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RICHARD T. CIOTTONE

October 31, 2000

Missouri Public Service Commission
Attn: Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
200 Madison Street, Suite 100
P. O. Box 360
Jefferson City, MO 65102-0360

FILED²
OCT 31 2000
Missouri Public
Service Commission

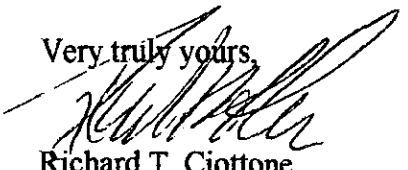
**Re: Application for Restatement and Clarification of
Certificate of Convenience and Necessity**

Dear Secretary Roberts:

WA-2001-288
in back of folder


Enclosed for filing please find an original and eight copies of the above styled application of St. Louis County Water Company, d/b/a Missouri-American Water Company. Will you please see to it that this matter is brought to the attention of the Commission at your earliest convenience. Please note also, that as indicated in the application, correspondence should be addressed to the undersigned at the below address rather than to the letterhead address. Thank you for your assistance and cooperation.

Very truly yours,


Richard T. Clottone
Attorney at Law
949 E. Essex Ave.
St. Louis, MO 63122
(314) 822-2355
fax (208) 275-0779

Certificate of Service

Copies of this transmittal and its attachments have on the date below indicated been provided to the Office of Public Counsel and to the General Counsel to the Missouri Public Service Commission.

 10/31/2000

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED

OCT 31 2000

Missouri Public
Service Commission

In the Matter of the Application of St. Louis)
County Water Company, d/b/a Missouri-)
American Water Company, for Restatement)
And Clarification of its Certificate of)
Convenience and Necessity for St. Louis)
County, Missouri)

Case No. WA- 2001- 288

**APPLICATION
FOR RESTATEMENT AND CLARIFICATION OF
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Comes now St. Louis County Water Company, d/b/a Missouri-American Water Company ("Applicant") pursuant to the provisions of Sections 386.250(3) and 393.170 RSMo, and 4 CSR 240-2.060, and for its Application for Restatement, Clarification and Certification of its Certificate of Convenience and Necessity states as follows. *(In pursuit of expediency, an explanation of the issue is contained in Section I, and the information required by the specifically numbered and letter paragraphs and subparagraphs of 4 CSR 240-2.060 (1) is presented in Section II):*

Section I

1. The Public Service Commission Law with respect to Water Corporations, Chapters 386 and 393 RSMo, was enacted in 1913. Applicant's predecessor Corporation was providing water service to St. Louis County prior to that date. Applicant obtained a perpetual franchise from the County Court of St. Louis County in 1902. That franchise, along with a legal opinion providing the interpretation of that franchise, have been generally accepted by Applicant, the Commission, St. Louis County and the municipalities within St. Louis County for nearly one hundred years. Those documents are attached hereto as *Exhibit A* and *Exhibit B* respectively. (It should be

noted that the County Court of St. Louis County Court no longer exists, but was the predecessor to the statutory establishment of the present St. Louis County government).

2. The franchise and its accompanying opinion state generally, that the Company may legally provide water service throughout the entirety of what was at that time unincorporated St. Louis County (see conclusion, page 35, *Exhibit B*) without further governmental approvals, excepting only five then-incorporated cities and those streets in subsequently incorporated cities which were first dedicated to public use subsequent to the incorporation of such cities. In order to provide service to the six cities already incorporated at that time, namely, Kirkwood, Webster Groves, Ferguson, Bridgeton, Pacific and Florissant, certificates of convenience and necessity and municipal franchises were required. Apparently, municipal contracts existed at that time with both Kirkwood and Webster Groves (See page 3, *Exhibit B*).
3. Although there have been inconsistencies in application of the principle over the last one hundred years, generally, if the Applicant could provide service to an area before it became incorporated, no further authority was acquired. If, however, subsequent to 1902 a municipality could incorporate an area prior to the Applicant reaching that area with its distribution system, state and municipal certification was sought. Applicant presently holds separate Certificates of Convenience and Necessity from the Commission for the following cities in St. Louis County: Richmond Heights, Ferguson, Glendale, University City, Oakville, Ellisville, Florissant, Peerless Park and Valley Park (limited area and limited service as herein explained). The Company also holds a certificate for a specifically defined unincorporated area in Jefferson County which is not affected by this Application.
4. The issue was dormant for many years until 1982. At that time, a large section of Federally subsidized housing was proposed for development within the City of Valley Park. The City had been incorporated in 1917. Applicant had not theretofore

provided service within the City. The City wanted to provide service to the development with its municipal supply system, but was not physically able to do so with its facilities. The City was unwilling to concede that Applicant was legally able to provide the service, because the City believed that to do so would permit Applicant to compete within the City for all of City's customers. A compromise was reached whereby a "limited" certification to serve the development was sought permitting the Applicant to master-meter the development without piping the development itself. The certificate was obtained in Case No. WA-82-141 by Order dated April 23, 1982.

