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November 8, 1982

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ATTORNEY GENERAL OPINION NO. 82- 239

The Honorable Michael Johnston  
Senator, Fourteenth District  
3610 Gabriel, No. 325  
Parsons, Kansas 67357

The Honorable Fred A. Kerr  
Senator, Thirty-third District  
Route 2  
Pratt, Kansas 67124

Re: Crimes and Punishments -- Code; Crimes Against  
Property -- Tampering With a Traffic Signal

Synopsis: Although K.S.A. 21-3725 and 21-3726 prohibit all  
persons from manipulating or tampering with railroad  
traffic signal devices, railroad personnel are excused  
from complying with said statutes when they are required  
to manipulate such devices to conduct operational  
tests in accordance with federal regulations. Cited  
herein: K.S.A. 21-3725, 21-3726, 49 C.F.R. §217.9.

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Dear Senators Johnston and Kerr:

You have each requested an opinion providing an interpretation of K.S.A.  
21-3725 and 21-3726. You state that you have been informed that certain  
railroad operating officials have removed one or more bulbs from traffic  
control signals on rail lines, causing a dangerous procedure to be initiated,

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i.e., the engineer must bring the train to an emergency stop. You ask whether K.S.A. 21-3725 and 21-3726 prohibit railroad personnel from engaging in such testing.

As we understand it, the purpose of the described procedure is to test the efficiency and safety of railroads and their crews. We have been informed that the test is conducted as follows: Railroad officials change to yellow the two railroad control signal lights immediately preceding the signal in which a light has been removed, thereby putting the engineer on notice that there may be trouble at the third light. According to established operating procedures, an engineer is to assume that a red light will follow two yellow lights and be prepared to stop. The engineer is also to assume that if a signal is not operating, e.g., no signal light shows because the bulb has been removed or has burned out, the signal is red and should immediately bring his train to a safe, complete stop. As a practical matter, we have been informed that the above described procedure is the only method available to adequately test this aspect of operation. We also understand that unless the engineer has not been paying attention to the two warning signals, no sudden emergency stop occurs. Rather, the stop is accomplished in a normal operational manner.

K.S.A. 21-3725 provides:

"Tampering with a traffic signal is intentionally manipulating, altering, destroying or removing any light, sign, marker, railroad switching device or other signal device erected or installed for the purpose of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft.

"Tampering with a traffic signal is a class C misdemeanor."

K.S.A. 21-3726 states:

"Aggravated tampering with a traffic signal is tampering with a traffic signal which results or could result in an accident causing the death or great bodily injury of any person.

"Aggravated tampering with a traffic signal is a class E felony."

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While we find no Kansas cases interpreting the two statutes in question, previous administrations of attorneys general have written opinions addressing your question. Two of these, Attorney General Opinion No. 62-46, and a letter from Attorney General Robert Londerholm, dated February 2, 1967, interpreted G.S. 1949, 62-2,110, the predecessor to K.S.A. 21-3725 and 21-3726. In both instances, the opinions concluded that the then existing statute did apply to railroad officials as well as other persons, because said statute was intended to protect the safety of passengers and crews. However, Attorney General Opinion No. 76-50, which considered the scope of the current statutes prior to their amendment in 1975, notes that "[o]bviously, in the course of employment, it may be the duty of railroad officials and employees to manipulate such devices in order to control and direct railroad traffic." Id. at p. 2. The opinion merely concludes that the statutes were unclear and needed legislative clarification as to whether railroad signals were to be included and what conduct was proscribed. The subsequent amendment to 21-3725 in 1975 included specific references to railroad devices and omitted language establishing a specific intention to deceive, but did not exempt persons in their scope of employment or acting under lawful authority from its provisions.

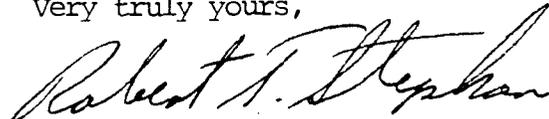
Applying the rules of statutory construction to the statutes in question, we find from the plain words of the statute, which is penal in nature, that the statute applies to any person, regardless of whether the person is a railroad official. Because it is presumed under the rules of statutory construction that the legislature has acted with full knowledge and information as to the subject matter of the statute, as to prior and existing law and legislation on the subject of the statute, and as to the judicial decisions regarding such prior law [Rogers v. Shanahan, 221 Kan. 221 (1976)], we must conclude that when the legislature amended K.S.A. 21-3725 to include railroad devices, it did not intend to change the scope of the statute regarding the applicability of 21-3725 to railroad officials, since no exemption was included in the amendment. Therefore, it is our opinion that the legislature did not intend to exclude railroad personnel from the provisions of K.S.A. 21-3725 and 21-3726. However, the United States Congress has delegated its authority to establish railroad operating rules to the United States Secretary of Transportation in 45 U.S.C. §§431 and 438. Pursuant to this delegation, the Secretary has promulgated such rules in Chapter 11, Part 217 of Volume 49 of the Code of Federal Regulations. Section 217.9 requires every railroad, other than those which are not part of the general

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railroad system and certain other short-haul passenger service railroads, to periodically conduct operational tests to determine the extent of compliance with their codes of operating rules and efficiency. It further requires that programs for such testing, including a description of each type of operational test utilized, be filed with the Federal Railroad Administrator who has authority to inspect said railroads. It is our understanding that the operational test previously described herein has been approved as being in compliance with these regulations. Thus, insofar as such test is conducted pursuant to the requirements of federal law, and such operational test necessitates actions proscribed by K.S.A. 21-3725, there is a conflict between such federal requirements and the proscriptions of the Kansas statute.

When such a conflict exists, the general rule is that state statutes may be superseded to the extent to which they conflict with valid regulations of a federal administrative agency. Public Utilities Com. v. United States, 355 U.S. 534 (1958); United States v. Shimer, 367 U.S. 374; 2 Am.Jur.2d §213. Noncompliance with a state statute is to be excused when a person is complying with a conflicting federal regulation. Id. See, also, Goldstein v. California, 412 U.S. 546 (1973). Although a state statute is to be superseded by federal law only when it is clear that Congress intended to preempt the power of the state in a given area [ Illinois C. R. Co. v. Public Utilities Com., 245 U.S. 493, 510 (1918)], we believe such intent is clearly manifested in the regulation of railroads. Congress has delegated the authority to establish operational rules for all but certain limited service railroads to the Secretary of Transportation. The Kansas statute proscribing the manipulation of railroad traffic signal devices must yield to the federal regulations insofar as it thwarts the federal purpose. Therefore, it is our opinion that, although the proscriptions of K.S.A. 21-3725 and 21-3726 are applicable to all persons, so long as railroad personnel are manipulating railroad signal devices in accordance with federal regulations, their conduct may not be deemed to be illegal in Kansas. However, if railroad personnel fail to comply with the pertinent federal regulations, such conduct is subject to the provisions of K.S.A. 21-3725 and 21-3726.

Very truly yours,



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