



**Family seeks evidence**  
Page 9-A: Cathers case update.



**Preston Chamber dinner**  
Page 9-A: Businesses honored.

**Baseball bond**

Galusky, Gyorko pals. Page 1-B



**Putin points to U.S.**

Sees Panama Papers plot. Page 6-A



# Post

## FRIDAY

April 8, 2016

### WEATHER

An a.m. snow shower; mostly cloudy, chilly.  
**High 49** **Low 28**  
Your complete forecast Page 12-A

**TO FIND OUT** about school closings and delays, go to **TheDPost.com**.



**One more winner before 'Idol' idled**

Long-running series wraps up. Page 7-A

### IN THE SPOTLIGHT



**Hawks hand MHS 8-2 lacrosse loss**  
Shaffer nets hat trick, triggers a fast start.

Page 1-B



**Used Book Sale gets under way**  
16th annual effort benefits school kids.

Page 2-A

# Truck ban dumped

Justices side with lower court against Morgantown law

BY BEN CONLEY  
The Dominion Post

In a ruling filed Thursday, the West Virginia Supreme Court upheld a lower court's decision that said Morgantown does not have the authority to ban trucks from using state roads in city limits.

### UPDATE

On Dec. 16, 2014, Kanawha County Circuit Court Judge Joanna Tabit affirmed the arguments of Nuzum Trucking Co., Greer Industries and Preston Contractors Inc., which filed suit about three months after the Sept. 2 passage of two laws amending the city's traffic code. In short, those amendments defined what constituted a "heavy truck" and banned their use in the city's downtown business district. The Supreme Court heard the

city's appeal on March 1, at the WVU College of Law.

Supreme Court Justice Robin Davis delivered the court's opinion.

In representing the city, Bob Bastress argued that a municipality has the authority to regulate traffic within its jurisdiction, including on connecting routes such as W.Va. 7, which passes through downtown and links city streets to U.S. 19 and 119.

In concluding her summary, Davis notes, "In very plain language, W.Va. Code 17C-17-12 grants local authorities the pow-

er to prohibit the operation of trucks or to impose limitations of the weight thereof only 'with respect to highways under their jurisdiction.' As we noted above, the only authority granted to a municipality over connecting parts of the state road system is the regulation of traffic, and that authority does not include regulating the size or weight of vehicles traveling thereon."

In concluding the court's position, Davis wrote "It is ax-

SEE TRUCK, 2-A

LINK UP, HE CONSIDERED ON THE lead. Since a nine is top of nothing, East has the heart ace-jack. To freeze out that suit, South must call for dummy's queen. East wins with his ace, but cannot return the suit without sacrificing a trick there. Suppose East shifts to a club. West wins and leads the heart eight, but South takes the trick, draws two rounds of trumps, then plays off dummy's club winners to discard his heart loser.

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www.dominionpost.com

## TRUCK

FROM PAGE 1-A

iomatic that when a provision of a municipal ordinance is inconsistent or in conflict with a statute enacted by the Legislature the statute prevails and the municipal ordinance is of no force and effect."

Greer Industries Executive Vice President Bob Gwynne said Thursday's ruling was the result he expected.

"We are delighted with the result. It has been some time since this issue was brought up, but I think from the beginning we thought that the court would rule this way, and

they did," Gwynne said.

It was noted that this is the second attempt the city has made at such a ban. Gwynne said a ruling from the Supreme Court should close the book on the effort.

"I think this does bring finality to it," he said.

Morgantown City Council initially voted, 6-1, to pass the truck ban with Marti Shamberger, Ron Bane, Bill Kawecki, Jenny Selin, Mike Fike and Nancy Ganz voting for, and Wes Nugent voting against.

Council voted, 4-2, on Feb. 3, 2015 — with Nugent and Bane voting in the minority — to move forward with the appeal process after the Kanawha County

Circuit Court ruling.

Had the Supreme Court ruled in the city's favor, there still would have been work left to do in order to get the ban reinstated.

City Manager Jeff Mikorski explained as much before council voted to move forward with the appeal.

