

Opinion No. 2012-134

November 19, 2012

The Honorable Leslee Milam Post  
State Representative  
Post Office Box 1212  
Ozark, Arkansas 72949-1212

Dear Representative Post:

You have requested my opinion on a dispute between a city and a railroad over a railroad crossing. You give the following background for your request: “In 2001, a railroad removed a long established city street rail crossing, which effectively blocked city vehicular traffic to now leased riverfront land. The city now wishes to gain access via that removed crossing to this land for planned economic development project.”

You then ask: “May a railroad remove a city street rail crossing without city council approval?”

**RESPONSE**

Because this question falls outside the scope of my opinions-writing function, I am unable to address it.

I am required to advise members of the General Assembly and various state officials on questions of state law.<sup>1</sup> This office’s opinions function does not ordinarily extend to questions of federal law, except as those questions involve or require the interpretation of state law.<sup>2</sup>

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<sup>1</sup> A.C.A. § 25-16-706 (Repl. 2002).

<sup>2</sup> *See, e.g.*, Op. Att’y Gen. Nos. 2009-089, 2001-268, 2000-208, 99-290.

Your question is purely about federal statutory and regulatory law. While Arkansas's statutes grant "exclusive" state authority to the Arkansas Highway Commission to regulate railroad crossings,<sup>3</sup> the Commission's regulatory authority has been preempted by federal law.<sup>4</sup> Hence, all the rules for removing or reestablishing railroad crossings must be analyzed according to the regulations of the federal agency known as the Surface Transportation Board, which is the entity Congress vested with the regulatory authority over these matters.

Because questions that are purely about federal statutory or regulatory law fall outside the scope of the opinions process, I must respectfully decline to address your question.

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL  
Attorney General

DM/RO:cyh

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<sup>3</sup> See A.C.A. §§ 23-12-301 *et seq.* (Repl. 2002).

<sup>4</sup> See *Anderson v. BNSF Railway Co.*, 375 Ark. 466, 476, 291 S.W.3d 586, 594 (2009), *citing Franks Investment Co. v. Union Pacific Railroad Co.*, 534 F.3d 443 (5th Cir. 2008); *City of Siloam Springs, Ark. v. Kansas City Southern Ry. Co.*, \_\_\_ F. Supp. 3d \_\_\_, 2012 WL 3961346 (W.D. Ark., Sept. 10, 2012).