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Legal Opinion 2008-016

TO: Mayor John Engen; City Council; Bruce Bender, Chief Administrative Officer; Anne Guest, Parking Commission Director; Brentt Ramharter, Finance Director; Marty Rehbein, City Clerk; Nikki Rogers, Deputy City Clerk; Ellen Buchanan, MRA Director; Chris Behan, MRA; Rusty Wickman, Chief of Police; Mark Muir, Assistant Chief of Police; Steve King, Public Works Director; Kevin Slovarp, City Engineer

FROM: Jim Nugent, City Attorney

DATE December 3, 2008

RE: Establishing speed limits inside the city limits

FACTS:

The Missoula City Council is in the process of considering a proposed amendment to § 10.18.020 Missoula Municipal Code (MMC) pertaining to the establishment of speed limits. The amendment introduced by a council member proposes the city council determine speed limits “upon the basis of an engineering and traffic investigation.” The current language in § 10.18.020 provides the city engineer establishes the speed limits “with the concurrence of the city council.”

ISSUES:

(1) How important are engineering and traffic investigations with respect to the adoption or establishment of speed limits within the city limits?

(2) Does the city have sole jurisdiction to establish speed limits on federal and/or state highway routes located within the city limits?

CONCLUSIONS:

(1) Engineering and traffic investigations are an imperative pre-condition to setting a speed limit in an urban area that is greater than or less than the statutory 25 mph for an urban area. Montana law mandates that speed limits greater or less than the statutory 25 mph in an urban district must be “warranted by an engineering and traffic investigation.”

(2) Pursuant to Mont. Code Ann. § 61-8-310(5) the Montana State Transportation Commission has “exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas.”

LEGAL DISCUSSION:

Title 61, chapter 8, part 2, Montana Code Annotated is entitled *Traffic Control Devices*. Mont. Code Ann. § 61-8-202 mandates that the Montana Department of Transportation shall adopt “a manual for a uniform system of traffic control devices consistent” with state motor vehicle traffic regulations and the traffic manual adopted “must correlate with and so far as possible conform to the Manual on Uniform Traffic Control Devices, as amended, published by the United States federal highway administration.”

Mont. Code Ann. § 61-8-203 is entitled *Department of transportation to place traffic control devices on highways it maintains and approve traffic control devices on highways under its jurisdiction*. Pursuant to this section the Montana Department of Transportation is required to place and maintain traffic control devices “conforming to its manual and specifications.” It is worth noting that Mont. Code Ann. § 61-8-203(2) provides:

A local authority or other entity **may not** place or maintain a traffic control device upon a highway under the jurisdiction of the department of transportation except with the department's permission.

Montana’s general speed limit regulations are set forth in Mont. Code Ann. Title 61, chapter 8, part 3, *Vehicle Operating Requirements*. Mont. Code Ann. § 61-8-303, entitled *Speed restrictions*, generally establishes urban district speed limits at 25 mph. However, other sections within this part authorize adoption of speed limits greater or less than 25 mph if warranted by an engineering and traffic investigation completed by a licensed professional engineer from a list compiled by committee. The committee, established by statute, is comprised of state and local representatives for that purpose pursuant to Mont. Code Ann. § 61-8-309(1)(c)(ii).

Current § 10.18.020 MMC provides:

10.18.020 Established. Where no special hazard exists that requires lower speed for compliance with motor vehicle traffic laws, the speed of any vehicle not in excess of the limits specified in this section or established as authorized by this chapter shall be lawful, but any speed in excess of the limits specified in this section or established as authorized by this chapter shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

A. Twenty-five miles per hour on all streets within the city limits unless posted otherwise;

B. The prima facie speed limits set forth in subsection A of this section may be altered as follows:

Whenever the city engineer determines upon the basis of an engineering and traffic investigation that any prima facie speed set forth in this section is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a street or highway, the city

engineer may, with the concurrence of the city council, determine and declare a reasonable and safe *prima facie* speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such intersections or other place or part of the street or highway.

Mont. Code Ann. § 61-8-303 provides:

61-8-303. Speed restrictions. (1) Except as provided in 61-8-309, 61-8-310, and 61-8-312, the speed limit for vehicles traveling:

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 miles an hour at all times and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime;

(c) in an urban district is 25 miles an hour.

(2) A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

(3) Subject to the maximum speed limits set forth in subsection (1), a person shall operate a vehicle in a careful and prudent manner and at a reduced rate of speed no greater than is reasonable and prudent under the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather, and roadway conditions.