5. Applicant and the City of Valley Park have entered into an agreement whereby Applicant will purchase the assets of the City's water distribution system. Applicant presently provides all the water that is resold by City to its customers. Because of this 1982 Application for a limited certificate, Applicant believes that it is necessary now for it to obtain a general Certificate of Convenience and Necessity to serve the entirety of the City as a precondition to acquisition of the City's system. This is believed to be expedient despite the fact that Applicant presently serves large parts of the City due to relatively recent annexations by the City of previously unincorporated areas of St. Louis County.
6. In discussions between the Company and the Commission Staff over the years, it has often been suggested that the Company should seek to restate and clarify its grandfather authority. This would permit the Applicant's authority to be represented in the Commission's records in a manner that is traditional for other utilities within the state. It would also eliminate administrative confusion and uncertainty with respect to the interpretation of the perpetual County Court franchise, as well as the pragmatic necessity for piecemeal applications as is deemed necessary at this time for clarification of Applicant's authority to serve the City of Valley Park.
7. It is for this reason that the Company seeks to restate and clarify its authority to serve the entirety of St. Louis County. Areas specifically defined in Jefferson County by

prior order of this Commission are unaffected by this application, as this Application refers only to St. Louis County.

8. Other suppliers within the County, and the potential impact of this Application are listed in the following Section II; but it is believed that the grant of the authority herein sought would have no material impact on present competition and service other than to eliminate future administrative complication, expense and uncertainty.

Section II

1. Information required by the specifically lettered paragraphs of 4 CSR 240-2.060 (1) is as follows:

A. Applicant St. Louis County Water Company is a Missouri Corporation legally authorized to do business using the fictitious name of Missouri-American Water Company. The corporation's principal office and place of business along with the other identifying information specified in subparagraph A of 4 CSR 240-2.060(1)(A) are as follows:

St. Louis County Water Company
c/o David P. Abernathy, Vice President and Corporate Counsel
535 N. New Ballas Rd.
St. Louis, MO 63141
telephone: (314) 991-3404, ext. 276
fax: (314) 997-2451
e-mail dabernathy@slcwc.com

B. A Certificate of Good Standing from the Secretary of State of Missouri is attached hereto as *Exhibit C*.

C. Applicant is not a foreign corporation.

D. Applicant is not a partnership.

E. A registration certificate of Applicant's authority to do business using the fictitious name Missouri-American Water Company is attached hereto as *Exhibit D*.

F. Applicant is a Water Corporation as defined in Chapter 386 RSMo and is subject to the jurisdiction of the Missouri Public Service Commission.

G. The information required in subsections B through F is attached as specified and need not be incorporated from other files.

H. Applicant provides retail water service to specified areas of Jefferson County, Missouri pursuant to a Certificate of Convenience and Necessity for a defined area awarded in Case No. 15,297, and to most of St. Louis County, Missouri pursuant to its perpetual franchise rights from the County Court as hereinbefore described. Applicant also provides water for resale to various municipalities and Public Water Supply Districts pursuant to tariffs and contracts on file with the Commission.

I. The data with respect to Applicant's counsel to whom information should be sent in addition to Applicant's in-house counsel identified in subparagraph A above, are as follows:

Richard T. Ciottone, Of Counsel
Brydon, Swearngen & England P.C.
949 E. Essex Ave.
St. Louis, MO 63122
telephone: (314) 822-2355
fax: (208) 275-0779
e-mail: rtciottone@msn.com

J. Applicant is not an association.

K. Applicant has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involves customer service or rates, excepting only the complaint of Arthur J. Steiger regarding plumbing repair costs bearing case number WC-2000-766 presently pending before this Commission.

L. No annual report or assessment fees are overdue.

M.

1. The verification of Applicant's Vice President and Corporate Counsel is endorsed hereon.

2. None of the items required under 4 CSR-240-2.060 is unavailable.

3. Applicant is not a telecommunications company.

4. The additional data required for a certificate application by the numbered subparagraphs of section 4 CSR 240-2.060 (4) (1) (A), (B), (C), (D) and (E) are as follows:

4.1 (A)1. The only providers known by Applicant to be making retail water service available in St. Louis County Missouri other than the service provided by Applicant, are as follows:

The City of Valley Park, Missouri. Valley Park provides unregulated service to certain of its inhabitants with water purchased on a wholesale basis from Applicant. Applicant also provides service within the City of Valley Park to two classes of retail customers: Applicant provides service through a single master meter to a specifically defined subsidized housing development under a limited certificate of convenience and necessity previously issued by this Commission in Case No. WA-82-141; and Applicant also provides service to certain residential

developments existing in areas annexed by the City from unincorporated St. Louis County after Applicant had already provided water service to the area pursuant to its perpetual franchise from the County Court of St. Louis County, hereinbefore previously explained. Applicant and the City of Valley Park are parties to a contract of sale of the City's water distribution assets.

