

Approved 3-24-88  
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at  
Chairperson

9:00 a.m./~~p.m.~~ on March 22, 1988 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Rep. Nancy Brown  
David Rosenthal, Kansas Commission for Deaf and Hearing Impaired  
Lt. Bill Jacobs, Kansas Highway Patrol  
Mike Germann, Kansas Railroad Association  
Jim Kaup, General Counsel, Kansas League of Municipalities  
Ed DeSoignie, KDOT

Hearing on H.B. 2988 - Symbol for motor vehicles of deaf or hearing impaired persons.

Rep. Nancy Brown appeared in support of this bill which would provide for a symbol to be attached to the rear of a vehicle for the deaf and hearing impaired. It would be voluntary and inexpensive.

David Rosenthal, Kansas Commission for Deaf and Hearing Impaired, said this bill is similar to a bill that became law in Texas. There have been incidents in this state where arresting officers have no idea that a person is hearing impaired and this symbol would alert law officers that there may be a communications problem. A copy of his statement is attached. (Attachment 1). Mr. Rosenthal did not know how many symbols would be issued but he thought it might be approximately 10,000. Mr. Rosenthal said an additional staff person to administer the program in training responsibilities would be necessary to make the program successful. This would cost approximately \$41,000 but this was not a part of H.B. 2988.

Lt. Bill Jacobs had a sample of the symbol which was to be displayed. They wanted a symbol which was not easily identifiable to anyone except law enforcement people or others in emergency services. They support this bill. A copy of his statement is attached. (Attachment 2).

On a motion from Sen. Hayden and a second from Sen. Bond a motion was made to recommend H.B. 2988 favorable for passage and recommend it be placed on the Consent Calendar. Motion carried.

Hearing on H.B. 2745 - Relating to regulation of train speeds.

Mike Germann, Kansas Railroad Association, said this bill would prohibit cities from adopting rules, regulations or ordinances which would regulate the speed of trains. A federal court ruled that cities could not regulate train speeds and there are a number of ordinances on the books that are unenforceable. This would clarify the situation. Cities may initiate a complaint to KCC and an order could be issued that would be consistent with federal law. A copy of his statement is attached. (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,  
room 254-E, Statehouse, at 9:00 a.m./~~pm~~ on March 22, 1988

Jim Kaup, General Counsel, Kansas League of Municipalities, said they were not in opposition nor do they favor this bill. Their grievance was with the federal government. They were concerned that the bill was overly broad. It could invalidate present ordinances. His amendments would take care of that and would clarify the point. The amendments deal only with speed and leaves local ordinances in that do not address speed. A copy of the suggested amendments is attached.  
(Attachment 4).

A motion was made by Sen. Hayden and was seconded by Sen. Hoferer to adopt the proposed amendments. Motion carried.

A motion was made by Sen. Norvell and was seconded by Sen. Hoferer to recommend H.B. 2745 as amended, favorable for passage. Motion carried.

Review of H.B. 2306- Sale of highway bonds by Secretary of Transportation.

Ed DeSoignie, KDOT, said they had appeared last year in support of this bill and they support it this year. It would give the Secretary the option of negotiating the private sale of bonds. These could carry a much lower rate and could be obtained faster. The committee made no decision on this bill and it would be held over.

On a motion from Sen. Hayden and a second from Sen. Norvell the Minutes of March 15, 16 and 17, 1988 were approved. Motion carried.

Meeting was adjourned at 10:00 a.m.

DATE: <sup>22</sup> 3-18-88

ROOM: 254-E

GUEST REGISTER  
SENATE  
TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
Mike Germann	Kansas Railroad Association	Topeka
Tom Whitaker	Ks Motor Collectors Assn	Topeka
FRANK EATON	SEK CITIES	Manhattan
Lt. Bill Jacobs	KHP	TOPEKA
Mike O'Leary	KACEH	1930 Topeka Av
Robert Hall	KDOT	Topeka
Rich Dame	B.L.E.	HOISINGTON
Ed DeSigue	KDOT	Topeka
Alfonzo A. Maxwell	KCC	Topeka
Jim Kamp	League of Municipalities	Topeka
David Rosenthal	KCDHI	Topeka
Patty Brecht	Integrator	Topeka
Ron CALBERT	U.J.U.	NEWTON

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

TESTIMONY IN SUPPORT OF HOUSE BILL 2988

Mr. Chairman, committee members, thank you for the opportunity to testify on behalf of House Bill 2988. I am the Executive Director of the Kansas Commission for the Deaf and Hearing Impaired, which is within Rehabilitation Services, under the Social and Rehabilitation Services umbrella.

The Kansas Commission for the Deaf and Hearing Impaired coordinates services and disseminates information related to the well-being of Kansans who experience deafness or hearing impairment. The Commission serves as an advocate for services for the deaf and hearing impaired citizens of Kansas, collecting facts and statistics to encourage and assist public and private agencies and units of local, state, and federal government to cooperate in the delivery of services to respond to the needs of this population.

This bill is similar to the bill that became law in Texas recently. It was a result of an incident in Amarillo, Texas involving a deaf person and the local police department in which the officers used the intercom from the patrol car to direct the driver to get out of his car. As you can imagine, the anxiety level of both parties were heightened before it was discovered that the driver of the car matching the description of a wanted vehicle was deaf.

