



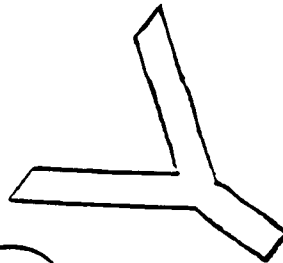
ROLAND W. BURRIS
ATTORNEY GENERAL
STATE OF ILLINOIS



November 20, 1991

FILE NO. 91-043

HIGHWAYS:
Enforcement of Vehicle Code on
Privately Maintained Roadways



Honorable Thomas F. Baker
State's Attorney, McHenry County
2200 North Seminary Avenue
Woodstock, Illinois 60098

Dear Mr. Baker:

I have your letter wherein you inquire whether a county sheriff may enforce the provisions of chapter 11 of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 11-100 et seq.) on privately maintained streets in unincorporated subdivisions in the county. For the reasons hereinafter stated, it is my opinion that, with the exception of articles IV and V thereof, a sheriff is not authorized to enforce the provisions of that chapter of the Illinois Vehicle Code on

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privately maintained roadways, unless a request for such enforcement has been made and an ordinance has been adopted by the county pursuant to section 11-209.1 of the Code. (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 11-209.1.)

According to the information you have provided, the subdivision streets in question were platted and recorded prior to July 23, 1959, but they do not conform to specifications prepared by the county superintendent of highways and have not been accepted into the township or district road system. They have been and are currently privately maintained. Homeowners associations in some of these subdivisions now claim that these roads are public roads, based upon statutory dedication, common law dedication or prescription, even though they continue to be privately maintained, and that the provisions of chapter 11 of the Illinois Vehicle Code should therefore be enforced upon them.

Section 1-126 of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 1-126) provides:

"Highway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel."

Section 11-201 of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 11-201) provides:

"Provisions of act refer to vehicles upon the highways--Exceptions. The provisions of this

Chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

1. Where a different place is specifically referred to in a given section.

2. The provisions of Articles IV and V of this Chapter shall apply upon highways and elsewhere throughout the State."

Under the plain language of these sections, the provisions of chapter 11 of the Illinois Vehicle Code apply exclusively to the operation of vehicles on roadways which are publicly maintained and open to the use of the public for vehicular travel, except as otherwise specifically provided.

Section 11-209.1 of the Illinois Vehicle Code permits representatives of a residential subdivision to request that a local authority enforce the provisions of the Code on subdivision streets, and further provides for a local authority (including a county) to adopt an enabling ordinance to authorize such enforcement. This provision was enacted as part of Public Act 83-1473, effective January 1, 1985.

In addition to amending section 11-209.1, Public Act 83-1473 also amended section 11-100 of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 11-100) by deleting a definition of the term "highway" applicable to chapter 11 of the Code only. The deleted definition included within the meaning of the term "highway" other roadways which were "open to the use of the public as a matter of right". (See

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Ill. Rev. Stat. 1983, ch. 95 1/2, par. 11-100.) The purpose of these amendments was to enhance the ability of local authorities to enforce the provisions of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 1-100 et seq.) through the procedure authorized by section 11-209.1. (Remarks of Senator Bloom, June 20, 1984, Senate Debate on House Bill 2211, p. 29.) The General Assembly, in essence, relieved law enforcement officials from having to determine when ways are "open to the public as a matter of right", by making the provisions of chapter 11 of the Code generally applicable only to publicly maintained ways and to those other roads with respect to which the local authority has adopted an enabling ordinance. Thus, for purposes of section 11-209.1, no roads which are privately maintained, regardless of the nature and extent of the use of those roads by the public, are considered "highways".

I note that Attorney General Scott addressed the issue of the enforcement of the provisions of the Illinois Vehicle Code on privately maintained roads in opinion No. S-858, issued January 17, 1975 (1975 Ill. Att'y Gen. Op. 3). In that opinion, my predecessor concluded that the provisions of chapter 11 of the Illinois Vehicle Code could be enforced on privately maintained roadways if, in accordance with the definition of the term "highway" in section 11-100 of the Code (see Ill. Rev. Stat. 1973, ch. 95 1/2, par. 11-100), the way

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was open to the public as a matter of right for vehicular traffic, regardless of being privately maintained. Because that opinion predated the enactment of Public Act 83-1473, which deleted that definition of "highway", however, the conclusion expressed therein is no longer correct. (I generally agree, nonetheless, with the analysis of the authority cited in opinion No. S-858 regarding the establishment of public rights in highways by dedication or prescription. While such authority may continue to be helpful in resolving the applicability of the provisions of the Illinois Highway Code (Ill. Rev. Stat. 1989, ch. 121, par. 1-101 et seq.) to roads which have historically been privately maintained, it no longer controls the applicability of the Illinois Vehicle Code to such roads.)

You have also inquired regarding who has the duty to determine whether a subdivision road is public or private when a request is made for traffic enforcement on that road. In general, if the request is made either to the sheriff or to another local authority pursuant to section 11-209.1, the sheriff or local authority may make that determination based upon whether the road is publicly maintained.

In conclusion, it is my opinion that chapter 11 of the Illinois Vehicle Code generally may not be enforced on privately maintained subdivision roads, except in accordance

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with the provisions of section 11-209.1 thereof. Articles IV and V of the Code, however, may be enforced on private as well as public ways (People v. Erickson (1969), 108 Ill. App. 2d 142), as may any other sections of the Illinois Vehicle Code which specifically so provide. (See e.g., Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 11-201, 11-1301.3.)

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Roland W. Burris".

ROLAND W. BURRIS
ATTORNEY GENERAL