

MEDFORD MAIL TRIBUNE

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GEORGE PUTNAM, Editor and Manager

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MEDFORD, OREGON. Metropolis of Southern Oregon and Northern California, and the fastest-growing city in Oregon.

Population—U. S. census 1910—8840; estimated, 1911—10,000.

Five hundred thousand dollar Gravity Water System completed, giving finest supply pure mountain water, and 17.5 miles of streets paved.

"STEAM BEER" MINE SOLD FOR \$17,000

The old "Steam Beer" placer mine on Grave creek, just above Leland has been sold by H. K. Miller to parties from California, the new owners to take immediate possession and operate the property on an extensive scale.

The purchase price of the mine is \$17,000, and one half of the amount was paid over to Mr. Miller in this city Monday.

Three "giants" are among the equipment of the "Steam Beer," and these will be put in operation washing the values from the gravel at once, the recent rains having raised the creeks and given a sufficient flow of water. This mine is one of the best known of the producing properties in the Grave creek district, and has been a dividend-payer for many years.

There is an increasing demand for the purchase of placer mines at present, and buyers are more plentiful than are the properties that are offered for sale.

WOMAN ELECTED MAYOR WARRENTON

WARRENTON, Ore., Dec. 19.—The first woman mayor in Oregon and as far as known, the second in the country is elected here today in the person of Miss Clara C. Munson, daughter of a survivor of the Whitman massacre. She won over her male opponent, H. W. Detrich, by a margin of 16 votes.

There were sixty-five votes polled at the election, one third of the ballots being marked by women. One of the women voters was Mrs. M. Munson, 71, mother of the victorious candidate for the mayoralty.

The new administration will begin its active duties January 1. Mayor-elect Munson has many reforms in view. She thinks she will have smoother sledding than the Hunnewell, Kan., woman mayor, whose councilmen resigned because they did not desire to take orders from a woman.

COMMUNICATIONS

To the Editor: It is to be regretted that the basket ball game played by the Chosen Friends and the Medford Athletics was reported from so biased a point of view and by one who finds it impossible to differentiate between fast aggressive playing and poor sportsmanship.

This protest is written in the interest of both teams who played a clean closely contested game. The play was fast and aggressive. The umpire and referee deserve credit for their work in rendering decisions where two teams both play for the ball. Basket ball is not a parlor game and it calls for some "heat," using the term supplied by your reporter. When the play is close the referee often finds it difficult to render impartial decisions.

Medford Bridge Decision by Supreme Court of Oregon

The decision of the supreme court in the Medford bridge case. (Benton Bowers et al vs. J. R. Neff et al) overrules the circuit court at every point, upholds the action of the county court in awarding the bridge contract, and holds not only that the Medford city charter compelled the county to build the Medford bridge, but that the diversion of the money raised for road purposes by special levy into the general fund and its use for redemption of warrants is contrary to the express provisions of the law and that the use of such money must be regarded as a loan from the road fund to the general fund. Porter J. Neff and W. D. Fenton represented the appellants (the county), and E. D. Briggs the respondents, Bowers.)

Supreme Court Decision

The decision of the court is in part as follows: "The plaintiffs in this suit maintain: (1) that the bridge in question being within the incorporated city, is not upon the county road, and that the county court has no authority to build such bridge; (2) that the carrying out of the contract in question, would increase the voluntary indebtedness of Jackson county beyond the constitutional limit. As to the first question: Section 937, subdivision 4, L. O. L. empowers the county court, among other things to public bridge upon any road or highway established by public authority.

"As a general rule when a municipal corporation is created over territory lying within a county, the power and duty to repair roads therein depends upon the statutes, which sometimes give the municipality power over that part of the highway within its limits, or which may allow the county officers to improve a highway within the limits of the municipal corporation.

Legislature Within Rights

"A county government is an arm of the state; so also is a city, acting in its public or governmental capacity, and at the time of the enactment of the several charters referred to, the legislature has power to impose upon a county the duty of building, maintaining and repairing a bridge on a county road within the limits of a city of the county. These municipal corporations are a part of the sovereign family, and it is appropriate that the state should direct and control their government in a manner not inconsistent with the constitution.

