

Decision No. 49754**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

ORDER MODIFYING DECISION NO. 49565

Decision No. 49565 established a procedure for the handling of requests for allocations from the crossing protection fund created by Statutes 1953, chapter 1739. Appendix A to that decision prescribed a form of request for allocation of funds. Item 1 provided that the resolution of a local agency authorizing the request "shall declare and hold the State of California free from damages resulting from construction of project and maintenance and operation of same."

City of Los Angeles has filed a petition requesting that the decision be modified by the elimination of such provision. Petitioner points out that the State, acting in its sovereign or governmental capacity, is not liable for damages on account of injuries to persons or property claimed to have been caused by the negligence of the State or its officers, in the absence of a statute imposing and accepting such liability. Petitioner also notes that no statute exists which purports to impose or accept any such liability in connection with railroad crossings of public streets or highways. It is urged that any indemnification requirement might be construed in future judicial decisions to constitute a basis for the imposition of liability where otherwise no liability could have been found to exist.

Petitioner argues that such requirement is outside of the purview of the enabling statute, and beyond the power of the Commission under any other statute or under the Constitution. Petitioner urges

that the requirement can have no meaning or purpose unless it would effect an enlargement of such liability as would be borne by an applicant for allocation in any event, or unless it would impose a liability on such applicant which it otherwise would not have. Petitioner submits that the requirement might well nullify the purposes of the statute, would be confusing and probably dangerous, is wholly unnecessary, and can effect no permissible purpose.

The Commission having considered such petition, no objection to the requested modification having been received, and good cause appearing,

IT IS ORDERED that Item 1 of Appendix A to Decision No. 49565, now reading as follows:

"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."

is hereby amended to read as follows:

"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."

The Secretary is directed to cause copies of this Order to be mailed to each appearance in Case No. 5495, 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 the date hereof.

Dated, Los Angeles, California, this 9<sup>th</sup> day of March, 1954.

R. B. [Signature]  
President  
Justina J. [Signature]  
[Signature]  
[Signature]  
Commissioners