



# MISSISSIPPI JUSTICE INSTITUTE

A Division of Mississippi Center for Public Policy

May 31, 2018

City Attorney Ben Logan, City of Tupelo  
71 E. Troy St.  
Tupelo, MS 38804

Mr. Logan,

I write to caution the City of Tupelo against regulating food trucks. I read, with concern, a recent article in *The Northeast Mississippi Daily Journal* entitled "Tupelo City Council pushes food truck regulations." If Tupelo chooses to regulate food trucks, Tupelo will likely open itself to legal liability, as many food truck regulations around the country have triggered lawsuits against municipalities.

The reason food truck regulations trigger litigation is their tendency to arbitrarily deny hardworking citizens the right to earn a living, unfairly privilege some businesses over others, and lead to inconsistent enforcement. For example, the very regulation Tupelo is discussing—a regulation about how close a food truck should be to a restaurant—was found to be unenforceable just this past December in Maryland. See *Pizza di Joey v. Mayor and City Council of Baltimore*, Case No. 24-C-16-002852, 2016 WL 2761337, at 1 (Md. Cir. Ct.). Other food truck regulations around the country, from Louisville, to San Antonio, to Chicago, and many other places have also been challenged in court. Many cities realize, ultimately, that tighter food truck regulations are difficult to defend. As a city attorney from San Antonio said just before that city rescinded its challenged food truck regulation, "This case [defending the regulations] is not defensible. I don't know how else I can say it."

I am also concerned that the public comments of members of the city council are the exact sort of evidence that would be used to identify the intentions of council and to strike down any food truck ordinances. For example, Ward 7 Councilman Willie Jennings was reported to say, "I just want to make sure the established businesses are protected." A regulation motivated by a desire to protect existing businesses flies in the face of rights under the Mississippi and federal constitutions.

Ultimately, Tupelo should not overregulate food trucks, because they are an important part of a dynamic economy. A look around the country at growing cities shows they often have vibrant food markets. Tupelo can have a bright future ahead of it. Do not stunt its growth with unfair regulations.

Sincerely,

  
Director Shadrack White  
Mississippi Justice Institute

cc: City Council President Markel Whittington  
Mayor Jason Shelton