"According to the plain provisions of section 105 of the charter of the city of Medford, it is incumbent upon the county of Jackson to build, maintain and repair all bridges and culverts upon county roads in the city and road district, the cost of which is in excess of \$20. Taking this section, together with the other sections referred to, and in view of the general legislation of the state, we think it was the intention of the legislature that the county of Jackson should retain jurisdiction of the county roads within the limits of the city of Medford, to that extent. Unless this requirement is clearly within some inhibition of the constitution, the mandate should be obeyed.

County Court's Jurisdiction

"It is contended by counsel for plaintiffs that section 105 of the Medford charter is within the inhibition contained in art. IV, sec. 23, sub. 7, of the constitution which provides that the legislative assembly shall not pass special or local laws for laying, opening, and working on highways, and for the erection or appointment of supervisors. This directs that a general rule shall prevail in this state for laying, opening and working highways, and in so far as the expenditure of money upon the highways is concerned, requires a general mode of assessment and taxation for the purpose of raising funds to be expended therefor. It has no particular application to the territorial limits of the jurisdiction of the respective county courts. It is admitted that this bridge on East Main street will accommodate many citizens and residents of Jackson county, and it is clear that the statute gives the county court jurisdiction over the bridge spanning Bear creek over which the highway extends.

"We now come to the second question which is more difficult. It was stipulated by the respective counsel that the county should be enjoined from paying for the bridge all in excess of \$18,000, until the city and the Pacific and Eastern Railway company shall pay the amounts agreed; therefore the question is whether or not the county, in June, 1912, was authorized to make a contract for a bridge, to this amount.

Constitution Interpreted

Section 10 of art. XI of the constitution is as follows: "No county shall create any debts or liabilities which shall singly or in the aggregate exceed the sum of five thousand dollars, except to suppress insurrection or repel invasion, or to build permanent roads within the county, but debts for permanent roads shall be

incurred only on approval of a majority of those voting on the question."

An indebtedness incurred by a county in constructing or repairing bridges is a voluntary obligation, and unless a special provision was made to meet such liability, it would come within the prohibition against county indebtedness contained in this section of the constitution. Security Co. vs. Baker county, 33 Or. 338.

"In January 1912, the county court of Jackson county made an annual tax levy on the property assessed in 1911. In addition to the other levies provided for by law, the court levied 1.9 mills on the dollar, or \$72,000, for the general fund; and for the road and bridge fund, pursuant to section 6320, L. O. L. 4 mills on the dollar, or \$152,000. One-half of the road fund received has been apportioned to the several road districts of the county as required by that section. IT THEN BECAME THE DUTY OF THE COUNTY OFFICERS TO SET APART THE REMAINING ONE-HALF OF THE MONEYS RECEIVED FROM THE ROAD FUND LEVY, INTO A GENERAL ROAD FUND TO BE EXPENDED FOR COUNTY ROADS AND BRIDGES, UNDER THE DIRECTION OF THE COUNTY COURT DURING THE YEAR 1912. THIS IMPORTANT REQUIREMENT OF SECTION 6320 THE COUNTY OFFICERS FAILED TO COMPLY WITH, but instead mingled the moneys received from the general county fund levy, and the half of the road fund moneys remaining after the apportionment to the road districts, and turning the whole thereof into the county general fund. From this combined fund the county treasurer has redeemed county general fund warrants of the county, aggregating \$72,936.26, besides some county warrants redeemed from funds obtained from other sources than the 1911 taxes.

Levying Road Tax

"It is here necessary to further notice the purpose of section 6320, L. O. L. This authorizes the county court of each county in the state to levy a tax of not to exceed 10 mills on the dollar on all taxable property of the county at the time of making the annual tax levy upon the previous year's assessment which shall be set apart as a general road fund to be used in building and improving public or county roads and bridges. It directs that such tax shall be paid in money, and collected as other county taxes are collected, and when so collected shall be used for road purposes only; and 50 per cent thereof shall be apportioned to the several road districts, and the remaining 50 per cent shall be applied to roads in such locality in the county as the court may direct. If it were contemplated that the receipts from the levy might be used in paying outstanding warrants there would be no reason for forbidding the payment of the tax in warrants as in the case of the general tax fund. This fund is, by the terms of the statute, a special road fund of Jackson county. Section 6320 authorizes the levy for a road fund and specifies how the same may be expended. The county court in its discretion, may or may not make the levy. It cannot be compelled to do so. BUT THAT COURT HAS NO AUTHORITY TO EXPEND SUCH FUNDS FOR ANY PURPOSE OTHER THAN AS DIRECTED BY THE STATUTE.

