

ROBERT T. OPAL

Attorney At Law
205 Orchard Lane
Glen Ellyn, Illinois 60137
(630) 403-2150
RobertTOpal@aol.com

232727

Via E-Filing

August 13, 2012

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
August 13, 2012
Part of
Public Record

RE: Finance Docket No. 35459, V&S Railway, LLC – Petition for Declaratory Order --
Railroad Operations in Hutchinson, KS

Dear Ms. Brown:

This letter will serve as the response of the Association of Railway Museums, Inc. and the Tourist Railway Association, Inc. (collectively "ARM/TRAIN") to the July 24, 2012 Petition filed by V&S Railway ("VSR") seeking reconsideration of the Board decision served July 12, 2012 in this proceeding.

Our response is limited to VSR's claim that the July 12 decision "misrepresents how the concerns of ARM/TRAIN have been alleviated" (Petition, pp. 9-10). Essentially, V&S argues that ARM/TRAIN's concerns were actually alleviated by V&S' February 7, 2011 Reply (in which V&S retreated from its original position that private rail operations "can only be" conducted over private track). V&S claims that ARM/TRAIN themselves acknowledged this in their March 9, 2011 letter Reply.

The Board's decision is correct. As the decision states (footnote 17), ARM/TRAIN intervened in this case because of V&S original argument that "private rail operations [can only be] conducted over private track." ARM/TRAIN's Petition to Intervene pointed out that V&S' argument was not supported by ICC/STB precedent and, if accepted by the Board, could adversely affect operations of many ARM/TRAIN members (ARM/TRAIN January 18, 2011 Petition to Intervene pp. 1-2).

V&S then changed its original position in its February 7, 2011 Reply to assert that only "nonconsensual" private operations were prohibited. In response, ARM/TRAIN's March 9 Reply stated that, in view of V&S' revised position, "there appears to be no reason for ARM/TRAIN to submit additional argument as to this issue." (V&S Petition at 9). While V&S' revised position was a positive development, ARM/TRAIN never stated or intimated that it "alleviated" ARM/TRAIN's concerns. Only a Board decision could do that. Nothing in the ARM/TRAIN Reply suggests that ARM/TRAIN no longer wanted the Board to decide this issue, or that they were withdrawing from the proceeding. It was the Board's disavowal of V&S' characterization of

the Devans Recycling Center holding which actually resolved ARM/TRAIN's concerns, as the Board correctly states in its July 12 decision.

Very truly yours

A handwritten signature in blue ink, appearing to read 'R. Opal', with a long horizontal flourish extending to the right.

Robert T. Opal
Attorney for:
Association of Railway Museums, Inc.
Tourist Railway Association, Inc.

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon the following:

Fritz R. Kahn, Esq.
Fritz R. Kahn, P.C.
1920 N. Street, NW (8th Floor)
Washington DC 20036
xiccg@verizon.net
(via E-Mail)

Edward J. Fishman, Esq.
K&L Gates LLP
1601 K Street NW
Washington, DC 20006-1600
Ed.Fishman@klgates.com
(via E-Mail)

Terry Malone, Esq.
Martin, Pringle, Oliver, Wallace & Bauer LLP
100 N. Broadway, Suite 500
Wichita, KS 67202
timalone@martinpringle.com
(via E-Mail)

Kristy D. Clark, Esq.
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Ft. Worth, TX 76161-2828
Kristy.Clark@bnsf.com
(via E-Mail)

Dated at Glen Ellyn, Illinois this 13th day of August, 2012


Robert T. Opal