

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

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Opinion No. 14-13

Pedestrian and Vehicular Use of Marked Bicycle Lanes

QUESTIONS

1. May a pedestrian lawfully use a bicycle lane where an adjacent, unobstructed, and wheelchair-accessible sidewalk is provided?

2. If the driver of a motor vehicle otherwise complies with applicable law, may that driver lawfully use a bicycle lane to overtake and pass upon the right of another vehicle that is making or about to make a left turn?

OPINIONS

1. No. A pedestrian who uses any portion of a roadway, including a portion marked as a bicycle lane, where an adjacent, unobstructed, and wheelchair-accessible sidewalk is provided violates Tenn. Code Ann. § 55-8-138 and commits a Class C misdemeanor.

2. State law classifies a bicycle lane as a portion of the roadway. While state law contains no *per se* prohibition against a driver using any portion of a roadway, including a bicycle lane, to overtake and pass upon the right of another vehicle that is making or about to make a left turn, state law allows such a use only under limited circumstances, including the requirement that passing upon the right is allowed “only under conditions permitting that movement in safety.” The illegal use of a bicycle lane could constitute a Class B or Class C misdemeanor, depending on the nature of the offense.

ANALYSIS

1. Chapter 8 of Title 55 of the Tennessee Code Annotated sets out the “Rules of the Road” applicable to the operation of vehicles on Tennessee highways. It also provides for the movement of pedestrians along the State’s roadways. *See* Tenn. Code Ann. §§ 55-8-101 to -201. Tenn. Code Ann. § 55-8-101(42) defines a “pedestrian” as “any person afoot or using a motorized or nonmotorized wheelchair.” By statute, “where sidewalks are provided, it is unlawful for any pedestrian to walk or use a wheelchair along and upon an adjacent roadway.” Tenn. Code Ann. § 55-8-138(a). There are two exceptions to this general rule: (1) where a sidewalk is

provided, but that sidewalk is “obstructed”; and (2) for pedestrians using wheelchairs, where the provided sidewalk is not wheelchair accessible. *See id.* § 55-8-138(b), (c). A violation of Tenn. Code Ann. § 55-8-138 is a Class C misdemeanor. *Id.* § 55-8-138(d).

A “highway” is “the entire width between the boundary lines of every way when *any part thereto* is open to the use of the public for purposes of vehicular travel.” Tenn. Code Ann. § 55-8-101(24) (emphasis added). Similarly, a “street” is defined as “the entire width between boundary lines of every way when *any part thereof* is open to the use of public for purposes of vehicular travel.” *Id.* § 55-8-101(66) (emphasis added). A “roadway,” as used in Tenn. Code Ann. § 55-8-138, is “that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder.” *Id.* § 55-8-101(54). A “sidewalk,” as used in Tenn. Code Ann. § 55-8-138, is “that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.” *Id.* § 55-8-101(58). Therefore, a “sidewalk” is a “portion of a street,” exclusive of the roadway—*i.e.*, the portion of the highway “improved, designed or ordinarily used for vehicular travel”—that is “intended for the use of pedestrians.” *Id.* § 55-8-101(24), (54), (58), (66).

The term “vehicle,” as used in the State’s Rules of the Road, includes a bicycle. *Richards v. Domalik*, No. E2000-01882-COA-R3-CV, 2001 WL 355568, at *4 (Tenn. Ct. App. Apr. 10, 2001) (interpreting definition of “vehicle” as codified at the time in Tenn. Code Ann. § 55-8-101(72) (Supp. 2000)).¹ Generally, bicyclists riding upon roadways are granted all of the rights and are subject to all of the duties applicable to the driver of a vehicle under the Rules of the Road. *See* Tenn. Code Ann. § 55-8-172(a).

State law allows the Commissioner of the Department of Transportation to “designate and appropriately mark on appropriate state highways, or portions of state highways, routes for the use of bicycles.” Tenn. Code Ann. § 54-5-142. The “responsible authority in each municipality” may also exercise this option on municipal streets, *see id.* § 54-5-211, and the “county legislative body of each county” may so designate and mark on county roads. *See id.* § 54-10-111.

