



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable C. Linwood Gregory
Commonwealth's Attorney
New Kent County
12001 Courthouse Circle, 2nd Floor
New Kent, Virginia 23124

Dear Mr. Gregory:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether, in the unique situation wherein two "No Through Truck" routes are contiguous,¹ a truck with either an origin or a destination along one of the routes may travel lawfully through the entire length of the other, contiguous "No Through Truck" route, "regardless of available reasonable alternative routes."

Response

It is my opinion, in the unique situation wherein two "No Through Truck" routes are contiguous, a truck with either an origin or a destination on one of the routes may not lawfully travel through the entire length of the other, contiguous route, when the driver of the truck has notice of the two separate "No Through Truck" route designations, and one or more reasonable alternative routes exist.²

Background

In making your inquiry, you provide the following facts. In Hanover County, Routes 630 (Market Road) and 613 (Fox Hunter Lane) between Route 156 (Cold Harbor Road) and the Hanover/New Kent County line are designated a "No Through Truck" route (the "Hanover Route"). In New Kent County, Route 613 (Dispatch Road), between the Hanover/New Kent County Line and Route 249 (New Kent Highway), is designated a "No Through Truck" route (the "New Kent Route"). The two routes are

¹ The term "contiguous" is defined to mean, "being in contact: touching along a boundary or at a point." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 270 (11th ed. 2009). In the context of your inquiry, the term signifies that the subject "No Through Truck" routes share an endpoint.

² As noted in detail below, your legal inquiry arises upon very specific factual circumstances. Thus, the legal conclusion of this Opinion directly pertains to those factual circumstances. Please note that other factual scenarios involving different configurations of contiguous or intersecting no-through-traffic routes may yield different conclusions upon an analysis of the applicable statutory and regulatory provisions.

contiguous and form a rural roadway measuring some 5.85 miles. Thus, through truck³ traffic is prohibited on this entire stretch of highway, albeit designated as two separate “No Through Truck” routes.

You indicate that the Hanover County Board of Supervisors, in 2003, and the New Kent County Board of Supervisors, in 2004, independently requested that the Virginia Department of Transportation (“VDOT”) designate the route located within its jurisdiction as a “No Through Truck” route, and, thereafter, each county satisfied all of the prerequisite requirements.⁴ On February 14, 2005, the Commissioner of VDOT, acting pursuant to his authority, issued a letter to the County Administrator of each county, approving the designation of each route as a “No Through Truck” route.⁵

You also provide the following additional facts relevant to your inquiry. A truck owner (“Doe”) resides on the west end of the Hanover Route. He can access the Hanover Route from roads that lie to the west of that route. From time to time, Doe drives a truck from his residence in Hanover County, east along the Hanover Route, crosses over the New Kent County line, and continues to drive the truck the full length of the New Kent Route, proceeding on to destinations beyond the terminus of that restricted route at the New Kent Highway. Doe contends he is allowed to drive the entire length of both “No Through Truck” routes, because his point of origin, (or, upon a return trip, his destination), is on the Hanover route. In making this contention, Doe cites an internal VDOT memorandum that refers to the two routes as “one continuous truck restriction.”⁶

³ The term “truck” is defined as “every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.” VA. CODE ANN. § 46.2-100 (Supp. 2013). While neither the *Code of Virginia* nor the *Virginia Administrative Code* defines “through truck,” VDOT uses the term “through truck” to mean a truck “that travels from one terminus [or endpoint] to the other with no origin or destination along the designated route.” See VA. DEP’T OF TRANSP., *Frequently Asked Questions – Through Truck Restriction Program*, http://www.virginiadot.org/programs/resources/web_faq's_TTR_program.pdf (last visited Oct. 24, 2013). This definition is generally consistent with the *Code of Virginia's* definition of “residential cut-through traffic,” which is “vehicular traffic passing through a residential area without stopping or without at least an origin or destination within the area.” VA. CODE ANN. § 46.2-809.1 (2010).

⁴ When a locality seeks to have a portion of a primary or secondary road designated a “No Through Truck” route, the governing body must hold a public hearing and make a formal request of VDOT. 24 VA. ADMIN. CODE § 30-580-30. The process must adhere to a number of procedural requirements, as quoted below:

1. The public notices for the hearing must include a description of the proposed through truck restriction and the alternate route with the same termini. A copy of the notices must be provided.
2. A public hearing must be held by the local governing body and a transcript of the hearing must be provided with the resolution.
3. The resolution must describe the proposed through truck restriction and a description of the alternate, including termini.
4. The governing body must include in the resolution that it will use its good offices for enforcement of the proposed restriction by the appropriate local law-enforcement agency.

Id.

⁵ See VA. CODE ANN. § 46.2-809 (2010); see also 24 VA. ADMIN. CODE § 30-580-20.

