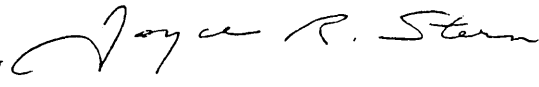



M E M O R A N D U M

March 16, 1992

TO: Edward U. Graham, Director
Department of Environmental Protection

VIA: Joyce R. Stern 
County Attorney

FROM: Marc P. Hansen 
Senior Assistant County Attorney

RE: Applicability of Montgomery County Noise Control Law to WMATA

You have supplied this office with a letter from David L. Gunn, General Manager of the Washington Metropolitan Area Transit Authority (WMATA) in which Gunn concludes that WMATA Metrorail operations are not subject to the Montgomery County Noise Control Law.¹ Gunn notes in his letter that WMATA was created by Interstate Compact. He asserts that the Compact exempts WMATA operations from certain local laws that are incompatible with the operations of the WMATA transit system. Gunn states: "The operating noise being created by the Rail system is an inherent attribute of rail operations throughout all three jurisdictions and inconsistent state and local laws would create an intolerable burden on the Authority."

You also provided us with a copy of County Attorney Opinion No. 76.055 dated August 18, 1976, and signed by then County Attorney Richard S. McKernon. In that Opinion, McKernon concludes that WMATA rail operations are subject to the County's Noise Control Law. The Opinion cites MD ANN Code art. 41, Section 317-75 (1971 Repl. Vol.) which provides that WMATA must comply with local laws regulating the use of streets, highways, vehicular facilities, zoning, signs, and buildings. The Opinion concludes: "Accordingly, it is suggested that WMATA either apply for a special exception as to its trains, or achieve compliance with the standards of the Montgomery County Noise Ordinance."

You have asked for our guidance on this issue. In general, we agree with the conclusion reached in County Attorney Opinion No. 76.055.

The Interstate Compact which creates WMATA is presently codified at MD. Transp. Code Ann., Sections 10-203 - 10-204 (1977). Section 10-204 sets out in 87 subsections the provisions of the Compact relevant to WMATA Metrorail operations.

¹The Montgomery County Noise Control Law is codified at Sections 31B-1 through 31B-17, Montgomery County Code (1984).

Subsection 2 of the Compact states that the purpose of WMATA is to plan, develop, finance, and operate a balanced, unified regional system of transportation. Subsection 11 provides: "Each signatory pledges to each other faithful cooperation in the achievement of the purposes and objects of this title."² Subsection 75 states: "The board shall comply with all laws, ordinances and regulations of the signatories and political subdivisions and agencies thereof with respect to use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings."³ Subsection 77 provides that transit services provided by WMATA are exempt from ". . . all laws, rules, regulations and orders of the signatories . . . except that laws, rules, regulations and orders relating to inspection of equipment and facilities, safety and testing shall remain in force and effect"

Reading these provisions of the Compact together, we believe there emerges an intent to create a unified regional metrorail system that encompasses three separate jurisdictions. In order to make a regional metrorail system workable, each jurisdiction must relinquish a certain degree of regulatory control over the operation of the metrorail system. Subsection 75, however, allows the signatories and political subdivisions to regulate WMATA operations if the regulation relates to the use of streets, highways and other "vehicular facilities". Subsection 77 allows the local regulation of WMATA operations if the regulation relates to safety. The question is whether the Montgomery County Noise Control Law can be considered the regulation of a street, highway or other vehicular facility or a regulation of WMATA operations relating to safety.⁴

²The signatories of the Compact are the State of Maryland, the Commonwealth of Virginia, and the District of Columbia.

³Subsection 75 is the section which forms the basis for the conclusion reached by County Attorney Opinion No. 76.055.

⁴We note that Subsection 75 expressly authorizes regulation by political subdivisions but that Subsection 77 simply allows regulation by the signatories. We believe that the term signatories includes the political subdivisions of the signatories as that term is used in Subsection 77. If a political subdivision is not included within the scope of the term signatory, then Subsection 77 would not constitute a ban against local political subdivisions enacting local laws regulating the use of the metrorail system. In our opinion, this would lead to an absurd result and one which would be at odds with the intent creating a unified regional metrorail system.

Edward U. Graham
March 16, 1992
Page 3

Section 31B-1 declares that the purpose of the Montgomery County Noise Control Law is to eliminate noise levels that are detrimental to the health of the people of the County. Section 31B-5 prohibits sound which emanates from any source above certain prescribed levels. Section 31B-2(15) defines source as "any activity, occupation, business, or operation conducted on land or water or in or upon a building or other structure, including streets and thoroughfares." (Emphasis added)

We believe that the Montgomery County Noise Control Law clearly falls within the parameters of the exception carved out in Subsection 77. Noise control is designed to protect humans from the adverse health effects of excessive noise. We also agree with County Attorney Opinion No. 76.055 that the County's Noise Control Law is authorized under Subsection 77 as a regulation concerning the use of a "vehicular facility".

Though we conclude that WMATA Metrorail operations are subject to Chapter 31B, we would like to emphasize that under Section 31B-13, the Director of the Department of Environmental Protection may grant exemptions from the requirements of Chapter 31B if the exemption would be "in the public interest". The State of Maryland, and we believe by operation of law Montgomery County, has pledged under the Compact to faithfully cooperate to achieve the purposes of WMATA. As we have already pointed out, one of the primary purposes of WMATA is to develop and operate a unified regional system of transportation, including a metrorail system. We believe that this pledge must be given significant weight in determining if granting an exemption to WMATA under Section 31B-13 is in the public interest.

We trust this memorandum has been responsive to your inquiry. Please do not hesitate to contact us if you have further questions.

0873.MPH:rpc
92.00301

cc: A. Katherine Hart, Senior Assistant County Attorney
Diane R. Kramer, Associate County Attorney