

FORBID ARBITRARY TAX LEVY

Held Council May Use Discretion in Water Extension Charges.

LAW DECIDED CONSTITUTIONAL

City Commissioners, if They Find Property Owners Will Derive Slight Benefit May Lessen Assessments.

Judges Troup, Kennedy and Day of the district court yesterday held that the city council need assess against adjacent property only such part of the cost of extending water mains as correspond to the benefits derived by the owners.

The judges decided that the legislative act on which the water board bases its claim that adjacent property can be taxed for part of the cost of extending water mains is constitutional.

Demurrer Overruled.

A demurrer by the city to the water board's mandamus suit to compel the city commission to assess the cost of extending a main in district No. 2 in the vicinity of Thirty-ninth and Dewey avenue was overruled, constituting a partial victory for the water board.

It was a qualified victory for the water board because the judges ruled that though a writ of mandamus should issue it should not compel the city commissioners merely to sit as a board of equalization and levy the cost of the extension as certified by the board up to 50 cents a front foot, as asked by the board in its test suit, but that the city council first must assess the property owners with reference to the benefit received by them and then sit as a board of equalization.

The court held that the city council must not be deprived of the privilege of determining the amount of a charge against property for special improvement according to the benefit derived by the owner; that it is not obligatory on the council to assess the whole amount demanded and that if a deficit exists through failure to assess the 50 cents a foot allowed by law it must be paid by the water fund as well as the excess of cost over the 50 cents a foot.

Deputy City Attorney Lambert, taking advantage of this ruling, secured the consent of the judges to making the writ of mandamus read that the city council will be required to take action in regard to an assessment against property rather than it must make an assessment, on the ground that it may find that there is no benefit on which to base a charge against property owners.

"Under this decision," said City Corporation Counsel Ben S. Baker, "the city council of Omaha will have power to pass on the question of benefits to Omaha residents and the councils of South Omaha and Florence will have to pass on the question in their jurisdiction, after the metropolitan water district law becomes effective, which is not until July. I maintained in this case that the water board could make no assessment whatever under the statute as worded. According to this decision such assessments may be made for benefits, but not to exceed 50 cents per front foot. If the benefits are shown to be only 25 cents per front foot that is all that can be assessed against the property."

May Not Appeal. Judge Baker said he did not believe the case would be appealed. The decision, he said, in no way effects the resolution of Councilman Thomas McGovern, directing the city legal department to institute legal proceedings to test the authority of the water board on other matters, and to compel the water commissioner to make periodical reports to the council of the financial condition of the water plant.

The court found that the important issue was whether the council was required to tax charges according to cost instead of benefits. It found two prime reasons why the council under the law is allowed to make the charges according to benefits, because the statute provides that the council shall "assess" property owners to pay for extending water mains, the legal meaning of "assess" being to distribute charges according to benefits; and because there is nothing in the statute which forbids such

a procedure, the presumption then being that the council's action must be according to the constitution. Counsel for the city had contended that the operation of the law would place many difficulties in the way of the city, but the judges said none of these hardships was so great that it could not be removed by a clear understanding of the law. It was explained that any deficit left by failure of council to assess 50 cents a foot against property must be paid by the water fund, though the law merely says that the excess over 50 cents shall be paid by this fund. The point that the law provides no opportunity for immediate payment of the whole tax, but leaves the implication that it must be paid in installments, with interest, the court disposed of by saying that immediate payment is not forbidden, but that it specifically nullifies any such meaning if the statute is interpreted otherwise by any person.

Water Board Has Plan Which Makes Some Men Laugh

"Here is a sample of what I call very poor management and financing," said a business man who was scanning his last monthly water bill. "You see," he added, "our place has consumed, according to this bill, 12,500 cubic feet of water in the month. At the rate of 15 cents per hundred cubic feet our bill is \$18.75. Now, here is where the funny part comes in. Had we used 10,000 cubic feet of water our bill would actually have been less. It comes about in this way: Consumption of 10,000 draws a rate of 14 cents, as against the 15-cent rate for less than that, or 12,500 which we used."

"In other words we might get 2,500 cubic feet of water run through our pipes as waste—sheer waste—and get the reduced rate and the reduction in the aggregate account."

And he laughingly said he didn't know but he would instruct his manager to see that at least 2,500 cubic feet of water was wasted at their place each month.

