

August 22, 2008

The Honorable Amanda K. Spies
Tuscarawas County Prosecuting Attorney
125 E. High Avenue
New Philadelphia, Ohio 44663

SYLLABUS:

2008-030

1. A golf cart is a motor vehicle and may not be driven on public streets and highways unless it meets the statutory requirements that are applicable to motor vehicles, including operating and equipment requirements. (1990 Op. Att’y Gen. No. 90-043, approved and followed.)
2. Title II of the Americans with Disabilities Act, 42 U.S.C.A. §§ 12131-12134 (West 2005), does not require the State, a county, or other public entity to refrain from enforcing motor vehicle equipment and operating standards in order to allow a person who is disabled to use a golf cart for personal transportation on public streets and highways. A public entity may be required, however, to grant to a person who is disabled a more limited modification to such standards if the facts developed from an individualized inquiry demonstrate that the limited modification is reasonable and would enable the person to meet those standards necessary to the public safety.



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OPINION NO. 2008-030

The Honorable Amanda K. Spies
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125 E. High Avenue
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Dear Prosecutor Spies:

You have requested an opinion whether the federal Americans with Disabilities Act (ADA) requires the county to permit persons with a disability to operate a golf cart on public highways and streets without complying with the laws regarding motor vehicles. If the answer is in the affirmative, you wish to know whether law enforcement officers may demand proof of disability, and what standard should be used for determining whether the operator is disabled. You specifically ask us to examine the impact of the ADA on the advice rendered in 1990 Op. Att'y Gen. No. 90-043.

A Golf Cart is a Motor Vehicle

In 1990 Op. Att'y Gen. No. 90-043, the Attorney General concluded that a golf cart, described therein as "a four-wheeled motorized vehicle that is designed and manufactured for the primary purpose of transporting people and equipment on a golf course," is a "motor vehicle" for purposes of R.C. Chapters 4501, 4503 (licensing of motor vehicles), and 4505 (certificates of title), and that, accordingly, a "golf cart may not lawfully be operated on public streets and highways unless it satisfies the statutory requirements that are applicable to motor vehicles." (Syllabus, paragraphs 1 and 2). Furthermore, the opinion concluded that a golf cart "may not be operated on public streets and highways unless it is registered pursuant to R.C. Chapter 4503; it complies with operating requirements imposed by R.C. Chapter 4511 and equipment requirements imposed by R.C. Chapter 4513; its owner meets financial responsibility requirements imposed by R.C. Chapter 4509; and its operator has a driver's license." (Syllabus, paragraph 3). The opinion ultimately advised that "[t]here appear to be serious questions as to whether a typical golf cart can comply with equipment and safety requirements that are applicable to motor vehicles," and "[a] golf cart that does not so comply is subject to removal from the highway pursuant to R.C. 4513.02." 1990 Op. Att'y Gen. No. 90-043 at 2-181.

The ADA was enacted and became effective subsequent to the issuance of 1990 Op. Att'y Gen. No. 90-043, and you wish to know whether the opinion has been "modified" by the

federal legislation.¹ We will begin by setting forth the requirements of the ADA, and then examine those requirements in relation to the state statutory scheme regulating the operation of motor vehicles in Ohio.

Americans with Disabilities Act

Section 12132 of Title 42 of the U.S. Code states: “Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” A “public entity” includes “any State or local government” and “any department, agency, special purpose district, or other instrumentality of a State or States or local government.” 42 U.S.C.A. § 12131(1) (West 2005). The use of public streets and highways for purposes of operating a motor vehicle to transport oneself is a service, program, or activity of a public entity under § 12132. *See Young v. City of Claremore*, 411 F. Supp. 2d 1295 (N.D. Okla. 2005); U.S. Department of Justice, The Americans with Disabilities Act, Title II, Technical Assistance Manual (Title II TAM), § II-3.6100, Illustration 3, note 18, *infra*.² *See also Theriault v. Flynn*, 162 F.3d 46 (1st Cir. 1998); *Briggs v. Walker*, 88 F. Supp. 2d 1196 (D. Kan. 2000). Thus, the State, the counties, and other public entities are prohibited from excluding a “qualified individual with a disability” (as further described below), on account of his disability, from using the public streets and highways for purposes of operating a motor vehicle to transport himself.³

¹ More specifically, your question requires examination of Title II, Subtitle A, of the ADA, 42 U.S.C.A. §§ 12131-12134 (West 2005). Subtitle A was enacted on July 26, 1990, and became effective eighteen months thereafter, except for § 12134, which became effective on the date of enactment. Pub. L. No. 101-336, § 205, 104 Stat. 327, 338. Section 12134 required the U.S. Attorney General to promulgate regulations within one year of the ADA’s enactment. *See* 28 C.F.R. pt. 35 (2007). (1990 Op. Att’y Gen. No. 90-043 was issued on June 20, 1990.)

