

Decision No. 21878

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation on the Commission's own motion into installation, maintenance, protection and operation of crossing of the railroad tracks of Southern Pacific Company with State Highway near southern limits of City of San Mateo, and to determine necessity for separation of grades.

Case No. 2757.

Mr. C. C. Carleton, General Counsel, for Department of Public Works, and Mr. Harry A. Encell, Attorney, for State Highway Commission.

Mr. L. N. Bradshaw and Mr. A. S. Hutchinson, for Western Pacific California Railroad Company.

Mr. Fred Pabst and Mr. W. J. Richardson, for Motor Car Dealers Association of San Francisco.

Mr. W. H. Taylor, for Peninsula Industrial Conference of San Mateo County.

Mr. C. W. Durbrow, for Southern Pacific Company.

DECOTO, COMMISSIONER:

O P I N I O N

The Department of Public Works of the State of California, through its Director, raised the question as to whether or not this Commission could afford the Department any relief in connection with a controversy which had arisen between it and Southern Pacific Company, in connection with the construction of a new State Highway (Bay Shore) over a disconnected spur track built by Southern Pacific Company near the southerly limits of the City of San Mateo. Thereupon, the Commission, on its own

motion, instituted an investigation into the installation, maintenance, protection and operation of said crossing. Hearings were held at San Francisco on October 18th and 29th, at which time both parties agreed to submit to the Commission, for determination, the question as to how the projected crossing between the railroad and highway should be effected and apportion the cost of the same.

The Bay Shore Highway is being constructed for the purpose of providing, in advance of development, a thoroughfare which can be maintained as a permanent high-speed artery to ultimately connect the City of San Francisco with San Jose by a route along the westerly shore of San Francisco Bay, which is, in general, at some distance from the built-up section of the peninsula. With the intense development of this territory, the need of this artery will be far greater than at present and it has been located so as to avoid the delays incident to travel over El Camino Real, the present state highway. If this purpose is to be accomplished, there must be a minimum of obstructions by the cities en route and by other agencies.

The highway has been constructed and is now open to travel between San Francisco and Fifth Avenue, in the City of San Mateo. Beyond Fifth Avenue, the proposed route follows a dedicated public street for a short distance and then continues across private property, known as the Emma Rose Estate. The State, at the present time, owns no right-of-way across the Emma Rose property but, on April 16th of this year, filed a condemnation suit against Emma Rose and Southern Pacific Company. It has declared its intention to construct the highway southerly from Fifth Avenue to Palo Alto during the next year.

Southern Pacific Company has, for some time, carried on negotiations with the Emma Rose Estate for the construction of a spur track into the property to be developed for industrial purposes. On March 18th, 1929, a fifty-foot right-of-way for a spur track, connecting with the main line of Southern Pacific Company near its Leslie Station, was deeded to Southern Pacific Company and immediately Southern Pacific Company laid approximately 1400 feet of skeleton track on this right-of-way, a portion of this construction being across the proposed routes of both the Bay Shore Highway and the Western Pacific California Railroad Company, a subsidiary of The Western Pacific Railroad Company. This skeleton track does not connect with any track of Southern Pacific Company and, at its nearest point, is 2200 feet distant from the nearest operative track. The ties on which the rails are spiked are widely spaced; no ballast has been applied and the entire construction is such as to be incapable of being subject to railroad operation even if it were physically connected to operative trackage.

The Commission cannot recognize a mere intention of the State or other political body, to acquire a right-of-way and construct a public thoroughfare, as constituting a public road such as referred to in Section 43 of the Public Utilities Act, nor, on the other hand, can it consider a few connected rails and ties, which are incapable of being operated over as a railroad, as being the track of a railroad referred to in that section. In the present case, however, a full and complete record as to the necessity, hazards, terms of installation and manner of crossing, has been developed and, since both parties have submitted the matter to this Commission for decision, it appears appropriate that the Commission finally determine the crossing.

matter at this time, particularly since it is apparent that both the highway and spur track will be constructed in the near future.

While the evidence in this case shows that for some time to come the switching operations over the railroad would not seriously interfere with the full use of the new highway, yet, if the purpose of the state in the construction of this highway is to be realized, the greatest caution should be used in permitting the establishment of any obstacle to the flow of traffic.

From the record in this proceeding, it is apparent that a grade separation is physically feasible and can be constructed at a cost ranging between \$75,000. and \$115,000., depending on the type of structure used. The most feasible manner appears to be to carry the railroad track over the highway and depressing slightly the grade of the highway.

It is my opinion that this crossing should be constructed at separated grades in the above manner but the details as to the type of structure and the fixing of the grades should be worked out between the parties or, if the parties fail to agree, the Commission can then decide as to these details. In fixing the grade lines, attention should be given to the crossing of the spur with the proposed track of the Western Pacific California Railroad Company.

If the area proposed to be developed as an industrial area does reach the full development of which it is capable, the cost of a separation of grades will be very nominal when compared to the revenue derived from freight or the increased value it will give the land to be served. On the other hand, the moving factor in this grade separation is the greater convenience and safety for the automobile using public.

After carefully considering the record in this proceeding, it seems to me that the cost of constructing said separation should be equally divided between the Department of Public Works of the State of California and Southern Pacific Company.

The following form of order is accordingly recommended:

O R D E R

The Commission having instituted an investigation on its own motion in the above entitled matter, hearings having been held and both the Department of Public Works of the State of California and Southern Pacific Company having submitted the matter to the Commission for determination as to the manner of constructing the crossing and apportionment of the cost;

IT IS HEREBY ORDERED that if and when the Department of Public Works of the State of California and Southern Pacific Company, or either of them, desire to construct the crossing of a State Highway and a spur track, in the vicinity of Engineer's Station 725, as shown on Sheet 6 of Exhibit No. 1, entitled "Plan and Profile of Proposed State Highway in San Mateo County," filed in this proceeding, said crossing shall be constructed subject to the following conditions and not otherwise:

(1) Said crossing shall be constructed at separated grades and said separation of grades shall be effected by constructing the railroad track above the State Highway.

(2) Said crossing shall be constructed with clearances conforming to the provisions of General Order No. 26-C.

(3) Before undertaking the construction of said crossing, a complete set of plans of the grade separation construction, together with profiles of the highway and the railroad, shall be submitted to the Commission, to be subject to its approval.

(4) The cost of effecting said separation of grades, including the approaches on the railroad and any excavation which may be necessary in connection with the change in grade of the highway, shall be borne fifty (50) per cent by Southern Pacific Company and fifty (50) per cent by the Department of Public Works of the State of California.

(5) Within sixty (60) days from the date of this order, said Southern Pacific Company shall notify this Commission as to whether or not it intends to construct said crossing.

(6) If said separation is effected Southern Pacific Company shall, within thirty (30) days after the construction thereof notify this Commission, in writing, of the completion of this work.

(7) If said crossing shall not have been installed within two (2) years from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(8) The Commission reserves the right to make such further orders, relative to the location, construction, operation, maintenance and protection of said crossing, as to it may seem right and proper and to revoke its permission if, in its judgment, the public

convenience and necessity demand such action.

The effective date of this order shall be twenty (20) days from and after the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7<sup>th</sup> day of December, 1929.

Wm. S. Lott

C. C. Kearsy

Edmund Wood

Leon O'Whitely

W. J. G. Coon

Commissioners.