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Decision No. 23558.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
the City of Palo Alto for an Order
of the Railroad Commission of the
State of California to widen Califor-
nia Avenue across the Right of Way
and Tracks of the Southern Pacific
Company.

ORIGINAL

Application No. 16880.

Norman E. Malcolm and Leon T. David,
for Applicant.

H. W. Hobbs, for Southern Pacific
Company.

BY THE COMMISSION:

O P I N I O N

The City of Palo Alto, a municipal corporation, has petitioned the Railroad Commission for an order granting authority to widen and improve the crossing of California Avenue across the tracks of Southern Pacific Company in that city.

A public hearing on this application was conducted by Examiner Handford at Palo Alto, the matter was duly submitted on the filing of briefs and is now ready for decision.

California Avenue crosses the main line tracks of Southern Pacific Company immediately north of the Mayfield station of that company. The street affords a connection between the residence district in the southeastern portion of the City of Palo Alto and the State Highway to the west of the tracks. Eventually, this street will provide an important connection between two State

Highways, i.e., Route No. 2 (Peninsular Highway) and Route No. 68 (Bayshore Highway). The crossing now carries the traffic of approximately 1,000 vehicles per day.

The City of Palo Alto recently, under street widening proceedings, has widened California Avenue from the State Highway to the westerly right of way line of the railroad from its former width of 60 feet between property lines to a width of 90 feet. In connection with this work, it has installed new curbs and increased the paved width of the street from 36 to 66 feet. This improvement now ends at the westerly right of way line and the crossing over the track consists of the old paving, approximately 36 feet in width. The evidence shows that the original proceedings, under the Matoon Act, covering the improvement of California Avenue, proposed to include the 100-foot right of way of Southern Pacific Company in the assessment district but, apparently based upon what was thought to be a verbal agreement between the city and the company the resolution was modified by the city to exclude the railroad right of way. The city and the railroad company, however, are in dispute as to the terms of the verbal agreement under which this change was made, it being claimed by the city that the railroad company agreed that if its operative property adjacent to California Avenue was not included within the district to be assessed in this street widening improvement, it would, at its own expense, widen and pave the street across its property. On the other hand, the railroad company, through its witness, who discussed this matter with the city engineer, testified that the company's proposal was not to oppose the granting of an application, if filed with the Commission by the city, seeking authority to widen the California Avenue crossing, providing the city would not include the company's operative property within the assessment district.

In its present condition, the crossing, with a paved 66-foot roadway leading up to the railroad right of way on each side and abruptly reduced to the width of but 36 feet across the tracks, presents a hazard to vehicles using the street, particularly at night, and it is the opinion of the Commission that public convenience and necessity require that the crossing be widened; therefore, the request of the city for such permission should be granted.

It appears that the railroad company is agreeable to bearing the cost of re-building the crossing in the track area to its present dedicated width. By track area, is meant a section along the tracks between lines two feet outside the rail. The company claims that no easement for crossing at this point has ever been granted to the public and the right of the city is simply the right of user and is limited to the present traveled width of the crossing, which is approximately 36 feet. On the other hand, the city takes the position that Southern Pacific Company should pay for the entire cost of the full width of the crossing within its right of way.

In the case of widening an existing crossing, it has been the policy of the Commission to assess the cost of such an improvement, within the limits of the railroad right of way, on the following basis; the railroad to pay the cost of constructing and maintaining the entire crossing, including the new portion, between lines two (2) feet outside of the outside rails and the political subdivision the remainder. In cases, however, where agreements are entered into between the officials of a political subdivision and a railroad, consideration is always given to such an agreement and if it appears that the parties have arrived at a reasonable conclusion, as

to how the expense of construction and maintenance of the crossing should be borne, even though it does not follow the above rule exactly, the Commission does not disturb such an agreement.

In reviewing the record in this proceeding, it develops that the agreement referred to, covering the question as to what portion of the cost of this crossing should be borne by the railroad, consisted of verbal conversations between the City Engineer of Palo Alto, on the one hand, and an Assistant Division Engineer for Southern Pacific Company, on the other. There is nothing in the record to show that any written agreement was ever entered into by the parties; in fact, in this case, even the terms and conditions of the verbal agreement referred to are disputed by each side as to the understanding reached.

After carefully considering the record, it appears that the proper course for the Commission to pursue in this case, in the absence of evidence, such as a written agreement, to establish the terms of a disputed verbal agreement, is to follow its usual practice in apportioning the expense of constructing and maintaining this crossing, to the effect that the railroad should bear the expense of constructing and maintaining that portion of the crossing lying between lines two (2) feet outside the outside rails, for the entire crossing, and the city the remainder of the crossing within the right of way.

With respect to acquiring the necessary property from the railroad to permit of the widening of this crossing, as proposed by the city, it should be pointed out that the Commission's function is merely to authorize the additional width of crossing required but it is not its duty to order the railroad company to grant an easement or convey its property for such purpose free of cost to the city.

The cost of providing adequate protection is a separate issue. The railroad company at present maintains one wigwag for the protection of this crossing and even though the crossing were not widened, it is quite probable that within the near future the Commission would require it to install additional protection to the extent of providing an additional wigwag and second-train indicators. It appears proper that this work should now be done in connection with this street improvement, as the wider paving will add to the necessity for two signals and with the improvement, there undoubtedly will be a material increase in vehicular traffic over this crossing. The cost of this additional protection should be assessed to Southern Pacific Company.

O R D E R

A public hearing in the above entitled matter having been held, the matter having been duly submitted upon the filing of briefs, and the Commission being now fully advised,

IT IS HEREBY ORDERED that the City Council of the City of Palo Alto, County of Santa Clara, State of California, is hereby authorized to construct a crossing at California Avenue at grade across the tracks of Southern Pacific Company to a width of ninety (90) feet between the property lines, as shown by the maps attached to the application, subject to the following conditions and not otherwise:

- (1) The above crossing shall be identified as Crossing No. E-31.6.
- (2) The entire expense of construction and all future maintenance of the crossing, outside of lines two (2) feet outside of the outside rails of each track, shall be borne by applicant. The cost of constructing and thereafter maintaining the crossing between lines two (2) feet outside of the outside rails of each track shall be borne by Southern Pacific Company.

- (3) The crossing shall be constructed of a width to conform with the map attached to the application, shall be constructed equal or superior to the type shown as Standard No. 3, in our General Order No. 72, and shall in every way be made suitable for the passage thereover of vehicles and other road traffic.
- (4) Two Standard No. 3 wigwags, as specified in General Order No. 75 of this Commission, equipped with second-train indicators, shall be installed and maintained, at the sole expense of Southern Pacific Company for the protection of said crossing.
- (5) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing and of its compliance with the conditions hereof.
- (6) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof unless further time is granted by subsequent order.
- (7) 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, public convenience and necessity demand such action.

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

Dated at San Francisco, California, this 31st day of March, 1931.

C. J. Sawyer
Leon C. Caldwell
W. H. Kim
M. B. Harris

Commissioners.