

Approved: 2/2/94
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidricksen at 9:00 a.m. on February 1, 1994 in Room 254-E of the Capitol.

All members were present except:
Senator Jones - Excused

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

Conferees appearing before the committee:

Paul Hoferer - General Attorney for The Atchison, Topeka and Santa Fe Railway
Charles McAtee - Burlington Northern Railroad Company, Representative
Dan Harden - Kansas County Highway Officials' Association
Larry Emig - Bureau Chief of the Bureau of Local Projects, KDOT
Gwen Welshimer - Representative, 88th District
Ray McVey - Chaplain, Chapter 558, Military Order of The Purple Heart, Wichita
Ken Bradstreet - Commander, Timmerman Memorial Chapter 648, Military Order of
The Purple Heart, Emporia
Charles Yunker - Department Adjutant, The American Legion, Department of
Kansas
Betty McBride - Director, Kansas Division of Vehicles, Department of Revenue

Others attending: See attached list

SB 597 - Relating to railroad crossings; concerning the grade thereof

Paul Hoferer addressed the Committee regarding this bill explaining that the statute has one specific element in which it is nearly impossible to comply. That being the requirement that crossings shall be on the same grade as the track for 30 feet on each side of the center, and the approaches shall not exceed a six percent grade. The statute does not specify what that includes. He pointed out that Kansas is the only state with this language in the statute and the term is ambiguous, and from an engineering standpoint, incomprehensible. There was also the question of the term "level" in the statute. It was pointed out that this language is ambiguous because the railroad has common law duty to maintain crossings so motorist can drive safely over them. (Attachment 1)

Charles McAtee also appeared in support of this bill which would remove vague, ambiguous and engineeringly infeasible language from the statute. He expressed the same concern as Mr. Hoferer explaining that when this statute was first adopted it was to address the problems of narrow-tire vehicles. Today it presents an impossible responsibility making legal settlements difficult where precise terms of the statute are not met. He felt that amending this statute would not impact public safety, but would remove the source of much controversy and litigation. (Attachment 2)

Dan Harden spoke in opposition of the bill stating that it appears that Kansas counties will be assuming liability for accidents occurring on railroad property. This change in liability is seen as essentially a subsidy of a privately owned railroad with already limited public funds. (Attachment 3)

Larry Emig presented testimony explaining that this statute does not affect railroad crossings on the State Highway System or within first or second class cities. He pointed out that elimination of the two grading requirements at railroad crossings could have safety ramifications, especially in adverse weather conditions. It was noted that the Rail/Highway Grade Crossing Hazard Elimination Program would have to place more emphasis on railroad crossings if the bill is passed and that the Kansas Corporation Commission Safety Program would also have to address the new concerns resulting from its passage. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254E-S Statehouse, at 9:00 a.m. on February 1, 1994.

HB 2425 - authorizing the issuance of one distinctive license plate to a recipient of the Purple Heart medal.

Representative Gwen Welshimer addressed the Committee briefly expressing her support for the bill.

Chaplain Ray McVey spoke in support of the bill, stating that the Purple Heart Veterans would display the license plate with honor. He also requested that the words, "Combat Wounded" be on the license plate. (Attachment 5)

Ken Bradstreet testified on behalf of the combat-wounded veterans Kansas veterans advocating the passage of this bill. He pointed out that Kansas is one of only six states which have not authorized the Purple Heart license plates. (Attachment 6)

Support for this bill was also urged by Charles Yunker. He stated that there were approximately 6500-7000 recipients of the Purple Heart residing in Kansas and passage of this bill would be a very significant gesture for the state to bestow upon these veterans. (Attachment 7)

Betty McBride appeared before the Committee on behalf of the Department of Revenue. She presented the statistics that would be incurred if **HB 2425** was passed. It was also pointed out that additional distinctive plates may be difficult for law enforcement officials, especially those out-of-state, to recognize a valid vs and invalid license plate. (Attachment 8)

The Chairman raised the question as to whether those veterans receiving the distinctive license plates would be willing to pay a personal charge for them. It was also noted that the American Legion might consider paying this fee.

Testimony was also distributed to the Committee from Robert Holzman, National Chief-Of-Staff for Kansas, The Military Order of the Purple Heart, Wichita, who was not able to be present for the hearing. (Attachment 9)

A motion to approve the minutes of the January 31 meeting was made by Senator Tiahrt. A seconded was made by Senator Papay. Motion carried.

The meeting was then adjourned by the Chairman.

The next meeting is scheduled for February 2, 1994.

GUEST LIST

SENATE TRANSPORTATION COMMITTEE

DATE: FEBRUARY 1, 1994

[illegible]

February 1, 1994

Kansas Senate Transportation Committee

K.S.A. 66-227

Mr. Chairman and members of Committee, my name is Paul Hoferer; I am the General Attorney for The Atchison, Topeka and Santa Fe Railway Company here in the State of Kansas. Thank you for giving me an opportunity to visit with you concerning K.S.A. 66-227, which deals with county and township railroad crossings.

This statute has one specific element which we believe is nearly impossible to comply with and is ambiguous. The first paragraph of the statute requires that public road crossings:

" . . . shall be on the same grade as the track for thirty feet on each side of the center of said track, unless the board of county commissioners shall find the same to be unnecessary, and the approaches thereto shall not exceed a six percent grade . . . "

Kansas is the only state with a statute that contains this language. We believe the reason why no other state has a crossing statute containing that requirement is because the term is extremely ambiguous and from an engineering standpoint, incomprehensible. To ask a court and jury to interpret the phrase "same grade as the tracks for 30 feet on either side," is an impossible task.

