

City Attorney's Report

Ashland, Ore., Dec. 25, 1916.
To the Hon. Mayor and Common Council of the City of Ashland, Ore.

Gentlemen: As the year for which I was last appointed your city attorney is drawing to a close, I deem it a fitting time to briefly review the work of the legal department of the city for the year 1916, and to report upon legal matters still pending, which I now have under way, and upon which I have devoted a great deal of time in an effort to adjust without litigation and expense to the city, and a few only of the many things taken up and disposed of.

I wish to heartily thank the mayor, the members of the city council, the recorder and treasurer, as well as the appointive officers of the city, for the many courtesies shown, and the material aid extended to me during my term of office, and the absolute confidence you have all seemed to have in me as your legal adviser, which I assure you I prize more highly than I do the meager salary, which seems to have been so begrudgingly paid, not by the city council, however, who have some knowledge of the services rendered, but by some of our citizens, who have little or no knowledge of such services, nor the value of the same. For all such I have only the kindest feeling, knowing full well that if they were in my office, and could observe from day to day the time consumed by and the advice given to not only individual members of the council and the mayor, but to the recorder's office, the police department, the electric light department, the engineering department, the street department, the water department, the Springs Water Commission and the Park Board, besides the thousand and one complaints and questions that are constantly pouring into the office from our citizens generally, resulting much time and patience to answer, and could also see the scores of resolutions, ordinances, contracts, deeds, charter amendments and official letters that are prepared by the city attorney, they would concede that he is earning a great deal more than he is being paid him. My only complaint against such unjust criticism is that there are those who are prone to find fault without first fully informing themselves of the facts.

At the beginning of the year we had a number of legal matters pending, among which may be mentioned the electric light case, by the California-Oregon Power Company against the city, which case is still pending in the United States District Court at Portland; the matter of adjusting a claim for damages against the city by the Cameron Septic Tank Company, on account of a claimed infringement of their U. S. patent; the adjustment of the right to the use of the water of Berkeley Springs, as between the city and Fred Homes; the matter of resisting the collection of road taxes against the citizens of Ashland by Jackson county, and the matter of adjusting the purchase of a small plat of park lands from J. M. Wagner. In addition to these matters, there has also come up the matter of effecting a settlement with the Smith-Emery company, and also right of way privileges between the city and numerous individuals, on account of the new power line leading to the mineral springs.

I will treat of these several matters in the order named:

Some three years ago, what is known as the electric light case against the city was filed by the Ashland Electric Power and Light Company, in the Federal Court at Portland. The city at that time employed A. E. Reames and myself to defend against this suit; we have spent a great deal of time in searching for authorities, writing up briefs, motions and demurrers and arguing the same, besides having made some three or four trips to Portland in connection with this case, our fees for which have not been fully paid, and which should be adjusted in the near future. The last consultation I had with Mr. Reames, which was some ten days ago, he suggested that we had best file an amended answer, to which the Power Company would file a reply, and which, together with the com-

plaint, would form the issues of the suit. We could then stipulate with the company, continuing the case until the expiration of our present electric light contract, and if then the people of the city voted to purchase the equipment belonging to the company within the city limits, the company would dismiss its suit; otherwise, the issues could be tried out at that time. I recommend this line of procedure; in fact, it is the only course we have to pursue, unless we are prepared to go to trial, which should be avoided if possible.

The septic tank matter has happily been adjusted for the time being, in which matter I was very materially assisted by members of a special committee, appointed for the purpose. The facts are, the Cameron Septic Tank Company claim that the city of Ashland was infringing the Cameron patent, by using septic tanks in the disposal of the sewage of the city, and insisted upon the city paying a graduated amount, fixed by that company, in the total sum of one thousand or fifteen hundred dollars. This same company was making like claims against numerous other cities throughout the United States. Under this condition of things a Universal Septic Tank League was formed at Marshalltown, Iowa, having for its purpose the defense of the city or cities belonging to the league. The membership fee was fixed at twenty dollars, and in view of the fact that the six-year statute of limitations is running against the claim of the company, and each year that the claim runs deducts a very considerable sum from the total claim, the city, after due consideration, concluded that every year we saved a settlement off we are reducing the claim to that extent, and that it was advisable to advance the \$20.00 and become a member of this protective league, who would defend us in case of suit, rather than run chances of defending against any such suit and paying the expense thereof ourselves. Under date of December 11th, I am in receipt of a letter from the Septic Tank Company, advising that the company had lately brought suit against the city of Shelbyville, Kentucky, having for its purpose the testing of the validity of the patent and determining whether or not cities using the septic tank system are liable to the company for such use.

