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DEPARTMENT OF JUSTICE
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May 31, 2024
OPINION 24-0068

The Honorable Gerald Brown
Mayor, Town of Richwood
2710 Martin Luther King Drive
Richwood, LA 71202

64-2 LOUISIANA ADMINISTRATIVE PROCEDURE ACT

La. R.S. 32:1	La. R.S. 32:235
La. R.S. 32:2	La. R.S. 49:951
La. R.S. 32:43	La. R.S. 49:954
La. R.S. 32:45	

Dear Mayor Brown:

DOTD's *Policy for Traffic Enforcement Systems on State Highway Rights-of-Way* is unenforceable and exceeds the statutory authority afforded to DOTD.

You requested an opinion of this office regarding the *Policy for Traffic Enforcement Systems on State Highway Rights-of-Way* (the "Policy") issued by the Traffic Engineering Division of the Louisiana Department of Transportation and Development ("DOTD"). Specifically, you questioned whether the Policy exceeds DOTD's statutory authority pertaining to speed safety cameras and whether the policy is legally enforceable.

In your request, you indicated that the Town of Richwood has put into operation a mobile photo traffic enforcement solution. You think that the relevant statutes pertaining to mobile speed cameras do not require a handheld electronic speed device to be manned and operated by an authorized law enforcement officer, whereas the DOTD Policy includes such a requirement. DOTD submitted a memorandum to our office in which it provided its position regarding the Policy.

For the reasons that follow, we conclude that the Policy exceeds the statutory authority afforded to DOTD and is, therefore, unenforceable.

Louisiana Revised Statutes 32:45 permits local municipal authorities or local parish authorities to utilize mobile speed cameras on roadways other than interstate roadways within their territorial limits and requires these authorities to post signs indicating the presence of the mobile speed cameras. "Mobile speed camera" is defined in La. R.S. 32:45(C) as:

For the purposes of this Section, "mobile speed camera" means a device designed to collect photographic or video evidence of an alleged violation of a posted speed limit by recording images that depict the license plate or other identifying feature of a motor vehicle that is not operated in compliance with a posted speed limit sign.

On May 4, 2023, DOTD issued its Policy setting forth the requirements for speed safety cameras. The Policy defines a "speed safety camera" as either a "handheld speed safety camera" or "an automated traffic enforcement system," and defines those terms as follows:

Handheld Speed Safety Camera shall mean a system:

- a. Consisting of an onsite handheld electronic device, *manned and operated by an authorized law enforcement officer in a police vehicle*, designed to collect photographic or video evidence of alleged traffic violations for the issuance of traffic citations. [emphasis supplied]

or

Automated Traffic Enforcement Safety Device shall mean a system that:

- a. Consists of an electronic/camera system that is *an unmanned optical device installed to work in conjunction with a traffic control signal or radar speed detection equipment, or both, and*
- b. Is designed to collect photographic evidence of alleged traffic violations for the issuance of traffic citations, and
- c. Is either *permanently emplaced in the highway right-of-way, or mobile but not handheld*. [emphasis supplied]

Although the Louisiana Highway Regulatory Act in La. R.S. 32:45(C) defines “mobile speed camera” as “a device designed to collect photographic or video evidence,” the DOTD Policy more narrowly defines a speed safety camera as either a handheld speed safety camera, which is manned and operated by an authorized law enforcement officer in a police vehicle, or an automated traffic enforcement safety device that is an unmanned optical device installed to work in conjunction with a traffic control signal or radar speed detection equipment, or both, but not handheld. The Policy also requires a DOTD permit for local authorities to “install, maintain, and operate stationary *and mobile enforcement systems* on state rights-of-way,” which may be obtained only when conformance to DOTD guidelines is determined by DOTD. [emphasis supplied]

The DOTD Policy with respect to speed control devices appears to be derived from a provision in the Highway Regulatory Act regulating speed enforcement on interstate highways in La. R.S. 32:43. The interstate highway enforcement requirements have no bearing or applicability on speed enforcement by local authorities on non-interstate highways. This seems to be the source of the errant provisions in the Policy.

