

ELECTION LAW IS TO BE TESTED IN MANDAMUS SUIT

Proceedings in Supreme Court Will Establish Whether City Charter Precedes Legislature.

Mandamus proceedings in the supreme court of Oregon may be instituted by the city to determine whether or not the charter takes precedence over the subsequent acts of the legislature in providing for the manner of election of city officials in municipalities having over 2000 inhabitants. Announcement of this was made this morning by Deputy City Attorney Latourrette.

Under the act of the legislature passed March 3, 1919, all cities of more than 2000 inhabitants must nominate their candidates by primary nomination. Each candidate must get his party's nomination at the primaries, to be placed as the party candidate on the ballot at the regular election.

Latourrette points out that the city charter, since the start of commission form of government, has provided that a candidate in order to have his name placed on the ballot simply secures the names of 100 property owners. Primaries were done away with.

Pending the test case, City Commissioners Harbo and Mann are wondering whether or not they will have to get the primary nomination in April in order to appear on the ballot at the regular election in November.

"My opinion is that the city charter takes precedence over the state legislature in matters of local self-government," said Latourrette. "I believe the constitution explicitly gives the city the right of directing its own affairs. A test case in the supreme court is quite probable in order to decide the issue."

BUILDING PLANS ARE CHECKED

City Plan Examiner Makes Inquiry in Three Cases.

Plans for the erection of three new structures in Portland aggregating an expenditure of \$45,000 are being checked up today by City Plan Examiner Fred Eichenlaub.

A. Roider, 199 Broadway, has presented plans for a two-story brick and apartment house costing \$23,000, on Broadway between Mill and Market.

L. R. Bailey & Co. have drawn the plans. The United States bakery intends to build a one-story bakery at a cost of \$12,000 at 90 East Eleventh street, between Everett and Flanders. The structure will occupy a plot of ground 100 by 100.

Eichenlaub is looking over plans for a \$10,000 storage building that will be built by the Central Investment company on Fourth street between Taylor and Samhill.

MAYOR BAKER IS NOT OUT YET

He Has Improved Much but Not Far Enough to Resume Duties.

Although Mayor Baker is gradually improving, it is quite certain he will not be able to preside at the council meeting Wednesday morning, according to Dr. George Parrish, city health officer.

Dr. Parrish reports the mayor is eager to return to his duties but is in a weakened condition. It may be next Monday before he is able to resume his official duties.

Commissioner Bigelow, senior commissioner, will preside at Wednesday's meeting.

Jack L. Crecher, John Jackson and Leo Leland, confessed safebreakers, who blew the Northern Pacific ticket office safe here a week ago, were sentenced to two to 15 years each in the state reformatory at Monroe.

Mrs. Olive Boyd, found guilty of arson at her second trial, was fined \$1000. The fine was paid by her son-in-law, H. Olsen.

Bids for the hard surfacing of Ilwaco Main street to the beach have been called by Pacific county commissioners.

Bernstorff demanded on allies' list is not former ambassador.

Berlin, Feb. 10.—The Bernstorff who is demanded by the allies for trial along with more than 800 other German nationals is not the former ambassador to the United States, Count Johann Heinrich von Bernstorff, but his cousin, a major, who was commandant of St. Quentin during the German occupation of that stronghold.

The Falkenhayn on the extradition list is not the former chief of the general staff and conqueror of Roumania, but an officer of the same name who was in charge of a prison camp.

Silver Lake Home Destroyed by Fire

Kelso, Wash., Feb. 10.—The home of Lester Patchen near Silver Lake was destroyed by fire Saturday night. Mr. and Mrs. Patchen were away from home and their three small children, the oldest a girl 11 years of age, were in the house by themselves taking baths and barely had time to escape, scantily clad. The house was a modern bungalow.

Yakima Business Men Insist on Open Shop

Yakima, Wash., Feb. 10.—Yakima business men will unite to fight for the open shop in all valley industries. Organization of the Associated Industries of Yakima in support of the open shop movement declared by the master builders has been decided upon. Radical leadership, not unionism, is opposed, it is said. No attempt will be made either to lengthen hours or lessen wages.

