

ORIGINAL

Decision No. 74324

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HACIENDA HEIGHTS IMPROVEMENT
ASSOCIATION, INC., a non-
profit corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a
corporation, and CITY OF
INDUSTRY, an incorporated city,

Defendants.

Case No. 8656
(Filed July 20, 1967)
(Amended September 22, 1967)

Louis T. Monson, for Hacienda Heights
Improvement Association, Inc.,
complainant.

Randolph Karr and E. C. Martin, Jr.,
for Southern Pacific Company; and
Graham A. Ritchie, for City of
Industry; defendants.

Phil Garro, in his own behalf, protestant.

Morris M. Conklin, in his own behalf;

G. R. Mitchell, for Brotherhood of
Locomotive Engineers; Gordon L. Oehl,
for City of La Puente; and Robert H.
Disterdick, for Los Angeles County
Public Library; interested parties.

William L. Oliver, for the Commission
staff.

OPINION ON MOTION TO DISMISS

Complainant seeks reopening of Stimson Avenue in the
City of Industry, California, rescission of a City Council
Resolution of the City of Industry vacating a portion of Stimson
Avenue, and reopening by the Southern Pacific Company of the railroad
crossing at Stimson Avenue and the railroad track.

The complainant alleges, among other things, that City of Industry through Resolution No. 424 adopted May 11, 1967, by its City Council, and recorded in the Official Records of the County of Los Angeles on May 17, 1967, as Document No. 2457 in Microfilm Plate D3645, Page 643 et seq., vacated a portion of Stimson Avenue, and that thereafter, defendant, Southern Pacific Company, removed the pavement in its right-of-way and erected barriers on both sides of its railroad tracks at the Stimson Avenue crossing so as to close the street to all vehicular traffic. Complainant also alleges that Stimson Avenue is a part of the Master Plan of Highways of Los Angeles County, and that it is also on the State Highway Department's so-called Select System, and that use of said street is necessary for complainant and 33,000 residents of Hacienda Heights. An amendment to the complaint alleges that the City of Industry acted arbitrarily and contrary to law in closing the street.

The defendant Southern Pacific Company filed an answer and motion to dismiss the complaint which deny the jurisdiction of the Commission over opening or closing of streets outside of the right-of-way of the Southern Pacific Company and also sets forth twenty affirmative defenses of which No. 20 is as follows:

"The jurisdiction to vacate Stimson Avenue is vested in the City of Industry; the vacation proceedings may not be reviewed by the Commission, and the Commission may not, and has no jurisdiction to require the City of Industry rescind its Resolution No. 424 regarding Stimson Avenue."

The defendant, City of Industry, filed an answer and motion to dismiss which denies the jurisdiction of the Commission over the portion of Stimson Avenue within the City of Industry except the portion lying within the right-of-way of the Southern Pacific railroad as it affects the operation of the railroad.

A public hearing was held on March 5, 1968, at Hacienda Heights and the City of La Puente and numerous other parties appeared and intervened in the matter.

The motions to dismiss were argued orally. The matter was removed from the calendar pending a decision on the motions to dismiss.

The City of Industry and the railroad bisect and separate the City of La Puente to the north and Hacienda Heights, an unincorporated area, to the south (See Exhibit 1). Stimson Avenue did run through all this area and cross the railroad track. The City of Industry, after a public hearing on August 11, 1966, did on May 11, 1967, adopt Resolution No. 424 which states in part that "WHEREAS, the City Council of the City of Industry does hereby find that that portion of Stimson Avenue in the City of Industry, as described or referred to in said Resolution No. 395, is unnecessary for present or prospective public street purposes;" and did vacate that portion of Stimson Avenue for 700 feet more or less between new Valley Boulevard and the Southern Pacific railroad track. A copy of the resolution is attached to the answer of the City of Industry and describes that portion of Stimson Avenue south of the Southern Pacific railroad approximately 700 feet long.

The complainant's brief to the motion to dismiss is devoted largely to argument on the need of the Hacienda Heights area for a crossing at this point, and to the benefits gained by the railroad in

closing the crossing while only a small part is on the jurisdictional issue raised by the defendants. Complainant relies on one case in its brief - People v. City of Los Angeles, 62 Cal.App. 781. This case is not in point and does not support Commission jurisdiction of this matter but on the contrary is a review of a Superior Court judgment declaring void a street vacation by the City of Los Angeles. Thereafter, the Court of Appeal affirmed the Superior Court judgment confirming jurisdiction of the Superior Court.

The brief of complainant does not cite any authority which gives this Commission jurisdiction over opening and closing of streets such as Stimson Avenue outside of the railroad right-of-way, or any case in which this Commission has exercised such jurisdiction, or in which it has authority to review the action of a municipality in vacating a street.

The briefs of defendant, Southern Pacific Company, cite numerous cases defining the limitations of Commission authority over private and public streets outside of the railroad rights-of-way. The railroad claims ownership of the reversion in the street easement and ownership to the adjoining land. The cases cited point out that the Commission has no jurisdiction over vacation of public streets. Some of these cases are as follows: Civic Center Assn. v. Railroad Commission, 175 C. 441, 453 (1917); Constantine v. City of Sunnyvale, 91 C.A.2d 278, 283 (1949).

The railroad argues further that since the street is vacated to the south of the railroad track there is no crossing of a street over its track.

The brief of the City of Industry also cites numerous cases in support of the City Ordinance, some of which are as follows: City of Los Angeles v. Fiske, 117 C.A.2d 167, 172 (1953); Bowles v. Antonetti, 241 C.A.2d 283 (1966).

The complainant has made no claim to an easement or reversion in the right-of-way or part of Stimson Avenue or land adjoining thereto, but, on the contrary, its argument shows that others have such control and that the State Highway Department of the State of California and the County of Los Angeles have improved portions of Stimson Avenue.

Mr. Morris Conklin claimed to be an interested party in this matter and filed a motion to open Stimson Avenue grade crossing. The motion states that he lives in La Puente and alleges that Stimson Avenue is a public or publicly used road. The same principles apply to this motion as to the complaint on file and the use of the railroad crossing is dependent upon the use of Stimson Avenue outside of the railroad track.

The cases cited herein hold that the power to control the use or vacation of streets is exclusively in the municipality save and except where the street interferes with the operation and use of the railroad. Since the street is vacated there will be no interference with the railroad. Action of the municipality is reviewable in these cases by superior and appellate courts.

The Commission has considered the pleadings and briefs filed in this proceeding and concludes that the complaint should be dismissed, the motions to dismiss should be granted and the motion to reopen Stimson Avenue should be denied for the reason that the resolution of the issues here is without the jurisdiction of the Commission.

O R D E R

IT IS ORDERED that:

1. Motions of defendants to dismiss the complaint are granted.

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2. The complaint of Hacienda Heights Improvement Association, Inc. is dismissed.

3. The motion of Morris Conklin is denied.

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

Dated at San Francisco, California, this 2nd day of JULY, 1968.

[Signature]
President
William H. Burnett
Attorney
William H. Burnett
David P. Morrissey
Commissioners