Law enforcement, discretion in issuing ticket

Number: INFORMAL

Date: July 20, 2006

Mr. Michael Ciocchetti
Town of Ponce Inlet Attorney
Post Office Box 15110
Daytona Beach, Florida 32115

Dear Mr. Ciocchetti:

As Town Attorney for the Town of Ponce Inlet you have asked for this office's opinion on whether a police officer is afforded discretion under section 316.1945, Florida Statutes, in issuing a traffic citation when the officer witnesses a violation of that statute. You have also asked whether, pursuant to section 316.008, Florida Statutes, a municipality can adopt an ordinance which allows a vehicle to be parked on a town sidewalk. Attorney General Crist has asked me to respond to your letter.

The Florida Uniform Traffic Control Law, Chapter 316, Florida Statutes, was enacted "to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities."[1] In order to ensure that the provisions of Chapter 316, Florida Statutes, are given uniform application throughout the state, section 316.002, Florida Statutes, provides 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."[2]

Section 316.1945, Florida Statutes, provides that:

"(1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:
(a) Stop, stand, or park a vehicle:

* * *

2. On a sidewalk.

* * *

(3) A law enforcement officer or parking enforcement specialist who discovers a vehicle parked in violation of this section or a municipal or county ordinance may:
(a) Issue a ticket form as may be used by a political subdivision or municipality to the driver; or
(b) If the vehicle is unattended, attach such ticket to the vehicle in a conspicuous place, except that the uniform traffic citation prepared by the department pursuant to s. 316.650 may not be issued by being attached to an unattended vehicle.

The uniform traffic citation prepared by the department pursuant to s. 316.650 may not be issued

for violation of a municipal or county parking ordinance.

(4) A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318."

Thus, section 316.1945(1)(a)2., Florida Statutes, prohibits parking an automobile on a sidewalk.

In light of the specific terms of section 316.002, Florida Statutes, providing 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" and the prohibition contained in section 316.1945(1)(a)2., Florida Statutes, against parking an automobile on a sidewalk, it does not appear that a local government is authorized to adopt an ordinance which would authorize such conduct.[3]

You also ask whether the language in section 316.1945(3), Florida Statutes, that a "law enforcement officer or parking enforcement specialist . . . may" issue a ticket, implies discretion on the part of the officer. The word "may" when given its ordinary meaning denotes a permissive term rather than the mandatory connotation of the word "shall."[4] Thus, it would appear that a law enforcement officer has a certain amount of discretion in issuing traffic tickets for violations of section 316.1945, Florida Statutes.

However, a law enforcement agency allowing a continuing violation of the law without legal consequences appears to extend the concept of "discretion" beyond those treated by section 316.1945, Florida Statutes. The statute clearly makes the conduct described therein illegal and the Florida Uniform Traffic Control Law contemplates enforcement of the provisions of the act.[5]

I trust that these informal comments will assist you in advising your clients. Please contact the Florida Attorney General's Office in the future if we can be of assistance to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Section 316.002, Fla. Stat.

[2] *And see* s. 316.007, Fla. Stat., providing that "no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized." *See also* s. 166.021, Fla. Stat., which grants municipalities broad home rule powers except on matters expressly prohibited by law or when the subject matter is expressly preempted to the state by general law.

[3] *See Thomas v. State*, 614 So. 2d 468 (1993).

[4] *See Fixel v. Clevenger*, 285 So. 2d 687 (Fla. 3rd DCA 1973); *City of Miami v. Save Brickell*

Ave., Inc., 426 So. 2d 1100 (Fla. 3rd DCA 1983).

[5] *See* s. 316.002, Fla. Stat.