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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CITY OF DES MOINES, IOWA, CITY OF CEDAR RAPIDS, IOWA, CITY OF MUSCATINE, IOWA, Petitioners, vs. **IOWA DEPARTMENT OF TRANSPORTATION, IOWA TRANSPORTATION COMMISSION** Respondents.	**Case No. CVCV049988** **RULING AND ORDER ON PETITION FOR JUDICIAL REVIEW**

This matter came before the Court on March 27, 2017, for oral argument in regard to the Petition for Judicial Review filed by the Petitioners, City of Des Moines ("Des Moines"), City of Cedar Rapids ("Cedar Rapids"), and City of Muscatine ("Muscatine") (collectively "Cities") seeking judicial review of an order by the Iowa Department of Transportation ("IDOT") that the Cities remove Automated Traffic Enforcement camera systems. The Court, hearing the arguments of counsel and reviewing the court file, including the briefs filed by the parties and the certified administrative record, now enters the following ruling:

BACKGROUND FACTS AND PROCEEDINGS

In 2010, Muscatine reviewed accident data and speed and red light surveys to identify approaches to intersections and intersections within its jurisdiction that presented safety concerns. Thereafter, Muscatine worked with Gatso USA ("Gatso"), a vendor of automated traffic enforcement camera systems ("ATEs") and the IDOT to engineer construction plans and

ensure that placement of signs were completed in accordance with IDOT guidelines. From 2011 to 2014, Muscatine gathered traffic violation information by using the ATEs. On or about April 29, 2014, Muscatine submitted its annual report to the IDOT. On or about March 17, 2015, the IDOT notified Muscatine of its evaluation. The IDOT ordered Muscatine to permanently remove the ATE equipment at one location for the following reasons: (1) crashes have increased since the camera was installed; (2) a high number of speed violations; and (3) the camera was within the 1,000ft rule.

In November 2011, Des Moines installed a camera using Gatso technology to monitor the speed of vehicles traveling eastbound on I-235 between the 4700-4200 blocks. The site was selected due to heavy traffic and its grade and layout creating risk for law enforcement officers to position themselves safely to monitor speed or respond to accidents. Des Moines gathered information from the ATEs and timely submitted its 2013 annual report. On March 17, 2015, Des Moines received an evaluation of the ATE system from Steve Gent, a Director of Traffic and Safety with the IDOT. The evaluation ordered Des Moines to remove the ATE citing low crash rate prior to the camera installment and limited use on interstate roadways. On April 16, 2015, Des Moines sent a Notice of Appeal to IDOT. On May 11, 2015, IDOT Director Paul Trombino III summarily denied the appeal.

In February 2009, Cedar Rapids passed its ATE ordinance, codified at Cedar Rapids Municipal Code § 61.138. Prior to the ATE implementation, Cedar Rapids examined issues of traffic safety in conjunction with the IDOT. Based on consultations between Cedar Rapids and the IDOT, Cedar Rapids received permits to install and operate ATE equipment at locations identified during the examination audit. On or about May 1, 2014, Cedar Rapids submitted their annual report to the IDOT. On or about March 17, 2015, the IDOT notified Cedar Rapids of its

evaluation. On or about April 16, 2015, Cedar Rapids appealed the evaluation. Director Trombino denied Cedar Rapids appeal and affirmed the IDOT's evaluation on or about May 12, 2015.

In 2013, prior to the Cities' evaluations, the IDOT issued a Notice of Intended Action with proposed rules regarding ATEs. A public hearing was held on October 30, 2013, where officials from the Cities, as well as other officials and the public, testified about the rules as proposed. On or about December 10, 2013, an IDOT Commission Order was issued which added language creating the 1,000ft rule.

In June 2015, Muscatine, Des Moines, and Cedar Rapids separately filed Petitions for Judicial Review pursuant to Iowa Code Chapter 17A. The actions were consolidated in recognition of the commonality of issues and desire for judicial efficiency. The Cities filed their pre-trial brief on December 9, 2016. The IDOT filed its pre-trial brief on January 18, 2017.

