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July 20, 2009

Honorable Mayor and Council
Township of Mount Olive
204 Flanders-Drakestown Road
P. O. Box 450
Budd Lake, NJ 07828

Re: Proposed Ordinance No. 16-2009

Dear Mayor and Council Members:

As you are well aware, I am the attorney for the Mount Olive Board of Health, which is an autonomous body separate and apart from the Mount Olive Council and Mayor.

State statute gives specific powers to the Board of Health for all safety, health and welfare issues, to include regulation and control of animals, *N.J.S.A.* 26:3-1 and *N.J.S.A.* 4:19-15.16.

As a general principle, it is established beyond question that municipalities, being created by the State, have no power save those delegated to them by the Legislature and the State Constitution. *Ringlieb v. Parsippany-Troy Hills Tp.*, 59 *N.J.* 348 (1971).

A municipality may not contradict a policy the Legislature establishes. ... Hence an ordinance will fall if it permits what a statute expressly forbids or forbids what a statute expressly authorizes. Even absent such evident conflict, a municipality may be unable to exercise a power it would otherwise have if the Legislature has pre-empted the field. *Summer v. Teaneck*, 53 *N.J.* 548.

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As you know, some months ago a representative of the New Jersey Animal Rights Alliance came to the Board of Health and requested that a TNR program be instituted. The volunteer members of the Board of Health investigated the proposal and found that there was not a feral cat problem in Mount Olive and the TNR program as proposed would be a detriment to the health, welfare and safety of the residents of Mount Olive.

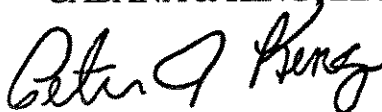
The New Jersey Animal Rights Alliance representative has now petitioned the governing body and is attempting to circumvent State law and have the municipality enter an illegal ordinance.

In addition, the representative of the New Jersey Animal Rights Alliance is threatening an initiative and referendum to force the governing body into enacting illegal legislation.

Please be advised that the above ordinance, as written, violates New Jersey State law and the ordinance, as written, would put in charge of animal control a non-governmental third-party radical animal rights group. In addition, the ordinance, as written, violates various health ordinances and takes specific powers that are granted by the State to the Board of Health and Animal Control Officer from them and, again, gives it to a radical animal rights group. The passage of this ordinance would violate the law and place the health, welfare and safety of the residents of Mount Olive in the hands of the New Jersey Animal Rights Alliance.

I would strongly suggest and recommend that the governing body vote against this ordinance and that, as stated above, it is illegal and, further, any referendum and initiative would have no bearing on the Department of Health.

Very truly yours,
CABANA & KING, LLC



PETER J. KING

PJK:wlc

cc: Lisa Lashway, Township Clerk
Frank Wilpert, Health Officer/Director
Raymond Perkins, Chairman Mt. Olive Board of Health
John H. Dorsey, Esq.