



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 25, 2025

The Honorable Janna Lindig
Bandera County Attorney
Post Office Box 656
Bandera, Texas 78003

Opinion No. KP-0491

Re: Authority of a county commissioners court to enact an order penalizing a dog owner for a public nuisance due to the dog's excessive barking (RQ-0557-KP)

Dear Ms. Lindig:

You ask whether the Bandera County commissioners court may enact an order penalizing a dog owner for causing a public nuisance due to the dog's excessive barking.¹ As background, you tell us the county adopted a Rabies and Animal Control Order in 2009 which, among other things, defined a "public nuisance" to include "allowing an animal to[] . . . [c]ause a disturbance by excessive barking or noise making near the private residence of another or to the extent that the barking or noise disturbs the peace or quiet of any neighborhood or can be heard from within the residence of another." Request Letter at 2 (referring to subsection 1.32(4) of the 2009 order). You explain that this order failed to establish consequences for an owner causing a public nuisance as defined by subsection 1.32(4). *Id.* To address this concern, the commissioners court adopted an order in 2022 that modified the 2009 order by penalizing a dog owner for committing a public nuisance under subsection 1.32(4). *Id.* at 3–4. The modification order created a misdemeanor offense and set forth a framework for notice and penalties. *Id.* at 4. You ask this office whether the county had "the authority under its official duties and powers to enter" the modification order. *Id.* at 6. We begin by examining the authority of a commissioners court.

Limited Authority of Counties

Article V, subsection 18(b) of the Texas Constitution authorizes a county commissioners court to "exercise such powers and jurisdiction over all county business, as is conferred by this Constitution and the laws of the State." TEX. CONST. art. V, § 18(b). The Texas Supreme Court has long held that this provision does not "immediately confer jurisdiction upon [commissioners courts] over the county business[] . . . nor authority generally over such business." *See, e.g., Bland*

¹ See Letter and Attachments from Hon. Janna Lindig, Bandera Cnty. Att'y, to Hon. Ken Paxton, Tex. Att'y Gen. at 1 (Aug. 8, 2024), <https://www.texasattorneygeneral.gov/sites/default/files/request-files/request/2024/RQ0557KP.pdf> ("Request Letter" and "Attachments," respectively).

v. Orr, 39 S.W. 558, 559 (Tex. 1897); *Mills Cnty. v. Lampasas Cnty.*, 40 S.W. 403, 404 (Tex. 1897) (observing the same). Instead, the reference to “county business” acts as a limitation on the scope of power the Legislature may confer on the commissioners court. *Sun Vapor Elec. Light Co. v. Kenan*, 30 S.W. 868, 868 (Tex. 1895) (“The powers which the legislature may require [the commissioners court] to exercise are confined by [article V, section 18] to county business[. . . .]”). Political subdivisions of the State “possess only such powers and privileges as have been expressly or impliedly conferred upon them,” and “[t]he authority vested in Texas counties—and county officials—is [therefore] limited.” *State v. Hollins*, 620 S.W.3d 400, 406 (Tex. 2020) (per curiam) (quoting *Wasson Ints., Ltd. v. City of Jacksonville*, 489 S.W.3d 427, 430 (Tex. 2016)). As such, “the legal basis for any action taken [by a commissioners court] must be grounded ultimately in the constitution or statutes.” *Guynes v. Galveston Cnty.*, 861 S.W.2d 861, 863 (Tex. 1993); see also *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948); *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941).

Lack of General County Police Power

You first assert that “[t]he matter addressed by the August 25, 2022, Modification Order is one affecting the public interest.” Request Letter at 4. As you observe, courts have recognized that the powers and duties given to commissioners courts “include aspects of legislative, executive, administrative, and judicial functions.” See, e.g., *Henry v. Cox*, 520 S.W.3d 28, 36 (Tex. 2017) (quoting *Ector Cnty. v. Stringer*, 843 S.W.2d 477, 478 (Tex. 1992)); see also Request Letter at 5. You suggest that the general power and duties of the commissioners court are thus broad enough to authorize the adoption of the modifying order, adding that “[m]unicipalities are given the power to adopt such rules/orders.” Request Letter at 5.

