

THAT STREET RAILWAY FRANCHISE

J. M. Blake Answers J. W. Bennett's Objections to Form of Franchise Which Is Now Up to the Property Owners.

The following letter from J. M. Blake to the City Council was handed into that body last Tuesday evening but as it was in answer to a letter of J. W. Bennett it was withheld from publication as a matter of courtesy until a copy could be delivered to Mr. Bennett personally after he returned from his outing at Ten Mile lakes. The letter is self explanatory:

To the Honorable Mayor and Common Council of the City of Marshfield, Oregon:

The communication of Mr. J. W. Bennett addressed to your honorable body under date of June 24, 1909, and relating to the form of ordinance heretofore presented by me for your consideration and recommendation is, I believe, the result of several conferences that I have had with him during the past week, and is, I think it is fair to say: dictated in the spirit with which the resolution of June 16, 1909, recommending my project to the property owners, was adopted by you; that is to say with the purpose to reserve to the individual members of your body a perfect freedom, commensurate with their public duty, to further modify the proposed ordinance in the public interest or to supply any deficiencies found therein, when it is brought before you for final passage. It is therefore, in a spirit of full acquiescence with this purpose that I will take up severally the points discussed by Mr. Bennett.

1. I propose to change section 1 of the ordinance to read as follows: "And to that end to lay down maintain and operate a single or double track railway to be operated by electricity or other mechanical motive power, except steam." So far as human experience now goes there has been developed for commercial use in the operation of surface railways no other and further mechanical traction power than electricity and steam. Inasmuch as I do not contemplate running horse cars and resign the use of steam engines or locomotives, it is proper, and in fact usual to stipulate in favor of the right to use any other mechanical motive power that in the future may be rendered feasible, economical and proper by human ingenuity and invention. It may be mentioned in passing that experiments have been under way during the last three years in the Union Pacific car shops at Omaha to perfect a gasoline motor car for use in suburban and interurban business. Trial trips have been made with such a car upon the West Side line out of Portland. No announcement, however, has been made indicating that the car is successful for the purpose for which it was designed. The matter is referred to at this time to show the interest to the franchise holder as well as to the public generally of keeping in mind the trend of scientific development along such lines.

2. The forfeiture clause in the proposed ordinance is taken from other franchises which I had before me at the time I was engaged in its preparation, and I am sure that it is in the usual terms. It is true that Courts do not look favorably on forfeitures and that, as a rule, the stronger the language used in providing for the forfeiture the more unfavorably are they viewed; but aside from a discussion of the language used, it is my purpose to refer later to another and separate provision of my franchise which operates more directly to protect the public against the anticipated danger which the right to declare a forfeiture is supposed to protect than the forfeiture clause itself.

3. I desire to accept in full the suggestion of Mr. Bennett contained in paragraph 3 of his letter and to that end I propose to modify that portion of section 4 of the ordinance relating to the portion of the street upon which the tracks are to be placed so that it may read as follows:

"The tracks herein authorized shall be of standard gauge and laid as nearly as practicable in the middle of the street and if there should be two tracks the distance between them shall not be greater than is necessary for the convenient and safe passing of cars thereon; provided, however, that where a single

track is laid down on any street herein mentioned that is or may be improved by the construction of a bridge or trestlework with a roadway not wider than 24 feet, the grantee, his heirs and assigns, shall be compelled to lay the track herein authorized upon one side or the other, at his option, of said bridge or trestle work, and in such place and position as said track would occupy if said bridge or trestlework was occupied by the double tracks herein authorized."

This will permit of the convenient passing of teams on a narrow 24 foot roadway and at the same time will permit the laying of the track in the first instance upon a permanent basis.

Paragraph 4 of Mr. Bennett's letter calls attention to the fact, that while the city has power of regulating the operation of the railway in certain instances, yet the courts would not enforce unfair or unreasonable regulations against the company operating under the franchise. It is, of course, this measure of fairness, which we all confidently look for in the administration of justice, that permits me to leave these regulations with the city in the first instance, instead of putting the city to the protection of the public interest as against unreasonable discrimination on the part of the franchise holder. I sincerely trust that the city of Marshfield will never feel called upon to limit unfairly the service of the company to the general public; and, so far as I can see, no trouble can arise on this score between the city and the franchise holder which will not have that direct effect.

The point raised in paragraph 5 was intended to be covered by the provisions of section 16 of the proposed ordinance. I will submit to any reasonable modification of the latter section, if it should be deemed inadequate to cover a violation of the particular condition pointed out.

Before taking up the discussion of the points directly raised in paragraphs 6 and 7 relating to the commencement of work, etc., I desire to make plain the reasons why it is of extreme interest both to the franchise holder and to the public to have lines located upon both Front street, North, and Broadway North, as well as upon Front street South and Broadway South. In the first place there is great economy both in installation cost and in maintenance and operating cost to be able to handle, in the early development of our business, our traffic on a single track basis; and this economy is manifested to a greater extent where two single tracks, operated as a loop, will give more service than a double track upon a single street.

