

Traffic control, unrecorded subdivision

Number: INFORMAL

Date: May 04, 2000

The Honorable Nancy Argenziano
Representative, District 43
1102 The Capitol
400 South Monroe Street
Tallahassee, Florida 32399

Dear Representative Argenziano:

Thank you for considering this office as a source for assistance regarding a question raised by one of your constituents about the county's responsibility to install traffic signs in an unrecorded subdivision.

Unfortunately, resolution of such a question will depend upon the particular facts of each case and thus presents mixed questions of law and fact which this office cannot resolve. In an effort to be of some assistance, however, I would note the following.

Section 316.006, Florida Statutes, vests jurisdiction to control traffic in the state, counties, and charter municipalities. Counties are specifically given original jurisdiction over all streets and highways located within their boundaries over which the public has a right to travel, except state roads and municipal streets.[1] The statute authorizes them to place and maintain traffic control devices on such streets and highways as they deem necessary to regulate, warn, or guide traffic. The sheriff of the county enforces all traffic laws of this state on all the streets and highways thereof and elsewhere throughout the county wherever the public has the right to travel by motor vehicle.[2]

A county may also exercise traffic control jurisdiction over private roads, or any limited access roads owned or controlled by a special district, located in its unincorporated area, if the county and the party or parties owning or controlling such roads enter into a written agreement approved by the governing body of the county.[3] The agreement should provide at a minimum for reimbursement of actual costs of traffic control and enforcement and for liability insurance and indemnification by the party or parties.[4] Moreover, the governing body of the county must consult with the sheriff and no such agreement shall take effect prior to October 1, the beginning of the county's fiscal year, unless this requirement is waived in writing by the sheriff.[5]

In Attorney General Opinion 81-18, this office was asked to determine whether a county could post enforceable traffic control devices on public roads constructed by a water control district, even though the county had not accepted the roads as part of the county road system. Given the county's original authority to control traffic over all streets and highways within its boundaries, except state roads and municipal streets, it was concluded the county could post traffic control devices wherever the public has a right to travel by motor vehicle, regardless of the county's acceptance of the roads as part of its road system. This office stated in that opinion:

"[C]ounties are authorized, but not required to exercise their traffic control powers under Ch. 316, F.S. Accordingly, it is a prerogative of the County Commission to determine the scope of their operations in this regard, within the bounds set by Ch. 316, and in turn to accept responsibility for, and to properly exercise such authority once under taken. However, whether the exercise of traffic control jurisdiction over and the posting and maintenance of the traffic control devices on the "public" roads in question . . . would operate to fix potential tort liability on the county . . . is a mixed question of law and fact which this office is without the requisite power to determine."

In Attorney General 97-03, this office again reiterated that the exercise of traffic control jurisdiction and the posting and maintenance of traffic control devices operates to impose potential tort liability presents a mixed question of law and fact that this office cannot resolve. I am, however, enclosing copies of several cases considering whether a county's failure to place certain traffic devices constituted a planning-level decision protected from suit by sovereign immunity or an operational-level decision for which a county could be held liable.

I trust that the above informal comments and enclosed materials may be of some assistance to your constituent in resolving this issue.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tjw

[1] Section 316.006(3), Fla. Stat.

[2] Section 316.640(2)(a), Fla. Stat.

[3] Section 316.006(3)(b), Fla. Stat.

[4] Section 316.006(3)(b)1., Fla. Stat.

[5] Section 316.006(3)(b)2., Fla. Stat.