



STATE OF KANSAS

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October 26, 1987

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ATTORNEY GENERAL OPINION NO. 87- 155

The Honorable Marvin E. Smith  
State Representative, Fiftieth District  
123 N.E. 82nd  
Topeka, Kansas 66617

The Honorable Don Sallee  
State Representative, Forty-Ninth District  
Route 2  
Troy, Kansas 66087

Re:           Automobiles and Other Vehicles -- Uniform Act  
              Regulating Traffic; Rules of the Road; Special  
              Stops Required -- Vehicles Required to Stop at  
              Railroad Crossings; Carriers of Hazardous Materials.

Synopsis:    K.S.A. 8-1553 requires certain vehicles to stop at  
              all railroad grade crossings, except as provided  
              for in K.S.A. 8-1553(b). K.S.A. 8-1553 delegates  
              to the secretary of transportation the authority to  
              describe the vehicles which must comply with the  
              stopping requirement. Accordingly, K.A.R. 1986  
              Supp. 82-4-3 incorporates by reference 49 C.F.R.  
              § 392.10 and § 397.2, both of which require that  
              every cargo tank motor vehicle, whether loaded or  
              empty, which is used for the transportation of  
              hazardous materials, along with all other motor  
              vehicles as specified by 49 C.F.R. § 392.10, shall  
              stop at all railroad grade crossings. Cited  
              herein: K.S.A. 8-1553, K.A.R. 1986 Supp. 82-4-3,  
              K.A.R. 1987 Supp. 82-4-20, 49 C.F.R. §§ 392.10,  
              397.2, and 177.804 (1986).

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Dear Representatives Smith and Sallee:

As State Representatives for the Fiftieth District and the Forty-Ninth District respectively, you request our opinion as to whether all motor carriers of hazardous materials are required by Kansas law to stop at railroad grade crossings.

Certain vehicles are required to stop at railroad grade crossings pursuant to K.S.A. 8-1553, which provides:

"(a) Except as provided in subsection (b), the driver of any vehicle described in regulations issued pursuant to subsection (c), before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, and shall not proceed until he can do so safely. . . .

(b) This section shall not apply at

(1) Any railroad grade crossing at which traffic is controlled by a police officer or human flagman;

(2) Any railroad grade crossing at which traffic is regulated by a traffic-control signal;

(3) Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train;

(4) Any railroad grade crossing at which an official traffic control device gives notice that the stopping requirement imposed by this section does not apply.

The regulation promulgated to describe motor carriers covered by K.S.A. 8-1553 is K.A.R. 1986 Supp. 82-4-3, which incorporates by reference 49 C.F.R. § 392.10 (1986). That federal regulation describes the following vehicles:

"(2) Every motor vehicle transporting any quantity of chlorine.

(3) Every motor vehicle which, in accordance with the regulations of the Department of Transportation, is required to be marked or placarded with one of the following markings:

- (i) Explosives A
- (ii) Explosives B
- (iii) Poison gas
- (iv) Flammable solid W
- (v) Radioactive
- (vi) Flammable
- (vii) Blasting agent
- (viii) Nonflammable gas
- (ix) Chlorine
- (x) Poison
- (xi) Oxygen
- (xii) Flammable gas
- (xiii) Combustible
- (xiv) Flammable solid
- (xv) Oxidizer
- (xvi) Organic peroxide
- (xvii) Corrosive
- (xviii) Dangerous

(4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the Department of Transportation, Parts 170 through 189 of this title.

(5) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flash point as determined by § 173.115 of this title. . . ."

Representative Marvin E. Smith  
Representative Don Sallee  
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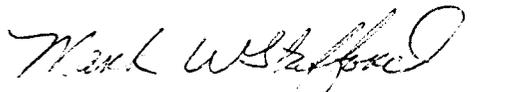
49 C.F.R. Part 397, which is also incorporated by K.A.R. 1986 Supp. 82-4-3(a)(8), further regulates the transportation of hazardous materials by motor vehicles. 49 C.F.R. § 397.2 (1986) specifically incorporates 49 C.F.R. § 392.10 (1986), quoted above.

In addition to the above-outlined general requirement, K.A.R. 1986 Supp. 82-4-20 specifically deals with the transportation of hazardous materials. That section incorporates by reference 49 C.F.R. § 177.804 (1986), which in turn also incorporates 49 C.F.R. § 392.10 (1986).

In summary, K.S.A. 8-1553 requires certain vehicles to stop at all railroad crossings, except as provided for in K.S.A. 8-1553(b). However, K.S.A. 8-1553 does not in itself define which vehicles are required to stop at railroad grade crossings. Instead, K.S.A. 8-1553(c) authorizes the secretary of transportation to "adopt such rules or regulations as may be necessary describing the vehicles which must comply with the stopping requirements of this section." K.S.A. 8-1553(c) stipulates that, "such regulations shall correlate with and so far as possible conform to regulations of the United States department of transportation." Pursuant to K.S.A. 8-1553(c), K.A.R. 1986 Supp. 82-4-3 incorporates by reference 49 C.F.R. § 392.10 and § 397.2 (1986). Also pursuant to K.S.A. 8-1553(c), K.A.R. 1986 Supp. 82-4-20 incorporates 49 C.F.R. § 177.804 (1986). Thus, it is our opinion that K.S.A. 8-1553 requires every cargo tank motor vehicle, whether loaded or empty, which is used for the transportation of hazardous materials, along with all other motor vehicles as specified by 49 C.F.R. § 392.10, to stop at all railroad grade crossings, except as provided for in K.S.A. 8-1553(b).

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Mark W. Stafford  
Assistant Attorney General

RTS:JLM:MWS:ma