

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
GENERAL CIVIL DIVISION**

**KURTIS KENT KELLY, KENNETH ALVIN
BERT, DAVID MARC BULLUCK,
PRO COPY, INC. and ANA MARIA GENNE,
on behalf of themselves and all
other similarly situated,
Plaintiffs,**

CASE: 09-CA-8840

v.

**THE CITY OF TEMPLE TERRACE,
a municipality, AMERICAN TRAFFIC
SOLUTIONS, LLC, a foreign limited
liability company, and ATS AMERICAN
TRAFFIC SOLUTIONS, INC., a
foreign profit corporation,
Defendants.**

DIVISION: F

ORDER GRANTING PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER is before the Court on cross motions for partial summary judgment. At issue in the motions is whether the City of Temple Terrace unlawfully infringed on state law by enacting ordinances 1217, 1242 and 1243, which authorized the city to capture images of, and issue fines to, motorists who failed to stop at red lights. The Court has considered the arguments made at the hearing on November 29, 2010, and the memos and other documents filed by the parties. Because the Court finds that the Legislature expressly preempted the type of activity encompassed by the ordinances, it grants partial summary judgment in favor of Plaintiffs.

In 2008 and 2009, the City of Temple Terrace enacted and amended chapter 20.230 of its code of ordinances, creating a regulatory scheme which allowed the city to set up cameras at certain intersections within the municipality. The cameras photographed so-called 'red zone infractions' – motorists running red lights. Some of the owners of the vehicles involved in the infractions (pictured in the photographs) were sent notices by mail of the municipal code violations. The city contracted the maintenance and operation of the cameras to American Traffic

Solutions, LLC, and ATS American Traffic Solutions, Inc. (collectively ATS). ATS installed and maintained the cameras. Per the contract, ATS reviewed the images from the cameras and recommended to the city's law enforcement officers whether the registered owner of the vehicle should be issued a violation for the red zone infraction. Based solely on the photographic evidence supplied by ATS, the officer then determined whether to mail a notice of code violation to the owner of the vehicle. The owner of the vehicle was sent the notice of code violation regardless of the identity of the motorist who committed the infraction. A red zone infraction was punishable by a fine which escalated based on subsequent violations. The monies received for the fines were divided by the city and ATS as set forth in their contract. The municipal code allowed an owner of a vehicle to appeal the violation but only to a hearing officer appointed by the city under rules set forth in the municipal ordinance. The hearings and procedures were not governed by the Florida Rules of Traffic Court. Moreover the hearing officers were not required to comply with or meet the qualifications of the Civil Traffic Infraction Hearing Officer Program, i.e., Rule 6.630 of the Florida Rules of Traffic Court. In order to prevail on the appeal the owner of the vehicle had to show that the vehicle was taken without permission, a uniform traffic citation was issued by law enforcement for the same violation, the violation was required to comply with other law, the violation was required to protect life or property, the traffic control device malfunctioned or the vehicle was an authorized emergency vehicle.

The Legislature has enacted the "Florida Uniform Traffic Control Law," Chapter 316 of the Florida Statutes, which occupies the same field as the city's regulations. Plaintiffs argue that the city's scheme is preempted by, and conflicts with, state law and that the ordinances are therefore invalid. At this juncture it should be noted that in 2010, the Legislature enacted section 316.0076, Florida Statutes, which removed all doubt about the Legislature's opinion on the preemption question here at issue, stating, "Regulation of the use of cameras for enforcing the provisions of this chapter is expressly preempted to the state." Defendants argue that the Uniform Traffic Control Law expressly provides for an exception to this type of activity in sections 316.008(1)(a & w), Florida Statutes (2009). Under this theory, the city's red zone infraction regulation and the consequential citation, fine and appeal process are permissible concurrent regulations of the local authority.

Where the Legislature preempts a field of law, it is improper for a local government to attempt to enact or enforce its own regulations within that field. Preemption may be express or it

may be implied wherever the legislative scheme is so pervasive and public policy strong enough to permit a court to infer the Legislature's intent to reserve a matter for its own regulation. *See Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

Municipal laws are inferior to state laws; they must not conflict with the higher authority. *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1246 (Fla. 2006). A conflict exists where the state law requires what the municipal law forbids, where the municipal law requires what the state law forbids, or where the municipal law provides a penalty in excess of the state law. *See id.* at 1247.

Section 316.007, Florida Statutes (2009), expressly preempts local regulation of traffic control when it states:

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized. However, this section shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this chapter in the local court.

Thus chapter 316 was intended by the Legislature to be the sole law on the subjects it addresses. There is a narrow band of exceptions to this general scheme at section 316.008, Florida Statutes (2009), where municipalities are expressly authorized to enact local rules on certain enumerated activities. The legislative scheme is one where everything germane to the Uniform Traffic Control Law is forbidden to municipal regulation except that which is expressly permitted to them by section 316.008.

