

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

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

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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 Although the legislation upon which the court relied in that case appears to have been repealed, nonetheless it clearly did not regard K.S.A. 66-273 as preemptive of the city's right to regulate the obstruction of public streets at railroad crossings by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 relationship to the problems sought to be eliminated or avoided, and the burdens imposed on the railroads should not be greater than necessary to deal with the problems of obstructed traffic. An ordinance 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.

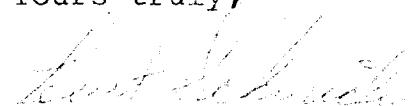
It is important to be mindful of the distinction between regulation and prohibition. The city has the unquestioned right to prescribe reasonable regulations to prevent unnecessary and undue obstruction of traffic, and to permit the passage of emergency vehicles. At the same time, it does not have the right to prohibit railroad operations at street crossings entirely. A total prohibition against railroad operations at a street crossing for a prescribed period of time on its face appears to be unrelated to the problem of traffic obstruction. That is, railroad operations are prohibited entirely, rather than the operation of railroad equipment in such a way as to obstruct vehicular traffic unduly. Thus, on the face of the matter, the proposed prohibition of railroad operations on the described crossing for prescribed periods appears to exceed the power of the city to

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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 interstate 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