

HOW TO MAKE HARBOR

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and consider it settled that if the power to levy a tax and raise money for the improvement of the harbor of Coos Bay, is local, special or municipal that the two cities and each of them may exercise such power through a charter or charters which they may adopt by election. That such a provision would come within the meaning of the word local is not disputable. Still the word local may have some significance in this connection, for it may be that the city of Marshfield or the city of North Bend would wish to make improvements in the harbor beyond the city limits and to pay for them out of some fund raised by taxing the people and property within the city limits. The word special has reference to matters which do not affect the people of the whole state, but do affect the people of the locality. The most important phrase to be analyzed is "municipal legislation." Fortunately the supreme court of Oregon has disposed of these questions very clearly in a line of notable decisions. The case of Acme Dairy company vs the city of Astoria which was decided May 21, 1907, is where the city of Astoria enacted an ordinance prescribing the manner of invoking the initiative and referendum by the people of that city. Under that ordinance the people attempted to amend their charter with reference to several matters of taxation and pursuant to such amendments contracts were let to improve certain streets and subject the property of abutting owners to special assessment to pay therefor. In its decision the supreme court upholds the city of Astoria in the exercise of the powers assumed and in the court's opinion the following language appears: "The amendment quoted having expressly authorized cities and towns to provide for the manner of exercising the initiative and referendum powers as to their municipal legislation, the provision is therefore self-executing in respect to the class of enactments specified; and this being so, the decision herein must hinge on the meaning of the phrase 'municipal legislation' as understood by the persons mentioned. To understand the signification of these words requires an interpretation of the term 'local and special legislation,' the right to formulate rules in relation to which is impliedly denied to cities and towns, on the principle that the expression of one thing is the exclusion of the other. The qualifying words 'local' and 'special' are synonymous (Smith vs. Grayson County, 18 Tex. Cir. App., 153, 44 S. W., 921) and in the sense in which they are used, mean any enactment that is plainly intended to affect a particular person or thing or to be in effect in some particular locality only. (Ladd vs. Holmes, 40 Or., 167, 56 Pac. 714). The words 'municipality' and 'district' as used in the clause of the amendment adverted to are evidently expressions of equivalent import, for a district legally created from a designated part of the state and organized to promote the convenience of the public at large as a municipal corporation. (Cook vs. Port of Portland, 20 Or., 580, 27 Pac. 263). The authority of such a corporation has been heretofore derived from an act of the legislative assembly creating it, and as such a statute is applicable to and enforceable in part of the state only, it is a local or special law. Prior to June 4, 1906, when the amendment referred to was adopted, the legal voters of a corporation of the kind last mentioned could exercise no legislative functions and the local and special laws were enacted by the legislative assembly. As some of these organized districts were in existence when the amendment was adopted, we believe a fair construction of the words 'local' and 'special' as used by the framers of this clause of the organic law, limit their application to such municipal corporations as are described in the case of Cook vs. Port of Portland. The court then quotes the amendments referred to and says: "It will thus be seen that this change in the organic law deprives the legislative assembly of all authority to enact, amend, or repeal any charter of a city or town, the legal voters of which reserve to themselves the exercise of all such power." Having thus disposed of the words "local" and "special" let us proceed to consider what is municipal. No doubt that the city must confine its legislative action to matters which affect their own territory and that such legislation must be of a municipal nature. It is unnecessary to consider this word municipal in its larger sense, but I will consider it in its local and special sense solely. In other words let us consider it with special reference to the proposition to raise money to improve the harbor

