June 27, 1977

ATTORNEY GENERAL OPINION NO. 77-215

Mr. John Dekker
Director of Law
City Hall - Thirteenth Floor
455 North Main Street
Wichita, Kansas 67202

Re: Cities--Railroad Crossings--Traffic Regulation

Synopsis: Cities have the power to enforce reasonable regulations concerning the obstruction of streets by railroad traffic. The power of reasonable regulation does not include the power to prohibit railroad operation entirely. While the city may prohibit undue obstruction of street crossings by railroad operations, it may not prohibit those operations entirely for fixed periods of time.

* * *

Dear Mr. Dekker:

You request my opinion whether the City of Wichita may prohibit railroad trains from crossing certain designated streets during specific times of the day. A proposal has been made that the city adopt an ordinance which would prohibit railroad train travel across such streets as Central, 13th, 21st, Lincoln and Douglas between the hours of 7:00 a.m. and 9:00 a.m., and 3:30 to 6:00 p.m.

K.S.A. 66-273 provides thus:

"Each and every railroad company or any corporation leasing or otherwise operating a railroad in Kansas is hereby prohibited from allowing its trains, engines or cars
to stand upon any public road within one half
mile of any incorporated or unincorporated
city or town, station or flag station, or
upon any crossing or street, to exceed ten
minutes at any one time without leaving an
opening in the traveled portion of the public
road or crossing of at least thirty feet in
width."

Violation of this provision is a misdemeanor. K.S.A. 66-274.

In Walker v. Missouri Pacific Railway Co., 95 Kan. 702 (1915),
the court held that a city could lawfully impose more restrictive
requirements upon obstruction than the statute provided. Although
the legislation upon which the court relied in that case appears
to have been repealed, nonetheless it clearly did not regard K.S.A.
66-273 as preemptive of the city's right to regulate the obstruc-
tion of public streets at railroad crossings by train operations.
Accordingly, the city may, in the exercise of its police powers,
impose more restrictive regulations than those authorized by K.S.A.
66-273.

The restrictions imposed by the city must be reasonable, however.
The restrictions which are imposed must bear a rational relation-
ship to the problems sought to be eliminated or avoided, and the
burdens imposed on the railroads should not be greater than nec-
essary to deal with the problems of obstructed traffic. An ordi-
nance which prohibits the use of the tracks at crossings entirely
for several hours each day very likely will restrict railroad
operations far more than is reasonably necessary.

It is important to be mindful of the distinction between regu-
lation and prohibition. The city has the unquestioned right
to prescribe reasonable regulations to prevent unnecessary and
undue obstruction of traffic, and to permit the passage of emer-
gency vehicles. At the same time, it does not have the right
to prohibit railroad operations at street crossings entirely.
A total prohibition against railroad operations at a street cross-
ing for a prescribed period of time on its face appears to be
unrelated to the problem of traffic obstruction. That is, rail-
road operations are prohibited entirely, rather than the operation
of railroad equipment in such a way as to obstruct vehicular traf-
ffic unduly. Thus, on the face of the matter, the proposed pro-
hibition of railroad operations on the described crossing for
prescribed periods appears to exceed the power of the city to
impose regulations which bear a reasonable relationship to the legitimate municipal object of preventing undue obstruction of traffic. In addition, so far as concerns tracks carrying inter-state railroad traffic, such a regulation may predictably cause serious disruptions of railroad operations so as to constitute an impermissible and unconstitutional burden on interstate commerce.

In my judgment, the proposed prohibition of railroad operations as described above would exceed the police power of the city to impose reasonable restrictions directly related to the obstruction of motor vehicle traffic; in addition, such a measure raises obvious serious constitutional questions because of its probable and foreseeable disruptive effects on interstate railroad traffic.

Yours truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj