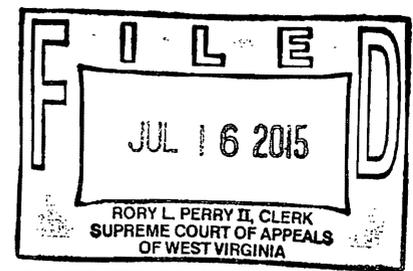


No. 15-0127



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

THE CITY OF MORGANTOWN, WEST VIRGINIA,
A West Virginia Municipal Corporation,
Defendant Below, Petitioner,

v.

NUZUM TRUCKING COMPANY, a West Virginia Corporation,
and PRESTON CONTRACTORS, INC., a West Virginia Corporation,
Plaintiffs Below, Respondents,

and

GREER INDUSTRIES, INC., a West Virginia Corporation,
Intervenor Plaintiff Below, Respondent,

and

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS, a West Virginia Executive Agency,
Defendant Below, Respondent.

**RESPONDENT WEST VIRGINIA DIVISION OF HIGHWAYS'
SUMMARY RESPONSE TO THE PETITION FOR APPEAL**

Counsel for Respondent Division of Highways

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**RESPONDENT WEST VIRGINIA DIVISION OF HIGHWAYS'
SUMMARY RESPONSE TO THE PETITION FOR APPEAL**

This Summary Response is filed on behalf of the Respondent, the West Virginia Division of Highways (DOH), in response to the City of Morgantown's Petition for Appeal from the summary judgment order of the Circuit Court of Kanawha County, wherein that court held that state law preempted Morgantown's attempted exercise of regulatory authority over WV 7, a state highway.

After due consultation with its co-Respondents in this case, DOH does hereby adopt the facts, statements, and arguments made by Respondents Nuzum Trucking Company, Preston Contractors, Inc., and Greer Industries, Inc., in their joint brief. However, DOH does not adopt or

join with the other Respondents' arguments associated with alleged potential resultant damage to their business concern or Morgantown's alleged attempted interference with general precepts of interstate commerce: such arguments are not properly DOH's affair.

DOH submits that the case at bar may be resolved relatively expeditiously. Unlike the frequent circuitous and arduous cases presented to this Court each term, the fundamentals of this case are straightforward: (1) West Virginia State Route 7 is a state highway;¹ (2) the West Virginia Constitution and the State's general statutes place authority, control, and supervision over the State's highways with the Commissioner of Highways;² (3) the Legislature specifically granted the Commissioner of Highways regulatory dominance over vehicle weight limits on the roads comprising the State Highway System;³ (4) the Legislature has declared that the Commissioner of Highways has ultimate approval authority over the form, character, and placement of traffic control devices (e.g. traffic signs) on state highways;⁴ and (5) the Legislature has given the Commissioner of Highways authority to exercise jurisdiction, control, supervision and authority over local roads, outside the state road system, to the extent determined by him to be expedient and practicable.⁵ From these established legal authorities, one can be well-assured that the lower court was correct in deciding that Morgantown's truck weight ordinance is preempted by state law.

While DOH has confidence in its position, the high importance of the issues presented here cannot be understated. Should Morgantown prevail, *all* municipalities in this State would be free to set their own weight limits on state highways crossing into their borders. A freight truck

¹ Petitioner has specifically admitted to the fact that WV 7 is a state highway. *See Complaint and Answer; see also Petitioner's Brief* at n. 1.

² W. Va. Const., amend. III (1920); W. Va. Code § 17-14-1; W. Va. Code § 17-2A-8(1).

³ W. Va. Code § 17-2A-8(8); W. Va. Code § 17C-17-11a; W. Va. Code R. § 157-5-8.1, *et seq.*

⁴ W. Va. Code § 17-4-27; W. Va. Code § 17C-3-1; W. Va. Code § 17C-3-2.

⁵ W. Va. Code § 17-2A-8(11).

driver coursing along U.S. Route 60 in Charleston might find a lower weight limit in South Charleston, an even lower limit in Saint Albans, and a high limit in Barboursville and Huntington. Through each municipality the driver would have to assess whether he would be required to alter his route based on weight limitations – causing him to meander onto other roads that presumably would allow him to pass. Perhaps no routes are available for him to haul his heavy freight around; what then? The efficiency, directness, and predictability that come with using a state highway would be wholly unattainable. Such a scenario could not be what the Legislature intended.

CONCLUSION

DOH respectfully requests that this Court affirm the summary judgment order entered by the Circuit Court of Kanawha County.

Respectfully submitted this 16th day of July, 2015.

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS**

By counsel



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DIVISION OF HIGHWAYS, a West Virginia Executive Agency,
Defendant Below, Respondent.

CERTIFICATE OF SERVICE

I, Michael J. Folio, do hereby certify that I have, this 16th day of July, 2015, served a true and accurate copy of *Respondent West Virginia Division of Highways' Summary Response to the Petition for Appeal* by depositing a copy of the same in the regular United States Mail, postage prepaid to the following:

<p>Paul R. Cranston, Esq. James B. Shockley, Esq. Cranston and Edwards, PLLC 1200 Dorsey Avenue, Suite II Morgantown, WV 26501</p>	<p>Robert M. Bastress, Esq. P.O. Box 1295 Morgantown, WV 26507</p>	<p>Frank E. Simmerman, Jr., Esq. Chad L. Taylor, Esq. Frank E. Simmerman, III Simmerman Law Office, PLLC 254 Main Street Clarksburg, WV 26301</p>
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