of Coos Bay. Is such a proposition "municipal" within the meaning of that word as it is used by the constitution? The supreme court in the case of Cook vs. the Port of Portland, 20 Or., 27 Pacific Reporter 263, discusses the meaning of the word "municipal" and finds that "a city, or purely municipal type of a corporation created for municipal purposes, because it is a miniature government, having legislative, executive and judicial powers. The court says: 'No one questions that the establishment and improvement of highways and the opening facilities for access to market are within the governmental powers of every state or nation, and that, among the most important of these highways are to be classed navigable rivers. These things are done by law. The state may directly levy taxes to improve such highways, or it may apportion and impose the duty or confer the power of assuming it, upon the municipal divisions of the state, or create a municipal division locally benefited for that purpose.'" The court quotes with approval the following language of Mr. Justice Strong in Railroad Co. vs. County of Otoo, 16 Wal., 676. "The legislature has the undoubted power to apportion a public burden among all the taxpayers of the state, or among those of a particular section, if, in its judgment, those of a single section may reap the principal benefit from a proposed expenditure, as from the construction of a road, a bridge, or a hospital." If we substitute the word "people" for "legislature" we have the law of Oregon as it must now be stated. The constitutional amendment of 1906 reserves to the people of every municipality and district the right to enact all local and special legislation. It is evident that the intention of the legislature was to authorize cities and towns to exercise any and all municipal powers which the people as a whole had the right to exercise within the same district. It is evident also that it was intended to simplify the right so that it could be exercised without having recourse to the people as a whole or to the legislative assembly. The powers to be exercised are any which are necessary for the well being of the community within the limits of the district or municipality. They must and do require that all waterways which are included in that district be regulated and controlled by the people of such community. The cities of Coos Bay have grown up and exist by reason of the fact that Coos Bay is accessible to ocean going vessels and that its waters are navigable. The well being of these cities depends on the efficiency of this great waterway as a highway and haven of commerce. There is no corporation or power now in existence except the governments of these municipalities which can take control of these waters, improve that harbor, police it or do any of those acts which are so necessary to its improvement. It is as necessary to the welfare of the state of Oregon that this bay be improved and its efficiency increased as that any other great navigable stream or body of water should be improved. I think the language of the court in the Port of Portland case, applies as well to Coos Bay as to the Columbia river and I will quote that language substituting the words "Coos Bay" for "Columbia and Willamette." "It is a fact of which this court will take judicial notice, that the Port of Coos Bay, a district which is now the cities of Marshfield, North Bend, Empire, Bunker Hill, Bay Park, East Marshfield, Millcooma, Blanco, Crawford Point, Coos Bay City, Glasgow, and North Port, is the commercial metropolis of southwestern Oregon. It is the center of trade and commerce for a vast section of country simply because here the commerce of land and sea meet, and through this city the country trades with the world at large. It holds communication with the sea, the great highway of commerce by Coos Bay, and can only retain its commercial supremacy by the maintenance in this bay of a ship channel of sufficient depth to admit the largest sea going vessels to find anchorage at its wharves. Its present prosperity is due to the fact that it is the center of trade and commerce which it would not be, if this bay were closed up, and which, in all probability it will not remain if the improvements contemplated are not made. The people of the Port of Coos Bay will reap the principal benefit from the proposed expenditure, and it is not unconstitutional that they should bear the burden." In this connection let me also say that the limits of Marshfield as at present defined, do not include the channel of the bay. The question might arise as to whether the city would have the right to raise money by taxation to improve the bay, if it should amend its charter for that purpose. The reasoning of the case of Cook vs. the Port of Portland seems to settle that question, but how far the public monies could be legally expended beyond the immediate vicinity of the city would be a serious question. I will advise the committee that the most efficient method of carrying out its purpose, is to consolidate all the cities, towns and districts around the navigable waters of Coos Bay into one city or municipality and my judgment is that something like fifty square miles should be embraced in the new city. The laws with reference to consolidation are ample and have been invoked so recently on this bay that no statement or elucidation of them is here required. It is sufficient to point out briefly the beneficial results which such consolidation can accomplish. The first of these results is that the charter of the new city can and should provide for some form of commission, whose duties shall be similar to those of the harbor commission of the Port of Portland. This city so formed should have the power

