

**ORIGINAL**Decision No. 6016S

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commission Investigation into that  
 grade crossing located at the inter-  
 section of Mt. Vernon Avenue and tracks  
 of Southern Pacific Company near  
 Bakersfield, Kern County, being Crossing  
 No. B-314.4.

Case No. 6003

In the Matter of the Application of the  
 County of Kern, State of California, for  
 an order authorizing the construction  
 of a grade separation crossing at Crossing  
 No. B-314.4 Mt. Vernon Avenue and the  
 mainline tracks of the Southern Pacific  
 Company.

Application No. 40264

Rex R. Mull, for respondent and applicant County of Kern.  
Randolph Karr and Harold Lentz, for respondent Southern  
 Pacific Company.  
Warren P. Marsden and George D. Moe, for respondent  
 Department of Public Works.  
Roland S. Woodruff, for Greater Bakersfield Separation  
 of Grade District, interested party.  
Martin J. Porter, for the Commission staff.

O P I N I O N

The order of investigation was originally filed November 5, 1957, and was amended by order of February 4, 1958, to include a grade separation and by order of March 2, 1959, to include as respondent The Archison, Topeka and Santa Fe Railway Company for the limited purpose of determining whether or not watchmen should be required at the crossing.

The application of the County of Kern was filed July 18, 1958, and alleged that applicant proposed to construct a crossing at separated grade across the tracks of the Southern Pacific Company and across Edison Highway (State Highway 58, U. S. Highway 466) at Mount Vernon Avenue. It was also asserted that plans for the structure had

been prepared and that financing of the project would depend upon an allocation of funds pursuant to Sections 189 and 190 of the Streets and Highways Code and that the County and Southern Pacific Company had agreed upon the amount which the railroad would contribute toward the cost of said project, but that the State had not agreed on the amount it would contribute by virtue of the separation of Mt. Vernon from State Highway 58 (U. S. Highway 466). In the prayer of the application the County requested that pursuant to Public Utilities Code Section 1202.1, the Commission set the application for hearing on the questions of the necessity for the project, including the engineering plans, reserving for later hearing and decision the question of the State's share of the cost of the "project of the separation of State Highway 58 (U. S. Highway 466)."

Such later hearings were held in Bakersfield and San Francisco before Examiner Rowe, and on January 20, 1960 both proceedings were submitted subject to the filing of briefs which have been received. This decision is for the purpose of determining the apportionment of costs, as provided by Section 1202.1, Public Utilities Code.

At the point in question, Mt. Vernon Avenue travels in a north and south direction approximately three miles east of the central business district of Bakersfield and is the principal north and south cross town artery in the area. Traffic counts at the crossing show about 9,000 vehicles per day on Mt. Vernon Avenue. The Southern Pacific Company railroad tracks, over which The Atchison, Topeka and Santa Fe Railway Company operate trains under a trackage agreement, is the main San Joaquin Valley line to Los Angeles. Some fifty through-train movements plus about 100 switching movements operate over the crossing daily. At the point of crossing the railroad tracks run in a generally northwesterly and southeasterly

direction intersecting Mt. Vernon Avenue at an angle of about 74°. The Edison Highway, State Route 58 or U. S. Highway 466, lies parallel to the railroad tracks and is immediately south thereof. The Edison Highway is the main route between Bakersfield and Mojave and at Mt. Vernon it is traversed by some 10,000 vehicles daily.

The grade separation structure proposed will pass above the tracks of the railroad and because of the close proximity of the State highway to the railroad must also pass above the highway.

The Mt. Vernon Avenue grade separation project was given the No. 1 priority on the Commission's 1959 Priority List by Decision No. 57810 in Case No. 6161. As a result of this high priority the Highway Commission allocated funds to the project and construction started on July 27, 1959. The project is now well underway towards completion.