This language may have been inserted in the 1919 amendment to the statute because of a then existing problem caused by a railroad's failure to restore the roadway to the established grade so the surface of the highway would be level with the top of the outside rail. See Atchison Ice Co. v. City of Atchison, 172 Kan.

ATTACHMENT 1

SEN. TRANS. 2/1/94

1-1

94, 238 P.2d 531 (1951), which also cited the cases of K.H. & D. Rly. Co. v. Cuykendall, 42 Kan. 234, 21 Pac. 1051 (1889), Sharp v. El Dorado & S.F. Rly. Co., 123 Kan. 397, 255 Pac. 1118 (1927). These decisions discussed the damages recoverable by an adjoining landowner when the construction of the railroad track restricted the motorist's ability to drive over the railway tracks.

The Kansas Supreme Court has decided that the term "same grade as the track" requires the road surface to be "level" for 30 feet from the center of the track. Brimm v. The Atchison, T. & S.F. Rly. Co., 136 Kan. 159, 12 P.2d 715 (1932). However, we do not know if "level" means "zero grade", or perhaps a uniform or even grade between the highway and the railroad tracks.

To illustrate the ambiguity, I refer you to several cases from other jurisdictions such as the Connecticut case of McGar v. Borough of Bristol, 42 A. 1000, 71 Conn. 652. The Court decided that to bring a street "to grade" does not require it to be absolutely level, but instead to bring the surface of the highway to the edge of the rail. However, another Court held that "same grade" meant a "level road", and a 4.7% grade constituted a "level road". See O'Rourke v. City of Washington, 155 A. 100, 102, 304 Pa. 78.

The term "same grade" has also been used to distinguish a grade crossing from a viaduct or a crossing at a "different level". Wabash R. Co. v. Defiance, Ohio, 17 S.Ct. 748, 167 U.S. 88, 42 L.Ed. 87. When this is done the statute and case language often use terms such as a "change in grade" and bringing the grade of a highway to the "same level" or same grade as the railroad.

Newburyport Turnpike Corp. v. Eastern R. Co., 23 Pick, 326, interpreted a Massachusetts statute providing that the street or highway may be constructed "over or across" the railroad. It held that this equates with a construction "at grade" or "upon the surface". Illinois Cent. R. Co. v. Chicago, 30 N.E. 1044, 141 Ill. 586, 17 L.R.A. 530, cites the Newburyport case as authority, and goes on to describe the two types of crossings as those on the "same grade as the tracks", and those elevating the tracks by means of a viaduct.

Another inherent conflict caused by the language "same grade for 30 feet and the 6% approach grade" is that it sometimes extends the crossing approaches far beyond the railroad's right-of-way. This occurs because the statute permits no greater than a 6% approach grade, but does not define the extent of the "approach". The statute does not specify whether the "approach" includes the total sixty feet of "same grade", or if it means 30 feet, 300 feet, or one mile. It is highly unlikely the Legislature intended to require the railroad to construct approaches on property it did not even own, particularly since elsewhere in the statute the railroad's responsibility for paving the road surface is limited to a distance of two feet on either side of the railroad track.

Compliance with the statute is even more difficult when the crossing is on a curved portion of the track which often requires one rail to be elevated as much as six inches higher than the other rail.

Finally, K.S.A. 66-227 is only applicable to county and township roads. The Kansas Supreme Court in Cooper v. Railway Co.,

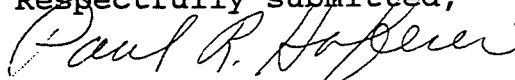
117 Kan. 703, 232 Pac. 1024 (1925), interpreted the statute in question as applying to "railway crossings over rural township highways". K.S.A. 66-229 makes it the statutory duty of every county engineer and road overseer in the state to see to it that K.S.A. 66-227 is complied with in his jurisdiction.

Concerning rail crossings in cities of the first or second class, K.S.A. 12-1633 gives cities the power to pass ordinances applicable to the construction and maintenance of railroad grade crossings.

Crossings on the state highway system are constructed and maintained "in a manner to be approved by the Secretary of Transportation", pursuant to K.S.A. 68-414. This statute does not contain the ambiguous and impossible language we have asked you to delete from 66-227.

Not only is the "same grade and 6% approach" requirement ambiguous, it is unnecessary because the railroad has long had the common law duty to maintain crossings so motorists can drive safely over them. Railroad Co. v. Henry, 60 Kan. 322 (1899). If modified in the manner we have proposed, K.S.A. 66-227 will still require a railroad to keep crossings in good repair and safe for crossing by motor vehicles.

Respectfully submitted,



General Attorney, Kansas
The Atchison, Topeka and
Santa Fe Railway Company

February 1, 1994

TO: Senate Transportation Committee
State of Kansas

FROM: Charles D. McAtee

RE: Senate Bill No. 597
(K.S.A. 66-227)

**PREPARED REMARKS OF CHARLES D. MCATEE IN SUPPORT OF
SENATE BILL 597**

Mr. Chairman, Madame Vice-Chairman, and Members of the Committee:

My name is Charles McAtee. From 1982 through 1989 I served as the General Attorney for the Union Pacific Railroad Company in Kansas. At present, I represent the Burlington Northern Railroad Company on a case assignment basis. All-in-all, I've represented the railroad industry in FELA and crossing accident cases for some twenty-five (25) years.

First, let me say that crossing safety is a matter of critical concern to the railroads, as well as to the citizens of Kansas. **Operation Lifesaver** is an ongoing program in cooperation with the various regulatory agencies, both in Kansas, and throughout the nation, and has enhanced public awareness of safety hazards at highway-rail crossings. That increased safety awareness, coupled with grade separations, and improved signing and signalization programs, has reduced the incidence of crossing accidents.

