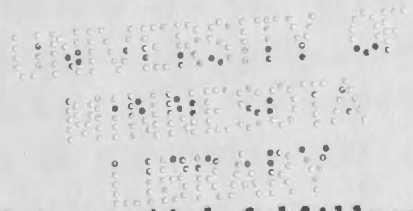


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The State Commission System
of
Regulating Public Utilities and
Its Possible Application
to
The State of Minnesota



A thesis submitted in partial fulfillment
of the requirements for the Degree of Master
of Arts, at the University of Minnesota.

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INTRODUCTION

Chapter I

This subject is both new and old. The right of the state to regulate the rendering of public services is coeval with the state itself. But the application of the principle, in the United States, in the complete form here intended, is not yet twelve months old.

The regulation of public utilities is, on this account and because of their importance in daily life, a problem of rapidly growing importance. It has been said that in the cities, every man, woman and child daily comes in contact with some franchise company. The increasing agitation of the subject has been one of the most remarkable movements in recent years. This agitation and the present unsatisfactory conditions will continue until the state achieves some adequate system of regulation.

The term, public utilities, covers so broad a field and the different services are so inextricably bound up together in ownership, operation and control, that, just as it has been found necessary to control them by a single commission, so also a study of them to give an understanding of the situation, must include many phases.

Especially in Minnesota, where, aside from steam railroads, we have made practically no attempt at regulation, and have everything to learn from other states, I have found it necessary, difficult as it may be in a Master's thesis, to treat the subject broadly as a foundation for later work. In studying this has been my guiding principle; in writing the thesis, however, the limitations of space have compelled the omission of whole subjects. For example, I had thought of having two chapters on the attitude of the courts and the present constitutional, statutory and municipal provisions relative to public service corporations and their franchises, but in writing each began to assume the proportions of a Doctor's thesis in themselves alone and were omitted. Several other chapters have had to be treated in a more general way than I had intended, on this account. To still further shorten it, I have everywhere condensed as much as possible, at the expense, I am afraid, of the interest of the reader.

Throughout the whole work, I have endeavored to treat the subject with a view to the possible application to this state. In the next three years, I hope to study European methods of operation and control and then on returning, to continue what has been to me an intensely

Chapter I

Definitions.

For our purposes it will be most convenient to follow the definitions given in the state statutes.

1. Public Utilities:--

Wisconsin: The Act establishing the Railroad Commission in 1905, defined the term "Railroad" so as to include steam railroads, all street and interurban electric railways and express and telegraph companies.¹ The Public Utility Act of 1907 contains the following definition: "The term 'public utility' as used in this act shall mean and embrace every corporation, company, individual, association of individuals, ... and every town, village or city that now or hereafter may own, operate, manage or control any plant or equipment ... within the state, for the conveyance of telephone messages or for the production, transmission or delivery or furnishing of heat, water or power either directly or indirectly to or for the public."²

New York: The "Public Service Commissions Law" included railroad corporations, street railroad corporations, and other common carriers, gas corporations and electrical

¹Laws of Wisconsin: 1905: ch. 362 sec. 2.

² " " " 1907. ch. 499. sec. 1.

corporations. It does not include waterworks, telephones or the supplying of heat except from gas or electricity.

The Minnesota statutes include all the above mentioned in the term "public service corporations". Chapter 452 Laws of 1907 says: "For the purposes of this act the term "public utilities" shall include" street railways, telephones, water works, gas works, and electric light, heat or power works.

This definition will be used as applied to both privately and publicly owned utilities. The term "public services" will include also all railways and other common carriers.

2. Common Carriers. The New York definition is as lucid as any : "The term "'common carrier'" ... includes all railroad corporations, street railroad corporations, express companies, car companies, sleeping-car companies, freight companies, freight-line companies and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state."²

3. The term "municipality" includes all cities, towns and villages.

¹Laws of New York: 1907, ch. 429 Art. 13 Sec. 2.

² " " " " 1907, " 429 " 1. " 2.

Chapter II

The Regulation of Common Carriers.

Common carriers form a class distinct from the other utilities. Nevertheless, legal principles which govern their control are at the basis of the whole subject and in Massachusetts, New York and Wisconsin it has been found impossible to really separate their control from that of other utilities. All are so inextricably bound up together in ownership, operation and control that any effective system should include them all. Especially has the remarkable extension of the electric railroads complicated the problem of railroad management and regulation so that attempt to dissociate them has become hopeless.

The Supreme Court of the United States has based the control of public service corporations upon the earlier regulation of public carriers and highways.

In all countries and in all ages, the state has never hesitated to regulate matters of public concern. Under well organized, powerful governments, the range of public activity has been very broad. In England, especially

the permanency of the royal government led to a long series of acts fixing prices, wages etc. Although in time the futility of these acts became apparent, the right to regulate businesses affected with a public interest has never been questioned. Particularly the regulation of public carriers has been maintained to the present day even from the Wagoners' Act of William and Mary. The real problem of regulation arose with the introduction of railroads.

On the continent of Europe, the governments, from almost the inception of the industry, assumed some measure of control because of the importance of the roads for military purposes.¹ In England, from 1830 to 1850, the roads were regarded with such suspicion and so few built that the era of speculative building was not so noticable as in the United States. After the elaborate report of 1849, Parliament in 1854, passed the Railway and Canal Traffic Act, which was "for many reasons the most important piece of legislation to which England and America have ever been subjected"² and "is the basis of both English and American railway legislation".³ Again in 1872, after the reports of the special committees of 1867 and 1872, the court tribunal, the Court of Common Pleas,⁴ was abolished as a fail-

¹Cohn I p 270

²Hendrick p 79 ; ³p 78; ⁴p 82

ure; and a commission of three members was established, whose decision with slight limitations was to be final. Finally in 1888 the whole system was revised to give more consideration for the public. Among other changes, the burden of proof in regard to rates was placed on the railroads and almost any constituted body was allowed to make complaint.¹ It may be said that the English Commission has not shown the activity that was expected of it, because it is said, its members are inexperienced in railroad work. The Commission has, however, undoubtedly been of great benefit to Great Britain.

Railroads in the United States.

The history of railroad legislation in this country may be outlined in three periods. From 1830 to 1850 speculative building ran riot. From 1850 to 1870 the roads passed through a period of receiverships and cut-throat competition with the accompanying evils of discrimination and neglect of public interests. The result was a period of violent agitation, the granger legislation, the general establishment of commissions and the Interstate Commerce Act of 1887.

The attempt at regulation may be said to have be-

¹ Hendrick p85.

gun with the passage of general laws for the incorporation of companies by Michigan in 1848, New York in 1848-1850, Illinois in 1849, Ohio 1854, to be followed by other states.¹ Enthusiasm still ran too high in the West to allow of thought for future control. The following table shows the remarkable boom in railroads in this period.

Increase and extension of Railroads.²

	Mileage 1866	In 1871
Illinois	3191	5904
Iowa	1283	3160
Minnesota	482	1612
Wisconsin	1036	1725
Nebraska	473	943
Kansas	494	1760

Total Mileage increased from 6992 in 1867 to 17,645 in 1873. An increase of 254 per cent. in six years.

Undoubtedly many of the roads were poorly laid out and "extended in advance of actual public needs".³ The people too began to feel the pinch of public and private debts incurred in aid of the railroads. In 1870, the

² Charles Francis Adams in N.A. Review, vol. cxx. p 397

¹ Clark, p 14 ; Hendrick p 97

³ Clark p 18 Hadley 131

land grants made to railroads in the United States amounted to 215,000,000 acres, an area equal to six Illinoises, or eight Ohios or sixty Connecticuts. The municipal and county bonds then outstanding reached the enormous sum of \$ 185,000,000. "Taken all together, the extent of such assistance rendered to corporations is enormous."¹ Notwithstanding this fact the managers "considered themselves sole proprietors" of the roads and claimed that "the people must pay what was asked and accept what was offered."² The owners of the roads were eastern capitalists; the employees of the companies were discourteous and overbearing; beyond question "real discriminations and inequalities did exist ... and the railroad system of the West was honey-combed with jobbery and corruption."³ The people awoke to a bitter realization of what they had unwittingly or heedlessly brought upon themselves. The result was a violent reaction.

The Grange Movement.