The Cities made offers of proof in this matter as to various evidentiary issues. The offers of proof were taken under advisement, reviewed by the Court, but not utilized by the Court in making this decision. The Court finds that the record made at the agency level was more than sufficient to review the agency action appealed.

STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Court "may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in section 17A.19(10)(a) – (n)." *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utilities Bd.*, 805 N.W.2d

758, 762 (Iowa 2011)). Where an agency has been "clearly vested" with a fact-finding function, the appropriate "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of the petition for judicial review"—that is, whether it involves an issue of 1) findings of fact, 2) interpretation of law, or 3) application of law to fact. *Burton*, 813 N.W.2d at 256.

"If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact." *Meyer*, 710 N.W.2d at 219. "[A] reviewing court can only disturb those factual findings if they are 'not supported by substantial evidence in the record before the court when that record is reviewed as a whole.'" *Burton*, 813 N.W.2d at 256 (quoting Iowa Code § 17A.19(10)(*f*)). A district court's review "is limited to the findings that were actually made by the agency and not other findings that the agency could have made." *Id.* However, "[i]n reviewing an agency's finding of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure that the fact finding is itself reasonable.'" *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012) (quoting *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

"Substantial evidence means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). If "the claim of error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous, and we may substitute our interpretation for the agency's." *Meyer*, 710 N.W.2d at 219.

The Court must also grant appropriate relief from agency action if such action was

"[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c). With respect to such provisions of law, the Court is not required to defer to the agency's interpretation. *Id.* § 17A.19(11)(b). Additionally, the Court must grant relief from agency action that is "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law," based upon a misapplication of law to the facts, or "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion." *Id.* § 17A.19(10)(l–n).

If "the claim of error lies with the *ultimate conclusion* reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." *Meyer*, 710 N.W.2d at 219. In other words, the Court will only reverse the Commissioner's application of law to the facts if "it is 'irrational, illogical, or wholly unjustifiable.'" *Neal*, 814 N.W.2d at 518 (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007); *see also Burton*, 813 N.W.2d at 256 ("When the application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency's application of the law to the facts of the particular case if that application is 'irrational, illogical, or wholly unjustifiable.'").

ANALYSIS

A. *Home Rule*

The Cities argue that the IDOT's action violates home rule authority. The Cities argue that Iowa home rule authority allows cities to determine their local affairs as long as they are not expressly preempted by the state or inconsistent with state law. The Cities claim that there is no statute allowing the IDOT to interfere with the time, place, and manner of the enforcement of the

rules of the road, and therefore, the Cities' ATE ordinances are not inconsistent with state law. Further, the Cities claim that the legislature did not intend for the IDOT rules to preempt municipal ordinances.

The IDOT responds, arguing that IDOT rules purport to regulate the ATE devices on the primary highway system and the Cities have the authority to place ATE systems on their local streets. The IDOT claims that the Cities' placement of ATEs on the primary highway system is an improper use of home rule authority as it is inconsistent with the laws of the general assembly.

Iowa cities are provided municipal home rule authority under Iowa law. Section 364.1 provides:

> A city may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

Iowa Code § 364.1 (2015). The IDOT is vested with jurisdiction and control over the primary roads. Iowa Code § 306.4(1). The Cities are vested with jurisdiction and control over the municipal street system. Iowa Code § 306.4(4)(a). The IDOT and Cities share concurrent jurisdiction and control over municipal extensions of primary roads in municipalities. Iowa Code § 306.4(4)(a).

State law provides for the IDOT to regulate obstructions in highway rights of way. *See* Iowa Code Chapter 318 (2015). Furthermore, state law prohibits any city to erect or cause to be erected or maintained any traffic sign or signal inconsistent with Chapter 321. Iowa Code § 321.348. Chapter 321 regulates motor vehicles and the laws of the road imposing criminal sanctions for traffic violations. Iowa Code Chapter 321.

Under Iowa's home rule amendment, a municipality cannot enact an ordinance that expressly or impliedly conflicts with state law. *See* Iowa Const. art. III, § 38A; *City of Davenport v. Seymour,* 755 N.W.2d 533, 537–38 (Iowa 2008). The Cities assert that their ordinances do not conflict with the Iowa Code.