The City of Webster Groves, Missouri. Webster Groves provides unregulated water service to certain of its inhabitants with water it either purchases from Applicant or from the City of St. Louis. Applicant also provides service within the City of Webster Groves to certain specific streets, the history of which predates any records.

The City of Kirkwood, Missouri. Kirkwood provides unregulated water service to certain of its inhabitants with water it either purchases from Applicant or develops from its own treatment facilities. Applicant also provides service within the City of Kirkwood to certain specific streets, the history of which predates any records.

The City of Florissant, Missouri. Florissant provides unregulated water service to certain of its inhabitants with water it purchases from Applicant. Applicant also provides service within the City of Florissant to certain specific streets specified in its municipal franchise. The Company also holds a Certificate of Convenience and Necessity from the Commission to provide service to certain areas within the City of Florissant which was awarded to the Applicant in Case No. 11,157. The history of this relationship otherwise predates any records.

St. Albans (proper entity name unknown). The residential development and Golf course of St. Albans provides water service to its own development with what has been described as an unregulated not-for-profit corporation.

The City of Eureka, Missouri. Eureka operates a municipal system. Applicant has not yet extended transmission mains to the City.

The City of Pacific, Missouri. Pacific operates a municipal system. Applicant has not yet extended transmission mains to the City.

4.1 (A) 2. Applicant presently serves over 300,000 customers throughout the service area for which restatement and clarification is requested. Applicant believes that the only citizens to whom the Company could not presently provide service under the grandfather rights of its perpetual franchise from the St. Louis County Court, reside in municipalities the incorporation of which predate Applicant's perpetual franchise. No service in those areas can or will be offered without the request or assent of the involved municipalities, and more specifically those municipalities named in section 4.1 above.

4.1 (A) 3. The legal description of the area to be certificated in this restatement (excluding the areas of Jefferson County which are specifically described in Case No. 15,297 and need not be addressed in this case) is the entirety of St. Louis County, Missouri. The legal description of St. Louis County is attached hereto as *Exhibit E*.

4.1 (A) 4. A County Highway Map issued by the Missouri Department of Transportation drawn to a scale of two thousand feet to the inch is attached hereto as *Exhibit F*.

4.1 (A) 5. Applicant's five-year plan, financing, number of customers, rates and charges, and revenues and expenses for the forthcoming years are all matters in issue in Applicant's presently pending rate case, Case No. WR-2000-844. The authority herein sought will have an immediate impact of changing those customers within the City of Valley Park who now purchase water indirectly from Applicant, into retail customer who

purchase water directly from Applicant. The difference in revenue to Applicant (the difference in the per-cubic-foot cost of water under existing Rate B compared to that cost under existing Rate A) will be offset against Applicant's increased costs of maintaining the distribution system being acquired and other operating expense. The net difference should be inconsequential to Applicant's financial picture. The designations of "Rate A" and "Rate B" are used in Applicant's current rates, and the rates for Valley Park will be the same as are Applicant's current rates for all other residential and commercial customers.

4.1 (B). Requirements of this section are inapplicable because the application is not for electrical transmission lines, gas transmission lines or electrical production facilities.

4.1 (C). Municipal franchises for all of the 91 municipalities in St. Louis County, Missouri are not legally necessary. In areas where Applicant provided water service under its perpetual County Court franchise prior to municipal incorporation, Applicant believes it has "grandfather" rights to continue to serve within those municipalities without further municipal authority (See Section I herein for further explanation). Verification of this Application by Applicant's officer constitutes an affidavit to this effect as required by 4 CSR 240-2.060 (4) (1)(C). The unusual number of local governments in St. Louis County, coupled with the unprecedented perpetual franchise grandfather rights, by pragmatic necessity leaves the issue of requisite municipal authorities to Applicant's individual relationship with each respective municipality. Applicant endeavors to acquire franchises from all municipalities (largely because municipal franchises are expected by institutional Bond purchasers, and acquisition of the franchises is more convenient than the explanation of why those franchises are unnecessary); but some municipalities resist in the pursuit of concessions from the Applicant, the concession of which Applicant believes would not be in the best interest of its customers. Applicant presently has effective franchise documents with 69

municipalities in St. Louis County. A list of those franchises is attached hereto as *Exhibit G*.