I appear today in support of Senate Bill 597 which will remove the vague, ambiguous and engineeringly infeasible language from K.S.A. 66-227. Our concern is with that portion of the statute alluded to by Mr. Hoferer in his remarks, which after setting forth the width of crossings on county and township roads, states:

ATTACHMENT 2

SEN. TRAVS. 2/1/94

2-1

"....(such crossings) shall be on the same grade as the track for thirty feet on each side of the center of said track, unless the Board of County Commissioners shall find the same to be unnecessary, and the approaches thereto shall not exceed a 6% grade....".

Several years ago, I undertook to research the legislative history of this provision. I came to the conclusion that when the statute was first adopted, it was to address the problems of narrow-tire vehicles, operating over largely dirt (mud) roads, which became stuck when they attempted to "climb" the usually elevated railroad tracks. We were barely out of the "horse and buggy" era when this statute was adopted in 1915, and it has been amended only twice, in 1919 and 1923. In any event, it has presented Kansas railroads (and counties) with an impossible responsibility, and has been used by many plaintiff's attorneys to "extract" settlements in cases where the precise terms of the statute are not met.

What is meant by the requirement that the "....crossings shall be on the same grade as the track for thirty feet on each side of the center of said track...."? Plaintiff's attorneys consistently contend that this means that the track has to be "level" for thirty feet in each direction, measured from the center of the track.¹ What if the track is navigating the "side of a hill" or is on a "curve" where one rail is , of necessity, higher than the other?

¹ In *Jamison v. Atchison, T. & S.F. Rly. Co.*, 122 Kan. 306, the Supreme Court referenced the plaintiff's petition stating, "....Plaintiff's petition charged defendant with negligent failure to build and maintain the statutory sort of crossing—twenty-four feet wide, and level for thirty feet on each side of the center of the track, with approaching grades not exceeding six per cent, except where such specifications are excused by the county commissioners. (R.S. 66-227.)...."

Further, what if there are two sets of tracks? Does it mean that the "crossing" has to be on the same "grade" for thirty feet from the "middle or center" of the area between the two sets of tracks, or thirty feet in one direction from the "center of the first set of tracks, as well as thirty feet from the center of the second set of tracks"?

What is meant by the phrase, "The approaches thereto shall not exceed a 6% grade..."? Can the "approach" be a "6% down-grade", or does it only prescribe a 6% "up-grade"? Most attorneys with whom I have litigated contend that it means that the approach to the crossing cannot exceed a 6% "up" grade. And, how far back from the crossing is one to consider what constitutes the "approach". Is it 100 feet, 200 feet, 300 feet, or an eighth of a mile? Clearly, railroads have no authority to address the issue of "grade" outside their right-of-way easement. (Where the railroad right-of-way easement is only 50 feet, a "grade" requirement of 30 feet in each direction from the center of a track, would require the railroad to go outside of its right-of-way easement 5 feet in each direction.)

I recently defended the Burlington Northern Railroad Company, who was named as a defendant, along with a Kansas county, in a case arising out of a tragic accident. (I prefer not to identify the county, or the case, inasmuch as both the railroad, and the county, have settled with the plaintiff, however the case is still pending against an automobile manufacturer.)

The plaintiff, an outstanding young lady, an excellent student, and a superb athlete, was riding with a 16-year-old

driver, who was driving a "borrowed" vehicle. They traversed a BN crossing (northbound) at a high rate of speed, which they acknowledged in deposition testimony, had given them a "real jolt", as they "almost hit their heads on the ceiling of the car".

Some ten minutes later, they approached the same crossing from the north (southbound), again driving at a high rate of speed. (Our experts estimated their speed to be 72-73 miles per hour.) Neither were wearing seatbelts.

As the driver approached the crossing, she remembered the "jolt" they had gotten the first time, slammed on her brakes, skidded onto and across the crossing, and lost control. The vehicle swerved to the right, back towards the center of the road, back towards the right or west side, where it fish-tailed and headed into the ditch backwards with the vehicle facing north, the direction from whence it came. It slammed up against the ditch, did another 180°, and landed back up on the roadway, facing southbound, some **417 feet south** of the railroad track. The driver, who held onto the steering wheel throughout, escaped unscathed, without a scratch.

Unfortunately, in the course of the "spin" and hitting the embankment of the ditch, the centrifugal forces caused the steel rod on which the back of the passenger seat tilted forward (to permit passengers to enter the rear seat of this two-door vehicle) to pull out of its floor bracket, which allowed the interior portion of the passenger seat to be "deflected", creating a gap of some 18" to 20". The 15-year-old passenger was thrown into the

back seat, breaking her back in two places. She is now a wheelchair-bound paraplegic.

Initially, the plaintiff sued only the Burlington Northern and the county, for failure of the crossing to comply with the provisions of K.S.A. 66-227.²

In this particular instance, the "approach" to the crossing, from both the north and the south, is "down-grade", with the single track being located at the "bottom" of a rather natural "slough". The track is not "level" for a distance of thirty feet on each side of the center of the track, and that was the primary allegation of "negligence" against both the railroad and the county. Our position was that the sole proximate cause of this tragic accident, and the plaintiff's serious injuries, was the negligence of the inexperience driver, who panicked and "braked" across the crossing, losing control of her vehicle, coupled with the design defect and the integrity failure of the vehicle seat.

I should like to pass to the members of the committee some of the original photographs, including a panorama, which depict the condition of both this county road, and the crossing. (Machine copies are attached hereto as Attachment "A".)

