

Enforcing Seasonal Weight Limitation Ordinances

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Introduction

Recently, the Wisconsin Supreme Court helped clarify the right of Wisconsin municipalities to enforce temporary seasonal weight limitation ordinances against trucking companies or others claiming federal law, namely the Surface Transportation and Assistance Act ("STAA"), specifically 49 U.S.C. § 31114(a),¹ and the related Federal Highway Administration ("FHWA") regulation, 23 C.F.R. § 658.19 (2018),² preempts state law and local ordinances related to temporary seasonal weight limitations.

The case, *Town of Delafield v. Central Transport Kriewaldt*,³ involved the issuance of a citation by the Town of Delafield ("Town") charging Central Transport Kriewaldt ("Central Transport") with a violation of a Town Ordinance adopting Wisconsin Stat. § 348.17 titled "Special or Seasonal Weight Limitations."⁴

Procedural History

Central Transport challenged the citation claiming, among other things, that the STAA and FHWA preempt the Town's ordinance and state statute. Central Transport claimed that the Town's application of Wisconsin Stat. § 348.17(1) denied Central Transport all reasonable access to its delivery address in violation of the STAA and the related FHWA.

At the time of circuit court trial, the Town called two witnesses: the Town Highway Superintendent and the Waukesha County Sheriff's deputy who

issued the citation.⁵ The Superintendent testified that on March 4, 2016, he posted the road signs identifying the temporary seasonal weight restriction prohibiting vehicles over six tons from driving on designated roads.⁶ This was based upon his professional opinion that, due to the spring thaw, excessive weight of vehicles would damage certain roads.⁷ In addition to the road signs, the Town provided notice by posting the temporary seasonal weight limitation on its website and in a local newspaper.⁸ The Superintendent also indicated that the temporary seasonal weight limitation would not necessarily be at the same time each year, so it was common for companies to contact him around the time the restrictions would likely go into effect.⁹ The Town's website also offered information regarding the issuance of special permits, on a case by case basis, to those wishing to travel on a restricted road in the Town with a load over the prohibited six tons.¹⁰ The Superintendent testified that he has never denied a permit request and provides a preferred route of travel to protect the Town's vulnerable roads.¹¹ The Superintendent also testified that it was common for companies to contact him for information about whether the temporary seasonal weight limitations were in effect and whether they need to reschedule for a time outside the seasonal restrictions.¹² He further stated that the weight limitations would only be in effect for a limited duration, approximately one week, depending on the weather.¹³

On March 7, 2016, the Superintendent observed an eighteen-wheel semi-tractor and trailer stuck in a Town ditch partially blocking traffic. The Deputy testified that when he responded to the dispatcher's call, he made contact with the driver and was able to confirm that the driver had driven on roads in the Town that were clearly posted with the seasonal weight restrictions. The Deputy was also able to confirm that the truck weighed well over the six-ton restriction just in the empty weight of the tractor-trailer itself. The driver of the truck indicated to the Deputy that he was attempting to deliver some art supplies to a residence in the Town. The Deputy further testified that he was aware of the Town's permitting process and that companies also routinely contact the Sheriff's Department inquiring about such local weight restrictions.¹⁴ Central Transport called no witnesses at the time of the trial, primarily arguing that the case involved a question of law and that the STAA and FHWA clearly preempted the Town from enforcing its weight restrictions.

In a written decision, the circuit court granted Central Transport's motion to dismiss the citation based upon federal preemption grounds. The Circuit Court found that the intent of § 31114 of the STAA was to provide "uniform standards for commercial motor vehicles utilizing the Interstate and other federal highways."¹⁵ The court found that, to accomplish this objective, the STAA explicitly prevents states from enacting laws that deny

commercial vehicles “reasonable access” to delivery destinations. In discussing the exception under § 31114(b)¹⁶ that allows states and local governments to impose “reasonable restrictions based upon safety considerations,” the circuit court found that the Town’s desire to protect its roadways from damage during the spring thaw did not fall within the safety concern exception of the STAA. The circuit court found that the Town’s permitting process ran afoul of the primary purpose of the STAA, namely “to create uniform standards for commercial motor vehicles utilizing the Interstate and other Federal highways” so as not to interfere with commercial transportation.¹⁷ Thereafter, the Town appealed the circuit court decision to the court of appeals.

In reversing the trial court, the court of appeals¹⁸ held that Central Transport was not denied reasonable access to its destination in the Town. The court reasoned that the Town’s weight restrictions are only in effect for a short period of time during the spring thaw.¹⁹ In addition, Central Transport could have attained a permit from the Town Superintendent, which would have allowed it to travel on a predetermined route.²⁰ The appellate court felt that it was not unreasonably burdensome for Central Transport “to develop an awareness of the Town’s seasonal weight restrictions”²¹ as a cost of doing business. Central Transport then petitioned the Wisconsin Supreme Court for review.