Invented Barbed Wire Fence

Hayward, Cal., Feb. 10 (U. P.)—John Calvin Merrill, who invented the barbed wire fence, is dead here. He was 84 years old.

THREE DRUGGISTS ARE FINED

All Admit Leaving Stores Under Unregistered Pharmacists.

For leaving their stores without a registered pharmacist in charge, while going to lunch, T. Harry Murphy of Harrison pharmacy, R. D. Jackson of Walnut Park pharmacy and J. C. Clark of Burnside pharmacy, upon pleading guilty to the charge of violating the rules of the state pharmaceutical board, were this morning fined, Murphy \$200 and the other two men \$100, by District Judge Jones. The fines were suspended.

S. Gish of the Oregon Drug company, charged with the same misdemeanor, pleaded not guilty. His case was set for trial Wednesday.

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"The title speaks of only one federal act and that act is the Shuckford bill," declares Justice Harris, in commenting on the provisions of the Bean-Barrett act.

"The title was in effect notice to every member of the legislature that if he voted for the bill he voted to authorize the state board of control to issue bonds in an amount sufficient to enable this state to receive its share of the fixed sum of money appropriated by the Shuckford bill, but there was no notice whatever that a vote for the Bean-Barrett bill was a vote to authorize the board of control to issue bonds to meet the requirements of some other federal act."

Even under the provisions of the act of 1920 the issuance of bonds for highway purposes is not mandatory upon the board of control, but is merely discretionary with that body. As originally introduced the bill "authorized, empowered and directed" the state board of control to issue bonds at the request of the state highway commission, Justice Harris points out, but this was later amended to authorize and empower the state board of control "in its discretion" to issue such bonds.

"In view of the language found in the act of 1920," concludes Justice Harris, "it is difficult to conceive of a situation which would authorize the issuance of a writ peremptorily commanding the state board of control to sell the bonds," which writ is consequently denied.

The court is careful in its expression as to the scope of the 1920 measure, confining itself to the opinion that the new act is broad enough to include all federal aid already made available, but omitting any mention of its inclusion of moneys which might be appropriated by the federal government for post and other purposes given.

Other opinions were handed down as follows:

H. J. White, appellant, vs. City of Ashland; appeal from Jackson county; suit to avoid the payment of an expense of street improvement; opinion by Justice Bean; Judge F. M. Calkins affirmed.

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EX-SERVICE MEN BRING SUIT FOR FRAUD AND LIBEL

J. T. Owen and K. N. Weir Charge Malicious Slander and Conspiracy to Gary Coast Agency.

Malicious slander, conspiracy and fraud are charged in a suit filed in the circuit court Monday afternoon by J. T. Owen and K. N. Weir against the Gary Coast agency, incorporated. Owen and Weir allege that the defendant company contracted last October to sell them a five ton motor truck for \$6619.30 and to furnish them with work until the truck was paid for.

The truck turned over by the Gary concern is alleged to have been a 3 1/2 ton truck and unable to haul the heavy load of gravel for which it was purchased. The complaint states that the Gary agency furnished employment to Owen and Weir at hauling lumber for the Ward Lewis Lumber company until December 10, when operations were discontinued on account of the snow.

When the snow had been cleared away sufficiently to permit hauling the Ward Lewis company is declared in the complaint to have asked the Gary agency to notify Owen and Weir to resume hauling operations. Instead of notifying them, the plaintiffs allege the defendants reported that the truck had been damaged through the carelessness of the driver, and that repairs could not be made for several weeks.

The plaintiffs say they were damaged to the amount of \$6912 by the slanderous report, and ask damages totaling \$11,829 because of the fraudulent contract tendered. Both Owen and Weir are ex-service men and members of the American Legion. They are represented by George L. Ruch.

According to Ruch and other members of the Legion, several cases similar to the one on which this suit is based have been reported by returned soldiers.

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Jay H. Upton, Lawyer Of Prineville, Comes Out for Senate Seat

Bend, Feb. 10.—Jay H. Upton, former legislator from Multnomah county, now a well known attorney of Prineville, has formally announced his candidacy for the state senate from the district comprising Klamath, Lake, Deschutes, Jefferson and Crook counties.