to raise money by levying a tax on all parts of the bay territory thus making every portion of this territory bear its just proportion of the expense of improving the bay. The next important result is that consolidation within the limits of fifty or more square miles would involve sufficient territory to enclose all parts of the bay and many of its navigable inlets would be included in the city. This would enable the city through its harbor commission to exercise a large control over all parts of the bay and its inlets, preventing encroachments, obstructions and abuses and also providing for improvements which could in no wise affect any part of the bay injuriously. It would be possible to say where a railroad should build its line on the water front and might consider it proper to construct a railway which would be a common user for all companies running up and down either side of the bay. It could issue bonds and raise money to keep the channel open and deep from Isthmus Inlet, past Marshfield, North Bend, Empire and thence to the sea, and would be in a position to make its power felt even in the halls of congress and in the executive mansion. The objections which can be offered for consolidation for the benefit of the bay, are of a negative and dilatory nature. They are not legal, but rest on supposed natural barriers, on political prejudice and on the claim that the several parts are not connected by lines of transportation. The plain answer to all of these is, that the commercial and social interests of the people everywhere in the proposed district are one. They have but one great common object in assembling on Coos Bay and that is the bay and its uses. This alone is sufficient to warrant immediate consolidation of all the forces which are active in the interest of progress. Coos Bay is waiting for united action on the part of all her friends and the longer she is compelled to wait the more serious, and perhaps the more hopeless her condition grows. There is one objection which is urged by some very earnest and honest opponents which should be answered. They consider that each city would lose its separate post-office and that possibly its predominant section politically would discriminate against the rest. This is altogether unnecessary. The plan on which eastern cities unite into what are called greater cities can well be adopted. Greater New York is divided into five boroughs—Manhattan, Brooklyn, Bronx, Queens and Richmond. Each borough has a borough government with its own local institutions, its borough council and president and its own post-office. The post-office is not involved, however, as the federal government controls that. Greater New York has its own city government which has special control over all matters which are of common interest to the five boroughs. The whole system is simple and easily understood, besides being efficient and up-to-date. Let me illustrate. If the city of Coos Bay should embrace all the territory mentioned, North Bend, Marshfield and Empire would continue to be called by their present names, if so desired. The borough of North Bend would have its own post-office and would be regulated as at present. It would also be divided into a number of districts and each district would have one representative in the borough council. The borough would have a president who would be the executive. This body would look after purely local affairs. Empire and Marshfield would be similarly organized. The east side, including perhaps, Northport, Coos Bay City, Crawford Point, Blanco and Millcooma would constitute another borough—and East Marshfield and Isthmus Inlet still another. The Greater City of Coos Bay would have its mayor, its city council, and other executive officials and would have exclusive jurisdiction of all interborough commercial relations, improvements, harbor matters and taxation with certain limitations. But the outside world would have to treat with the City of Coos Bay. The matter of assuming any public indebtedness would be avoided, as under the plan proposed any existing municipal indebtedness might continue to be the exclusive burden of the borough which incurred it as a city. The objection that the area, fifty square miles is too large for a comparatively small population is not tenable. Let me remind you that at least twenty of the fifty square miles are what are known as mud flats and should be treated as an adjunct to the harbor and regulated as such. The whole territory is not as large as that covered by the city of Duluth which has a population of 65,000 and an area of sixty-seven square miles. Sioux City, Iowa, has forty-eight square miles and only 40,000 people. New Orleans has one hundred and ninety-six square miles San Diego, California, has seventy-eight square miles. Taunton, Massachusetts, with a population of 25,000 has fifty square miles. St. Paul, Minnesota, has fifty-six square miles. The need of controlling a large area in the cities mentioned, except New Orleans, San Diego and Duluth, is not so plain as on Coos Bay. In those cities the harbor and water front necessities have been recognized in the territorial inclusions. The city of San Diego is specially in point. Its population of 25,000 is not less presumptuous in its area of seventy-nine square miles than that of Coos Bay would be in fifty. But its harbor needs have been pre-eminent and controlling in the minds of the people. So far as Coos Bay is concerned the objection that the area would be large will soon be answered by the assembling of a sufficient population to suggest a still further extension of the city limits. But it is not population, nor wealth, nor politics which offer the best argument for consolidation here, but rather the unity of the bay. I have said on another occasion what I want to repeat now. Coos Bay be-

longs to the world—to all mankind—to the shores of all maritime nations and to commerce everywhere. Whether it swings into its proper place among the seaports of the world, depends upon your largeness of vision and your energy and unity of action. You cannot afford to let prejudices influence you, and you can not justify delay, for the power to shape the destiny of a great seaport has been placed in your hands by the people of this great state, and you occupy a position whose unusual surroundings must and will command an imperial domain. Not for North Bend, nor for Marshfield, nor for Empire, but for the great seaport of Coos Bay, you should unite, consolidate and conquer.

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