

Counties, speed limits on St. Johns River

Number: INFORMAL

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The Honorable Tom Feeney
Representative, District 33
Post Office Box 622109
Oviedo, Florida 32762-2109

Dear Representative Feeney:

You have asked for this office's opinion regarding the validity of a Seminole County ordinance which seeks to impose speed limits on portions of the St. Johns River located within the county.

While this office must presume the validity of any duly enacted ordinance until judicially determined otherwise in a court of competent jurisdiction,[1] the following informal comments are offered in an effort to be of some assistance.

In 1965, the Legislature enacted provisions specifically relating to Seminole County's authority to prescribe regulations for the operation of watercraft within the county. Specifically, Chapter 65-2266, Laws of Florida, states:

"The Board of County Commissioners of Seminole County is authorized and empowered to and may:

- (1) Prescribe speed limits of such boats in any areas within said county;
- (2) Prescribe areas wherein such boats may not operate;

* * *

- (5) Prescribe any other reasonable rules or regulations for the operation of motor boats as may be necessary and proper for the safety and welfare of the public[.]"[2]

The 1965 act thus authorizes the county to regulate the speed of watercraft in order to protect property and persons.[3]

Moreover, Chapter 327, Florida Statutes, the "Florida Vessel Safety Law," recognizes the authority of local government to regulate the operation of vessels on Florida waterways. For example, section 327.22(1), Florida Statutes, states that there is no prohibition against local governments regulating boating related activities. In addition, section 327.60, Florida Statutes, acknowledges the authority of local governments to regulate the operation and equipment of vessels so long as the regulations are not in conflict with the statute.

In Attorney General Opinion 88-46, this office stated that regulations restricting boat speeds

within certain areas would appear to fall within a municipality's authority to regulate the operation of vessels within its boundaries. The Second District Court of Appeal, in *Lee County v. Lippi*,^[4] held that the fact that Chapter 327, Florida Statutes, authorizes the state to take action regarding the operation of boats in certain areas did not deprive the county of authority to adopt an ordinance on the same subject:

We find no language in section 327.46(1) or any other provision of chapter 327 that evidences a legislative intent to preempt the authority of a county to regulate personal watercraft by designating areas in which they may not be operated. On the contrary, section 327.22, Florida Statutes (1993), and section 327.60, Florida Statutes (1993), both expressly recognize the authority of local governments to regulate these vessels in accordance with specified conditions.^[5]

Clearly the courts and this office have recognized that concurrent jurisdiction exists in both the state and local governments to regulate in this area.

Seminole County Ordinance 99-49 indicates that the regulations contained therein are necessary to protect property threatened by the high level of the river due to recent flooding. This office is in no position to evaluate the factual criteria upon which the ordinance is based. I trust, however, that the above informal comments may be of some assistance to you and your constituent in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See, e.g., *State ex rel. Watson v. Caldwell*, 23 So. 2d 855 (Fla. 1945); *Adams Packing Association, Inc. v. Florida Department of Citrus*, 352 So. 2d 569 (Fla. 2d DCA 1977); and Ops. Att'y Gen. Fla. 78-64 (1978) and 77-99 (1977).

[2] Section 7, Ch. 65-2266, Laws of Florida.

[3] Section 2, Ch. 65-2266, Laws of Florida.

[4] 662 So. 2d 1304 (Fla. 2d DCA 1995).

[5] *Id.* at 1306.