

THE FRANCHISE

Full Text of the Grant Made to Smith Timber Co. by Coos County.

In the Matter of the Application of C. A. Smith Timber Company, a corporation, for the use of a portion of the Marshfield-Coquille County Road.

Comes now to be heard the petition of C. A. Smith Timber Company, a corporation, for the use of the east 16 feet of a portion of the county road and public highway leading from the City of Coquille to the City of Marshfield, in Coos County, State of Oregon, by way of Coaledo, Dalsnar and Bunker Hill and being the county road running between said cities aforesaid in the vicinity of and near the right of way of the Southern Pacific Company, a corporation, between the following initial and terminal points on said public road, to-wit: From the point where the present county road leading from Coquille to Marshfield, aforesaid, crosses the railroad of the Southern Pacific Company at the summit, now known as Overland, to a point due west of the intersection of the spur track leading from the railroad of said Southern Pacific Company in or near Bunker Hill to the saw mill of the C. A. Smith Lumber and Manufacturing Company, a corporation;

And it appearing that said petitioner is a corporation organized for the construction of a railway for public use as a common carrier of passengers and freight and that it is necessary or convenient for said railroad company in the location of its road to appropriate the said east 16 feet of said portion of said county road between said initial and terminal points last above described;

And it appearing that the same is not within the corporate limit of a municipal corporation;

And it appearing that it would be to the best interests of Coos county and the public to grant a franchise or use as hereinafter stated;

It is hereby ordered by the County Court of Coos County, State of Oregon, sitting for the transaction of county business, that said petitioner, C. A. Smith Company, hereinafter called the railroad company be and it is hereby given the use of the east 16 feet of that portion of said county road leading from the City of Coquille to the City of Marshfield above mentioned between the following described termini of said road, to-wit: From the point where the present county road leading from Coquille to Marshfield crosses the railroad of the Southern Pacific Company at the summit, now known as Overland, to a point due west of the intersection of the spur track leading from the railroad of said Southern Pacific Company, in or near Bunker Hill to the saw mill of the C. A. Smith Lumber and Manufacturing Company, a corporation, upon the following terms and conditions and upon the extent hereinafter mentioned.

The term of this franchise or use hereby given is ninety-nine years from the date of the making and entering of this order.

The said railroad company shall commence the work of locating the said railroad on the portion of the county road to which a franchise or use is hereby given it within six months from the making and entering of this order and shall complete the same within two years from the said date of making and entering this order, unless prevented by any order or orders of a court or courts having jurisdiction so to do, and in the event of such orders, injunctions or restraining process the railroad company shall use all due diligence to expedite any litigation and dissolve any injunctive process or restraining orders and the period for the completion of said road shall be extended for such period as said company may be actually prohibited and prevented against its will from pursuing the work and locating said road.

The said railroad company shall in no manner interfere with the construction, improvement or repair of said county road nor hinder Coos county, its officers, agents or servants, or any person or persons doing any work of improvement, construction or repair on said road by contract or otherwise from the prosecution of its, his or their work of such improvement, construction or repair in such manner, at such times or according to such plans or specifications as the County Court of Coos County, Oregon, may from time to time adopt, or such modifications or alterations thereof as it may make or any of them.

Said railroad company shall construct barriers, guards, bulkheads, retaining walls, structures and fences at and in all places and in the manner that may hereafter be designated by the county court and if the county road shall at any time be injured or damaged by reason of the proximity of the railroad track, railroad op-

erations, or by any act of said company, whether of omission or commission, the said company, shall repair the same, without delay, upon notice being given to it by this court or the county judge of Coos county, Oregon, and said railroad company shall immediately repair and restore said county road to the condition the same was in immediately prior to the time of any such injury or damage to such road and to the satisfaction of the county court of Coos county, which is hereby agreed upon as being the final arbiter thereof.

The railroad company shall, during the progress of the work of surveying and locating said railroad and at all times prior to its completion and thereafter and during the entire period of term of this franchise and the use hereinafter stated keep that portion of the county road west of its railroad open, safe and unobstructed by logs or otherwise due to any of its railroad operations and a event of wrecks or the casting or hurling or leaving of wreckage, logs, freight or rolling stock on the said county road it shall be the duty of the railroad company to immediately remove the same and open the said road for travel and restore and replace the same in as good condition as it was immediately prior thereto.

