Municipality, operation of golf carts in subdivision

Number: INFORMAL

Date: September 01, 2011

The Honorable Carol M. McCormack
Mayor, Town of Palm Shores
5030 Paul Hurtt Lane
Palm Shores, Florida 32940

Dear Mayor McCormack:

You ask whether the Broward County Sheriff's Office[1] may enforce the traffic laws relating to the operation of golf carts on streets within a non-gated community located in the town. According to your letter, the streets are considered private streets for purposes of repair and maintenance by the homeowners' association.

After reviewing your letter, it appears that resolution of your inquiry necessarily presents mixed questions of law and fact which this office cannot resolve.[2] The following informal comments, however, are offered in an effort to be of assistance.

Section 316.212, Florida Statues, provides that the operation of a golf cart upon the *public roads or streets* of this state is prohibited except as provided therein.[3] Moreover, this office has stated on several occasions that the provisions of Chapter 316, Florida Statutes, are enforceable on private property when the public has a right to travel by motor vehicle on such property.[4] This conclusion is based on the language of section 316.640, Florida Statutes, which provides, in part, that counties and municipalities shall enforce state traffic laws on all streets and highways "wherever the public has the right to travel by motor vehicle."[5] It is therefore the availability of the area or place for travel and the right of general and common use which makes private property subject to public control pursuant to Chapter 316, Florida Statutes.[6]

Accordingly, this office has stated that local police authorities have enforcement authority with respect to traffic violations and accidents occurring on "private property" where the public has the right to travel by motor vehicle such as shopping centers and parking lots.[7] When, however, the roads in question are private and the public does not have the right to travel thereon, this office has concluded that a municipal law enforcement agency does not possess such enforcement authority, absent a written agreement entered into pursuant to section 316.006(2)(a), Florida Statutes.[8]

For example, in Attorney General Opinion 83-84, this office considered whether a municipal police department had the authority to enforce the provisions of Chapter 316, Florida Statutes, on private roads located within a private development. This office was advised that the streets were owned and maintained by the homeowners' association. Under the development's restrictive covenants, owners of units within the development had a perpetual nonexclusive easement of access to and from their units over the development's roadways while the owner, members, employees, guests, and invitees of the golf and racquet club possessed an easement

of access over those roads located in the "community area" of the development. Governmental entities having jurisdiction over the development area also had an easement over the development's roads for police, fire, ambulance, waste removal and other vehicles for the purpose of furnishing utilities or municipal or emergency services to the premises.

Attorney General Opinion 83-84 noted that if the general public were permitted to commonly use the private roads and were given ready access to this development and thereby acquired a right to travel by motor vehicle on such roads, then the right of the motoring public may well be established and the municipal police department would be authorized to enforce the provisions of Chapter 316, Florida Statutes, on such roads. If, however, access to and common use of the roads was not generally available to the public, but was legally limited by the recorded restrictive covenants governing the development to those having express or implied permission from the owner, then the provisions of Chapter 316 would not appear to be applicable as such property would not be a "public" or "quasi-public" area available for the general and common use by the public or an area or place where "the public has the *right* to travel by motor vehicle."[9] (e.s.)

Subsequent to the issuance of Attorney General Opinion 83-84, the Legislature authorized a municipality to exercise jurisdiction over any private road or roads located within its boundaries *if* the "municipality and party or parties owning or controlling such road or roads provide, by written agreement approved by the governing body of the municipality, for municipal traffic control jurisdiction over the road or roads encompassed by such agreement."[10] In authorizing local governments to enter into such agreements with the owners of private roads, section 316.006, Florida Statutes, implicitly recognizes a distinction between roads where the public has the right to travel and roads where that right is not present. Section 316.006(2)(a), Florida Statutes, provides:

"Chartered municipalities shall have original jurisdiction over all streets and highways located within their boundaries, except state roads, and may place and maintain such traffic control devices which conform to the manual and specifications of the Department of Transportation upon all streets and highways under their original jurisdiction as they shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic."

Section 316.003(53), Florida Statutes, defines the term "street or highway" for purposes of Chapter 316, Florida Statutes, as:

"(a) The entire width between the boundary lines of every way or place of whatever nature when any part thereof *is open to the use of the public* for purposes of vehicular traffic;
(b) The entire width between the boundary lines of *any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons*, or any limited access road owned or controlled by a special district, *whenever, by written agreement entered into under s. 316.006(2)(b) or (3)(b), a county or municipality exercises traffic control jurisdiction over said way or place . . . .*[11] (e.s.)

The term "private road or driveway" is defined in section 316.003(33), Florida Statutes, to mean that "[e]xcept as otherwise provided in paragraph (53)(b), any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons." This office has no information as to whether the homeowners'

association has entered into such a written agreement with the city.

I would further note that section 322.03(1), Florida Statutes, provides that except as otherwise authorized in Chapter 322, Florida Statues, "a person may not drive any motor vehicle upon a highway in this state unless such person has a valid driver's license issued under this chapter."[12] Section 322.01(39), Florida Statutes, defines "Street or highway" for purposes of Chapter 322, Florida Statutes, relating to driver's licenses, to mean "the entire width between the boundary lines of a way or place if any part of that way or place is *open to public use* for purposes of vehicular traffic."[13] (e.s.) This definition has been held to include private property such as parking lots in "malls, industrial parks and similar areas" because those areas were "heavily travelled" and "open to the public" even though they were privately owned.[14] As the court in *Mattingly v. State*[15] stated, whether a street is considered to be open to public use is usually a question of fact.