In 1867 the idea of a national organization of farmers was conceived ^{by} O.H.Kelly, a clerk in the Agricult

¹ Henry C. Adams in Dixon p

² Clark p 20

³ C.F.Adams NAReview cxx p 401

tural Department. The organization, entitled the "United Order of the Patrons of Husbandry", was started in 1868 and was intended for social and industrial purposes and the protection of the farmer. After 1871 the growth of the order was very rapid. The Minnesota Grange, the first state grange was organized on February 23, 1869; that of Iowa in 1871; yet in January 1873, there were 1300 organizations; and by the close of 1874 there were a total of 22,000 granges.¹ The reaction soon set in; very few granges were organized in 1875 and from that time the grange has movement, lost its spectacular features.⁵

In the boom days of 1873 and 1874, the political importance of the order was very great; disgruntled politicians flocked to it; the discipline, the secrecy, the admirable organization of the order made agitation easy and effective. Whether rightfully or wrongfully, the grange has been given the credit and the blame for the whole anti-railroad movement of the seventies. The Farmers Conventions at Owatonna, September 2, 1873,² and at DeMoines³ and Springfield⁴ the same year all adopted resolutions demanding legislative control of the railroads. Illinois in 1870. Iowa in 1874. Nebraska and Alabama in 1875 and

¹ D.W. Aiken, The Grange, Its Origin, Progress and Purposes
Special Report 2, Misc. Ser. U.S. Dept of Agric. pp. 55-66

³ Dixon; p. ; ² Martin p. 310 ; ⁴ Adams, C.F. N.A. Rev. cxx

⁵ Paine, A.E., The Granger Movement in Illinois, U. of Ill. I

California in 1879 drew up new constitutions containing provisions for railway regulation.¹ Illinois in 1871 and Iowa, Minnesota and Wisconsin in 1874 established railroad commissions with power to fix maximum rates. The reaction overthrew these laws in Wisconsin and Minnesota⁴ in 1876, in Iowa in 1878.² For this the change of popular sentiment and railroad influence were probably jointly responsible.³

The commission idea was not new. The fear of accidents led the people of New Hampshire to establish a board to examine the roads and report to the legislature. Connecticut in 1853, Vermont in 1855, Maine in 1858 and Ohio in 1867 adopted similar plans.⁴ At the same time a somewhat different movement had been going on. The idea of temporary boards appointed to arbitrate labor disputes in connection with the railways led to the establishment of a permanent commission with advisory powers of regulation, in Massachusetts in 1869. Iowa reestablished her commission in 1878, which as amended in 1884 and 1888 still exists.⁵ Minnesota soon also reestablished her commission,¹⁸⁸⁵ but Wisconsin did not succeed in this until 1905.

In recent years the railroad discussion has again become wide-spread. Its results were even greater than those of the granger movement. The amount of railroad legislation

¹Clark p.22 ³Larrabee p.334 ²Dixon p. ; ⁴Clark p. ;

⁴Hendrick p. . ³Dey p.558;

⁵Laws of Iowa: 1878 17th G.A. ch.77 ; 1888. April 5.

" " " 1888, 22nd G.A. ch.28; 1890 23rd G.A. ch17

" " " 1892 24th G.A. chs.25 and 27.

²Commons, J.R. by mistake fixes the date, 1876. Rev. of Revs. 1905

* 1875

passed in 1907 was unprecedented. Passenger fares were changed in 21 states: Ala., Ark., Ga., Ind., Ill., Ia., Kan., Md., Mich., Minn., Miss., Mo., Neb., N.C., N.Dak., Okla., Penna., S.Dak., Va., West Va., and Wis. No sessions were held in Ky. and La. Bills failed to pass in Arizona, Fla. and Maine. In only nine states was no action at all taken. In Texas over 100 bills were introduced. Free passes were prohibited or limited in thirteen states. Eleven established railroad commissions: Col., Ind., Mich., Mon., Nev., New Jersey N.Y. (a new commission was established, although one had previously existed), Okla., Ore., Penna., Vt. In 16 states the powers of the commissions were increased: Ala., Ark., Fla., Ill., Iowa, Kan., Minn., Mo., Neb., N.H., N.C., S.C., S.Dak., Texas, Washington, and Wis.

The following states now have railroad commissions: Ala., Ark., Cal., Col., Conn., Fla., Ga., Ill., Ind., Iowa, Kan., Ky., La., Maine, Mass., Mich., Minn., Miss., Mo., Mon., Neb., Nev., N.H., N.J., N.Y., N.C. (Com. of Corporations), N.Dak. (Corporations) Ohio, Okla. (Corporations), Ore., Penna. (Dept. of Int. Affairs) R.I. (A Commissioner), S.C., S.Dak., Tenn., Texas, Vt., Va. (Corp.) Wash., and Wisconsin. The following have no commissions nor any thing to correspond to a commission: Alaska, Arizona Del., Idaho, Maryland, Utah, New Mexico, West Va., Wyoming.

See R. of R's. 1907 pp.

In view of this action of the legislatures of so many states, the statement of Henry C. Adams in 1896, seems of special significance: "We must make the commissions a positive influence in the conduct of railroad affairs or "adopt the policy of government ownership and government management. As one who has studied this question with considerable care for a number of years, I can see no other solution. This is the situation as recognized by publicists, by statesmen and by students."

The Electric Railways.

Within the last decade the extension of street and electric railways has complicated the whole question of railroad control. The importance of these railways even in 1902 can be seen from the following table:

Comparison of Street and Electric Railways.

	Miles of Track of Electric Rys.	Per centage of total.
Connecticut	338.83	60 %
Indiana	278.34	43 %
Maine	200	60 %
Massachusetts	1700.86	66
Michigan	558.62	54.6 %

¹ Dixon, Introduction by Adams. p.

New Hampshire	85.99	51.3 %
Ohio	1278.55	54.3
Pennsylvania	1113.54	44.9 %
Virginia	197.89	55.1

The percentage of interurban railways has grown greatly since 1902, over the above figures. In Indiana in 1907, there were 2186 miles of interurban railway and in Ohio, 2400 miles.²

In the United States Census it was said: "It is evident that even if the electric railways confine themselves to the methods already widely prevalent, they are bound to become a social and economic factor of enormous importance. Remarkable benefits have already been realized from the existing interurban lines, and the extension of such railways to a large proportion of our more prosperous communities seems but a matter of a short time."³

These railways operate both interurban and urban systems in many instances; they do a passenger, express and freight service. Many of the railways, particularly in New England are now owned by the steam railroads.⁴ It is therefore necessary that the powers of the railroad commission be extended to these roads and also to the

¹ U.S. Census, Special report on Electric Railways p.102

² Electric Railway Review, 1907 p.

³ U.S. Census, Spec. Rep. p.107

⁴ Report of Mass. Railroad Commission 1905 p.xxxvi.

street or more distinctly urban railways. This brings up the whole question of public utilities and their control.

One^{fact} might be pointed out at this place. It^{is} manifestly impossible to carry out the idea of municipal ownership in the case of the extensive interurban railways. State regulation is positively the only solution of the problem. This is admitted by the advocates of municipal ownership.

APPENDIX I

The following statistics of railroads show the importance of railroads to the people of the United States.

June 30, 1906:

Single track railroad mileage	224,363.17
Employees	1,521,355
Outstanding capitalization	\$14,570,421,478.
Dividends	\$ 272,795,974.
Rate of dividends on paying stocks	6.3%
Capitalization per mile	\$ 67,936.
Number of Passengers	797,946,116
Accidents Number killed and Injured:	108,324
Tons of Freight	1,631,374,219
Gross earnings on 220,340 miles	\$2,325,765,167.

Report of the Interstate Commerce Commission. 1907

Chapter III

The Municipality and the Public Utility.

The growth of municipalities in the last half century and of the public utility in the last quarter of a century have been almost beyond belief. The one so depends upon the other that some understanding of both is necessary for a comprehension of the problem, that has resulted.

Increase of Urban Population, U.S.

