



Court Limits Road Commission Authority to Resolve Inter-Township Roadway Disputes

Karl W. Butterer

Foster Swift Municipal Law News

August 30, 2013

Until recently, if a township thought that a neighboring township's truck route ordinance unfairly pushed commercial truck traffic into it, then the township could ask the county road commission to approve or void the truck route. The Michigan Court of Appeals recently limited road commissions' authority to referee these disagreements, and questioned whether the Legislature had violated the state constitution when it gave road commissions the obligation to resolve these disputes.

Townships have a state constitutional right to "reasonable control" over roads. Townships also have the statutory right to adopt truck route ordinances. What happens if one township's truck route ordinance effectively pushes commercial traffic into a neighboring township? What happens if the neighboring township passes an ordinance to push the commercial traffic back? Since at least 1982, Michigan courts have recognized that neighboring townships may pass competing ordinances which create a non-contiguous and "chaotic patchwork" of truck routes.

In 2008, the Michigan Legislature adopted MCL 257.726(3), which obligated road commissions to resolve these inter-township truck route disputes. Specifically, the Legislature stated that road commissions must either "approve" or "void" a township truck route ordinance if a neighboring township objected to the ordinance.

In *Oshtemo Charter Township v Kalamazoo County Road Commission*, the road commission "voided" an Oshtemo Charter Township truck route ordinance after two neighboring townships objected that the ordinance had the effect of diverting commercial traffic onto the neighboring townships' roads. Oshtemo challenged the decision up to the Court of Appeals. The Court struck down the road commission's decision on the grounds that the road commission had not made a finding that the Oshtemo ordinance was "unreasonable." The statute that required road commissions to resolve these disputes did not instruct road commissions to determine whether the ordinance was reasonable or unreasonable, rather only to "approve" or "void" the

AUTHORS/ CONTRIBUTORS

Karl W. Butterer

PRACTICE AREAS

Business & Commercial Litigation

Commercial Litigation

Employment Law

Employment Litigation

General & Commercial Litigation

Municipal & Public Entity Law



ordinance. Nevertheless, the Court held that the Michigan Constitution prohibits road commissions from voiding township ordinances unless the ordinance is found to be “unreasonable.” The Court further suggested that - even if the road commission had actually stated that the ordinance was “unreasonable” - the statute may violate the Michigan Constitution anyway, because it did not provide road commissions enough guidance or standards to either “approve” or “void” an ordinance.

A road commission still has a statutory obligation to resolve inter-township truck route disputes. However, a road commission may now only void an ordinance if it finds the ordinance to be “unreasonable.” The *Oshemo* court strongly suggested, without deciding, that road commission authority to do even that is unconstitutional.