

Approved 4-2-91 Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

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

9:02 a.m. on March 26, 1991 in room 254-E of the Capitol.

~~All members were present except~~ Members present:  
Senators Morris, Doyen, Brady, Hayden, F. Kerr, Martin, Sallee and Thiessen.

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

Conferees appearing before the committee:  
Rep. Dick Edlund  
Donald J. Morris, Secretary, Maryland Committee of Blind Vendors  
Larry E. Waymire, Secretary, State Committee of Blind Vendors  
Glen Yancey, Rehabilitation Services, SRS  
Ken Stodgell, KDOT  
Dale Carlson, USD 322, Onaga  
Tom Vanadore, Transportation Supervisor, Wamego USD 320  
Jack Tierce, Compliance Administrator of Transportation Division, KCC  
Rep. Don Rezac  
Pat Hubbell, Kansas Railroad Association

Hearing on HB 2209 - Sales of products by blind persons on state high-ways and interstate systems.

Rep. Dick Edlund said this legislation should have been enacted eight years ago. He said it would establish vending machines on inter-state highways and increase job opportunities for the blind.

Donald J. Morris said his state of Maryland had had favorable results from this type of legislation and this bill would help blind Kansans and Kansas taxpayers reap the same benefits. 34 other states have also implemented this type of legislation. A copy of his statement is attached. (Attachment 1).

Larry E. Waymire spoke in favor of the bill and said the income would keep the program a self-sufficient one, independent of state tax dollars. He urged passage of the bill. A copy of his statement is attached. (Attachment 2).

Glen Yancey, SRS, said passage of this bill would clear the way for the vending stands program, operated by the Division of Services for the Blind, to subcontract with private vending machine companies to install the machines. He said this bill would enhance employment opportunities and independent living opportunities for Kansans who are blind. He said 34 other states already had this and Kansas should not be the last state to enact this type of legislation. A copy of his statement is attached. (Attachment 3).

Ken Stodgell said the Secretary of KDOT was neutral on this bill.

Hearing on HB 2165 - Obstruction of highways by trains.

Dale Carlson said his school district had a problem with railroad crossings that affect bus routes. Children are frequently late because of being held up at crossings for up to 30 minutes. He submitted a letter from Nina Oakes, Onaga dated February 19, 1991. A copy of her

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,  
room 254-E, Statehouse, at 9:02 a.m./~~p.m.~~ on March 26, 1991

letter is attached. (Attachment 4). She said coal trains going to Jeffrey Energy Center had caused problems in blocking roads. This has led to problems with children on school buses in extreme heat for long periods of time.

Tom Varnadore read a statement from Coleen Weilert, bus driver with USD 320. A copy of her statement is attached. (Attachment 5). She had had problems with a blocked crossing. She had a child on the bus with severe medical problems and this could have caused real trouble. The crossing was blocked for 38 minutes. She also said the railroad employees did not seem too concerned.

Jack Tierce said grade crossings should not be blocked for more than ten minutes. The penalty of a fine not less than \$5 nor more than \$25 is archaic. It was enacted in 1903 and does not cover the cost of the paper work alone. He said passage of this bill would eliminate the archaic fine level and provide the commission with a tool to follow legislative mandate to ensure public safety and convenience. They support the bill. A copy of his statement is attached. (Attachment 6).

Rep. Don Rezac said he has had numerous complaints in his district concerning blocked crossings. He has tried to work with the sheriff, KCC and the railroad to handle the problem but has not been successful. He supports this legislation. A copy of his statement is attached. (Attachment 7). He also submitted a letter from William F. Siper, St. Marys in which Mr. Siper related his problems at crossings. (Attachment 8).

Pat Hubbell said he had a proposed amendment to the bill to raise the fine from \$25 to \$250. He said there are approximately 60 to 70 trains per day in that area and with the heavy traffic to Jeffrey Energy Center these blockages occur. He said the area would be double-tracked in three years and then there won't be a problem. This is a unique situation because of Jeffrey Energy Center. A copy of his statement is attached. (Attachment 9). He also submitted a history of HB 2165 which showed a correlation between introduction of the bill and a summons issued in Pottawatomie County about the same time. This probably got the attention of the sheriff's office because they issued a ticket for blocking a crossing. A copy of this is attached. (Attachment 10).

A motion was made by Sen. Thiessen and was seconded by Sen. Hayden to approve the Minutes of March 20 and 21, 1991. Motion carried.

The Chairman discussed the Pearl Harbor plates, HB 2043, with the Committee. This bill had been amended in the House to include Desert Storm persons and would also allow retired members of the National Guard to be issued the same plate as members of the National Guard.

A motion was made by Sen. Hayden to remove the House Committee of the Whole amendments from the bill. Motion was seconded by Sen. Brady. Motion carried.

A motion was made by Sen. Brady to recommend H.B. 2043 as amended, favorably for passage. Motion was seconded by Sen. Sallee. Motion carried.

