

Approved April 15, 1988  
Date

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at  
Chairperson

1:30 ~~am~~/p.m. on February 9, 1988 in room 519-S of the Capitol.

All members were present except: Representatives Laird and Justice

Committee staff present:

Bruce Kinzie, Revisor of Statutes  
Hank Avila, Legislative Research  
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Ms. Cleo Murphy, Kansas Department of Revenue  
Representative Bob Ott  
Mr. Charles Nicolay, Kansas Oil Marketers Association  
Mr. Michael C. Germann, Kansas Railroad Association  
Mr. Jim Kaup, League of Kansas Municipalities

The meeting was called to order by Chairman Crowell, and the first order of business was a hearing on HB-2771 concerning the incidence of motor vehicle fuels tax.

Ms. Cleo Murphy, Kansas Department of Revenue, presented testimony in support of HB-2771. (See Attachment 1)

Ms. Murphy said that during the 1986 legislative session, legislation was enacted which required the motor fuel tax to be imposed on the sale or delivery of motor vehicle fuel even though the sale was made to another licensed distributor, manufacturer or importer.

She said due to passage of this legislation, the exemption from motor vehicle fuel tax for the first sale or delivery of motor vehicle fuel from a refinery, pipeline terminal, pipeline tank, farm or other place, to a duly licensed distributor was inadvertently removed. Ms. Murphy said passage of HB-2771 would once again allow the first sale of motor vehicle fuel from a pipeline terminal, refinery, pipeline tank farm or other place in Kansas to a duly licensed distributor without the motor vehicle fuel tax being imposed.

Representative Bob Ott testified in support of HB-2771, and said passage of the bill provides the state with a better method of collecting motor vehicle fuel taxes.

Mr. Charles Nicolay, Kansas Oil Marketers Association, spoke in support of HB-2771.

The hearing on HB-2771 was concluded.

The next order of business was a hearing on HB-2745 concerning train speeds.

Mr. Michael C. Germann, Kansas Railroad Association, testified in support of HB-2745. (See Attachment 2)

He stated this legislation was requested in response to a United States District Court decision which held that the Federal Railroad Safety Act of 1970, 45 U.S.C. 421 et seq. ("FRSA"),

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,  
room 519-S, Statehouse, at 1:30 ~~xxx~~ p.m. on February 9, 1988

preempted the authority of a municipality to enact an ordinance regulating train speeds.

Mr. Germann said the preemption finding by the United States District Court for the District of Kansas came in the case of Sisk v. National R.R. Passenger Corp. (See Attachment 3)

Mr. Germann said the railroad industry believes HB-2745 is necessary in order to remove confusion which exists in this area of the law.

Mr. Jim Kaup, League of Kansas Municipalities, spoke concerning HB-2745, and passed among Committee members a balloon showing proposed amendments to the bill. (See Attachment 4)

The hearing on HB-2745 ended.

The meeting was adjourned at 2:20 p.m.

  
\_\_\_\_\_  
Rex Crowell, Chairman

MEMORANDUM

TO: The Honorable Rex Crowell, Chairman  
House Committee on Transportation

FROM: Harley T. Duncan, Secretary  
Department of Revenue

DATE: February 9, 1988

RE: House Bill No. 2771

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Thank you for the opportunity to appear before you today on House Bill No. 2771.

During the 1986 legislative session, legislation was introduced and subsequently enacted which required the motor fuel tax to be imposed on the sale or delivery of motor vehicle fuel even though the sale was made to another licensed distributor, manufacturer or importer. This legislation removed the so-called "daisy chain" effect and was introduced to help eliminate office paperwork which the Department had to perform to ensure the motor vehicle fuel tax was eventually paid. This elimination of office paperwork has been accomplished.

However, due to passage of this legislation, the exemption from the motor vehicle fuel tax for the first sale or delivery of motor vehicle fuel from a refinery, pipeline terminal, pipeline tank farm or other place to a duly licensed distributor was inadvertently removed. It was never the intention of the Department to have this particular exemption eliminated from the motor fuel tax act. House Bill No. 2771 would once again allow the first sale of motor vehicle fuel from a pipeline terminal, refinery, pipeline tank farm or other place in Kansas to a duly licensed distributor to occur without the motor vehicle fuel tax being imposed.

The Department supports this legislation as it represents the current practice followed by the Department.

Thank you for the opportunity to appear before you. I would be glad to answer any questions.

