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Memorandum

R-131-2730

To: The Honorable Capri S. Cafaro
Ohio Senate

From: Amanda George, Staff Attorney *ag*

Date: May 13, 2016

Subject: Federal Railroad Safety Act preemption

You asked what remedies the City of Lordstown has with regard to trains that block roadways for an extended period of time. As I indicated in a phone conversation with your office, it appears that both Lordstown's local ordinance¹ and state law² prohibiting the obstruction of a public street or highway by a train for longer than five minutes may be preempted by federal law. Therefore, it does not appear that the enforcement of state or local laws governing this issue is an appropriate remedy for the City of Lordstown.

The Sixth Circuit in *CSX Transp., Inc. v. City of Plymouth*, 283 F.3d 812 (6th Cir. 2002), ruled that a Michigan statute (which is almost identical to Ohio's statute) was preempted by the Federal Railway Safety Act (FRSA), thus rendering the Michigan statute unenforceable. Since Ohio is under the Sixth Circuit's jurisdiction, if either the City of Lordstown ordinance or the Ohio statute is challenged in federal court, the court may rule that the ordinance or statute is preempted by federal law and, like the Michigan law, unenforceable.

In light of federal case law, one remedy may be for the City of Lordstown to address their concerns to the appropriate United States Representative or Senator by requesting an amendment to the FRSA to address this issue.

I hope that this information is helpful. Please contact me at (614) 644-5231 if you have additional questions concerning this matter.

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¹ Lordstown Ordinance §553.01.

² R.C. 5589.21.