health laws in adjacent county areas. However, for a city to cede to the county responsibility for the enforcement, within the city, of state health laws, the county’s acquiescence is not required. Unlike sections 480 and 483, there is no provision for a contract between the city and county in section 476.<sup>2</sup> The only requirement specified in section 476 for such a shifting of enforcement responsibilities is that the city promulgate an ordinance expressing its consent to county enforcement. Upon this manifestation of consent the county becomes obligated to enforce state health laws within the city. (26 Ops. Cal. Atty. Gen. 208, 209 (1955); Ops. Cal. Atty. Gen. NS 4668 (1942).) See *City of Pasadena v. County of L.A.*, *supra*, 235 Cal. App. 2d at p. 156, where the court characterized a city’s implementation of section 476 in terms of a city’s “having duly cast upon the County . . . the obligation to enforce state laws in the city at the county’s expense, pursuant to the power to do so conferred by section 473 . . . .” (Emphasis added.)

Evaluating in light of these provisions the obligation under section 1920(e) to provide for a pound, we note that there is nothing in the Rabies Control Act which purports to alter this general scheme for the allocation of responsibilities for health law enforcement.

“‘. . . it is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication’ . . . .” (*Busching v. Superior Court* (1974) 12 Cal. 3d 44, 52.)

Thus as an initial proposition we conclude that in providing that in a rabies area: “It shall be the duty of . . . each city, city and county, or county to maintain, or provide for the maintenance of a pound system . . . .” (§ 1920(e)), the Legislature intended, in the absence of any contrary consent or contract, for the county to provide for a pound system within its unincorporated territory and for the city to concurrently provide for such a system within its corporate boundaries.

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<sup>2</sup> “Where a statute on a particular subject omits a particular provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is not applicable to the statute from which it was omitted.” (*Marsh v. Edward Theatres Circus, Inc.* (1976) 64 Cal. App. 3d 881, 891.)

But the question that arises here is what is the effect upon the distribution of these concurrent duties of sections 476 and 480? Of primary significance in this regard is the fact that section 1920(e) requiring the providing of a pound is a “state-created law[]” and thus subject to the provisions of section 476, which does not require a contract with the county. As stated in *City of Pasadena v. County of L.A.*, *supra*, 235 Cal. App. 2d at p. 155:

“ . . . An incorporated city may transfer to the county health officer the power and duty of enforcing, within the city, all of the state-created laws and ruler (Health & Saf. Code, § 476), in which case the costs of local enforcement of these laws becomes a county expense. In addition, a board of supervisors and an incorporated city may contract for the enforcement within the city of the municipal ordinances by the county health officer (Health & Saf. Code, § 480), the expenses of the enforcement of these municipal ordinances remaining with the city (Health & Saf. Code, § 482 . . . .” (Emphasis added.)

Thus by enacting the appropriate resolution or ordinance pursuant to section 476, the city can unilaterally “transfer to the county” the obligation to enforce the “state-created law[]”, requiring a pound without the necessity of the county’s prior agreement to accept this obligation.

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