The Commission has heard of similar incidents here in our state. We were involved in a situation recently involving a deaf man who was arrested on a DUI

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3/22/88

charge in southeastern Kansas. The arresting officer had no idea the man was deaf until they attempted to interrogate him. In this process, they may have unwittingly violated his civil rights. A letter from the city attorney is attached to illustrate the dilemma facing law enforcement officials.

The benefits of this symbol program extends further than just law enforcement. Emergency medical technicians and fire department personnel should also benefit in being aware of potential communications problems in advance.

To merely issue a sticker and recognize that a person has a hearing impairment is not enough. The Commission has done in-service training on hearing impairments and communication strategies in emergency situations for law enforcement agencies, EMTs, and fire personnel in the past. Occasionally, we are invited to speak to cadets in a law enforcement academy. To the best of my knowledge, only the Kansas State Highway Patrol and a law enforcement training academy in Kansas City, Kansas have a portion of their program covering hearing impairment for a length of about an hour to an hour and a half. There is a definite need to extend this type of information and training on the various degrees of hearing impairment and communication needs to all law enforcement academies, fire/emergency medical technician training programs, in service training sessions, and community training programs. This combination of training and utilization of the symbol would prevent the situations I illustrated earlier from happening again.

An additional staff person is necessary to administer the program since it entails training responsibilities in order to make the program successful. The fiscal impact is roughly expected to be approximately \$41,000. In addition to

the staff, funds will be needed to pay for travel, training materials, printing, and manufacturing the symbols.

Thank you for your time and attention.

David S. Rosenthal

Executive Director

Kansas Commission for the Deaf  
and Hearing Impaired

296-2874

March 22, 1988

SEP 16 1987

City of  
Cherryvale, Kansas



CHERRYVALE, KANSAS

67335

September 15, 1987

Robert Hiller  
SRS Fraud & Recovery Section  
5th Floor  
Docking State Office Bldg.  
Topeka, KS 66612

Re: [REDACTED] - Interpreter Fee

Dear Mr. Hiller;

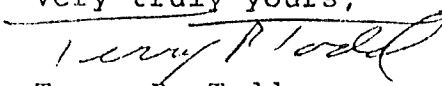
To confirm our discussion by phone 9/14/87, the City of Cherryvale admits that an attempt was made to interrogate Mr. [REDACTED] prior to appointment of an interpreter. Given Mr. [REDACTED] condition, it was only after such attempts were made that it was discovered that he was, infact, deaf, instead of merely heavily intoxicated, as he first appeared to the investigating officers.

After it was ascertained that Mr. [REDACTED] was deaf, but also having the ability to read lips, the only question posed to him upon which action was taken was when he was asked if he wished to be returned home. According to the officers, he quickly and repeatedly indicated that was what he wanted. And that was what was done.

Until such time as all deaf persons (or anyone else who may qualify for use of an interpreter) who may, at some time or other get roaring drunk, start wearing obvious identifying insignia, the only way investigation officers will have of ascertaining that need will be through attempted interrogation. If there are other alternatives, we would appreciate having them.

If there is anything further I may help with in this matter, please feel free to contact me.

