

Decision No. 82932**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
THE CITY OF SAN LEANDRO, a municipal  
corporation, to construct a street  
crossing over the Southern Pacific  
Railroad for the extension of Farallon  
Drive in the City of San Leandro,  
County of Alameda, State of California.

Application No. 52243  
(Filed October 13, 1970)

OPINION AND ORDER  
DENYING REHEARING

By Decision No. 79893 issued April 4, 1972, the Commission authorized the City of San Leandro (City) to construct a crossing at grade over the tracks of the Southern Pacific Transportation Company (SP) at Farallon Drive. SP's petition for rehearing was denied by Decision No. 80206 issued June 27, 1972. However, upon further consideration the Commission ordered the proceeding reopened for the taking of additional evidence (Decision No. 80764 issued November 21, 1972). One day of hearing was held on March 13, 1973, and the Commission again authorized the City to construct the crossing at grade at Farallon Drive (Decision No. 82182 issued November 27, 1973). SP now requests a rehearing of that decision and the opportunity for oral argument before the Commission.

After a careful consideration of the numerous grounds for relief presented by SP we are of the opinion that they are not sufficient to warrant a grant of rehearing or oral argument. Therefore, we will deny the petition for rehearing and oral argument. However, one matter raised by SP does merit discussion and requires us to modify our opinion in certain respects.

SP contends that the Commission has erred in applying the

City's Ordinance No. 866 N.S.<sup>1/</sup> to the proposed crossing at Farallon Drive. SP urges the Commission, as it has throughout this proceeding, to rule that the local ordinance is null and void as a matter of law. In the initial hearings the Examiner ruled that such a determination need not be made in an application proceeding such as this. In Decision No. 82182, issued November 27, 1973, which granted the authority to construct the crossing at grade, we stated that while it was not necessary or appropriate to determine the validity of the local ordinance the Commission should determine the reasonableness of applying the local ordinance to the proposed crossing. Upon review of SP's petition for rehearing and the applicable law, we are of the opinion that a determination of the validity of the San Leandro ordinance was necessary in this case, and, based on that review, we have determined that the City's Ordinance No. 866 N.S. is void as a matter of law. (See also our decision of this date in Case No. 9199 involving an ordinance of the City of Pittsburg and in Application No. 52982, et al., involving the terms of franchises issued by the County of Los Angeles.)

Determination of the validity of the City's crossing blocking ordinance is properly within the purview of the Commission. Where the determination of legal issues in a proceeding is incidental to or necessary for the exercise of the Commission's regulatory power, it will make that determination.<sup>2/</sup> Indeed, where the issues are mainly within the ambit of the Commission's regulatory jurisdiction it has primary jurisdiction to proceed with the

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1/ The ordinance reads, in pertinent part, as follows:

"It shall be unlawful for inter-urban or other railway trains to be operated in such manner as to prevent the use of any street for purposes of travel for a period of time longer than five (5) minutes."

2/ Pomona Valley Tel. & Tel. Union, 1 Cal. R.R.C. 362 (1913); Pacific Gas & Electric Company, 33 Cal. R.R.C. 484 (1929); Oakland Antioch and Eastern Ry. v. Northern Electric Ry., 4 Cal. R.R.C. 1155 (1914).

determination of the issues.<sup>3/</sup> One of the issues in a proceeding for authority to construct a grade crossing is the extent of disruption to the railroad's operation. The City's crossing blocking ordinance provides for a flat 5 minute limitation on the time a train may block a crossing. SP presently operates throughout the state pursuant to Commission Resolution No. S-1278 which provides a 10 minute period with certain exceptions. Whether or not the City's ordinance will apply to the proposed crossing will determine the extent to which the railroad's operations are disrupted. If the City's ordinance is void it may not be applied to the crossing in issue. Therefore, a determination of the validity of the City's ordinance is proper here.

The Commission's authority to regulate and supervise public utilities is derived from Section 23 of Article XII of the California Constitution which provides in part that:

"The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the Legislature, and the right of the Legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution. From and after the passage by the Legislature of laws conferring powers upon the Railroad Commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this State, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the Railroad Commission; provided, however, that this section shall not

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<sup>3/</sup> Northwestern Pacific R.R. Co. v. Superior Court of Humboldt County, 34 Cal. 2d 454, 458 (1949).

affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town, as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the Railroad Commission as provided by law; ...."

The section provides that the Legislature may confer upon the Commission broad powers to regulate public utilities and that after the Legislature has done so the powers of cities and counties relating to utilities shall cease to the extent they conflict.