⁶ See Memorandum from Curtis W. Myers, Jr., to Thomas A. Hawthorne, P.E. (Oct. 18, 2004) (“Memorandum”). In addition, you describe a related “Fact Sheet” that is referred to in the Memorandum. The Memorandum constituted an internal VDOT document, drafted by and for subordinate officials within that agency. It pertained primarily to the New Kent Route; however, it contained language referring to VDOT’s efforts to coordinate its processing of the separate applications of Hanover County and New Kent County to designate the subject roadway segments as “No Through Truck” routes within their respective jurisdictions. The Memorandum noted that the New Kent Route “meets the criteria for restricting through trucks in accordance with the guidelines adopted by the CTB.” Thereafter, the passage cited by Doe, in full context, reads as follows:

Applicable Law and Discussion

Section 46.2-809 of the *Code of Virginia* provides, in pertinent part:

The Commonwealth Transportation Board, or its designee, in response to a formal request by a local governing body, after such body has held public hearings, may, after due notice and a proper hearing, prohibit or restrict the use by through traffic of any part of a primary or secondary highway if a reasonable alternate route is provided. . . . Such restriction may apply to any truck or truck and trailer or semitrailer combination, except a pickup or panel truck.^[7]

The Commonwealth Transportation Board (“CTB”) has “delegate[d] the authority to restrict through truck traffic on secondary highways to the Commissioner of the Virginia Department of Transportation.”⁸ In its regulations, the CTB both explains its philosophy respecting restricted access to roadways and sets forth the essential public safety-related determinations requisite to the imposition of any such restriction:

It is the philosophy of the Commonwealth Transportation Board that all vehicles should have access to the roads on which they are legally entitled to travel. Travel by any class of vehicle on any class of highway should be restricted only upon demonstration that the restriction will promote the health, safety and welfare of the citizens of the Commonwealth without creating an undue hardship on any of the users of the transportation system. The board recognizes that there may be a limited number of instances when restricting through trucks from using a segment of a primary or secondary roadway will reduce potential conflicts, creating a safer environment and one that is in accord with the current use of the roadway. The board has adopted these guidelines to govern and regulate requests for through truck restrictions on primary and secondary highways.^[9]

Further,

Travel by any class of vehicle should be restricted only upon demonstration that the restriction will promote health, safety and welfare of the citizens of the Commonwealth without creating an undue hardship on any users of the transportation network[.]^[10]

Route 613, functionally classified as a minor collector highway, is a two-lane undivided roadway with 16-20 foot pavement and 1-5 foot shoulders. The posted speed limit on this route is 35 and 45 miles per hour. The New Kent County Board of Supervisors have conducted a public hearing on this proposed restriction and determined that a reasonable alternate route exists to accommodate through trucks via Routes 249, I-64, I-295 and Route 156 to Route 630 in Hanover County. Hanover County has also requested that Route 630 and 613 be restricted to through trucks between Route 156 and the Hanover/New Kent County Line. We will try to have both of these restrictions processed and signed at the same time since they would constitute one continuous truck restriction.

As a document internal to VDOT, the Memorandum clearly did not represent a legally, or otherwise binding determination on New Kent County. Moreover, its contents reveal that VDOT, at the relevant time in October 2004, recognized that each county independently had sought a “No Through Truck” designation for specific highway segments within its territorial limit. Nevertheless, recognizing that the roadways shared a terminus at the Hanover/New Kent County line, agency officials sought to coordinate the consideration of them.

⁷ VA. CODE ANN. § 46.2-809 (2013).

⁸ 24 VA. ADMIN. CODE § 30-580-20.

⁹ 24 VA. ADMIN. CODE § 30-580-10.

¹⁰ 24 VA. ADMIN. CODE § 30-580-40. In setting forth four specific criteria for VDOT consideration, this guideline requires the locality to mandatorily establish the first two: “(1) Reasonable alternative routing is provided,” including

In the factual scenario you describe, while the Hanover Route and the New Kent Route are contiguous, such that they appear to form a 5.85 mile stretch of nearly continuous road, as a matter of law they constitute two separately designated "No Through Truck" routes. Doe lives proximate to the western terminus of the Hanover Route, and may depart his residence as a point of origin, or access it as a destination, without driving upon the New Kent Route, by utilizing one or more alternative routes that VDOT has deemed reasonable. Moreover, the New Kent Route is located wholly in New Kent County, some distance east of Doe's residence. When Doe drives his truck the length of it, so as to depart from or access his residence via the New Kent Highway, he does so as a through truck.¹¹ In so doing, he traverses the length of the New Kent Route in a way denied by operation of law to other truck drivers with no point of origin or destination along its length. Thus, he does so without any claim of necessity, but instead, for his mere convenience.

Upon these facts, I conclude that Doe's use of the New Kent Route is inconsistent with, and violative of, VDOT's designation of that roadway segment as a "No Through Truck" route. Therefore, and especially in light of the public safety-related rationale for such designation, I further conclude that such use is unlawful.

Conclusion

Accordingly, it is my opinion, in the unique situation wherein two "No Through Truck" routes are contiguous, a truck with either an origin or a destination on one of the routes may not lawfully travel through the entire length of the other, contiguous route, when the driver of the truck has notice of the two separate "No Through Truck" route designations, and one or more reasonable alternative routes exist.

With kindest regards, I am,

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

that, "The termini of the proposed restriction must be identical to the alternate routing to allow a time and instance comparison to be conducted between the two routings. Also, the alternate routing must not create an undue hardship for trucks in reaching their destination," and that, "(2) The character or frequency, or both, of the truck traffic on the route proposed for restriction is not compatible with the affected area." In addition, it provides for consideration of the following factors, of which only one need be established: "(3) The roadway is residential in nature," and/or, "(4) The roadway must be functionally classified as either a local or collector." You note VDOT's determinations that each county respectively met the specified criteria for the Hanover Route and the New Kent Route to receive approval for imposition of "No Through Truck" restrictions.

¹¹ Without question, according to the facts you provide, Doe has personal knowledge, that is, he possesses actual notice, of the separate "No Through Truck" designations of the Hanover Route and the New Kent Route. The fact of such notice is significant to the conclusion reached herein.