



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

February 15, 2006

TO: Hon. Phil Andrews, Councilmember
Montgomery County Council

FROM: Charles W. Thompson, Jr.
County Attorney

RE: Request for an opinion on Regulation 17-94 (COMCOR 31.69.01)

I hereby acknowledge your request for an opinion concerning whether Regulation 17-94 (now COMCOR 31.69.01) authorizes the County Department of Public Works and Transportation to prohibit through traffic on certain roads. Actually, whether Regulation 17-94 authorizes the County to prohibit through traffic should not have been the question, as the real question is whether the County has the authority to prohibit through traffic under state law. State law does not allow the County to prohibit through vehicular traffic on a road, but under state law it may prohibit trucks from using certain roads as through roads under certain circumstances.

The Maryland Transportation Article, § 25-101.1(c), provides:

Except as otherwise provided in the Maryland Vehicle Law:

- (1) The provisions of the Maryland Vehicle Law prevail over all local legislation and regulation on any subject with which the Maryland Vehicle Law deals;
- (2) All public local laws, ordinances, and regulations that are inconsistent or identical with or equivalent to any provision in the Maryland Vehicle Law are repealed; and
- (3) The charters of all political subdivisions of this State are modified to prohibit the political subdivision from making or enforcing any ordinance or regulation in violation of the Maryland Vehicle Law.

Section 25-101.1(c) specifically preempts all local legislation on matters that are regulated by the Maryland Vehicle Law with some exceptions. Those exceptions are generally found in Section 25-102(a) which addresses through roads as follows:

* * *

- (6) Designating any highway as a through highway or designating any intersection as a stop intersection or a yield intersection;

* * *

- (11) Regulating through truck traffic and prohibiting trucks from using any highway or

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alley that is not designated or maintained as a part or extension of the State or federal highway system, provided the local authority has designated an adequate alternate route for diverted truck traffic;

* * *

The Code defines "through highway":

"Through highway" means a highway or part of a highway:

- (1) On which vehicular traffic is given the right-of-way; and
- (2) At the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on that highway or part of a highway, in obedience to either a stop sign or yield sign placed as provided in the Maryland Vehicle Law.

Transportation Article, § 21-101(u). From these provisions, we believe the legislature intended to prohibit a local government from implementing a ban on through traffic on highways within its jurisdiction, except for "through truck traffic" which it may ban. However, if the County were to ban through truck traffic it must provide for a designated alternate and adequate route for the diverted truck traffic. The authority granted by Section 25-102(a)(6) allows the local government to designate a highway as a "through highway" simply providing authority for a local government to grant vehicles using one street at an intersection the right of way.

I hope we have been fully responsive to your question.

cc: Arthur Holmes, Director, Department of Public Works & Transportation
Emil Wolanin, Department of Public Works & Transportation
Greg Leck, Department of Public Works & Transportation
Marc P. Hansen, Manager I, Office of the County Attorney