The City of Morgantown

Jeff Mikorski, ICMA-CM
City Manager
389 SPRUCE STREET
MORGANTOWN, WEST VIRGINIA 26505
(304) 284-7405 FAX: (304) 284-7430
www.morgantownwv.gov

Office of the City Manager

July 7, 2014

Mr. Paul Mattox, Jr., Secretary of Transportation / Commissioner of Highways.
WV Department of Transportation
1900 Kanawha Blvd., East
Building 5, Room 110
Charleston, WV 25305

Dear Mr. Mattox,

The City of Morgantown continues to have a significant amount of heavy truck traffic traveling State Route 7 through Downtown Morgantown and the neighborhoods leading toward the Downtown Business District including the Greenmont and South Park. The City has received volumes of complaints from residents, property owners, and businesses along the State Route regarding noise, debris falling out of trucks, health concerns from exhaust, safety concerns, and congestion because of the heavy truck traffic. Due to the hundreds of large limestone trucks that travel State Route 7 from 4:00 am to mid-afternoon, this situation is interrupting the lives of residents and disrupting general business activity all along the state route. Previous City Manager Dan Boroff also sent you a letter regarding this issue in September of 2005 with a proposed City Ordinance reducing truck traffic on State Routes traveling throughout the City.

Recently, the City was presented with a new proposed ordinance (See attached) by a group of residents and business owners called "Safe Streets Morgantown", who feel that a fair reading of State Code 17-4-27 and 17C-17-12 justifies the City can restrict heavy truck traffic traveling through the Downtown Business District. They suggest that the City and State are not upholding the State Legislation as intended by not allowing the City to regulate heavy truck traffic within its boundaries. Morgantown City Council members are willing to move the proposed ordinance forward based on the presentations from the "Safe Streets Morgantown" group and the large number of residents in favor of redirecting the heavy truck traffic around the neighborhoods and the Downtown Business District along State Route 7. Morgantown City Council asks that you review the proposed ordinance in context of the local situation and offer any suggestions or clarifications. I would also ask you to provide to the State Attorney General's Office for review and response.

I would like the opportunity to meet with you and your staff to determine if there are other ways to resolve the current situation by finding alternate "Designated Truck Routes" around the City or work create incentives for truckers to alter their routes by increasing the weight limits on alternative routes in the transportation system around Morgantown. In the meantime, please contact if you have any questions or concerns.

Sincerely,

Jeff Mikorski, ICMA-CM

MEMORANDUM

To: **City Council of The City of Morgantown**

From: **Steptoe & Johnson PLLC**
Vincent A. Collins
Thomas L. Aman, Jr.

Date: **March 6, 2006**

Re: **Proposed Ordinance Regulating Truck Traffic in Downtown Business District**

Privileged Attorney-Client Communication

It is our understanding that the City Council of the City of Morgantown (the "City") is considering the enactment of an ordinance which would regulate truck traffic in the downtown business district of the City. The City has requested that we attempt to determine whether if enacted, such an ordinance would withstand a legal challenge. The primary questions are:

1. Does the State of West Virginia, the City or both have jurisdiction over the roadways that the City proposes to regulate?

2. Is there legal authority under West Virginia law permitting municipal regulation of through truck traffic?

3. Does federal law preempt municipal authority to regulate through truck traffic?

We will discuss each of these issues separately and then provide our conclusions and recommendations.

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Jurisdiction Over Roadways in Municipality

Every municipality and the governing body thereof has the authority by ordinance or resolution, as the case may require, and by appropriate action based thereon, to establish, construct and keep in good repair, streets and roadways for the use of the public. W. Va. Code § 8-12-5(1). Municipalities have the further right and power to regulate the use of streets and roadways which belong to the municipality. W. Va. Code § 8-12-5(4). This leads to the question of which city streets belong to a municipality? Certainly, those that were established and constructed by the municipality would belong to the municipality. However, the West Virginia Supreme Court of Appeals seems to have taken a broader view in stating that municipalities own such portions of the highways within their corporate limits for such public uses and purposes as the Legislature by express declaration or implication recognizes as lawful. The Chesapeake & Potomac Telephone Company of West Virginia v. City of Morgantown, 144 W. Va. 149, 107 S.E.2d 489 (1959). This would indicate that a municipality has sole jurisdiction of the streets within its borders. However, such is not the case, as the State Road Commissioner also has jurisdiction over roadways located within municipalities.

The State Road Commissioner may designate as a "connecting part" of the state road system any bridge or street within a municipal corporation. W. Va. Code § 17-4-26. Roads in Monongalia County which have been designated as "connecting parts" of the state highway system include US 119, WV 73, and parts of WV 7. The State Road Commissioner may construct, reconstruct, improve and maintain the designated connecting part at the cost and expense of the State. W. Va. Code § 17-4-26. Further, the State Road Commissioner shall exercise the same control over connecting parts of the state road system in municipalities, ***except the regulation of***

traffic, that he exercises over such systems generally. W. Va. Code § 17-4-27. Thus, from the foregoing it appears that municipalities retain some, but not exclusive, jurisdiction to regulate traffic over the roadways located within their borders.