"What we're dealing with is just the state preemption saying that we have authority over the state on those routes. There were other issues within those lawsuits that have not been brought up yet that, even if we do win this at the Supreme Court, we'd drop back to the circuit court," Mikorski said in February 2015. "I just don't want everybody to think that would be the final part of it."

Kawecki said the outcome is not one he wanted, but the situation did bring items to light. "I am disappointed, certainly," he said. But the proposal did get groups looking at the issue. One is the Morgantown Metropolitan Organization, which is looking at improving Green Bag Road so it could become an alternative route for trucks. Kawecki also commended Bastress' work on the case. Shamberger also thanked Bastress for his work. She added that she also wanted to thank the court for hearing the case.

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**GREER INDUSTRIES** is co-owned by John and David Raese. The two also co-own the West Virginia Newspaper Publishing Co., publisher of *The Dominion Post* and *TheDPost.com*.

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**Biaforas want BOE support**

Say tax exceptions hurt Mon students.  
Page 1-B

**Two pharmacies closing**  
CVS to acquire both stores.  
Page 1-D

THE DOMINION  
**Post**

**Expectations are high for WVU's Henry**

True freshman in mix to start at free safety.  
Page 5-B

**Soccer squad absent 3 starters**  
Mountaineers on U-20 World Cup team.  
Page 5-B

Morgantown, West Virginia

dominionpost.com

Newsstand: 75 cents

**WEDNESDAY**

Aug. 13, 2014

**WEATHER**



A morning shower, then some sun returning.  
High **75** Low **57**  
Your complete forecast  
Page 6-A

**Century celebration**

Sabra UMC notes 100 years.  
Page 1-B

**Truck-ban avenues outlined**

City presented with 4 options, some warnings

**UPDATE**

BY BEN CONLEY  
The Dominion Post

Assistant Morgantown City Manager Glen Kelly presented members of city council with data

as well as four potential routes forward in regard to the restriction of heavy truck traffic in the city's downtown business district. "These are options," Kelly said. "Nothing has been approved by council. We're just trying to give them the information and as many options as possible to find a way to achieve what the citizens want without opening

the city to all kinds of lawsuits." Kelly explained that all the information collected by city staff indicates that the city council may not have the authority to ban trucks from state roads. He said the city also lacks sufficient safety data to influence the Federal Highway Commission (FHC) to allow the city to take such action. He gave council a list of four routes he sees around these roadblocks:  
■ Follow Pennsylvania's lead

in getting a waiver through the State Highway Commission to increase the weight limit to 77,000 pounds on interstate highways. This way, Interstate 68 could be used to haul limestone or coal. If done countywide, Kelly explained, Green Bag Road and others could be developed to be cost-effective routes for businesses.  
■ Explore other states' laws concerning alternative truck  
SEE TRUCK, 2-A

sues. It affects everyone — family, friends, homeless, addicts, everyone in our community."

so it's probably likely that there's not a whole lot of awareness to begin with, I don't think."

**12 WARNING SIGNS OF SUICIDE**

**LIFELINE WEBSITE:** [suidpreventionlifeline.org](http://suidpreventionlifeline.org).

- Threatening to hurt or kill oneself or talking about wanting to do so.
- Looking for ways to kill oneself by seeking access to firearms, pills or other means.
- Talking or writing about death, dying or suicide when these actions are out of the ordinary.
- Feeling hopeless.
- Feeling rage or uncontrolled anger or seeking revenge.
- Acting recklessly or engaging in risky activities, seemingly without thinking.
- Feeling trapped — like there's no way out.

- Increasing alcohol or drug use.
  - Withdrawing from friends, family and society.
  - Feeling anxious and agitated, or unable to sleep, or sleeping all the time.
  - Experiencing dramatic mood changes.
  - Seeing no reason for living or having no sense of purpose in life.
- If you or a loved one are suffering from any of these symptoms, seek help immediately by contacting a mental health professional or by contacting the National Suicide Prevention Lifeline, toll free, at 1-800-273-TALK (8255).

SOURCE: Valley HealthCare

**TRUCK**

FROM PAGE 1-A

routes and request legislators push to enact the needed laws to facilitate alternative routes.

- Build the empirical safety data that would support the city's need to restrict heavy truck traffic with the DOH and the FHC.
- Pursue a Declaratory Judgment Action, which would allow a judge to rule whether the city has the jurisdiction to regulate traffic. The action could get a court to rule on the issue without the city being sued.