For Road Purposes Only

"Section 6306 L. O. L. enacts that when such a fund is exhausted and an emergency shall arise demanding immediate action by the county courts, they are authorized in their discretion to apply any money in the county treasury not otherwise appropriated, towards defraying expenses of building or repairing bridges. The plan thus evolved by the statutes, taken in connection with the provisions for levying a general annual tax, seems to be that the legislature, taking into consideration the fact that many counties were in debt to or exceeding the limit of the constitution, authorized a levy to be made under section 6320, to be used for road purposes only, during the current year, and ordained that it could be used for no other purpose, leaving the general county fund to pay the outstanding warrants in the order issued. Otherwise when a county has reached the limit of indebtedness, in as much as all road and bridge expenditures are voluntary, it would follow that no county could legally expend any funds for roads and bridges, unless it first levied enough tax to pay all the outstanding debt of the county together with the amount of the contemplated expenditure, and the county road machinery would cease to operate.

Road Fund's Object Defined

"The road fund differs radically in its nature from the general fund which is a continuing debt paying fund. It should be presumed that the legislature intended to provide a system which in operation would work in harmony and not be violative of

Daily Hint from Paris



From the 'Daily Hint from Paris' column.

In this black velvet hat the actress is attached to it under a bracelet of knitted white silk cord and pendant ornaments.

"It will be noticed that Art. XI, Sec. 10 of the constitution by its terms inhibits the creation of certain indebtedness. It contains no requirement that a county shall not levy, collect and expend revenues in the construction of bridges and the improvement of county roads. No restriction is implied therein which is applicable to a statute wherein a scheme which contemplates and adheres to the principle of paying as you go. Neither does this organic law make any express provision for paying county indebtedness. The statute of California provides that claims of counties are entitled to payment in the order in which they are presented.

"Not to Pay Debts"

The constitution of the state provides, "that no county, etc., shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for in such year." In Shaw vs. Statler, 74 Cal. 258, the court held that in view of the constitutional provision it would be presumed that the legislature intended the funds of the counties to be annual funds. The court makes use of the following language: "It will be observed by this provision that it refers in terms to the incurring of indebtedness and not expressly to the payment. There is no express provision that the income and revenue of each year shall be applied to the payment of the indebtedness of such year but we think such is the necessary implication."

Therefore the situation at the date of the execution of the contract June 1912, was this: The condition of the general road fund of Jackson county for expenditure in the year 1912 was as follows:

Table with columns: Levy for the road fund of January 17, 1912 exclusive of the amount apportioned to the road districts \$76,000.00; Expenditures for Roads and Bridges, 1912; Warrants issued in January \$14,525.99; Warrants issued in February 2,837.35; Warrants issued in March 2,245.35; Warrants issued in April 1,271.46; Warrants issued in May 1,754.34; Warrants issued in June 8,007.74; To complete Twenty Bros. contract No. 1 of Sept. 1911 10,650.00; To complete balance Twenty Bros. contract No. 2, May-July, 1912 3,082.25; Leaving an unexpended balance of \$31,586.52 which should be in the general road fund for 1912. ANY DIVERSION FROM THIS FUND FOR OTHER PURPOSES MUST BE TREATED AS A LOAN.

The county court, under Sec. 6320 L. O. L. having provided for a fund sufficient to meet an \$17,000 liability on the contract in question, and this fund being available for that purpose on June 6, 1912 the execution of the contract and the expenditure of that sum for the erection of a county bridge was not creating an indebtedness within the purview of the constitution. Therefore the county was not prohibited from expending that sum in the manner designed.

