

November 6, 2014

Nathan A. Poore
Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth, ME 04105

RE: Restricting Truck Traffic on Local Roads

Dear Nathan:

You have asked me to provide a summary of the legal principles governing the Town's authority to restrict commercial traffic on local roads. The context for this letter is the upcoming review by the Town Council of the existing ordinance prohibiting through bus and truck traffic on Brook Road between Blackstrap Road and Mountain Road, with certain exceptions. *See* Code of Ordinances § 17-9. It is my understanding that the regulation prohibiting bus and truck travel on this portion of Brook Road is the only regulation of this type currently in the Town's ordinances.

Transportation over local streets and roads is generally subject to municipal police power regulation where the regulation is not precluded by state or federal law. The Legislature has granted municipalities the general authority to regulate local traffic. Section 3009 of Title 30-A states that the "municipal officers may regulate the operation of all vehicles in the public ways," but may not adopt or enforce an ordinance that is the same as or in conflict with state regulations imposed by the Maine Department of Transportation.¹ 30-A M.R.S. § 3009(1)(B). State law also permits municipalities to post roads seasonally and impose restrictions on gross-weight, speed and other factors to protect the integrity of the municipality's local road infrastructure. *See* 30-A M.R.S. § 2395(4).

Municipal regulation of traffic on its roads is not boundless, however, especially when outright route restrictions (as opposed to regulations governing markings and traffic control devices) on certain vehicle categories are being contemplated. For example, a municipal regulation limiting traffic routes cannot interfere with or burden interstate commerce. Such a regulation could be found to violate the Commerce Clause of Article I of the U.S. Constitution, which grants Congress the exclusive power to regulate interstate commerce. U.S. Const. art. I, § 8 cl.3. Areas where Congress has the authority to regulate interstate commerce but has not exercised that authority fall under the "dormant" Commerce Clause, a doctrine of the U.S. Supreme Court. The dormant Commerce Clause prohibits states and local government from

¹ Likewise, state laws and regulations of trucks in interstate commerce must be compatible with federal regulations. 49 C.F.R. § 355.21.

enacting laws and regulations that infringe on Congressional authority by discriminating against or unduly burdening interstate commerce.² See *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 192 (1994). In essence, the doctrine prevents protectionist regulations that favor in-state business over out-of-state businesses. *Id.* If a law or local regulation clearly treats out-of-state businesses differently—and is thus facially discriminatory—or has the effect of treating them differently, then the law is unconstitutional unless the state or local government can prove (1) a legitimate local interest (2) that cannot be achieved by non-discriminatory means. *Dept. of Revenue of Ky. v. Davis*, 553 U.S. 328, 338 (2008).

In addition to constitutional concerns based on burdening interstate commerce, local regulations restricting travel routes should be carefully drafted to avoid claims of federal preemption on other grounds. See, e.g., *Aux Sable Liquid Products v. Murphy*, 526 F.3d 1028 (7th Cir. 2008) (ordinance restricting trucks of certain weight to certain roads preempted by federal law where ordinance denies reasonable access to truck destinations and facilities for food, and fuel); *New Hampshire Motor Transport Ass'n v. Town of Plaistow*, 67 F.3d 326, 332 (discussing the scope of preemption of local truck traffic ordinances by the Noise Control Act); Noise Control Act, 42 U.S.C. § 4917; 40 C.F.R. §§ 202.10-202.23; 49 C.F.R. § 325.1.

Moreover, municipal regulations of truck traffic must be reasonable and necessary and must provide for reasonable alternative routes. *Associated Transport v. City of Syracuse*, 196 Misc. 1031, 93 N.Y.S.2d 423 (N.Y. Sup. Ct. 1949). This is consistent with the scope of municipal police powers, in which regulations must be rationally related to public health, safety, and welfare. *State v. Rush*, 324 A.2d 748, 752 (Me. 1974). Regulations for safety and to protect roads from excessive wear constitute permissible grounds assuming alternative avenues of travel remain open. For example, a municipality cannot restrict truck traffic to peripheral streets, thereby shifting the burden of truck traffic to neighboring towns. 7A McQuillin, *Municipal Corporations* § 24:664 at 598 (2008). Nor may a municipality restrict truck traffic to main highways. *Id.* at 600. To be reasonable, safety concerns must also be specific to the conditions or features of particular roads, such as the road curvature, sightline distance, width, or grade.

A decision to restrict travel on a particular road due to safety concerns should be based on uniform, objective criteria which could include, for example:

- Road geometrics – road width, road curvature, vertical sight line distance, turning radius, road grade, presence or absence of shoulder or sidewalk, and other physical data
- Speed, volume, weight, size and frequency of motor vehicle traffic
- Frequency of pedestrian and/or bicycle traffic
- Frequency of turning traffic or traffic backing out onto road
- Seasonal or other temporal patterns of usage of the particular road
- Presence of street or road in historic district, on scenic drive, or the like.

² “Interstate commerce” is extremely broad, encompassing any business activity that transcends state boundaries in any way, and the federal government has the authority to regulate actions that may impact instrumentalities of interstate commerce.

In this case, Falmouth's ordinance prohibits bus and truck³ traffic—with the exception of emergency vehicles and vehicles making local stops—on a segment of Brook Road from Blackstrap Road to Mountain Road. Code of Ordinances § 17-9. On its face, the ordinance does not discriminate against out-of-state trucks. The next question is whether the ordinance has the effect of burdening or interfering with interstate commerce. This determination will depend on the actual use of Brook Road as well as other surrounding roads that may provide a reasonable alternative route. If a local ordinance scheme is overbroad in its restrictions on truck routes, it may have the effect of imposing restrictions on vehicle travel that are preempted by federal law. As to whether the ordinance is reasonable and necessary, it is my understanding that Gorrill-Palmer Consulting Engineers, Inc. has studied this portion of Brook Road for safety concerns related to a number of the above criteria, including the physical characteristics of the road and frequency of truck traffic. The Town may also wish to consider studying road use to determine the existence of other contributing factors to the overall safety of the road as compared to other roads in the Town.

Finally, in addition to being reasonable and necessary, an ordinance restricting truck travel to certain routes should be uniform in operation and free from arbitrary discrimination. Thus, it will be important to analyze safety concerns on a particular road through the application of uniform, objective criteria that can be applied consistently to all roads being considered for restriction. Barring truck traffic on some roads but not others, given similar road conditions, could result in the ordinance being challenged as arbitrary and capricious. Alternatively, if the uniform safety criteria are applied too leniently to all roads in town, the ordinance could have the effect of prohibiting truck traffic on the majority of local roads, thus risking a challenge that such restrictions interfere with or unduly burden interstate travel.

As discussed above, the validity of an ordinance prohibiting truck traffic on local roads depends on a variety of factors and factual circumstances, and should be analyzed carefully on a case by case basis. This letter does not reach any conclusion with respect to the particular ordinance at issue, but rather addresses more generally the legal framework and processes necessary for the Town to restrict commercial travel on local roads.

I trust this summary will be helpful to you and the Town Council. Please let me know if you have any questions or if I can be of further assistance on this issue to you or the Council.

Sincerely,



Amy K. Tchao
AKT/cp

³ Interestingly, "truck" is not a defined term in the ordinance and is not expressly limited to commercial vehicles. Nor is a weight or size limitation provided. Although the regulation may have been intended to apply only to commercial trucks of a certain weight, size or type, the ordinance language on its face could be interpreted to prohibit all trucks, regardless of weight and size.