Meeting was adjourned at 10:00 a.m. Next meeting March 27, 1991.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 3-26-91 Place 254-E Time 9:02

GUEST LIST

NAME

ADDRESS

ORGANIZATION

|                 |          |                            |
|-----------------|----------|----------------------------|
| John Thompson   | KCK      | NFB                        |
| Ralph Bradley   | KCK      | KSSWH                      |
| Rob Tabor       | Lawrence | NFB                        |
| Eileen Edlund   | KCY      | NFB                        |
| Lynn Webb       | KCK      | Ks. Vendor/NFB             |
| Don Morris      | Mayland  |                            |
| Kimberly Ramsey | Lawrence | Intern w/ Sen. Doyen.      |
| Tom Whitaker    | Topeka   | Ks Motor Carriers Assn     |
| Mary Newbauer   | Topeka   | Assoc. Press               |
| Bob Tiffin      | Topeka   | Ks Contractors Association |

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 3-26-91 Place 254-E Time 9:02

GUEST LIST

| NAME               | ADDRESS    | ORGANIZATION                        |
|--------------------|------------|-------------------------------------|
| Don Lindsey        | OSAWATOMIE | UTU                                 |
| Jim Lee            | Paola      | Boyle                               |
| Glen Yancy         | Topeka     | SRS - Rehab. Svcs.                  |
| Pat Whittell       | Topeka     | Ks. Railroad Assn.                  |
| Pete Carter        | Lawrence   | KDOT                                |
| Shirley K. Vander  | Wamego     | USD 320                             |
| Jack Turner        | Topeka     | KCC                                 |
| Ken Carls          | Topeka     | KCC                                 |
| John C. Bottenberg | Topeka     | Ks Railroad Assoc                   |
| M. Dale Carlson    | Onaga      | USD# 322                            |
| Roger W. Barr      | Topeka     | T.C.U.                              |
| Ken Stodzen        | Topeka     | KDOT                                |
| Robert Sheldon     | Topeka, KS | SRS Div. Blind Svcs.                |
| Bill Munch         | Topeka KS  | " " " "                             |
| Sandra Terry       | Wichita KS | STATE Committee<br>OF Blind Vendors |
| Marcy Kutay mink   | Topeka KS  | " " " "                             |

SENATE COMMITTEE ON TRANSPORTATION

Testimony on H.B. 2209  
by Donald J. Morris  
March 26, 1991

Chairman MORRIS, Members of the Senate Committee on  
Transportation:

My name is Donald J. Morris, I am the Secretary of the Maryland Committee of Blind Vendors. I appreciate this opportunity to speak in support of H.B. 2209 introduced by Rep. Richard J. Edlund.

You may well ask why a blind person from Maryland would come to Topeka in support of Kansas legislation. The reason I'm here is to share with you some of the favorable results Maryland and other states have experienced with legislation comparable to H.B. 2209. It is also to encourage you and your colleagues to adopt H.B. 2209 so blind Kansans and taxpayers can enjoy the same benefits.

In 1982 Congresswoman Barbara Kennelly of Connecticut promoted passage of amendments to the federal Surface Transportation Act 23 U.S.C.111. These amendments permit the installation of vending machines at rest areas on interstate and National Defense Highways. These machines can only be installed by or on behalf of each state's vending program for the blind, (in Kansas the Business Enterprise Program for the Blind, a part of the Department of Social and Rehabilitation Services).

We began this program in Maryland almost two years ago, and though it is not fully implemented we have earned nearly \$700,000 to date. In Maryland we use these funds to help pay the cost of administering the Maryland Vending Program and to renovate existing vending facilities. Additionally we have been able to fund the cost of new employment opportunities by opening more vending facilities for more blind persons to work and earn.

34 states have implemented legislation to take advantage of this federal authority. In Pennsylvania nearly \$800,000 annually is generated to pay program administrative costs. These revenues were formally appropriated from state general funds. In South Carolina, revenues exceed \$1,000,000 per year. In Washington State four highway vending facilities generate \$30,000 for program expenses.

We do not know the extent to which the 17 Kansas rest areas will generate income but it is reasonable to assume that each facility should generate a minimum of \$10,000 and a probable high end of \$35,000.

ATT. 1  
T&U  
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Testimony to Kansas Senate Comm. on Transportation  
March 26, 1991  
Page Two

Purchases made at highway rest areas are largely impulse purchases. They give Kansas travelers the opportunity for additional refreshment thereby enhancing safe travel on Kansas highways. They also generate a form of "found money". The revenues generated can be used to expand and improve the Kansas Business Enterprise Program for the Blind and there is no demand for state revenues. In fact, implementation of this program will generate many thousands of sales tax dollars as income for the general fund.

Travelers will benefit from your passage of H.B. 2209 as they will have the opportunity for refreshments not now available to them.

Taxpayers will benefit from your passage of H.B. 2209 in that a state sponsored program will generate funds not only for the maintenance of current programs, but the expansion of employment opportunities for blind Kansans.