According to Kelly, Safe Streets Morgantown spokesman Brian McAllister has said that WVU Law Professor Bob Bastress would represent the city pro bono in this effort.

Kelly said the action would be a last resort, as it would basically entail the city taking the DOH to court in Kanawha County. Kelly also acknowledged that these options might not be as immediate as members of council would like.

"It's going to be time consuming, but if we pass

a law that's illegal, that would also be time consuming, plus potentially cost the city hundreds of thousands, if not millions, and end up overturned anyway," Kelly said. These options were compiled based on information collected by Kelly as well as the city manager and other city staff.

**Enforcement woes**

Morgantown Police Chief Ed Preston shared concerns about possible traffic stops.

In an email to Kelly, Preston said there are "lots of issues" regarding enforcement of a heavy truck ban.

"A traffic stop is considered a seizure under the Fourth Amendment and is subject to review as to whether the stop was reasonable. If the law that the officer is trying to enforce is invalid/unenforceable, then the officer can be held liable," Preston explained in the email.

When contacted by *The Dominion Post*, Preston referred all questions to the city manager's office.

Furthermore, according to information provided by

the city, if officers, administration or councilors are operating outside of their scope of responsibility, it could nullify the city's lawsuit insurance.

In the case that the city would have to take ownership of the routes affected by the downtown truck ban, some preliminary numbers were compiled.

The city's engineering division projected that it would cost between \$400,000 and \$500,000 to pave W.Va. 7 from Hartman Run Road to Spruce Street.

There are two bridges on that stretch of W.Va. 7. The bridge just past the Hogback turn would cost a minimum of \$1 million to replace. The Walnut Street Bridge would cost between \$6 million and \$10 million to replace.

"We're just trying to get all the information we can, and we're still digging," Kelly said. "What we all hope is that we are able to achieve the desired outcome — do what the people want — while creating the least possible damage to the city."

**PENNSYLVANIA**

(afternoon)  
Daily number: 9-1-3  
Big 4: 0-9-9-4  
Quinto: 9-0-2-1-4 (evening)  
Daily number: 0-8-0  
Big 4: 6-5-7-0  
Quinto: 3-4-7-6-8  
Cash 5: 05-23-29-30-37  
Treasure Hunt: 06-09-16-24-25

**MEGA MILLIONS**  
32-53-60-63-68  
Mega Ball: 6  
Megaplier: x4  
Jackpot: \$128M

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**Post 2 wins its opener**

Tops Potomac Valley in Legion tourney.  
Page 5-B

**WVU eyes return to glory**

Few gridders here for last 10-win season.  
Page 5-B

# THE DOMINION Post

**Mon BOE approves classrooms**

Research Ridge to help house pre-K program.  
Page 1-D

**Eberly dean leaves WVU**

Jones joining Clements at Clemson.  
Page 1-D

Morgantown, West Virginia

dominionpost.com

Newsstand: 75 cents

**THURSDAY**

July 31, 2014

**WEATHER**

A thunderstorm in spots this afternoon.  
High **80** Low **59**  
Your complete forecast  
Page 6-A

**Mon County Fair pageantry**

Miss Teen, Junior Miss winners revealed.  
Page 1-B

## Truck talk concerns county

### Possible ban has Bloom watching

BY BEN CONLEY  
The Dominion Post

Tuesday night's decision by Morgantown City Council to consider banning heavy trucks from the city's downtown was addressed during the Commissioner's Report portion of Wednesday's

### MONONGALIA COUNTY COMMISSION

brief, regular meeting of the Monongalia County Commission. Council moved a proposed heavy truck ban on for a first reading despite learning that the West Virginia Division of Highways would not support the move. Also, federal interstate commerce laws forbid the restriction of commercial truck

traffic — particularly on U.S. routes, such as U.S. 119 and U.S. 19 in the city's downtown.

"I'm very concerned and I'm just going to monitor the situation very carefully. I think that has a major effect on all residents of not only the city, but the county," Commissioner Tom Bloom said. "I just hope this does not open up

a can of worms and cost the residents of Monongalia County an enormous amount of money."

