Regulation of texting while driving

Number: INFORMAL

Date: February 07, 2017

The Honorable Emily Slosberg
Representative, District 91
7499 West Atlantic Avenue #200
Delray Beach, Florida 33446

Dear Representative Slosberg:

Thank you for your letter requesting assistance in determining whether the Legislature may provide express authority for the Palm Beach County Commission to pass an ordinance making "texting while driving" in a school zone in Palm Beach County a primary offense. Attorney General Bondi has asked that I respond to your inquiry.

As you have noted, Chapter 316, Florida Statutes, operates as the State Uniform Traffic Law primarily intended to "make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities."[1] The chapter recognizes that there are certain areas in which local authorities may control certain traffic movements or enact specified traffic ordinances, but the statute specifically states that "[i]t is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter."

To enact legislation granting authority to Palm Beach County to solely enact an ordinance making texting while driving in a school zone a primary offense would be contrary to this express legislative intent of a uniform system of traffic regulation and would violate the Florida Constitution. Section 316.305, Florida Statutes, prohibits the operation of a motor vehicle while manually texting, but provides in subsection (5) that the offense may be enforced only as "a secondary action" when the operator of the motor vehicle has been detained for a suspected violation of another provision of Chapter 316, Chapter 320, or Chapter 322. This currently is the uniform method of enforcing the traffic law relating to texting while operating a motor vehicle. An exception to the general prohibition against the enforcement of any ordinance in conflict with the provisions of Chapter 316, Florida Statutes, would require amendment of the general law, which if specifically crafted to apply to Palm Beach County may run contrary to Article III, section 11(b), Florida Constitution, requiring that a general law on political subdivisions must be on a basis reasonably related to the subject of the law. No argument has been put forth which places Palm Beach County in a position different from other counties in the enforcement of traffic laws relating to texting while driving.

Several bills making it a primary offense to text while operating a motor vehicle are being proposed for consideration during the 2017 Legislative Session.[2] You may wish to work with your colleagues in crafting legislation which will allow your concerns to be addressed throughout the state.

Sincerely,

Lagran Saunders
Director, Opinions Division

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[1] Section 316.002, Fla. Stat.

[2] *See* SB 144 by Sen. Garcia, HB 47, and HB 69.