Also attached to these remarks, as Attachment "B", is a copy of a diagram received from an engineering expert, retained by the plaintiff in that case. Please note that this particular

² With respect to the particular crossing in question, the original right-of-way deed was issued by the landowners to the "Republican Valley Railroad Company" on May 6, 1880. It provided for a 50' right-of-way. Thus, the right-of-way easement existed long before the county road traversed the railroad track, and several decades before the adoption of K.S.A. 66-227. The Burlington Northern acquired this trackage in 1970, when the Chicago Burlington & Quincy Railroad Company, the Great Northern, the Northern Pacific, and the Spokane, Portland and Seattle Railroads, merged.

engineering expert commenced at the "center of the track", and then took elevations at five (5) foot increments along the "east edge of the roadway", down the "centerline of the roadway", and along the "west edge of the roadway", extending such incremental measurements out to a distance of 50', both north and south of the crossing.³

If one were to "average" the linear grade, in either direction from the centerline of the railroad track, along the east edge or the west edge, or down the center of the roadway, the grade, over the 50' distance, does not exceed 6%. (Only four (4) of the incremental elevations exceed 6% i.e. 6.2% at 40'-45' north of the crossing on the east edge; 6.2% at 10'-15' south on the east edge of the crossing, and 6.2% from 10'-20' south of the crossing, on the centerline.)

Our consulting engineer in that case, advised that this statute is not only vague and ambiguous, and engineeringly unfeasible, but that this type of grade analysis is flawed. (Without knowing the "length" of the approach, it is impossible to ascertain the "grade".) Further, he advised that placing the surveyor's stick on a pebble the size of a "BB" could make the difference between a measurement of 5.8% and 6.2%, and thus "compliance" versus "non-compliance".

Attached to your copy of my prepared remarks as Attachment "C" is a statement from Jay Pfeiffer, that consulting engineer from Wichita, Kansas. Therein he outlines the vague, ambiguous

³ This engineer's measurements, totalling 100', go 25' beyond the railroad's right-of-way in each direction, or a total of 50' beyond any authority of the railroad.

engineering imponderables of this statute, as presently written. (Unfortunately, Mr. Pfeiffer was unable to appear in person today, however his statement is self-explanatory.)

In *Watkins v. Roach Cadillac, Inc.*, 7 Kan.App. 2d 8, the Kansas Court of Appeals stated:

Constitutionally impermissible vagueness in a statute depends on whether men of common intelligence must guess at a statute's meaning and differ as to its application; if so, the statute lacks the first essential of due process and is void for vagueness. *Calloway v. City of Overland Park*, 211 Kan. 646, 655, 508 P.2d 902 (1973). Proper constitutional clarity of a statute depends on whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. *State ex rel., v. Coscot Interplanetary, Inc.*, 212 Kan. 668, 678, 512 P.2d 416 (1973). *Watkins*, p. 14.

I respectfully submit that when both engineers, and men of common intelligence, must guess at this statute's meaning, and differ as to its application, it is unconstitutionally vague and ambiguous.

It has been suggested that amending this statute leaves the counties (and townships) without any "leverage", to require railroads to repair "bad" crossings. That is not correct. I had hoped that K.S.A. 66-228 and K.S.A. 66-229 would be repealed. K.S.A. 66-228 makes it a daily misdemeanor, subject to a fine of "....not less than \$5.00, nor more than \$50.00", for each and every violation and for each day that a crossing is out of compliance. K.S.A. 66-229 makes it the duty of the county engineer and road overseer to see that the act is complied with, and to report every failure to the county attorney, whose duty it is to enforce the

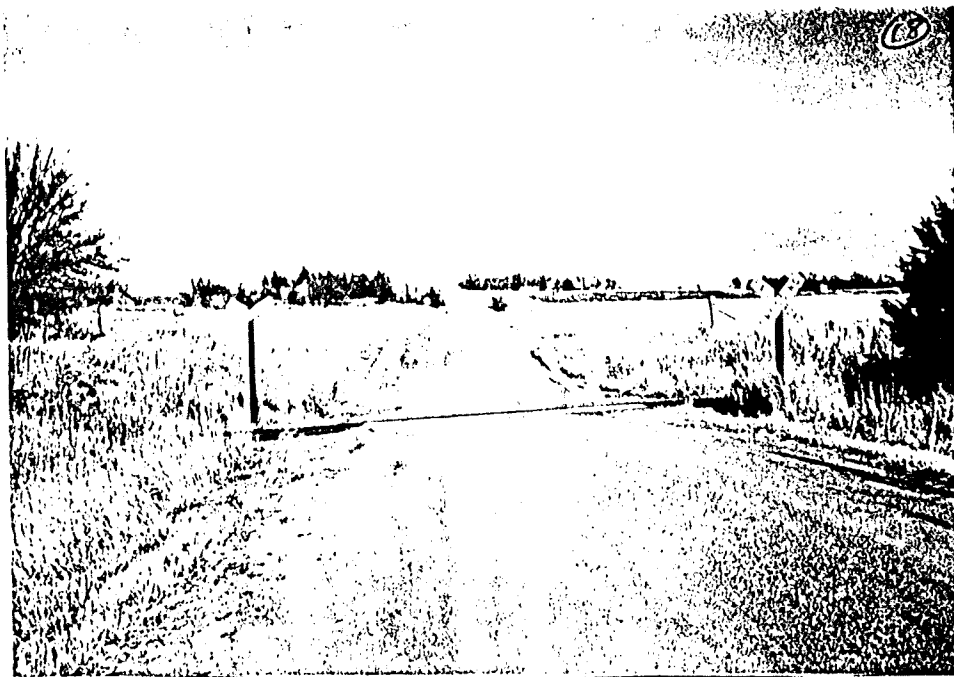
act. I am not aware that there has ever been a case brought pursuant to those two provisions.

