OREGON PORT COMMISSION ACT

(Continued from page three.

whether the emergency is a proper conreads thus: "Inasmuch as it is nec- Mears, 44 Or. 215. in question.

here is sufficient to put the act pro- returns left the possession of said providing for the incorporation of title to an office the following cases viding for the incorporation of ports judges and clerks of election, and ports the county court makes the or- will be found instructive: Fletcher v. into effect according to the terms of were forwarded to the county clerk der for the election. It is required Tuttle, 42 Am. St. Rep. 220; Arnold v. section 10 of the act.

sembly at its next session in like are not well founded. tion to its complete enactment as a in this litigation was void.

trary delivered it to the secretary of such an election. state February 12, 1909. The governor The local option law requires that other sources of revenue in charges property right of the plaintiffs. It was not prevented from returning the at least 20 days previous to an elec- for pilotage, towage, salvage, etc., would be time enough for the plainbill by the general adjournment of tion ordered by the county court the which may be applied to the payment tiffs to complain if then when the the legislature, for that did not hap- county clerk shall deliver to the sher- of the proposed bonds. pen until eight days thereafter. Un- iff of the county at least five notives The elements authorizing action by upon the plaintiffs' property for the der such circumstances the constitu- of the election for each election pre- the county court are different in the payment of such bonds. tion expressly says the bill shall be cinct of the county voting on the two cases. In the one the county a law without his signature. We con- question, and it shall be the duty of court had before it in the sheriff's re- necessary to go behind the returns of clude that in respect to the act in the sheriff at least 12 days before the turn, that he had failed to post no- the election or to inquire whether or question the legal process of making election to post such notices in public tices in some instances, evidence that not the election was properly con-It a law was complete when the gov- places in the vicinity of the polling its authority to act was defective. In ducted in the manner of giving noernor did not return the bill to the place or places. Both the sheriff and the other the only things giving the tice thereof. house whence it originated within the clerk are required to enter of recfive days from the date it was present- ord their compliance with the pro- original petition praying for an elec- affirmed, with costs. ed to him and that all its provisions, visions of the section requiring the is- tion and the election returns sent in including the emergency clause, be- suance and posting of such notices: by the judges and clerks. The coun- A Cold, La Grippe, Then Pacumonia Let me give you figures. tion of that process.

vides for offices the tenure of which notices. act empowering the governor to ap-liquor dealers to enjoin the county it and, further, when the returns of macy.

pro tempore appointment within the make the order. meaning of the constitution

clusion to be drawn from such facts. indirectly receive any salary or com- case the only defect in the posting Myers, 4 Or. 72; People v. Willi, 147 street from the center line of High sioner of the State of Oregon, pursu-But no such strict rule hampers the pensation for his services as a com- of the notices was that the sheriff Ill. App. 207; Woodard v. State, 103 street to the center line of Commer- ant to law: legislative branch of the state gov- missioner, or for acting as an officer had posted only three instead of five Go. 496; State v. Cooper, 101 N. C. cial street, within the limits of said ernment. It has the exclusive power of the said corporation." The gen-notices in one precinct, but it was 584; State ex rel v. Vali, 53 Mo. 97; city, according to the provisions of a Amount of capital deto declare that its enactments are eral effect of the act in question is to made to appear to the court that if Gibson v. Twaddle, 81 Pac. 727; Hoy necessary for the immediate preserva- make these commissioners mere all the votes in that precinct had been v. State ex rel, 81 N. E. 509. tion of the public peace, health or agens for the performance of certain cast against the prohibition of the For all that appears these defendsafety, and that hence an emergency agents for the performance of certain sale of intoxicating liquors, yet in ants acted in manner and form after exists on account of which the act are not officers within the meaning the whole county there would still the county court had declared the shall take effect when the legislative of the constitution prescribing that have been a very considerable ma-election just as commissioners would troduced in the common council of process, as applied to the act in ques- the tenure of an office shall not be jority in favor of prohibition, and have done had the election been in tion, is fully completed. In the case more than four years, David v. Port- under those circumstances the court all respects as required by law. of Dallas v. Hallock, 44 Or. 258, the land Water Co., 14 Or. 98; State ex rel sustained the election. emergency clause under consideration v. George, 22 Or. 142; White v. Like the act in question here, the determined here? It is to all intents ing and referred to the committee

But it is said that this act was to vided for by the general election cial election shall be posted in each 48; State ex rel v. Withrow, 154 Mo. take effect from and after its approval laws of the state of Oregon, but not polling precinct in which such meas- 397; People v. Dist. Court, 93 Am. St.

