Golf Carts -- Child Safety Restraints

Number: AGO 2016-07

Date: June 27, 2016

Subject:
Golf Carts -- Child Safety Restraints

Mr. A. Kurt Ardaman
City Attorney
City of Winter Garden
1947 Lee Road
Winter Park, Florida 32789-1834

RE: GOLF CARTS – CHILD SAFETY RESTRAINTS – MUNICIPALITIES – SEAT BELTS – regulation of golf carts operating on public streets within municipality. ss. 316.212 and 316.613, Fla. Stat.

Dear Mr. Ardaman:

You ask on behalf of the City of Winter Garden the following:

1. Is the operation of a golf cart on the public streets of a municipality subject to the child restraint requirements of section 316.613, Florida Statutes?

2. Please clarify the limitation in section 316.212(8), Florida Statutes, that "[a]n ordinance referred to in this section must apply only to an unlicensed driver."

3. May a municipality adopt an ordinance prohibiting the operation of a golf cart on public streets by a person who does not have a valid driver's license?

4. Is a person who has a suspended or revoked license considered an "unlicensed driver" within the meaning of section 316.212(8)(a), Florida Statutes?

In sum:

1. The operation of a golf cart on the public streets of a municipality is not subject to the child restraint requirements of section 316.613, Florida Statutes.

2. The plain language of the statute limits a municipality's ordinance imposing more restrictive operation and safety requirements on golf carts to unlicensed drivers.

3. A municipality may not prohibit the operation of a golf cart by an unlicensed driver.

4. A person with a suspended or revoked driver license appears to be treated as an unlicensed driver under Florida's motor vehicle licensure laws.

Chapter 316, Florida Statutes, is the “Florida Uniform Traffic Control Law.”[1] By enactment of the law, the Legislature has stated its intent to make uniform traffic laws applicable throughout the state and make it unlawful for any local authority to pass or attempt to enforce an ordinance in conflict with the provisions of Chapter 316. The law recognizes, however, that certain conditions, enumerated in section 316.008, Florida Statutes, require municipalities to pass other traffic ordinances in regulation of municipal traffic that are not required to regulate traffic outside the jurisdiction.[2]

Section 316.008, Florida Statutes, sets forth specific areas in which municipalities may regulate traffic within their jurisdictions, including the enactment of an ordinance to “permit, control, or regulate the operation of vehicles, *golf carts*, mopeds, motorized scooters, and electric personal assistive mobility devices *on sidewalks or sidewalk areas* when such use is permissible under federal law.”[3] (e.s.) Moreover, section 316.212, Florida Statutes, designates roadways upon which golf carts may be operated. While generally the operation of a golf cart upon a public street or roadway is prohibited, the Legislature has recognized, pertinent to your inquiry, that a golf cart may be operated upon “a municipal street that has been designated by a municipality, or a two-lane county road located within the jurisdiction of a municipality designated by that municipality, for use by golf carts.”[4] Section 316.212, Florida Statutes, further prescribes that golf carts may only be operated during the hours between sunrise and sunset, unless “the responsible governmental entity has determined that a golf cart may be operated during the hours between sunset and sunrise and the golf cart is equipped with headlights, brake lights, turn signals, and a windshield.”[5]

While section 316.212 provides that a local government may enact an ordinance relating to golf cart operation and equipment which is more restrictive than those enumerated in the section, such ordinance may apply only to an unlicensed driver.[6]

Question One

Section 316.613, Florida Statutes, in part, states:

“(1)(a) Every operator of a motor vehicle as defined in this section, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device.
1. For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer’s integrated child seat.
2. For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a child booster seat may be used. However, the requirement to use a child restraint device under this subparagraph does not apply when a safety belt is used as required in s. 316.614(4)(a) and the child:
a. Is being transported gratuitously by an operator who is not a member of the child’s immediate family;
b. Is being transported in a medical emergency situation involving the child; or
c. Has a medical condition that necessitates an exception as evidenced by appropriate documentation from a health care professional.
(b) The department shall provide notice of the requirement for child restraint devices, which

notice shall accompany the delivery of each motor vehicle license tag.
(2) As used in this section, the term “motor vehicle” means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:
(a) A school bus as defined in s. 316.003(45).
(b) A bus used for the transportation of persons for compensation, other than a bus regularly used to transport children to or from school, as defined in s. 316.615(1)(b), or in conjunction with school activities.
(c) A farm tractor or implement of husbandry.
(d) A truck having a gross vehicle weight rating of more than 26,000 pounds.
(e) A motorcycle, moped, or bicycle.”