² The U.S. Attorney General is required to “render technical assistance to individuals and institutions that have rights or duties” under Title II, Subtitle A, of the ADA, and “shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties” under Title II. 42 U.S.C.A. § 12206 (West 2005). *See Briggs v. Walker*, 88 F. Supp. 2d 1196, 1203, n.3 (D. Kan. 2000) (“[t]he Title II TAM is persuasive authority unless it is plainly erroneous or inconsistent with the DOJ regulations it interprets”).

³ We assume for purposes of this opinion that, as to the matters discussed herein, Congress constitutionally abrogated the States’ Eleventh Amendment immunity in Title II of the ADA. 42 U.S.C.A. § 12202 (West 2005). *See U.S. v. Georgia*, 546 U.S. 151, 159 (2006) (“[i]nsofar as Title II creates a private cause of action for damages against the States *for conduct that actually violates the Fourteenth Amendment*, Title II validly abrogates state sovereign immunity”) (emphasis in original and added); *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004) (“Title II, *as it*

We note initially that Ohio law does not allow all drivers, *except* persons with a disability, to operate a golf cart on public streets and highways without complying with the statutes applicable to motor vehicles—every person is prohibited from doing so. And, for the most part, the state motor vehicle statutes are facially neutral—they make no distinction between persons who are disabled and those who are not.⁴ The issue remains, however, whether the State and its units of local government have an obligation to allow a person who is disabled to operate a golf cart on public streets and highways without complying with the statutes pertaining to the operation of motor vehicles, so as to provide that person “meaningful access” to public streets and highways. As noted by the court in *Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 907 (6th Cir. 2004), “Title II does more than prohibit public entities from intentionally discriminating against disabled individuals. It also requires that public entities make reasonable accommodations for disabled individuals so as not to deprive them of meaningful access to the benefits of the services such entities provide.” *See also Alexander v. Choate*, 469 U.S. 287, 301 (1985) (“an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the [State] offers,” and “to assure meaningful access, reasonable accommodations in the [State’s] program or benefit may have to be made”).⁵

applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress’ § 5 authority to enforce the guarantees of the Fourteenth Amendment”) (emphasis in original and added). Cf. Board of Trustees v. Garrett, 531 U.S. 356 (2001) (state employees are barred by the Eleventh Amendment from filing suit in federal court to recover money damages against the State for failure to comply with Title I of the ADA, which prohibits employers from discriminating against persons with a disability).

Units of local government are not covered by the Eleventh Amendment’s grant of immunity. *Board of Trustees v. Garrett*, 531 U.S. at 369.

⁴ Requirements for issuance of a driver’s license are the primary exception. *See, e.g.*, R.C. 4507.08(D)(3); R.C. 4507.081; R.C. 4507.12; R.C. 4507.14; R.C. 4507.20. We will discuss these restrictions more fully below. *See* note 14, *infra*.

⁵ *Alexander v. Choate*, 469 U.S. 287 (1985) was decided under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (West 1999) (Supp. Pamphlet 2007), which prohibits an “otherwise qualified individual with a disability” from being excluded from participating in, denied the benefits of, or subjected to discrimination under, any program or activity receiving federal financial assistance, solely on account of his disability. However, the ADA, 42 U.S.C.A. § 12201 (West 2005), states that, “[e]xcept as otherwise provided in this [Act], nothing in this [Act] shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 or the regulations issued by Federal agencies pursuant to such title.” *See also* 42 U.S.C.A. § 12133 (West 2005) (“[t]he remedies, procedures, and rights set forth in section 794a of Title 29 [§ 505 of the Rehabilitation Act of 1973] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title”); 42

