

Willig, Robert A.

From: [REDACTED]
Sent: Monday, February 26, 2024 4:58 PM
To: Willig, Robert A.
Subject: [REDACTED]
Attachments: [REDACTED]

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[REDACTED]

Greene Township has received your official 30 day letter. The Township contends that we are not violating ACRE law by requiring a road bond. We require a Road Bond for excessive hauling. We have our township engineer and solicitor backing that the residual waste from an industrial plant is not an ACRE issue.

[REDACTED] is hauling industrial waste from the [REDACTED] plant [REDACTED] traveling on a 10 ton township road. In 2021 while he was bonded did excessive damage to Spruce Run Road. In November of that year [REDACTED] did repair the road to the Township's satisfaction.

That same year, the Township hired [REDACTED]. He takes care of the Road Bond applications as well as videoing the road. We found that to be a more professional and fair approach to Road Bond Applications. The Township averages 4 or 5 Road Bonds per year.

The FPR is hauled with a 80,000lb tractor trailer excluding the capacity weight. When he hauls FPR (food processing residual) he has three tanker trucks with full capacity running from 8:00AM - 5:00PM for 11 days straight.

[REDACTED] I have included [REDACTED] Road Bond that he had in place in 2021. He continued to renew the road bond until April of 2023. I alerted the Board that he had not renewed so the Township turned it over to [REDACTED]

[REDACTED] sent him an application. Per [REDACTED] instructions, I sent [REDACTED] the hauler [REDACTED] registered letters

We have support from our PennDOT representative [REDACTED]. We have support from the PSP. All agree that the Township has the authority to require a Road Bond if the Township determines that a road could be damaged by a hauler.

[REDACTED]

[REDACTED]

[REDACTED]

[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.

Pennsylvania ██████ 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 box covering the signature and any accompanying text or title.

Greene Township has been made aware that some of the trucks coming and going from the facility *may* meet the definition of local traffic as defined under 67 Pa. Code § 189.2(4) ("[v]ehicles and combinations going to or coming from a residence, commercial establishment, or farm located on a posted highway or which can be reached only via a posted highway"). However, both 67 Pa. Code § 189.3(a) and Section 5(B) of Township Zoning Ordinance 07062021 both indicate that if the posting authority (Board of Supervisors) determines that overweight local traffic may not exceed posted weight limits if the posting authority (Board of Supervisors) determines that such overweight vehicle is likely to damage the road. It should be noted that both Section 5(B) of the Township Ordinance and 67 Pa. Code § 189.3(b) require that notice of such determination must be sent to the registrants of overweight vehicles or the owners of the destination, or both, two (2) days after which such vehicles shall not exceed the posted weight limit unless under permit. My understanding is that the Supervisors have determined that these overweight vehicles are likely to damage the Township road(s) and the Township provided such notice to [REDACTED]

Yes, under 189.3(c), the Township could require a hauler claiming to be exempt as local traffic to "prove" it through one of the following:

(c) *Proof of local traffic status.* The following types of documents will constitute evidence that a vehicle is local traffic:

(1) A bill of lading, shipping order or similar document which shows a destination on the posted highway.

(2) Certification by the permittee or an official of a permittee company on the company letterhead describing the local traffic nature of the activity which the vehicle is engaged in.

There are two (2) ways in which Greene Township can determine whether a road is likely to be damaged or has been damaged. The first is what I will call a "road survey," which would be the more informal way that the Supervisors verify the condition of a specific road and whether that road has been damaged recently. Typically, this involves the road master or another agent of the Township visiting the road and either videoing or photographing the condition. I believe this should (or could) be done every year. This method in and of itself would not be sufficient to support a weight limit ordinance.

The second is to have an actual road study conducted by an engineer. This type of study is required if the Township wanted to post a weight limit on a road of less than 80,000 lbs. In this case, a study was conducted in 1999 by a PennDOT engineer on multiple Township roads, which determined that anything over 10 ton would likely damage the roads. I do not have the study in front of me, but I could probably obtain a copy for your office.

Based on the above information the Township will then attempt to have a discussion with the hauler(s) and/or the business to determine whether bonding is appropriate. The weight of each truck, the frequency of trips, and the duration of the expected traffic are all considered by the Supervisors in this determination. Depending on the responses to the above factors, the Supervisors will then make a determination as to whether the trucks are likely to damage the road—even if they fall under the exception of local delivery.

My understanding is that Greene Township is attempting to engage in these discussions and make each determination on a case-by-case basis.