



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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OAG-01-18

The Honorable Scott Fitzgerald
Senate Majority Leader
Chair, Senate Committee on Organization
Post Office Box 7882
Madison, WI 53707-7882

Dear Senator Fitzgerald:

¶ 1. Wisconsin Stat. § 348.27(9r) authorizes the Wisconsin Department of Transportation to issue permits allowing the transportation of recyclable scrap on vehicles exceeding statutory weight or length limitations. You have requested an opinion on whether Wisconsin municipalities are prohibited from regulating, by either a permit or a license, vehicles operating on municipal streets or highways that have been issued such a permit by the Department of Transportation.

¶ 2. I conclude that Wisconsin municipalities do not have the authority to regulate, by permit or license, vehicles that have been issued permits by the Department of Transportation under Wis. Stat. § 348.27(9r). Under Wisconsin law, local traffic regulations (1) cannot be contrary to or inconsistent with chapters 341 to 348 and 350 of the Wisconsin Statutes or (2) must be expressly authorized by state statute. Wis. Stat. § 349.03(1)(a)–(b). Municipalities have no authority to require licenses or permits of scrap hauling vehicles because such regulation would be contrary to Wis. Stat. § 349.03(2), inconsistent with Wis. Stat. § 348.27(9r), and is not expressly authorized by any statute.

¶ 3. As the Wisconsin Supreme Court requires, I begin with the plain language of the statutes. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. The Wisconsin Supreme Court has long held that “the state has absolute control of streets and highways and a city has no inherent power over them.” *City of Madison v. Reynolds*, 48 Wis. 2d 156, 158, 180 N.W.2d 7 (1970). A municipality cannot “forbid[] in an area pre-empted by the

state, in order to have uniformity, what the state law does not forbid.” *City of Janesville v. Walker*, 50 Wis. 2d 35, 39–40, 183 N.W.2d 158 (1971). The Legislature has limited the power of municipalities to regulate traffic in two ways: by prohibiting ordinances that are contrary to or inconsistent with state law, and by requiring express authorization in a state statute before a municipality may regulate.

¶ 4. Two different provisions of the statutes allow municipalities to regulate traffic only if it is not contrary to or inconsistent with a state statute. Wisconsin Stat. § 349.03(1) provides that “[n]o local authority may enact or enforce any traffic regulation unless such regulation: (a) Is not contrary to or inconsistent with chs. 341 to 348 and 350.” Wisconsin Stat. § 349.06(1), in turn, describes that limitation more stringently: “any local authority may enact and enforce any traffic regulation which is in strict conformity with one or more provisions of chs. 341 to 348 and 350 for which the penalty for violation thereof is a forfeiture.” Wis. Stat. § 349.06(1)(a). In *City of Janesville v. Walker*, the Wisconsin Supreme Court explained the relationship between these statutes as “the same concept of municipal power” and concluded that “[t]hese two sections dealing with the power of municipalities to enact traffic regulations must be read together and establish one test.” 50 Wis. 2d at 37. Under this test, a municipality’s traffic regulation must not conflict with or be inconsistent with state law, and must be in strict conformity with state law. *Id.* at 38–39.

¶ 5. A different subsection, Wis. Stat. § 349.03(1)(b), requires that any ordinance be “expressly authorized by ss. 349.06 to 349.25 or some other provision of the statutes.” The supreme court has interpreted that statute to require a municipality to “find some language in the statutes granting power to enact an ordinance which denies free access to the public of the streets.” *City of Madison*, 48 Wis. 2d at 159.

¶ 6. As to the requirement of consistency with state law, municipal licensing or permitting of scrap haulers is contrary to or inconsistent with state law in three ways.

¶ 7. First, the Legislature specifically provided in Wis. Stat. § 349.03(2) that “[n]o local authority may enact or enforce any traffic regulation . . . requiring local registration of vehicles.” The only exception is the vehicle registration fee allowed under Wis. Stat. § 341.35, which allows for an annual registration fee of all vehicles kept in a municipality or county.

¶ 8. Second, the Legislature has prohibited municipalities from “excluding or prohibiting any motor vehicle, . . . recreational vehicle, trailer, or semitrailer whose owner has complied with chs. 341 to 348 from the free use of all highways,” with some specific exceptions that do not apply here. Wis. Stat. § 349.03(2). The statute broadly defines “highway” to include “all public ways and thoroughfares and bridges on the same,” including “the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel.” Wis. Stat. § 340.01(22); *see also* Wis. Stat. § 349.01(1). The Wisconsin Supreme Court has interpreted the phrase “free use of all highways” in Wis. Stat. § 349.03(2) to mean “accessible to everyone.” *City of Madison*, 48 Wis. 2d at 159. Because scrap haulers who have obtained permits under Wis. Stat. § 348.27(9r) have “complied with chs. 341 to 348,” municipalities cannot deny them “the free use of all highways.” Wis. Stat. § 349.03(2).

¶ 9. Third, municipal licensing and permitting of scrap haulers is inconsistent with the state permitting regime for oversize and overweight vehicles in Wis. Stat. § 348.27. The Legislature gave the Department of Transportation the authority to issue “permits for the movement of oversize or overweight vehicles or loads,” Wis. Stat. § 348.27(1), including a specific “permit for the transportation of metallic or nonmetallic scrap for the purpose of recycling or processing on a vehicle or combination of vehicles which exceeds statutory weight or length limitations.” Wis. Stat. § 348.27(9r). Local permitting regimes would be inconsistent with the uniformity provided by the state permitting regime.

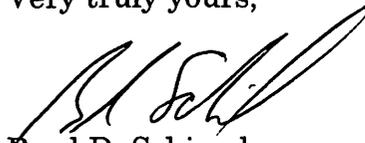
¶ 10. As to the requirement that municipal regulation have express statutory authority, a local licensure or permitting regime for scrap haulers would also be unlawful because state law does not expressly authorize it. Neither the express regulatory powers granted to municipalities over traffic in subchapter II of chapter 349, Wis. Stat. §§ 349.06–349.236, nor any other statutory provision includes the authority to issue permits or license to scrap haulers. Under Wis. Stat. § 349.06(1)(a), a municipality may only enact an ordinance that require scrap haulers with oversize or overweight trucks to have the required permit from the Department of Transportation, with a forfeiture penalty if they do not comply.

¶ 11. This opinion is limited to a municipality’s authority to regulate by permit or license vehicles that have been issued a permit for the transporting of recyclable scrap under Wis. Stat. § 348.27(9r). Vehicles operating under such permits must still abide by all generally applicable local traffic regulations validly enacted under a municipality’s express regulatory powers.

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¶ 12. I conclude that municipalities have no authority to regulate, by permit or license, vehicles that have been granted permits by the Department of Transportation under Wis. Stat. § 348.27(9r) because such regulation would be contrary to Wis. Stat. § 349.03(2), inconsistent with Wis. Stat. § 348.27(9r), and is not expressly authorized by statute.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Schimel', written in a cursive style.

Brad D. Schimel
Attorney General of Wisconsin

BDS:BPK:mlk