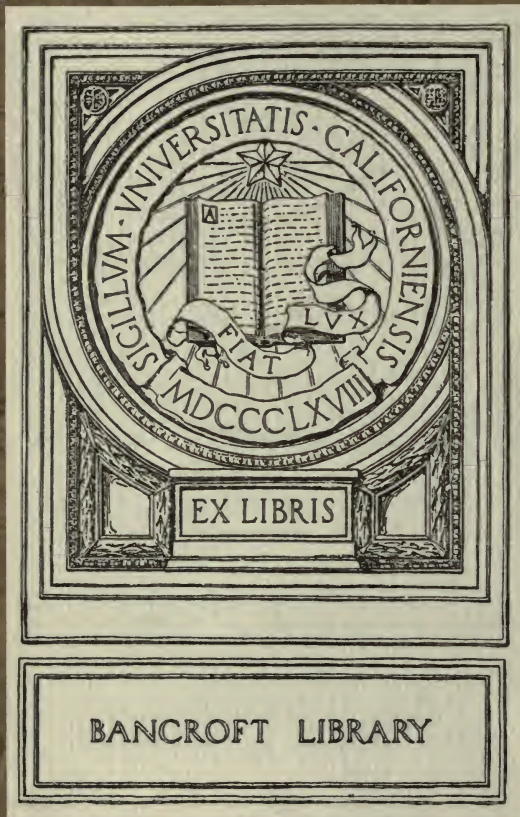


MESSAGE OF GEN. JAMES B. ORMAN

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MESSAGE
OF
Governor James B. Orman
TO THE
Thirteenth General Assembly
In Special Session Assembled

1902



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It was with a feeling of great regret and reluctance that I was compelled to call the legislature together at this time for the purpose of enacting special legislation. It was not through any sense of fear but what the subject-matter for legislation would be capably and efficiently administered at your hands, but because of the fact that I know many, if not all, of you have been compelled to make great sacrifices in order to be present at this session, and for the further reason that extraordinary sessions of the legislature are never popular with the people, no matter for what causes called. For these reasons I deplore the situation in which we are now placed, all of which has been brought about by a combination of circumstances against which the administration has persistently endeavored to enforce the provisions

of the revenue law without the necessity of an extra session.

I have not called this assembly together until after having exhausted all practical and reasonable resources at my command, and not before having ascertained that it would be impossible for the Supreme Court to act in the matter until it would be so late in the season that it would be an added hardship upon the members of the legislature to attend; therefore I had no expedient left save in the calling of the legislature together to enact such laws as will best conserve the rights and interests of the people, untrammelled by the crushing heel of the great corporations, and I feel that I would indeed have been derelict in my duty to the people had I wantonly abandoned the revenue law enacted by this assembly and have allowed the general derangement of the affairs of state to stand in the manner in which they have been placed by the actions of the railroad and other corporations.

Knowing that you have kept in close touch with the situation, and that you are perfectly qualified to cope with it in all its different phases, whatever remarks I have to make will be brief, and whatever recommendations I have to make will be made with the sincere hope that they will aid you in arriving at a satisfactory solution of the difficulty in which we now find ourselves. You have shown in times past that you were thoroughly familiar with the subject with which you have to deal. You are the representatives of the will of the people, you express their desires, and to you they have delegated the proper application of their supreme powers.

To refresh your memory, and in order that you may be fully cognizant of all the steps that have been taken in the matter of the litigation growing out of the revenue law, and the consequent perplexity arising therefrom, I will give you a resume of the cases, and will endeavor to place the matter before you as succinctly as possible.

During the latter part of June the railroad and other corporations interested brought a proceeding in mandamus, in the District Court of Pueblo county, to compel the state board of equalization to perform certain duties devolving upon it by statutes previously in force and effect, which statutes were explicitly repealed by the revenue law of 1901, setting up that the law of 1901 was unconstitutional and void. To this application for a writ of mandamus the state asked for a change of venue, which the court denied. Upon the trial of the cause the court declared the law to be unconstitutional and void, to which judgment the state appealed to the Supreme Court of this state, and a supersedeas was granted the state by said court. This cause is now pending in the court for determination.

When the writ of error was sued out of the District Court of Pueblo county and lodged in the Supreme Court, the state had a direct understanding with the attorneys representing the litigating corporations, that every effort would be made on their part to have this case determined with as little delay as possible. With this understanding, the state prepared its case for presentation and adjudication, and it then transpired that the corporation attorneys had no intention of keeping their part of the agreement, and,

instead of doing as they had agreed to do, were placing every obstacle in their power in the way of a speedy determination.

