REPORT OF THE STREET RAILWAY COMMISSION : : : : :

TO THE CITY COUNCIL OF
THE CITY OF CHICAGO

DECEMBER.....1900

Report of the

Street Railway Commission

TO THE

City Council of the City of Chicago

Ald. MILTON J. FOREMAN, Chairman

Ald. WILLIAM S. JACKSON	Ald. ERNST F. HERRMANN
Ald. WILLIAM F. BRENNAN	Ald. JULIUS GOLDZIER
Ald. WALTER J. RAYMER	Ald. WILLIAM MAVOR

GEORGE C. SIKES, Secretary

December, 1900

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RESOLUTION CREATING THE STREET RAILWAY COMMISSION, AND SUPPLEMENTARY RESOLUTIONS AND ACTS OF THE CITY COUNCIL RELATING TO THE COMMISSION.

The City Council, at its meeting of December 18, 1899, adopted the following resolution, offered by Alderman Foreman:

WHEREAS, The contractual relations at present existing between several of the companies operating the street car systems in the City of Chicago and the municipality of the City of Chicago will shortly expire; and

WHEREAS, The problem of the renewal or extension of these franchises, and of all others that are to expire in the future, presents itself at the present time, and in view of the magnitude and variety of interest involved is of paramount importance; and

WHEREAS, It is the almost unanimous opinion of the people of the City of Chicago that the existing laws and ordinances concerning street railway franchises and the municipal regulations of the operation of street railway systems are antiquated and were enacted at a time when the City of Chicago had not reached its present stage of development, and such acts and ordinances are wholly inadequate to meet the needs and requirements of the City of Chicago, both with respect to accommodations and facilities for passengers and for compensation for the use of the public streets and highways by said operating companies, and in many other regards; and

WHEREAS, In view of these existing conditions, constructive legislation is necessary, looking toward the enactment of such contracts as will result in a correction of the evils and defects of the past and assure to the people of the City of Chicago good and efficient service, as well as just and adequate remuneration for the privileges enjoyed by the companies to whom such franchises or renewals thereof may be granted; and

WHEREAS, The question of municipal ownership of street railways is engrossing public attention and finds many advocates amongst citizens having the interest of the city at heart, and the expediency and desirability of this step is one of the questions that must be taken into serious consid-

eration before any final steps are taken toward renewing existing or granting new franchises; and

WHEREAS, The people of the City of Chicago look with deep concern and jealous eye at the ultimate solution of these questions and should have a voice in their settlement, and with this in view a submission of the same to the arbitrament of the people by means of referendum, may be advisable; now therefore, be it

Resolved, That the Mayor be and he is hereby authorized and directed, by and with the concurrence of the City Council, within thirty days after the passage of this resolution, to appoint a committee of seven members of this Council, whose duty it shall be to:

First—Examine into the feasibility and practicability of the municipal ownership of street railways in this city and the terms and conditions under which this ownership may be established.

Second—Examine into the questions of kind and amount of compensation and the conditions for the renewal of existing or granting of new franchises or renewals, kind of motive power best adapted to various sections of the city and at varying times; the condition in which the streets, highways and tunnels are to be placed and maintained by companies using the same; accommodations to be furnished passengers; amount of fares; commutation tickets; transfers; terminal facilities and switches; extension of lines; the hours of employment and compensation to the employes; protection of the citizens against accident, and penalties for non-compliance with the laws, ordinances, rules and regulations.

Third—To report to this body such measures, modes of procedure and ordinances as shall be requisite and necessary to carry into effect after their passage the recommendations of this commission.

Under authority granted by the foregoing resolution, His Honor the Mayor, on January 3, 1900, sent to the City Council a communication, making appointments as in the said resolution provided for, as follows:

MAYOR'S OFFICE,
January 3d, 1900.

To the Honorable, the City Council:

GENTLEMEN—In accordance with a resolution passed by your Honorable Body at its meeting of December 11th empowering the Mayor to appoint seven Aldermen to serve as a committee to investigate various matters in connection with the street railway systems in the City of Chicago, I

hereby appoint the following Aldermen as members of such committee and respectfully ask the concurrence of your Honorable Body:

Ald. Foreman, Chairman.
Ald. Herrmann,
Ald. Jackson,
Ald. Brennan of the Tenth Ward,
Ald. Raymer,
Ald. Mayor,
Ald. Schlake.

Respectfully,

CARTER H. HARRISON,
Mayor.

The City Council, at its meeting of January 15, 1900, adopted the following resolution, offered by Alderman Goldzier:

WHEREAS, Grave doubt exists as to the right of a number of the traction companies of the City of Chicago to operate street cars by cable or electric power; and,

WHEREAS, It is expedient and necessary, previous to the expiration of the various franchises of such companies, that this question shall be definitely determined, so as to fix the respective rights of the city and of the traction companies; therefore, be it

Resolved, That the Special Committee on Street Railway matters be directed to report at as early a time as possible all information attainable on the following points:

First—Which of the traction companies (if any), to whom the right of operating cars by other than animal power is granted by the City of Chicago, are authorized by their charters from the State of Illinois to so operate street cars.

Second—Whether a grant by the city of the right to use other than animal power in street car service is valid, when made to a company which is prohibited by its State charter from using other than animal power.

Third—Whether the act of 1865, under which various of the traction companies claim certain rights, confers power to operate street railroads by other than animal power.

Fourth—What street car lines (if any) may be acquired by the City of Chicago by virtue of the provisions of the ordinances under which the various street railways are operating?

The City Council, at its meeting of February 5, 1900, adopted the following resolution, offered by Alderman Goldzier:

WHEREAS, One of the most important questions before the people of this city is that of sufficient means of street car transportation; and,

WHEREAS, The congested condition of the streets in the heart of the city makes it practically impossible to burden the surface of streets with more vehicles by increasing the number of cars upon the various surface roads centering in the down town district; and,

WHEREAS, Under similar conditions in other cities the system of placing street cars underground has been found practicable; therefore be it

Resolved, That the Special Committee on street car matters be and they are instructed to investigate the question of the feasibility of subways in the heart of the city to accommodate all street cars which are now operated upon the surface of streets, and that said committee make a full report to this Council upon this subject, giving an outline both of the technical side of such a plan and of the proper financial methods of securing such improvement.

The appropriation ordinance for 1900, as passed by the City Council March 26, 1900, and amended April 4, 1900, contained the following item:

For secretary and expenses of Street Railway Commission, $4,000.

Under the authority thus conferred the Commission selected as secretary, Mr. George C. Sikes, whose service with the Commission began June 12 of the present year.

The City Council, at its meeting of April 23, 1900, adopted the following resolution, offered by Alderman Brennan (Tenth Ward):

Resolved, That the Street Railway Commission be continued, and the Mayor be empowered to fill such vacancies as may have occurred.

In accordance with the authority conferred by the foregoing resolution, His Honor the Mayor appointed Alderman Goldzier to fill the vacancy in the Commission caused by the retirement of ex-Alderman Wm. E. Schlake.

LETTER OF TRANSMITTAL

To the Mayor and Aldermen of the City of Chicago in Council Assembled:

The Street Railway Commission created by resolution of your Honorable Body submits herewith the draft of a street railway bill, together with a report dealing with questions of street railway policy that seem to require discussion in connection with the bill.

The Commission also has under preparation a bill relating to subways, which it hopes to be able to submit to your Honorable Body early in January.

It is the recommendation of the Commission that the City Council, if it approve of the street railway bill herewith submitted, give formal expression of its approval of that measure and that thereupon the City Clerk be directed to transmit one copy of the bill to His Excellency, the Governor of Illinois, one copy to the President of the Senate for presentation to the Senate, and one copy to the Speaker of the House of Representatives for submission to the House, with the request that the bill be enacted into law.

Respectfully submitted,

[Signed] MILTON J. FOREMAN,
Chairman.
WM. S. JACKSON,
W. F. BRENNAN,
WALTER J. RAYMER,
ERNST F. HERRMANN,
JULIUS GOLDZIER,
WILLIAM MAYOR.

Chicago, Illinois, December 17, 1900.

QUESTIONS OF STREET RAILWAY POLICY DISCUSSED.