A great amount of evidence was received tending to show that the separation over State Highway 58 (U. S. Highway 466) would result in savings to the State Department of Public Works; that there would be an easing of traffic at that point, and consequently that the flow of traffic would be expedited; that the cost of land to be acquired by the County would be increased due to the existence of the State highway; and that if said highway had not been in existence a less expensive type of grade separation could have been constructed, to-wit: a bridge with dirt fill rather than the reinforced concrete structure actually erected. There was other evidence suggesting benefits to the Department and detriment to the County.

The Department of Public Works, by its motion to dismiss and by argument and briefs, contends that it is not in this proceeding a public body "affected" within the meaning of that word, as used in Section 1202(c) of the Public Utilities Code.

In considering this contention we assume that the Legislature intended that only the railroads or public bodies which are legally "affected" are to be included in the term, whether it consists of protection to an existing crossing, the erection of a new crossing with the necessary protection, or a grade separation structure. The word "affected" should be considered as meaning affected by the project, rather than by the crossing itself. For example, many separations involve work beyond the boundaries of the intersection. This is also the case with warning devices, the wiring of which often extends for several hundred feet along the tracks, or parts of which reach far into the street right of way and into nearby intersections so that they may effect advance warning of danger.

A railroad right of way, being dedicated to a public use, i.e., for the purpose of public transportation, is substantially the same thing as a public street or highway. Prior to the advent of control by a regulatory body, the crossing of public roads and streets was a matter for determination by the courts in condemnation proceedings, unless the matter was determined by contract. Such crossings which involve railroads constitute a small portion of the highways which are constructed into, across or over the roads and highways of other entities.

It is clear that the Legislature, in enacting these sections, primarily contemplated questions between the railroad, on the one hand, and a public body, on the other hand. Where improvements must be constructed on the property or facilities of two or more public bodies, normally the decision involves, as to each public body affected, the allocation of costs between the railroad and such public body. It is by reason of the fact that in the instant proceeding, the County of Kern has entered into a contract with the railroad

company as to the allocation of all construction costs of the project, but seeking to reserve a claim against the Department of Public Works for additional contribution, that we are faced with a dispute solely between two public bodies.

In its brief the Department of Public Works asserts that "the only way the Commission can acquire jurisdiction over more than one public agency, in a separation proceeding involving only one railroad crossing, is where the highway facility which crosses the railroad tracks, or the approaches thereto, are under the jurisdiction of more than one public agency. In a situation like the Edison Highway in Kern County, where the state highway facility neither crosses the railroad tracks nor forms an approach to the railroad crossing, it is the Department's firm belief that the Commission is completely lacking in jurisdiction, under subsection (f) of Section 1202.5, or otherwise, to apportion any part of the costs against the State."

This Commission disagrees with this contention. The Commission finds that the Department is affected by the grade separation structure. This Commission in exercising its jurisdiction, should act to impose costs on a public body only when it is clear from the record that some portion of the costs should reasonably be allocated to such public body. Since Edison Highway is neither directly affected by the project by its crossing the tracks or by its constituting an approach to them, and since the State through the Department has made a substantial contribution to the project pursuant to the provisions of Sections 189 and 190 of the Streets and Highways Code, it appears to the Commission that the Highway Commission acted reasonably in refusing further contributions from State funds. The Commission finds that the contract between the Southern Pacific Company and the County of Kern has adequately provided for all

necessary funds and that no moneys should be ordered paid to the County for this project by the Department of Public Works, other than the moneys to be paid pursuant to Sections 189 and 190 of the Streets and Highways Code.

ORDER

Public hearings having been held and the Commission being fully advised, and based upon the above findings,

IT IS ORDERED:

1. That the motion to dismiss for lack of jurisdiction filed by the Department of Public Works is denied.
2. That the Department of Public Works is not required to make any further contribution to the project described in Application No. 40264.
3. That the investigation ordered in Case No. 6003 is discontinued.

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

Dated at San Francisco, California, this 24th day of May, 1960.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners

Commissioner Peter E. Mitchell being necessarily absent, did not participate in the disposition of this proceeding.