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## State of Louisiana

DEPARTMENT OF JUSTICE  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

August 9, 2013  
OPINION 13-0004

50 HIGHWAYS – Roads

La. R.S. 32:235

Ms. Tiffany K. Clark  
Council Secretary  
St. Charles Parish Council  
P.O. Box 302  
Hahnville, Louisiana 70057

The "guidance" statements in the Manual on Uniform Traffic Control Devices ("MUTCD") are merely recommendations and are not mandatory. Therefore, the St. Charles Parish Council can pass ordinances to install multi-way stops upon highways within its jurisdiction without having to adhere to the "guidance" statements as set forth in the MUTCD, including the use of an engineering study or engineering judgment.

Dear Ms. Clark:

You have requested an opinion of the Attorney General on behalf of the St. Charles Parish Council as to whether the Council can pass ordinances to install multi-way stops upon highways within its jurisdiction without having met the guidance established in the Manual on Uniform Traffic Control Devices ("MUTCD"). Your request has been assigned to me for research and reply.

Louisiana's laws on traffic regulation are found in Title 32 of the Louisiana Revised Statutes. Pursuant to La. R.S. 32:235(B), local, municipal and parish authorities are granted the authority and responsibility to place and maintain traffic control devices upon highways within their jurisdiction. However, please note that in accordance with La. R.S. 32:235(C), "[n]o local municipal or parish authority shall place or maintain any traffic control device upon any state maintained highway without having first obtained the written approval of the department."

It is well-settled that a governing authority which has jurisdiction over a particular roadway, in this case St. Charles Parish, has a legal duty to make that roadway reasonably safe for travel.<sup>1</sup> This includes the duty to erect warning signs or barricades sufficient to warn motorists of unusually dangerous conditions such as sharp curves or unexpected intersections.<sup>2</sup>

Nevertheless, a governing authority has a certain amount of discretion as to the manner in which it will fulfill this duty.<sup>3</sup> Whether it is appropriate or necessary to place warning signs at a particular intersection or crossing is a decision which the governing authority

<sup>1</sup> *Chaney v. Nat'l R.R. Passenger Corp.*, 583 So.2d 926 (La.App. 1 Cir. 1991).

<sup>2</sup> *Chaney, supra*, citing, *Langer v. Bienville Parish Police Jury*, 541 So.2d 360 (La.App. 2 Cir. 1989), *writ denied*, 546 So.2d 177 (La.1989); *Douget v. Allen Parish Police Jury*, 520 So.2d 813 (La.App. 3 Cir.1987); *Laque v. St. Charles Parish*, 444 So.2d 742 (La.App. 5 Cir.1984); *Watts v. City of Baton Rouge*, 248 So.2d 42 (La.App. 1 Cir. 1971), *writ denied*, 259 La. 63, 249 So.2d 203 (1971); *Wall v. Am. Employers Ins. Co.*, 215 So.2d 913 (La.App. 1 Cir.1968), *writ denied*, 253 La. 325, 217 So.2d 415 (1969).

<sup>3</sup> *Chaney*, 583 So.2d at 929.

must make.<sup>4</sup> However, as explained below, all traffic control devices erected must conform to the MUTCD.<sup>5</sup>

The MUTCD contains the rules and regulations regarding the placement of traffic control devices.<sup>6</sup> It “is designed to provide consistent and uniform signs, markings, traffic signals, etc. as indicators for drivers to make them uniform across the country.”<sup>7</sup>

The Louisiana Department of Transportation and Development (“DOTD”) has adopted the MUTCD as its manual for a uniform system of traffic control devices.<sup>8</sup> La. R.S. 32:235(B) grants local, municipal, and parish authorities the power to place and maintain traffic control devices upon highways under their jurisdiction as they may deem necessary and provides as follows:

Local municipal and parish authorities in their respective jurisdictions shall place and maintain such traffic control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this Chapter, regulations of the department and commissioner adopted pursuant hereto, and local traffic ordinances adopted pursuant to the authority granted by R.S. 32:41 and R.S. 32:42. **All such traffic control devices hereafter erected shall conform to the department's manual or specifications.** If any such device hereafter erected by a political subdivision of this state fails to conform to the manual or specifications, payment of any funds allocated to that political subdivision shall be withheld by the department until the standards established by the department are complied with.

(Emphasis added).