In affirming the appellate court, the Wisconsin Supreme Court analyzed and dismissed Central Transport’s federal preemption arguments. The supreme court first reiterated the three areas of federal preemption, namely: 1) express preemption – where Congress specifically sets forth its preemptive purpose in the text of the law itself; (2) field preemption – where preemptive

intent is implied in the breadth of federal legislation in a particular field and; (3) conflict preemption – where federal law actually conflicts with state law.²² Central Transport first argued that express preemption applied in that any restriction on access must be based upon safety concerns and the Town’s weight restrictions are preempted because protecting the roads through a spring thaw is not a safety-based concern. In the alternative, Central Transport argued that conflict preemption applied because the Town ordinance and state statute deny reasonable access as required by the STAA and FHWA.

In rejecting the express preemption argument, the supreme court found that nothing in the exception in 49 U.S.C. § 31114 (b) indicates that local restrictions regarding access must be based solely on safety considerations, but rather local municipalities must only provide reasonable access.²³ In rejecting Central Transport’s conflict preemption argument, the supreme court looked to the specific facts of the case and determined that reasonable access was available to Central Transport.²⁴ The supreme court highlighted the following testimony elicited at trial: the Town provided adequate notice by posting the signs, posting notice on its website and publishing notice in a local newspaper; the Town offered permits allowing overweight vehicles to drive on designated restricted roads; the Superintendent had never denied a request for a permit; and many companies would call the Town to inquire about the temporary seasonal weight limitations.²⁵ The supreme court found that temporary seasonal weight restrictions were normal, that calls to local highway departments and sheriff offices were commonplace and that Central Transport could have obtained a permit and preferred route to reach

its destination.²⁶ The supreme court also held that the Town’s ordinance was based upon a well-founded police power consideration, namely the protection of its roads from damage during a spring thaw.²⁷ The supreme court concluded that the enforcement of the Town’s ordinance did not conflict with and was not preempted by the STAA and FHWA and that the Town afforded Central Transport reasonable access to its destination.²⁸

Conclusion

In order to avoid a preemption challenge to the enforcement of temporary seasonal weight limitation ordinances, local municipalities must ensure that reasonable access is granted to contractors, subcontractors, trucking companies, and others operating overweight vehicles seeking access to their respective destinations during the time of restriction. Notice of the restrictions is important, by posting of the signs themselves, notice on the municipal website, and notice in the local paper. Permit notice and the issuance of temporary special permits delineating the specific route for the vehicle provide an effective way to grant reasonable access. Local sheriff’s departments should also be informed of the temporary seasonal weight limitations and the necessary contact person within the municipality, with whom reasonable access can be discussed.

Traffic Regulation 432

About the Authors:

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1.49 U.S.C. § 3114(a) of the Surface Transportation Act provide as follows:

Access to the Interstate System

(a) Prohibition on Denying Access. – A State may not enact or enforce a law denying to a commercial motor vehicle subject to the subchapter or subchapter I of this chapter reasonable access between –

- (1) the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under section 3111(f) or 3113(e) of this title) and other qualifying Federal-aid Primary System highways designated by the Secretary of Transportation; and
- (2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers, motor carriers of passengers, any tow away trailer transporter combination (as defined in section 3111(a)), or any truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 3111(c) of this title.

(Pub.L. 103-272, § 16), July 5, 1994, 108 Stat. 999; Pub.L. 114-94, div. A, title V, § 5523(c)(2), Dec. 4, 2015, 129 Stat. 1560.)

2. Regulation 23 C.F.R. § 65.819 (2018) of the Federal Highway Administration provides as follows: "No State may enact or enforce any law denying access within 1 road-mile from the National Network using the most reasonable and practicable route available except for specific safety reasons on individual routes."

3. *Town of Delafield v. Central Transport Kriewaldt*, 2020 WI 61, 944 N.W.2d 819.

4. Wisconsin Stat. § 348.17(1) titled "Special or Seasonal Weight Limitations" reads as follows:

No person...shall operate a vehicle in violation of a special weight limitation imposed by state or local authorities on particular highways, highway structures or portions of highways when signs have been erected as required by s. 349.16(2) giving notice of such weight limitations, except when the vehicle is being operated under permit expressly authorizing such weight limitations to be exceeded....

5. *See supra*, note 1, ¶ 25.

6. *See supra*, note 1, ¶ 26.

7. *Id.*

8. *Id.*

9. *See supra*, note 1, ¶ 27.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Quoting Aux Sable Liquid Prods.*, 526 Fed.3d 1028,1036 (7th Cir 2008).

16. 49 U.S.C. § 3114(b) of the Surface Transportation Act provides as follows:

(b) Exception. –

This section does not prevent a State or local government from imposing reasonable restrictions, based on safety considerations, on a truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 3111(c) of this title.

17. *See supra*, note 5, at 1036.

18. *Town of Delafield v. Central Transport Kriewaldt*, 2019 WI App 35, 388 Wis. 2d 179, 932 N.W.2d 423.

19. *See supra*, note 8, ¶ 20.

20. *Id.*

21. *See supra*, note 8, ¶ 13.

22. *See supra*, note 1, ¶ 7.

23. *See supra*, note 1, ¶ 17.

24. *See supra*, note 1, ¶ 24-7.

25. *See supra*, note 1, ¶ 26-7.

26. *See supra*, note 1, ¶ 28-9.

27. *See supra*, note 1, ¶ 29.

28. *See supra*, note 1, ¶ 31.