

File 1710
The State of South Carolina



Office of the Attorney General

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March 20, 1985

The Honorable Charles L. Powell
Senator, District No. 4
506 Gressette Building
Columbia, South Carolina 29202

Dear Senator Powell:

By your letter of March 6, 1985, you asked this Office to research Section 44-1-140 of the Code of Laws of South Carolina (1976) to determine whether federal laws can override this statute. Based on the following information, we would advise that to the extent regulations promulgated pursuant to Section 44-1-140 conflicted with certain federal statutes or regulations, those federal statutes or regulations would be controlling. Because there are apparently no applicable (or conflicting) regulations in effect in this State presently, we can only offer the following as information.

Federal Statutes and Regulations

The most important federal statute, a portion of the Federal Railroad Safety Act, is 45 U.S.C § 434, which provides:

The Congress declares that laws, rules regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject

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matter of such State requirement. A State may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

This statute is very specific as to what types of rules, regulations, laws, orders, or standards may be promulgated by states with respect to railroad safety. Where states have promulgated statutes or regulations in conflict with federal statutes or regulations, the courts have held that such state regulations or statutes have been preempted by federal statutes or regulations, under the Supremacy Clause of the United States Constitution. See, for example, Southern Pacific Transportation Company v. Usery, 539 F.2d 386 (5th Cir. 1976); Louisville and Nashville Railroad Company v. Sullivan, 617 F.2d 793 (D. C. Cir. 1980); Donelon v. New Orleans Terminal Company, 474 F.2d 1108 (5th Cir. 1973); Consolidated Rail Corporation v. Pennsylvania Public Utility Commission, 536 F.Supp. 653 (E.D. Pa. 1982); National Association of Regulatory Utility Commissioners v. Coleman, 542 F.2d 11 (3d Cir. 1976); Liepelt v. Norfolk and Western Railway Company, 19 Ill. Dec. 357, 62 Ill. App.3d 653, 378 N.E.2d 1232, rev'd. other grds. 444 U.S. 490, 100 S.Ct. 755, 62 L.Ed.2d 689 (1980).

Volume 49 of the Code of Federal Regulations (1984) contains federal regulations on transportation. In particular, Section 200 et seq. contains railroad regulations. An examination of these regulations reveals that the thrust therein is safety; such matters as brakes, wheels, axles, lights, switches, rail maintenance, communications, window glazing, repairs, emergency orders, couplers, draft systems, and the like are covered by the voluminous regulations, all of which appear to be safety-oriented. None of these regulations appears to deal with cleanliness of facilities, cabooses, or the like, however.

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Interaction between the state and federal governments is also specified by 45 U.S.C. §§ 435 and 436; copies of these sections are enclosed for your convenience, though such sections do not appear to apply to your concern about promulgation of health and safety regulations.

Finally, it was noted in Donelon v. New Orleans Terminal Company, supra, that states can bring common law suits to enjoin unsafe railroad practices, in addition to whatever remedies may be available under the Federal Railroad Safety Act. Again, the emphasis was on safety, track maintenance in particular.

State Statutes and Regulations

Section 44-1-140 of the Code authorizes the Department of Health and Environmental Control to promulgate certain regulations. In pertinent part the statute reads:

The Department of Health and Environmental Control may make, adopt, promulgate and enforce reasonable rules and regulations from time to time requiring and providing:

(1) For the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats and other vehicles of transportation in this State and all convict camps, penitentiaries, jails, hotels, schools and other places used by or open to the public;

* * *

The closest regulation applicable to train stations, passenger cars, cabooses (which usually transport one or two persons), and the like might have been Regulation 61-43, concerning bus stations. Even if the regulation could have been expanded to cover train stations, the regulation was repealed effective May 27, 1983. Thus, there is apparently no State regulation in force presently concerning the sanitation or cleanliness of passenger cars, cabooses, or train stations (as places used by or open to the public).

