

Decision No. ✓

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application of
SOUTHERN PACIFIC COMPANY for permis-
sion to Construct, Maintain and Oper-
ate at grade Railroad Crossings in
the City of San Jose and the County
of Santa Clara.

Application No. 1966.

Decisão n.º 2421

BY THE COMMISSION:

OPINION ON APPLICATION FOR
REHEARING.

On June 9, 1916, the City of San Jose filed an application for rehearing in this proceeding. In this application the City urges two points: first, that the Commission acted without and in excess of its jurisdiction in providing that as a condition to the authority granted Southern Pacific Company to construct its tracks across West Santa Clara Street in said City the Commission provided that certain expenses should be borne by the City of San Jose; and, second, that the Commission acted without and in excess of its jurisdiction in not requiring as a condition to the authority granted Southern Pacific Company to cross certain specified streets in the City of San Jose, that the Company should obtain from the City a franchise to cross such streets.

We believe that there is no merit in either of these contentions. With reference to the first contention, it should be noted that the order of the Commission authorizing

the construction of the crossing at West Santa Clara Street or The Alameda, and prescribing the terms upon which the separation of the grades shall be made and the proportions in which the expense of the separation of the grades shall be divided, is in strict compliance with the jurisdiction of the Railroad Commission with reference to such matters as defined in Section 43(b) of the Public Utilities Act, giving to the Commission power with reference to the separation of grades at crossings to prescribe "the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the state, county, municipality or other public authority in interest."

With reference to the second contention, if, in order to obtain the right to cross the streets in question in the City of San Jose, the Southern Pacific Company must obtain a franchise from the municipality the order of the Commission does not assume to, and, of course cannot in any way, change that requirement. In other words, the order of the Commission does not assume to state all of the conditions which must be complied with in order that the Company shall have the right to cross the streets in the City of San Jose. If a franchise is necessary--upon which question we do not here pass--such a franchise must be obtained; but there is no requirement in the Public Utilities Act that the Commission's order authorizing

the construction of a crossing under Section 43(b) of the Public Utilities Act must require as a condition to the Commission's authority the obtaining of a proper franchise from the municipality. The latter question is one between the municipality and the Company.

ORDER DENYING APPLICATION FOR REHEARING.

CITY OF SAN JOSE having, on June 9, 1916, filed with this Commission an application for rehearing in this proceeding, and the Commission being of the opinion that there is no merit in said application,--

IT IS HEREBY ORDERED that said application for rehearing be, and the same is hereby, denied.

Dated at San Francisco, California, this 14th day of June, 1916.

Max Thelen
W. H. [unclear]
Alex Gordon
Edwin C. Edgerton
Commissioners.