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February 9, 2017

OFFICIAL OPINION 2017-1

The Honorable Jerry Torr
The Honorable Donna Schaibley
Indiana State House
200 W. Washington Street
Indianapolis, IN 46204

RE: Municipal Regulation of Golf Carts

Dear Representatives Torr and Schaibley:

You requested the opinion of the Office of the Indiana Attorney General (OAG) as to what extent a municipality may prescribe certain requirements for golf carts operating on public streets and roadways within its jurisdiction.

REQUESTOR STANDING

Ind.Code § 4-6-2-5 contemplates that either house of the General Assembly may request, by resolution, an official advisory opinion of the Attorney General as to the constitutionality of an existing or proposed piece of legislation. The final clause of that same statutory enactment grants to the Attorney General the discretion to render (or decline to render) opinions sought by individual state legislators about other matters, including questions of statutory interpretation having statewide significance, and which are likely to recur while evading judicial review.

QUESTION PRESENTED

Can a municipality, operating under Ind. Code § 9-21-1-3.3 (“Ordinances Regarding Use of Golf Carts on Highway”), require golf carts to be outfitted with safety equipment that, by state law, is required for motor vehicles generally (pursuant to Ind. Code, art. 9-19), without violating Ind. Code § 9-21-1-3.3(a)(1), which *prohibits* ordinances that “*conflict with or duplicate* another state law” (emphasis supplied)?

BRIEF CONCLUSION

The local ordinance in question, which incorporates safety standards adopted by state statute for the regulation of full-scale motor vehicles, and applies those standards to the operation of golf carts on public streets and roadways within the city limits, is clearly within the municipality's realm of legitimate authority. Such an ordinance would not violate applicable statutory provisions because the Indiana legislature has made clear its intent not to pre-empt local regulation of low-speed vehicles and golf carts. Further, the particular ordinance in question does not "conflict with" or "duplicate" any other state law within the meaning of Ind. Code 9-21-1-3-3(a)(1), as those terms have been interpreted most recently by the Indiana Court of Appeals in *Maraman v. City of Carmel*, 47 N.E.3d 1218 (Ind. Ct. App. 2015), *trans. denied*, 48 N.E.3d 317 (Ind. 2016).

ANALYSIS

Ind. Code § 9-19-1-1(a) was amended by Pub. L. 150-2009, Sec. 7, to read, in relevant part:

"[T]his article does not apply to the following with respect to equipment on vehicles: ... (6) Golf carts." Although at first glance, this specific exclusion could be read to signal the legislature's intent to remove the subject of golf carts from regulation,¹ a number of statutory amendments and previous enactments had the effect of clarifying the legislature's true direction, toward state de-regulation of golf carts. By removing these carts from the scope of Ind. Code, art. 9-19. Pub. L. 182-2009, Sec. 289 refined this further so that golf carts were only excepted from statute "when operated in accordance with an ordinance adopted under IC 9-21-1-3(a)(14) or IC 9-21-1-3.3(a)."

Ind. Code § 9-21-1-3(a)(14) reads: "A local authority, with respect to private roads and highways under the authority's jurisdiction, in accordance with [Ind. Code §§ 9-21-1-2, -3.3], and within the reasonable exercise of the police power, may do the following: ... (14) regulate or prohibit the operation of low speed vehicles, golf carts, or off-road vehicles on highways in accordance with [Ind. Code § 9-21-1-3.3(a)]."

Ind. Code § 9-21-1-3.3 reads, in relevant part:

(a) A city, county, or town may adopt by ordinance traffic regulations concerning the use of golf carts or off-road vehicles, or both on a highway under the jurisdiction of the city, county, or town. An ordinance adopted under this subsection may not:

¹ *Expressio unius est exclusio alterius*. Applied too hastily to this case, this ancient principle of statutory construction might well lead one to conclude that the legislature intended to remove golf carts from local regulation, by specifying the statute's applicability to full-scale motor vehicles and excluding other vehicles, including golf carts. The Latin expression does translate literally as, "when one or more things of a class are expressly mentioned, others of the same class or category are to be taken as intentionally excluded." The other statutes cited herein make clear, however, that it was not the legislature's intent to exclude golf carts from local safety regulations, but quite the opposite, anticipating and authorizing their regulation to be exercised at the local level.

- (1) conflict with or duplicate another state law; or
- (2) conflict with a driver's licensing requirement of another provision of the Indiana Code.

(b) A fine assessed for a violation of a traffic ordinance adopted by a city, county, or town under this section shall be deposited into the general fund of the city, county, or town.

* * * *

(d) A violation of an ordinance adopted under this section that is committed on a state highway by the operator of a golf cart or off-road vehicle is considered to be an ordinance violation.

Reading this skein of statutes as a unified whole, the legislature has ceded regulation of golf carts to local governmental entities, by removing golf carts from the scope of state regulation, and instead empowering local governmental entities to regulate them. For municipalities, the legislature conditioned this exercise of power on two requirements, only one of which is at issue here. In regulating golf carts, a municipality must not pass an ordinance that will "conflict with or duplicate another state law." Ind. Code § 9-21-1-3.3(a)(1).

