

Investigation on the Commission's own
 motion to establish a list of grade
 crossings of railroads and city, county,
 or city and county highways urgently
 in need of improved protection, and to
 determine the nature of needed improved
 protection at such crossings.

Case No. 5495

(See Appendix B for appearances)

O P I N I O N

The 1953 Legislature appropriated \$500,000 for allocation by the Commission to assist local agencies in paying their shares of the cost of constructing protection at grade crossings of railroads and city or county highways. (1) No allocation shall exceed half of the local agency's share of the cost of such work. The statute does not permit allocations in connection with crossings involving state highways, nor for grade separation projects.

(1) Statutes 1953, ch. 1739, reads as follows:

"An act making an appropriation for allocations to counties and cities for the construction of grade protections.

The people of the State of California do enact as follows:

SECTION 1. The sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, is hereby appropriated from the State Highway Fund to the Public Utilities Commission, without regard to fiscal years. The commission shall allocate and expend such money, together with any other sums which may hereafter be appropriated for the purposes specified herein, to cities, counties, and cities and counties, on the basis of need as determined by the commission, to assist them in paying their shares of the cost of constructing grade crossing protection works on city, county, and city and county streets, roads, and highways. In no event, however, shall the commission allocate or expend to any city, county, or city and county a sum exceeding one-half of its share of the cost of such work.

SEC. 2. At the time the commission makes each allocation under this act, it shall certify such to the State Controller. The commission shall present claims for reimbursement of the State's share of the cost of construction of projects under such allocations to the State Controller for payment. The State Controller shall make such audit as he deems necessary, before or after disbursement, for the purpose of determining that the money allocated has been expended for the purposes and under the conditions authorized under this act."

The appropriation statute became effective on September 9, 1953. The present investigation was instituted on September 15, 1953. Hearings were held before Commissioner Scoggins and Examiner Daly at Los Angeles on October 28, 1953, and at San Francisco on November 4, 1953. In essence; the purpose of this proceeding is to ascertain how best to proceed in carrying out the will of the Legislature in allocating the funds it has made available for grade crossing protection. The representatives of numerous local agencies, the railroads, the various railroad brotherhoods, and other interested parties have displayed great interest in this investigation and have contributed much detailed information which will be of substantial assistance to the Commission and its staff in the administration of the statute.

The order of investigation indicated the possibility of establishing a list of crossings urgently in need of improved protection and of determining the nature of needed protection at such crossings. An exhibit introduced by the staff contains a list of 96 crossings in need of additional protection, showing the existing and recommended protection at each listed crossing. The list was presented as an illustrative and not as an exclusive or "priority" list. The staff recognized there are other crossings which may be equally worthy of inclusion in such list. The exhibit contains general information concerning the 12,000 grade crossings in the State, and sets forth the recently experienced range and average costs of certain types of protective devices.

(2) "The costs of installing flashing lights or automatic gates vary considerably from one crossing to another. The factors that affect these costs are the number of main and side tracks, variation in train speeds, amount of switching movements, and proximity to railroad stations where trains might stop. These items determine the complexity of control circuits and, in turn, the cost of installation.

The range and average costs are:

Flashing Lights:	from \$3,000 to \$14,000	Average	\$ 6,000
Automatic Gates:	from \$9,000 to \$25,000	Average	\$16,000"

(Ex. 2, p. 7.)

The staff did not recommend the establishment of a "priority" or "eligible" list of crossings in advance of requests for allocations from the fund. It expressed doubt that a satisfactory state-wide priority formula could be developed, and was supported in this view by the testimony of local agency engineers. In the opinion of the engineer who presented the report of the Los Angeles County Grade Crossing Committee it is practically impossible to work out a priority formula which would give reasonable results when applied to the large number of crossings within the State. He took the position, however, that it would be practical for local agencies to attempt to develop a priority list for a given community or area. According to one engineer for a local agency, a definite state-wide priority list based on formula would not be appropriate because of the need for the exercise of judgment in regard to many changing factors. Argument was also made that attempts to develop a state-wide priority list would lead to unreasonable delay in the construction of needed safety improvements.

The record preponderantly demonstrates the impracticality of prescribing in advance a "priority" or "eligible" list. It is believed the public interest would be better served by establishing a procedure for the handling of requests for allocations from the fund, thus affording all local agencies the opportunity to bring to the attention of the Commission those crossings which they believe merit an allocation.

The statute provides that the money appropriated shall be allocated to local agencies "* * * on the basis of need as determined by the Commission * * *." Representatives of local agencies were apprehensive of a suggestion that requests for allocation contain a statement showing the local agency's need for financial assistance. It was urged that allocation not be based upon financial need, nor upon the basis of a "pauper clause." So to do, as expressed by one city

official, would be unsound and unfair because, although every local agency has legal authority to raise money, financial need exists in each agency. Moreover, it was suggested that allocation on the basis of financial need could give special assistance to those agencies which have refused to face the problem of crossing protection, and penalize communities which are making serious effort to solve the problem. The local agencies contend that the appropriation statute is based upon an equitable principle of mutual interest by the State, the railroads, and the local governmental agencies, and was intended to assist in solving a problem of state-wide concern without consideration of possible financial distress on the part of local agencies.