Very truly yours,

  
Terry P. Todd  
City Attorney

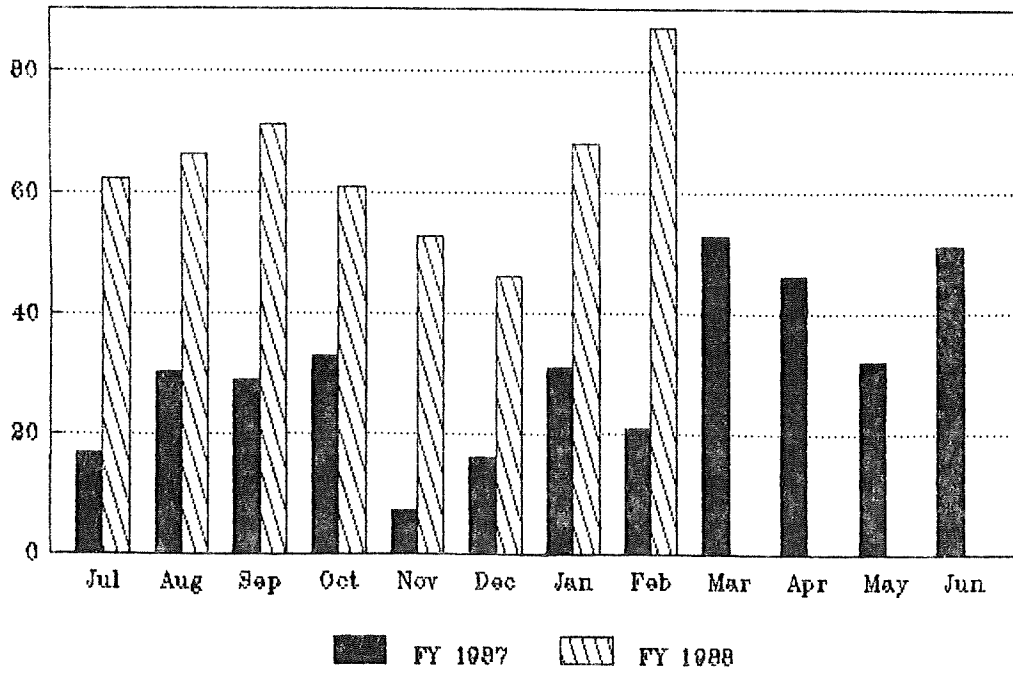
TPT/mt

CC David S. Rosenthal

Mr. & Mrs. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

# Interpreter Requests

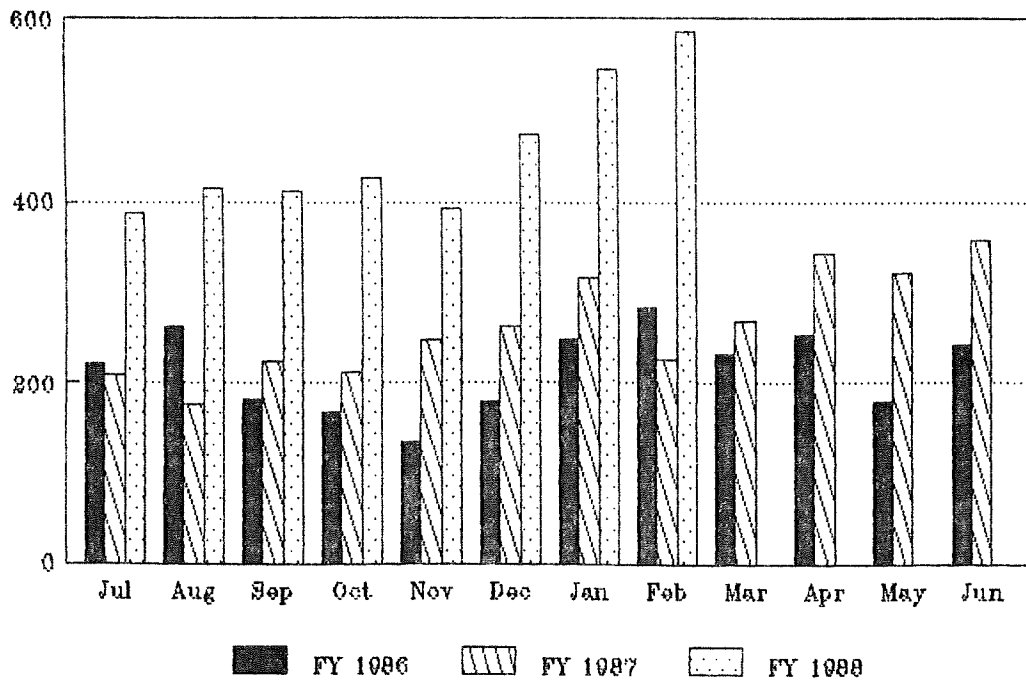
# of requests per month





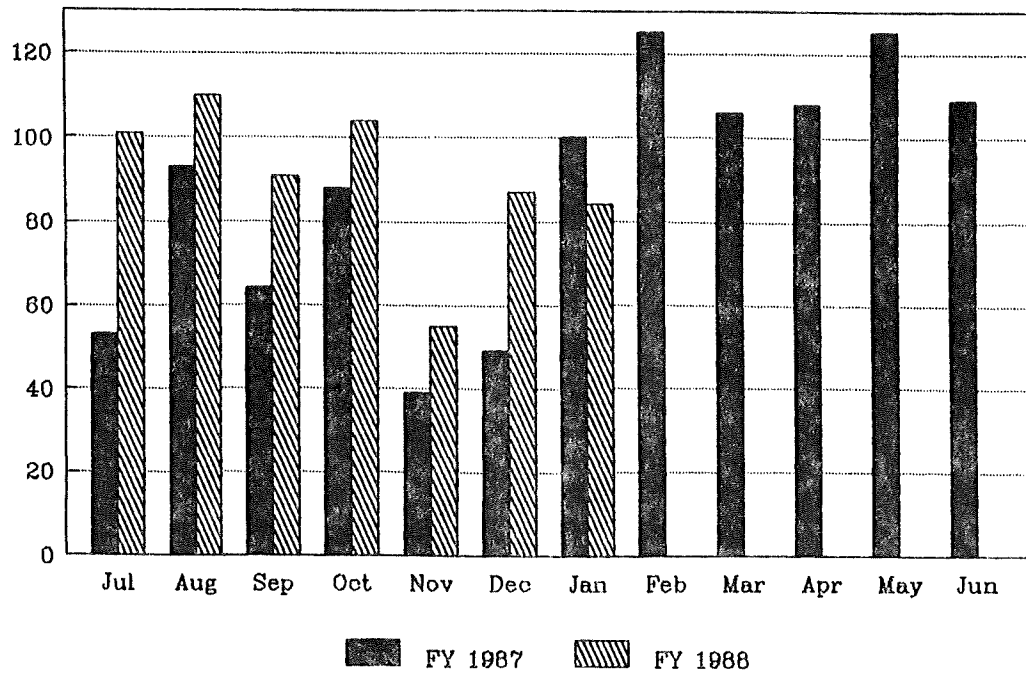
# Message Relay Service

# of calls per month



# Information/Referral Service

# of requests per month



SUMMARY OF TESTIMONY

Before the Senate Transportation and Utilities Committee

House Bill 2988

Presented by the Kansas Highway Patrol

(Lieutenant William Jacobs)

March 22, 1988

Appeared in Support of House Bill 2988

The Kansas Highway Patrol supports House Bill 2988 which would provide for a symbol to be attached to motor vehicles driven by the deaf and hearing impaired.

