

# COUNCIL MAY USE DISCRETION IN PASSING UPON PETITIONS, IS CITY ATTORNEY'S OPINION

That the city council is given discretionary powers under the charter in acting on petitions for street improvements, is the gist of an opinion completed by City Attorney C. S. Benson on section 25 of chapter 29 of the city charter. The opinion was written to clear any doubt existing in connection with the charter provision in question and was presented to the council at the regular session of that body.

The section covered by the opinion is to the effect that "whenever the owners of a majority of the property benefited by a contemplated street or sewer improvement shall cause a petition to be filed with the common council of the city of Bend designating the nature and kind of improvement desired, and naming the streets, alleys, public ways, or the parts thereof, desired to be improved, or designating the termini of the sewer to be constructed or reconstructed, and naming the streets upon which the same is to be located, and subscribed by said respective owners, describing the property so owned by them, and also setting forth in said petition a description of the respective properties to be benefited by said improvement, the common council shall thereupon proceed to consider said petition, and if it appears that the owners of a majority of the property are benefited by said contemplated improvement, and have signed said petition, the said common council shall thereupon declare by resolution its purpose of making said improvement," etc.

Mr. Benson's opinion, as it was presented to the council, is as follows:

"To the Honorable Mayor, and Common Council of the City of Bend, Gentlemen: Replying to your request for an opinion from me as to the powers and duties of the common council under section 25 of chapter 19 of the charter of the city of Bend, I have to say, that as I interpret said section, a measure of discretion is therein reserved to the council, and even though a petition were presented to that body signed by a number of persons claiming to be the owners of a majority of the property benefited by a proposed improvement, and asking for an improvement of a described character, nevertheless the council has the sole power and authority to determine whether the persons joining in such petition do, as a matter of fact, constitute the owners of a majority of all the property that would be benefited by said proposed improvement, and whether such signers would be benefited thereby and, in its discretion, grant or deny the prayer of the petition as it found these facts to be; and under well established rules of law, the judgment of the council in the matter, honestly exercised, would not be subject to review by the courts.

"I think a careful reading and consideration of the involved section will convince anyone that the construction contended for is the only one possible from the language used, for, had it been the intention that the council should have no discretion in the matter, but should act wholly in a ministerial capacity, the following phrase in said section would have been omitted: 'The common council shall thereupon proceed to consider said petition, and if it appears that the owners of a majority of the property are benefited by said contemplated improvement and have signed said petition, the common

council shall thereupon declare by resolution,' etc., and in its place words of this import used. 'It shall appear that said petition is signed by the owners of a majority of the property assessable for the cost of said improvement, the said common council shall thereupon declare by resolution,' etc. Said section 25, as it now reads, wisely provides for the protection of the property holder, since it lodges in the council the power to investigate a proposed improvement before it is made and ascertain its real merits by competent investigation, and if such investigation shows that such improvement involves the use of some untried material or of some material or plan of construction concerning which there exists a reasonable doubt as to its utility, the council is in a position to declare that the petitioning property owner will not be benefited, and hence it can decline to grant the prayer of the petition.

"There is another phase of this question that should be considered. Section 27 of chapter 19 of the city charter embodies what is popularly known as the Bancroft act, a provision for paying assessments for local improvements in deferred semi-annual installments; where an owner's property is assessed \$10 or over, he can apply to pay such assessment under the deferred payment plan, to the amount of the assessed valuation on his lot plus the amount of the assessed valuation of his permanent improvements thereon as shown by the last county assessment roll. He must pay in cash the amount of his assessment in excess of these assessed valuations. If he does not pay such excess, he cannot bond, and his property will be sold forthwith by the city. The bonds issued under the Bancroft act are obligations of the city, which the city must pay like any other of its indebtedness to the holders of the bonds, irrespective of the fact whether the city collects in the assessments or not. Moreover, the contracts for all improvements under our charter are made with the city through its authorized officials, and in case of a default in payment by the city, judgment can be obtained against it and the levy of a tax ordered to pay same. The fund for meeting this contract is provided by the sale of Bancroft bonds, or by voluntary payment of the assessment, or by selling the property assessed in case same is not bonded. In case a tract of land is not worth the assessment for the improvement, the owner would naturally refuse to pay same, the city is forced to buy in the property, carry it at an expense, and eventually sell it for the best price obtainable, probably at a loss. Thus it will appear that all the tax payers of the city are interested in every contract for a local improvement, and the city council, as the representative of all the taxpayers, should have the absolute veto power over every proposed contract for a local improvement. Where the property assessable for a proposed improvement is clearly worth what it costs, a council would hardly go on record as opposing such improvement, but where any of the assessable property is not worth the cost of the improvement, or where the proposed improvement is of doubtful or even uncertain value, I consider that the council, as a guardian of the public interest of all the tax payers of the city, would properly exercise its veto power on a proposed local improvement."

