

Decision No. 32754

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the CITY)
OF LIVINGSTON, a municipal corporation, for) Application
permission authorizing the opening of a street) No. 22909
crossing over a railroad.)

HUGH E. GRISWOLD, City Attorney, for the City of Livingston
R. S. MYERS, Attorney, for Southern Pacific Company
FRANK B. DURKEE, for the Department of Public Works

BY THE COMMISSION:

O P I N I O N

On August 9, 1939, the City of Livingston filed the above-numbered application seeking authority to construct and open to traffic a highway crossing at grade over the railroad tracks of the Southern Pacific Company at mile post B-136.0, located in the City of Livingston, County of Merced. Public hearing was held in Livingston on October 6, 1939, before Examiner Jenkins, and the matter submitted on that date.

Running generally in a northwesterly-southeasterly direction the main line railroad track of Southern Pacific Company's San Joaquin Valley route passes through the City of Livingston dividing that city into two parts commonly referred to as "north of the tracks" and "south of the tracks." According to the evidence the population of Livingston was established by the United States census of 1930 at 803 persons, and the estimated present-day population is 1,100.

Located south of the tracks are the main business and residential areas, together with schools, police department, city fire department, and other public buildings. Except for about two

blocks of business houses fronting on and paralleling the railroad tracks, the area north of the tracks is residential in character and sparsely settled.

The geographic characteristics of the City of Livingston as regards its relationship to the Southern Pacific railroad are typical of the many San Joaquin Valley cities that have developed around central agricultural shipping points and with the passage of years spread out on both sides of the track, and in that the city is divided by the main highway which generally runs parallel and adjacent to the railroad.

During recent years a statewide program has been in progress toward the end of eliminating particularly hazardous crossings at grade of principal highways. As a result of that program numerous underpasses and elevated highway crossings have been constructed in the San Joaquin Valley, entailing large expenditures of state and federal funds, in an attempt to reduce the toll of death and accidents at dangerous crossings and to expedite the freer flow of highway and railroad traffic. Generally, construction of separated grade structures has been contingent upon eliminating the original crossing at grade, and the expenditure of federal grade crossing funds in the construction of such structures requires compliance with the proviso of Section 5 of the Rules and Regulations relative to the expenditure of Federal Aid Grade Crossing Funds as provided by the Act of June 16, 1936.

In its application the City of Livingston alleged that in the interest of public convenience and necessity the aforementioned crossing should be constructed, said crossing being specifically necessary for public safety, and that without said crossing adequate policing, fire protection, and emergency medical

care are hindered in those instances involving movement between the two sections of the city. It was further alleged that existing crossing facilities are insufficient to meet the needs of the community, particularly at such times when long freight trains are side-tracked for passing or other purposes within the city limits. It was pointed out that due to the physical characteristics of the city, as described above, wherein the vital functions of city government and medical aid were located south of the tracks, such standing trains interfered with the normal activities of such agencies, and further, that on certain occasions in the movement of farm equipment from one side of the tracks to the other, material damage is done to the street surface along the main automobile routes over the existing crossings.

At the present time there are two street crossings at grade over the railroad track, one at Third Street and the other at "C" Street, Third Street being the main north and south thoroughfare through the business section of the city. The "C" Street crossing is located approximately 1750 feet south of the Third Street crossing. Formerly U.S. Highway No. 99, connecting San Francisco and northern points with Los Angeles and the southern part of state, passed through the City of Livingston paralleling and immediately adjacent to, and on the north side of, the railroad tracks, making a crossing at grade at a point approximately 1,100 feet north of Third Street. In addition to providing a crossing for through main highway traffic, that crossing was also used by local traffic. In order to eliminate the hazardous crossing at grade a subway structure was constructed a short distance north thereof, and the main highway through the city relocated about one block north of its former location. Upon the opening to traffic of the subway on February 21, 1939, the old crossing was closed and barricaded, under authority granted by this

Commission on application of the Department of Public Works of the State of California,⁽¹⁾ said application having been filed in accordance with the provisions of the Federal Aid Grade Crossing Fund Act above referred to. In an agreement dated December 4, 1937, entered into between Central Pacific Railway Company, Southern Pacific Company, and the State of California through its Department of Public Works, providing for construction of the subway, Section 20 on page 6 thereof referred to the closing of the old crossing as follows:

"20. When said subway is completed and opened to traffic State shall forthwith legally close and abandon, or cause to be closed and abandoned, for highway purposes, and for public use, except for railroad purposes, that portion of that certain railroad right-of-way, 100 feet wide, lying equally on each side of the located center line of the main track of the Central Pacific Railway Company through Section 26, Township 6 South, Range 11 East, M.D.B. & M., and situated within the corporate limits of the Town of Livingston, County of Merced, State of California,***"

In connection with the application of the State of California, Department of Public Works, to close crossing No. E-136.0 above referred to, which was filed September 14, 1937, the file in this matter shows no communication from the City of Livingston until February 24, 1939, when a letter was received protesting permanent closing of the crossing without public hearing. It should be pointed out that this Commission, in its Decision No. 30246, dated October 18, 1937, authorized the closing and abandonment of said crossing approximately one year and four months prior to the protest received from the City of Livingston under Application No. 21463. In the instant application the City of Livingston requests authority to reopen the crossing, in answer to which both the Southern Pacific Company and the State of California, through its Department of Public Works, protested.

At the hearing, counsel for Southern Pacific Company petitioned for dismissal of the application, said motion being concurred in by the State Department of Public Works. In so far as

(1) Application No. 21463, Decision No. 30246, dated October 18, 1937.

the motion to dismiss is concerned, it appears that this application to all intents and purposes is for the opening of a crossing at grade of a city street over a railroad track, and the fact that the location of said proposed crossing is identical with the former crossing does not provide sufficient grounds for dismissal. If the proposed crossing were removed a sufficient distance to clear the old crossing, then there would be no question as to the right of applicant to be heard. Therefore the motion to dismiss should be denied.

In the light of the intent of the national program of eliminating hazardous grade crossings by the expenditure of large sums of money for constructing grade separations, and the action taken in this specific instance involving the railroad, the Department of Public Works of the State of California, the federal government, and the Railroad Commission of the State of California, supported by the absence of evidence of record indicating the existence of a sufficiently greater need today for crossing No. B-136.0 than existed at the time closing of said crossing was authorized by this Commission, it appears that authority for its reopening should be denied, and the following Order will so provide.

O R D E R

A public hearing having been held and the matter having been submitted,

IT IS HEREBY ORDERED that the motion of protestants for dismissal be denied and that the request for authorization to construct a crossing at grade, as described in the foregoing Opinion,

be denied.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at ~~San Francisco~~ ^{Los Angeles}, California, this 23rd day of January, 1940.

Ray L. Alley
Frank H. Hume
Ray W. Washfield

Justus J. Grewer

Commissioners