

Dollars (\$900.00) per year for each court so organized and located within such county.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved April 14, 1921.

CHAPTER 277—H. F. No. 210.

An act authorizing cities of the fourth class to pay claims of persons, copartnerships or corporations, doing work or furnishing skill, tools, machinery or materials for any public work for said cities where contractor and sureties on the contractor's bond have become insolvent.

Be it enacted by the Legislature of the State of Minnesota :

Section 1. **Cities of fourth class may pay claims in certain cases.**—That any city of the fourth class, which has heretofore entered into any contract with any person, copartnership or corporation, for any public improvement, August 18, 1915 and January 15, 1916, and such contract has been substantially performed and the contractor, to whom said contract was let and the sureties on the bond of said contractor have become insolvent, shall have the right to pay any and all claims for work, skill, tools, machinery or materials performed or furnished in said public work, which have not been paid by said contractor or said sureties on the contractor's bond.

Sec. 2. **Not to affect actions pending.**—This action shall not affect any action now pending in any of the courts of this State.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved April 14, 1921.

CHAPTER 278—S. F. No. 687.

An act relating to street railways.

Be it enacted by the Legislature of the State of Minnesota :

Section 1. **Definitions.**—The term "Commission" as used in this Act shall mean the Railroad and Warehouse Commission of this State; the term "city" as used in this Act shall mean city or village within this State; the term "street railway" and "street railways" shall mean and apply to any association or corporation, leasing, holding, owning, managing, operating or otherwise controlling any street railway line or street railway property wholly or partly within this State; the term "Council" shall mean any board or body, whether composed of one or more branches, who are authorized to make ordinances for the government of a city within this State, and

the term "indeterminate permit" as used in this Act shall mean and embrace every grant to any street railway to own, operate, manage or control any street railway property within the state for the transportation of passengers for hire. The phrase "street railway property" whenever used in this Act shall include and mean the property of any street railway as an operating system which is used, useful and reasonably necessary for street railway purposes.

Sec. 2. Franchises to be "indeterminate permits"—Terms not affected except as provided.—Every grant that has been heretofore, or that shall be hereafter, made to a street railway by the state or any city shall become and it shall thereafter be, an indeterminate permit, upon such street railway executing and filing with the clerk of the city in which said street railway is located, a written declaration that it desires that such grant shall become an indeterminate permit and consent that the terms of this Act shall apply to and govern the ownership, control, management, maintenance and operation of the street railway property of said street railway. Upon such street railway filing such declaration and consent, the city clerk shall issue to such street railway a certificate that such declaration and consent has been filed in his office. When such certificate shall be filed with the Secretary of State such grant subject to the provisions of this Act shall become an indeterminate permit to own, operate, manage and control any street railway property, or any part thereof, within such city under the terms and conditions of the grant that shall have been theretofore made by the state or any such city and be then in force; but all of the terms, conditions and obligations of such existing grant, except as herein otherwise specifically provided, shall continue in force so long as such indeterminate permit shall continue. Such indeterminate permit shall continue in full force unless and until the city shall acquire the street railway property of such street railway within the limits of such city, or unless terminated or modified by the Legislature of the State of Minnesota as hereinafter provided.

Sec. 3. Cities may acquire street railways—Procedure.—Any city shall have the power and authority to acquire the street railway property of any street railway within such city as in this section provided and not otherwise: (a) by eminent domain according to the procedure provided by Chapter 41, General Statutes of Minnesota for 1913, and amendments thereto; or (b) by purchase by agreement between the city and the street railway at a value fixed by such agreement; or (c) by purchase at the fair value of such street railway property as determined and fixed by the Commission upon hearing upon petition by the city and subject to appeal to the district court, all as herein provided: and every street railway within the State is hereby required to sell its street railway property to any such city in which the same is located, at such fair value when and as so fixed by the Commission or by the Court upon appeal.

No value shall be allowed in any case for any franchise and no allowance shall be made for damages because of the severance of the properties from connecting properties, but the same shall be valued as an operating system.