Chicago has more miles of street railway than any other city in the world. That fact, taken together with the large area of this city, makes the street railway problem, or rather, the problem of local transportation, one of tremendous importance for Chicago; for the welfare of the city as a whole and of its population as individuals is vitally dependent upon the adequacy of the system or systems of local transportation that may be provided. Despite the importance of the subject, however, the street railway systems of Chicago have been permitted to develop for the most part in a haphazard manner, without regard to any well-defined and comprehensive plan or policy. As a result the situation as it exists today is complicated in the extreme, and the problem presented is exceedingly difficult of solution. In fact, it is impossible of immediate solution in any manner that can prove entirely satisfactory to all the interests concerned. The best that can be done is to outline a definite and comprehensive policy to be kept continuously in mind in dealing with the different phases of the local transportation problem as they may arise for consideration and action, this policy to be constantly worked toward and realized as speedily as circumstances will permit.

While so far as internal policy is concerned the street railway systems of Chicago have developed without much regard to any definite or comprehensive plan, there are two features of State policy regarding street railways which Chicago has been chiefly instrumental in forcing the State to adopt, that may be accepted as well established. One is the principle of local control. The other is the policy of short term grants.

The first street railway franchise under which a railway was constructed in Chicago, granted by the City Council in 1858, was for a period of twenty-five years, and gave to the city the

right of purchase at the end of that period. The Legislature of 1865, however, despite local popular protest, passed over the veto of Governor Oglesby a law extending, or purporting to extend, from twenty-five to ninety-nine years, not only the charters of the companies then operating horse railways in the city of Chicago, but their franchise rights in the public streets of the city as well. In response to the public protest against the principle underlying this act, a provision was inserted in the constitution of 1870 designed forever thereafter to prevent interference with the principle of local control in such matters. That provision is: "No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town or incorporated village without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad."

Under the new constitution the Legislature in 1874 passed a general law relating to horse railroads, which, among other things, limited to twenty years all grants thereafter to be made by any local authorities.

From the discussion growing out of street railway measures enacted or considered by the last three legislative assemblies of Illinois it plainly appears to be the popular desire that the principle of local control and the policy of short term grants be maintained.

Starting with these two features of State policy as a basis the Street Railway Commission, in accordance with the instructions of the City Council given in the resolution creating the Commission, is attempting to formulate such other features of street railway policy and to outline such courses of action as the situation seems to require. As said before, the problem presented is complicated and difficult of solution and the Commission has not been able, in the time at its disposal, to go thoroughly into all its phases. It has given attention first to those aspects of the question that demand consideration in connection with proposed State legislation. The resolution creating the Commission points out that the existing laws and ordinances concerning street railway franchises and the municipal regulations of the operation of street railway systems are antiquated and were enacted at a time when the city of Chicago had not reached its present stage of development, and that such acts and ordinances are wholly

inadequate to meet the needs and requirements of the city of Chicago at the present time. Fully agreeing with this view, and believing that legislative action is a necessary prerequisite to any thoroughly satisfactory solution of the problem by the City Council, the Commission, as the first step in its work, has prepared and herewith presents the draft of a street railway bill, the purpose of which is to confer upon the municipality the power to work out such a solution of the street railway problem as may best suit its inhabitants, without, however, conferring upon the present generation the power needlessly to tie the hands of succeeding generations.

Except for two features, the bill presented is a mere grant of power to local authorities. The operation of the bill, if enacted into law, is intended to insure proper publicity of the affairs of street railway companies and to prevent future overcapitalization without action on the part of local authorities. The provisions of the bill in other respects, however, are in the nature of enabling legislation, and merely confer upon local authorities power, subject to restrictions and safeguards, to deal with street railway problems in such manner as may seem to them wise. No attempt is made in the bill to settle or determine any question of policy for any municipality.

Sections 2, 3, 4 and 5 of the bill submitted are substantially the provisions of the existing street railway law. Section 7 is a modification of the present statutory provision relating to frontage consents that is embodied in the city and village act. The other sections of the bill embody street railway provisions that are new to Illinois.

In framing the bill the commission naturally has had the needs of Chicago particularly in mind, but of necessity a bill designed to displace the existing street railway law must be general in its scope. For the most part, however, the important new features of the bill are made applicable to cities only. The general aim has been to change as little as possible the status and powers under existing street railway laws of municipalities other than cities.

The discussion that follows is not confined to points embodied in the bill submitted, but consideration is also given to some

features of street railway policy that seem to require treatment in this connection.

The most important questions of street railway policy with which the Commission has deemed itself called upon to deal, may be considered under the following headings:

I. UNIFICATION OF MANAGEMENT.

The street railway business should be recognized as a monopoly business and treated accordingly.

II. PUBLIC CONTROL AND DURATION OF GRANTS.

These two subjects should be treated together because of the intimate relations they bear to each other. If street railways are to remain under private management some means must be devised for rendering public control more effective. The Commission favors the reservation to the Council of broad powers of control and for the exercise of the powers thus reserved it recommends the creation of a new standing committee on Local Transportation, modeled in the main after the Committee on Track Elevation. This committee should have regular quarters in the City Hall, which should be open during business hours for receiving complaints from citizens. The committee should have at its service such expert and clerical assistance as might be found necessary.

III. MUNICIPAL OWNERSHIP.

Cities should possess the power, under proper restrictions and safeguards, to own and operate street railways. The city may not deem it expedient to exercise this power, but with such a power in reserve to be used in case of need, the city would be in a position to make much better terms with private corporations. The Commission, while believing it wise and important to give the power to operate, would not look wth favor upon the proposition to have the city of Chicago operate street railways in the immediate future. It has no notion that such a proposition would meet with the favor of the people of Chicago at this time. Problems of the future may safely be left to the decision of the future. The Commission is of the opinion, however, that it would be wise for the city, at the earliest practicable time, to acquire ownership of the trackage and of whatever may form a part of the public

street, without going to the extent of ownership and operation of rolling stock.

IV. REFERENDUM.

In so far as practicable, the people should be given a direct voice through the referendum in the settlement of the most important questions of street railway policy.

V. PUBLICITY.

Street railway companies are entrusted by the public with the management of a public business. The affairs of such companies, therefore, should be open and known to the public to the same extent as if the business were managed by the public directly.

VI. CONTROL OF CAPITALIZATION.

The law should forbid overcapitalization.

VII. FRONTAGE LAW.

Frontage consents should be required only when it is first sought to lay down tracks upon a street. The right of abutting property owners to prevent a street from being used for street railway purposes, regardless of the public need for a proposed railway, should not be absolute and unqualified.

VIII. LABOR POLICY.

The public has a right to demand uninterrupted street railway service. To that end, it has a right to insist that everything reasonably possible be done to prevent strikes and lock-outs. Companies, in accepting grants, should be required to submit all labor disputes to arbitration.

IX. MOTIVE POWER.

The Chicago street railway field is profitable enough to warrant the use here of the most desirable form of motive power which experience has shown to be practical. The overhead trolley should not be permitted in the business district.

X. SUBWAYS.

The Commission is of the opinion, in so far as it is qualified

to judge without the assistance of engineering experts, that Chicago should have a system of subways in the down-town district for the accommodation of street cars entering that district, thus making possible the removal of such cars from the surface of the streets within such subway district. The subject, however, is one calling for a careful and detailed investigation by engineers employed for that purpose by the city before any decisive steps are taken. Legislation should be secured at once permitting the construction and ownership of such subways either by the city or by a private corporation, which legislation should authorize the people themselves to say, through the referendum, which form of ownership they prefer, or whether they want subways at all.

XI. RATE OF FARE AND COMPENSATION.

These are matters requiring a more careful study than the Commission has yet been able to make of them. The two should be considered together, for obviously the lowering of fares would reduce the possibilities in the way of compensation to be paid into the public treasury, and vice versa. The question of low fares vs. compensation and the question of the uniform fare as opposed to graded fares or the zone system of fares present themselves for consideration. The Commission believes the question as to the amount of compensation for franchise grants should be left open until the terms of the grant otherwise are virtually decided upon.

XII. CO-ORDINATION OF SERVICE.

The Commission is of the opinion that there should be more co-ordination between surface lines and steam and elevated roads.

XIII. LEGAL QUESTIONS—THE 99 YEAR ACT.

When the companies now in control in Chicago receive any further grant of privileges from the city they should be required, as a condition of such grant, to renounce any claim of rights under the so-called Ninety-nine Year Act of 1865.

These various features of policy, in the order enumerated, will now be considered more at length.

I.

UNIFICATION OF MANAGEMENT.