Year	Density	People in Cities 8,000 or over.	Number of Cities	Percentage Urban.
1900	25.6	24,992,199	545	33.1
1890	21.2	18,772,503	447	29.2
1880	17.3	11,318,547	286	22.6
1870	13.3	8,071,875	226	20.9
1860	10.8	5,072,256	141	16.1
1850	7.9	2,897,586	85	12.5
1840	8.4	1,453,994	44	8.5
1830	6.4	864,509	26	6.7

1820	4.8	475,135	13	4.9
1810	3.7	356,920	11	4.9
1800	6.6	210,873	6	4.0
1790	4.9	131,472	6	3.4

The following table shows the increase of incorporated places from 1890 to 1900. In Minnesota #

Year	6000- 8000	5000- 6000	4000- 5000	2500- 4000	1500- 2500	1000- 1500	500- 1000
1890	3	2	1	10	18	24	71
1900	5	5	2	18	35	50	96

The increase in urban population is largely in the larger cities: #

Year	Percentage of Population of, to total popula.				
	United States		North Central States		
	Cities 8000	Of 25000	8000	25000	
1900- 1890	Increased	20.7%	32.5%	17.7%	35.4%
1890- 1880	"	24.8%	49.5%	28.78%	82.6%

The relation of the population of incorporated places to the total population is here shown: 1900

United States Census Vol. on Population, vol. I.

	Total Pop.	Pop. Incorp. Places	Percent.*
United States	76,148,576	35,849,516	47.1%
Minnesota	1,751,394	859,878	49.1%
Massachusetts			67. %
Pennsylvania			63.3%
New York			77 %
Wisconsin			46.4%
Iowa			43.6%
Illinois			66.5%

That this growth of cities is not confined to the United States or the characteristic of a new country alone is evident from an examination of the nearly equal growth of the cities of England,¹ Scotland,² France,³ Germany,⁴ Sweden⁵ and Norway.⁶ In all these countries the growth has been the greatest in the larger cities, rather than the smaller. The urban population of Scotland increased from 25% in 1880 to 75% in 1900; in France while the rural population has decreased, the urban population has doubled. England is now three quarters urban and Germany about one-half.

*U.S.Census, Vol.I Population

Weber The Growth of Cities. ¹p.46-7; ²p.58; ³p.68,71;
⁴p.83,92; ⁵p.110; ⁶p.111.

The Growth of Municipal Utilities.

The growth and extension of public utilities in municipalities has been even more rapid than the growth of the cities themselves.

I. Water Works.

In 1800 there were only 17 cities in the United States that had any system of water supply.

Cities having a system of water supply:

1800	17 cities
1835	54 "
1855	106 "
1875	422 "
1890	2000 "
1897	3200 "

II. Gas Lighting.

Gas plants were established in Baltimore in 1816, Boston, 1822, New York 1823, and Brooklyn 1825. Lowe's process for the manufacture of water gas revolutionized the industry after 1875.

Increase of Gas plants. U.S. ²

1850	30
1860	221
1870	390
1890	742
1900	877
-----1906	940 } ³

¹ Maltbie:p.149; ² US Census, 1900, vol. 10 p.705

³ Brown's Directory of Am.Gas Co.s 1906,Table 4

III. Electric Lighting.

The first central lighting station was operated by the California Electric Light Co. in San Francisco in 1879. The Edison incandescent light was not adopted for several years after this. The great increase in the industry since is here shown:

Growth of Electric Lighting in the U.S. ¹

1881.....	8
1885	167
1890	1009
1895	2076
1900	3224
1902	3620
1905 (Sept.)	4064
1906 (Mar.).....	4284

³

The statistics for electric light stations in 1902:²

Number of stations	3,620
Cost of construction & Equipment	\$504,740,352
Gross income	\$ 85,700,605
Officials and Clerks	6,996
Wage earners	23,330

IV. Street Railways.

The street railway was very slow in developing. The first

¹ U.S. Census Special Report on Electric Lighting 1902 p.106
² " " " " p. 6.
³ Central Station Lists Sept. 1905 and March 1906.

passenger street railway ever constructed was the lumbering "John Mason" horse car drawn over strap rails laid on stone ties on Fourth Avenue in New York City, in the thirties. The success of the Sixth Ave. road in 1850 led to the building of some half-dozen roads from 1850 to 1855; 30 in the next five years and over 80 from 1860 to 1870; in 1890, there were some 769 street railways in the leading cities of the United States. The cable railway was introduced in August 1873; from that time to 1891 more than 1000 patents were taken out on the cable system. After innumerable unsuccessful experiments, from 1835 on, in many parts of the country, the BENTLEY-Knight system, installed in Cleveland in 1884, "as a matter of fact seems to be the first regular street car equipment installed in America, operating for fare like the old horse cars."¹

Track Mileage, 1890 and 1902.²

Character of Power	Mileage 1902	Mileage 1890	Increase
United States	22,576.99	8,123.02	177.9%
Electric	21,907.59	1,261.97	1,636.0%
Animal	259.19	5,661.44	95.4%
Cable	240.69	488.31	50.7%
Steam	169.61	711.30	76.2%

¹-U.S.Census Spec. Report on St.RYs. p.164; ²p.8.

The increased use of the street railways is shown by this table: #

		Urban Population 4000 and over.	Fare passengers carried	Rides per Inhabitant Total :Urban.
United States	1902	28,372,392	4,474,211,904/63	168
	1890	20,745,974	2,023,010,202/32	98
North Central	1902	9,343,313	1,344,000,951/51	144
	1890	6,744,938	538,309,887/24	80

In 1902, on the electric surface railways, 1,185 people were killed and 47,180 injured.

W. Telephones.

The first commercial telephone exchange was established at New Haven, Conn., Jan. 25, 1878. Yet in 1881, so rapidly had the business developed that only ten cities having over 10,000 people did not have an exchange. The National Bell company consolidated with the Western Union to form the National Bell Telephone Company in 1879; in 1899 this became the American Telephone and Telegraph Co. After the expiration of the patents in 1893, many companies were formed, whose number is still increasing yearly.

U.S. Census Special Report 1902 p.8,9 p. 16.

Comparative Summary of all Systems. ¹

	1902	1890	1880
Number of systems	4151	53	148
Miles of wire	4,850,486	240,412	34,305
Number of Subscribers	2,178,366	227,357	48,414
Number of Employees	78,752	8,645	3,338
Capital Stock	\$384,534,066		\$17,386,700
Total Revenue	\$86,825,536	\$16,404,583.	\$3098,081

Summary of All Utilities in 1902. ²

Size of City	Number over 3000	Water- works	Street Rys.	Electric Lights	Gas	Telephones
Above 30,000	135	135	135	135	133	134
10,000- 30,000	303	302	285	302	285	296
5,000- 10,000	463	458	293	455	342	453
3,000- 5,000	623	580	215	579	221	583
Total, U.S.	1,524	1,475	928	1,471	981	1,466

These statistics will convey some idea of the growth and present size of these so-called municipal monopolies. It is not necessary here to enlarge upon the importance of these utilities to the people of the United States, in the problem of their regulation.

¹ U.S. Census Special Report, Telephones. p.5;

² Municipal Year Book, 1902, pp.xxix, xxx, xxxi.

Chapter IV.

The Municipality and The Control of Municipal Monopolies.

It is not possible here to trace the development of the modern city from the city state of the Greeks and the Romans, or its original prototype, the original city where an agricultural and trading population clustered for protection worship, barter and pleasure about a camp, a temple or a court. The great cities of Italy, the Communes of France, the Frei-städte of Germany and the Boroughs of England, were almost independent. The Communes ^{regulated} saloons, inns, public houses, theatres, markets, fairs, the prices of commodities, cab-fares, the composition and weight of goods, weights and measures, the use of sign boards, paving cleaning and watering of streets. They licensed trades and occupations, regulated in detail the processes of manufacture, kept a strict censorship of the press and fixed the value of wedding presents." ¹ The German free cities "regulated trade and commerce, coined money, levied and collected customs, equipped armies, maintained navies, appointed foreign ambassadors and negotiated treaties."

¹ Maltbie, pp.

The Boroughs elected representatives to Parliament, chose their own magistrates, "held property, maintained a local police force, regulated in detail every phase of trade and industry, fixed wages, the quality, weight and maximum price of food, controlled and regulated public markets, constructed quays and bridges, town halls and churches." But the lack of communication between cities, change of economic conditions, and the growth of the central government, led to the decline of these independent cities.

The modern city is a statutory creation. It may be defined as a legal political entity, located in an urban center and constituting a local government. Municipal functions are both (1) those peculiar to local government under municipal conditions and (2) those performed by municipalities as the agents of the state. They may be classified under the following heads:

- A. Protection, Police, courts and prisons, fire depts.
- B. Charities.
- C. Education: schools, libraries, museums.
- D. Recreation: Theatres, parks, baths, play grounds.
- E. Street Facilities: Paving, cleaning, sprinkling, Sewers, and garbage disposal.