(4) Except when a special hazard exists that requires lower speed for compliance with subsection (3), the limits specified in 61-8-312 and in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 are the maximum lawful speeds allowed.

(5) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(6) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314.

As previously noted Mont. Code Ann. § 61-8-303(1)(c) generally establishes the speed limit in urban districts at 25 mph. Mont. Code Ann. § 61-8-102(u) defines "urban district" as:

"Urban district" means the territory contiguous to and including any street that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more.

Mont. Code Ann. § 61-8-303(3) and (4), pertaining to speed districts, recognize that lower maximum speed limits may be required when a special hazard exists. Pursuant to the cross reference within § 61-8-303(4) to § 61-8-303(3) it appears the Montana State Legislature is indicating that the special hazard situations where a maximum speed limit may be reduced are to be "the conditions existing at the point of operation, taking into account the amount and character of traffic, visibility, weather and roadway conditions."

Both Mont. Code Ann. §§ 61-8-309 and 61-8-310 are important for establishing speed zones. Both statutes require speed zones other than the statutory urban district 25 mph are to be established by an “engineering and traffic investigation” warranting a lesser or greater speed limit than 25 mph. For example, see Mont. Code Ann. § 61-8-309(1)(a), (b) and (c)(i), (ii) and (iii) as well as § 61-8-310(1)(d) set forth below.

Mont. Code Ann. §§ 61-8-309 and § 61-8-310:

61-8-309. Establishment of special speed zones. (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, or dangerous location or on a segment of a highway less than 50 miles in length under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location.

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the jurisdiction of the department of transportation is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department of transportation.

(d) A local authority may request a temporary special reduced or increased speed zone for a route or route segment that is under consideration for a reduced or increased speed limit under subsection (1)(a), (1)(b), or (1)(c). If a local authority makes multiple requests for temporary special reduced or increased speed zones, the local authority shall prioritize the requests. The department of transportation shall conduct a preliminary visual and engineering review of a route or a route segment for which a temporary special speed zone is requested. The reviewing party must include a representative of the local authority. Upon completion of the preliminary review, if the department of transportation concurs with the local authority that a temporary special reduced or increased speed limit

is warranted, a temporary special reduced or increased speed zone may be established upon formal approval by the commission. The temporary special reduced or increased speed limit remains in effect until a complete traffic and engineering study has been done on the route or route segment and the commission has made a determination on changing the speed limit.

(2) The department of transportation shall erect and maintain appropriate signs giving notice of special limits. When the signs are erected, the limits are effective for those zones at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit.

61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 35 miles an hour; or

(d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

Note § 61-8-310(1)(d) provides local government authorities, within areas of their jurisdiction, the ability to determine “on the basis of an engineering and traffic investigation” that the speed permitted by Montana state law in §§ 61-8-303 and 61-8-309 through 61-8-313 is greater or less than reasonable and safe under the conditions found to exist, including; but not limited to altering speed limits to decrease a speed limit near a school or designated cross walk near a school.

Note pursuant to the definition of “commission” in § 61-1-101(9), whenever “commission” is used in Title 61 it means the “state transportation commission.” Several additional legal points to note with respect to § 61-8-309(1)(c) pertaining to a local government request for an “engineering and traffic investigation” include: 1) a local authority may at its own expense request an “engineering and traffic investigation” to be completed by a licensed professional engineer selected from a list compiled and approved by the committee established pursuant to § 61-8-309(1)(c)(ii); 2) the “engineering and traffic investigation” list of eligible professional licensed engineers must be compiled by a committee “containing two department of transportation staff” and “two representatives of associations whose membership comprises cities, towns, and counties”; and 3) upon completion of the “engineering and traffic investigation” conducted for a local government, the Montana Department of Transportation shall submit a report to the Montana Department of Transportation Commission which shall decide an appropriate speed within 120 days from the date the investigation is submitted.

Finally, Mont. Code Ann. § 61-8-310 must be noted and emphasized because it explicitly provides in pertinent part that the Montana state transportation **“commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas.”** The commission shall set these limits in accordance with 61-8-309.”

CONCLUSIONS:

(1) Engineering and traffic investigations are an imperative pre-condition to setting a speed limit in an urban area that is greater than or less than the statutory 25 mph for an urban area. Montana law mandates that speed limits greater or less than the statutory 25 mph in an urban district must be “warranted by an engineering and traffic investigation.”

(2) Pursuant to Mont. Code Ann. § 61-8-310(5) the Montana State Transportation Commission has “exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas.”

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