

Decision No. 7372

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

HOWARD BLACK,

Complainant,

-vs-

BOARD OF TRUSTEES OF THE  
CITY OF BURLINGAME,

Defendant.

Case No. 1396.

Louis E. Auberry, for Complainant,  
J. F. Davis, City Attorney, for  
City of Burlingame.

BY THE COMMISSION:

O P I N I O N

The complaint herein is in the nature of a petition for an injunction by the Commission to prevent the City of Burlingame from moving the depot belonging to the Southern Pacific Company from its present site to a location which complainant alleges to be seriously objectionable from the point of view of public convenience and safety. The complaint is directed against the City of Burlingame, the railroad company not being made a party to the case.

A public hearing was regularly held in the City of Burlingame on January 5, 1920.

In view of the final disposition of this case by dismissal for want of jurisdiction, it is unnecessary to

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discuss the matters of fact presented at the hearing.

It must be recognized that the Public Utilities Act does not confer upon the Railroad Commission the broad powers of injunction possessed by a court of equity. Therefore, even though it be assumed that the moving of the depot to the proposed location would affect certain street crossings, as alleged in the complaint, and thus present a situation over which this Commission would have jurisdiction under section 43(b) of the Public Utilities Act, it must be recognized that no action has <sup>now</sup> been taken in violation of the Act. The Commission does not have jurisdiction to enjoin threatened violations of the Public Utilities Act.

It is not to be assumed from what has been stated that the Commission would not have jurisdiction over the ultimate questions concerning the installation, operation and maintenance of grade crossings, and of the location and maintenance of proper depot facilities by the railroad company. These questions, however, can only be dealt with in a proceeding wherein the railroad affected is a party.

It is therefore recommended that prior to any further action by the parties effecting any change in grade crossings or depot facilities, the entire matter be presented in a proceeding to which both the city and the railroad company affected are made parties.

#### ORDER

It appearing from the complaint herein that the Railroad Commission has no jurisdiction to grant the injunctive relief therein prayed for, and that none of the acts complained of are matters over which the Commission has jurisdiction,--

IT IS HEREBY ORDERED that the complaint herein be,  
and the same is hereby dismissed.

Dated at San Francisco, California, this 5<sup>th</sup> day of  
April, 1920.

Edwin O. Edgerton  
H. J. Loveland  
Frank P. Dalm  
H. H. Brundige  
Irving Martin  
Commissioners.