## LAKEVIEW ROAD TO TAP C. G. HIGHWAY

Carrying out the idea of tying in the Lakeview road with a state highway to the north, the state highway commission has ordered a survey, with a view to adopting the China Hat route to the Central Oregon highway, rather than connecting with The Dalles-California highway at La Pine. The route selected is 10 miles shorter.

## HAY OWNERS WILL TRADE FOR COWS

Enough hay owners have signified their desire to trade for Tillamook cows to insure a carload of cattle, says County Agriculturist D. L. Jamison, who has been working on a trading scheme of this nature since his return from Corvallis. Others are expected to sign up. No definite deal has been completed with the coast dairymen for a trade.

## FEW POTATOES HIT BY FRIDAY FROST

Potato fields in some parts of the county were nipped by Friday night's frost, others not, according to R. M. Chase of the Grange Hall district. Mr. Chase's own fields were not damaged, but those of A. J. Melvin, near Bend, were badly frosted, as were those of Herman Tekampe of the Arnold district. The thermometer reached 30 degrees on the Chase ranch, while 28 degrees is the highest at which potatoes may be injured.

## RURAL ROUTE FOR TUMALO PROMISED

Establishment of a rural route at Tumalo, effective August 17, has been promised by the postoffice department, it is announced.

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### CHAPTER SIX. In Which a Very Old Game Takes Place on the Hog's Back.

**ONE.**  
A thick grey mist lay over the Thames. It covered the water and the low fields to the west like a thick white carpet; it drifted sluggishly under the old bridge which spans the river between Goring and Streatley. It was the hour before dawn, and sleepy passengers, rubbing the windows of their carriages as the Plymouth boat express rushed on toward London, shivered and drew their rugs closer around them. It looked cold . . . cold and dead.

Slowly, almost imperceptibly, the vapor rose, and spread upwards up the wooded hills by Basildon. It drifted through the shrubs and rosebushes of a little garden, which stretched from a bungalow down to the water's edge, until at length wisps of it brushed gently round the bungalow itself. Suddenly the window of one of the downstairs rooms was flung open, and a man with a white beard and face leaped out drawing great gulps of fresh air into his lungs. Three other men lay sprawling uncouthly in chairs, and two dogs lay motionless on the hearthrug.

"After a moment or two the man withdrew, only to appear again with one of the others in his arms. And then, having dropped his burden through the window on to the lawn outside, he repeated his performance with the remaining two. Finally he pitched the two dogs after them, and then, with his hand to his forehead, he staggered down to the water's edge.

"Holy smoke!" he muttered to himself, as he plunged his head into the cold water, "talk about the morning after!"

After a while, with the water still dripping down his face, he returned to the bungalow and found the other three in various stages of partial insensibility.

"Wake up, my heroes," he remarked, "and go and put your great fat heads in the river. We were all of us drugged or doped somehow. And now," he added bitterly, "we've all got heads, and we have not got Potts."

"I don't remember anything," said Toby Sinclair, "except falling asleep. Have they taken him?"

"Of course they have," said Hugh. "Just before I went off I saw 'em all in the garden, and that swine Lakington was with them. However, while you go and put your nuts in the river, I'll go up and make certain."

With a grim smile he watched the three men lurch down to the water; then he turned and went upstairs to the room which had been occupied by the American millionaire. It was empty, as he had known it would be, and with a smothered curse he made his way downstairs again.

### TWO.

"Has it struck you fellows," remarked Hugh, at the conclusion of lunch, "that seated around this table are four officers who fought with some distinction and much discomfort in the recent historic struggle?"

"How beautifully you put it, old fella!" said Darrell.

"Has it further struck you fellows," continued Hugh, "that last night we were done down, trampled on, had for mugs by a crowd of dirty blackguards composed largely of the dregs of the universe?"

"A veritable Solomon," said Algy, gazing at him admiringly through his eyeglasses. "I told you this morning I detested your friends."

"Has it still further struck you," went on Hugh, a trifle grimly, "that we aren't standing for it? I propose that we should tackle the blighters tonight."

"Tonight!" echoed Darrell. "Where?"

"At The Elms, of course. That's where the wretched Potts is for a certainty."

"And how do you propose that we should set about it?" demanded Sinclair.

Drummond drained his port and grinned gently.

"By stealth, dear old beans—by stealth. You—and I thought we might rake in Ted Jerningham, and perhaps Jerry Seymour, to join the happy throng—will make a demonstration in force, with the idea of drawing off the enemy, thereby leaving the coast clear for me to explore the house for the unfortunate Potts. An accident . . . A car . . .

What is the connecting-link . . . Why, drink. Write it down, Algy, or we might forget. Now, can you beat that?"

"We might have some chance," said Darrell kindly, "if we had the slightest idea what you were talking about."

"Eg attention, all of you," said

was silence for the next two miles. Once or twice he looked at her out of the corner of his eye, taking in every detail of the sweet profile as near to him. Except for their first meeting at the Carlton, it was the only time he had ever had her completely to himself, and Hugh was determined to make the most of it. He felt as if he could go on driving for ever, just he and she alone. It was then that the girl turned and looked at him. The car swerved dangerously.

