

Decision No. 19113.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of the  
CITY OF MARYSVILLE, a Municipal  
Corporation, that the Railroad Com-  
mission of the State of California  
require the alteration of a railroad  
crossing over and across "B" Street,  
in the City of Marysville, County of  
Yuba, State of California.

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Application No. 14,132.

W. P. Rich, for Applicant.

F. W. Mielke, for Southern Pacific  
Company.

BY THE COMMISSION:

O P I N I O N

The City of Marysville filed the above entitled application on October 8, 1927, wherein it asks that this Commission direct the alteration of the existing crossing of "B" Street under the tracks of the Southern Pacific Company in such a manner as to make said crossing safe for pedestrian traffic. A public hearing was held in this matter before Examiner Satterwhite in the City of Marysville on November 18, 1927.

The City of Marysville is situated near the junction of the Yuba River with the Feather River, the Yuba River being located south and east of the business section and the Feather River west and north. Flood levees are located along both banks of these rivers.

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The tracks of the Southern Pacific Company cross both these rivers passing over the flood levees. Originally, these tracks descended toward the center of Marysville at steep grades until approximately level with the city streets. In order to somewhat reduce these grades, the railroad, in the early part of 1910, applied to and was granted permission by the City of Marysville to raise its tracks within certain limits, subject to certain provisions, one of which required that the railroad build and maintain, across "B" Street, a subway having a clear width of thirty (30) feet and a clear height of fifteen (15) feet.

The Railroad Company began the construction of a subway which, however, did not conform with the above provision and which the City of Marysville refused to accept. Construction consequently was stopped, the subway abandoned and the City agreed to allow the construction of the present subway, which consists of two roadways approximately fifteen feet in width instead of a single roadway thirty feet in width, as originally required. No facilities were provided for pedestrian traffic other than the two vehicular roadways above described.

It is now proposed to construct a pedestrian subway independent of the present vehicular subway and east thereof.

Testimony was presented by applicant, showing the amount of and growth in the traffic using the existing subway, particularly in regard to pedestrian traffic. These witnesses testified that the traffic had grown to such a density that the use of the vehicular roadways by pedestrians was extremely hazardous and that a pedestrian subway was necessary and that, upon the completion of a high school now being constructed north of the Southern Pacific tracks, the necessity for such subway would be greatly increased. The Southern Pacific Company stipulated that public convenience and necessity required the construction of the proposed subway.

The representative of the City of Marysville stated that agreement had been reached with the Southern Pacific Company as to the construction of the pedestrian subway. It was agreed that the subway should be constructed in accordance with the plans attached to the application, that the actual construction should be undertaken by the Southern Pacific Company and that the approximate cost would be \$18,000. However, agreement was not reached as to the division of this cost.

The City of Marysville contends that the railway tracks were raised for the sole convenience of the Southern Pacific Company; that the manner in which such tracks are elevated above the city streets forms a barrier between two portions of the city; that this condition, and not the density of traffic along the streets, determines the necessity for the many subways; that the Southern Pacific Company maintains an embankment on a portion of "B" Street for its own convenience and that only thirty feet of the fifty-six foot roadway is open through the subway under the railroad tracks; that said subway originally was designed and constructed by the Southern Pacific Company at the sole cost of said company with no provision for pedestrian traffic and must now be enlarged in order to properly provide for same. Due to these circumstances, the City of Marysville contends that the proposed pedestrian subway should be built at the sole cost of the Southern Pacific Company.

The Southern Pacific Company contends that the pedestrian subway is now required solely to care for foot traffic that will be created upon the completion of the high school; that the City of Marysville is in the position of a "new comer" and consequently should be assessed with 75% of the cost and the Southern Pacific Company with 25%.

The testimony in this matter shows the contention of the Southern Pacific Company not to be a fact. The Southern Pacific Company's tracks were built after "B" Street was established and in use by the City of Marysville. These tracks were subsequently raised, in order to improve railway operating conditions, thereby necessitating the construction of a number of subways, one of which is the existing subway at "B" Street.

It is the opinion of the Commission that it is not essentially the relief from the hazard of crossing railroad tracks at grade which necessitates the construction of the pedestrian subway proposed in this application but rather the fact that, due to the creation of an artificial barrier by the railroad for its sole benefit, the pedestrian traffic, in order to accomplish a crossing, must either use the vehicular roadways of the present subway, which all parties admit would be unduly hazardous, or be subjected to unreasonable inconvenience and attending hazards in being compelled to climb over said barrier.

The City's contention that the railroad company should be assessed the entire cost does not appear to be justified from the record herein. The City will receive substantial benefits from having a pedestrian crossing not at grade, especially in view of the fact that a new High School is about to be opened in this vicinity. It should, therefore, bear a portion of the cost of this improvement.

After due consideration, it is concluded that the cost of constructing this subway, amounting to approximately \$18,000., should be assessed 25% to applicant and 75% to the Southern Pacific Company.

#### O R D E R

The City of Marysville, having filed the above entitled application, a public hearing having been held, the Commission being apprised of the facts and the matter being submitted and ready for decision, therefore,

IT IS HEREBY ORDERED that permission and authority be and it is hereby granted to the City of Marysville to

enlarge the existing crossing of "B" Street under the tracks of the Southern Pacific Company by the construction of a pedestrian subway east of the existing vehicular subway, as shown by plans attached to this application, said pedestrian subway to be constructed subject to the following conditions:

(1) The entire cost of constructing the subway shall be borne 25% by applicant and 75% by the Southern Pacific Company. The maintenance of the subway shall be borne by applicant. No portion of the cost herein assessed to applicant for the construction or maintenance of said subway shall be assessed by applicant, in any manner whatsoever, to the operative property of Southern Pacific Company.

(2) Said subway shall be constructed in accordance with the detailed plans filed with the application and shall be properly lighted at night.

(3) Applicant shall, within thirty days thereafter, notify this Commission, in writing, of the completion of the installation of said subway.

(4) If said subway shall not have been installed within one year from the date of this Order, the authorization herein granted shall then lapse and become void unless further time is granted by subsequent Order.

(5) The Commission reserves the right to make such further orders relative to the construction and maintenance

of said subway as to it may seem right and proper if, in its judgment, public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 10<sup>th</sup> day of ~~November~~ <sup>December</sup>, 1927.

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*C. Seaver*  
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*Wm. S. Hewitt*  
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*M. J. Curran*  
Commissioners.  
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