In laying such railroad, if any portion of the 16 feet upon which said railroad company is given the use as herein stated shall extend over or interfere with the improved county road bed prepared for the public or vehicles, the said railroad company shall make, construct and grade upon approved plans approved by the county court on a grade and in a manner satisfactory to the county court on the western side of said improved roadway, a roadway which shall make an improved public highway suitable for all purposes needed by the public, at least twenty-four feet in width west of the portion of the road the use of which is given to the railroad company as herein designated.

Before construction is begun the railroad company shall prepare a complete set of plans showing in general and in detail the alignment, grades and structures which it is proposed to use in the construction of the railroad, and in the protection or alteration of the county road and prepare specifications under which it is proposed to build the structures and such plans and specifications must meet with the approval of the county court or said court may order such alterations, corrections, changes and improvements thereof as it may deem necessary or expedient and when satisfactory shall approve the same and thereafter such work shall be done strictly in compliance with such approved plans and specifications. If during construction or afterwards it is discovered that this provision has not been complied with by the railroad company, the county court may order such changes as may be necessary and the railroad company shall forthwith comply with such order or orders.

If it shall be deemed necessary or expedient by the county court by reason of the use by said railroad company of such portion of the county road to acquire additional width or right of way for said county road or any portion thereof, the said county may acquire such county road or additional width by condemnation or otherwise in the manner provided by law and the said railroad company shall pay all the expenses of such condemnation and damages paid to owners of property for land acquired, together with all engineering and surveying expenses incurred by the county and said railroad company shall make such cuts and fills with such slopes in cuts and on fills as the court shall designate and dispose of all earth to be removed as the court at all direct.

The railroad company shall make excise and deliver and at all times during the continuance of this franchise keep on file with the County Clerk of Coos County a good and sufficient bond or bonds in the penal sum of twenty five thousand dollars, executed by a responsible surety company, licensed and authorized to do business under the laws of the State of Oregon and at all times during the term of this franchise, valid, operative and enforceable by Coos County, or any persons interested therein, conditioned that and indemnifying and saving harmless the said Coos County, its officers, servants and agents from any and all claims, demands and damages by reason of the said railroad or the operation or maintenance thereof or injuries caused thereby and conditioned that said railroad company shall in all things, observe, perform, fulfill and keep all and singular the clauses, conditions, agreements, matters and things which on its part are to be observed, performed, fulfilled and kept according to this order and the franchise given, and all lawful orders of the county court hereafter made pursuant hereto.

The railroad company will and upon acceptance of this order and as part consideration of the granting of this franchise shall be deemed to and shall

thereby covenant and agree to furnish, sell and deliver to Coos County, Oregon, and load F. O. B. on cars to be furnished by said company on the railroad of said railroad company, thirty-two thousand cubic yards of gravel from the south fork of the Coquille river suitable for road building and to be approved by the county court of Coos County, for fifty cents per cubic yard and shall deliver said gravel without further charge to the county at such places along said railroad as may be desired by the county and as directed by the county court, in orders of not less than 1000 cubic yards in any one order.

The railroad company shall and upon acceptance of this order and as part consideration of the granting of this franchise shall be deemed to and shall hereby covenant and agree during the life of this franchise, in addition to the gravel above mentioned, furnish and sell to Coos county, F. O. B. on cars to be furnished by said railroad company on the railroad of said railroad company gravel from the south fork of the Coquille river, suitable for road building and to be approved by the county court of Coos county in such quantities as the county court may from time to time designate and in orders for not less than 1000 cubic yards in any one order, at fifty cents per cubic yard and agree to haul and deliver said gravel to the county at such places along said railroad between said town of Powers and the City of Marshfield for the improvement, construction and repair of the county roads of the county as the county court may designate at the price of twenty-five cents per cubic yard delivered at the City of Myrtle Point and at the price of fifty cents per cubic yard delivered at all points on said railroad northerly of said City of Myrtle Point, and said company shall use all reasonable means to promptly furnish and deliver such gravel at the times, places and in the quantities ordered by the county court. All gravel to be delivered, if the stage of the water in the Coquille river permits, during the months of May, June, July, August, September, October and November in each year.

