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OPINION	:	No. 80-1007
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of	:	<u>APRIL 21, 1981</u>
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The Honorable Ronald Barbatoe, District Attorney, Trinity County, has requested an opinion on the following question.

May local authorities, by ordinance or resolution, establish crosswalks between intersections on state highways without the approval of the Department of Transportation?

CONCLUSION

Local authorities may not establish crosswalks between intersections on state highways without the approval of the Department of Transportation.

ANALYSIS

We are informed by the requester that for several years State Highway Route 299, passing through Weaverville, California, had a crosswalk between two intersections allowing pedestrians to cross the highway at a point that was convenient for the citizens of Weaverville. Recently the road has been resurfaced and the Department of Transportation (hereinafter “department”) does not want to place the crosswalk at its former point while the county wishes the crosswalk placed at its former location. The question arises as to which entity, the state or the county, has authority to control placement of the crosswalk and involves the question of the power of each of those entities to regulate traffic.

Section 21 of the Vehicle Code¹ provides:

“Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the state and in all counties and municipalities therein, and *no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.*” (Emphasis added.)

It is well recognized by the courts of this state that the State Legislature has intended to occupy the field with regard to regulation of vehicles and traffic and that local regulation may take place only when authorized by the Legislature. (*Pipoly v. Benson* (1942) 20 Cal. 2d 366, 370; *Atlas Mixed Mortar Co. v. City of Burbank* (1927) 202 Cal. 660, 663.) This is also true in regard to crosswalks. (*Holman v. Viko* (1958) 161 Cal. App. 2d 87, 92.)

Division 11, chapter 1, article 3 (commencing with § 21100 of the Veh. Code) authorizes certain types of local regulation. Within article 3 some sections authorize local regulation only as to highways exclusively under local control and provide that the department must approve ordinances or resolutions regulating traffic on highways not exclusively under local control. (See §§ 21101 and 21104.) Section 21106, unlike other sections of the Vehicle Code, does not limit local regulation to highways exclusively under local control, nor does it provide that the department must approve ordinances or resolutions establishing crosswalks.

Section 21106 provides for local regulation of crosswalks as follows:

“(a) Local authorities, by ordinance or resolution, may establish crosswalks between intersections.

¹ All unidentified statutory references will be to the Vehicle Code.

“(b) Local authorities may install signs at or adjacent to an intersection directing that pedestrians shall not cross in a crosswalk indicated at the intersection. It is unlawful for any pedestrian to cross at the crosswalk prohibited by a sign.”

The issue raised by the requester is the extent of the delegation of power to local authorities intended by subdivision (a) of section 21106 and by other applicable law.

The phrase “local authorities” as defined in section 385 includes the legislative body of a city or county. Section 275 provides that a crosswalk may be located either at an intersection or on other portions of a roadway. If located on a portion of a roadway other than at an intersection, a crosswalk must be clearly indicated by markings on the surface of the road. (§ 275.) Section 21106 provides for crosswalks “between intersections” and thus clearly refers to a crosswalk located on a portion of a roadway other than at an intersection. Under section 275 such crosswalks must be clearly indicated by markings on the surface of the road.

In determining whether the department has any authority to control the local action, we look first to section 440 which provides:

“An official traffic control device is any sign, signal, *marking*, or device not inconsistent with this code, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.” (Emphasis added.)

The term “traffic” as defined in section 620 includes both pedestrian and vehicular travel. Thus, any markings which regulate, warn or guide either pedestrian or vehicle traffic are official traffic control devices. A crosswalk marking fits within this definition.

Section 21400 gives the department authority to prescribe uniform standards for official traffic control devices, but it has not established uniform standards for crosswalks. The delegation to local authorities insofar as these devices are concerned is in section 21351:

“Local authorities *in their respective jurisdictions* shall place and maintain or cause to be placed and maintained such traffic signs, signals, and other traffic control devices upon streets and highways as required herein, and *may place and maintain or cause to be placed and maintained, such appropriate signs, signals or other traffic control devices as may be authorized hereunder* or as may be necessary to indicate and to carry out the provisions of this code or local traffic ordinances or to warn or guide traffic.”

(Emphases added.)

Sections 21350 and 21352 indicate the area of state jurisdiction over traffic control devices. Section 21350 provides:

“The Department of Transportation shall place and maintain, or cause to be placed and maintained, *with respect to highways under its jurisdiction*, appropriate signs, signals, and other traffic control devices as required hereunder, and *may place and maintain, or cause to be placed and maintained, such appropriate signs, signals, or other traffic control devices as may be authorized hereunder*, or as may be necessary properly to indicate and to carry out the provisions of this code, or to warn or guide traffic upon the highways. The Department of Transportation may, with the consent of the local authorities, also place and maintain, or cause to be placed and maintained, in or along city streets and county roads, appropriate signs, signals, and other traffic control devices, or may perform, or cause to be performed, such other work on city streets and county roads, as may be necessary or desirable to control, or direct traffic, or to facilitate traffic flow, to or from or on state highways.” (Emphases added.)

Section 21352 provides:

“The Department of Transportation may erect stop signs at any entrance to any state highway and *whenever the department determines that it is necessary for the public safety and the orderly and efficient use of the highways by the public, the department may erect and maintain*, or cause to be erected and maintained, on any state highway any semaphore or traffic control signaling device or any *official control device* regulating or prohibiting the turning of vehicles upon the highway, allocating or restricting the use of specified lanes or portions of the highways by moving vehicular traffic, *establishing crosswalks at or between intersections* or restricting use of the right-of-way by the public for other than highway purposes.” (Emphases added.)

The extent of local and state jurisdiction under the language in sections 21350 and 21351 has been considered by the California Supreme Court.² In *Gillespie v. City of Los Angeles* (1950) 36 Cal. 2d 553, the court held that the phrase “in their respective jurisdictions” (now appearing in § 21351) referred to only those roads that were under the

² The predecessor to sections 21350 and 21351 was section 465 which had virtually identical language to the present sections. It was section 465 that has been interpreted by the court.

exclusive jurisdiction of the local agency, and the phrase “under its jurisdiction” (now appearing in § 21350) meant roads exclusively under state control. The court stated:

“Both subdivisions (a) and (b) of section 465 provide that the respective agencies shall ‘place and maintain’ the required traffic control devices, If two or more agencies had the same mandatory duty, confusion would result when they sought to discharge their duties over the same highway and the uniformity sought to be achieved by the state highway system would be defeated.” (*Id.*, at p. 559.)

Thus, any traffic control device, such as a marked crosswalk, must be placed and maintained by the department on highways over which it has exclusive jurisdiction. The Streets and Highways Code provide in sections 24, 230, and 599 that Route 299 is a state highway. Sections 90 and 91 of the Streets and Highways Code provide that such highways are under the control of the department.³ It is manifest, therefore, that Route 299 is under the exclusive jurisdiction of the state and under the *Gillespie* holding, the department has the exclusive authority to establish crosswalks at or between intersections on such roads.

³ The *Gillespie* case also held that section 465 and applicable provisions of the Streets and Highways Code are in *pari materia* and must be construed together. (*Gillespie v. City of Los Angeles, supra*, 36 Cal. 2d at p. 558.)