In the meantime, the corporations again went before the District Court of Pueblo county and prayed for an injunction restraining the state board of assessors from proceeding with the performance of its duty as prescribed by the law of 1901. Again the state moved for a change of venue on the ground that the court did not have jurisdiction, and for other reasons, but the state, finding that there was liable to be considerable delay in having this motion passed upon, applied to the Supreme Court for a writ of prohibition restraining Judge Dixon from proceeding farther in the matter, which application was granted by the Supreme Court. However, the state board of assessors, believing that the District Court did not have jurisdiction to restrain it from performing its executive duties, went ahead and certified out the assessment. Then the corporations immediately asked that contempt proceedings be instituted against the board, its secretary and the attorney-general, and upon a final hearing in that matter the court discharged the board, its secretary and the attorney-general, but declared the certification of the assessment which had been made by the board, null, and required its return. Then, before the board could meet to re-certify out the assessment, and, in fact, almost before the Supreme Court was through announcing its opinion in the contempt proceedings, the corporations appeared before the United States District Court and obtained an order from that court restraining the board of assessors from performing its plain duty.

Upon the hearing Judge Riner, who had been called in to hear the case, held that the state board of assessors was an unconstitutional board, and from his decision the state has taken an appeal to the United States Circuit Court of Appeals at St. Louis.

After the decision of Judge Riner, holding that the provisions of the revenue law providing for a state board of assessors was in contravention to the Constitution, the state board of equalization met and instructed the attorney-general to withdraw the writ of supersedeas in the mandamus case, and that board is now proceeding to make the assessment on corporate property. This, in brief, is the status of the litigation up to the present time.

The Thirteenth General Assembly enacted a law which, in its operations, was the wisest, most efficient and effective revenue law that has yet been provided for the collection of the revenues of the state. It was a law that appealed to the people, irrespective of party, by its equity and impartiality. Under its provisions all persons and all corporations were treated alike; none received benefits and privileges that were not accorded to all. It was a law that was demanded by the people, by the business interests, by the educational interests and by the charitable interests of the state.

This law has been ruthlessly attacked in the courts by the corporations, and the hands of the administrators of the affairs of state have been so effectively tied that they are unable to proceed with the collection of the revenues necessary to conduct our institutions of learning, our great bulwarks of Ameri-

can citizenship and freedom. Our penal and charitable institutions are now suffering for the want of funds with which to properly conduct them.

While we do not for a moment contend that the corporations do not at all times have a perfect right and privilege to test the constitutionality and validity of a legislative enactment, yet their manner of procedure has been such as to delay the speedy determination of the cause now pending before the Supreme Court, until the interests of the state in the matter of the assessment and collection of taxes have become seriously jeopardized. The dilatory tactics they have pursued is more than convincing that they are endeavoring to escape their just proportion of taxation.

Since the passage of the law we have had ample opportunity afforded us to determine its practical effectiveness. It may be that there are some provisions contained therein that can be improved upon, which will add very materially to its efficiency. As a whole, the law is most satisfactory, and I have but one recommendation in the way of a change to make, and that is the provision providing for the assessment of mining property, whether producing or non-producing. It seems to me as though, when the assessing powers of the state are required to list and value the other property of the state at full cash value, that legislation of this kind, where the assessor is compelled to take one-fourth of the gross output for the year previous as the value of the property, that it certainly is class legislation. It is also provided "that nothing in this act contained shall be construed as giving the assessor any right to assess a non-producing mining claim at a greater sum per acre than is assessed per acre

against the lowest producing mine, or mining claim, situated in the same locality," thus taking away the authority of the assessor to use his own judgment and discretion as to its real and true value. It may be that such non-producing claim may be actually worth thousands upon thousands of dollars, yet the assessor has no authority whatever to assess it at its true worth, being compelled to place an assessment upon it of not more than that placed on the lowest producing claim or mine in the same locality. It does not appear to me that this is just or right, and I earnestly recommend this feature to the assembly with the hope that it may receive your thoughtful attention and such remedy as may suggest itself to you as being just and fair to our mining industry.