The Cities assert that the Iowa Supreme Court presided over a similar ATE case and ruled that the Cities' ordinances were supplemental to – and not in lieu of or in conflict with – the regular Iowa traffic code. *See City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 353 (Iowa 2015) (citing *Seymour*, 755 N.W.2d at 537-39). Both *Seymour* and *Jacobsma*, however, dealt with individuals challenging criminal traffic tickets. Here, the Cities are challenging the authority of the IDOT to regulate primary highways. Iowa Code Section 306.4(1) provides the IDOT with authority to regulate primary highways. Pursuant to Section 306.4(1), the IDOT implemented rules governing the minimum requirements for ATEs, their evaluation, and their subsequent removal if necessary. Iowa Admin. Code r. 761-144. Therefore, state law, through the IDOT administrative rules, controls.

B. *Authority to Regulate Speed Enforcement*

The Cities argue that the Iowa legislature did not give the IDOT authority to regulate the methods by which municipal peace officers enforce speed regulations. The Cities claim that the IDOT did not have the authority to remove the ATEs because they are a method of enforcing speed regulations in local jurisdictions. The IDOT replies, arguing that their rules do nothing to interfere with traditional law enforcement. Rather, the IDOT has the authority to regulate primary highways based on safety concerns and have adopted rules that promote overall safety when ATEs are in use.

Iowa Code Section 307.2 states "a state department of transportation which shall be responsible for the planning, development, regulation and improvement of transportation in the state as provided by law." Iowa Code § 307.2. The director of the DOT is authorized to "adopt rules in accordance with Chapter 17A as the director deems necessary for the administration of the department and the exercise of the director's and department's powers and duties. Iowa Code §307.12(1)(j).

The "jurisdiction and control over the primary roads shall be vested in the [IDOT]." *Id*. § 306.4(1). To carry out these statutory provisions, the IDOT adopted rules regulating ATEs emphasizing safety. *See* Iowa Admin. Code r. 761–144.6(1). This is consistent with regulating obstructions in highway right-of-ways; the construction, improvement, operation or maintenance of any highway; and limiting cities' obstruction of a street or highway which is used as an extension of a primary road. *See* Iowa Code Chapter 318; Iowa Code §§ 306.4, 321.348.

Furthermore, consultation between the IDOT and cities is required when both exercise concurrent jurisdiction over municipal extensions of primary roads. *Id*. § 306.4(4)(a). The IDOT and city then enter into an agreement as to the kind and type of construction, reconstruction, repair, and maintenance that is required. *Id*. § 306.4(4)(a). Therefore, the IDOT is the primary authority on matters involving the primary highway system.

Based on state law providing the IDOT with the authority to regulate safety on primary highways, the Iowa legislature has provided the IDOT with the authority to regulate ATEs placed on primary highways. The IDOT has the power to apply safety regulations to ATE use on primary highways, which does not interfere with municipal police officers' ability to enforce speed regulations.

C. *Chapter 17A*

a. *Were IDOT actions the product of reasoning that is so illogical as to render it wholly irrational?*

The Cities argue that the IDOT actions were a product of reasoning that is so illogical as to render it wholly irrational because while the IDOT claims to promote safety, their actions actually create more risk on Iowa highways. The IDOT replies, claiming that Iowa primary roads are the safest class of roadway in the state and ATEs should only be considered in extremely limited situations.

> The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:
> (l) Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

Iowa Code § 17A.19(10)(l). The IDOT has clearly been vested with the authority to interpret Iowa law. *See* Iowa Code § 306.4. Accordingly, the IDOT adopted administrative rules in order to promote safety on primary highways in Iowa. *See* Iowa Admin. Code r. 761–144.6 - .8. In order to operate an ATE, the system, for example, shall promote a safe environment for motorists by being located in an area where it is not impeding, does not create a visual obstruction, and is not placed within the first 1,000 feet of a lower speed limit. Iowa Admin. Code r. 761–144.6(1)(b)(1)–(10).