Because bicycles are “vehicles” for the purposes of the Rules of the Road, the “routes for the use of bicycles” created under the authority of Tenn. Code Ann. §§ 54-5-142, 54-5-211, and 54-10-111, are “portions of a highway improved, designed or

¹ The current definition of “vehicle” is identical to the one interpreted in *Richards*: “Vehicle’ means every *device* in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.” Tenn. Code Ann. § 55-8-101(77) (2012) (emphasis added); *compare with* Tenn. Code Ann. § 55-8-101(5) (defining “bicycle” as “every *device* propelled by human power upon which any person may ride, having two (2) tandem wheels, either of which is more than twenty inches (20”) in diameter”) (emphasis added).

ordinarily used for vehicular travel” and, as such, are “roadway” as defined in Tenn. Code Ann. § 55-8-101(54). Therefore, the provisions of Tenn. Code Ann. § 55-8-138 apply to restrict pedestrian usage of these “routes for the use of bicycles” or “bicycle lanes.”² If a sidewalk is provided adjacent to a bicycle lane, a pedestrian violates Tenn. Code Ann. § 55-8-138 by using the bicycle lane, unless the adjacent sidewalk is “obstructed,” or, for pedestrians using wheelchairs, unless the adjacent sidewalk is not wheelchair accessible.³

2. Tennessee law allows the driver of a vehicle to pass upon the right of another vehicle only under limited conditions. Specifically, Tenn. Code Ann. § 55-8-118 provides:

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

- (1) When the vehicle overtaken is making or about to make a left turn;
- (2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction; and
- (3) Upon a one-way street, or upon any roadway on which traffic is restricted to one (1) direction of movement, where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting that movement in safety. In no event shall the movement be made by driving off the pavement or main-traveled portion of the roadway.

Tenn. Code Ann. § 55-8-118. Other statutory provisions apply to a driver who is overtaking and passing upon the right of another vehicle. For instance, Tenn. Code Ann. § 55-8-123(1) compels drivers on roadways with two or more lanes marked for traffic to keep their vehicles “as nearly as practicable entirely within a single lane”

² The *Manual on Uniform Traffic Control Devices* (MUTCD), 2009 Edition, promulgated by the Federal Highway Administration, refers to “bicycle lanes” as a “portion of the roadway for preferential use by bicyclists.” See MUTCD, § 9C.04. The MUTCD has been adopted, with a few inapplicable exceptions, by the Tennessee Department of Transportation under the authority of Tenn. Code Ann. § 54-5-108(b). See Tenn. Comp. R. & Regs. 1680-03-01.02 (2012).

³ Questions such as whether a sidewalk is “adjacent” to a bicycle lane or whether that sidewalk is “obstructed” or “wheelchair accessible” are factual determinations, the answers to which would vary based upon the facts and circumstances of each situation. Accordingly, such questions are outside the scope of this opinion.

and forbids drivers from moving from that lane “until the driver has first ascertained that the movement can be made with safety.” Further,

[n]otwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, every driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.

Tenn. Code Ann. § 55-8-136(b). A violation of any of the above-quoted provisions constitutes a Class C misdemeanor. *Id.* §§ 55-8-103, -136(c). Additionally, a driver commits reckless driving, a Class B misdemeanor, if he “drives any vehicle in willful or wanton disregard for the safety of persons or property.” *Id.* § 55-10-205(a), (d)(1).

The words “street” and “highway,” as used in Tenn. Code Ann. § 55-8-118, have the same statutory meaning, and each term contemplates an area that is wider than the part used for the purposes of “vehicular travel.” *Ludwig v. Doe*, 914 S.W.2d 522, 525 (Tenn. Ct. App. 1995). “[N]either definition is tied to a paved area.” *Id.* Indeed, “street” and “highway” are synonymous with the full right of way and refer to the area “designated for vehicular travel by the public, any paved shoulder, any unpaved shoulder, and any remaining part of the right of way.” *Id.*

Based upon these statutory interpretations, the Tennessee Court of Appeals held in *Ludwig* that a driver had not violated Tenn. Code Ann. § 55-8-118 by using a paved part of the street that was designated for parked vehicles to pass another vehicle on the right. *Id.* The court noted that the phrases “off the pavement” and “main-traveled portion of the roadway,” as used in Tenn. Code Ann. § 55-8-118(b), are to be read in the disjunctive, meaning that a driver may comply with the statute by passing on the right using *either* the “main-traveled portion of the roadway” *or* by remaining on the pavement. *Ludwig*, 914 S.W.2d at 525.

