



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 8, 1996

F. David Butler, Esquire
General Counsel
South Carolina Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Mr. Butler:

By your letter of November 22, 1995, to Attorney General Condon (which was received by this Office on April 11, 1996), you had enclosed correspondence from several parties and had sought an opinion on several questions raised therein. Apparently one or more trains belonging to CSX block the State Street crossing in the City of Cayce. The request cites to S.C. Code Ann. §57-7-240 (1976) and asks specifically:

1. Who specifically at the railroad is to receive notice to remove the train in episodes of excessive blockage?
2. To whom does the City of Cayce cite an ordinance summons and/or an arrest warrant to enforce the law?
3. Who is the agent or other person in charge of the locomotive? Are they the trainmaster and/or yardmaster at the State Street switchyard? Are the trainmaster and/or yardmaster one and the same as the "agent or other person in charge of the locomotive?"
4. Once it is determined who is to be notified, who is responsible for removing the train after notification?

Robert C. Dennis

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§57-7-240

Section 57-7-240 is a portion of state law relative to obstruction of roads. That Code section provides in relevant part:

If any person shall obstruct unnecessarily any street, public road or highway by permitting any railroad car or locomotive to be or remain upon or across any street, public road or highway for a longer period than five minutes, after notice to remove such car or locomotive has been given to the conductor, engineer, agent or other person in charge of such car or locomotive or shall permit ... other obstruction to remain upon or across any such street, road or highway to the hindrance or inconvenience of travelers or any person passing along or upon such street, road or highway, such person so offending shall forfeit and pay for every such offense a sum not exceeding twenty nor less than five dollars and shall be liable for all damages arising to any highway, to be recoverable by an action at the suit of the county in which such offense shall have been committed or by indictment in the court of general sessions or suit in the court of common pleas. ... Every twenty-four hours such person, after being notified, shall suffer such obstruction to remain, to the hindrance or inconvenience of travelers or any person going along or upon such road or highway, shall be deemed an additional offense against the provisions of this section.

§58-17-4080

Section 58-17-4080 is a portion of the state's general railroad law; similar to §57-7-240, that section provides in relevant part:

If any person, including any conductor of any train of railroad cars or any other agent or servant of any railroad company, shall obstruct unnecessarily any public road or highway by permitting any railroad car or locomotive to be or remain upon or across any street, public road or highway for a longer period than five minutes, after notice to remove such cars has been given to the conductor, engineer, agent or other such person in charge of such train or shall permit ... other obstruction to remain upon or across any such street, road or highway to the hindrance or inconvenience of travelers or any person passing along or upon such street, road or highway, every such person so offending shall forfeit and pay for every such offense any sum not exceeding twenty nor less than five dollars and shall be liable for all damages arising to any highway, to be recovered by an

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action at the suit of the governing body of the county in which such offense shall have been committed or any person suing therefor, before any magistrate within the county in which such offense shall have been committed or by indictment in the court of general sessions or suit in the court of common pleas. All fines so accruing under the provisions of this section, when collected, shall be paid over by the magistrate to the county treasurer for the district in which such offense was committed. Every twenty-four hours such person, after being notified, shall suffer such obstructions to the hindrance or inconvenience of travelers or any person going along or upon such road or highway to continue shall be deemed an additional offense against the provisions of this section.

It is observed that both §57-7-240 and §57-17-4080 were part of the same legislative enactment, Act No. 535 of 1902; §57-7-240 was section 21 of that Act, and §58-17-4080 was section 22 of that Act. The statutes thus are in pari materia and as such should be construed together and consistently.

Other Statutes

In considering the above provisions of law, it is helpful to examine other related statutes. Section 58-17-10(4) defines the term "person":

The word "person" shall be construed and held to mean an officer, corporation, company, receiver, trustee, lessee, agent or other person acting or engaged in any of the matters and things mentioned in the General Railroad Law.