F. Industrial Functions: Real estate, markets, abattoirs
cemeteries, water works, gas and electric lighting,
harbor facilities, ferries, street railways, pawn
shops, banks, fire insurance, restaurants, miscellany.

It is with this last classification that we are here concerned. In recent years the public opinion has changed in regard to the proper activities for municipalities. The cities now take practically entire charge of matters pertaining to education, protection and health. The majority now own their own water systems. This change is due to the remarkable growth of cities and the progress of invention, which together have made the supplying of these services relatively inexpensive and so necessary that it is no longer safe to leave them in private hands.

The street railways, telephones, gas and electric lighting are still entirely or largely in private hands. They are in the hands of corporations operating under state charter or municipal franchise. These franchises, like the railroad charters, have been held by the courts to be legislative grants in the nature of contracts and hence irrevocable. The corporations, operating under pu

franchises, have been held to be quasi-public in their nature and hence unless expressly exempted by their franchises, are subject to control and regulation.

The American cities have gone through much the same experience as did the states in the early period of railway regulation or lack of regulation. Anxious to obtain the advantages of the new and much needed street railways, and other utilities, the cities granted franchises in perpetuity and without provision for future regulation or any compensation to the city. Some of the early franchises were so poorly drawn that the main profits have gone to the attorneys who were fed fat by the ensuing litigation. In many cases franchises were so skillfully drawn that in later years cities awoke to find that in innocent little clauses they had hopelessly given away their essential rights.

The result of this action of the cities was to be expected. The same reckless promotion of companies, the same grabbing of franchises, the same poor service, in a word, the exploitation of stockholders and the public that were so notorious in early railroad history. The rapid growth of cities, the introduction of the cable and later

of electric traction, the inventions and improved methods telephones and lighting cut operating expenses in half and made distribution on a large scale both possible and enormously profitable. The cities awoke to find themselves in many cases bound to an inefficient service, dictatorial companies and exorbitant prices.

Again the usual outcome. The first thought was for competition. Everyone seemingly depended on this as a remedy for all ills. A new outpouring of franchises followed, with some limitations. The attitude of the New York legislature is a case in point. After the consolidation of the of the gas companies in New York City, in 1886, the legislature passed an act "to facilitate the supply of gas in the city of New York at a reasonable price"; which act merely incorporated the Street Gas Light Company and authorized it to charge \$1.50 for gas. In the same year the legislature, after an investigation reduced the price of gas for all companies to \$1.25, the previous price having been found to be unreasonable.¹ If the promoters had any sense of humor they must have enjoyed the absurdity of the whole proceeding. Of course it was New York City that suffered.

The testimony² at Cleveland of Capt. W.H. White is

¹ N.Y. Senate Documents: No. 41, 1885.

² Quoted in Municipal Monopolies: p.594

illustrative . "The competing companies unite and usually double the capital when they unite, of course." The same stated that the people of Boston had been paying 6% dividends on the \$10,000,000 of "wind script stock". The experience of Massachusetts in spite of its Gas Commission should be a final answer to the question. The introduction of the Bay State Gas Co. of Mass. in 1885 and its subsequent consolidation with the other companies into the enormously overcapitalized Bay State Gas Co. of Delaware; the wasteful war between the Bay State and new Brookline Gas Co. in the years 1893 to 1896. After the duplication of several hundred miles of pipes, the issue of a million or more of watered stock, after contests involving legislatures, councils and mayors, what is the net result ? Waste and more waste, sad experience and the consolidation of all companies into the New Gas and Coke Company, a voluntary association having a firmer hold upon all Massachusetts than did any of the old companies in Boston. /

The experience of New York and Chicago with their traction companies confirm the same idea. The experience has been the same throughout the United States.² It has been accepted as a maxim by both advocates and opponents of municipal ownership. The general acceptance of the

1 - Gray, The Gas Companies of Mass. Q.J. of Econ.

2 - See Bibliography.

principles illustrated by the following quotations:

"The telephone business is by nature one of the most complete of monopolies, altogether apart from the patents involved. Hence neither private nor municipal competition can take the place of either absolute ownership or a fair degree of control by the municipality." --- Baker.¹

"No permanent gain, either in the way of lower rates or improved service, is ever secured by a rival franchise company. Consolidation is inevitable, after which the consumer bears the expense of the duplicate works, and the over capitalization connected with consolidation." Baker.¹

"Finally free competition was admitted to be impracticable, wasteful and the search begun for some new system of public control."----- Maltbie.²

"All admit that competition has failed and unregulated monopoly is inimical to freedom." Howe.³

"The mass of the people have come to a firm conviction that competition in the services now under consideration, is no safeguard for the public and no remedy against the abuses heretofore perpetrated by the privately owned public service corporations." J. H. Gray.⁴

The advocates of private ownership make practically

¹ Baker, Municipal Engineering p. 57 and 271.

² Maltbie, Municipal Functions p. 185

³ Howe, p. 115.

⁴ Gray, Control of Quasi-Public Municipal Enterprises.

Address before the Mass. Reform Club, Feb. 2, 1906.

thesame statements. Such quotations might be multiplied indefinitely. I have discussed this question at such length because in Minnesota we do not seem to have yet learned. The incorporation of the Twin City Telephone Co., now known as the Tri-State, has meant the duplication of equipment and great expense and inconvenience to the public without material benefit in the long run. Now it is generally believed that the two companies are largely owned by the same interests. It means practically that the public must pay dividends on two series of phones where one system would be more convenient. Let us hope that we may profit in Minnesota by the experience of the past.

Competition, therefore is a failure. How then are the public service corporations to be controlled? For no one can deny that unregulated, absolute monopoly is in contravention of the whole spirit of our institutions, has been proved unsafe to democracy and in the the present state of the public mind wholly intolerable. As a final word, no clearer statement could be made than the first resolution in the report to the National Civic Federation: *

"We wish to emphasize the fact that the public utilities are so constituted that it is impossible for them

* See description of this investigation in the next chapter.

to be regulated by competition. Therefore they must be controlled and regulated by the government; or they must be left to do as they please; or they must be operated by the public. There is no other course. None of us is in favor of leaving them to their own will, and the question is whether it is better to regulate or to operate."

The two alternatives are municipal ownership or state regulation. We have come squarely to this question. The first of the two alternatives will be considered in the next chapter.

Chapter V.

Municipal Ownership

To attempt within the limits of a single chapter to give a complete discussion of municipal ownership would be futile. Perhaps, however, I may be permitted to outline the present status of the subject.

The United States Census Report on Cities of over 30,000 people contains the following statement: "No subject connected with the management of cities in the old or new world is attracting more attention at the present time than the operation of governmental industries."¹

This is the key note of the whole situation. The people seeing the failure of competition and keenly realizing the often times inequitable privileges obtained by private corporations in their franchises, have entered upon an unprecedented discussion of the functions of municipalities. The amount of literature, both scientific and popular in character, that has been published in the last decade conveys some idea of the extent of the discussion.

¹ Sp. Census Rep. on Cities over 30,000, 1905 p.62

Water Works

After it became necessary on account of the congestion of population to provide an adequate public supply of water for municipalities, the majority of cities left the matter in private hands. In 1800, of 17 cities having water supplies, only one owned its own plant. Gradually it became more common for cities to own their own works. In 1835, 15 cities owned their plants while 30 remained under private ownership; St. Louis purchased her supply in 1836, Detroit in 1836, and Cincinnati in 1839. New York, Boston, Albany, Worcester, Hartford, Baltimore and others followed building their own works.¹ By 1855 of 106 water works 48, or 45% were municipal. By 1875, there were 422 plants, 54 % being public. In 1890 only 42 % were municipal, in 1897, 54%; and in 1902 there were 766 public plants to 661 private. In 1905 according to the United States Census, of the 134 cities of over 30,000 people, 113, or 75.4 % owned or operated or owned and operated systems for supplying water. And of 369 cities having a population from 8,000 to 25,000, 187 had municipal plants, or 50.7 per cent. Evidently the bulk of the larger cities own their water works and private ownership is more common in smaller cities and towns.

The tendency toward municipal ownership is much stronger in some sections of the country than in others.

¹ Baker, Manual of Am. Water works.

This is illustrated in the following table: 1902 ¹

New England	63.2 % public
Middle Atlantic	41.7 %
South Atlantic	59.8
South Central	39.5
North Central	65.3
Northwestern	67.3
Southwestern	43.5
Pacific states	45.7 % public

Maine, Pennsylvania, Arkansas, Montana, Missouri had less than 50 per cent. public. Whereas Vermont had 83; Massachusetts 75; Michigan 81; Minnesota 67.7; and similarly with other states.