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# KANSAS RAILROAD ASSOCIATION

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P.O. BOX 1738  
TOPEKA, KANSAS 66628

913-357-3392

PATRICK R. HUBBELL  
SPECIAL REPRESENTATIVE-PUBLIC AFFAIRS

MICHAEL C. GERMANN, J. D.  
LEGISLATIVE REPRESENTATIVE

Statement of the  
Kansas Railroad Association

Presented to the House Committee  
on Transportation  
The Honorable Rex Crowell, Chairman

Statehouse  
Topeka, Kansas  
February 9, 1988

\* \* \* \* \*

Mr. Chairman and Members of the Committee:

My name is Mike Germann. I am a representative of the Kansas Railroad Association. I would like to thank the Chairman and the Committee for giving me the opportunity to express the railroad industry's support for House Bill No. 2745.

We came before the Committee on January 28, 1988, and requested the introduction of legislation to respond to a United States District Court decision which had held that the Federal Railroad Safety Act of 1970, 45 U.S.C. §421 et seq. ("FRSA"), preempted the authority of a municipality to enact an ordinance regulating train speeds. H.B. 2745 was sponsored by the Committee in response to our request and our report on the Court decision.

The preemption finding by the United States District Court for the District of Kansas came in the case of Sisk v. National R.R. Passenger Corp., 637 F.Supp. 861 (D.Kan. 1986). The Sisk case

arose from a highway/rail grade crossing accident which occurred at Cimarron, Kansas. The principal defendants in the case were Amtrak and the City of Cimarron.

In the Sisk case the District Court began its analysis of the speed ordinance issue by first observing that state and local governments historically had the right to enact laws and ordinances to promote safety in railroad operations. The Court found that beginning in 1869 cities of the third class in Kansas were authorized by state statute to regulate railroad safety. The Court observed that K.S.A. 15-438, the statute which authorized the City of Cimarron to enact the train speed ordinance involved in the Sisk case, had remained unchanged since 1923. (Sisk at 863.)

The Court noted that in 1970, Congress, in recognition of the need for uniform safety standards in railroad operations, enacted the FRSA. In its opinion the Court quoted from a report published by the U.S. House of Representatives concerning the FRSA: "To subject a carrier to enforcement before a number of different state administrative and judicial systems in several areas of operation could well result in an undue burden on interstate commerce . . . ." (Sisk at 863, 864.)

The Court found that pursuant to the FRSA the Federal Railroad Administration ("FRA") had established train speed regulations in conjunction with the adoption of track and roadbed standards and with the adoption of signal standards (citing 49 C.F.R. §§213, 236). The Court found that the purpose of FRA speed regulations is to establish safe train speeds under differing circumstances. (Sisk at 864.)

SISK v. NATIONAL R.R. PASSENGER CORP.

Cite as 647 F.Supp. 861 (D.Kan. 1986)

lowing further limited discovery on the jurisdictional issue with regard to defendant Berube is reasonable. Order accordingly.

ORDER

In accordance with memorandum filed this date, it is ORDERED:

1. Defendants' motion to dismiss the complaint for lack of personal jurisdiction as to defendants Thoroughbred Racing Protective Bureau and Thoroughbred Racing Association is denied.

2. Defendants' motion to dismiss the complaint for lack of personal jurisdiction as to defendants Victor Wickman and Kenneth Graf is allowed.

3. Plaintiff's motion for further limited discovery on the jurisdictional issue with regard to defendant Paul Berube is allowed.

4. Defendants' motion to dismiss the complaint for lack of personal jurisdiction as to defendant Paul Berube is continued pending completion of discovery.



Karen Sue SISK, Wife, Heir-At-Law and Next of Kin of Gerald R. Sisk, Jr., Deceased, and Christopher A. and Matthew R. Sisk, Minors, By and Through Karen Sue Sisk, Their Mother, Natural Guardian, and Next Friend, Plaintiffs,

v.

NATIONAL RAILROAD PASSENGER CORPORATION; the Atchison, Topeka and Santa Fe Railway Company; and the City of Cimarron, Kansas, Defendants.

No. 85-1744-K.

United States District Court,  
D. Kansas.

Nov. 12, 1986.

Wrongful death action was brought for damages arising from automobile-train

accident. On parties' motions to dismiss and motions in limine, the District Court, Patrick F. Kelly, J., held that: (1) local ordinance limiting speed of trains was preempted by federal law and thus was inadmissible for purpose of showing railroad's negligence, and (2) evidence of widow's remarriage was admissible for limited purpose of establishing decedent's motive for alleged suicide.

Motions granted in part and denied in part.

1. Municipal Corporations §735

Under Kansas law, city was immune from liability for failure to enforce train speed limit ordinance. K.S.A. 75-6104(c).

2. Municipal Corporations §735

Under Kansas law, city was not liable for failure to remove site obstructions on property owned by railroad or for failing to inspect railroad's property to determine whether it contained hazard to public safety. K.S.A. 8-2011, 75-6104(j).

