

# KING'S FAMOUS DISSENTING OPINION IN CRATER LAKE HIGHWAY CASE

Supreme Court Justice Who Held That Southern Oregon Was as Much Entitled to Appropriations as Other Sections and That Holding the Appropriation Invalid Violated the Letter and Spirit of the Constitution.



WILL R. KING, JUSTICE OF THE SUPREME COURT

Judge Will R. King of the supreme court, candidate for re-election on the non-partisan and democratic tickets, should receive a unanimous vote in southern Oregon, regardless of party, not only for his acknowledged ability, but for his broadness of vision and his fairness to this section of the state.

When the supreme court last February held the Crater Lake highway appropriation invalid, Judge King wrote a dissenting opinion, which in its way is a classic and has endeared him to the heart of every Crater Lake enthusiast. In part this decision, championing the rights of this section, is as follows:

"Can we then consistently hold that under this section of our fundamental law, the state has the right to appropriate money for the purpose of connecting on our northern boundary two divisions of the state, requiring the taxpayers in remote sections to contribute to such appropriations, merely because the means of transportation is in cars upon this highway, and at the same time hold that the same range of mountains may not be pierced by another and less expensive class of highways—wagon roads—near its southern boundary, opening, thereby, the only practical means of communication available to the people of the two separated localities of such remote section? And shall it be held that the people along the Willamette river, through the generosity of the state appropriation for the locks at Oregon City, shall be commercially united north and south, and at the same time deny a like privilege to the citizens of the two divisions east and west of the Cascade range near our southern borders? I think not. Such inconsistency was certainly not intended by the conceded broad-minded, far-seeing and able men of which the convention was composed. It is not a question, as intimated, whether the southern part of the state has been, or is receiving its proportion of state appropriations but whether the rule of construction shall be applied, when disbursements by the state shall be made for highways in the northern and northwestern part of the state and a different rule prevail when disbursements are authorized for highways in the southern and southwestern districts. I deem the precedent established, by holding the act under consideration void, to be far-reaching and portentous in its resultant effects.

"Along the line of this contemplated road and within the western boundary of Klamath county is what is known as the Crater Lake National park. Of this park and its general nature and advantages we may have judicial knowledge; but in determining whether the benefits to accrue to the state at large or sufficient to make the highway one of public rather than local importance, we are not left to this resource alone. We have, together with plaintiff's opinion in his pleadings, the uncontradicted testimony of witnesses, whose high standing and informato, on the subject is unquestioned.

"The Crater Lake district is in a northwestern part of Klamath county, adjacent to Jackson county,

within the government forest reserve, and, prior to 1865, was practically unknown; but in 1902 was, by the government, set aside as a national park, since which time it has been known as Crater Lake national park. It contains, approximately 160,000 acres, or 250 square miles of territory, the grandeur of which is unequalled, either on this continent or elsewhere, and when properly opened by traversable highways, promises to rank through its wondrous scenic beauty and unparalleled geological formation, as one of the most valuable resources of our state.

Summing up, Justice King says: "In view of the conceded facts, it would seem the public importance as compared to the local benefits could hardly admit of doubt. One of the great assets of any commonwealth is its scenery, its freaks of nature, whether in its rugged mountains or its valleys; its lakes, mammoth caves, hot springs, as in Arkansas, or geysers, such as appear in Yellowstone park, etc. Upon assets of this character many of the railway lines throughout the various states in which they operate, such as those along the Columbia, the Denver & Rio Grande, and other so-called scenic railways, rely for much of their income; and the states in which the natural wonders may be situated proportionately share in the benefits accruing therefrom.

"Considering, then, the combined advantages to accrue to the state by uniting and bringing in touch with each other the two great divisions of the state, as shown, together with the opening to the people of the entire state by a convenient road what promises to be one among the great public parks and natural wonders of the continent, can it be legally held that the act in question is void? Holding unconstitutional this act violates, I think, both the letter and spirit of the constitution, and especially disregards the rule of construction invoked by this court in an unbroken line of decisions for half a century, to the effect that constitutions, in order that the object of the government may be accomplished, must be construed liberally and along broad, general lines; and that before an act shall by the courts be annulled and held for naught, the conflict must appear beyond a reasonable doubt. Does the showing made in this instance eliminate all reasonable doubt as to the validity of the act? I think not. In fact, I can see no room for a substantial doubt upon the subject, and must, therefore, record my dissent from the conclusion announced by the majority."

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