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MADRAS, OREGON

### The Madras Pioneer

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THURSDAY - AUG. 17, 1911

### CITY CHARTER MUST BE AMENDED

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tions are requested for the purpose of indicating the steps we deem necessary to be taken by the city preliminary to the issue of such bonds.

In order to accomplish the desired purpose, the city must first have a valid charter authorizing the erection of a system of water works and the contracting of a bonded indebtedness to supply funds for such purpose. We have before us a copy of a new charter of the city of Madras. As we are now advised, the city of Madras, prior to the adoption of the new charter, had no charter or by-law provision covering the manner of exercising the initiative and referendum established by the constitution of the state of Oregon. We therefore assume that the new charter was adopted under the provisions of article IV, section 1 a, of the constitution, and chapter 11 of Lord's Oregon Laws, particularly sections 3480, 3481 and 3482. The new charter was adopted February 14, 1911. As we are advised, no referendum was demanded by the people, and consequently the charter became operative March 14, 1911.

If the charter thus adopted was

in full compliance with the constitution of the state of Oregon, the next step would be the proper calling of a waterworks election under the provisions of said ordinance, but, as we have already indicated, in our opinion the present charter is in several important respects in conflict with the constitution of the state of Oregon. We have only examined the charter in so far as it affects the question of the proposed bond issue, but in this respect we note the following:

1. Section 87 of the charter undertakes to prescribe a property qualification for voters at bond elections. It appears to us that under the rule laid down in *Livesley v. Litchfield*, 47 Ore. 249; 83 Pac. 142, such limitation of the qualification of voters is in conflict with the constitution of Oregon, article II, section 2. It is true that the case above cited refers to elections for municipal officers, but the reasoning of the case is broad enough to include all municipal elections. Therefore, in the absence of a controlling judicial decision to the contrary, we must insist that the constitutional qualification be followed without limitation.

The more recent case of *Johnson v. Grand Forks County*, decided by the Supreme Court of North Dakota, November 13, 1907, and reported in 113 N. W. Rep. 1071, contains a general discussion of the principles involved in this case, and reaches the same conclusion in construing a constitutional provision quite similar to that of Oregon. We also beg to refer counsel for the city of Madras to *The People v. Canaday*, et al, 73 N. Car. 198—a case which contains a report of the briefs of counsel, and is a leading case upon the question as to whether the legislature can change the constitutional electoral qualification. The court, in that case, reaches the conclusion

that cities and towns, like counties and townships, are parts and parcels of the state, organized for the convenience of local self government, and that the constitutional designation of electoral qualifications cannot be changed by statutory or municipal charter enactment. While the cases above cited refer to the election of municipal officers, nevertheless the same principles have been applied in other elections. For example, in the *St. Joseph and Denver City Railroad Company v. Buchanan County Court*, 39 Missouri, 485, the rule was applied as fixing the electoral qualifications in a railroad aid election case. Also in the *State of Wisconsin v. Williams*, 5 Wis. 308, the rule was applied in a county seat removal case.

2. Section 12 of the charter undertakes to prescribe an electoral qualification different from that prescribed by article II, section 2 of the constitution. With respect to this change in the electoral qualifications, the case of *Livesley v. Litchfield*, 47 Ore. 249, is directly in point. The requirement of a residence of sixty days preceding an election fixes a limitation not imposed by the constitution. A limitation of this character was directly involved in the case of *Wisconsin v. Williams*, above cited. In disposing of this point, the Supreme Court of Wisconsin used the following language:

"We have no doubt that the qualifications of the voters, as fixed by the act, are, in respect to residence in the state, quite different from those prescribed in the constitution. The latter instrument is explicit; it provides in express terms that a person who possesses the other qualifications mentioned and who has resided in the state one year next preceding any election shall be deemed a qualified elector at such election.

"It seems to us clear that by requiring a residence of thirty days in the town where the elector offers to vote, the legislature have added a qualification not contained in the constitution, and which is repugnant to its provisions. The constitution provides that if a person possesses certain qualifications and has resided in the state one year next preceding any election, he shall be deemed a qualified elector at such election; while the act of the legislature in question provides in effect that this shall not be sufficient and that he shall in addition have resided for thirty days previous to the time when the election is held in the town where he offers to vote. . . . An act of the legislature which deprives a person of the right to vote, although he has every qualification which the constitution makes necessary, cannot be sustained."

The rule of law is well established that where an unconstitutional electoral qualification is involved, the entire election is void, whether the result of the election be changed by such unconstitutional provision or not. See cases above cited.

Therefore, section 12 of the charter must be amended to conform to constitutional provisions, and if municipal officers have been elected under said section 12, as it now stands, we could not approve bonds issued by of-

ficers so elected. A new election must be held under the amended section.

3. By section 5 of article XI of the Oregon constitution, it is provided that "acts of the legislative assembly incorporating

towns and cities shall be subject to their powers of taxation, borrowing money, contracting debts, loaning their credit." At the time of the adoption of the going constitutional provisions.

Continued on page 2.

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