AGRICULTURE, HORTICULTURE AND FOOD: COMPREHENSIVE ANIMAL LAWS.

COUNTIES, CITIES AND TOWNS: COUNTIES GENERALLY.

General Assembly, in extending to all localities power to adopt ordinances regulating keeping of dangerous dogs, restricted local governing bodies from adopting controls more stringent than those prescribed by statute. Prince William County has no authority under Virginia's comprehensive animal laws to include in such ordinance provisions that deviate from statutory definition of "dangerous dogs" and that alter procedure for determining dog is dangerous, and may not obtain authority to adopt ordinance pursuant to general police powers granted counties.

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You ask whether Prince William County may include in an ordinance regulating the keeping of "dangerous dogs" provisions that differ from those set forth in § 3.1796.93:1 of the Code of Virginia.

Chapter 27.4 of Title 3.1\(^1\) contains Virginia's "Comprehensive Animal Laws." Article 4 of Chapter 27.4\(^2\) relates to the authority of local governing bodies to regulate the keeping and licensing of dogs and cats.

Section 3.1796.93:1(A) authorizes any local governing body to "enact an ordinance regulating dangerous dogs and vicious dogs."\(^3\) Section 3.1-796.93:1(B) defines a "dangerous dog[]" as one "which has bitten, attacked, or inflicted injury on a person or companion animal, other than a dog, or killed a companion animal."

Any ordinance enacted pursuant to § 3.1796.93:1 shall prescribe the provisions enumerated in § 3.1796.93:1(C). Section 3.1796.93:1(C)(1) prescribes the following procedure for determining whether a dog is "dangerous." An animal warden with reason to believe that a dog is "dangerous" applies to a magistrate for a summons requiring the owner to appear in general district court. "The summons shall advise the owner of the nature of the proceeding and the matters at issue."\(^4\) Either the owner or the animal warden is to confine the animal until the court hears evidence and renders a verdict.\(^5\) If the court determines that the dog is "dangerous," the court shall order the owner to comply with the provisions in the ordinance that require the owner to obtain a special license and identification tag from the animal warden.\(^6\)

Prince William County proposes to include in its ordinance provisions that deviate from the statutory definition of "dangerous" and that alter the procedure for determining that a dog is dangerous. The county wishes to classify as "dangerous" a dog that has exhibited a predisposition to attack humans. The county also wishes to permit the animal warden to issue dangerous dog licenses, with the owner having a
right of appeal to the general district court. You ask whether Prince William County may include such provisions in its ordinance.

Section 3.1796.94(A) provides that local governing bodies may, "in their discretion," adopt ordinances "which parallel §§ 3.1796.84 through 3.1796.93, 3.1796.95 through 3.1796.104, 3.1796.115 through 3.1796.119, 3.1796.121, 3.1796.126:1 through 3.1796.126.7, and 3.1-796.127 through 3.1796.129." Section 3.1796.94(A) further provides that "[n]othing in this section shall be construed so as to prevent or restrict any local governing body from adopting local animal control ordinances which are more stringent than" those enumerated sections. Section 3.1796.93:1 is not included in the sections enumerated in § 3.1796.94(A).

The primary goal of statutory construction is to ascertain and give effect to the intent of the legislature. An additional guide in construing statutes is that the mention of one item in a statute implies the exclusion of another and that when the legislature expresses these items through a list, it is assumed that what is not listed is not included. It is my opinion that, by expressly designating in § 3.1796.94 certain sections in Chapter 27.4 which permit a local governing body to adopt more stringent animal control measures, the legislature clearly intended to withhold the authority to adopt more stringent controls pursuant to the sections not listed. This conclusion is particularly compelling because the listed sections include both the section immediately preceding § 3.1796.93:1 and the section immediately following § 3.1796.94.

Moreover, at the 1994 Session, the General Assembly amended § 3.1-796.93:1 to extend its application to "any county, city or town." In the same bill, the General Assembly amended § 3.1796.94 in a manner that removed § 3.1796.93:1 from the specified sections which permit a locality to adopt more stringent measures. Since the General Assembly considered both of these amendments in the same bill, it is highly unlikely that the omission of § 3.1796.93:1 from § 3.1796.94 is attributable to legislative inadvertence rather than to legislative intent. A more likely interpretation is that when the legislature acted to extend to all localities the power to adopt dangerous dog ordinances, it intended to place restrictions on the exercise of the power.

