

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: October 25, 2007

**MEMORANDUM**

TO: Michael May

FROM: Steve Brist

RE: Train Blocking Crossing at Johnson Street area

The City received a self-reporting form from a citizen regarding the blocking of Railroad crossings in the vicinity of the Wisconsin and Southern Railroad on May 17, 2007. According to the Citizen Report, the crossing was blocked from 7:42 A.M. to 8:05 A.M. This would be in excess of the times provided in Sec. 10.24, MGO, which states that a crossing cannot be blocked more than three minutes during this time of day. After investigation and research, I decided not to prosecute the Railroad for the following reasons:

First, I contacted Steve Beske, Superintendent of Transportation for the Wisconsin and Southern Railroad. He contacted the railroad's dispatcher, and they were familiar with this incident. According to Beske, this particular train was the victim of vandalism. He reported that someone had physically "pulled the pins" on the train in several places. He explained that pulling the pins was uncoupling the couplers of the cars, so that when the engine went forward the train broke apart in several places. This separation of the cars caused the air brakes in the entire train to go into emergency mode. He explained that the train conductor had to walk the entire length of the train to find the places where the train was broken and in each case, the train had to pull forward, then back up to couple up again, and then the conductor had to recouple the air hoses. As each section of the train was recoupled to the air, the engine then had to recharge the air in that train section, so that the train could pull forward to find the next break in the train, where the process was repeated. When I spoke to you about this incident we felt that because this delay was not caused by the railroad's negligence but was because of vandalism, that this should be taken into consideration.

Second, federal law appears to have preempted our local ordinance on blocked crossings, and case law supports this interpretation. In CSX Transportation v City of Plymouth, 283 F.3d 812 (2002), the Sixth Circuit Court of Appeals held that the Federal Rail Safety Act and the Interstate Commerce Termination Act preempted a Michigan statute that prohibited

trains from continuously blocking grade crossings for more than five minutes. There was no factual dispute in the case, the railroad admitted blocking crossing for more than five minutes, resulting in the issuance of more than 893 citations, with potential fines exceeding \$446,000. The Court of Appeals granted a summary judgment motion for CSX finding that the state law conflicted with federal law and unreasonably burdened interstate commerce.

Likewise, in Village of Mundelein v. Wisconsin Central Railroad, 855 N.E. 2d 230 (2006), the Seventh Circuit, reached the same conclusion regarding a local ordinance that restricted a train from blocking crossings in the Village of Mundelein, Illinois that prohibited trains from blocking a grade crossing for more than 10 minutes. The Court stated that to the extent that the village's ordinance regulated train speed and length and the performance of federally mandated air brake tests and implicated grade crossing safety concerns, that the ordinance was preempted by the Federal Rail Safety Act, because federal regulations covered the matter.

Because of these court decisions, I do not think that the City of Madison can enforce Sec. 10.24, MGO against the Wisconsin and Southern Railroad. Given this, along with the facts surrounding this particular incident, I did not believe that it was appropriate to proceed with a prosecution, and that we would lose if we did so. I have attached copies of the two cases referred to in the above text.