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March 13, 1985

FILE NO. 85-002

MOTOR VEHICLES:  
Handicapped Parking Enforcement

Honorable Howard W. Carroll  
Illinois State Senator  
627A State House  
Springfield, Illinois 62706

Dear Senator Carroll:

I have your letter wherein you ask the following questions regarding section 11-1301.3 of The Illinois Vehicle Code (Ill. Rev. Stat. 1984 Supp., ch. 95 1/2, par. 11-1301.3):

1. Are local law enforcement agencies obligated to enforce the statutory prohibition against the unauthorized use of parking spaces reserved for handicapped persons, when the parking space is properly designated but is located on private property?
2. Can units of local government, including home rule units, validly enact ordinances imposing different fines for the unauthorized use of parking places reserved for handicapped persons?

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For the reasons hereinafter stated, it is my opinion that local law enforcement agencies are required to enforce the provisions of section 11-1301.3 of The Illinois Vehicle Code with respect to properly posted handicapped parking spaces located on private property. Further, it is my opinion that units of local government, including home rule units, may not validly impose different penalties for the unauthorized use of handicapped parking spaces.

Section 11-1301.3 of The Illinois Vehicle Code provides:

"Unauthorized use of parking places reserved for handicapped persons. (a) It shall be prohibited to park any motor vehicle which is not bearing registration plates or decals issued to a handicapped person, as defined by Section 1-159.1, pursuant to Sections 3-616 or 11-1301.2, or to a disabled veteran pursuant to Section 3-609 of this Act, as evidence that the vehicle is operated by or for a handicapped person or disabled veteran, in any parking place, including any private or public offstreet parking facility, specifically reserved, by the posting of an official sign as designated under Section 11-301, for motor vehicles bearing such registration plates.

(b) Any person or local authority owning or operating any public or private offstreet parking facility may, after notifying the police or sheriff's department, remove or cause to be removed to the nearest garage or other place of safety any vehicle parked within a stall or space reserved for use by the handicapped which does not display handicapped registration plates or a special decal or device as required under this Section.

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(c) Any person found guilty of violating the provisions of this Section shall be fined \$50 in addition to any costs or charges connected with the removal or storage of any motor vehicle authorized under this Section.

(d) Local authorities shall impose fines as established in subsection (c) for vehicles parked in spaces for the handicapped that do not display the registration plates pursuant to Section 3-616 or a special decal or device pursuant to Section 11-1301.2." (Emphasis added.)

In response to your first question, section 11-1301.3 expressly provides that it is unlawful to park any motor vehicle not bearing the appropriate handicapped registration plates or decals in any parking space reserved for handicapped parking by the posting of an official handicapped parking sign. The term "parking space", as used in section 11-1301.3, specifically includes both public and private offstreet parking facilities.

Where the language of a statute is clear and unambiguous, the plain meaning of the statute as expressed in its language must be given effect. (Finley v. Finley (1980), 81 Ill. 2d 317, 326; Certain Taxpayers v. Sheahan (1970), 45 Ill. 2d 75, 84.) Section 11-1301.3 of The Illinois Vehicle Code clearly and unambiguously prohibits the parking of unauthorized motor vehicles in parking places reserved by the display of the appropriate sign for handicapped parking, including those parking spaces located in private offstreet parking facilities.

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Therefore, it is my opinion that local law enforcement agencies are obligated to enforce the provisions of section 11-1301.3 of The Illinois Vehicle Code when a properly designated handicapped parking space is located on private, rather than public, property.

Moreover, it should be noted that the authority to enforce handicapped parking space reservations in private parking facilities which is conferred by section 11-1301.3 of The Illinois Vehicle Code is conferred solely by the terms of that provision, and thus, is independent of, and in addition to, the power of a municipality or a county to contract for the regulation of parking and traffic in private parking areas. (See Ill. Rev. Stat. 1983, ch. 95 1/2, par. 11-209.) Consequently, the obligation of local law enforcement agencies to enforce section 11-1301.3 is not contingent upon the existence of such a contract. Rather, local law enforcement agencies may enforce that section in any private parking facility where handicapped parking spaces have been reserved by the placement of official designation signs.

In response to your second question, section 11-208.1 of The Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 11-208.1) provides in part:

"Uniformity. The provisions of this Chapter of this Act, as amended, \* \* \* shall be applicable and uniformly applied and enforced throughout this State, in all other political

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subdivisions and in all units of local government." (Emphasis added.)

Section 11-208.2 of The Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 11-208.2) provides:

"Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208 and 11-209 of this Chapter of this Act."