While this office cannot resolve questions of fact or mixed questions of law and fact, I hope that the above informal comments may be of some assistance in this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

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[1] According to your letter, the town is patrolled by the sheriff's office.

[2] See this office's statement concerning Attorney General Opinions, available online at: http://myfloridalegal.com/opinions, (Attorney General Opinions are intended to address only questions of law, not questions of fact or mixed questions of fact and law).

[3] *And see* s. 316.2125, Fla. Stat., permitting, notwithstanding s. 316.212, Fla. Stat., the reasonable operation of a golf cart, equipped and operated as provided in s. 316.212 (5), (6), and (7), within any self-contained retirement community unless prohibited under subsection (2) which authorizes a county, municipality, or the Department of Transportation to prohibit the operation of golf carts on any street or highway under their respective jurisdictions if determined to be necessary in the interest of safety. *See also* Op. Att'y Gen. Fla. 04-25 (2004), stating that the use of the term "self-contained retirement community" in s. 316.2125(1), Fla. Stat., does not limit the use of golf carts to those retirement communities that maintain private roads on which the public does not have the right to travel, but includes retirement communities with roads open to the public.

[4] *See, e.g.,* Ops. Att'y Gen. Fla. 90-68 (1990) (no authority to enforce Ch. 316, Fla. Stat., on private roads located within a private development or over roads or streets within a special taxing district where such byways are not available for public use, absent a written agreement entered into pursuant to s. 316.006[2][b]), Fla. Stat.), 88-05 (1988), 86-59 (1986) (municipal

police department not authorized to enforce provisions of Ch. 316, within park and recreation district created by special act since general public not permitted to travel by motor vehicle therein).

[5] *See* s. 316.640(2)(a) and (3)(a), Fla. Stat., respectively. *And see* s. 316.072(1), Fla. Stat., stating that the provisions of Ch. 316, Fla. Stat., "apply to the operation of vehicles and bicycles and the movement of pedestrians upon all state-maintained highways, county-maintained highways, and municipal streets and alleys and wherever vehicles have the right to travel." (e.s.)

[6] *And see* Op. Att'y Gen. Fla. 96-53 (1996), stating that a municipal police officer or parking enforcement specialist does not have the authority under Ch. 316, Fla. Stat., to issue a traffic citation for vehicles parked on private residential property in violation of municipal ordinance since such property is not a thoroughfare or street upon which the public has a right to travel by motor vehicle.

[7] *See* Ops. Att'y Gen. Fla. 73-323 (1973) and 72-383 (1972). *And see* Op. Att'y Gen Fla. 51-183, June 28, 1951, Biennial Report of the Attorney General, 1951-1952, p. 481, and Ops. Att'y Gen Fla. 66-59 (1966) and 58-144 (1958) (where private owner permits the general and common use of a street or way by the public, he subjects such street to all necessary controls which are applicable to public streets).

[8] *See, e.g.,* Op. Att'y Gen. Fla. 90-68 (1990).

[9] The opinion further noted that under the development's restrictive covenants, the general public had the right to travel on certain roads owned and maintained by the owners' association within the development when traveling to and from the golf and racquet club as guests or invitees of the owner of the golf and racquet club, but was unable to conclude that such access, in and of itself, would make the roads within the development quasi-public or grant to the public any general or common right to travel on them. Nor could this office conclusively state that the actions of the owners' association in not blocking the access road to the development by a gate and in not affirmatively precluding any member of the public from entering the development constituted a grant to the public of the right to generally and commonly use the roads in question, especially in light of the terms of the recorded restrictive covenants which governed the ownership and rights of access and usage of the roads in question and which appeared to limit access to the roads within the development. The opinion notes, however, that a determination as to whether the public has a right to use the development's roadways will be dependent upon the precise nature of the permitted use of the roads in question.

[10] Section 316.006(2)(b), Fla. Stat. See s. 3, Ch. 87-88, Laws of Fla. *And see* s. 316.006(2)(b)4., Fla. Stat., stating that the board of directors of a homeowners' association as defined in Ch. 720, Fla. Stat., may, by majority vote, elect to have state traffic laws enforced by local law enforcement agencies on private roads that are controlled by the association.

[11] Section 316.003(53), Fla. Stat., also includes within the definition any area within the boundary of an airport owned by the state, a county, a municipality, or a political subdivision, which area is used for vehicular traffic, but which is not open for vehicular operation by the general public; or any way or place used for vehicular traffic on a controlled access basis within

a mobile home park recreation district which has been created under s. 418.30 and the recreational facilities of which district are open to the general public.

[12] *See generally* ss. 316.003(68) and 320.01(22), Fla. Stat., defining a golf cart as a motor vehicle, and Meister v. Fisher, 462 So. 2d 1071 (Fla. 1984) (golf cart is clearly a motor vehicle). *And see* s. 322.04(1)(e), Fla. Stat., exempting from the requirement of obtaining a driver's license, "[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."

[13] *Cf.* s. 320.01(16), "Road" means "the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic."

[14] *See State v. Lopez*, 633 So. 2d 1150, 1151 (Fla. 5th DCA 1994).

[15] 41 So. 3d 1020 (Fla. 5th DCA 2010). *And see State v. Tucker*, 761 So. 2d 1248 (Fla. 2d DCA 2000).