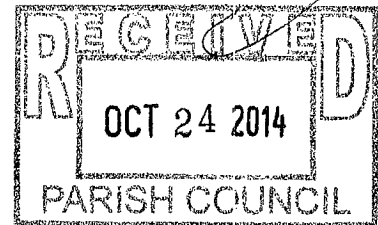




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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005



OCT 20 2014
OPINION 14-0164

172 WATERS & WATER COURSES- Boats, Motorboats & Vessels

Ms. Tiffany K. Clark
Council Secretary, St. Charles Parish
P.O. Box 302
Hahnville, LA 70057

La. R.S. 34:851.27
La. R.S. 34:851.31

La. R.S. 34:851.2
La. R.S. 33:1236(39)

La. R.S. 34:851.27(B)(1) allows parish governing authorities to regulate the speed of an air boat on parish waterways. In addition, La. R.S. 34:851.27(B)(7) grants such governing authorities the power to prohibit the operators of air boats from committing trespass.

Dear Ms. Clark:

As the Secretary of the St. Charles Parish Council ("Council"), you have requested an Attorney General's opinion as to whether the Council has the authority to adopt Ordinance No. 2013-0312 ("proposed Ordinance"), which amends the Parish's existing ordinance regulating air boats. Specifically, you ask if La. R.S. 34:851.27, among other laws, would prohibit such an amendment to the Parish Code of Ordinances.

St. Charles Parish operates under a Home Rule Charter, which came into existence following the enactment of Article VI, § 5(E) of the Louisiana Constitution (1974). As such, this political subdivision is governed by its charter to the extent the provisions are consistent with state law and the state constitution.

In sum, the proposed Ordinance seeks to provide enhanced definitions (Sec. 5-14) and extend restrictions related to the regulation of air boats (Sec. 5-18). The proposed Ordinance also amends the language concerning enforcement (Sec. 5-20) and provides new provisions concerning exemptions (Sec. 5-21) and severability (Sec. 5-22).

La. R.S. 33:1236(39) was enacted by Act 240 of 1974 to give parishes the authority to adopt ordinances for regulation of air boat operations and to fix penalties for violations within the parish boundaries. However, by Act 288 in 1984, the legislature enacted statewide comprehensive boating regulations. Specifically, La. R.S. 34:851.27 prohibits local regulations of any kind except for the posting speed limits on waterways within local jurisdictions.¹

In La. Atty. Gen. Op. No. 95-399, we analyzed the conflict between La. R.S. 33:1236(39) and La. R.S. 34:851.27, and concluded that the later legislation must prevail.

¹ Certain watercraft regulations by the governing authority of Calcasieu Parish and the Cane River Commission were also exempted; however, neither exemptions are applicable here.

La. R.S. 34:851.27, states, in pertinent part:

A. ...[A]ll political subdivisions of this state are expressly prohibited from regulating watercraft in any respect, including, but not limited to, their operation, minimum equipment requirements, registration (with or without a fee) or inspection.

B. (1) The governing authority of any parish or municipality may establish and post speed limits on waterways within its jurisdiction....

...
(4) The governing authority of any parish or municipality may establish penalties for violation of such ordinances in accordance with law.

...
(7)... [T]he operation of all vessels and motorboats shall be subject to state law and local ordinance prohibiting trespass or unauthorized entry.

...
C. In addition to speed limits established by any governing authority of any parish or municipality under the provisions of this Section, there are hereby established certain "no-wake" zones where each vessel shall operate at bare steerage speed, the slowest speed the vessel can travel while allowing the operator to maintain directional control of the vessel to produce the minimum water surface turbulence. The "no-wake" zones are established on all waterways within three hundred feet of any of the following facilities:

(1) A boat launch accessible by the public.

(2) A docking facility adjacent to a boat launch accessible by the public.