Be that as it may, we respectfully submit that amending K.S.A. 66-227, as provided by Senate Bill 597, will not impact public safety, but will remove the source of much controversy, and litigation.

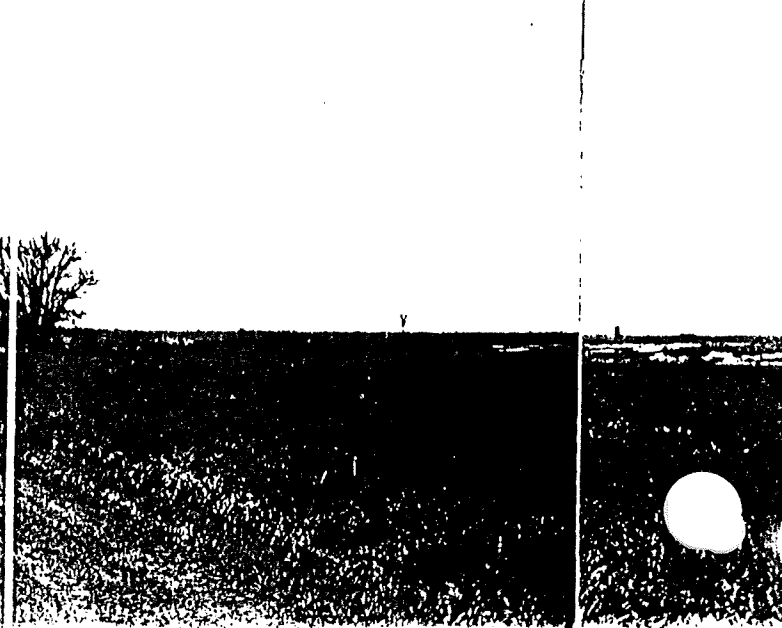
(2)

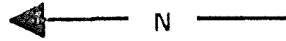


(3)



ATTACHMENT "2"
SER. TRAWS 2/1/94 2-9





3.6%	6.2%	4.6%	5.6%	0.0%	0.4%	1.2%	0.6%	2.0%	1.0%	5.3%	5.2%	6.2%	0.4%	2.6%	2.6%	1.4%	3.4%	3.4%	2.5%
------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------

East Edge of Roadway

100.23	100.10	99.79	100.02	99.74	99.72	99.78	99.81	99.91	99.96	100.27	100.48	100.72	100.81	100.94	101.11	101.18	101.30	101.47	101.61
--------	--------	-------	--------	-------	-------	-------	-------	-------	-------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

3.6%	3.0%	5.0%	0.4%	1.0%	1.0%	1.6%	1.4%	2.2%	0.6%	3.0%	6.2%	6.2%	5.8%	4.2%	4.6%	4.4%	4.0%	4.2%	4.0%
------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------

Centerline of Roadway

100.92	100.74	100.59	100.49	100.32	100.23	100.17	100.09	100.02	99.91	100.09	100.40	100.71	101.00	101.21	101.44	101.66	101.86	102.07	102.27
--------	--------	--------	--------	--------	--------	--------	--------	--------	-------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

1.6%	1.4%	3.2%	3.6%	0.0%	0.0%	1.8%	0.0%	4.6%	1.0%	0.8%	1.0%	3.2%	3.8%	2.4%	4.6%	2.8%	6.0%	4.0%	4.0%
------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------	------

West Edge of Roadway

100.09	100.01	99.94	99.78	99.60	99.60	99.69	99.69	99.92	99.97	99.93	99.98	100.14	100.33	100.45	100.68	100.82	101.12	101.32	101.52
--------	--------	-------	-------	-------	-------	-------	-------	-------	-------	-------	-------	--------	--------	--------	--------	--------	--------	--------	--------

50' 40' 30' 20' 10' BL 10' 20' 30' 40' 50'

Scale: 1" = 10'

ATTACHMENT "2"

SEN. TRAMS 2/1/14 2-10

$\Delta \cdot E_{KK} = 2 \cdot A$



SED. TRANS. 2/1/94-2-11

KENNEDY & PFEIFFER
CONSULTING ENGINEERS

WILLIAM K. KENNEDY
JAY N. PFEIFFER

233 S. LULU
WICHITA, KS 67211
(316) 264-3001

FAX 913-357-0333

January 31, 1994

Kansas Senate Transportation Committee
Re: K.S.A. 66-227

Dear Sirs:

As a consulting engineer in the State of Kansas I have been involved in the investigation and analysis of railroad-highway grade crossing accidents since 1981. I received my Bachelor of Science Engineering Degree in 1978 and have been a Registered Professional Engineer in the State of Kansas since 1987. My professional license number is 10706.

My investigation and analysis of numerous road and grade crossing accidents has given me the opportunity to review K.S.A. 66-227. It is my opinion that provisions of K.S.A. 66-227 are vague and ambiguous as they relate to engineering specifications and measurements of crossing geometry. For instance, a provision of K.S.A. 66-227 states that: "Said crossing shall ... be on the same grade as the track for 30 feet on each side of center of said track," Grade is a number which relates the change of elevation over a change in horizontal position. The grade of railroad tracks is measured along the length of the railroad track and the grade of a road is measured along the length of the road. At a railroad-highway grade crossing, the grades are not aligned in the same direction but are crossing each other. It is inappropriate and ambiguous to try to relate the grade of the crossing to the grade of the railroad track. From an engineering standpoint this portion of K.S.A. 66-227 is unclear and lacks engineering meaning. At best, this provision is ambiguous.

