

Decision No. _____.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of
the CITY OF ALBANY for an order
directing the widening of Main Street
in the City of Albany at the point
where said Main Street crosses the
right-of-way of The Atchison, Topeka
and Santa Fe Railway Company.
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ORIGINAL

Application No. 1740.

Decision No. 2678

Leon A. Clark, for applicant

M. W. Reed, for The Atchison, Topeka and
Santa Fe Railway Company.

DEVLIN, Commissioner,

O P I N I O N.

This application was filed with the Commission on June 23, 1915, and a public hearing was held on August 3, 1915. The issue involved in this application is in regard to the terms upon which the Santa Fe shall grant to the City of Albany a strip 20 feet wide across its 40-foot right-of-way for the purpose of widening an existing crossing. Some question was raised at the hearing as to the Commission's jurisdiction, in cases of this sort where an alteration is to be made in an existing crossing, and although I am far from being satisfied that there is any merit in the contentions of counsel for the Santa Fe in this regard, it will not be necessary to consider the matter at this time since it was stipulated by both parties that they would abide by the Commission's decision. The railway company will, in other words, grant an easement for the ground necessary for widening the crossing upon such terms as the Commission prescribes and the city will accept an easement so drawn up.

Main Street runs east and west through the city of Albany and is the principal street of the city. It is 80 feet wide throughout its length except at the crossing of the Santa Fe

right-of-way where the right-of-way projects southward 20 feet into the street. The city has for some time sought to acquire this strip so that this street could be widened at this point to the full 80 feet to make it correspond with the rest of the street, but the two parties at interest have been unable to come to an agreement. The city objected to some phrases in the tentative deed offered to it by the railway company and the railway company on its part has taken the ground that if it granted the necessary easement it should not be called upon to pay any of the cost of installing or improving the crossing.

There appears to be no reason why the applicant should not be granted permission to widen the existing crossing 20 feet, and the only question now to be considered is in regard to the matter of expense. To my mind the situation here, as far as the cost of the crossing is concerned, is exactly analogous to that existing when a railroad company deeds property for a new crossing. For reasons which have been so often stated in the Commission's previous orders that it is not necessary to reiterate them here, it has been customary, unless unusual conditions obtain, to require the applicant to stand all expense connected with the opening of the crossing it has applied for, and I see no reason why this should not be done in this case. The crossing has been graded over the rails on the right-of-way of the Santa Fe and the expense connected with fixing the crossing so it can be used will be trifling. At some future time the sidewalks will be extended across the track; and possibly the curb will be built to the track and the gutter under the track, and if and when this is done the expense should be considered as part of the cost of the original crossing. For reasons connected with the safety of train operation whatever work is done between the rails should be carried on by the railway company even though the expense is being borne by the city.

I believe the terms upon which the crossing should be installed, as I have outlined them, are fair and equitable and I recommend the following form of order:-

O R D E R.

CITY OF ALBANY, having applied to the Commission for permission to widen the existing crossing at Main Street over The Atchison, Topeka and Santa Fe Railway from sixty (60) to eighty (80) feet, and a public hearing having been held, and there appearing to be no reason why this permission should not be granted, and it appearing to be fair and equitable that the expense of this work should be borne by the City of Albany; that the maintenance of this crossing hereafter should be borne partly by the city and partly by the railway company,

IT IS HEREBY ORDERED, that the city of Albany be and the same hereby is given permission to widen the existing crossing of Main Street with the track of The Atchison, Topeka and Santa Fe Railway Company from a width of sixty (60) feet to a width of eighty (80) feet, subject to the following conditions, viz.:-

(1) The entire expense of constructing the crossing in good and first-class condition for the safe and convenient use of the public shall be borne by applicant.

(2) The expense of maintaining the crossing thereafter in good and first-class condition shall be borne by applicant to within two (2) feet of the rails of The Atchison, Topeka and Santa Fe Railway Company.

(3) The expense of maintaining the crossing thereafter between the rails and to a distance of two (2) feet outside thereof shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

(4) 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 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 17th day of August, 1915.

Max Thelen

Max Gordon

Frank R. Deben

Commissioners.