



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

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.

- 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.

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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 Council in its consideration of this proposed ordinance.

Very truly yours,


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