REPORT

of

COMMITTEE ON EXAMINATION

This is to certify that we the undersigned, as a Committee of the Graduate School, have given Max Peter Rapacz final oral examination for the degree of Master of Arts. We recommend that the degree of Master of Arts be conferred upon the candidate.

Minneapolis, Minnesota

May 1917

C. D. Allin

Chairman

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The undersigned, acting as a Committee of the Graduate School, have read the accompanying thesis submitted by Max Peter Repacz for the degree of Master of Arts. They approve it as a thesis meeting the requirements of the Graduate School of the University of Minnesota, and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts.

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# PUBLIC UTILITY FRANCHISES IN MINNEAPOLIS

A Thesis submitted to the
Faculty of the Graduate School of the
University of Minnesota

by

Max P. Rapacz

in partial fulfillment of the requirements
for the degree of
MASTER of ARTS

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# PREFACE

This paper was prepared at the University of Minnesota,in the Seminar in Political Science. I wish to acknowledge my indebtedness to the members of that department, and particularly to Professor W.A.Schaper, who directed the work. I am also under obligations to Styles P.Jones, Secretary of the Central Franchise Committee, for many helpful suggestions.

Max P. Rapacz.

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# PUBLIC UTILITY FRANCHISES IN MINNEAPOLIS

## CONTENTS

Preface.

Chapter I. Authority for granting franchises.

Chapter II. General characterization of franchises.

Chapter III. Gas franchises.

Chapter IV. Electric light and power franchises.

Chapter V. Street Railways.

A. The Minneapolis Street Railway Company.

B. The St.Paul City Railway Company.

C. Suburban and Interurban Railways.

D. The Twin City Rapid Transit Company.

E. The Enabling Act of 1915.

F. Valuation of the Minneapolis Street Railway Company.

Chapter VI. Telephone franchises.

Chapter VII. Miscellaneous grants.

Bibliography.

## CHAPTER I

## AUTHORITY FOR GRANTING FRANCHISES

There is no other subject in connection with franchises in this city which has given rise to more disputes and to a greater diversity of opinion than the power to grant franchise privileges in the streets. In general there are six distinct sources from which the right to exercise special privileges in the streets of a municipality may be derived.

Franchise rights may be derived from the charter of the corporation which desires to use the streets;(b) the right may be exercised under the State Constitution;(c) a public utility corporation may operate under state statutes;(d) a corporation may obtain a franchise from the state legislature;(e) the right may be claimed under "permits" to use the streets;(f) a public utility corporation may obtain a franchise from the municipality.

In some states franchise privileges have been exercised directly under the corporation charter. The charter of incorporation is considered a contract between the incorporators and the State, which contract is constitutionally protected against impairment.[1] The right to exercise franchise privileges under a charter of incorporation was upheld by the Supreme Court of Michigan, in the case of Grand Rapids v. The Grand Rapids Hydraulic Company.[2] In this case the court held that a company supplying the city with water could lay its pipes in the streets under its charter from the State, without the consent of the municipality.

1. Mower v. Staples, 32 Minnesota, 284 (1884); Stevens County v. St. Paul, Minneapolis and Manitoba Electric Railway Co., 36 Minnesota, 467 (1886)
2. 66 Michigan, 606 (1887).

In California, under certain conditions, public service corporations may enjoy franchise rights under the state constitution.[3] The power of granting certain franchises to use the streets has been entirely taken away from the control of the legislature and the municipalities by constitutional provisions. If there is no municipal plant, any person or corporation may use the streets to supply water or light. In the granting of other franchises, the permission of the municipality is unnecessary, provided the legislature is not prohibited by the state constitution from granting the use of the streets.

A more common source of franchise privileges are general state laws. Many of the states grant the right to use the public roads and highways to the telephone and telegraph companies, and it is generally held by the courts that the right extends to streets within municipalities without the consent of the local authorities.[4] The municipality, however, may regulate, under police power, the placing of poles and wires, provided the regulations are reasonable.[5] In 1915 the Minnesota Legislature passed the "Minette Bill" which takes the control of the telephone companies completely out of the hands of the municipalities.[6] The Minnesota law places telephone companies under the jurisdiction of the Railroad and Warehouse Commission, and it is no longer necessary for telephone companies to obtain franchise privileges from local authorities. The local authorities, however, may regulate in a reasonable manner the placing of poles and wires and the use of the streets in general. The general laws of the state granting

3. Madera Waterworks Company v. Madera, 185 Federal Reporter 281,289 (1911)
4. Northwestern Telephone Co. v. Minneapolis, 81 Minnesota, 140 (1901)
5. Ibid; Grand Rapids v. Grand Rapids Hydraulic Company, 66 Michigan, 606 (1887)
6. Session Laws of Minnesota, 1915, Chapter 152.

franchise privileges can most easily be applied to telephone,telegraph, and electric light companies, whose operations extend outside of the limits of any one municipality.

It is a well established principle that in the absence of constitutional provisions, the state legislature has complete control over the streets and highways. The state legislature is limited in its contRACTUAL POWERS IN REGARD streets and highways only by the constitution and the police power. No state or municipality can divest itself of the right to exercise the police power by contract, franchise, or otherwise.[7] With the restrictions mentioned the power to grant franchises rests primarily in the state legislature,[8] which may grant the use of the streets to any public service corporation without compensation and without the consent of the municipality.[9] And where the right to use the streets has been unconditionally granted by the legislature, it cannot be absolutely denied by the municipality.[10]

The power of a state legislature to control the use of the streets and highways is quite absolute, and there could be little question about the validity of franchises granted by that body.

7.The Slaughter House cases,111 U.S.,746 (1883); State ex rel of Minneapolis v.St.Paul,Minneapolis and Manitoba Railway Company, 98 Minnesota,380(1906).
8.People ex rel v.Chicago Telehpone Company,245 Illinois,121(1910); Northwestern Telephone Company v.Minneapolis,81 Minnesota,140(1901)
10.Northwestern Telephone Company v.Minneapolis,81 Minnesota,140(1901); Louisville v.Louisville Water Company,105 Kentucky,754(1898)
9.Northwestern Telephone Company v.Minneapolis,81 Minnesota, 140(1901); Atlanta v. Gate City Gas Company, 71 Georgia, 106, (1883)

The Minnesota Legislature,however, has never directly exercised the power of granting franchises in the streets of Minneapolis, but it is hoped that the discussion of the legislative powers in regard to the use of the streets and highways will be a help in discussing the power of the city council to grant franchises.

A "permit" to a public service corporation to use the streets is usually construed as a franchise. This principle has been repeatedly upheld by the courts in different states, and many public service corporations today are operating under "permits" to use the streets instead of franchises.[11]

The most important source of franchise privileges in Minneapolis is the City Council. We have seen that the power to grant franchises rests primarily in the state legislature, but that body may, in the absence of constitutional restrictions, delegate to the municipalities the control of the streets within their respective boundaries.[12] This delegated authority always carries with it the right to enforce all appropriate regulations sanctioned by the police power of the state.[13] In case the control of the streets is delegated to the local authorities, the municipality acting through its legislative body has no power to enter into contracts which curtail or or prohibit an exercise of its legislative or administrative authority over streets, highways, or public grounds whenever the public interests demand that it should act.[14]

11. Ghee v.Northern Union Gas Company,158 New York,518(1899); State v.Portage City Water Company,107 Wisconsin,441(1900);Norwich Gas Light Company v.Norwich City Gas Company,25 Connecticut,19(1856).
12. Carli v.Stillwater Street Railway and Transfer Company,28 Minn., 373(1898);Montgomery v.Parker,114 Alabama,118(1896)
13. State ex rel.v.St.Paul,Minneapolis & Manitoba Railway Company,98 Minnesota,380(1906); Northwestern Telephone Company v.Minneapolis, 81 Minnesota,140(1901)

The legislative power of a municipality is always under the control of the state legislature, and a state law always supersedes delegated authority in a city charter.[15] Of course, the legislature must not violate the principles of contract. If a municipality has been granted the power to grant franchises, such grants to public service corporations are contracts between the corporation and the municipality.[16]

In the past all franchises in Minneapolis were granted by the City Council, but from the very beginning there has been a diversity of opinion concerning the legality of the grants. The authority to grant franchises to public service corporations does not appear in any express terms in the City Charter, which enumerates the powers of the City Council. In construing municipal charters, where the general provisions are followed by particular provisions, the general powers are restricted by the particular provisions.[17] It has been decided by the courts many times that the authority to enact ordinances must appear affirmatively in the city charter, and that it is not to be inferred from terms of doubtful or uncertain[18]

14. Nash v.Lowery,37 Minnesota,261(1887);also Judge Brook's opinion on the Gas Franchises,Minneapolis Journal,1909,12-24-2-3.
15. St.Paul v.Byrness,38 Minnesota,171(1888).
16. Blair v.Chicago,201 U.S.,400(1905); Minneapolis v.Minneapolis Street Railway Company,215 U.S.,417(1909)
17. Blackenship v.Sherman,33 Texas Civil Appeals,507(1903);Chicago v.Baker,112 Illinois Appeals,94,98(1884); State v.Butler,178 Missouri,272,314(1903); St.Paul v.Trager,25 Minnesota,248(1878); State v.Paperin,42 Minnesota,320 (1889).
18. Nash v.Lowery,37 Minnesota,190(1858);St.Paul v.Laidler,2 Minnesota,190(1858); Mankato v.Fowler,32 Minnesota,364 (1884); St.Paul v.Trager,25 Minnesota,248(1878)

import. In the case of the Brush Electric Light Company v. Jones, the court said:" Municipal corporations cannot, without being expressly authorized, confer authority to use public streets and ways for purposes of transporting gas, electricity, water, etc., or for railway purposes, or indeed for any other purpose than the ordinary use appertaining to such ways. General power to regulate and control streets is ordinarily held to be insufficient".[19]

All the franchises in this city have been granted by the city council, but a study of the city charter will show that the body had no specific authority to make the grants.

The cities of St.Anthony and Minneapolis were consolidated into the one city of Minneapolis by a special act of the legislature in 1872.[20] The present city charter, minus the numerous amendments, was adopted for the city at that time. Both the city charters of St.Anthony (1855) and of Minneapolis, as approved by the act of 1872, enumerate in considerable detail the powers of the City Council, but the power to grant franchises is not among the powers enumerated. It is very evident from a study of the Minneapolis charter that there has been no delegation of the power to the local governing body in any expressed terms. Therefore if the power is possessed by the City Council at all, it must be implied in the City Charter; and if it is not clearly implied, the franchises granted by that body are of doubtful validity.

The first public utility franchise was granted by the City Council of Minneapolis February 21, 1970. It was an exclusive grant

19. 5 Ohio Circuit Court Reports, 340 (1891).
20. Special Laws of Minnesota 1872, Chapter X.

for a period of forty years, permitting D.Morrison,H.S.Southhard, W.P.Westfall,S.C.Gale, andH.A.Gilson to operate gas works and lay gas mains in the streets.[21] It was under this grant that the Minneapolis Gas Light Company operated until it received its present franchise in 1910. The next franchise was likewise for the purpose of constructing and operating gas works,[22] but it was granted by the City Council of St.Anthony, for the City of St.Anthony,December 5, 1871, prior to the consolidation of the two cities.

The nearest resemblance of authority in the City Charter of St. Anthony to grant a franchise is a provision which gives the city council power to provide for the lighting of the city streets and the erection of lamp posts.[23] Another provision following the enumerated powers reads as follows:"The City Council shall have the power to make all ordinances, which shall be necessary and proper, for the carrying into execution the powers specified in this Act so that such ordinances be not repugnant to, nor inconsistent with,the Constitution of the United States, and the Constitution of the State of Minnesota".[24] With a liberal construction of the two clauses just mentioned, the City Council probably could have granted a legal franchise to a gas company, or to any other company providing light.

21. Minneapolis City Charter,Ordinances,Court and Board Acts,1872-1905,p.584.
22. Ibid,p.586.
23. City Charter of St.Anthony,1855,Chapter V,Section 11.
24. Ibid,section 34.

Judge Brooks, legal adviser for the city during the gas controversy, in an opinion to the Council Committee, declared that the St.Anthony franchise was invalid.[25] The Company, which had contended that the St.Anthony franchise was valid, accepted the opinion of Judge Brooks and dropped the contention that it had a seventy-five year franchise for that part of the city on the east side of the Mississippi River.

The Minneapolis Charter of 1872, with its numerous amendments since that time, contains all the powers delegated to the local authorities by the State Legislature. Chapter five, which enumerates the subjects upon which the City Council may legislate, has no provision dealing with franchises; and of the twenty-nine amendments adopted prior to 1892, when special legislation was prohibited by a constitutional amendment, not one deals with the franchise question. After the constitutional amendment of 1892, prohibiting special legislation, charter changes were impossible, and it was not until the adoption of the Home Rule Amendment to our state constitution that legislation applying particularly to Minneapolis could be passed. Under the Home Rule Amendment cities may be classified according to population, and the legislature may enact laws applying to the city of Minneapolis alone. That such legislation was not special legislation was held by the Supreme Court of Minnesota, in Hunter v.Tracy.[26]

There are two paragraphs in the City Charter upon which the City Council might have relied to some extent in granting franchises

25.Minneapolis Journal,1909,12-23-1-4.
26.104 Minnesota,378(1908)

to public utility corporations. Paragraph 1, section 3, Chapter IV, contains the following provision:" The City Council shall have full power and authority to make, enact, ordain, establish, publish, enforce, alter, modify, amend, and repeal all such ordinances,rules, and by-laws for the government and good order of the City, as they shall deem expedient, and all ordinances passed and ordained by them are hereby declared to be and have the power of law, provided that they be not repugnant to the laws of the United States,or of this State". Paragraph 2, section 3,Chapter IV, gives the City Council the power to provide for the lighting of the city, and to contract for the erection of gas works for lighting the streets,public grounds and buildings, and to create,alter and extend lamp districts. The two paragraphs just mentioned are the only provisions in the City Charter that could possibly have any bearing on the granting of franchises.

That the power of the City Council to grant valid franchises has been very doubtful has been substantiated by facts. When the first franchise grants were made in the years 1870-1888, the grantees were themselves doubtful about the power of the City Council to make such grants. They were careful not to bring the question before the public for fear of losing valuable rights, but their doubts were shown by the fact that they applied to the state legislature to pass acts legalizing the grants. At a special session of the legislature in 1879, acts were passed legalizing the franchise granted to the Minneapolis Street Railway Company in 1875, together with one of the early ordinances amending that grant,[27] and the

27.Confirmed by Special Laws of Minnesota,1879,Chapter 299.

franchise under which the Minneapolis Gas Light Company operated until 1910.[28] In 1887, in the case of Nash v.Lowery, the Minnesota Supreme Court, under circumstances very similar to those under which the grant was made to the Minneapolis Street Railway Company, declared that the City Council of St.Paul could not make a valid contract with a street railway company without explicit authority from the legislature, but that the contract became binding upon the city as soon as the legislature "confirmed and validated" the contract ordinace.[29]

The gas ordinance of 1871 and the street railway ordinance of 1875 were both exclusive and valuable franchises, and this may have prompted the companies to obtain legislative confirmation.While the legislature, in the absence of constitutional restrictions, may grant exclusive franchises,[30] a municipality cannot grant an exclusive franchise unless the power not only to grant a franchise but also to grant an exclusive franchise has been delegated to it by the legislature.[31] The legislature may authorize a municipality to grant exclusive franchises, but such grants are not favored and all doubt as to such authority or grant will be resolved against it.[32]Another factor which may have caused the corporations holding franchise grants from the City Council to seek legislative approval was a state law which provides that action may be brought by the Attorney General, for the purpose of vacating the charter, or annulling the existence of a corporation, other than a municipal corporation, when-

28. Confirmed by Special Laws of Minnesota,1879,Chapter 301.
29. 37 Minnesota,261 (1887).
30. California State Telephone Co. v. Alta Telephone Company,22 California,398(1863)
31. Norwich Gas Light Company v.Norwich City Gas Company,25 Connecticut,19(1856)

ever such a corporation exercises a franchise or privilege not conferred upon it by law.[33] The Attorney General was given the power to bring action in every case of public interest, whenever he had reason to believe that any acts or ommissions violating the state laws could be proved, and also in every other case where satisfactory security was given to indemnify the state against the costs and expenses to be incurred. The law further provided that such action could be brought by the Attorney General upon his own information, in the name of the State, or upon the complaint of a private party against the party offending in the following cases:"When a person usurps,intrudes into,or unlawfully holds or exercises, any public office, or any franchise, within the state, or any office in a corporation created by the authority of this state". Under this law it would have been possible to nullify any franchise granted by the City Council upon sufficient proof that the authority to grant franchises had not been delegated to the local governing body. This law is still on the statute books in a slightly modified form.[33a]

The Enabling Act of 1915, which authorizes the City Council or any other governing body of any city now or hereafter having a population of more than fifty thousand inhabitants, not operating under section 36,art.IV. of the Constitution, to grant a franchise for the continuation,extension,maintenance, and operation of street railways, is the latest proof that the state legislature still retains the power to grant franchises.[34] The act not only authorizes the City

32.Long v.Duluth,49 Minnesota,280(1892); Slaughter House Cases,16 Wallace,36(1872).
33.Statutes of Minnesota,1878,Chapter 79.
33a. General Statutes of Minnesota,1913,sections 8254,8255.
34.Session Laws of Minnesota,1915,Chapter 124.

Council to grant the franchise, but it prescribes certain conditions under which it must be granted. The main purpose in securing the passage of the "Enabling Act" was to secure a sound legal basis for negotiations between the City and the Minneapolis Street Railway Company. The company had no desire to negotiate a franchise with the City without authority from the legislature, because the action might prove invalid after a settlement was made.

Regardless of who passesses the franchise-granting authority, that authority is always subject to certain limitations. The state legislature is limited my the provisions of the Federal and State Constitutions, while the municipal authorities, if they posses the power, are limited by the Federal and State Constitutions, by the state laws and by the municipal charter.

The only limitation placed upon the legislature in the Minnesota Constitution is the provision that there shall be no special legislation.This would prevent the legislature from making franchise grants through special laws. In case the franchise is granted by the local authorities, the legislature may prescribe certain limitations, such as the length of the term, the purchase provisions, and the submission of the franchise to the voters for approval.All these limitations are included in the "Enabling Act" of 1915.

One of the most noticeable tendencies in relation to franchises in Minneapolis since 1900 has been to prescribe some definite limitations upon the powers of the City Council in making grants, and making the franchise dependent upon its acceptance by a vote of the people before it becomes operative. In every one of the proposed charters for Minneapolis since 1900 are to be found provisions in regard to the powers of the City Council to grant franchises.

Hudson's "New Minneapolis Charter" of 1900, which was framed by a Charter Commission, provided that the City Council shall have the power to grant franchises by a two-thirds vote, but no franchise could be granted without first submitting the franchise to the people for approval. The last provision was decided upon after numerous conferences between the Commission and the companies now rendering public service to the city. The Home Rule Charter proposed in 1907 also limited the City Council in granting franchises. The City Council was to have the power to make the grant, but it could not be for a longer period than 25 years, and every franchise had to be submitted to a popular vote on petition of twenty per cent of the voters. The charter proposed by the Board of Freeholders in 1913 contained an elaborate chapter on franchises. The limitations upon the nature of the franchise that might be granted were very numerous and rather stringent. Certain members of the Commission charged that the franchise chapter of the proposed charter was drafted with a special design to force municipal ownership. No public service franchise was to be granted,extended, or renewed by the City Council except by an ordinance approved at a general or special election by a majority of the electors voting upon it. The City Council could, however, by a four-sevenths vote of all the members, grant a temporary license for a period not to exceed five years. Such licenses could be renewed for periods of five years, provided that the gross earnings of the grantee did not exceed $200,000.00 annually.

Public service corporations in Minneapolis have operated under one of three kinds of franchises.A fourth method of granting franchises has been recently introduced in connection with the street

railway franchise.

When a public service corporation desired to obtain special privileges in the streets, it applied to the City Council for a franchise. The City Council would then proceed to make the grant without authorization from the legislature. All the franchises granted in the past were granted by the City Council, but they have had a rather doubtful standing. Some lawyers believe that the franchises have no validity whatever, while otherscontend that a valid grant can be made by the city without special authorization from the legislature.There are no cases in which the courts have passed directly upon the validity of a Minneapolis franchise that was not confirmed by the legislature, but in the case of the Northwestern Telephone Company v. Minneapolis, the Minnesota Supreme Court held that a grant to the company to use the streets became a contract when accepted by the company.[35] Court decisions, however, on the construction of municipal charters and franchises, as previously pointed out, tend to indicate that franchises granted by the City Council are invalid. A further indication that the franchises granted by the City Council have only a doubtful validity is the fact that the public service corporations have not strongly disputed the power of the City Council to revoke franchises in several instances.[36]

The second method of obtaining a franchise was to secure the grant from the City Council and have it confirmed by the state

35. 81 Minnesota,140(1901).
36. The Franchise of the Northwestern Exchange Telephone Company was repealed in 1900: Council Proceedings for 1900,p.94. In 1907, the City Council also repealed four franchises held by the Minneapolis General Electric Company,Council Proceedings for 1907,pp.134,135.

legislature subsequently. This proceedure was followed in the franchises granted to the Minneapolis Street Railway Company and to the Minneapolis Gas Light Company. Ratification by the legislature dispenses with all doubts concerning the validity of the franchise, and consequestly gives the public service corporation a sound legal basis, which is a great advantage from a financial standpoint.

Thirdly, franchise privileges may be enjoyed under the general laws of the state which regulate the use of streets and highways. Telephone and telegraph companies in this state, now operate under the state laws, instead of operating under franchises granted by municipalities.

The fourth method of granting franchises was introduced in 1915, when the legislature passed the "Enabling Act", which gives the city the power to negotiate a franchise with the Minneapolis Street Railway Company.