Another provision of K.S.A. 66-227 notes that "... , and the approaches thereto shall not exceed a six percent grade." This provision is also vague and ambiguous in that:

(1) There is no definition of what constitutes the "approaches thereto". It is unknown whether it is a 20 foot distance in approach to the crossing, a quarter mile interval in approach to the crossing or some other distance.

(2) This provision does not address how the grade is to be measured. Grade can be determined across any horizontal distance chosen. For instance, grade

readings could be made at half foot intervals, one foot intervals, five foot intervals, twenty-five intervals or any other interval. Without specification of the interval, survey data can be obtained by one method which would indicate compliance and by another method which may indicate non-compliance. Grade can also be measured at any position across the road width.

(3) The specification of six percent does not provide for specification of tolerance in determining the grade. A tolerance, whether implied or stated will result from the measurement technique and method.

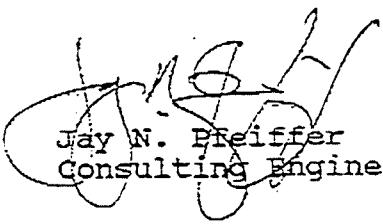
As an example, I am aware of an instance in which grade measurements were performed at a crossing. These measurements were made at five foot intervals and were made along each road edge and in addition along road center. Based only on these measurements there were certain positions along any one set of measurements where the approach apparently exceeded six percent. However, at any position, averaging the grade across the width of the road resulted in grade values indicating road compliance. Further, because the readings were made at five foot intervals, placement of the measuring instrument on a pebble of gravel on this gravel road is sufficient to cause the grade reading to fluctuate in and out of compliance. By simply brushing away all the gravel or leaving the gravel mounded at a measurement point can result in apparent compliance or non-compliance. Alternately, determining the grade based on 10 foot intervals results in complete grade compliance.

These provisions of K.S.A. 66-227 are vague and ambiguous and do not allow for an engineering determination to be made with regard with compliance or non-compliance.

I hope this information is useful to you in your review and evaluation of K.S.A. 66-227.

Yours truly,

KENNEDY & PFEIFFER



Jay N. Pfeiffer
Consulting Engineer

JNP/ki

Karen McCulloh
Wilton B. Thomas
Jim Williams

RILEY COUNTY PUBLIC WORKS DEPARTMENT

RILEY COUNTY OFFICE BUILDING • 110 COURTHOUSE PLAZA
MANHATTAN, KANSAS • 66502-0112 • PHONE (913) 537-6330 • FAX (913) 537-6331

DAN R. HARDEN
COUNTY ENGINEER
& DIRECTOR OF
PUBLIC WORKS
Registered Professional
Engineer No. 7412

Testimony of Dan Harden representing the Kansas County Highway Officials' Association before the Senate Transportation Committee 9:00 a.m. Tuesday 1 February 1994 regarding Senate Bill 597

The Kansas County Highway Officials' Association opposes Senate Bill 597 for the following reasons.

1. Why is there a need for a change? The Association sees no need to change the present statute. It has served Kansans well for years.
2. What public purpose is served by making this change to K.S.A 66-227? We see none.
3. If this change is made, it appears Kansas counties will be assuming liability for accidents occurring on railroad property. This change in liability is seen as essentially a subsidy of a privately owned railroad with already limited public funds.

• **EMERGENCY MANAGEMENT**
Emergency Preparedness
Rural Fire
(913) 537-6333

• **PLANNING & ZONING**
(913) 537-6332

• **RECYCLING INFORMATION**
(913) 537-6332

• **SOLID WASTE BILLING**
(913) 537-6330

• **WATER DISTRICTS**
Hunter's Island
Tatarrax
University Park
(913) 537-6330

STATE OF KANSAS



Michael L. Johnston
Secretary of Transportation

KANSAS DEPARTMENT OF TRANSPORTATION

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
FAX - (913) 296-1095

Joan Finney
Governor of Kansas

TESTIMONY BEFORE
SENATE TRANSPORTATION AND UTILITIES COMMITTEE
REGARDING
SENATE BILL 597
FEBRUARY 1, 1994

Mr. Chairman and Committee Members:

Mr. Chairman and members of the committee, I am Larry Emig, Bureau Chief of the Bureau of Local Projects. On behalf of the Department of Transportation, I am here today to provide testimony regarding Senate Bill 597 which would alter requirements for railroad crossings.

Senate Bill 597 would amend K.S.A. 66-227, which pertains to railroad crossings on county and township roads. Specifically, it eliminates the requirement for the railroad owner or operator to maintain county and township roads at a zero percent grade, or at the same grade as the tracks, for a distance of 30 feet on either side of the centerline of the tracks. It also eliminates a maximum approach grade of six percent. This statute does not affect railroad crossings on the State Highway System or within first or second class cities.

BACKGROUND

Currently, K.S.A. 66-227 mandates that railroad crossings on county and township roads carry the same grade as the track for 30 feet on either side of the railroad crossing. In addition, it sets a limit of six percent for the allowable grade for the approaches to the crossing. The statute for this bill was written in 1915 and its original intent is not known. It is presumed that its purpose was for safety related reasons. Elimination of the two grading requirements at railroad crossings could have safety ramifications.

ATTACHMENT 4

SEN. TRANS. 2/1/94

4-1

SAFETY ISSUES

The primary effect of Senate Bill 597 would be on the safety of public road users including school buses. The steep grades at rail crossings that could result from the relaxation of K.S.A. 66-229 requirements would present a safety problem, especially in adverse weather conditions.

