Juvenile Curfews - Municipalities - Ordinances

Number: AGO 2016-11

Date: August 17, 2016

Subject:
Juvenile Curfews - Municipalities - Ordinances

Mr. Jeb T. Branham
Attorney at Law
3500 3rd Street South
Jacksonville Beach, Florida 32250

RE: JUVENILE CURFEWS – MUNICIPALITIES – ORDINANCES – whether municipality is authorized to alter terms of statutory juvenile curfew as adopted in an ordinance. ss. 877.20 - 877.24, Fla. Stat.

Dear Mr. Branham:

As Town Attorney for the Town of Baldwin, Florida, you have asked for my opinion on substantially the following question:

Is a municipality authorized to adopt by ordinance the terms of the state juvenile curfew law described in sections 877.20 - 877.25, Florida Statutes, and to subsequently make changes, by ordinance, in the terms of the statutes for local application?

In sum:

If a municipality adopts an ordinance that incorporates by reference the provisions of sections 877.20 - 877.24, Florida Statutes, it may not alter by ordinance the statutory terms expressed in the statutes. However, section 877.25, Florida Statutes, does not preclude a municipality from adopting an independently crafted juvenile curfew ordinance. Any such locally crafted language must comport with federal and state constitutional law relating to juvenile curfews.

According to information supplied to this office, the Town of Baldwin has adopted the state curfew imposed by section 877.20, Florida Statutes, *et seq.*, without any changes to the statutory language.[1] A number of local governments nearby have adopted curfew ordinances which include individually-crafted provisions relating to the age of minors subject to the curfew. You ask whether the language of section 877.25, Florida Statutes, which states that local governments may "provide restrictions more stringent or less stringent than the curfew imposed under section 877.22" would allow the Town of Baldwin to modify by ordinance the statutory language contained in section 877.22, Florida Statutes, to redefine the term "minor" which the Town has adopted in its curfew ordinance. As discussed below, it is my opinion that the Town may adopt the provisions of section 877.20 - 877.25, Florida Statutes, but has no authority to alter the language of the statute by ordinance to redefine the term "minor." If the Town of Baldwin decides to draft its own juvenile curfew ordinance it may develop the terms of its ordinance but should be

cognizant of federal and state constitutional law relating to juvenile curfews.

Sections 877.20 - 877.25, Florida Statutes, describe a template for local juvenile curfew ordinances. It was the intent of the Legislature, in adopting these provisions:

"to protect minors in this state from harm and victimization, to promote the safety and well-being of minors in this state, to reduce the crime and violence committed by minors in this state, and to provide counties and municipalities with the option of adopting a local juvenile curfew ordinance by incorporating by reference the provisions of ss. 877.20-877.25."[2]

As used in the act, the term "[m]inor" is defined as "any person under 16 years of age."[3]

The act prohibits minors from being in public places and establishments during certain hours[4] and prescribes penalties[5] and procedures[6] for violations of the curfew provisions. The act does not apply in a county or a municipality unless the governing body of the local government adopts a local ordinance:

"Sections 877.20-877.24 do not apply in a county or municipality unless the governing body of the county or municipality adopts an ordinance that incorporates by reference the provisions of ss. 877.20-877.24. Sections 877.20-877.24 do not preclude county or municipal ordinances regulating the presence of minors in public places and establishments which provide restrictions more stringent or less stringent than the curfew imposed under s. 877.22."[7]

Thus, it appears that the juvenile curfew ordinance provided in sections 877.20 - 877.24, Florida Statutes, is not preemptive; rather, the act recognizes that a county or municipality may regulate the presence of minors more strictly, or less strictly, than those provisions of sections 877.20 - 877.24, Florida Statutes. However, if, as the Town of Baldwin has done, a county or municipality adopts the statutory scheme as set out in the statutes, it is my opinion that the Town is bound by the language of those statutory provisions. The statute provides no flexibility to alter the framework set forth in sections 877.20 - 877.24, Florida Statutes, if the Town has adopted that framework.[8] Rather, the statute appears to authorize local governments to craft juvenile curfew ordinances with terms either more or less stringent which may be adopted independently of sections 877.20 - 877.24, Florida Statutes.

In sum, it is my opinion that if a municipality adopts an ordinance that incorporates by reference the provisions of sections 877.20 - 877.24, Florida Statutes, it may not alter by ordinance the statutory terms expressed in the statutes. Section 877.25, Florida Statutes, does not, however, preclude a municipality from adopting an independently crafted juvenile curfew ordinance, but any such locally-crafted language must comport with federal and state constitutional law relating to juvenile curfews.[9]

Sincerely,

Pam Bondi
Attorney General

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[1] The Baldwin, Florida, Code of Ordinances has adopted the state statutes establishing a curfew for minors in the following terms: "Pursuant to Florida Statutes s. 877.25, the provisions of Florida Statutes ss. 877.20 - 877.24 are hereby adopted by reference as part of the Code of the Town of Baldwin." The provisions of the state statutes are not set out at length in the code.

[2] Section 877.20, Fla. Stat.

[3] Section 877.21(3), Fla. Stat.

[4] Section 877.22(1)(a), Fla. Stat., prohibits minors from being or remaining in a public place or establishment between 11:00 p.m. and 5:00 a.m. of the following day, Sunday through Thursday, except for legal holidays; (b) prohibits minors from being or remaining in a public place or establishment between 12:01 a.m. and 6:00 a.m. on Saturdays, Sundays, or legal holidays.

[5] Penalties include written warnings for a first violation and a fine of $50.00 and being charged with a civil infraction for those already having received a prior written warning. Section 877.22(3), Fla. Stat. I note that this act came into the statutes in Ch. 94-209, Laws of Fla., which was a major juvenile crime bill.

[6] Section 877.22(4), Fla. Stat., states that a minor violating a curfew and taken into custody must be transported to a police station or other facility conducting a curfew program and requires that the parents of the minor be contacted to take custody of the minor.

[7] Section 877.25, Fla. Stat.

[8] While municipalities in Florida do have home rule powers, Article I, section 18 of the Florida Constitution specifically provides that the imposition of penalties may only be accomplished "as provided by law." This office has concluded that the term "by law" means an act of the Legislature and does not include municipal ordinances. *See* Ops. Att'y Gen. Fla. 2009-53 and 84-39 (1984); *Advisory Opinion to Governor*, 22 So. 2d 398 (Fla. 1945); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982).

[9] *See, for example, State v. J.P. v. T.M.*, 907 So. 2d 1101 (Fla. 2005) ("Because the juveniles' fundamental rights to privacy and freedom of movement are burdened by the curfew ordinances, the cities must have a compelling governmental interest in regulating the activities of minors during the hours of the curfew and the ordinances must be narrowly tailored to accomplish their goals by the least intrusive means available.").