Upton will launch his campaign upon a program for more irrigation, better roads, Americanism and raising of the standard of rural schools. He is retiring president of the Oregon Irrigation congress and has been active in irrigation development of Central Oregon for a number of years.

EXCEPTIONS IN RATE FINDINGS SENT ON

(Continued From Page One)

convey Commercial club. It proposes:

"The proposed report for rate findings should be modified so as to give them (Portland and Vancouver) differential rates in their favor over Puget Sound in all territory south of the line of the Milwaukee railroad; and that the differentials recommended for the territory south of Snake river should be increased substantially and should be decreased according to distance.

NO RELIEF PROPOSED

"In the proposed report no relief whatever is proposed for complainants in the territory north of Snake river. So far as Astoria is concerned, Portland ought to have substantial differentials in its favor over the territory north of the Snake river, including Spokane and north. So far as Puget Sound is concerned, the record amply justifies the prescription in Portland's favor of substantial differentials in all territory south of the line of the Milwaukee railroad; and, as already argued, the substantial increase of the differentials recommended to be applied in territory south of the Snake river."

The chief examiner made reference in his proposed report to the presence of the Milwaukee railroad in the territory north of the Snake river, and that it does not, consequently, maintain a competitive relation between Portland and Puget Sound. In reference to Astoria's contention that port investments there should forbid any modification of the rate schedule, the statement asserts:

ASTORIA IS ANSWERED

On sheet 33 of the proposed report it is mentioned that since the decision of the city of Astoria case on January 22, 1918, very great investments have been made in Astoria looking to the greater development of that city and that in part at least some of these investments have been made in reliance upon that decision.

These exceptions in connection with this matter desire only to suggest that the maintenance of a parity of rates between Astoria and Portland anywhere in the entire Columbia river basin upon the principle of equitable estoppel is impossible in view of the decision of the supreme court of the United States in the case entitled Southern Pacific Company vs. Interstate Commerce Commission, 219 U. S. 433, in which it was held that the enforcement of an order of the commission based upon considerations of equitable estoppel was beyond the power of the commission and therefore must be enjoined."

EXCEPTIONS ARE FILED BY OTHER LITIGANTS

Washington, Feb. 10.—(WASHINGTON BUREAU OF THE JOURNAL)—Exceptions to the Thurteel report in inland waterway cases were filed with the interstate commerce commission today by the public service commission of Washington, by Oswald West, as attorney for the Inland Empire Shipper league, and by J. B. Campbell for the Spokane Merchants' association and Chamber of Commerce. The Washington commission makes 13 specific exceptions, chief among which are these contentions:

That the increased rates will result with benefit to nobody except Portland middlemen; that the Thurteel report, if permitted to stand, will interfere with state rates and cause intolerable conditions by upsetting relations between Eastern Washington and Puget Sound.

That the door is opened for reprisals by the railroads against each other and against shippers, and would cause endless litigation.

That the territory south of the Snake river would be deprived of Puget Sound markets and that the Northern Pacific could deliver freight through Seattle to Portland cheaper than to Seattle or Tacoma.

The exception by the Shippers league controverts the Thurteel findings that the grain rates in themselves were not unreasonable, and asks for relief on the lines of the original complaint, which Thurteel recommended be dismissed.

The Spokane intervenors complain of a failure to direct how railroads should comply in the application of preferential rates to Portland from south of the Snake river, and ask that, whether the rates are finally lowered to Portland or raised to Puget Sound, the existing differentials shall be preserved as between Spokane and Portland into this territory.

This is the last day for filing exceptions. The case will soon be set for oral argument before the commission in Washington.

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Jail Sentence Suspended

John J. Studholme, 1005 Sumner street, today was fined \$50 and sentenced to 30 days in jail for driving while intoxicated on the Linnton road, Sunday night. The jail sentence was suspended by Municipal Judge Rossman owing to previous good conduct.

Universal Military Training Indorsed By 29 Legion Posts

Indianapolis, Ind., Feb. 10.—(I. N. S.)—A resolution favoring a system of universal military training as opposed to universal military service was adopted today by representatives of 29 state departments of the American Legion, meeting at the national headquarters, with national officers and officers of the national military policy of the legion. The legion went on record as being opposed to an "enlarged or stronger military caste."

