

Decision No. 30560

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CITY OF OAKLAND, a municipal corporation, for an order of the Railroad Commission fixing the crossing at grade across the tracks of the SOUTHERN PACIFIC COMPANY and The ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY at the intersection of 28th and Campbell Streets in the City of Oakland, County of Alameda, State of California.

APP. NO.  
21414

ORIGINAL

Homer W. Buckley, Assistant City Attorney,  
for Applicant.  
H. W. Hobbs, for Southern Pacific Company.

BY THE COMMISSION:

O P I N I O N

Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway Company operate a joint drill track in Oakland which leads from a track on 26th Street, runs along Campbell Street to and crossing 28th Street, proceeds along Ettie Street, and ends at 32nd Street. This proceeding involves the crossing of 28th Street by said drill track.

By the present application the City of Oakland requests an order "fixing the crossing of said spur track \* \* \* across 28th Street at grade" and requiring the carriers to pay construction and maintenance expenses on that portion of the crossing which lies between lines two feet outside of the rails.

Ex parte Decision No. 30280 considered and treated the application as one seeking authority to construct a new crossing, authorized applicant City to construct 28th Street at grade across the track, and provided that the carriers should prepare the track to receive pavement and bear maintenance cost between lines two feet outside of rails, while applicant City should bear all other construction and maintenance costs.

Upon the filing of a "petition for rehearing" by the City of Oakland, the proceeding was reopened for the purpose of determining whether the ex parte decision should be rescinded, altered or amended in any particular, and public hearing was had before Examiner Hall at Oakland on December 10, 1937. After reconsideration of this matter and of the conditions under which the carriers were originally authorized to construct this crossing, it appears that the present application should not have been considered as an application to create a new crossing, but is in fact an application for an order fixing the type of pavement, the protection to be provided, as well as the assessing of cost thereof in accordance with an earlier order which prescribed the conditions under which the carriers should be permitted to construct such crossing.

In 1926 the two carriers applied for authority to construct the drill track at grade across 26th, Campbell, 28th and Ettie Streets, having received a revocable franchise or permit (Resolution No. 35215 N.S.) granted by the Oakland City Council pursuant to sections 51(55) and 149 of the Charter of the City of Oakland. The purpose of the proposed track was to provide rail service to certain industries, it appearing that it was not feasible at that time to construct a grade separation, and that no crossing protection was then deemed necessary. (Application No. 12639).

By Decision No. 16324 (March 29, 1926), the carriers were authorized to construct the track across the four streets mentioned, subject to the following condition, among others:

- "(1) The entire expense of constructing the crossings together with the cost of their maintenance thereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicants."

In authorizing new crossings it is customary to prescribe the type of pavement, and also to specify the protective devices which should be installed. However, in 1926 the four streets, although

dedicated streets, had not yet been paved, and the carriers constructed the track on ballast without any filling between the rails, which mode of construction is known as "open track." The 1926 order did not specify the type of pavement construction nor require any protective device, but provided that the order was made on condition that the four streets were not then actually open to travel at the particular points of crossing and that the order should not be deemed as authorization for such opening (condition 6); and also specifically reserved the right to make further orders relative to the location, construction, operation, maintenance, use and protection of the crossings (condition 7).

Returning to the present application, the City has now improved and paved 28th Street from Ettie Street to Cypress Street (except that portion of the street occupied by the rails), to provide a connection with the new state highway approach (along Cypress Street) to the San Francisco-Oakland Bay Bridge. We are now called upon to prescribe the appropriate type of pavement to be installed "for the safe and convenient use of the public" (Condition 1 of Decision No. 16324), as well as the protective devices for this particular crossing.

### O R D E R

The Commission having reconsidered the above reopened proceeding, and good cause appearing, .

IT IS ORDERED as follows:

1. Ex Parte Decision No. 30280 is hereby rescinded.
2. The type of pavement to be installed at the crossing at grade of Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company's joint drill track across 28th Street at the intersection of 28th Street and Campbell Street in the City of Oakland shall be equal or superior to Standard No. 2 as set forth in General Order No. 72. Construction and maintenance costs thereof

between lines two feet outside of outside rails shall be borne by Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company.

3. Maintenance cost outside of lines two feet outside of outside rails shall be borne by the City of Oakland.

4. Said crossing shall be protected by two Standard No. 1 crossing signs, as set forth in General Order No. 75-A, construction and maintenance costs of said signs to be borne by Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company.

This order shall become effective on the twentieth day after the date hereof.

Dated at San Francisco, California, this 31<sup>st</sup> day of

January, 1938.

Walter H. ...  
Frank ...  
Commissioners