Blind Kansans will benefit from your passage of H.B. 2209 as a result of revenues generated in this program which can be utilized to open more business opportunity for more blind Kansas men and women who hope to join the ranks of taxpayers.

As amended by the House Committee on Transportation, this legislation holds the State harmless for any loss or any liability. Please note that in Maryland and other states of which I am aware, insurance liability contracts have been secured for the protection of the public as well as the state.

House support for H.B. 2209 was overwhelming. It is my fond hope that the Senate of Kansas will be equally responsive in supporting this tremendous opportunity to improve the lives of their blind constituents and to do so without expense to taxpayers.

I will be pleased to answer questions regarding this subject.

Donald J. Morris  
16547 Old Emmitsburg Road  
Emmitsburg, Maryland 21727  
(301) 447-2795  
FAX (301) 447-2799



TESTIMONY

To: BILL MORRIS, CHAIRPERSON

SENATE TRANSPORTATION and UTILITIES COMMITTEE

Date: MARCH 26, 1991

Regarding: HOUSE BILL #2209

From: LARRY E. WAYMIRE

Secretary, State Committee of Blind Vendors  
2nd Vice President, National Federation of the Blind of Kansas

In order to establish vending machines in safety rest areas; this bill amends K.S.A. 68-432 so blind vendors licensed under K.S.A. 75-3339, and amendments thereto, can sell merchandise at rest areas along interstate highways in Kansas. K.S.A. 68-432 currently does not allow this; but federal law (PL-97-424) allows it and specifies priority must be given to merchandise sold by the blind through the designated state licensing agency, which in Kansas is the Department of Social and Rehabilitation Services, (S.R.S.).

Passage of this bill will allow S.R.S. to contract with private vending machine companies to place automatic vending machines at highway rest areas along the interstate highways in Kansas. A portion of the income from the machines will be channeled to the Business Enterprise Program (B.E.P.) within the Division of Services for the Blind, under S.R.S. This income will help keep this program a self-sufficient one, independent of the need for Kansas State Tax Dollars. This program is proud of the fact that they currently use no State Tax Dollars.

In essence this bill could conceivably accomplish the following:

1. Entice motorists to use rest areas as a public safety factor. Stopping for a cold soda could prevent a potential accident or highway fatality.
2. Provide services to the motoring public not currently available. This would include Kansans and Tourists.
3. Serve to improve the image of rest areas in Kansas, and to more fully utilize the picnic facilities at rest areas.
4. Increase financial stability of the B.E.P. and decrease future need for State Funds.
5. To increase job opportunities for the blind with the added revenue generated for the program.
6. Help to broaden the retail sales tax base in Kansas. Coupled with the economic multiplier of 7, sales generated by these machines could be substantial. The dollars that these vending machines would take in, by a vast majority, would remain in this state's economy.

Kansas Randolph Sheppard Vendors and the B.E.P. have expressed an interest in highway vending since 1983. From that time to the present, this interest and desire has steadily increased. We believe that the time for passage of this bill has arrived. Especially when you consider that the American Association of State Highway and Transportation Officials have passed a Policy Resolution, PR-2-90 (attached) in favor of commercializing interstate highway rest areas.

We do not see litter or vandalism as being a problem after having seen highway vending programs in operation in other states. There is the potential that a few may litter and vandalize, but in the 32 states that have a program such as this, these problems have been minor.

This would require no liability insurance expense to the state of Kansas. Furthermore, installation expenses are expected to be minimal. When considering the amendments made by the House in regards to liability insurance and that it is a common practice for S.R.S./B.E.P. to require that subcontractors carry sufficient insurance along with a clause in the contract to hold the state and S.R.S./B.E.P. harmless in liability claims; liability should pose no problem with passage of this bill.

This bill would create no need for additional administrative staff within the B.E.P.

At this time, Blind Vendors in Kansas have no fringe benefits. The income to the B.E.P. from the possible 17 locations on the Interstate Highway System could provide increased health insurance, sick leave, vacation, or retirement benefits.

The State Committee of Blind Vendors and The National Federation of the Blind of Kansas support H.B. 2209. We urge your support for passage of this bill.



# AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

KERMIT H. JUSTICE, President  
Secretary  
Delaware Department  
of Transportation



FRANCIS B. FRANCOIS  
Executive Director

## Policy Resolution PR-2-90

Title: Commercialization of Interstate Rest Areas

WHEREAS, the states have constructed over 1,400 Interstate rest areas with several hundred more to be constructed and reconstructed, and associated maintenance and operational costs are increasing (\$2.4 billion have been expended to date for construction and over \$100 million annually is spent for routine maintenance),

WHEREAS, the motoring public is demonstrating an increased reliance on services provided at Interstate rest areas (it has been verified that one in ten vehicles stop at each rest area, and motorists overwhelmingly support the desirability and need for increased services),

WHEREAS, tollway authorities in the United States and several provinces in Canada have already initiated successful cost effective commercial rest areas,

WHEREAS, the demands being placed on the states' annual operational budget for their transportation systems are growing and relief is needed,

WHEREAS, the recently concluded Presidential Commission on Privatization has advocated that local, state and federal public agencies should consider utilizing the private sector in delivering the services traditionally performed by public employees,

WHEREAS, the U. S. Department of Transportation has published a new National Transportation Strategy that endorses and recommends the involvement of the private sector in the financing and operation of future transportation facilities and their operation, and

WHEREAS, the AASHTO Task Force on the Commercialization of Rest Areas has recently concluded that the states should be given the opportunity to commercialize rest areas of their choice using criteria that would be mutually agreed upon by the Federal Highway Administration and the states because of the significant additional services that can be provided and the savings that can be realized.