The Legislature, pursuant to Section 23 of Article XII of the Constitution, has enacted a comprehensive scheme of regulation of the railroads of this state. In addition to regulation of rates and service the Commission is given broad powers to regulate railroad crossings in Sections 1201-1232 of the Public Utilities Code. Section 1201, 1202, and 1219 provide:

"1201. No public road, highway, or street shall be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a railroad corporation at grade, without having first secured the permission of the commission. This section shall not apply to the replacement of lawfully existing tracks. The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

"1202. The commission has the exclusive power:

- (a) To determine and prescribe the manner, including the particular point of crossing,

and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public or publicly used road or highway by a railroad or street railroad, and of a street by a railroad or vice versa.

- (b) To alter, relocate, or abolish by physical closing any such crossing heretofore or hereafter established.
- (c) To require, where in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the construction, alteration, relocation, or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the State, county, city, or other political subdivision affected."

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"1219. The Legislature declares that Sections 1201 to 1205, inclusive, are enacted as germane and cognate parts of and as aids to the jurisdiction vested in the commission for the supervision, regulation, and control of railroad and street railroad corporations in this State, and the Legislature further declares that the authority and jurisdiction thus vested in the commission involve matters of state-wide importance and concern and have been enacted in aid of the health, safety, and welfare of the people of this State."

It is important to note that both Section 23 of Article XII and the above code sections deal with the power to regulate and not with specific regulations. The power of the Commission to regulate railroad crossings generally has been upheld on numerous occasions. (Civic Center Assn. of L.A. v. Railroad Commission (1917) 175 Cal 441, 450-53; City of San Mateo v. Railroad Commission (1937) 9 Cal.2d 1, 7, 10; Union City v. Southern Pacific Co.

(1968) 261 Cal.App.2d 277, review denied, June 11, 1968.)

However, Section 23 contains a proviso which states that local powers relating to utilities which are "vested", except for the fixing of rates, should continue unimpaired unless surrendered by vote of the people of the City. If a city has "vested" powers with regard to regulation of utilities it is free to exercise that power even if it conflicts with power of the Commission.

Thus, in order to determine whether the City's ordinance is valid, it is necessary to examine what is meant by the term "vested" powers. Guidance is provided by the opinion of the California Supreme Court in the case of City of San Mateo v. California Railroad Comm., supra.<sup>4/</sup> That case arose out of a decision of the Commission which ordered the closing of several street crossings over railroad tracks in the city of San Mateo. The city argued that it had "vested" powers relating to the establishment and maintenance of streets within the city, that its power includes establishment of grade crossings, and that the Commission was therefore without power to order the closing.

The Court, having reviewed the authorities, concluded that:

"From the history of the proviso in question and its relation to other provisions of the Constitution, it must be concluded that the term 'vested' as used in the proviso, referred to powers of control over public utilities (1) such as related to the making and enforcement of local, police, sanitary and other regulation in chartered cities (other than the fixing of rates); (2) such as related to municipal affairs; and (3) such as had been assumed by such cities by appropriate charter provision. This was the holding, and properly so, in Mountain View v. Southern Pac. R.R. Co., (1934) 1 Cal.App.(2d) 317 [36 Pac.(2d) 650].

"The history and context of the proviso in section 23 also indicate that the reservation to cities therein contained was intended to relate to such powers of control as were vested in cities at the time the proviso was adopted. [1911]" City of San Mateo v. Railroad Comm., supra., 9 Cal.2d at 8.)

<sup>4/</sup> See also City of Mountain View v. Southern Pac. R.R. Co., 1 Cal.App.2d 317 (1934).

San Mateo was not incorporated until after 1911 and the Court therefore held that it had no "vested" powers relating to public utilities.

San Leandro is an incorporated city organized pursuant to a charter and was so organized at the time the proviso in Section 23 of Article XII was adopted. The city therefore would have "vested" power to regulate crossing blockings if that were a municipal affair within the meaning of Section 5(a) of Article XI of the Constitution.<sup>5/</sup>

The early cases in this area, while recognizing the Commission's power to regulate crossing blockings, respected the distinction between matters of statewide concern and municipal affairs. In City of Los Angeles v. Central Trust Co., 173 Cal. 323 (1916), the Supreme Court held that the Commission's power to regulate railroad crossings pursuant to Section 43,<sup>6/</sup> a predecessor to Section 1201, did not apply to the opening of crossings over railroad tracks within the city of Los Angeles. It stated the opening of streets across existing railroads within the city was a municipal affair and that the provisions of the city charter with respect thereto are paramount to the general laws of the state. One year later, in Civic Center Assn. of L.A.

