

[REDACTED]

April 22, 2024

VIA FIRST-CLASS MAIL & E-MAIL
[REDACTED]

Pennsylvania Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
Attn: Robert A. Willig, Esq.
Senior Deputy Attorney General

Re: Greene Township Response to ACRE Request for Review

Dear Senior Deputy Willig:

Our firm serves as the solicitor for Greene Township, Clinton County, Pennsylvania (the "Township"). This letter is in response to your letter, dated as of January 29, 2024, regarding a request for review of the Township's application of its Motor Vehicle Weight Limitation and Bonding Ordinance (the "Ordinance")¹ pursuant to the Pennsylvania Agricultural, Communities and Rural environmental Act ("ACRE").² [REDACTED] on behalf of [REDACTED] (the "Requestor"), a Pennsylvania limited liability company located at [REDACTED]

¹ The Ordinance, No. 0706-2021, dated as of July 6, 2021, attaches as Exhibit "A" a list of fifteen (15) Township roads, the posted portions of the roads, and the weight limit thereon.

² 3 Pa.C.S.A. §§ 311-318.

[REDACTED] submitted a request for review of the Ordinance on December 29, 2023 (the "Request").

The Request alleges the Township's enforcement of the Ordinance "[r]estricts or limits the ownership structure of a normal agricultural operation" and, therefore, is an "unauthorized local ordinance" pursuant to ACRE.³ Specifically, the Request alleges the Township's enforcement of the Ordinance "targets" the Requestor, local independent truck haulers, and local farmers in connection with the transportation of food processing waste ("FPW") from the Requestor's facility to local farmers for use as fertilizer.

First, the Township respectfully disagrees with the scope and applicability of a review of the Ordinance and its enforcement thereof under ACRE. As recently as 2021, the Pennsylvania Office of Attorney General ("OAG") has been unwilling to include municipal road bonding as an issue that is subject to ACRE.⁴ Additionally, it is not clear from the Request how the Township's enforcement of the Ordinance permits an ACRE review. The Township has the authority to enact and enforce restrictions as to the weight or size of vehicles operated on Township highways and bridges. The Township's position is that the enactment and enforcement of the Ordinance is in

³ Id. § 312.

⁴ In a letter to Canton Township and a complainant, dated as of May 5, 2021, regarding an ACRE review of Canton Township's requirements for PennDOT excess weight agreements and permits, you state, "[i]t is unclear whether that is even an ACRE issue."

accordance with the applicable laws and regulations.⁵ Accordingly, the Township believes the review sought by the Request exceeds the scope of the OAG's authority under ACRE.

To the extent the OAG believes a review under ACRE is permitted and warranted under the circumstances, the Township's position is that the Ordinance and its enforcement thereof are not an "unauthorized local ordinance" as defined by ACRE. In accordance with ACRE, "[a] local government unit shall not adopt nor enforce an unauthorized local ordinance."⁶ An "unauthorized local ordinance" is one that either: (i) prohibits or limits a normal agricultural operation unless the local government unit has authority under state law to adopt the ordinance and it is not prohibited or preempted under state law, or (ii) restricts or limits the ownership structure of a normal agricultural operation.⁷

The Ordinance is not an unauthorized local ordinance because the Township has statutory authority to enact and enforce restrictions as to the weight or size of vehicles operated on Township highways and bridges pursuant to Section 4902 of the Vehicle Code and the applicable regulations.⁸ Thus, even assuming the Ordinance and its enforcement prohibit or limit a normal agricultural operation, the Township is explicitly

⁵ See 75 Pa.C.S.A. § 4902; see also 67 Pa. Code §§ 179.1, 189.1; Pennsylvania Department of Transportation Publication 221.

⁶ 3 Pa.C.S.A. § 312.

⁷ Id.

⁸ 75 Pa.C.S.A. § 4902; see also 67 Pa. Code §§ 179.1, 189.1.

authorized to do so by Pennsylvania statute. Additionally, the Request alleges the Township's enforcement of the Ordinance restricts or limits the ownership structure of a normal agricultural operation; however, the Request failed to explain any connection or causal relationship. Said another way, it is unclear from the Request how the Township is targeting the Requestor and restricting or limiting the Requestor's ownership structure by merely enforcing the Ordinance. The Township would require any overweight vehicle using the fifteen (15) Township roads identified in the Ordinance that are over the posted weight limit to post a bond. Without additional information from the Requestor, the Township cannot respond to the allegation regarding ownership structure. Therefore, the Township's enforcement of the Ordinance does not constitute an "unauthorized local ordinance" as defined by ACRE.

In consideration of the foregoing, the Township respectfully requests the OAG deny the Request.

Sincerely,

A large, solid black rectangular redaction covers the signature and any text that might have been present below the word "Sincerely,".