

The Fate of the Five Cent Fare

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In view of the question of increased fares affecting so many municipalities in Canada we reproduce from the "National Municipal Review" of Philadelphia, the following article on the subject.

The cause of the American municipality in the present nation-wide propaganda for higher fares was ably defended by Judge William L. Ransom, counsel for the New York public service commission for the first district, in his address before the June meeting of the National Municipal League in New York city.

Pointing out that the present situation has placed a "wholesome and salutary power in the hands of the municipalities" the speaker urged that American cities face their traction problems in a courageous and statesmanlike way, granting increases where absolutely necessary but insisting upon just and desirable changes in franchise terms for future public protection. "Lines and portions of lines which are no longer necessary or desirable should be abandoned, and not continued as drains upon the resources of the systems. In many instances, rail lines on the surface are obsolete, and should give way to improved or more economical facilities. 'Water' should come out of stock; the power of 'extortion' possessed by the holders of 'pioneer franchises,' covering essential links in the present-day system, should be broken."

The street railway problem is not of recent growth. Long prior to the war there was conflict between the desire of investors to obtain a legitimate return upon their investments and the desire of the general public to obtain good service at low cost. With increased costs due to the war, investors have found their incomes reduced and street railway patrons are being asked to pay more, for a service in many instances actually inferior to previous standards.

Low Fares Are Essential.

There are a great number of cases where favorable action in the matter of relief "is the alternative of cessation of service." Granting the need for relief the problem is from what source the assistance will be forthcoming. As "most of our municipal communities have been built up, and their population distributed, in reliance upon the prevalence of low fares for intra-urban and suburban travel," it is a grave question whether or not sharp increases in transportation costs will become a social factor of menacing importance.

Rather than deterioration of service, properties, and employees, Judge Ransom believes that "slight, temporary advances in fares" would be preferable. There is, however, an acceptable alternative which may be adopted in some of the larger cities. Responsibility for operating deficits may be temporarily accepted by the public authorities, i.e., the community may decide to meet the deficit temporarily by taxation, rather than raise the rates. This principle, embodied in the New York city subway contracts, enables the municipality, at its option, to maintain the low, uniform rate of fare, despite the temporary period of war-time costs.

Nation-Wide Move for Higher Fares.

Before taking up Judge Ransom's discussion of recent developments in New York State let us outline the main features of the problem in its nation-wide aspect treating each event in due sequence. Early in the war the public utility interests decided upon a nation-wide campaign for "relief" and fixed upon the state utility commissions as the most advantageous point of attack. As Judge Ransom points out: "The courts and public service commissions of various states have been inclined to hold that the commission . . . has power to authorize the company to charge more than five cents, without the consent of the city or a modification of the franchise contract."

At this point it is interesting to trace the history of this doctrine of commission jurisdiction over local utility franchises and contracts. The movement for state regulatory bodies, in its inception, aimed to protect the interests of local communities. Acting upon the principle that what is sauce for the goose is sauce for the gander, public utility corporations are now noisily insisting upon the duty of state commissions, under present trying conditions, to af-

ford them protection from the sort of rapaciousness of which they themselves were guilty in the past.

Do State Commissions Possess Jurisdiction?

But an examination of public service commission laws, and opinions of commissioners themselves, by no means tends to indicate a uniformity of opinion on this point. As matters stand to-day there are some eighteen states where the commission does not have jurisdiction or has failed to act, and almost a dozen states where there is no commission. On the other hand the question of jurisdiction is pretty firmly established in about fifteen states, is claimed but contested in five states, is claimed but not affirmed (by courts), or as yet exercised, in three states, and in one other state is claimed, but not affirmed although increases have been granted.

The problem is first of all complicated by the degree of home rule operative in the various states. In California the public utility act provides that all incorporated cities so voting have jurisdiction until same is surrendered to the commission. In Ohio, Alabama, Colorado, Illinois, Indiana, Iowa, Kansas, Oregon, South Dakota, Tennessee, Michigan and Texas, the original public service commission law denied the jurisdiction of the commission. Of these states Colorado, Kansas, Oregon, Illinois, Indiana, now claim or have been ordered to assume jurisdiction. In Colorado although complete jurisdiction is claimed by the commission it has only been affirmed (by courts) in regard to cities not operating under the home rule act. It is interesting to note that in the original public service commission laws of the different states jurisdiction was specifically denied in thirteen states and obviously not contemplated in twelve states—a total of twenty-five states. In sixteen or seventeen states only was jurisdiction specifically asserted.

The New Jersey constitution "does not confer upon cities the right to grant street franchises, and the requirement for municipal consent was imposed by legislative acts." In this state the jurisdiction of the commission has been definitely established, but the demands of the public service railway have been refused notwithstanding that its president called a witness for the defense a "jackass" and referred to the board of commissioners as "political horse thieves." But, as pointed out above, the New Jersey case does not furnish a precedent for other states where a larger degree of home rule is vested in the cities.

Basis of Municipal Claim of Jurisdiction.

The claim of jurisdiction by the commissions, in many cases is based upon the theory that "there is always existent a right upon the part of the legislature to change the law"—The legislature is the sovereign body and all local powers are delegated therefrom. Professor McBain has admirably shown how this "doctrine of legislative supremacy over the political subdivisions of the state has been upheld with little if any regard for the property rights of these subdivisions" (the cities), and how this has resulted in the ignoring of the personal character of this city. In fact, the framers of the constitution of the State of Pennsylvania realized this tendency and sought to tie the hands of the legislature by declaring that "The general assembly shall not delegate to any special commission . . . any power to make, supervise, or interfere with any municipal government." For legal opinion on this point we quote Judge McQuillin: "It is well settled that the state legislature may authorize a municipality to establish by contract the rates to be charged by a public service corporation for a definite term, not grossly unreasonable in point of time, and that the effect of such a contract is to suspend, during the life of the contract, the governmental power of fixing and regulating the rates, but inasmuch as such contract extinguishes an undoubted power of government, both its existence and the authority to make it must be resolved in favor of the continuance of the power." Present-day commissions apparently have based their claim of jurisdiction on the underlined portion of Judge McQuillin's holding, although such an interpretation would seem to be in direct conflict with the intention of the writer.

Intention of Original Commission Laws.

Reference to the public utility commission acts reveals