

Efforts of the Port District of the Port of Seattle to Own and Operate a Public Belt Line

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THE Port of Seattle is a municipal corporation created under a state law commonly known as the Port District Act. The purpose of this law was to enable the creation of separate municipal corporations whose object was to develop the natural ports and harbors of the State of Washington. Such Port Districts were empowered by the Act

to lay out, construct, condemn, purchase, acquire, add to, maintain, conduct and operate any and all systems of seawalls, jetties, wharves, docks, ferries, canals, locks, tidal basins, and other harbor improvements, rail and water transfer and terminal facilities within such port district.

The Port Commissioners of the Port of Seattle early took the position that the power "to lay out, construct, condemn, purchase, acquire, maintain, conduct and operate *rail and water transfer and terminal facilities*," conferred upon the District the power to construct and operate a belt line railway paralleling Seattle's waterfront, connecting up, and serving with rail facilities the various piers, docks and other harbor terminals.

The necessity of such a public belt line was recognized because the railroads had divided the city into some 12 or 13 switching zones, each with a separate switching charge. Furthermore, the four leading railroads may be said to have divided Seattle's harbor into at least three sub-ports or spheres of influence. The Northern Pacific Railway, being the oldest road, controlled by its franchise grants the central waterfront, being that part of the harbor adjacent to the older and more highly developed business of the city. The Great Northern Railroad dominated the situation northerly of the central waterfront, and particularly in what is known as the Ballard and Interbay districts. The Milwaukee, Oregon & Washington in turn controlled sections in the southern portion of the city.

The common user provision in the several franchises of the respective railways had not been availed of because of various

complications which prevented the common use intent, such as lack of adequate physical connections, separate ownership of spur tracks, exclusive agreements of certain railroads with dock companies as to access to docks, etc. The result was a pyramiding of switching charges and delays in interchange between the railways. Comparatively low switching charges were made in the central business district, but to switch a car to any of the newer industrial districts lying outside of the central territory, switching charges had to be paid to two and sometimes three railroads. This resulted in discouraging large companies from establishing their industries outside of the central zone, and tended to place an artificial value upon industrial territory located within the central zone. Smaller industrial concerns, which had to buy cheaper sites and therefore located outside of the central territory, were placed in a most unfavorable situation through the high switching charges. Because of this situation, many favorable industrial locations within easy reach of the waterfront and the central business district were retarded in their development. Smaller industries preferred to locate in smaller cities in the vicinity of Seattle rather than be subjected to the high switching charges and to the delays and inconvenience incident to interchange between several competing railroads. In the year 1914, the Port Commission obtained from the City Council of the City of Seattle two franchises on Whatcom Avenue extending through a section of Seattle which was rapidly becoming the most important industrial section.

On December 4th, 1915, the Commission submitted to the voters at the general Port District election, two propositions:

(I) Amending the Comprehensive Scheme of Harbor Development to include a Belt Line Railway extending from the city limits on the south paralleling the Duwamish Waterway to a point on Elliott Bay, and then extending Northward along the waterfront streets paralleling Elliott Bay to the extreme Northerly end of Seattle's harbor proper.

(II) For \$125,000.00 of Port District Bonds to build the First Unit of the Belt Line, namely, that included within the franchise already obtained.

¶ In order to make any harbor development, the plan therefor must be approved by a majority vote of the people and then it becomes a part of what is known as the Comprehensive Scheme of Harbor Improvement.

Notwithstanding a most vigorous campaign against both of the propositions by the two leading daily papers, the Amendment to the Comprehensive Scheme of Harbor Development, providing for the inclusion of a Belt Line Railroad was adopted.

The \$125,000.00 bond issue failed to receive two-thirds of the votes of the people voting thereon, which the law requires for adoption of a bond issue. It received, however, a substantial majority, only falling short a small amount of the requisite two-thirds vote. On March 7th, 1916, the Port Commission called a special election held simultaneously with the general city election of the City of Seattle, and presented a second bond issue for a Belt Line in the sum of \$285,000.00. This included a larger unit of the total Belt Line as planned in the Comprehensive Scheme that had been adopted December 4th, 1915. Thirty-three thousand and nine hundred and eleven voters voted in favor of this issue; 24,635 voted against; the issue again failing by a comparatively few votes of receiving the requisite two-thirds. On December 2nd, 1916, the Commission submitted a third bond issue for a Belt Line in the sum of \$450,000.00. This made provision for a Belt Line extending from the southerly limits of the city along the waterfront to the northerly boundaries of Seattle's developed harbor. This issue also failed to receive the requisite two-thirds vote. On the 6th day of March, 1917, at a special election held simultaneously with the general city election of that year, the Port Commission submitted a bond issue in the sum of \$450,000.00 for a Belt Line covering practically the same as that proposed in the election of December 2nd, 1916.

This issue failed to obtain the majority vote of the people. This was not due, however, to a reversal of sentiment on the part of the majority who had voted first to include in the Comprehensive Scheme of Harbor Development a plan for a Belt Line Railway, and thereafter three times in favor of bond issues to construct such a Belt Line. The vote of March 6th, 1917, was a reflection of the people's feeling that our country was about to enter on the World War. Several city bond issues for needed improvements were presented at this same election, all of which failed because of the feeling on the part of the people that money should not be voted for public improvements on the eve of our entrance into the war.

