

CITIES AND TOWNS - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;

HIGHWAYS - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;

JURISDICTION - Jurisdiction of city over federal-aid or state highway within city limits;

MUNICIPAL GOVERNMENT - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;

TRAFFIC - Authority of city to regulate traffic at crosswalks on federal-aid or state highway;

MONTANA CODE ANNOTATED - Title 61, chapter 8; sections 60-1-102, 60-1-201, 60-2-201, 60-2-203, 60-2-210, 61-1-201, 61-1-306, 61-1-403, 61-8-101 to 61-8-103, 61-8-203, 61-8-502, 61-12-101.

HELD: A city council may not enact an ordinance requiring a driver of a motor vehicle upon a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not upon the half of the roadway upon which the vehicle is traveling and when the pedestrian is not close enough to be in danger.

22 April 1985

D. W. McKenna
Hamilton City Attorney
P.O. Box 389
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Dear Mr. McKenna:

You have asked my opinion on the following question:

May the City of Hamilton enact an ordinance requiring all traffic to stop for a pedestrian crossing U.S. Highway 93 whenever the pedestrian steps off the curb and into a crosswalk and to remain stopped for as long as the pedestrian is within any portion of the crosswalk?

U.S. Highway 93, a federal-aid highway maintained by the Montana Department of Highways, passes through the city limits of Hamilton. The segment of the highway within the city was recently widened to four lanes. The Montana Department of Highways has established several marked crosswalks for pedestrians to use in crossing the highway within the city. These crosswalks are not controlled by traffic signals. Your inquiry states that the Hamilton City Council may wish to consider and enact an ordinance which would require the driver of a vehicle on the highway to stop and remain stopped for a pedestrian at all times during which the pedestrian is within any portion of a crosswalk, rather than only when the pedestrian is upon or is about to enter upon the half of the roadway upon which the vehicle is traveling, as required in section 61-8-502, MCA.

I have concluded that the City of Hamilton does not have authority to enact such an ordinance.

Section 61-8-502(1), MCA, provides:

When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is

traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in 61-8-503(2).

Section 61-8-503(2), MCA, requires a pedestrian to yield the right-of-way when crossing at a point where a pedestrian tunnel or overhead crossing has been provided. This statute is not applicable here.

According to section 61-8-101(2), MCA, the provisions of Title 61, chapter 8, MCA (including section 61-8-502, MCA), refer exclusively to the operation of vehicles upon "highways," defined in section 61-1-201, MCA, to include any publicly maintained way open for public use for purposes of vehicular travel. U.S. Highway 93 comes within this definition of highway. Section 61-8-103, MCA, states:

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.

Under section 61-1-306, MCA, the Hamilton City Council is a "local authority" and is therefore precluded from enacting any ordinance in conflict with section 61-8-502, MCA, without express authorization.

The proposed ordinance is in apparent conflict with section 61-8-502, MCA, which permits drivers to proceed through a crosswalk while a pedestrian within the crosswalk is upon the opposite half of the roadway so long as the pedestrian is not so close as to be in danger. Such an ordinance would not promote the

state-wide uniformity intended by the Legislature. §§ 61-8-102, 61-8-103, MCA.

Although local authorities may adopt nonconflicting traffic regulations under section 61-8-103, MCA, the proposed ordinance makes unlawful what would otherwise be lawful conduct by a driver on a highway and therefore must be considered to be "in conflict" with the provisions of section 61-8-502, MCA. The final question, then, is whether the statutes contain express authorization for a local authority to enact a conflicting ordinance regulating rights-of-way for crosswalks on a highway such as U.S. 93.

Section 61-12-101, MCA, states:

The provisions of chapter 8 and chapter 9 shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

....

(2) regulating the traffic by means of ... traffic control devices;

....

(14) enacting as ordinances any and all provisions of chapter 8 or chapter 9 and any and all other laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction. [Emphasis added.]

A marked crosswalk may be considered a "traffic-control device" under section 61-1-403, MCA, so that local authorities may regulate traffic "by means of" crosswalks; however, this statute does not provide express authority to change the respective rights-of-way of the driver and the pedestrian in crosswalk situations. In addition, the preliminary inquiry must be whether the highway is under the jurisdiction of the local authority. A review of the statutes leads to the conclusion that U.S. Highway 93 does not come under the

jurisdiction of the city council as it enters the city limits of Hamilton. Section 60-1-201, MCA, classifies public highways and distinguishes between federal-aid or state highways and city streets, the latter being defined as those public highways under the jurisdiction of municipal officials. Section 60-1-102, MCA, indicates the legislative intent to make the department of highways the custodian of the federal-aid and state highways. Section 60-2-201(4), MCA, gives the department the authority to adopt necessary rules for the marking of state highways. Sections 60-2-203 and 60-2-210, MCA, require the department to maintain state highways within incorporated municipalities. On the other hand, local authorities are expressly precluded by section 61-8-203, MCA, from placing or maintaining a traffic control device upon a highway under the jurisdiction of the department. See also 39 Am. Jur. 2d Highways, Streets, and Bridges §§ 199, 200, 204; Annot., 144 A.L.R. 307; Bidlingmeyer v. City of Deer Lodge, 128 Mont. 292, 274 P.2d 821 (1954); Palffy v. Director of Finance of City of Bozeman, 168 Mont. 108, 540 P.2d 955 (1975).

The authority of the city council to regulate traffic is expressly subject to the provision that such regulation not conflict with state law. I could find no statutory authority which authorizes the enactment of this proposed ordinance.

THEREFORE, IT IS MY OPINION:

A city council may not enact an ordinance requiring a driver of a motor vehicle upon a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not upon the half of the roadway upon which the vehicle is traveling and when the pedestrian is not close enough to be in danger.

Very truly yours,

MIKE GREELY
Attorney General