

WHO MANAGES LOCAL PUBLIC SAFETY? CITIES OR THE STATE?

SEATBELTS

Recently, in *City of St. John v. Brockus*, ED99644 (Decided May 20, 2014), the court of appeals found that an ordinance allowing for primary enforcement of a seatbelt violation did not conflict with a state statute (§307.178 RSMo) that prohibited primary enforcement of the state statute requiring the use of seatbelts. Primary enforcement means stopping and citing a driver for a seatbelt violation without any other reason for stopping the vehicle.



does not expressly state what is an irreconcilable conflict.

Moline Acres has argued that its ordinance does not prohibit the enforcement of the state speeding laws since nothing in the ordinance allows a vehicle operator to exceed the posted speed limits in the City or punishes a vehicle operator for complying with those same speed limits. It also argues that its ordinance does not infringe upon the state's right (or ability)

TRAFFIC CAMERAS

The court of appeals has issued seven opinions in the past year or so addressing the issue of camera enforcement, all opinions adverse to the cities. Those cases are: *Smith v. City of St. Louis*, 409 S.W.3d 404 (Mo. App. E.D. 2013), *Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. App. E.D. 2013), *Ballard v. City of Creve Coeur*, 419 S.W.3d 109 (Mo. App. E.D. 2013), *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. App. E.D. 2013), *Damon v. City of Kansas City*, 419 S.W.3d 162 (Mo. App. W.D. 2013), *Brunner v. City of Arnold*, 427 S.W.3d 201 (Mo. App. E.D. 2013) and *City of St. Peters v. Roeder*, ED100701, decided June 3, 2014 (Mo. App. E.D. 2014).

These opinions represent a significant departure from traditional analysis of statute/ordinance conflict. *Edwards* is perhaps the most significant of these seven opinions. The court in *Edwards* opined that because Section 304.281 RSMo, pertaining to running red lights, regulates the conduct of "drivers and pedestrians," the Ellisville ordinance was in conflict with the state statute.

In these cases, the courts of appeal have held that the attempts of municipalities to use traffic cameras

as a public safety solution at city intersections conflicts with state statutes. The Supreme Court granted transfer on June 24, 2014, to a case arising out of the city of St. Louis involving red light cameras.

SPEED CAMERAS

Early this year, the court of appeals also struck down Moline Acres' use of a camera device to capture speeding vehicles. However, in May the Missouri Supreme Court granted transfer in the case of *Moline Acres v. Charles Brennan*. Both the *St. Louis* and *Moline Acres* cases follow the General Assembly action in failing to pass any of the pending legislation this year pertaining to the use of traffic cameras.

The trial court in Mr. Brennan's case found that the ordinance conflicted with state law, specifically Sections 304.009 and 304.010 RSMo pertaining to speeding by vehicle operators.

Generally, municipalities are authorized to adopt ordinances that supplement state law, but may not pass ordinances that create an irreconcilable conflict with state statutes. The test for determining if a conflict exists is whether the ordinance permits what the statute prohibits or prohibits what the statute permits. Usually a state law

to enforce its speeding laws on state highways, nor the ability of the City's police officers to charge offenders under either the state statutes or its municipal ordinances.

Unlike the state speeding statutes, Moline Acres asserts that its ordinance establishes a mechanism for placing responsibility upon the owners of motor vehicles for the unsafe manner in which their vehicles are operated. The two offenses are different, and the fact that both involve vehicles travelling at excessive speeds does not place them in conflict. An ordinance holding the owner of a vehicle liable for unsafe operation by another does not conflict with a statute holding a vehicle driver responsible for the manner in which he/she operates the vehicle.

In the *Brennan* case, the City argues that both the state statute prohibiting speeding and the City's ordinance are aimed at achieving the same goal, reducing the instances of speeding vehicles on roadways. The statute does so by punishing drivers, the ordinance does it by imposing liability on vehicle owners. Just because the statute and ordinance differ in their approaches at mitigating the same societal danger, does not place them in irreconcilable conflict. This is similar

to the *Brockus* case where it was held that the fact that St. John's ordinance and the state seatbelt statute differ on enforcement, i.e., whether a suspected violation is sufficient grounds in and of itself to conduct a traffic stop, does not render them in conflict with one and other.

Traffic ordinances are enacted pursuant to a city's police powers. Courts "presume that an ordinance enacted pursuant to a municipality's police power is valid, and the party contesting the ordinance bears the burden of proving its invalidity." *City of Creve Coeur vs. Nottebrok*, 356 SW3d 252, 258 (Mo App. E.D. 2011). The burden is on the party contesting the ordinance to negate every conceivable basis that might support it. If reasonable minds might differ as to whether a particular ordinance is reasonably related to the protection of the general health, safety or welfare of the public, then the issue should be decided in favor of the ordinance. *Nottebrok* was the first test case for traffic camera enforcement in Missouri in 2011. When Creve Coeur's ordinance was upheld, many felt that cities had "the green

light" to enforce red light camera ordinances. Many cities, attorneys and other commentators expressed surprise that the *Nottebrok* opinion was disregarded after only two years.

The ultimate question before the Supreme Court is whether the camera enforcement ordinances are expressly based upon rational public policies and designed to promote the health, safety and welfare of its citizens.

Several statutes provide additional authority for cities to "enact and make all such ordinances and rules, not inconsistent with the laws of the state, as may be expedient for maintaining the peace and good government and welfare of the city ..." and to "enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order... and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect ..." Sections 546.902; 79.110 RSMo.

While it is difficult to ascertain what the Supreme Court has in mind in agreeing to hear the camera enforcement cases, the issue of whether cities can legislate on these public safety issues by imposing additional restrictions will certainly be argued. Whether or not the Supreme Court will revisit the red light camera issues and restore the *Nottebrok* decision remains to be seen. The Missouri Municipal League and other cities are expected to file additional briefs in support of the right of cities to regulate public safety by ordinances that are not inconsistent with state law. The final decisions could affect a host of issues where both the state and cities have similar regulation, not only for traffic laws, but also many other issues such as smoking, texting while driving, alcohol and firearms. □

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