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Legal Issues Relating to County Government

ATV/UTV Speed Regulations

—Andrew T. Phillips & Rebecca J. Roeker, von Briesen & Roper, s.c.

All-terrain vehicle (ATV) and utility-terrain vehicle (also known as a utility-task vehicle) (UTV) use continues to increase throughout Wisconsin. With that increased use, counties¹ are sometimes posed with questions regarding speed limit regulations for ATVs/UTVs. In addition to speed regulation, counties are also tasked with regulatory requirements for routes and trails on highway bridge crossings,² or signage requirements for ATV/UTV routes and trails.³ While these are important issues for counties, this article will address the unique aspects of a county's ability to regulate speed for ATVs/UTVs on county trunk highways and on state trunk highways.

Statutory Authority.

A county has statutory authority to designate highways under its jurisdiction as ATV/UTV routes.⁴ A key component of this authority is jurisdiction: a county does not have regulatory jurisdiction over a state trunk highway, and therefore, a county wishing to designate an ATV/UTV route or regulate an ATV/UTV trail along a state trunk highway must obtain Wisconsin Department of Transportation (DOT) approval.⁵ The exception to this point is that DOT approval is not required for an ATV/UTV route/trail along a state highway (or a portion thereof) that has a speed limit of less than 35 miles per hour (MPH).

In addition to the statutory authority to designate an ATV/UTV route and maintain an ATV/UTV trail, counties also have the required statutory authority to adopt ordinances regulating those routes and trails.⁶ Regulation of ATV/UTV routes and trails are subject to other statutory restrictions, such

as certain provisions of Wis. Stat. Ch. 346, entitled "Rules of the Road."⁷ However, simply because ATV/UTV route and trail regulations are subject to certain statutory restrictions, a county may still regulate ATV/UTV routes and trails in a manner that does not conflict with or otherwise impose a more restrictive requirement. This includes a county's ability to regulate speed along an ATV/UTV route/trail within its jurisdiction so long as certain factors are met.

Authority to Set Speed Restrictions.

As discussed in greater detail below, a county may set forth speed restrictions on an ATV/UTV route/trail within its jurisdiction based on Wis. Stat. § 23.33(11) (a), which grants a county the right to regulate routes/trails on highways within its jurisdiction, and based on a county's police power to establish speed restrictions for its thoroughfares so long as those regulations do not conflict with state law.

To answer the question of whether a county may set speed restrictions along a ATV/UTV route/trail, the first question is whether the route/trail is public or private. If public, then a county has general regulatory authority. If private, then a county's regulatory authority is limited to the authority granted to the county by the property owner. However, even if the route/trail is privately owned but lies in a public right-of-way, a county may still have regulatory authority over the route/trail.

Assuming the route/trail is subject to a county's regulatory authority, the next question is whether the

continues

county's regulatory restrictions conflict with state law. A county may set forth reasonable regulations relating to the use of its streets and public thoroughfares so long as the restrictions do not violate any statutes.⁸ While "a traffic ordinance may be less severe in coverage or penalty than a state statute, it cannot be more severe or go beyond the statute and prohibit an act therein allowed or increase the amount of a penalty" based on the rule of preemption.⁹

Speed restrictions are generally covered in Wis. Stat. § 346.57, but those restrictions do not apply to ATV/UTVs by virtue of the provisions set forth in Wis. Stat. § 346.02(11).¹⁰ In addition, the broad prohibition set forth in Wis. Stat. § 346.57(2) stating "no person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions" is not applicable to ATV/UTVs. However, simply because Wis. Stat. § 346.57's speed restrictions do not apply to ATV/UTVs does not mean that counties do not have authority to establish speed restrictions pursuant to each's own independent police power (so long as there is no contrary statutory provision).¹¹ Inherent in the term "regulate" via a county's police power is the ability to set forth the speed restrictions.¹²

Both Wis. Stat. § 23.33(3) and Wis. Stat. § 23.33(11)(a)(2) set forth various speed restrictions in specific instances and when the ATV/UTV is in certain locations, such as on a frozen surface of public waters or when a snow removal device is attached to the ATV/UTV. A county may not impose more restrictive speed limits on ATV/UTVs than the specific limits set forth in these sections. However, these sections do not prohibit a county from enacting speed restrictions in other scenarios if those speed limits are not more restrictive than the state statutes.

