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OFFICIAL OPINION 2008-3

The Honorable Earline Rogers
Indiana Senator
State House, 200 West Washington Street
Indianapolis, IN 46204-2785

RE: Power of a municipality to implement a "red light camera" program.

Dear Senator Rogers:

You have asked whether a municipality may adopt an ordinance for the implementation of a red light camera enforcement program. You indicated that such a program would use a stationary camera to photograph the license plates of vehicles entering an intersection when a traffic light is red. An outside contractor would review the photographs, determine if a violation has occurred, and mail citations imposing a penalty of up to \$100 directly to the vehicle owner. You asked whether the Indiana General Assembly must pass an enabling statute before a local unit of government may implement such a program.

Brief Answer

It is our opinion that state law would preempt a local law that attempts to further regulate automobile moving violations. The General Assembly must enact enabling legislation before a red light camera enforcement program may be implemented. A red light camera ordinance would be an invalid attempt to locally regulate conduct that is already regulated by a state agency. Unless expressly granted authority by statute, a local governmental entity's passage of such an ordinance would be in contravention of the state's home rule law at Indiana Code section 36-1-3-8(a)(7).

Analysis

Your question deals generally with an Automated Traffic Law Enforcement System, as that term was defined in Senate Bill 570, introduced and considered by the 2005 General Assembly (but not ultimately enacted):

“automated traffic law enforcement system” means a device that:

(1) has one (1) or more motor vehicle sensors working in conjunction with a traffic control signal that exhibits:

(A) a steady red light as described in IC 9-21-3-7(b)(3); or

(B) an illuminated flashing red light as described in IC 9-21-3-8(b)(1); and

(2) is capable of producing a photographically recorded still image of a motor vehicle or a vehicle being drawn by a motor vehicle, including an image of the vehicle's rear license plate, as the vehicle proceeds through an intersection while the traffic control signal is exhibiting a steady red light or an illuminated flashing red light.¹

Traffic control is a creature of state law and is the subject of comprehensive state regulation. Title 9, Article 21 of the Indiana Code relating to traffic regulation, “applies [throughout Indiana] to the operation of vehicles upon highways and private roads of a residential subdivision, regardless of who maintains them.” Ind. Code § 9-21-1-9.

The requirement that a vehicle stop at a red light is a matter of state law. Indiana Code section 9-21-3-7(b)(3)(A) provides, in pertinent part:

. . . vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line. However, if there is no clearly marked stop line, vehicular traffic shall stop before entering the crosswalk on the near side of the intersection. If there is no crosswalk, vehicular traffic shall stop before entering the intersection and shall remain standing until an indication to proceed is shown.

Violation of this statute is a Class C infraction. Ind. Code § 9-21-3-11. Running a red light is a “moving traffic offense” under section 9-30-3-14 since it is the violation of a law “relating to the operation or use of motor vehicles while the motor vehicle is in motion.” Running a red light will result in the assessment of four points against the operator’s license in accordance with rules adopted by the Indiana Bureau of Motor Vehicles at 140 Indiana Administrative Code section 1-4.5-10(d).

Under Indiana's home rule law, the General Assembly has granted to local units of government “all the powers that they need for the effective operation of government as to local affairs.” Ind. Code § 36-1-3-2. However, the state has withheld certain powers, including “the power to regulate conduct that is regulated by a state agency, except as expressly granted by statute,” and “the power to prescribe a penalty for conduct constituting a crime or infraction under statute.” Ind. Code § 36-1-3-8(a)(7) to (8). Indiana courts have stated, “[i]t is hornbook law [that] municipal ordinances and regulations are inferior in status and subordinate to the laws and statutes of the state. When a state statute totally preempts the field, a city may not further legislate therein. *If a city attempts to impose regulations in conflict with rights granted or*

¹ An “automated traffic law enforcement system” is similarly defined at Indiana Code section 9-21-3.5-2. Under that provision, the General Assembly specifically authorized the Indiana Department of Transportation to use such a system to aid in the enforcement of non-payment of tolls on the Indiana Toll Road. Ind. Code ch. 9-21-3.5.

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reserved by the Legislature, such ordinances or regulations are invalid.” City of Indianapolis v. Fields, 506 N.E.2d 1128, 1131 (Ind. App. 1987) (emphasis added); see also City of Hammond, Lake County v. N. I. D. Corp., 435 N.E.2d 42, 48 (Ind. App. 1982) (noting “a municipal corporation may validly legislate in an area pre-empted by the legislature only when specific authority to do so is granted by the statute enacted”).

Conclusion

The state has preempted the field of regulating moving traffic violations, including the violation of running a red light. State traffic regulations apply throughout Indiana and “to the operation of vehicles upon highways and private roads of a residential subdivision, regardless of who maintains them.” Ind. Code § 9-21-1-1 and 9-21-1-9. The General Assembly has defined the offense of disregarding a traffic control signal at section 9-21-3-7(b)(3)(A), and has set the penalty as a Class C infraction. Ind. Code § 9-21-3-11. Therefore, a local ordinance imposing a penalty for running a red light would result in an attempt to regulate conduct that is already regulated by a state agency in contravention of the state's home rule law at section 36-1-3-8(a)(7). Such an ordinance would be invalid unless the power to locally regulate the conduct is “expressly granted by statute.”

It is our opinion the General Assembly must enact enabling legislation before a red light camera enforcement program may be implemented by a local governmental entity.

Sincerely,



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Susan W. Gard
Deputy Attorney General