Any city which may acquire street railway property may own, operate, lease or resell or otherwise dispose of such property. In no case, however, shall any acquirement of street railway property by purchase or by eminent domain or otherwise, or any agreement or action or proceeding therefor have any force or effect or be binding in any way upon any such city unless and until such acquirement shall, after the fair value of such street railway property has been fixed as provided by this Act, be ratified and approved by a majority of the votes of the electors of such city, cast upon the question at a general or regular city election, or a special election for that purpose, at which such question shall have been submitted as herein provided. As soon as may be after the fair value of such street railway property within any city has been finally determined and fixed by any proceeding or by agreement as provided by this act, the Council of such City shall by resolution submit the question of such acquirement by purchase or by eminent domain, as the case may be, to the electors of such city, fixing the time of such election which shall be not less than three months nor more than six months after the passage of such resolution, and providing for due notice thereof, stating the question to be voted upon and providing for the holding of such election. Provided that no special election shall be ordered to occur or be held for such purpose within any three months' period immediately preceding or immediately succeeding any general or regular city election.

Sec. 4. City councils to have power to grant franchises.—The exclusive right and authority is vested in the council of any city, in this state to grant a license, permit or franchise for the construction, maintenance and operation of street railway property within the limits of such city and on such terms and conditions as it may impose. Such council shall have the exclusive right and authority to designate the street or streets upon which any street railway property or part thereof may be hereafter constructed and no street railway property shall be hereafter constructed upon any street in any city without express authority from the council of such city. Such council shall have authority by ordinance or resolution to require the construction of any new line or lines and the extension or change or removal of any existing line or lines. The council shall have authority to prescribe reasonable requirements, standards and conditions of service and operation of any street railway property by any street railway within such city, and shall have the right at all times and in all respects to exercise reasonable control over such service and operation and all things pertaining thereto, including type of cars, the right to fix and amend service schedules, to control

stops, routes, headway, speed and number of cars, and to make regulations governing their lighting, heating and their sanitary condition, and such street railway shall furnish the council such information relating to such matters as it may from time to time require and shall operate at all times at least a sufficient number of cars to and shall fully comply with all schedules and routes required by the council, and adequately accommodate the traveling public, and in these and all other respects furnish reasonable and adequate service and facilities for the accommodation of the traveling public. All cars used shall be of modern design and equipped and furnished with such improvements and appliances as to assure the health, safety, comfort and convenience of the passengers, the public and the company's employes. They shall at least equal in quality, style and design cars now operated in such city. The company's road bed and tracks shall be maintained at all times in first class operating condition so as to afford convenient and comfortable travel thereon. The location of shops, car barns, waiting rooms and terminals and all other matters hereinbefore in this section specified shall be subject to the approval of the Council. The action of the Council of any city under this section shall be final and not subject to appeal by the street railway, except as specifically otherwise provided by this section.

Any order, resolution, rule or regulation or requirement of any kind made or imposed upon the street railway by the Council as provided by this Act may be enforced by mandamus, injunction or other appropriate proceeding.

Sec. 5. Railroad and Warehouse Commission to fix rates.—The Commission is hereby granted initial and exclusive power and authority upon hearing upon petition as provided by this Act, to fix and establish rates of fare and charges by a street railway for carrying passengers, subject to the powers of the district court in case of appeal thereto as hereinafter provided, which rates shall not yield to exceed a reasonable return on the fair value of the street railway property of any street railway.

Sec. 6. Rates must be fair—Transfers.—Rates of fare and charges within any city shall be just, fair and reasonable and shall be sufficient to yield only a reasonable return on a fair value of the street railway property of the street railway within such city. The same fare shall be charged each passenger for transportation over all street railway lines in any city from any one point to any other point therein and transfers and retransfers shall be given to each passenger free of charge, good for use for his continuous trip on all other lines in the city under such rules and regulations as the Commission may prescribe. In all cases where cities are contiguous, continuous inter-city passenger service shall be provided without change of cars by a street railway operating in both cities. If a different street railway is operating in one such city from the

street railway that is operating in the other city, the inter-city transportation as above provided shall be furnished nevertheless by both street railways and mutual adjustment of fares and expenses shall be made by such railways, subject to control and regulation thereof by the Commission, authority for which is hereby granted to the Commission. The fare charged for transportation within either city on the portion of such interurban line located within that city shall not exceed the fare on other lines within such city with like transfers and re-transfers as hereinbefore provided. The costs and expenses incurred and paid by the street railway in performing its obligations shall be reasonable.