THOMAS PRINCE'S WILL LEAVES \$71,000 FOR CHARITABLE PURPOSES

Largest Bequests in \$500,000 Estate Is Left to Son, Thomas Prince.

The sum of \$71,000 was distributed to charity by the late Thomas Prince, who died February 3 at Santa Barbara, according to the will filed in probate Monday.

Prince, son, Thomas Prince, receives \$10,000 in cash and \$100,000 in trust, the income of which is to be paid him during his lifetime.

Although the estate is valued in the petition for probate at \$500,000, it is supposed by those familiar with the affairs of the late manufacturer that his fortune totaled well near the million dollar mark.

Besides the money and trust fund, his son, Thomas Prince, also receives an 85 acre ranch at Dundee, Or., containing the largest walnut grove in the state and valued at about \$65,000, and the Prince residence in Portland, valued at \$25,000.

Ruth Emery of Gresham, the nurse who attended Mr. Prince for several years, is left \$5000. Other heirs are Lucius T. Hayward of Dundee, Or.; William L. Ames of Worcester, Mass.; J. S. Simmons of New York; Olive M. Dows of Melrose, Mass.; Lucy P. White of Portland, Me.; and Ralph A. Simmons of Lowell, Mass.

Among the bequests to charity are \$25,000 to the town of Kingston, Mass., of the income of which is to be used in caring for the needy of the city; \$25,000 for the Kingston County Cemetery association; \$5000 each to the Masonic home, Charlton, Mass.; Odd Fellows home, Home for Aged Women and Home for Aged Men, Worcester, Mass.; and to the needy members and families of George H. Ward post No. 10, Worcester, \$1000.

Honors Come Fast

Pon Du Lac, Wis., Feb. 10.—(U. P.)—Mrs. Frank Chapman became grandmother and great grandmother on the same day. Her daughter and her granddaughter gave birth to girl babies within 2 hours.

Funeral of Screen Actress Conducted At Local Parlors

The funeral of Miss Hazel Marie Swanson, daughter of Mrs. Lottie Nelson, who died in Jacksonville, Fla., Feb. 2, was held this afternoon at the Erickson funeral parlors, Rev. W. W. Young officiating. Final services were held at the Portland crematorium, where the remains were placed in a vault. Miss Swanson died suddenly from heart failure while with a moving picture company at Jacksonville, taking a prominent part in the production of a series of films. She was reared in Portland and left here about a year ago for Florida.

Leffie F. D. Casey

Mrs. Leffie Florence Davidson Casey died Sunday at the home of her mother, Mrs. G. C. Garfield, 65 East Sixty-eighth street north, after three days' illness with pneumonia. Mrs. Casey was born in Ione, Or., January 19, 1894, and was educated in Portland and a graduate of the Oregon Agricultural college in 1918. Surviving here are her husband, John M. Casey of Meacham, Or., and an infant daughter. The funeral will be held at the P. S. Dunning chapel, 414 East Alder street, Wednesday at 2:30 p. m.

Andrew Heiman

Andrew Heiman, aged 27, died in Phoenix, Ariz., February 7, where he had gone with his parents seeking to regain his health. He is survived by a wife and one child.

Bertram Whiting

Bertram Whiting, aged 49, who died Saturday, was a shipping clerk for Fleischer, Mayer & Co., and was a member of the Independent Rifles of San Francisco. Whiting is survived by a daughter, Miss Beatrice Whiting of this city. His mother and a sister live in San Francisco. Funeral services will be held at the Finley chapel Wednesday at 1 p. m.

Frank Berg

Frank Berg, aged 27, who died Sunday at his home, 921 Missouri avenue, was a foreman in the Smith & Watson iron works. Berg is survived by his wife, Mrs. Minnie Berg, and one son. Funeral arrangements are in charge of the Pearson Undertaking company.

Ruby Alva Robinson

Mrs. Ruby Alva Robinson, wife of James A. Robinson, a native of Arcadia, Fla., died last Thursday in this city.