4.1 (D). Applicant presently provides service to areas of the City of Valley Park without a municipal franchise under its perpetual franchise grandfather rights hereinbefore described. Applicant is presently negotiating an Agreement with the City of Valley Park for the acquisition of its water distribution system assets. Just at the acquisition of the Certificate of Convenience Necessity herewith sought is a condition subsequent to that Agreement, so also under the terms of that Agreement will the City be contractually obligated to provide Applicant with a municipal franchise.

4.1 (E). The granting of this application is required by the public convenience and necessity because:

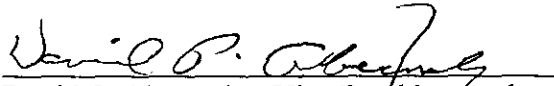
- a) Applicant is the only water provider capable of providing service to the entirety of St. Louis County.
- b) Applicant holds itself out to provide such service at this time pursuant to its grandfather rights and its perpetual franchise from the County Court.
- c) The various municipal annexations in recent years have blurred the distinctions enunciated in Applicant's perpetual franchise from the County Court and clarification of the matter is in the public interest.
- d) No purpose would be served by a "wait and defend" approach to the matter as Applicant continues to expand throughout the County into virtually all the incorporated and unincorporated areas of the County.
- e) Excepting only the St. Albans development and the municipal systems in Eureka and Pacific, to which Applicant has not yet extended transmission

mains, Applicant has formal Agreements or other understandings with all four municipal suppliers in St. Louis County with respect to where in each such City Applicant may provide service. These understandings date back many decades. It is Applicant's position that unless and until any of these municipalities authorize or request the Applicant to extend water service into their cities to an extent greater than presently provided, the grant of the authority herein requested will not, in and of itself, permit Applicant to do so.

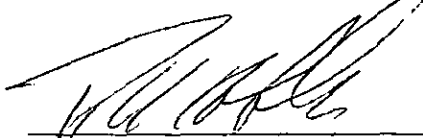
- f) Restatement and clarification that Applicant has a Certificate of Convenience and Necessity from the Missouri Public Service Commission to provide retail water service to the entirety of St. Louis County will save Applicant and its ratepayers the cost of addressing and resolving administrative ramifications of service area uncertainty, e.g. the application that prompted this request for restatement being the certification for the City of Valley Park, Missouri.

WHEREFORE, Applicant prays that the Commission issue its order stating that Applicant has a Certificate of Convenience and Necessity to provide retail water service to areas of Jefferson County previously defined in Case No. 15,297, as well as to all areas of St. Louis County, Missouri where Applicant is otherwise legally permitted to provide service consistent with its legal relationship with each respective incorporated municipality, and that such grant of authority does not restrict or limit Applicant's existing authority under its perpetual franchise from the St. Louis County Court. . In the alternative, Applicant prays for a Certificate of Convenience and Necessity for the entirety of the City of Valley Park, Missouri so that it may complete the acquisition of the water distribution system assets presently operated by the City.

ST. LOUIS COUNTY WATER COMPANY,
d/b/a Missouri-American Water Company



David P. Abernathy, Vice President and
Corporate Counsel MBE# 33785
535 N. New Ballas Rd.
St. Louis, MO 63141
telephone: (314) 991-3404, ext. 276
fax: (314) 997-2451
e-mail: dabernathy@slcwc.com

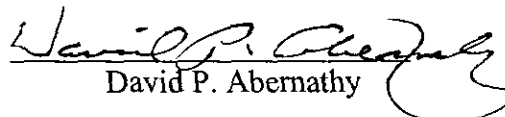


Richard T. Ciottone, Attorney for Applicant
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fax: (208) 275-0779
e-mail: rtciottone@msn.com

State of Missouri)
) ss
County of St. Louis)

VERIFICATION

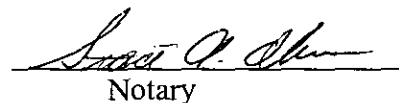
I, David P. Abernathy, do herewith swear and affirm that I am Vice President and Corporate Counsel of St. Louis County Water Company, that I am duly authorized by the Board of Directors of such Company to file the foregoing Application, and that the facts contained therein are true to the best of my knowledge, information and belief.



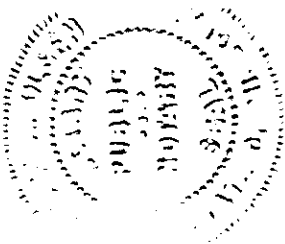
David P. Abernathy

Subscribed and sworn to before me on this 27~~th~~ day of October, 2000.

Staci A. Olsen, Notary Public
County Of St. Louis, State Of Missouri
My Commission Expires March 20, 2001

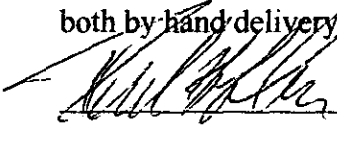


Notary



CERTIFICATE OF SERVICE

Two copies of the foregoing have on this date been provided to the Office of Public Counsel, and one copy has been provided to the General Counsel to the Missouri Public Service Commission, both by hand delivery.