Next to the important duty of providing for state revenues is the necessity of providing the proper protection to that large class of our citizens who are compelled to undergo dangers and hazards in the performance of their duties. They should have ample protection afforded them in a proper liability bill against the negligence they are powerless to prevent and of which they have no knowledge until overtaken by some accident, and I trust that the senate will, as speedily as possible, remove the cloud that now hangs over the employers' liability bill, passed by the Thirteenth General Assembly.

The people of the western slope are vitally interested in the construction and completion of State Canal No. 3. The completion of this canal will add many beautiful homes and prosperous citizens to our fair state, and I commend to you such liberty of judgment and action as will enable those who have this work

in charge to complete their work at the earliest date practicable.

As citizens of the state of Colorado we all take great interest and pride in the World's Fair to be held in St. Louis in 1903, to commemorate the Louisiana Purchase, of which Colorado formed a part. It is the desire that this state shall make an exhibit which shall surpass that of any of our sister states. Our natural resources are such as to enable us to make a most gratifying exhibit, and one that will attract the attention of investors of capital, eventually adding greatly to our material welfare. Through some inadvertence the legislature, in passing a liberal appropriation for the purpose of making this exhibit, enacted that the funds should be paid out by the treasurer on vouchers drawn upon him. This provision is in direct violation of the Constitution, which provides that no money shall be paid out of the state treasury except on warrants drawn by the auditor. The manner of making this payment has caused the commission a great deal of trouble and perplexity, and has very materially hampered it in its work, and I trust that this special session of the legislature will so amend the act that the auditor of state may draw the warrants in the usual and customary manner, thus avoiding any confusion or difficulty in the future.

In the matter of constitutional amendments, I bespeak your earnest consideration. This is an intricate matter that will require your careful and serious thought. Should you find that any amendment has been proposed by inadvertence, or by reason of its character and effect not being fully apparent at the time of its passage, it should be repealed. However, I

am strongly convinced that the people of this state are able to handle the fundamental law of the state in a most satisfactory and intelligent manner, and that when once committed to them they will take such action upon it as the best interests and rights of the people demand.

In regard to corporate legislation, it must be remembered that whatever materially affects the interests of the corporations correspondingly affects the welfare of the people of the state; but we must also remember that it is from the state and its resources that they derive their great wealth and power, and that the people should have something to say as to how that power is used and that wealth acquired. In the early days, when our state was new, and its development had not reached that unprecedented stage upon which we now find ourselves, there may have been some necessity for charging high freight and passenger rates. But since the state has developed, with its multitudinous farms, cities and villages, with the opening of new mines and new industries, with an enormously increased traffic in both freight and passengers, the tribute these corporations lay upon our people is indeed onerous and exacting, and I believe that this session of the legislature should take steps to remedy this great evil, and curb, at least to some extent, the aggressions of our great railroad corporations. The future prosperity and welfare of our people demands that this session of the legislature take cognizance of this serious situation and that the necessary relief be afforded them.

However, the matter of the greatest and utmost importance for your attention is the enactment of a

revenue law that will insure sufficient revenue for the necessary expenses of the state government and of the state institutions. This is primarily the object in calling you together. The state looks to you for the needed relief, and I do not believe that the appeal will be in vain. I believe you will enact a law that will be just and fair to all, in the operation of which no one will have just cause for complaint. I sincerely hope and trust that as few bills will be introduced as possible, only such bills being introduced as are actually necessary to properly cover the matters mentioned in the call. I also wish to express the hope that you will complete the work as speedily as possible, and with as little expense to the state as may be. However, in the performance of your duty, I do not desire such expedition as will embarrass you in the right performance of your duty, or such expedition as is inconsistent with the passage of carefully considered and absolutely constitutional measures. Do not be turned from the plain path of your duty by those who see in the assemblage of the people an investigation into affairs that may disturb their particular monopoly.

The calling of the legislature together is a most solemn occasion. You should not be unmindful of the fact that, as representatives of the people, great responsibilities rest upon you. The matters before you can not be treated in a light or frivolous manner. I believe the intelligence and patriotism of the Thirteenth General Assembly is of such a high character that it will be enabled to comprehensively grasp the situation and deal with it in an equitable and unswervable fairness to all concerned.

It is your sworn duty to conscientiously and earnestly consider the matters herein presented, and give heed to your own consciences as to the right and justice of such matters; then you will have discharged your duty to the state and your constituents.

JAMES B. ORMAN,
Governor.

Tuesday, January 28, 1902.

Pamphlet
Binder
Gaylord Bros.
Makers
Stockton, Calif.
PAT. JAN 21, 1908