Legal Authority Which Would Permit Regulation of Truck Traffic

Municipalities, with respect to highways under their jurisdiction may, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. W. Va. Code § 17C-17-12(c). This provision grants to municipalities the power to prohibit operation of trucks, and the power to limit truck weight on roadways under municipal jurisdiction. This conclusion is supported by the statutory provisions relative to "connecting parts" of the state highway system which were discussed above. In this respect, it is provided that the State Road Commissioner shall exercise the same control over connecting parts of the state road system in municipalities, ***except the regulation of traffic***, that he exercises over such systems generally. W. Va. Code § 17-4-27. Prohibiting the operation of trucks or limiting the weight of trucks on municipal roadways would likely be considered regulation of traffic as permitted with respect to "connecting parts" of the state highway system.

However, the power of a municipality to prohibit operation of trucks and to regulate truck weight is substantially limited by certain powers which are reserved for the State of West Virginia. The West Virginia Code specifically provides that municipal truck prohibitions and weight limitations shall be designated by appropriate signs placed on such highways. W. Va. Code § 17C-17-12(c). Furthermore, W. Va. Code § 17C-2-8 provides that no ordinance or regulation restricting the use of highways as authorized in [§ 17-C-12] shall be effective until signs giving notice of such

local traffic regulations are posted. However, W. Va. Code § 17-4-27 provides that the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any municipality on any highway or street constructed with state or federal aid shall be subject to the approval of the State Road Commissioner. Through the power to reject signs and traffic signals which a municipality is required to post in order to validate and enforce an ordinance prohibiting trucks or limiting the weight thereof, the State Road Commissioner effectively has the ability to block efforts of a municipality to restrict truck traffic through enactment of such an ordinance.

Federal Preemption of Municipal Authority to Regulate Truck Traffic

Federal law provides that a state, political subdivision of a state, or political authority of two or more states may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, ***route***, or service of any motor carrier with respect to the transportation of property. 49 U.S.C.A. § 14501(c)1. Taken alone, this provision would prohibit the City from enacting or enforcing an ordinance that would impose route controls on through truck traffic in the downtown business district. However, the federal legislation also provides an exception which would likely apply to the proposed City ordinance. The above referenced federal statute shall not restrict the safety regulatory authority of a state with respect to motor vehicles, the authority of a state to impose highway route controls or limitations based upon the size or weight of the motor vehicle or the hazardous nature of the cargo. 49 U.S.C.A § 14501(c)2. Further, a state may delegate regulatory authority to municipalities to enact motor carrier restrictions based on safety concerns and size and weight restrictions, but not to enact regulations concerning prices, routes, or service that are

not based thereon. California Dump Truck Owners Association v. Davis, 302 F. Supp. 2nd 1139 (2002).

Thus, federal preemption would not likely prevent the City from enacting a narrowly tailored ordinance which addresses the specific safety and health concerns identified by the Greater Morgantown Metropolitan Planning Organization (the "MPO") in its April 21, 2005 memorandum. The MPO memorandum details safety and public health concerns related to through truck traffic on Route 7 in the downtown business district of the City. The safety concerns identified by the MPO include: (i) potential injury to buildings and pedestrians due to the narrow road and lack of buffers; (ii) cargo or debris falling from trucks and injuring people and property; and (iii) truck weight, width and speed causes long stopping times, making it difficult to navigate, and decreasing visibility for other motorists. For preemption purposes, the ordinance would have to be narrowly tailored to address the specific safety and health concerns identified by the MPO in its memorandum. The ordinance could also minimize the possibility of federal preemption by imposing route controls based upon the weight of the vehicles that would be regulated. These ordinance provisions would bring the ordinance into compliance with the safety regulatory authority and route control based on weight exceptions to preemption set forth in 49 U.S.C.A § 14501(c)2.

Conclusion and Recommendations

A court would likely determine that the City has jurisdiction to regulate traffic on the portion of WV Route 7 that passes through the municipal boundaries of the City. Further, legal authority exists to support the proposition that the City could enact a narrowly tailored truck ordinance that regulates through truck traffic in the downtown business district based upon the safety concerns identified by the MPO in its April 21, 2005 memo, or which imposes route controls based

upon the weight of the vehicles. However, the legal authority which would support such an ordinance is undermined by the fact that the State Road Commissioner has the authority to reject any proposed traffic signs or signals that would be needed to validate and enforce such an ordinance.