The plain language of the statute applies to “every operator of a motor vehicle” and adopts the definition of “motor vehicle” in section 316.003, Florida Statutes. Section 316.003(21), Florida Statutes, defines “motor vehicle” as “a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, swamp buggy, or moped. For purposes of s. 316.1001, ‘motor vehicle’ has the same meaning as in s. 320.01(1)(a).”[7] Thus, in general, it would appear that a golf cart falls within the definition of a motor vehicle which would be subject to the child safety restraint requirements in section 316.613, Florida Statutes. However, as noted above, there are statutes which specifically address safety equipment required on golf carts.[8]

Moreover, it is worth noting that section 316.614, Florida Statutes, the “Florida Safety Belt Law,” makes it unlawful for any person to operate a motor vehicle “unless each passenger and the operator of the vehicle under the age of 18 years are restrained by a safety belt or by a child restraint device pursuant to s. 316.613, if applicable[,]” but exempts from its application “motor vehicles that are not required to be equipped with safety belts under federal law.”[9] You indicate that there is no federal requirement for golf carts to be equipped with safety belts.[10] An informational pamphlet distributed by the Florida Department of Highway Safety and Motor Vehicles indicates that conventional golf carts are not classified as low speed vehicles because they have a top speed of less than 20 miles per hour; consequently, they are subject only to state and local requirements regarding safety equipment.[11]

In Attorney General Opinion 2004-60, this office was asked whether the operation of a golf cart on the public streets of a golf course community is subject to the child restraint requirements in section 316.613, Florida Statutes, and the seat belt requirement in section 316.614, Florida Statutes. The opinion discussed the general prohibition against the operation of golf carts on the public streets and highways of this state, as well as the specific exemption allowing such operation when a municipality has enacted an ordinance in compliance with the statutory requirements. Relying upon the fact that the Legislature has prescribed the safety equipment which must be included on a golf cart which is operated on a public street, which does not include child restraints or safety belts, the opinion concluded that a municipality could not require the installation of such equipment on golf carts.

The conclusion in Attorney General Opinion 2004-60 that a golf cart operating on public streets pursuant to section 316.212, Florida Statutes, is not required to be outfitted with safety belts or child safety restraints remains supported by the plain language of the statute prescribing the

safety equipment required on a golf cart and the position of the Florida Department of Highway Safety and Motor Vehicles. While the general traffic laws require safety belts and child safety restraints on motor vehicles, the more specific statutory requirements for golf carts control.[12]

Question Two

As noted above, section 316.212, Florida Statutes, generally prohibits the operation of golf carts on the public roads and streets of this state, but specifically authorizes municipalities to designate certain roads for use by golf carts. A municipality may enact an ordinance relating to golf cart operation and equipment which is more restrictive than those enumerated in section 316.212, but it may "apply only to an unlicensed driver."[13]

You request clarification of the term "must apply only to an unlicensed driver." This language was added when section 316.212, Florida Statutes, was amended during the 2005 Legislative Session. As initially proposed, House Bill 1697 (2005 Legislative Session), contained language which authorized local governments to enact more restrictive golf cart equipment and operation regulations than state law provides. The language limiting such an ordinance to an unlicensed driver was by amendment on the Senate floor without discussion.[14] There is no readily discernible legislative history indicating any intent behind adding such a restriction, other than the plain language of the statute.

The plain language of the statute indicates an intent that any regulations imposed by municipal ordinance on the operation or equipping of a golf cart on municipal streets is limited to unlicensed drivers operating golf carts. Where the Legislature has prescribed the manner in which something may be accomplished, it by implication prohibits its being done in any other way.[15]

Question Three

By its terms, section 316.212, Florida Statutes, would appear to authorize a municipality to adopt an ordinance prohibiting the operation of a golf cart on public streets by a person who does not have a valid driver's license, as such a prohibition would apply only to an unlicensed driver (the qualifying limitation on the power of a municipality to enact stricter regulations by ordinance). Section 322.04(1)(e), Florida Statutes, however, exempts from licensure "[a]ny person operating a golf cart, as defined in s. 320.01, which is operated in accordance with the provisions of s. 316.212." The Legislature has clearly authorized unlicensed drivers to operate golf carts on the highways of this state when operating pursuant to section 316.212, thereby precluding a municipality from enacting an ordinance prohibiting the operation of golf carts by an unlicensed driver.[16]

