

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

April 17, 2015

Opinion No. 15-35

Conflict of City Ordinance with Tennessee Code Annotated § 55-10-301

Question

Is an Oak Ridge City Council ordinance that prohibits the dismissal of traffic tickets issued in school zones following completion of a driver education training course preempted by state law?

Opinion

Yes.

ANALYSIS

Oak Ridge City Council Ordinance 08-2014, Section 15-502, which took effect on August 21, 2014, reads as follows:

For speeding violations occurring during school zone speed limits, the City shall not defer imposition of judgment or allow the defendant to enter into a diversion program, including but not limited to a driver education training course, that would prevent such defendant's conviction for the violation from appearing on the person's driving record with the Tennessee Department of Safety.

The City Council's stated intent for enacting the new section was "to protect the health, safety, and welfare of students, school personnel, and other persons present during school zone speed limit hours of operation . . ." by mandating the reporting of an offender's violation to the Tennessee Department of Safety and disallowing a judicial diversion program or deferment that would remove the violation from an offender's driving record. Oak Ridge, Tenn., Ordinance 08-2014 §15-502 (Aug. 21, 2014).

Tennessee Code Annotated § 55-10-301(b)(1) addresses the same subject and explicitly and unambiguously grants courts discretion to send a violator to a driver education course "in lieu of any portion or other penalty imposed."¹ It provides that "[a]ny person violating any of the provisions of chapters 8 and 9 of this title and parts 1-5 of this chapter may be required, *at the*

¹ A basic principle of statutory construction is to ascertain and give effect to legislative intent, derived whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995); *Carson Creek Vacation Resorts, Inc. v. State, Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993). If a statute is clear and unambiguous, courts will find the intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918, 921 (Tenn. 2007).

discretion of the court, to attend a driver education course approved by the department of safety in addition to or in lieu of any portion of other penalty imposed” *Id.* (emphasis added). If the violator completes the driver education course, the court may then dismiss the charge and it will not appear on the violator’s driving record. *Metro. Gov’t of Nashville and Davidson Co. v. Stark*, No. M2007-00635-COA-R3-CV, 2008 WL 276005 (Tenn. Ct. App. Jan. 31, 2008) (Tenn. Code Ann. § 55-10-301(b)(1) provides the basis for a court to grant deferred judgment or dismissal of a violator’s offense following completion of a driver education course, although it does not apply to violators who hold commercial licenses). Thus, the Ordinance directly conflicts with Tenn. Code Ann. § 55-10-301 because it completely disallows the judicial discretion that the statute specifically permits.

Tennessee Code § 55-10-307 provides that “[a]ny incorporated municipality . . . may by ordinance provide additional regulations for the operation of vehicles within the municipality, which *shall not be in conflict with the provisions of the listed sections.*” (Emphasis added.) Section 55-10-301 is one of the listed sections. Because the Ordinance conflicts with § 55-10-301, it is not a valid “additional regulation” of the kind permitted by Tenn. Code Ann. § 55-10-307.

Indeed, the Ordinance is preempted by Tenn. Code Ann. § 55-10-307. Although municipalities have broad power to enact ordinances to protect the health, safety, and welfare of their residents, municipal ordinances that conflict with a state law “are universally held to be invalid.” *City of Knoxville v. Currier*, No. 03A01-9801-cv-00038, 1998 WL 338195, at *2 (Tenn. Ct. App., June 26, 1998) (citing *Southern Ry. Co. v. The City of Knoxville*, 223 Tenn. 90, 442 S.W.2d 619 (Tenn. 1968)); *see also* Tenn. Att’y Gen. Op. 86-71 (Mar. 20, 1986). The subject matter of ordinances and state statutes may overlap “as long as there is no conflict between the two.” *Southern Ry.*, 442 S.W.2d at 622. In fact, municipal ordinances and state statutes should be read harmoniously when possible so that both can stand. *Id.* However, municipalities “cannot adopt ordinances which infringe the spirit of a state law or are repugnant to the general policy of the state.” *Id.* When a statute and an ordinance “are in irreconcilable conflict . . . the ordinance must give way to the imperatives of the statute.” (*B.F. Nashville, Inc. v. City of Franklin*, No. M2003-00180-COA-R3-CV, 2005 WL 127082, at *15 (Tenn. Ct. App., Oct. 8, 2003) (citing *Manning v. City of Lebanon*, 124 S.W.3d 562, 565 (Tenn. Ct. App. 2003).

Here, the City Council Ordinance directly conflicts with Tenn. Code Ann. § 55-10-301 because it completely disallows the judicial discretion that the statute specifically permits. The Ordinance and the statute cannot be reconciled. Accordingly, Oak Ridge City Council Ordinance 08-2014, Section 15-502, is preempted by Tenn. Code Ann. § 55-10-301 because it expressly contradicts the language and intent of the state statute.

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