But in addition to this the loop idea is one of the essentials that must be early considered in the development of a system of street railways. The same necessity which dictates my choice of these streets urges a demand on the part of the public which is to be served by the cross town lines, that I be granted franchises upon streets upon which the loop idea as applied to the operation of street railroads, can be developed. The operation of a modern street railway system has a single purpose which consists in extending its lines in every available direction from the congested business portion of the city and in carrying the patrons of every line as nearly as may be, without transfer, to the center of that business center. It can be readily seen that, with the growth of the city, the development of our own business and the multiplication of the cross town lines, no time schedule could be framed that would permit of bringing to a common point all cars of all lines without interminable confusion and obstruction of other travel and traffic on a street without resort to a loop system in the downtown portion of the city.

The streets which I have applied for may be grouped as follows: Broadway South, Kruse avenue, East and Front street South; Front street North and Broadway North. One complete loop is provided by the first group, and only a single block between the two latter streets is needed to complete the second loop, and which when taken together would roughly form a figure 8. Therefore not only intelligent foresight in planning for an adequate system of city transportation with a due regard for service to patrons is involved, but consideration also must be given by the property holders to the fact that their business locations are within the loop districts; which means that instead of

the street being served with single lines, it is probable that with the growth of the city, the cars of more than one line will be run around the loop thereby greatly enhancing the traffic carried past their doors.

The main questions involved in paragraphs 6 and 7 of Mr. Bennett's letter, I take it, goes to the point that the streets under this franchise may be tied up indefinitely. I desire to recognize his fairness in admitting that the question is not without difficulty in its solution both with respect to the conditions which should be exacted by the city and to the conditions which could properly be accepted by the applicant for the franchise.

In proposing to modify section 12 of my proposed ordinance in the particulars hereinafter mentioned, I do not wish the restriction which I placed in section 14 for the express purpose of obviating this objection, to be lost sight of.

I propose in addition to the provisions contained in paragraph 12, to the effect that I must commence work within four months after the passage of the ordinance; that I must complete and have in operation within twelve months one mile of the line and complete and operate the whole within eighteen months, that I must expend Five Thousand dollars in actual and permanent construction work within six months after the commencement of the construction work.

Section 14 of the proposed ordinance, however, provides that within four months from the time the ordinance is passed, or in other words within the time that construction work must be commenced, I must assign this franchise to the Union Traction and Terminal Company; but it further provides that such assignment shall not be valid until it is approved by a resolution of the city council. In drawing this section of the ordinance it was my purpose to give a final opportunity to the city council to satisfy itself, before turning over to me the possession of the streets, that all arrangements had been made by me to insure the speedy and continuous construction of the line of road necessary to meet the requirements of section 12.

Of course, if I were defeated in the end from going forward after a meritorious showing that I was ready, willing and able to perform fully all reasonable expectations in the premises through an arbitrary or whimsical position adopted by the members of the council or a majority of them in refusing to pass the necessary resolutions, the result would indeed be unfortunate; but that is a hazard I feel free to assume in the given case.

It is also suggested that provision should be made in the proposed ordinance whereby my associates and successors shall be absolutely and positively prevented from ever abandoning these franchises and the duty placed upon us and them by the terms thereof. As I can conceive the law applicable to compelling the performance of public duties when dictated by the terms of public franchises, it has been so clearly developed by the courts, that an effort to make "assurance doubly sure" by an attempt to write the law into the franchise would be fraught with positive danger to the city's interest. As an illustration of the simplicity of the action that is open to any member of the public whose interest lies in preventing an abandonment of a franchise or a duty owing thereunder, I desire to cite the case of State ex rel Crinsfelder vs. Spokane Street Railway Company reported in 19 Wash. 518, 53 Pacific 719.

In conclusion it is but fair to say that the press of business upon Mr. Bennett has been such that I have been unable to go with him into the details of many questions that he has raised in his letter and which I have gone over with you more fully on previous occasions. If I have not misunderstood him in talks which I have had with him, the purpose of his letter is to call to your attention features of the proposed ordinance in which he is interested as a property holder on streets to be covered by the franchise and to give me an opportunity to state explicitly the terms and conditions of such modifications of the ordinance as will be agreeable to me when it comes before you for final passage.

Respectfully submitted,
J. M. BLAKE.

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W. U. Douglas Writes Letter to Blake Demanding An Extension of Forfeiture Clause of Franchise.

The following communication and letter accompanying same are self explanatory:

MARSHFIELD, Or., July 5, '09.
Editor of "Daily Times":

I hand you herewith substantially a copy of a letter for publication, the original of which has been mailed to Mr. J. M. Blake. In order that the public may have the benefit of the discussion you may publish it. Also in talking with members of the Citizens Committee, they request me to submit the letter for publication, because Mr. Blake's franchise contains the particular matter which they as a committee tried to and did avoid, in drafting the ordinance submitted by them, because they deemed it objectionable.

Yours truly,

W. U. DOUGLAS.

July 3, 1909.

