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"With or without offense to friends or foes I sketch your world exactly as it goes."
—Byron

Cities' Health at Stake

The decision of Judge Hill invalidating the city bond issue voted for the purpose of purchasing the city water plant, emphasizes the folly of haste in such projects and the necessity of adopting a well thought out plan in advance. The election carried on a wave of municipal ownership sentiment, the result of poor service rendered and tactless overcharges by the shifting managements of the new owners.

The amount of the bond issue was set by guess in advance without having secured authoritative estimates to ascertain how much money was needed. The enabling acts were feverishly drafted in a midnight session in a race against time limitations and the petitions as carelessly circulated. With so many technicalities involved, there was bound to be a slip, though of course the supreme court may find the circuit court erred.

Another mistake was made in not accepting the offer of the water company to complete the new filtration plant under city supervision, providing only that the city agree, in event of purchase to refund the actual cost. Instead, the city accepted the advice of experts and rejected the proposal, which while it was a good thing for engineers and lawyers was injurious to the community, which would have been insured pure water, pending the taking over of the plant.

As long as the city follows only the advice of engineers and lawyers, for whom new plans and specifications and protracted litigation mean fancy fees, the securing of the water system by the city will be indefinitely delayed, for no two engineers can agree among themselves. Condemnation is a long and costly proceeding for the city, though a fat thing for experts, for it must be followed through state and federal courts, and in the end the courts will insist upon a fair price and prevent confiscation.

As the city is definitely committed to municipal ownership, the commonsense thing to do is to secure a round-table conference between the best business minds of the city and the water company officials and amicably agree if possible, upon a purchase price that can be submitted to the people for acceptance or rejection. It would be far cheaper than prolonged and profitless litigation in an effort to secure something for nothing. It is the only feasible short cut to city ownership.

In the meantime, the company's offer for completion of the filtration plant should be accepted. It will be needed, no matter from what source we eventually secure water, for there is no such thing nowadays as pure mountain or other water. And the health of the community should be the controlling motive. We face another dry year and low water which always spells contamination, and by the time the plant is completed, its need will be apparent.

Light for the Dim Ones

Obedience to the hydro-power mandate of the people does not mean that our legislators must accept and approve any measure, however defective, that the Governor may pass on to them. It means the strengthening of our existing laws to the extent that they will throw every safe guard around our water resources yet permit such orderly development of hydro-power possibilities as public and private agencies may see fit to undertake.

It has been admitted by those who drafted the hydro-electric commission bill that many of its provisions are in direct conflict with existing federal laws. This being so it is evident that such conflicting provisions must fail.

There are a few fundamental principles which have been laid down by the supreme court of the United States which the drafters of the bill should carefully study and which the members of the legislature should seriously consider. Among them are:

The states with certain limitations, are free to control and regulate the use of the waters of their lakes and streams. This right, under its police powers, to regulate and control does not spring from ownership of the waters. It grows out of a trusteeship. The waters of the state, like fish and game, are held in trust for the use and benefit of all the people. The state could not grant to any one the exclusive right to the use of its waters nor to gather its fish and game.

The waters of a non-navigable stream, flowing through the public lands, are a part of the public domain, and the right to their use may be sold or granted by the general government, separate from the rest of the state.

The federal Constitution delegates to Congress the general power, absolutely and without limitations, to dispose of and make all needful rules and regulations concerning the public domain independent of the locality of the land, whether situated in a state or territory, the exercises of which power cannot be restricted in any degree by state regulation.

Owners of land patented prior to 1877 enjoyed all those rights and privileges growing out of the old common law doctrine of riparian rights, for that year Congress, recognizing the necessity of a modification of this old common law doctrine, in effect, separated the water from the land and patented thereafter took their lands divested of the old claim to riparian rights. The right of the states to control and regulate the use of the waters of their lakes and streams was for the first time duly recognized.

The waters, however, are held only by the states in trust for the people and their police powers stop where they deprive the government (or those holding under patents issued prior to 1877) of some right or benefit in the lands.

However, congressional enactments, providing or recognizing that rights to the use of water in streams running through the public lands may be acquired in accordance with local laws, have no application to a controversy over the right to use the public lands as sites for works employed in generating and distributing electric power.

Since 1877 and in such western states as have adopted the "Colorado doctrine" which rejects the common law as to riparian rights, the ownership of the waters of natural streams is in the state, in trust for the public, and individual rights can be acquired only by appropriation and application to a beneficial use.

While the government appears to have recognized the right of the several states to control the use of the waters of their lakes and streams, so-called "state ownership" is largely a legal fiction for while the water is an incident to the

M'MAHAN ASKS REDUCTION IN COURT TERMS

In connection with the bill before the legislature seeking to decrease the term of circuit court in department No. 1 of Marion county from seven to five terms a year, a bill championed by Circuit Judge McMahan who holds that the seven terms are an imposition on the taxpayers of the county, a resume has been made of cases tried during the last eight terms of court since January 1, 1920, will show figures attached to indicate reasons for passage of the bill.

