

Local regulation of ATV's use

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Robert K. Robinson
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Dear Mr. Robinson:

Thank you for contacting the Florida Attorney General's Office regarding the validity of provisions of recently enacted City of North Port Ordinance 2006-13. The ordinance regulates the use of all terrain vehicles (ATV's) on public and private property within the City of North Port. Attorney General Crist has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may comment. This office, like the courts, must presume the validity of any duly enacted ordinance or statute, until such time as a court of competent jurisdiction rules otherwise.[1]

In an effort to be of some assistance to you I would note that the Legislature created section 316.2123, Florida Statutes, during the 2006 legislative session. Section 14, Chapter 2006-290, Laws of Florida, created this provision which regulates the operation of ATV's on certain roadways:

"(1) The operation of an ATV, as defined in s. 317.0003, upon the public roads or streets of this state is prohibited, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour by a licensed driver or by a minor under the supervision of a licensed driver. The operator must provide proof of ownership pursuant to Chapter 317 upon request by a law enforcement officer.

(2) A county is exempt from this section if the governing body of the county, by majority vote, following a noticed public hearing, votes to exempt the county from this section."

These provisions become effective on October 1, 2006.[2] I would note that the statute authorizes counties to act to exempt themselves from operation of this section but does not provide a similar exemption provision for municipalities.

I regret that this office could not be of more direct assistance to you in this matter but trust that you will understand that our authority is limited by constitutional separation of powers considerations.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tfl

[1] See *Belk-James, Inc. v. Nuzum*, 358 So. 2d 174 (Fla. 1978), *Pickerill v. Schott*, 55 So. 2d 716 (Fla. 1951) and *State ex rel. Atlantic Coast Line Railroad Co. v. State Board of Equalizers*, 94 So. 681 (Fla. 1922). And see *Department of Legal Affairs Statement of Policy Concerning Opinions* (copy enclosed).

[2] Section 51, Chap. 06-290, Laws of Fla.