This obligation on the part of public entities to make reasonable modifications derives from the command in § 12132 that no “qualified individual with a disability” be excluded or discriminated against by reason of his disability, and the Act’s definition of “qualified individual with a disability.” A “qualified individual with a disability” is “an individual with a disability who, *with or without reasonable modifications* to rules, policies, or practices ... *meets the essential eligibility requirements* for the receipt of services or the participation in programs or activities provided by a public entity.” (Emphasis added.) 42 U.S.C.A. § 12131(2) (West 2005).⁶ See *Alexander v. Choate*, 469 U.S. at 299, n. 19 (“the question of who is ‘otherwise qualified’ and what actions constitute ‘discrimination’ ... would seem to be two sides of a single coin; the ultimate question is the extent to which a [State] is required to make reasonable modifications in its programs for the needs of the handicapped”).⁷

U.S.C.A. § 12134(b) (West 2005) (regulations adopted by the Attorney General to implement Subtitle A must be consistent with the ADA and “with the coordination regulations” promulgated by the Department of Health, Education, and Welfare implementing § 504 of the Rehabilitation Act).

The Supreme Court has stated that “[t]he directive [in § 12201] requires us to construe the ADA to grant at least as much protection as provided by the regulations implementing the Rehabilitation Act.” *Bragdon v. Abbott*, 524 U.S. 624, 632 (1998). See also *Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 908 (6th Cir. 2004) (“[t]he analysis of claims under the [ADA] roughly parallels those brought under the Rehabilitation Act,” and “cases construing one statute are instructive in construing the other”); *Theriault v. Flynn*, 162 F.3d 46, 48, n.3 (1st Cir. 1998) (“Title II of the ADA was expressly modeled after Section 504 of the Rehabilitation Act, and is to be interpreted consistently with that provision”); *Young v. City of Claremore*, 411 F. Supp. 2d 1295, 1303 (N.D. Okla. 2005) (“Title II of the ADA is modeled on the Rehabilitation Act, and decisional law on the Rehabilitation Act may be relied upon interchangeably in examining claims under the ADA”).

⁶ For purposes of the ADA, a “disability” is “a physical or mental impairment that substantially limits one or more of the major life activities” of an individual, “a record of such an impairment,” or “being regarded as having such an impairment.” 42 U.S.C.A. § 12102(2) (West 2005).

⁷ The ADA uses the phrase “qualified” individual, while § 504 of the Rehabilitation Act uses the phrase “otherwise qualified” individual. The regulations implementing § 504, however, use the phrase “qualified” rather than “otherwise qualified,” see e.g., 28 C.F.R. §§ 41.32, 41.51 (2007), and the Supreme Court noted this distinction with approval in *Southeastern Community College v. Davis*, 442 U.S. 397, 407, n.7 (1979). The significance of these terms, and why it is appropriate to use § 504 cases to help explain the meaning of “qualified” persons for purposes of the ADA, is discussed in further detail in note 11, *infra*. See also note 5, *supra*.

An analysis of whether a public entity has an obligation to provide modifications to a person who is disabled must consider, therefore: (1) whether the person could, with the modifications, meet the essential eligibility requirements of the benefit offered by the public entity; and, (2) if he could, whether the modifications are “reasonable.” Resolution of these issues requires an individualized inquiry, which is highly factual in nature. *See Buck v. U.S. Dept. of Transportation*, 56 F.3d 1406, 1408 (D.C. Cir. 1995) (“[a] determination as to whether an individual is otherwise qualified should ‘in most cases’ be made in the context of an ‘individualized inquiry’ into the relation between the requirements of the program and the abilities of the individual”);⁸ *Brennan v. Stewart*, 834 F.2d 1248, 1262 (5th Cir. 1988) (“since it is a part of the ‘otherwise qualified’ inquiry ... the ‘reasonable accommodation’ question [must] be decided as an issue of fact”).⁹ Although an individualized inquiry may be necessary to determine whether a person could, with modifications, meet the “essential eligibility requirements” for the receipt of services, and whether the modifications are “reasonable,” we will set forth the standards used by the courts to resolve these issues. As will become apparent, the two inquiries are inextricably related, but we will attempt to separate them for purposes of discussion.