NOW, THEREFORE, BE IT RESOLVED:

1. That the American Association of State Highway and Transportation Officials is of the position that the states should be permitted to commercialize Interstate Rest Areas and,
2. Recommends that the Federal Highway Administration be requested to assist the Association in drafting the necessary legislation and attendant regulations that would enable, but not require, the states to develop commercial rest areas at existing and/or new locations on Interstate right-of-way.

As approved by the Policy  
Committee on July 23, 1990

Kansas Department of Social and Rehabilitation Services

Testimony in Support of House Bill No. 2366

Mr. Chairperson and members of the Committee:

SRS supports House Bill 2366 which updates terminology used in reference to people with disabilities and accessible parking privileges.

The recommended language is consistent with the "Guidelines for Reporting and Writing about People with Disabilities" developed by the Research and Training Center on Independent Living at the University of Kansas. These guidelines reflect input from more than 100 national disability organizations and emphasize putting people, not disability, first. Language like "person with a disability" appropriately places the focus on the individual, not the particular functional limitation. The parking space is more accurately portrayed as "accessible" rather than "handicapped."

The words we use in our speech and writing have a subtle impact on the way in which people with disabilities are viewed, in their home communities and on the job. Therefore, I urge the Senate Committee on Transportation to support these amendments.

Glen Yancey  
Acting Commissioner  
Rehabilitation Services  
Social and Rehabilitation Services  
296-3911  
March 19, 1991

ATT. 3  
T&U  
3-26-91

2-19-91

Nina Oakes  
RR #1  
Onaga, Kansas 66521  
913-889-4482

**Testimony on H.B. 2165**

My name is Nina Oakes. My husband and I have lived at this address for sixteen years. The only access in or out of our home and ranch crosses the main Union Pacific (UP) tracks at the Aicken Switch. This is also the point where the spur line branches to Jeffrey Energy Center. A mile north of our driveway the county road also crosses the same UP tracks. This is our only access to the town of Onaga without a detour of twelve to thirteen miles. The school bus must traverse this crossing to pick up and bring home two other families in addition to mine.

Over the years there has been a significant increase of train traffic especially with the opening of the Jeffrey Energy Center. Blockage of our driveway became a common occurrence, with waits of up to an hour not unusual. This was happening for several reasons. Often long loaded coal trains would have too few engines to climb the grade to the power plant. The train would stall, lock up and not be able to move for any reason, emergency or otherwise. The situation would not be resolved until another passing train stopped to help. Additional engine(s) would have to unhook and supplement the coal train in it's effort to climb the hill.

A communications telephone box located one block north of our driveway caused additional problems. Northbound trains would pull onto the siding to allow other traffic to pass. While there was always room to stop before our driveway, they would choose to pull on north to use the phone box to talk to dispatchers, blocking the entrance to our ranch.

Both situations improved only after numerous phone calls and several demand letters from our attorney. The telephone box was moved to the edge of our driveway so that the train did not have to block the crossing to reach it. Trains do not get stalled on the Jeffrey grade any more. I suspect that increased traffic and the time wasted tying up two trains was not cost efficient for the railroad. Changes were probably made for this reason and not because of our complaints.

ATT. 4  
T&U

In the last few years there has been an increase of blockage incidents at the county road crossing. The UP has done away

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with cabooses and often fail to clear the crossing as they attempt to stop just past it. Often the engineers are unaware that they have blocked the crossing with the last few cars of their train. They are also much more reluctant to walk a mile from the engine to break the train. In the past it would have required only a short walk from the caboose. It needs to be noted that when, our crossing, or the county crossing is blocked our access to emergency services such as ambulance and fire from Onaga is also blocked.

When the school bus is blocked in the morning it makes every child on the route late to school. The most recent incident involving our school bus happened last week, Wednesday, February 13, 1991. I noticed that the school bus was twenty minutes late returning my children from school. I got in my car at 4:05 p.m. to find out why the bus was delayed. The bus was blocked by a train at the county road crossing one mile north of our driveway. The train blocked the crossing for twenty-five to thirty minutes before I could reach my children. After taking them off of the bus I drove back to my driveway. There I found the same train blocking our crossing. It had moved south, one-half to three-fourths of a mile, and stopped again. After waiting an additional thirty minutes I drove up the county road to where the engine was. I had to walk across a ditch and head high weeds to get to the engine. I asked the engineer how much longer it would be before they moved or if it was possible to break the train. He informed me that it would be ten minutes at most before they moved. I finally got my children home at 5:10 p.m..