3. Federal Civil Procedure §2515

Whether city was negligent in failing to improve surface of railroad crossing presented factual question precluding summary judgment, in wrongful death action arising out of train-automobile accident, where it was unclear what condition of surface was beyond the point of railroad's responsibility and whether surface condition had any causal connection to accident. K.S.A. 66-227.

4. States §18.21

Local ordinance limiting speed of trains through city to 50 miles per hour was preempted by Federal Railroad Safety Act, which imposes uniform national railroad safety standards, and thus local ordinance was void and unenforceable and evidence of ordinance, as well as train's speed at time of crossing accident, was inadmissible for purpose of showing railroad's negli-

gence. Federal Railroad Safety Act of 1970, § 101 et seq., 45 U.S.C.A. § 421 et seq.; U.S.C.A. Const. Art. 6, cl. 2.

#### 5. Death ⇄60

Under Kansas law, evidence of widow's remarriage is inadmissible for purpose of mitigation of damages in wrongful death action.

#### 6. Death ⇄60

Rule that remarriage of widow is inadmissible for mitigation of damages in wrongful death action did not preclude accurate and true identification of widow if she decided to testify.

#### 7. Death ⇄61

Fact of widow's remarriage was admissible, in wrongful death action, for limited purpose of supporting allegation decedent's death was deliberate act of suicide, because widow's remarriage soon after husband's death to very person she had allegedly planned to leave decedent for may have been probative toward establishing motive for alleged suicide.

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Richard D. Cordry, of Michaud, Cordry, Michaud, Hutton & Hutton, Wichita, Kan., for plaintiffs.

Charles W. Harris, of Curfman, Harris, Stallings & Snow, Wichita, Kan. for defendant railroads.

Harry Bleeker, of Turner & Boisseau, Great Bend, Kan. for City of Cimarron.

### MEMORANDUM AND ORDER

PATRICK F. KELLY, District Judge.

This case is before the court on a motion to dismiss by defendant The City of Cimarron, Kansas, and motions in limine by plaintiffs, and by defendants National Railroad Passenger Corporation, and The Atchison, Topeka and Santa Fe Railway Company (Railroad). The court heard arguments on these motions on September 24, 1986. The court ruled on the city's motion to dismiss at that time, but took the motions in limine under advisement. Having now thorough-

ly reviewed the substance of these motions, the court is prepared to rule.

This case arises from an automobile and train collision which occurred at a crossing in Cimarron, Kansas, on October 10, 1984, resulting in the death of Gerald R. Sisk, Jr. Plaintiffs—the widow and children of the deceased—claim the accident would not have occurred but for the negligence of defendants in maintaining an extrahazardous crossing at the intersection in question. Specifically, plaintiffs claim the railroad was negligent in exceeding the speed limits set by the Cimarron ordinance, in failing to evaluate the safety needs and install the appropriate traffic control devices, gates and other safety warning devices at the crossing, in failing to improve the crossing surface, in failing to properly sound the train whistle, in failing to maintain the crossing free of weeds and shrubs which limited sight distance, and in authorizing speeds up to 90 miles per hour for passenger trains through the City of Cimarron. Plaintiffs further maintain defendant City of Cimarron was negligent in failing to enforce the speed limit as set by ordinance, in failing to remove brush and shrubs from the crossing, in failing to improve the crossing surface and install gates with flashing signal lights. The defendants deny the crossing was ultrahazardous or that they were negligent in any manner. They contend the decedent's death was the result of a deliberate action—a suicide.

[1, 2] The City of Cimarron (City) has moved the court to dismiss three of plaintiffs' claims against it: (1) failure to enforce the speed limit; (2) failure to remove brush, weeds and shrubs; and (3) failure to improve the crossing surface. Consistent with the court's statements at the hearing, the city's motion is granted as to the claim for failure to enforce the speed limit, as the Kansas Tort Claims Act, K.S.A. 75-6104(c), immunizes the city from liability for "failure to enforce a law, whether valid or invalid, but not limited to, any ... ordinance." Also, defendant's motion is granted as to the claim for failure to remove road obstructions as the property in ques-

tion is owned by the railroad; therefore, pursuant to K.S.A. 8-2011 the city has no duty to remove obstructions or inspect for obstructions on property belonging to another. Further, K.S.A. 75-6104(j) immunizes the city from liability for failure to inspect property which does not belong to the government to determine whether it contains a hazard to public safety.

[3] However, the court denies the motion to dismiss the claim that the defendant city was negligent in failing to improve the surface of the crossing. Pursuant to K.S.A. 66-227, the railroad's "surface responsibility" extends only two feet from the outside rails. Questions of fact remain as to the condition of the surface beyond that point and any causal connection to the accident.