"Let's stop," she said, with the suspicion of a smile. "Then you can tell me."

Hugh drew into the side of the road, and switched off the engine.

"You're not fair," he remarked, and if the girl saw his hand trembling a little as he opened the door, she gave no sign. He came and stood beside her, and his right arm lay along the seat just behind her shoulders.

"Tell me about this important thing," she said a little nervously.

He smiled, and no woman yet born could see Hugh Drummond smile without smiling too.

"You darling!" he whispered, under his breath—"you adorable darling!" His arm closed around her, and, almost before she realized it, she felt his lips on hers. For a moment she sat motionless, while the wonder of it surged over her, and the sky seemed more gloriously blue, and the woods a richer green. Then, with a little gasp, she pushed him away.

"You mustn't . . . oh! you mustn't, Hugh," she whispered.

"And why not, little girl?" he said exultantly. "Don't you know I love you?" His face was still very close to hers. "Well?"

"Well, what?" she murmured.

"It's your turn," he whispered. "I love you, Phyllis—just love you."

"But it's only two or three days since we met," she said feebly.

"And pawat the devil has that got to do with it, at all?" he demanded.

"Would I be waiting longer to decide such an obvious fact? Tell me," he went on, and she felt his arm round her again forcing her to look at him—"tell me, don't you care . . . a little?"

"What's the use?" She still struggled, but, even to her, it wasn't very convincing. "We've got other things to do . . . We can't think of . . ."

And then this very determined young man settled matters in his usual straightforward fashion. She felt herself lifted bodily out of the car as if she had been a child; she



She Found Herself Lying in His Arms, With Hugh's Eyes Looking Very Tenderly Into Her Own and a Whimsical Grin Around His Mouth.

found herself lying in his arms, with Hugh's eyes looking very tenderly into her own, and a whimsical grin around his mouth.

"Cars pass here," he remarked, "with great regularity. I know you'd hate to be discovered in this position."

"Would it?" she whispered. "I wonder . . ."

She felt his heart pound madly against her; and with a sudden quick movement she put forth her arms round his neck and kissed him on the mouth.

"Is that good enough?" she asked, very low; and just for a few moments, time stood still. . . . Then, very gently, he put her back in the car.

"I suppose," he remarked resignedly, "that we had better descend to trivialities. We've had lots of fun and games since I last saw you a year or two ago."

"Idiot boy," she said happily. "It was yesterday morning."

"The interruption is considered trivial. Mere facts don't count when it's you and me." There was a further interlude of uncertain duration, followed rapidly by another because the first was so nice.

"To resume," continued Hugh, "I regret to state that they've got Potts. The girl sat up quickly and stared at him.

"Got him? Oh, Hugh! how did they manage it?"

"I'm d—d if I know," he answered grimly. "They found out that he was in my bungalow at Goring during the afternoon by sending round a man to see about the water. Somehow or other he must have done the drink

or the food, because after dinner we all fell asleep. I don't remember anything more till I woke this morning with the most appalling head. Of course, Potts had gone."

"I heard the car drive up in the middle of the night," said the girl thoughtfully. "Do you think he's at The Elms now?"

"That is what I propose to find out tonight," answered Hugh. "We have staged a little comedy for Peter-son's especial benefit, and we are hoping for the best."

"Oh, boy, do be careful!" She looked at him anxiously. "I'd never forgive myself if anything happened to you. I'd feel it was all due to me, and I just couldn't bear it."

"Dear little girl," he whispered tenderly, "you're simply adorable when you look like that. But not even for you would I back out of this show now." His mouth set in a grim line.

"It's gone altogether too far, and they've shown themselves to be so completely beyond the pale that it's got to be fought out. And when it has been," he caught both her hands in his . . . "and we've won . . . why then, girl o' mine, we'll get Peter Darrell to be best man."

Which was the cue for the commencement of the last and longest interlude, terminated only by the sudden and unwelcome appearance of a motor-bus covered with and without by unromantic sightseers, and paper-bags containing binoculars.

They drove slowly back to Gullford, and on the way he told her briefly of the murder of the American's secretary in Belfast, and his interview the preceding afternoon with the impostor at the Carlton.

"It's a tough proposition," he remarked quietly. "They're absolutely without scruple, and their power seems unlimited. I know they are after the duchess of Hampshire's pearls: I found the beautiful Irma consuming tea with young Laidley yesterday—you know, the duke's eldest son. But there's something more in the wind than that, Phyllis—something which, unless I'm a mug of the first water, is an infinitely larger proposition than that."

(To be Continued)

## COBB ACCEPTS POST AS MANAGER OF GYM

Norman A. Cobb, designated recently as the choice of the governing board of the gymnasium as manager, has accepted the position.

## CUPID LAYS OFF IN USUALLY BUSY MONTH

Four marriages less than the number made possible in Deschutes county in June, 1920, were provided for during the month just past, County Clerk J. H. Haner's records show. In June of this year 10 licenses were issued from the clerk's office as against 14 in the corresponding month of the year preceding.

## Brand Directory

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