

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION**

COUNTY OF COOK,)	
)	
Plaintiff,)	
)	
v.)	No. 10 CH 39696
)	
)	
VILLAGE OF BRIDGEVIEW,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

This case involves two home rule units' conflicting regulation of feral cat colonies. Feral cats are cats (i) born in the wild, (ii) that have been abandoned by their owners and are no longer socialized, or (iii) that live on a farm. In 1973, the Illinois legislature enacted the Animal Control Act, 510 ILCS 5/1, *et seq.*, to control the stray animal population and prevent and control the spread of rabies in Illinois. The Act provides that:

It shall be the duty of the Administrator [a licensed veterinarian appointed by the County Board] or the Deputy Administrator, through sterilization, humane education, rabies inoculation, stray control, impoundment, quarantine, and any other means deemed necessary, to control and prevent the spread of rabies and to exercise dog and cat overpopulation control. . .

510 ILCS 5/5(a).

The Act also grants the counties in the State the power to enact ordinances to “determine the extent of the police powers that may be exercised by the Administrator.” 510 ILCS 5/5(b). Based on this express authority, Cook County enacted the Cook County Animals Code. The Code grants the County Administrator the power “to control and prevent the spread of rabies” “through public education, rabies inoculation, stray control, impoundment, quarantine and other means deemed necessary.” County Animals Code § 10-6(a).

On October 16, 2007, based, in part, on the recommendation of the County Administrator, Dr. Donna Alexander, the legislature enacted Article IV of the Code, Ordinance 07-0-72, titled "Managed Care of Feral Cats." This ordinance seeks to control the feral cat population and the spread of rabies within the County through the Trap, Neuter, and Return Program, which permits individuals in the County to maintain feral cat colonies. Specifically, the ordinance provides that: "Feral Cat Colonies shall be permitted and Feral Cat Colony caretakers shall be entitled to maintain and care for Feral Cats by providing food, water, shelter and other forms of sustenance . . ." County Animals Code § 10-97(a). The County's ordinance requires feral cat caretakers to vaccinate, spay or neuter, and provide any other necessary medical care for members of the feral cat colony in order to restrict the colony's growth. County Animals Code § 10-97(d). Caretakers must also register and report on the location and number of feral cats in the colony with a sponsoring Humane Society, and take measures to identify the cats in the colony through observation, eartipping, and having electronic identification devices inserted into each cat. *Id.* In the event that a feral cat is trapped, steps should be taken to identify and place the cat with its caretaker, have the cat adopted or placed with a caretaker, or have it "humanely destroyed" if it "presents an imminent danger to the public health or safety." County Animals Code § 10-98(a).

The Village of Bridgeview, a municipal corporation wholly located within the County of Cook, is subject to the County's feral cat ordinance. On April 1, 2009, pursuant to its home rule power, Bridgeview enacted an ordinance forbidding the operation of feral cat colonies in Bridgeview and imposing a maximum fine of \$500 per day for operating a feral cat colony in violation of the ordinance.¹ Ordinance No. 09-04; Municipal Code of Bridgeview §1-1-11.

¹ Section 1 of the Bridgeview Ordinance amends Section 9-3-12 of the Municipal Code and provides that: "It shall be unlawful for any person to operate a feral cat colony within the Village."

In light of the conflicting nature of the two ordinances, the County filed a two-count complaint seeking: (1) a declaratory judgment that Bridgeview lacked statutory or home rule authority to adopt its ordinance, and that the Bridgeview Ordinance violates the Animal Control Act and Articles I and IV of the Cook County Animals Code; and (2) an injunction restraining Bridgeview from enforcing its ordinance. Bridgeview filed an affirmative defense alleging that the County lacks standing.² The parties' cross-motions for summary judgment ask this court to determine whether Bridgeview exceeded its statutory and/or home rule authority in enacting its ordinance.

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (2002). The purpose of a summary judgment proceeding is not to try an issue of fact, but to determine whether any genuine issue of material fact exists. *Happel v. Wal-Mart Stores*, 199 Ill. 2d 179, 186 (2002). Parties that file cross-motions for summary judgment "agree that only a question of law is involved and invite the court to decide the issues based on the record." *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010).