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information in writing to the corporation of the repairs, additions, improvements or changes which it adjudges to be proper. If the company shall fail, within sixty days, to adopt the suggestions of the Commission, it shall take legal proceedings as it may deem expedient and may call upon the Attorney General to institute and conduct such proceedings. The power herein conferred upon the Commission shall be sufficient to require of common carriers the establishment and maintenance of terminal facilities, the extension of pass tracks, sidetracks and other industrial tracks and all other improvements and changes which seem reasonable and expedient to the Commission. [Emphasis added.]

Conceivably, considering both Sections 44-1-140 and 58-17-150, recommendations for improving sanitary conditions in a station house or terminal facilities could thus come from both the Public Service Commission and the Department of Health and Environmental Control.

Additionally, under the statutes pertaining to the Public Service Commission, are found the following:

§ 58-18-3070. Accommodations and passengers.

Every railroad corporation shall furnish reasonable accommodations for the convenience and safety of passengers. For every wilful neglect to provide such accommodations such railroad corporation shall forfeit not less than five nor more than twenty dollars, to be recovered in an action against such corporation.

§ 58-17-3080. Waiting rooms for passengers.

Every railroad company owning or operating a railroad in this State shall erect and keep at every office where tickets are sold for travel over its road two good rooms or apartments of

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reasonable size for the amount of travel at such office, which shall be furnished with comfortable seats for the accommodation of passengers. Such rooms shall be in charge of an employee of such company and kept open at such hours as to accommodate passengers traveling over such road on any of its passenger trains. The Public Service Commission shall enforce the provisions of this section.

§ 58-17-3100. Separate water closets shall be maintained at stations.

All railroads or other persons operating any system of cars, carriages or other conveyances for the purpose of transporting passengers for hire shall, when ordered so to do by the Public Service Commission, build, keep and maintain at all passenger stations and other places where people are regularly taken on and put off of such cars, carriages or other conveyances, two separate and distinct water closets, one for female passengers and one for male passengers and such closets shall be kept in fit and suitable condition for the use and convenience of passengers. But this section shall not be construed to have reference to flag stations on railroad lines where there is no regularly kept passenger station. Any person refusing, failing or neglecting to observe the provisions of this section shall be liable to pay a penalty of fifty dollars for each and every day he shall fail, refuse or neglect to provide such water closets, such penalty to be recovered by any citizen who will sue therefor, one half of such penalty to go to the school fund of the county in which such suit is brought and the other half to the citizen suing for it. [Emphasis added.]

It would appear that these code sections are narrowly and specifically regulatory in nature, but by these statutes the Public Service Commission is not given authority such as that specifically delegated to the Department of Health and

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Environmental Control. Therefore, regulations pertaining to sanitation and such concerns relative to passenger cars, cabooses, and train stations would most appropriately be promulgated by the Department of Health and Environmental Control. Because such regulations would deal more with health than safety, it is most likely that no federal statute or regulation of which we are aware would preempt a state statute or regulation in this matter.

In conclusion, we would advise that:

1. Federal statutes and regulations, which would preempt state statutes and regulations except in specific instances, appear to cover only safety aspects of railroad operations and do not address health aspects, about which you expressed concern;
2. the Department of Health and Environmental Control has authority to promulgate regulations as to sanitation or health matters pertaining to passenger trains, cabooses, and train stations as public places; and
3. the Public Service Commission has certain regulatory authority over railroads, though such authority most probably does not extend to health and sanitation matters about which you are concerned.

We trust that the above information satisfactorily responds to your inquiry. If we may provide additional assistance or clarification, please advise this Office.

Sincerely,

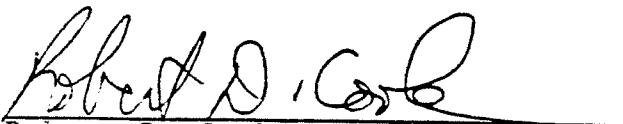
Patricia D. Petway

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PDP/an

Enclosure

REVIEWED AND APPROVED BY:



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