

Decision No. 21648

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BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Application of LEONARD C. ELVER,
for an order for the construction
of a farm or private crossing over
the Southern Pacific Company's
line at a point about one-half mile
west of Moorpark, Ventura County,
California.

Application No. 15567

F. B. Mc Connell, for Applicant.
E. W. Hobbs, for Southern Pacific Company, Protestant.

BY THE COMMISSION -

O P I N I O N

Leonard C. Elver has petitioned the Railroad Commission for an order pursuant to Section 485a of the Civil Code, authorizing the construction of a private crossing, at grade, across the track of Southern Pacific Company, at a point approximately 1450 feet west of Moorpark Avenue in the town of Moorpark, Ventura County, California.

A public hearing on this application was conducted by Examiner Handford at Moorepark on August 7, 1929; the matter was submitted upon the filing of briefs, and is now ready for decision.

Applicant is the owner of a tract of land, containing about 6 acres, which is located about one-fourth mile west of Moorpark and immediately north of Southern Pacific Company's right of way. All the land adjoining applicant's property, except the railroad property is either privately owned or high school property. Immediately south of the Southern Pacific Company's right of way and parallel thereto is constructed a paved county highway, known as Poindexter Avenue. Applicant's property is therefore separated from the county highway by Southern Pacific Company's 100-ft. right of way.

Moorpark Avenue, a paved county highway extending in a north and south direction, is located approximately 1000 feet east of applicant's property. Between applicant's property and Moorpark Avenue, on the north side of the railroad company's right of way, the land is owned by various interests.

Applicant testified that he had means of ingress and egress to his land from Moorpark Avenue via a road through the high school grounds, but he had never obtained permission to use the road and same was dangerous due to its steepness, very irregular alignment, and the fact that it was utilized as a portion of the playground for high school students. He further testified that from Moorpark Avenue, a road was constructed parallel to the railroad company's north right of way line which road passed through the southerly portion of his land but was not a county road; that he had not obtained permission to use same and furthermore, the road was in poor condition and impassable 60 to 90 days during the winter months. Applicant contended that at any time he could be prohibited from using either of these roads so it was his desire to have a private crossing over the Southern Pacific Company's track in order to give him ingress and egress from his land to Poindexter Avenue.

The railroad involved is Southern Pacific Company's single track main line between San Francisco and Los Angeles which carries an average traffic in excess of twenty-four trains daily, many of which operate at a speed of fifty miles per hour at this location.

The top of rails of Southern Pacific Company's track is approximately three feet higher than the pavement on Poindexter Avenue at the location of the proposed crossing, consequently a six percent approach grade would be required from the south. The corner views are clear in all directions, except the northwest corner view which is somewhat obstructed by walnut trees.

The cost of constructing that portion of the crossing between lines two feet outside of the rails has been estimated to be between \$200. and \$300. which does not include gates or other protection.

Applicant stated that if gates were constructed across the crossing in all probability they would not remain closed and further stated that if the Commission required that gates be constructed across the crossing, which were to be kept closed at all times except when the crossing was in use, he would not desire the crossing. It is the usual practice to require that gates be constructed at a private crossing in order to prevent the general public from using same and furthermore such gates should be kept closed at all times, except when the crossing was being used.

Southern Pacific Company's witness testified that the deeds for the various parcels of property lying immediately north of the railroad company's right of way between the east property line of applicant's land and Moorpark Avenue were checked and it developed that the deed for each parcel contained a property reservation forty feet in width to be used for road purposes. It appears that applicant was not aware of this situation and that the road constructed parallel to the railroad company's north right of way line was provided for by easements in the various deeds. It is apparent that applicant has a reasonable, legal means of ingress and egress to his property from Moorpark Avenue and he could not be prohibited from utilizing such means.

Southern Pacific Company protested the granting of this application on the ground that the Commission is without jurisdiction; that there is no law in California providing that private property can be taken by private interests for private use; and that Sec.485a, Civil Code, is unconstitutional.

Section 485a of the Civil Code, in our opinion, clearly sets forth the Commission's jurisdiction relative to the establishment of farm or private crossings over railroads.

From the record in this case, it appears that applicant has a permissive right to pass over the high school grounds from Moorpark Avenue to his property; that he has an easement right over the land north of the railroad company's property between Moorpark Avenue and his property; and that the route provided for by such easement is reasonably convenient and a much safer means of ingress and egress to his land than the proposed private crossing would afford.

O R D E R

A public hearing having been held on the above entitled application, the matter having been duly submitted following the filing of briefs, the Commission being now fully apprised of the facts, and of the opinion that the application should be denied,

IT IS HEREBY ORDERED that this application be and the same is hereby denied.

Dated at San Francisco, California, this 4th day of October, 1929.

Thomas D. Lewis
Ed. Seaver
Ernest C. Cook
Leon Whitely
M. H. Mum
COMMISSIONERS.