In addition, §58-17-4120 states who shall be deemed agents of a railroad corporation:

Any person occupying an office or room in any railway station and attending to and transacting therein the business of any railroad under the charter of such railroad shall be deemed the agent of such corporation, notwithstanding he may claim to be the agent of some other person or corporation claiming to operate such railroad by virtue of any lease, contract or agreement. A bill of lading, receipt, agreement or contract signed or entered into by any such person as agent of any such person or corporation operating such railroad shall be deemed the contract of the corporation under the charter of which the railroad is authorized.

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Further, §58-17-4150 states the persons against whom judgment shall be rendered under the general railroad law:

Any judgment under the provisions of this chapter shall be rendered against the person violating its provisions and against the corporation in whose service or under whose authority he performed such unlawful acts.

Finally, §58-17-4020 provides penalties for violations of the general railroad law by individuals:

Any director or officer of any railroad corporation or company or any receiver, trustee, lessee or person acting or engaged as a railroad or any agent of any such corporation or company, receiver, trustee, lessee or person, or of one of them alone or with any other corporation, person or party, who shall (a) directly or indirectly do, or cause or willingly suffer or permit to be done, any act, matter or thing in this chapter prohibited or forbidden, (b) directly or indirectly aid or abet therein, (c) directly or indirectly omit or fail to do any act, matter or thing in this chapter required to be done, (d) cause or willingly suffer or permit any act, matter or thing, so directed or required to be done, not to be so done, (e) directly or indirectly aid or abet any such omission or failure, (f) directly or indirectly be guilty of any infraction of this chapter or (g) directly or indirectly aid or abet therein shall, unless otherwise herein specially provided, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars.

Order of the Public Service Commission

Certain of the matters complained of herein have been heard before the South Carolina Public Service Commission, in a matter captioned In re: Suzanne M. House and William C. Morgan, Complainants, v. CSX Transportation, Inc., Dockets No. 88-50-T and 88-128-T. An order of the Public Service Commission, Order No. 88-879, was issued on August 25, 1988. After a summary of the complaints and the procedural history of the complaints, the Commission stated its findings of fact and conclusions of law and issued its order.

The relevant findings of fact as stated by the order were:

1. That the Respondent [CSX] has, as an incident of its switching operations at its Cayce yard, been blocking the access thoroughfares in and

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around the Riverland Park Subdivision in Cayce, South Carolina for protracted periods -- periods considerably in excess of those suggested by the provisions of S. C. Code Sections 57-7-240 and 58-17-4080, supra.

2. That the Respondent has otherwise, in general, conducted its operations at the Cayce switchyard in reasonable conformity with applicable statutes, regulations and other standards.

3. That the situation of the Respondent's Cayce switchyard and the immediately proximate residential environs, particularly the Riverland Park Subdivision, is such as to suggest the need to examine and evaluate construction possibilities whereby to effect easier and quicker ingress and egress to and from the vicinity.

In the order of the Commission, CSX was ordered to "continue to observe and comply with all applicable Federal and State Statutes, Rules, Regulations and other standards concerning rail transportation safety, rail equipment and apparatus safety, transportation of hazardous materials, and obstruction of public roads and highways." [Emphasis added.] CSX was further ordered to "undertake whatever special endeavors may be necessary in the conduct of its operations at its Cayce, South Carolina switchyard to minimize the obstruction of access streets, roads and highways to the Riverland Park Subdivision."

Section 58-17-3930 imposes a penalty on a railroad for failure to obey orders of the Public Service Commission:

Any railroad in this State refusing to obey any order of the Public Service Commission made under this chapter shall forfeit not less than the sum of five hundred dollars nor more than two thousand dollars, to be recovered by the suit of the Commission in a suit in the court of common pleas. Such sum, if recovered, shall go to the general fund of this State.

Whether such a penalty has been sought by the Commission is not known by this Office.

