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ATTORNEY GENERAL  
STATE OF ILLINOIS

June 22, 1992

FILE NO. 92-013

MOTOR VEHICLES:  
Municipal Alternative  
Traffic Ticket Program

Honorable William R. Haine  
State's Attorney, Madison County  
325 East Vandalia Avenue  
Edwardsville, Illinois 62025

Dear Mr. Haine:

I have your letter wherein you inquire whether a municipality may establish and operate an alternative traffic enforcement program which authorizes municipal police officers to elect to issue an "ordinance violation ticket", rather than a Uniform Traffic Citation and Complaint, for minor traffic offenses and which provides for the payment by the motorist of an "administrative penalty". The penalty provided is in an amount less than the usual fine and costs and payment thereof results in avoidance of the issuance of a complaint and any report of the violation to the Secretary of State. For the

reasons hereinafter stated, it is my opinion that Illinois municipalities have no authority to adopt or enforce such programs.

For purposes of illustration, I will describe the salient features of the Fairmont City, Illinois, traffic enforcement program, which is similar to programs that have been initiated by other municipalities. The village board, by ordinance, authorized the issuance of "alternative tickets", or "AT's", in lieu of arrest for minor ordinance violations, including certain traffic violations. (The village has apparently previously adopted an ordinance incorporating the provisions of articles 11 and 12 of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, pars. 11-100 et seq., 12-100 et seq.) as village ordinances; therefore, a traffic violation could arguably be charged as either an ordinance violation or a statutory violation.) A person who is issued an "AT" may settle the charge by payment of a \$30.00 fine, or "administrative penalty", to the village treasurer within 10 days of issuance; the fine, or penalty, is increased to \$40.00 if settled within 11 to 30 days after issuance. The ordinance further provides that if the accused fails to pay the fine within 30 days, a complaint will be filed in the circuit court for the violation.

Procedural Order No. 07-91 of the Fairmont City Police Department implements the village ordinance. The order provides, in pertinent part:

" \* \* \*

It will be the policy of this department that an Officer may issue an Alternative Ticket for a traffic violation when he believes that it will be sufficient enforcement to deter the motorist from future violations. The exceptions to this policy will be the following:

1. Any vehicle or driver involved in a traffic accident.
2. Speeding in excess of 16 mph over the speed limit.
3. Driving while under the influence of intoxicating liquor or narcotics.
4. Reckless driving.
5. Reckless homicide.
6. Drag racing.
7. Leaving the scene of an accident.
8. Driving while drivers license suspended/revoked.

Enforcement Procedure:

The officer on observing and stopping a vehicle that is in violation of an ordinance that is covered by this process has the option of issuing an alternative ticket.

If an alternative ticket is used the officer completes the ticket and issues the 'violators copy' and 'Return envelope copy' to the violator.

Persons who request a regular citation or indicate they want a court appearance are to be issued a standard citation. A drivers license, bail bond card or cash bond is to be taken as bond in this case, following standard operating procedures.

\* \* \*

Application:

Ordinance 482 provides that sections 11 and 12 of the Illinois Vehicle Code are adopted as local ordinances.

\* \* \*

The "alternative ticket" issued generally resembles a Uniform Traffic Citation and Complaint. Printed on the front of the form is the following legend:

" THIS IS AN ADMINISTRATIVE WARNING  
AND PENALTY!

If The Penalty is Paid Promptly:

1. You Will Not Have to Appear in Court.
2. No Points Will Be Charged Against Your License.
3. Your Auto Insurance Rates Will Not Be Affected.
4. The Fee Is Less Than A Normal Citation.
5. You Will Not Have to Pay Normal Court Costs.

If not paid within 30 days an arrest complaint will be issued subjecting you to trial in circuit court including the payment of a fine and court costs."

There are obvious advantages to both the traffic violator and the municipality from the use of this or a similar alternative traffic enforcement program. The traffic violator pays a lesser penalty than is prescribed for bail and ex parte satisfaction under the applicable Supreme Court Rules, and also avoids the report of a conviction being forwarded to the Secretary of State. The municipality receives the entire amount of

the penalty imposed, without deductions for the several statutory fees, costs, additional penalties and surcharges ordinarily payable from the amount posted for bail (see Supreme Court Rule 529 (Ill. Rev. Stat. 1991, ch. 110A, Rule 529)).