Rules and regulations promulgated or policies adopted by an administrative agency may not exceed the authorization delegated by the Legislature. *Piazza's Seafood World, LLC v. Odom*, 07-2191 (La. App. 1 Cir. 12/23/08), 6 So.3d 820, 828 (citing *State v. Alfonso*, 99-1546 (La. 11/23/99), 753 So.2d 156, 162). Since DOTD is only an administrative agency of the state, it cannot on its own authority enlarge the powers delegated to it by the Legislature. *Realty Mart, Inc. v. Louisiana Bd. of Tax Appeals*, 336 So.2d 52, 54 (La. App. 1 Cir. 1976). Therefore, DOTD lacks the statutory authority to implement the Policy as it pertains to local authorities or to adopt rules and regulations that impose permit requirements for the utilization of mobile speed cameras by local governing authorities.

As noted earlier, Louisiana Revised Statute 32:45 expressly allows local municipal authorities or local parish authorities to utilize mobile speed cameras and sets forth the

requirements for posting signage of the mobile speed cameras. There is no statutory provision which authorizes DOTD to require permits from local governing authorities to utilize mobile speed cameras on non-interstate roadways. DOTD is not empowered to expand the scope of La. R.S. 32:45 by mandating local municipal authorities to secure permits for the deployment of mobile speed cameras. DOTD Policy regulating speed enforcement by local government authorities therefore overreaches its authority, rendering the policy unenforceable.

In its memorandum, DOTD erroneously classifies “mobile speed cameras” as “traffic control devices”, which DOTD contends authorizes their inclusion in the manual pursuant to the Louisiana Highway Regulatory Act, La. R.S. 32:1 *et seq.* However, La. R.S. 32:1(97) defines “traffic control devices” as “all signs, signals, markings, and devices, not inconsistent with this Chapter, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.” Courts have traditionally interpreted traffic control devices to mean stop signs, traffic signals, or control devices controlling the flow of traffic into and through an intersection.¹ “Mobile speed camera” is separately defined in La. R.S. 32:45 and does not conform to the definition of “traffic control device” pursuant to La. R.S. 32:235. A mobile speed camera is used to “record images that depict the license plate or other identifying feature of a motor vehicle that is not operated in compliance with a posted speed limit sign.” La. R.S. 32:45(C). A speed limit sign is different and falls outside this definition. Obviously, a “mobile speed camera” is not a traffic control device, and DOTD errs in regarding it as such.

Considering the foregoing, it is the opinion of this office that the *Policy for Traffic Enforcement Systems on State Highway Rights-of-Way* is unenforceable in its entirety and exceeds the statutory authority afforded to DOTD.

¹ See *Daigle v. Hanson*, 476 So.2d 953, 956 (La. App. 1 Cir. 1985) (La. R.S. 32:235(B) imposes upon a parish the duty to erect and maintain traffic control devices such as stop signs on roads under its jurisdiction); *Hatcher v. State Through Dept. of Transp. And Development*, 467 So.2d 584, 587 (La. App. 3 Cir. 1985) (The Manual of Uniform Control Devices is a handbook for signals and other traffic control devices, modeled after the guidelines employed by the Federal Highway Administration of the United States Department of Transportation. The use of the manual by DOTD is mandated by La. R.S. 32:235(A)); and *Stutes v. Greenwood Motor Lines, Inc.*, 17-52 (La. App. 3 Cir. 11/22/17), 234 So.3d 75, 82 n.3 (The MUTCD is the nationally accepted engineering treatise published by the Federal Highway Administration which provides guidelines and recommendations for the standardization of traffic control devices, such as signs and signals, nationwide. DOTD has adopted the MUTCD as the minimum safety standards for highway design, construction, and maintenance).

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

With best regards,

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