It is probable that if an ordinance of the type contemplated were to be enacted, litigation would be initiated by the businesses that routinely truck products through the downtown business district. The probable outcome of such a legal challenge is difficult to predict. Authority exists for a court both to find in favor of the City and to rule against the City. The City should plan for a likely protracted legal battle and attendant costs if it chooses to enact and enforce such an ordinance.

The City might consider attempting to negotiate reasonable restrictions on truck traffic with the trucking companies that are most likely to contest the proposed ordinance. Failing this, the City might consider working with the State Road Commissioner to determine whether they would be willing to impose reasonable regulations.

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways
1900 Kanawha Boulevard East • Building Five • Room A109
Charleston, West Virginia 25305-0430 • 304/558-3505

Joe Manchin III
Governor

RECEIVED
OCT - 7 2005

October 4, 2005

Mr. Don Boroff
City Manager
The City of Morgantown
389 Spruce Street
Morgantown, West Virginia 26505

Dear Mr. Boroff:

Thank you for your letter dated September 2, 2005, in which you requested that the Division of Highways (DOH) review the proposed Morgantown Traffic Code Ordinance 312. This Ordinance proposes to prohibit all commercial motor vehicles as defined in W.Va. Code §17-E-1-3 from using streets or roadways within the City's Downtown (B-4) Business District, excepting those commercial motor vehicles which are en route to, or from providing services within, the District. Federal, State and City Governments, and their employees, are exempted from the prohibition of this ordinance while performing work for the governmental entity, as is the Monongalia County Urban Mass Transit Authority.

As you know, WV 7 runs through the Downtown (B-4) Business District. This road is currently used as a through route by commercial motor vehicles which are not on route from, or providing services to, locations within the District.

The (DOH) cannot approve passage of the proposed ordinance for the following reasons:

1) The class of vehicles prohibited appears to be overbroad given the purported safety concerns of the Greater Morgantown Metropolitan Planning Organization (hereinafter "MPO"), which are expressly adopted in the proposed ordinance. These concerns relate to through truck traffic and not to all commercial motor vehicles, as defined in W. Va. Code §17-E-1-3, which includes school buses. Further, the MPO analysis addresses only through truck traffic on WV 7, and not on all streets or roads within the District.

2) The ordinance provides no exemption for Monongalia County employees or vehicles.

E.E.O./AFFIRMATIVE ACTION EMPLOYER

3) The concerns and recommendations of the MPO refer to impacts of trucks related to size, weight, speed, cargo, securing of cargo, and manner of operation. These more narrowly focused concerns are already addressed by state statutes and are the subject of Federal regulation. In this context, the total prohibition of through commercial traffic again appears overbroad and not narrowly tailored to address the concerns expressed by the MPO.

Even if the proposed ordinance was revised to meet the objections noted above, it would be subject to Federal preemption under 49 U.S.C. 14501, which provides in pertinent part:

> § 14501. Federal authority over intrastate transportation
>
> (c) Motor carriers of property ▪
>
> (1) General rule ▪ Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.
>
> (2) Matters not covered. ▪ Paragraph (1) ▪
>
> (A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;
>
> (B) does not apply to the transportation of household goods; and
>
> (C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

Federal Courts have stated that restrictions affecting routes in state and local law must be premised on genuine safety concerns. As noted above, the purported safety concerns recited by the MPO, and adopted by the city in the proposed ordinance, are already addressed by state and federal law and may be addressed with more particularity with respect to municipal streets by a more narrowly crafted ordinance. Moreover, these concerns are not unique to Morgantown's Downtown (B-4) Business District or demonstrated to be substantially different from similar impacts in other urban and non-urban areas of the state. In addition, if the concerns are those of safety, there appears to be no rational basis for exempting local delivery commercial motor vehicles or governmental entities' commercial motor vehicles.

Other federal laws that may be implicated by the proposed ordinance include but are not limited to 49 U.S.C. 31114 et. seq., 49 C.F.R. Part 350 and 23 C.F.R. Part 650.

Accordingly, I request that the City submit for review by the DOH a traffic engineering study of WV 7 within Morgantown Downtown (B-4) Business District documenting whether roadway design criteria or accident history demonstrate one or more genuine safety problems related to the size, weight, speed, nature or securing of cargo, or manner of operation of commercial motor vehicles using WV 7 through the District. In addition, I recommend that you contact the West Virginia Public Service Commission, Motor Carrier Division, for additional assistance.

If you have any questions, you may contact Jeff Miller at (304) 558-9273 or Barry Warhoftig at 558-3063. I hope these comments prove to be of value to the Morgantown City Counsel in its consideration of this proposed ordinance.

Very truly yours,

Paul A. Mattox, Jr.

Paul A. Mattox, Jr., P. E.
Commissioner of Highways

PAM:Mm

cc: Henry Compton, FHWA w/Enclosures
Gary Edgell, WVPSC Motor Carrier Division w/Enclosures
WV Motor Truck Association w/Enclosures