If a showing of financial need is required, it would be necessary for the Commission to make a detailed examination of the financial affairs of each applicant agency, including the agency's financial structure, assessed valuation for tax purposes, tax rates, availability of other sources of revenue, charter limitations, and like matters. We do not believe the Legislature, by adoption of the appropriation statute, intended to confer upon the Commission the additional power and duty of passing upon the financial needs of local agencies. Nor do we believe it was the legislative intent to require a showing of financial need or pauperism by a local agency in order to qualify for an allocation from the fund.

The form of requests for allocation, hereinafter set forth, will not require a statement of applicant's financial need for assistance. However, such requests should show the amounts of money expended by the local agency for crossing protection during a past three-year period, as well as the amount budgeted or otherwise available for such purpose during the fiscal year in which the request is made.

Before a local agency requests an allocation from the crossing protection fund it is believed there should be some assurance that the proposed protective devices will be installed. Such assurance may be

obtained by the local agency and the railroad agreeing on the type of protection to be installed and the division of the cost of such installation. If they are not in agreement, the local agency may file a formal complaint, or the railroad may file a formal application, requesting the Commission to direct or authorize the installation of appropriate protective devices and apportion the cost thereof between the parties.

There may be situations where conditions at particular crossings are so hazardous to the public as to require additional protection, but neither the local agency nor the railroad appear willing to take steps to provide such protection. In such a case the Commission may institute a formal investigation on its own motion. Such a proceeding may result in a decision directing the installation of specified protective devices and apportioning the costs thereof between the local agency and the railroad. (3)

When assurance exists that the work will be performed, and a local agency desires an allocation from the crossing protection fund, the local agency may submit to the Commission a verified request for an allocation, setting forth such information and accompanied by such exhibits as are specified in the form of request attached as Appendix A to this decision.

Upon the filing of a request for allocation, the Commission's technical staff shall make such informal investigation as may be appropriate. Should the Commission approve the request in whole or in part, any allocation shall be made by the adoption of an appropriate resolution. Copies of each allocation resolution shall be sent to the

(3) It should be noted that any apportionment of costs in such formal proceedings (complaint, application, or investigation) under the Public Utilities Act is in terms of percentages of costs, rather than dollars. However, in the allocation of funds under the 1953 appropriation statute, any such allocation must be for a specific maximum amount of dollars, but not to exceed one-half of the actual cost of the local agency's share.

local agency and to the railroad involved. A copy of each resolution making an allocation, together with a copy of the request therefor, shall be sent to the State Controller upon the adoption of such resolution.

Because of the nature and location of crossing protective devices and the fact that practically all of such devices are maintained by the railroad, actual installation thereof is normally made by the railroad. The railroad bills the local agency for the latter's agreed or apportioned share of the cost of construction. Therefore, when the work has been completed the local agency shall file with the Commission a claim for reimbursement. Such claim shall be accompanied by a certificate of the authorized officer of the local agency, stating the total actual cost of the project and the agency's share of such cost, and that such expenditures for which reimbursement is claimed were actually incurred and paid in connection with the project. Evidence of actual expenditure by the local agency shall accompany the claim.

Upon receipt of a claim for reimbursement, and after appropriate certification to the Commission's Accounting Officer, by the Commission's technical staff, of the fact of proper installation, the Accounting Officer shall approve and forward the claim for reimbursement to the State Controller. It is understood that the State Controller's office may make such audit of actual expenditures as it may deem necessary before the issuance of any warrant in connection with a claim for reimbursement.

O R D E R

Good cause appearing, IT IS ORDERED that requests for allocation of funds under Statutes 1953, chapter 1739, shall set forth such information and be accompanied by such exhibits as are specified in the form of request set forth as Appendix A to this order.

The Secretary is directed to cause copies of this order to be mailed to each appearance, to each city, county, and city and county

in which a railroad grade crossing is located, to each railroad operating in California, to the League of California Cities, and to the County Supervisors Association of California.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 18th day of January, 1954.

[Signature]
President

[Signature]
[Signature]
[Signature]

Commissioners

Commissioner Justus F. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

(Skeleton form of request for allocation of funds under Statutes 1953, chapter 1739. Original and six copies to be submitted to Commission on 8 1/2" by 11" paper. Each copy shall conform to the original, and include a copy of each exhibit attached to the original.)

Crossing Protection Fund, Case No. 5495
Allocation Request No. _____
(Commission will assign number)

Request of _____
(City or County)
for allocation from Crossing Protection Fund for protection at crossing of

REQUEST FOR ALLOCATION OF FUNDS

_____, State of California, hereby requests
(City or County)
the Public Utilities Commission to make an allocation to applicant from the Crossing Protection Fund in the maximum amount of \$ _____, such allocation, however, not to exceed one-half of the actual costs of applicant's share of the costs of constructing protection at the crossing of the tracks of _____ and _____
(Name of railroad) (Street
_____, being Crossing No. _____
or highway)

(The request should then set forth the following information in separate numbered paragraphs.)