The MUTCD itself clearly sets forth that the manual only describes the placement, design, and application of traffic control devices; **it does not establish legal requirements that devices must be installed.**<sup>9</sup> Within the MUTCD, sections 1A.09,

<sup>4</sup> The courts have interpreted the decision of whether or not to place highway signs at a particular intersection or crossing to be an operational decision, not a policy-making or discretionary function decision for which La. R.S. 9:2798.1 provides immunity to public entities or their employees. See *Valet v. City of Hammond*, 577 So.2d 155 (La.App. 1 Cir.1991); *Chaney*, 583 So.2d at 929, and *Estate of Thomas v. State*, 604 So. 2d 617, 624-25 (La.App. 2 Cir. 1992), *writ denied*, 608 So. 2d 167 (1992).

<sup>5</sup> La. R.S. 32:235.

<sup>6</sup> 23 CFR 655.603(a); 23 CFR Part 655, Subpart F, “in accordance with” 23 USC 109(d) and 23 USC 402(a).

<sup>7</sup> *Robinson v. State*, 2012 WL 3090930 (Tenn.Ct.App. July 31, 2012).

<sup>8</sup> La. R.S. 32:235(A)(1) states that DOTD “shall adopt a manual and specifications for a uniform system of traffic control devices consistent with the provisions of this Chapter for use upon highways within this state.” DOTD adopted the 2009 Edition of the MUTCD on December 16, 2011. See DOTD Authorization Memorandum RE: 2009 Edition of the Manual on Uniform Traffic Control Devices dated December 2009, available at [http://www.dotd.la.gov/highways/traffic/publications/MUTCD/Authorization for 2009 MUTCD.pdf](http://www.dotd.la.gov/highways/traffic/publications/MUTCD/Authorization%20for%202009%20MUTCD.pdf). Last visited August 9, 2013.

<sup>9</sup> MUTCD, 2009 Edition, Section 1A.09, P02. (Emphasis added).

P03; 2B.04, P02; and 2B.07, P03 contemplate the use of either an engineering study or the application of engineering judgment in determining whether to use a particular traffic control device at a particular location.<sup>10</sup> Section 1A.09, P03 of the MUTCD provides as follows:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and applications of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of roads and streets that the devices complement.

Section 2B.04, P02 of the MUTCD, which is applicable to traffic devices at intersections, provides as follows:

Engineering judgment should be used to establish intersection control. The following factors should be considered:

- A. Vehicular, bicycle, and pedestrian traffic volumes on all approaches;
- B. Number and angle of approaches;
- C. Approach speeds;
- D. Sight distance available on each approach; and
- E. Reported crash experience.

Finally, Section 2B.07, P03 of the MUTCD, which specifically contains provisions regarding the application of multi-way stop control at an intersection, states that “[t]he decision to install multi-way stop control should be based on an engineering study.”

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<sup>10</sup> MUTCD, 2009 Edition, Section 1A.13 contains the definitions of “engineering study” and “engineering judgment.” MUTCD, 2009 Edition, Section 1A.13, P03, 64 and 65 provides, in pertinent part:

Engineering Judgment – the evaluation of available pertinent information, and the application of appropriate principles, provisions, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. Engineering judgment shall be exercised by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. Documentation of engineering judgment is not required.

Engineering Study – the comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, provisions, and practices as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer. An engineering study shall be documented.

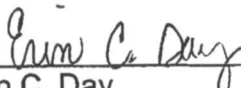
However, these provisions of the MUTCD are not mandatory. In general, the MUTCD classifies its text into four separate categories: standards, guidance, options, and support. A "standard" is "a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device."<sup>11</sup> "Guidance" is defined as "a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate."<sup>12</sup> An "option" is "a statement of practice that is a permissible condition and carries no requirement or recommendation."<sup>13</sup> "Support" is defined as "an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition."<sup>14</sup> Therefore, the "standards" are the only mandatory statements that must be followed.

Sections 1A.09.03, 2B.04.02 and 2B.07.03 of the MUTCD, which state that the decision to install a traffic device at a particular location should be based on either an engineering study or the application of engineering judgment, are categorized in the MUTCD as "guidance." They are merely recommendations and do not place a mandate upon the local governing authority. Thus, it is the opinion of this office that the Council can pass ordinances to install 3-way and 4-way stop signs upon highways within its jurisdiction without having met the "guidance" statements set forth in the MUTCD. However, please note that under La. R.S. 32:235(C), "[n]o local municipal or parish authority shall place or maintain any traffic control device upon any state maintained highway without having first obtained the written approval of the department."

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY:   
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JDC: ECD

<sup>11</sup> MUTCD, 2009 Edition, Section 1A.13, P01, A.

<sup>12</sup> MUTCD, 2009 Edition, Section 1A.13, P01, B.

<sup>13</sup> MUTCD, 2009 Edition, Section 1A.13, P01, C.

<sup>14</sup> MUTCD, 2009 Edition, Section 1A.13, P01, D.