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January 31, 2003

**OFFICIAL OPINION 2003-2**

State Representative Daniel A. Dumezich  
State Representative Dan Stevenson  
State of Indiana House of Representatives  
Third Floor State House  
Indianapolis, Indiana 46204

RE: Local Ordinances and State Laws

Dear Representatives Dumezich and Stevenson:

This letter is in response to your request for an opinion on the following questions:

Question 1. May a city or town enact a local ordinance that is similar to an existing state statute in order to capture the revenue generated by any resulting fines levied by the city or town for violations of the local ordinance?

Question 2. Does state law prohibit a city or town from enacting a local ordinance that mirrors an existing state statute in order to capture the revenue generated by any resulting fines levied by the city or town for violations of the local ordinance?

Question 3. Does state law allow or specifically prohibit a city or town from enacting a seat belt ordinance, which is similar to the existing state statute regarding seat belts, in order to allow the city to keep the revenue generated by the levied fines at the local level in lieu of returning those fines to the state?

Question 4. How would such a seat belt ordinance differ from other local ordinances that mirror state law such as fines levied for infractions like speeding?

## **BRIEF ANSWERS**

Questions 1 & 2: The Home Rule Act expressly prohibits local units of government from adopting local ordinances which assign a penalty for an act that constitutes a crime or infraction under state statute. A state statute must be evaluated to determine if the statute deals comprehensively with a subject matter; local ordinances might not be preempted if a state statute does not deal comprehensively with a subject matter and there is room for supplemental local regulation. However, a city or town may not enact a local ordinance where there is an existing state statute dealing comprehensively with the subject matter and local law is considered preempted by state law.

Question 3: The General Assembly has preempted any local initiatives regarding motor vehicle equipment, such as seatbelts, by enacting comprehensive statewide laws regarding such equipment and by withholding any reference to a local unit's specific statutory authority to supplement the state law. Funds collected as judgments for violations of state statutes regarding seat belt violations are required by statute to be deposited into the state general fund.

Question 4: The General Assembly has established uniform and comprehensive state standards for motor vehicle equipment and has withheld from local units any statutory authority to supplement state laws on the matter. Conversely, when enacting state laws regulating the movement of traffic, the legislature contemplated the need for additional local regulations addressing particular local needs, such as speed, and specifically granted local units the statutory authority to supplement state law.

## **ANALYSIS**

### 1. Local Ordinance Analysis under the Home Rule Act:

Local ordinances passed by cities and towns must be analyzed in light of Indiana's Home Rule Act ("Act"). The validity of any local ordinance should be evaluated in the context of the legislative intent behind the Home Rule Act and the corresponding history of case law regarding the Act. The Act applies to local units of government, which include counties, municipalities, and townships.<sup>1</sup> Under the Act, a local unit of government is granted broad authority, with few exceptions, to adopt any local law needed "for the effective operation of government as to local affairs."<sup>2</sup>

Under the Home Rule Act, a local unit of government is not precluded from enforcing an ordinance it enacts even if there is no express grant by the legislature permitting a municipality

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<sup>1</sup> IND. CODE §§ 36-1-3-1 (1998); 36-1-2-23 (1998).

<sup>2</sup> IND. CODE § 36-1-3-2 (1998).

to pass such an ordinance.<sup>3</sup> However, under the Act, certain powers are withheld from local control and a local unit may not exercise power that is expressly denied by the Indiana Constitution or by statute.<sup>4</sup>

The Home Rule Act expressly prohibits local units from adopting a local ordinance designating a penalty for conduct that constitutes a crime or infraction under state statute.<sup>5</sup> Pursuant to state law, a “crime” is defined as a felony or misdemeanor for which a person may be imprisoned, and an “infraction” is defined as a violation of a statute for which a person may be fined, but not imprisoned.<sup>6</sup> The Home Rule Act prohibits local units from assigning a local penalty for conduct which already constitutes a crime or infraction under state law.<sup>7</sup>

However, when a state statute does not deal comprehensively with a subject matter, local regulation might not be considered preempted by state law.<sup>8</sup> One must review the breadth of a statute to determine if it excludes local governance of a subject matter.<sup>9</sup> “When a state statute totally preempts the field, a city may not further legislate therein. If a city attempts to impose regulations in conflict with rights granted or reserved by the Legislature, such ordinances or regulations are invalid.”<sup>10</sup>

## 2. State Statutes Regarding Safety Belt Standards:

Pursuant to state law, occupants of the front seat of an automobile must use a safety belt and also insure that any accompanying children are properly restrained.<sup>11</sup> State law provides that the failure to use a safety belt, or the failure to properly restrain a child passenger, constitutes a

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<sup>3</sup> IND. CODE § 36-1-3-4 (1998); *See Beta Steel Corp. v. Porter County, Indiana*, 695 N.E.2d 979, 982 (Ind. Ct. App. 1998).