 10/29/2000

Exhibits for Application

Exhibit A - Franchise from County Court

Exhibit B -- Legal Opinion about Franchise

Exhibit C -- Certificate of good standing

Exhibit D -- d/b/a certificate

Exhibit E -- Legal description St. Louis County

Exhibit F -- County Highway Map of entire County to scale of ½ inch to the mile.

Exhibit G -- list of franchises presently held by the Applicant

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

FEBRUARY TERM, 1902

In the County Court of said County, on the 17th day of February, 1902, the following among other proceedings were had, viz:

In the matter of the petition of the)
Missouri Water, Light & Traction)
Company, a corporation, for permission)
to lay water pipes, etc. on the streets,)
and roads of this county.)

The Court having considered the matter of the petition of the said Missouri Water Light & Traction Company, a corporation, and being fully advised and duly considered the premises doth order as follows:

Permission, authority and license is hereby given to the said Missouri Water Light & Traction Company, its successors and assigns, to lay and maintain mains and pipes under, along and across the public highways of all that portion of the County of St. Louis lying West of the City of St. Louis and South of the Clayton Road to connect mains and pipes in said district with supply pipes and mains, under along and across the public highways of said county, with a pumping station to be located at or near the Missouri River at a point West of or up stream from the outlet of Creve Coeur Lakes, as hereby given and granted to the said Missouri Water Light & Traction Company, its successors and assigns, under and upon the following conditions and provisions:

(1) That before laying any main or pipe from time to time a plat or map showing the location and size thereof shall be filed with the County Clerk and the location of said pipes upon any portion of the public highways shall first be approved by the County Court of St. Louis County.

(2) All work upon public highways shall be done under the supervision of the County Road Commissioner, or such other person as may be designated by the County Court, and shall be done subject to the approval of the court.

(3) The surface of all highways occupied by the said Missouri Water Light & Traction Company shall be restored to the former condition thereof as soon as practicable, and any damage to the surface by reason of such occupancy from time to time shall be promptly repaired by the said company, its successors or assigns. And wherever practicable the conduits and pipes laid by said company, its successors or assigns, shall be placed and maintained along the parallel line with the center of the road, and in no case shall any conduits or pipes be laid under any of the macadamized part of any of the public highways, streets or alleys in said portion of said county as aforesaid as now made, except when necessary in crossing streets or unless absolutely unavoidable. And before the location of the conduits or opening of any excavation of any kind in any portion of said roads, plans and profiles shall be filed in the office of the Clerk of the County Court showing the places where said conduits shall be laid and excavations made, which said plans and profiles shall be approved by the Commissioner of Roads and Bridges and the County Court.

The conduits shall be constructed, pipes laid and all appurtenances and fixtures used in connection therewith shall be laid and constructed or repaired with the least possible delay or injury to the public, and said company, its successors or assigns, shall, as soon as the work is done, restore the

streets, alleys and highways at their own cost and expense in as good condition as they were before the work was commenced, and all excavations made at any time by said company, its successors or assigns, for the purpose of laying conduits, appurtenances and fixtures shall be kept on a level with the plans of said streets, alleys or highways that may be used by said company for the purpose aforesaid during the life of the franchise of said company, its successors or assigns, and said company shall not at any one time cause to be opened excavations more than one-half mile along any one road, street or highway at any one time, which when said work is once commenced must be completed within the period of Thirty Days from the commencement thereof, to the satisfaction of the County Court, before further work is started on any other portion of said road or alley, provided, however, that said company, its successors or assigns are hereby permitted to continue in the excavation of said roads and work toward the completion thereof so that said company may be permitted to continue in the other work until completed, and which excavations made and pipes laid therein shall be filled and properly packed and tamped so as to make solid the earth or material used in filling the same.

As soon as said pipes shall be laid therein and during the work upon said excavations signal lamps shall be placed at convenient points along said excavations and with proper guard rail at each end of excavations and not less than a certain number, one signal lamp and guard rail to be at the beginning, one at the end and not less than six signal lamps between the beginning and end of said excavations, to be kept burning during the night, and wherever there shall be a public crossing or private crossing, or an entrance into private property, said company, its successors or assigns shall make and maintain temporary crossings therefor during the construction of said conduits,

(4) The said company shall at its own expense and without delay cause any portion of its public line situated along or across any highway to be lowered and conform to such grade as may be established by the County Court at any time when notified so to do, provided that said pipes shall not be lowered until such time as such grading shall be actually done by said County.