As stated above, a county does not have jurisdiction over state trunk highways, and therefore, a county

must obtain DOT's approval to designate an ATV/UTV route along a state trunk highway. As part of the permitting process, DOT may elect to set the speed of the ATV/UTV route/trail at a speed lower than the posted speed limit for motor vehicles based on DOT's general authority over state trunk highways.¹³ If a county wishes to set a specific speed limit along an ATV/UTV route/trail that is on a state trunk highway, the county should include that request as part of its application process. Otherwise, absent other DOT approval, a county may not restrict the speed on an ATV/UTV route/trail abutting a state trunk highway beyond what is set forth for other motor vehicles given the county's lack of jurisdiction.

Application Process for ATV/UTV Route/Trail Approval From DOT.

Assuming the desired ATV/UTV route/trail is on a state trunk highway with a speed limit of 35 MPH or more, DOT approval is obtained through a permit issued by DOT for connection to a state trunk highway.¹⁴ An applicant must complete and submit DOT form DT1504 via the instructions provided with the form.¹⁵ If the ATV/UTV route/trail will be public, the county should be the official applicant and permittee. An ATV/UTV club, other recreational club, or other individual may also be an applicant so long as the county grants that club or individual authority to obtain the permit on the county's behalf. The applicant must also provide a copy of a county's resolution or other agreement that details the maintenance of the ATV/UTV route/trail. If the route/trail will be private, the group or individual with ownership of the route/trail should be the applicant and subsequent permit holder. Note that simply because an ATV/UTV route/trail is public does not prohibit a county from entering into

A county may set forth reasonable regulations relating to the use of its streets and public thoroughfares so long as the restrictions do not violate any statutes.

an agreement with a private group or individual to share maintenance or other costs.

Enforcement.

Pursuant to Wis. Stat. § 23.33(12), a county sheriff and municipal peace officer have "authority and jurisdiction to enforce this section and ordinances enacted in accordance with this section." If a violation of a county's ordinance occurs, the citation would be based on the county's code and penalty schedule. Counties are advised to adopt the ordinance penalty schedule to be consistent with the penalty provisions set forth in Wis. Stat. § 23.33(13).

In the event a county does not have adopted speed restrictions for ATV/UTV routes/trails within its jurisdiction, a county may also look to the general "rules of operation" set forth in Wis. Stat. § 23.33(3)(a) for speed violations. This section states that no person may operate an ATV/UTV "in any careless way so as to endanger the person or property of another." The term "careless way" is not defined in the statutes, and is open to subjective analysis of any situation's facts and circumstances. As such, it is recommended that a county adopt specific speed restrictions or other specific ATV/UTV route/trail ordinances to better address the elements of a violation.

If you have any questions about a county's ability to regulate ATV/UTV speed restrictions, or any other governmental law needs, please contact the Wisconsin Counties Association or any member of the von Briesen & Roper Government Law Group. ♦

Endnotes

- ¹ See Wis. Stat. § 23.33(8)(b). A city, village, town or county may adopt and ATV/UTV route designation highways within its municipal jurisdiction; however, this article will focus on counties' rights and responsibilities in setting forth ATV/UTV speed limits.
- ² See Wis. Stat. § 23.33(4)(d) and (11)(am).
- ³ See Wis. Stat. § 23.33(8)(e).
- ⁴ Wis. Stat. § 23.33(8)(b)2.-3.
- ⁵ The process of obtaining DOT approval is discussed in greater detail in Section 3 herein.
- ⁶ Wis. Stat. § 23.33(11)(a)-(b).
- ⁷ See Wis. Stat. § 346.02(11).
- ⁸ See *Oshkosh v. Campbell*, 151 Wis. 567, 139 N.W. 316 (1913).
- ⁹ See *Madison v. McManus*, 44 Wis. 2d 396, 171 N.W.2d 426 (1969).
- ¹⁰ See Wis. Stat. § 346.02(11).
- ¹¹ *City of Janesville v. Garthwaite*, 83 Wis. 2d 866, 871, 266 N.W.2d (1978), holding that "a local traffic regulation is not inconsistent with the motor vehicle code simply because the vehicle code does not contain a provision on the same subject."
- ¹² See *City of Beaver Dam v. Rasmussen*, 98 Wis. 2d 748 (1980) (unpublished).
- ¹³ See Wis. Stat. § 84.01(2).
- ¹⁴ See Wis. Statute § 86.07(2), Wis. Admin. Code Ch. TRANS 231; DOT Form DT 1504.
- ¹⁵ DOT Form DT 1504 may be found at <https://wisconsindot.gov/Pages/global-footer/formdocs/default.aspx>