I. Does Bridgeview's ordinance violate the Animal Control Act or Cook County's Animals Code?

The County argues that the Animal Control Act and the Animals Code mandate it to implement programs to control the feral cat population and prevent the spread of rabies within its borders. According to the County, Bridgeview's ordinance usurps this mandate by nullifying the County's ordinance. Further, the County claims that the ordinance is not authorized under

² Bridgeview filed a motion to dismiss alleging this same argument, which the court denied on June 10, 2011.

Section 24 of the Act or Section 10-7 of the Animals Code, which only allow Bridgeview to enact “stricter” regulations.

Bridgeview, on the other hand, contends that the Act imposes duties only on administrators, and therefore, it does not “require” counties to enact ordinances to enforce its provisions. Rather, municipalities have the “discretionary” power under Sections 24 and 35 of the Act to prohibit feral cat colonies. Moreover, Bridgeview contends that it did not exceed its authority under Section 24 of the Act, because its ordinance “controls and regulates” cats and is not specific to any given breed.

Section 5 of the Act delineates the duties and powers of Administrators. It provides, in relevant part, that:

- (a) It shall be the duty of the Administrator or the Deputy Administrator, through sterilization, humane education, rabies inoculation, stray control, impoundment, quarantine, and any other means deemed necessary, to control and prevent the spread of rabies and to exercise dog and cat overpopulation control. . .
- (b) Counties may by ordinance determine the extent of the police powers that may be exercised by the Administrator, Deputy Administrators, and Animal Control Wardens, which powers shall pertain only to this Act. . .

§ 510 ILCS 5/5.

Section 24 of the Act outlines the limits on a municipality’s powers and provides:

Nothing in this Act shall be held to limit in any manner the power of any municipality or other political subdivision to prohibit animals from running at large, nor shall anything in this Act be construed to, in any manner, limit the power of any municipality or other political subdivision to *further* control and regulate dogs, cats or other animals in such municipality or other political subdivision provided that no regulation or ordinance is specific to breed.

§ 510 ILCS 5/24 (emphasis added).³ The Act also grants immunity to municipalities and political subdivisions that allow feral cat colonies or trap, neuter, and return programs. § 510 ILCS 5/35.

The plain language of Section 5 allows for counties to enact ordinances defining the scope of the Administrator's police powers. While Bridgeview is correct in that the Act does not *mandate* counties to implement such ordinances, the County validly exercised its discretionary authority to do so. Here, the County Board enacted the County ordinance upon the recommendation of its Administrator Dr. Alexander.⁴ Given the Act's grant of immunity to municipalities and political subdivisions that allow feral cat colonies, it is clear that the County was well within its realm of authority in enacting its feral cat ordinance. *See* § 510 ILCS 5/35.

Because the County decided to regulate in this area, municipalities within its boundaries may only regulate feral cats by imposing stricter regulations than that of the County. Section 24 of the Act recognizes a municipality's authority to "prohibit animals from running at large" and to "further control and regulate dogs, cats or other animals." § 510 ILCS 5/24. Pursuant to this section, Bridgeview has the power to enact ordinances that prohibit operators of feral cat colonies from allowing cats to run at large or it can impose stricter requirements on operators than those imposed by the County Administrator. However, the provision of Bridgeview's ordinance that makes it unlawful to operate feral cat colonies exceeds this authority.

This provision of the Bridgeview ordinance does not prohibit animals from running at large as it is undisputed that feral cats roam freely. The provision also is not a mechanism to "further control and regulate" feral cats. Based on the uncontradicted testimony of Dr.

³ The relevant portion of Section 10-7 of the County's Animals Code essentially mirrors this language.

⁴ Dr. Alexander did not assist in writing the County's Ordinance, but she advised the County Board after it was written, recommended the ordinance be passed, and agrees that the ordinance is the best way to deal with stray cat overpopulation and to control rabies in the County.

