

Decision No. 38716

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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**ORIGINAL**

In the Matter of the Investigation )  
on the Commission's own motion into )  
the propriety of closing up those )  
portions of certain streets or )  
public ways lying within the rights )  
of way of Southern Pacific Company )  
in the Cities of San Mateo, San Carlos )  
and Redwood City. )

Case No. 4092

Albert Mansfield, City Attorney of Redwood City  
and San Carlos for Councilmen of those cities,  
Respondents.

Ernest A. Wilson, City Attorney of San Mateo, for  
Councilmen of San Mateo, Respondents.

H. W. Hobbs, for Southern Pacific Company, Respondent.

J. C. Nowell, for the Grade Crossing Committee of  
the State Chamber of Commerce.

John O'Donnell, for Burleigh C. Murray and Burleigh  
H. Murray, Property Owners.

Wayne R. Millington, for Thomas Tuyte, J. P. and  
Helen Cullen and C. Locker, Property Owners in  
Redwood City.

WHITSELL, Commissioner:

O P I N I O N

An investigation into the propriety of maintaining the  
railroad crossings involved in this proceeding was first undertaken  
by this Commission pursuant to a complaint filed by Peninsula Grade  
Crossing Conference, a civic organization. Pursuant to this com-  
plaint an investigation was conducted as to grade crossing con-  
ditions on the double track line of Southern Pacific Company be-

tween the northerly limits of San Mateo and the southerly limits of Redwood City, in San Mateo County, a distance of some 9.3 miles. A discussion of the evidence taken in the course of this proceeding is contained in this Commission's decision (The Peninsula Grade Crossing Conference v. S. P. Co., 39 C.R.C. 417) which will not be repeated here.

Of the thirty grade crossings now existing within the area above mentioned, five have been the subject of inquiry in this proceeding. On November 25, 1935 this Commission, on its own motion, made an order instituting an investigation into the propriety of closing the following crossings:

Crossing No. E-20.8	Thirty-ninth Ave.,	San Mateo
Crossing No. E-21.1	Mills Ave.,	San Mateo
Crossing No. E-22.9	Hull Crossing	San Carlos
Crossing No. E-24.5	Eaton Road	San Carlos
Crossing No. E-25.9	Beech Street	Redwood City

On the same date the Commission made its order directing the members of the Legislative bodies of the various communities within which these crossings are located to show cause why they should not be required to close those portions of the various streets lying within the limits of these crossings.

Motions to dismiss have been made by the various respondents, contending that the closing of streets within the limits of municipal corporations is a municipal affair, in which the legislative body of the municipality has the sole discretion and that it is a matter lying beyond the jurisdiction of this Commission. Civic Center Ass'n. v. Railroad Commission, 175 Cal. 441; Los Angeles v. Central Trust Co., 173 Cal. 323. We are not impressed with this contention. As amended in 1933 (Stats. 1933, ch. 855), subdivision (b) of Section 43 of the Public Utilities Act, provides in part as follows:

"The commission shall have the exclusive power \* \* \* to alter, relocate or abolish by physical closing any such crossing heretofore or hereafter established, \* \* \*." (Emphasis supplied.)

Under the constitution and laws of this state the Commission is empowered to abolish grade crossings by physical closing and has the further power to require municipalities to proceed in accordance with the laws of the state to close any portion of a public street lying within a grade crossing. S. H. Chase Lumber Co. v. Railroad Commission, 212 Cal. 691.

The motions to dismiss on the ground of lack of jurisdiction will be denied.

Turning to a consideration of the matter on the merits, it is apparent from the unhappy record of fatal accidents that grade crossing conditions in the area under consideration are not ideal. We are of the opinion that these conditions can be greatly improved by concentrating traffic at the minimum number of crossings consistent with public convenience and providing adequate protection at the crossings to be used.

A "fact-finding committee," composed of representatives of the Peninsula Grade Crossing Conference, State Chamber of Commerce, Southern Pacific Company, San Mateo County Planning Commission, Redwood City, San Mateo, Belmont, San Carlos, and the Engineering Department of the Railroad Commission, made a comprehensive and thorough survey of crossing conditions in the area and presented a written report which was made a part of the record. This report indicates that one-half of the thirty existing crossings carry 90 per cent of the traffic crossing the tracks.

In the case of two of the crossings here under consideration (Crossing No. E-21.1, Mills Ave., San Mateo; Crossing No. E-22.9,

Hull Crossing, San Carlos), the evidence does not warrant a finding that they are at present public streets or public crossings. It is clear that these areas have never been formally dedicated by the owners as public streets or ways. This Commission has never authorized their opening as public crossings. The evidence as to the public user, we deem insufficient to create a public crossing without the consent of the Commission.

These two crossings will, therefore, be treated as private crossings and an appropriate order made directing Southern Pacific Company to close them to the public. Our action in directing that these crossings be closed to the public shall not, however, be construed in derogation of any right of access which may <sup>have</sup> heretofore been created either by contract or deed.

As to the other three crossings the limited use made by them by the public indicates that public convenience does not require their continuance.

Traffic counts were made by the "fact-finding committee" and in some instances independent counts were made by the cities. These counts show the following traffic movements:

<u>Crossing</u>	(1) <u>Vehicles in Twelve Hours</u>	
	<u>Committee Count</u>	<u>City Count</u>
Thirty-ninth Ave.	23	-
Eaton Road	37	59
Beech Street	57	109

It is clear that the use made of these crossings does not warrant the continuance of the hazard which they represent to the public safety, and that public convenience and necessity require that they be closed.

