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ATTORNEY GENERAL OPINION NO. 87-155A

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

Public Utilities -- Powers of State Corporation
Commission; Regulation of Motor Carriers of Persons
and Property -- Types of Carriers Which Must Comply
With Act and Other Applicable Laws

Synopsis: Carriers of hazardous materials, as defined by
K.A.R. 36-26-1, must stop at railroad crossings.
This requirement does not apply if the crossing is
of the type designated in K.S.A. 8-1553(b), unless
the carrier is subject to the controlling
provisions of K.S.A. 66-1,112. To the extent
Attorney General Opinion No. 87-155 is inconsistent
with the requirements of Article 66, it is hereby
modified. Cited herein: K.S.A. 8-1553, 66-1,108,
66-1,109, 66-1,111, 66-1,112; K.A.R. 36-26-1,
K.A.R. 1986 Supp. 82-4-3; 49 C.F.R. §392.10
(1986).

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Dear Representative Smith and Sallee:

On October 26, 1987, we issued Attorney General Opinion No. 87-155. That opinion was issued pursuant to your request when you asked whether K.S.A. 8-1553 required carriers of hazardous materials to stop at all railroad crossings. We now wish to clarify that opinion.

The rules of the road make general requirements regarding stops at railroad crossings. Specifically, vehicles designated in K.A.R. 36-26-1 by the Secretary of Transportation are required to stop at railroad crossings, unless such crossings are of the type excepted in K.S.A. 8-1553(b). Our previous opinion was confined to that statute.

While K.S.A. 8-1553 includes general requirements and exceptions, some carriers are subject to other specific statutes. Pursuant to K.S.A. 66-1,112(b) the Kansas Corporation Commission has promulgated K.A.R. 82-4-3(c). That regulation incorporates 49 C.F.R. §392.10 (1986). The federal regulation requires that drivers of vehicles subject to that section must stop within 50 feet of, but not less than 15 feet from, railroad tracks. Exceptions to this rule appear at subsection (b) of the federal regulation, and include:

"(1) A streetcar crossing or railroad tracks used exclusively for industrial switching purposes, within a business district as defined in §390.12 of this chapter.

(2) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed.

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the vehicle to proceed across the railroad tracks without slowing or stopping.

(4) An abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

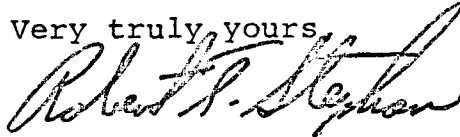
(5) An industrial or spur line railroad grade crossing marked with a sign reading

"Exempt." Such "Exempt" signs shall be erected only by or with the consent of the appropriate State or local authority." 49 C.F.R. §392.10 (1986).

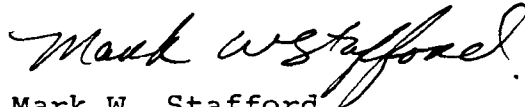
The substantive requirements of 49 C.F.R. §392.10 are applicable to the motor carriers listed in K.S.A. 66-1,111, which, unless exempted by K.S.A. 66-1,109, include motor carriers of property or passengers for hire, contract motor carriers of passengers or property as defined by K.S.A. 66-1,108(g), (h), private motor carriers as defined by K.S.A. 66-1,108(i), and local cartage carriers.

In conclusion, carriers of hazardous materials as defined by K.A.R. 36-26-1 must stop at railroad crossings. This requirement does not apply if the crossing is of the type designated in K.S.A. 8-1553(b), unless the carrier is subject to the controlling provisions of K.S.A. 66-1,112. To the extent Attorney General Opinion 87-155 is inconsistent with the requirements of Article 66, it is hereby modified.

Very truly yours



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford
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RTS:MWS:bar