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THE MESSAGE

(Continued from page 2.)

WILLAMETTE FALLS.

Under the provisions of an act passed by the legislature in 1882, the Willamette Falls and Locks Company, or those claiming under it, were required to certify to the Board of Canal Commissioners on January 1, 1883, and quarterly thereafter, the number of tons of freight and the number of passengers passing through the canal and locks and the number and names of the steamboats and other craft passing through the same for each quarter immediately preceding the return of said reports. Shortly after my inauguration as Governor in 1903, I began an investigation of the matter with the view of securing reports from the successor in interest of the Willamette Falls and Locks Company, so as to collect for the State for the benefit of the common school fund ten per centum of the net profits arising from tolls collected at the rate of fifty cents per ton for freight and ten cents for each passenger passing through the canal and locks. After some correspondence and one or more interviews with the officers of the Portland General Electric Company, the successor in interest of the original company, they refused to render any statement or make any report, claiming that the State had acquiesced in the company's exercise of its claim of ownership in fee of the canal and locks and was estopped from making any claim for net profits under any act of the legislature. The matter was then submitted to the Attorney-General by me with a request for an opinion as to the liability of the company, and in October, 1905, the Attorney-General furnished me an opinion, in which he said, after reviewing all the acts of the legislature upon the subject: "Relative to this matter, I am of the opinion that the acts taken altogether and under authorities I am able to find upon the question, the construction and intention of the legislature and the corporation which constructed the locks was, that net profits should mean all receipts above actual operating expenses and necessary repairs. If this is correct, then there should be some net profits each year to be accounted for. While I am unable to say in what light a court may look upon the matter, I am of the opinion the interests of the State are sufficient to warrant a suit being brought to settle the matter, and if your Board of Canal Commissioners are of the same opinion, after examining this communication, and direct that suit shall be brought therefor, I would suggest that instructions to that effect be issued by the board or your Excellency both to this office and to the District Attorney of the judicial district in which said suit must be brought in order to avoid any question as to whether the Attorney-General has authority to institute the suit."

On the 14th day of November, 1905, the Board of Canal Commissioners requested the Attorney-General to take the matter up with the proper District Attorney and unite with him in instituting the proper proceeding for an accounting against the present owners of the canal and locks, and endeavor, if possible, to compel payment to the State of whatever sum might be ascertained to be due upon such accounting. Shortly thereafter suit was instituted in Multnomah County by the Attorney-General and the District Attorney against the Portland General Electric Company to collect ten per centum of the net profits arising from tolls collected on the canal and locks under the statute. Issue was joined, and the court decided against the State's claim, but on appeal, the Supreme Court on the 12th day of May, 1908, reversed the decree of the lower court and remanded the case to the lower court with instructions to sustain the demurrer of the State to each of the defenses of the defendant, and for such other proceedings as might be proper. The cause is now pending in the lower court, and it is hoped that an accounting will in due course be had and a considerable sum recovered for the use of the common school fund.

I am glad to take this occasion to commend the ability with which this case has been handled by the Attorney-General, the District Attorney, and Hon. W. P. Lord, who assisted in the trial in the Supreme Court. The just claim of the State has been already too long delayed and an early determination of the matter is a consummation most devoutly to be wished for.

NON-PARTISAN JUDICIARY.

In some of the States, steps are being taken to secure the election of a non-partisan judiciary. This state ought not to be behind others in this important progressive movement. Each of the several parties might nominate candidates at the primary elections, and when the nominations are made the names of the candidates nominated could be arranged on the ballot for the general election in alphabetical order without disclosing the party to which they belong. This would require the voter to exercise the power of selection, and I am sure the result would be more satisfactory and eliminate politics entirely from the judicial department of the government.

WILLAMETTE LOCKS.

The legislature at its last session appropriated \$300,000.00 to assist the United States in acquiring, by purchase or otherwise, a canal and locks at the falls of the Willamette. It was provided, however, that within three years the United States was to appropriate a like sum, and upon failure so to do the appropriation made by the State was to be and become a part of the general fund. In other words, the purpose of the act was to fail. As yet Congress has done nothing. The present canal and locks are owned by a private corporation, vested by law with the power of levying a tax of not to exceed fifty cents a ton upon every pound of freight in either direction,

and ten cents for each passenger carried, passing through the locks.