⁸ *Cf. Olmstead v. L.C.*, 527 U.S. 581, 607 (1999) (under Title II of the ADA, the duty of States to provide community-based treatment for persons with mental disabilities may be based, in part, on whether “the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities”); *Alexander v. Choate* (Section 504 did not require the State of Tennessee to modify its Medicaid program by waiving durational limitations on inpatient hospital coverage for handicapped persons). *See also Ward v. Skinner*, 943 F.2d 157, 162-63 (1st Cir. 1991) (Judge, now Justice, Breyer writing for the court) (“an agency, in treating handicapped persons, may sometimes proceed by way of general rule or principle, at least where 1) the agency behaves reasonably in doing so, 2) a more individualized inquiry would impose significant additional burdens upon the agency, and 3) Congress, as well as the agency, has expressed some kind of approval of the general rules or principles concerned.... [W]e doubt that the [Rehabilitation] Act ... requires individual inquiry to the point where doing so is unreasonably burdensome (taking account not only of administrative needs but also of Rehabilitation Act policies”).

⁹ *Cf. Young v. City of Claremore*, 411 F. Supp. 2d at 1310-11 (concluding in a case presenting the same basic issue you raise, that, while “it is true that reasonableness of a requested modification is usually a question of fact requiring a fact-intensive inquiry ... the Court finds the modification requested by Plaintiff in this case is unreasonable as a matter of law,” considering that plaintiff requested “unfettered access” to “all types of roads at all hours” in a golf cart, and that the case also involved “undisputed facts (which are in many ways self-evident) regarding the health and safety risks associated with a golf cart traversing public streets and highways in the flow of vehicular traffic”). *See also* note 16, *infra*.

Essential Eligibility Requirements

The first part of an analysis to determine a public entity's obligation to provide an individual with a modification is to establish whether the individual could, considering his disability, meet the "essential eligibility requirements" for participation in the activities of the public entity if he is granted the modification. The courts have interpreted "essential eligibility" requirements as those that are "necessary" to participation in the benefit.¹⁰ See *Southeastern Community College v. Davis*, 442 U.S. 397, 407 (1979) ("[t]he remaining question is whether the physical qualifications [the college] demanded of [an applicant for admission who was deaf] might not be necessary for participation in its nursing program"); *Buck v. U.S. Dept. of Transportation*, 56 F.3d at 1408 ("[o]nce an individual has admitted that he does not meet such a necessary—as opposed to a merely convenient—standard, the Rehabilitation Act does not forbid the application to him of a general rule"); *Doherty v. Southern College of Optometry*, 862 F.2d 570, 574 (6th Cir. 1988) (the neurological condition of an optometry student "indisputably prevents him from being able to use the four instruments, thus the critical question is whether proficiency with the four instruments is a necessary requirement of the program"). See also Title II TAM § II-3.5100 ("[a] public entity may not impose eligibility criteria for participation in its programs, services, or activities that either screen out or tend to screen out persons with disabilities, unless it can show that such requirements are necessary for the provision of the service, program, or activity").

The Supreme Court has held that Title II "does not require States to compromise their essential eligibility criteria for public programs." *Tennessee v. Lane*, 541 U.S. at 531-32. And, a public entity is not required to make a requested modification if it would not enable the requester to meet the necessary requirements. See *Southeastern Community College v. Davis*, 442 U.S. at 406-407, 409 ("[a]n otherwise qualified person is one who is able to meet all of a program's requirements [including necessary physical qualifications] in spite of his handicap," and it appeared "unlikely" in the instant case that the disabled individual could benefit from any modification "that the regulation reasonably could be interpreted as requiring");¹¹ *Buck v. U.S.*

¹⁰ See generally Title II TAM, § II-2.8000 ("[t]he 'essential eligibility requirements' for participation in many activities of public entities may be minimal. For example, most public entities provide information about their programs, activities, and services upon request. In such situations, the only 'eligibility requirement' for receipt of such information would be the request for it. However, under other circumstances, the 'essential eligibility requirements' imposed by a public entity may be quite stringent").

