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September 17, 1990

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Legality of "Centennial Traffic Safety Ordinance," allowing payment of civil assessment to city clerk in lieu of filing of traffic citation with the court.

Dear Mr. Lempesis:

This letter is in response to your inquiry concerning the adoption of a Centennial Traffic Safety Ordinance by the city of Post Falls. According to the information I have received from your letter and subsequent telephone conversations, the ordinance would be in effect only between Memorial Day and Labor Day. It would allow persons charged with basic rule (speeding) violations who had no traffic violations within the preceding 12 months to enter into a "civil compromise." Such persons would be offered a chance to pay a \$30 "civil assessment" to the city clerk of Post Falls within 36 hours after the time of the alleged violation. If the payment was made, the charge would not be filed with the court. Otherwise, the uniform traffic citation would be filed with the court and processed in the same manner as any other traffic infraction case. Although there is no draft of the proposed ordinance, these would be its essential provisions. You have asked us to evaluate the validity of such an ordinance.

It is our conclusion that such an ordinance would be invalid for several reasons. The ordinance would violate Idaho Code § 49-206, which requires that the provisions of title 49 of the

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Idaho Code be applicable and uniform throughout the state. Also, the ordinance would violate the statutes and rules pertaining to the issuance and processing of uniform traffic citations. These conflicts with statutes would also render the ordinance unconstitutional, since article 12, section 2, of the Idaho Constitution provides that city regulations cannot be in conflict with the general laws.

Article 12, section 2, of the Idaho Constitution provides as follows:

Local police regulations authorized. -- Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

The power to enact ordinances and prescribe penalties for their violation is also recognized by statute. Idaho Code § 50-301 provides that cities may "exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho." Idaho Code § 50-302 states in part, "Cities shall make all such ordinances, by-laws, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry." That statute goes on to provide that violations of ordinances may be punishable as misdemeanors. Cities may also create ordinances whose violation is punishable as an infraction. Attorney General Legal Guideline, 1989 Annual Report at 169.

The breadth of the constitutional grant of police power to local governments has been recognized by the courts. "[A] municipality, under the constitutional provision in question, has authority to make police regulations not in conflict with general laws, coequal with the authority of the legislature to pass general police laws." Clyde Hess Distributing Co. v. Bonneville County, 69 Idaho 505, 512, 210 P.2d 798 (1949). However, the importance of the requirement that ordinances not be in conflict with the general laws has also been recognized. "[T]he right to exercise the police power of the state in local police, sanitary and other regulations, has not been granted to counties and municipalities without limitation. That right is limited to such regulations as are not in conflict with general laws." State v. Robbins, 59 Idaho 279, 286, 81 P.2d 1078 (1938).

The development of the law as to what constitutes a conflict between local ordinances and the general laws of the state was

discussed in Envirosafe Service of Idaho v. County of Owyhee, 112 Idaho 687, 735 P.2d 998 (1987):

The concept of "conflict" broadens when put in the context of a determination of state preemption over a field of regulation. Of course, direct conflict (expressly allowing what the state disallows, and vice versa) is "conflict" in any sense. State v. Musser, 67 Idaho 214, 176 P.2d 199 (1946). Additionally, a "conflict" between state and local regulation may be implied. This state firmly adopted the doctrine of implied preemption in Caesar v. State, 101 Idaho 158, 610 P.2d 517 (1980).

Where it can be inferred from a state statute that the state has intended to fully occupy or preempt a particular area, to the exclusion of [local governmental entities], a [local] ordinance in that area will be held to be in conflict with the state law, even if the state law does not so specifically state. Caesar, supra, 101 Idaho at 161, 610 P.2d at 520. (See also, United Tavern Owners of Philadelphia v. School District of Philadelphia, [441 Pa. 274] 272 A.2d 868 (Pa. 1971); Boyle v. Campbell, 450 S.W.2d 265 (Ky. 1970); In re Hubbard, [62 Cal.2d 119, 396 P.2d 809] (Cal. 1964).)

The doctrine of implied preemption typically applies in instances where, despite the lack of specific language preempting regulation by local governmental entities, the state has acted in the area in such a pervasive manner that it must be assumed that it intended to occupy the entire field of regulation.

"The [local governmental entity] cannot act in an area which is so completely covered by general law as to indicate that it is a matter of state concern." Caesar, 101 Idaho at 161, 610 P.2d at 520.

Other jurisdictions have commonly found that the doctrine of implied preemption will also apply where uniform statewide regulation is called for due to the particular nature of the subject matter to be regulated.

[I]f the court finds that the nature of the subject matter regulated calls for a uniform state regulatory scheme, supplemental local

ordinances are preempted. Township of Cascade v. Cascade, Resource Recovery Inc., 118 Mich.App. 580, 325 N.W.2d 500, 502 (Mich. App. 1982). (See also, People v. Llewellyn, 401 Mich. 314, 257 N.W.2d 902 (1977), cert. den., 435 U.S. 1008, 98 S.Ct. 1879, 56 L.Ed.2d 390 (1978).

* * *

Moreover, the underpinnings for the doctrine of implied preemption are principles of long-standing in this state. In Clyde Hess Distributing Co. v. Bonneville County, 69 Idaho 505, 210 P.2d 798 (1949), this Court acknowledged the ability of the legislature to implicitly preempt local regulation by occupying the field of regulation.

112 Idaho at 689-90.

The court went on to hold that the state had "fully occupied and preempted both the fields of hazardous waste disposal and PCB disposal," and that a county ordinance which attempted to regulate these areas was void. 112 Idaho at 693.