Gas Works.

According to the Census, in 1904, of from 8000 to 250000 six had municipal plants; and ⁱⁿ 1905, out of 154 cities from 50,000 population and upwards, six had municipal plants: Philadelphia, Toledo, Richmond, Duluth, Holyoke and Wheeling; Philadelphia and Toledo leased their plants to private companies.

In 1902 the "municipal year book" reported 20 public plants out of a total of 981.

¹ Municipal Year Book, 1902. pp. xxx and xxxvi.

Electric Lighting.

The only other industry in which municipalities have extensively engaged is that of electric lighting. In 1905, of 154 cities over 30,000, 22 owned electric plants; of 369 cities from 8000 to 25000, 58 had municipal plants.

In 1902, 278 out of 1471, or 19 % had public plants. The ownership of electric plants is much more common among the smaller municipalities. It is much more common in the South Atlantic, North Central, and North western states than in the Middle or South-western states.

It is evident from these statistics that in recent years there has been a pronounced movement for municipal ownership. The people dissatisfied with private ownership and angered by the attitude of the managers have turned to municipal operation as a panacea for all municipal ills.

Anyone who undertakes to study the subject of municipal ownership is at once overwhelmed by the mass of material; much of it based on inaccurate or inadequate information. Any one who undertakes to debate the subject finds that it is possible to prove almost anything on either side of

the question. The statistical material, especially has been in such shape that it has been almost useless for purposes of study. The trouble has been that all the actual information has been locked up in the books and vaults of the companies themselves. Only so much was divulged as was not to their disadvantage. The Bureau of Labor in 1899, made a useful but inconclusive investigation; and the Census Reports contained some information. Thus as late as a year ago the leading authorities on the subject said that there was really no information on which a satisfactory conclusion could be based.

The recent investigation conducted by a committee of the National Civic Federation is, therefore of especial interest. The Federation in 1905 decided to conduct an investigation and in September appointed a committee of 21; this Committee then elected a Committee of 21 which had charge of the investigation. The Committee of 21 represented all interests; it contained advocates of municipal ownership, like E.W. Bemis, Frank Parsons and others, and the prominent men in the field of private ownership, such as Walton Clark, operating head of the United Gas Improvement Co. of Philadelphia, which owns and operates about 100 companies from

Maine to Florida. It is this company that sought the memorable franchise grab in Philadelphia which aroused such a storm of public protest under Mayor Weaver. The committee prepared schedules covering the Constitutional provisions, statutes and franchises, in charge of Professor Gray and Milo R. Maltbie, labor, in charge of J.W. Sullivan and John R. Commons, Engineering and Accounting. The investigation covered a considerable number of plants, both public and private in both this country and England. At the final meeting of the Committee of twenty-one, on June 10, 1907, some very interesting and valuable resolutions were adopted. These are published in one volume with papers on the American Municipality, the British^M Municipality, on Labor and Politics, and on the interpretation of the findings of the investigation by the advocates of municipal and private ownership, respectively. It is unfortunate that the Committee did not prepare a complete analysis of their report, in order that the average citizen might have been able to understand the real results of the work, especially in view of the fact that different members of the Committee, were able to write on the subject with regard to the investigations of the Committee and come to opposite conclusions on the same material. The general

material collected by the investigators and published in two additional volumes is of great value to the student. Here, however, I have been compelled to ~~give an~~ attempt to present an examination of the material presented by the Committee, because such an examination as I might be able to make, would be inadequate and on account of lack of space. The general conclusions of the Committee are of very great value, because of the thoroughness of the investigation and because of the diversity of interests represented by the members of the Committee. Two of the most interesting things brought out are these:

"There are no particular reasons why the financial results of public or private operation should be different if the conditions are the same. In each case it is a question of the proper man in charge of the business and of local conditions."

"It is charged that the political activity of public service corporations has, in many instances been responsible for the unwillingness or inability of American cities to secure a higher type of public service. This charge we believe to be true."

If nothing else had been decided upon, these conclusions, coming from the source that they do, would have been of value, for ^{They} disclose, it seems to me the fundamental

question in the whole discussion of municipal ownership. The first puts the matter of relative cost on the sound basis that there need be no inherent difference between the two forms of ownership. The second is really the key to the situation: the relative influence on the body politic of municipal or private operation and the accompanying political conditions. Any one who has followed the disclosures of municipal corruption can have failed to be impressed with the fact the public service corporations are largely responsible for municipal and legislative corruption. So long as conditions remain as they are, it will be to the financial interest of these companies to keep corrupt or inefficient men in office. And so long will it be to the financial interest of the employees and especially of that great body of citizens known as the "better class", who own the securities or are influenced by the operation of these corporations, to remain indifferent or opposed to reform. So long will such indictments as that brought by Mayor Swift¹ of Chicago, against the "good citizens" who are more concerned with the interest on their investments than with the welfare of the city, continue to be applicable.

¹ See Appendix.

We have cried out for an awakening of interest in the reform movement, but I believe that until conditions can be changed, except for spasmodic outbursts the hope will be in vain. The question is to what extent will municipal ownership improve these conditions. Frederick C. Howe sees in municipal ownership a remedy for all ills. Where conditions are favorable this might result. On the other hand, where the present administration is inefficient, and the people disinclined to interest themselves in governmental questions, there would be vast opportunity for corruption and careless administration of large public plants. And in addition, there is the problem which has aroused some fear in England even,-- the political influence of public employees. Under these conditions, municipal operation might be little or no improvement over the present system. In the words of the Committee of twenty-one, in a passage immediately following that just quoted:

"However, there seems to be an idea with many people that the mere taking by the municipality of all its public utilities for municipal operation will at once result in ideal municipal government, through the very necessity of putting honest and competent citizens in charge. While an increase in the number and importance of municipal functions may have

a tendency to induce men of a higher type to become public officials, we do not believe that this of itself, will accomplish municipal reform. We are unable to recommend municipal ownership as a panacea for political ills."

Chapter VI.

State Regulation of Public Service Corporations in Massachusetts.

The oldest state to attempt to really regulate the public service corporations is Massachusetts. It is important then that we consider the nature and results of the system. Two state commissions exist. The Board of Railroad Commissioners has in charge the steam and electric railways. The Board of Gas and Electric Light Commissioners supervises the lighting plants both public and private.

Board of Railroad Commissioners.

This commission is governed and governs by a great number of successive statutes dating from 1869 to the last session. The main law is Chapters 111 and 112 Rev. Laws of 1902. There are three members appointed by the governor with the advice and consent of the Council. They receive a salary of \$ 5000 or \$4000, may be removed by the Governor and have clerks, inspectors and other

assistants. It is the duty of the Board to

Make examination of the condition of the road.

To investigate accidents.

To examine the books and accounts of companies and prescribe a form for the annual reports of the companies.

To hear and investigate complaints. Public hearing.

In a word their powers are general, supervisory, and advisory.

The procedure is by public hearing or informal adjustment of complaint, depending upon circumstances. Notification of finding is given the company and if the company does not comply the matter is laid before the attorney-general.

Fares may be revised by the legislature.

No stock or bonds or other evidence of indebtedness may be issued except on approval of the Commission and then only in the amount, manner and at the price fixed. No shares shall be sold below par .

In regard to Street Railways there are some special provisions.

Routes of companies laid out after 1902 are subject to approval by the Commission.

The following provision is of such interest that it is quoted in full here: "Section 32. The board of aldermen of a city or the selectmen of a town, after the expiration of one year from the opening for use of a street railway in their city or town, and after notice as provided in section seven and a hearing, if the public necessity and convenience in the use of the streets so require, may, for good and sufficient reasons to be stated in the order therefor, revoke the location of a street railway in any highway or street in said town or city, but unless within thirty days after such order of revocation, the company consents thereto in writing, such order shall not be valid until approved by the Board of Railroad Commissioners after public notice and a hearing." ¹

Street railway companies may consolidate only with the approval of the Commission. Their capital stock may not exceed the stock and indebtedness of the combined companies.

For an analysis of the last report of the Board see the appendix at end of chapter.

For the railroad and street railway laws, see the Compilation made by the Board. Boston, 1905 .

¹ Section 86 and 87 Rev. Laws of 1902. Compiled Laws p.123.