In view of the fact, the electors of the Port District had voted to include a Belt Line plan in the Comprehensive Scheme of Harbor Development, and of the further fact that a majority of the voters on three occasions had voted favorably upon bond issues to construct a Belt Line, the Port Commission on May 23rd, 1917, passed a resolution establishing a Belt Line Railway Fund. By this resolution, the Port Commission devoted for the construction of a Belt Line, revenues amounting to about \$20,000.00 a year, which the District received from various leaseholds. On June 30th, 1917, the Port Commission adopted a second resolution providing for the immediate construction of railway tracks extending approximately two miles and a half along the Duwamish Waterway, appropriating for this purpose, the sum of \$16,000.00, at that time, in the Belt Line Railway Fund.

The Duwamish Waterway is a public waterway extending some six miles from Elliott Bay through the heart of a new and largely undeveloped industrial district. The waterway is paralleled by a street known as East Marginal Way, and on this street, the Port District had a franchise. While the area tributary to the Duwamish Waterway was one of the best prospective industrial sections of the city, its development had been held back because it lacked railway facilities. The property owners for several years had sought to get the railway companies to build a road into this territory without avail. It was due primarily to these facts that the Port Commission passed the two resolutions of May and June, 1917, mentioned above. There was a crying necessity for railroad facilities in this district.

The Port Commission was about to commence work to construct the road provided for in the June resolution, when an injunction suit was started. This suit raised the question of the power of the Port District to own and operate a Belt Line Railway paralleling the harbor and connecting up the various docks and terminal facilities thereon. The suit was originally started by a taxpayer, but immediately after its commencement, a second taxpayer intervened. It soon became apparent that this second taxpayer was acting in reality for the railroads because all of the railroads' attorneys appeared on his behalf. The trial court held that the Port District Act did not confer the power to own and operate such terminal railways. An appeal was taken to the Supreme

Court of the State, and the Supreme Court sustained the judgment of the trial court. Counsel for the Port District challenged the railway attorneys and indeed, challenged the members of the Supreme Court to give a meaning to that part of the Statute, which empowered Port Districts to maintain, own and operate "rail and water transfer and terminal facilities." Counsel for the railways were unable to give anything but a ridiculous meaning to those words of the Statute. The Supreme Court in its opinion practically eliminated the words from the Statute entirely. It was one of many cases of judicial infringement upon the legislative branch of the government. Judicial legislation, however, is now so frequent that it has almost ceased to be a source of comment.

Anticipating that the Supreme Court would rule against the power of the Port District to own and operate a terminal railroad, if the court could find a single peg upon which to hang its judicial hat, the Port Commission caused to be introduced in the 1917 Legislature, an amendment to the Port District Act. This amendment was so framed that if passed by the Legislature, the courts could not defeat the legislation intended. The railways, however, were able through their representatives in the Legislature, to prevent the passage of this bill. The Port Commission while temporarily frustrated in the plan to own and operate a Belt Line Railway, are still hopeful that the next Legislature will empower Port Districts to own and operate such terminal railways.

The fight which the Port Commission of the Port of Seattle made to obtain a Belt Line has not been, however, without beneficial effects. A direct result of the Port Commission's attempt to construct a railroad on East Marginal Way was the immediate building of a railroad on this street by the O.-W. R. & N. Co. As a result of the construction of this road, many new industries including several new shipyards, which sprung up as a result of the war, located in this district. Without railroad facilities, these industries could not have located in the district and it is doubtful if they could have found suitable locations anywhere in the city. Furthermore, the fight for a Belt Line Railroad by the Port Commission, brought to the attention of the people the many deficiencies in the methods of operation by the railroads and a number of the worst practices of the railroads have been eliminated. The

unified control of the United States Railroad Administration also assisted in bringing this about, but it was the campaign of education carried on by the Port Commission which created a public opinion demanding the reforms obtained.

State ex rel Huggins v. Bridges

97 Wash. 558, 559.

The separation of the powers granted into, (1) the owning, maintenance and operation of a system of harbor improvements, and (2) the owning, maintenance and operation of rail and water transfer and terminal facilities, seems to us to do violence to the plain intendment of the language and to grant a power by inference, viz., the power of operating railways not expressly granted by the legislation and clearly not to be implied.

We are asked by appellants to define what is meant by the words "rail and water transfer and terminal facilities." It might be answered that it is sufficient to determine what powers are granted this municipal corporation by the clear intendment of the act or by necessary inference, and that nowhere is it granted the power to construct, operate and maintain railway lines, either terminal, belt, or otherwise, and to act as such a common carrier. But we conceive that the language referred to simply means such adjuncts and appurtenances as are necessary or convenient for the trans-shipment of commodities between land carriers and water carriers. Such facilities may include a spur track or switch to a dock, pier or warehouse, and they may include the connecting track between two docks or piers or warehouses of the port commission, for its convenience. If we construe the language as contended for by appellants, instead of reading rail and water transfer and terminal facilities, it should be read rail or water transfer, etc. When the legislature has used precise words and used words which subsequent portions of the act and amendments thereto imply were the exact words meant to be used by the law-making power, it is not the business of the court to substitute words, even such a small word as "or" for "and." *Black, Interpretation of Laws* (2d ed.), p. 231.

We are convinced, therefore, that the appellants have not been granted the power proposed to be exercised by them. The judgment is affirmed.