Other cases in which ordinances have been held to be in conflict with state laws include Caesar v. State, 101 Idaho 158, 162, 610 P.2d 517 (1980) (local building ordinance could not be applied to state-owned buildings; the "statutes indicate that the area of state-owned buildings is completely covered by the general law and may not be subjected to an ordinance which is purely local in nature"); State v. Frederic, 28 Idaho 709, 155 P. 977 (1916) (state could not authorize municipalities to prohibit by ordinance acts that would be felonies or indictable misdemeanors under the general laws of the state); and In re Ridenbaugh, 5 Idaho 371, 49 P. 12 (1897) (ordinance permitting licensing of gambling houses was in conflict with state law forbidding gambling).

With these explanations and holdings as to the meaning of a "conflict" between an ordinance and state law, it becomes apparent that the proposed ordinance would be in conflict with various state laws.

Idaho Code § 49-206 provides a strict limitation on local regulation of traffic and motor vehicles:

Provisions uniform throughout state. -- The provisions of this title shall be applicable and uniform throughout this state in all political subdivisions and municipalities and no local authority

shall enact or enforce any ordinance on a matter covered by the provisions of this title unless expressly authorized.

This statute indicates an intent to preempt the field of traffic regulations, subject to exceptions only where local regulation is expressly authorized. Among the "provisions of this title" that are to be uniform throughout the state are speeding regulations. Idaho Code § 49-654. A violation of that section is an infraction. Idaho Code § 49-236(2).

Certain local regulations with regard to speed limits are expressly authorized. Idaho Code § 49-207(1) provides that "[t]hese provisions of law shall not be construed to prevent cities from enacting and enforcing general ordinances prescribing additional requirements as to speed, manner of driving, or operating vehicles on any of the highways of such cities" Further, local authorities are authorized, on the basis of engineering or traffic investigations, to vary speed limits within their jurisdictions in urban districts and on arterial highways. Idaho Code §§ 49-207(2) and (3). Idaho Code § 49-208 also authorizes local authorities to, among other things, establish speed limits in public parks; alter or establish speed limits; establish minimum speed limits; establish maximum speed limits on bridges and other elevated structures; and prohibit drivers of ambulances from exceeding maximum speed limits.

None of these provisions can be considered to be an authorization of the proposed ordinance. The ordinance would not impose an "additional requirement as to speed," but rather would provide a method of resolving charges of speeding violations entirely different from that which is set forth in the statutes. Nor would the ordinance vary speed restrictions in the manner authorized by Idaho Code §§ 49-207 and 49-208. No other provision has been found in title 49 that would authorize the adoption of the type of procedures contemplated by this ordinance. The ordinance therefore must be considered to be in violation of the requirements of Idaho Code § 49-206.

Conflicts with the general laws of the state also become apparent when we consider the provisions of title 49 relating to the processing of traffic citations. The procedure that would be followed under the proposed ordinance, as I understand it, is that the alleged offender would be given a uniform traffic citation charging him with the basic rule violation, along with some type of notice that he can avoid having the citation filed with the court if he pays a "civil assessment" of \$30 within 36 hours. If the payment is made, the citation would be, in effect, cancelled.

Such a procedure is expressly prohibited by Idaho Code § 49-1415(1), which provides, "Any person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this chapter, shall be guilty of a misdemeanor." An ordinance authorizing cancellation of a citation in a manner not authorized by the Idaho Code would be in violation of this section, and therefore would be beyond the power of the city; it could also involve the city clerk and police officers in the commission of a crime.

The ordinance fares little better under chapter 15 of title 49, which pertains specifically to the processing of traffic infractions. Idaho Code § 49-1502(1) provides in part, "The procedure for processing an infraction citation and the trial thereon, if any, shall be the same as provided for the processing of a misdemeanor citation under rules promulgated by the supreme court, except there shall be no right to a trial by jury." The supreme court rules specify the color and distribution of the various copies of the citation; they also require that two of the copies of each citation are to be given to the court. Idaho Misdemeanor Criminal Rule 5(g); Idaho Infraction Rule 5(e). Idaho Code § 49-1503 provides, "The penalty for an infraction citation and the judgment entered for the commission of an infraction shall be the amount set for that infraction in the payment schedule to be adopted by supreme court order and published annually by the administrative director of the courts." A failure to pay the prescribed penalty will result in suspension of the driver's license under Idaho Code § 49-1505.

These requirements take on special significance in view of Idaho Code § 49-1506:

Provisions uniform throughout state. -- The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions.

Under the proposed ordinance, the provisions of chapter 15 of title 49 would not be applied uniformly within the city of Post Falls. Instead, basic rule violations for a specified class of persons would be processed in a different manner and would result in payment of a different penalty. Even if the amount of the "civil assessment" were made equal to the prescribed penalty for moving traffic infractions -- which is currently \$43 under Idaho Infraction Rule 9(b)(4) -- it would still be considered a different penalty, since it would go directly to the city, rather than being distributed in the manner required by state law. Idaho Code §§ 19-4705, 49-239. Thus, the ordinance would be in direct conflict with Idaho Code § 49-1506.

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In summary, the state has preempted the area of traffic regulation and the processing of uniform citations for traffic infractions, subject only to certain specified exceptions. The proposed ordinance does not fall within any of these exceptions. The ordinance is in direct conflict with the requirements for uniform application of the law contained in Idaho Code §§ 49-206 and 49-1506. These conflicts with the general laws of the state also mean that the ordinance would be beyond the city's regulatory power as prescribed by article 12, section 2, of the Idaho Constitution. Thus, the ordinance would be unconstitutional.

Please contact me if you have any additional questions on this matter.

Sincerely,



MICHAEL A. HENDERSON
Deputy Attorney General
Criminal Law Division

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