Officers, through the nature of their occupation, sometimes encounter hearing impaired drivers. If the vehicle those drivers are operating displayed the proposed symbol, the officer would be aware of the situation and be prepared to converse so the individual could read their lips or by written communication.

The symbol would also be valuable to other emergency workers (ambulance attendants, fire fighters, etc.) if a hearing impaired driver required those services.

We feel that the symbol would only benefit all concerned and cannot think of any adverse affects. We urge this Committee to give favorable consideration to this bill.

ATT. 2  
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3/22/88

# KANSAS RAILROAD ASSOCIATION

920 S.E. QUINCY  
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 Senate Committee  
on Transportation and Utilities  
The Honorable Bill Morris, Chairman

Statehouse  
Topeka, Kansas  
March 22, 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 appeared before the House Committee on Transportation 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 House 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

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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.)

Concluding its analysis the Court stated: "[K.S.A. 15-438] 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." (Sisk at 865.)

H.B. 2745 was drafted to focus narrowly and specifically on the speed ordinance issue addressed in Sisk. This narrow focus was defined more clearly by House Committee amendments. The bill amends four statutes to remove the delegation of authority to municipalities to regulate train speeds. The amendments to these statutes also state that ordinances pertaining to the regulation of train speeds are null and void. Further amendments by the House Committee specify the mechanism which must be followed if the governing body of a municipality desires to have lawful and enforceable regulation of train speeds through the municipality.

The railroad industry believes that this legislation is necessary to remove confusion which exists in this area of the law. We urge your favorable consideration of this legislation and ask that you report the bill with a recommendation for passage.

I again thank you for the opportunity to appear before the Committee and present our statement in support of House Bill No. 2745. Mr. Chairman, I will try to respond to any questions which you or members of the Committee might have.

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.

The plaintiffs have filed a motion in limine to preclude defendants from introducing into evidence or mentioning during voir dire or opening or closing statements the following: (1) that plaintiff Karen Sue Sisk, wife of decedent, has remarried; (2) any services being provided Karen Sue Sisk by her new husband; (3) the financial status of Karen Sue Sisk or any money she has received from Social Security; (4) that the decedent's death may have been a suicide. Defendants concede that the collateral source rule precludes introduction of evidence of the widow's financial status or any monies she has received since her husband's death, as her damages are to be ascertained from the date of death. Therefore, the court need address only the admissibility of the widow's remarriage and the defense of suicide.

[5] Under Kansas law, evidence of a widow's remarriage is inadmissible for the purpose of mitigation of damages. *Pape v. Kansas Power & Light Co.*, 231 Kan. 441, 647 P.2d 320 (1982); *see also Fudge v. City of Kansas City*, 239 Kan. 369, 379, 720 P.2d 1093 (1986). In *Fudge*, the Kansas Supreme Court held the trial court did not abuse its discretion by precluding voir dire of the jurors about whether any of them knew the widow (by her new name) or her current husband. *See also Nichols v. Marshall*, 486 F.2d 791 (10th Cir.1973).

[6] This court has no quarrel with the rule that the remarriage of the widow is inadmissible for mitigation of damages. Clearly, the cause of action for wrongful death arises at the time of death, and damages are to be determinable at that time. *Pape*, 231 Kan. at 447, 647 P.2d 320. This is not to say, however, that the widow's true identity must—under all circumstances—be concealed from the jury. In this regard, if and when the widow testifies, she will be accurately and truly identified.

[7] In the case at bar, the defendants contend the proximate cause of Gerald Sisk's death was a deliberate action on his part. The court will deny plaintiffs' motion in limine seeking to bar this defense. In

order to prove suicide, defendants must establish a motive. The defendants herein allege decedent was despondent because of his wife's intent to leave him for another man. In the court's view, the widow Sisk's remarriage on the heels of her husband's death to the very person she had allegedly planned to leave decedent for may indeed be probative toward establishing a motive. Accordingly, the fact of her remarriage will be admitted for this limited purpose.

Even if suicide were not at issue herein, the court would not be willing to acquiesce in any "facade", the thrust of which would allow the widow to be sworn in under a name which is no longer her own. Additionally, proper instructions will preclude the jury from considering remarriage per se when assessing damages. Therefore, the court declines to invoke Rule 403 to exclude all evidence of the widow's remarriage. Accordingly, plaintiffs' motion in limine is denied as to the evidence of remarriage and suicide.

IT IS ACCORDINGLY ORDERED this 12 day of November, 1986, that defendant The City of Cimarron's motion to dismiss is granted in part and denied in part; defendants National Railroad Passenger Corporation and The Atchison, Topeka & Santa Fe Railway Company's motion in limine is granted; and plaintiffs' motion in limine is granted in part and denied in part. It is further ordered that plaintiffs' motion to amend their complaint, adding a count of negligence against the City of Cimarron, is granted.