The itemized statement shows that 77 cases were tried in the last eight terms, or a fraction over nine cases a term. Of this number 23 of the cases resulted in verdicts for the defendant or non-suits.

The estimated cost of operating department No. 1 of circuit court while in jury session is \$120 a day. This cost is the same for a fraction of a day with the jury sitting. All told the nine terms of court showed a total of 127 days or fractions of days when cases were being tried before juries or at the approximate rate of \$129 a day, a total cost of \$15,240 for the 77 cases tried. This would average around \$210 a case, far in excess of the amount of filing fees charged.

In a number of cases where verdicts against the defendants were recorded and the plaintiff won, the judgments were considerably below the cost of the case to the taxpayer, or it is indicated that in many of the cases the county could afford to pay the judgment awarded and make considerable money if no jury had been called in the matter.

As instances a one day case of Sheridan against Witzel saw a judgment of \$96.25 returned; a case of Becker Hillman, consuming a day and a half, brought a judgment for the plaintiff of \$65.50, this representing a \$240 cost to the county.

In the case of Welch vs. Beardsley, consuming one day, a \$40 judgment for plaintiff was returned. In the case of Hill vs. Fawc, consuming two days, a \$1 judgment was returned. In the case of Conlee vs. Fawc, also a two day case, a \$75 judgment was returned. In the case of Adams against Neer, a case using up two and a half days or \$320 costs for the court, a judgment of \$100 was returned for the plaintiff.

Some of these facts in favor of the bill reducing the number of terms of court will be presented to the committee in the next day or two.

"Farmers are going without butter on their bread to sell the cream; they are selling eggs at 15 cents a dozen and going without them on their own tables, to get together money enough to pay their taxes," said Judge McMahan. "Bills like this will help them to get their butter back onto their bread and to keep a few eggs for their own tables."

LEGION LAMENTS PAST COMMANDER

Capital Post of the American Legion has adopted the following resolution:

"Whereas we have recently lost from our midst one of our best beloved comrades, a soldier, a legislator, a generous and high minded gentleman, the first Commander of Capital Post No. 9, one who gave unstintingly of his time, labor and funds for the care of ailing and needy veterans, and

"Whereas, it is fitting and proper that this Post express to the widow of said comrade and to all Oregon Posts and Legionnaires elsewhere, its sorrow and sympathy for the widow and its high regard for the departed.

"Be it resolved by Capital Post No. 9 of the American Legion, department of Oregon:

"That we do hereby extend to the widow of our comrade, Dr. W. Carlton Smith, our heartfelt sympathy; we sincerely affirm that in his death our county has lost a most worthy citizen and patriot, one who in his special sphere cannot be replaced. To the Legion Posts of the state of Oregon and to the endless number of friends who mourn his death, our deepest sym-

land the land is not an appurtenance to the water right. Without the ownership of the land upon, or through, which it can be applied to a beneficial use the water has little or no value.

Congress is vested with the exclusive right and power to dispose of, and make all needful rules and regulations respecting, the public domain of the United States.

By conditions embodied in the enabling act, under which Oregon was admitted into the Union as a state, the right of Congress to control and dispose of all public lands within the state is expressly recognized. The state further bound itself never to tax any of the land or properties of the United States. Nor can the states acquire title to such lands through the exercise of the power of eminent domain for they are already held for the public purposes of the nation. The power of eminent domain cannot be exercised by any state without a suit at law or equity. The government of the United States is not suable in any court without its express consent. There is no distinction between suits against the government directly and suits against its property.

The Constitution vests in Congress the power of disposition of, and for making all needful and regulations governing, the public lands, and that power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions and the mode of transferring such property, or any part of it, and to designate the person to whom the transfer shall be made. No state legislature can interfere with this right or embarrass its exercise.

Under the situation today the state appears to control the water, and the federal government the land, necessary for hydro-power development. As no water right can vest unless the appropriator has lawfully acquired the right to use the land necessary to its utilization, it would appear that the Governor's hydro-electric commission bill, "as is", is doomed to failure.

Having the water without the land is like having a match and nothing to light.

OAKLAND HORSE SHOW FIRE LAID TO INCENDIARIES

Oakland, Cal. (AP)—Three investigations of the disastrous Oakland horse show fire, in which four persons were killed and more than 50 prize horses destroyed, were under way Tuesday with activity centering about police clues to an alleged arson plot.

The city of Oakland, horse show officials and representatives of the state of California were in charge of the separate inquiries while firemen isolated the blackened area swept by the flames.