(1) For purpose of comparison it may be noted that the traffic count at several of the more commonly used crossings was as follows:

<u>Crossing</u>	<u>Vehicles in Twelve Hours</u>
Broadway, Redwood City	5,871
Broadway, Burlingame	3,133
Third Avenue	2,404
Grand Avenue	2,464
North Lane	1,950

O R D E R

Public hearings having been had in the above entitled matter, the Commission being fully advised and said matter having been duly submitted and now ready for decision, IT IS HEREBY ORDERED

1. That Southern Pacific Company forthwith, by the installation and maintenance of suitable gates or other structures, physically close to public use those two certain areas heretofore designated by the Commission, pursuant to its General Order 75A as:

Crossing No. E-21.1 Mills Ave., San Mateo  
Crossing No. E-22.9 Hull Crossing, San Carlos

Provided, however, that nothing in this order shall be deemed to preclude Southern Pacific Company from permitting the use of such crossings by such persons and to such an extent as may be necessary to enable the Southern Pacific Company to fulfill any obligation heretofore assumed by, or imposed upon it, either by way of covenant or condition, nor shall anything in this order be deemed to relieve Southern Pacific Company of any such obligation.

2. That Southern Pacific Company forthwith, by the installation and maintenance of suitable physical structures, and/or any change of the existing grade, physically close to public use those three certain areas heretofore designated by the Commission, pursuant to its General Order 75A as:

Crossing No. E-20.8 Thirty-ninth Ave., San Mateo  
Crossing No. E-24.5 Eaton Road San Carlos  
Crossing No. E-25.9 Beech Street Redwood City

3. That Asa E. Hull, J. B. Bryan, F. Lyon, Merritt Hosmer, and John E. Cowgill, as and constituting the Council of the City of San Carlos take all acts and do all things necessary or required under the laws of the State of California to close up and divest of its character as a public street all that portion of that certain street or public way known as Eaton Road in the City of San Carlos, County of San Mateo, State of California, more particularly described as follows, to-wit:

BEGINNING at a point on the northeasterly line of El Camino Real 215.60 feet southeasterly from the intersection of said line with the southeasterly line of St. Francis Way extended northeasterly as said streets are shown on map of White Oaks Track, Subdivision 4, as recorded May 28, 1926, in Volume 14 of Maps, pages 1, 2 and 3, San Mateo County Records; thence continuing southeasterly along said northeasterly line of El Camino Real 35.000 feet to a point; thence northeasterly, deflecting  $90^{\circ} 00'$  to the left from preceding course 120.000 feet to a point; thence northwesterly, deflecting  $90^{\circ} 00'$  to the left from preceding course 35.000 feet to a point; thence southwesterly, deflecting  $90^{\circ} 00'$  to the left from preceding course 120.000 feet to point of beginning, containing an area of 4200 square feet, more or less.

4. That F. P. Simmen, Charles K. Cheney, Justin Fitzgerald, E. G. Stern, and Edward Keller, as and constituting the Council of the City of San Mateo take all acts and do all things necessary or required under the laws of the State of California to close up and divest of its character as a public street all that portion of that certain street or public way known as Thirty-ninth Avenue, in the City of San Mateo, County of San Mateo, State of California, more particularly described as follows, to-wit:

BEGINNING at the most northerly corner of Block 31 as shown on Map of the Subdivisions of Laurel Creek Farm and recorded May 6, 1889 in Volume 1 of Maps, page 69, San Mateo County Records; thence southwesterly along the northwesterly line of said Block 31 15.864 feet to a point, said point being on the southwesterly right of way line of Southern Pacific Railroad Company; thence northwesterly, deflecting  $71^{\circ}-00'$  to the right from preceding course 52.881 feet to a point; thence northeasterly, deflecting  $109^{\circ}-00'$  to the right from preceding course 111.050 feet to a point; thence southeasterly, deflecting  $71^{\circ}-00'$  to the right from preceding course 52.881 feet to a point; thence southwesterly, deflecting  $109^{\circ}-00'$  to the right from preceding course 95.186 feet to a point of beginning, containing an area of 5553 square feet, more or less.

5. That C. G. Lambert, L. C. Christensen, J. M. Eva, E. A. Fletcher, Robert N. Jones, Paul A. McCarthy, and G. W. McNulty, as and constituting the Council of the City of Redwood City take all acts and do all things necessary or required under the laws of

the State of California to close up and divest of its character as a public street all that portion of that certain street or public way known as Beech Street in the City of Redwood City, County of San Mateo, State of California, more particularly described as follows, to-wit:

BEGINNING at a point on the northwesterly line of Beech Street distant thereon 236.998 feet southwesterly from the most easterly corner of Block 74 as shown on Map of Eastern Addition to Redwood City as recorded November 3, 1862 in Volume 2, page 85, Miscellaneous Records, San Mateo County; thence continuing southwesterly along said Northwesterly line of Beech Street 62.325 feet to a point, said point being on the southwesterly right of way line of Southern Pacific Railroad Company; thence southeasterly, deflecting  $80^{\circ}-40'$  to the left from preceding course 60.805 feet to a point on the Southeasterly line of Beech Street; thence northeasterly, deflecting  $99^{\circ}-20'$  to the left from preceding course along said southeasterly line of Beech Street 62.325 feet to a point; thence northwesterly, deflecting  $80^{\circ}-40'$  to the left from the preceding course 60.805 feet to the point of beginning, containing an area of 3740 square feet, more or less.

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 13<sup>th</sup> day of April 1936.

M B Harris  
Leon Culbertson  
W J Lewis  
Robert J. ...  
Frank ...  
Commissioners