A similar incident occurred at the beginning of the school year. School was dismissed early due to the extreme heat. The train was blocking the county road crossing again and after thirty minutes in 100 degree heat the school notified the parents. I drove to the crossing, walked one-half of a block down the tracks, crossed the tracks behind the train, walked one-half of a block back to the bus and retrieved my children. We then repeated this scenario to return to the car. My five year old was overheated at this point and was dehydrated. I started for home and upon reaching our driveway discovered that there was another train blocking that point of the tracks. At that point I had to drive a mile to the neighbors to get water for my children. It needs to be noted that the UP offices had been phoned by the school superintendent and were aware of this situation but did nothing to rectify it in a timely fashion. As there was no caboose on this train the brakeman would have had to walk approximately one mile in the heat to break the train. Apparently the brakeman had no desire to do this.

Over the years similar incidents have occurred but they are too numerous to mention. I would like to note two of the most serious. One winter in the early 1980's a part of a coal train with no engine attached was left blocking our driveway for over eight hours in sub-zero temperatures. Both my husband and I were caught away from home. A babysitter and my children were stranded at our home. Finally in desperation the babysitter drove her car with my children therein up to the crossing. She and I had to climb between two railroad cars and trade vehicles in order for both of us to get home. It was several more hours before the train was moved and my husband was able to get home. If any of my children would have needed medical attention that day or a fire would have occurred at our home we would have been totally helpless.

Another incident occurred while I was employed at Wamego City Hospital as a medical technologist. Wamego is a twenty-five mile drive from my home. I was on call and was called to work at four a.m. one morning. I was needed to cross match blood for an emergency C-section. I left my home and a train was blocking my driveway. I quickly returned home and phoned the UP dispatcher and apprised him of the situation. This was the only time I had ever asked for the train to be broken for an emergency. I could overhear the conversation of the dispatcher with the engineer. The engineer thought he would be moving soon and refused to break the train. I had to notify the hospital that I could not get in to work and another technologist had to be called in in my place.

I am strongly in favor of this bill because I feel that the UP will make few or no improvements with blockage of roads unless forced to do so. Thank you for your consideration and I will stand for questions at this time.

Nina Oakes

*Nina Oakes*



# UNIFIED DISTRICT NO. 320

510 Highway 24 East

P.O. Box 26

WAMEGO, KANSAS 66547

PHONE (913) 456-7643

DR. NORRIS WIKA  
Superintendent

February 18, 1991

Statement read by Tom Varnadore, transportation supervisor for Wamego USD 320. Mr. Varnadore relates an incident involving a Wamego bus driver, Colleen Weilert.

To Whom It May Concern:

On August 29, 1991, I was driving bus number 28 for Unified School District 320. Because of the intense heat we had dismissed school at 1:00pm. At approximately 1:20pm I was driving North on River Bend Road. As we approached the railroad crossing a train was slowly traveling West. We stopped and waited for a very long train. Because of it's length I assumed it was stretched through Wamego blocking all crossings. When it stopped completely I thought it wouldn't be long since they were blocking the crossing. At approximately 1:50pm I saw bus number 27 driven by Tom Varnadore, transportation director, heading West to Wamego. I called him on the bus radio to get his advice. He radioed back that the train cars were unhooked and I could cross at Dutch Mill Road, which I could not see from where we were. To do this I had to back a 65 passenger bus with 28 students approximately 1/4 of a mile which is not advisable, but since the temperature was over 100 degrees in the bus and I transport a child with a severe medical problem, who was getting very upset, I asked an older student to watch while I backed up. With the heat and a bus load of children it could have caused real problems.

On Sept. 12, 1990, we received a letter from K.C. Packard, Supt. of Transportation Services apologizing for the inconvenience to the school district. He explains they were doing track maintenance and had a large piece of equipment break down.

In a statement written by Mr. Varnadore it was noted there were 14 cars West of the River Bank crossing where we were sitting. On the West end of the box cars there were two tenths of a mile before the crossing at Dutch Mill where I had to go to cross. There was plenty of room to disconnect without blocking any country roads. The crossing at River Band Road was blocked from approximately 1:20 to 2:58. Mr. Varnadore also visited with a train engineer after he got back to town. This gentleman did not seem very concerned about the problems they were causing.

Colleen Weilert  
Bus Driver

ATT. 5  
T&U  
3-26-91



STATEMENT OF THE  
STATE CORPORATION COMMISSION

Presented to the Senate Transportation Committee  
March 26, 1991

House Bill No. 2165

Mr. Chairman and Members of the Committee:

My name is Jack Tierce. I am the Compliance Administrator of the Transportation Division, State Corporation Commission and the State Chairman for the Kansas Operation Lifesaver Program. The Corporation Commission would encourage the House Transportation Committee to respond favorably to the proposed changes in K.S.A. 66-273 and K.S.A. 66-274.

