

---

## Coates' Canons Blog: Speeding: Local Ordinance Violation or State Law Infraction?

By Shea Denning

Article: <https://canons.sog.unc.edu/speeding-local-ordinance-violation-or-state-law-infraction/>

This entry was posted on May 19, 2015 and is filed under Enforcement, Ordinances & Police Powers

---

[Note: This post originally appeared here on the North Carolina Criminal Law blog.]

Suppose a North Carolina city adopts an ordinance establishing a local speed limit of 25 miles per hour for all city streets that are not otherwise marked. Signs are posted on city streets reflecting the 25 mile per hour limit. Absent this ordinance, state law would provide for a speed limit of thirty-five miles per hour inside the municipal corporate limits. The city's municipal code provides that violations of its provisions are **not** governed by G.S. 14-4, which otherwise would render the violation of a local ordinance regulating traffic an infraction. The municipal code also states that speeding on a city street is punishable by a civil penalty of \$75 and requires that payment be made to the town hall. A local law enforcement officer stops a car that is traveling 40 miles per hour on a city street. May the officer issue a civil citation to the driver, requiring payment of the \$75 penalty? May the officer cite the driver for speeding in violation of state law, an infraction? May the officer choose between these two methods of enforcement?

**Cut to the chase.** No. Yes. And no. Those are my answers. Here's my explanation.

**State law regulating speeding.** G.S. 20-141 prohibits various varieties of speeding on streets and highways within North Carolina. G.S. 20-141(b) provides:

Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

- (1) Thirty-five miles per hour inside municipal corporate limits for all vehicles;
- (2) Fifty-five miles per hour outside municipal corporate limits for all vehicles except for school buses and school activity buses.

G.S. 20-141(e) permits local authorities to "authorize by ordinance higher or lower speeds than those set out in subsection (b) upon all streets which are not part of the State highway system." Such speed limits are effective "when appropriate signs giving notice thereof are erected upon the part of the streets affected."

Violations of G.S. 20-141(b) are infractions punishable by a fine of not more than \$100. G.S. 20-176.

Thus, when a person drives a vehicle in excess of 35 miles per hour on a city street with a 35 mile per hour speed limit, that offense clearly is a violation of G.S. 20-141(b), and is punishable as an infraction. A person charged with such an infraction must be ordered to appear in district court, where, if found responsible, the person may be ordered to pay a fine of up to \$100 and court costs. See G.S. 15A-1114, 20-176.

A city may not adopt an ordinance prohibiting conduct identical to that constituting a crime or infraction under state law. G.S. 160-174(b)(6). Thus, it is clear that when the default speed limits under G.S. 20-141(b) apply, speeding in excess of those limits is an infraction under state law and may not also be defined as a local ordinance violation.

**Some believe that a different rule applies when the city departs from the presumptive speed limits set forth in G.S. 20-141(b).** They reason that G.S. 20-141(b) defines a crime "except as otherwise provided," and that local ordinances authorizing higher or lower speeds adopted pursuant to G.S. 20-141(e) **do** otherwise provide. Thus, the argument goes, the violation when a person speeds over a locally established speed limit is an ordinance violation, rather

---

than a violation of state law. As a result, the offender may properly be cited solely with violating the ordinance, which benefits the offender and, in some circumstances, the city. North Carolina's Division of Motor Vehicles (DMV) does not maintain a record of a driver's adjudication of responsibility for local ordinance violations as it does for records of violations of the State's motor vehicle laws. As a result, no license or insurance points are assessed for local ordinance violations. And when the ordinance violation is not punished as an infraction in district court, no court costs are assessed. Furthermore, if the violation is solely considered a local ordinance violation and not a violation of the State's penal laws, then the city may keep the proceeds rather than remitting them to the local school board.

**As I've already said, I don't share this view.** Though G.S. 20-141(b) is perhaps inartfully drafted, I understand it, when read in conjunction with G.S. 20-141(e), to prohibit all speeding that exceeds either the default or the posted speed limits. And while G.S. 20-141(e) clearly authorizes local authorities to set their own speed limits, it does not authorize them to enact an ordinance prohibiting driving in excess of those speed limits as that conduct already is prohibited by G.S. 20-141(b). To interpret the provisions otherwise results in a hodgepodge enforcement scheme, where the nature of the violation and the applicable punishment depends upon whether a city happens to have departed from the default limitations in G.S. 20-141(b). On city streets where the speed limit is 35 miles per hour, only a state law infraction could be charged. On streets with a higher or lower speed limit, officers would have a choice as to whether to charge an infraction or an ordinance violation, with the latter charges inuring to the driver's benefit as well as, perhaps, the city's. Such inconsistent regulation strikes me as entirely inconsistent with the comprehensive scheme in Chapter 20 regulating the operation of vehicles, and, thus, unlikely to reflect the legislature's intent.

## Links

- [nccriminallaw.sog.unc.edu/speeding-local-ordinance-violation-or-state-law-infraction/](https://nccriminallaw.sog.unc.edu/speeding-local-ordinance-violation-or-state-law-infraction/)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-4](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-4)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=20-141](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=20-141)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=20-176](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=20-176)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=15A-1114](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=15A-1114)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-174](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-174)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=20-16.2](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=20-16.2)
- [nccriminallaw.sog.unc.edu/insurance-points-yet-another-cost-of-traffic-convictions/](https://nccriminallaw.sog.unc.edu/insurance-points-yet-another-cost-of-traffic-convictions/)
- [www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=7a-304](http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=7a-304)
- [nccriminallaw.sog.unc.edu/we-are-not-ferguson/](https://nccriminallaw.sog.unc.edu/we-are-not-ferguson/)