Lower Court Modified

The decree of the lower court will therefore be modified so as to restrain the issuance or payment of any county warrants on account of the bridge contract, in excess of \$18,000 until such time as the city of Medford and the Pacific & Eastern Railway Company shall have paid into the treasury of Jackson county, \$16,000 as per agreement.

WIFE OF OREGON'S FIRST GOVERNOR HAS PASSED AWAY

EUGENE, Ore., Dec. 19.—Flags here and in Salem are at half mast today in memory of Mrs. Nancy Jane Whitaker, 84, wife of the first governor of Oregon, who died yesterday. She had been in poor health for two years.

GRANTS PASS SOLID FOR ROAD BONDS

GRANTS PASS, Ore., Dec. 19.—By an overwhelming majority the city has today voted \$200,000 to build the first unit of a railroad to the coast, ninety miles away. But 62 out of the 1200 votes cast went against the issue.

Lumber and other interests have already subscribed more than \$75,000 to the line, and with the \$200,000 voted by this city the contractors will be enabled to rush it to completion. The city council will meet tonight and take action to make the \$200,000 voted available at the earliest possible date, when work on the Pacific-Interior railway, projected from Grants Pass to Tidewater at Crescent City, will be pushed. With the funds raised at the coast end of the line, nearly a million dollars of cash is now available for use in immediate construction.

"YOU'LL FIND ME DEAD" PHONES WIFE, KILLS SELF

TACOMA, Dec. 18.—Mrs. Leon Leo, wife of Jasper Leo, former member of the state legislature and prominent attorney is dead here today by her own hand. She fired a .38 calibre bullet through her brain, while lying in bed at her home at 6427 G street. A few minutes before her body was found, relatives telephoned her that they would be with her during the supper hour. "You'll find me dead," replied Mrs. Leo.

NOTICE

Notice is hereby given that the undersigned will apply to the city council of the city of Medford, Oregon, at its next regular meeting on January 7, 1913, for a license to sell spirituous, vinous and malt liquors in quantities less than a gallon at its place of business on lots 5, 6, 7, 8, block 29, in said city, for a period of six months.

NOTICE

Notice is hereby given that the undersigned will apply to the city council at its meeting to be held Jan. 2, 1913, for a license to sell malt, spirituous and vinous liquors in quantities less than a gallon at its place of business on lot 10, block 44, city of Medford for a period of six months.

NOTICE

I take pleasure in wishing all my customers a merry Christmas and happy New Year and also inform you that I am now prepared and am doing the best horse shoeing and general blacksmithing you can get in Oregon. I guarantee all work. We cure corns and pay special attention to all crippled horses. (An old saying) "Horses shod by Elliott never get old."

CITY TREASURER'S NOTICE

Notice is hereby given that there are funds in the city treasury for the redemption of all outstanding warrants against Main Street Bridge Fund.

John A. Perl Undertaker 28 S. BARTLETT Phone M. 471 and 473 Ambulance Service Deputy Coroner

STAR UGO

ALWAYS A GOOD SHOW "KITTY AT THE BOARDING SCHOOL" - A whirlwind of fun and frolic - Edison. "MOTHER GOOSE IN A 10TH CENTURY THEATER" - Edison. A glimpse into the past. "A COUNTY FAIR" - A Raleth rural drama. "THE AWAKENING" - Sells. A wholesome modern photo play. "THE TOM BOY ON BAR Z" - Es-sana. A vigorous, powerful drama constructed for long remembrance and staged by the world's acknowledged master of filmcraft, G. M. Anderson. Coming feature - "Frenzied Financiers." Music by Prof. Beach, violinist, and Miss Woolworth, pianist. Change of program every Sunday, Tuesday, Thursday and Saturday. ADMISSION 5c AND 10c Watch for Coming Features ADMISSION 5c AND 10c

ISIS THEATER

Vaudeville and Photoplays ALLMAN and McFARLAND Black and Tan Oddity Last Night of the Big Feature Film "THE LION TAMER'S REVENGE" Two Other Pictures Good Music Matinees Saturday and Sunday. Matinee Prices 5c, 10c. Evenings 10c, 15c

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