The railroad has moved the court for an order in limine precluding the admission in evidence of the city's ordinance limiting the speed of trains through the city to 50 miles per hour. Defendant railroad claims the ordinance is void *ab initio* under the doctrine of federal preemption.

Initially, the court was of the view that the speed of a train through a city was a matter of purely local concern: the city has an interest in protecting the safety of its citizens, and pursuant to an enabling statute (K.S.A. 15-438) the city is authorized to set the speed limit necessary to protect this interest. The court voiced this view at the time of the hearing; however, recognizing a legitimate question of preemption had been raised, the court took the matter under advisement.

[4] Having now reviewed the issue thoroughly, the court must find for the reasons stated below that the ordinance in question has indeed been preempted by the Federal Railroad Safety Act of 1970, 45 U.S.C. § 421 *et seq.* (FRSA).

Historically, state and local governments had the right to enact laws to promote safety in railroad operations. *Missouri Pacific Railroad Co. v. Board of Greeley County Comm'rs*, 231 Kan. 225, 643 P.2d 188 (1982). The only restriction was that

the laws could not unduly burden interstate commerce. In Kansas, beginning in 1869, cities of the third class were enabled to enact railroad safety laws pursuant to K.S.A. 15-438, as follows:

The council shall have power to regulate levees, depots, depot grounds and places for storing freight and goods, and to provide for the passage of railways through the streets and public grounds of the city; also, to regulate the crossings of railway tracks, and to provide precautions and prescribe rules regulating the same, and to regulate the running of railway engines, cars and tracks within the limits of said city, and to prescribe rules relating thereto, and to govern the speed thereof, and to make any other and further provisions, rules and restrictions to prevent accidents at crossings and on the tracks of railways, and to prevent fires from engines.

This statute has remained unchanged since 1923.

At the same time, Kansas law imposed on the railroad the principal burden of installing train-activated warning devices at dangerous crossings. *See* K.S.A. 66-231a.

Then, in the 1970s, Congress, recognizing a need for uniform safety standards, enacted the Railroad Safety Act which imposed nationwide standards, reserving authority to the states for further regulation only under special circumstances. In conjunction with the national regulation of railroad safety, Congress determined that grade crossing improvements were a governmental responsibility rather than the responsibility of the railroads and increased funding to the federal aid program. Under the new program, the responsibility for railroad crossing improvements is to be shared 90% by the federal government and 10% by the state and local government. Therefore, as to federal aid projects, state law requiring railroads to share in the cost of work for the elimination of hazards at crossings shall not apply. The significance of the increased funding for railroad crossing improvement under the federal aid program is the government's recognition, in light of



its desire to preserve a national railroad transit system, that public safety at crossings is a matter of concern to the government rather than the railroad, and thus requiring the railroads to share in the cost was overly burdensome.

Likewise, in enacting the FRSA of 1970, Congress sought to eliminate the undue burden on public railroads caused by non-uniform railroad safety regulations:

To subject a carrier to enforcement before a number of different state administrative and judicial systems in several areas of operation could well result in an undue burden on interstate commerce....

H.R.Rep. No. 91-1194, 91st Cong., 2d Sess., reprinted in [1970] U.S.Code Cong. & Ad. News 4104, 4110.

In enacting the FRSA, 45 U.S.C. § 421 *et seq.*, Congress' stated purpose was "to promote safety in all areas of railroad operations." 45 U.S.C. § 421.

Pursuant to the Act, the Federal Railroad Administration (FRA) established and adopted train speed regulations in conjunction with the adoption of track and roadbed standards and with signal standards. 49 C.F.R. §§ 213, 236. The purpose of these regulations is to establish safe train speeds under differing circumstances. The FRA has established safe operating speeds between 10 miles per hour and 110 miles per hour depending on the condition and curvature of the track and roadbed. These regulations are aimed at reducing the possibility of derailments and train collisions.

Within the City of Cimarron, the FRA has determined trains can operate safely at speeds of 50 miles per hour for freight and 90 miles per hour for passenger. However, the City of Cimarron has in effect an ordinance, No. 13-208, that sets a speed limit for trains passing through the city of 50 miles per hour.

Defendant railroad argues the ordinance has been preempted by the federal law because (1) the FRA has adopted standards regulating the speed of trains, and (2) the ordinance was established by a municipality rather than a state.