REGULATORY AUTHORITY CONCERNING  
PUBLIC SAFETY

The State Corporation Commission exercises regulatory authority over railroads in Kansas. (Reference K.S.A. 66-1,216) Kansas Statute Annotated 66-1,223 mandates: "From time to time, the commission shall carefully examine and inspect the condition of each common carrier, its equipment, the manner of its conduct and its management with reference to the public safety and convenience." Kansas has approximately 6,507 miles of track and 8,761 public grade crossings, which ranks Kansas third in the nation for total miles of track with Texas and Illinois ranked 1 and

2, respectively. The commission also regulates motor carriers, utility companies, and companies producing oil. It enforces laws and regulations over these companies through the penalty provision in K.S.A. 66-138.

#### BACKGROUND INFORMATION

The Commission is presently investigating the blocking of three grade crossings in excess of ten minutes, one each in Shawnee, Jackson and Pottawattomie Counties. In the past, positive action has been initiated through showcause hearings to remove unsafe commercial motor vehicles from Kansas highways and prohibit railroads from blocking crossings in excess of ten minutes. After all else failed, the Commission has evoked penalties as provided in K.S.A. 66-138 numerous times against motor carriers and twice against railroads to enhance public safety. In the two orders assessing penalties against railroads, the two railroads did not challenge the authority of the Commission. During the present investigation a railroad has challenged the commission's authority. Motor carriers have not challenged and are not in the same position to utilize the same argument challenging the authority of the Commission.

#### LEGISLATIVE PROBLEM

During the present investigation the railroad has challenged the authority of the commission to assess a penalty pursuant to K.S.A. 66-274

& 66-138. It is the opinion of counsel that since K.S.A. 66-274 specifically addresses the penalty for violating K.S.A. 66-273; K.S.A. 66-138 cannot be used by the commission to enforce K.S.A. 66-273. The penalty in K.S.A. 66-274 enacted in 1903 establishing a fine of not less than \$5 nor more than \$25 is archaic. The cost of the paper work alone for enforcement would exceed the maximum fine excluding cost of manhours for prosecuting.

#### SAFETY AND CONVENIENCE

Kansas spends approximately \$5.3 million to provide active safety devices at grade crossings annually. Approximately 40% of all grade crossing accidents occur at crossings with active devices. Public safety is compromised by people who try to beat trains to the crossings or go around lowered gates in fear that they will be blocked by a train. Trains blocking crossings causes them to be late for work, late company deliveries and school children being late for school or going home. The commission chairs the Kansas Operation Lifesaver Committee which promotes grade crossing safety through enforcement, education and engineering. This committee is funded by Kansas railroads and is recognized nationally in grade crossing safety. Public safety and convenience is compromised by trains blocking crossings in excess of ten minutes.

## ENFORCEMENT

Railroads presently have an operating rule which prohibits the blocking of crossings in excess of ten minutes. When railroads enforce their own regulations the need for state enforcement is rarely required, however that tool should be available for prodding railroad management to comply with their own regulations. The cause for blocking a crossing can be from inaction of a crew member, dispatcher, mechanical failure or management. It should be noted that the commission has not and will not initiate enforcement action for a mechanical failure, provided immediate remedial action is initiated. The primary responsibility for eliminating the blocking of crossings lies with railroad management. The commission does not exercise authority over railroad employees; only over railroad management with reference to public safety and convenience as provided by statute.

## OTHER STATES PENALTIES

Missouri - has it under their traffic ordinance - the fine is not less than \$100, nor more than \$2,000 per day.

Iowa - penalty not less than \$100 nor more than \$500 for each violation in excess of ten minutes.

Illinois - if blocking occurs in excess of ten minutes, but less than 15

minutes the fine is not less than \$200 but not more than \$500.

For violations over 15 minutes but under 20 minutes the fine is \$500.

For violations over 20 minutes but less than 25 minutes the fine is \$700.

For violations over 25 minutes but less than 30 minutes the fine is \$900.

For violations over 30 minutes but under 35 minutes the fine is \$1,000.

If over 35 minutes the fine is \$1,000 plus an additional \$500 for each 5 minutes that the obstruction is in excess of twenty five minutes.

Illinois is relevant because they have substantial mileage of track in their State as does Kansas and this is the fine that they have developed.

#### CONCLUSION

The commission's desire is to reduce the number of times that trains block public grade crossings in excess of ten minutes. This legislation would eliminate the archaic fine level and provide the commission a tool to follow the legislative mandate to ensure public safety and convenience. It is only logical that railroads should be subject to the same penalty statute as that of small motor carriers, large utility companies and oil producing companies. The commission would request that the committee respond favorably.

