

Opinion No. 2013-138

April 4, 2014

The Honorable Johnny Key  
State Senator  
Post Office Box 350  
Mountain Home, Arkansas 72654

Dear Senator Key:

You have asked for my opinion on three questions related to the interpretation of Act 170 of 2013, which deals with the authority of municipalities to enact an ordinance permitting the operation of golf carts on city streets. Specifically, you ask:

1. Can a municipality refuse to consider such an ordinance if it determines their streets are not designated for such use?
  - a. If the answer is no, who bears the liability in case of an accident?
2. Can a municipality require golf carts to have liability insurance and set a minimum age for individuals operating golf carts?

**RESPONSE**

Your questions are about the nature and scope of the authority granted to municipalities under section 14-54-1410, which Act 170 of 2013 amended. Yet nothing in the Act altered the nature of the authority expressly granted to municipalities. Therefore, I continue to hold my prior views on the interpretation of this statute. Accordingly, in response to your first question, a municipality has absolute discretion to decide whether to allow golf carts on its streets. The question of who bears liability for an accident involving a golf carts turns on standard principles of tort liability. In response to your second question, municipalities are authorized to enact ordinances that are not contrary to state law.

According to my review, there are no state laws establishing insurance or age requirements for golf carts operating on city streets pursuant to an ordinance passed under section 14-54-1410. Therefore, in my opinion, the answer to your second question is “yes.”

## **DISCUSSION**

Because your questions arise from a single statute on which I have previously opined, I will briefly explain my earlier conclusions regarding the statute. Doing so will enable me to concisely state the change wrought by Act 170 of 2013 and how that informs the answers to your questions.

I have opined on section 14-54-1410’s pre-2013 version three times.<sup>1</sup> In Opinion No. 2008-142, I explained that while this statute “gives some discretion to municipalities on whether to permit the operation of golf carts on city streets, this discretion is extremely limited.” Citing former subsection 1410(b), I explained that municipalities have the authority to authorize the operation of golf carts “from the owner’s place of residence to the golf course and to return from the golf course to the owner’s residence.”

Act 170 of 2013 amended A.C.A. § 14-54-1410 by deleting an entire subsection (indicated below in the stricken language) and renumbering the remaining subsections as follows:

14–54–1410. Operation of golf carts on city streets.

(a) It shall be within the municipal affairs and authority of any municipality in the State of Arkansas to authorize, by municipal ordinance, any owner of a golf cart to operate the golf cart upon the city streets of the municipality; provided, however, operation shall not be authorized on city streets which are also designated as federal or state highways or as a county road.

~~(b) The municipality may authorize the operation of golf carts on city streets only from the owner's place of residence to the golf course and to return from the golf course to the owner's residence.~~

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<sup>1</sup> Op. Att’y Gen. Nos. 2009-082, 2009-068, and 2008-142.

~~(e)~~ (b) When authorized by the municipality to operate on the city streets and limited to the circumstances and provisions of this section, there shall be no motor vehicle registration or license necessary to operate the golf cart on the public street.

~~(d)~~ (c) The term “municipality” as used in this section means any city of the first class, city of the second class, or an incorporated town.

As you can see from the foregoing quotation, Act 170 of 2013’s only substantive change was to remove subsection (b), which was itself a statutory limitation on the locations where golf carts could be operated. Act 170 did not affect the nature of the authority granted to municipalities, which is set forth in subsection (a). Thus, in my opinion, the degree of municipal control over the operation of golf carts on city streets was unaffected by Act 170. Consequently, section 14-54-1410 grants municipalities the authority to decide whether golf carts can be driven on those streets. Section 14-54-1410 does not *itself* grant any further regulatory authority to municipalities regarding the manner in which golf carts are driven or the qualifications of their operators.

Having made these preliminary points, we can now directly address your questions.

***Question 1: (A) Can a municipality refuse to consider such an ordinance if it determines their streets are not designated for such use? (B) If the answer is no, who bears the liability in case of an accident?***

I am not entirely sure what this question is asking. Section 14-54-1410(a) makes it clear that the municipality has discretion to decide whether to pass an ordinance allowing golf carts on its streets. If the municipality decides, for whatever reason, that having golf carts on its streets is undesirable, then the municipality may simply refrain from enacting the ordinance. The answer to your second sub-question turns on standard principles of tort liability and, thus, cannot be answered in the abstract.

***Question 2: Can a municipality require golf carts to have liability insurance and set a minimum age for individuals operating golf carts?***

Municipalities are creatures of the legislature and, as such, have only the power bestowed upon them by statute or the Arkansas Constitution.<sup>2</sup> Municipalities have been authorized to “perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to [their] municipal affairs.”<sup>3</sup> Municipalities can also legislate in matters designated as “state affairs” as long as the city’s legislation is “not in conflict with state law.”<sup>4</sup> Further, even in matters designated as “municipal affairs,” the state constitution prohibits municipalities from enacting any ordinances that are “contrary to the general laws of the state.”<sup>5</sup> Thus, regardless of whether the regulation you describe would be considered a state or a municipal affair, the city would be authorized to regulate in that matter as long as the regulation was not “in conflict with” or “contrary to” a state law.

Such a regulation would be in conflict with or contrary to state law (and thus, unauthorized) under two scenarios. First, the regulation would be unauthorized if the General Assembly included golf carts in the comprehensive statutory system governing the registration, licensing, operation, and insuring of motor vehicles. But there are several reasons to think that the General Assembly has not done so. First, in section 14-54-1410(b), the General Assembly expressly stated that golf carts are not subject to the standard licensing and registration requirements: “there shall be no motor vehicle registration or license necessary to operate the golf cart on the public street.” This shows an intent to treat golf carts differently from motor vehicles that are designed to operate on roadways. Second, enactment of section 14-54-1410 was apparently necessary in order to allow the operation of golf carts on roadways. This further evinces the fact that the General Assembly has not subsumed golf carts into the larger body of law governing motor vehicles.

The other scenario in which such a municipal regulation would be unauthorized is if there were a specific state statute governing the insuring and operating of golf

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<sup>2</sup> *Jones v. American Home Life Ins. Co.*, 293 Ark. 330, 738 S.W.2d 387 (1987).

<sup>3</sup> A.C.A. § 14-43-602(a) (Repl. 2013). A “municipal affair” means “all matters and affairs of government germane to, affecting, or concerning the municipality or its government....” A.C.A. § 14-43-601(a)(1) (Repl. 2013).

<sup>4</sup> A.C.A. § 14-43-601(a)(2)(B).

<sup>5</sup> Ark. Const. art. 12, § 4. *See City of Fort Smith v. Housing Authority of the City of Fort Smith*, 256 Ark. 254, 506 S.W.2d 534 (1974); *Nahlen v. Woods*, 255 Ark. 974, 504 S.W.2d 749 (1974) (holding that Arkansas is a legislative home-rule state and that the legislature has plenary power over municipalities).

carts. But according to my review, there is no such statute. Given the apparent lack of any state regulation on the matters of the insuring of and age-restrictions on the operation of golf carts, it is difficult to see how a municipal ordinance addressing the topics you specified would be in conflict with or contrary to state law.

Therefore, in my opinion, municipalities that authorize golf carts on their streets may also require liability insurance and set a minimum-age requirement.

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,

Dustin McDaniel  
Attorney General

DM:RO/cyh