The theory underlying the street railway policy of Chicago heretofore, in so far as Chicago may be said to have had a policy on this subject, has been that the street railway business is a competitive business; that competition should be fostered in the interest of the public and that the possibility of competition should be ever present as a means of keeping traction managers alive to their duties to the public. That theory is incorrect and unsound. Moreover, in practice it is everywhere found impossible to induce, persuade, require or compel public service corporations engaged in the same line of business to compete with one another except for comparatively short periods of time. Sooner or later rival companies of this kind will consolidate, or they will divide the territory among themselves and each will keep in its own territory, or there will be secret agreements or understandings that will suffice to eliminate all effective competition. The various gas companies of Chicago which were given franchises on the promise that they would compete with one another are now consolidated under one management. The principal street railway companies have carved Chicago into sections, each agreeing, tacitly at least, to serve a particular section and not to encroach upon the territory of others. Where one company has been given a franchise to enter the field of another company, as in the case of the General Electric, which was authorized to invade City Railway territory, the usual effect has been only to increase the amount of outstanding securities upon which the people will be expected to pay dividends.

One street railway company can serve the city better and more economically than can several. The street railway business is by its nature a monopoly business. Therefore, instead of trying to foster unnatural competition which cannot possibly be maintained for any considerable period of time, the wise thing to do would seem to be to recognize the monopoly nature of the street railway business and to deal with it accordingly.

If the slate were clean, so to speak, and the city of Chicago were in a position to deal with the problem in the manner that might be deemed most wise, the Commission would unhesitatingly recommend granting to a single corporation the exclusive

right to operate street railways within the limits of the city, subject, of course, to the conditions that should logically attend such a grant. It would under no circumstances favor authorizing a competing company to enter the field. If the company given the exclusive right to provide street railway service could not or would not satisfy the public, the proper remedy would be for the city to terminate the grant and take possession of the property of the company suitable to and used by it for street railway purposes, compensation to be made for the same on the basis of its value for railway purposes but without any allowance for franchise value.

But the slate is not clean. Existing complications must be reckoned with. Taking the situation as it is, the Commission would discourage permitting any new company to enter the field except, perhaps, as a successor to some or all of the companies now in control, in the remote and improbable contingency that some of such companies might be unwilling to deal with the city on terms that could be accepted. The Commission does not go to the extent of favoring an actual legal monopoly. It does not believe that to be necessary or expedient. But it does believe that the people of Chicago are ready to deal with the street railway business as a monopoly business and that if the decision is left to them no franchise will be granted to a competing company so long as the company in control is making anything like reasonable efforts to satisfy the public. Therefore the Commission has provided (Section 10 of the proposed bill) that no street railway franchise shall be granted to a competing company unless the ordinance making such grant be approved by the people by direct vote. Such a provision, the Commission believes, will amount to virtual assurance of a monopoly to any company disposed to deal fairly with the people.

Besides opposing further grants to competing companies, the Commission would recommend that the city use its influence to bring about unification of management, so far as possible, either through actual consolidation of the different companies now in existence, or through operating agreements, to the end that the street railways of Chicago may be operated upon the basis of a unified system. Therefore the Commission, in the bill submitted (Section 26), authorizes street railway companies to sell or lease their property or to consolidate or make operating agreements

with other companies, subject to the approval of the public authorities granting the right to construct the railways in question. The provision calling for the approval of the public authorities is important, as otherwise sales or agreements might be made in derogation of the public interests.

Of course, if a company is to be given a grant on the assumption that it is to be permitted to occupy the field alone, that company, on its part, must undertake to occupy the field completely and to the satisfaction of the public. It must build and operate not alone such lines as it chooses, but it must furnish all the service within the territory assigned to it which the public interests may require. Especially must such a company be required to extend its lines or to establish new lines as needed. It would be well for the City Council, therefore, in grants that may be made hereafter, to reserve the right to require the establishment of new lines as needed.

II.

PUBLIC CONTROL AND DURATION OF GRANTS.

These two matters should be considered together because of the intimate relation one bears to the other.

The primary object in granting to private corporations the right to encumber the public streets with car tracks is to secure street car service. Unless this primary object is accomplished the street railway policy of the city must be said to be a failure, no matter how large revenues may be secured for the public treasury, nor how advantageous for the city the terms of a franchise grant may be in other respects. How to secure adequate service at reasonable rates is, therefore, the essence of the street railway problem. All other considerations, comparatively speaking, are of secondary importance.

One way that suggests itself of securing adequate service is to stipulate for it in the franchise. But franchise stipulations of this kind are not self-executing. It is one thing to insert in a grant provisions requiring certain things in the way of service. It is quite another matter actually to get the things done. More-

over, it is absolutely impossible to make stipulations today that will fit the changed conditions of tomorrow. No person is wise enough to formulate for insertion into a street railway franchise that is to be interpreted as a contract, all the stipulations that will be necessary to insure good service for the period, say, of a generation for which the franchise may run. In fact, the more a street railway franchise partakes of the nature of a contract, which cannot be altered in any material respect except with the consent of both parties, even to meet changes in conditions which could not be foreseen at the time the grant was made, the less satisfactory is it certain to prove in operation and the more is it likely to militate against healthy and progressive development. On the other hand, the more such a franchise partakes of the nature of a mere license, being subject to complete regulation and control by the public authorities at all times, the better for the public at large. Mere property interests of a government, like the property interests of an individual, may properly enough be contracted away. But governing authorities ought not, by contract, to divest themselves of governing functions. Control of the public streets and of the public means of transportation thereon, is a governing function which should, so far as possible, be vested in the proper governing authorities at all times. Such control should be continuous and properly ought not to be surrendered beyond recall, either by contract or in any other manner. But, of course, it is surrendered to a greater or less degree by the ordinary definite term street railway grant with which we are familiar. The present widespread dissatisfaction with street railway management in private hands, it would seem, may in large measure fairly be attributed to the fact that public authorities have not retained continuous control, as they should have done, but have permitted themselves to be divested of it by contract. British and German cities generally have a reputation for marked ability in making contracts with public service corporations, and some of the agreements made by those cities, conferring franchise rights, are remarkable for the ingenuity and detail with which they seek to guard against future contingencies. But the results under these very carefully drawn contracts do not seem to be satisfactory, because, as the contract periods expire, British and German cities are rapidly adopting the policy of municipalization. Some contend that the careful restrictions of the contracts

made by British and German cities tend to hamper and discourage private enterprise and thus to preclude satisfactory street railway development under private management. Whether this or some other explanation be accepted as the correct one, the fact remains that the system of regulation by contract has not proven satisfactory in British and German cities, as attested by the fact that this system is being abandoned with considerable rapidity for the policy of municipalizaton. Prof. James, of the University of Chicago, who has lately returned from a trip of investigation of German cities, tells an incident which helps to an understanding of the movement toward municipal ownership in Germany. In reply to a question as to the reason why the city of Cologne was proceeding to take over its tramways, the Mayor of that city said to Prof. James: "We are taking over the tramways because it was found impossible thoroughly to safeguard the public interests under any contract with a private corporation that could be drawn."

There is unquestionably in American cities a strong popular trend in the direction of municipalization of street railways. It seems also to be unquestionable that the growth of municipalization sentiment is due in large measure to the failure, or supposed failure, of many American cities to get satisfactory results from public service corporations with which they have attempted to deal on the contract basis.

One of two things appears to be inevitable. Either a system of really effective continuing public control over street railways must be developed or street railways are virtually certain to be municipalized sooner or later. Manifestly, therefore, it should be the part of those who look with disfavor upon the idea of municipalization to do what they can to assist in developing a system of control over street railways that will prove satisfactory to the public.

In attempting to devise a system of effective public control, the important considerations are: (1) That adequate powers of control be reserved to the governing authorities to be exercised by such authorities in their discretion at any time; (2) that special machinery be created for the purpose of insuring the intelligent exercise of such powers of control in the interest of the public.

As has been said, franchise stipulations designed to insure

adequate service are not self executing. There must be some supervising body, whose special business it is to see that the things stipulated are actually done. Moreover, specific franchise stipulations cannot possibly cover all points in relation to service that may arise. The proper governing authorities should be able at any time to make such regulations, or to order such improvements in service, as the needs of the public may require. Therefore broad powers of control should be reserved to the governing authorities, to be exercised as need may arise. Section 6 of the proposed bill aims to reserve to city councils broader powers of control than are now possessed. If this bill should not become a law before the settlement of the pending franchise-renewal problem, the City Council by all means ought specifically to reserve such powers of control in any grant that may be made.

Having reserved the right of control, special governmental machinery for the exercise of such right must be devised if the control is to be really effective and of benefit to the public. Chicago today has rights of control which are not exercised for the lack of any supervising body whose special business it is to recommend regulations for the improvement of the service and to see that existing regulations are properly enforced.