Alexander at her deposition, the County ordinance allowing for feral cat colonies and the Trap, Neuter, and Return program has been a cost-effective and successful measure in decreasing the overall feral cat population and the spread of rabies. Bridgeview's prohibition of feral cat colonies altogether undermines the County's ability to address this county-wide problem. Therefore, Bridgeview's ordinance violates both the Animal Control Act and the County Animals Code.

II. Did Bridgeview exceed its home rule authority when it enacted its ordinance prohibiting the operation of feral cat colonies within its municipal boundaries?

The County further argues that Bridgeview exceeded its home rule authority in enacting its ordinance because the feral cat problem is one that pertains to the County's, rather than Bridgeview's, government and affairs. The County compares Bridgeview's ordinance to those struck down in *County of Cook v. Village of Rosemont*, 303 Ill. App. 3d 403 (1st Dist. 1999) (ordinance prohibiting the imposition of the County amusement tax within Rosemont was an improper exercise of the village's home rule power on a matter involving the government and affairs of the County), *Bernardi v. Highland Park*, 121 Ill. 2d 1 (1988) (holding ordinance exempting work performed in Highland Park from the Illinois Prevailing Wage Act invalid given the ordinance's effect on workers and projects throughout the county), and *Highland Park v. County of Cook*, 37 Ill. App. 3d 15, 25 (2d Dist. 1975) (finding that Section 6(a) of article VII of the Illinois Constitution extends a home rule unit's "power over strictly local affairs, not those involving other municipalities or the county or State"), and argues that Bridgeview's ordinance prohibiting feral cat colonies is a regulation on matters beyond its borders given that cat overpopulation affects citizens outside the territorial boundaries of Bridgeview.

Bridgeview contends that because the County did not enact its ordinance pursuant to its own home rule powers, its power to enact such legislation should be strictly construed. In contrast, Bridgeview claims its home rule powers pursuant to the Illinois Constitution should be construed liberally. Based on this liberal construction, Bridgeview argues that its ordinance pertains to its own government and affairs because 1) the ordinance is not contrary to any uniform State statute regulating feral cat colonies; 2) the Animal Control Act only addresses cats in limited sections and does not make feral cat colonies, caretakers, or Trap, Neuter, and Return programs an exclusive interest of the State, and 3) it is regulating its own citizens—not the County—given only private citizens operate feral cat colonies.

The Illinois Constitution creates broad home rule powers and provides for the powers and functions of home rule units to be construed liberally. *Page v. City of Chicago*, 299 Ill. App. 3d 450, 459 (1st Dist. 1998). “[H]ome rule units may exercise and perform any function pertaining to their government and affairs, including regulation for the protection of the public health, safety, morals and welfare.” *Id.* Nonetheless, there is an inherent limit upon home rule power, which “is based upon a preference for local solutions to local problems.” *The City of Chicago v. Stubhub, Inc.*, 2011 Ill. LEXIS 1823, at *16 (October 6, 2011). As such, the powers of a local government do not extend to “those involving other municipalities or the county or State.” *Highland Park*, 37 Ill. App. 3d at 25. Therefore, if an ordinance “does not pertain to the government and affairs of [a] home rule unit,” it is “void unless authorized by statute or by another provision of the 1970 Constitution.” *Stubhub*, 2011 Ill. LEXIS 1823, at *16-17.

Pursuant to Article VII, section 6(c) of the Illinois Constitution, if a municipal ordinance conflicts with “a home rule county ordinance . . . the municipal ordinance shall prevail within its jurisdiction.” Before a court can apply this section, however, a municipality first “has to

overcome the section 6(a) 'government and affairs' hurdle." *Rosemont*, 303 Ill. App. 3d at 407. Whether an ordinance relates to the government and affairs of a municipality "is not a decision made in a vacuum." *Id.* Courts must "consider how the ordinance relates to or has impact on other units of government," "the nature and extent of the problem" that the ordinance addresses, "the units of government which have the most vital interest in [the problem's] solution, and the role traditionally played by local and statewide authorities in dealing with" the problem. *Id.*; *Bernardi*, 121 Ill. 2d at 13.