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<sup>5/</sup> Sec. 5(a) of Art. XI is substantially a restatement of Sec. 8(j) of Art. XI which was in effect until 1970. Sec. 5(a) provides: "Sec. 5. (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith."

<sup>6/</sup> Stats. 1911, p. 18; Sec. 43 contains substantially the same language as now contained in Section 1201.

v. Railroad Commission, supra, the Court held that the Commission had exclusive power to require railroads to construct subways and overpasses at street crossings in the city of Los Angeles. The Court distinguished the Central Trust case on the ground the city's action in the earlier case concerned a municipal affair (the extension and improvement of city streets) over which its power was "vested" in its charter, while in the Civic Center case the Commission was directing the railroad to take certain actions with respect to separation of grade crossings. The Court made it clear that where an intercity rather than purely intra-city railroad is involved and where the street alteration interferes with the operation and use of the railroad, the matter ceases to be a municipal affair and becomes one of statewide concern. (175 Cal. at 453-454.)

The question of whether the extension of a city street across a railroad track is a municipal affair arose again in Northwestern Pacific R.R. Co. v. Superior Court of Humboldt County, supra, note 3. There, the Court again distinguished the Central Trust case on the ground that the extension would interfere with railroad operations. The Court stated:

"If the proposed crossing, . . . , would substantially interfere with the use of the facilities of the utility, then the matter becomes one of statewide concern, rather than a 'municipal affair' and the commission has exclusive jurisdiction to make the primary determination of the necessity and advisability of the change."  
(34 Cal.2d at 458.)

Several cases have held that the regulation of train speeds through a city is in the area of municipal affairs and that local ordinances of charter cities dealing with train speeds are valid. (Switzler v. Atchison Topeka & Santa Fe Ry. Co., 104 Cal.App. 136 (1930), Schultheiss v. Los Angeles Ry. Corp., 11 Cal.App.2d 525 (1936), and Wright v. Los Angeles Ry. Corp., 14 Cal.2d 168, (1939).) In each of these cases the issue arose



in the context of a negligence suit against a railroad wherein the plaintiff sought to establish negligence by proving violation of a local train speed ordinance. In each case the local ordinance was held to be a valid exercise of the "vested" powers of a charter city. In none of the cases was the Commission involved in any way nor did there exist any Commission regulations relating to train speeds at that time. There was no allegation that the local ordinances in any way interfered with railroad operations in the cities. None of the cases discussed sections 1202(a) or 1219 which indicate that the Commission has the exclusive power to prescribe the terms of "operation" and "use" of street crossings and that such regulation involves "matters of statewide importance and concern".

The Commission is of the belief that these cases either must be limited to the situation where no interference with railroad operations is caused or could be caused by the local speed ordinance, or, they no longer accurately state the law.

The concept of "municipal affairs" as set forth in section 5(a) of Article XI is a changing and flexible concept. In the case of Pac. Tel. & Tel. Co. v. City & County of S.F., 51 Cal.2d 766 (1959) the Supreme Court stated:

"It is likewise settled that the constitutional concept of municipal affairs is not a fixed or static quantity. It changes with the changing conditions upon which it is to operate. What may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state." (at 771.)  
(Citations omitted.)

It is only to be applied to those matters which are of strictly local interest and any doubt is to be resolved in favor of state regulatory power. (Trans World Airlines v. City & County of San Francisco, 228 F.2d 473, 475 (1955); citing Los Angeles Ry. Corp. v. City of Los Angeles, 16 Cal.2d 779, and Civic Center Ass'n.

of Los Angeles v. Railroad Comm., 175 Cal. 441.)

This Commission has on numerous occasions struck down local speed ordinances when, after hearing, we determined that they constituted an interference with statewide railroad operations. (City of Brentwood, 49 Cal. PUC 47 (1949), City of Belmont, 71 Cal. PUC 181 (1970), and City of Turlock, 62 Cal. PUC 524, (1964).) Each of our decisions accomplished the result without comment on the validity of the local ordinance. However, in the City of Turlock case the city's petition for writ of review was denied by the Supreme Court.<sup>7/</sup> The city argued to the Court that the speed of trains through a city or town is a municipal affair and therefore solely with the power of the city to regulate. Although the Commission noted in its brief to the Court that Turlock was a general law city, we rested on the broader ground that all matters relating to the regulation of railroads in this state are solely and exclusively within the Commission's jurisdiction. (Article XII, Section 23 and Code Sections 1202 and 1219.) It is a fair reading of the Court's denial of the writ to state that this ground was affirmed.