Maximum authorized speed for freight train is 70 MPH provided:

- (1) Train does not contain empty car(s).
- (2) Train does not exceed 5,500 tons.
- (3) Train does not exceed 8,500 feet.
- (4) Train does not average more than 80 tons per car.
- (5) Locomotive can control speed to 70 MPH without use of air brakes.

SECOND SUBDIVISION

<u>STATIONS</u>	<u>MILE POST</u>		<u>ATSF SPEED RESTRICTIONS</u>	<u>CITY ORDINANCES</u>
Holliday	13.4		60	
Craig	19.5		60	
Olathe	27.8		50	40
Gardner	34.6		55	40
Edgerton	39.8	North Track	65	
		South Track	55	
Wellsville	45.5		65	50
Ottawa	57.1		65	20/30
MoPac Crossing	59.9		30	
Pomona	67.5		30/45	
Quenemo	71.8		50	
Melvern	79.6	North Track	45	
		South Track	65	
Ridgeton	87.6		55	
Lebo	93.8		55	
Neosho Rapids	101.6		55	6
Wiggam	107.1		55	
N.R. Jct.	111.3		30	
Emporia	112.1		30	30

Maximum Authorized Speed - Various Cars

(A)	Trains handling continuous welded or jointed rail, excluding twin loads of 78-ft. rail *except 25 MPH on curves of 6 degrees or more.	MPH 40*
(B)	Trains handling tank cars numbered: ACFX 17451 thru 17495 and NATX 10841 thru 10865	45
(C)	Trains handling gondolas numbered: CR 598500 thru 598999 PC 598500 thru 598999 SP 345000 thru 345699	45
(D)	Trains handling ATSF tank and work equipment cars numbered: ATSF 100301 thru 101099 & ATSF 198880 thru 199899 ATSF 189000 thru 189999 & ATSF 202750 thru 202999 ATSF 192770 thru 192875 & ATSF 209000 thru 209999	45
(E)	Trains handling the following tank cars numbered: DVLX 4001 thru 4190 UTLX 76517, 76539 UTLX 76556, 76558, 76568, 76595, 76649 UTLX 76656, 76696, 76733 UTLX 76736 thru 76738 UTLX 76742 thru 76751 (except 76746 and 76749) UTLX 78256 thru 78269 UTLX 78272, 78274, 78281 UTLX 78285 thru 78293 (except 78286) UTLX 78236 thru 78333 (except 78237) UTLX 78336 thru 78344 (except 78341 and 78342) UTLX 78347 thru 78350 (except 78349) UTLX 78353	40
(F)	Trains handling EMPTY "Schnable" type cars numbered: APWX 1004                    GEX 40010, 80002, 80003 BBCX 1000                    GPUX 100 CAPX 1001                    HEPX 200 CEBX 100, 101                KWUX 10 CPOX 820                      WECX 101, 102, 200-203, 301 CWEX 1016	40

All cars listed must be handled on or near the rear end of trains not exceeding 100 cars in length, must NOT be handled in trains requiring pusher service and must NOT be humped or switched with motive power detached.

(G)	Trains handling LOADED "Schnabel" type cars listed in (F) also CEBX 800 LOADED & EMPTY, must be governed by special instructions issued for each individual movement.	
(H)	Trains handling solid consist of military equipment	55
(I)	Trains handling EMPTY gondolas numbered: KCS 801011 thru 802930	45

As Amended by House Committee

Session of 1988

HOUSE BILL No. 2745

By Committee on Transportation

2-2

ATT. 4  
T&U  
3/22/88

0018 AN ACT relating to train speeds; amending K.S.A. 12-1633,  
0019 12-1634, 14-434 and 15-438 and repealing the existing sec-  
0020 tions.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 12-1633 is hereby amended to read as fol-  
0023 lows: 12-1633. The governing body of cities of the first and  
0024 second class shall have the power to regulate the crossings of  
0025 railway and street-railway tracks and provide precautions and  
0026 ~~prescribe rules adopt ordinances~~ regulating the same; ~~and to~~  
0027 regulate the running of street railways or cars ~~and railway en-~~  
0028 ~~gines and cars in the city, and to prescribe rules and to adopt~~  
0029 ordinances relating thereto and to govern the speed thereof; to  
0030 regulate the running of railway engines and cars, except speed,  
0031 and to adopt ordinances relating thereto; and to make other and  
0032 further provisions, rules and regulations to prevent accidents at  
0033 crossings and on tracks of railways, and to prevent fires from  
0034 engines, and to require all railway companies to erect viaducts  
0035 over or tunnels under their tracks at the crossings of streets.

0036 *From and after the effective date of this act, ~~no part of any~~*  
0037 ~~rule, regulation or ordinance adopted by the governing body of~~  
0038 ~~any city of the first class or second class regulating the running~~  
0039 ~~of railway engines and cars or governing the speed thereof of~~  
0040 ~~railway engines and cars shall be of any force or effect, and the~~  
0041 ~~same shall be and is hereby declared null and void.~~

0042 The governing body of any city of the first class or second  
0043 class, pursuant to K.S.A. 66-165, and amendments thereto, may  
0044 initiate a complaint to the state corporation commission and seek  
0045 an order regulating the speed of railway engines and cars. In

that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any force or effect, and that part or parts shall be and are hereby declared null and void.