While the County is a home rule unit, it does not contend that it enacted its ordinance pursuant to its home rule authority, but rather, that Bridgeview exceeded its home rule authority in prohibiting feral cat colonies. Regardless of whether the County enacted its ordinance pursuant to its own home rule authority, in order for Bridgeview's ordinance to be valid under its own home rule authority, the regulation of feral cats must pertain to Bridgeview's "government and affairs." Ill. Const. Art. VII, 6(a). In other words, it must not be an issue involving other municipalities, the county, or the State. *See Stubhub*, 2011 Ill. LEXIS 1823, at *16; *see also Rosemont*, 303 Ill. App. 3d at 410. In deciding this issue, it is necessary to consider the following: a) how the Bridgeview ordinance relates to or impacts the County and other units of government, b) the nature and extent of the feral cat problem, c) which units of government have the greatest interest in resolving the problem, and d) the role traditionally played by local and statewide authorities in addressing the problem.

The Bridgeview and County ordinances are in direct conflict with one another. While Bridgeview contends that its ordinance is not regulating the County or the County Administrator, this is essentially the effect of the ordinance. Bridgeview is prohibiting feral cat colonies and imposing a fine on individuals for operating feral cat colonies. By prohibiting feral cat colonies

within its borders, the Administrator is prevented from carrying out her duty granted under the Animal Control Act and the County Animals Code to control and prevent the spread of rabies and to exercise cat overpopulation control in Cook County through means she sees fit, *i.e.* by allowing persons to operate feral cat colonies pursuant to the County ordinance and exercising the rights of the Department of Animal and Rabies Control in enforcing the County ordinance throughout the county.

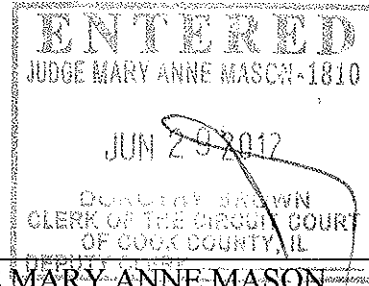
Moreover, the prevalence of feral cats and cat overpopulation is not an issue unique to Bridgeview. According to Dr. Alexander's deposition testimony, the feral cat problem is not only of statewide concern, but also a national and world-wide problem. In Illinois, the State legislature has left the issue to be resolved at both the county and local level. Pursuant to the Animal Control Act, the legislature equipped County Administrators with the authority to "control and prevent the spread of rabies and to exercise dog and cat overpopulation control." § 510 ILCS 5/5. The legislature also granted municipalities the power to prohibit animals from running at large and to "further control and regulate" animals. § 510 ILCS 5/24. Bridgeview urges this court to accept these provisions as an authorization by the State for local municipalities to address the issue of feral cats how they deem fit, regardless of any County action on the same subject. However, as discussed above, this language serves to create a regulatory hierarchy. The issue of animal control, overpopulation, and the spread of rabies, while one involving other municipalities, should be dealt with primarily at the county level. Local units of government within each county then have the discretionary power to impose stricter regulations on feral cat colonies within their boundaries, but they may not ban them altogether. Since Bridgeview's ordinance does not pertain strictly to its own "government and affairs," it must be struck down as an invalid exercise of its home rule power.

Having found that the Bridgeview Ordinance is invalid and prevents the County Administrator from fulfilling her duties within Bridgeview, this court also grants the County's request for a permanent injunction, enjoining Bridgeview from further enforcing Ordinance No. 09-04.

WHEREFORE, for the foregoing reasons, IT IS HEREBY ORDERED: (1) the County's motion for summary judgment is granted and on Count I of the complaint the court declares that the Village of Bridgeview lacked statutory or home rule power to enact Ordinance No. 09-04. And, on Count II, the court enjoins the Village of Bridgeview from enforcing Ordinance No. 09-04 within its boundaries,⁵ and (2) Bridgeview's cross-motion for summary judgment is denied. There being no other matters in controversy, this is a final and appealable order.

DATE: June 29, 2012

ENTER:



⁵ Strictly speaking, Count II of the County's complaint labeled "injunction," is not a cause of action; it is a remedy properly awarded ancillary to the declaratory judgment granted on Count I.