EFFECT ON KANSAS DEPARTMENT OF TRANSPORTATION

This bill would not directly affect any KDOT programs, expenditures, or revenues. The one possible exception would be safety funds which are presently being expended to eliminate hazardous conditions at all rail/highway crossings. Project costs could be increased to eliminate these adverse approach conditions.

The Rail/Highway Grade Crossing Hazard Elimination Program is a federally funded program which specifically adheres to safety concerns at all public grade crossings. K.S.A. 66-227 currently specifies that the owner of the rail line is responsible for maintaining the same grade 30 feet from the centerline of the tracks going in both directions; plus adhering to a maximum six percent approach grades. The County Board of Commissioners has control of mandating the owners to comply. Railroad companies or operators conducting maintenance of their rail lines could potentially alter the elevation of their facilities causing an adverse affect on the 60 foot area and approach grades. K.S.A. 66-227 presently addresses this safety issue at rail/highway crossings and the Rail/Highway Grade Crossing Hazard Elimination Program would have to place more emphasis on railroad crossings if Senate Bill 597 is passed.

KDOT, as mandated by statute, currently sets aside \$300,000 per year to fund a Kansas Corporation Commission Safety Program. This program is used for rail crossings on local roads off the State Highway System and the Federal-Aid Highway System. This KCC program would also have to address the new concerns resulting from Senate Bill 597.

Ray McVey
1648 Faulders
Wichita, Ks. 67218

JANUARY 31, 1994

HONORABLE BEN VIDRIKSEN:

BILL 2425 Purple Heart License Plate.

The Purple Heart the oldest decoration issued 1782 by Gen. George Washington.

The Purple Heart Veterans of this Great State of Kansas would display the license plate with honor, as they do their Purple Heart.

We would like the words Combat Wounded on the license plate that is what the Purple Heart is about.

Sincerely,

~~Ray McVey~~

Chaplain Chapter 558
Military Order of Purple Heart

DATE: 1 FEBRUARY 1994

TO: KANSAS STATE SENATOR BEN VIDRICKSEN AND COMMITTEE

FROM: TIMMERMAN MEMORIAL CHAPTER 648
MILITARY ORDER OF THE PURPLE HEART
EMPORIA, KANSAS
KEN BRADSTREET, COMMANDER

RE: H.B. 2425

Mr. Chairman and Committee Members.

I am testifying on behalf of combat-wounded veterans of Chapter 648, Military Order of the Purple Heart and all other of the combat-wounded Kansas veterans, advocating your passage of H.B. 2425.

The combat-wounded veterans of Kansas, estimated in number at between 6,500 and 7,000, shed their blood defending the heritage and freedoms enjoyed by all citizens of the United States of America. We are proud to have done so and take pride in wearing the Purple Heart medal, the oldest decoration for valor awarded by the United States, first awarded by General George Washington.

Thirty-five states have authorized Purple Heart license plates, nine are in final procedures of authorizing Purple Heart license plates. Our great State of Kansas is one of only six states which have not authorized the plates.

Our patriot comrades in other states carry their Purple Heart plates on their vehicles with pride, showing everyone that their state respects the sacrifices they made. We pray that our beloved great State of Kansas follows their lead

Respectfully,

We thank you.

HOUSE BILL 2425
SENATE TRANSPORTATION COMMITTEE
9:00am ROOM 454E
FEBRUARY 1, 1994
TESTIMONY BY CHARLES M. YUNKER, DEPARTMENT ADJUTANT
THE AMERICAN LEGION, DEPARTMENT OF KANSAS

Thank you for allowing me the privilege and opportunity this morning to testify on behalf of the more than 90,000 members of The Kansas American Legion, American Legion Auxiliary and Sons of The American Legion in favor of House Bill 2425.

As of today thirty-five (35) states have adopted legislation similar to House Bill 2425 thereby granting veterans of those states who have been wounded in action as a result of their military service against an armed enemy of the United States the means to obtain a distinctive vehicle license plate which identifies that vehicle's owner as a recipient of the Purple Heart. There are approximately 6500 to 7000 recipients of the Purple Heart currently residing in Kansas. Although some may consider that number small, their having placed themselves in harms way and ultimately paying the price for having done so, these veterans continue to carry the scars of war with them wherever they go.

Passage of House Bill 2425 is a small but very significant gesture the State of Kansas can bestow upon these veterans. Therefore I urge your support of House Bill 2425.

STATE OF KANSAS

Betty McBride, Director
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66626-0001



(913) 296-3601
FAX (913) 296-3852

Department of Revenue
Division of Vehicles

To: Honorable Ben Vidricksen, Chairman, Senate Committee on Transportation.

From: Betty McBride, Director, Kansas Division of Vehicles *Betty McBride*

Date: February 1, 1994

Re: HB 2425

Mr. Chairman, Members of the Committee,

My name is Betty McBride. I am the Director of the Kansas Division of Vehicles, and I appear before you on behalf of the Kansas Department of Revenue with regard to House Bill 2425. House Bill 2425, if passed will provide license plates for recipients of the purple heart medal.

Implementation of House Bill 2425 will cost the division \$29,042 in manufacturing cost, which includes a \$4.42 per plate cost and one-time silk screen set up charge of \$312, there is also a one-time cost for computer changes to VIPS of \$4,354. If passed as proposed, the one-time charge for VIPS changes would be incurred in FY '94.

In addition to the regular SAM-123 license plate, apportioned plates, and personalized plates, the Division of Vehicles issues ten (10) distinctive license plates for different groups and individuals. Additional distinctive plates may be difficult for law enforcement officials, especially out-of-state law enforcement, to recognize a valid vs. an invalid license plate.

Thank you for the opportunity to address you on this matter, and I stand for your questions.