1. That attached as Exhibit A is a true copy of a resolution adopted by the legislative body of applicant authorizing the submission of this request. Such resolution shall declare and hold the State of California free from damages resulting from construction of project and maintenance and operation of same.
2. Present protection at the crossing.
3. Proposed protection at the crossing.

4. Vehicular traffic (actual count 16-hour typical week day) and railroad traffic at the crossing.

5. That detailed estimates (showing sources thereof) of the costs of installation of the protection are attached as Exhibit B.

6. That attached as Exhibit C is a true copy of a contract or other authentic documents evidencing that agreement has been entered into between applicant and the railroad for the installation of the proposed protection and division and payment of the costs thereof.

7. Statement that applicant is willing and able to participate in the costs of construction in the amount of \$ _____ over and above the amount of the requested allocation, and the date on which said amount will be available.

8. Statement showing the amounts of money expended by applicant for crossing protection during the last three fiscal years and the amount budgeted or otherwise available during the present fiscal year.

9. Statement of need for additional protection.

10. Other pertinent facts.

WHEREFORE, applicant requests an appropriate allocation from the Crossing Protection Fund.

Dated at _____, California, this _____ day of _____ 195__.

(Signature of the mayor or chairman of the council, board, or other legislative body of the particular political subdivision. The official who signs shall also verify the request, in the form set forth below.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

_____, being first duly sworn, deposes and says: That he is the _____ of the _____ of _____, applicant herein, has read the foregoing request, and knows the contents thereof; and that the same is true of his own knowledge except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this
_____ day of _____, 195__.

Notary Public in and for the
County of _____, State of California

APPENDIX "B"

R.B. Cassidy and J.G. Hunter, Commission Staff.

Roger Arnebergh, T.M. Chubb and Alan G. Campbell, City of Los Angeles; G.C. Bacon, U.S. Department of Commerce, Bureau of Public Works; George Ballard, Brotherhood of Railroad Trainmen; Ronald W. Bishop, City of Torrance; J.A. Blickensderfer, Los Angeles County Road Department; B.N. Brizie, Union Pacific Railroad Company; Henry M. Busch, City of Upland; Robert W. Walker, Henry M. Moffat and C.L. Connolly, The Atchison, Topeka & Santa Fe Railway Company; Clayton T. Cochran and John K. Waggoner, County of Kern; Robert D. Dier and Henry E. Jordan, City of Long Beach; William K. Ellis, Brotherhood of Locomotive Firemen and Engineers; J.C. Ellis, City of El Monte; H.G. Erickson, Los Angeles Junction Railway Company; E.S. Hastings and Charles L. Lortz, City of Alhambra; H.F. Holley, Los Angeles County Grade Crossing Committee; M.H. Irvine and Oren L. King, City of Riverside; Randolph Karr and E.J. Foulds, Southern Pacific Company and Pacific Electric Railway Company; Douglas D. MacKenzie, City of Pasadena; Henry McClernan, John H. Lauten, J.C. Albers and R. Ralph Goodman, City of Glendale; Albert R. McKee, Hoyt E. Ray and James E. Reading, City of San Diego; William V. Ellis, G.R. Mitchell, Charles J. Newall, Carl C. Raymond, Arthur Fisk, D.F. Lewis, F.J. Lorcheter and Frank Noble, Brotherhood of Locomotive Engineers; M.A. Nicholas and D. Murdock, Highway Department, County of San Bernardino; Maurice O'Connor, City of Covina; Clayton W. Paige, Los Angeles County Grade Crossing Committee and League of California Cities; B. Douglas Powell, County of Riverside; Robert E. Reed, George C. Hadley, R.B. Pegram, H.B. Le Forge, M.L. Bauders, Clarence Bovey, George M. Webb and W. Gaylord, California Division of Highways, Los Angeles District; William Richards, City of Arcadia; J.L. Rivers and C.W. Sprotte, Los Angeles County Road Department; N.B. Smith, City of South Gate; Harold Springer, County of Orange; Earnest A. Taylor, City of Oceanside; Fritz Zapf, City of Monrovia; Warren P. Marsden, California Department of Public Works; E.L. Van Dellen, Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railway Co.; Edson Abel, California Farm Bureau Federation; Herbert B. Bronner, State Controller's Office; F.A. Silveira, City of Merced; Fred E. Palmer, City of Belvedere; Fred C. Seig, Order of Railway Conductors; Abraam Krushkhov, Santa Clara County Planning Department; C.S. Hiden, City of San Francisco; Basil R. Andrews, Contra Costa County Highway Department; Robert R. Thompson, City of Millbrae; Sidney S. Johnson and P.A. Cox, City of Gilroy; Ross Miller and Allen Grimes, City of Modesto; Arthur B. Philpott, City of San Jose; John W. Cone, City of Sunnyvale; Alexander D. Russell, City of Santa Cruz; Fred R. Pracht and Gus Wahlberg, County of Santa Cruz; Kenneth I. Jones, City of Suisun; Le Roy H. Morgan, A. F. of L.; L.H. Wentworth, Paul J. Lunardi, Joseph Colnar and N.J. Bartolome, City of Roseville; Douglas J. Carmody, County of Alameda; interested parties.