What should this machinery be? Two plans or methods are naturally suggested for consideration. One is the creation of a Commission to be entirely independent of the Council. The other is to have the desired machinery of control developed within the Council. The Street Railway Commission gives its approval to the latter plan.

It would recommend that a new standing committee of the Council be created, to be known, perhaps, as the Committee on Local Transportation. This committee in many respects might well be modeled after the Track Elevation Committee. It should not be large in number. It should have regular quarters in the City Hall, which should at all times during business hours be open for receiving complaints concerning service from citizens, and for the imparting of information. This committee should have such expert and clerical assistants as might be required. These assistants should be under the protection of the civil service law, to the end that their tenure of employment should be permanent or during good behavior, in order that the city may have the benefit of their experience after they have become

familiar with the problems to be dealt with. The most important feature of this plan is the one providing that the Council, through its committee on this subject, should have at its service a permanent force of experts to advise and assist it in dealing with the various problems of local transportation as they may arise.

Naturally, too, this same committee, with its expert advisers and its mass of accumulated information and experience, is the one to which ordinances conferring the right to construct or operate street railways would be referred. This committee, acting for the Council, would be better qualified to conduct the preliminary negotiations with a private corporation over franchise terms than would a committee that is only occasionally called upon to consider street railway matters. The present plan of referring street railway ordinances to one of three committees (Streets and Alleys, West, North or South, as the case may be), according to the part of the city in which it may be proposed to locate the road, is especially objectionable as tending to foster the sectionalism which it should be the object of a well considered street railway policy to obliterate. If the street railway systems of the city ought to be unified as far as possible, and the Commission believes they should be, the City Council itself ought to take the first step in that direction, by having one committee to consider all street railway matters, rather than three committees, made up on strictly sectional lines, as is the case at present.

ALL GRANTS SHOULD EXPIRE TOGETHER.

In order for the city to control the situation satisfactorily it must be able to deal with the problem as an entirety at any given time, which it is not in a position to do when some outstanding grants expire at one time and some at other times. It ought to be the policy of the city in the future, therefore, to make provision to have all grants expire at the same time. This is a matter of much importance.

DURATION OF GRANTS.

It was said at the opening of the discussion under this heading that the question of duration of grants was closely related to the problem of public control. The nature of that relation will now be considered.

As has already been stated, efforts to control public service

corporations through contractual agreements generally have proven unsatisfactory wherever tried, whether in this country or in Europe. The Commission, in the plan recommended for the reservation of broad powers of control, hopes to secure better results than can possibly be secured through contract stipulations in the franchise with reference to service. But the Commission does not delude itself with the hope that the results under this plan will be entirely satisfactory and perhaps they may not in practice prove even approximately so. It is difficult to compel a corporation enjoying definite term rights in the public streets to do what it may desire for reasons of self-interest not to do. The only way for the city to be certain of its ability to exercise complete control over its public streets and over the means of transportation thereon is for it not to surrender beyond recall any rights of use or of occupation in such streets. The city can control completely only when it is in a position to terminate at any time the right of use claimed by any person or corporation that may choose to defy the will of the city in any respect. In other words, the grant terminable at any time at the will of the city authorities is the only kind under which the city can be sure of its ability to dominate the situation at all times. And it is precisely in the communities where that form of grant obtains that the best results generally are secured, and it is in such communities that the relations between the corporations and the public are the most satisfactory. We refer to the State of Massachusetts and to the city of Washington, D. C.

In Massachusetts street railway grants do not run for any definite period. A company is simply granted a "location," that is, it is permitted to lay its tracks in a street. But the location may be revoked at any time. Until recently the power of revocation rested absolutely with the local authorities, but the act has lately been amended so as to give the right of appeal to certain State authorities where the company may feel that it has been treated unfairly. But the principle of a grant revocable by the public authorities at will has not been altered. This power of revocation, it is true, has seldom been used, but its existence has served to keep the corporations on their good behavior at all times, and to keep the public authorities complete masters of the situation at all times. Moreover, capital has not been wanting

for street railway enterprises in Massachusetts under these conditions.

The only careful and thorough-going official study ever made in this country of the subject of the proper duration of street railway grants, so far as this Commission is aware, was that made by a Massachusetts committee, of which Mr. Charles Francis Adams was chairman. The report of that committee, which was submitted to the Legislature of Massachusetts in February, 1898, is so enlightening and instructive that lengthy extracts from it are appended to this report. The Massachusetts committee, after an examination of the different varieties of grant in use, declared in favor of the continuation of the Massachusetts system of indefinite term grants. "In theory," it says, "such a franchise is to the last degree illogical." Yet it cannot be said, the Commission further adds, "that the system has for the half century it has been in use worked otherwise than on the whole satisfactorily." On the other hand, the term franchise, wherever its results were studied, the committee says, "has been productive of dissension, poor service, scandals and unhealthy political action." The committee adds: "There is probably no possible system productive of only good results and in no respect open to criticism; but, in fairness, the committee found itself forced to conclude that the Massachusetts franchise, which might, perhaps, not improperly be termed a tenure good behavior, would in its practical results compare favorably with any. Certainly those results are as immeasurably as they are undeniably better than the results as yet produced in Great Britain."

The important thing in the testimony of the Massachusetts committee is the assertion that the Massachusetts system of indefinite term grants has worked well in practice. It is important to know, too, that the system is satisfactory both to the companies and to the municipalities, for at the hearings of the committee neither asked for any change in the form of franchise grant in this respect, except that the companies suggested some "partial measures of protection against possible orders of sudden, ill-considered or aggressive revocation."

Turning to the city of Washington, we find this same indefinite term grant in use, with most satisfactory results. Washington is one of the smaller cities of the country, and therefore does not furnish as profitable a field of operation from the street rail-

way manager's point of view as do the larger centers of population like Chicago, Philadelphia or New York. Nevertheless, Washington has the best street railway service of any city in the country and it has led most other cities in the introduction of improvements in service.

In Washington franchise grants are conferred by act of Congress, and all grants are subject to alteration, amendment or repeal at any time, at the will of Congress. Under the power thus reserved Congress orders such improvements in service as it may deem desirable, and whenever it deems them desirable, and the orders are at once executed without parley or litigation. The overhead trolley was never permitted in Washington. When the underground trolley was shown to be feasible, Congress passed an act reading in part as follows:*

"That the said Metropolitan Railroad Company be, and the same is hereby authorized, empowered and *required* to equip and operate the lines of its cars upon and along * * * with an underground electric system for the propulsion of such cars."

Under this order Washington was the first city in the country to secure the underground trolley.

Under the reserved power to alter, amend or repeal grants at will Congress has required different companies to make arrangements for issuing transfers from the line of one company to those of another, and it has also required different companies to use certain tracks in common where the public interests would be served by such an arrangement.

In framing franchise legislation for Porto Rico Congress made provision for this same form of indefinite term grant.†

In view of the fact that the indefinite term franchise has worked so well in practice, it may be in order to question the statement of the Massachusetts committee that found in favor of this form of grant that "such a franchise is to the last degree illogical." Things that are illogical usually do not work well, in the long run at least. The fact that the indefinite term franchise

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*Section 2 of an act to authorize the Metropolitan Railroad Company to change its motive power for the propulsion of the cars of said company. Approved August 2, 1894.

† See text of the Porto Rican franchise legislation in the appendix to this report.

has actually produced such satisfactory results in practice must lead one to inquire if it is not really correct in principle, despite its seeming illogical character.

As the Massachusetts committee very clearly and very correctly points out, the street car, in evolutionary development, is "nothing more nor less than an improved omnibus, and the tramway a special feature in the pavement of the public way; a feature adapted, it is true, to the car's special use, but not necessarily excluding from general use the portion of the street in which it is laid. This is all the street railway was fifty years ago, when first laid; it is all it is now—an improved line of omnibuses, running over a special pavement. If this fact be firmly grasped and borne constantly in mind, the discussion, and the principles underlying it, are greatly simplified. The analogy throughout is with the omnibus line, and not with the railroad train; with the public thoroughfare, and not with the private right-of-way. Upon this distinction, indeed, all the questions now to be discussed, whether of taxation or of franchise privilege and obligation, will be found to turn."