Senate Transportation
Feb. 1, 1994
Attachment 8



100967

Robert V. Holzman
923 FABRIQUE ST
(94)ADJ & CFO CH 558 (93) CS K
WICHITA KS 67218-3607

January 31, 1994

The Honorable Ben Vidricksen:

It is with deep regret that I am unable to attend the conference on The Military Order of the Purple Heart in Topeka, Kansas on 02-01-94.

It would be a great honor for me to be able to display the license, on this my 50th Anniversary of receiving the Purple Heart.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert V. Holzman".

Robert Holzman
National Chief-of-Staff for Kansas

*The road to glory in a patriot
army and a free country is thus
open to all.*

George Washington

Membership in the Military Order of the Purple Heart is limited by public law to "...persons who have received the Purple Heart during combat..."

There is a proud history to an award which was created for "gallantry but also of extraordinary fidelity and essential service." The order to establish the first Purple Heart was issued by General George Washington during the Revolutionary War. The official papers, signed by Washington, were saved from burning during the War of 1812. The famous award was revived in 1932 by President Hoover and General Douglas MacArthur. Today, as in the past, the single bond that unites members of The Order is that each has sustained a wound, inflicted by an enemy, in combat. There is no exclusion by war, or by branch of service...the members' common bond is that they have given of their own blood. The Order exists to serve, not only combat wounded, but all veterans and their dependents.

The Only Congressionally Chartered
Veterans Organization Exclusively
For Combat Wounded Veterans

PROUD to be a **MEMBER**

I am proud to be a member of the Military Order of the Purple Heart. This group of patriots serves as a reminder to our nation and to the world that we have shed blood for our country, and we fight to defend our freedom. The Order deserves the full support of all those who are eligible for membership.

Strom Thurmond
United States Senate

As a proud lifetime member of the Military Order of the Purple Heart, I want to encourage all eligible veterans to join me in this outstanding organization. There are many useful services already awaiting you and your family. A grateful nation will never forget your sacrifice.

Bob Dole
United States Senate

1782



1932

THE PURPLE HEART

Once upon a time when most of us had died
A soldier at the Judgment seat applied.
"Show me," the Stern one said,
"Some proof that you are choice among the dead!
Some saintly act; some holy skill or kindly art!"

Only this, Oh Magistrate, Oh King, Oh God;
My life's blood for my country stained the sod.
For proof...I have this Purple Heart."

He gazed long at it, the King all mankind's mentor
Then nodding, softly whispered..."Enter."

The Military Order of the Purple Heart
5413-B Backlick Road • Springfield, VA 22151
(703) 642-5360 • FAX (703) 642-2054

**Congressionally Chartered
For The Combat Wounded**

*The Military Order
of the*

PURPLE HEART

The
Association
for Those
Honored with
The
Purple Heart

For information on local Chapters

Reasons for belonging to The Military Order of the Purple Heart...

9-3

Your Voice in Washington The Military Order of the Purple Heart represents you in the Nation's Capitol. This means that the voice of the combat wounded veteran is heard in Congress, at the Department of Defense and at the Veterans Administration. We are constantly alert to any legislation which affects our members. The M.O.P.H. is working on your behalf.

The Purple Heart Magazine There is an official magazine of M.O.P.H. It is issued six times a year for the enjoyment of members. Each issue brings a series of timely and well written articles about the activities of The Order around the country. Members have written to say that they look forward to receiving The Purple Heart Magazine. The cost of your subscription is included in your modest dues payment.

Local Chapters All members of The Order are automatically eligible to participate in the activities of local chapters of M.O.P.H. These chapters offer programs which meet the needs and interests of local members. Many members enjoy the pride of participating in community based activities as members of M.O.P.H.

Annual Convention Once each year the Military Order of the Purple Heart holds a National Convention for the purpose of renewing goals and ideals. There is always a full roster of activities for members and their spouses. Between the official activities of the Convention, there is time for relaxation and a chance to renew old friendships and to make new ones.

Group Insurance Offers The Order is proud to offer a variety of insurance plans to meet the needs of members and their families. Several times each year members will receive material to advise them of different programs. Each program can be tailored to meet the specific needs of each member.

Patriotism We are proud to address each of our fellow members as a "Patriot" for who among the people of this country can say that they have given more of themselves than the members of the Military Order of the Purple Heart? This association is proud to stand up for America, and sponsors an award program, through The Freedoms Foundation at Valley Forge, which serves Armed Forces personnel.

Educational The Order is proud to promote much needed patriotic education in our nation's schools. All of our citizens, both young and old, must appreciate the blessing of freedom and accept the responsibility that comes with it. The Order's educational activities include a grant scholarship program to institutions which encourage young people to enter into the field of being teachers for the handicapped. The Order also has started a scholarship program for sons and daughters of M.O.P.H. members.

Pride of Membership There is one important intangible benefit that members enjoy when they belong to the Military Order of the Purple Heart. Your membership helps to keep alive the ideals for which you were awarded the Purple Heart.

Fellowship The Order provides an opportunity for fellowship with other Purple Heart recipients.

National Service Officer Program The Order participates in the Veterans Administration National Service Officer Program which serves to assist America's veterans. This program works to make certain that veterans of the United States Armed Forces, and their dependents, receive all to which they are entitled.

Outreach Program The Order operates a mobile service program designed to reach veterans in remote areas. This program will be expanded with additional vans.

Other Benefits Support of the Veterans Administration Voluntary Service program at Veterans Medical Centers throughout the United States.

The Military Order of the Purple Heart is the only Congressionally chartered veterans organization exclusively for combat wounded veterans who have been awarded the Purple Heart by the Government of the United States.