¹¹ As discussed in note 7, *supra*, HEW's regulations implementing § 504 use the term "qualified" (as does the ADA) rather than the phrase "otherwise qualified," which appears in § 504 itself. In *Southeastern Community College v. Davis*, 442 U.S. at 407, n.7, the Court cites with approval the explanation prepared by HEW: "The Department believes that the omission of the word 'otherwise' is necessary in order to comport with the intent of the statute because, read literally, 'otherwise' qualified handicapped persons include persons who are qualified

Dept. of Transportation, 56 F.3d at 1408 (where a public agency “has established a certain safety standard ... and there is no way in which an individual with a certain handicap can meet that standard, the law does not require the pointless exercise of allowing him to try”). *Cf. Ability Center of Greater Toledo v. City of Sandusky*, 385 F.3d at 910 (“[a] person with an ambulatory disability who would be eligible for public services but for publicly imposed architectural impediments to the receipt of such services is a qualified individual with a disability” and thus, “to ensure that the individual is not denied the benefits of the public service, the public entity must remove the architectural barrier of its own creation”).

The courts have held specifically that a public entity is not required to compromise its safety standards,¹² including those regulating the operation of motor vehicles. *See Theriault v. Flynn*, 162 F.3d at 50 (the ADA “certainly does not require licensing officials to refrain from evaluating safety risks *because* an applicant appears to be disabled.... the safe-driving standard is accepted as appropriate”); *Coolbaugh v. State of Louisiana*, 136 F.3d 430, 439 (5th Cir. 1998) (the State did not discriminate against a person on account of his disability by requiring him to take a driving test in order to receive a driver’s license; “[r]ather, its decision was motivated by a desire to protect the public on the state’s highways”); *Ward v. Skinner*, 943 F.2d 157, 161-64 (1st Cir. 1991) (the federal Department of Transportation did not violate § 504 when it denied plaintiff’s request to waive a safety rule that disqualified those with a history of epilepsy from driving trucks in interstate commerce); *Briggs v. Walker*, 88 F. Supp. 2d at 1202-03 (“an applicant’s ability to safely control a motor vehicle was an essential eligibility requirement for the privilege to operate a motor vehicle. Federal regulations openly recognize that some activities trigger safety questions which, in turn, affect eligibility requirements”). *See also* Title II TAM, § II-3.7200, Illustration (“[a]n individual is not ‘qualified’ for a driver’s license unless he or she can operate a motor vehicle safely. A public entity may establish requirements, such as vision requirements, that would exclude some individuals with disabilities, if those requirements

except for their handicap, rather than in spite of their handicap.” (Emphasis added.) HEW’s note continues: “‘Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be ‘otherwise qualified’ for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms ‘qualified’ and ‘otherwise qualified’ are intended to be interchangeable.” *Id.* *See also Ward v. Skinner*, 943 F.2d at 161 (the Rehabilitation Act “makes it unlawful for DOT to forbid [the claimant] from driving trucks ‘by reason of . . . his handicap,’ *i.e.*, his epilepsy, if he is ‘otherwise qualified’ to drive. (We suspect that, in this context, we should read the word ‘otherwise’ to mean ‘nonetheless,’ for ‘otherwise,’ in its ordinary sense, means ‘without the handicap’ in which case virtually every handicapped person would be ‘otherwise qualified’”).

¹² *See Buck v. U.S. Dept. of Transportation*, 56 F.3d 1406, 1408 (D.C. Cir. 1995); Title II TAM, § II-3.5200 (“[a] public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities”).

are essential for the safe operation of a motor vehicle”).¹³ A person who is unable to meet the necessary safety requirements of a program or service, even if provided modifications, is not, therefore, a “qualified individual,” and a public entity is not required to modify its program or service for that person.

Is the Modification Reasonable?

If an individual with a disability could meet, with a proposed modification, the requirements necessary to participate in a service or program, the next inquiry is whether the modification is “reasonable.” In *Tennessee v. Lane*, 541 U.S. at 531-32, the Court explained that Title II of the ADA “requires only ‘reasonable modifications’ that would not fundamentally alter the nature of the service provided,” and the DOJ adopted this standard in 28 C.F.R. § 35.130(b)(7) (2007): “A public entity shall make *reasonable modifications* in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, *unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.*” (Emphasis added.) See also Title II TAM, § II-3.6100 (“[a] public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate, however, that the modifications would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification”). See, e.g., *Jones v. City of Monroe*, 341 F.3d 474, 480 (6th Cir. 2003) (waiver of ordinance imposing one-hour limitation on free public parking would require the city “to cease enforcement of an otherwise valid ordinance, which by its very nature requires a fundamental alteration of the rule itself”). Again, the courts have found to be unreasonable modifications that would jeopardize the public safety. See, e.g., *Doherty v. Southern College of Optometry*, 862 F.2d at 575 (“[s]urely the law does not require that a handicapped person be accommodated by waiver of [an educational degree] requirement when his failure to meet the requirement poses potential danger to the public”); *Young v. City of Claremore* (note 9, *supra*).¹⁴