The IDOT conducts annual ATE evaluations. Iowa Admin. Code r. 761–144.7. These evaluations do not only consider speeding violations or traffic collisions. *Id*. Instead, the evaluation considers speed and red light violations; the number and type of collisions; critical traffic safety issues; and the number of citations. *Id*. Finally, a local municipality's continued use of ATEs is based on a number of factors, including: the effectiveness of the system, appropriate

administration of it by the local jurisdiction, the continued compliance with these rules, changes in traffic patterns, infrastructure improvements, and implementation of other identified safety countermeasures. Iowa Admin. Code r. 761–144.8(1). The IDOT then reserves the right to require removal or modification of a system if these conditions are not met. *Id*.

In this case, the Cities' primary argument is that it is illogical to remove ATEs in areas where many speeding violations occur or where lower speeds are required, as in the case of the S-curve in Cedar Rapids. This, however, ignores the IDOT's cumulative review process. Instead of only looking at speeding, the IDOT could consider out of state drivers who are not familiar with unique curves in Iowa roads or the number of traffic accidents pre- and post-ATE implementation. In these situations, it is possible that ATEs will result in unfamiliar drivers braking too quickly or frequently, causing greater risk for accidents. In addition, the IDOT considers outbound camera usage superfluous, as in the case of the Cedar Rapids S-curve. Speed reduction while entering the S-curve is entirely reasonable and is achieved without placing a camera within 1,000 feet of a speed reduction sign, another factor in the IDOT's review. This principal is not advanced when vehicles are exiting a tricky stretch of road, where acceleration into the normal flow of traffic is normal and reasonable.

Therefore, the IDOT's actions are reasonable and logical.

b. *Did the IDOT decision making process fail to consider relevant and important matters that a rational decision maker in a similar circumstance would consider?*

The Cities argue that the IDOT failed to consider information that a rational decision maker in a similar circumstance would consider. Specifically, the Cities point to data showing a reduction in violations in Muscatine; a reduction in crashes in Des Moines; scholarly articles about ATEs; and evidence from the Cities about where to locate the ATEs. The IDOT responds,

arguing that the IDOT Director reviewed crash history and other materials submitted by the Cities in addition to the geometry and traffic flow of the named locations.

Since the IDOT has been vested with the jurisdiction over primary highways, the court will defer to its interpretation of state law. *See* Iowa Code § 306.4. The IDOT adopted rules governing the safety of Iowa's primary highways and developed a review procedure for the use of ATEs. Iowa Admin. Code r. 761–144.6-.8. Under Rule 761–144.8, "[c]ontinued use will be contingent on the effectiveness of the system, appropriate administration of it by the local jurisdiction, the continued compliance with these rules, changes in traffic patterns, infrastructure improvements, and implementation of other identified safety countermeasures." Iowa Admin. Code r. 761–144.8(1).

The Cities point to reduced violations and reduced crashes in Muscatine and Des Moines, respectively. The IDOT Director, however, also analyzed the geometry of the stretch of road on I-235 in Des Moines and determined that the crash rate, compared to the entire flow of traffic on I-235 and the average Iowa urban interstate crash rate, was well below average. Further, the Director analyzed design exceptions and law enforcement methods in determining that the location is safe and does not require an ATE. Regarding the Muscatine location, the IDOT Director reviewed crash history for the location and the location of the ATE, which fell within the 1,000ft rule.

The Cities argue that the IDOT failed to review Anne McCartt's opinions as well as scholarly articles. The IDOT argues that it did consider certain scholarly articles and did not consider McCartt's opinions for various reasons. Giving deference to the agency to evaluate the ATEs in accordance with state law and administrative rules, the particular scholarly article advanced by the Cities is immaterial. The record shows that the IDOT considered certain

scholarly articles, which supported their decision to remove the ATEs. Undoubtedly there will be evidence to the contrary but this does not mean the agency failed to consider relevant material. Furthermore, the IDOT found issues with McCartt's opinions such as her exclusion as an expert witness, and her opinion on the standard for "arbitrary." Again, giving deference to the agency, it is within their discretion to decide which evidence is more persuasive in certain matters.

