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AUTHORITY OF THE STATE AND LOCAL GOVERNMENTS TO LEGISLATE IN REGARD TO MOTOR VEHICLES

With the enactment of the Uniform Act Regulating Traffic in 1955¹ the Legislature of the State of Wyoming once again asserted its authority over public highways and streets in the state and the operation of motor vehicles upon them.

As a general proposition, the power to regulate the use of public roads and highways is primarily the exclusive prerogative of the individual states.² The determination of what constitutes a public highway is exclusively within the province of the legislature.³ The procedure for creating a public highway is controlled by statutory and constitutional limitations.⁴ There cannot be a road denoted as being public unless there is recognition of it as such by the proper public authorities.⁵

Case law has attributed the power of individual states over public roads and highways within their boundaries to three basic concepts. First, the state derives its authority from a proprietary interest acquired by state expenditures on the construction and maintenance by it of public highways.⁶ This view has been rejected in Wyoming.⁷ The State of Wyoming does not own its highways in a proprietary capacity because they are constructed and maintained with funds derived from taxes and contributions from the general public.⁸ It would be more proper to state that one of the prime requisites of a public highway is that it is maintained by public authorities.⁹ Second, because the streets and highways are built and maintained at public expense for the use of the general public in the ordinary manner, the state, and the city as an arm of the state, have absolute control over them in the interest of the people of Wyoming.¹⁰ Third, the source most frequently used to sustain a state's authority to regulate motor vehicles is the police power vested in the individual states.¹¹ This power extends to control and regulation of residents and nonresidents on

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1. Wyo. Stat. §§ 31-77 to 247.
 2. 7 Am. Jur. 2d, *Automobiles and Highway Traffic* § 12; *Smith v. State Highway Commission*, 185 Kan. 445, 346 P.2d 259 (1959).
 3. *Nixon v. Edwards*, 72 Wyo. 274, 264 P.2d 287 (1953).
 4. *Ibid.* Wyo. Stat. § 24-1 (1957). This statute defines the establishment of public roads on maps and plats of the Federal government, the state, and boards of county commissioners and the recording thereof.
 5. *Nixon v. Edwards*, *supra* note 3, at 291. For prescriptive use making a road public there must be; 1) a public use for the prescriptive period and 2) a recognition of the road as a public road by the proper public authorities.
 6. *Collins-Dietz Morris Co. v. State Corporation Commission*, 134 Okla. 121, 7 P.2d 123, 130, 80 A.L.R. 572 (1931).
 7. *Weaver v. Public Service Commission of Wyoming*, 40 Wyo. 462, 278 Pac. 542 (1929).
 8. *Ibid.* *State v. Luttrell*, 159 Neb. 641, 68 N.W.2d 332 (1955).
 9. *Nixon v. Edwards*, *supra* note 3, at 293. Also consonant with the theory of public maintenance is the Uniform Act Regulating Traffic. Wyo. Stat., § 31-78 (h) (1) (1957), defines street or highway as "The entire width between the boundary lines of every way publically maintained when any part thereof is open to the use of the public for purposes of vehicular travel."
 10. *Public Service Commission of Wyoming v. Grimshaw*, 49 Wyo. 158, 53 P.2d 532 (1936). *Weaver v. Public Service Commission*, *supra* note 7.
 11. *Weaver v. Public Service Commission*, *supra* note 7.

the public highways.¹² The police power of a state is not referable to any particular source of the Federal Constitution, but is commonly delineated as being a power not expressly delegated to the states, but one which is reserved.¹³ In order for there to be a valid exercise of the police power, the regulations under it must tend to prevent offenses, or preserve the public health, morals, safety, or welfare.¹⁴ The validity of legislative enactments rests on several criteria. In general, the legislation must not be contrary to the Constitution and must meet the standard of reasonableness.¹⁵ Similar restrictions are placed upon municipal legislation.¹⁶

Wyoming has not decided the status conferred upon one holding a driver's license. Generally, the question revolves around the concept of a natural, unqualified right to use the highways versus the concept that use of the public highways is a qualified privilege.¹⁷ The controls and limitations exerted by the authorities in specific instances frequently receive their basis from the particular use made of the highway by the individual.¹⁸ As would be expected, commercial usage would require greater control than ordinary uses.