The Uniform Traffic Control Law addresses the failure to stop for a red light at section 316.075, Florida Statutes (2009), which defines the offense and requires punishment pursuant to chapter 318. Section 316.640, Florida Statutes (2009), addresses the manner in which citations for traffic infractions should be issued. Section 316.650, Florida Statutes (2009), authorizes the use of uniform traffic citations. Section 318.18, Florida Statutes (2009), defines the penalties for traffic infractions under chapter 316. Sections 316.30 through 316.38, Florida Statutes (2009), authorize the creation of the Civil Traffic Infraction Hearing Officer Program by which authority the Florida Supreme Court has enacted the Florida Rules of Traffic Court. The Legislature has preempted regulation on these subjects. The city's ordinances on red zone infractions encroach upon this

wide field. The Defendants argue against preemption and rely on three arguments to support their contention that the alternate scheme created by the city is authorized under existing law.

First they argue that the city's red zone infractions are fundamentally different under the municipal code. Section 316.075, Fla. Stats., defines a traffic control device and dictates the manner in which motorists must stop for red lights, and at subsection (4) the statute declares that it is a *moving* violation if a motor vehicle fails to stop at a red light, however, a red zone infraction under section 20.230.5 is defined as a *non-moving* violation. This is specious, it is impossible to imagine how one could "run a red light" without moving. The act of driving a motor vehicle through an intersection against a red light is clearly defined as a moving violation in the Florida statutes and no contortion of language within the city's code can alter that fact. Because red zone infractions and violations of section 316.075 are the same acts and because section 316.075 defines how such infractions are to be disposed of, it follows that the disposition of each infraction must be governed by state law. Yet the city's ordinances create new regulations on many of these subjects; fines for a moving violation of the kind at issue here are capped at \$60 under section 318.18(3)(a) but at \$150 under the code, a traffic infraction enforcement officer must observe and personally investigate a violation of the Uniform Traffic Code before issuing a uniform traffic citation under section 316.640(5)(a), but under the city's code an officer may rely solely on the film from the camera.¹ Violations of chapter 316 are subject to disposition under the Florida Rules of Traffic Court and the Civil Traffic Infraction Hearing Officer Program which is substantively and procedurally more robust than the 'appellate' hearing provided under the municipal code.

Defendants next argue that section 316.008(1)(a) provides explicit authorization for the city's ordinances. This section permits a municipality to regulate or prohibit "stopping, standing or parking." Defendants argue that issuing code violations for failing to stop for a red light falls within the city's power to regulate stopping. The Court disagrees. To regulate stopping is to reduce such conduct as stopping to the systematic governance of a body of rules; it is not creating a parallel regime to enforce those regulations. The Uniform Traffic Code thoroughly regulates enforcement of the traffic law. It states how citations are issued and by whom, how fines are assessed and how drivers may seek review of traffic citations – all matters preempted for the Legislature's exclusive control. Defendants' final argument is similar, relying as it does on

¹ Cf. Op. Atty. Gen. 2005-41, July 12, 2005, wherein the Attorney General opined that the statutory requirement that an officer "observes the commission of an infraction" requires that the officers have some personal knowledge beyond mere reliance on photographic evidence of the infraction.

section 316.008(1)(w), which states that local authorities are permitted to regulate, restrict or monitor “traffic by security devices or personnel on public streets and highways.” They argue that regulation of traffic without enforcement is not regulation at all. But this misses the point that the Legislature’s grant of authority to regulate municipal traffic does not carry with it the power to regulate the issuance of citations, fines and other penalties. The city has enacted an enforcement scheme alternative to the one adopted by the Legislature. That is simply not permitted by any part of section 316.008. The city is permitted to regulate traffic, and to enforce its regulations, but it is not permitted to enact an alternate enforcement scheme where the Legislature has preempted such activity.

The Court is mindful of the persistent danger that some motorists pose to our collective safety. While it is laudable that municipalities strive to limit the hazards caused by these drivers, the City of Temple Terrace went too far with its ordinances, encroaching on the wider field of traffic enforcement and due process. The Court therefore finds that the city’s ordinances improperly infringe on state law.

For these reasons it is therefore **ORDERED** that:

1. Plaintiffs’ motion for partial summary judgment is hereby **GRANTED**.
2. Defendants’ motions for partial summary judgment are hereby **DENIED**.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of January, 2011.

CHARLES ED BERGMANN, Circuit Judge

ORIGINAL SIGNED
CONFORMED COPY

JAN 27 2011

CHARLES ED BERGMANN
CIRCUIT JUDGE

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