



08/06/2020

Mr. Kenneth Hetto
Chair, Town Board
Peck Town Hall
N5650 Cty. Road H
Deerbrook, WI 54424

Chair Hetto:

I am writing on behalf of the Venture Dairy Cooperative, Wisconsin Manufacturers and Commerce, and Wisconsin Dairy Alliance regarding the Town of Peck's (Town) "Implements of Husbandry Ordinance," Ordinance #2021-01 (Ordinance) adopted on July 14th, 2020. Collectively, our organizations represent thousands of farmers and businesses tied to Wisconsin agriculture including in the Town of Peck. It is deeply concerning to members of Wisconsin's business community, especially Wisconsin's agricultural sector, that the Town would *de facto* ban farmers moving a single commodity – manure – on Town roads under the guise of a surety bond. This action is both bad public policy and likely unlawful.

Farmers comprise a vital and necessary part of Wisconsin's economy, including in Langlade County and the Town of Peck. A necessary part of farming is hauling manure. The Town's unlawful actions will harm local farmers and likely lead to costly and reputation-damaging litigation.

The Ordinance requires farmers who haul manure on town roads to "post a surety bond of \$100,000 with the Town, *for each road used*, to cover any possible damage that may be done" by the hauler. The Town cites Wis. Stat. § 349.16(1)(c) as its authority to impose this onerous requirement. The section, in its entirety reads:

Order the owner or operator of any vehicle being operated on a highway to suspend operation if in its judgment such vehicle is causing or likely to cause injury to such highway or is visibly injuring the permanence thereof or the public investment therein, except when s. 84.20 is applicable or when the vehicle is being operated pursuant to a contract which provides that the governmental unit

will be reimbursed for any damage done to the highway. Traffic officers also may order suspension of operation under the circumstances and subject to the limitations stated in this paragraph.

Wis. Stat. § 349.16(1)(c). The plain language of the statute does not mention a “surety bond” at all, let alone give the town authority to impose such a requirement as a prerequisite to driving on town roads. What the statute does allow is officers in charge of highway maintenance and traffic officers to order the suspension of a vehicle currently operating on a road if the vehicle is causing injury or likely to cause injury to the roadway. Officers do *not* have this authority if the vehicle is being operated “pursuant to a contract which provides that the governmental unit will be reimbursed for any damage done to the highway.” This language does not give the Town additional authority to impose a surety bond requirement, rather it is a restriction on the Town’s authority under certain circumstances.

The Town should take note of three other issues related to this statute. First, that the Town cannot use it to restrict vehicles from operating based on the commodities they haul. All else being equal, whether the vehicle is hauling 50,000 lb of feathers or 50,000 lb of lead, it degrades the roadway in the same manner. Thus, to avoid constitutional equal protection issues, the Town must be prepared to render the same requirements to haulers of sand and gravel, logs and other materials to the same extent it applies to manure hauling. Second, unlike other subsections of this statute, the Town cannot use sub. (1)(c) to restrict whole classes of vehicles from operating (unlike subs. (1)(a)-(b)) in advance. See Wis. Stat. § 349.16(1)(c), (2). Third, the Town cannot enforce this unlawful surety bond requirement, or any other requirement subsequently created, to deny permits for certain implements of animal husbandry (those that fall under s. 340.01(24)(a)1.b.). Wis. Stat. § 348.27(19)(b)4m. Rather, the Town only has authority to modify the proposed route.

Rather than continue down this legally dubious path that will harm local farmers, the Town should rescind the ordinance and work with its farming community to come to a mutually beneficial solution. Venture Dairy Cooperative is happy to help lead and facilitate a productive working discussion to address any and all concerns on this matter. Contact Kim at kim@aginspirations.com or 715-797-7796.

Respectfully,

Kim Bremmer, Venture Dairy Cooperative
Cynthia Jetzer, Wisconsin Dairy Alliance
Scott Manley, Wisconsin Manufacturers and Commerce

cc: Richard Wiegard, Supervisor
Clayton Walrath, Supervisor