"That is what they call good management," the business man exclaimed in disgust. "That is what our expert water business is handing us. Is it? Well, suppose I and every other business man similarly situated should waste this amount of water each month to get the decrease, what would happen?"

High School Lads Lose Their Debate

Eloquence of the Omaha High school debaters failed to win the debate with Sioux City Friday night at the Iowa city, and the judges decided in favor of the home team, giving them possession of the trophy cup presented by W. H. Beck. The trophy becomes the permanent possession of the Sioux City High school.

Uncle Joe Suggests Place for Monument

"You just tell them that 'Uncle Joe' says that that monument to our Indians, which General Webster wants us to build should be located up in my part of town, where the Indians used to be when we pioneers used to be, and where they had their Indian burial grounds." It was "Uncle Joe" Redman talking.

MEN SLATED FOR THE JOBS

Harley G. Moorhead to Be Named for Election Commission.

GREEVY MAY BE ASSISTANT

Rumor Has It that J. H. Grossman Will Be Appointed to Judgeship Made Vacant by Kennedy's Resignation.

Harley G. Moorhead will be appointed election commissioner of Douglas county by Governor John H. Morehead, and Mat J. Greevy will probably be named his assistant, according to statements made by the governor at a conference with Mayor Dalmann and other local democrats last night.

John H. Grossman probably will succeed Judge Howard Kennedy on the district bench, although the governor said he was also considering the advisability of appointing County Attorney James English.

"The governor said he considered Harley Moorhead best fitted for the place and was favorably impressed with him," said Mayor Dalmann, "but he did not state outright that he would be appointed. In my opinion he will be named for the position."

"A republican must be named for chief deputy to the election commissioner, and Governor Morehead declared he would name a real, well known republican. He asked about Mat Greevy, and I told him that I considered him thoroughly qualified by experience for the place. The governor seemed to favor him, although he said he had not given the appointment of an assistant very much consideration as yet."

Judge Howard Kennedy will leave the bench some time between the 15th and last of this month. He goes to the State Board of Control at the same salary he is now receiving, \$3,000 a year. Grossman was a member of the last legislature, serving in the senate.

The salary of election commissioner will be \$2,000 a year, and of the assistant \$1,500 a year. The office carries with it power to redistrict the election districts of the city and county and to appoint the judges and clerks of election.

Governor Morehead had announced his intention to name a man not connected with local political factions to any appreciable extent. Moorhead's appointment will meet with the approval of the mayor and the majority of local democrats. F. J. McNamee was talked of as being a candidate but he says he did not make application for the office.

EPISCOPALIAN ASSOCIATION CONCLUDES AT HASTINGS

HASTINGS, Neb., May 10.—(Special Telegram.)—The twenty-third annual convention of the Episcopalian church closed last night with confirmation by Bishop Beecher. Alliance was chosen as the place for the next meeting. Rev. George Ware of

PHONE BUILDING TO BE OF HASTINGS MATERIALS

HASTINGS, Neb., May 10.—(Special Telegram.)—The Lincoln Telephone and Telegraph company today announced plans for the erection of a two-story building here to be made entirely of building materials made in Hastings. It will be completed about September following, which time the Bell and independent plants will be consolidated as speedily as possible.

CLARK'S BURNS MORTGAGE

CLARKS, Neb., May 10.—(Special Telegram.)—The members of the Congregational church held a jubilee anniversary Friday evening, celebrating the clearing of a \$50 debt which had rested upon the church property. Rev. C. J. Rives is the present pastor of the church and it is through his untiring efforts that the debt was liquidated. At 5 p. m., a supper was

POSTHUMOUS SON IS GIVEN JUDGMENT

AINSWORTH, Neb., May 10.—A verdict of \$5,000 in favor of Lyle Edward Roach was returned against Joseph Wolff and Charles V. Day, Long Pine saloon keepers, and the Lion Building company of Omaha, and the Bankers' Surety company of Cleveland, O.

Lyle Edward Roach was born in February, 1912, and is the posthumous son of John P. Roach, who was killed on the track of the Northwestern railroad between Long Pine and Ainsworth on the night of July 4, 1911, while in a drunken condition brought about by indulgence in intoxicating liquors in the saloons of the defendants.

Shortly after Roach's death suit was brought by his widow for the benefit of herself and daughter, and in November, 1911, she recovered a verdict of \$5,000. After the birth of Lyle Roach, about seven months after the death of the father, the second suit was brought.