In *State v. Levitt*, 73 S.W.3d 159 (Tenn. Crim. App. 2001), the Tennessee Court of Criminal Appeals determined that a driver did not violate Tenn. Code Ann. § 55-8-118 when he used a paved shoulder to pass on the right a vehicle that had stopped in the lane of travel. *Id.* at 174-75. The Court described the driver’s lawful maneuver:

The defendant did not travel for any substantial distance or period of time outside his lane of traffic, and quite obviously believed that it would be safer to pass on the right than on the left, given the sharp curve in the road ahead. He testified that he checked to see if the way was clear, and proceeded slowly and cautiously around the stopped vehicle and boat. The paved shoulder, which was at least ten feet wide, provided ample room for him to maneuver, and there were no parked vehicles impeding his path. The defendant was immediately behind the Blazer and boat, and nothing in the evidence indicates that there were any other vehicles stopped behind him. Thus, this was not the case of a motorist attempting to get around backed up traffic by traveling on the shoulder, while the rest of the motorists waited in the lane. Instead, the defendant utilized the shoulder only for the length of time necessary to get around what he believed to be a vehicle that had been involved in an accident. Accordingly, we conclude that the defendant did not violate this statute by driving onto the shoulder to pass on the right the vehicle stopped in his lane of traffic.

Levitt, 73 S.W.2d at 174-75. (internal footnote omitted). The court specifically cited the statutory interpretations from *Ludwig* in reaching this conclusion. *Id.* at 174.

Additionally, Tenn. Code Ann. § 55-8-118 makes clear that a vehicle may overtake and pass another vehicle only on the “main-traveled portion of the roadway.” As shown *supra*, bicycle lanes constitute “roadway,” or a part of the highway “improved, designed or ordinarily used for vehicular travel.” *See* Tenn. Code Ann. § 55-8-101(54). Therefore, neither Tenn. Code Ann. § 55-8-118 nor other statutory provision establishes any *per se* prohibition against using bicycle lanes for the purpose of passing another vehicle on the right.

Of course, drivers who choose to pass other vehicles in this manner can do so only in limited circumstances and must comply with all other statutory provisions. For instance, in order to pass a vehicle on the right, that vehicle must be “making or about to make a left turn.” Tenn. Code Ann. § 55-8-118(a)(1). The pass must occur on a street or highway “with unobstructed pavement not occupied by parked vehicles of sufficient width for two (2) or more lines of moving vehicles in each direction” or “[u]pon a one-way street ... where the roadway is free from obstructions and of sufficient width for two (2) or more lines of moving vehicles.” *Id.* § 55-8-118(a)(2), (3). Furthermore, the passing driver must keep his or her vehicle either on the pavement or on the main-traveled portion of the roadway while executing the pass. *See id.* § 55-8-118(b); *Ludwig*, 914 S.W.3d at 525.

Even if all of these conditions are met, state law requires that the passing driver make sure that using the bicycle lane does not endanger other persons or property. For example, the driver may pass another vehicle on the right “only under conditions permitting that movement in safety.” Tenn. Code Ann. § 55-8-

118(b). Furthermore, the driver cannot leave his or her lane of travel “until the driver has first ascertained that the movement can be made with safety.” *Id.* § 55-8-123(1). Finally, the driver must exercise due care by:

operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person . . . legally using . . . any roadway, [. . . or] roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.

Id. § 55-8-136(b). Whether a motorist’s use of a bicycle lane to pass another vehicle on the right satisfies all of these statutory requirements will depend upon the facts and circumstances of each situation.

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