# CHAPTER II

## GENERAL CHARACTERIZATION OF FRANCHISES

One of the most important considerations in any franchise is the maintenance of control over the streets by the city. Public highways should be equally open to all, and no one public utility corporation should be allowed to monopolize the use of the streets. Practically every franchise granted reserves to the City the control of the streets by including in the grant a provosion that the corporation shall be subject to all present and future ordinances governing the use of the streets,avenues, and alleys. An amendment to the City Charter ,made in 1883, gives the City Council the power to prohibit the placing of poles and the suspending of wires along or across the streets of the city, and to require any or all already suspended,either in limited districts or throughout the city,to be removed or to be placed in such a manner as it may designate beneath the surface of the street or sidewalk.[1]

The power conferred by this amendment,however, cannot be exercised arbitrarily , but only as a reasonable exercise of the police power.[2] The later franchises, as a general rule, include a provision that the City Engineer shall supervise the construction of the public utility in the streets. Another provision generally found in the telephone and telegraph franchises is that a reservation of

1.Special Laws of Minnesota,1883,Chapter III,Secction 13.
2.Northwestern Telephone Company v.City of Minneapolis,81 Minnesota, 140 (1901).

space shall be made for wires for fire alarm and police purposes free of charge to the city.

Heretofore the city granted only two exclusive franchises; the first in 1870 to permit the construction and operation of gas works, and the second in 1875 to the Minneapolis Street Railway Company for the purpose of operating street railways. The alternative of granting an exclusive franchise is making grants to several competing companies, which often results in much confusion and inconvenience to the public. We have good illustrations of this in the numerous grants made to telephone and electric companies in this city. The confusion and difficulties become still grater when competing franchises are absorbed by a single company. The consolidated company may claim to operate under whichever franchise best suits its purpose. This is at present the situation in regard to the Minneapolis General Electric Light Company which has no franchise, but which claims to operate under three or four very doubtful grants.[3] In the case of street railways the situation is also somewhat complicated by the entrance into the city of suburban and interurban lines.

The length of the term of a franchise may depend upon a time clause in the franchise itself, upon limitations imposed by the state laws, or upon the revoking power of the City Council. The terms of Minneapolis franchises have been limited by all three methods. The Mississippi Valley Telephone Company's franchise of 1898 is limited to thirty years, for such a company could be incorporated for only that length of time under our state laws. Ordinarily where

3. The General Electric Light Company bought out several competing companies and their franchises when it entered the city in 1905.

a grant does not fix the duration, it will be construed by the courts as limited to the life of the corporation,[4] but in some jurisdictions such a grant is construed as a perpetual one.[5] Some of the franchises contain express provisions under which they may be revoked by the City Council. The franchise granted to the Edison Light and Power Company in 1889 contains a provision giving the City Council power to repeal it if the company fails to carry out any material requirement of the ordinance. A provision in the Mississippi Valley Telephone Company's franchise renders it void without any action on the part of the City Council if the company fails to fulfill the requirements of the grant. In the Electric Short Line franchise of 1910 there is a revoking clause which gives the City Council the power to repeal the franchise whenever it shall deem it for the interests of the city to do so. There was a great deal of opposition in the City Council to the granting of the Electric Short Line franchise because it contained no time limit. City Attorney Fisk then inserted the revoking clause as a protection of the city's rights. In reality this is almost a perpetual grant, for public necessity will not permit the operation of an important public utility plant to cease; and the courts, too, would be slow in declaring that the company must vacate the street even after the franchise was revoked. The revoking of a franchise seems to have little effect upon the operations of a public utility company when it is once established in the streets. The franchises

4.People ex rel.v.Central Union Telephone Company,232,Illinois, 260 (1908).
5.People v.Olrevin,111 New York,1 (1888).

of the General Electric Company have been revoked , but the company continues to operate just the same.[6] In the case of the Northwestern Telephone Company the City Council repealed the franchise in 1900, and after the revocation the city had less control over the company than before.[7] No perpetual franchises have been granted in Minneapolis, but the Minneapolis General Electric Company claims a perpetual franchise on the ground that there is no time limit in some of the franchises which it has acquired.

A provision common to all Minneapolis franchises is that the grantee must accept the franchise and all its provisions in writing within a certain definite period, usually 30 or 60 days, before the grant becomes valid. Some of the franchises provide for the filing of a bond with the acceptance to protect the city.Several of the franchises have provisions whereby the work upon the proposed plant must commence within a certain period, and a few even go as far as to provide that a definite portion of the work shall be finished at a stipulated time. The franchise granted to the Minnesota Power and Trolley Company in 1905 provides that the construction must start within sixty days.Another franchise granted to the Thomson-Houston Electric Company in 1889 provides that work of construction must commence within three months. The latter franchise also stipulates that if the company does not have a 1000 H.P. plant in operation at the end of twelve months, it shall forfeit its franchise. A franchise granted to the American Telephone and Telegraph Company in 1896 provides that there shall be telephone communication between

6.Council Proceedings,1907,pp.134,135.
7.Ibid,1900,p.94.

Chicago and Minneapolis within one year, delays occasioned by the Act of God, public enemies, or litigation excepted. The main reason for the provisions referred to above is to prevent corporations from acquiring valuable franchise grants without the intention of using them in the near future.

One of the most important problems to be settled in any franchise grant is in connection with extensions. In the past franchise grants especially those granted prior to 1900, the matter of extensions has been dealt with very unsatisfactorily. Where the City Council does reserve the power to order extensions , the wording is so indefinite, or clever, that the Council simply orders extensions with no power to compel them. In the Minneapolis Street Railway franchise of 1875, the City Council reserved the power to order extensions. If the company fails to make the extensions, it loses its franchise rights in those streets where the extensions were ordered; and the City Council may bring in competing companies. This provision is of little value for no new company could be induced to construct new lines of railway upon streets where the present company refused to make extensions probably because they would be unprofitable. A franchise granted to the Edison Light and Power Company of 1887 reserves to the City Council the power to compel extensions. Later in the Minnesota Power and Trolley Company's franchise of 1905 there is a provision which is definite in regard to extensions. The company must extend its system upon the request of the City Council, whenever a petition shall be presented to the City Council showing that the aggregate amount of electricity consumed within ten city blocks shall amount to at least $2,000. per annum.

Several of the franchises contain provisions restricting the transfer of property and operation under other franchise grants. Provisions in regard to the transfer of property and franchises are of considerable importance in controlling public utility companies. Without some prohibition upon the transfer of property, public utility companies may consolidate so as to become a nuisance difficult to manage. Where there have been such consolidations it is difficult to get at the right parties in attempting to deal with the corporations. In the past, restrictions upon the transfer of property and franchises seem to have been inserted into the telephone franchises. The franchise of the Minnesota Central Telephone Company of 1898 provides that there shall be no transfer of property, or any consolidation, without a two thirds vote of the City Council. The Mississippi Valley Telephone Company's franchise of 1898 contains a similar provision.[8] The franchise of the Minnesota Power and Trolley Company provides that there shall be no transfer of property or franchise privileges without authority from the City Council; nor shall the plant be operated under any other grants.Nevertheless the company is now practically controlled by the Minneapolis General Electric Company without any such authorization.

Today an important provision in any franchise grant is the one in regard to the purchase of the public utility by the city. The "Enabling Act" of 1915, which gives the city of Minneapolis the power to grant a street railway franchise, specifically states that

8. The Mississippi Valley Telephone Company, however, sold its property and franchise without any authorization from the City Council.

the city shall reserve to itself the right to purchase the property. In the Minnesota Power and Trolley Company's franchise of 1905, the city reserves the right of purchase after ten years. This right of purchase was also included in some of the earliest grants, but in those days the purchase provisions were so framed that all the benefits accrued to the company. The gas franchise of 1870, under which the Minneapolis Gas Light Company later operated, provided that the city shall have the right of purchase at the end of the forty-year period, at the actual value of the plant, the value to be fixed by arbitration. However, should the city decline to purchase, the rights were to continue twenty years longer.

The gas franchise granted by the city of St. Anthony in 1871 provided that the city shall have the right to purchase the franchise and gas plant at the expiration of the franchise, but if it declined to do so, that the franchise was to be extended twenty-five years. Later, in the case of the Mississippi Valley Telephone Company, and the Minnesota Central Telephone Company, the city reserved the right to purchase the property at its actual value less depreciation. No value was to be placed upon the franchises.

In the early franchises some attempts were made to regulate rates and service, but these were determined upon rather arbitrarily and consequently were of little value. One of the tendencies was to fix the maximum rates. The Edison Light and Power Company franchise provided that rates shall be reasonable, and the maximum rate was fixed. In the Minneapolis Street Railway grant the City Council reserved the right to regulate rates, but a minimum rate of five cents was provided for in the ordinance. Some of the telephone franchises fixed the maximum rates which might be charged for residence

and business service. In the last franchise granted to the Minneapolis Gas Light Company in 1910, the maximum rates have been scientifically determined by making a physical valuation of the property, and examining the books and records of the company. In regard to service the early franchises have no provisions, or they are so general that they are of no value.

Many of the early franchises seem to have been granted on the theory that the city should receive some compensation for the privileges granted. A number of the early franchises provide for the payment of a part of the gross receipts into the city treasury. The franchises of the Edison Light and Power Company and the Thomson-Houston Electric Company provide that three per cent of the gross receipts shall be paid to the city. The franchise of the Mississippi Valley Telephone Company and the Minnesota Central Telephone Company provide that five per cent of the gross receipts shall be paid to the city. The franchise of the Minnesota Power and Trolley Company provides that for the first ten years one per cent of the gross receipts shall go to the city, three per cent during the next ten years, and five per cent thereafter. As a matter of fact these payments have been made in only a few instances. The local franchises, whenever the grant provides for the payment of a percentage of the gross receipts to the city, have always paid their amount.[9] The Street Railway Company also pays a license tax of $25. a year per car. The telephone companies have never made the payments provided for in their franchises, and with the two exceptions mentioned, the

9. The term "local franchises" is used to designate franchises for subways between two buildings, for lighting, heating , or water purposes, or for other purely local uses.

payments have been entirely disregarded by all the companies.

The interests of the city in the receipts of the companies caused the City Council to insert some regulations in regard to the keeping of books and records.[10] Some of the franchises provide that the city treasurer shall be furnished with sworn statements showing the receipts and expenditures of the companies. The franchise of the Minnesota Central Telephone Company provides that the company shall furnish the city, from time to time, with sworn statements regarding actual costs, and that it shall keep accurate accounts of its earnings. On the whole the matter of keeping books and records has received little attention in past franchises, and such general provisions as were inserted in some grants were of no practical value.

Many of the defects mentioned in the past franchise are not found in the gas franchise of 1910, but a discussion of those provisions will be reserved for a later chapter.

10. Minnesota Central Telephone Company franchise 1898; Mississippi Valley Company franchise 1898; Edison Light and Power Company franchise, 1889; and Minnesota Power and Trolley franchise, 1905.

# CHAPTER III

## GAS FRANCHISES

The gas industry is the oldest public utility in the city. The first ordinance granting the right to manufacture and sell gas was passed by the city council of Minneapolis, Feb.21,1870.[1] An exclusive franchise was granted to D. Morrison, H.S.Southward, W.P.Westfall, S.C.Gale, and F.A. Gilson for a period of forty years. In 1879 the franchise was confirmed by an act of the state legislature.[2] The franchise was granted prior to the consolidation of St.Anthony and Minneapolis, and it therefore applied to only that part of the city on the west side of the Mississippi River. As was the case in most of the early franchises, all the benefits of the grant were conferred upon the company. The company was to be exempt from municipal taxation for a period of three years. The City Council and the company were to enter into contracts for lighting the city, and if they could not agree upon price, the matter was to be settled by arbitration. The two parties were to agree upon one person to act as arbitrator, the City Council was to chose the second, and the third was to be chosen by the two. The arbitration of prices was later one of the controverted questions in granting a new franchise in 1910. The gas company held out for arbitration of prices until the final settlement was brought about.

1. Minneapolis City Charter, Ordinance, Court and Board Acts, 1872-1905, p.584.
2. Special Laws of Minnesota, 1879, Chapter 301.

The city reserved the right to purchase the franchise pertaining to its territory together with the pipes,gas works, and fixtures at the actual value of the same at the end of forty years, the value to be fixed by three arbitrators. One of the arbitrators was to be chosen by the city, one by the company, and the third by these two. All or a majority of them were to determine the purchase price. However, if the city declined to purchase the plant at the valuation made, then the rights, franchise, and privileges were to continue twenty years longer with the conditions stated in the ordinance. Any failure on the part of the company to carry out the provisions of the ordinance was to cause a forfeiture of all the rights and privileges granted. The ordinance further provided that the construction of the plant should commence within six months, and that one and one half miles of pipe should be laid, and the company ready to furnish gas to all who desired it within eighteen months of its passage.

In 1871 another gas franchise was granted by the City Council of St.Anthony.[3] It was for the construction and operation of gas works in the city of St.Anthony, which was on the east side of the Mississippi River, opposite the city of Minneapolis. It was also an exclusive grant for a period of fifty years.This ordinance is almost identical with the grant made by the City Council of Minneapolis in 1870, with the exception of the purchase provision and the length of the term. In regard to purchase, the franchise provided that at the end of fifty years the city shall have the right to

3.Minneapolis City Charter,Ordinances,Court and Board Acts,1872-1905,p.586.

purchase the franchise and gas works. The price of purchase was to be determined by arbitration in the same manner as was provided in the Minneapolis grant. But if the city should decline to purchase, then the rights, franchise, and privileges were to be continued twenty-five years longer, with the conditions mentioned in the franchise.

In 1872, the St.Anthony franchise was amended by the City Council of St.Anthony so as to extend the time within which the plant was to be put into operation from eighteen to twenty four months.[4] The St.Anthony franchise was never confirmed by the legislature,or ever put into operation.

In 1882 the City Council passed a third ordinance granting to Chas.D.F.Smith the right to lay gas pipes in the streets of Minneapolis.[5] As the franchise was never accepted by the grantee, it would not be profitable to discuss its provisions in detail, but there is one provision which is of special interest in connection with the Minneapolis Gas Light Company.The grant included the following provision:

"It is understood by the said Chas.D.F.Smith that the Minneapolis Gas Light Company now claims exclusively all the rights and privileges herein named, under and by virtue of an ordinance of the City Council, approved Feb.24,1870,and of a certain act of legislature for legalizing and confirming the same, found on page 411, of the Special Laws of 1879; and that he takes said rights and privi-

4.Minneapolis City Charter and Ordinances,1883,p.130.
5.Council Proceedings,1883,p.130.

leges at his own risk, and subject to all claims of right, of any other person and without any warranty or assurance that the said City Council has either right or power to give the same, or that he or his heirs, executors, administrators, or assignees, can take, hold, or enjoy anything thereunder".

If the new company had accepted the ordinance, there is no doubt but that the Minneapolis Gas Light Company would have attempted to prevent the construction of gas works by court action. It also shows the doubts of the City Council in regard to granting franchises.

In 1883 an amendement to the city charter which furnished the chief basis for controlling the manufacture and sale of gas in Minneapolis under the franchise of 1870 was adopted by the legislature.[6] The amendment provided that the City Council shall have the power to regulate and control the quality and measurement of gas; to prescribe and enforce rules and regulations for the manufacture and sale of gas; to provide for the inspection of gas and gas meters, and to appoint an inspector and other officers, if needed for that purpose, and prescribe their duties. Under the authority of this amendment the City Council passed an ordinance in 1894 fixing the maximum prices that might be charged for gas by the Minneapolis Gas Light Company.[7] A second ordinance was passed the same year providing for the appointment of a gas inspector and for the inspection of gas meters.[8] From time to time the ordinances regulating the manufacture and sale of gas were passed, but prior to 1910 there was no effective gas regulation, and the rates were high. The table

6. Special Laws of Minnesota, 1883, Chapter III. p. 74.
7. Council Proceedings, 1894, p. 528.
8. Ibid, p. 275.

below shows the gas rates between the years 1878 and 1909.[9]

Gas Rates : 1878 -1909.

| | | |
|---|---|---|
| 1878 - 1882 | = $3.50 | per 1000 cu.ft. |
| 1882 - 1886 | = 2.50 | " |
| 1886 - 1891 | = 1.80 | " |
| 1891 - 1895 | = 1.60 | " |
| 1895 - 1901 | = 1.30 | " |
| 1901 - 1904 | = 1.20 | " |
| 1904 - 1906 | = 1.10 | " |
| 1906 - 1909 | = 1.00 | " |

A gas controversy of long duration commenced in 1907 when the City Council began to consider the purchase of the gas plant at the expiration of the franchise in 1910, but the negotiations with the company were not opened until July 1909. In 1907 the City Council passed a resolution directing the legislative committee of the City Council to ask the Hennepin delegation in the state legislature to secure the passage of a bill authorizing the city of Minneapolis to issue bonds for $2,000,000. to defray the cost of purchase. The question of valuating the gas property was also discussed. It was thought that the bond issue permit, if not used to purchase the gas plant, would at least have a good effect upon the company when the time for renewing the gas franchise arrived, knowing that the city was ready to try municipal ownership. The request of the Hennepin delegation was granted by the legislature, which passed an act authorizing and empowering the City Council of cities having a

9. Minneapolis Journal, 1909, 6-19-1-3.

population of more than 50,000 inhabitants to issue and sell municipal bonds, and to use the proceeds for the purpose of purchasing or establishing gas works and plants for the use and benefit of the inhabitants of such cities.[10] The amount of the bonds issued was not to exceed $2,000,000., payable within thirty years, with interest payable semi-annually not to exceed four per cent. The proceeds were not to be used for any other purpose than the purchase or construction of public gas works.

In February of the following year the City Council passed a resolution to the effect that, as soon as practicable, the Council shall proceed to acquire, maintain, and operate the gas works.[11] And to facilitate the acquisition of the gas plant the City Council was to cause the issue of municipal bonds of the city of Minneapolis pursuant to the provisions of Chapter 376,general laws for 1907, which gives cities of over 50,000 inhabitants the power to issue bonds for the purchase en construction of gas works. During the 1909 session of the legislature the city secured the passage of another law which gave the city a great deal of power when it came to dealing with the gas company. An act was passed which authorized cities then or thereafter having a population exceeding 50,000 inhabitants, excepting cities under Home Rule charters, to acquire gas,electric, and water power plants and property through the exercise of "eminent domain".[12] This right of "eminent domain" was to be exercised for the above purposes in pursuance of Chapter 41, revised laws of

10.General Laws of Minnesota,1907,Chapter 376.
11.Council Proceedings,1908,p.105.
12.General Laws of Minnesota, 1909, Chapter 372;(General Statutes, 1913, sections,1386-1389.)

Minnesota for 1905, and acts amendatory thereto.[13]

A city under the "eminent domain " law may decide to take over any public utility by a two-thirds vote of the City Council; and whenever a city does decide to take over a public utility, it may , through its City Council, notwithstanding any limitations contained in the charter of the city or any law of the state prescribing or fixing any limit upon the bonded indebtedness of the city, issue and sell the bonds of the city for the payment of such utility, bearing interest at a rate not exceeding five per cent and maturing within thirty years after date. The City Council, after acquiring the public utility property is authorized to issue and sell bonds of the city, in the manner and terms prescribed in the law and upon the same conditions, to the par value of $100,000 or less as working capital for the operation of the plant.

Thus it will be seen that the city was well prepared to meet the company half way when the franchise settlement started. There is no question that this foresight on the part of certain public spirited men of the city was to a great extent instrumental in securing the present modern gas franchise. If the city had not secured the passage of the "eminent domain" bill, it would have been in no position to deal advantageeusly with the gas company for the public good. For

13. Chapter 41,section 5395, of the Revised Laws of Minnesota,1905, reads as follows:
"Whenever the taking of private property for any public use shall be authorized by law, it may be acquired, under the right of "eminent domain", in the manner prescribed in this chapter; but nothing herein shall apply to the condemnation of property by any incorporated place whose charter provides a different mode of exercising the right of "eminent domain" by it possessed or to the taking of property under the chapter relating to roads and drainage".

although the law of 1907 authorized a bond issue of $2,000,000. that would have been far from adequate to purchase the company's property, and the city had no other legal means of securing money with which to purchase the property when the franchise expired.

There was a bitter fight in the legislature over the passage of the "eminent domain" bill, and had it been defeated the results might have been quite disastrous to the city.[14] After introduction, the bill was kept in a Senate committee for over two months, and when it became evident that the bill had little chance to become a law, Representative Sawyer, of Minneapolis, started a similar bill through the house. Several times the billnearly met death through sharp parliamentary practise, but when it became evident that the bill could not be defeated, it passed unanimously in both Houses .

During the following summer, Mayor Haynes urged the City Council to start proceedings under the "eminent domain" law as a business necessity. His contention was that if the city proceeded to acquire the gas plant by purchase, as specified in the franchise,the value set by the arbitrators would most likely be too high. Good will and franchise value were likely to be considered; and the value being too high, the Council would be forced to reject the purchase price with the result that the franchise would extend itself automatically for twenty years.

With the talk of condemnation was raised the question of the value of the"eminent domain" law. Prominent lawyers differed about the validity of the law. The gas company claimed that it was invalid

14.Haines,Lynn,The Minnesota Legislature of 1909,Chapter IX.

for three reasons:

1. Because it did not provide, in terms, for the acquisition of the franchise.

2. Because it was special legislation.

3. Because it impaired the obligation of the company's alleged contract of 1870.

City Attorney Healy declared that the "eminent domain" law was invalid because it was class legislation in excepting cities of the first class with Home Rule charters, and secondly, because the law attempted to abrogate a contract. His contention was that the company's franchise was good for twenty years more unless the city acquired the plant by the method of arbitration provided in the grant. He maintained that the real object of the grantor of the franchise was to give the grantees the right to manufacture and sell gas for a period of sixty years, with the reservation of purchase at the end of forty years. He held that purchase was the only legal method by which the city could acquire the franchise.[15] Mayor Haynes and his attorneys held that if the city made no attempt at purchase, then the clause in regard to the twenty year extension would not operate, it having been made to apply only in case of attempted purchase at a fixed price. Mayor Haynes and such prominent attorneys as C.J.Rockwood,Daniel Fish, and ex-Governor Lind, who examined the bill, held it to be perfectly valid.

