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May 12, 2015

ESTABLISHED 1911

D. LOGAN GIFFIN
(1890-1980)

MONTGOMERY S. WINNING
(1892-1966)

C. TERRY LINDNER
(1903-1987)

ALFRED F. NEWKIRK
(1904-1980)

JAMES M. WINNING
(1921-2013)

Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

**RE: Population Control Fund under the Animal Control Act
Our File: UNITCC-0601**

Dear Mike:

Issue

May monies held in the population control fund under the Animal Control Act which exceed amounts necessary to meet the obligations imposed by the Act be transferred to general revenue at the end of the year?

Analysis

Non-home-rule units of local government only possess those powers which are specifically conveyed by the Constitution or by statute and thus, a non-home-rule unit may regulate in a field occupied by state legislation when the Constitution or a statute specifically conveys such authority.¹

Under the Animal County Act, the county board is granted the authority to require registration of dogs and cats in the county and to impose a fee for such registration.² The county may impose a minimum differential of \$10 for intact dogs.³ Ten dollars of any differential imposed is to be placed either in the county animal population control fund or in the State's Pet Population Control Fund. Money placed in the county animal control fund is to be used to (1) spay, neuter, or sterilize adopted dogs or cats or (2) to spay or neuter dogs and cats owned by low income county residents eligible for

¹ *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080 (2 Dist. 1994); Illinois Const., Art. VII, § 7.

² 510 ILCS 5/3.

³ *Id.*

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the Food Stamp Program.⁴ All other registration fees are to be placed in the animal control fund to be used to pay costs of the animal control program.⁵

Conclusion

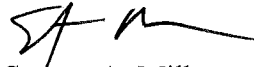
A non-home rule county does not have the authority to act unless specifically authorized by the Illinois Constitution or state statute. The Animal Control Act specifically directs where the minimum \$10 differential is to go and how it is to be used. No other section of the Act authorizes the transfer of funds from one fund to another. A county will be authorized to charge registration fees in excess of the minimum \$10 differential with such funds to be placed in the animal control fund. A county may not move funds placed in the population control fund into the general revenue fund because such action is not authorized by statute and additionally it directly contradicts the statutory grant of authority under the Act.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Steven A. Milburn

HGB/SAM:tem

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Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

⁴ *Id.*

⁵ 510 ILCS 5/7.