We disagree. To be sure, it is true that the state government generally possesses authority “to promote the public convenience or the general prosperity[] [and] promote the public health, the public morals, or the public safety.” *Lombardo v. City of Dallas*, 73 S.W.2d 475, 479 (Tex. 1934). But a “commissioners court has no general police power, such as that possessed by the State and by the many municipalities under the law.” *Upton Cnty. v. Brown*, 960 S.W.2d 808, 818 (Tex. App.—El Paso 1997, no pet.) (citing *Travis Cnty. v. Colunga*, 753 S.W.2d 716, 720 (Tex. App.—Austin 1988, writ denied)); accord *Comm’rs Ct. of Harris Cnty. v. Kaiser*, 23 S.W.2d 840, 841 (Tex. App.—Galveston 1929, writ ref’d); see also, e.g., TEX. LOC. GOV’T CODE § 51.001(1) (providing municipalities with express authority to “adopt[] . . . an ordinance, rule, or police regulation that[] . . . is for . . . good government, peace, or order”). As previously explained, “the legal basis for any action taken [by a commissioners court] must be grounded ultimately in the constitution or statutes.” *Guynes*, 861 S.W.2d at 863; see also *Canales*, 214 S.W.2d at 453; *Anderson*, 152 S.W.2d at 1085.

Chapter 826 of the Health and Safety Code

You also suggest the Rabies Control Act of 1981 (the “Act”) serves as a source of authority for the order underlying your inquiry. See Request Letter at 5–6. The Act establishes a statewide program to control and prevent the spread of rabies to persons through the vaccination, registration, restraint, and potential quarantine of dogs and cats. See generally TEX. HEALTH & SAFETY CODE §§ 826.001–.055. The executive commissioner of the Health and Human Services Commission

“adopt[s] rules necessary to effectively administer” the Act which, along with the chapter itself, serve as “the minimum standards for rabies control.” *Id.* §§ 826.011(b), .012. A commissioners court may adopt these minimum standards as its own, *id.* § 826.013, or it “may adopt ordinances or rules that establish a local rabies control program in the county and set local standards that are compatible with and equal to or more stringent than the program established by [Chapter 826] and the department rules adopted” thereunder, *id.* § 826.014(a). Further, section 826.033 authorizes a commissioners court establishing a local rabies control program “adopt ordinances or rules under Section 826.014 . . . to require,” among other things, that “each dog . . . be restrained by its owner.” *Id.* § 826.033(a)(1); *see also id.* § 826.034 (making failures or refusals “to restrain” a Class C misdemeanor). You therefore contend that the ordinary meaning of “restrained” is not limited to being “leashed, penned, [or] confined” and can include county orders—like that here—requiring an owner to “restrain” excessive barking. Request Letter at 6.

Again, we disagree. Words not defined in a statute are given their plain meaning, read in context, and construed according to the rules of grammar and common usage. TEX. GOV’T CODE § 311.011(a). Courts generally consult dictionaries to determine an undefined term’s common meaning. *Morath v. Lampasas Indep. Sch. Dist.*, 686 S.W.3d 725, 735 (Tex. 2024); *see also Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018). “If an undefined term has multiple common meanings, . . . [courts] will apply the definition most consistent with the context of the statutory scheme.” *Sw. Royalties, Inc. v. Hegar*, 500 S.W.3d 400, 405 (Tex. 2016). Courts also strive to interpret each term consistently in every part of the statute. *Sunstate Equip. Co. v. Hegar*, 601 S.W.3d 685, 690 (Tex. 2020). In addition to dictionaries, courts also “consider the term’s usage in other statutes, court decisions, and similar authorities.” *Id.* at 702 (quoting *Tex. State Bd. of Exam’rs of Marriage & Fam. Therapists v. Tex. Med. Ass’n*, 511 S.W.3d 28, 35 (Tex. 2017)). Courts likewise “strive to give [a] provision a meaning that is in harmony with other related statutes.” *Rodriguez*, 547 S.W.3d at 838. Ultimately, the “essential task in interpreting [a] statute is to carry out the Legislature’s intent.” *Gilbert v. El Paso Cnty. Hosp. Dist.*, 38 S.W.3d 85, 89 (Tex. 2001).