It is my opinion that the General Assembly did not intend to permit a county to include in its ordinance provisions more stringent than those set forth in § 3.1796.93:1. It is also my opinion that encompassing within the "dangerous dogs" classification dogs that have displayed a predisposition to attack humans is more stringent than the definition in § 3.1796.93:1(B), which confines the classification to dogs that have "bitten, attacked, or inflicted injury" on a person or another animal. Likewise, permitting the animal warden to issue a dangerous dog license without the general district court first hearing evidence and rendering a verdict that the dog is dangerous, and placing the responsibility on the owner to appeal the warden's decision to the general district court is more stringent than the procedure set forth in § 3.1796.93:1(C)(1). Accordingly, it is my opinion that Prince William County does not have the authority under Chapter 27.4 to adopt an ordinance containing these provisions.
You ask whether, if Prince William County lacks the authority under Chapter 27.4, the county nevertheless has the authority to adopt the ordinance pursuant to the general police powers granted counties in § 15.1510 to "adopt such measures as it may deem expedient to secure and promote the health, safety and general welfare of the inhabitants of such county." You state that the ruling of the Supreme Court of Virginia in *King v. Arlington County* \(^{13}\) indicates that the county has such authority.

It is my view that, in light of the express language of §§ 3.1796.93:1 and 3.1796.94, a locality may no longer rely on *King v. Arlington County* as authority for the adoption of provisions more stringent than those contained in § 3.1796.93:1. The police powers granted counties in § 15.1510 may not be exercised in a manner "inconsistent with the general laws of this Commonwealth." When the Court decided *King v. Arlington County* in 1954, the General Assembly had not adopted animal control measures as comprehensive as those now contained in Article 4 of Chapter 27.4. \(^{14}\) The basis for the Court's holding in *King v. Arlington County* was that, because the state law was silent on the issue, a county ordinance prohibiting the keeping of a dog that exhibited a propensity to attack humans was not in conflict with any state law. \(^{15}\) This is no longer true, and the Court has recognized that *King v. Arlington County* does not apply when a statute "expressly speaks to the subject in a manner that conflicts with the ordinance." \(^{16}\) Accordingly, it is my opinion that Prince William County may not obtain authority under § 15.1510 to adopt an ordinance that would be in conflict with § 3.1796.93:1.

\(^{1}\)Sections 3.1796.66 to 3.1796.129.

\(^{2}\)Sections 3.1796.84 to 3.1796.103.

\(^{3}\)Because you do not indicate that a proposed ordinance would differ from the state statute in regard to the regulation of "vicious dogs," I confine my analysis to the regulation of "dangerous dogs."

\(^{4}\)Section 3.1796.93:1(C)(1).

\(^{5}\)"The court, through its contempt powers, may compel the owner ¼ to produce the animal." Section 3.1796.93:1(C)(1).

\(^{6}\)The provisions in the ordinance regarding special licensing and identification are specified in § 3.1796.93:1(C)(3) and (4). Section 3.1796.93:1(C)(5) requires that the dog be confined in a secure manner. Unlike the provisions regarding the licensing and keeping of a "dangerous" dog, if the court determines that a dog is "vicious," it is to order the dog euthanized. Section 3.1796.93:1(C)(1).


A further indication of the legislative intent that the local ordinance regulating dangerous dogs not differ in any material respect from the provisions of § 3.1796.93:1 is seen in the language of § 3.1-796.93:1(C), providing that the local ordinance "shall prescribe" the provisions enumerated in subsection C.

Ch. 115, 1994 Va. Acts 223, 224 (amending § 3.1796.93:1(A)).

See id. at 225.

Section 3.1796.93:1(C)(2) places limitations on the court's authority to find that a dog is dangerous or vicious.


No statutory provision in Article 4 was enacted before 1984.

195 Va. at 109192, 81 S.E.2d at 592.