0046 accordance with the provisions of K.S.A. 66-165, and amend-  
0047 ments thereto, its rules of procedure and other applicable law,  
0048 the state corporation commission shall investigate the complaint,  
0049 may conduct a hearing and, consistent with applicable law and  
0050 rules and regulations of the federal railroad administration, issue  
0051 its order.

0052 The governing body shall have power to require any railroad  
0053 company or companies owning or operating any railroad or  
0054 street-railway track or tracks upon or across any public street or  
0055 streets of the city to erect, construct, reconstruct, complete and  
0056 keep in repair any viaduct or viaducts upon or over or tunnels  
0057 under such street or streets and over or under any such track or  
0058 tracks, including the approaches of such viaduct, viaducts or  
0059 tunnels as may be deemed and declared by the governing body  
0060 to be necessary for the convenience, safety or protection of the  
0061 public. Whenever any such viaduct shall be deemed and de-  
0062 clared by ordinance to be necessary for the convenience, safety  
0063 or protection of the public, the governing body shall provide for  
0064 appraising, assessing and determining the damage, if any, which  
0065 may be caused to any property by reason of the construction of  
0066 such viaduct and its approaches. The proceedings for such pur-  
0067 pose shall be the same as provided by law for the purpose of  
0068 ascertaining and determining damages to property owners by  
0069 reason of the change in grade of any street, except that such  
0070 damage shall be paid by such railway company or companies.  
0071 The amount of damage thus ascertained and awarded shall, upon  
0072 notice by the city, be promptly paid by the railway company or  
0073 companies interested and if any such company shall fail to pay  
0074 the same within ~~ten~~ 10 days from receipt of notice of the amount  
0075 thereof, then the amount so awarded shall become a lien in the  
0076 proportion to the amount each railway company shall pay —, if  
0077 more than one company is concerned —, upon the right-of-way  
0078 and all property of such railway company and the collection  
0079 thereof may be enforced by the city in an action against such  
0080 railway company or companies ~~so~~ failing to pay. The width,  
0081 height and strength of any such viaduct or tunnel and the  
0082 approaches thereto, the material to be used ~~therefor~~, and the

0083 manner of construction thereof, shall be as required by the  
0084 governing body.

0085 When two or more railroad companies own or operate separate  
0086 lines of track to be crossed by any such viaduct, either upon,  
0087 above or below the grade, or where any street-railway company  
0088 intersects and crosses the track or tracks of any railroad company,  
0089 the proportion thereof and of the approaches thereto to be  
0090 constructed by each, and the proportion of cost to be borne by  
0091 each, shall be determined by the governing body. It shall be the  
0092 duty of any railroad company or companies or street-railway  
0093 company, upon being required, as herein provided, to erect,  
0094 construct, reconstruct or repair any viaduct or tunnel, to proceed,  
0095 within the time and in the manner required by the governing  
0096 body, to erect, construct, reconstruct or repair the same, and it  
0097 shall be a misdemeanor for any railroad company or companies  
0098 or street-railway company to fail, neglect or refuse to perform  
0099 such duty, and upon conviction, any such company or companies  
0100 or the superintendent or other officer having charge of such  
0101 railway company or street railway in the district or division  
0102 where such viaduct or tunnel is to be erected or repaired, shall  
0103 be fined ~~one hundred dollars~~ \$100, or imprisoned in the county  
0104 jail not less than ~~thirty~~ 30 days, and each day such companies or  
0105 officers shall fail, neglect or refuse to perform such duty shall be  
0106 deemed and held a separate offense; and in addition to the  
0107 penalty herein provided any such company or companies shall  
0108 be compelled by mandamus or other appropriate proceedings to  
0109 erect, construct, reconstruct, or repair any viaduct or tunnel as  
0110 may be required by ordinance as herein provided.

0111 The governing body shall also have power, whenever any  
0112 railroad company or companies or street-railway companies shall  
0113 fail, neglect or refuse to erect, construct or reconstruct or repair  
0114 any viaduct, viaducts or tunnel, after having been required so to  
0115 do as herein provided, to proceed with the erection, construc-  
0116 tion, reconstruction or repair of the same by contract or in such  
0117 other manner as may be provided by ordinance and assess the  
0118 cost thereof against the property of such railroad company or  
0119 companies or street-railway company, and such cost shall be a

0120 valid and subsisting lien against such property, and also shall be  
 0121 a legal indebtedness of such company or companies in favor of  
 0122 such city, and may be enforced and collected by suit in any court  
 0123 having jurisdiction.