The supremacy clause of the United States Constitution establishes that when federal law conflicts with state or local law the federal law must control. Article VI, Clause 2. When reviewing whether a state law or municipal ordinance has been preempted by an act of Congress, the court must find an intent on the part of Congress to preempt the field. This intent may be discerned either through explicit or implicit language of the statute or through a direct conflict between the state and federal statute. *See, e.g., Ray v. Atlantic Richfield*, 435 U.S. 151, 98 S.Ct. 988, 55 L.Ed.2d 179 (1978); *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S.Ct. 1305, 51 L.Ed.2d 604 (1977). In enacting the FRSA, Congress clearly stated its intent of preemption as follows:

The Congress declares that laws, rules, regulations, orders and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such state requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

45 U.S.C. § 434.

The legislative history further clarifies Congress' preemptive intent:

[T]he railroad industry has very local characteristics. Rather, in terms of its operations, it has a truly interstate character calling for a uniform body of regulation and enforcement....

H.R.Rep. No. 91-1194, 91st Cong., 2d Sess., reprinted in [1970] U.S.Code Cong. & Ad. News 4104, 4110.

Moreover, courts which have applied the Act have found an intent to preempt. See *National Assoc. of Regulatory Utility Comm'rs v. Coleman*, 542 F.2d 11 (3d Cir. 1976); *Donelon v. New Orleans Terminal Co.*, 474 F.2d 1108 (5th Cir.1973), cert. denied 414 U.S. 855, 94 S.Ct. 157, 38 L.Ed.2d 105; *Atchison, Topeka & Santa Fe RR. Co. v. Illinois Commerce Comm.*, 453 F.Supp. 920 (N.D.Ill.1977).

Although the clear intent of Congress was to establish nationally uniform control of railroad safety, the Act—in § 434—specifically authorizes “exceptions” from this uniformity. The first exception applies when no federal regulation has been adopted which covers the subject matter of the law in question. In this case, federal regulations covering the precise subject matter—train speed—have been enacted. Therefore, the first exception is inapplicable.

Under the second exception, the state may continue in force a more stringent law if (1) the state law is necessary to eliminate or reduce an essentially local safety hazard, (2) the law is not incompatible with any federal measure, and (3) the law does not unduly burden interstate commerce. See *Donelon*, 474 F.2d at 1112. Clearly, a law reducing the speed limit within a city in order to protect public safety is more stringent than, and not incompatible with, the rail speed limits set by federal regulation. However, to fall within the second exception the law must clearly have been enacted at the state level. *Id.* at 1112. See also *City of Cleveland v. Consolidated Rail Corp.*, 82 C.R.B. 2730 (Cleveland Mun.Ct., Apr. 4, 1983) (local ordinance of 35 mph preempted by F.R.S.A.). The ordinance in question herein was enacted at the local level. Thus, it does not fall within this second exception.

Plaintiffs argue that K.S.A. 15-438 is a clear delegation to local governments of the state's authority to pass laws excepted from the FRSA under § 434. Because this statute was enacted in 1869, some 100 years prior to the passage of the FRSA, and because it is obviously contrary to the

clear purpose of the FRSA as it would allow for a multitude of differing local safety standards, this court is of the view that it has been preempted by the FRSA and should not be given effect. Therefore, the local speed limit ordinance in question herein is rendered void and unenforceable.

Plaintiffs contend the ordinance should be admissible to show negligence. Plaintiffs cite *Thomas v. Illinois Central Gulf RR. Co.*, 592 F.2d 1366 (5th Cir.1979), and *Shibley v. St. Louis-San Francisco Ry. Co.*, 533 F.2d 1057 (8th Cir.1976), two federal cases in which evidence of local speed limit ordinances were admitted on the issue of the railroads' negligence. However, these cases are unpersuasive as preemption by the FRSA was not discussed and it can only be presumed that the issue was never raised.

By finding the local speed limit ordinance unenforceable, the court does not intend to convey that it is unconcerned with public safety. The court is simply of the view that Congress intended the railroad safety laws to be nationally uniform due to the public interest that is served by the railroads. In areas where the federal government has not acted, Congress intended that only states—and not local governments—could act. To hold otherwise would be a licensing of widely variant and confusing safety ordinances enacted by a multitude of local governments. In order for a city to protect its safety interests, it must notify the Kansas Corporation Commission that it believes a particular crossing is hazardous. The Corporation Commission may then order the installation of safety devices (K.S.A. 66-231a) or determine what other safety measures are necessitated. In this way, the public's safety is adequately protected.

Because the Cimarron speed limit ordinance is void and unenforceable due to federal preemption, evidence of the ordinance, as well as the train's speed at the time of the accident, will be inadmissible for the purpose of showing the railroad's negligence.