Question Four

In light of the conclusion in Question Three, no comment is necessary as to whether an individual with a suspended or revoked license is considered an "unlicensed driver" for purposes of prohibiting an unlicensed individual from operating a golf cart on a public highway. There may be instances, however, in which a municipality may enact ordinances applicable to an unlicensed driver which would not otherwise be applicable to licensed drivers operating a golf

cart on public streets within a municipality.[17]

Section 322.01(17), Florida Statutes, defines a "[d]river license" as "a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. s. 30301."[18] No definition of "unlicensed driver" as that term is used in section 316.212, Florida Statutes, has been found. For purposes of the Florida motor vehicle licensure laws, "[r]evocation" means "the termination of a licensee's privilege to drive"[19] and "[s]uspension" is "the temporary withdrawal of a licensee's privilege to drive a motor vehicle."[20]

By comparing the privilege which is bestowed upon an individual who possesses a valid driver license, *i.e.*, the authority to drive a motor vehicle upon the public highways of this state, and the condition imposed upon an individual whose driver license has been suspended or revoked, *i.e.*, the temporary or permanent removal of such authority, it is logical to deduce that a person whose driver license has been suspended or revoked is treated as an unlicensed driver for purposes of enforcement of the traffic laws of this state.[21]

Sincerely,

Pam Bondi
Attorney General

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[1] Section 316.001, Fla. Stat.

[2] Section 316.002, Fla. Stat.

[3] Section 316.008(7), Fla. Stat.

[4] Section 316.212(1), Fla. Stat.

[5] Section 316.212(5), Fla. Stat.

[6] Section 316.212(8)(a), Fla. Stat.

[7] Section 320.01, Fla. Stat., provides a definition, as used in the Florida Statutes, except as otherwise provided, the term:

"(1) 'Motor vehicle' means:
(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, special mobile equipment as defined in s. 316.003(48), vehicles that run only upon a track, bicycles, swamp buggies, or mopeds."

[8] *See* n. 12, *infra*.

[9] Section 316.614(4)(a), Fla. Stat.

[10] This office has further reviewed 63 FR 33913 (49 CFR Part 571), dated June 17, 1998, imposing stricter safety regulations (including safety belts) on low-speed vehicles (capable of speeds of 20 to 25 miles per hour), but recognizing and discussing that golf carts incapable of exceeding 20 miles per hour would not be subject to the new regulations.

[11] *See* https://www.flhsmv.gov/pdf/mv/lowspeedvehicles.pdf. *See also* Florida Driver's Handbook (2015), p. 46, listing the safety equipment required on golf carts at: /files/pdf/page/62EB835C1DD6F22D85257FDF0067CD72/englishdriverhandbook.pdf.

[12] *See, e.g., State v. McMillan*, 45 So. 882 (Fla. 1908); *American Bakeries Company v. Haines City*, 180 So. 524 (Fla. 1938); *Adams v. Culver*, 111 So. 2d 665 (Fla. 1959) (rule of statutory construction that a statute covering a particular subject matter controls over a general statutory provision covering the same in general terms).

[13] Section 316.212(8)(a), Fla. Stat.

[14] Florida Senate, Chamber Action on HB 1697, May 5, 2005 (amendment to amendment by Senators Webster and King).

[15] *See Alsop v. Pierce*, 19 So. 2d 799, 805 (Fla. 1944) (where Legislature prescribes the mode, that mode must be observed; express statutory direction as to how a thing is to be done is implied prohibition of its being done in any contrary manner).

[16] *See City of Miami Beach v. Rocio Corporation*, 404 So. 2d 1066, 1070 (Fla. 3d DCA 1981), *petition for review denied*, 408 So. 2d 1092 (Fla. 1981) (municipal ordinance is inferior to state law; if conflict arises, state law prevails. Ordinance which supplements statute's restriction of rights may coexist with that statute; ordinance which countermands rights provided by statute must fail).

[17] This office has neither been provided nor does it surmise the particular factual circumstances which would be the basis for an ordinance applicable to an unlicensed driver operating a golf cart.

[18] 49 U.S.C. s. 30301(5), defines “motor vehicle operator’s license” as “a license issued by a State authorizing an individual to operate a motor vehicle on public streets, roads, or highways.”

[19] Section 322.01(36), Fla. Stat.

[20] Section 322.01(40), Fla. Stat.

[21] *See* s. 322.34, Fla. Stat., making it a moving violation for a person to drive a vehicle upon the highways of this state while his or her license is suspended, revoked, canceled, or disqualified.