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Ohio Supreme Court Ruling Opens the Door for Legal Challenges to Ordinances that Criminalize Feeding Feral Cats and Dogs

On Oct. 23, 2024, the Ohio Supreme Court unanimously ruled that the term “companion animal” in Ohio’s law criminalizing cruelty to companion animals should be interpreted to mean all cats and dogs—even those that would be considered feral or wild.

While the court definitely closed the door on one compelling statutory interpretation question, it opened the door to another: Do local ordinances that prohibit feeding feral cats and dogs (“feral-animal-feeding bans”) conflict with the Ohio law meant to protect companion animals from starvation? Ohio political subdivisions with such ordinances may soon have to litigate that issue.

All Dogs and Cats Are “Companion Animals”

In *State v. Kyles*, 2024–Ohio–5038, the Ohio Supreme Court considered whether the state could prosecute an individual for cruelty toward a feral cat. The individual was indicted on a single count of animal cruelty under O.R.C. § 959.131, which is a fifth-degree felony, after they poured bleach on a feral cat. The bleach exposure caused the cat to experience swollen paws with ulcerations. Prosecutors argued that for purposes of § 959.131, any cat (or dog) is a companion animal—even if they are feral. Ohio law prohibits “knowingly caus[ing] serious physical harm to a companion animal.”

The trial court entered a guilty verdict, but the Eighth District Court of Appeals overruled the conviction. The appellate court carefully reviewed the definition of “companion animal” at § 959.131(A)(1), which states, “‘Companion animal’ means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept[.]” The appellate court concluded that the phrase “regardless of where it is kept” narrowed the meaning of the

otherwise-broad phrase “any dog or cat.” Thus, it held that a dog or cat was not a “companion animal” unless it was “kept.” Because the cat in this case was not kept, it was not a crime to knowingly cause serious physical harm to it.

But a unanimous Ohio Supreme Court disagreed. While acknowledging that § 959.131 is “no model of clarity,” the Ohio Supreme Court concluded that the word “any” means “all ... unless it is followed by a clear limiting condition,” and that the phrase “regardless of where it is kept” is “not limiting but, rather, expansive.” Put another way, the word “kept” does not alter the meaning of “any dog or cat.” The Ohio Supreme Court further noted that if the legislature had wanted the law to apply only to “kept” animals, then it could have worded the provision differently to convey that requirement. Because it did not do so, the term “companion animal” means any dog or cat—even a feral dog or cat.

Does This Affect Feral-Cat-Feeding Bans in Ohio?

As innocuous as this conclusion might seem, it could become a thorn in the side of municipalities that have (or are considering adopting) feral-animal-feeding bans. These ordinances typically state that it is unlawful to feed a feral or wild animal, and they usually include feral dogs and cats within the meaning of feral or wild animal. But animal rights groups and allied citizens often point to O.R.C. § 959.131(D)(2), which provides that it is unlawful to knowingly deprive a “companion animal of necessary sustenance” in certain circumstances. They argue that there is a conflict between Ohio law and the local ordinance if someone feeds a feral cat or dog.

Of course, § 959.131(D) is not as straightforward as § 959.131(C). The Ohio Legislature clarified that subsection (D) applies only to an individual “who confines or who is the custodian or caretaker of a companion animal[.]” Thus, anyone who wishes to challenge a feral-animal-feeding ban will have to argue that: (1) the limiting condition in subsection (D) should not be given its plain meaning, at least when it comes to dogs and cats; or (2) a feral-animal-feeding ban cannot be enforced in situations where the individual can show that they confine, or are a “custodian” or “caretaker” of, a feral cat or

dog. And ultimately, challengers will have to convince the courts that the political subdivision lacks home rule authority to enforce the ordinance.

Each of these considerations is an uphill battle. Nevertheless, it may be costly, time-consuming, and politically inconvenient to litigate these questions. Ohio political subdivisions with (or those considering adopting) feral-cat-feeding bans should consider how they define feral or wild animals in their ordinance if they wish to avoid complex political and legal conflicts.

Please contact the authors or any attorney with the firm's [Government Service Practice Group](#) if you have any questions about how to address these issues as they arise.

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