# HOUSE BILL No. 2745

By Committee on Transportation

2-2

Att. 4

0017 AN ACT relating to train speeds; amending K.S.A. 12-1633,  
0018 12-1634, 14-434 and 15-438 and repealing the existing sec-  
0019 tions.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 12-1633 is hereby amended to read as fol-  
0022 lows: 12-1633. The governing body of cities of the first and  
0023 second class shall have the power to regulate the crossings of  
0024 railway and street-railway tracks and provide precautions and  
0025 ~~prescribe rules~~ regulating the same; and to regulate the running  
0026 of street railways or cars and railway engines and cars in the city,  
0027 and to ~~prescribe rules~~ relating thereto and to govern the speed  
0028 thereof; and to make other and further provisions, rules and  
0029 regulations to prevent accidents at crossings and on tracks of  
0030 railways, and to prevent fires from engines, and to require all  
0031 railway companies to erect viaducts over or tunnels under their  
0032 tracks at the crossings of streets.

[ enact laws

[ and  
[ enact laws

[ to regulate the running of railway engines and cars and to  
[ enact laws regulating thereto other than the governing of  
[ speed;

0033 ~~From and after the effective date of this act, no rule, regula-~~  
0034 ~~tion or ordinance adopted by the governing body of any city of~~  
0035 ~~the first class or second class regulating the running of railway~~  
0036 ~~engines and cars or governing the speed thereof shall be of any~~  
0037 ~~force or effect, and the same shall be and is hereby declared null~~  
0038 ~~and void.~~

0039 The governing body shall have power to require any railroad  
0040 company or companies owning or operating any railroad or  
0041 street-railway track or tracks upon or across any public street or  
0042 streets of the city to erect, construct, reconstruct, complete and  
0043 keep in repair any viaduct or viaducts upon or over or tunnels  
0044 under such street or streets and over or under any such track or  
0045 tracks, including the approaches of such viaduct, viaducts or

0046 tunnels as may be deemed and declared by the governing body  
0047 to be necessary for the convenience, safety or protection of the  
0048 public. Whenever any such viaduct shall be deemed and de-  
0049 clared by ordinance to be necessary for the convenience, safety  
0050 or protection of the public, the governing body shall provide for  
0051 appraising, assessing and determining the damage, if any, which  
0052 may be caused to any property by reason of the construction of  
0053 such viaduct and its approaches. The proceedings for such pur-  
0054 pose shall be the same as provided by law for the purpose of  
0055 ascertaining and determining damages to property owners by  
0056 reason of the change in grade of any street, except that such  
0057 damage shall be paid by such railway company or companies.  
0058 The amount of damage thus ascertained and awarded shall, upon  
0059 notice by the city, be promptly paid by the railway company or  
0060 companies interested and if any such company shall fail to pay  
0061 the same within ~~ten~~ 10 days from receipt of notice of the amount  
0062 thereof, then the amount so awarded shall become a lien in the  
0063 proportion to the amount each railway company shall pay —, if  
0064 more than one company is concerned —, upon the right-of-way  
0065 and all property of such railway company and the collection  
0066 thereof may be enforced by the city in an action against such  
0067 railway company or companies ~~so~~ failing to pay. The width,  
0068 height and strength of any such viaduct or tunnel and the  
0069 approaches thereto, the material to be used ~~therefor~~, and the  
0070 manner of construction ~~thereof~~, shall be as required by the  
0071 governing body.

0072 When two or more railroad companies own or operate separate  
0073 lines of track to be crossed by any such viaduct, either upon,  
0074 above or below the grade, or where any street-railway company  
0075 intersects and crosses the track or tracks of any railroad company,  
0076 the proportion thereof and of the approaches thereto to be  
0077 constructed by each, and the proportion of cost to be borne by  
0078 each, shall be determined by the governing body. It shall be the  
0079 duty of any railroad company or companies or street-railway  
0080 company, upon being required, as herein provided, to erect,  
0081 construct, reconstruct or repair any viaduct or tunnel, to proceed,  
0082 within the time and in the manner required by the governing

0083 body, to erect, construct, reconstruct or repair the same, and it  
 0084 shall be a misdemeanor for any railroad company or companies  
 0085 or street-railway company to fail, neglect or refuse to perform  
 0086 such duty, and upon conviction, any such company or companies  
 0087 or the superintendent or other officer having charge of such  
 0088 railway company or street railway in the district or division  
 0089 where such viaduct or tunnel is to be erected or repaired, shall  
 0090 be fined ~~one hundred dollars~~ \$100, or imprisoned in the county  
 0091 jail not less than ~~thirty~~ 30 days, and each day such companies or  
 0092 officers shall fail, neglect or refuse to perform such duty shall be  
 0093 deemed and held a separate offense; and in addition to the  
 0094 penalty herein provided any such company or companies shall  
 0095 be compelled by mandamus or other appropriate proceedings to  
 0096 erect, construct, reconstruct, or repair any viaduct or tunnel as  
 0097 may be required by ordinance as herein provided.

