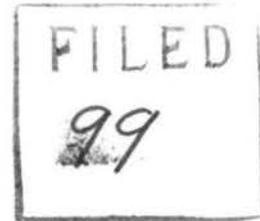


RAILROADS:
POLICE:
HIGHWAY PATROL:
LICENSES:

Railroad police licensed by the Superintendent of the State Highway Patrol under the provisions of Section 388.600, RSMo Supp. 1971, are exempt from regulation of the St. Louis Board of Police Commissioners under the provisions of Section 84.340, RSMo 1969.

OPINION NO. 99

April 24, 1972



Mr. Richard M. Miller, Secretary
St. Louis Board of Police Commissioners
1200 Clark Avenue
St. Louis, Missouri 63103

Dear Mr. Miller:

This opinion is in answer to your question in which you ask:

"1) Do the provisions of Sections 388.600 - 388.660 R.S. Mo. preempt the licensing authority of the Board of Police Commissioners as contained in Section 84.340 R.S. Mo?

"2) Regardless of whether or not the Board retains its licensing authority, may the Board of Police Commissioners continue to 'regulate' (Section 84.340 R.S. Mo.) Railroad policemen in the City of Saint Louis in any manner e.g. require minimum training, regulate carrying of firearms, specify type of uniform?"

You further add that:

"Under the provisions of Section 84.340 R.S. Mo. the Board of Police Commissioners has been licensing and otherwise regulating railroad policemen within the City of Saint Louis. Acting under this statutory authority, the Board has set licensing standards, required minimum training, and established numerous other regulatory standards. As the proposed questions indicate, we are now uncertain of our authority to continue to operate in this area."

Mr. Richard M. Miller

You are correct of course that the Board of Police Commissioners has licensed such railroad police under the provisions of Section 84.340, RSMo 1969. Manson v. Wabash Railroad Company, 338 S.W.2d 54 (Mo. 1960); Frank v. Wabash Railroad Company, 295 S.W.2d 16 (Mo. 1956).

Sections 388.600 to 388.660, RSMo Supp. 1971 provide for the licensing of railroad police by the Superintendent of the Missouri State Highway Patrol and contain provisions for the appointment, commission, identification, training and bonding of such police. Notably, Section 388.625 provides:

"Railroad policemen, while engaged in the pursuit of their purposes in regard to violations of the law which occurred on railroad property, shall have in every county and city in this state all law enforcement powers which county and city peace officers have except for the serving and execution of civil process, provided, however, that a railroad policeman shall not apply for or serve search warrants."
(Emphasis added)

It must be borne in mind that the new provisions authorizing the regulation of railroad police by the Superintendent of the State Highway Patrol are strictly regulatory in nature and have none of the attributes of a revenue act. Further, we note that railroad police of necessity must have a degree of mobility that transcends city and county lines. In our view, the legislature enacted Sections 388.600 et seq., as a special law, dealing with a special subject with statewide application.

A special or specific statute creates an exception to a prior general statute, from which it differs, to the extent of the conflict. Mennemeyer v. Hart, 221 S.W.2d 960 (Mo. 1947). In this instance the police power exercised by the Superintendent of the Highway Patrol is a matter of statewide concern and therefore, in our view, railroad police licensed under Sections 388.600 et seq., are exempt from licensing and regulation by the Board of Police Commissioners under Section 84.340. Cf. Agnew v. City of Culver City, 304 P.2d 788, 793 (Dist.App.Cal. 1956); 53 C.J.S., Licenses, § 11, p. 490 et seq. Regulation by the Board would in fact impair the police power authorized by license by the Superintendent. Cf. State v. Keirnan, 207 S.W.2d 49 (Mo.App. 1947).

CONCLUSION

It is the opinion of this office that railroad police licensed by the Superintendent of the State Highway Patrol under the provisions of Section 388.600, RSMo Supp. 1971, are exempt from regulation by the St. Louis Board of Police Commissioners under the provisions of Section 84.340, RSMo 1969.

Mr. Richard M. Miller

The foregoing opinion which I hereby approve was prepared by my assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General