The enactment of the Uniform Act for Regulating Traffic¹⁹ clarified the status of legislation enacted by cities and towns to regulate traffic within their jurisdictional and geographical limits.²⁰ This act of the legislature was designed to provide uniform traffic laws "throughout the state and in all political subdivisions and municipalities."²¹ Because state jurisdiction over the streets and highways has extended this far, it has been held that a municipality may not prohibit use of the streets within its precincts.²² The

12. *Hess v. Pawlowski*, 274 U.S. 352, 356 (1927).

13. 11 Am. Jur. Constitutional Law § 245.

14. *State ex rel Sampson v. City of Sheridan et al.*, 25 Wyo. 347, 170 Pac. 1 (1918). "Thus, the state legislative bodies, as the chosen representatives of the people of the state, may lawfully enact all manner of wholesome and reasonable laws which it may deem proper for the welfare of the people, provided such enactments are not repugnant to the Constitution." *Fisher, Vehicle Traffic Law* 66 (1961).

15. *State ex rel Sampson v. City of Sheridan et al.*, supra note 14, at p. 3. "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. . . . There must be some clear, real and substantial connection between the assumed purpose of the enactment and the actual provisions thereof."

16. *Western Auto Transports v. City of Cheyenne*, 57 Wyo. 351, 120 P.2d 590 (1942).

17. *Eastwood v. Wyoming Highway Department*, 301 P.2d 818, 821 (1956). "It may be said that those courts who have disapproved statutes which provided for summary revocation of a drivers license have tended to hold that fundamentally the license to drive is a right, denial of which without due process is a violation of both federal and state constitutions . . ." Courts which view the license to drive as a privilege take a contrary view. *Public Service Commission of Wyoming v. Grimshaw*, 49 Wyo. 158, 53 P.2d 1 (1936), suggests that the ordinary citizen, who uses Wyoming highways, does so as a matter of common right; but that those who use the highways as a means for private gain, such as common carriers, are subject to broader controls due to special or exceptional uses of the public highways.

18. *Public Service Commission v. Grimshaw*, 49 Wyo. 158, 53 P.2d (1936).

19. Wyo. Stat. §§ 31-77 to 247 (1957).

20. 147 A.L.R. 522.

21. Wyo. Stat., § 31-85 (1957).

22. *Western Auto Transports v. City of Cheyenne*, supra note 16.

grant of a right to use highways of the state deprives "local authorities" of the power to prohibit the use of the streets and highways within the local area.²³ The power of the state acting through its legislature to delegate authority to regulate motor vehicles to administrative bodies and municipal corporations was well settled before the enactment of the uniform laws in 1955.²⁴

Two basic theories have been evolved to explain the source of municipal powers. First, the older theory, developed when the population was quite sparse, is that municipalities have "inherent power" to govern local affairs.²⁵ Second, because municipalities are only "creatures" of the state they have only powers given to them by their creator.²⁶ One writer suggests that the "creature concept" represents more of a "limitation" on the "inherent rights concept" rather than the two concepts being diametrically opposed.²⁷ Thus, while the state is the source of the police powers exercised by municipalities,²⁸ the municipalities may reasonably exercise jurisdiction over affairs which the legislature has expressly or impliedly delegated to the municipal concern.²⁹

The legislature is specifically charged with the duty to provide by general laws for the organization of municipal corporations in Wyoming.³⁰ Three cities in Wyoming derive their existence and powers from special charters enacted in the latter part of the last century.³¹ In addition Wyo. Stat. § 31-85 (1957), provides;

Local authorities may, however, adopt by ordinance, traffic regulations either similar to the regulations contained herein, or additional regulations so long as they are not in conflict with provisions

23. *Ibid.*

24. *Public Service Commission of Wyoming v. Grimshaw*, 49 Wyo. 158, 53 P.2d 1 (1936). *Blumenthal v. City of Cheyenne*, 64 Wyo. 75, 186 P.2d 556 (1947). *Western Auto Transports v. City of Cheyenne*, 57 Wyo. 351, 120 P.2d 590, 593 (1942). "But merely because the state has such power, it by no means follows that the City of Cheyenne has it also. Municipalities are the creatures of the legislature. They have only such powers as have been granted by the state. Streets in municipalities are part of the highways of the state, and the legislature has primary power to control and regulate them . . ."

25. *Buchholz, Home Rule: A Solution for Municipal Problems?* 16 Wyo. L.J. 47, 49 (1961).

