cutting off their county right. This precipitated a series of meetings culminating in a meeting of the Seward Commercial club at which I presented my views in shape of a proposed bill for county ownership of telephones. This club is composed of the most conservative citizens of one of the most conservative towns in Nebraska, yet one and all, democrat, republican, standpat or progressive, unanimously approved my bill. It seemed that regulation was about to fail. We must either submit to be ruled, or provide some remedy whereby if necessary we could take matters into our own hands. This remedy is afforded by my bill and its companion bill for physical connection between telephone exchanges.

This is the simple logic of the whole question of natural monopolies. Regulation of private ownership, if it works, if not, then public ownership. This principle we are attempting to apply to the telephone problem.

The objection is made to the bill that it provides for fixing of rates by the county board and that this is in conflict with the constitutional provision granting control and regulation of common carriers to the state railway commission. We must first consider what our constitution is. There is an important distinction between the federal constitution and the constitution of our state. The federal constitution is a pact or agreement between the sovereign states, by which each state has surrendered to the federal government certain of its inherent powers. The federal government is a creature of the separate states and can exercise only such powers as are expressly or impliedly granted to it by the constitution.

Our state constitution is not, however, an instrument granting powers of government. It is, instead, an instrument of inhibitions or limitations. Without it the state could form such a government as it pleased and could do what it pleased. It is an agreement made so to speak by the people with themselves. After its adoption the people of the state are still free to do as they please, except where the state constitution has placed a limitation. Where such limitation has been placed they must act within it. Otherwise they are free. Thus they may pass any law on any subject except where forbidden by the state constitution. Unlike the federal government they need not look to the constitution for authority to act. Instead, they look to the constitution to see if a contemplated act is forbidden, and if it is not forbidden they may act.

The right to regulate common carriers as to rates and tolls and the like is a well recognized power of government. It needs no constitutional provision to bestow that power on the legislature, nor for the legislature to provide for the exercise of regulatory power by proper boards or tribunals. This right is similar to the inherent right to regulate matters of fire protection, pure food and the like and arises from the duty of the state to subserve the best interests of its citizens. Why, then, was it necessary to amend the constitution to establish a railroad commission? It was not, so far as bestowing the power of regulation was concerned. That might have been devolved upon any existing officer or board of officers just as many of the powers of government are now exercised. Witness the food commission, the fire commission, all exercising powers of government bestowed on them by statute without express or implied constitutional authority.

We have, however, a constitutional provision that no new executive state office may be created. And in order to provide for new executive officers to constitute the railroad commission it was necessary to amend the constitution, which was done. The constitutional amendment does not assume to bestow any powers or duties upon the railroad commission except "in the absence of specific legislation." It expressly provides for the legislature to define the powers and duties of the commission, over the general field of "regulation of rates, services and general control of common carriers." This the legislature has done and has included telephone corporations within the purview of their enactments. This is done only on the theory, however, that telephone companies are common carriers.

Now it is not to be thought of under the broad scope of the constitutional amendment which really does not and could not confer any powers on the legislature but those which it already had, but that the legislature had an absolute right to provide for the regulation of rates as to common carriers in any way it saw fit. The Nebraska legislature might provide that the rates established and placed in effect by the companies should be subject to revision at order of the commission, or it might require the submission of data to the commission in the fixing of rates by the commission in the first instance. Assuming for the present that county telephone systems fall within the class of utilities subject to regulation, simply because the counties are given the right in the first instance to fix their own rates, does not contravene any right of regulation on the part of the railroad commission. If the statute does not specifically give that right it exists by virtue of the amendment. That is, if the railroad commission is to regulate county telephone systems it can do so, whether or not the statute permits, under the broad powers bestowed in default of specific legislation by the amendment. The fact that the regulation might be performed in a manner differing from the manner of regulating private corporations would be immaterial.

There is nothing in the law as proposed refusing to the railroad commission a power regulatory of these rates. If it has it, it has it. That the regulation might be revisory instead of being exercised in the first instance could not be a valid objection under the terms of the amendment, for it is not specified in what particular manner it is to be exercised. However, I can see no reason why county telephone systems should be construed to be common carriers and within the purview of any of these enactments. A common carrier is ordinarily a private corporation doing business which affects the public. They are sometimes called quasi-public corporations and are held to certain rules of law stricter than a private carrier with respect to their dealings with the public. Here the state grants to its own subdivision the right to do certain things. Were this state ownership instead of county, the principle would be the same. Should the state, which has granted rate regulation to its own board as to private corporations, submit to a regulation of any enterprise carried on by itself? It is not a quasi-public undertaking which requires regulation for the protection of the public. It is a public undertaking. The people themselves are acting.