J. M. Blake, Esq., City:

Dear Sir: Regarding the form of a street railway ordinance, granting you a franchise, which you left with me for consideration, I have to say: laying aside the objections which I expressed to you orally concerning the paralleling of the road along the waterfront, one road on Broadway and one on Front street, thus effectively shutting out any other road from building or going along the waterfront, except over your road, and also a requirement that the road be completed and in operation in and between Marshfield and North Bend within a given time, I find the terms of the ordinance unsatisfactory in other respects which seem to me to be of more importance.

The only cause for which the franchise can be terminated is the failure to build the road within the time specified, and it is questionable under the language of the ordinance, whether the ordinance would be forfeitable for this reason, so long as a part of the work was done. The all important feature of a franchise of this kind to the public is that the railway shall be kept in operation. Under this ordinance so long as the road is built, and in operation within the time specified, there is no further requirement to operate it, and if you or your assigns chose to cease operating it because it does not pay, or to cease operating any part of it, for any reason, there is no penalty attached, and it would be questionable if the city could do anything. It is true mention is made as to the frequency of running the passenger cars, and the manner in which cars or trains carrying certain kinds of freight shall be operated, but I do not find there is any penalty for not operating them in the manner described. This seems to be clearly illustrated in section 12, containing the only penalty, wherein it says that there must be one mile of road completed and in operation within twelve months, and that the other lines must be completed within twenty months. But it is silent whether these other lines must also be in operation within that time. So that the way the ordinance reads to me, you are only required to put in operation one mile of road, and even then are not required to operate it only so long as you desire, and the regulations concerning its operation imposed by the city would only be effective when you were so operating it.

My idea is that in case you or your assigns would build the road, and cease to operate it in good faith, the franchise should be forfeited, and thereby clear the track for some one who would. Under this franchise you could operate the road so as to practically make a freight road of it, or in fact do just as you pleased.

Of course it might be contended that section 11 of the franchise in some measure modifies this defect. This section reserves to the city the right and power to permit other railroad companies or persons to connect other railways with this one, and also gives the city the right to require you or your grantees to accept trains of cars and transport them, at reasonable rates, but it does not reserve the city the power to permit other railways to operate cars or trains over your tracks, in case of your refusal to operate them, at such reasonable rate, nor is there any penalty fixed in case of such refusal. The effect would be, it seems to me, that in case you or your as-

signs found it expedient to refuse to operate these trains or cars of other persons or railroad companies, all the city could do would be to start legal proceedings which might continue and certainly would, for years, or until such time as you or your assigns could exact sufficient tribute to satisfy you to make the concession. And in case the litigation was pursued to the end, all you or your assigns would be out, would be the costs of the litigation, and that might be more than made up by the benefit derived by you in keeping out some other line. If, however, this refusal should carry with it a penalty such as forfeiture, you or your assigns would naturally hesitate a long while before jeopardizing the terms of the franchise, because the penalty would be too great.

Under these circumstances I do not find it possible for me to either sign or recommend the signing of the petition for this ordinance, but I do not wish you to think that I feel you are acting in anything but good faith.

Yours truly,

W. U. DOUGLAS.

CELEBRATION IS BIG SUCCESS

(Continued from page 1.)

second, the latter finally winning. The other entries were John Shepard, Clyde Smith and Paul Welling.

Ladies race, fifty yards—Miss May Durrand, first; Miss Mary Beckman, second. The other entries were Mrs. Harry Scott and Mrs. Jack Nollner.

Girls race, fifty yards, 16 years and under—Bessie Baines, first; Florence Rehfield, second. The other entries were Frieda Holm, Marie Wheeler, Katie Sargent, Nellie Holland, Laura Pominville, Martha Ross, Stella Jutstrom, Ivy Chapman, Norma Chase, Kathleen Bessey, Annie Wright and Eleanor Ackerman.

Fat men's race, fifty yards—James Mast, first; John Mirrasoul, second. Dave Wallace, F. S. Smithey and John Herron also ran.

Girls' race, 12 years and under—The entries were Kathleen Pominville, Edna Edwards, Ivy Wickens, Mabel Lingo, Bana Bend, Stella Jutstrom, Lilly Gidmark, Murrell Stemmerman, Virginia Clarke, Lillian Seaman, Alta Lash, Lillian Cook, Ivy Chapman, Nettie Rehfield, Anna Lund, Louise Chapman, Eleanor Ackerman, Adelaide Clarke, Jessie King, Mary Holland, Martha Russell and Villa Fairplay. Nettie Rehfield, first and Virginia Clark, second.

Boys race, twelve years and under—Walter Conquist, first; Victor Blomquist, second. Among the other entries were Lloyd Tharp, John Cook, Clifford Carlson, and Enevoid Hanson.

Baby carriage race for married men—Dan Keating, first; D. L. Foote, second. The other entries were Leonard Mauzey, Chas. Stauff, Carl Albrecht and A. R. Cvenga. Sack race—G. R. McNair, first; E. D. Bowman, second. The other entries were W. D. Dewesse, Hubert Cotter, A. Smith and W. C. Weaver.

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