Initially, it is my opinion that such alternative traffic enforcement ordinances are invalid because they impermissibly conflict with the provisions of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 1-100 et seq.). Chapter 11 of the Code, which is commonly referred to as the Rules of the Road, regulates the operation of motor vehicles upon the streets and highways of this State. Sections 11-207, 11-208.1 and 11-208.2 of the Illinois Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, pars. 11-207, 11-208.1, 11-208.2) provide, respectively:

"§ 11-207. Provisions of Act uniform throughout state. 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 rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Chapter, but such regulations shall not be effective until signs giving reasonable notice thereof are posted."

"§ 11-208.1. Uniformity. The provisions of this Chapter of this Act, as amended, and the rules and regulations promulgated thereunder by any State Officer, Office, Agency, Department or Commission, shall be applicable and uniformly applied and enforced throughout this State, in

all other political subdivisions and in all units of local government."

"§ 208.2. Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208 and 11-209 of this Chapter of this Act." (Emphasis added.)

In addition, although the Illinois Municipal Code authorizes municipalities to regulate traffic on public ways, that authority is expressly made subject to the provisions of the Illinois Vehicle Code. (Ill. Rev. Stat. 1991, ch. 24, pars. 11-80-1, 11-80-20.)

Both the Illinois Vehicle Code and the Illinois Municipal Code clearly express the policy that, except to the limited extent permitted by the former, municipalities, including home rule units, may not enact or enforce ordinances which conflict with the provisions of the Vehicle Code. Sections 11-208 and 11-209 of the Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, pars. 11-208, 11-209) expressly authorize the enactment of certain municipal traffic ordinances. Section 11-208.3 of the Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 11-208.3) also expressly authorizes municipalities to adopt a system for the administrative adjudication of parking violations. Nothing in the Code, however, otherwise authorizes municipalities to adopt an administrative enforcement program for traffic regulations for the violation of which State statutes specify penalties and the manner of enforcement.

Indeed, the public policy requiring uniformity in enforcement expressed in the Vehicle Code has been recognized for many years. (See City of Geneseo v. Mirocha (1967), 85 Ill. 2d 359 (Abst.); Robbins v. Illinois Power & Light Corp. (1929), 255 Ill. App. 106, 120; see also Village of Park Forest v. Thomason (1986), 145 Ill. App. 3d 327.) Although there are Illinois Appellate Court cases which suggest that a traffic ordinance which expresses the same policy as the State statute but specifies a different penalty does not impermissibly conflict with the statute (see Village of Cherry Valley v. Schuelke (1977), 46 Ill. App. 3d 91; City of Rockford v. Floyd (1968), 104 Ill. App. 2d 161), there is much more at issue in these circumstances. The ordinances in question create an entire enforcement mechanism which deviates significantly from that created by statute.

The Illinois Vehicle Code requires uniformity in the enforcement of traffic regulations as well as the substantive regulations themselves. The statutory enforcement procedures for traffic violations include not only the fines, penalties and costs imposed by several statutes, but also the reporting of all "moving" violations to the Secretary of State to enable the Secretary to execute his duty to suspend the driving privileges of repeat offenders. Section 6-204 of the Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-204) provides, in part:

"When Court to forward License and Reports.  
(a) For the purpose of providing to the Secretary of State the records essential to the performance of the Secretary's duties under this Code to revoke or suspend the driver's license and privilege to drive motor vehicles of persons found guilty of the criminal offenses or traffic violations which this Code recognizes as evidence relating to unfitness to safely operate motor vehicles, the following duties are imposed upon public officials:

1. Whenever any person is convicted of any offense for which this Code makes mandatory the revocation of the driver's license or permit of such person by the Secretary of State, the judge of the court in which such conviction is had shall require the surrender to the clerk of the court of all driver's licenses or permits then held by the person so convicted, and the clerk of the court shall, within 10 days thereafter, forward the same, together with a report of such conviction, to the Secretary.

2. Whenever any person is convicted of any offense under this Code or similar offenses under a municipal ordinance, other than regulations governing standing, parking or weights of vehicles, and excepting the following enumerated Sections of this Code: [and the Chicago Municipal Code] [exceptions omitted] it shall be the duty of the clerk of the court in which such conviction is had within 10 days thereafter to forward to the Secretary of State a report of the conviction and the court may recommend the suspension of the driver's license or permit of the person so convicted.

\* \* \*

5. \* \* \* Failure to forward the reports of conviction as required by this Section shall be deemed an omission of duty and it shall be the duty of the several State's Attorneys to enforce the requirements of this Section.

\* \* \*



(c) For the purposes of this Code, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court when forfeiture has not been vacated, or the failure of a defendant to appear for trial after depositing his driver's license in lieu of other bail, shall be equivalent to a conviction.