The adjustment of the right to the use of the water of Berkeley Springs, as between the city and Fred Homes, I am sorry to say, has not been consummated, notwithstanding the fact that I have, at my own expense, made several special trips to Medford to consult with Mr. Homes' attorney, endeavoring to effect some kind of an amicable settlement. The facts concerning the purchase of this spring and the use of the water by the city are briefly as follows:

The members of the Springs Water Commission had made a tentative agreement with Mr. Berkley, who owned the land upon which this spring rises, for its purchase at a stipulated price of \$250.00. It seems that no abstract was furnished nor was any investigation made as to the ownership of the water, or rather the use of the water, flowing from the spring. The city in due course of time paid the \$250.00 and received its deed. The Springs Water Commission let its contract to the Smith-Emery company and the flow of the spring was quite materially increased by subsequent development work by the company, assisted by Mr. Homes and others, extended a pipe line from the spring to the city, which, owing to the faulty construction, has never anything like carried the full flow of the spring. In the settlement with Smith-Emery the company provided six hundred dollars with which to cure this defect. Some months after the city had purchased the spring, Mr. Homes filed an application with the State Water Board, and was granted permission to appropriate all of the water of the spring, notwithstanding the fact of his knowledge that the city had bought the spring and had spent a great deal of money in developing it and piping the water to our public fountains. I have carefully briefed up the law on this subject,

and feel quite confident that the city has a valid right to a considerable part if not all of the flow of this spring, but in order to have the city's rights finally determined, if it can not be adjusted by an agreement between the parties, it will be necessary to file a protest with the State Water Board, setting up the city's rights, and asking that Mr. Homes' permit be canceled.

This matter would necessarily have to come up before the Board at Salem, and if either party were dissatisfied with the findings of the Board the matter could be appealed to the Circuit Court and from there to the Supreme Court. You will understand from this, that after the matter gets into the courts, it means a long, expensive litigation, the result of which no one can definitely foresee. For this reason I have been loath to file a protest with the Water Board, so long as there was any hope of adjusting the respective rights without litigation.

Now, in the matter of resisting the collection of road taxes against the citizens of Ashland by Jackson county, and the reimbursement to the city by the county to the extent of all such passed collections, I have to state that some two years ago Mr. Reames and I successfully resisted the collection of such taxes in the Circuit Court of this county, and also in the Supreme Court of the state, in the suit of O. H. Johnson vs. Jackson county, which was on account of a road tax levied and designated as such by the county court, and which, under numerous decisions of the Supreme Court of the state, could not be done against the property of citizens of municipalities who have charters similar to the city of Ashland. The result of this suit saved to the citizens of Ashland the approximate sum of \$6,000.00 or \$8,000.00, which was refunded by the county. For the past two years the County Court of Jackson county has been levying general taxes against all of the property of the county, including that in the city of Ashland, and immediately after such levy would make an order directing that a certain part of such general levy should be used for road purposes, thus endeavoring, by indirect means, to force the people of the city of Ashland to pay a road tax, which the court could not directly do.

Recently a similar case went to the Supreme Court from Lane county, in which the court held that such a levy was valid under the order made by the Lane County Court. I am not fully advised as to whether or not that order is the same as the order made by the Jackson County Court for the past two years in connection with road tax levies, nor am I in a position to advise as to the legal effect of these County Court orders without securing a copy of the Lane county order and comparing it with the Jackson county order, and otherwise knowing all of the issues which were raised in that case. The only safe way to get these details would be to go to Eugene and examine the records and procure copies of the pleadings, the briefs of attorneys, and other orders. This would entail quite a little expense, and I have been slow to mention the matter to the council, feeling that it would be reluctant to advance money for such purpose.