The most clear cut opinion on the validity of the "eminent domain" law, however,was delivered by Judge Brooks, special adviser to the city in the gas controversy.[16] He dispelled all doubts as

15. The Minneapolis Journal,1909,6-11-8-2.
16. Ibid,12-24-2-3.

to the validity of the law. He declared that franchises are in the nature of property, and like any other property may be taken under the "eminent domain" act. That the law was not special legislation he proved by citing the case of Hunter v.Tracy, where the Sppreme Court of Minnesota upheld a statute based upon population excepting Home Rule cities.[17] He held that the law did not impair the obligation of contract because no legislature can divest itself of the power to exercise "eminent domain" rights. Judge Brooks said that every contract is made in subordination to the higher laws that exist, and whenever public uses require, the government may appropriate any private property on just compensation. He showed that the United States Supreme Court upheld condemnation proceedings under a similar law in the case of Long Island Water Company v.Brooklyn.[18] Judge Brooks, however, thought that in condemning the gas plant, the city might have to pay the value of a twenty year franchise, while in purchasing the plant under the ordinance it would not.

The gas company was well satisfied with its old franchise, and desired to continue to operate under it. With the hope that the City Council would permit the automatic renewal of the franchise, the company made an offer of considerable rate reductions in June,1909.[19] It offered to furnish gas to private consumers at $1. per 1000 cu. ft., with a ten per cent discount for prompt payment.The price then charged was $1.20 per 1000 cu.ft. with a twenty per cent discount for prompt payment. The company also offered to light the 2,112 street lamps, and 300 additional lamps each year free of charge.

17. 104 Minnesota,378 (1908).
18. 166 U.S.,685 (1896).
19. The Minneapolis Journal,1909,6-19-13-1.

Some of the aldermen and business men thought that the company was making a fair proposition, and officials of the company stated that no further concessions would be made.

Mayor Haynes accounted for the reductions on the ground that in its application for a new franchise the company made a strong argument in favor of changing the light standard. It desired to measure the efficiency of its gas by the B.T.U. system rather than that it be compelled to keep up the 23 candle power efficiency. It was claimed by some that in reality there would be no reduction if the new standard was adopted.The mayor urged condemnation proceedings from the very outset. One of his arguments was that there was nothing to prevent the company from issuing watered stock to cover the value of the franchise, and afterwards compelling the consumers to pay interest on the same, by high rates. The company refused to allow any city officials to have access to its books and records during the negotiations, and thus added greatly to the difficulties in dealing fairly with the company. The company was evidently afraid that the watered stock would be squeezed out of its capital.

One of the first things to be determined in the gas controversy was the standing of the gas franchisesof 1870 and 1871. The gas company claimed that the St.Anthony franchise was a seventy-five year grant, and that it was still good. The company offered to waive sixteen years of the life of the St.Anthony franchise so that both franchises would expire in 1930, provided the city waived its right to purchase the gas plant. Judge Brooks, who was secured by the city as its legal adviser, delivered a very comprehensive opinion on the legal phases of the two gas franchises held by the company

to the special gas committee of the City Council, Dec.23,1909.[20]

Judge Brooks declared that the St.Anthony ordinance was void, and, therefore, the company was offering nothing of value when it promised to surrender 16 years of its alleged East Side franchise. The St.Anthony grant, he said, in so far as it took upon itself to abridge the future legislative power of the city of St.Anthony or its successors by conferring an exclusive franchise for any period, or undertook to disable the municipality, or the state, from subsequent regulation of the price to be paid for gas, was wholly and entirely void. It was valid only in so far as it granted permission to the assigns and their successors to lay gas mains in the streets. Judge Brooks said that the power to grant franchises was never conferred upon the City Council; nor was its attempted exercise in this instance ever ratified by the legislature. "The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by the legislative authority, is a very grave act, and the surrender itself as well as the authority to make it, must be closely scrutinized. The general powers of a municipality or of any other political subdivision of the state are not sufficient. A specific authority for that purpose is required". This opinion was held by the United States Supreme Court in the case of the Home Telephone Company v.Los Angeles.[21] Such powers must be given in explicit language,[22] for public policy does not permit an unnecessary inference of authority to make a contract inconsistent

20.The Minneapolis Journal,12-24-2-3.
21.211 U.S.,265(1908).
22.Detroit Citizens Street Railway Company v.Detroit Railway,171 U.S.,48 (1897); The Water,Light,and Gas Company v.Hutchinson, 207 U.S.,385 (1907).

with the continuance of the sovereign power and duty to make such laws as the public welfare may require.[23] The gas company accepted Judge Brooks' opinion and dropped its claim to the St.Anthony franchise.

Judge Brooks also entertained some doubt as to whether the Minneapolis franchise, which became the basis for negotiations, ever became a contract. When adopted it had no greater validity than the St.Anthony ordinance until ratified by the legislature. He held that the contract was of doubtful validity because the legislative confirmation was in its language a qualified or a limited one. The act did not, as is usual in such cases, legalize or confirm the ordinance. The ratifying statute provides that the ordinance in question "be and is hereby legalized and confirmed to the extent of the rights and privileges set forth in the ordinance". The legislative intent was therefore uncertain, and the ordinance as a contract was left in doubt. In such cases it is the rule of legal construction that the public is to be favored.[24]

Judge Brooks held that the Minneapolis franchise was clearly a forty year grant and not a sixty year one as claimed by the company, and he was of the opinion that if the city purchased the gas works at the end of forty years, it would not be obliged to pay for a franchise, as the company would have no franchise at the end of that time. He contended that the power to regulate price had not been surrendered by the franchise of 1870, and declared that the arbitration clause was invalid. He insisted that the company, when coming

23. Long v.Duluth,49 Minnesota,280 (1892).
24. Knoxville Water Company v. ~~Hutchinson~~ Knoxville,200 U.S., 22 (1905)

up for a new franchise, should surrender its rights to fix prices by arbitration, and that the power to fix rates should be vested in the City Council.

The final hearings on the gas franchise began before the Council Committee in December,1909. Judge Brooks advised the Council that condemnation proceedings be stopped until further negotiations with the company were made impossible.The three main issues in the negotiations were:(1) the purchase provision,(2) rate regulation,(3) publicity. Judge Brooks advised that the time to break off negotiations was when the company refused to concede publicity of its acts and the right of the city to supervise the sale of securities. He thought that the gas problem could best be settled through two separate ordinances, a franchise ordinance and a regulatory ordinance, and as a result of his suggestion two separate ordinances were worked out.

As a basis for negotiations, the City Council had an estimate of the value of the gas plant made by William Marks, a national gas expert hired by the city. Marks submitted an estimate of $3,600000. as the cost of duplicating the gas plant.[25] This estimate was made without an opportunity to examine the books of the company. Mr.Marks stated that it was next to impossible for him or anyone else to obtain any data from the officials of the company. The estimates were made wholly from physical observations.

Mr.Marks was assigned to draft the regulatory ordinance, and Judge Brooks drafted the contractual ordinance. This was early in January,1910. The city could pursue one of three courses:(1) it

25.The Minneapolis Journal,1909,12-8-10-3.

could proceed to buy the gas plant under its contract with the gas company before the twenty first of February;(2) it could start the condemnation of the plant by a two-thirds vote of the City Council; (3) it could pass a contractual ordinance, and if the company accepted it, the question would be settled.

About this time, City Attorney Healy delivered an opinion, without request,which greatly prejudiced the case of the city.[26] He advised the City Council that the company's franchise was good for 20 years, and that in his opinion the "eminent domain" law was void, and he was not certain that the St.Anthony franchise was invalid, but he was very certain that the city was bound to arbitrate the rates.

In the first franchise drawn up by Judge Brooks the power to regulate rates was given to the City Council, and publicity was provided for. But the five year purchase provision, which the mayor demanded ,was left out. Mayor Haynes proposed to veto any franchise which did not contain a five year purchase provision, while Judge Brooks held such a clause to be of minor importance. Judge Brooks explained that the gas plant could be taken over at any time under the "eminent domain" law. The right would in no way be restricted by any contract entered into by the city and the company. The valuation determined under the law would be determined by court procedure under legal principles and under legal testimony which would be more satisfactory than the proposed method of arbitration.

The company demanded that the franchise should provide for the arbitration of rates instead of giving that power to the City Coun-

26. The Minneapolis Journal,1910, 14-12-1.

cil, with the restriction that the rates must yield a fair return on the investment. The company claimed a violation of the contract rights of 1870, which provided for the arbitration of rates. It also claimed that its contract of 1870 was violated by the publicity and security clauses of the proposed franchise. The company insisted that the franchise would renew itself automatically, for twenty years. Attorneys for the company expressed an opinion that only the state legislature could demand the publicity of acts and the regulation of rates.[27]

Before the first contractual ordinance was passed, the five year purchase clause was inserted, and Mayor Haynes signed the ordinance, Feb.3,1910.[28] The company promptly rejected the ordinance, the chief objections being the five year purchase clause, and a provision placing the manual labor employed by the company under the provisions of the state law which regulates the employment of manual labor in the performance of state contracts. The situation was becoming critical. Some advocated the dropping of the five year purchase clause, while others thought that notice should be served on the company that the city would proceed under the purchase clause of the 1870 franchise. Still others believed that the question could be adjusted with the company.

The final result was that the City Council amended the ordinance adopting a twenty year purchase provision. On March 3,1910, the ordinance was published as amended,[29] and it was accepted by the company.The ordinance became effective without the mayor's signature, under the provision of the city charter which provides that if an

27.The Minneapolis Journal,1909,12-9-15-1.
28.Council Proceedings,1910,p.84.
29.Ibid,p.139.

ordinance is not returned within five days, it shall become law.

This settled the most bitter controversy that has so far arisen in Minneapolis between a public utility company and the city. With the exception of the purchase provision the company made every concession demanded by the city, and to-day Minneapolis has an up-to-date gas franchise recognized as among the best in the country. The city surrendered the right of purchase provided the company accepted all the provisions of the franchise ordinance. Nothing in the ordinance is to be construed to impair the right of the city to acquire any or all of the property of the company by condemnation, through the exercise of the right of "eminent domain" conferred or granted by any statute of the state of Minnesota, now or hereafter in force.

The ordinance provided that the company shall put into effect, on the first day of the month, succeeding the acceptance of the ordinance, rates of 85¢ per 1000 cu.ft. to private consumers and 65¢ to the city.[30] These prices were not to increase until determined as provided by the ordinance. Any time after the expiration of three years after the acceptance of the ordinance, and at intervals of five years thereafter, the City Council may, or if requested in writing by the company to do so, shall, by ordinance, fix and determine the rates to be charged, both to the city and the private consumers. The Council is given the power to fix rates whether or not the laws now or hereafter in force give that authority to the city, and the company shall furnish gas to the city and private consumers

30. These rates were proposed by the company itself, and this is the only feature of the ordinance which originated with the company.

at the rates determined without discrimination. The rates fixed by the City Council are subject to a provision which states that the rates shall always be just and reasonable, and shall not be so fixed as to fail to afford a "fair and reasonable" return upon the investment of the company. The reasonableness of rates and prices shall always be subject to a review by the courts. The company is given the privilege of rendering bills to private consumers at a price which exceeds by 15¢ the price specified in the ordinance, and then making a discount of 15¢ per 1000 cu.ft. when the bills are paid ten days after rendition.

The city preserves considerable power to prescribe the equipment of lamp posts and the management of street lighting. The city may take over the street lighting if it desires, but it must buy the equipment of the company at its value, which is to be fixed by arbitration.

The issue of stocks and bonds is closely regulated by the franchise. The "capital investment" of the company, as that term is used in the franchise, shall mean the "fair and reasonable" value of its plant as a "going concern".No value in good will or unexpired franchise or future profits shall be considered in determining the value, and no regard shall be had for the company's capitalization as represented by its stocks and bonds.

The city has the right of purchase at the end of twenty years, by paying for the "capital investment" as that term is defined in the franchise. The price is to be fixed by arbitration if the city and the company cannot agree. Nothing in the ordinance is to be construed as obligating the city to purchase the plant at the end of the

twenty year period. In case the city does purchase, it shall have three years in which to pay the price agreed on, and the company shall in the meantime operate the plant as provided in the franchise until the purchase price is paid.

The franchise provides that the company shall kepp accurate accounts and records, and complete publicity is also provided for.The company must file,under oath each year with the city comptroller, statements of all its assets and liabilities, and statements giving for the previous year the gross receipts of the company in detail, together with the expenditures item by item.

The franchise also includes a provision that no person doing manual labor shall be required to labor more hours than in behalf of the state of Minnesota on public contracts.

By the acceptance of the ordinance the company relinquished and released all rights and privileges or franchises mentioned by the St.Anthony ordinance, in so far as that ordinance purports to extend beyond Feb.1830. The company is forbidden to consolidate or transfer its plant or any of its property in any manner whatsoever.

It will be remembered that at the time the negotiations were in progress, it was decided to draw up two separate ordinances, a regulatory ordinance and a contractual ordinance. The City Council proceeded to pass a regulatory ordinance shortly after the contractual ordinance was accepted, but the company thus far has refused to accept it.[31] However, I am informed by the gas inspector that the company is complying with the pressure regulations provided for in

31. Council Proceedings,1910,p.264.

the regulatory ordinance.

The annual report of the gas company for 1912 shows that it is operating on a sound financial basis under the new franchise.[32] In June,1912, the company paid the stockholders cash dividends of $64,000. The total assets of the company in 1912 were $8,669,871.69. The total liabilities were as follows:

| | |
|---|---|
| Capital stock - - - - - - - - - | $800,000.00 |
| Funded debt - - - - - - - - - - | 6,318,000.00 |
| Accounts payable - - - - - - | 365,993.55 |
| Depreciation reserve - - - - | 346,274.68 |
| Sinking fund reserve - - - - | 445,250.00 |
| Undivided profits - - - - - - | 395,343.46 |
| Total - - - | $8,669,871.69 |

In order to be prepared to make fair and reasonable prices at the expiration of the three year period, after which time the City Council was given power to regulate rates, the City Council employed William Marks, a gas expert from New York, to make a valuation of the properties of the company. The report was completed and transmitted to the City Council committee on lighting in July,1913. It is a report in four volumes upon the present value of the plant of the Minneapolis Gas Light Company, and a computation of a fair and reasonable price for gas.[33]

Marks placed the value of the plant at $4,318,178.93, and came to the conclusion that a reasonable price for gas should be 67.8¢ per 1000 cu.ft. to private consumers, and 62.6¢ per 1000 cu.ft. to the city. The gas was to be of 18 candle power for lighting purposes

32.The Minneapolis Journal,1913,2-1-1-1.
33.There is only one copy of the report and that is found in the vault in the City Attorney's office.

and 600 B.T.U. for heating purposes.[34]

The gas company, on the other hand, claimed a valuation of $9,990,867., and an expert accountant for the company testified that the company would go bankrupt at 75¢ per 1000 cu.ft.[35] The company insisted that it could not reduce the price of gas below 85¢ per 1000 cu.ft., while Mr.Marks contended that at 70¢ per 1000 cu.ft. the company would realize a fair profit.

In accordance with the recommendations of Mr.Marks, the City Council passed the Hooker ordinance which provided for 70 cent gas to private consumers and 65 cent gas to the city.[36] The company applied to the District Court to restrain the publication of the ordinance; but the District Court denied an injunction to restrain the publication, whereupon the company appealed to the State Supreme Court. In the meantime the ordinance was officially published in November,1913, and the City Attorney declared the rates prescribed by it to be the legal rates.The State Supreme Court refused to reverse the decision of the District Court,[37] and the 70 cent gas rate came legally into force with the publication of the ordinance.

In April,1914, the company, in accordance with the franchise provision regarding rates, applied to the District Court for a revision of the gas rates provided for in the Hooker ordinance, as being unfair and unreasonable. However, before the hearing the representatives of both parties met and settled the case out of court.An agreement to be in force for five years was made with the company at an

34.Gas Valuation Report of William Marks,Vol.I.
35.The Minneapolis Journal,1913,7-16-1-1.
36.Council Proceedings,1913,p.1237.
37.The Minneapolis Journal,1913,11-28-1-6.

average rate of 77.4 cents per 1000 cu.ft. Beginning Nov.8,1914,the rates were to be as follows:[38]

70¢ per 1000 cu.ft. for the first five months.

80¢ " " " " " " next 21 months.

77¢ " " " " " " last 34 months.

77.4¢ Average rate.

The above rates were put into effect, and are in operation at the present time .

In 1914 the question of municipal ownership of the gas plant was again revived, because of complaints from consumers. Consumers complained that the heating value of the gas had fallen off, and that bills were unusually large.The matter was discussed by the City Council, and an ordinance providing for submission to the electors of the proposition of acquiring the gas plant was voted upon, but it failed to pass.[39] During the last two years there has been little complaint from the consumers, and the service, according to the gas inspector, is on a high level.

A comparison of gas rates in different cities is a very difficult matter because of the various standards used in measuring pressure and heating value. In the table below are the rates now in FORCE IN some of the cities nearest to Minneapolis.[40]

38. The Minneapolis Journal,1914,4-8-1-7.
39. Council Proceedings,1914,p.421.
40. These rates were secured through personal correspondence.

Comparison of gas rates.

Winnipeg

$1.20 per M cu.ft. net.

Duluth

$0.75 per M cu.ft. net.

St.Paul[41]

$0.85 per M for first 50,000 cu.ft. per month.

0.75 per M for excess over 50,000 cu.ft.per month.

Detroit

$0.75 per M net for first 50M.

0.65 per M net for second 50M.

0.55 per M net for next 100M.

0.45 per M net for all over 200M.

41. The required candle power in St.Paul is only 14, and the minimum heating value is 550 B.T.U., although a heating value of 600 B.T.U. is required by ordinance.

# CHAPTER IV.

## ELECTRIC LIGHT AND POWER FRANCHISES.

In the field of lighting it has been a general practise to grant several franchises, and the fact that electricity is often generated by water power makes it difficult to regulate the operations of electric companies through local authority. The granting of water power franchises brings about state-wide and even nation-wide complications. In this chapter it is the intention to deal only with the relation of the electric companies to the City of Minneapolis. The problem of Minneapolis is a difficult one because of the numerous franchises that have been granted. The affairs of the many electric and power companies, some of which are outside of the city, and beyond its control, have been so interwoven that it will be a stupendous task to draft a franchise that will be acceptable to the electric companies and at the same time one that protects the city.

Electricity was first developed for lighting about 1879, and three years later electric companies were seeking franchises in Minneapolis. The first franchise to an electric company was granted to the Minnesota Electric Light and Power Company, May 10, 1882.[1] The company was granted permission to erect and maintain poles, wires, masts and other fixtures, in the streets, alleys, avenues, and public grounds of the City of Minneapolis for the purpose of furnishing

1. Minneapolis City Charter, Ordinances, Court and Board Acts, 1872-1905, p.589.

heat,light and power by means of electricity. The franchise was very brief and no time limit was prescribed. The only provision of importance was that in regard to the control of the streets by the city. The ordinance provided that it shall be subject to all the provisions of any and all ordinances then in force or which might,in the future, be enacted by the City Council regulating and controlling the use of the streets and other public grounds of the city by telegraph,telephone, or other companies; and it provided further that the City Council shall at all times have full and complete authority to order the use of wires discontinued,removed,located, or placed in a different place or position, whenever in the judgement of the City Council,the safety of the public or any individual property in the city might require that to be done.The necessary poles were to be erected at such places as the City Engineer would designate, and the materials used by the company in the construction of its conducting wires, globes ,or other apparatus, were to be such as would comply fully with the requirements of the standard adopted by the New York Board of Fire Underwriters,January 12,1882.

In 1887 another franchise was granted to the Edison Electric Light and Power Company.[2] The term of this grant was not specified, but in other ways it was a much more definite franchise than the first one. Nothing in the franchise was to be construed as giving the company exclusive privileges in the streets, or the exclusive right to light the city streets with electricity. The ordinance provided that the City Council might compel extensions, upon such streets as it deemed necessary. Rates were always to be reasonable,

2. Ibid,p.590.

and the maximum rates for both residence lighting and commercial uses were fixed by the ordinance.These maximum rates,however, were too high to give any practical relief. The grant was made expressly subject to an ordinance of 1886, governing the placing of underground wires,cables, and conduits. Work on the plant was to commence May 1,1887, and a plant of 1200 H.P. and sufficient wires to use all the power thus furnished were to be ready to go into full operation within twelve months from the date of the publication of the ordinance. All the powers and privileges granted were to cease and terminate if the company did not fulfill the above requirements, and if the company should ever fail to carry out and perform any material requirement of the ordinance,then the City Council was authorized to repeal it.

In October,1887, the National Subway Company was granted permission to lay electrical subways in the streets and alleys of the city[3]. The grant was made for a period of thirty years, but no exclusive privileges were granted to the company. The company was to permit any other company to use its system of underground conduits or subways upon such terms as might be agreed upon by the respective parties; or if they could not agree about the joint use, the terms were to be determined by arbitration. In return for the privileges granted in this ordinance the company agreed to furnish, free of charge to the city, sufficient space to provide for carrying the fire and police alarm and telephone wires belonging to the city, and all other wires used for automatically or telegraphically receiving

3.Ibid,p.592.

or transmitting , fire, burglar, or police alarms. Two miles of conduits were to be ready Dec.1,1888, and the company was to extend its system at the rate of at least one mile each year until such time as all the territory within the fire limits of the city was fully provided with its conduits or other conveniences for underground wiring. Not more than one fourth of the space reserved for underground wiring was to be taken up by the company, and the space to be used was to be selected with the approval of the City Engineer. The City Council reserved the right to order the removal of any conduits at the expense of the company whenever they proved to be a nuisance or unsatisfactory. The company was required to file an acceptance of the ordinance within 30 days, and upon acceptance the ordinance was to operate as a contract between the company and the city.

