S T A T E O F T E N N E S S E E
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Opinion No. 03-039

Railroad Grade Crossings: Obedience to Signal Indicating Approach of Train

QUESTIONS

1. What is the usage and effect of the word "and" currently inserted between subdivisions (3) and (4) in Tenn. Code Ann. § 55-8-145(a)?

2. If the word "and" is removed by legislation, and not replaced with any other word, what would be the effect?

3. If the word "and" is removed by legislation, should it be replaced with the word "or"?

OPINIONS

1. To give effect to legislative intent, a court would likely interpret the use and effect of the word "and," currently inserted between subdivisions (3) and (4) in Tenn. Code Ann. § 55-8-145(a), as a disjunctive, that is, the equivalent of the word "or."

2. Deletion of the word "and" would not change the meaning of the statute.

3. Replacing the word "and" with the word "or" also would not change the meaning of the statute but would make it more precise.

ANALYSIS

Tenn. Code Ann. § 55-8-145 reads in pertinent part as follows:

> (a) Whenever any person driving a vehicle approaches a railroad grade crossing **under any of the circumstances stated in this section**, the driver of such vehicle shall stop within fifty feet (50') but not less than fifteen feet (15') from the nearest rail of such railroad, and shall not proceed until that driver can do so safely. The foregoing requirements shall apply when:
>
> (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

> (2) A crossing gate is lowered or when a human flagger gives or continues to give a signal of the approach or passage of a railroad train;
>
> (3) A railroad train approaching within approximately one thousand five hundred feet (1,500') of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard; and
>
> (4) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(Emphasis added).

In your letter, you point out that this section, as originally enacted, did not have the conjunction "and" between subdivisions (3) and (4). In the 1980 replacement volume of the Tennessee Code, an "and" appeared between subdivisions (3) and (4).

The statutory language highlighted in the quote above leads us to conclude that, in this instance, the word "and" should be read as "or." Common sense tells us that the enumerated list describes four different situations, any one of which could create the danger this statute aims to prevent. *See In re Frosty Morn Meats, Inc.*, 7 B.R. 988 (D. Tenn. 1980) (A statute should be enforced according to its plain meaning.). The use of the word "and," however, usually is interpreted as a conjunctive. *State v. Stewart*, 33 S.W.3d 785, 792 (Tenn. 2000). In this instance, interpreting "and" as a conjunctive would mean that a person would not violate the law unless all four situations occurred simultaneously. Such an interpretation does not jibe with the introductory statutory language.

To make sense of a statute, the word "and" and the word "or" may be interchangeable. *Stewart*, 33 S.W.3d at 792. Thus, in Tenn. Code Ann. § 55-8-145, the word "and" may be read as "or" to achieve legislative intent. Doing so would give the statute its plain meaning, that is, that each numbered paragraph is a separate situation requiring a vehicle to stop, and all situations need not be present to invoke this rule.

Thus, it is this office's opinion that a court would likely interpret the word "and" as meaning "or" in Tenn. Code Ann. § 55-8-145. If the General Assembly deleted the word "and" or replaced "and" with "or," the effect would be the same.

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