This order shall have no force or effect until the said company shall file with the County Court its acceptance in writing of the terms, conditions and provisions herein set out and accompany the same with the receipt of the County Treasurer for the sum of One Thousand Dollars, which said sum shall become the absolute property of the County as a guarantee and shall be maintained and kept on deposit in the Treasury subject to be drawn upon by order of the County Court to pay for making repairs to the damage done to the surface of any highway so occupied, provided that no repairs made necessary by said company's conduits or mains shall be made by any of the officers without first giving ten days' notice by order of the County Court to said company to make the same.

And provided further that no order shall be made by the County Court drawing money from said fund until ten days' written notice shall have been given to the said company by the County Clerk stating when and where the work was done, the amount proposed to be drawn from said fund and the day upon which such order will be made, and provided further that no repairs shall be made by the County Court and charged to said funds unless said repairs shall have become necessary by reason of causes particularly attributable to the occupancy of the public highway by the mains and pipes of the said company, and the said Missouri Water Light & Traction Company, its successors or assigns shall within thirty days thereafter, upon due notice from the County Clerk as aforesaid, supply the deficit occasioned by any disbursement from said fund as aforesaid that may be made so that there shall always be the sum of one thousand dollars in the Treasury of the County of St. Louis for the use hereinabove mentioned.

(5) It is further ordered and provided that a failure upon the part of the said company, its successors or assigns, to comply with any and all the conditions, provisions and agreements herein above mentioned and contained shall work a forfeiture of the provisions herein contained and this franchise, permit, license and authority shall be void and of no effect.

Presiding Justice.

I, WALTER E. MILLER, Clerk of the County Court in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

16th day of March, 1942

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

FEBRUARY TERM, 1902

In the County Court of said County, on the 14th day of April, 1902, the following among other proceedings were had, viz:

In the matter of The Missouri)
Water Light & Traction Company.)

Whereas it appears to this Court that on the 17th day of February, 1902, an order was passed by this Court granting permission, authority and license to said company to use and occupy certain roads and streets of the County of St. Louis, as in said order provided, and upon the terms, conditions, and provisions therein contained. And whereas no time was fixed by this Court in said order for the acceptance by the said company of the conditions of said order and the payment of the sum of one thousand dollars as therein provided for. Now therefore it is ordered that a new section be added to said order of date February 17, 1902 with reference thereto to be known as Section 6 of said order as follows, to-wit:

Section Six (6).

The acceptance, in writing, of all the terms, conditions and provisions of the order of the court of date February 17, 1902, concerning the said Missouri Water Light & Traction Company and the payment of the sum of One thousand dollars as therein provided shall be filed and made on or before June 2nd, 1902.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
County of St. Louis,) SS.

I, WALTER E. MILLER, Clerk of the County Court in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office in Clayton, this the

16th day of March, 1902

(Signed) WALTER E. MILLER
Clerk County Court.

(Seal)

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

AUGUST TERM 1902

In the County Court of said County, on the 20th day of October 1902, the following, among other proceedings, were had, viz:

In the matter of the petition of)
the West St. Louis Construction)
Company for modification of order.)

Now comes the West St. Louis Construction Company, a corporation, and shows to the Court that it is the assignee of the Missouri Water Light & Traction Company of all the rights, franchises and privileges heretofore granted said Company by this Court and petitioning prays that the orders of this Court as granted on the 17th day of February 1902, and amended by orders of April 14th, 1902, and of May 22nd, 1902, granting certain rights and privileges to said Missouri Water Light & Traction Company be modified and amended so that said franchise as embodied in said order and amendments there- to shall read as an order submitted and made a part of this petition; It is ordered by the Court that said petition be referred to F. A. Heidorn, Prosec- uting Attorney for his opinion.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
County of St. Louis,) SS.

I, WALTER E. MILLER, Clerk of the County Court in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office in Clayton, this the

_____ 16th _____ day of _____ March _____, 1942

(Seal)

(Signed) _____ WALTER E. MILLER
Clerk County Court.

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI, }
County of St. Louis, } SS.

AUGUST TERM 1902

In the County Court of said County, on the 27th day of October, 1902, the following among other proceedings were had, viz:

In the matter of the petition of the }
West St. Louis Construction Company }
Assignee of the Missouri Water, Light }
and Traction Company for Franchises. }

The Court having considered the matter of the petition of the West St. Louis Construction Company, a corporation, assignee of the Missouri Water, Light & Traction Company, to modify the orders of this Court of dates February 17th, 1902, April 14th, 1902, and May 22nd, 1902, granting franchises, licenses, and permits to the said Missouri Water, Light & Traction Company, its successors or assigns, and being fully advised and having considered the premises, doth order as follows:

WHEREAS, the said Missouri Water, Light & Traction Company, and its successors and assigns, the West St. Louis Construction Company, have paid into the Treasury of the County of St. Louis the sum of Two Thousand (\$2000.00) Dollars, and have filed a bond in the penal sum of Five Thousand (\$5000.00) Dollars, for the purpose of saving the County harmless of all claims and damages for and during the first five (5) years of construction, and have otherwise complied with the orders of this Court in the premises.