26. *Ibid.*

27. *Ibid.*

28. 37 *Am. Jur.*, *Municipal Corporations* § 279.

29. *Blumenthal v. City of Cheyenne*, 64 Wyo. 75, 186 P.2d 556 (1947). *Clayton v. State*, 38 *Ariz.* 135, 297 *Pac.* 1037 (1931). *Stewart v. City of Cheyenne*, 60 Wyo. 497, 154 P.2d 355, 360 (1944). The case above involved a challenge of the legislature's authority to provide by statute for a municipal board of utilities. ". . . it has been recognized from the very beginning of Wyoming that the legislature has the right to prescribe the powers and the duties of municipalities and these include not only governmental affairs but strictly local affairs as well." But, in *Town of Green River v. Fuller Brush Co.*, 65 *F.2d* 112, 115 (1933), where the constitutionality of the *Green River Ordinance* was in issue it was stated, ". . . local authorities intrusted with regulation of such matters . . . are primarily the judges of the necessities of local situations calling for such legislation. . . ."

30. *Wyo. Const.*, Art. 13, § 1.

31. See *Wyo. Stat.* §§ 15-636 to 739 (1957). Charter cities are *Cheyenne* (1877), *Laramie* (1884), and *Rawlins* (1886).

of this act, and the said authorities shall have the express authority to enforce said traffic regulations so adopted, by action in their respective local municipal courts.

Other statutes both limit and specify the extent of the police power which may be exercised to regular motor vehicles in Wyoming municipalities.³² The statutes specify certain areas which are of peculiar local concern.³³ There are also established criteria for the exercise of local authority. For example, a condition precedent to alteration of the prima facie speed limits established by Wyo. Stat. § 31-130 (1957), by "local authorities" is that there must be conditions extant based upon "engineering and traffic investigations" which warrant change in speed limits.³⁴ Again, the speed limits established by local authorities must be reasonable and safe.³⁵ The fact that the authority to regulate motor vehicles comes from several sources does not hinder enforcement of municipal regulation of motor vehicles. The authority to adopt ordinances may be derived from a single grant or from a combination of enumerated powers.³⁶

Because Wyoming has no general form of home rule legislation,³⁷ ordinances conflicting with or repugnant to legislative enactments governing the use of motor vehicles will be invalid even if the ordinance might regulate a local matter.³⁸ Municipal legislation must not conflict with either the general policy or the express enactments of the state.³⁹ In *Blumenthal v. City of Cheyenne*⁴⁰ the authority of the city to exclude certain large, commercial vehicles from all city streets except the established truck route was upheld. The court found that neither the Constitution nor the laws had been transcended, that the enactment was necessary in the public interest, and that the enactment was "reasonably" calculated to prevent possible harm caused by heavy trucks passing through the "business" area of the city.⁴¹ Even when municipalities do act, they must not act arbitrarily in local regulation, for there must be a clear and substantial connection between the purpose of the enactment and the provisions contained in it.⁴²

The Uniform Act Regulating Traffic of 1955 served the purpose of making clearer the relative responsibilities towards regulating highway traffic between the state and individual municipalities. The state dele-

32. Wyo. Stat. §§ 31-86, 87, 133, 137, 156 (1957).

33. *Ibid.*

34. *Ibid.*

35. *Ibid.*

36. 37 Am. Jur., Municipal Corporations § 279.

37. 16 Wyo. L.J. 47., *supra* note 26.

38. 147 A.L.R. 522.

39. *Western Auto Transports v. City of Cheyenne*, 57 Wyo. 351, 120 P.2d 590 (1942). This case ruled invalid a prohibitory license tax imposed on certain commercial vehicles hauling automobiles. The local enactment was held to be repugnant to the state's grant to use the highways under license.

40. 64 Wyo. 75, 186 P.2d 556 (1947).

41. *Ibid.*

42. *State ex rel. Sampson v. City of Sheridan et. al.*, 25 Wyo. 347, 170 Pac. (1918).

gates its authority to regulate under its police power to the municipalities in matters of local concern. Both state and municipality are limited by case law standards as to the validity of their regulations. The body of law developed in this area in Wyoming is still sparse because Wyoming and its residents are not yet as "rights conscious" as more populous states and because the expense and time involved in appealing matters settled in justice courts and municipal courts beyond the district court level is prohibitory.

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