This rate, fixed by law, establishes as well the rail, as the water rate, and imposes an enormous burden upon the producers and consumers of the whole Willamette Valley directly, and indirectly largely upon those of the whole State. Whether the United States complies with the act or not (and the prospects for compliance are not flattering), the legislature should continue it in force, and a fund ought to be accumulated sufficient to enable the State to proceed independently if necessary. The canal and locks ought to be owned and operated free of charge by the United States, but if Congress declines to act, they should be owned and operated by the State, and this unjust burden removed from the enterprise and industry of the people.

committed is the same and under almost identical circumstances, the prisoner may be given a very short term. It seems to me that it is a part of the duty of the executive branch of the government to equalize, where conditions warrant, this apparent inequality in the administration of justice. It may be that I have exercised too frequently the power of the Executive in behalf of prisoners, and that an occasional mistake has been made, but in the aggregate the results accomplished have been most beneficial, for the public has been relieved of the support of the convict, he has been restored to useful citizenship, and in many cases he has returned to the support of a dependent family, who, during his incarceration, were the objects of charity.

The efforts in most States have been directed to making the prisoner earn, during his term of imprisonment, his cost to the State, but that effort, it seems to me, has been in the wrong direction. Experience has proven to me that men are now confined in prison who have wives and little children supported by public charity, while the prisoners are barely earning for the State their daily bread. A poor return, indeed, is this mere pittance for the suffering of the family and their burden to the community! Some system ought to be adopted and crystallized into a statute which would leave the prisoner to be supported by the State, but compel his earnings to be paid to his wife and family. If a general policy of road construction with convict labor is to be adopted, the earnings of the prisoner should go to the support of those dependent upon his labor, if there are such persons; otherwise, to the State, to be kept until the release of the individual, so that he may not be turned out penniless to return to a criminal career. In a word, it is cheaper for the taxpayer to maintain the prisoner during his incarceration and give to those dependent upon him, or reserve for him as a capital to begin life with anew upon his discharge, his earnings during imprisonment.

I call attention to the report of the superintendent for detailed information as to the prison, and take occasion to commend him and the officers and employees thereof for the excellent discipline that has been maintained, the hygienic condition of the prison, and the generally improved methods which have been successfully carried out and which have been instrumental in placing the Oregon State Penitentiary in the forefront of the model penal institution of the country.

WATER SUPPLY FOR STATE INSTITUTIONS.

As the population of the State increases, that of the charitable, penal, and reformatory institutions increases in the same proportion. The question of a more ample and purer water supply is becoming a vital one, and particularly with reference to the insane asylum. The health of the unfortunates confined in this institution must suffer unless something is done in the very near future to relieve the conditions as to water, for an epidemic of typhoid fever and other diseases always is imminent under present conditions. The citizens of Salem have already appointed committees to investigate the possibility of securing an ample water supply from one or the other of the mountain streams to the east of the city, and to secure estimates of probable cost of construction of a pipe line and a distributive system. This line must of necessity come within easy reach of the State institutions, and I deem it advisable to suggest that a committee of the legislature be appointed to confer with a committee of the citizens of Salem to ascertain if it might not be feasible for the city and State to co-operate in the construction of a waterworks system upon some basis that might be equitable and just to all concerned. This, in my opinion, will be much more economical than for the State to proceed independently in the matter.

EDUCATIONAL INSTITUTIONS.

The Agricultural College and the State University are in excellent condition, and the enrollment at both of these institutions is larger than ever before. The policy has been to raise the standard of both each year, bringing them on a par with the higher educational institutions of the country. Like all of the State institutions, with the increase of population in the State, the enrollment of the schools will be greater, demanding each year larger appropriations to meet actual needs. I hope that committees of the legislature will visit both the University and the Agricultural College and acquaint themselves with the present needs of both institutions.

NORMAL SCHOOLS.

Under an act of the last legislature the Normal schools of the State were placed under one Board of Regents and their report has been filed with the Governor. It will be found that there is a greater uniformity in the course of study, and a better system in vogue in these schools, under one Board of Regents, than was possible under a board for the control of each. There is no question but that there is a necessity for training schools for teachers for the public schools of the State, and if these training schools are to be maintained they ought to be placed on the basis of the highest efficiency. A majority of the Board of Regents have recommended the

continuance of the Normal schools at Monmouth, Ashland, and Weston, and have called attention to their needs, if they are to be continued. The appropriations suggested are large, but they are no larger than will be necessary to thoroughly equip and maintain the schools so as to attain the best results. It is folly to undertake to educate and train teachers for the public schools by any starvation policy. In order to have a good public school system it is necessary to have well trained teachers, and they cannot be obtained except from properly equipped Normal schools.

I trust the legislature will once and for all settle the Normal school question, and probably the best way to do it is to act upon the recommendation of the regents and make provision for maintaining three schools in the State.

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