

Subject: Cities - Ordinances
Ejectment - Enforcement
Highways - Road Bridges
Speed - Traffic Signs



STATE OF KANSAS

Office of the Attorney General

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Attorney General

August 28, 1975

ATTORNEY GENERAL OPINION NO. 75- 351

Mr. Thomas W. Stockwell
Merriam City Attorney
9000 West 62nd Terrace
Merriam, Kansas 66202

Re: Cities--Motor Vehicles--Offenses

Synopsis: Cities have authority to prescribe by ordinance the offense of careless driving, although that offense was deleted from the 1974 Uniform Traffic Code adopted by the Legislature.

* * *

Dear Mr. Stockwell:

You inquire whether a city of the second class may by ordinance create and define the offense of careless driving, notwithstanding that the offense was deleted from the 1974 uniform traffic code as adopted that year by the Kansas Legislature. Rules of the road and offenses under that code are found in art. 15, ch. 8, K.S.A. 1974 Supp. Reckless driving is an offense, see K.S.A. 1974 Supp. 8-1566, while careless driving is not, although the latter offense was included in the previous traffic code. See K.S.A. 1973 Supp. 8-531a.

The powers of local authorities under the code are described at K.S.A. 1974 Supp. 8-2001 and -2002. The former section states thus:

"The provisions of this act shall be applicable and uniform throughout this state and in all cities and other political subdivisions therein, and no local authority shall enact or enforce any ordinance in conflict with the provisions of this act unless

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expressly authorized; however, local authorities may adopt additional traffic regulations which are not in conflict with the provisions of this act."

This general authority empowers cities to adopt ordinances which supplement but do not conflict with provisions of the uniform code. The enactment of an ordinance creating the offense of careless driving does not, on the face of the matter, conflict with any provision of the uniform code, but merely creates an offense supplemental to those defined by statute. In other words, this section purports to give to cities broad residual legislative power to enact local traffic regulations, limited only by the requirement that such regulations not conflict with any provision of the uniform code.

K.S.A. 1974 Supp. 8-2002 goes on, however, to enumerate 23 specific powers of traffic regulation reserved to local authorities which the uniform act shall not be construed to preempt, including, in addition to those specifically enumerated, "such other traffic regulations as are *specifically authorized* by this act." [Emphasis supplied.] It may be argued that this detailed and comprehensive enumeration of specific powers reserved to local authorities which are not preempted by the act suggests inferentially that all other powers of local traffic regulation are indeed preempted, notwithstanding K.S.A. 8-2001.

The argument is, we think, not sound. The latter statute specifically authorizes cities to adopt additional traffic regulations which do not conflict with the provisions of the act. In *City of Junction City v. Lee*, 216 Kan. 495 (1975), the court stated thus:

"A test frequently used to determine whether conflict in terms exists is whether the ordinance permits or licenses that which the statute forbids or prohibits that which the statute authorizes; if so, there is conflict, but where both an ordinance and the statute are prohibitory and the only difference is that the ordinance goes further in its prohibition but not counter to the prohibition in the statute, and the city does not attempt to authorize by the ordinance that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict." 216 Kan. at 501.

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K.S.A. 1974 Supp. 8-2001 expressly authorizes additional local traffic regulations which are not in conflict with the act. Although the provisions of the act are provided to apply uniformly throughout the state and in all cities and other political subdivisions, additional traffic regulations which are not in conflict with the act are also authorized. We see no conflict with the act in prescribing an offense in addition to those provided by statute. As stated above, the enactment of an ordinance prescribing the offense of careless driving does not, on the face of the matter, conflict with any provisions of the uniform code.

In *Hutchinson Human Relations Commission v. Midland Credit Management, Inc.*, 213 Kan. 308, 517 P.2d 158 (1973), the court stated thus:

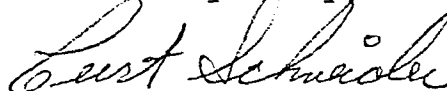
"An intent on the part of the legislature to retain exclusive jurisdiction to legislate in a given area must be clearly shown. Where such an intention cannot be gathered from the language of the statute itself, whatever extrinsic evidence there may be of prescriptive intent must be clear and convincing before the power to regulate can be said to have been withdrawn from our cities." 213 Kan. at 315.

In *Blue Star Supper Club, Inc. v. City of Wichita*, 208 Kan. 371, 495 P.2d 524 (1972), the court pointed out that the omission of a preemptive provision in a state statute relating to private clubs could not be viewed as unintentional, since the legislature was undoubtedly aware of the manner in which state-wide preemption could be accomplished.

In this instance, there is no occasion to look for extrinsic evidence, nor to draw any inferences from the lack of a preemptive provision, for the legislature has squarely addressed the question of the power of cities and other local subdivisions to legislate concerning traffic regulation. Cities may "adopt additional traffic regulations which are not in conflict with the provisions" of the act.

Accordingly, we cannot but conclude that cities may adopt ordinances prescribing the offense of careless driving in terms which do not conflict with the provisions of the uniform code.

Yours very truly,



CURT T. SCHNEIDER
Attorney General