Publicity: The Board shall inspect the books and accounts of the companies, prescribe a form for the annual report of companies in September of each year, and shall publish such parts of these reports as it may deem advisable. Accidents must be reported to the Commissioners and may be investigated by them .

Capitalization:¹ No stock or bonds may be issued except under the approval of the Commission and then only in the amount fixed by the Board, as in the case of railroads. From 1894 to Jan. 1, 1907. the Board has denied 7 out of 257 applications; the increases of capital allowed amounted to \$20,009,800.

Rates and Service: on complaint the Board after public hearing, may order reduction in price or improvement in service. Such reductions have been made in gas in only 36 cases and in electricity in 17 cases. Up to June 30, 1906 the companies had made 292 voluntary reductions in the price of gas. The rates for gas have been: ²

1886.....	\$1.72	1900.....	\$1.10
1890.....	1.46	1905.....	1.05
1895.....	1.21	1906.....	.99

¹ Rev. Laws of 1902

² "Statement of the Board" May 1907

The Board of Gas and Electric Light
Commissioners.

The first Gas company was established in Mass. in 1823, but not until 1855 was a general law passed for the incorporation of companies. In 1885, the appearance of the Bay State Company¹ led to the establishment of a state gas commission. The act² was drawn by the attorney of the Boston Gas Company, introduced into the Board of Aldermen by his brother, and introduced into the legislature upon petition of the City of Boston. Electric lighting had been started in Mass. in 1880 and in 1887 the title of the Commission was changed to the "Board of Gas and Electric Light Commissioners".³ In 1891 municipal ownership was allowed by state law. On Jan. 1, 1907, there were 146 companies under the jurisdiction of the commission.

Powers and duties:⁴ The Board "shall have the general supervision" "shall make all necessary examinations and keep informed as to the compliance of the Companies with the law." Annual report to the legislature, Jan. 1. The board proceeds by public hearing and shall notify the attorney general of any violation of law. The Supreme Court shall have jurisdiction in equity to enforce all orders.

¹ Incorporated Feb. 16, 1885; ² Laws of 1885. ch. 314

³ Laws of 1887. ch. 382.

⁴ Rev. Laws of 1902 ch. 121 Sections 5, 6, 7.

In 1906, the London "Sliding Scale Act"¹ was passed by the legislature. It applies only to the Boston Consolidated Gas Company. This is the first instance of the adoption of the plan in this country and so is of considerable interest. The price is fixed at 90¢ and dividends at 7%; if during any year ending June 30, the price has been less than 90¢, the company may for the following year increase its dividends 1/5 of one per cent. for every reduction of one cent in the price of gas. At the expiration of ten years the Board may lower the price fixed in the act. Under this act the company on July 1, 1907 reduced the price of gas to 85¢.

In 1902 the powers and duties of the state gas inspector were transferred to the Board.² In 1906 out of 916 inspections, only 22 companies were found deficient. The Board's inspections of gas meters materially reduced the number of incorrect meters.³

	1902	1906
Meters examined on complaint	992	424
Meters, correct	394	178
Meters, incorrect	602	246

Municipal Ownership:⁴ Any city or town may acquire its gas or electric lighting plant by referendum vote. A municipal light board is then established, appointed by

1 Laws of 1906:ch. 422.

2 Office established in 1861.

3 See the official "Statement of the Board" 1907

4 Laws of 1891; ch. 370

the Mayor. A manager of Municipal Lighting is also appointed in the same way. Among various regulations for the government of municipalities under such circumstances, one provides that the Supreme Judicial Court of that county shall have power² to fix prices of municipal plants or to compel the the fixing of reasonable prices. If the company previously operating in that municipality votes to sell, within a certain time, the municipality must buy either at an agreed price or at a price fixed by commissioners appointed by the Court.¹ Up to Jan.1,1907, 22 cities and towns had municipal plants; 51 cities and towns had voted against municipal ownership. In 1907, 4 cities and towns owned and operated gas and electric plants; 18 operated electric plants.

Expense of administration:³ In 1904 the laws of 1869, and 1902 were amended so that now the expenses of the Board are appropriated by the General Court; this amount is assessed upon the companies and the assessment is collected with the other taxes; any excess is applied on the expenses of the following year and all fees are paid into the state treasury.

Amount assessed upon the Companies. 1906	
Total expenses of Board: Office	\$ 16,619.89
Total expenses including inspection	28,034.18

¹ Laws of 1891 ch. 370; ² Laws of 1905 ch. 34.

³ Official "Statement of the Board" 1905.

Total income of the Board from fees for
Inspections: \$11,271.40

The remainder is assessed upon the companies,
The amount assessed per \$100 of
gross earnings was \$.07053

Summary: The Efficiency of the Commissions.

Mr. Louis D. Brandeis,¹--- "The right of revocation has been fully sustained by the Supreme Court and is universally recognized in practice. The grant of the location is substantially a license during good behavior. The existence of the right of revocation has been an effective means of securing to the people proper transportation facilities." "Largely because of the reserve power of revoking locations reasonable demands of the local public, if approved by the commissioners, usually result in immediate compliance on the part of the company with the recommendations of the commissioners." The "low construction charge... is accounted for by the fact that the locations, being revocable, are not treated as an asset in Massachusetts. ... The "substantial prevention of stock watering has been accomplished by means of the following provisions of law," explained before. "These provisions not only prohibit stock dividends in any form but actually prevent them."

¹ Municipal Affairs, Vol. VI. p. 720 Mr. Brandeis is a

well known attorney and Sec. of the Franchise Reform League.

² Official "Statement of the Board"

Dr. John H. Gray, generally considered the authority on the Massachusetts Gas situation and the leading expert of the Committee of the National Civic Federation, in an address before the Massachusetts Reform Club, Jan. 2, 1906, after praising or excusing some features of the work of the Board of Gas and Electric Light Commissioners, pointed some defects; this criticism is especially valuable because it shows the difficulties of control and what must be avoided. "The anti-stock watering laws, with the compulsory sale of new stock at a high premium fixed by the state, have been successfully interpreted by the companies as a state guarantee of dividends at a rate maintained by the most successful companies in the halcyon days of secrecy of accounts and unregulated prices.

"The drastic statutory provisions on price regulation have been evaded by the simple device of holding companies in the form of foreign corporations or of incorporated domestic voluntary associations or trusts. These holding companies under either name, have enabled the manager to play hide and seek in and out among the corporations in buying and selling materials and finished products, carrying on building operations and manipulating accounts until no man living

could tell what it would cost any one of the corporations to do the business (at a fair price) for which it was created. To determine a fair price under such circumstances was of course equally impossible.

"At the same time these devices have enabled the owners to place an amount of watered capitalization upon the property of these poor captive domestic corporations such as was never thought of by the most reckless promoters in the days before any dreamed of anti-stock watering legislation."

These quotations convey a clear impression of the situation in Massachusetts. The system has many imperfections, but on the whole has no doubt been of great benefit to the people of the state. Its form, in view of the fact that the enforcement of the law depends very considerably upon publicity, and public opinion with the ultimate possibility of franchise revocation or appeal to the courts, would not be as successful in other states as it has been in Massachusetts, nevertheless the long experience of Massachusetts in the control of public service corporations was largely utilized by New York and Wisconsin in the framing of their laws. These systems will next be considered.

Chapter VII.

Regulation of publicService Corporations in the State of New York.

The first railroad in New York opened its line from Albany to Schenectady in 1831. The first general law for the incorporation of companies was passed in 1848¹ and provided for the submission of annual reports by the railroad companies to the State Engineer and Surveyor. A railroad commission was created in 1855,² consisting of the Engineer, one member appointed by the Governor and one elected by the railroad companies. This board was abolished at its own request in 1857.³ Finally in 1882, after a long and bitter struggle the present commission was established. Its members are appointed by the Governor with the advice and consent of the Senate. The Commission's powers were of the advisory type and the work of the Commission was never entirely satisfactory.

Repeated investigations of the transit situation were conducted by special commissions usually appointed

¹ Laws of N.Y. ch. 140, 1848: ² 1855, ch. 526.

³ 1857, ch. 633.

by the Mayor of New York City. The recommendations of these commissions seem to have been generally ignored. The transit situation was partially provided for by the granting of franchises to elevated railways. Finally the transit situation in New York city became so complicated and the evils of private ownership wholly unregulated, led became so notorious that the clamor for a commission could not be resisted. The act of 1894,¹ amending the act of 1891 provides for a Rapid Transit Board, consisting of the Mayor, the Comptroller, the president of the Chamber of Commerce, and five members designated in the act. This commission has since in some measure controlled the situation in New York City. It has done much work in the building of the subways to the traffic congestion at certain hours of the day.