DON M. REZAC  
 REPRESENTATIVE, SIXTY-FIRST DISTRICT  
 PARTS OF POTTAWATOMIE,  
 WABAUNSEE, MARSHALL & LYON COUNTIES  
 (913) 535-2961



TOPEKA

COMMITTEE ASSIGNMENTS  
 CHAIRMAN: PENSIONS, INVESTMENTS AND BENEFITS  
 VICE CHAIRMAN: AGRICULTURE  
 MEMBER: ENERGY AND NATURAL RESOURCES  
 TRANSPORTATION

HOUSE OF  
 REPRESENTATIVES  
 TESTIMONY ON HB 2165  
 SENATE TRANSPORTATION & UTILITIES COMMITTEE  
 March 26, 1991

Mr. Chairman and Members of the Committee:

My name is Representative Don Rezac. I am here in support of HB 2165.

Today you have heard a lot about railroad crossings in my district. One of the crossings I am quite familiar with. This crossing is on Aiken Switch Road at MP 103. Aiken Switch Road is a blacktop road across pasture country between Hiway 63 and the Onaga Road. When the crossing at 103 is blocked by a train, it is at least a 20 mile trip around to the other side of the crossing. Emmett Fire District is responsible for all of St. Clair Township, and the fire trucks do have to cross this crossing to get to most destinations.

The people of the area contact me about this crossing being blocked. They call me day or night when they can't get across the road. I've tried to work with the sheriff, the KCC and the railroad in keeping this open. I have called the dispatcher several times when they were dispatching out of Kansas City. Currently they are in Omaha, and I don't have that number; but I never did have much luck with them doing anything with the train to open the crossing.

The sad part of all this is currently Pottawatomie County does have 911, and you would think if someone would call 911 in case of an emergency that the sheriff could make a phone call to the dispatcher and the train would break or move, but this is not available. This is a real dangerous situation that we are being left with. It's one thing to wait a half hour on a train but it's something else if you know there's an accident and you have to get across the track. Currently you never know whether you're going to get across that crossing or not.

Lobbyist Patrick Hubbell was there and looked the situation over. I think he does see the problem. Someone needs to get the railroad's attention and keep this crossing open, and I hope this bill will give the KCC just a little more authority to do it. I don't think a \$1,000 fine is out of line when you go through the process of proving the railroad at fault.

I will be happy to answer questions.

DON REZAC

ATT. 7  
 T&U  
 3-26-91

On the evening of the 14th Feb 1960 I read Don Reynolds' column in the St. Marys Star concerning railway companies blocking the road.

On Feb 13, at approximately noon I went north to Cook's Crossing crossed the tracks and went one mile east, to cut wood. From where I was cutting wood I could see the railroad tracks.

At approximately 12:15 pm a train was blocking the road I had to drive three miles out of my way to drive home at 1:30 as the train was still blocking the road. I unloaded a pickup load of wood and at 2:00 pm I went back north to cut more wood. I had to go three miles out of my way again. I estimate the train was across the road  $3\frac{1}{2}$  hours.

Much to my surprise, on Feb 14th I again went north to cut wood. The train was broken at Cook's Crossing. It stayed this way for about  $1\frac{1}{2}$  hours.

We have had problems with trains ~~not~~ blocking one roadway



for many years, on a day to day basis. We have quite a lot of local traffic on the road and if we cannot get across the track it means a 3 or 4 mile drive to get on the other side of the railroad tracks.

I am very much in favor of a bill prohibiting these trains from blocking traffic on our road.

William F. Depee  
Rt 1 Box 62  
St Marys Mo 6655

Ph 437-2079

U.P. RAILROAD SUPERINTENDENT  
KANSAS CITY KS  
913-621-9333

# KANSAS RAILROAD ASSOCIATION

800 JACKSON  
SUITE 1120

TOPEKA, KANSAS 66612

PATRICK R. HUBBELL

913-357-3392

## Statement of the Kansas Railroad Association

Presented to the Senate Committee  
on Transportation and Utilities  
The Honorable Bill Morris, Chairman

Statehouse  
Topeka, Kansas  
March 26, 1991

Mr. Chairman and Members of the Committee:

My name is Pat Hubbell. I appear here today representing the Kansas Railroad Association. Thank you for giving me the opportunity to express the position of the Kansas Railroad Association on House Bill 2165. Prior to 1973, K.S.A. 66-274, the statute proposed to be amended by House Bill 2165, read as follows:

"Any person or employee of any railway company or corporation operating a line of railroad in Kansas failing or neglecting to comply with the preceding section K.S.A. 66-273, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars (\$5) nor more than twenty-five dollars (\$25)."

I assume that the penalty contained in the pre-1973 statute was being enforced or no effort would have been mobilized during the 1973 legislative session to amend the statute in the manner in which it was amended. We also assume that changes made in 1973 are not effectively controlling the conduct prohibited by K.S.A. 66-273 or House Bill 2165 would not have been proposed.