To “restrain” means “to hold back from action; keep in check or under control,” but it also means “to deprive of liberty, as by arrest or the like.” RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1642 (2d unabridged ed. 1987); *see also id.* at 1108 (defining “liberty” as “freedom from captivity, confinement, or physical restraint”). This common understanding of “restrain” is confirmed by the Act’s other references to restraint, which contemplate an animal’s movement—suggesting a similar construction here. *See Sunstate Equip.*, 601 S.W.3d at 690. For example, the Act’s definition of “quarantine” refers to “strict confinement of an animal . . . *under restraint by closed cage or paddock.*” TEX. HEALTH & SAFETY CODE § 826.002(9)(B) (emphasis added); *compare, e.g., id.* § 821.102(b) (prohibiting unlawful restraint), *with id.* § 821.101(7) (defining “restraint” to “mean[] a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system”).² Texas courts have likewise described section 826.033 as a delegation of authority over “*the restriction of roaming animals*, such as dogs, to local governmental entities.” *Garza v. Ochoa*, No. 13-20-00143-CV, 2021 WL 2231931, at *2–3

² The county’s 2009 order defines “restraint” in an identical manner. *See BANDERA COUNTY, TEX., RABIES AND ANIMAL CONTROL ORDER* § 1.33 (Apr. 9, 2009), <https://www.banderacountyac.org/uploads/6/3/6/2/6362150/animalcontrolorders04.09.09.pdf>.

(Tex. App.—Corpus Christi-Edinburg June 3, 2021, no pet.) (mem. op.) (emphasis added); *see also, e.g., Smith v. Doyle*, No. A14-93-00316-CV, 1994 WL 88855, at *5 (Tex. App.—Houston [14th Dist.] Mar. 10, 1994, no writ) (emphasizing that the purpose of the Act “is to protect people from animal bites that might transfer rabies”).

At bottom, the Act’s use of the term “restrained” plainly contemplates freedom of movement—not barking. We therefore conclude that the Act does not countenance the orders referenced in your request.

County Authority to Remedy Nuisances

Your letter closes by noting that the recent modification order “is an effort on the part of [the] [c]ommissioners [c]ourt to remedy a public nuisance.” Request Letter at 6. But the fact that the county’s authority to adopt the 2009 order “has not been challenged,” *id.* at 2, does not change that the commissioners court cannot exercise authority it does not possess under either “the constitution or statutes,” *Guynes*, 861 S.W.2d at 863; *see also, e.g., Canales*, 214 S.W.2d at 453.

The Act expressly cabins the commissioners court’s authority to “adopt ordinances or rules under Section 826.014” by providing that “each *stray* dog or cat [may] be declared a public nuisance.” TEX. HEALTH & SAFETY CODE § 826.033(a)(2) (emphasis added). Neither does the county’s general authority to abate public nuisances extend to barking dogs. *Id.* § 343.011(c) (defining “public nuisance”). Unlike municipalities, the Legislature has not vested commissioners courts with the authority to “define and declare what constitutes a nuisance.” *Cf.* TEX. LOC. GOV’T CODE § 217.002(2) (granting this authority to municipalities). Suffice it to say the commissioners court cannot expand the definition of “nuisance” without coordinate statutory or constitutional authority. *See Guynes*, 861 S.W.2d at 863; *see also, e.g., Canales*, 214 S.W.2d at 453.

S U M M A R Y

A county commissioners court does not possess authority to enact an order penalizing a dog owner for a “public nuisance” due to the dog’s excessive barking where, as here, no statute confers such authority to the commissioners court.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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