¹³ Title II TAM, § II-3.7200 continues: “BUT: The public entity may only adopt ‘essential’ requirements for safe operation of a motor vehicle. Denying a license to all individuals who have missing limbs, for example, would be discriminatory if an individual who could operate a vehicle safely without use of the missing limb were denied a license. A public entity, however, could impose appropriate restrictions as a condition to obtaining a license, such as requiring an individual who is unable to use foot controls to use hand controls when operating a vehicle.”

¹⁴ As alluded to in note 4, *supra*, Ohio has several statutory provisions that address issuance of a driver’s license to persons with a disability. For example, a person applying for renewal of a driver’s license must “submit to a screening of the person’s vision” before the license may be renewed, and a deputy registrar or driver’s license examiner may not issue a license if the results of the screening do not meet the standards required for licensing. R.C. 4507.12. A person with impaired hearing must equip his motor vehicle “with two outside rear vision mirrors, one on the

Courts may look to see whether other alternatives are available when judging the reasonableness of a proposed modification. For example, in *Young v. City of Claremore*, the court included in its analysis of whether a city was required under the ADA to allow a disabled person to operate his golf cart on public roads the fact that the city offered a transportation service to disabled persons that had normal hours of operation and could transport the plaintiff around the city. 411 F. Supp. 2d at 1311. *See also Jones v. City of Monroe*, 341 F.3d at 481 (denying plaintiff's request for the city to waive its time limitation on free parking spaces based in part because "the record contains evidence of alternative accommodations available to Jones such as a service which will pick her up at any Monroe parking lot, based on a schedule constructed personally for Jones, and take her to the door of her office building").

1990 Op. Att'y Gen. No. 90-043 and Ohio Motor Vehicle Laws

We turn now to examine the manner in which the ADA and Ohio's motor vehicle laws relate, specifically with regard to the operation of golf carts on public streets and highways. As mentioned above, 1990 Op. Att'y Gen. No. 90-043 covers a variety of motor vehicle and traffic laws, including registration, titling, taxes and fees, drivers' licenses, vehicle operation, and vehicle equipment. The opinion explains that a golf cart is a motor vehicle for purposes of these laws, and although no specific statute prohibits a golf cart from being operated as a motor vehicle on public streets and highways, it is unclear whether the General Assembly intended to allow it. 1990 Op. Att'y Gen. No. 90-043 at 2-182. "There appear to be serious questions as to whether a typical golf cart can comply with equipment and safety requirements that are applicable to motor vehicles," and a "golf cart that does not so comply is subject to removal from the highway pursuant to R.C. 4513.02." 1990 Op. Att'y Gen. No. 90-043 at 2-181. Assuming that a typical golf cart could not meet all equipment and safety requirements necessary for operation on public streets, we view your question as whether the ADA requires that those equipment and safety requirements that would be impossible for a golf cart to meet, and thus

left side and the other on the right side," in order to be licensed. R.C. 4507.14. And, the registrar of motor vehicles, upon issuing or renewing a driver's license "whenever good cause appears, may impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle that the licensee may operate, or any other restrictions applicable to the licensee that the registrar determines to be necessary." R.C. 4507.14. *See also* R.C. 4507.06(A)(1)(c); R.C. 4507.08(D)(3); R.C. 4507.081; R.C. 4507.11; R.C. 4507.20.