Sec. 7. Companies may issue bonds, stocks, etc., on permit from commission.—Any street railway authorized to do business under the laws of this state may issue stocks, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the dates thereof, whenever necessary for the acquisition of property, the construction, extension or improving of facilities or for the discharge or lawful refunding of obligations; provided, however, that except as herein otherwise provided before the street railway shall issue any such stocks, bonds, notes or other evidences of indebtedness as aforesaid, it shall secure from the Commission after a full hearing and investigation before and by such commission an order authorizing such issue and fixing the amount thereof. The city shall be a necessary party to such hearing. Such order shall only be issued when the Commission shall be satisfied that the funds derived from such issue are essential for carrying out such purposes, and that it is proper and reasonable under all the circumstances to make such issue; provided that it shall be the duty of the Commission to authorize an issuance of such bonds, notes or other evidences of indebtedness as may be required for the construction of any new line or lines, or the extension or change of any existing line or lines, or any construction or improvement in facilities, any of which shall have been ordered, required or approved by the council as provided by this act, subject, however, to the right of appeal to the district court of the county wherein such city is located from any such order or requirement upon the same terms and conditions as provided by this act in case of other appeals. Any order of the Commission made hereunder, shall contain a finding by the Commission that the use of the capital or property to be secured by issue of such stocks, bonds, notes or other evidences of indebtedness is reasonably required for the purposes of such street railway and that such issue is reasonable and proper under all the circumstances. Provided, further, however, that any street railway may issue notes for lawful purposes payable at periods of not more than twelve months without authority from said Commission, and no such notes or any part thereof shall be refunded by any issue of stocks, or bonds or any evidences of in-

debtedness running for more than twelve months without the consent of the Commission. The Commission shall not permit the issue of and the street railway shall not issue, any notes, bonds or other evidence of indebtedness when the aggregate par value thereof, together with all other like evidences of indebtedness that shall then be outstanding, shall exceed 85% of the fair reasonable value of the property of the street railway.

Sec. 8. Street railways to make application to fix rates.—Any street railway or city may apply to the commission at any time to fix and establish hereunder rates of fare to be charged by such street railway for the carrying of passengers within such city and it shall be the duty of the Commission upon application being made by petition as provided by this act to proceed with due diligence to examine and appraise the street railway property and to hear evidence submitted on behalf of the street railway or the city, and to fix and determine the fair value of such street railway property within such city and to fix and establish rates of fare to be charged by such street railway for carrying passengers within such city under and in accordance with the terms and requirements of this act, which rates established shall yield to the street railway a reasonable return on the fair value of its street railway property within such city as an operating system. In establishing any rate of fare the Commission or the court upon appeal shall consider the fair value of the street railway property of the street railway within such city as an operating system, but no additional value shall be allowed for any franchise of the street railway. The rates which the street railway is authorized to charge and collect under existing franchises shall be and remain the authorized and lawful charge until a rate is fixed by the Commission under the provisions of this Act; provided, however, that the Commission may on application of either any city or street railway establish after notice and hearing, an emergency or temporary rate pending a valuation of property and the establishment of a rate based thereon; provided that no such rate shall continue in force or effect for a longer period than is reasonably necessary to make a valuation of the property and establish a rate based thereon. The Commission may at any time after notice and hearing change or cancel any such emergency rate. Thereafter the Commission may on its own initiative and shall upon the application of the city or the street railway from time to time make such investigation as to any change in property value or cost of service as may be reasonably necessary and after a full hearing as herein provided make such order confirming existing rates or changing rates as may be just, to properly regulate rates of fare hereunder. The Commission or council shall have the right at all times to inspect by itself or by its representatives all the books, records and accounts and street railway property of any street railway in any city.