La. R.S. 34:851.27(B)(1) and (7) allow parish governing authorities to regulate only the speed of vessels on parish waterways and to enforce certain trespass laws against the operators of such vessels.² Thus, the exercise of authority over the operation of air boats, aside from the precise provisions relative to speed of water traffic, is specifically prohibited.³

Under these circumstances, the first paragraph of Sec. 5-18(A) of the proposed Ordinance, stating that the operation and use of air boats is restricted to use for lawful purposes on real property or land for which the air boat is registered and the navigable streams of the parish, is outside the Council's authority and is, therefore, prohibited.⁴

² La. R.S. 34:851.2(10) defines "vessel" as "watercraft and air boats of every description, other than a seaplane on the water, used or capable of being used as a means of transportation on water." "Watercraft" is defined in La. R.S. 34:851.2(11) to mean "any contrivance used or designated for navigation on water." Accordingly, air boats are controlled by this statute.

³ La. Atty. Gen. Op. No. 82-711 (stating that a Parish Council may not prohibit water skiing on parish waterways). Also see La. Atty. Gen. Op. No. 78-452 (stating that La. R.S. 34:850.23 seems sufficiently inclusive to preclude and prohibit the regulating of pleasure watercraft in any respect.) (Note that pursuant to Act 288 of 1984, La. R.S. 34:850.23 became La. R.S. 34:851.27).

⁴ See La. Atty. Gen. Op. No. 95-399.

In contrast, La. R.S. 34:851.27(B)(7) grants the governing authority power to prohibit the operator of a vessel from trespassing or committing an unauthorized entry. Accordingly, Sec. 5-18(A), second paragraph, declaring it unlawful for an operator of any commercial or recreational air boat to commit trespass is a valid proposed Ordinance as it is also consistent with the extent of parish authority under the state law.⁵ Note that Sec. 5-18(C), providing for an exception to trespassing when the affected property owner issues a "letter of no objection" or "written permission" is valid, but is also likely unnecessary. The reason that such a provision may be unnecessary is that obtaining express, legal or implied authority to be on the property of the affected party, by definition, eliminates the violation.⁶

Furthermore, it appears that Sec. 5-18(B) of the proposed Ordinance establishing the maximum speed at no more than idle speed within three hundred feet of a public boat launch and/or public docking facility adjacent to a public boat launch and within one-fourth mile on any inhabited dwelling is in agreement with the controlling statute and thus is valid.⁷

La. R.S. 34:851.27(B)(4) authorizes the governing authority to establish penalties for violations of its ordinances. As such, Sec. 5-20, which provides for enforcement and penalties, is also valid. However, it is important to note that, pursuant to La. R.S. 34:851.31(A)(1), a violation under La. R.S. 34:851.27(C) is considered a class one violation. Thus, if the speeding violation was committed within a "no-wake" zone as provided by the statute, the penalty must be in accordance with La. R.S. 56:31.⁸

We do not find any prohibition in the law to establish certain exceptions on the applicability of the proposed Ordinances; thus, it appears that Sec. 5-21 is valid.

In sum, it is the opinion of this office that La. R.S. 34:851.27(B)(1) allows parish governing authorities to regulate the speed of an air boat on parish waterways. In addition, La. R.S. 34:851.27(B)(7) grants such governing authorities the power to prohibit the operators of air boats from committing trespass. Also, our review of other Louisiana law has identified no further restrictions applicable to the proposed Ordinance.

⁵ The wording of the proposed Ordinance needs to be revised. It appears that the intent of the local legislative body is to prohibit the operator of an air boat from committing trespass, since an "air boat" cannot have the required criminal intent.

⁶ La. R.S. 14:63(D).

⁷ See La. Atty. Gen. Op. No. 82-702.

⁸ Local ordinances are restricted insofar as the general laws of the State are paramount, and local ordinances cannot be in conflict with or provide a greater penalty than the State statute punishing the same crime. La. Atty. Gen. Op. No. 79-864.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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ATTORNEY GENERAL

By:



Ethel Solache Graham
Assistant Attorney General

JDC: ESG