NOW, therefore, be it ordered that the West St. Louis Construction Company, its successors or assigns, are hereby granted permission, authority and right to lay and maintain conduits, mains and pipes under, along and across all public highways as they now exist, or as may hereafter be laid out or open within the present limits of St. Louis County, under and upon the following conditions, and provisions.

(1) Before laying any conduits, mains or pipes, from time to time, a plat or map, showing the approximate location and size thereof, shall be filed with the Clerk of this Court for the inspection and approval of this Court, and the supervisor of roads and bridges; Provided, however, that where service pipes for consumers are to be put in, the maps and plats may be filed, and work approved after the pipes and connections are put in.

(2) Wherever practicable conduits, mains and pipes shall be laid approximately parallel to and twelve (12) feet from the center line of all streets and highways occupied, except at points where deflections and detours are made necessary by curves in the highway, culverts, bridge, abutments, or other obstructions or conditions. All such work shall be under the supervision of the supervisor of roads and bridges and subject to the approval of the County Court. The surface of highways occupied by conduits, mains and pipes shall be restored to the former condition thereof, as soon as practicable, and any damage to the surface by reason of such occupancy from time to time shall be promptly repaired by said company, its successors or assigns, and in no case shall conduits, mains or pipes, be laid under the macadamized parts of public highways, except where unavoidable, or necessary in crossing the same. Excavations not to exceed one-half mile in length on any public highway may remain open at any one time without the consent of the supervisor of roads and bridges, and when once open must be completed and refilled as soon as practicable not exceeding the period of thirty days from the commencement thereof. Guard Rails and signal lamps shall be placed at each end of

excavation and intermediate lamps shall be placed not more than three hundred (300) feet apart along all excavations, to be kept burning during the night. Temporary crossing shall be provided and maintained at public crossings, and private entrances by said company.

(3) The said company shall at its own expense and without delay cause any portion of its public line situated along or across any highway to be lowered to conform to such grade as may be established by the County Court at any time when notified so to do.

Provided that such pipe shall not be lowered until such time as such grading shall be actually done by the county. The said Two Thousand (\$2000.00) Dollars deposited with the County shall remain the absolute property of the county as a guarantee, and shall be maintained and kept on deposit in the treasury, subject to be drawn upon by order of the County Court to pay for making repairs of damage done to the surface of any highway so occupied; providing, that no repairs made necessary by such company shall be made by any officer of the county without first giving ten (10) days notice in writing by order of the County Court to said company to make the same; and, providing further, that no order shall be made by the County Court for drawing money from said fund until ten (10) days notice shall have been given to said company by the county court stating when and where the work was done, the amount to be drawn from the said fund and the day upon which said order will be made. And, provided further, that no repairs shall be made and charged to said fund unless said repairs shall have become necessary by reason of causes particularly attributable to the occupancy of the highways by the said conduits, mains and pipes. The said company, its successors or assigns, shall within thirty (30) days after due notice from the County Court, as aforesaid, supply the deficit occasioned by any disbursement from said fund, as aforesaid, so that there shall always be the sum of Two Thousand (\$2000.00) Dollars in the Treasury of the County for the uses and purposes hereinabove mentioned. And provided further that the determination by the County Court of the necessary repairs, or improvements to be made, on account of said occupancy and use of any and all of such roads and highways along the public line or lines of said company, its successors or assigns, shall be conclusive and binding on said company, its successors or assigns, but from which determination by said court as to the necessity of such repairs being made and the reasonableness of the cost thereof, and the liability therefor said company shall have the right of appeal to the Circuit Court; And provided further that the amount named to be paid for work and material furnished in making repairs, when necessary, as aforesaid shall not exceed the amount paid by the county of St. Louis for similar kinds of work done, and material furnished in places adjoining where repairs are made.

A material failure and persistent refusal upon the part of said company to comply with any and all conditions, provisions and agreements hereinabove mentioned, within a reasonable time after due notice in writing to said company by this court, shall work a forfeiture of all rights herein under.

(4) This order shall have no force until said company, its successors or assigns, shall file with the clerk of this court, its acceptance in writing of the terms, conditions and provisions herein set out, and shall file with the Clerk of this Court, its penal bond in the sum of Five Thousand (\$5000.00) Dollars with good and sufficient security to be approved by this Court, conditioned that said company, its successors and assigns, will hold the county of St. Louis harmless from any and all claims for damages arising from the construction of said work, including the work now done and that which remains to be done, and that they will comply with all the terms, conditions and provisions of this franchise for and during the term

of five (5) years from the date of the acceptance of this franchise, license and permit. Said acceptance and bond shall be filed within thirty (30) days from the approval of this order, and, when said new bond is approved, the old bond will be cancelled and returned.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
County of St. Louis,) SS.