Now, the omnibus is operated under a license that gives no right as against the authority granting the license that cannot be altered or taken away at any time. All would concede the unwisdom and impolicy of making the license for the omnibus a binding contract for a definite period of time that could not be altered or revoked by the granting authority, no matter how conditions might change, and no matter how arbitrary and overbearing the manager of the omnibus line might be in his dealings with the public. And yet the indefinite term grant or revocable license for the street car, which is only an improved omnibus, is conceived to be illogical. We cannot think that it is so. On the contrary, the indefinite term grant is nearer in accord with the correct principle than is the term grant.

Because of the great outlay involved in establishing a street railway system, it is said, the owners of such property ought to have some assurance that their property value will not be destroyed by some hasty act of revocation. And so they ought. But the assurance should be that, if their rights to use the streets be revoked, their property suitable to and used for street railway purposes should be taken off their hands at a fair valuation; not that they should be privileged to remain in undisputed possession

of the public streets for a definite period of time, whether they serve the public well or ill.

The Street Railway Commission believes that the definite term grant, whatever its duration, is open to serious objections. It is of opinion that a grant of indefinite duration but subject to termination at any time upon certain conditions, one of which should be the taking of the property of the grantee at a fair valuation, would be productive of much better results. But this idea is so much at variance with commonly accepted views in this State concerning franchise grants, and would mark such a radical departure from present policy, that the Commission has hesitated to do more than to commend the idea to public favor. It has not sought to incorporate the idea into the draft of the bill herewith submitted. As a modification of this idea, however, and as a means of controlling the situation in the interest of the public, the Commission would recommend that grants hereafter made contain a provision giving the city the right to terminate the grant and to take over the property at an appraised valuation at the end of every five year period. This provision should be inserted primarily with a view to its use only in case public dissatisfaction with service and conditions should be so great as to make a change in management imperative. With such a provision in the grant there is much less likelihood that there would be cause for public dissatisfaction.

The Commission has not thought it wise to make any change in the term named by the present law, twenty years, for which street railway grants may run. But it has sought to define somewhat more clearly the status and rights of the parties to the transaction (the company receiving the franchise on the one side and the local authorities granting the same on the other side) at the expiration of any grant hereafter made. The provisions of the bill in this respect have reference only to future grants and do not apply to outstanding grants which were given and received under the existing law. The bill stipulates (Section 12) that the authorities making the grant shall have the right at the expiration of the grant to take over the property of the grantee at a fair valuation. More than that, the company holding the grant is given some rights as against the local authorities, as will be seen by further perusal of Section 12 of the bill. This feature is an

important modification of the twenty year term limitation in the direction of the indefinite term grant, heretofore discussed.

The language of that portion of Section 12 which prescribes the method for determining the valuation of street railway property to be taken over by the public authorities is taken bodily from the British Tramways Act. That language has been adjudicated by the highest courts of Great Britain and has been interpreted (British Law Reports, 1894, A. C. 456) to mean substantially that cost of duplication less depreciation is to be taken as the basis for determining valuation. In taking over the language of the British statute the British judicial interpretation of the language would naturally be accepted too, and presumably our courts would follow the British decisions, should the language in question become the subject of litigation.

III.

MUNICIPAL OWNERSHIP.

The bill as drafted and presented by the Commission gives to cities the power to own and operate street railways. It does not follow from this, however, that the Commission favors the early adoption by Chicago of the policy of municipal ownership and operation. In fact, the Commission is quite distinctly of the opinion that it would be unwise for the city of Chicago to attempt at the present time to operate its street railways. Nor has the Commission any notion that the people of Chicago, if given the opportunity through the referendum to express themselves upon the subject, would at present favor municipal operation. What the decision of the people might be upon this proposition at some future time and under different circumstances can only be a matter of conjecture. But if in the future the people, for reasons that should seem sufficient to them, should desire to operate the street railway system, they should have the power to do so. To guard against the experiment ever being entered upon without due deliberation the bill presented provides that no city shall undertake to operate street railways unless the proposition to operate shall first be submitted to popular vote and approved by four-sevenths of those voting thereon.

In the discussion of this general topic the distinction between municipal ownership without operation, and municipal ownership

and operation, should be kept clearly in mind, for the propositions are plainly separable and distinct and are quite different in their nature. The Commission favors municipal ownership of conduits and tracks and of whatever may form a part of the public street, without municipal ownership of rolling stock or municipal operation, at the earliest practicable time.

The custom of having street railway companies pave between their tracks and for a short distance either side may have had a justification in the days of horse cars, but it is a source of dissatisfaction at the present time. Divided control over street improvements is to be deprecated, for numerous reasons. Either the company should pave the entire street, from curb to curb, or the city should do all the work of paving and repairing the street. The tax rail is only a special form of street pavement, designed for a particular kind of vehicle. Therefore, if the city is to do all the street paving, it may very properly lay down all tax rails, too, as a part of the permanent street improvement, collecting for the use of the same a rental or wheel charge from the owner or owners of the particular kind of vehicles, namely, street cars, that alone make use of this special part of the street paving.

The power to own and operate street railways is given to cities in the bill submitted, not alone because emergencies might arise which would make desirable the exercise of such power, but even more because the having of such power in reserve to be used in case of need would put the city in a much more advantageous position in its dealings with private corporations. For some instructive comments on the value of such reserved power for purposes of regulation and control, the reader is referred to articles printed in the appendix to this report, one being an editorial from *Engineering News* and *American Railway Journal*, the other an editorial from the *Chicago Tribune*.

It may not be out of place in this connection to make some general observations concerning the policy of municipalization. There are those who attempt to settle this question, either for or against, by appeal to certain supposed fundamental principles which are held to be decisive in favor of the views of the particular parties or disputants who hold them firmly. One school considers that municipalization is the only right policy, that any other policies must be condemned as wrong under all circumstances. On the other hand it is a general belief that it is a considerable

extent of men of practical business affairs, whose business experience may lead them instinctively to question the expediency of municipalization, who seek to justify their opposition to the policy by appeal to what they imagine are principles of economics or of government. The essence of denouncing the policy of municipalization as socialistic is but putting the same appeal into inflated and coarse form.

Now, this Commission makes bold to assert that there are no recognized principles either of economics or of government that may properly be appealed to as decisive of this question, either one way or the other, under all circumstances. Moreover, there are few, if any, recognized authorities of the first rank either in the field of economics or of government, who will contend that there are. The question is one not of principle, but of policy; is of expediency, and questions of policy are to be determined largely by the particular circumstances or conditions existing where it may be proposed to put the policy into effect. In other words, as between municipal and private management, that policy is best which on the whole gives the best results; and as between two permissible policies, the city should be permitted to adopt that which it may deem the better.

The point of these observations is this: The Legislature, in considering the bill herewith presented, is not called upon to decide whether the policy of municipalization for any given city is expedient. The Legislature ought to give the power to municipalize, leaving every city to decide for itself, according to the conditions there existing, whether or not it be wise to exercise the power, and to what extent.

For the light which they throw upon this point, there are reproduced in the appendix to this report two articles appearing in the *Independent* of May 6, 1909, one by Dr. Albert Shaw, editor of the *Review of Reviews* and a recognized authority upon the subject of city government, the other by J. Laurence Laughlin, professor of political economy in the University of Chicago, and a leader of the conservative school of economics. Dr. Shaw is inclined to favor the policy of municipalization for American cities, while Prof. Laughlin gives his preference to the policy of private management. But the writers agree that there is no accepted principle that is decisive of the question one way or the

other. The question, according to Prof. Laughlin, is chiefly dependent for its decision "upon expediency and local conditions."

The Legislatures of progressive States are rapidly coming to recognize and concede the right of cities to determine these questions for themselves. Most city charters of recent adoption confer the power, either immediately or ultimately, to own and operate railways. The Greater New York charter authorizes the city to acquire and operate street railways at the expiration of any grants hereafter made. The new charter of Baltimore follows the Greater New York charter in this respect. While the new charter of the city and county of San Francisco goes even further and declares it "to be the purpose and intention of the people of the city and county that its public utilities shall be gradually acquired and ultimately owned by the city and county." To this end the requisite powers are given by the charter.

Congress, in its franchise legislation for Porto Rico, has recognized that the policy of public ownership may under some conditions be desirable by stipulating that grants to public service corporations shall provide "for the purchase or taking by the public authorities of their property at a fair and reasonable valuation."*

Recent examples of public ownership are furnished by Boston and New York, both of which cities own but do not operate the subways or underground roads recently completed or now under construction.

