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JOHN K. VAN DE KAMP  
Attorney General

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OPINION	:	No. 86-504
	:	
of	:	<u>AUGUST 19, 1986</u>
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JOHN K. VAN DE KAMP	:	
Attorney General	:	
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RODNEY O. LILYQUIST	:	
Deputy Attorney General	:	
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THE HONORABLE REBECCA Q. MORGAN, MEMBER, CALIFORNIA SENATE, has requested an opinion on the following question:

May a city adopt an ordinance prohibiting the sounding of train whistles at street crossings within the city?

CONCLUSION

A city may not adopt an ordinance prohibiting the sounding of train whistles at street crossings within the city.

## ANALYSIS

Public Utilities Code section 7604<sup>1</sup> provides:

"(a) A bell, of at least 20 pounds weight or of equivalent sound-producing capability, shall be placed on each locomotive engine, and shall be rung at a distance of at least 1,320 feet from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed the street, road, or highway; or a steam whistle, air siren, or an air whistle shall be attached, and be sounded at the like distance, and be kept sounding at intervals until it has crossed the street, road, or highway, except as follows:

"(1) *Notwithstanding Section 7678, in a city, the ringing of the bell or the sounding of the steam whistle, air siren, or air whistle shall be at the discretion of the operator of the locomotive engine.*

"(2) When a locomotive engine is engaged in a switching operation or comes to a stop at any point within a distance of 1,320 feet from the place at which the railroad crosses any street, road, or highway, it shall not be necessary that the bell be rung or the whistle, air siren, or air whistle be sounded, until the time and from the place that the locomotive begins an uninterrupted movement to and across the place at which the railroad crosses the street, road, or highway.

"(b) Any railroad corporation violating this section shall be subject to a penalty of one hundred dollars (\$100) for every violation. The penalty may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the state. The corporation is also liable for all damages sustained by any person, when the provisions of this section are not complied with." (Emphasis added.)<sup>2</sup>

The question presented for analysis is whether the language of section 7604 prevents a city from adopting an ordinance prohibiting the sounding of train whistles at street crossings

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<sup>1</sup> All unidentified section references hereafter are to the Public Utilities Code.

<sup>2</sup> Section 7678 states:

"Every person in charge of a locomotive-engine who, before crossing any traveled public way, omits to cause a bell to ring or steam whistle, air siren, or air whistle to sound at the distance of at least 80 rods from the crossing, and up to it, is guilty of a misdemeanor."

within the city. We conclude that a city would not have authority under the Constitution to adopt such an ordinance.

Every California city possesses the general power to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7; see Gov. Code, § 37100; *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290; *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885; *Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 704.)

Under this constitutional provision, however, "[l]ocal legislation in conflict with general law is void." (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484; see *Galvan v. Superior Court* (1969) 70 Cal.2d 851, 856.) A conflict may arise in a number of ways, including where the local ordinance contradicts general law. (*Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807-808; *In re Mingo* (1923) 190 Cal. 769, 773; *Ex parte Daniels* (1920) 183 Cal. 636, 642-645.) For example, "[a] conflict may exist between general law and ordinance if the ordinance prohibits conduct that is expressly authorized by state law. [Citations.]" (*People v. Orozco* (1968) 266 Cal.App.2d 507, 511.)

The state law under consideration here is section 7604 read in conjunction with section 7678. Section 7678 makes it a crime for the operator of a train to omit "to cause a bell to ring or steam whistle, air siren, or air whistle to sound" before crossing any traveled public way. This mandatory duty is also contained in the general provisions of section 7604. An exception, however, is provided in the latter section: "Notwithstanding Section 7678, in a city, the ringing of the bell or the sounding of the steam whistle, air siren or air whistle shall be at the discretion of the operator of the locomotive engine."

This exception language of section 7604 was added in 1981. (Stats. 1981, ch. 761, § 1.) Prior thereto, the statute read:

"A bell, of at least 20 pounds weight, shall be placed on each locomotive engine, and shall be rung at a distance of at least 80 rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed the street, road, or highway; or a steam whistle, air siren, or an air whistle shall be attached, and be sounded, *except in cities*, at the like distance, and be kept sounding at intervals until it has crossed the street, road, or highway; provided, that when a locomotive engine is engaged in a switching operation or comes to a stop at any point within a distance of 30 rods from the place at which the railroad crosses any street, road, or highway, it shall not be necessary that the bell be rung or the whistle, air siren, or air whistle be sounded, until such time and from such place as the

locomotive begins an uninterrupted movement to and across the place at which the railroad crosses the street, road, or highway. Any railroad corporation violating this section shall be subject to a penalty of one hundred dollars (\$100) for every violation. The penalty may be recovered in an action prosecuted by the district attorney of the proper county, for the use of the State. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, train, or cars, when the provisions of this section are not complied with." (Stats. 1953, ch. 75, § 1, emphasis added.)