The Springs Water Commission, during the early part of 1915, negotiated the purchase of land owned by J. M. Wagner and commonly known as the old bottling works, which are located in the central part of Lithia park. I am informed by the members of the commission that it was the agreement that, for the stipulated price, Mr. Wagner was to convey to the city all of his holdings in the park; that in drawing the deed there was a small triangular tract of land which was omitted, and that after receiving his money, which was before the omission was discovered, Mr. Wagner declined to make a conveyance of this additional tract. The matter was referred to me by the commission, and I immediately attempted to adjust it with Mr. Wagner, but so far he has refused to make any conveyance, and the disputed matter is still in issue. This tract is entirely surrounded by other park lands belonging to the city, and it would seem that the city should by all means secure the title to the land. If the contention of the Springs Water Commission is true, a suit to reform the deed, or a suit for specific performance, would be the proper remedy, and while it would probably cost the city \$100.00 to bring such a suit, I should advise doing so, rather than run the risk of a holdup in years to come.

The final settlement with Smith-Emery company on account of the installation of the mineral water plant was an exceedingly delicate matter. The Springs Water Commission was dissatisfied with the character of the work, as well as the material furnished, and when the matter came up for final settlement the commission consulted with me concerning the same.

At one time long, expensive litigation seemed inevitable, but finally the principal matters in dispute were adjusted, not to the entire satisfaction of the commission or myself, but in view of that fact the settlement made with the company was probably the most advantageous that could be hoped for, under all the circumstances.

Another embarrassing matter which has not yet been settled is that of securing an easement or right of way on private lands for the setting of electric light poles, anchors and guy-wires on the new power line leading to the mineral springs. Primarily the Springs Water Commission negotiated a deal with the California-Oregon Power Company, whereby the company was to furnish electric current for a period of twenty years, for pumping water or gas at the three mineral springs, and also the conveyance of a certain plat of land located in Lithia park, the consideration, as agreed upon, for this current and tract of land being the cost of a new line from what is known as the Homes ranch to the several mineral springs. It being the supposition of the parties, no doubt, that the public road would be used for the purpose of this line, and that no right of way would be necessary. It later on de-

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veloped that the Public Service Commission of Oregon would not permit a power line and a telegraph and telephone line to occupy the same side of the public road. Along each side of the road in question were already telegraph lines, one of which belonged to the Postal Telegraph Company. The California-Oregon Power Company, who assumed the responsibility of erecting this new line, did so, and then exchanged, or agreed to exchange, the new line for the old Postal line on the opposite side of the road. In putting in the new line it was found necessary, where an angle in the road occurred, to put in a brace against the pole, or possibly a guy-wire and anchor, and in a few instances to set a pole on private land outside the line of road. There are probably six or seven parties who are affected in this manner, and efforts have been made to secure their permission to allow the guys and anchors, braces or poles to remain as placed by the California-Oregon Power Company at the time of erecting the line, but so far there has been only one right procured, and there seems to be a disposition on the part of the land owners to dictate impossible terms. Neither the power company nor the city procured these easements in advance, which should have been done. The Postal Telegraph Company is not willing to accept the new line unless a permanent easement is obtained and conveyed to them for these several poles, wires and anchors.

The California-Oregon Power Company has shown a disposition to throw the entire burden of acquiring these rights on the city, while the contract made with the company makes no mention whatever of securing such rights, and was probably never thought of by any of the parties in interest. Now, while the city has never admitted it was liable for these rights, we have used every reasonable effort to assist in procuring the same. Mr. Lamkin gratuitously made a special trip in his auto up along the line and interviewed several of these parties, in which he tried to secure for a reasonable compensation these rights. He was successful in only one instance, that of Fred Homes. I also, gratuitously, spent one half day endeavoring to secure like results, but I could accomplish nothing; in fact, I did not see all of the parties, but from what information I gathered at the time, and subsequent reports received, I am thoroughly convinced that no amicable agreement can be made with the parties, and that it will be necessary, sooner or later, to bring condemnation proceedings against each of the individuals on whose land any part of this line is located, if the same is to be maintained in the future. I would recommend that immediate action be taken, the expense of which to be borne by the power company, as there has been much friction as between the Postal company and the California-Oregon Power Company, into which they have endeavored to draw the city of Ashland, and force her to bear the expense of acquiring these rights.