Acting Commission President Eldon Callen said initially he wasn't going to address council's decision, but later said, "There's a lot of things I would like to have, but sometimes the laws prevent it. And sometimes discretion is the better part of valor."

SEE **TRUCK**, 2-A

2-A THE DOMINION POST THURSDAY, JULY 31, 2014

**LOCAL**

## Sides weigh in on heavy-truck ban

### MORGANTOWN CITY COUNCIL

BY BEN CONLEY  
The Dominion Post

Thirty minutes prior to the start of Tuesday's Morgantown City Council Committee of the Whole meeting, every available seat was taken and a crowd was forming around the chamber door.

The overwhelming majority of those in attendance were drawn to the meeting by the proposed law that would remove heavy trucks from the city's downtown business district.

While most came simply to hear, several residents on both sides of the issue took the opportunity to be heard.

"Consider the public health impact of the pollutants that come from the trucks — the noise, the exhaust, the dust. There are a variety of public health issues," Dwight Harshbarger said. "I think those need to be front and center when you consider the consequences of maintaining what we have today with the

“All I'm saying is, we're not your enemy.”

Roger Nuzum, owner Nuzum Trucking Co.

gains that we could have by making these changes.”

Susan Case agreed. She said she's lived in Morgantown for 30 years and hopes to finally see a solution to a longstanding problem.

"I think it's partly an air quality issue ... I think it's partly a safety issue, partly a cleanliness issue, partly an increased traffic issue, and it just affects the general pleasantness of the city we live in to have these trucks rumbling through our neighborhoods and the downtown," Case said. "I promise you that if you do pass this ordinance, the citizens of Morgantown will support you and will come out in any way you like to help support you in this."

Hobson Street resident

David Saville said quality of life is the component that gets Morgantown mentioned as one of the country's best places to live, as well as all the other accolades the city has received.

"One of the things that detracts from that is having large trucks going through downtown Morgantown," Saville said, before continuing, "Getting back to quality of life, trucks are terrible. Trucks detract from downtown Morgantown. If I owned a business downtown ... I would be up in arms that my customers have to put up with that noise, that filth and the traffic congestion that [heavy trucks] cause every day."

Roger Nuzum, owner of the Nuzum Trucking Co., said half of his 38 trucks operate out of Greer Limestone and are driven loaded through Morgantown, not out of convenience, but economic necessity.

Nuzum explained that a 2008 decision by the state legislature leaves drivers in a position where a truck can haul only 58,000 pounds on

“Trucks detract from downtown Morgantown.”

David Saville  
Hobson Street resident

an interstate highway, but 77,000 on all other roads.

"It's not your fault. It's not my fault. The state legislature allowed that," Nuzum said. "If I've got to use the interstate, hauling 5 to 8 net tons less than what I'm used to hauling on a secondary road ... I would have to charge between \$5 and \$8 per ton more on a haul rate to take that same load" in order to be competitive.

Nuzum explained that all trucks newer than 2005 operate under California air pollution standards, the nation's most stringent. He said that changes coming in 2016 will require a truck to produce equal or less emissions than a passenger car.

Nuzum said he worries what impact a heavy truck

ban will have on his company's 45 employees.

"All I'm saying is, we're not your enemy. We're not traveling Morgantown as a convenience because it's cool to drive through town and look at the students. It's simply an economic necessity for the trucking industry right now and we're powerless to do anything about it," Nuzum said. "I hate driving through Morgantown."

Randy Rhodes explained that he is a third generation truck driver whose father began driving trucks through Morgantown in 1956.

"These filthy, stinking, dirty trucks have made my family a living, and it's been a hard living, but I'm thankful," Rhodes said. "I think there's an agenda here against a certain industry and I won't mention any names. These trucks are a lot safer running through the streets of Morgantown than you are to walk down the streets of Morgantown after dark."

Council moved the proposed downtown truck ban on for a first reading at an upcoming regular meeting.

### CORRECTIONS/CLARIFICATIONS

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Madigan Lawson's name was misspelled on the July 29 KidFo page. Her drawing will reappear in Tuesday's KidFo.