The legislative purpose of the 1981 amendment may be amply demonstrated by quoting from various committee reports and analyses of the proposed legislation:

1. "It is understood that this bill was prompted by a City of Los Angeles ordinance which prohibits sounding of a whistle at specified crossings. The Railroad Association feels that, due to the liability issue, the engineer should make the judgment about when to sound the whistle at grade crossings." (Ways & Means Com. Staff Analysis of Assem. Bill No. 848 (1981 Reg. Sess.).)

2. "Some cities have been considering bans on the sounding of locomotive whistles. The purpose of this bill is to make sure that the engineer always has the option to use the whistle if needed." (Sen. Com. on Energy & Public Utilities Analysis of Assem. Bill No. 848 (1981 Reg. Sess.).)

3. "Proponents state that this bill is needed to make sure that the engineer always has the option to use the whistle if needed." (Sen. Dem. Caucus Com. Analysis of Assem. Bill No. 848 (1981 Reg. Sess.).)

4. "An analysis prepared by the Senate Committee on Energy and Public Utilities states that local governments have been considering ordinances to ban the sounding of locomotive bells, whistles and sirens within city limits. AB 848 will preserve the ability to use these devices on a discretionary basis." (Enrolled Bill Rep., Assem. Bill No. 848, Sept. 17, 1981.)<sup>3</sup>

Both the legislative purpose of the 1981 amendment and the current language of section 7604 are clear. The statute authorizes the use of discretion by a train engineer

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<sup>3</sup> Committee reports may be used to determine legislative intent. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 863; *People v. Superior Court (Douglass)* (1979) 24 Cal.3d 428, 434.)

in cities. Such discretion would be eliminated if sounding the whistle were also prohibited by local ordinance. We believe that a local ordinance would be void under the general provisions of the Constitution, article XI, section 7, if it attempted to control the discretion given to train engineers by statutory law.<sup>4</sup>

We must also examine, however, the special powers given by the Constitution to charter cities: "City charters adopted pursuant to this Constitution . . . with respect to municipal affairs shall supersede all laws inconsistent therewith." (Cal. Const., art. XI, § 5.) Under a "home rule" charter provision, local ordinances of a charter city control over general state law with respect to "municipal affairs." (*Fisher v. City of Berkeley, supra*, 37 Cal.3d 644, 704; *Baggett v. Gates* (1982) 32 Cal.3d 128, 135-136; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 135; *City of Santa Clara v. Von Raesfeld* (1970) 3 Cal.3d 239, 245; *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61.)

While "[t]he determination of what constitutes a strict municipal affair is often a difficult question" (*San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 957), the courts look to the provisions of the conflicting state statute to see if it addresses a matter of "statewide concern" (*Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 294). If so, the state law is controlling regardless of the charter provision. (*City of Santa Clara v. Van Raesfeld, supra*, 3 Cal.3d 239, 245-246; *Bishop v. City of San Jose, supra*, 1 Cal.3d 56, 61; *Bruce v. City of Alameda* (1985) 166 Cal.App.3d 18, 21; *Ferrini v. City of San Luis Obispo* (1983) 150 Cal.App.3d 239, 246.) If any doubt exists as to whether the subject is strictly a municipal affair or more properly constitutes a matter of statewide concern, the doubt "must be resolved in favor of the legislative authority of the state." (*City of Los Angeles v. Department of Health* (1976) 63 Cal.App.3d 473, 480.)

Examining the purpose of the state legislation, we find that sections 7604 and 7678 were enacted to protect public safety. Persons in automobiles or otherwise traveling on streets and highways of the state are warned by the whistle or bell of the approach of a train, thereby avoiding any collision. (See *Johnson v. Southern Pacific R. R. Co.* (1905) 147 Cal. 624, 629.)

Public safety on the streets and highways of the state, as well as with respect to the operation of trains within the state, cannot be characterized as being merely a

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<sup>4</sup> The local ordinance could not be saved by adding an authorization for the engineer to sound the whistle in an emergency. Such additional language would be preempted by section 7604 either by contradicting it or duplicating it. (See *Cohen v. Board of Supervisors, supra*, 40 Cal.3d 277, 292; *Lancaster v. Municipal Court, supra*, 6 Cal.3d 805, 807-808; *Abbott v. City of Los Angeles* (1960) 53 Cal.2d 674, 682.)

municipal affair. It is a matter of statewide interest and concern which the Legislature has addressed in sections 7604 and 7678. (See Veh. Code, § 21; *Pipoly v. Benson* (1942) 20 Cal.2d 366, 369; *Civic Center Assn. v. Railroad Comm.* (1917) 175 Cal. 441, 444-451; *CEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 321; Sato, "*Municipal Affairs*" in *California* (1972) 60 Cal.L.Rev. 1055, 1076-1077, 1094-1097.) Accordingly, a city ordinance prohibiting the sounding of train whistles at street crossings would not come within the municipal affairs constitutional authorization.

We therefore conclude that section 7604 preempts a city from adopting an ordinance prohibiting the sounding of train whistles at street crossings within the city.

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