0124 Sec. 2. K.S.A. 12-1634 is hereby amended to read as follows:  
 0125 12-1634. The governing body of all cities of the first and second  
 0126 class in a county having a population of over 90,000 shall have  
 0127 the power to regulate the crossings of railway and street-railway  
 0128 tracks and provide precautions and ~~prescribe rules~~ **adopt ordi-**  
 0129 **nances** regulating the same;; ~~and to regulate the running of street~~  
 0130 ~~railways or cars and railway engines and cars in the city, and to~~  
 0131 ~~prescribe rules and to adopt ordinances~~ relating thereto and to  
 0132 govern the speed thereof; **to regulate the running of railway**  
 0133 **engines and cars, except speed, and to adopt ordinances relating**  
 0134 **thereto; and to make other and further provisions, rules and**  
 0135 **regulations to prevent fires from engines, and to require all**  
 0136 **railway companies to erect viaducts over or tunnels under their**  
 0137 **tracks at the crossings of streets.**

0138 *From and after the effective date of this act, ~~no part of any~~*  
 0139 *~~rule, regulation or ordinance adopted by the governing body of~~*  
 0140 *~~any city of the first class or second class in a county having a~~*  
 0141 *~~population of over 90,000 regulating the running of railway~~*  
 0142 *~~engines and cars or governing the speed thereof of railway~~*  
 0143 *~~engines and cars shall be of any force or effect, and the same~~*  
 0144 *~~shall be and is hereby declared null and void.~~*

0145 The governing body of any city of the first or second class in a  
 0146 county having a population of over 90,000, pursuant to K.S.A.  
 0147 66-165, and amendments thereto, may initiate a complaint to the  
 0148 state corporation commission and seek an order regulating the  
 0149 speed of railway engines and cars. In accordance with the pro-  
 0150 visions of K.S.A. 66-165, and amendments thereto, its rules of  
 0151 procedure and other applicable law, the state corporation com-  
 0152 mission shall investigate the complaint, may conduct a hearing  
 0153 and, consistent with applicable law and rules and regulations of  
 0154 the federal railroad administration, issue its order.

0155 The governing body shall have power to require any railroad  
 0156 company or companies owning or operating any railroad or

that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any force or effect, and that part or parts shall be and are hereby declared null and void.

0157 street-railway track or tracks upon or across any public street or  
0158 streets of the city to erect, construct, reconstruct, complete and  
0159 keep in repair any viaduct or viaducts upon or over or tunnels  
0160 under such street or streets and over or under such tracks,  
0161 including the approaches of such viaduct, viaducts or tunnels as  
0162 may be deemed and declared by ordinance to be necessary for  
0163 the convenience, safety or protection of the public.

0164 Whenever any such viaduct shall be deemed and declared by  
0165 ordinance to be necessary for the convenience, safety or protec-  
0166 tion of the public, the governing body shall provide for apprais-  
0167 ing, assessing and determining the damage, if any, which may be  
0168 caused to any property by reason of the construction of such  
0169 viaduct and its approaches. The proceedings for such purpose  
0170 shall be the same as provided by law for the purpose of ascer-  
0171 taining and determining damages to property owners by reason  
0172 of the change in grade of any street, except that such damage  
0173 shall be paid by such railway company or companies. The  
0174 amount of damage thus ascertained and awarded shall, upon  
0175 notice by the city, be promptly paid by the railway company or  
0176 companies interested, and if any such company shall fail to pay  
0177 the same within ~~ten~~ 10 days from receipt of notice of the amount  
0178 thereof, then the amount so awarded shall become a lien in the  
0179 proportion to the amount each railway company shall pay, if  
0180 more than one company is concerned, upon the right-of-way and  
0181 all property of such railway company, and the collection thereof  
0182 may be enforced by the city in an action against such railway  
0183 company or companies so failing to pay. The width, height and  
0184 strength of any such viaduct or tunnel and the approaches  
0185 thereto, the material to be used ~~therefor~~, shall be as required by  
0186 the governing body.

0187 When two or more railroad companies own or operate separate  
0188 lines of track to be crossed by any such viaduct, either upon,  
0189 above or below the grade, or where any street-railway company  
0190 intersects and crosses the track or tracks of any railroad company,  
0191 the proportion thereof and of the approaches thereto to be  
0192 constructed by each, and the proportion of cost to be borne by  
0193 each, shall be determined by the governing body. It shall be the

0194 duty of any railroad company or companies or street-railway  
0195 company, upon being required, as herein provided, to erect,  
0196 construct, reconstruct or repair any viaduct or tunnel, to proceed,  
0197 within the time and in the manner required by the governing  
0198 body to erect, construct or reconstruct or repair the same, and it  
0199 shall be a misdemeanor for any railroad company or companies  
0200 or street-railway company to fail, neglect or refuse to perform  
0201 such duty, and upon conviction, any such company or companies  
0202 or the superintendent or other officer having charge of such  
0203 railway company or street railway in the district or division  
0204 where such viaduct or tunnel is to be erected or repaired shall be  
0205 fined one hundred dollars, and each day such companies or  
0206 officers shall fail, neglect or refuse to perform such duty shall be  
0207 deemed and held a separate offense; and in addition to the  
0208 penalty herein provided, any such company or companies shall  
0209 be compelled by mandamus or other appropriate proceedings to  
0210 erect, construct, reconstruct or repair any viaduct or tunnel as  
0211 may be required by ordinance as herein provided.