As discussed above, the courts and the Department of Justice recognize the right of a State to impose these types of restrictions on persons with disabilities in order to preserve the public safety. *See Briggs v. Walker*, 88 F. Supp. 2d at 1203 ("courts have had no difficulty accepting the ability to safely control a motor vehicle as an essential eligibility requirement for the privilege of driving or as an essential function of a driver"); Title II TAM, § II-3.7200 (note 13 and associated text, *supra*) and § II-3.4300. *See also Theriault v. Flynn; Coolbaugh v. State of Louisiana*, 136 F.3d 430 (5th Cir. 1998); *Buck v. U.S. Dept. of Transportation*; note 11, *supra*.

would prevent golf carts from being operated on public highways and streets, not be enforced so as to allow a person with a disability to operate a golf cart thereon.¹⁵

As discussed above, requirements necessary to ensure the safe operation of motor vehicles properly constitute “essential eligibility” requirements, and public entities are not required to grant modifications that would jeopardize the public safety. In *Young v. City of Claremore*, 411 F. Supp. 2d at 1301, 1310, the court found the plaintiff’s requested modification of “unfettered access to operate his golf cart without restrictions as to route, hours of operation, or type of road traversed,” to be unreasonable as a matter of law in light of the “self-evident” facts “regarding the health and safety risks associated with a golf cart traversing public streets

¹⁵ 1990 Op. Att’y Gen. No. 90-043 addressed operation of a “typical” golf cart—that is, “a four-wheeled motorized vehicle that is designed and manufactured for the primary purpose of transporting people and equipment on a golf course,” *id.*, at 2-176, and we have assumed for purposes of discussion that the golf cart to be operated on roadways was designed for use only on golf courses. The National Highway Traffic Safety Administration (NHTSA) has observed that most unmodified golf carts can achieve a maximum speed of less than twenty miles per hour, and the agency has declined, therefore, to develop Federal Motor Vehicle Safety Standards (FMVSS) with which such golf carts must comply. *See* 63 Fed. Reg. 33194, 33196 (June 17, 1998) (promulgation of 49 C.F.R. § 571.500) (because application of the passenger car Federal Motor Vehicle Safety Standards to “sub-25 mph passenger-carrying vehicles would necessitate the addition of a considerable amount of structure, weight and cost, such application appears to preclude their production and sale”).

The NHTSA has also noted, however, that the use of modified or custom-made golf carts designed to reach speeds of between twenty to twenty-five miles per hour is becoming more common. (A mobility device that can reach speeds of over twenty-five miles per hour is considered by the NHTSA to be a motor vehicle that must meet the applicable Federal Motor Vehicle Safety Standards. *See* 49 C.F.R. pt. 571 (2007).) The agency has classified these devices as “low-speed vehicles” (*see* 49 C.F.R. § 571.3 (2007)) and developed FMVSS No. 500 (49 CFR § 571.500) with which manufacturers must comply. *See* 63 Fed. Reg. 33194 (June 17, 1998). Section 571.500 imposes “minimum motor vehicle equipment appropriate for motor vehicle safety,” for any low-speed vehicle (LSV) that is “operated on the public streets, roads, and highways.”

A disabled person’s request to use a LSV, which must meet federal safety standards for highway use, might be viewed as a more reasonable modification than one involving a traditional golf cart built for use only on golf courses. For example, in *Young v. City of Claremore*, the court took into consideration that the plaintiff’s golf cart was manufactured for off-road use and did not meet the Federal Motor Vehicle Safety Standards. 411 F. Supp. 2d at 1300. The NHTSA has specifically stated, however, that “this final rule [49 C.F.R. § 571.500] does not alter the ability of states and local governments to decide for themselves whether to permit on-road use of golf cars and LSVs.” 63 FR 33194, 33197 (June 17, 1998).

and highways in the flow of vehicular traffic.”¹⁶ *Cf. Jones v. City of Monroe*, 341 F.3d at 480 (plaintiff’s request for the city to waive for her its one-hour limit on free parking spaces “would be ‘at odds’ with the fundamental purpose of the rule,” and “would also require Monroe to cease enforcement of an otherwise valid ordinance, which by its very nature requires a fundamental alteration of the rule itself”).¹⁷ In keeping with *Young v. City of Claremore*, and other judicial decisions and Department of Justice pronouncements upholding the authority of public entities to enforce motor vehicle safety standards, we conclude that the ADA does not require a county or other public entity to refrain from enforcing motor vehicle equipment and operating requirements so as to allow a person with a disability to use a golf cart on public streets and highways.