Another franchise was granted in May,1889, to the Edison Light and Power Company.[4] The grant was very brief and indefinite. It was simply made subject to all the terms and restrictions in the existing and future ordinances of the city. The company was to pay three per cent of the gross receipts into the city treasury during the first two years of its operation, and such percentage as the Council might determine thereafter. The company was to furnish the City Treasurer with a sworn statement of the gross receipts every year. This was the first public utility franchise which made any provision for furnishing financial statements to the city. A plant of sufficient size to furnish 1000 H.P. was to be put into operation within 12 months from the date of the publication of the ordinance, and if the company ever failed to carry out and perform any material part

4 .Ibid,p.594.

of the agreement, the ordinance was subject to repeal by the City Council.

On the same day that the electric franchise was granted to the Edison Light and Power Company, another franchise was granted to the Thomsen-Huston Electric Company.[5]The grant was very similar to the former, with a few slight changes. The company was likewise to pay three per cent of the gross receipts to the city, and furnish the city with sworn statements showing the gross earnings. Work was to commence within three months, and a 100 H.P. plant was to be in operation at the end of twelve months. The poles and wires were to be located under the supervision of the City Engineer, and the Council reserved the right to order the removal of the company's equipment at the expense of the company.

For the next few years there was a lull in the granting of franchises to electric companies until 1896. In that year a franchise was granted to the St.Anthony Falls Water Power Company[6]. The company was organized to furnish electricity for power, light,heating purposes. No time limit was prescribed by the franchise. About the only restriction was a provision that made the company subject to certain city ordinances, then in force, in regard to the placing of underground wires and the establishing of electric plants within the city.

In 1903 the Minneapolis General Electric Company made an attempt to get into the electric industry. The company was a New Jersey corporation with a capital stock of $2,100,000. at the time of incorporation.[7] The company filed its articles of incorporation with the

5.Ibid,p.595.
6.Ibid,p.596.
7.Articles of Incorporation,File number 128.

Secretary of State in 1899. Part of a proposed franchise was published in the Council Proceedings for 1903, but blanks were substituted for certain facts that the City Council did not wish to disclose.[8]

The last of the numerous electric franchises was granted to the Minnesota Power and Trolley Company in 1905.[9] The company was organized to furnish electrical energy for lighting and power purposes for public and private use. This franchise was worked out with a great deal of care, and at the time was thought to be a very good grant. The term was limited to thirty years, and the franchise was to be subject to all city ordinances then in force or which might be passed in regard to laying, constructing,placing, maintaining,and extending suitable wires,cables, or other conductors. During the life of the company it was to provide suitable space upon its poles and in its conduits for wires for alarm and police purposes. It was also to furnish and maintain in its conduits, at its own expense,all necessary fire alarm and police wires required by the city of Minneapolis for its use. Furthermore the city was to have priority of right to water power furnished by the company.

No exclusive privileges were granted, and there was to be no transfer of the company's property or any of the franchise privileges without authority from the City Council. The plant was not to be operated under any other franchise; nor was a director of the company permitted to be a stockholder or interested in any other electric lighting or electric power company operating in the city.[10]

8.Council Proceedings,1903,pp.546,548.
9.Minneapolis City Charter,Ordinances,Court and Board Acts,1872-1905,p.613.
10.The Company is now under the control of the Minneapolis General Electric Company for all practical purposes.

The franchise provided for the payment of a percentage of the gross receipts into the city treasury. The amount was to be one per cent during the first ten years, three per cent during the second ten years, and five per cent annually for the remaining ten years. An annual financial statement was to be filed with the City Comptroller. The company agreed to furnish the city with at least 4,000 hrs. each year, for 1000 H.P. electrical energy at a price not to exceed $25. per H.P. per annum, and in case the city should elect to purchase the light and power as provided, the gross earnings tax was not to apply. The city reserved a great deal of control over the company in the matter of street lighting. The maximum price that may be charged is fixed. The maximum prices to private consumers are also fixed by the franchise, but these maximum rates are subject to revision by arbitration after ten years, and after that time during every five year period. Extensions of the system are to be made on request of the City Council whenever a petition is presented to it showing that the aggregate amount of electricity consumed within ten city blocks shall amount to at least $2,000. per annum.

The property was to be relinquished by the company at a price not to exceed actual cost, less depreciation. Nothing was to be paid for the unexpired franchise. Thepurchase price was to be determined by arbitration, and the city was to have one year to pay for the property, the company in the meantime retaining possession of the plant.

The Minnesota Power and Trolley Company's franchise was granted upon the express condition that the company would file a written acceptance within ninety days after its publication, together with a bond of $25,000. as security that it would faithfully keep its

agreement. Construction of the plant was to commence within sixty days after the acceptance, and within one year at least $200,000. was to be expended upon the system. The plant was to be ready to furnish electrical energy as provided for in the ordinance in November ,1907.

This completes the history of franchise grants to electric companies, and we are now ready to trace the conditions that prevailed in the electric industry for the last dozen years. It is necessary to keep inmind the electric franchises granted from time to time in order to understand the franchise controversy that commenced in 1907 and which lasted for two years without any settlement being made.

In the Spring of 1905, the General Electric Company determined to establish its industry in Minneapolis. The company's first move was to secure valuable water power rights at Taylors Falls, a distance of 45 miles from the city.[11] 24,000 H.P. was available at the Falls, according to the company. A plant which the company said would cost $3,000,000. was to be completed and in operation Jan.1,1906. The company had no franchise rights in the streets, and the acquisition of such rights was the next problem to be solved. The company purchased a private right of way 60 feet wide in a direct straight line to the city limits, at a point just northwest of the Fair Grounds. It then proceeded to buy out the several competing companies with their franchises, and thus it obtained a foothold in the city.

The electric situation had always been a muddle, and the en-

11. The Minneapolis Journal,1905,3-27-1-7.

trance of the General Electric Company did not help matters. The company had been in the city only a short time when it was accused of having perfected a monopoly in furnishing the city and its citizens with electricity by eliminating all competition. It was accused of enforcing arbitrary regulations as well as charging exorbitant rates. With the opening of the electric controversy in 1907, the first thing that the company laid claim to was a perpetual franchise by virtue of the fact that there was no time limitation in some of the franchises granted by the City Council. The company denied any right of the city to regulate or in any way control its dealings with the citizens, or the right of the City Council to establish maximum rates. The customer had no way of ascertaining the justice of the charges made because the company refused to provide suitable reading meters.[12]

The citizens of Minneapolis became dissatisfied with the treatment by the company, and there was some talk about inviting other corporations to start competition with the General Electric Company. Others believed that theproper step to take was to try to negotiate a new franchise with the company, and get it to consolidate under one franchise.

The Council proceeded to inform itself of the history of the company. Upon investigation it was found that Stone and Webster of Boston had purchased the plant of the Minneapolis General Electric Company, then a local corporation. With the purchase they acquired three franchises,namely:one granted to the Minnesota Electric Light and Power Company in 1882; the second, granted to the National

12. This paragraph is based upon a discussion of the City Council; Council Proceedings,1907,p.41.

Subway Company, in 1887; and the third, given to the Thomson-Houston Electric Company, in 1889. Previous to selling out to Stone and Webster, the Minneapolis General Electric Company had purchased the plant and equipment of the Edison Light and Power Company, which had been granted a franchise in 1887, and in 1889, but the latter grant had never been accepted by the company. It was found that Stone and Webster negotiated preferred stocks and bonds sufficient to provide capital to pay for the old plant, bought at double values, install up-to-date equipment, and still have a surplus for working capital. They also issued to themselves $1,500,00 of common stock. Rates were computed on this greatly inflated capitalization and debt. Besides, the company installed a complicated system of charges, based upon theoretical costs of supplying each customer with electrical energy. A great deal of discrimination was practised under the system. Customers were paying all the way from 3/4 ¢ to 14¢ per kilowatt per hour. Stone and Webster felt that they could easily keep out all competition, for new companies would be greatly restricted by franchise and council regulations, while the company itself claimed its franchise to be perpetual.[13]

According to Alderman Walker's report, at least fifty per cent of the company's capital was watered stock, upon which the city of Minneapolis was paying good dividends. The big problem in negotiations for a new franchise would necessarily be concerning the valuation of the company's property for rate purposes. The cost of the

13. This paragraph is based upon a report to the City Council by Alderman Walker, who was assigned to investigate the history of the Minneapolis General Electric Company; Minneapolis Journal, 1907, 3-5-1-1.

General Electric Company's plant could be no criterion. The company, in order to stifle competition, paid double and treble the actual value of the plant, including the good will of rival companies.

The city started to make plans for drawing up a new franchise, but before a draft was completed the company submitted a franchise of its own.[14] To show what the company offered the city, two of the franchise provisions are cited below as typical of the franchise.

(1) "The city shall have the right to purchase the company's entire property at any time at its fair market value as a going concern". (2) "Should the city at any time desire to establish a municipal plant to do a commercial business, the city shall purchase the company's entire property before the establishment of said municipal plant".

The City Council promptly proceeded to repeal all the electric franchises to which the company laid any claims.[15] The franchises repealed by the action of the City Council were the following: The National Subway franchise granted in 1887, the Edison Electric Light and Power Company franchise of 1887, the Minnesota Electric Light and Power Company franchise of 1882, and the Thomson-Houston franchise granted in 1889.

The Minnesota Power and Trolley Company, to which a franchise was granted in 1905, had not yet started work upon its plant. The Council could have anulled the franchise, because the company had not lived up to its agreement, but some thought that a better plan would be to assist the company in building up the plant to compete

14. The Minneapolis Journal, 1907, 2-20-7-3.
15. Council Proceedings, 1907, pp. 134, 135.

with the General Electric Company. Ex-governor Lind interested himself in getting Eastern capital to finance the construction of the plant, but about thw time he got a New York Company interested, the General Electric Company upset his plans. It developed that the New York company would not touch the proposition because of the opposition of Stone and Webster of the General Electric Company.

Shortly after the repeal of the company's franchises in March, 1907, the City Council passed the Walker ordinance regulating the furnishing of electricity for lighting and power purposes, and fixing the maximum rates to be charged by any corporation furnishing light or power by electricity.[16] The ordinance provided that the new rates should go into effect August 1,1907. The City Council sent out circulars to consumers of electricity urging them to render the bills at the new rates. The Council hoped to get the matter into the courts by the passage of the Walker ordinance on the ground that the city had no right to regulate rates. The company refused to accept the ordinance, and asked its customers to disregard the action of the City Council, and promised to give as low rates as it could reasonably make. Investigations later in the year developed that practically everybody was paying for electricity at the old maximum rate of 14¢ per kw. hour. Business men urged the citizens to pay rates according to the Walker ordinance in order to force the rate controversy into the courts. Much discrimination was practised by the company. Some consumers reported that the General Electric Company solicited contracts with them at even lesser rates than the Walker ordinance provided for, while it continued to charge others

I6. Ibid,p.391.

the old excessive rates.

Besides the rate dispute there was a great deal of trouble concerning the placing of wires underground. The manager of the General Electric Company informed the City Council that the company would not comply with the underground wire ordinance passed the previous year. The company claimed that it could not undertake the expense in the precarious state of investment. The district to which the underground wire ordinance applied was that included between First Avenue South, First Avenue North, Washington Avenue, and Fifth Street.[17] The telephone and telegraph companies had already signified their intention of complying with the ordinance, and it was almost a public necessity that the General Electric Company also comply.

On June,1907, the City Council took the first step towards municipal ownership. It passed an ordinance, by unanimous vote,providing for the conversion of unused down-town pumping stations into electric light plants. But the city was thoroughly unprepared to attempt municipal ownership, and little more was done in that direction for some time. Meanwhile the situation was becoming more intolerable. A long petition signed by business men was presented to the City Council in November asking that the Council and the Company end the rate war by agreeing upon a franchise. About the same time W.D. and D.C. Jackson, Boston experts who were hired to examine the electric light plant made their report to the City Council.[18]In their opinion it would have required about $5,000,000. to duplicate the Minneapolis General Electric Company's plant and equipment.

17. The Minneapolis Journal,1907,5-24-7-5.
18. Ibid,11-9-6-5.

Mayor Haynes made the General Electric issue the keynote of his campaign for re-election in 1908, and won out by a small plurality in a community normally strongly Republican. The Council was desirous of meeting the request of many Minneapolis citizens to settle the controversy, and as a result a franchise was adopted by the Council in June ,1908.[19] It was thought that the franchise would be acceptable to the company and that the controversy would be brought to a close. The hopes of an early settlement, however, were shattered by the mayor who vetoed the ordinance. Mayor Haynes thought that the public rights were not sufficiently protected in the ordinance. His chief reasons for vetoeing it were: the length of the term, no provision for the physical valuation of the company's property, and unsatisfactory rate regulation provisions.[20]

The franchise provided for a term of 30 years for which the mayor claimed there was no justification. He desired renewals at frequent intervals to control the rates and service of the company, and to protect the city against the company in the future. The mayor believed that a physical valuation of the property should be obtained, either by agreement or by some other competent authority, before granting a franchise. The franchise gave the city the right to regulate rates once a year, but it provided that such rates should be reasonable and insure a fair return upon the capital investment,with a right of appeal to the courts by the company. In the absence of a physical valuation of the property, such a provision did not necessarily mean lower rates, as the company could secure an increase in

19.Council Proceedings,1908,p.396.
20.From a circular issued by Mayor Haynes to the City Council stating his reasons for vetoing the franchise ordinance.

rates on a proper showing in the courts. The company also admitted that the Taylors Falls Power Company is a separate and distinct corporation. It is evident that the Minneapolis General Electric Company might make a contract with the Taylors Falls Company, very profitable to the latter, and shift the expense to the consumers, when one considers that the same people own both companies. Some provision should be made to prevent the juggling of accounts and finances with other companies for the purpose of raising rates. The statement that the rates shall be such as to return a "reasonable return or profit" was very unfortunate. The interpretation of the word "profit" would be left to the courts, and it might prove disastrous to the city.

The franchise provided for purchase at five year intervals, but that provision would have had little practical value when the company once became entrenched behind a thirty year grant, especially in view of theobstacles to municipal government ownership in the city at the time. The city did not possess the legal means to get the necessary funds, and secondly, the question of a new gas franchise was soon to come up for settlement. The city might have been called upon to exercise its right of purchase of the gas plant in 1910. It could hardly have purchased both. The company urged the approval of the franchise ordinance that it might be able to market bonds, but Mayor Haynes' answer was that the city was under no obligations to assist the company financially, especially when the company showed no consideration for the rights of the city.

Since the veto of the franchise in 1908, matters between the company and the city have been in a status quo, the company pre-

sumably operating without a legal franchise, and making its own rates and classifications. The result has been a continuous rate war between the city and the company. Both municipal ownership and competing companies have been considered as a solution of the controversy. In 1908, the Northern Heating and Electric Company tried hard to get into the electric industry; and the threats to start independent companies had some effect upon the General Electric Company. At one time the citizens of the Linden Hill district,becoming dissatisfied with the promises of the General Electric Company, organized the Lake Harriet Electric Company.[21] The General Electric Company took immediate steps to furnish the required service.

In 1909, the validity of the ordinances of the City Council repealing the company's several franchises was a much disputed question.[22] The company claimed that they were invalid, but nevertheless detrimental to its interests. The company promised sweeping reductions in rates if the City Council would repeal the ordinance of 1907, which declared the five franchises of the company repealed. Mr.Leonard, manager of the company, said that the repealing ordinances had a bad effect when disposing of bonds. As a second reason for a reduction of rates the company stated that it would be an incentive to consumers to pay the bills, many customers having refused to pay the bills since the Walker ordinance of 1907. How this could be an incentive to pay the bills it is difficult to see, for the reductions were to be in the form ofrebates, but those who had not paid promptly after the ordinance of 1907 were not entitled to the rebates, and

21. The Minneapolis Journal,1909,6-18-10-3.
22. Ibid,12-7-5.

therefore would not benefit by the reductions. Many consumers refused to pay their bills except at the rates specified by the Walker ordinance. Prominent attorneys believed the ordinance to be perfectly valid, but City Attorney Healy came to the rescue of the company by declaring that the City Council had exceeded its authority in establishing rates. He contended that the City Council could not regulate rates without that power being granted through the city charter.[23]

Until 1907 the city paid $84 per year for its arc light service. In 1907 the Walker ordinance fixed the rate at $70., but the company contended that this was invalid. The company accepted the $70. offered by the city, always claiming that it would collect the extra $14. through the courts. The validity of the Walker ordinance was finally passed upon by the courts, when in 1911 the City Council took the queer step of passing one ordinance to enforce another. It passed the Heywood ordinance to force the company to furnish electricity under the Walker ordinance. The company asked the Circuit Court for a writ of injunction to restrain the publication of the Heywood ordinance. The Heywood ordinance was declared invalid, and an injunction to restrain its publication was issued by the Court.[24] The Court did not pass directly upon the validity of the Walker ordinance, but it did declare that the city had no power through its city charter, or otherwise, to regulate rates. Had the Court upheld the Heywood ordinance, it would have put itself in a position of declaring, not only that the City Council had the power to regulate rates, but also that the rates prescribed by the Walker ordinance were reasonable.

23. The Minneapolis Journal, 6-13-6-1.
24. The Minneapolis General Electric Company v. City of Minneapolis, 194 Federal Reporter, 215 (1911).

The passage of the Heywood ordinance was an unwise move on the part of the city. The decision of the Court left the city without any control over the rates or service of the company.

Municipal ownership now seemed the only solution of the problem. Mayor Haynes strongly urged the City Council to take over street lighting, and he urged it to put the financesof the city in such shape, during the next few years, as to enable the city to take over the operations of the General Electric Company. Some initial steps in the direction of municipal ownership were taken in 1912, by the establishment of a plant for experimental purposes. A small plant was established at the city crematory, and was operated by steam generated by burning garbage. The General Electric Company was asked to discontinue street lighting in that part of the tenth ward in which the municipal plant operates. At present about 240 street lamps are lighted, and the municipal plant has proved very successful on a small scale. The plant by being able to produce electricity at a reasonable cost, has produced a good effect upon the General Electric Company and its prices. It shows that the city can operate the electric plant if it is forced to do so.[25]

The case of the Minneapolis General Electric Company v. Minneapolis proved beyond doubt that Minneapolis could not exercise any effective control over the company's affairs without the authority from the legislature. To get the required authority, attempts were made during the session of 1913 to pass a bill introduced by I.W. Nolon of Minneapolis.[26] The bill proposed to grant specifically to cities the right to control the rates and service of public utility

25. The information for this paragraph was obtained from the City Statistician.
26. The Minneapolis Journal, 1913, 1-31-10-4.

companies, subject to existing contracts. The chief opposition to the bill came from members who favored a State Public Utility Commission, but the bill passed both Houses by good margins. The bill, however, was vetoed by Governor Eberhart who was strongly in favor of a Public Utilities Commission. An attempt was made to pass the bill over the Governor's veto, but the Senate upheld the veto. The "Nolan bill" was passed at the request of the Mayor and City Council of Minneapolis. It had the confidence of the community, and it was the hope of settling a long standing dispute with the General Electric Company. The veto of the bill and the failure to enact a Public Utilities Law again left Minneapolis without authority to regulate local utilities operating without a franchise.

When the legislature assembled again in 1915, the "Nolan bill", identical with the bill vetoed by the Governor in 1913, was introduced.[27] The bill won only a prelimenary hearing and was killed in the Hennepin County Senate delegation. What the present legislature will do to help settle the General Electric Company controversy remains to be seen, but the antagonism which at present exists between the company and the public is a detriment to the growth of the city. There are ample opportunities for cheap power if a settlement could be reached. The development of the company's interests, too, would be greatly assisted by a satisfactory settlement. In 1912 the company tried to secure "permits" from the City Council to lay high voltage lines through the city to supply light and power to Shakopee, Chaska, and other towns outside of Minneapolis, but the "permits"

27. The Minneapolis Journal, 1915, 3-17-12-1.

were refused until a better understanding can be reached with the company.[28] The proposed line would be of no benefit to the city, and it might prove a detriment through arrangements of the company with outside towns.

The condition of affairs that has existed in the electric industry for the last dozen years is very undesirable, and some agreement should be made at the earliest possible date. There are two things that stand out in this electric controversy, the inter-relationship of the several electric companies, and the rapid disappearance of good water power sites near the city. The city should enter into no agreements with the General Electric Company until there has been an understanding as to the relationship of subsidiary companies, which the General Electric Company controls, to the city and to the company. This should be one of the most important considerations in any settlement, and no doubt it will be one of the difficult questions to settle. This inter-relationship is especially important in case the city contemplates purchase of the property sometime in the future. Something should be done as soon as possible, for as time goes on the situation is becoming more complicated. All the good water power sites are disappearing, and the value of the property is increasing rapidly, making municipal ownership more difficult if a settlement cannot be reached with the company.

Another factor which may be of some importance when the company comes up for a new franchise is the company's stock selling proposition. The Minneapolis General Electric Company has been pushing the sale of stock for the Northern States Power Company, of which

28. The Minneapolis Journal, 1912, 11-21-17-1.

it is the most important unit. The company at present claims to have 2,200 stockholders in Minneapolis, and if the figures are correct, these stockholders will be able to exert a good deal of influence in favor of the company.[29]

The Northern States Power Company claims to have paid dividends of 7 per cent on its preferred stock since its organization in 1909, and common stock dividends of 6 per cent per annum are now being paid by the company.[30] The company has issued a statement giving the capitalization outstanding Sept.30,1916, together with gross and net earnings for the year ending Sept.30,1916. This statement,however, has little significance as regards the Minneapolis General Electric Company. The only item of the statement that has any direct bearing on the General Electric Company is the capital account. The statement shows that there are at present $7,628,000. of the Minneapolis General Electric Company's first mortgage , five per cent bonds due in 1934.

In the fixing of rates the company differentiates between long and short hour users, as well as between day and night consumers. In the absence of regulations, as is the case in Minneapolis, this affords immense opportunities for discriminations.