Despite the Cities' arguments, it is clear that the Director analyzed relevant information regarding each location. That the Director found other scholarly articles, road geometry, and crash data more persuasive, is indicative of the agency's discretion and expertise in transportation matters and ability to properly weigh evidence. Therefore, the IDOT's actions were based on relevant and important matters that a rational decision maker in similar circumstances would have considered.

c. *Were IDOT actions unreasonable, arbitrary, capricious, or an abuse of discretion?*

The Cities argue that the IDOT provides no basis for its position that the current ATE programs are less effective than the IDOT proposal. The IDOT replies, arguing that the IDOT Director analyzed relevant and important information when making each determination and that sanctions are not being imposed retroactively.

As previously mentioned, interpretation of Sections 306.4, 307.12, and Chapter 318 is clearly vested in the discretion of the agency. The IDOT relied on engineering studies, including crash history and traffic violation history, when deciding to remove the ATEs from Des Moines, Muscatine, and Cedar Rapids. With respect to Cedar Rapids and Muscatine, the agency further relied on the 1,000ft rule and determined that the respective ATEs were not in compliance with IDOT rules. Finally, each determination was made to promote highway safety by emphasizing

the importance of the continuous flow of traffic, uninterrupted by ATEs or traffic warning signs that could cause unfamiliar drivers to brake suddenly. Although the Cities argue that higher speeds are inherently more dangerous to highway safety, the IDOT's interpretation and basis for their rules is not unreasonable. Therefore, the IDOT's actions were not unreasonable, arbitrary, capricious, or an abuse of discretion.

D. *Rule-Making Procedures*

The Cities argue that the IDOT's rule-making procedures were defective. Specifically, the Cities argue that the IDOT did not did not fully consider all written and oral submissions respecting the proposed rules. The IDOT claims that the 1,000ft rule was a "logical outgrowth" and "in character" with the prior notice and comments during rule-making, and that interested parties were sufficiently apprised of the ATE subject and issues.

The Cities' argument is based on the idea that the final IDOT rules were not the same as the proposed rules. As the IDOT argues:

> The procedural rules were meant to ensure meaningful public participation in agency proceedings, not to be a straitjacket for agencies. An agency's promulgation of proposed rules is not a guarantee that those rules will be changed only in the ways the targets of the rules suggest. "The requirement of submission of a proposed rule for comment does not automatically generate a new opportunity for comment merely because the rule promulgated by the agency differs from the rule it proposed, partly at least in response to submissions." [citations omitted] Even substantial changes in the original plan may be made so long as they are "in character with the original scheme" and "a logical outgrowth" of the notice and comment already given. [citation omitted]
> The essential inquiry is whether the commenters have had a fair opportunity to present their views on the contents of the final plan.

Iowa Citizen/Labor Energy Coal., Inc. v. Iowa State Commerce Comm'n, 335 N.W.2d 178, 181 (Iowa 1983) (citing *BASF Wyandotte Corp. v. Costle,* 598 F.2d 637, 642 (1st Cir.1979), *cert. denied,* 444 U.S. 1096, 100 S.Ct. 1063, 62 L.Ed.2d 784 (1980)). The IDOT

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argues that comments were submitted during Administrative Rules Review Committee ("ARRC") meetings on October 8, 2013 and February 7, 2014. Further, a public hearing on the rules was held on October 30, 2013. At the meetings and during the public hearing, comments specifically citing the 1,000ft rule were submitted. Therefore, the 1,000ft rule is a direct result of public comments made and is, at the very least, a logical outgrowth of overall public comments. Since final administrative rules may differ from proposed rules, an additional notice and comment period is not required and the IDOT decisions and orders pursuant to the rule are valid.

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that the removal orders, of the Iowa Department of Transportation, are hereby AFFIRMED.

Costs are taxed to the Petitioners.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV049988	CITY OF MUSCATINE IOWA VS IOWA DEPARTMENT OF TRAN

So Ordered

Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa