Coates' Canons Blog: Local Government Authority to Regulate Traffic

By Shea Denning

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Questions frequently arise regarding whether cities and counties may lawfully adopt ordinances regulating traffic. For instance, may a city or county allow the operation of golf carts on streets within its boundaries? May a city adopt an ordinance defining speeding as violation of city code, punishable by a fine? May a city prohibit the use of mobile telephones by drivers within its jurisdiction?

The answer to these questions hinges upon a two-part inquiry. First, is the local government authorized to regulate in this area? Second, is the proposed ordinance consistent with state and federal law?

The general ordinance-making powers of cities and counties are defined in **G.S. 160A-174** and **G.S. 153A-121**. Cities and counties may adopt ordinances regulating acts "detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the [city or county]." G.S. 153A-121; 160A-174.

G.S. 160A-296 provides that cities have general authority and control over (which includes the power to regulate the use of) the public streets, sidewalks, alleys, and bridges within their jurisdictions, except to the extent that authority and control is vested in the Board of Transportation. Several additional provisions in Chapter 160A expressly permit local regulation of traffic. *See, e.g.,* **G.S. 160A-300** (permitting cities to regulate pedestrian or vehicular traffic on public streets, sidewalks, alleys and bridges within the city); **G.S. 160A-300.1** (permitting cities to install red light cameras and impose civil penalties for running a red light in violation of G.S. 20-158); **G.S. 160A-300.6** (authorizing cities, notwithstanding contrary provisions of state law, to allow and regulate the operation of golf carts on public streets); **G.S. 160A-301** (allowing cities to regulate parking).

Counties are in a different posture, however, as G.S. 153A-121(b) specifies that counties' general ordinance-making powers do not confer authority to "regulate or control vehicular or pedestrian traffic on a street or highway under control of the Board of Transportation." Since all public roads in the county are state-controlled, counties can only regulate in this area as specifically authorized by other provisions of state law.

The state's motor vehicle laws expressly authorize local regulation of certain traffic activities. *See* **G.S. 20-141** (authorizing local authorities to set higher or lower speed limits on certain streets within their jurisdictions); **G.S. 20-158** (permitting local authorities to erect traffic signs and signals); **G.S. 20-169** (authorizing local authorities to enact ordinances that: (1) regulate heavy or continuous traffic by signaling device; (2) establish one-way streets; (3) regulate use of the highways by processions or assemblages; (3) set speed limits in public parks; and (4) authorize law enforcement or emergency vehicles to preempt traffic signals).

When a proposed vehicle regulation is expressly sanctioned by state statute, such as the regulation of golf carts on public streets, see **G.S. 153A-245** and 160A-300.6 (discussed **here**), the inquiry ends, and the local government may act pursuant to the statutorily conferred authority.

In contrast, when the regulation satisfies a generally permissible purpose but is not expressly authorized, the local government must consider whether the proposed regulation is consistent with state law. *See* G.S. 160A-174(b). And while there are obvious ways in which regulation may conflict with state or federal law, such as by permitting conduct expressly forbidden by state or federal law or by regulating a verboten subject, there are two other, less intuitive, ways in which local regulation may be deemed inconsistent.

First, a local ordinance may not – absent an express grant of authority – define and punish an act that already defined as a crime or infraction under state law. G.S. 160A-174(b)(6). An example of this type of inconsistent regulation was highlighted a few years ago when the News and Observer **reported** that police officers in the City of Raleigh exercised unbridled discretion in determining whether to cite speeding drivers for a violation of state law or, instead, a violation of the city's ordinance regulating the same conduct. Being cited for a city ordinance violation versus a state law infraction or misdemeanor pursuant to G.S. 20-141 was thought to be a more favorable outcome for drivers, as it required no appearance in court and carried no risk of collateral license or insurance consequences. Shortly after the story, as reported **here**, the Raleigh city attorney acknowledged that the city lacked authority to regulate speeding in this manner and reported that city police officers had been instructed to discontinue the practice.

Second, a local ordinance may not regulate a field for which a state or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation. G.S. 160A-174(b)(5).

So let's suppose that instead of prohibiting speeding, a city wants adopt an ordinance banning mobile phone use by drivers within in jurisdiction, with an exception for emergency situations. (The Town of Chapel Hill **considered such regulation** earlier this year. You can read town attorney Ralph Karpinos' thoughtful analysis regarding the town's authority **here**.) May a city do that? The proposed ordinance regulates an act that arguably is detrimental to the safety of city citizens so it falls within the city's general ordinance-making power. No state or federal law expressly prohibits local regulation of mobile phone use by drivers. And while state law **prohibits mobile phone use by drivers under eighteen** and **by school bus drivers**, and bans **texting or emailing while driving**, it doesn't impose an outright ban on drivers' mobile phone use. Thus, the proposed ordinance would not define an offense with the same elements of a state (or federal) offense. The determinative question is whether the field is preempted.

If the regulatory scheme "is so complete in covering the field that it is clear any regulation on the [local] level would be contrary to the statewide regulatory purpose" then local regulation is preempted pursuant to G.S. 160A-174(b)(5). *Craig v. County of Chatham*, 356 N.C. 40, 46 (2002). There is no requirement that the local regulation be expressly barred—the completeness of the scheme is sufficient to establish preemption.

Do the three state statutes regulating mobile phone use by drivers constitute a complete and integrated regulatory scheme? One provision of **G.S. 20-137.4**—the statute banning mobile phone use by school bus drivers—indicates they do not. G.S. 20-137.4(e) specifies that "[n]o local government may pass any ordinance regulating the use of mobile telephones or additional technology associated with a mobile telephone by operators of school buses." If regulation of mobile phone use by drivers is preempted from local legislation, then G.S. 20-137.4(e) is surplusage, an interpretation disfavored by rules of statutory construction.

On the other hand, the mobile phone use statutes comprise a portion of the extensive vehicle equipment regulation codified in Part 9 of Article 3 of Chapter 20. The first provision of Part 9, **G.S. 20-115**, provides that "local authorities shall have no power or authority to alter said limitations [regarding vehicle size, weight, construction, and equipment] except as express authority may be granted in this Article." This comprehensive scheme for regulating equipment associated with vehicles favors a view that the field is preempted. Also relevant is that local regulation of mobile phone use by drivers may subject drivers to different rules in different jurisdictions, an outcome inconsistent with the generally uniform nature of motor vehicle regulation-. *See Craig*, 356 N.C. at 48 (2002) (considering risk of different, conflicting rules in different jurisdictions relevant to inquiry regarding whether local ordinances regulating swine farms were preempted by statewide swine farm regulation crafted to balance the interests of swine farmers and adjoining landowners).

Given the arguments in favor of and opposed to preemption with respect to regulation of the use of mobile phones in vehicles, I won't hazard a guess as to whether a court would consider such an ordinance preempted if challenged.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-174.html
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-121.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-296.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-300.pdf
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