Pursuant to these sections, no unit of local government, including a home rule unit, may enact an ordinance inconsistent with or in conflict with the provisions of article 11 of The Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95 1/2, par. 11-100 et seq.), unless there is express authorization to do so within the Code. 1980 Ill. Att'y Gen. Op. 99, 101; see Village of Mundelein v. Hartnett (1983), 117 Ill. App. 3d 1011, 1015.

Section 11-208 of The Illinois Vehicle Code (Ill. Rev. Stat. 1984 Supp., ch. 95 1/2, par. 11-208) provides in pertinent part:

"Powers of local authorities. (a) The provisions of this Code 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:

\* \* \*

14. Imposing fines in accordance with Section 11-1301.3 as penalties for use of any parking place reserved for handicapped persons, as defined by Section 1-159.1, or disabled veterans by any person using a motor vehicle not bearing registration plates specified in Section

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11-1301.1 or a special decal or device as defined in Section 11-1301.2 as evidence that the vehicle is operated by or for a handicapped person or disabled veteran; \* \* \*

\* \* \*

(Emphasis added.)

Although section 11-208 of The Illinois Vehicle Code enables a unit of local government to impose fines for the unauthorized use of handicapped parking spaces, it is my opinion that, when construed together with the language of subsections 11-1301.3(c) and (d) of the Code, section 11-208 does not permit units of local government to impose fines for that offense in amounts different from that provided by statute.

In Village of Mundelein v. Hartnett (1983), 117 Ill. App. 3d 1011, the court was required to determine the validity of a village ordinance prohibiting driving under the influence of alcohol within the village. The State statute pertaining to that offense (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 11-501) had recently been amended to provide that any person violating a local ordinance prohibiting driving under the influence of alcohol "shall be guilty of a Class A misdemeanor". The ordinance in question, however, provided for a different penalty than specified by statute. The court stated:

"

\* \* \*

\* \* \* Municipalities may exercise police power concurrently with the State, and police regulations may differ from those of the State on the same subject, if they are not inconsistent

with the State statutes. Municipalities cannot, however, adopt ordinances under a general grant of power which infringe upon the spirit of the State law or are repugnant to the general policy of the State. The State statute is the strongest indicator of public policy, and where the legislature speaks on a subject upon which it has constitutional power to legislate, the public policy is what the statute [sic] passed indicates. Finally, where there is a conflict between a statute and an ordinance, the ordinance must give way." (Citations omitted.) (Village of Mundelein v. Hartnett (1983) 117 Ill. App. 3d 1011, 1015.)

After determining that the word "shall" in the statutory provision in question indicated the intent to make the penalty provided therein mandatory, the court held:

" \* \* \*

\* \* \* In our view the effect of section 11-501(c) is to remove from municipalities the discretion of providing for Class A misdemeanor treatment in their local ordinances \* \* \*. We believe that to view the amendment as other than mandatory would be to disregard the plain intent of the legislature, to deprecate the seriousness of this offense, and to deprive the public of its interest in obtaining appropriate sanctions against ordinance violators. We, therefore, find that the ordinance here is invalid for failing to comply with the mandate of section 11-501(c) (Ill. Rev. Stat. 1981, ch. 95 1/2, par. 11-501(c), as amended by Pub. Act 82-311), and that defendant's conviction thereunder must be reversed.

In reaching this result, we are mindful of those previous cases which held that the penalty under an ordinance may be less restrictive than the State law without being in conflict with it. In each of these cases, however, the statute was silent as to how municipalities should punish

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violations of similar local ordinances. This clearly is not the situation here.

\* \* \*

(Citations omitted.) Village of Mundelein v. Hartnett (1983), 117 Ill. App. 3d 1011, 1017. "

The statutory provision discussed in Village of Mundelein v. Hartnett is clearly analogous to section 11-1301.3 of The Illinois Vehicle Code, in that subsection 11-1301.3(d) provides that local authorities "shall" impose fines as established in subsection 11-1301.3(c) (e.g., \$50). Moreover, section 11-208 of The Illinois Vehicle Code provides that a municipality may impose fines for unauthorized parking in handicapped parking spaces only "in accordance with Section 11-1301.3 [of The Illinois Vehicle Code]". Under the reasoning of Village of Mundelein v. Hartnett, the effect of this statutory language is to remove from municipalities any discretion in the amount of fines which may be imposed in a local ordinance pertaining to the unauthorized use of handicapped parking spaces. Therefore, as previously stated, it is my opinion that units of local government, including home rule units, may not provide by ordinance for the imposition of a fine different from that specified in section 11-1301.3 of The Illinois Vehicle Code for the unauthorized use of handicapped parking spaces.

Very truly yours,

  
ATTORNEY GENERAL