



**CITY OF DANBURY**  
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March 27, 2007

Honorable Mark D. Boughton, Mayor  
Honorable Members of the Common Council  
City of Danbury, Connecticut

Re: March Agenda Item #12  
Cell Phone Use by City Bus Drivers

Dear Mayor and Council Members:

Please accept this letter in response to your request for a report regarding the agenda item referenced above. That item related to a letter from Councilmen Rotello, Chianese and Saadi, expressing concern about cell phone use and other "diversions" by local bus drivers that could pose a risk to passengers and the public. Possible solutions suggested in the letter included the adoption of a local ordinance, contract negotiations or other means. After reviewing the matter, we have found that with aggressive enforcement, existing state law may already provide the answer.

First, as you may know, current policy statements by Laidlaw Education Services, our local school bus company and by HART our regional passenger carrier already prohibit the use of cell phones, except in cases of emergency. Further, with respect to school busses, section 14-296aa of the Connecticut General Statutes, specifically prohibits the use of cell phones, including those with hands-free devices, while busses are in operation and carrying passengers, again, except in cases of emergency. In addition, state law prohibits "any activity" not related to the actual operation of a motor vehicle in a manner that interferes with the safe operation of such vehicle (See C.G.S. section 14-296aa(e)).

While we have some concerns relating to the reach of the federal commerce clause as well as the council's inability to address this matter through collective bargaining with respect to which the city is not directly a party, our primary concern regarding local regulation of this area flows from the apparent pre-emption of the field by state law. When the state regulates an area of the law as broadly and completely as the state regulates the operation of motor vehicles it is said to have pre-empted the field. The effect of pre-emption is that it precludes the adoption of local ordinances on the subject. The logic behind the pre-emption doctrine is that it is designed to avoid a patch-work of local laws, a balkanization, as courts have described it, of the rules of law. The problem of having one rule for driving in Danbury, another for driving in Brookfield and yet another for traveling in New Milford is

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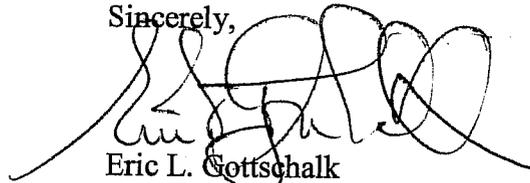
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readily apparent. Further, the adoption of section 14-296aa, covering the narrower subject of distractions to the operation of motor vehicles, underscores the pre-emption question in this case.

As a result, the adoption of local law on this subject seems problematic. On the other hand, if after a careful evaluation of the provisions of C.G.S. section 14-296aa it seems inadequate to address the concerns raised by Councilmen Rotello, Chianese and Saadi (for example the prohibition against using a hands-free device that applies to school bus drivers doesn't apply to HART bus drivers), the most effective solution might well be to encourage an amendment to existing state law.

If you have any additional questions, please feel free to contact us.

Sincerely,



Eric L. Gottschalk  
Assistant Corporation Counsel