effect, at least not until 90 days after the tally sheets and the poll book it is provided that "it shall be the Council, 17 S. E. 110; In re Sawyer, the end of the session at which it which was kept by the second clerk, duty of the county clerk, thirty days 124 U. S. 200; Peaple v. Elbert Dist. was enacted. Section 15 article 5 of ballots and stubs, ballot baxes, and before any general or presidential Court, 46 Colo. 1; Hotchkiss v. Keck, the constitution provides that "every remaining supplies, shall be forthwith election, and at least ten days before \$4 Neb. 545. bill which shall have passed the leg- conveyed by one of the judges or any special election, to prepare print- To reach the result desired by islative assembly shall, before it be- clerks of the election, to be agreed ed notices to each judge and each the plaintiffs the court is asked to comes a law, be presented to the gov- upon for that purpose by the judges, clerk of election in each precinct; override the exercise of political ernor; if he approve, he shall sign to the county clerk of the county, L and it shall be the duty of the sev- power by a co-ordinate branch of the it; but if not, he shall return it with O. L. section 3328. It is admitted by eral judges and clerks to immedi- government in appointing these offihis objections to that house in which the complaint that the election re- ately post said notices in public cers and, having done so, to go still it shall have originated." If, after re- turns of the election in question were places in their respective precincts," further and overturn in this collateral consideration, two-thirds of the mem- thus forwarded to the county clerk, but nowhere is it provided that the proceeding the order and proclamabers of both houses shall agree to The effect of the argument of coun-judges and clerks of the election shall tion of the county court of Coos counpass the bill it shall become a law. sel for plaintiffs is that all the judges make any return to the county court ty, a tribunal specially authorized to section further provides: "If and all the clerks should unite and of having performed the duty of post-declare the result of an election which any bill shall not be returned by the attend in carrying the election re- ing the notices. governor within five days (Sundays turns to the county clerk. If the In the case at hand it appears that thority to order and, finally, to deterexcepted) after it shall have been pre- statute in question were capable of the clerk mailed the notices to the mine that the defendants had no title sented to him, it shall be a law with- that construction, yet in the absence election officers as provided in section to the positions of commissioners of out his signature, unless the general of fraud or corruption none of which 3307, supra. The only response proadjournment shall prevent its return, appears, we hold that such provision vided by the general election laws We do not conceive that the equitain which case it shall be a law, un- would be merely directory. Equity to be made to the notices sent out by ble power of the court extends so far. less the governor within five days looks to the substance and not to the the clerk is found in the returns of If the plaintiffs would determine the next after the adjournment (Sundays form. For all that appears here the election. We thus see in the matexcepted) shall file such bill, with returns reached the county court ter of giving and posting notices of fendants, recourse can be had to the his objections thereto, in the office of pure and undefiled and truthfully disthe secrefary of state, who shall lay closed the result of the election. The terial difference between the provis- L., stating that "an action at law the same before the legislative as- plaintiffs' objections on that ground ions of the local option law construed may be maintained in the name of the

the governor." In Biggs v. McBride, tention in the case: that of the valid- case. Further, in the three local op- lation of a private pary against the 17 Or. 640, the act there in question lty of the election in question. Countion cases above mentioned the injunc- person offending, in the collowing had an emergency clause requiring sel for plaintiffs pressed upon our at- tion was sought before any action by cases: 1. When any person shall the act to take effect from and after tention the cases of Marsden v. Har- the county court in declaring the re- usurp intrude into, or unlawfully its approval by the governor. The locker, 48 Or. 95; Guernsey v. Mc- suit of the election and making the hold, or exercise any public office, governor vetoed the bill and the legis- Haley, 52 Or. 555; and Roesch v. order of prohibition. In the case in civil or military, or any franchise lature passed it over his objection. In Henry, 54 Or. 230, and insisted that hand no action was taken by or on be- within this state, or any office in a that case this court, in substance, held those cases were decisive of this case half of the plaintiffs until long after corporation either public or private, that the act took effect when the law- and must inevitably lead to a reversal the county court had received the re- created or formed by or under the making power had done every act or of the decree of the circuit court on turns and proclaimed the result of the authority of this state; or * * 3. thing necessary under the constitu- the ground that the election involved election and the establishment and When any association or number of