There can no longer be any doubt that the regulation of street crossings over railroads and the manner in which railroad trains proceed through or block those street crossings is a matter of statewide concern and is therefore solely within the regulatory jurisdiction of the Commission. (Union City v. Southern Pacific Co., supra; City of San Mateo v. Railroad Comm., supra; City of San Bernardino v. Railroad Comm., 190 Cal. 562 (1923); Civic Center Assn. of L.A. v. Railroad Comm., supra; Northwestern Pacific R.R. v. Superior Court of Humboldt County,

<sup>7/</sup> S.F. No. 21934, filed December 29, 1964, denied June 16, 1965. Denial of review by the Supreme Court is a ruling on the merits. People v. Western Airlines, Inc., 42 Cal.2d 621, 630 (1954).

supra.) No city, whether incorporated pursuant to a charter or organized as a general law city, has any power to regulate these activities of railroads. Since we hold that local governments have no power to regulate crossing blockings it is unnecessary to consider whether there exists a conflict between local and state regulations on the subject. Local ordinances affecting crossing blockings are void as a matter of law.

One further point in the petition for rehearing filed by SP merits discussion. SP argues that the Commission, in Decision No. 82182, has unlawfully delegated its authority to enforce its orders. It refers to ordering paragraphs 8 and 9 which state:

"8. The city of San Leandro shall not apply its Ordinance No. 866 N.S. to the Farallon Drive crossing except between the hours of 7:00 a.m. and 8:00 p.m.

"9. The city of San Leandro shall not apply its Ordinance No. 866 N.S. to the Lewelling Boulevard crossing after the opening of the Farallon Drive crossing, while the Lewelling Boulevard crossing remains in its present state of development."

SP asserts that such action violates the provisions of Section 2104 which provide that actions brought to recover penalties shall be commenced and prosecuted by the attorney of the Commission. This argument ignores Section 2101 which requires the Commission to ensure that the provisions of the Constitution and statutes affecting public utilities are enforced, and which, to that end, provides:

"Upon the request of the commission, the Attorney General or the district attorney of the proper county or city and county shall aid in any investigation, hearing, or trial had under the provisions of this part, and shall institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this State affecting public utilities and for the punishment of all violations thereof."

Ordering paragraphs 8 and 9 will be changed consistently with our opinion herein. However, the Commission wishes to make it clear that we have ample authority in Section 2101 to delegate to a local district attorney the authority to enforce any Commission rules or regulations concerning crossing blocking.

In view of the opinions expressed herein the following amendments and deletions to the findings of fact and conclusions of law in Decision No. 82182 are appropriate.

IT IS ORDERED that the following amendments to Decision No. 82182 be made:

Findings:

15. S.P. will experience some delay in operations due to the necessity to clear the Farallon Drive crossing to comply with Commission Resolution S-1278. These delays are due primarily to the following factors:

- a. A train which could now fit onto the drill track between Fairway Drive and the clear point at the end of the drill track will have to be either cut to clear Farallon or moved south of Farallon, if such train exceeds the storage space between Fairway and Farallon.
- b. Some switching movements from the various industries onto the drill track will be affected since some such movements will have to be backed southward to clear Farallon Drive.
- c. Northbound trains which stop south of Farallon Drive (i.e., those which it is undesirable to cut at Farallon Drive pending further movement) will have to travel an additional 2,900 feet to reach the Mulford yard.
- d. Southbound trains picking up or setting out cars onto the drill track by way of the southern entry to it (north of the flood control channel) will, at times, have to be cut at Farallon Drive, or if less than 43 cars, left north of Farallon, entailing an additional movement of the cars to or from the clear point on the drill track.

19. Deleted.

20. Deleted.

Ordering Paragraphs

8. Upon completion of the crossing Southern Pacific Transportation Company shall operate its trains in a manner consistent with the provisions of Commission Resolution No. S-1278.

9. Deleted.

IT IS FURTHER ORDERED that Decision No. 82182 is hereby affirmed in all other respects not inconsistent with our opinion herein, and that SP's petition for rehearing and oral argument is hereby denied.

The effective date of this order shall be the date hereof.  
Dated at San Francisco, California, this 29th day  
of MAY, 1974.

Vernon L. Stinson  
President  
William J. Vukasin, Jr.  
[Signature]  
[Signature]  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.