<sup>4</sup> IND. CODE § § 36-1-3-5(a)(1) to – 8 (1998).

<sup>5</sup> IND. CODE § 36-1-3-8(a)(8) (1998).

<sup>6</sup> IND. CODE § 33-1-13-1 (1998). Traffic infraction proceedings are considered civil in nature rather than criminal. *Preston v. State*, 735 N.E.2d 330, 332 (Ind. Ct. App. 2000) (*citing Wirgau v. State*, 443 N.E.2d 327, 329-30 (Ind. Ct. App. 1982)).

<sup>7</sup> IND. CODE § 36-1-3-8(a)(8) (1998).

<sup>8</sup> *See generally State v. Town of Roseland*, 383 N.E.2d 1076 (Ind. App. 1979) (holding the town may enact local speeding ordinances and a fine assessed under such an ordinance may be retained locally).

<sup>9</sup> *See DeHart v. Town of Austin, Indiana*, 39 F.3d 718, 723 (7<sup>th</sup> Cir. 1994).

<sup>10</sup> *City of Indianapolis v. Fields*, 506 N.E.2d 1128, 1131 (Ind. Ct. App. 1987) (*citing City of Indianapolis v. Sablica*, 264 Ind. 271, 342 N.E.2d 853, 854 (Ind. 1976); *City of Hammond, Lake County v. NID Corp.*, 435 N.E.2d 42, 47 (Ind. Ct. App. 1982)).

<sup>11</sup> IND. CODE § § 9-19-10-2 (1998); 9-19-11-2 to – 3 (1998).

Class D infraction.<sup>12</sup> State law prescribes a penalty of up to twenty-five dollars (\$25) for a violation which constitutes a Class D infraction.<sup>13</sup> Circuit, superior, county, city and town courts have jurisdiction over all infractions.<sup>14</sup> Funds collected as judgments for violations of state statutes constituting infractions are required by statute to be deposited into the state general fund.<sup>15</sup>

The state statutes regarding the use of seatbelts are comprehensive statutes and do not authorize or otherwise provide local units of government with an opportunity to pass additional supplemental laws regarding seat belts which address local problems and conditions. Presumably, in passing a statewide comprehensive seat belt law, the legislature took into account the fact that its citizens were highly mobile and thus there was a need for uniform seat belt laws across the state. In addition, the need for safety provided by the uniform state law applies generally to all instances where a vehicle is in movement and no specific situations need to be addressed by local law.

The state statutes regarding penalties for failure to use a safety belt in a vehicle differ from state statutes regarding speed limit use. Statutes regarding safety belt use fall under Article 19 of Title 9 of the Indiana Code, "Motor Vehicle Equipment." The provisions of the article do not grant statutory authority to local units to adopt additional regulations regarding such equipment. On the other hand, state speed limits are set under Article 21 of Title 9, "Traffic Regulations." The state traffic regulations are not all-inclusive. Local authorities are given specific statutory authority to adopt additional regulations that do not conflict with or duplicate a state statute, such as regulating the speed of vehicles.<sup>16</sup> Local units of government are also given specific statutory authority to deposit fines assessed for violations of local traffic regulation laws into the general fund of the local unit.<sup>17</sup> Therefore, unlike motor vehicle equipment laws for which the legislature has established uniform and comprehensive state standards, the legislature contemplated the need for additional local regulations addressing particular local concerns when enacting state laws regulating the movement of traffic. In sum, the legislature preempted any local initiatives regarding motor vehicle equipment by enacting comprehensive statewide laws regarding such equipment and withholding any reference to a local unit's statutory authority to supplement the state law.

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<sup>12</sup> IND. CODE § § 9-19-10-8 (1998); 9-19-11-2 to - 3 (1998).

<sup>13</sup> IND. CODE § 34-28-5-4 (1998).

<sup>14</sup> IND. CODE § § 33-4-3-11 (1998); 33-5-2-8 (1998); 33-10.1-2-2 to - 7 (1998).

<sup>15</sup> IND. CODE § 34-28-5-5(c) (1998).

<sup>16</sup> IND. CODE § § 9-21-1-2(a) (2002); 9-21-5-6 (1998).

<sup>17</sup> IND. CODE § 9-21-1-2(b) (2002).

**CONCLUSION**

It is my opinion that the Home Rule Act prohibits local units of government from adopting any local ordinance that prescribes a penalty for conduct constituting an infraction under any Indiana Code provision regarding seat belt use. At the same time, the state law that requires funds collected as judgments for infraction violations be deposited into the state general fund preempts any local ordinance designating the funds be deposited otherwise.

Sincerely,

Stephen Carter  
Attorney General

Rebecca Walker  
Deputy Attorney General