All these three cases arose under a municipal corporation. The same principle applies here, and required a construction of what A further distinction can be drawn porated.' We conclude that the Considering the governor as a part of is known as the local option law, between the two cases in this: That plaintiffs have a plain, speedy and adthe legislative power by virtue of his regulating the sale of intoxicating the direct effect of the order of the equate remedy at law under this secprerogative to approve or object to liquors. In Marsden v. Harlocker it county court in the local option cases tion for the grievances of which they any act of the legislative assembly appeared that the county court of declaring the result of the election complain, having which, their suit in yet the constitution gives effect to Coos county did not meet in regular and making an order of prohibition equity in this form will not lie. his inaction as well as to his affirma- or special session or assemble at the against the sale of intoxicating We further conclude that as distive action in such cases. As already place and time prescribed by law for liquors would be to destroy the busi- closed by the record here, the destated, the twenty-fifth regular ses- the purpose of ordering a local ap- ness of the plaintiff and make it unsion of the legislative assembly ended tion election in pursuance of a pe- lawful to engage therein, whereas be- missioners of the Port of Coos Bay, February 20, 1909. Taking judicial tition therefor which had been filed fore the election they were engaged and that their acts are valid so far notice, as we must under section 729, with the county clerk, but that at dif- in lawful business. In this case the as described in the complaint here, L. O. L., of the public and private of- ferent times and in different places mere holding of the election and mak- Leach v. People ex rel, 122 III. 420; ficial acts of the legislative and ex- the individuals composing the court ing a proclamation thereof by order Mer. Nat. Bank v. McKinney, 2 S. D. ecutive departments, we know that had signed a memorandum purporting of the county court had no direct ef- 196. The mere fact, as disclosed by the act in question, having passed to authorize an election. This court fect on any property right of the the complaint, that the defendants the legislative assembly, was pre- in that case held that by such separ- plaintiff. The establishment of the had passed an ordinance providing for sented to the governor; that he did not ate actions of the individuals com- port does not in itself necessarily im- the issuance of bonds but without return it within five days to the house posing the county court, no authority ply taxation or appropriation of plain- providing any means for their payin which it originated, but on the con- had been given for the holding of tiffs' property. They are possible ment, whether by taxation or other-

shall be longer than four years, thus In Guernsey v. McHaley it appeared not do otherwise than to act upon reliable cough medicine that conviolating section 2 of article 15 of the that although the county clerk had the materials which the law had proconstitution. Conceding that these issued and delivered to the sheriff vided for it and it having appeared and Tar is the best cough remedy I commissioners are officers within the the requisite notices for the local ap- by the returns of the election that a ever used, as it quickly stopped a Phone 135. meaning of that section, yet it must tion election, none were posted in one majority of the votes had been cast in severe cough that had long troubled be read in connection with section 12 precinct, in another the notices were favor of the incorporation of the port me," says J. W. Kuhn, Princeton, of article 2, which states that "in all posted for only 11 days and in another the court could do nothing less than Neb. Just so quidkly and surely it cases in which it is provided that an only 10 days before the election, and to proclaim the result in the form acts in all cases of coughs, colds, is office shall not be filled by the same I nanother only three notices were provided by the statute. In legal ef- grippe and lung trouble. It is as safe person more than a certain number posted and these only for eight days, fect the law has lodged in the county for your children as yourself, and of years continuously, an appointment The election resulted in a small ma- court the power to order a special should be used in all cases of croup, pro tempore shall not be reckoned a jority in favor of prohibition, and in election when a proper petition for whooping cough and measles. Re-

point the first commissioners was sim- court from making an order prohibit, the election have come back to it by Notice of Intention to Establish the FIRE, MARINE, AND FIRE AND Synopsis of the annual statement of ply to establish a temporary arrange- ing the sale of intoxicating liquors virtue of such an order, invests it ment for beginning the work provided in accordance with the election the with the further duty of proclaiming for in the set and the appointment by court held that the election was not the result of the election and the esthe governor should be considered a sufficient to authorize the court to tablishment of the port as a munici-

The act further provides that "no the rule laid down in the preceding isterial in its nature is conclusive as Oregon deems it expedient and pro- Britain, on the 31st day of December, missioner of the State of Oregon. commissioner shall either directly or cases was somewhat modified. In that against collateral strack. Warner v.

