Municipality, texting while driving

Number: INFORMAL

Date: November 06, 2009

Mr. Andrew S. Maurodis
Parkland City Attorney
150 Northeast 2nd Avenue
Deerfield Beach, Florida 33441

Dear Mr. Maurodis:

On behalf of the City Commission of the City of Parkland, you have asked for assistance regarding the provisions of section 316.0075, Florida Statutes, and the preemptive effect of this statute. Attorney General McCollum has asked me to respond to your letter.

You have asked whether section 316.0075, Florida Statutes, preempts a municipal ordinance which prohibits texting while driving a motor vehicle within the municipality. The City of Parkland has adopted such an ordinance which seeks to prohibit anyone from driving a motor vehicle while "texting" in the city limits. While this office has no authority to address the validity of local legislation,1 the subject of preemption of local legislation by state statutes has been the subject of Attorney General Opinions. My comments will be general, and no comment is expressed on the validity of the City of Parkland's ordinance.

Section 2(b), Article VIII of the Florida Constitution provides, in part that:

"Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."

The Florida Supreme Court has stated that this constitutional provision "expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services."[2] The Court stated, in *State v. City of Sunrise*, that the only limitation on the power of municipalities under this constitutional section is that such power must be exercised for a valid municipal purpose. As determined by the Court, "[l]egislative statutes are relevant only to determine limitations of authority" and municipalities need no further authorization from the Legislature to conduct municipal government.[3]

Pursuant to section 166.021(1), Florida Statutes, municipalities are granted "the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." Subsection (3) of the statute prescribes limitations on the subjects that municipal legislation may address:

"The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation

concerning any subject matter upon which the state Legislature may act, except:
(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
(b) Any subject expressly prohibited by the constitution;
(c) Any subject expressly preempted to state or county government by the constitution or by general law; and
(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution."

The relationship between local and state legislation was specifically discussed by the Florida Supreme Court in *City of Miami Beach v. Rocio Corporation*:

"The principle that a municipal ordinance is inferior to state law remains undisturbed. Although legislation may be concurrent, enacted by both state and local governments in areas not preempted by the state, concurrent legislation enacted by municipalities may not conflict with state law. If conflict arises, state law prevails. An ordinance which supplements a statute's restriction of rights may coexist with that statute, whereas an ordinance which countermands rights provided by statute must fail."[4]

Section 316.0075, Florida Statutes, was adopted in 2002 in response to an Attorney General Opinion issued the previous year. In Attorney General Opinion 2001-49, this office concluded that since Chapter 316, Florida Statutes, did not regulate or otherwise address the operation of cellular telephones while driving, local governments could regulate the operation of such devices without constituting a conflict with the "Florida Uniform Traffic Control Law." Following issuance of the opinion, the Legislature adopted section 316.0075, Florida Statutes, which provides:

"Operator use of commercial mobile radio services and electronic communications devices.—Regulation of operator or passenger use of commercial mobile radio services and other electronic communications devices in a motor vehicle is expressly preempted to the state."

Legislative history related to the enactment of section 316.0075, Florida Statutes, recognizes that "[t]his bill expressly preempts to the state the regulation of the use of cellular phones and other electronic communications devices by drivers and passengers of a motor vehicle."[5] As the Legislature noted:

"With the proliferation of cellular phones and the recent emergence of other in-vehicle technologies that allow drivers to fax, e-mail, obtain route guidance, view infrared images on a head-up display, operate multimedia entertainment systems or use the internet, a debate has emerged whether the use of cellular phones and other devices should be allowed while operating a motor vehicle."

The Senate Staff Analysis for SB 358 notes the conclusion expressed by Attorney General Opinion 2001-49 and reports that "[s]ince the Attorney General issued his opinion, several of Florida’s local governments have sought to enact ordinances regulating the use of cellular phones by motorists." The concern expressed by legislative staff was

". . . the possibility that regulations may be enacted that differ from city to city and county to

county [causing] concerns for some who envision a scenario in which a driver lawfully using a cell phone in one jurisdiction might cross into another jurisdiction where the behavior is outlawed."[6]

Relating the effect of the enactment of SB 358, creating section 316.0075, Florida Statutes, staff noted that

". . . the bill expressly preempts to the state regulation of operator or passenger use of commercial mobile radio services (cellular phones) and other electronic communications devices in a motor vehicle. The bill therefore renders ineffective any local ordinances regulating the use of cellular phones, or other electronic communications devices in motor vehicles."[7]

The clear language of section 316.0075, Florida Statutes, and the legislative history produced during consideration of this legislation expresses the Legislature's determination to preempt to the state regulation of the use of cellular telephones and other electronic communications devices by both the driver of a motor vehicle and any passengers in that vehicle. Thus, it would appear that the Legislature has reserved to itself the regulation of "texting," that is, communicating electronically using "electronic communications devices," while operating or riding as a passenger in a motor vehicle.

Sincerely,

Gerry Hammond
Assistant Attorney General

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[1] *See* s. 16.01(3), Fla. Stat., providing that the Florida Attorney General's Office may issue opinions on state law, and Department of Legal Affairs Statement Concerning Attorney General Opinions.

[2] *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978).

[3] *Supra* at 1209. *See also City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764 (Fla. 1974).

[4] *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).

[5] Summary, Senate Staff Analysis and Economic Impact Statement, SB 358, dated November 27, 2001.

[6] *See* p.3, *id*.

[7] *Supra* n.4 at p.3.