Discussion

A. Who Is To Receive Notice To Move A Train

Section 58-17-4080 states that notice to remove cars of a railroad train is to be given to "the conductor, engineer, agent, or other such person in charge of such train." As observed above, who is to be deemed an agent of a railway company is defined in §58-17-4120. The same persons are specified in §57-7-240. Therefore, I would advise

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that the requisite notice should be given to the conductor, engineer, agent, or whoever else may be in charge of a train of railroad cars that may have obstructed a road, street, or highway in excess of five minutes.

Giving notice to the railroad company in the manner prescribed in §58-17-4080 appears to be a key element in the violation of that Code section and also §57-7-240. The railroad company in question has certainly been put on notice by order of the Public Service Commission that it has violated the provisions of §58-17-4080, but I am not certain that such general notice is what was contemplated by §58-17-4080. That statute speaks in terms of "every such offense" and "[e]very twenty-four hours such person, after being notified, shall suffer such obstructions ... shall be deemed an additional offense against the provisions of this section." To be on the safe side, I suggest that notice be given each time a train of railroad cars should be deemed to be violating §58-17-4080.

B. Who Should Be Cited In Ordinance Summons/Arrest Warrant

Section 58-17-4080 imposes a penalty on "any person, including any conductor of any train of railroad cars or any other agent or servant of any railroad company" who has allowed the train of cars to obstruct unnecessarily or for longer than five minutes a road or highway." Thus, theoretically, any person who permits the train to obstruct the road or highway in excess of five minutes could be cited. A better approach might be to make an inquiry or investigation as to who is in charge at a particular time, provide that person with the requisite notice as discussed above, and cite that person if the statute is not complied with. Due process must be accorded; the municipality may wish to consult its attorney with a specific factual situation to make certain that, in a given instance, the appropriate person is to be cited. See also §58-17-4150 and §58-17-4020, supra.

No comment is offered herein on violation of a municipal ordinance and who should be cited therefor, as no ordinance has been presented to this Office for consideration.

C. Who Is The Person In Charge Of The Locomotive

The general railroad law does not define who would be considered to be the person in charge of the locomotive, nor does state law cover who might be a trainmaster or yardmaster and what the duties of those individuals might be. Who would be considered to be in charge of a locomotive, or whether a trainmaster or a yardmaster would be considered to be the agent or person in charge of a locomotive may well be questions of fact, as such could conceivably vary from railroad to railroad.

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D. Who Is Responsible For Moving The Train After Notification

The general railroad law does not specifically state who is to be responsible for moving the train after the requisite notice has been given. Section 58-17-4080 speaks in terms of penalizing "any person" who shall obstruct unnecessarily a public road or highway by permitting a railroad car or locomotive to remain upon or across a public road or highway in excess of five minutes, after the requisite notice has been given.

Other Considerations

Due to the facts that the statutes being construed have been in existence without amendment for nearly a century and that there are many gaps in the statutory scheme which make use of the statutes difficult at best, interested parties may wish to bring the problems being experienced in the City of Cayce to the attention of the Lexington County Legislative Delegation toward having more effective statutes adopted or gaps closed in the present statutes.

In addition, interested parties may wish to consider whether alternative remedies may be more effective. For example, thought could be given to seeking an injunction against further violations of §§58-17-4080 and 57-7-240. Another remedy might be to invoke the penalty provisions of §58-17-3930, *supra*, toward having the court penalize CSX for failure to comply with the order of the Public Service Commission. Another potential remedy might be to have the railroad and/or its operations declared a nuisance under common law for operation of the railroad to the detriment of the surrounding area, with whatever other remedy might be available having had such declared a common law nuisance. See 74 C.J.S. Railroads §§ 146, 190, 191, 194, 457. No comment is made herein as to whether any of these remedies would be successfully imposed, or whether facts have been or could be developed sufficiently to permit any of the suggested remedies to be granted by a court. In addition, there might be other remedies which might be available under the circumstances; this list of suggestions is not intended to be exhaustive.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General