0098 The governing body shall also have power, whenever any  
 0099 railroad company or companies or street-railway companies shall  
 0100 fail, neglect or refuse to erect, construct or reconstruct or repair  
 0101 any viaduct, viaducts or tunnel, after having been required so to  
 0102 do as herein provided, to proceed with the erection, construc-  
 0103 tion, reconstruction or repair of the same by contract or in such  
 0104 other manner as may be provided by ordinance and assess the  
 0105 cost thereof against the property of such railroad company or  
 0106 companies or street-railway company, and such cost shall be a  
 0107 valid and subsisting lien against such property, and also shall be  
 0108 a legal indebtedness of such company or companies in favor of  
 0109 such city, and may be enforced and collected by suit in any court  
 0110 having jurisdiction.

0111 Sec. 2. K.S.A. 12-1634 is hereby amended to read as follows:  
 0112 12-1634. The governing body of all cities of the first and second  
 0113 class in a county having a population of over 90,000 shall have  
 0114 the power to regulate the crossings of railway and street-railway  
 0115 tracks and provide precautions and prescribe rules regulating the  
 0116 same; ~~and to regulate the running of street railways or cars and~~  
 0117 ~~railway engines and cars in the city, and to prescribe rules~~  
 relating thereto and to govern the speed thereof; ~~and to make~~  
 0119 other and further provisions, rules and regulations to prevent

enact laws  
and to regulate the running of railway engines and cars and  
to enact laws relating thereto other than the governing of  
speed;

0120 fires from engines, and to require all railway companies to erect  
0121 viaducts over or tunnels under their tracks at the crossings of  
0122 streets.

0123 ~~From and after the effective date of this act, no rule, regula-~~  
0124 ~~tion or ordinance adopted by the governing body of any city of~~  
0125 ~~the first class or second class in a county having a population of~~  
0126 ~~over 90,000 regulating the running of railway engines and cars~~  
0127 ~~or governing the speed thereof shall be of any force or effect,~~  
0128 ~~and the same shall be and is hereby declared null and void.~~ The  
0129 governing body shall have power to require any railroad com-  
0130 pany or companies owning or operating any railroad or street-  
0131 railway track or tracks upon or across any public street or streets  
0132 of the city to erect, construct, reconstruct, complete and keep in  
0133 repair any viaduct or viaducts upon or over or tunnels under such  
0134 street or streets and over or under such tracks, including the  
0135 approaches of such viaduct, viaducts or tunnels as may be  
0136 deemed and declared by ordinance to be necessary for the  
0137 convenience, safety or protection of the public.

0138 Whenever any such viaduct shall be deemed and declared by  
0139 ordinance to be necessary for the convenience, safety or protec-  
0140 tion of the public, the governing body shall provide for apprais-  
0141 ing, assessing and determining the damage, if any, which may be  
0142 caused to any property by reason of the construction of such  
0143 viaduct and its approaches. The proceedings for such purpose  
0144 shall be the same as provided by law for the purpose of ascer-  
0145 taining and determining damages to property owners by reason  
0146 of the change in grade of any street, except that such damage  
0147 shall be paid by such railway company or companies. The  
0148 amount of damage thus ascertained and awarded shall, upon  
0149 notice by the city, be promptly paid by the railway company or  
0150 companies interested, and if any such company shall fail to pay  
0151 the same within ~~ten~~ 10 days from receipt of notice of the amount  
0152 thereof, then the amount so awarded shall become a lien in the  
0153 proportion to the amount each railway company shall pay, if  
more than one company is concerned, upon the right-of-way and  
all property of such railway company, and the collection thereof  
0154 may be enforced by the city in an action against such railway

0157 company or companies so failing to pay. The width, height and  
0158 strength of any such viaduct or tunnel and the approaches  
0159 thereto, the material to be used ~~therefor~~, shall be as required by  
0160 the governing body.

