

“JAKE BRAKE” ADVISORY

(from Maine Municipal Association’s “*Maine Townsman*”, “Legal Notes,” November 2008)



For several years, and for several reasons, we’ve advised against the adoption of “Jake Brake” or engine braking ordinances as a means of controlling truck engine noise (see “‘Jake Brake’ Ordinances,” *Maine Townsman*, “Legal Notes,” October 2000). Now we learn, courtesy of the MaineDOT’s Maine Local Roads Center, that engine braking ordinances may actually be pre-empted by federal law.

The Noise Control Act of 1972 (now codified at 42 U.S.C. § 4917) authorizes the Environmental Protection Agency (EPA) to promulgate uniform national noise emission regulations for motor carriers engaged in interstate commerce. The federal statute expressly prohibits the states and their political subdivisions (including municipalities) from adopting or enforcing noise standards applicable to any motor carrier engaged in interstate commerce unless the standards are identical to the federal standards (see § 4917[c][1]). (The current version of the EPA’s regulations is codified at 40 C.F.R. § 202.20.) Therefore, unless the noise standards in an engine braking ordinance are identical to the federal standards, the ordinance is unenforceable as applied to motor carriers engaged in interstate commerce.

As we’ve advised all along, engine braking ordinances can be difficult to enforce and may not get at the real problem, which is often a modified or defective exhaust system (which is already against State law, 29-A M.R.S.A. § 1912). The federal preemption of these ordinances as applied to motor carriers engaged in interstate commerce may be one more good reason to reject them.

Thanks to the Maine Local Roads Center (and its Vermont counterpart) for bringing this issue to our attention. For more information on engine braking and other traffic control issues, visit the Local Roads Center at <http://www.state.me.us/mdot/mlrc/mlrc-home.php>. (By R.P.F.)