

**OPINION  
62-155**

January 25, 1962            (OPINION)

MOTOR VEHICLES

RE: Vehicles for Hire - Street - Railways

This is in response to your letter in which you ask for an opinion on the interpretation of subsection 3 of section 39-10-43.

This subsection provides:

3. This section shall not apply at street-railway grade crossings within a business or residence district."  
(Underscoring ours).

The preceding subsections, all of which comprise section 39-10-43 to which subsection 3 has reference, substantially provides that certain vehicles carrying passengers for hire, or carrying explosive substance or inflammable liquids, or any schoolbus carrying any schoolchild shall stop such vehicle within fifty feet from the tracks of a railroad and first assure himself that it is safe to cross before crossing the railroad tracks.

The ultimate question to be resolved involves the construction and interpretation of the term "street-railway". The definitions for title 39 as found in section 39-01-01 defined the term "railroad" to mean "a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails." (Subsection 35.) The term "railroad train" as defined in subsection 36, means "a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars."

We note that no definition is given for the term "street-railway" as used in subsection 3 above. We find the term used in Section 139 of the North Dakota Constitution. The term there is used in connection with telegraph, telephone and electric light plants within a city. This would indicate that the term as being used is not necessarily synonymous with "railroad". Words and phrases make a distinction between railroad and street railroad or railway. In this respect, we take special cognizance of the fact that the term "street-railway" is hyphenated to indicate that "street" is an integral part of the word "railway". The term "street-railway" is also found in subsection 1 of section 40-05-02, which has reference to powers of cities. In this subsection, the term is used in connection with permitting the locating and construction of railway or street-railway tracks in streets, alleys or public places. It permits a city to regulate or prohibit the location and construction of same and also permits a city to permit such location and construction but not for a period of longer than fifty years. The term "street railroad" is discussed in 83 C.J.S., p. 126 under the title, "Street Railroads". The term as used there generally means a railroad or railway constructed upon streets or highways for the purpose of facilitating the use thereof in the transportation of persons and property. It is significant to note that the same text, C.J.S. in Volume 74, discusses railroads but

does not include street-railway or street railroads within this topic, except to say there is a difference.

We also note that in the first two subsections of section 39-10-43, the term "railroad" is used in connection with a train or approaching train which would indicate that the term "railroad" without modification means something different than a street-railway.

It is, therefore, our opinion that the term "street-railway" as used in subsection 3 means railways such as were used for streetcars, trolleys, etc., within the municipalities, which may run parallel to streets or transverses them but does not include the railroads on which trains operate across county from one city to another. It is our further opinion that the vehicles required to stop at railroads, as set out in subsection 1 of section 39-10-43 are not required to stop at the street-railway.

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