The state can not be sued without its consent. Should it be required to submit to regulation by its own tribunals without its consent? If the common carrier robs the people it enriches itself. If the state charges extortionate rates it simply takes from one pocket and puts into the other. And it can not conceal the goods. They will show up on the balance sheet. The need does not exist for the regulation of rates of a purely public enterprise. It does, unhappily exist in the matter of private and quasi-public enterprises. I am clearly of opinion that our courts would not permit the railway commission to exercise even a revisory supervision over rates established by county boards.

A few words by way of illustration will make it very apparent that a publicly owned telephone system could not be construed to be a common carrier. Telegraph companies, like telephone companies, when privately owned, are construed to be common carriers and are held to all the liabilities of law in that behalf. Among these they are held responsible for the non-delivery of messages. You send your message by wire and it is not delivered and you can hold the company for damages. However, you take the same message and place it in the United States mails and it is lost. Can you hold the government for damages? Decidedly not. It was decided thus in England long ago, and so far as I know no one has ever been foolish enough to raise that question in this country. And this exemption extends to the railroad company while carrying the United States mails, so that the courts have held that railroad companies while carrying the mails are not common carriers but agents of the government, that is, public agents carrying on an act of government. (See 52 Am. Rep. 334, 92 N. W. R. 88, 65 L. R. A. 397.) So even a corporation that ordinarily is a common carrier ceases to be one when employed on public business.

Even the most unlearned man could easily see that this would be as true of a business run by the government itself as where run by subordinates. If the government owned the railroads it would not change the rule.

The business is changed from a private enterprise into a matter of government, by reason of public ownership. And the character of the business, the duties of the parties carrying it on, their liabilities, and their relation to law, are all entirely changed. The railroad commission would have no more to do with publicly owned telephones than with rotten eggs.

However, lest in some communities county boards might fix rates too high and pile up a surplus for looting purposes it is provided in this bill that telephone rates are to be fixed on basis of cost, less expense of extension and maintenance, the purpose being to make the system once established self-maintaining and self-perpetuating. This is a substantive duty cast upon the board and any infringement thereof by them could be speedily checked by injunction or suitable court action.

A further objection to the working of the bill is that county ownership only is contemplated. The bill as at first drawn contemplated state ownership of trunk lines. This however, would necessitate a state board of new officials or a commission of already overworked officers and the authorization of a levy for the purpose of establishing trunk lines. It was not deemed wise to make the experiment on so extensive a scale, or to add to the burden of the tax-payers for further state taxes at this time. Besides the matter of accounting in inter-county communication is largely a matter between the various counties. If my companion bill for physical connection is passed, then county exchanges can connect at county lines and provide between themselves for inter-county service, and can make use by compulsion, if necessary, of the already existing trunk lines of private companies, paying them a fair profit therefor. Should public systems be established in sufficient number in the next two years to warrant the establishment of state trunk lines, or of a state commission to act as a clearing house for inter-county business the next legislature will be in a better position to figure out the details necessary for such a system than we are, and I assure you that after giving this matter some thought it will be necessary to work very carefully on such a bill as would have to be passed to effect the desired result. However, for the present the instant bill and my companion bill will certainly afford relief to those communities where it seems impossible to get a solution of the telephone problem.

A proposition urged most seriously is that this bill would injure numerous small independent companies. Such is not the intention. Special provision is made in the bill for purchase of already existing systems or parts of systems. And unless the small independent company should want to hold up the people for an extortionate price they would undoubtedly receive full value for their property in case of the establishment of public systems.

The matter of purchasing as well as the matter of establishing the systems is left to a vote of the people. It must receive the approval of a majority. Believing, as every good citizen should, in the rule of the people I believe that this provision is a sufficient safeguard against snap judgment, or confiscation of property. It is hard enough to get a majority vote in any proposition and unless the proposition is fair it will not in the vast majority of cases prevail.

TWENTY-FIVE STATES VOTE YES

The Kansas City Star says: The resolution proposing the constitutional amendment for the direct election of senators was fifty years in getting through congress. In less than a year since it was submitted it has been ratified by the legislatures of twenty-five states. It has been rejected in only one state—Georgia.

The twenty-five ratifying states are: Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oregon, South Dakota, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

The amendment is being blocked by special interests in New Mexico, Pennsylvania, Delaware and Rhode Island. New Jersey and Tennessee are expected to ratify soon. Action by Kentucky, Maryland, Mississippi and Maine is expected next year. The legislatures of Alabama, Florida, Kentucky, Louisiana, Maryland, Mississippi and Virginia are not now in session.

Prompt action by some of the states now hesitating would make possible the adoption of the amendment this year so that it could be effective in the election of senators in the general elections of 1914. Eleven more ratifications are needed.

Col. A. E. Brackett, Ohio.—Enclosed with this letter I hand you on this inauguration day, a New York draft for $5.00 in payment for the five annual subscriptions herewith. Please send me extra numbers of The Commoner, which I can make good use of.