Because of the many different methods of computaion, classification, and contracting USED by electric companies in the different cities, a comparison of rates is rather a difficult matter. This is especially true of commercial lighting and of the current used for power purposes. In the matter of residence lighting there is more

29.This information was given out by Mr.Peck,Sales Manager of the Minneapolis General Electric Company.
30.From a personal letter from the company.

uniformity and comparisons can be made. The table inserted below shows the rates for residence lighting now in force in Minneapolis, St.Paul,Duluth,Winnipeg, and Toronto.[31] In St.Paul the electricity is furnished by the Northern States Power Company; in Duluth the current is purchased from the Great Northern Power Company, which generates its current by water power from the St.Louis River. The electric power in Toronto is supplied by the Toronto Hydro-Electric System, and is purchased from the Hydro-Electric Power Commission of Ontario, which in turn purchases the same from private companies operating at Niagara. In Winnipeg the electric plant is municipally owned, and the current is generated by water power. Winnipeg has by far the lowest rates for both lighting and power purposes of any of the citiesmentioned. It would seem that the conditions in Winnipeg and Minneapolis are not so very different, and the difference in rates should not be great.

Table of Rates for Residence Lighting.

Minneapolis:

8 1/2¢ per kilowatt hour for the first three kilowatt hours per room per month.

6¢ per kilowatt hour for the next three kilowatt hours per room per month.

2 1/2¢ per kilowatt hour for all additional current.

St.Paul:

11¢ per kilowatt hour for the first three kilowatt hours per month.

7.3¢ per kilowatt hour for all excess.

31. These rates were obtained through personal correspondence with city officials.

Duluth:

6¢ per kilowatt hour.

Toronto,Canada:

3¢ per 100 sq.ft. of floor area per.mo.,(minimum 1000,maximum 3000, sq.ft.)plus 2¢ per k.w.h. up to an equivalent of 3 k.w.h. per 100 sq.ft. of floor area charged.

1¢ per kilowatt hour for all additional consumption.

Winnipeg:

3 1/3¢per kilowatt hour,subject to a net minimum monthly payment of 50¢ per meter.

In all these cities a discount is offered for prompt payment of bills,but this is unimportant for the purpose of comparison, for the percentages are nearly the same in all the cities. It will be seen that Minneapolis and St.Paul, thecities whose plants are controlled by the same syndicate, pay considerably higher rates than the other cities. St.Paul is paying rates that are three times those of Winnipeg and almost double those of Duluth. M,nneapolis is also paying rates that are 2 1/2 times as high as those of Winnipeg. Practically the same comparisons as to rates could be made in commercial lighting and power in the five cities. Thefacilities for developing electricity are just as good in the vicinity of Minneapolis as they are near the other cities;therefore the conclusion is that Minneapolis is paying rates that are out of proportion to the cost and much too high.

# CHAPTER V.

## STREET RAILWAYS.

### A. THE MINNEAPOLIS STREET RAILWAY COMPANY.

The Minneapolis Street Railway Company obtained an exclusive franchise to operate street railways in the city of Minneapolis from the City Council, July 9,1875.[1] Excluding the suburban and interurban lines, this company operates all the street railways in the city. It has been proved that the franchise was invalid at the time it was made because the City Council did not possess the authority to grant franchises.

In 1872 the City Council of St.Paul granted a street railway franchise to the St.Paul City Railway Company. The city charter of St.Paul did not confer the right of granting franchises upon that body, nor was the authority otherwise given by the legislature. In 1887 the validity of the grant was brought into question in the Minnesota Supreme Court in Nash v. Lowery.[2] The court held that the City Council had no authority to make the grant, and that it was invalid until confirmed by an act of the legislature.[3]

The Minneapolis Street Railway ordinance was likewise confirmed by an act of the legislature,[4] and its validity was passed upon by the United States Supreme Court in 1909 in the case of the City of

1.Minneapolis City Charter,Ordinances,Court and Board Acts,1872-1905, p.564. 2. 37 Minnesota,261,(1887).
3.Special Laws of Minnesota,1872,Chapter 112. 4.Ibid,1879,Chap.299.

Minneapolis v. The Minneapolis Street Railway Company.[5] The United States Supreme Court cited the decision in Nash v. Lowery, and continued: "The ratifying act of 1879 being within the power of the legislature, vested the contract right in the company notwithstanding the want of power in the city to make it at the time it was entered into". The court further went on to say:"Where the legislature by statute, recognizes and acquiesces in the existence of a corporation which was formed by the incorporators without proper authority, it thereby invests the association with the right of continuing to act in a corporate capacity for the purposes and in the manner that it publicly assumed to act".[6]

The franchise granted in 1875 is a poor safeguard of the city's rights. The provisions that are of most interest to us are those which deal with the length of the term, the rate of fare, and extensions. All these subjects have come up for litigation. The franchise also provides that cars may be propelled by horse or pneumatic power just as the company may deem advisable; and it is the duty of the company to furnish and run a sufficient number of cars to accomodate the traveling public on all streets which it shall occupy for railroad purposes. No locomotive, freight, or passenger car, such as are usually run over the general railways of this State for the transportation of freight and passengers, are to be used on any of the lines of railway without authorization from the City Council. The franchise allows the tracks to be used for the transportation of freight and passengers, with the restriction that the cars and carriages for that purpose shall be of the best style

5. 215 U.S.,217,(1909).
6. Morawetz in his work on Corporations,Vol.I.Sec.19,second edition.

and class used on such railways in other cities. The company is given the right to transport all the road materials over its lines.

The City Councils of Minneapolis and St.Paul are given the right to determine how there shall be an interchange of tracks by the street railway companies of the two cities within their respective limits.

The length of the term of the Minneapolis Street Railway Company franchise has always furnished one of the subjects for dispute. The dispute usually arose in conjunction with the attempts of the City Council to regulate fares. A discussion of the term of the franchise involves an examination of the street railway franchise, of the state laws of incorporation, of the articles of incorporation of the company, and of court decisions in the matter.

The franchise itself provides that the Minneapolis Street Railway Company is granted the exclusive right of operating street railways in the City of Minneapolis, during the term of its charter. The length of the franchise then hinges upon the term of the company's charter. The company claimed to be incorporated under title 1, chapter 34, of the General Statutes of Minnesota for 1866, which allowed incorporation for fifty years.[7] The city, on the other hand, claimed

7. Sections 1, and 5, chapter 34, of the General Statutes for 1866, read as follows:

Section 1. "Any number of persons, not less than five, may associate themselves and become incorporated for the purpose of building, improving, and operating railways, telegraphs, canals, or slack-water navigation, upon any river or lake, and all works of internal improvement which require the taking of private property or any easement therein".

Section 5. "No corporation shall be formed to continue more than fifty years in the first instance, but it may be renewed from time to time for periods not longer than fifty years; provided that three fourths of the votes cast at any regular election for that purpose, are in favor of such renewal, and those desiring the renewal purchase

that the Minneapolis Street Railway Company was not a railroad within the meaning of title I,chapter 34, Laws of Minnesota for 1866,and that it could only be organized under title II of the same chapter as amended by an act of March 10,1873, which would limit its term to thirty years.[8] Title I provides for the incorporation of railroad companies, while title II provides for the incorporation of various kinds of companies among them transportation companies. Was a street railway company a "rairoad company", or a transportation company within the meaning of the statutes? As a rule the legislature when legislating for railroads,legislates for commercial railroads alone, and therefore it seems apparent that it was the intention of the lawmakers to have tätle I apply only to commercial railroads.Furthermore title II as amended by the laws of 1873, provides for the incorporation of gas companies, andother companies of a public nature. A street railway is a public service corporation not very different from a

the stock of those opposed thereto at its current value"
8. Bissell's Statutes at large for 1873,title IV,p.443.(This is the same as title II of chapter 34, of the General Statutes of Minnesota for 1866.)

Sec.98(45, as amended by act of Mar.10,1873)

"Any number of persons not less than three, who have or shall,by articles of agreement in writing,according to the provisions of this title under any name assumed by them for the purpose of engaging in and carrying on the business of mining, smelting,or manufacturing iron,copper, or other minerals, or for producing the prescious metals, or for quarrying and marketing any kind of ore, stone, slate, or other mineral substance,or for constructing,leasing,or operating docks,warehouses,elevators,or hotels,or as a mutual savings fund, loan, or building association,manufacturing gas,or any kind of manufacturing,lumbering,agricultural,mechanical,mercantile,chemical, transportation, or other lawful business,and who have or shall comply with the provisions of this title,shall with their associates, successors,and assigns,constitute a body corporate and politic under the name assumed by them in their articles of agreement;provided that no company shall take a name previously assumed by any other company, any mutual saving fund,loan, or building association, as authorized to loan funds and to secure such loans by mortgage or other security, and any premiums taken by any such association for

gas company, and it seems logical that both would be organized under the same laws.

The courts, too, have recognized a distinction between "railroads" and "street railways". In the case of Annie Funk, administratrix v. The St.Paul City Railway Company,[9] the Minnesota Supreme Court held that a law of Minnesota providing that every railroad in this state shall be liable for damages sustained by an agent or servant by reason of the negligence of any other agent or servant was not applicable to a street railway corporation.[10] The Court took into consideration the intended meaning of the word "railroad" when the law was passed. Following the same course of reasoning there could have been little thought of street railways when the law of 1866 was passed, for there were no street railways in the state at the time. In a later case, State v. Duluth Street Railway Company, the question whether a certain tax applying to railroad companies applied also to street railways was raised.[11] The Minnesota Supreme Court held that the Duluth Street Railway Company was not a "railroad company", within the meaning of the General Statutes of 1894, sec.1669.

the preference of priority of such loans, shall not be deemed interest within the meaning of section I of chapter 23 of the General Statutes. Any such association is authorized and empowered to purchase at any sheriff's or judicial sale, or any other sale, public or private, any real estate, upon which such association may have or hold any mortgage, judgement, lien, or other incumbrance, or in which such association may have an interest, and the real estate so purchased, to sell, convey, lease, or mortgage at pleasure, to any person or persons whatsoever."

Sec.100. (47, as amended by act of Feb.27,1873.)

"The shares shall not be less than $10 nor more than $50, except the capital stock of mutual, loan and building associations may be divided into shares of $200."

9. 61 Minnesota, 435 (1895.)
10. General Statutes of Minnesota, 1894, section 2701.
11. 76 Minnesota, 96 (1899).

However, the intentions of the Minneapolis Street Railway Company, at the time of its organization, were to incorporate for fifty years. This greatly favored the company when the matter was brought into court for decision. The articles of incorporation provided that the business of the company would be to construct and operate street railways in the streets and highways of the city of Minneapolis and its suburbs, in the County of Hennepin. The time of commencement of the corporation was the first day of July,1873, and the period of its continuation was to be fifty years thereafter. The number of shares of capital stock was to be twenty five hundred of $100 each.

The state accepted these articles of incorporation, and thereby practically acknowledged the right of the company to organize under title I,chapter 34, of the General Laws of 1866. Section 47 of title II,chapter 34, General Laws of 1866, as amended by the laws of 1873, provides that the amount of capital stock in every such corporation shall in no case be less than $10,000. nor more than $500,000., and that it shall be divided into shares of fifty dollars each. The shares of the Minneapolis Street Railway Company are of $100. each, which value is permissable only under title I.

On Feb.15,1907, the company amended its articles of incorporation so that a renewal of the charter would take effect on the first day of July,1923, and continue for the further period of thirteen years and eight months after that date.[12] During the same year,when the six-for-a-quarter ordinance was attacked by the company in the Circuit Court, the Court in order to determine the validity of the ordinance, first had to decide upon the term of the franchise.[13]

12.Amendment to the Articles of Incorporation.

The suit was brought by the company itself to restrain the publication of the six-for-a-quarter ordinance, but the real contention of the company was that the term of its charter had been extended to 1937 by the amendment of Feb.,1907, and that its franchise was likewise extended to that date. The bill of complaint was so framed that the company could claim that its charter runs until 1923 or 1937. The bill alleged that the company was originally organized for a term of fifty years from July 1,1873, and that it had been since legally extended to 1937. If the courts upheld such a contention, the company would virtually have a perpetual franchise, since the franchise would be automatically extended with every renewal of its charter. The company did contend that it had a perpetual grant for the above reasons.

The Circuit Court held that the company was organized under title I,chapter 34, General Laws of Minnesota for 1866, and although it did not say that the company's franchise extended to 1837,the judgement was so framed as to permit the Street Railway Company to claim later that its contract rights do extend and are exclusively determined by the judgement to extend to July 1,1937. The following sentence is quoted from the decision of the Court:" During the terms of the complainant's charter as alleged in said amended bill ,(bill of complaint) the complainant is entitled to collect five cents for each passenger riding upon its cars as provided in said ordinance of July 9,1875". It is evident how the company would claim that the "terms of its charter" include both the original term and the extended term, and that such terms do not expire until July 1,1937.

13.The Minneapolis Street Railway Co. v.City of Minneapolis,155 Federal Reporter,989 (1907)

The decision of the Circuit Court was a defeat for the city, and its indefiniteness failed to settle satisfactorily the relation between the company and the city. The city therefore decided to take an appeal to the United States Supreme Court, and the case of the City of Minneapolis v.The Minneapolis Street Railway Company was tried in January,1910.[14] The Supreme Court held that the franchise of 1875 was a contract during the life of the company's charter, a term of fifty years from 1873, when the corporation was organized. The Supreme Court did not expressly state that the franchise could not be extended to 1937, but it threw out a gentle hint that if it was called upon to pass on that question, the decision would be adverse to the company. In affirming the decision of the Circuit Court,the Supreme Court included the following statement:" The decree as it stands might be construed as establishing a contract to endure until March,1937. All that was necessary to adjudge was that the company, by virtue of the ordinance of July 9,1875, as amended in July,1879, constituted a valid contract for the term of fifty years from July 1, 1873."

The franchise of 1873 provides that the City Council shall have the power to regulate fares after a period of five years and every five years thereafter;secondly that the fare over one continuous line shall not be reduced below five cents. What shall be a continuous line may be designated by the City Council, but the Council shall not designate any such continuous line to be more than three miles in length.

The first objections to the regulation of fares came from the company in 1887 when the City Council passed an ordinance providing

14. 215 U.S., 417 (1909).

for the issue of transfers.[15] The ordinance required the company to place conductors on every car, and transfers were to be issued to all persons desiring them. The company was to permit the transfer of any passenger from any point in the city to the crossing of Washington and Hennepin Avenues on any car that might cross either of the avenues in different directions. The ordinance was to apply to the Hennepin Avenue, Lyndale Avenue, and Lake Street Lines. The terminus of the Lake Street line was, at that time, between Washington Avenue and Third Street.

Mr.Lowery, then president of the Minneapolis Street Railway Company, petitioned the City Council to be released from the operation of the Ordinance. He contended that it imposed too heavy a burden upon the company. The City Council solicited the City Attorney's opinion concerning the validity of the ordinance.[16] Attorney Segraves Smith held that the ordinance of 1875 was a contract between the city and the company, and that the transfer ordinance would impair the obligation of contract. He declared that the transfer ordinance was void, and therefore could not be enforced. Attorney Smith cited the case of Nash v. Lowery[17], which had just been decided, to show that there was a contract between the city and the company, but his opinion was based chiefly upon a decision of the New York Supreme Court in the case of the Brooklyn Crosstown Railway Company v. City of Brooklyn, which was decided in 1885.[18] In that case the City Council of Brooklyn passed an ordinance providing that no street car should be operated without a conductor.

15.Council Proceedings,1887,p.218.
16.Ibid,1887-1888,pp.719-720.
17. 37 Minnesota,261 (1887).
18. New York Supreme Court Reports,Hun.37,413,(1885).

The company brought the matter to the courts, claiming a violation of contract. It claimed that the city had no power to pass such an ordinance. The street railway company had a charter from the legislature, and the court held that since that body had not given the power to regulate street railways to the City Council, an ordinance requiring that the company place conductors on all its cars was void.

Smith stated that the courts could compel a transfer where the continuous lines did not exceed three miles, but nothing could be gained by such a decision, for many of the lines extended beyond that distance. It was thought that such a decision might give the company the right to collect two fares on a line more than three miles in length. Smith therefore suggested that the city try to make the best possible arrangements with the company without attempting to enforce the ordinance.

In 1890 the company applied to the City Council for permission to transform its system from a horse railway to one operated by electric power. An ordinance granting such permission was passed.[19] This ordinance also provided for the issue of transfers at the intersection of Washington and Hennepin Avenues. Whenever the lines of the company did not connect at Washington and Hennepin Avenues, transfers were to be given at points nearest the crossing of the two avenues where such lines connected with a line reaching the junction point at Washington and Hennepin. The ordinance was granted upon the express condition that the company would pay an annual license tax of $25. per car for the average number of cars operated. The ordinance was accepted, and therefore all its provisions became binding.

19. Council Proceedings, 1890, p. 547.

upon the company.

The transfer provision of the ordinance of 1890 did not prove very satisfactory because the passengers had to come to the transfer points near the center of the city in order to obtain and use their transfers. The result was that many preferred to pay two fares rather than use a transfer. To remedy this situation the City Council passed another transfer ordinance in April, 1892.[20] This ordinance provided for the issue of transfer checks to travellers on all lines in the city at all junctions and intersections made by the company's lines, as they then existed or might thereafter be established. Had the company accepted this system of transfers, it would have remedied the situation, but the company objected.

In November of the same year the City Council passed a third transfer ordinance, this time amending the ordinance of 1890 which gave the company the right to operate its railways by electricity, and which also provided for the issue of transfers.[21] The purpose of the amendment was to obtain a more convenient system of transfers than was used by the company. The ordinance was not as exacting as the one passed in April. It provided for three additional transfer points, and for the establishment of a transfer depot at the chief point of transfer which was to be located on Hennepin Avenue between the Union depot and Washington Avenue. The three additional transfer points were to be at the corner of Cedar and Washington Avenues, Twentieth Avenue North and Washington, and at Second Street Northeast and Central Avenue. This ordinance was accepted by the company in January, 1893,[22] but in the meantime the City Council had again

20. Ibid, 1892, p. 168
21. Ibid, 1892, p. 668.
22. Ibid, 1893, p. 18.

amended the ordinance of 1890.[23] The amendment was very similar to the amendment passed in November, but it provided for five additional transfer points instead of three, and that the transfer depot should be in operation on the first of May,1893. The passengers were to be carried to the end of any intersecting line for one fare of five cents.

In July,1893, the City Council passed a fourth transfer ordinance amending the ordinance of September 19,1890.[24] The previous transfer ordinances were declared to be unreasonable and burdensome to the public. No transfers were issued to parallel lines, and they could be obtained only at a few central points in the heart of the city, to and from which it was necessary to travel in order to obtain a transfer to be used at outlying points. Under such a system most passengers prefered to pay another fare rather than to incurr the inconvenience and loss of time. The ordinance of July,1893, required the issue of transfers to all passengers who desired them, and the transfer entitled the traveler to a continuous passage on any line intersected, joined, or connected with, and where the lines did not intersect or connect, transfers were to be issued to other lines at a point where the cars most nearly approached the intersection of Washington and Hennepin Avenues.

With the passage of the transfer ordinances was raised the question of the power of the City Council to regulate fares.During the consideration of the transfer ordinances by the City Council, President Lowery of the Street Railway Company was asked to appear

23. Ibid,1892,p.713.
24. Ibid,1893,p.468.

before the Council Committee on Street Railroads. President Lowery informed the committee that previous engagements prevented him from complying with the request. But, in a letter to the committee, he stated that it would be useless for a representative of the Street Railway Company to take up the committee's time in discussing the proposed transfer ordinance.[25] He informed the committee that the company would in the future, as it had in the past, keep all its agreements with the city, including the transfer clause in its ordinance,[26] and he hoped that the city would do the same. If the existing system of transfers was inadequate, he said the company would be glad if the committee would aid the company by suggesting a better system to accomodate the public in its legitimate use, and at the same time protect the company from the wholesale frauds daily practised upon it.

When the transfer ordinance of 1892 was passed, the company refused to recognize the right of the City Council to pass such an act. The company denied the constitutionality of the ordinance. It claimed perpetual contract rights to collect five cent fares, under its statutory right to renew its existence from time to time. It claimed that the transfer ordinance regulated fares so far as to reduce them below five cents, thus violating the contract of 1875. The city contended that the contract of 1875 was abandoned by mutual consent when the company accepted the ordinance of Sept.19,1890, and that the company was operating under a "permit" not amounting to a contract; and that if not abandoned altogether, the original contract was in 1890 modified by mutual consent so as to subject the company

25. Ibid, 1892, p.88.
26. The reference is to the transfer clause in the ordinance of Sept. 19, 1890.

to the regulatory powers of the City Council with reference to fares as well as in other respects. The Street Railway Company, on the other hand, claimed that the various ordinances and acts, subsequent to the franchise, were a modification and not an abandonment of it, and that the company never waived or lost its right to collect five cent fares.

The contentions of the city that the contract was abandoned by the acceptance of the ordinance of 1890 were rather weak. There seems to have been no mention of the question of fares when the ordinace of 1890 was passed, and the text of the ordinance itself would seem to indicate that only a midification of the ordinance of 1875 was intended. Section 8 of the ordinance reads as follows:"In the construction, maintenance, and operation of said lines of Street Railway Company, its successors, and assigns shall at all times be subject to all the conditioms and limitations and other provisions of an ordinance of July 17th,1875, as the same has been amended and is now in force, or hereafter adopted, so far as applicable." This would seem to indicate that there were no intentions to abandon any of the provisions of the ordinance of 1875, outside of the changes that were specifically agreed upon in the ordinance of 1890.