### LOTTERY

**WEST VIRGINIA**  
Daily 3: 0-6-3  
Daily 4: 6-4-9-7

**MARYLAND**  
(afternoon)  
Pick 3: 2-5-2  
Pick 4: 1-7-1-8  
(evening)  
Pick 3: 0-1-5  
Pick 4: 1-2-7-3  
Bonus Match 5:  
24-32-34-35-38

## OBITUARIES

BUTLER, Naomi Inez  
DALTON, Danny Eugene 'Chub'  
DOUGLAS, June Maureen  
HISER, Pamela Jean  
LAWSON, Adrian Lee  
MALONEY, William 'Bill' E.  
RIGGLEMAN, Marietta 'Mary' June  
SINGLETON, Marjorie Garlow  
YOST, Larry Lynn 'Larp'

Page 5-A

## Video purports to show beheading of U.S. journalist

Page 5-A

## Apple: Accounts tampered with

Page 3-A

## MARKETS

DOW  
17,067.56 ▼ -30.89

NASDAQ  
4,598.19 ▲ +17.92

S&P 500  
2,002.28 ▼ -1.09

Page 1-D

## COMING TOMORROW

### Marquee

Find out about area entertainment options.

## U.S. marine band



Ron Rittenhouse/The Dominion Post

The United States Marine Band, under the direction of Lt. Col. Jason K. Fettig, plays at the WVU Creative Arts Center, on Tuesday, in Morgantown.

## CAC hosts decorated musical group

The Dominion Post

The United States Marine Band, known as The President's Own, was at the WVU Creative Arts Center, in Morgantown, on Tuesday evening.

The band was under the direction of Lt. Col. Jason K. Fettig and sponsored by the WVU College of Creative Arts, the WVU School of Music and the WVU Bands.

Founded in 1798 by an Act of Congress, the Marine Band is America's oldest continuously

**To see photos, go to ...**  
**TheDPost.com**



**The band played everything** from a selection of John Philip Sousa marches to a number from the musical "Wicked."

## MORGANTOWN CITY COUNCIL

# Truck ban receives a green light

City staff have 90 days to prep for enforcement

BY BEN CONLEY

The Dominion Post

Morgantown City Council voted 6-1 Tuesday night to put a heavy-truck law on the books.

City staff now have 90 days to try to get the city in position to enforce the law.

Council Member Wes Nugent was the only vote against the law.

Council passed two laws amending the city's traffic code. The first dealt with the definitions of the terms "heavy trucks" and "downtown business district."

Based on a recommendation from Morgantown Police Chief Ed Preston, a change was made to how violating trucks will be identified.

The original proposed law said "heavy truck" meant a vehicle with a declared gross weight of more than 26,000 pounds ... and three or more axles in total.

The issue with that definition, City Manager Jeff Mikorski explained, is that it is not uncommon for vehicles weighing in excess of 26,000 pounds to have fewer than three axles.

"To make it more consistent with the commercial motor vehicle classifications, we'd like to request an amendment that would remove the three or more axles and instead of that place 'a commercial motor vehicle with class seven or greater rating.'"

SEE TRUCK BAN, 2-A

## TRUCK BAN

FROM PAGE 1-A

Mikorski said. "That would make it more consistent with the 26,000 pounds."

Also, under the initial definition, vehicles that were never intended to be a target of the law would have to be checked in order to avoid claims of discriminatory enforcement, City Attorney Steve Fanok explained.

"When [Preston] thought about it, when you're stopping everything with three or more axles, and then asking for the weight card ... that you're going to be stopping a huge amount of vehicles with three axles that are not going to be 26,000 pounds," Fanok said, later adding, "It's the police department that's said 'if you want us to try to enforce this, please make this change. This will make it easier for us to enforce,'" Fanok said.

Council agreed to the change in definition, but Nugent said the fact that such changes needed to be made during the second reading is an indication of why he couldn't support it.

"I appreciate the city staff trying to come back and give us recommendations as to what can be done, but the fact that we're still trying to tack down aspects such as this on second reading gives me pause for concern,"

Nugent said.

The second law amends the city's traffic code to put the restriction into place and spells out exceptions to the law, such as government or military vehicles, solid waste trucks and vehicles that have attained a special permit from the city, among others.