R. Stanley Dollar, San Francisco shipping magnate and president of the Oakland national horse show, acted as spokesman for the horse owners in charging the city of Oakland was responsible for building the makeshift stables in which the valuable horses were kept.

"Oakland never should have asked these people to bring horses valued at thirty, forty and fifty thousand dollars to this place," he said.

Dollar pointed out the fire would be a severe blow to the Los Angeles horse show opening next Saturday, in which most of the horses destroyed at Oakland were to have been exhibited. He said the owners might consent to show at Oakland again next year but only on condition fireproof stables are provided.

Seeking possible culprits of the fire, police traced clues left by empty gasoline containers, and sought two men described by a horseman as having been overheard in a whispered conversation shortly before the fire broke out.

The dead men were identified as Michael McCarthy, manager of the Carmation Farms stables of Pomona, Cal.; John K. Thomas, Oakland stableman; George Ewing, stableman for Mrs. G. H. Neary, San Francisco, and "Bib Harvey," negro hostler.

Statements were issued by Mayor John L. Davis, and other Oakland officials deploring the appalling loss and the fact that insufficient funds were available to build more suitable quarters. The makeshift stables were located behind Oakland auditorium, in which the show was presented, and was practically destroyed 20 minutes after the fire started.

TEXT BOOK FIGHT BEFORE COMMITTEE

With Mrs. Lotta Smith of the Marion county delegation leading the fight for the exclusion of high schools from the provisions of the free text book bill on the ground of excessive expense, and with C. A. Howard, state superintendent of schools, admitting that the allowance of \$1.50 per pupil for books would not be adequate in the first instance particularly in the case of high schools, the education committee decided Tuesday morning to go into an executive huddle during the early afternoon to iron out this phase of the free text problem.

Opposing the suggestion of Mrs. Smith were Representative George P. Winlow, Tillamook county, who said his constituents are demanding enactment of the bill "as is" and Mrs. Dorothy Lee, who said that the various groups supporting the measure were agreed that high school books should be included in its provisions.

Because, he said, it is relieving parents of the responsibility they should assume. Representative S. L. Stewart, Polk county, is opposing the measure and expressed himself as being in positive disagreement with the modern tendency to shift upon the state burdens which rightfully belong to the individual.

Cleveland, O. (AP)—Police Chief William O. Batrows of Cleveland Heights, a suburb, issued a challenge to any chief in the country for a match on the golf links. The chief is a consistent "80" shooter and an array of golf trophies decorate his office.

POLICE CHIEF OF CORVALLIS IS INDICTED

Corvallis, Ore. (AP)—A three week investigation of crime in Benton county had resulted Tuesday in the indictment of Chief of Police Henry N. Robinson, Corvallis, for malfeasance and negligence in office.

Chief Robinson's time for plea was set for Saturday, February 21, after his arraignment before Judge Skipworth late Monday. He was released on his own recognizance.

The grand jury, in its report, commended Benton county and Corvallis for general law observance activities but charged that Chief Robinson "has overlooked, if not directly connived at, violations of the liquor and gambling laws." The jury said Robinson no doubt sought political favor and allowed bootleggers to trade unmolested. It was recommended that the chief of police be appointed by the mayor rather than elected.

The jury reported that it found "the moral and ethical standards of the instructors and student body at Oregon State college unusually high."

Judge Skipworth ordered the investigation following revelations made during the murder trial of W. L. Henderson, who was convicted of manslaughter and sent to prison for shooting E. B. Mills here November 29.

CAPITAL FLORISTS TAKE GREENHOUSES

Announcement is made that John W. "Jack" Barker and John A. Olson have taken over from C. F. Brethaupt, operation of the Salem greenhouses at 15th and Market streets, largest greenhouses in this section of the valley, and will operate them in the future under the name of Capitol Florists. Brethaupt will continue to operate his retail business downtown as in the past. The new operators of the greenhouses have taken a three-year lease on them with an option to buy. There are over 30,000 square feet of glass in this group of greenhouses.

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ZERBST'S CAPSULES

and the houses are now entirely planted to various sorts of plants. Barker has had charge of the same greenhouses for Brethaupt and has operated them for over 15 years. Olson was formerly in the florist business here with Clancy and later Brethaupt and the past six years has been a member of Salem fire department.

As a new feature a big rockery garden has been installed at the entrance of the main house, showing a mountain scene, with falls and stream, a flagstone bridge, and the streams emptying into a lake below. Improvements are being made in the road, a new glass front being put in, and the salaroom remodeled and completely stocked.

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Accept No Substitutes

Tsuruga, Japan. (AP)—Tsuruga's new harbor constructed at a cost of more than 2,000,000 will be completed in October, vastly improving this seaport, which is the Japan terminus the ship lines from Vladivostok.

Agricultural societies of the Irish Free State have asked the government to impose a tariff on all foreign agricultural produce.

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