Some time past I was informed that there are still two easements of considerable extent for mineral water pipe lines, which had not yet been acquired. I suggest that the matter be investigated and, if possible, procure these easements, otherwise complications will be sure to arise in the future.

It is worthy of note that the Berkeley Springs matter, the J. M. Wagner matter, the Smith-Emery settlement and the easements for poles, guy-wires and anchors, and the acquiring of pipe line easements, either directly or indirectly, grew out of the operations of the Springs Water Commission, and not from any direct laches on the part of the city.

Some weeks ago one of the principal transformers which the city leased from the electric light company was totally destroyed by fire, and damages occasioned thereby, not only to the loss of the transformer, but also damages to some of the city's customers, in something like the sum of \$250.00, is still to be adjusted. Shortly after this accident, which occurred through no fault of the city, I took the matter up with the superintendent of the company. In an effort to adjust the damages as between the company and the city, but as I did not have a detailed statement of the damages with me, the matter has been deferred, pending such statement from the city electrician.

There are quite a number of city liens against abutting property, created on account of public improvements, that are delinquent, and which should be taken up and disposed of at the earliest opportunity, as I believe it should be the policy of the city to promptly collect when due all special improvement liens, otherwise these

liens grow from year to year and finally become so large that the parties abandon the payment altogether, and where one abandons and refuses to pay, it encourages others to do likewise, which is too apt to result in a multiplicity of foreclosure suits later on, or a taking over of the property.

I am pleased to report that the State Water Board found that the city of Ashland is entitled to 500 inches of water, measured under a six-inch pressure, from Ashland creek, for domestic irrigation and other municipal purposes; that their report was duly made to the Circuit Court of Jackson county, and that while the entire report of the adjudication of all the waters of Rogue river and its tributaries were referred back to the Board for further consideration, the 500 inches of water awarded to the city will not be disturbed, as there were no objections or exceptions filed to this finding. I feel that the city has won a decided victory in securing such a liberal allowance of the waters of Ashland creek.

The matter of acquiring rights of way and opening up the Grand View Drive has occupied a great deal of the time of both the city engineer and the city attorney during the past year and a half. The city engineer has accurately surveyed this driveway, and at numerous times has interviewed people across whose land this Grand View Drive will be extended, in an effort to secure deeds from them to the city. He at one time had secured the consent of most of the people to donate their right of way, but afterwards some of them changed their minds, some could not be found and others refused absolutely to convey an easement without compensation. It was finally concluded by the committee having the matter in charge that the better plan would be to prepare the deeds and go directly to the parties, and have them executed at the time of presentation. I accordingly prepared about a dozen deeds, which I still have in my office, none of which have ever been executed. I regard this as a matter of great interest to the city, and one that should be consummated if possible.

It is quite important that future councils will not hastily or without due and careful consideration change the present ordinances of the city. There is usually a good and sufficient reason for the passing of any given ordinance, or at least the former council must have thought so, or the ordinance would not have been enacted. It is only fair to suppose that each and every ordinance was carefully considered before its passage; that the people have become accustomed to the existing ordinances, and there should be a good and sufficient reason existing before any such ordinance is amended or repealed. I therefore recommend against the indiscriminate repealing or amending of ordinances.

In conclusion I sincerely hope that the incoming council may realize the importance, I might say the great necessity, of immediately employing a capable lawyer as my successor in office, to care for the legal matters hereinabove referred to, and to look after other legal matters which from time to time will surely come up.