\* \* \*

The enumerated exceptions contained in section 6-204 pertain primarily to equipment and other minor traffic violations which are generally referred to as "nonmoving" violations. Section 6-206 of the Vehicle Code (Ill. Rev. Stat. 1991, ch. 95 1/2, par. 6-206) provides, in part:

"Discretionary authority to suspend or revoke license or permit--Right to a hearing.  
(a) The Secretary of State is authorized to suspend or revoke the driving privileges of any person without preliminary hearing upon a showing of such person's records or other sufficient evidence that such person:

\* \* \*

2. Has been convicted of not less than 3 offenses against traffic regulations governing the movement of vehicles committed within any 12 month period. No such revocation or suspension shall be entered more than 6 months subsequent to the date of last conviction;

\* \* \*

The issuance of an ordinance violation ticket as an alternative to a Uniform Traffic Citation and Complaint improperly infringes upon the duty of the circuit clerk to report convictions to the Secretary of State, as well as the Secre-

tary's discretionary duty to revoke or suspend the driving privileges of repeat offenders. Based upon the information that you have provided, these enforcement programs do not provide for records of ordinance violation tickets which are paid within the specified time to be filed with the circuit clerk. Even though the payment of the "administrative penalty" would constitute a "conviction", within the definition of that term in section 6-204 of the Code, the circuit clerk would not have a record of the violation or conviction to report. Indeed, the ordinance violation ticket form you have furnished informs the violator that prompt payment of the administrative penalty will avoid "points" being assigned to his or her license. An individual therefore could be ticketed several times for various traffic ordinance violations within a twelve month period in the same or neighboring municipalities with no report being made to the Secretary of State. Such an ordinance clearly conflicts with the policy set out in sections 6-204 and 6-206 of the Code, and renders the ordinance invalid.

It is also my opinion that these alternative traffic ordinance enforcement procedures conflict with the Supreme Court rules governing bail in traffic offenses. (See, Ill. Rev. Stat. 1991, ch. 110A, Rules 501-556.) Supreme Court Rule 526 (Ill. Rev. Stat. 1991, ch. 110A, Rule 526) requires persons

who are arrested for violations of traffic regulations, including those traffic offenses which are defined by ordinances, to post bail in the specified amount, or, in the alternative, to be released by the posting of a driver's license or by signing a promise to comply. Further, Rule 529 specifies the amount of fine, penalties and costs which may be applied to satisfy a violation of a minor traffic regulation, as well as the distribution of the amounts which are collected. The municipal enforcement program avoids compliance with the Supreme Court's Rules entirely. The proposed "administrative penalty", being substantially less than the amount required for bail or to satisfy a conviction for a traffic offense, is inadequate to satisfy these rules. More importantly, none of the administrative penalty is applied to satisfy the statutory fees and surcharges imposed upon traffic violators. Therefore, the program impermissibly avoids compliance with the Supreme Court's Rules, which have the force and effect of law, and improperly channels the penalty to the municipality without deductions for statutory costs, additional penalties, and surcharges.

Lastly, it is my opinion that these alternative traffic enforcement procedures violate the rights of persons accused of ordinance violations to due process of law. No provision is made for a hearing on the ordinance violation ticket. In order to obtain a hearing, an accused must risk

greater penalties by requesting that a Uniform Traffic Citation and Complaint be issued. Conditioning a constitutional right, such as the right to a hearing before imposition of a penalty, upon the certainty of an enhanced penalty upon a finding of guilt, is a violation of due process. (United States v. Jackson (1968), 390 U.S. 570, 88 S. Ct. 1209, 20 L. Ed. 2d 138; Gardner v. Broderick (1968), 392 U.S. 273, 88 S. Ct. 1913, 20 L. Ed. 2d 1082.) While the imposition of added costs has been held not to violate the right of accused persons to a hearing (Fuller v. Oregon (1974), 417 U.S. 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642; People v. Peters (1975), 32 Ill. App. 3d 1018), there is more involved here than mere costs. The ordinance violation ticket informs the accused motorist that if he foregoes a hearing he will not only pay a lesser fine and no costs, he also will not have the violation reported to the Secretary of State, thereby avoiding the possible loss of his driving privileges. The prospect of such an increased penalty has a significant chilling effect upon the exercise of the fundamental right to a hearing, particularly where the charging instrument itself proclaims that the satisfaction of the matter administratively will result in no "points" being assigned to the accused motorist's driver's license.

For the reasons stated, it is my opinion that alternative traffic enforcement ordinances of the type described are

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void and unenforceable. Such ordinances conflict with the comprehensive traffic regulation and enforcement policy set forth in the Illinois Vehicle Code and the Supreme Court Rules on bail in traffic cases, and deny due process of law.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS  
ATTORNEY GENERAL