If it be conceded that Chicago may desire to municipalize the street railway system at any time within, say, the next twenty years, or if it be desired to incorporate into the ordinance renewing grants that are to expire in 1903 provisions for city purchase at the expiration of the next grant, legislation permitting the city to acquire street railways should be secured before the renewal ordinances are granted. Otherwise a purchase clause inserted in such renewal ordinances may prove of no value to the city when the time comes to exercise the supposed right of purchase.

The first ordinance under which a street railway line was constructed in Chicago, granted by the City Council in 1858, contained provisions looking to purchase by the city at the expiration

*See the text of the Porto Rican franchise legislation in the appendix to this report.

of a period of twenty-five years, or in 1883. When the time came for the exercise of this right of purchase, the situation was complicated in several ways. For one thing, it was claimed that the Legislature, by the act of 1865, had postponed to ninety-nine years from 1858 the right of purchase given by the ordinance of 1858. Moreover, the Legislature has never authorized cities to acquire street railways, so that the right of purchase, if valid as against the company, could not be exercised by the city for lack of power. But these considerations aside, Mr. Francis Adams, the then Corporation Counsel, in an opinion delivered to the City Council July 23, 1883, and concurred in by Mr. Julius Grinnell, the then City Attorney, held that the purchase provisions of the ordinance of 1858 were absolutely void and of no value to the city. Following is an excerpt from that opinion bearing on the point in question:*

"First, were Sections 10 and 11 of the ordinance of August 16, 1858, valid when passed, in so far as they relate to the purchase of the railways; and if not, have they been validated by subsequent legislation?

"The answer to this question depends upon whether the city of Chicago, at the date of the passage of the ordinance, had power by its charter, or any law of the State, to contract for the purchase of a railway, with its appurtenances. A municipal corporation is the creature of law; it exists and acts only by virtue of law. The power which the law confers upon it, either in express words or by necessary implication, it may exercise. When it attempts to exercise powers not so conferred, such attempts are absolutely null and void. The rule of construction of public and private charters is the same, and is, that the corporation can exercise no power not granted in express words or by necessary implication.

* * * * * * *

"Neither the charter of the city, nor any law of the State, in force August 16, 1858, conferred upon the city either in express words or by necessary implication, the power to purchase or contract for the privilege of purchasing a street railway. I have, therefore, no doubt that Sections 10 and 11 of the ordinance, in

*See Chicago City Council Proceedings for 1883-4, page 80.

so far as they provide for the purchase of the railways, were, at the date of their passage, ultra vires and void.

* * * * * * *

No lawyer having the least familiarity with the law governing municipal corporations will contend for a moment that the power to impose terms and conditions upon street railway companies, in and by ordinances granting them the right to construct, maintain and operate railways, includes the power to contract for the purchase of the railways. Such power must be granted in express words or must exist by necessary implication (that is, it must be necessary to the exercise of an expressly granted power, or it must be essential to the declared objects and purposes of the corporation, not simply convenient but indispensable).

From which it appears that the city of Chicago, if it desires to be able to make valid contracts for the purchase of street railways at the expiration of any franchise grants hereafter made, should hasten to secure enabling legislation authorizing the insertion of a purchase clause into such grants, before any more important franchise ordinances are passed. Especially ought this legislation to be secured before the passage of ordinances renewing the grants which are to expire in 1903.

The method of financing is, of course, an important consideration in connection with any project for municipal ownership. The Commission, in the bill presented, has forbidden the issue of bonds against the credit of the city for the purpose of acquiring street railways. Instead it has made provision for the issue of bonds or certificates of indebtedness payable solely out of the revenues to be derived from the street railways. As security for the payment of bonds or certificates so issued, a city may give a mortgage or deed of trust covering the street railway property and a franchise grant of the right to operate, if sold under foreclosure proceedings, such franchises to run for a period of not exceeding twenty years.

Two considerations may be urged in favor of this plan of raising funds, as opposed to the plan of borrowing against the credit of the city.

The first is that these bonds or certificates, not being an obligation or liability of the city which the taxpayers can be called

upon to pay, may be issued in disregard of the constitutional limitation upon the power of the city to incur indebtedness.

The second is that under this plan the credit of the city cannot be exploited for the purpose of engaging in undertakings that might prove financially disastrous and therefore ultimately a grievous burden upon the taxpayers.

The chief disadvantage of the plan, which the Commission does not deem one of prime importance, is that the rate of interest on funds raised in this manner must be somewhat higher than it would be were the credit of the city pledged to the payment of the bonds or certificates put forth.

It is frequently asserted that the franchise of a public service corporation, which it derives from the public, is its most valuable asset. If such really be the case, and it sometimes undeniably is the case, why should not the city, by mortgaging the franchise, instead of granting it to a private corporation, thus secure the needed funds with which to construct or acquire the street railway? Private corporations operating under franchise grants sometimes borrow upon the franchise the entire amount needed for construction purposes. If a private corporation can thus raise all needed funds, without other security than the franchise and the plant to be constructed, why cannot the city do the same?

The Chicago Union Elevated Loop will serve as a good illustration of the point under consideration. All the money for floating that undertaking was secured by loans. After securing the franchises, the promoters of the loop undertaking made provision for the issuance of bonds to the face value of $5,000,000, and of stock to the same amount. These securities were not offered to the public in the open market by the promoters, but they were turned over to the construction company representing the same interests as the promoters. The bonds and stocks have since found their way on to the market, the prevailing price of the bonds being about 108, and of the stock about 90. Thus the market value of the loop securities outstanding is about $10,000,000. No one except the promoters knows the cost of the loop, as no information upon that subject has been made public, but according to the most liberal estimates the entire cost of floating the undertaking, including the cost of building all four sides of the loop structure, the cost of purchased frontage consents and the amount set aside for the satisfaction of possible damage suits

for injuries to abutting property, could not have equaled the face value of the bonds issued, or $5,000,000. As the cash value of the loop securities outstanding is twice that amount, the elevated loop franchises represent a gratuity to the promoters of not less than $5,000,000.

Now, the Elevated Loop is an undertaking admirably adapted to municipal ownership. An income of more than the amount needed to meet interest charges on bonds is absolutely assured by the leases with the operating companies that use the loop. The expenses of maintenance are light, and the owner is not called upon to operate.

Had the city possessed the power to do so, we have little doubt that under the plan of raising money for street railway purposes provided for in the bill, the city could have borrowed all the money needed for the construction of the Elevated Loop, and would now have in its possession a very valuable revenue-producing property.

IV.

REFERENDUM.

The provisions relating to the referendum in the proposed bill are self-explanatory and therefore do not call for much comment. It is the opinion of the Commission that the decision of important questions of street railway policy may very properly and very profitably be left with the people themselves, so far as such a course may be practicable. It is therefore provided in the bill that the local authorities may submit to popular vote any proposition or ordinance relating to street railways.

It is sometimes contended that the law should require every ordinance of the city council conferring franchise rights to be submitted to popular vote. Such a provision of law, the Commission believes, would make it the duty of the people to pass direct judgment upon a considerable number of ordinances of comparatively minor importance with which they would rather not be bothered. It is only the most important measures upon which the people are likely to desire a chance for the direct expression of their wishes, and that opportunity for direct expression of the

popular will the Commission has aimed to give by the provisions of Section 8, which requires submission to popular vote of certain ordinances in case a specified proportion of the voters shall ask for such submission.

V.

PUBLICITY.

The provisions of the proposed bill relating to accounting and publicity are based upon the conception that the street railway business is a public business, and that therefore the affairs of companies entrusted with the management of such a business should be open and known to the public to the same extent as if the business were managed by the public directly. In line with this conception, the Commission, in the bill presented, has made substantially the same plans for accounting and publicity applicable to street railway companies and to municipalities that may either own or operate street railways (Sections 22, 23, 24, 27 and 28 of the proposed bill).

The city is sometimes said to be a partner in the street railway business. It furnishes what is oftentimes the most valuable part of the assets, namely, the franchise. Yet when it comes to renewing the partnership agreement the city, under present arrangements, is not able to act intelligently because the main facts necessary to intelligent action are kept from it.

The bill requires annual reports covering the important features of street railway operation and management. But a system of publicity through reports, to be satisfactory, must be based upon a proper system of accounting. Therefore the Commission, in the bill presented, has also provided that accounts shall be kept in a uniform manner upon a system to be prescribed by public authorities. In the main, this provision is modeled after the Massachusetts law upon the same subject. The provision for uniformity will give the published reports a value for purposes of comparison that they otherwise would not possess.