The office of Gas Inspector was established in 1859, but in spite of popular clamor, and the recommendations of of Governors, especially Governors Hill and Odell, a commission was not established until the legislative investigation conducted by Mr. Hughes made further delay impossible. The Commission existed so short a time,²-- July 20, 1905 to July 1, 1907,-- that it is difficult to judge of its possible

¹ workings:--¹ Laws of New York, 1894, ch. 752

² 1905, ch. 737.

At the legislative session of 1907, the republican party was pledged to the reform of the public service conditions. Governor ^{HUGHES} very strongly advocated the passage of the law which he proposed and was able with the support of a strong public sentiment to force through the Legislature by an almost unanimous vote the "Public Service Commissions Law". The state of feeling is evidenced by the following quotation from the speech of Senator Fuller: "The state railroad and Rapid Transit Commissions have been failures and the people want experts to handle the regulation of public service corporations, who shall be responsible to the people through the Governor." The commendation of the action of the Legislature was very general. The following are some of the expressions of approval:

"Nothing has occurred in many so likely to promote good government in New York City and State and to exert so wholesome an influence in many directions as the creation of the public service commissions." Clinton R. Woodruff.

"As the new law stands it is a necessary step in government evolution. It is necessary, because either the government must control the public utility corporations, or else they will control the government." Engineering Magazine.

" From the old point of view the legislation will appear radical, but is there any thing essentially unreasonable about it." Springfield Republican. May 11, 1907

"It will give the people of New York a chance to decide whether there can be honest private corporations, or whether we shall be driven to think of state ownership." N.Y. Evening Post, May 29, 1907.

This illustrates the opposite point of view: "The distinction between legislative, executive and judicial is disappearing in a form of oligarchy termed commissions." Chancellor Day.

Similar expressions of approval might be quoted from publications throughout the country.

The Law provides for two commissions, one for the city of New York and one for the remainder of the state. These commissions have practically complete control over railroads, street and electric railways, gas and electric lighting companies; in the matter of investigation of accidents, of the books and accounts of the companies, the regulating of rates and service, in the issuance of stock in the hearing of complaints and in general supervisory

functions. The procedure is by informal complaint or by public hearing. The penalties provided for failure to obey the orders of the commissions is very great, even drastic, \$5000 a day in the case of common carriers and \$1000 in the case of other utilities. The act abolished the other public commissions.

The commissions appointed by Governor Hughes were composed of men worthy of the compensation fixed by the law, \$15,000. The men are prominent in the public affairs, students of the question of the control of public utilities, and men esteemed for their intelligence freedom from political taint, and ^{Their} high character.

The Commissions have made a most excellent beginning. The City Commission began with the investigation of the transit situation in the city. The results were disclosures second only in importance to those of the Insurance commissions. Investigations. The best illustrations of the purpose of the commissions in beginning their duties is revealed by the following statement of Chairman Willcox,-- " It was imperative that we should be informed as to the exact history and financial conditions of the property of the railway corporations

with in our territory. We have, therefore, made searching investigations and taken a great mass of testimony, in order that we might issue reasonable orders to the railways, orders that they could comply with.... We do not investigate for the sake of discovering rottenness, and if we have found it, the matter is incidental to our real work. Because there did not exist any reliable statistics regarding our street railways, we have dug down and found them. And when we issue an order for such a street railway to use so many more cars, we know just how many it is possible for them to operate and that they can afford to do it."

The Commission of the city has vastly improved the transit situation; the equipment of some companies has been increased 66 per cent.; The number of accidents have been reduced by increased care and improved cars and service. In the matter of the gas situation, the hands of the Commission have been tied by proceedings in the Federal Court; but the commission has settled many complaints, improved the service conditions, and carried on such practical work as the testing of gas meters; the commission has tested about 6,000 meters a week and expects to test fully 400,000 in

the year 1908.

The statement of Mr. Osbourne of the Second District Commission illustrates their purpose and the nature of their work thus far: "This commission is striving to substitute reasonable and fair regulation in place of competition. We act mainly on complaints, giving all a fair hearing. The railway and other corporations have met us in a very fair spirit, and many grievances are corrected simply by calling attention to them. We are also gratified to learn that many differences between the common carriers and their customers are now settled without recourse to us, simply because it is known that we give even small matters a quick settlement. ... The commission prevents the watering of stock issues, by having its own engineers inquire into the the properties on which new moneys are sought to be raised. "

The commissions are now well organized in permanent quarters. The appropriation is large, but not larger than was expended by the old commissions. For next year the City Commission alone will ask for an appropriation of over \$1,000,000. The first annual reports recently published, and the published proceedings of the Commissions, copies of which are submitted with this thesis, show in detail the

mehod of organization, the method of procedure and the
extensiveness of the work of the commissions.

In summarizing, it may be said that the public ser-
vice commissions have already shown the great possibilities
of such a system. Their work has been characterized by common
sense . The me^mbers are honest, capable men, seeking only to
serve the people. The Commissions have already and in the
future, in even a greater degree, so long as such men remain
in office, be of vast, incalculable benefit to the people
of New York.

Chapter VIII.

The Wisconsin System of Regulating Public Utilities.

The public Utility Law of Wisconsin is the product, or by-product of the railway agitation that has been going in the state for eight years. Notwithstanding the repeated and urgent appeals of Governor LaFollette in 1903, the legislature failed to enact a law establishing a railroad commission. In consequence it became the issue of the campaign of 1904; and at the session of 1905 a law establishing a railroad commission was passed almost unanimously. This law gave jurisdiction over all common carriers except urban street railways. By amendment in 1907, telegraph and all electric railways were also included.

Under Governor Davidson, a new agitation began for the inclusion of the other public utilities with in the jurisdiction of the commission. In 1906, the Republican State platform contained this plank: The party was pledged " to the enactment of a law providing for the regulation

of rates of service of all public service corporations, similar to that now exercised over railroads." At the legislative session of 1907, it was decided to place the whole matter of regulation in the hands of the Railroad Commission, so great had been the satisfaction with the work of that commission.

In the preparation of the law, the framers profited by the experience of Massachusetts, New York and even utilized some of the English Sheffield Gas Acts, of 1855 and 1866, at least there seems to me a similarity of provisions, which were there space, I would like to trace out here.

The railroad commission consists of three members appointed for six years at a salary of \$5,000. The act of 1907 provides:

"The railroad commission is vested with power and jurisdiction ~~over~~ to regulate and supervise every public utility in the state, and to do all things necessary and convenient in the exercise of such power and jurisdiction."

The definition of a public utility is given in chapter one of this thesis. It includes all the public utilities of the state whether under public or private operation.

" This Commission shall value all the property of every public utility actually used and useful for the convenience of the public." This valuation is made by an engineering staff of some 30 men, with public hearings at which the companies are represented by counsel and experts. Just what the commission should allow under this provision for the "going value " has not yet been finally settled. Full provision is made for publicity and uniformity of accounts, investigation of accidents and the other matters provided for in the Massachusetts and New York laws.

The method of fixing rates and regulating service is the same as that provided for common carriers and are too well known to need explanation in detail here. The rates of the companies are deemed lawful until held unreasonable by the commission after public hearing. The rates fixed by the commission are then prima facie reasonable until adjudged unreasonable by the court. The burden of proof is thus placed upon the company who brings the action.

Some of the leading differences between the Wisconsin and New York Laws may be pointed out. The main differences are: The Wisconsin law requires a complete valuation of the property of the corporation, as the basis for the action

of the commission. Under the New York law the commission may make an investigation of the condition of the corporation.

The New York law requires the permission of the commission prior to the issue of any stock or bonds or other evidence of indebtedness. The Wisconsin law makes no provision in regard to the control of stock watering. The assumption is that the valuation of the plant, with the power to fix rates, and the publicity of all accounts will be sufficient to prevent overcapitalization.

The New York ^{Law} gives the commission complete control over the granting of franchises. The Wisconsin law provides for an indeterminate franchise. All new franchises shall be considered indeterminate; and in consideration for the surrender of old franchises, the companies will be granted freedom from competition in their district. Thus it is hoped to induce companies to surrender their charters.

The Wisconsin law allows a larger measure of local government in the matter of the kind of lighting desired and in possible municipal ownership.