As explained above, the duty of a public entity to provide a modification is fact-specific, and depends upon whether the individual involved is a “qualified individual”—that is, whether the person is disabled and could, with the proposed modification, meet the essential eligibility requirements of the benefit offered by the public entity—and, if he is, whether the modification is “reasonable.” A limited modification that would provide a person “meaningful access” to

¹⁶ In addition to safety concerns, factors considered by the court in *Young v. City of Claremore* in denying the requested modification included: the plaintiff had the ability to operate an automobile, but was anxious doing so because of an automobile’s potential speed, state law did allow for some more limited modifications, and the city offered a transportation service to persons who were disabled. 411 F. Supp. 2d at 1311.

¹⁷ Although no precedent similar to *Young v. City of Claremore* exists for Ohio, the Sixth Circuit addressed in *Dillery v. City of Sandusky*, 398 F.3d 562 (6th Cir. 2005), the claims brought by a woman who frequently rode her motorized wheelchair in the street, and consequently had been arrested on several occasions for being a pedestrian in the roadway. *See* R.C. 4511.50. *See also* R.C. 4511.491 (“[e]very person operating a motorized wheelchair shall have all of the rights and duties applicable to a pedestrian that are contained in this chapter, except those provisions which by their nature can have no application”). The plaintiff alleged that the city had violated the ADA by failing to install proper curb cuts so that she was forced to ride her wheelchair in the street and because city police officers had arrested her for doing so.

The court recognized that the city had previously been found to have violated the ADA by failing to install proper curb cuts, but declined to find that the city had discriminated against plaintiff on account of her handicap by prohibiting her from using her wheelchair in the street. The plaintiff argued that the police made no reasonable accommodation for her, and although the court did not explicitly address this argument, it found that “the police did not stop Dillery because of her disability, but rather stopped her in response to citizen complaints about her being in the roadway.... Because the police were discharging their duties in investigating citizen complaints and keeping the roadways safe for both Dillery and passing vehicles, their actions do not constitute intentional discrimination.” 398 F.3d at 568.

public streets and highways might be reasonable under a particular set of facts.¹⁸ We are unable to conclude as a general matter, however, that a public entity must provide to persons who are disabled “unfettered access” to operate a typical golf cart on public streets and highways “without restrictions as to route, hours of operation, or type of road traversed.”

Local Law Enforcement

You have asked whether law enforcement officers may demand proof of disability, and what standard should be used for determining whether the operator is disabled, if we conclude that the ADA requires the county to permit a person with a disability to operate a golf cart on public highways and streets without complying with the laws regulating motor vehicles. In light of our response to your first question, we need not address these additional questions.

Conclusions

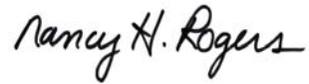
In conclusion, it is my opinion and you are advised that:

1. A golf cart is a motor vehicle and may not be driven on public streets and highways unless it meets the statutory requirements that are applicable to motor vehicles, including operating and equipment requirements. (1990 Op. Att’y Gen. No. 90-043, approved and followed.)
2. Title II of the Americans with Disabilities Act, 42 U.S.C.A. §§ 12131-12134 (West 2005), does not require the State, a county, or other public entity to refrain from enforcing motor vehicle equipment and operating standards in order to allow a person who is disabled to use a golf cart for personal transportation on public streets and highways. A public entity may be required, however, to grant to a person who is disabled a more limited modification to such standards if the facts developed from an individualized inquiry demonstrate that the limited modification is

¹⁸ ILLUSTRATION 3 to Title II TAM, § II-3.6100 gives an example of a limited modification: “A county ordinance prohibits the use of golf carts on public highways. An individual with a mobility impairment uses a golf cart as a mobility device. Allowing use of the golf cart as a mobility device on the shoulders of public highways where pedestrians are permitted, in limited circumstances that do not involve a significant risk to the health or safety of others, is a reasonable modification of the county policy.” *See also Young v. City of Claremore*, 411 F. Supp. 2d at 1311, 1314 (“there is no evidence in the record that Plaintiff requests use of the golf cart only on ‘shoulders of public highways where pedestrians are permitted,’” and “because Plaintiff in this case requests unfettered access, it is impossible for [the city] to take steps to ‘mitigate’ or eliminate the safety risks posed”). You have stated that, in most of the locations in question, no sufficient berm is available for use by golf carts.

reasonable and would enable the person to meet those standards necessary to the public safety.

Respectfully,

A handwritten signature in black ink that reads "Nancy H. Rogers". The signature is written in a cursive style with a horizontal line at the end.

NANCY H. ROGERS
Attorney General