The plaintiff was represented by M. P. Harrington of O'Neill; R. M. Johnson of Omaha, and John M. Cotton of Ainsworth, and the defendants by Judge Ritchie of Omaha, and J. A. Douglas of Bassett.

ALLIANCE, AS CLERICAL DELEGATE, RAY, F. CHAPMAN OF NORTH PLATTE, AS ALTERNATE, AND L. A. HORTH OF GRAND ISLAND, AS LAY DELEGATE, TO THE NATIONAL CONVENTION IN NEW YORK, WERE ELECTED.

The convention was the largest ever held in the Kearney district.

MAYOR OF BLAIR TAKES OATH AT HIS RESIDENCE

BLAIR, Neb., May 10.—(Special Telegram.)—Mayor W. D. Haller, who was taken to the Omaha hospital some weeks ago, suffering with a hemorrhage is slowly improving at his home here. He is able to be up and around the house a greater part of the day, but it will be some time before he can resume work. Owing to the illness of Mr. Haller, the new city council was not sworn in until the regular meeting on Tuesday evening.

Haller took the oath of office at his residence after which he made his appointments and advised with the council over the telephone.

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PHELAN AND SHIRLEY BUY MORE PROPERTY

Ed Phelan, one of the purchasers of the Senator Millard property at Twenty-fourth and Farnam streets, has bought a lot 75x122 feet at Farnam street where Twenty-second street should run through from J. J. Boucher, paying \$18,000. Another lot owned by Boucher on Thirty-sixth street between Dodge and Davenport streets was bought by Phelan with the Farnam property. He said the deals were made as investments.

BREEDER SENDS BEAR AS FOOD FOR FEAST

HASTINGS, Neb., May 10.—(Special Telegram.)—Adam Breede, editor of the Hastings Tribune, has sent from Plains, Mont., a large bear, which he shot this week near that place. It will be prepared for an Elk club feast, to which Grand Island Elk will be invited. Mr. Breede has returned to the hunt in the northern Rockies.

CADET ENCAMPMENT IS TO HAVE REGULAR ARMY COOKS

The Omaha High school cadet camp will be at Missouri Valley this year and an assessment of \$4.50 will be made on every cadet going to camp. This sum will pay for his train fare, rent of tents and food, so that no cadet need spend a bit more than this amount.

TABLE ROCK NOTES

TABLE ROCK, Neb., May 10.—(Special Telegram.)—Mrs. T. J. Hawkins, well known in this county, died at the home of her daughter Mrs. Whitford in Falls City on Monday. She was the widow of the late T. J. Hawkins, and was aged about 63 years. She was a sister of Hon. J. R. Ervin, who was senator from this senatorial district more than a quarter of a century ago. The interment was in the Pawnee City cemetery.

The addition to the Christian church at Elk Creek was dedicated Sunday morning, a large audience being present. Evangelist Whiston, who conducted a successful meeting in Elk Creek two months

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Advertisement for a homefurnishing store. Text: 'We Store, Move and Pack Household Goods. A New Department. Phone D. 1800 for Full Information. This Homefurnishing Store is for the Service of the People. THE supremacy of this store in value-giving and service is daily shown in the wonderful development of this great organization. The thousands of homes furnished by us is the best expression of the value of this store to the people of Greater Omaha. And "Your Credit is Good"—as usual.' Includes images of a library table, a refrigerator, a rug, and a folding go-cart.

Advertisement for Nebraska Clothing Co. Text: 'Wonder Clothing Values-- Better Styles. An Amazing Variety at \$10, \$15, \$20, \$25. INVESTIGATE our new way of clothes selling-- study it from every angle. Measure the Greater Nebraska's usefulness to you by the remarkable values offered. Spring suits-- the season's smartest models--tailored by Rochester, New York's best journeymen tailors. Especially selected fabrics, bought direct from the mills. Actually \$5.00 to \$8.00 more solid worth in spring suits. A wonderful showing at-- \$10, \$15, \$20, \$25. YOUNG MEN'S Special Styles, values the talk of the town, at, \$10, \$15, \$20. STOUT MEN, tall men, short men and extra sizes, values, \$10 to \$35. BLUE SERGE satisfaction is yours in "Color-fasts" exclusive here. \$10 to \$30. Nebraska Clothing Co. CORRECT APPAREL FOR MEN AND WOMEN.' Includes image of a man in a suit.