Sec. 9. Proceedings commenced by filing petition—Hearing. All proceedings before the Commission shall be commenced by filing with the Commission a petition in writing in such form as the Commission may prescribe briefly setting forth in addition to such other matters as the Commission may by rule or order provide, the matter or matters upon which hearing is desired and requesting a hearing thereon. Any city or street railway affected by any such proceeding shall be a necessary party thereto. Upon the filing of any such petition as aforesaid, the Commission shall fix a place and time for such hearing not less than thirty days after the filing of such petition and shall forthwith give notice of the time and place of such hearing to all interested parties and serve or cause to be served upon each such party a copy of such petition, provided that continuances from time to time shall be granted to either party as the necessities of the case may require; and the city shall have reasonably ample time before the conclusion of any such hearing to make all necessary valuations and adequately prepare its case, as herein provided.

At the time and place so set for said hearing unless continued for cause the Commission shall proceed to hear and determine the matter or matters set forth in such petition. If the petition be to fix the value of street railway property for purchase by the city as provided by this act, the Commission shall after such hearing determine and fix the fair value of the street railway property of any such street railway within the city. If the petition be to fix a rate of fare, the Commission shall after hearing as herein provided fix a rate of fare to be charged by the street railway which will yield only a reasonable return on the fair value of the street railway property of such street railway within the city, as provided by this act.

Whenever any proceeding is instituted before the Commission or Court on appeal, either for rate-making purposes or purchase of the street railway property and before the same is heard, the Council shall examine and appraise, or cause to be examined and appraised, the street railway property of the street railway involved and shall employ and procure the services of a person or persons of known and recognized experience and qualifications in street railway appraisals and rate-making, to appraise such street railway property, investigate the books, accounts and records of such street railway and inform himself as to its operating conditions and expenses, and otherwise fully prepare himself and the city to present to the Commission or the Court all the facts material to the issue before the Commission or Court; and the Council shall employ such other qualified accountants, engineers and others to assist in the preparation of the city's case before the Commission or the court on appeal, as the Council deems advisable.

All the expenses and disbursements of the city in any such pro-

ceeding, either before the Commission or court on appeal shall be borne by the street railway company as an operating expense, and shall be paid by the street railway to the city upon presentation to the street railway of vouchers showing the same has been paid or incurred by the city; provided the amount of expenses and disbursements to be so paid shall not exceed in any one year an amount equal to One Hundred and Fifty Dollars per 1000 of population of any such city and the necessary expense incurred by the Commission in such proceedings shall also be paid by the street railway company and treated as an operating expense.

Sec. 10. Appeals.—Any city or street railway may appeal from any order, ruling or decision of the Commission duly made after hearing to the District Court of the county in which the city affected by any such order, ruling or decision is located, and said appeal shall be taken and all proceedings thereunder had as provided for by Sections 4191 to 4199, both inclusive, General Statutes of Minnesota for 1913, so far as the same may be applicable. Upon such appeal the matters involved therein shall be tried and determined by the court without a jury, in the same manner as though originally commenced therein, provided that the findings and order of the Commission shall be received in evidence upon such trial but the Court shall in no event be bound thereby. In case of an appeal involving the value of the property for the purpose of purchase by the city, such appeal shall be heard by three (3) judges, and if there are less than three judges in such district, then the Governor shall designate one or more district judges to sit upon any such case so that the same may be determined by such judges as aforesaid. Upon any appeal the District Court shall have jurisdiction of and shall try the whole matter in controversy including matters of fact as well as law, and make findings upon all material facts, and in any case involving rates or the value of street railway property shall find and determine the fair value of such property and also what is a reasonable rate of return thereon, and shall affirm, modify or reverse any order or finding of such commission as may be required by law. The judgment or any order of such court shall be certified to said commission and the commission shall thereupon modify, reverse or put into effect its order or findings so as to conform to the judgment, order and findings of such court. Any party to an appeal or other proceeding in the District Court under this act may appeal from the final judgment or from any final order therein in the same cases and manner as in civil actions. The appeal may be filed in the Supreme Court during any term thereof and shall be immediately entered upon the calendar and heard upon such notice as the court may prescribe, as provided for by Section 4200, General Statutes of Minnesota for 1913, as far as the same may be applicable.