It was the general legal opinion at the time that the Minneapolis Street Railway Company had a valid contract with the city which rendered an ordinance ineffectual which undertook to regulate its business, and which was not assented to and accepted by the company. Two city attorneys had pronounced the transfer ordinance unconstitutional and void. Segraves Smith declared a transfer ordinance void in 1887, and in 1891 City Attorney Robert D.Russel, in an opinion on transfer ordinances, declared that they were invalid and could

not be enforced.[27] But there was one man who held a different opinion, and who maintained that the transfer ordinance was valid and enforcable as passed.[28] That man was Judge Brooks, special attorney for the city, who was again to figure so prominently in the gas controversy in 1910.

The contentions of the company and the city in regard to the regulation of fares have been submitted to the courts three times: the first time to the District Court of Hennepin Councty in 1894, the second time to the Circuit Court in 1907, and the last time to the United States Supreme Court in 1909.

In 1894 the transfer ordinance case came up before the District Court of Hennepin County, where Judge Smith then presided.[29] Judge Brooks defended the case for the city, and litigation showed that he was right in spite of the general legal opinion to the contrary. Judge Smith, who himself once thought the transfer ordinance to be invalid, sustained the city, but before judgement was entered, the company offered to put the ordinance into operation, provided the action was dismissed without judgement. The city accepted the company's proposal, and the case was dismissed. Had judgement been rendered upon Judge Smith's decision and not reversed, the question determined by him would have been settled beyond further investigation.

The dispute over the power of the City Council to regulate the rate of fare was again renewed in 1907, when the City Council passed

27. Council Proceedings,1892,p.86.
28. Minneapolis Times,Oct.23,1894.
29. The Minneapolis Journal,March 7,1909.The case was dismissed without judgement, and no record of the case was kept.

the six-for-a-quarter ordinance.[30] This ordinance provided for the issue of six tickets for a quarter. Before the ordinance was published the company applied to the Circuit Court to get an injunstion to restrain its publication.[31] The company claimed that an ordinance reducing fares below five cents was a violation of the contract of 1875, and it was on that ground that it asked the court to enjoin the publication, which would put the ordinance into effect.The city, on the other hand, contended that the ordinance of 1890 was a mere "permit" or license to use electric power in the operation of the street railways, and was therefore subject to amendment,modification, or repeal. The ordinance of 1890 had never been confirmed by the legislature , and from court decisions in regard to the validity of the ordinance of 1875, it must be concluded that the City Council had no power, under its charter, to enter into a contract with the Street Railway Company so as to bind the people of Minneapolis for any definite period.The city further claimed that the ordinance was still an incompleted piece of legislation, as it had not been published, and that the court ought not to restrain legislative bodies by issuing the injunction asked for. Judge Lochren, although he confessed that he did not know of any case where the action of the legislative body was similarly restrained, held that the ordinance was completed.

As has already been stated,Judge Lochren held that the company was organized under title I,chapter 34,General Laws of Minnesota for 1866, and thatthe ordinance of 1890 had no reference to fares. A

30.This ordinance was not published, for the city was restrained by court action from publishing it.A good account of the ordinance is found in the case of The Minneapolis Street Railway Company v. Minneapolis,155 Federal Reporter,989 (1907).

change of motive power by the company after a number of years,with the consent of the Council, was held not to terminate the contract made by the ordinance of 1875 so as to give the city the right to reduce fares. The provision concerning the reduction of fares below five cents was held not to be abbrogated by the subsequent ordinance providing that " in the construction, maintenance, and operation" of its lines the company should be subject to all the ordinances then in force or which might be enacted in the future.

The decision of Judge Lochren was a complete defeat for the city. He not only held the ordinance of 1875 to be a contract to operate during the term of the company's charter, but he also held the ordinance of 1890 to be a contract, contrary to the general belief of the attorneys at the time. An appeal to the United States Supreme Court was immediately taken from Judge Lochren's decision. The company asked that the appeal be dismissed so that Judge Lochren's decision might become final, and put the company's position beyond further question in regard to the rate of fare and the term of its franchise. Judge W.A.Lancaster, special attorney for the city,urged the City Council to continue the suit on the ground that a withdrawal of the appeal would be an abandonment of the claim of the city to absolute power of regulation and control. Judge Lochren had issued an injunction forever enjoining the publication of the six-for-a-quarter ordinance. There was no question that the company would claim that its contract rights could be extended by an extension of its charter, and thus without a better decision from the Supreme Court, the city might never obtain the right to reduce fares below five cents. The city had everything to lose and nothing to gain by a withdrawal of the appeal, so it was finally decided to await the decision of th

United States Supreme Court in the matter.

In the meantime, while the six-for-a-quarter case was awaiting a hearing in the Supreme Court, public utility interests were busy in the 1909 session of the legislature. Public opinion had become awakened on franchise matters, and the public service corporations, realizing this, decided to get away from the control of the municipal authorities. To accomplish this an attempt was made to put two bills through the legislature.[8] A state public utilities bill was introduced which provided that the State Railroad and Warehouse Commission should have sole authority over public service corporations.Public opinion kept this bill from passing, and so a Street Railway bill, H.F.number 266, was introduced by W.A.Nolan, of Grand Meadow.

The"Nolan bill" was purely in the interests of the Minneapolis Street Railway Company. The bill proposed to give the Railroad and Warehouse Commission "all power and authority now vested by law,ordinance, charter, contract or otherwise in the common councils or other governing bodies of any city or municipality in this state over street railways and street railway companies." Such a bill would have taken from the city of Minneapolis every means of controlling the Street Railway Company,its equipment and service. The bill itself was bad enough , but the "wood chuck" was to be found in an amendment to the bill. The amendment is as follows:" But nothing herein contained shall authorize the modification or impairment of any duty, obligation, right or privilege imposed by or contained in any law, contract,obligation or any ordinance or resolution heretofore adopted".

31.Minneapolis Street Railway Company v City of Minneapolis,155 Federal Reporter,989 (1907).
8. Haines,Lynn,The Minnesota Legislature of 1909, Chapter X.

This was an outrageous piece of attempted legislation. Judge Lancaster and other lawyers who examined the amendment declared that if it became a law, it would not only prevent the enforcement of the six-for-a-quarter ordinance, should it be sustained by the United States Supreme Court, but it would also remove from both the City Council and the Railroad and Warehouse Commission the power to in any way control or direct the operations of the Street Railway Company. This was a clever maneuver to forestall the action of the United States Supreme Court. The law would become effective before the court's decisions, and then there would be no object in continuing the suit. Public opinion, however, was very strong against the bill and it was defeated.

The case of the Minneapolis Street Railway Company v. City of Minneapolis was decided in January, 1910.[32] The Supreme Court held that the six-for-a-quarter ordinance was void under the contract clause of the consitution, and the acceptance by the company of a municipal ordinance requiring it to issue transfers does not abbrogate an existing contract right, secured against impairment by subsequent legislation. The ordinance of 1890 provided for the issue of transfer checks, but that is as far as it dealt with the matter of fares. The court was of the opinion that there was no intention to change the rate of fare at the time of the negotiations.The ordinance of 1890 was held not to abrogate the contract of 1875. The use of the words "maintenance,construction, and operation" were construed not to include fares.

This decision settled beyond doubt the right of the company to charge fares of five cents during the term of its charter, but it

32. 215 U.S.,417 (1909).

also put an end to the claims of the company for a perpetual franchise, and to a perpetual right to collect five cent fares. This decision cleared up the relation of the company and the city under the ordinance of 1875.

The ordinance of 1890, which has already been discussed quite thoroughly, also required the payment of a $25 license tax to the city for the average number of cars operated by the company. The company has always paid this tax, but the number of cars has been based on the company's own statements.[33] The company considers a day of 18 hours running time, and on that basis it computes the average number of cars operated per day and per year. In the year 1911, the company paid a tax of $7,500. which would be a tax on 300 cars, which is less than one half of the total number of cars operated by the company.[34]

We still have to consider one of the most important provisions in the Minneapolis Street Railway franchise, and that is in regard to extensions. The franchise reserves to the City Council the right to designate extensions when demanded by public necessities. The City Council has the right to bring in competing companies to operate street railway lines in the streets where the Minneapolis Street Railway Company refuses to make extensions. The City Council has many times exercised this reserved power to order extensions, but these designations have not generally been taken seriously by the company. The provision is regarded as of no practical value, but there is a clause which makes it stronger than it appears. The clause provides that when the city grants rights to other companies to operate

33. City Comptroller.
34. Council Proceedings, 1911, p. 60.

street railroads in the streets of Minneapolis, the Minneapolis Street Railway Company, and any other street railway company which the City Council may charter, shall each allow the other to connect and jointly use such portions of the track belonging to each as the convenience of the traveling public may require, upon such equitable terms as may be agreed upon by the two companies, or as may be determined by the District Court of Hennepin County. This provision, which does not apply to interurban and suburban lines, might have been used effectively to obtain better service in the early years of the company. At the time the franchise was granted conditions were very different from what they are to-day, and the remedy of competition, during the time of horse cars, was not as inadequate as it is now. At that time no great expenditure of money would have been necessary to start a competing company.

Previous to 1911, when the City Council desired an extension, it would pass a resolution authorizing the company to build the desired line. In 1911, City Attorney Fish gave his opinion that the company was bound by its contract as a public service corporation to furnish adequate service to the people of the city.[35] The company had been ordered to make more than six miles of extensions during the previous year, but none were made. After City Attorney Fish declared that reasonable extensions could be enforced by court action, the City Council adopted a more careful form of order calling for extensions, and authorized the City Attorney to take a test case to the courts. The resolutions of 1911 contained a declaration of public necessity for the particular line named, and stated a definite time

35. The Minneapolis Journal, 1911, 1-24-1-7.

within which the designated line had to be finished.

The City Council ordered certain extensions using the new form of resolution. The company then appealed to the Circuit Court, claiming a violation of contract and deprivation of property without due process of law. It sought to enjoin the City Council from making the new orders, but the Federal Court held that it was not a case for injunctions.[36] The court declared that the ordinance which the company sought to enjoin was in strict conformity with the company's franchise, and that there was no violation of contract nor deprivation of property without due process of law. It said that in designating extensions a reasonable time limit must be fixed to give them validity. This was not done in the ordinances prior to 1911, and for that reason they were declared null and void, and inoperative as far as imposing any duty upon the company. The court declared that the only remedy the city had to compel extensions was to bring in a competing company if the local company refused to build the designated lines.

In this same case the court also passed upon the validity of a service ordinance. The court held that an ordinance limiting the number of people to seventy-five per car was valid, and another ordinance providing apenalty for violating the same was also held to be valid. The service ordinance was weak in that it provided that the fine need not be paid when another car is following within 300 feet with less than seventy-five persons. Nevertheless the decision showed that the city was not absolutely without power to regulate the service of the company.

36. The Minneapolis Street Railway Company v. City of Minneapolis, 189 Federal Reporter, 445 (1911).

In 1916 the city again considered taking the question of compelling extensions to the courts. The City Council passed a resolution calling for an extension along Franklin Avenue to be completed within a definite time. The company seemed to take no action, and there was some talk in a council committee of passing a resolution empowering the City Attorney to take the matter to the courts to compel the extension. The company, however, started work on the extension a day or two before the time expired and that settled the matter. The company either feared an adverse decision, or it did not wish to antagonize the public at this inopportune time when it is asking for a new franchise.

This completes a brief survey of the Minneapolis Street Railway Company. Its franchise will expire in 1923, and unless a new one is granted béfore that date, things will remain in a status quo up to that time.The company will continue to charge a fare of five cents, and will make extensions when it sees fit to do so unless the city can secure a decision from the courts compelling it to build required lines.We still have to consider the "Enabling Act", and the valuation of the company's property,but these two subjects can be taken up more logically in the last part of the chapter.

B. THE ST.PAUL CITY RAILWAY COMPANY.

The Minneapolis Street Railway Company is associated with the St.Paul City Railway Company through the Twin City Rapid Transit holding company. For that reason it is adviesable to sketch briefly the history of the St.Paul Company.

The first franchise authorizing the operation of street railways in St.Paul was granted in 1872.[37] It was for the operation of horse railways in certain streets only. The grant did not have a time limit, but the city reserved the right of purchase at the end of ten years. Like the Minneapolis grant it was made by the City Council without express authority from the city charter. The grant, however, was ratified by an act of the legislature,[38] and when its validity was attacked in the courts, it was held to be a valid grant because of the legislative confirmation.[39] In 1877 the St.Paul City Railway Company went bankrupt, and its property was sold to Thomas Cochran,Jr., by the sheriff of Ramsey County. In October,1877, a new organization was formed at Cochran's proposal, and the name of the new corporation was to be the St.Paul City Railway Company. The corporation was formed pursuant to an act of the legislature approved March 8,1876, entitled," an act to amend title I,chapter 34, of the General statutes relating to corporations".[40] This act gives the company the right to organize for fifty years.

In 1882 the city did not wish to exercise its right of purchase

37.St.Paul City Ordinances,1907,p.817.
38.Special Laws of Minnesota,1872,chapter 112.
39.Nash v. Lowery,37 Minnesota,261 (1887).
40.Articles of Incorporation,St.Paul City Railway Company.

as provided fot in the franchise of 1872. The company desired to have the city relinquish its right of purchase on the ground that it wished to make extensions, and that unless the city relinquished its rights, it would be difficult to obtain the necessary funds. The City Council of St.Paul therefore passed an ordinance in 1882 relinquishing its right of purchase as provided in the original grant.[41] All the other privileges of the ordinance of 1872 were continued during the life of the company's charter.

In 1889 when the company was about to transform its system to one operated by electric power, it asked for valuable rights and privileges. The city of St.Paul was far-sighted enough to see that the original grant did not protect the growing city. As a result a new franchise ordinance to continue for a period of fifty years was granted to the company on Sept.20,1889.[42] The chief advantage that the city derived from the new ordinance was in regard to extensions. The original grant of 1872 had a provision which gave the City Council about the same power over extensions as is allowed by the Minneapolis franchise.Competition was the only remedy to compel extensions.

The ordinance of 1889 provided that the City Council shall,from time to time after January 1,1892, have the power to order the construction and completion by the Railway Company of any new line of railway, or the extension of any existing or future lines upon any or all streets in the city of St.Paul upon which sewers shall have been constructed, and all lines or extensions so ordered must be in

41.St.Paul City Ordinances,1907,p.822.
42.City Ordinances of St.Paul,number 1227.

operation within one year after such orders are made. The following section of the ordinance provides that if the railway company shall fail to comply with any or all requirements of the ordinance, then all the rights andprivileges granted shall be forfeited to the city. The power of the city to compel extensions has been passed upon by the courts with decisions very favorable to the city. In the case of the City of St.Paul v.The St.Paul City Railway Company, the Minnesota Supreme Court held that an extension could be compelled by a writ of mandamus.[43] In this instance the company refused to make an extension ordered by the City Council, claiming that there was no public necessity for the proposed line. The District Court of Ramsey County awarded a peremptory writ of mandamus to compel the company to construct and operate the proposed street railway, from which the company appealed. The Supreme Court decided that a writ of mandamus was proper to compel the company to make the extension. The question whether public interest or necessity requires the construction of any particular line in one resting with the discretion of the Council, and its action cannot be interfered with unless it is an arbitrary one. The court also added that after accepting the ordinance of 1889, the Railway Company no longer had the option to build the required extensions or forfeit its franchise. The ordinance after its acceptance by the company became a valid contract between the city and the company, and the latter assumed the legal obligation to comply with the orders. Thus, while Minneapolis has only the remedy of competition to compel extensions, St.Paul has contractual authority upheld by the highest court.

43. 117 Minnesota,316 (1912).

The ordinance of September 20,1889, also provided for an annual license fee of $10 per car. This provision of the ordinance is applied much more effectively than in Minneapolis. According to an ordinance of 1910, regulating the licensing of cars, the company must pay, before the 10 th. of January each year, the license fee as required by the ordinance of 1889, and it must pay the license fee upon all cars added to the service from time to time.[44] Upon payment of the license fee the company receives license tags which are numbered according to the number of the car, and which must be displayed on every car.

44. Council Proceedings of St.Paul,1911,p.1.

C. SUBURBAN AND INTERURBAN RAILWAYS.

The street railway problem of a large and growing city cannot be solved without taking into consideration interurban and suburban lines. The rights of suburban companies must be carefully considered, for a good suburban service is absolutely necessary to a large city. All suburban lines should be given easy access to the heart of the city, and in granting a franchise to a street railway company, in a city like Minneapolis, the relation of suburban companies should be carefully worked out.

The first suburban railway company to operate in Minneapolis was the Minneapolis, Lyndale and Minnetonka Railway Company. The corporation was organized in 1881 to operate a steam railroad from a point within or to a point near the city limits of Minneapolis, to Lake Minnetonka via Lyndale Avenue, Lake Calhoun, and Lake Harriet, with a branch line to Fort Snelling.[45] This company owned its right of way and had no franchise from the city. The corporation, however, soon became heavily indebted, and in 1887 the company was taken over by the Minneapolis Street Railway Company. The corporation still continues to exist as a separate organization, controlled by the Minneapolis Street Railway Company, and the Minneapolis and StPaul Suburban Railway Company.

In 1889 the Minneapolis and St.Paul Suburban Railway Company was incorporated. The general nature of the company's business was to purchase, lease, build, own and operate suburban street rail-

45. Articles of Incorporation.

ways, extending from the city limits of the cities of St.Paul and Minneapolis to and into the outlying cities, towns and villages, within the state of Minnesota. The company was organized for thirty years, commencing on the 15th of June, 1899, with a capital stock of $300,000 to be paid in as the directors might require.[46] The most prominent persons in this corporation were Thomas Lowery and C.G. Goodrich, both closely identified with the Minneapolis Street Railway Company, and the Twin City Rapid Transit Company. It is atonce evident that the suburban company was to be closely connected with the Minneapolis Street Railway Company.

In 1905 the Minneapolis Street Railway Company transferred to the Minneapolis and St.Paul Suburban Railway Company the lease between the Minneapolis, Lyndale and Minnetonka Railway Company and the Minneapolis Street Railway Company, covering the right of way from Thirty-first Street, in the city of Minneapolis, to Lake Harriet and Hopkins.[47] The Minneapolis Street Railway Company was to be permitted to use a part of the above mentioned right of way from Thirty-First Street to Lake Harriet on payment of certain amounts to be agreed upon definitely later, and the Minneapolis Street Railway Company was given the right and authority to run over Hennepin Avenue and other necessary streets in Minneapolis in consideration of which the Minneapolis and St.Paul suburban Railway Company was to pay to the Minneapolis Street Railway Company the sum of five cents for each passenger riding in the cars of the suburban company over the lines mentioned above. The Minneapolis and St.Paul Suburban Railway Company further agreed to pay and take care of certain

46. Articles of Incorporation of the Minneapolis & St.Paul Suburban Railway Company, 1899.

proportion of the bonded and mortgage outstanding indebtedness of the Minneapolis,Lyndale, and Minnetonka Railway Company.

In 1910 another Minneapolis and St.Paul suburban railway company was incorporated,by practically the same men that incorporated the company in 1905, so as to extend greatly its operations. The general nature of its business was to maintain and operate railroads in the State of Minnesota, and make extensions into other states as common carriers of passengers,express and freight.

The most important line the company proposed to acquire and operate was a line from a central point in St.Paul to a central point in Minneapolis. The cars were to be operated over its own lines or over lines leased from other companies operating in the two cities. There were many proposed lines from the centers of Minneapolis and St.Paul into outlying districts in the company's charter, but the company was organized particularly to acquire,own and operate all the railway lines,property, and franchises of the Minneapolis and St.Paul Suburban Railway Company and of the Minneapolis,Lyndale, and Minnetonka Railway Company. The principal place of business of the corporation was to be in Minneapolis.The time of its commencement was to be March 10,1910, and the period of its continuation 999 years.[48]

At present the interurban service between St.Paul and Minneapolis is furnished jointly by the St.Paul City Railway Company and the Minneapolis Street Railway Company. The St.Paul Company runs its cars into Minneapolis over the tracks of the Minneapolis Company, and the Minneapolis Company does likewise in St.Paul.When a car of the local company passes the city limits into St.Paul, the employees are under control and in the service of the St.Paul Company, and

all fares collected in St.Paul go to that company. Likewise when a car of the St.Paul Company crosses the city limits into Minneapolis, the employees pass under the control of the local company, and the fares collected within Minneapolis go to the local company.

I was told that after several years of bookkeeping the results were that about as much was collected by the St.Paul company in Minneapolis as was collected by the Minneapolis company in St.Paul. This is supposed to be due to the fact that the cars of the local company cover more territory in the smaller city of St.Paul, than the St.Paul Company's cars cover in Minneapolis. In order to eliminate bookkeeping the two companies agreed to divide the earnings from interurban service on a fifty per cent basis.

The Minneapolis Street Railway franchise makes no provision for the joint use of tracks by suburban companies, and as a consequence there is no way of compelling the company to allow the use of its tracks by suburban companies to enter the city. Sometimes suburban companies are able to make satisfactory agreements with the Minneapolis Street Railway Company, but in other cases the only alternative is to grant the suburban company the right to build its own lines into the city. This requires the giving up of additional streets, and the cost of acquiring terminals is sometimes so great that it imposes a very heavy burden upon the suburban company.

At present there are two suburban companies which have agreements with the Minneapolis Street Railway Company for the joint use of tracks. In 1914 the Minneapolis and St.Paul Suburban Railway

47.Agreement between the two companies filed with Railroad and Warehouse Commission.
48.Articles of Incorporation of the Minneapolis and St.Paul Suburban Railway Company,1910.

Company entered into a contract with the Minneapolis Street Railway Company and the St.Paul City Railway Company for the joint use of certain tracks.[49] The Minneapolis and St.Paul Suburban Railway Company owns a right-of-way from Thirty-first Street, in the City of Minneapolis, to Hopkins, leased by the first party, and from Hopkins Junction to Lake Minnetonka. The Minneapolis and St.Paul Suburban Railway Company also has a franchise and street railway in the village of Columbia Heights over which the Minneapolis Street Railway Company runs its cars. It is agreed that the second and third parties receive and be entitled to all fares from incoming and outgoing passengers from and to all points at which the cars are received and delivered by them to the Suburban Company.The Suburban Company is entitled to all fares from passengers outside of certain designated points at which the control of the cars passes from one company to the other.