in the three cases last above men- state, upon the information of the manner as if it had been returned by We come now to the principal con- tioned and the act in question in this prosecuting attorney, or upon the re-

secondary results; but the ports have wise, does not necessarily involve any

came effective at once on the comple- In other words, both of said officers ty court in the proceeding involved are required to make return to the here had nothing else-before it and It is further contended that this county court of their proceedings re- had no means provided by law for Foley's Honey and Tar expels the act is unconstitutional in that it pro- specting the giving and posting of the otherwise acquiring any information cold, checks the la grippe and preabout the election. That court could vents pneumonia. It is a prompt and

pal corporation. This action of the In Roesch v. Henry the rigor of county court, although largely min-common council of the city of Salem, Of London, in the Kingdom of Great 1910, made to the Insurance Com-

What, then, is the real question to be first and second times at said meetlocal option law requires a petition and purposes whether or not the deessary for the immediate preservation By the provisions of the act already signed by a certain percentage of fendants properly hold the office of on file in the office of of the public health and public safety quoted the judges and clerks are re- the legal voters and upon the petition commissioners of the port. Injunc- the city of Salem on the 27th day of of the inhabitants of the said city of quired to return the canvass of the being presented in proper form the tion will not lie to determine that nance is hereby referred to for a Losses paid during the Dallas that the provisions of this act vote together with the ballots cast to county court issues an order for the question. In Biggs v. McBride this more specific and detailed descripshould become effective at the earliest the county clerk of the county in holding of an election. The local op- court held that mandamus was not possible time, an emergency is hereby which the election is held. In that tion law contains particular provisions the proper proceeding to try the title made a part of this notice. declared to exist, and this act shall connection the complaint alleges about the manner of giving notice of to an office, and the principle there be in force and effect from and after "that the judges and clerks of said an election in that it requires the announced is equally applicable to an its approval by the governor." This special election did not return the clerk to issue to the sheriff five no- effort in that direction by injunction, court there, following its earlier de- canvass of the vote, together with the tices for each precinct and imposes for injunction is complementary to cision in Kadderly v. Portland, 44 Or. ballots cast thereat, to the county upon the sheriff the duty of posting all mandamus, the one being preventive 118, sustained the emergency clause clerk of said Coos county, Oregon, these notices in the several precincts and the other affirmative exercise of in which said county said special elec- and further calls for a return from the power of the courts. As illustra-Following those precedents we de- tion was attempted to be held; but both of those officers as to their do- tive of the principle that injunction termine that the emergency clause these plaintiffs do allege that said ings in that behalf. Under the law is not the proper remedy to try the of said county in the manner pro- that notices of the time of such spe- Henry, 78 Am. St. Rep. 556, 155 Md. by the governor and that no affirma- in accordance with said port law." ure is to be voted upon in like manner Rep. 61, 29 Colo. 277 68 Pac. 224; tive approval having been signified by The law governing general elections as is provided for in cases of general Cochran v. McCleary, 22 la. 75; Cozart the governor the act never could take requires that "one complete set of elections. In section 3307 L. O. L., v. Fleming, 31 S. E. 822; Davis v. Ctty

it confessedly had the power and au-

existence of the Port of Coos Bay as persons act within this state, as a cor-

defendants shall attempt to levy a tax

The decree of the circuit court is

Is often the fatal consequences. part of that term." The design of the a suit brought by a firm of retail that purpose has been presented to fuse substitutes. Red Cross PharGrade of Mill Street from the Center Line of Commercial Street,

Notice is hereby given that the certain ordinance entitled "An ordinance establishing the grade of Mill street to the center line of Commercial street." Said ordinance was in- Interest, dividends and the city of Salem on the 2th day of February, 1911, and was read the tion of said grade, and is hereby Dividends paid during

This notice is published for 10 days pursuant to the order of the common council of said city, and the date of the first publication thereof is the 28th of February, 1911. Remonstrances may be filed against the establishment of said grade within 10 days from the last publication of this Remitted to Home Office.. 385,412.69 notice, and in the manner provided by the city charter.

CHAS. F. ELGIN, City Recorder

Warning to Railroad Men. Look out for severe and even dangerous kidney and bladder trouble resulting from years of railroading. Geo. E. Bell, 639 Third street, Fort Wayne. Ind., was many years a con. ductor on the Nickel Plate. He says: "Twenty years of railroading left my kidneys in terrible condition. There was a continual pain across my back and hips and my kidneys gave me much distress, and the action of my bladder was frequent and most painful. I got a supply of Foley's Kidney Pills and the first bottle made a wonderful improvement, and four bottles cured me completely. Since being cured I have recommended Foley's Kidney Pills to many of my railroad friends." Red Cross Phar-