As pointed out in chapter one, there is a difference of jurisdiction. The Wisconsin law includes railroads,

electric railways, telephones, telegraphs, electric, gas, heat, water and power plants and all common carriers not mentioned. The New York law excludes telephones, water, and power plants except as connected with the lighting companies.

In general, the New York system is a system based on regulation in the strict sense of that term. The Wisconsin system depends largely on the idea of a physical valuation and of the indeterminate permit, or franchise.

The present railroad commission of Wisconsin is one of the very ablest in the United States. It is very highly regarded in Wisconsin and in other states. Its main work is of course, thus far, largely in connection with the railroads. It has, too, done a large amount of preliminary work in the matter of valuations, which will produce future results. The commission is called conservative by some. Actually it has followed a middle course. Its work has been characterized by common sense, intelligence and a regard above all else for the welfare of the public. It is now regarded by both companies and the public as a protection for their real interests. In the words of Mr. Hudnall, one of the authors of the law, "not a member of the legislature which drafted the law would now be willing to amend a single essential feature."

Chapter IX.

The Situation in Minnesota.

In this state, aside from the establishment and operation of the Railroad and Warehouse Commission, practically nothing has been done in the regulation of public service corporations. The subject then returns to the fundamentals of public control. It is therefore of importance to examine the provisions of the Constitution and statutes as to what is possible and as to what has been the trend of legislation heretofore.

There are three provisions in the Constitution of Minnesota that are of special interest. Art. X. sec. 2 prohibits special acts of incorporation. Article IV. sec. 35 prohibits special legislation. By these two provisions, adopted respectively in 1858 and 1881, the state was rid of some of the worst evils of legislative handling of corporations. Article IV., sec. 36, allows municipalities to adopt home-rule charters. This provision might have a

very important bearing upon the matter of state control of the public service corporations in those states where such charters have adopted.

Provisions of the statutes:

Revised Laws of 1905:

Sec. 2841, public service corporations may incorporate, but must obtain franchise from a city or village in order to enjoy rights in the streets of that city or village.

Sec. 2842, "the state shall at all times have the right to supervise and regulate the business methods and management of any such corporation, and from time to time to fix the compensation which it may charge or receive for its services; and every such corporation (~~obtaining a franchise~~) obtaining a franchise from any city or village, shall be subject to such conditions and restrictions as from time to time may be imposed upon ~~a~~ it by such municipality." The right of eminent domain is not granted to street railway companies within any city or village. Laws of 1894, 1895, ch. 19.

2843. Any city or village may acquire any utility at the end of any period of five years from the date of the granting of the franchise.

Other provisions of the statutes of less general interest are 2891, 2896, 2927, 2928, 2932.

Laws of 1907 amended these provisions in these respects:

Passes prohibited by ch. 449.

Chapter 452, provided : "For the purposes of this act public utilities shall include street railways, telephones, waterworks, gas works, and electric light, heat or power plants"

Sec. 2, Cities may own, construct and acquire plants, of this nature, and may issue certificates of indebtedness .

Sec. 5. This act shall not be in force until adopted in that municipality where it is sought to be applied by three fifths of those voting at that election.

"The general supervision of railroads, and express companies doing business as common carriers and of public warehouses" is invested in a board of three commissioners elected for four years and receiving a salary of \$3,600. "

"Any commissioner may be removed by the governor ^{for} inefficiency, neglect of duty or malfeasance in office," after opportunity to be heard.

Various employees and assistants are provided for.

Duties: To make examinations, going from town to town at twenty- days notice, and holding public hearings. To prescribe a form of annual report for the returns of the railways, to receive such reports and to make due report to the governor each year.

Common carriers is defined to include all carriers except street railways lying wholly within municipalities, so far as relates to the carriage of person or property.

Upon complaint the commission shall hold public hearings and shall then make findings as to the unreasonableness or reasonable ness of the rates complained of. "Such findings of fact shall be prima facie evidence of the facts therein stated and the order shall be prima facie reasonable and the burden of proof upon all issues raised by the appeal shall be upon the appellant." With such limitations, there is right of court review, except, "Such appeal shall not stay or supercede the order appealed from unless the court shall so direct."

Laws of 1905, ch. 122 provided that all accidents shall be reported by telephone or telegraph to the commissioners. Amended in 1907, ch. 290, requires an investigation by the

commission.

Laws of 1905 provides for a uniform classification throughout the state. Published tariffs may not be changed but by consent of the commission. The commission shall have power to examine the books and accounts of the companies.

Act of 1907, ch. 253, hours of service of employees.

Act of 1907, ch. 232, the commodity rate law.

I have also made a study of the franchise provisions of some of the representative villages and cities, and the charter provisions of some of the cities. The subject is too large to present here; I wish however to call attention to some of the provisions of the St. Paul City charter, both because they are part of a home rule charter and because they have attracted some attention in other states and cities.

Par. 124 The common council shall have power to to grant franchise by ordinance under certain restrictions as to the vote required and similar limitations, prescribed in paragraphs 125, 126, 127, 128. There shall be no exclusive or perpetual franchise nor any franchise for more than 25 years.

Par. 129, 130, provide for annual reports by the

companies, in accordance with a form to be prescribed by the city comptroller.

Par. 130, places a gross earnings tax of five per cent. upon all companies who may thereafter be granted franchises.

Par. 131, 132, 138, provide that no extension, modification, or new franchise shall be granted except on condition that both the new and old franchises shall become subject to the provisions of the charter.

Par. 133 and 138 provide that hereafter the City Council may regulate prices and impose additional terms.

The early history of the railroad policy of the state has been given in chapter 2. Since that date, the history of the railroad policy is briefly as follows:

In 1881, the office of railroad commissioner was established. The reports of the railroads were to be made to him. In 1884, the Railroad Commission was established by chapter 26 of the laws of that year, and the office of railroad commissioner abolished. The reaction set in so early in this state that the Board of Railroad Commissioners was abolished by chapter 103 of the laws of 1875, and was not

re-established until 1885. (Laws of 1885, ch. 188.) The present railroad Commission or to give it its full title, the the State Railroad and Warehouse Commission, has existed in its present form since that date, as amended in the statutory provisions already described.

It has proved a difficult matter to obtain any definite information in regard to the public service corporations operating in Minnesota. By consulting Poor's manual, "Moody's Manual", American Street Railway Investments" and similar publications, especially such technical journals as the "Electric Railway Review", the "Street Railway Journal", the "Engineering Magazine", the "Engineering Review" and others, by consultation of the files of the newspapers, particularly the Pioneer Press, and by personal interview with some of the public officers and others interested in the subject, I have been able to collect a mass of information. It would be useless to attempt to present it here. One or two tables illustrating the extent of municipal ownership will be given in the appendix.

Minnesota

Mun. Own. Favored

State Comm. Unconsidered

Northfield 3,438 pop.

Mun. Own. of water is liked, gas will be municipal
if put in I think. Horace Goodhue Mayor

Thief River Falls 3,502 pop.

Our people built the electric light plant 8 yrs.
ago, binding for \$7500., plant is worth now fully
\$40,000. and pays a handsome profit to city, is
run by water power. Entire sentiment in favor of
city owning plant. Water system put in two yrs.
ago and hardly on a paying basis yet. Telephone
system owned by private party and quite unsatis-
factory. Think a majority would be in favor of
city owning same. W.W.Prinhood act. Mayor

New Ulm 5720 pop.

Waterworks plant operated by city over 15yrs.
Electric Light plant about 5 yrs. & have given
universal satisfaction. Our rates are low compar-
ed with other cities I know of. Ernst Wicherski Clk.

Fergus Falls 6892 pop.

Our city seems to favor municipal ownership,
am not posted on the Wisconsin system. H.T.Hille myr

Brainerd 8133 pop.

Am of the opinion that Mun . Own. will be voted
on at next General Election & carried. Am not
familiar with Wis. State Comm. would want to con-
sider the various phases before deciding.

R.R.Wise mayor

Winona 20,334 pop.

Opinion is divided as to Mun. Own. & the matter of
State Comm. has not been considered to any great
extent.

E.S.Muir mayor

Mun. Own. Favored

State Comm. Not Favored.

St. Peter 4514 pop.

I believe in Mun. Own. if run honestly. This
city never had any private own. except telephone.
I do not believe in State Comm. to own any city,
too much politics in State Comms., and as a rule the
average legislature knows very little about city