

Speed limit less than 25 on local streets & highways

Number: AGO 92-94

Date: January 05, 1996

Subject:

Speed limit less than 25 on local streets & highways

Mr. Herbert Elliott
City Attorney
City of Tarpon Springs

RE: MUNICIPALITIES--TRANSPORTATION, DEPARTMENT OF--ROADS--TRAFFIC CONTROL-- authority to establish speed limit lower than 25 miles per hour. s. 316.189, F.S.

QUESTION:

May a municipality establish a speed limit lower than 25 miles per hour on local streets and highways in light of the provisions of s. 316.189(1), F.S.?

SUMMARY:

Section 316.189(1), F.S., does not authorize a municipality to establish a speed limit lower than 25 miles per hour on local streets and highways.

Section 316.189(1), F.S., provides:

"The maximum speed within any municipality is 30 miles per hour. With respect to residence districts, a municipality may set a maximum speed limit of 25 miles per hour on local streets and highways after an investigation determines that such a limit is reasonable. It shall not be necessary to conduct a separate investigation for each residence district. A municipality may set speed zones altering the speed limit, both as to maximum, not to exceed 55 miles per hour, and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the Department of Transportation, except that no changes shall be made on state highways or connecting links or extensions thereof, which shall be changed only by the Department of Transportation."

You state that you are of the opinion that under the above statute, only an investigation is required in order to establish a speed limit of 25 miles per hour; however, if a municipality wishes to establish a lower speed limit, an investigation in conformity with the criteria promulgated by the Department of Transportation is required. I have been advised that the Department of Transportation has stated that neither a municipality nor a county may reduce the maximum speed in a business or residential area below 25 miles per hour.[1]

Where reasonable differences arise regarding the interpretation or application of a statute, the legislative intent must be the polestar in construing the statute.[2] To determine such intent,

examination may be made of the legislation as a whole, the evil to be corrected, the history of the statute's enactment and the state of the law already in existence bearing on the subject.[3]

Prior to its amendment in 1988, s. 316.189(1), F.S. 1987, provided:

"The maximum speed within any municipality is 30 miles per hour in the daytime or nighttime. However, a municipality may set speed zones altering such speed, both as to maximum, not to exceed 55 miles per hour, and minimum, after investigation determines such a change is reasonable and in conformity to criteria promulgated by the Department of Transportation, except that no changes shall be made on state highways or connecting links or extensions thereof, which shall be changed only by the Department of Transportation."

In addition, s. 316.183(2), F.S. 1987, stated that "[o]n all streets or highways, the maximum speed limits for all vehicles shall be 30 miles per hour in business or residential districts, and 55 miles per hour at any time at all other locations. . . ."

In 1988, the Legislature, amended the above statutes to provide for a maximum speed limit of 25 miles per hour following an investigation determining that such limit is reasonable.[4] An examination of the legislative history surrounding the enactment of Ch. 88-47, Laws of Florida, indicates that the Legislature considered that under the then existing statutes quoted above, a municipality could set speed zones within the municipality provided such limits did not exceed 55 miles per hour or were not lower than 30 miles an hour.[5] In amending ss. 316.183(2) and 316.189(1), F.S. 1987, it appears that the Legislature sought to create an exception to the 30 miles per hour limit by permitting municipalities to set a maximum speed limit of 25 miles per hour in residential districts rather than 30 miles per hour.[6]

Sections 316.183(2) and 316.189(1), F.S., have been amended once since 1988 to limit the application of the 25 miles per hour maximum speed limit to local streets and highways and to provide that separate investigations for each district were not necessary.[7]

In light of the above, I am, therefore, of the opinion that s. 316.189(1), F.S., does not authorize a municipality to establish a speed limit lower than 25 miles per hour on local streets and highways.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] Inf. Op. to Mr. Thomas R. Scanlan, Legal Advisor to the Sarasota County Sheriff's Office, by E. Clay McGonagill, Jr., Deputy General Counsel of the Department of Transportation, dated October 23, 1992.

[2] *Lowry v. Parole and Probation Commission*, 473 So.2d 1248 (Fla. 1985); *and see* In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender, 561 So.2d 1130 (Fla. 1990) (Legislative intent is polestar by which court must be guided in interpreting statutory provisions).

[3] *State v. Webb*, 398 So.2d 820 (Fla. 1981); *DeBolt v. Department of Health and Rehabilitative Services*, 427 So.2d 221 (1 D.C.A. Fla., 1983) (In discerning legislative intent behind conflicting statutes, court must consider history of act, evil to be corrected, purpose of enactment, and law then in existence bearing on same subject).

[4] Chapter 88-47, Laws of Florida.

[5] See Tape 1 of 1, Committee on Transportation, Florida Senate, on SB 70, dated February 3, 1988, in which the sponsor of the bill, Senator McPherson, stated in response to a question from Senator Girardeau as to whether municipalities could set any lower limit:

"Under the present conditions [s. 316.189, F.S. 1987], the lowest [municipalities] can go in a residential area is 30 miles an hour. . . . This [SB 70] allows them to go 25 in some areas. . . ."

Cf. s. 316.1895, F.S., providing for the establishment of school speed zones.

[6] *Id.* Senator McPherson stated in introducing SB 70 that it was a "very simple bill [that] allows municipalities to set a maximum speed limit in a residential area of 25 miles an hour as opposed to 30." See Tape 1 of 2, ECCA Committee, Florida Senate, dated April 11, 1992, in which Senator McPherson states:

"The present statute says that any municipality can only lower the speed limit to 30 miles an hour and they can't go below that. This bill [CS/SB 70] allows them in a particular instance, if they investigate and find out there's been a series of injuries . . . that they can reduce it to 25 miles an hour."

And see Tape 1 of 1, Subcommittee on Highway Safety, Committee on Transportation, Florida House of Representatives, dated April 6, 1988, discussing HB 187, the companion bill to SB 70. Representative McKenzie, the sponsor of the bill, states:

"Currently municipalities can set their speed limits at 30 miles per hour and what the city . . . is trying to do, along with lots of neighborhood associations, is to, after an investigative study has been made, they would like to have it lowered to 25 miles per hour."

See *also* Tape 1 of 1, Committee on Transportation, Florida House of Representatives, dated April 11, 1988, in which Representative Burns, in introducing the bill on behalf of Representative McKenzie, states that under the bill "[m]unicipalities may set a maximum speed limit of 25 miles an hour; under current law, . . . the minimum they can set is 30 miles an hour except for school zones."

[7] Sections 21 and 22, Ch. 90-227, Laws of Florida.