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The Honorable Wes Shoemyer  
State Representative, District 9  
State Capitol, Room 105C  
Jefferson City, MO 65101

Dear Representative Shoemyer:

You have asked our office whether, under Section 192.300, RSMo, a county health board may enact a public health ordinance regulating the operation of concentrated animal feeding operations (CAFOs) within the county. The response below is not a formal Attorney General Opinion but reflects my research and thoughts on this issue.

Section 192.300 grants county commissions and county health center boards the authority to:

“ . . . make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county, but any orders, ordinances, rules or regulations shall not be in conflict with any rules or regulations authorized and made by the department of health in accordance with this chapter or by the department of social services under chapter 198, RSMo. . . ”

The Missouri Court of Appeals has held that a county commission may enact a health ordinance to regulate CAFOs. In *Borron v. Farrenkopf et. al.*, 5 S.W.3d 618 (Mo. App.W.D. 1999), the court held that the Legislature provided authority for the commission to enact health ordinances and that the commission's ordinance was indeed a health ordinance rather than a zoning regulation. *Id.* at 622. In reaching its conclusion, the court found that the nature of the ordinance - regulating a facility's structures and lagoons, including a distance requirement between the animal waste and the stream, was “rationally related” to the health problems caused by livestock facilities. *Id.* In upholding the commission's ordinance, the court distinguished a previous case, *Premium Standard*

*Farms v. Lincoln County Township of Putnam*, 946 S.W.2d 234 (Mo.banc 1997), where the court held that Missouri zoning law did not authorize a township to enact zoning regulations for agricultural property. *Borron* at 621. A copy of *Borron* is attached for your review.

Section 192.300 grants authority to both county health center boards and county commissions to enact health ordinances. Specifically, the statute mentions the county commission and the county health board in 4 distinct places: (1) the county commissions and the county health center boards of the several counties may make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health . . . ; 2) the county commissions and the county health center boards of the several counties may establish reasonable fees to pay for any costs incurred in carrying out such orders, ordinances, rules or regulations . . . ; 3) after the promulgation and adoption of such orders, ordinances, rules or regulations . . . such commission or county health board shall make and enter an order or record declaring such orders, ordinances, rules or regulations to be printed and available for distribution to the public in the office of the county clerk, and shall require a copy of such order to be published in some newspaper in the county in three successive weeks . . . ; and 4) the county commission or county health board of any such county has full power and authority to initiate the prosecution of any action under this section.

In construing the legislative intent behind a statute, the statute is read as a whole and in *pari materia* with related sections. *Wood v. Lisher*, 187 S.W.3d 913, 916 (Ct. App.W.D. 2006). In reviewing Section 192.300, it appears that the legislature intended those counties with health center boards to have the same authority to promulgate health orders, ordinances, rules or regulations as county commissions. A review of the various sections of Chapter 205, RSMo, which allows a county to establish a county health center and a county health center board, supports the conclusion that the legislature intended a county health center board to have coequal authority with the county commission.

Section 205.010 provides that at least 10 % of the voters of the county, as determined by the number of votes cast at the last gubernatorial election, may petition the commission to establish a levy to establish such a health center.

If the voters approve this levy (Section 205.020), then the commission appoints 5 trustees to serve as health center trustees (Section 205.031). Once appointed, the trustees are subsequently elected (Section 205.031).

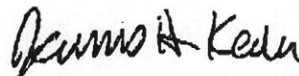
Trustees are provided certain powers under Section 205.042 - these powers include the power to make and adopt such bylaws, rules and regulations for its own guidance and for the government of the county health center. This section also provides the county health center boards with powers to make personnel decisions regarding health center employees and to enter contracts for furthering health activities. Finally, the board of trustees is empowered to obtain health, life and employment insurance for its employees (205.115).

These provisions illustrate that county health center boards, once established in a county upon voter approval, are largely autonomous from the county commission. While there are a few sections in Chapter 205 that require some oversight by the commission over the health board - Section 205.090 requires the county health center board to file a "report of proceedings" regarding the health center and a statement of all receipts and expenditures for the previous calendar year - the overall goal of Chapter 205, RSMo, is to provide the county health center boards with independent authority to make personnel decisions, enter contracts, and enact bylaws and ordinances related to the county health center.

Section 192.300 grants county health center boards "of the several counties" the additional power to enact certain health ordinances - the same power granted to county commissions. In those counties where a health center board has been established, the health center board has the same powers to enact health regulations regarding CAFOs.

It is my conclusion that a county health center board has the same authority to enact health regulations pursuant to Section 192.300 as a county commission.

Respectfully,



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Assistant Attorney General

JHK/kkb

Enclosure