0212 The governing body shall also have power, whenever any  
0213 railroad company or companies or street-railway companies shall  
0214 fail, neglect or refuse to erect, construct or reconstruct or repair  
0215 any viaduct, viaducts or tunnel, after having been required so to  
0216 do as herein provided, to proceed with the erection, construc-  
0217 tion, reconstruction or repair of the same by contract, or in such  
0218 other manner as may be provided by ordinance, and assess the  
0219 cost thereof against the property of such railway company or  
0220 companies or street-railway company, and such cost shall be a  
0221 valid and subsisting lien against such property, and also shall be  
0222 a legal indebtedness of such company or companies in favor of  
0223 such city, and may be enforced and collected by suit in any court  
0224 having jurisdiction. Or in lieu of enforcing the collection of the  
0225 costs of ~~said~~ such improvement by a suit at law, the city may  
0226 issue internal improvement bonds of the city as provided by law  
0227 to pay for ~~said~~ such work, and special assessments shall be levied  
0228 against the property of such railroad company or companies or  
0229 street railway as above provided to pay ~~said~~ such bonds and  
0230 interest.

0231 Sec. 3. K.S.A. 14-434 is hereby amended to read as follows:  
 0232 14-434. The council shall have power to regulate levees, depots,  
 0233 depot grounds, and places of storing freight and goods, and to  
 0234 provide for the passage of railways through the streets and public  
 0235 grounds of the city; also to regulate the crossings of railway  
 0236 tracks and to provide precautions and ~~prescribe rules adopt~~  
 0237 ~~ordinances regulating the same, and to regulate the running of~~  
 0238 ~~railway engines, cars and tracks within the limits of said city, and~~  
 0239 ~~to prescribe rules relating thereto, and to govern the speed~~  
 0240 ~~thereof;~~ to regulate the running of railway engines and cars,  
 0241 except speed, and to adopt ordinances relating thereto; and to  
 0242 make any other and further provisions, rules and restrictions to  
 0243 prevent accidents at crossings, and on the tracks of railways, and  
 0244 to prevent fires from engines.

0245 *From and after the effective date of this act, ~~no part of any~~*  
 0246 *rule, regulation or ordinance adopted by the council regulating*  
 0247 *the running of railway engines and cars or governing the speed*  
 0248 *thereof of railway engines and cars shall be of any force or effect,*  
 0249 *and the same shall be and is hereby declared null and void.*

0250 The council, pursuant to K.S.A. 66-165, and amendments  
 0251 thereto, may initiate a complaint to the state corporation com-  
 0252 mission and seek an order regulating the speed of railway en-  
 0253 gines and cars. In accordance with the provisions of K.S.A.  
 0254 66-165, and amendments thereto, its rules of procedure and other  
 0255 applicable law, the state corporation commission shall investi-  
 0256 gate the complaint, may conduct a hearing and, consistent with  
 0257 applicable law and rules and regulations of the federal railroad  
 0258 administration, issue its order.

0259 Sec. 4. K.S.A. 15-438 is hereby amended to read as follows:  
 0260 15-438. The council shall have power to regulate levees, depots,  
 0261 depot grounds and places for storing freight and goods, and to  
 0262 provide for the passage of railways through the streets and public  
 0263 grounds of the city; also, to regulate the crossings of railway  
 0264 tracks, and to provide precautions and ~~prescribe rules adopt~~  
 0265 ~~ordinances regulating the same, and to regulate the running of~~  
 0266 ~~railway engines, cars and tracks within the limits of said city, and~~  
 0267 ~~to prescribe rules relating thereto, and to govern the speed~~

that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any force or effect, and that part or parts shall be and are hereby declared null and void.

0268 thereof; to regulate the running of railway engines and cars,  
 0269 except speed, and to adopt ordinances relating thereto; and to  
 0270 make any other and further provisions, rules and restrictions to  
 0271 prevent accidents at crossings and on the tracks of railways, and  
 0272 to prevent fires from engines.

0273 *From and after the effective date of this act, ~~no part of any~~*  
 0274 *~~rule, regulation or ordinance adopted by the council regulating~~*  
 0275 *~~the running of railway engines and cars as governing the speed~~*  
 0276 *~~thereof of railway engines and cars shall be of any force or effect,~~*  
 0277 *~~and the same shall be and is hereby declared null and void.~~*

that part or parts of any rule, regulation or ordinance adopted pursuant to this section regulating the speed of railway engines and cars shall not be of any force or effect, and that part or parts shall be and are hereby declared null and void.

0278 The council, pursuant to K.S.A. 66-165, and amendments  
 0279 thereto, may initiate a complaint to the state corporation com-  
 0280 mission and seek an order regulating the speed of railway en-  
 0281 gines and cars. In accordance with the provisions of K.S.A.  
 0282 66-165, and amendments thereto, its rules of procedure and other  
 0283 applicable law, the state corporation commission shall investi-  
 0284 gate the complaint, may conduct a hearing and, consistent with  
 0285 applicable law and rules and regulations of the federal railroad  
 0286 administration, issue its order.

0287 Sec. 5. K.S.A. 12-1633, 12-1634, 14-434 and 15-438 are  
 0288 hereby repealed.

0289 Sec. 6. This act shall take effect and be in force from and  
 0290 after its publication in the statute book.