All conditions, terms, covenants and provisions of this order shall be binding upon the said railroad company, its successors, assigns and lessees, in the event of the succession of interest herein or assignment hereof, provided, however, that no interest in the franchise or use hereby granted shall devolve upon or to or succeed to any person, persons or corporation than the said railroad company nor shall the said railroad company assign this franchise or use or any interest therein, nor sublet said franchise, use or any portion thereof or of county road, nor lease or sublet said road or any portion thereof without the consent of the County Court being first had and obtained, and any attempted assignment, subletting or leasing without such consent shall be null and void.

No grade crossing of the county road shall be made.

In the event of the breach or violation by said company, its successors, assigns, or lessees of any of the conditions, covenants, terms or provisions of this order or franchise after being notified by the county court thereof, the said railroad company, its successors, assigns or lessees, shall pay to the County of Coos, State of Oregon, during each day of the continuance of such breach or violation or failure to comply strictly and literally with the provisions of this order and franchise the penal sum of twenty-five dollars, it being hereby mutually understood that the damages are unliquidated and uncertain and incapable of exact ascertainment and time being the essence of all the terms, provisions, conditions and covenants hereof.

In the event that such breach or violation shall continue for a period of ninety days after notice by the County Court thereof as aforesaid, the County Court may at its option absolutely determine said franchise and terminate all rights of said railroad company, its successors, assigns or lessees in and to the use of said county road or any portion thereof, and no court shall relieve said railroad company, its successors, assigns or lessees from its obligation to strictly comply with and fulfill all the terms, conditions, covenants and provisions of this order and franchise and all orders of the county court lawfully made pursuant hereto.

In the event of a breach by the railroad company of any of the conditions herein provided or a failure to do any of the things ordered by the County Court and hereon contemplated to be done, the County Court in addition to any of its other remedies, may perform at its option such work or do the things necessary to be done, or cause the same to be done, and the railroad company shall repay to the county all of the cost and expense thereof, including supervising and all incidental expenses.

In the event of any of the terms, conditions, covenants or provisions of this order or franchise may be declared invalid or inoperative by any

court having jurisdiction in the premises, such order, judgment or decree shall not affect the remainder of said terms, conditions, covenants or provisions but the same shall remain in full force and effect, it being understood and agreed that all of the terms, conditions, covenants and provisions of this order and of said franchise are severable and separate terms, conditions, covenants and provisions and each and all shall be operative except such as may be particularly held invalid or of no legal effect.

In the event any of the provisions as to the consideration to be paid to the County by said railroad company, its successors, assigns or lessees, or the furnishing of gravel of the price or freight or hauling rates thereof, as hereinbefore mentioned, may be declared inoperative by any court having jurisdiction in the premises, then in lieu thereof said railroad company, its successors, assigns or lessees shall pay such sums for the franchise and use hereby granted as may be mutually agreed upon by the County Court and said railroad company, its successors, assigns or lessees and in the event of the failure to so agree, such sum yearly in advance at the beginning of each calendar year as rental or the value of the use as the Court may adjudge reasonable in a suit or suits or action or actions brought for the recovery of such rental or value of such use.

This order shall not be deemed operative or go into force or effect until said railroad company shall present to the County Court and file with the Clerk of Coos County, Oregon, a written acceptance of all of the terms, conditions, covenants and provisions of this order and the franchise and use hereby granted, on behalf of itself, its successors, assigns and lessees, within 90 days from date hereof. Dated this 30th day of December, A. D. 1916.

James Watson, County Judge.
G. J. Armstrong, Commissioner
W. T. Dement, Commissioner.

Beach Mining on a Big Scale.

Henry Artell is pulling the lumber that washed on the beach when the wharf went down last spring onto the bluff near Fort Point with a donkey engine. As soon as he has completed this work he will move the donkey on the beach near Gold Run where he will try black sand mining on an extensive scale this winter. He is having a large boiler and steam scraper shipped in, and will handle 200 tons of sand a day over especially prepared copper that is treated for the purpose of resisting the action of grease. Greasy gold has long been a source of much trouble to beach miners.—Port Orford Tribune.

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ABSTRACTS

For reliable Abstracts of Title and information about Coos County Real Estate see

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Marshfield and Coquille City, Ore.

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