Sec. 11. Reservations by city.—The city hereby reserves the

right to authorize any existing or future suburban railway company to jointly use tracks, poles, wires, appliances, power and electric current of said street railway, as now existing or hereafter constructed. Such use shall be subject to such rules and regulations, routing and schedules as may be fixed by mutual agreement between said street railway and such suburban railway company, subject to the approval of the Council. If the parties cannot agree as to said rules of operation, routing and schedules, the same shall be determined by the Council.

The compensation to be paid the street railway by such suburban companies for said joint use shall, if possible, be fixed by mutual agreement between the street railway and the suburban company, subject to the approval of the Council. If they are unable to agree upon such compensation the same shall be fixed and determined in the first instance by the Council subject to appeal to the District Court of the county in which such city is located as in case of other appeals provided for in this Act.

Such compensation shall in all cases be just, fair and reasonable compensation for the facilities furnished, representing a sum not less than the reasonable value of the power furnished by the company and a fair share of the cost of maintenance of the tracks and equipment, taking into account the advantages and disadvantages of the entry of said line into the city.

The city expressly reserves the right by ordinance at all times to regulate and control the carrying of freight and express and the operation of freight and express cars by suburban lines over the tracks of the company.

Sec. 12. Franchise not to be issued without certificate from commission.—No license, permit or franchise to operate a street railway in any city where a street railway is then operating shall be granted by the Council of any such city unless a certificate of convenience and necessity is first obtained from the Commission after a hearing held thereon.

Sec. 13. Commission to investigate, prescribe system of accounting, etc.—The Commission shall have authority, upon its own motion, to make investigation, prescribe uniform systems of accounting, and prescribe depreciation, written notice of which shall forthwith be given the city with the right in such city to appeal to the District Court as provided by this Act in other cases of appeal, and shall have authority to control the disposition and use of any moneys in the depreciation fund, and to do or perform any act which may in its opinion be necessary or expedient to carry out the provisions of this Act. The street railway shall furnish and file with such Commission annually, accurate and full reports and information of its income and expenditures (in such form as the Commission shall require) and the Commission may require the

street railway to make and file with it, any and all other reports, financial or otherwise, that it may deem necessary.

Sec. 14. **Rights reserved**—Permit may be granted to Minnesota corporations only.—The state reserves the right at any future time to modify, amend or repeal this Act or any part thereof, or to cancel or modify any indeterminate permit arising or existing under this Act, or any grant, permit or franchise heretofore or hereafter granted by the State or any city, or otherwise, and nothing in this Act contained shall limit the police power of the State. The street railway shall be subject to all the duties, restrictions or liabilities now or hereafter contained in the General Laws of the state. Notwithstanding anything in this Act to the contrary, an indeterminate permit shall be granted only to a Minnesota corporation, and any assignment, or transfer thereof, shall be to a Minnesota corporation. No such street railway shall be entitled to any damages or compensation in the event of any modification, amendment or repeal of this Act or the cancellation or modification, of any permit, grant or franchise above referred to.

Sec. 15. **Conflicting acts repealed**.—All Acts or parts of Acts conflicting with the provisions of this Act are hereby repealed insofar as they are inconsistent therewith.

Sec. 16. This Act shall take effect and be in force from and after its passage.

Approved April 14, 1921.

CHAPTER 279—S. F. No. 909.

An act to amend Sections 5772, and 7820 of General Statutes 1913, relating to reference by consent, and fees of referees.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Fees of referees**—**Agreement by parties**.—That section 5772, General Statutes 1913, be amended so as to read as follows:

5772. **Fees of referees in general agreement**. The fees of Referees shall be *not less than Five Dollars nor more than twenty five Dollars* each for every day spent in the business of the reference, *as shall be fixed and allowed by the court ordering the reference*; but the parties may agree, in writing, upon any other rate of compensation, and such rate shall be allowed, *any excess over the rate fixed by the court as provided above, to be paid by the parties*. *In addition to said referee's fees, and as a part of the same the Court may tax and allow the usual bailiff's and reporter's fees, where a bailiff, reporter, or both, are employed in connection with the reference.*

Sec. 2. **Reference by consent**.—That Section 7820, General Statutes 1913, be amended so as to read as follows:

7820. **Reference by consent**. Fees when paid by the County.