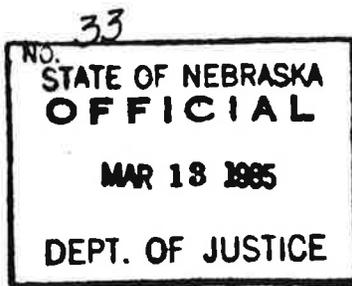


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA
TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General

A. Eugene Crump
Deputy Attorney General

March 12, 1985

Senator James E. Pappas
Nebraska State Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Senator:

This is in response to your letter of March 5, 1985, concerning LB 161 and proposed amendments you have indicated that you intend to make to that legislation.

Your primary concerns deal with the issue of federal preemption in the area of railroad safety. Contrary to what some individuals have apparently said, railroad safety has not been preempted by the federal government to preclude all state activity. For example, 45 U.S.C.A. §434 provides as follows:

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

Assistants

Bernard L. Peckett
Mel Kammerlohr
Harold I. Mosher
Terry R. Schaaf
Marilyn B. Hutchinson
J. Kirk Brown

Royce N. Harper
Sharon M. Lindgren
Lynne R. Fritz
Ruth Anne E. Geiter
Dale A. Comer
Mertel J. Bundy

Mark D. Starr
Dale D. Brodkey
Linda L. Willard
John B. Boehm
Henry M. Grether III
Calvin D. Hansen

Timothy E. Divis
L. Jay Bartel
Jill Gradwohl
LeRoy Sievers

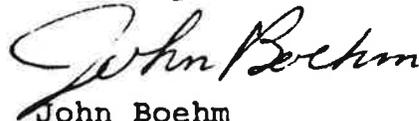
Senator James E. Pappas
March 12, 1985
Page -2-

Likewise, as you point out, federal law specifically allows states to participate in investigative and surveillance activities in accordance with Federal Railroad Administration guidelines, 45 U.S.C.A. §435. If your proposed amendments conform to the requirements of the federal State Safety Participation Program as set forth in federal law and federal regulations, there can be no question as to any issues of federal preemption. This would, of course, include elimination of the penalty provisions from LB 161 as it is presently written, and as you have indicated you intend to do.

We would also concur with your conclusion to amend LB 161 to place this safety program under the authority of the Public Service Commission, since under Article IV, Section 20, of the Nebraska Constitution, the Public Service Commission is given general authority over the regulation of common carriers, which include the railroads.

Very truly yours,

ROBERT M. SPIRE
Attorney General



John Boehm
Assistant Attorney General

JB:ejg

cc Mr. Patrick J. O'Donnell
Clerk of the Legislature