After consideration of the subject, the Commission arrived at the conclusion that it would be best, on the whole, to make the State auditor the officer for receiving reports and for pre-

scribing and supervising methods of accounting. In this way uniformity over the entire state can be secured. Publicity is desirable not alone for railways operating entirely within the limits of a municipality. Street railways connecting cities and towns are growing rapidly in number and such railways are becoming a factor of ever increasing importance in the rural life of the state. Therefore the state ought to be possessed of information concerning these railways that will enable it to deal intelligently with problems concerning them whenever the necessity may arise for legislation. The needs of local authorities for information concerning local railways are not overlooked, however, for the bill requires companies operating railways within any municipality to file with the financial officer of such municipality a duplicate copy of the report transmitted to the State Auditor. Moreover, the financial officer of the municipality, for the purpose of verifying the accuracy of such report, is given the same right to examine the books of the company as by the bill are given the State Auditor.

VI.

CONTROL OF CAPITALIZATION.

Over-capitalization is a favorite device for concealing large profits. The putting on the market of large quantities of watered securities is objectionable, too, as introducing complications which it is better to avoid. The Commission is strongly of the opinion, therefore, that provision should be made by law to prevent, if possible, excessive over-capitalization by street railway companies.

To accomplish this object, something more is necessary than a mere declaration of law against over-capitalization. The constitution of Illinois contains a provision (Article XI, Section 9) designed to prevent stock watering, but it has proven of comparatively little value. In order to prevent over-capitalization there must not only be a law against it, but there must be administrative machinery of some sort to pass upon all bond and stock issues to see that the law is complied with before the securities are put out. Massachusetts has such special administrative

machinery and the results of its operations appear to be fairly satisfactory, as is attested by the following excerpt from the report (page 37), made to the Massachusetts Legislature in February, 1898, by the special committee on street railways:

"The laws of Massachusetts as to capitalization have been strictly drawn and rigidly administered, nor has any evidence been adduced showing that they have been peculiarly ineffective. On the contrary, using round numbers only, the capitalization per mile in stock and bonds ($46,000) is less in Massachusetts than the average ($49,500) in the New England states, not a third of what it is in New York ($177,800) or half what it is in Pennsylvania ($128,200), less than half what it is ($94,100) in the United States as a whole; and it is less than in Great Britain ($47,000)."

In this connection some figures concerning the capitalization of the principal Chicago companies may be interesting. The report of the Illinois Bureau of Labor Statistics for 1896, which discussed at considerable length the subject of street railway capitalization, gave the following (see page 47 of the report) as the mileage and capitalization of the three great companies at the close of 1896:

	Mileage.	Outstanding Obligations.	Total per mile.
Chicago City Ry. Co.....	184.22	$16,619,500	$ 90,216
N. Chicago St. R. R. Co.....	101	14,780,900	146,346
West Chicago St. R. R. Co....	202.62	30,291,900	149,500
Totals	487.84	$61,692,300	$126,460

Since 1896 mileage and capitalization have both increased, so that new calculations will be necessary to determine the present capitalization per mile. The Chicago City Railway Company has a mileage of 205.48. The par value of the stock outstanding is $13,500,000. The bonds outstanding amount to $4,619,500, making a total capitalization of $18,119,500, which would be $88,172 per mile.

The North Chicago Street Railroad Company and the West Chicago Street Railroad Company about a year ago were merged into the Chicago Union Traction Company, which company, without creating any new mileage, has added $32,000,000 of stock to the amount already resting upon the mileage of the West and North

Chicago systems. The total bond and stock obligations of the north and west side systems assumed by the Union Traction Company, less stock in the treasury of the Union Traction Company, are given by the Investor's Manual for May 5, 1900, as follows:

Total West Chicago Bonds and Stocks	$29,201,200
Total North Chicago Bonds and Stocks	13,913,900
Total	$43,115,100

Adding the $32,000,000 stock of the Union Traction Company makes the total capitalization $75,115,100. The mileage of the West Chicago system is 202.70; that of the North Side system, 94.33. The total mileage for the two systems is, therefore, 297.03. According to these figures, the capitalization resting upon the tracks of the West and North Chicago systems after merger into the Union Traction Company would be $252,912 per mile.

But the Union Traction Company, through an operating agreement, also controls the lines of the Consolidated Traction Company, which has a mileage of 205.71. (The mileage figures here given are all on the single track basis.) Perhaps it would be better, therefore, as a means of getting the present capitalization per mile, to spread the total capitalization over the 502.74 miles of single track, by taking into calculation the mileage of the Consolidated Traction Company, as well as that of the North and West Side systems, more directly controlled by the Union Traction Company.

The Consolidated Traction Company has issued stock to the amount of $15,000,000, but as that stock is held in trust for the Union Traction Company it will be left out of these calculations. There is one issue of bonds outstanding, guaranteed by the Union Traction Company, of $6,750,000. Other bond obligations outstanding amount to $5,435,000, making a total of $12,185,000. This amount applied to the mileage of the Consolidated Traction Company alone, 205.71, would make a capitalization per mile of $59,237. Adding to the amount heretofore obtained, $75,115,100, the $12,185,000 outstanding bond obligations of the Consolidated Traction Company, and dividing the sum—$87,300,100—by the total mileage controlled by the Union Traction Company —502.74—there is secured a quotient of $173,644, which may

be said to be the capitalization per mile of the lines controlled by the Chicago Union Traction Company.

Whatever the basis of figuring, therefore, the West and North Side systems show a considerable recent increase of capitalization per mile.

To return to consideration of means of preventing over-capitalization. Massachusetts seems to have accomplished the object in view with a fair degree of satisfaction by requiring all bond and stock issues to be approved by designated public authorities. The Commission has aimed in a general way to follow the Massachusetts plan. Section 25 of the proposed bill prohibits excessive over-capitalization and the State Auditor, the Attorney General and the State Treasurer are constituted a board to pass on stock and bond issues to see that the prohibitions of the law are recognized.

The manner of constituting this Board was a matter which the Commission did not find easy of solution. As the duties of such a board will not be onerous it seemed undesirable to create entirely new offices. In Massachusetts the duty of passing upon stock and bond issues of street railway companies is made to rest with the State Railroad Commission. The Street Railway Commission was averse to recommending the adoption by Illinois of this feature of the Massachusetts law because of the fear that such a recommendation might be made use of as a dangerous precedent for giving the Illinois Railroad Commission an amount of control over street railways in other respects that would be objectionable to popular sentiment in the cities of this state. On the whole, therefore, it was deemed the most advisable course to vest in the state officers indicated the duty of passing on stock and bond issues with a view to preventing over-capitalization. The Auditor, as one of the members of this board, will have in his possession the information concerning street railways of the state that may be requisite to the passing of correct judgment on the issues presented.

VII.

FRONTAGE LAW.

The existing frontage consent law (embodied in the City and Village Act, clause 90 of section 62, Hurd's Revised Stat-

utes) seems to require modification in some respects. Frontage consents should be required only when it is first sought to lay down tracks upon a street. Where a railway is in operation upon a street no such consents should be necessary to the granting of an ordinance to continue the use of such a street for railway purposes. Probably the existing law would not be interpreted to require consents for such purpose, but it is well to have all doubt removed by making the language of the law clearer in this respect, which the Commission has aimed to do in the draft of the bill presented. (Section 7.)

According to the theory of the frontage consent law the property owner is a trustee for the public. It is expected that he will give his consent freely if the road is needed, and that he will withhold his consent if a proposed railway is not in the public interest. In practice, however, this theory frequently is out of harmony with the actual facts. Sometimes the abutting property owner, for personal considerations, gives his consent without any regard whatever to public interests. In some instances, too, stubborn property owners, by withholding consent, may block the construction of a road for which there is an imperative public need. While the wishes of the abutting property owner are deserving of consideration, his right to object to the construction of a street railway which the public welfare may require should not be absolute and unqualified. Other states with frontage laws have found some such modification to be necessary. In New York*, for example, when the abutting property owners refuse their consent to the construction of a street railway, it is possible to override their objection by appeal to the courts. The court, on petition, appoints three commissioners to investigate and report whether the public welfare would be served by the construction of the proposed road. If the commission finds in the affirmative, the road may be built, notwithstanding the objections of the abutting property owners.

The custom of entrusting administrative duties to the courts is open to objection. Therefore, the Street Railway Commission, instead of following the New York plan for accomplishing the

* Section 4 of an Act of New York passed May 6, 1884, entitled "An Act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages."

object in view, has simply provided that frontage petitions shall not be required for the passage of any ordinance that may be approved by popular vote. It would seem that if the people of the entire city favor a railway upon a given street, their wishes should govern. On the other hand, it is believed that the people at large can be depended upon not to do wanton injury to any street or neighborhood by inflicting upon it a needless railway.