Children Cry FOR FLETCHER'S CASTORIA Get it at Dr. Stone's Drug Store

West Salem Transfer

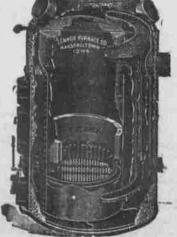
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A. L. Frasier

25% State Street

MARINE. ter Line of High Street to the Cen- Synopsis of the Annual Statement of AMERICAN CENTRAL LIFE IN. the United States Branch of THE LONDON ASSURANCE COR- Of Indianapolis, in the state of Indi-

the

SUBANCE COMPANY.

ana, on the 31st day of December,

Captal. Amount of capital paid up \$ 137,000

Income.

the year \$ 887,049

the year 149,962

Total income\$1,039,882

surrender of values ...\$ 279,120

Disbursements.

2.871

11,026

10,960

265,742

17,941

89,827

895,966

94,041

71.203

30,495

56,175

Premiums received during

Interest, dividends and

Income from other sources

received during the year

ment, annuities and

holders during the year

stock during the year ..

paid during the year ...

paid during the year ..

ditures

Total expenditures ...\$ 674.626

owned \$ 472,350

collateral, etc 1,275,745

Total assets\$2,839,770

Oregon \$2,839,770

Liabilities.

Net reserve\$2,412,015

Capital stock 137,000

Total liabilities\$2,579,357

for basis\$25,837,230

Business in Oregon for the Year.

Assets.

Commission and salaries

Taxes, licenses and fees

Amount of all other expen-

Market value of real estate

Market values of stocks

and bonds owned

loans

hand

red premiums

Other assets (net)

Less specal deposits in

Total policy claims

All other liabilities

Total insurance in force

December 31, 1910, paid

year\$

during the year

ing year

Losses paid during year ..

Losses incurred during

year

Total amount of risks out-

standing in Oregon De-

cember 31, 1910 \$ 79,175

AMERICAN CENTRAL LIFE IN-

SURANCE COMPANY.

and attorney for service: W. S.

No Need to Stop Work.

When your doctor orders you to

stop work it staggers you. "I can't"

you say. You know you are weak,

as you can stand. What you need is

Electric Bitters to give tone, strength

and vigor to your system, to prevent

break down and build you up. Don't

be weak, sickly or alling when Elec-

tric Bitters will benefit you from the

first dose. Thousands bless them

for their glorious health and strength

Try them. Every bottle is guaran-

teed to satisfy. Only 50c at J. C.

Montgomery, Hood River, Oregon.

Satutory resident general agent

any state (if any there

be)

Cash in banks and on

Dividends paid to policy

rents received during

PORATION poses to establish the grade of Mill 1910, made to the Insurance Commis- pursuant to law:

> Capital. posited. 630,000.00 Income. Premiums received during the year in cash ... \$2,561,091.24 rents received during the year 120,283.41 Income from other sources received during the year 213,888.27 Paid for losses, endow-

Total income\$2,895,262.92 Disbursements. the year on capital stock Commissions and salaries paid during the year ... 727,574.78 Taxes, licenses, and fees paid during the year. 66,484,64 Amount of all other expenditures. 134,426.17

Total Expenditures ...\$2,575,628.65 Assets. Value of real estate owned Loans on mortgages and Value of stocks and bonds Loans on mortgages and collateral, etc. Cash in banks and on 176,768.38 Net uncollected and deferhand Premiums in course of collection and in transmission 427,843.26 Due from other companles for re-insurance on losses paid Interest and rents due and accrued 37,430.41 Total assets admitted in

be)-Total assets admitted in Oregon\$3,665,913.16 Liabilities, Gross claims for losses unpaid\$ 299,768.14

Total assets\$3,665,813.16

Less special deposits in

any state (if any there

Amount of unearned premiums on all outstanding risks 2,049,888.05 Total risks written during Due for commission and brokerage 11,496,10 Gross premius - received All other liabilities 109,585.19 Premiums returned dur-

Surplus. 1,195,075.68 Total liabilities\$3,665,813.16 Total insurance in force December 31, 1910 .. \$323,092,562.00 Business in Oregon for the Year. Total risks written during the year\$5,717,932.00 Gross premiums received during the year..... 104,274.58

Premiums returned during the year 29,206.59 Losses paid during the year 187,668.10 Losses incurred during the year 185,211.10 Total amount of risks outstanding in Ore-

gon Dec. 31, 1910... 4,542,736.00 run down and failing in health day LONDON ASSURANCE CORPORA- by day, but you must work as long TION.

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P. B. WALLACE, Agt.

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