In June,1915, the Anoka and Cayuna Range Railway Company entered into a contract with the Minneapolis Street Railway Company for the joint use of tracts when entering the city.[50] By the agreement the Suburban Company pays five cents for each passenger transported wholly within the city limits, and three cents for each interurban passenger transported partly over the company's lines. It is the duty of the Suburban Company to construct lines within the city to reach the Minneapolis Company's lines and to maintain them, with the Minneapolis Street Railway Company having the option of purchasing

49. Agreement filed with the Railroad and Warehouse Commission.
50. From a contract filed with the Railroad and Warehouse Commission.

as much of the company's line as is within the city. The power and light within the city are furnished by the Minneapolis Company, and the cars of the Suburban Company are governed by the operating rules of the Minneapolis Company. In case of disagreement between the two companies, disputes are to be settled by arbitration, one arbitrator to be chosen by each party, and the third by these two. The decision of the arbitrators is to be final.

There are two other suburban railroad companies which have entered the city lately. The experiences of both have been sad, partly for the reason that the cost of entering the city and establishing terminals was beyond their means. Had these companies been able to make reasonably satisfactory agreements with the Minneapolis Street Railway Company for the joint use of tracks, they might have kept out of the receiver's hands. The two companies referred to above are the Electric Short Line Railway Company, and the Minneapolis, St.Paul, Rochester and Dubuque Electric Traction Company. The latter is sometimes called the Dan Patch line.

The Electric Short Line Company was granted franchise rights in certain streets in 1910, in order that it might enter the city.[51] The cars were to be propelled either by gasolene or electricity. The franchise contained no restrictions or regulations whatever. No time limit was stated, and the city was guaranteed no benefits for the privileges granted. The value of these privileges, for which the company paid nothing, will be appreciated when we read the history of the Minneapolis, St.Paul, Rochester & Dubuque Electric Traction Company. The City Council made a mistake when it granted a private

51 . Council Proceedings, 1910, p.771.

right of way to the Electric Short Line Company. The grant should have been of such a nature that several suburban railways could use the same right of way. As it is the city simply put the control of certain streets in the hands of the company.

In the Spring of 1913 the Electric Short Line Company was cramped for space for terminal purposes within the city. The original grant provided that no more than four cars at any one time should be permitted on the railroad nor at intersections of streets from Lyndale Avenue North to Seventh Street North. To secure additional space for terminal purposes, the company asked the City Council to amend its franchise. The City Council then passed an amendment which permitted the company to leave twelve cars on the railroad on or at intersections of streets from Lyndale Avenue North to Seventh Street North. The amendment itself does not state that the privileges were granted for terminal purposes, but in the acceptance of the amendment, the company makes it very clear that the privileges and concessions, including various street and alley vacations and changes, are for such purposes.[52]

In December, 1913, the company desired certain changes in the grade of Holden Street. The property rights of persons owning lots along the way were to be affected by the proposed changes. There were vigorous protests from the owners, but the City Council passed an ordinance amending the company's franchise as requested.[53] To show that the City Council expected trouble from citizens who would be affected by the changes of the grade I will quote a paragraph from the amendment making the change.

"The said company shall assume and pay all damages resulting to

52. Acceptance of Amendment, Council Proceedings, 1913, p.503.
53. Council Proceedings, 1913, p.1351.

property and property owners by reason of such change and establishment of the grade of said Holden Street, and shall indemnify, save harmless, and defend the city of Minneapolis from and against any or all claims,demands, and causes ofaction against said city by reason of such change of grade of said Holden Street, and appear in and defend any and all suits,actions, and proceedings brought against said city to recover any such claims, demands, or causes of action, and pay any and all costs and disbursements necessary for the defense of any suits,actions and proceedings, and pay any and all judgements recovered against the city in any suits, actions , or proceedings, and said company shall pay to and reimburse said city of Minneapolis all the necessary cost and expense, if any, of grading up of certain lots named".

The Minneapolis,St.Paul,Rochester and Dubuque Electric Traction Company, a suburban company operating inthis part of the state,originally planned to operate electric railways and use the tracks of the Minneapolis Street Railway Company in entering the city. The Minneapolis Street Railway Company, however, refused the use of its tracks, and the company made arrangements to come into the city over the Electric Short Line Railway Company's right of way.[54] The agreement with the Electric Short Line Company was very unreasonable,and it was partly for that reason that the company went bankrupt. The Electric Short Line Railway Company, which secured the private right of way from the City Council, was now ready to use every opportunity to capitalize the franchise. It gave an easement to the Minneapolis, St.Paul,Rochester and Dubuque Electric Traction Company over its

54.From an agreement filed with the Railroad and Warehouse Commission.

right of way for the construction and operation of a railroad, employing steam, electric, or other motive power, upon and over its properties. The properties were then to be enjoyed in common by the Lessor and the Lessee. Furthermore, the Lessee agreed to make certain payments for the privileges granted. The Lessee agreed to pay to the Lessor $2.40 per one round trip per train of the Lessee not exceeding ten cars, and for trains exceeding ten cars an additional three cents per car per mile operated over the tracks. Each power car was to be regarded as two cars for the above purposes. The Lessee further agreed to pay a minimum annual sum of $5,000 for the first year, which payment was to be made as provided above with an annual increase of $1,200. over the next preceeding year in each following year until such annual compensation amounted to $12,000 per year, after which the Lessee guaranteed a minimum annual income of $12,000 as long as the grant shall remain in force and the Lessee or its assigns shall continue to use the property.

Both of the above companies are now in the hands of receivers, and the cost of terminal facilities was not a small factor in putting them there. Experiences of this kind ought to awaken the City to the fact that in order to have a good suburban service, there must be a proper relationship between suburban companies and street railway companies operating within the city.

The Enabling Act of 1915 reserves to the city the right to authorize any suburban railway company to utilize the appliances of the Minneapolis Street Railway Company, and it provides that the franchise shall contain provisions for determining the compensation to be paid for such joint use.

The legislature of 1915 also passed an act to promote the development of suburban railways, and allowing them upon just compensation the joint use of street railway tracks and accesories in cities and villages.[55] This act gives the City Council the power to designate the route to be followed, and the governing body may by a revocable license, or by a franchise duly approved by the electors, in accordance with its charter, permit a suburban railway company, using other than steam power, to enter such city or village for the purpose of carrying passengers,baggage, and light freight. Upon failure of the party owning the tracks and the suburban company to agree upon terms for the joint use of the tracks, the Railroad and Warehouse Commission,upon application of either party or city,shall hold a hearing and fix by an order the rate of compensation;and such an order shall be enforcable by mandamus proceedings in the state courts. The suburban company must own and provide its own cars substantially like those of the city railway company, and it must comply with the ordinances and regulatuons of the city which it enters.

55. Session Laws of 1915,Chapter 310,p.448.

## D. THE TWIN CITY RAPID TRANSIT COMPANY.

The street railway situation in Minneapolis is greatly complicated by the fact that the management of the Minneapolis Street Railway Company's property and finances is controlled by a holding company which also controls the St.Paul City Railway Company and the Minneapolis and St.Paul Suburban Railway Company. The Twin City Rapid Transit Company was organized in New Jersey in 1889. It was part of a scheme to finance the St.Paul and Minneapolis street railway systems when they were being transformed from horse systems to electric systems. Thomas Lowery, of the Minneapolis company, was the principal factor in the organization of the holding company.

Since the organization of the Twin City Rapid Transit Company the finances of the Minneapolis and St.Paul companies have not been separated so far as published statements are concerned. Bonds and stocks have been issued jointly, and it is difficult to determine where the money was actually expended.

At the time of the organization of the Twin City Rapid Transit Company, each of the local companies had $5000,000 worth of stock outstanding. The St.Paul City Railway Company and the Minneapolis Street Railway Company were organized with a capital stock of $5,000,000 each. This stock was all issued without receipt of money by either company, and was either given to promoters or to bondholders in connection with bond sales. The bonds were sold at about 85 cents on the dollar, and the proceeds constituted the only receipts of the companies from stocks and bonds.[56]

56. The information on the finances of the company was obtained

Upon organization of the Twin City Rapid Transit Company, the stock of the two local companies was turned in, and $15,000,000. of the Twin City Company's common stock was issued in its place. The two local companies sold additional bonds, and among them a joint issue of $10,000,000., five per cent bonds secured by a joint mortgage. The total bond issues of the two companies at present are in the following form:

| | |
|---|---|
| Minneapolis Street Railway Company, 5 % bonds - - | $5,000,000.00 |
| St.Paul City Railway Co., 6 % bonds - - - - - - - - | 680,000.00 |
| St.Paul City Railway Co., 5 % bonds - - - - - | 3,708,000.00 |
| Joint five per cent bonds - - - - - - - - - - - - - | 10,000,000.00 |
| Total bond issues of the two companies - - - | 19,000,000.00 |

About 1892, the Twin City Rapid Transit Company sold for cash $3,000,000 of 7 per cent preferred stock. The Minneapolis and St.Paul Suburban Railway Company, after its organization, sold $500,000, of five per cent bonds.The Twin City Company also issued $7,000,000 of its common stock which was sold for cash. The properties of these three companies were produced from the proceeds of the $19,888,000 of bonds and the $10,000,000 of stock, and the earnings of operation. How the proceeds of the $10,000,000 joint bonds, the $3,000,000 preferred stock, and the $7,000,000 common stock were divided between the three companies has not been disclosed.

56.(continued). chiefly from a report made by C.J.Rockwood,at a meeting of the Central Franchise Committee, which the writer personally attended on Feb.22,1917. C.J.Rockwood was attorney for the Civic and Commerce Association, and he drew up the "Enabling Act" under which the present negotiations aretaking place.In connection with the work on the"Enabling Act", Mr.Rockwood received the information from the representatives of the company.

The total capitalization of the Twin City Company in 1915 was as follows:

| | |
|---|---|
| Bonds - - - - - - - - - - | $19,888,000. |
| Common stock - - - - - - - | 22,000,000. |
| Preferred stock - - - - | 3,000,000. |
| Total - - - - - - | 44,888,000. |

Interest on all the bonds has always been paid from the date of issue. The dividends at 7 per cent have been paid on the preferred stock from the date of sale. Dividends on common stock, including the $15,000,000 not sold for cash, were paid from 1902 to 1907 at 5 per cent, in 1909 at 5 1/4 per cent and from 1910 to 1915 at 6 per cent.

The present gross income of the Twin City Rapid Transit Company is around $7,000,000. a year, and this will not be less in the future. One of the questions to settle in a new franchise is on what amount shall the Minneapolis Street Railway Company pay returns. Leaving out of consideration the $15,000,000 of common stock issued by the Twin City Company, there were sold $29,888,000 of stocks and bonds of the Twin City company. Now, $500,000 of bonds of the Minneapolis and St.Paul Suburban Railway Company, and $2,599,800 of stock of the same company are included.[57] This would leave $26,788,200 for the St.Paul and Minneapolis systems. St.Paul spent about $3,500,000 on the cable system, an expense that the Minneapolis Company did not have. About $10,000,000 of stocks and bonds also

57. A vote on an amendment to the articles of incorporation in 1915 shows that 25,998 shares of stock were represented. The par value of each share is placed at $100.

went to the St.Paul company. Therefore only about $13,000,000 in stocks and bonds is actually invested in Minneapolis.

The net earnings ~~in Minneapolis~~ have been about twice as great in Minneapolis as in St.Paul. The Minneapolis system has therefore been paying the dividends on the $15,000,000 of promoters' stock. The St.Paul company has hardly been able to maintain itself, while the Minneapolis company has paid dividends on the promoters' stock and besides has built up the system that we have to-day. Mr.Lowery, president of the Twin City Company, according to Mr.Rockwood, stated that the net earnings of the Minneapolis system were $2,300,000, and the net earnings of the St.Paul system $900,000. This problem of finances will necessitate such a franchise as will kepp the Minneapolis system from supporting the St.Paul system.

Mr.Lowery wants a return of $45,000,000 for the whole Twin City Company system. He says that he has no authority to negotiate a franchise for the Minneapolis company on terms that will not maintain the par value of the stocks and bonds of the whole system of the Twin City Rapid Transit Company. This brief survey of the finances pf the Twin City Rapid Transit Company will give some idea of the difficulties that will necessarily arise in determining the value of the Minneapolis Street Railway property.

E. THE ENABLING ACT OF 1915.

The first step for the renewal of the Minneapolis Street Railway franchise was taken by the company itself in January,1915. Mr. Lowery, vice-president of the company, suggested that the City Council ask the legislature to pass a bill which would permit the city and the company to enter into negotiations upon a sound basis. Mr. Lowery was of the opinion that the city had no legal power to enter into negotiations with the company without the consent of the legislature.[58] The company wanted an early franchise so that it could feel safe in making demanded extensions.

About the same time the "Dengre Bill,S.F.97" was introduced in the legislature with the view of an elevated line or express service between St.Paul and Minneapolis. The bill provided that cities of the first class be authorized and empowered to contract with any person or corporation, for the construction and operation of underground or elevated street railways. It also gave City Councils the power to contract with such persons or corporations in regard to the duration of such contracts and rates of toll, fare or charges, and provided for the renewal of any existing contracts which might be deemed expedient or necessary by the contracting parties. The City Attorney was of the opinion that the city could negotiate legally with the Minneapolis Street Railway Company under the bill, but there was much opposition to a franchise renewal and to the bill at this time. Some thoughtthat it was an inopportune time to negotiate a

58.The Minneapolis Journal,1915,1-27.

new franchise, and there was a feeling among others that the Street Railway Company was planning to railroad a franchise through the Council. The bill was denounced in the City Council as dangerous, because it did not fix the time limit for franchises that might be granted, and because it did not provide for a referendum of the franchise to the people. The terms of the bill were general, and the City Council was vested with full powers to grant practically an unlimited franchise. There was nothing to prevent the making of a perpetual grant. The "Denegre Bill" received too muchopposition to pass, and a substitute bill was introduced by Minneapolis senators, which resulted in the "Enabling Act".[59]

The "Enabling Act" was prepared by C.J.Rockwood, attorney for the Minneapolis Civic and Commerce Association at its request, and when made public it was the subject of bitter attack, and considerable public interest.Of special interest was a provision for a sixty year term. Attorney Rockwood publicly defended the bill at the request ofthe Minneapolis Street Railway Company's cousel. The sixty year povision was defended on the ground that the long term of 60 years was for the purpose of amortization and the acquisition of the property by the city. Attorney Rockwood also contended that specific powers to regulate fares and services of the Minneapolis Street Railway Company must be made by the legislature , otherwise the City Council would be helpless to exercise powers which might be conceded by the company in a new franchise.[60] Mr.Rockwood stated that after the Dengre bill had been postponed, the Minneapolis Street Railway Company had requested the Civic and Commerce Association to draw a

59.Session of Minnesota,1915,Chapter 124.
60.The Minneapolis Journal,1915,3-1.

bill which it considered fair, and that he was directed to do it.

The Public Utilities Franchise League of Minneapolis started a movement against the renewal of the franchise at the time on the ground that the question should be discussed in a municipal campaign before being considered by the Council. The League came out to defeat any measure in the legislature giving the City Council the power to negotiate a new franchise on the ground that there was no necessity for immediate extension, that a valuation of the property should first be made, and that a more equitable contract could be secured at a later time. Its proposition was to have the city first secure adequate legislative authority to acquire the property and to finance the purchase if necessary.

The "Enabling Act" had the support of the Minneapolis Civic and Commerce Association, and that body was accused of being in sympathy with the street railway interests.Mr.Childs, speaking at an open meeting ofthe Civic and Commerce Association, said that the "Enabling Act" contained dangerous limitations, among which were the word "may" which might be construed as shall, that the bill allowed a franchise value to be placed on the street railway property, and that it provided for the fixing of a definite fare for the duration of the grant. He suggested that the Association make certain changes. He suggestedthe provision that "may" shall not be construed to mean "shall", and asked to insert a provision that no franchise value shall be included in any valuation. Both these suggestions were incorporated in the bill as it finally passed. The "Enabling Act" was passed in spite of the fact that it was generally opposed by public opinion in Minneapolis, and after the City Council voted unanimously in favor of a resolution opposing the passage of the

act. This would tend to throw a strong suspicion upon persons who were contending for an immediate franchise renewal. However, regardless of the merits of the act, it is the legal basis for the negotiations between the city and the company, and the first step in the direction of a new franchise.

The "Enabling Act" grants the city the power to negotiate with the street railway company, but there are certain restrictions imposed which the city must observe. No franchise can be granted under the act to a corporation not organized under the laws of the state, and no franchise can be granted for more than thirty years, and it must contain an option on the part of the city to purchase the entire street railway property at the end of each 5 or 10 year period of such term. Any franchise may provide that upon the failure of the city to condemn or exercise such option to purchase at or before the expiration of the franchise, the grant shall, without further action, continue until terminated by purchase or condemnation of the property but not exceeding thirty years, or any shorter period that the franchise may fix. The right of purchase is not to be construed to prevent resort to eminent domain. The franchise shall terminate at the time of purchase or condemnation of the entire plant and properties.

The franchise may embrace an agreement fixing fares, and shall provide for compensation to the city in the form of a division of surplus earnings, amortization, or otherwise, but no agreement fixing fares shall extend over thirty years. In the absence of an agreement the City Council is given the power to fix a reasonable fare.

As a basis for the purchase of the property by the city and for the division of surplus earnings, a franchise valuation shall be made either before the granting of the franchise and incorporated

therein, or at the beginning of the term of the franchise. The act provides that the valuation shall not include a franchise value,but may include a "fair going concern" value.

The act further provides that annual reports by the franchise holder must be filed with the city, andcalls for an annual inspection by the city of all accounts and records of the company. The holder of the franchise is prohibited from selling or disposing of, or pledging any shares of its capital stock, or to issue any certificates therefor, for less than 95% of their par value, nor until such shares shall have been paid for in money to the market value of the bonds, not, however, less than 90% of the par value.

The franchise is to be granted by an ordinance of the City Council, but no franchise is to take effect until it shall have been ratified by a majotity of the votes of the electors of the city cast upon the question at a general or special election, after the acceptance of the franchise by the company. The act authorizes the city to issue and sell bonds to the amount of $50,000 in par value, for the purpose of making the valuation provided for.

The term "going concern value" is one of the indefinite phrases in the "Enabling Act", and one likely to cause a great deal of trouble in agreeing upon a fair valuation of the company's property. However, the question of "going concern value" can be more appropriately discussed later when we consider the second step toward the renewal of the franchise, namely, the physical valuation of the property.

## F. VALUATION OF THE MINNEAPOLIS STREET RAILWAY COMPANY.

The problem of valuation of public utility properties is a very complicated one, and there are no definite and settled theories of valuation that can be applied in all cases. The United States Supreme Court, realizing the developing and unsettled condition of the legal and constitutional principles involved in a valuation of public utility properties, has refrained from deciding that any particular theoriesmust in all cases be adopted. The subject of valuation with its economic and legal aspects would furnish more than enough material for a thesis in itself.In this brief discussion it shall be the aim simply to present the facts in regard to the Minneapolis Street Railway Valuation.

In the Fall of 1915 the City Council authorized the City Engineer to make a physical valuation of the company's properties as provided under the "Enabling Act". The City Engineer has completed the valuation as of January 1,1916, and at the present time it is receiving considerable attention from those interested in the granting of a street railway franchise. The valuation was made chiefly on the "reproduction cost" theory basis, but a "fair going concern" value is also included. The valuation report can be divided into three main parts:(1) that part dealing with the physical property; (2) that part dealing with the value of the water power leases;(3) that part which deals with the capital which was invested in the early development and experimental periods of the property, and which was suspended owing to the development in the art of transportation.

The last, in the opinion of the City Engineer, represents the "fair going concern" value of the property.

A summary of the value as of January 1,1916, is as follows:[61]

| | |
|---|---|
| Present value of physical property, being cost to reproduce new,less depreciation - - - - - - - - - | $21,152,221. |
| Capital invested in the development of the property,being "fair going concern" value - - - - - | 4,270,230. |
| Present commercial value of water power leases to July 1,1923 - - - - - - - - - - - - - - - - - - | 491,857. |
| Total value of the property - - - - - - - | 25,914,308. |

The City Engineer places the cost of reproducing the properties new at $28,789,085.00.

The valuation report, since it was published, has received a great deal of criticism, and there is a movement to have it re-checked in some manner. The City Council will probably employ an expert to go over the valuation and have him make out a supplementary report. The mayor thinks that the valuation is much too high, and he has urged the Council committee to take some action to review the report as soon as possible. The things that have been particularly criticized are the small amount of depreciation, the cost of paving between the tracks, the value of water power leases, real estate values, and the "going concern" value.

In many instances the City Engineer allows little or no depreciation, and he places the value of many items at cost to reproduce new. The company has made some donations and contributions of real estate and cash to the city for park purposes which the City Engi-

61.Vol.I.p.3,of the City Engineer's report on the valuation of the Minneapolis Street Railway Company.

neer now includes in his valuation. Such items clearly do not belong in a physical valuation of the company's property for the donations are no longer the property of the company. Another item that has a doubtful place in the report is the value placed upon the paving between the company's tracks. This item amounts to $1,906,208. Under the terms of the franchise, the company is under obligations to pave the space between the tracks, and the company's right to include the cost of such paving in a physical valuation is but little stronger than its right to capitalize any of the other taxes that it has paid to the city.

In figuring the value of the company's water power leases the City Engineer departed from the "reproduction cost" theory, and tried to place a commercial value upon them. The value of the water power leases is based on the reduction affected due to the leases. This reduction is computed on the basis of the total cost of the electric power purchased under the water power leases and the total cost of manufacturing the same power if generated at a modern steam power station. The savings that the company can make prior to 1923 due to the water power leases are capitalized at $491,768. This practically amounts to capitalizing the future earning power of the company and including it in the valuation.