If the council should make the unpardonable mistake of employing a thirty-cent attorney instead of appointing a lawyer to the important position of city attorney, the city may possibly get thirty cents' worth of service, but more likely will be plunged into much expensive litigation and wind up with more experience and less money. The council should constantly keep in mind that there is a vast difference between the capable, conscientious lawyer, supplied with a well-equipped office, and the ordinary cheap shyster. The one will render but little if any service, and is an expensive luxury at any price, while the other keenly feels the responsibility and will render effective, faithful service that cannot be measured in dollars and cents. The best lawyer to be had is none too good for a city attorney, and it is surely false economy to object to paying him reasonably for his services, or hire an inferior attorney.

The city cannot expect to get first-class legal services for the same price she would employ a man to pick apples, break rocks or cut wood. However, this seems to be the standard by which many people measure the value of legal services. Any lawyer who is capable of properly serving the city is surely worth \$50.00 per month. The city of Medford, where there is no public improvement going on and nothing like as much legal services rendered as is given the city of Ashland, is paying her city attorney \$75.00 per month, while Grants Pass, under like conditions, is paying her city attorney \$100.00 per month.

TALENT-PHOENIX ITEMS.

Mrs. B. N. French of North Talent was an Ashland business visitor Thursday of last week.

Mr. and Mrs. E. O. Reese of Ashland returned Friday from Weed, Cal., and spent Christmas with Mrs. Reese's parents in North Talent.

Dr. and Mrs. Frank Roberts and family spent Christmas with Mr. Roberts' brother, J. E. Roberts, and family of North Talent.

Joshua Patterson of North Talent was a business caller in Phoenix Wednesday evening.

John Graffes of East Eden was in North Talent and Phoenix on Tuesday.

Mr. and Mrs. M. Stockford have moved into Mrs. Emma Reed's house in North Talent.

Mr. William Carless returned Sunday to his home at Phoenix from Sitka, Alaska, where he has mining interests. Mr. Carless says this is mild weather, he having encountered a one hundred mile an hour gale on his voyage home. Their boat took shelter for twenty-four hours near one of the islands.

Those who did trading in Medford Monday from Phoenix were Mrs. F. E. Furry and daughter Sybel, Mrs. Callie Steadman, Mrs. Milo Furry, Mrs. King, Mrs. James Morton, Miss Mary Stancliff, Mrs. Louise Colver, A. S. Furry and John Calhoun.

Ritter, Ore., is 35 miles closer to market than ever before with the completion of the road to Hepler and a bridge across the John Day river.

A leading engineering and construction company is authority for the statement that there will be 100 and probably 200 grain elevators built in the Columbia river basin to handle the 1917 crop, thus doing away with the old sack system.

Then, too, if I may be pardoned for the digression, the city of Ashland, for the past two years, has been paying her city engineer \$75.00 per month and furnishing him with an office, fuel, lights and phone, while the city attorney has not only furnished himself with all of those incidentals, but has also paid a stenographer, most of whose services have been rendered for the city, and furnished his own services, including an expensive library, for the sum of \$50.00 per month. The city engineer has earned every dollar which has been paid him, nor would I for a moment be understood as objecting to his salary, but at the same time I feel warranted in stating that he has not spent nearly so much time on city work as the city attorney has during the past year, and why there should be such a discrepancy made between the two lines of skilled services I am unable to comprehend. Surely no one will claim that the ordinary work of an engineer is more valuable than that of a capable lawyer.

It has been suggested as an economic measure that the city can now dispense with the services of a regular city attorney, and when legal services may be required, that the council can then go into the open market and buy them. I should strongly disapprove of any such plan. It is not fair to the lawyers of the town, nor will the city get efficient service by adopting it. If a lawyer does a little odd job occasionally he will hesitate to take a case against the city, and thus bar himself from fees which under ordinary circumstances he might otherwise receive. The officers of the city will feel, or at least should feel, reluctant to go from office to office over town, spunging legal advice, without paying for the same, and if they do not get such advice on the hundred and one things that are sure to come up, they will be treading on dangerous ground.

Being conscious of the fact that I have done my full duty as your city attorney, and only regretting that my efforts have not at all times been crowned with complete success, I again thank the mayor and council for the consideration shown me, and extend my best wishes for the future welfare and prosperity of the city.

Respectfully submitted,
W. J. MOORE,
City Attorney.



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