Council also amended that law, in order to put the 90-day implementation period in place. Council Member Bill Kawecki was the lone vote against the 90-day period.

Council Member Ron Bane asked Mikorski to explain how enforcement of the law would work.

Mikorski said he's reached out to Preston, the county's prosecuting attorney and the West Virginia Public Service Commission, the state agency that handles truck weight issues.

"The police chief, the prosecuting attorney and the public service commission all say that in order to enforce this ban, you need to weigh the truck. You need to see the actual weight of the vehicle. Just because the vehicle's declared weight is a certain weight, you cannot give an ordinance based on declared weight ... you'll have to weigh those vehicles in order to give a citation," Mikorski said.

Because the trucks would not be in violation until they reach the de-

finned downtown area, the question becomes how and where these trucks would be weighed, Mikorski explained, adding that issues like the acquisition of proper scales and training for personnel and the possibility of additional personnel needed to be considered.

"In order to enforce it, we have to establish commercial vehicle traffic enforcement stations so that these vehicles can pull off, be weighed and then cited if they meet the restrictions," Mikorski said.

Mikorski also said the city would also need to get the state to approve signage in order to enforce the ban.

Mikorski said the city would work toward the 90-day deadline, and felt it could get close to being ready, but stopped short of assuring council that everything would be in place.

"We have to look at all these things prior to be able to enforce it," Mikorski said. "That's going to take some time to work out all the technicalities and the issues with putting this in place."

Several members of council said that in the meantime, the city should step up enforcement of the laws that are already on the books and enforceable.

In the end, Mikorski explained, the issue will come down to whether or

not the state and federal authorities agree that enough safety concerns exist to justify the restriction.

"As long as the [federal highway administration] agrees with that, it's fine. If the federal highways does not agree that it is a reasonable restriction based on safety, one of the issues that may come up is that they would then tell the state DOH that they're out of compliance with the federal standards and it may have an impact on the state's federal transportation funds," Mikorski explained.

Council member Mike Fike said that all of the arguments he's heard against the law have been questions about what can be done or what can be enforced. The only way to get answers to this long-standing city issue is to move forward, he said.

"If we get pushed into a corner with the law and are told 'no, you can't do this,' then we back out of it. But right now, we know we can. We can. We have to take the action," Fike said. "If we pass this thing, I think we're going to see this overwhelming response. 'City council, thank you, we're pleased with what you did.' That's why I feel like we have no choice but to vote for it. Beyond that, we'll work through the questions."

## Albright man charged for making meth

**METH-MAKING** suspects waive hearings; opt for lower bonds. **Page 2-D**

The Dominion Post

**KINGWOOD** — An Albright man was arrested Tuesday and charged with operating a clandestine drug lab.

According to a release from the Preston County Sheriff's Department, a search warrant was executed at the residence of Donald Carl Stout, 65, on Sunday. The search revealed evidence that Stout had been manufacturing methamphetamine.

Operating a clandestine drug laboratory is a felony punishable by a 2- to 10-year prison sentence and/or a fine of \$5,000 to \$25,000.

Bond was set at \$150,000.

## Legal weed could raise crash stats

Associated Press

**WASHINGTON** — As states liberalize their marijuana laws, public officials and safety advocates worry that more

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## LOTTERY

**WEST VIRGINIA**  
Daily 3: 5-7-4  
Daily 4: 5-2-5-7  
Cash 25:  
04-05-11-14-16-25

**MARYLAND**  
(afternoon)  
Pick 3: 3-3-9  
Pick 4: 9-8-3-7  
(evening)  
Pick 3: 4-9-6  
Pick 4: 3-2-0-8  
Bonus Match 5:  
03-05-10-16-25  
Bonus: 22  
5 Card Cash:  
2C-3D-6D-4S-5S

**PENNSYLVANIA**  
(afternoon)  
Daily number: 5-8-5  
Big 4: 7-5-0-5  
Quinto: 9-5-8-6-0  
(evening)  
Daily number: 7-3-6  
Big 4: 5-8-6-2  
Quinto: 7-3-3-6-9  
Cash 5:  
05-10-13-25-40  
Treasure Hunt:  
12-13-16-19-20

**MEGA MILLIONS**