At first blush, an ordinance requiring much of the same safety equipment that is required of other motor vehicles might be viewed as duplicative of Ind. Code Art. 9-19. Though the content of such an ordinance would in fact echo and incorporate some statutory language, its effect would be entirely distinct, as the ordinance would apply only to golf carts while the statutes, by explicit exception, apply only to other varieties of full-speed motor vehicles. Similarly, as the exception for golf carts renders the relevant statutes of no effect with respect to golf carts, the statutes produce little effect with which an ordinance could conflict. The mere fact that statutory language may be appropriated, incorporated by reference as a relevant standard, and thereby applied to other subjects of regulation does not render the two enactments "duplicative," as they deal with separate subject-matter and different regulatory targets.

This understanding of the interplay of the statutes and ordinances is brought into sharper focus, confirming our view, by an examination of recent judicial precedent on a similar issue. Here once again, bold local legislative strokes by one of Indianapolis's largest northern neighbors, the City of Carmel, provided a kind of test case.

In *Maraman v. City of Carmel*, 47 N.E.3d 1218 (Ind. Ct. App. 2015), *trans. denied*, 48 N.E.3d 317 (Ind. 2016), the Court held that an ordinance was void because it duplicated a statute, where the authority to pass the ordinance was explicitly conditioned on not duplicating or conflicting with statute. In *Maraman*, the City of Carmel had used an incorporation clause to effect the wholesale adoption, in an ordinance, of much of Indiana's statutory traffic regulations. This duplicated not merely the content and regulatory focus of the relevant statutes, but also their effect. The result of this ordinance was that drivers could be charged with a violation of either a

state statute or a local ordinance for the same conduct. The Court reasoned that the legislature, through the conditional clause proscribing duplicative ordinances, intended to occupy the field of traffic regulation, at least insofar as particular conduct is penalized under statute.

Though a golf cart ordinance which duplicates the content of any statute would raise issues similar to those presented in *Maraman*, it would also differ in important respects. First, a court would be unlikely to judge such an ordinance to be duplicative of statute, as it would not duplicate the *effect* of any statute. It is not clear from *Maraman* whether the Court was concerned with mere duplication of content or only with duplicative effect, but the latter is more likely. As the relevant statutes explicitly do not apply to golf carts, any ordinance that does apply to golf carts would create a new, rather than a duplicative, effect.

Thus, while an ordinance which incorporates parts of Ind. Code Art. 9-19 and applies them to golf carts could at first blush resemble the one at issue in *Maraman*, it would be distinguishable at least with respect to the effect. The ordinance in *Maraman* created an additional offense for conduct that was already proscribed, whereas the contemplated golf cart ordinance would proscribe conduct which is not punishable by statute.²

Even so, given the recent vintage of *Maraman*, municipalities may want to ensure that they do not approach a line which has yet to be fully delineated. To that end, a municipality that wishes to apply elements of Ind. Code Art. 9-19 to golf carts or other low-speed vehicles would be well served by carefully considering which of the various specific requirements contained within Ind. Code, art. 9-19 it would make the most sense to apply to a scheme of regulation of some other kind of vehicle, rather than simply embracing a wholesale adoption of large swaths of the Indiana Code. These considerations would serve to further distinguish such an ordinance from the one invalidated in *Maraman*.

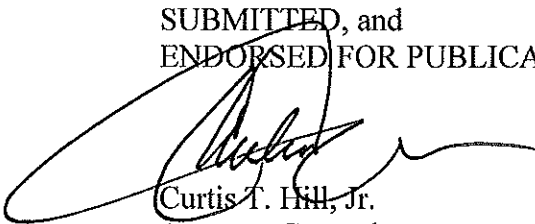
CONCLUSION

The enactment adopted by the City of Carmel does not violate the proscriptions of Ind. Code § 9-21-1-3.3(a)(1). Reading the explicit exception in Ind. Code § 9-19-1-1(a)(6) together with the explicit empowerments in Ind. Code § 9-21-1-3(a)(14) and Ind. Code § 9-21-1-3.3(a), a Court should conclude that the legislature intended to de-regulate golf carts at the state level and empower governments at the local level to regulate in this area, so long as such regulation is

² "Like statutes, ordinances are presumptively valid and the party challenging an ordinance bears the burden of proving invalidity." *Hobble v. Basham*, 575 N.E.2d 693, 697 (Ind. Ct. App. 1991). It is noteworthy that the legislature authorized certain local governmental entities to "[r]egulate or prohibit," *inter alia*, "golf carts," provided this is pursuant to "the reasonable exercise of the police power" of the local governmental entity. Ind. Code § 9-21-1-3(a)(14). "Governmental actions, including ordinances, taken under the grant of police power, must be in reasonable furtherance of the goals of the health, order, morals, or safety of society at large." *Basham*, 575 N.E.2d at 696. The proffered reason by the municipality for regulating in this area is safety, an element of "police power."

reasonable, applied to local conditions, and does not appropriate Indiana law in wholesale fashion to the same conduct. In this matter, the municipality is engaged in the reasonable exercise of its police power to ensure the safe operation of golf carts on its local streets and roadways. This does not run afoul of existing statutory provisions.

SUBMITTED, and
ENDORSED FOR PUBLICATION:



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