Golf carts in mobile home community

Number: INFORMAL

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Ms. Pamela J. Mitchell
3542 Maine Avenue
Sebring, Florida 33872-2541

Dear Ms. Mitchell:

The Office of Attorney General Charlie Crist has received your letter regarding the operation of golf carts within a mobile home community.

While this office is precluded by law from rendering legal opinions or advice to private individuals, the following informal comments are offered in an effort to be of assistance.

As this office noted in Attorney General Opinion 2004-25, section 316.212, Florida Statutes, prohibits the operation of golf carts on the public roads or streets of this state, except under specified conditions. One of those exceptions is provided in section 316.212(3) which states:

"Any other provision of this section to the contrary notwithstanding, a golf cart may be operated for the purpose of crossing a street or highway where a single mobile home park is located on both sides of the street or highway and is divided by that street or highway, provided that the governmental entity having original jurisdiction over such street or highway shall review and approve the location of the crossing and require implementation of any traffic controls needed for safety purposes. This subsection shall apply only to residents or guests of the mobile home park. Any other provision of law to the contrary notwithstanding, if notice is posted at the entrance and exit to any mobile home park that residents of the park utilize golf carts or electric vehicles within the confines of the park it shall not be necessary that the park have a gate or other device at the entrance and exit in order for such golf carts or electric vehicles to be lawfully operated in the park."

The issue in Attorney General Opinion 2004-25, however, concerned the provisions of section 316.2125(1), Florida Statutes, which creates another exception to the general prohibition against golf carts contained in section 316.212. Section 316.2125(1) states:

"Notwithstanding the provisions of s. 316.212, the reasonable operation of a golf cart, equipped and operated as provided in s. 316.212(4), (5), and (6), within any self-contained retirement community is permitted *unless prohibited under subsection (2)*." (e.s.)

Subsection (2) of the statute provides that a county or municipality may prohibit the operation of golf carts on any street or highway under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

The issue addressed in Attorney General Opinion 2004-25 concerned the meaning of the term

"self-contained retirement community," a term not defined in the statute, and whether it refers only to a community where the streets of the retirement community are privately owned and not generally open to the public. This office noted that the provisions of Chapter 316 only apply to roads where the public has a right to travel. To limit the application of section 316.212 to only those communities where the roads are privately owned and not open to the public would make the language of section 316.2125(1) meaningless since Chapter 316 does not regulate such roads.

It is a fundamental rule of statutory construction that statutes are not to be interpreted as surplusage. This office therefore concluded that the use of the term "self-contained retirement community" in section 316.2125(1), Florida Statutes, 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.

I would further note that section 316.2125(1) itself contains an exception. Golf carts are permitted within such self-contained retirement communities "unless prohibited under subsection (2)." As noted above, subsection (2) provides that a county or municipality may prohibit the operation of golf carts on any street or highway under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety. If the term "self contained retirement community" is limited to communities with private roads, the reference to subsection (2) is rendered meaningless since a county or municipality would not have jurisdiction over those roads.

The conclusion that section 316.2125, Florida Statutes, applies to self contained retirement communities with public roads provided the county or municipality has not prohibited the operation of golf carts on such roads in the interest of safety does not mean that section 316.212, Florida Statutes, does not have any meaning. On most public roads, golf carts are prohibited. There are, however, exceptions. Section 316.2125 is one such exception. It is not unusual for a statute to have exceptions to its terms. For example, section 119.07(1), Florida Statutes, provides a right of access to the public records of this state. There are, however, numerous exceptions to such a right established by various statutes. That does not mean that section 119.07 is meaningless, only that there are exceptions as prescribed by other statutory provisions.

As the sheriff's general counsel advised you, you may wish to discuss this matter with your local legislative delegation, that is, those state legislators that represent your district, as it the Florida Legislature, not this office, that writes the laws of this state.

Thank you for sharing your concerns with the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General