There are instances in which petitions several years old have been made the basis for ordinances against the protest of the property owners, who had signed originally when conditions may have been quite different. To guard against repetition of abuses of this kind the proposed bill provides that no petition of property owners shall be valid, any of the signatures in which were obtained more than two years before the passage of the ordinance.

VIII.

LABOR POLICY.

The Street Railway Commission is strongly of the opinion that, when the time comes for the passage of franchise renewal ordinances, the City Council should insert provisions designed to prevent interruptions of service through strikes or lockouts. As the bill submitted is in the nature of enabling legislation, it was not deemed necessary to incorporate therein any specific provisions relating to labor. The authority given the City Council to impose terms and conditions is sufficient to warrant the incorporation into a franchise grant of such terms as to labor as the Council may favor.

European and Canadian cities very commonly insert in franchise grants stipulations concerning the maximum length of the working day and the minimum wage for employes. In some instances other provisions in the interest of employes are inserted. The most elaborate provisions of this kind with which we are familiar are those made by the City of Paris for the benefit of employes on the new Paris system of subways, or underground roads. A summary of these provisions will be found in the

address of Prof. James on the Paris Subways, in the appendix to this report.

As a rule, franchise grants by American cities are silent on the matter of labor conditions. One of the recent Detroit franchises is an exception to the general rule in that it stipulates that employes shall not be obliged to work more than ten hours a day. In some instances, however, states by legislation have attempted to regulate the hours of employment for labor of this kind. Legislative enactments requiring the vestibuling of cars in winter and other measures of similar kind indicate a growing disposition on the part of the public to consider the welfare of this special class of labor.

Considerations of humane regard for the welfare of those who toil have their weight in support of measures of this kind, but these measures are justified primarily on quite different grounds. Fair treatment of street railway workers is demanded by the public primarily as a means of insuring efficient and continuous service, free from the interruptions that are likely to grow out of controversies over labor conditions between the employing corporation and dissatisfied employes. Recent street railway strikes in other cities have emphasized the importance of doing whatever may properly be done to guard against the possibility of similar interruptions of service here.

The Street Railway Commission is of the opinion that the best way* to accomplish the object in view would be to insert in all future franchise grants a provision requiring the company, in case of a disagreement with its employes that threatens to interfere with service, to submit the same to arbitration and to abide by the decision of the arbitrator. This would be a system of arbitration compulsory upon the company and not upon the men, it is true. But in the opinion of the Commission this fact does not constitute a valid objection in this case, as it would if the attempt were to be made to apply the same system to industrial disputes generally. The city has no direct dealings with the employes which give it warrant to require special things of them. But the company comes to the city as a seeker for privileges, and as the city may grant or withhold the privilege at will, so it may properly grant the privilege subject to conditions, and

* Ald. Mavor and Ald. Jackson do not concur in this recommendation.

one of those conditions may properly be an agreement upon the part of the recipient company to submit disputes with its employes to arbitration. It is as competent for the city to exact such an agreement from the company, as a condition of the grant, as it is for the city to exact compensation, or to require the company to carry policemen and firemen free, or to do a number of other things which the city does require of street railway companies but not of ordinary industrial corporations.

Now, as to the practical operation of this plan. If the companies always stand ready to arbitrate, there is very little likelihood of interruption of service as the result of street car strikes. Street car strikers cannot win a contest in which they are not supported by public sentiment and public sentiment would be almost unanimous against a group of street railway employes who would go on strike without first seeking a settlement by arbitration, when such a remedy should be open to them. There is every likelihood that the street railway employes would be glad to make use of arbitration as a means of adjusting grievances. There is every likelihood, therefore, that a system of arbitration compulsory upon the company receiving the grant would remove most of the danger of interruption of service through strikes or lockouts.

Continuous service is the thing above all others which the public must have from its transportation agencies. If the city itself were managing the street railway system employes would be treated in such a manner as to insure a service free from interruption on account of strikes. In so far as fair treatment of employes may be necessary to continuous service, private corporations operating street railways under a franchise from the city should be required to treat employes as fairly as the city itself would treat them were it their direct employer.

The Commission is prepared at this time to outline only the general features of the plan which it recommends. Before the time shall come for action upon important franchise renewal ordinances the Commission hopes to have the details of the plan worked out.

IX.

MOTIVE POWER.

Motive power is one of the subjects which the Commission

was instructed by the resolution creating it, to investigate. The Commission has been able thus far to consider this question superficially only. The subject calls for further study and investigation by engineering experts. The Commission would recommend that the City Council, in the next appropriation ordinance, include an item for this purpose.

The overhead trolley with which the people of Chicago are familiar answers very well for the less thickly settled parts of the city, but it is for several reasons an objectionable form of motive power for the populous areas. In view of the fact that some other and more desirable forms of motive power seem to be practicable the Commission is of the opinion that the overhead trolley ought not to be permitted in the central business district. Just as soon as the managers of companies entering the downtown district understand that the opposition of the city to the overhead trolley in that district is unrelenting they will be willing to adopt a more desirable method of propulsion. The experience of New York is enlightening upon this point. The authorities there simply would not permit the stringing of overhead trolley wires, even when the alternative seemed to be long continued use of horsecars. As a consequence street railway development in New York City seemed belated for a time and the service was poorer than in cities that admitted the overhead trolley. But New York City is now reaping its reward. The principal lines of the city either have been or are rapidly being equipped with the underground trolley and extensive practical experiments are being made with compressed air as a motive power on New York lines.

The underground trolley is in successful operation in New York and Washington, as well as in several European cities. The London County Council recently had an investigation made by an engineer, Mr. J. Allen Baker, whose recommendation was in favor of the underground trolley. A like investigation for Birmingham, England, led to a similar recommendation as to motive power for that city. Following is an extract from the report to the London County Council, which was submitted Oct. 15, 1898:

"With the examples of Washington, the capital city of the United States, and New York, its commercial metropolis, on one side of the Atlantic, and Paris, Edinburg, Birmingham and other cities on this side, in which the overhead has been prohibited and other forms of mechanical traction have been successfully installed, it becomes a grave question

as to whether the trolley wire should be permitted in any of our London streets. No one would think of advocating it for the busier streets or the more central parts of the metropolis, and whilst it might possibly be put up without serious disadvantage (except its unsightliness) in some of the suburban streets, any economy in the first installation would be largely counterbalanced by the inconvenience of having to change from one system to another on the same routes and necessitating all the cars that run on the combined system being fitted with overhead trolley poles.

"I believe the stand taken by the Birmingham Corporation is a safe one for us to take also. In that city there are already in operation tramway lines run by steam, cable, electric accumulator and horse, while in the immediate vicinity there are several installations of the overhead trolley. During the past year arrangements were nearly completed with a Canadian company for the installation of a combined system—the conduit for the central and busy streets, the overhead for the suburbs—but the town council, not feeling satisfied to have any of their streets disfigured with the trolley wires, sent a special deputation of its members to visit continental cities which were working both trolley and conduit, with the result that they decided that the overhead wires be not allowed in any part of the city. After giving an acount of their impressions in each city visited, their committee sum up their conclusions thus:

" 'From a public point of view, and apart from the question of first cost, there does not seem to be much doubt as to which system is the better one. The overhead wire gives reliable and efficient service, but the underground conduit is equally capable of doing the same. It has been in successful use for several years, often under more adverse circumstances than would be met with in Birmingham. The only point against it is that its construction is said to involve a more prolonged disturbance in the streets, but your subcommittee do not think this argument of much weight, and especially if its depth is only such as has been found sufficient in other places no great disturbance of gas or water pipes need be anticipated. When the work is done there is no room for doubt as to the appearance of the streets as presented by the two systems. In one case, the appearance, whatever it was, remains unaltered; in the other case, we have a number of poles and overhead wires, which, wherever seen, can be considered nothing but a disfigurement.

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" 'The conclusion to be drawn from this inquiry has been a matter of anxious consideration to your subcommittee. They recognize that it is not merely a matter of the cheapest form of traction to be used on some of the present tramways, but a much larger one, affecting in many ways the best interests of the whole town. Due weight has been given by them to the considerations that should enter into such an important question, and they strongly recommend that no consent be given for the erection of overhead wires in any part of the city. They believe that less objectionable and equally efficient methods of applying electricity to the working of the tramways are available and at a reasonable cost.'