0161 When two or more railroad companies own or operate separate  
0162 lines of track to be crossed by any such viaduct, either upon,  
0163 above or below the grade, or where any street-railway company  
0164 intersects and crosses the track or tracks of any railroad company,  
0165 the proportion thereof and of the approaches thereto to be  
0166 constructed by each, and the proportion of cost to be borne by  
0167 each, shall be determined by the governing body. It shall be the  
0168 duty of any railroad company or companies or street-railway  
0169 company, upon being required, as herein provided, to erect,  
0170 construct, reconstruct or repair any viaduct or tunnel, to proceed,  
0171 within the time and in the manner required by the governing  
0172 body to erect, construct or reconstruct or repair the same, and it  
0173 shall be a misdemeanor for any railroad company or companies  
0174 or street-railway company to fail, neglect or refuse to perform  
0175 such duty, and upon conviction, any such company or companies  
0176 or the superintendent or other officer having charge of such  
0177 railway company or street railway in the district or division  
0178 where such viaduct or tunnel is to be erected or repaired shall be  
0179 fined one hundred dollars, and each day such companies or  
0180 officers shall fail, neglect or refuse to perform such duty shall be  
0181 deemed and held a separate offense; and in addition to the  
0182 penalty herein provided, any such company or companies shall  
0183 be compelled by mandamus or other appropriate proceedings to  
0184 erect, construct, reconstruct or repair any viaduct or tunnel as  
0185 may be required by ordinance as herein provided.

0186 The governing body shall also have power, whenever any  
0187 railroad company or companies or street-railway companies shall  
0188 fail, neglect or refuse to erect, construct or reconstruct or repair  
0189 any viaduct, viaducts or tunnel, after having been required so to  
0190 do as herein provided, to proceed with the erection, construction,  
reconstruction or repair of the same by contract, or in such  
other manner as may be provided by ordinance, and assess the  
0193 cost thereof against the property of such railway company or

0194 companies or street-railway company, and such cost shall be a  
 0195 valid and subsisting lien against such property, and also shall be  
 0196 a legal indebtedness of such company or companies in favor of  
 0197 such city, and may be enforced and collected by suit in any court  
 0198 having jurisdiction. Or in lieu of enforcing the collection of the  
 0199 costs of ~~said~~ such improvement by a suit at law, the city may  
 0200 issue internal improvement bonds of the city as provided by law  
 0201 to pay for ~~said~~ such work, and special assessments shall be levied  
 0202 against the property of such railroad company or companies or  
 0203 street railway as above provided to pay ~~said~~ such bonds and  
 0204 interest.

0205 Sec. 3. K.S.A. 14-434 is hereby amended to read as follows:  
 0206 14-434. The council shall have power to regulate levees, depots,  
 0207 depot grounds, and places of storing freight and goods, and to  
 0208 provide for the passage of railways through the streets and public  
 0209 grounds of the city; also to regulate the crossings of railway  
 0210 tracks and to provide precautions and prescribe rules regulating  
 0211 the same; and to regulate the running of railway engines, cars  
 0212 and tracks within the limits of said city; and to prescribe rules  
 0213 relating thereto; and to govern the speed thereof; and to make  
 0214 any other and further provisions, rules and restrictions to prevent  
 0215 accidents at crossings, and on the tracks of railways, and to  
 0216 prevent fires from engines.

and to regulate the running of railway engines, cars and tracks  
 and to enact laws relating thereto, other than laws governing  
 speed

0217 ~~From and after the effective date of this act, no rule, regula-~~  
 0218 ~~tion or ordinance adopted by the council regulating the running~~  
 0219 ~~of railway engines and cars or governing the speed thereof shall~~  
 0220 ~~be of any force or effect, and the same shall be and is hereby~~  
 0221 ~~declared null and void.~~

0222 Sec. 4. K.S.A. 15-438 is hereby amended to read as follows:  
 0223 15-438. The council shall have power to regulate levees, depots,  
 0224 depot grounds and places for storing freight and goods, and to  
 0225 provide for the passage of railways through the streets and public  
 0226 grounds of the city; also, to regulate the crossings of railway  
 0227 tracks, and to provide precautions and prescribe rules regulating  
 0228 the same; and to regulate the running of railway engines, cars  
 0229 and tracks within the limits of said city; and to prescribe rules  
 0230 relating thereto; and to govern the speed thereof; and to make

and to regulate the running of railway engines, cars and tracks  
 and to enact laws relating thereto, other than laws governing  
 speed



0231 any other and further provisions, rules and restrictions to prevent  
0232 accidents at crossings and on the tracks of railways, and to  
0233 prevent fires from engines.

0234 ~~From and after the effective date of this act, no rule, regula-~~  
0235 ~~tion or ordinance adopted by the council regulating the running~~  
0236 ~~of railway engines and cars as governing the speed thereof shall~~  
0237 ~~be of any force or effect, and the same shall be and is hereby~~  
0238 ~~declared null and void.~~

0239 Sec. 5. K.S.A. 12-1633, 12-1634, 14-434 and 15-438 are  
0240 hereby repealed.

0241 Sec. 6. This act shall take effect and be in force from and  
0242 after its publication in the statute book.