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3-26-91

My recommendation for a solution to controlling the conduct prohibited by K.S.A. 66-273 is contained in the attached amendment. The amendment would raise the maximum fine from \$25 to \$250 but it would leave the enforcement of the fine in the hands of the local ticketing authority who would ticket the railway company for violations. This proposed amendment does not in any way put the fine back on the train crew who might be operating a particular train in violation of K.S.A. 66-273, it merely increases the fine and sets out conditions "That no penalty shall be assessed for noncompliance with K.S.A. 66-273 if such noncompliance is due to equipment malfunction, operational requirements, sickness, injury, emergency or other circumstances beyond the control of the operating crew of such train, engine or cars.

Mr. Chairman, I will try to answer any questions which you or members of the Committee may have.

Thank you.

# # # # #

Sec. 2. K.S.A. 66-274 is hereby amended to read as follows: 66-274. Any railroad company or corporation operating a line of railroad in Kansas failing or neglecting to comply with the preceding section K.S.A. 66-273, and amendments thereto, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars (\$5) nor more than *two hundred fifty dollars (\$250)*: Provided, That no member of a railroad train, yard, or engine crew shall be held personally responsible or found guilty of violating any state laws or any municipal ordinances regulating or intended to regulate the occupying or blocking of any street, road or highway crossing at grade by trains or passenger or freight cars upon reasonable proof that his action was necessary due to circumstances beyond his control, or to comply with the order or instructions, either written or verbal, of his employer or his officers or supervisory officials: Provided further, That nothing in this section shall relieve the employer or railroad from any responsibility placed upon said employer or railroad by any such state law or any municipal ordinance. *That no penalty shall be assessed for noncompliance with K.S.A. 66-273 if such noncompliance is due to equipment malfunction, operational requirements, sickness, injury, emergency, or other circumstances beyond the control of the operating crew of such train, engine or cars.*

Striking lines 41 and 42.

DATE 03/21/91 TIME 09:46:55

H 2165

Bill by Transportation

Obstruction of highways by trains. Effective date:  
07/01/91.

02/06/91 H Introduced -HJ 131

02/07/91 H Referred to Transportation -HJ 133

02/28/91 H CR: Be passed by Transportation -HJ 259

03/06/91 H COW: Be passed -HJ 293

03/07/91 H FA: Passed; Yeas 94 Nays 31 -HJ 302

03/07/91 S Received and introduced -SJ 244

03/08/91 S Referred to Trans. & Util. -SJ 261

03/20/91 S Hearing: 3/26/91, Tues, 9:02 am, Rm 254-E

ATT. 10  
T&U  
3-26-91

DISTRICT COURT OF ~~POTTAWATOMIE~~ COUNTY, KANSAS

~~Courthouse, 106 Main, 2nd Floor, Westmoreland, Kansas 66549~~  
Address and Location of Court

THE STATE OF KANSAS,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY

Defendant.

**SUMMONS**

TO THE ABOVE NAMED DEFENDANT

No. 91 TR 254

~~POTTAWATOMIE~~  
County of Alleged Offense in Kansas

WHEREAS, complaint in writing under oath has been made to me, the undersigned, by Jeff Elder, County Attorney for Pottawatomie County, Kansas and it appearing that there is probable cause for believing:

That on or about the 4th day of February, 19 91, ~~XXXXXX~~ said corporation, ~~XXXXXX~~ within the above named County in the State of Kansas, then and there being, did then and there contrary to the statutes of the State of Kansas unlawfully and willfully:

COUNT 1: allow one of its trains, to-wit: Train No. 3435, to stand upon a public road at a crossing in said road in excess of 10 minutes at one time without leaving an opening in the travel portion of the public road of at least 30 feet in width, in violation of K.S.A. 66-273; PERMITTING TRAIN TO STAND ON PUBLIC HIGHWAY; an unclassified misdemeanor; penalty section: K.S.A. 66-274.

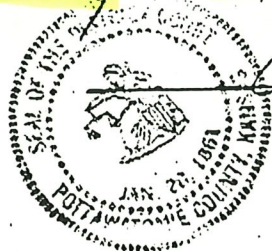
Sections violated and class: Stated above.  
Penalty sections: Stated above.

Witnesses: Greg Riat, Barbara M. Rezac, William B. Carter, Billy D. Kenney, James R. Smith, Wally B. Rose, Lance Rezac

YOU ARE HEREBY COMMANDED to appear in person on the 28th day of March, 19 91, at 1:00 P.M. in this Court at the above shown place, to answer to said charge or charges, AND THIS DO YOU IN NO WISE OMIT UNDER PENALTY OF THE LAW.

Counts \_\_\_\_\_ through \_\_\_\_\_ attached

Witness my hand and official seal, this 28th day of February, 1991.

  
[Signature]  
Judge Clerk

**RETURN**

I served this summons on the defendant.

(Check applicable service below)

- by delivering a copy to defendant personally
- by leaving a copy with

a person of suitable age and discretion then residing at the defendant's dwelling house or usual place of abode.

- by mailing a copy to defendant's last known address:

If not found, so state above when summons returned

10-2

X