Excerpt from appellate reply brief in civil case written by Daniel Cohen, Legal Research

I. THE COUNTY ORDINANCE IS IMPLICITY PREEMPTED BY STATE LAW BECAUSE "THE LEGISLATIVE SCHEME IS SO PERVASIVE AS TO EVIDENCE AN INTENT TO PREEMPT."

The "aggressive dog" provisions of Alachua County Code section 72 are invalid because they are implicitly preempted by state law. Implied preemption of a county ordinance exists when [1] the state legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and [II] where strong public policy reasons exist for finding such an area to be preempted.[1] Both of those prongs are readily satisfied in the case of Chapter 767.

(A) The pervasiveness of the legislative scheme of Chapter 767 is manifest in the Legislature's intent: to address the problem of dogs that, by their commission of a second act of severely injurious or deadly conduct towards other domestic animals, present a "serious and widespread threat to the safety and welfare of the people of the state", s.767.10, Fla.Stat.

(B) The pervasiveness of the legislative scheme of Chapter 767 is manifest in the implied state law requirement that dog owners have *scienter* of their dogs' deadly propensities, s.767.11(1)(b) (defining dangerous dogs as those

[1] Dade County v. Dade County Police Benevolent Ass'n, 154 So.3d 373, 379 (Fla. 3d DCA 2014) (quoting Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010).

"who *more than once* severely injured or killed a domestic animal while off the owner's property")(emphasis added);

(C) The pervasiveness of the legislative scheme of Chapter 767 is manifest in the Florida Legislature's express finding that it is "appropriate and necessary to impose *uniform requirements* for owners of dangerous dogs." s.767.10 (emphasis added);

(D) The pervasiveness of the legislative scheme of Chapter 767 is manifest in the mandate of s.828.27 specifically, except for penalty, authorizing, **only** ordinances relating to animal control that are **identical** to state law, and expressly prohibiting ordinances relating to animal control that conflict with state law.

These statutory provisions constitute a substantial part of the framework of the state law. In contrast, the County's "aggressive dog" provisions require only a single incident of canine misconduct for imposing numerous, onerous sanctions on a dog owner, as well as placing the owner in jeopardy of his or her dog being summarily confiscated and destroyed. Hence, the "aggressive dog" provisions of the municipal ordinance impermissibly vitiate the statutory framework of Chapter 767. See Hoesch v. Broward County, 53 So.3d 1177 (Fla. 4th DCA 2011). This is true because the state law *already* addresses the problem of dogs that, by their deadly conduct towards other domestic animals, pose a "serious . . .threat to the

safety and welfare of the people" of Florida. s.767.10, Fla. Stat.. Indeed, proving the hopeless legal conflict between the state of Florida and the municipality of Alachua County, the County's ordinance effectively *usurps* the state law; for enforcement of the County law must render Chapter 767 obsolete; the draconian action taken by the County against a dog owner after only a single incident of canine misconduct will forever preclude the application of the state law. In Alachua County, the occurrence of a *second* incident in which the dog is found to have merely scratched or chased another domestic animal, will result in the dog's destruction. See sec. 72.16 (a)(2), (b), and (g), ACC and s.72.02, ACC (defining "attack" to comprehend the acts of scratching and chasing). Hence, in Alachua County, the purpose for the state law, and the law itself, are denied legal effect.

A. Legislative Findings expressly articulate the intent and purpose of Chapter 767.

The Florida Legislature formally articulated its intent in promulgating Chapter 767:

> . . . dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people in this state because of unprovoked attacks which cause injury to persons and domestic animals . .

s.767.10, Fla. Stat. ("Legislative Findings")

It is only as a part of the greater scheme and framework to regulate ownership of dogs that pose the described danger that the Florida Legislature

created the legal category of animals to be classified, as a matter of law, as "dangerous dogs." In other words, in adopting Chapter 767, the Florida Legislature sought to regulate the ownership of dogs that, having confirmed their suspected deadly proclivity by having *more than once* severely injured or killed a domestic animal, thus pose a "serious . . . threat to the safety and welfare of the people in this state." s.767.10. It is the definition of the class, not the name that is important.

In defining the class of dogs that pose a serious threat to the safety and welfare of the people of Florida, the Legislature did **not** include dogs that, *in a single incident*, severely injure or kill a domestic animal. As noted by Appellant at page 12 of her initial brief to this Court, when a court interprets a statute, "express mention of one thing is the exclusion of another." Citizens for Responsible Growth v. City of St. Pete Beach, 940 So.2d 1144, 1150 (Fla. 2d DCA 2006) (citation and internal quotation marks omitted). In Chapter 767, the Florida Legislature expressly mentioned dogs that "more than once severely injure or kill a domestic animal," defining such dogs as "dangerous." The Legislature thus excluded regulation of dog owners whose dogs have **not** "more than once" engaged in the described conduct.

B. Chapter 767 of Florida Statutes implicitly requires dog owners have *scienter* of their dogs' deadly propensities.