

Municipal Franchises. A Description of the Terms and Conditions upon which Private Corporations Enjoy Special Privileges in the Streets of American Cities. By DELOS F. WILCOX, Ph.D., Chief of the Bureau of Franchises of the Public Service Commission for the First District of New York. In Two Volumes: Vol. ii, Transportation Franchises, Taxation and Control of Public Utilities. (New York: The Engineering News Publishing Company, 1911. Pp. xxi, 885.)

The first volume of this work was reviewed in the REVIEW for February, 1911. The present volume, like its predecessor, consists of two parts; one devoted to a consideration of certain general phases of the franchise problem as affecting American cities, and the other to a more or less detailed description of the character and provisions of franchises that have been granted by municipalities of the United States for the performance of certain public utility functions. The two volumes together give us much the most comprehensive study now available regarding this, probably the most, difficult concrete problem confronting our municipalities.

The bulk of the work and the great variety of topics handled preclude anything like a full statement of the points covered and much less any attempt to pass judgment upon positions taken. The best that can be done is to indicate in a general way those features which seem to be of especial interest, and make known the more important conclusions of the author in respect to the manner in which a solution of the very complex problems presented should be sought.

The utilities considered in this volume, under the head of transportation franchises, are street railways, elevated railways, belt line railroads, interurban railways, subways, spur tracts, depots, viaducts, toll roads, omnibus lines, docks, ferries and markets. Each is given separate treatment and the character of the franchises granted by different cities for them is described in detail. In this descriptive part of the work, the chapters which are of greatest interest to the general reader are those devoted to the street railway franchises in Greater New York, and to the street railway settlement franchises of Chicago in 1907 and Cleveland in 1910, which latter two, as the author points out, represent the high-water mark thus far attained in municipal franchises granted for urban transportation in the United States. In an appendix is also given substantially in full the Minneapolis gas

franchise passed February 23, 1910, and the gas regulation ordinances passed March 24, 1910, by which a settlement of the gas franchise problem of that city was secured. This is in the nature of a supplement to the first volume which dealt with franchises of this character. Another chapter which is of more than usual interest is the one entitled "Elements of a Model Railway Franchise." This is so well done that it is to be regretted that a similar attempt was not made for all of the various classes of municipal utility franchises.

The student of political science will also find of especial interest those chapters and parts of chapters which consider such purely political questions as the extent to which the state, by constitutional provisions or by ordinary statute, should seek to fix the powers of municipalities and the conditions to be observed by them in making franchise grants, the part that should be played by the initiative and referendum in reaching a decision regarding the terms of such grants, the relative powers and spheres of activities of state and municipal public utilities commissions, etc.

The conclusions of one who is not only a thorough student of franchise problems, but, on account of his official position as chief of the Bureau of Franchises of one of the most important public utilities commissions of the United States, is directly familiar with the details of the problems presented in establishing proper relations between public service corporations and the public, are entitled to great weight. These conclusions the author does not hesitate to state with great definiteness. He goes to the heart of the problem in stating, and emphasizing in every possible way, that the provision of adequate transportation facilities to the public should be regarded as essentially a governmental function, though for motives of assumed expediency, its performance may, for a time at least, be entrusted to private corporations, and real progress cannot be achieved until we get away from the idea, that has to so large an extent prevailed in the past, that it is a private business merely "affected with a public interest." This position, fortunately, is more and more receiving general recognition.

From the practical standpoint, probably the most important point brought out by the author is that the adjustment of the relations that should exist between municipal service corporations and the public is a matter that cannot be left to the exercise of the general police powers of the state and municipalities, but must be secured through the formulation of franchise ordinances partaking of the nature of formal contracts between the municipality and the corporation and

in which the effort is made to foresee and set out in detail the conditions that shall be observed by both parties. "It is obviously more difficult to compel a company to obey orders which are based upon the exercise of the police powers than to compel it to live up to the specific terms and conditions of a franchise which it has formally accepted and made a contract with the city. There is unquestionably something to be said in favor of brief general grants which leave to the control exercised by the legislature, state commissions or the local authorities, all those questions relating to the operation of a particular street railway system which can be understood better as they arise than far in advance. The practical difficulty, amounting almost to impossibility, of exercising such control has resulted, however, in the development, not only in this country, but in European countries and in the British colonies, of a system of elaborate contracts by which every contingency, so far as it can be foreseen, is provided for. From this standpoint no franchise is good unless it is elaborate. Notable examples of these long and complex documents are the franchises now granted by the city of New York, the Cleveland low-fare ordinance ratified by the people in 1910 and the Chicago settlement ordinances passed in 1907. . . . Experience seems to have fully established the principle that the operations of a street railway by a private company, depending as it does upon a delegation of sovereign powers and the exercise of a special privilege monopolistic in nature, cannot be safely left to public control exercised from time to time through the police power, but must be regulated by the terms of an elaborate and carefully worked out contract between the company and the local authorities."

This condition of affairs evidently vitally affects the whole problem of the practical administration of public service matters. It carries with it the absolute necessity that the ordinance-making body shall have at its disposal a technical service competent to handle this matter, since it is obviously impossible for the ordinary municipal council unaided to do so. The best means by which this can be accomplished is by conferring upon the same body the functions of both attending in the first instance to the determination of the conditions of the contract that shall be made between the municipality and the corporation seeking a franchise or a modification of an existing one and the drafting of the necessary ordinances, which ordinances must, of course, receive the approval of the council, and the subsequent control and supervision over the manner in which the conditions determined upon are

carried out. It further makes it essential that in all franchise ordinances adequate powers should be retained by the municipality to amend such ordinances in order to meet new conditions as they arise, require extensions into new territory, relocation of routes, etc. These requirements lead to one conclusion that may be stated with great definiteness, the imperative need that each municipality of any importance shall have a municipal service bureau or commission, to which shall be entrusted primary authority in respect to franchise matters, as a necessary part of the machinery of government.

In conclusion, one fact stands out very prominently—the enormous complexity of the problem, and the difficulty that exists, even when franchise ordinances are drafted with the greatest care, and strong public service commissions with adequate powers and technical equipment are provided, in effectively administering the system and ensuring proper facilities and service on the part of the grantee corporations. This leads the author to the fundamental conclusion, that even if full municipal ownership and operation are not to be immediately resorted to, all action taken should look towards this as the ultimate solution of the problem.

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The Indian and His Problem. By FRANCIS E. LEUPP. (New York: Charles Scribner's Sons, 1910. Pp. xiv, 369.)

The author of this volume has had large experience with Indian affairs and the work throughout bears the impress of having been written by one who not only knows a great deal about the Indian and his problems, but who also has a constructive policy to propose for the relief of some of the difficulties which still confront our government. Perhaps no branch of the federal service has had a less fixed and less decisive policy than that of the Indian bureau, and now that the problem has reached a stage where its solution is largely a matter of administration, any suggestions, coming from a recent commissioner, and one engaged in every branch of Indian service, are especially worthy of note.

The author makes no attempt at a "contribution to the literature of ethnology, of jurisprudence, or of political science in the narrower sense of the term," nor could this be expected in a single volume upon so complicated a subject. The work is largely made up of the author's