The values placed upon the real estate of the company are said to be excessive, and particularly the value placed upon the Harriet private right of way from 31st.Street to the city limits. The value of the Harriet right of way is placed at $632,122. This sum cannot be properly included in the valuation of the Minneapolis Street Railway Company. This private right of way was transferred in 1905 to the Minneapolis and St.Paul Suburban Railway Company, a distinct

and separate corporation.[62] By the transfer agreement the Minneapolis Street Railway Company is simply using the tracks of the Minneapolis and St.Paul Suburban Company, on terms agreed to by the two companies. In a later agreement entered into by the two companies in 1914, it is specifically stated that the Minneapolis and St.Paul Suburban Railway Company owns the right of way FROM Thirty First Street to Hopkins and Lake Minnetonka.[63]

The "going concern value" will be one of the difficult things to settlein a final valuation. The City Enginmer places the "going concern value" of the company at $4,270,000, and includes in it the discarded steam, horse, and cable lines, the cost of initial electrical development, and track replacement due to new paving laid by the city. Attorney Rockwood, of the Minneapolis Civic and Commerce Association, advises that the item,"going concern value", should be left out entirely. He says that it has no application in the Minneapolis Street Railway valuation as the courts have ordinarily interpreted the phrase. A "going concern value" is ordinarily obtained from a study of a corporations financial and operating history to determine the investors' sacrifice below a reasonable rate of return upon their investments. Legally the phrase means returns upon losses. The Minneapolis Street Railway Company has always paid reasonable returns to the investors, and there is no "going concern value" in the sense that the courts ordinarily use the phrase.

In December, 1918, the street railway company submitted to the City Council a tentative franchise draft based on transportation

62.From an agreement between the Minneapolis Street Railway Company and the Minneapolis and St.Paul Suburban Railway Company,made in 1905
63. From an agreement filed with the Railroad and Warehouse Commission.

at cost, together with detailed inventory and appraisal of the value of the property of the company also as of January 1,1916. The company places the total value of its properties at $35,323,376.[64] From the forgoing figures it can be seen that one of the first and most difficult problems in any settlement of the street railway franchise will be to agree upon a valuation acceptable and fair to both the city and the company.

The street railway franchise was one of the issues of the last election for mayor, and public interest in the street railway matters is quite keen. In March,1916, a Citizens' Franchise Committee, known as the Central Franchise Committee, was organized, and it has since been engaged in an intensive study of every phase of the franchise question. The committee is composed of fifty men,representing the city's civic and commercial interests. Prior to its organization notices were sent to the diverse organizations in the city to appoint delegates to a meeting. Labor organizations, however, refused to take part on the ground that they stand for municipal ownership. They are afraid that the Central Franchise Committee may not be inclined toward public operation of street railways. Styles P. Jones, a franchise expert of national prominence, is the executive secretary of this franchise committee, which will undountedly be a prominent factor in the granting of a new franchise.

Since the old franchise runs until 1923, there is ample time to settle the street railway question without hurrying, but if an early agreement can be reached it will be a great advantage to the company and the public. The company could give the public better

64. From a letter from the Street Railway Company to the City Council.

service by immediately starting a broad policy of extensions.Cross-town lines, closer running schedules, andcooperation with independent suburban lines to give them access to up-town districts, are needed. The company will not be inclined to make the necessary improvements until a settlement is made, and if the granting of the franchise should be prolonged for several years, the public might suffer a great deal from the inconvenience. It is also known that the company is making good profits, and under present conditions these profits will be likely to increase for the remaining seven years of the franchise. If an early agreement can be reached the city can share in these profits, for the new franchise must provide for some division of surplus earnings. Because of this opportunity of the company to make good profits during the remaining years of its operation, it is only fair that the city should make some concessions to the company in case of an early agreement, which should receive no consideration when the franchise expires. When the franchise expires in 1923 the company will have no rights in the streets of the city, and it ought not to be entitled to more than a fair valuation of its physical property at that time.

# CHAPTER VI.

## TELEPHONE FRANCHISES.

The first telephone company to do business in the city was the Northwestern Telephone Company incorporated in 1878.[1] The company was organized to operate telegraph and telephone lines in the cities of Minneapolis and St.Paul, and between the two cities and other cities in the state. Although a telephone company could legally organize for only thirty years under the laws of the state,[2] the articles of incorporation of the Northwestern Telephone Company stipulate the period of its continuance to be fifty years. The Northwestern Telephone Company obtained the first telephone franchise in the city of Minneapolis in 1883. The ordinance granting the use of the city streets was very brief and indefinite.[3] There was no time limit or any other restrictions outside of a provision that an application for the use of the city streets must be filed with the City Engineer and approved by him.

Between the years 1883 and 1890 several attempts were made by other telephone companies to secure franchises from the City Council, butin each case the request was rejected. The Mississippi Valley Telephone Company, under which the Tri-State Telephone Company now operates, tried to secure a franchise at this time, but it

1.Articles of Incorporation of the Company.
2.General Statutes of Minnesota,1866,Chapter 34.
3.Council Proceedings,1882-83,p.302.

was not successful. About 1896 several telephone companies petitioned the City Council for franchises, and this time with great success. In 1896 a franchise was granted to the American Telephone and Telegraph Company.[4] This franchise provided that improvements must be made under the supervision of the City Engineer. The franchise was to be subject to all ordinances then in force or which might in the future be enacted by the City Council, regulating and controlling the use of streets and other public grounds of the city by telegraph and telephone companies. Furthermore, it was to be subject to all general ordinances of the City Council providing for a reasonable compensation to the city for the use of its streets by telegraph companies, and was also to be subject to all general ordinances of the City Council providing for a reasonable price to be charged to the city by such companies for its corporated business. This company was required to file an acceptance with the City Clerk within 30 days from the date the ordinance took effect, and agreed to have telephone communication, within one year, between Minneapolis and Chicago.

In February,1898, the City Council passed another ordinance granting to the Minnesota Central Telephone Company permission to use the streets, alleys, and avenues of the city.[5] There was no provision in regard to the term of the grant or the rates to be charged, but otherwise the franchise was drafted with much greater care than the two previous grants. The ordinance was expressly made subject to all ordinances then in force or which might be enacted

4. Minneapolis City Charter, Ordinances, Court and Board Acts, 1872 - 1905,p.603.
5. Ibid,p.604.

by the City Council in the future. All materials and equipment used had to be approved by the City Engineer and the Inspector of Buildings; the City Council was to supervise the location of poles and wires; the company was forbidden to transfer any of its stock or property or consolidate with any other company except with the approval of two-thirds of the City Council; the city reserved the right to purchase the property after five years at the actual cost less depreciation, and no franchise value was to be included. The purchase price was to be determined by agreement or arbitration. The company was forbidden to encumber the property for more than seventy-five per cent of its value by mortgage or bonds, and was to furnish the city with sworn statements of the actual cost from time to time, and the company agreed to open its books for inspection by persons designated by the City Council. The company was required to pay five per cent of its gross receipts into the city treasury, and to keep an accurate account of its earnings. For the purpose of securing the city such five per cent, the city was to have a lien on the company's property which could be enforced by the city by civil action. The company was to furnish space for police and fire alarms on its poles, and before it could occupy any streets or alleys it had to secure the approval of the City Council. An acceptance of the franchise was to be filed with the city clerk within thirty days from its passage together with a bond in the sum of $5,000, conditioned that the company would begin the work of construction on or before ninety days from the date of filing the acceptance. The telephone system to be constructed under the ordinance was in no case to be operated under any other telephone franchise previously granted by the City of Minneapolis.

In March, 1898, only a few days after the above franchise was granted, another grant was made to the Mississippi Valley Telephone Company, a corporation organized under the laws of Minnesota.[6] The ordinance did not prescribe the term of the franchise, and was almost an exact copy of the franchise granted to the Minnesota Central Telephone Company in the previous month. There was one important innovation in this ordinance. The rates and charges for both residence and business service were fixed by the ordinance, and party lines were prohibited. Furthermore, the company was to deposit with the City Treasurer a bond of $5,000 within thirty days of the passage of the ordinance as proof of good faith, with an agreement that the company would accept the ordinance; and upon failure by the company to accept, the money was to be absolute property of the city. The provision in regard to the party lines has since been amended so that party lines are permitted for residence service with the restriction that charges shall not exceed $2 per month.[7]

As a result of the many franchises granted to different companies we have two telephone systems in the city. It is not necessary to go into the disadvantages of a double system, for they are quite evident without explanation. The Minnesota Central Telephone Company and the American Telephone and Telegraph Company never established their systems, and so all telephones prior to 1901 were operated either under the Northwestern Telephone Exchange Company's franchise, or under the Mississippi Valley Telephone Company's ordinance. In 1900 the City Council repealed the Northwestern Telephone Exchange Compppny's franchise, and the following year a contro-

6. Ibid, p.808.
7. Council Proceedings, 1914, p.231.

versy between the city and the company ensued concerning the right of the City Council to regulate the placing of wires and poles in the streets of the city. The matter was finally adjudicated in the courts, and the company operated without a franchise until the law of 1915 was passed which placed the control of the telephone companies under the Railroad and Warehouse Commission.

In the case of the Northwestern Telephone Company v Minneapolis, the Minnesota Supreme Court held that telephone and telegraph companies possessed the power to place poles and wires in the streets of all municipalities in this state under state laws, and that the city only possessed power to regulate the placing of poles and wires in their streets.[8] The Court further declared that the provisions of the Minneapolis charter conferred no authority arbitrarily to order a removal of telephone poles and wires. The City Council could only regulate the placing of poles and wires in the streets, and compel the telephone companies to put their wires in subsurface conduits when reason, convenience, or the good government of the municipality required that it be done.[9] The city had claimed the right to enact and enforce ordinances regarding the placing of poles and wires without any reference to their reasonableness or effect upon the contract rights of the plaintiff possessed by reason of its prior acceptance of the ordinance under which its system was established. The Court held that the franchise ordinance became a contract between the state and the plaintiff, and as such was protected against impairment by the state and Federal constitutions. The Court restrained

8. General Laws of Minnesota, 1860, Chap. 12, (General Statutes, 1866, chapter 34) as amended by the laws of 1881, chap. 73 (General Statutes 1894)
9. The Northwestern Telephone Company v City of Minneapolis, 81 Minnesota, 140, (1901).

the operatinn of two ordinances of the City Council passed in 1899 on the ground that they imposed such burdens upon the plaintiff that they impaired the obligation of contract. The result of this decision was that the company secured permission to place its poles and wires in certain streets against vigorous protests of the property owners. In 1905 a resolution was passed by the City Council permitting the Northwestern Telephone Company to place its poles along Lake Street. The next day the company took up the walks to make room for its poles. There were vigorous protests from the property owners demanding that the company be made to place the wires underground.[10]

In 1901 the charter of the Mississippi Valley Telephone Company was amended to the Twin City Telephone Company. The company operated under the latter name for five years, andthen it sold its physical assets and franchise to the Tri-State Telephone and Telegraph Company in 1906. There was no resolution of the City Council authorizing the transfer of the property as the Mississippi Valley Company's franchise provided. The Tri-State Telephone Company is still operating under this franchise with a few amendments regarding service.

During the legislative session of 1913, the "Minnette bill", placing the control of all telephone companies of the state under the jurisdiction of the Railroad and Warehouse Commission, was passed by both Houses.[11] Governor Eberhart, who was very strongly in favor of a Public Utilities Commission, however, vetoed the bill, and demanded that a bill providing for a Public Utilities Commission

10. The Minneapolis Journal, 1905, 6-30-7-3.
11. Ibid, 1913, 4-20-1-5; 4-23-11.

be passed immediately. He even threatened to call an extra session of the legislature, but his threats were ignored. In 1915 substantially the same bill was enacted into law.

There was a great deal of interest concerning certain provisions of the bill. The Northwestern Telephone Company supported a feature of the bill which provided that the Commission must declare that public convenience requires a second system before "permits" shall be granted. The Tri-State Telephone Company and a big majority of about 900 independent companies claimed that commissions have not been prone togrant such "permits", their tendency being to restrict competition. The question was finally settled by providing that the commission shall decide whether public convenience demands a second system after a public hearing.

Under the "Minnette Bill" any telephone company operating under any existing franchise, permit, or license, may, by surrendering such permit, license, or franchise, receive in its stead an indeterminate permit from the state.[12]

From the standpoint of the public it is not a very satisfactory law. Rates and service are probably the most important considerations in regard to telephone companies, and these are dealt with only in a very general way in the law. The law simply provides that rates shall be fair and reasonable and that the companies shall furnish reasonably adequate service and facilities for the accomodation of the public. The companies are allowed to make up their own schedules of rates and charges which they are required to file with the Commission. The law vests the Commission with the power to make

12. Session Laws of Minnesota, 1915, chapter 152.

valuations of telephone companies whenever it shall deem it necessary and the Commission could make rates on a valuation basis, but it is doubtful if the Commission will ever take the initiative in prescribing reasonable rates in any municipality without strenuous efforts being exerted by the municipality itself in that direction.

All permits to construct telephone systems must be secured from the Commission, and no local exchange can be constructed or installed in any city or village for furnishing local service to subscribers, where there is in operation a local exchange already furnishing such service, without first securing from the Commission a declaration that public convenience requires a second telephone exchange. The governing bodies of all municipalities possess the powers of regulation with reference to the placing of poles and wires so as to prevent any interference with the safe and convenient use of the streets and alleys by the public. Municipalities are given the right to operate telephone exchanges. The plants may be acquired by construction, purchase, or condemnation, with the consent of the majority of the goters. In case of condemnation, the Commission shall determine the compensation to the owner. IN case a local exchange already exists, a municipal exchange shall not be constructed without the consent of 65 % of the voters.

Probably the most important provision of the state law is that which compels every telephone company to make physical connections with the toll lines of all other companies, whenever the convenience of its patrons demands, and when such connections are practicable. If the companies cannot agree upon rates and fees to be charged, the Commission shall have the power to fix the same.

Minneapolis Telephone Rates, January 1, 1917.

Northwestern Telephone Company:

A. Business Rates:

| | | | |
|---|---|---|---|
| One-party lines- - - - - - - - - | $6.50 | gross | per mo. |
| One-party lines- - - - - - - - - | $6.00 | net | per mo. |
| Two-party lines - - - - - - - - | $4.50 | gross | per mo. |
| Two-party lines - - - - - - - - | $4.00 | net | per mo. |

B. Residence Service:

| | | |
|---|---|---|
| One-party lines- - - - - - - - - | $3.00 | gross. |
| One-party lines- - - - - - - - - | $2.50 | net. |
| Two-party lines - - - - - - - | $2.50 | gross. |
| Two-party lines - - - - - - - - | $2.00 | net. |

A $.50 discount is allowed if the rental is paid before the fifteenth of each month.

The Tri-State Telephone Company:

A. Business Rates:

One party lines- - - - - - - - - $48. per year.

B. Residence Service:

| | | |
|---|---|---|
| One-party lines- - - - - - - - - | $2.50 | per mo. |
| Two-party lines - - - - - - - - | 2.00 | per mo. |

The Tri-State Company has only one-party lines for business service.

# CHAPTER VII.

## MISCELLANEOUS GRANTS.

Under miscellanous grants will be considered the most important one of the market franchises, central heating plant franchises, and local franchises granting the right to construct subways under alleys or streets for conveying, heat,water,steam, or wires from one building to another.

The Central Market franchise was granted to T.B.Walker, Sam C.Gale, and Geo.E.Maxwell, in Feb.,1891.[1] There were several other market franchises, but this is by far the most important, and one quite typical of othergrants. This franchise is different from all other public utility franchise grants made by the city in that the city charter specifically authorizes the City Council to establish and regulate markets.[2] The term of the grant is twenty-five years from July 1,1892, the date on which the market was to be ready for occupation. The franchise seems to have been drafted with considerable care. It provided that within sixty days of the passage of the ordinance, plans for the market were to be submitted for approval to the City Council; the building materials and the size of the plant were also definitely prescribed. The City Council reserved to itself very complete control over the management of the market. It provided that the Council could declare the ordinance null and void

1.Council Proceedings,1891,p.327.
2.Minneapolis City Charter,Chapter IV,paragraph 5.

when it ceased to be occupied as a public market in the sale of farm and garden products, and no adjoining streets were to be occupied without permission from the City Council. The market master was made appointive by the City Council from nominees of the company, and was to be paid by the company.The maximum rates and fees for standing room were fixed by the ordinance, but the owners could contract for lesser rates if they wished.However, the market master could sell stand in the market place to the highest bidder, at auction, under the restriction that vegetable stands could not be sold for more than an average of $25 per season. The schedule of maximum prices for all stands for each ensuing season had to be submitted and approved by the committee of the City Council on markets prior to the sale of stands each year.

The franchise also provided for purchase by the city at the end of ten years and at intervals of five years thereafter. The purchase price was to be the actual value of the plant agreed upon by the city and the company or fixed by three arbitrators, one to be chosen by the company, one by the city, and the third by these two. A majority of the arbitrators was to determine the price.

The company also had certain advantages secured by the grant. No other market was to be established in the fourth ward during the term of the grant, and all persons were prohibited to hawk, peddle, or vend vegetables or small fruit at retail in Minneapolis upon or along the public streets or highways, from team wagons or carts, prior to 10 o'clock A.M., except upon some public market place of the city. This provision was invalid, for in the case of St.Paul v. Trager, the Minnesota Supreme Court held that the City Council could not regulate the sale of vegetables and farm products without

express authority in the charter from the state legislature.[3] The City Council of St.Paul claimed the right to pass a regulatory ordinance under its power to regulate markets and streets, but the Court held that to be insufficient.

The Central Market franchise provides that upon approval of the ordinance the proper officers of the city shall execute a contract with grantees, in which this ordinance shall be recited as a part and in which both parties shall covenent for the faithful fulfillment of all the provisions of the foregoing ordinance. The ordinance also provides that stall rents shall be due and collectable one-quarter in advance of occupancy; and all other fees and rents provided for in the ordinance all in advance of occupancy.

The franchise contains very detailed regulations of everything pertaining to markets, such as the use of streets, rents, fees for stalls, and stands, market master's duties, cleaning of stalls and stands, transfers, market hours, removal of vehicles, cleanliness, use of water free of charge, the placing of vehicles,hawking,sales from carts, size of bulk of meats sold, weights and measures,punishment for violations, the preservation of order and regarding complaints. The market master, under the direction of the City Council, has entire supervision over the market.

The Central Market franchise expires July first of this year, and the proposition of granting a new franchise is now before the people of Minneapolis. Lately there was considerable talk of establishing a municipal market, but that does not seem to be a possibility under present conditions, since the state legislature refused

3. 25 Minnesota, 248 (1878).

to pass a bill authorizing a bond issue of $500,000 to be spent in establishing a municipal plant. Had the bond issue been secured,it is very probable that a municipal market would have been established, for the mayor and several of the civic organizations of the city are in favor of such a plan.

The city charter provides that the City Council shall have the power to establish public markets, and therefore there was nothing in a legal way to obstruct the establishing of a munisipal market.[4] However the City Attorney thinks that in the absence of an ordinance specifically prohibiting a private market, one could be operated without the consent of the city.[5] Such a private market could be controlled by the City Council only in so far as location and sanitation were concerned.

In 1908 the Minneapolis Heating and Transportation company applied for a franchise to operate a Central Heating plant. The City Council, instead of granting a franchise started an investigation of a municipal ownership scheme. The municipal ownership of subways for the transportation of light, power,heat, and package delivery were being investigated. IT was proposed that the City Council could rent the subways, and by such united action prevent the tearing up of streets and alleys, for gas, light, and heat pipes. The franchise to the heating company was not granted, and nothing came of the municipal ownership scheme. At present, the city has only a small number of municipal subways for wiring purposes in the fire department.

4. Minneapolis City Charter, Chapter IV,paragraph 18.
5. The Minneapolis Journal,1917,2-10-6-1.

At the present time a company is again trying to enter the municipal heating industry.The company is a new corporation capitalized at $100,000,and one to be affiliated with the American District Steam Company, which operates in other cities. The company proposes to furnish steam from a central station to both business and residence sections. The mains would be connected with pipes already installed.The company has petitioned the City Council to pass an ordinance to give it permission to lay mains in the streets and to do business. A good deal of interest has been aroused over the project, and a Council Committee has been assignedto investigate the central heating systems in other cities with the view of granting a franchise. Mr.Wells, president of the American District Company, merely wanted a permit to go ahead with the work, and he stated that no one need fear that it would be niggardly with its extensions to residence districts. Of course it is not to be expected that the city will grant a permit in any hasty manner, for such a permit would be almost as good as a franchise for the company,with no safe-guard of the city's interests.

There have been many local grants for subway purposes for conveying heat,water,or steam, but they are so nearly alike that a discussion of one or two of them will suffice. An examination of the Powers Mercantile Company's underground subway franchise,[6] and the Cudhay Packing Company's franchise,[7] will bring out the important provisions in such grants. Neither one of the franchises has a time limit, but they provide that the City Council shall have power at all times,when public necessity may demand,to repeal them;and the City Coun-

6.Minneapolis City Charter,Ordinances,Court & Board Acts,1872-1905, p.649. 7.Council Proceedings,1904,p.623.

cil shall be the sole judge of such necessity. No exclusive privileges are granted in the streets or alleys. The uses to which the subway may be put are definitely stipulated, and the location of the subway is clearly defined, subject to be laid under the direction of the City Engineer. The important consideration in subway grants is the control of streets and alleys. Wherever the road-bed is disturbed it is to be rebuilt under the direction of the City Engineer. The companies are also required to file bonds to hold the city harmless from any or all claims arising in connection with the subways. In consideration of the privileges granted, the companies are required to pay 5% of the gross receipts, of all business done through them into the city treasury. Each year the companies must file with the City Comptroller a sworn statement setting forth the cost of heating by means of the subways, the nature and extent of the business transacted, a statement of the gross receipts accruing therefrom, the amount of the operating expense, and the net income. The books of the companies are open to inspection by the persons named by the City Council. All local franchises before they become valid must be accepted in writing within a definite time.

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