



From: lernerMichelle@aol.com [mailto:lernerMichelle@aol.com]
Sent: Monday, July 20, 2009 9:24 PM
To: Lashway, Lisa
Subject: Please forward to Peter King, John Dorsey, Mayor, and Council

Dear all,

This not my area of expertise, but from a few hours' research it seems that Mt. Olive doesn't even have to have an independent Board of Health, that the council could dissolve it and make it purely advisory if it wanted, and it is not clear to me yet that Mt. Olive even *can* have an independent Board of Health (though for me the jury is out on this question, pending further research). Faulkner Act towns vest all policy and legislative power in the town council, except for a few exceptions that do not include Boards of Health. The NJ Supreme Court determined in 1961, in *Myers v. Twp of Cedar Grove*, 36 NJ 51, that the Faulkner Act abolished all Boards of Health in towns that adopted Faulkner Act forms of government, that such towns are not required to maintain a separate and independent board of health, and that the authority granted by NJSA 26:3 to Boards of Health is instead vested in council in such towns. NJSA 26:3-1 states that a separate BOH shall exist "except that in any municipality operating under laws establishing a form of government for such municipality under which the full powers of a local board of health can not be exercised by a local board of health so appointed or designated, the respective functions of a local board of health shall be exercised by such boards, bodies, or officers as may exercise the same according to law." The court found that the "except" clause applies to Faulkner Act towns, meaning that Faulkner Act towns do not have to appoint BOHs. The Myers case considered a council-manager form of government, but its principles have also been applied to the mayor-council form of government finding that council has supreme legislative authority. See *Keuerleber v. Township of Pemberton*, 260 NJ Super 541 (1992). Indeed, other towns I have looked at with our form of government either do not have Boards of Health at all and have council exercising BOH functions (like Parsippany) or have council exercising BOH functions and have a separate advisory BOH. When I talked to the president of the NJ Association of Local Boards of Health, he was confused as to how we could be a Faulkner Act town and still have a separate BOH with rulemaking authority, and now I see why.

Given that the statute that we established our BOH under, NJSA 26:3, does not even apply to Faulkner Act towns in terms of its mandate to establish a separate BOH, that Faulkner Act town councils have all legislative authority for the town and the mayor has all administrative authority over departments, health included, there is even less basis for Peter King's assertion that health department employees can ignore ordinances passed by council. Even if council had the authority to establish a separate BOH with rulemaking authority (which is still questionable to me at this point in my research), it certainly did not have to, can dissolve it at any time, and by the wording and interpretation of the Faulkner Act provisions has supreme legislative authority. This, combined with the state statute specifying that town councils have authority to regulate free-roaming

animals, certainly indicate that the council's ordinances on feral cats would be the law of the land and neither the BOH nor the ACO can ignore council's mandate on the subject. And, since the electorate is empowered to pass any ordinance council can pass under the Faulkner Act initiative statute, the same goes for a feral cat ordinance passed by the electorate.

If I am missing something, please tell me. Again, I researched this only for a few hours. But thus far I do not see any argument by which a judge could find that the ACO can ignore the mandates of a council ordinance on TNR, especially in a Faulkner Act municipality that vests all power centrally in council and mayor and that does not even have to have a BOH to begin with. If Mr. King wished to litigate this, he would probably end up with a decision that states the municipality does not even have to have a Board of Health, much less recognize any exclusive jurisdiction on the part of the BOH to pass ordinances relating to free-roaming animals.

Michelle

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