I, WALTER E. MILLER, Clerk of the County Court in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office in Clayton, this the

_____ 18th _____ day of _____ March _____, 1942

(Seal)

(Signed) _____
WALTER E. MILLER
Clerk County Court.

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

MAY TERM 1902

In the County Court of said county, on the 19th day of May, 1902, the following, among other proceedings were had, viz:

In the matter of the Missouri)
Water Light & Traction Company)

WHEREAS, the County of St. Louis, in the State of Missouri, by the order of the county court of said county entered on the 17th day of February 1902, and amended by a further order of April 14th, 1902, granted to the Missouri Water, Light & Traction Company, and to its successors and assigns, certain permission authority and rights fully set forth in the said order of the county court, and on the terms and conditions embodied in said order, and in the amendment thereof; Now, comes the said Missouri Water, Light & Traction Company, and fully accepts and ratifies the said order and assumes and undertakes to do and perform all the things set forth in said orders; The said company also presents to the Court its bond in the penal sum of Five Thousand (\$5000.00) Dollars for the due fulfillment of the conditions and provisions of the franchise; -- It is ordered by the court that said acceptance be received and filed and further ordered that said Bond be approved.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
County of St. Louis,) SS.

I, WALTER E. MILLER, Clerk of the County Court in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office in Clayton, this the

_____ 16th _____ day of _____ March _____, 1942

(Seal)

(Signed) WALTER E. MILLER
Clerk County Court.

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

MAY TERM 1902

In the County Court of said county, on the 22nd day of May, 1902, the following, among other proceedings were had, viz:

In the Matter of the Missouri)
Water, Light & Traction Company.)

WHEREAS, it appears to the Court that on the 17th day of February 1902, an order was passed by this court granting permission, authority and license to said Missouri Water, Light & Traction Company, its successors and assigns, to use and occupy the roads and streets of the county of St. Louis, as in said order provided, and upon the terms, conditions and provisions therein contained; and, whereas the streets and roads, which said company were permitted to occupy and use under said order were designated as being in that portion of St. Louis County, lying West of the City of St. Louis and South of Clayton Road; Now, therefore, in consideration of the payment of an additional One Thousand (\$1000.00) Dollars to the Treasurer of the County of St. Louis, for the county of St. Louis, to be used in the same manner and for the same purpose as the one thousand (\$1000.00) provided for in the said order of this Court of the 17th day of February, 1902.

Now, therefore, it is ordered that that portion of said order which reads as follows:-

The Court having considered the matter of the petition of the said Missouri Water, Light & Traction Company, a corporation, and being fully advised and duly considered the premises, doth order as follows:

Permission, authority and license is hereby given to the said Missouri Water, Light & Traction Company, its successors and assigns, to lay and maintain mains and pipes under, along and across the public highways of all that portion of the county of St. Louis lying West of the City of St. Louis, and South of Clayton Road to connect mains and pipes in said district with supply of pipes and mains, under, along and across the public highways of said county, with the pumping station to be located at or near Missouri River at a point West of or up stream from the outlet of Creve Coeur Lakes, as hereby given and granted to the said Missouri Water, Light & Traction Company, its successors and assigns, under and upon the following conditions and provisions: -

Shall be stricken out and the following be inserted in lieu thereof:-

The Court having considered the matter of the petition of the said Missouri Water, Light & Traction Company, a corporation, and being fully advised and duly considered the premises doth order as follows:-

Permission, authority and licenses is hereby given to the said Missouri Water, Light & Traction Company, its successors and assigns to lay and maintain mains and pipes, along and across all the public highways as they now exist, or may hereafter be laid out, of the County of St. Louis, as hereby given and granted to the said Missouri Water, Light & Traction Company, its successors and assigns, under and upon the following conditions and provisions:-

And that a new Bond be given in the sum of FIVE THOUSAND (\$5000.00) DOLLARS in lieu of the old bond which will be cancelled and returned. The new bond to contain the same conditions and provisions as are provided for in Section 4 of said order of the 17th day of February 1902; that all other conditions and provisions in said order of date of February 17th, 1902, and the amended order of date of April 14, 1902, with reference to said Missouri Water, Light & Traction Company, its successors or assigns, shall remain and be in force and be the order of the Court concerning the premises and this order shall be held to apply only to the territory which said Company may operate, and also as to the amount of deposit to be made and bond to be given.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
) SS.
County of St. Louis,)

I, WALTER E. MILLER, Clerk of the County Court in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office in Clayton, this the

_____ 16th _____ day of _____ March _____, 1942

(Seal)

(Signed) WALTER E. MILLER
Clerk County Court.

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

MAY TERM 1902

In the County Court of said county, on the 2nd day of June, 1902,
the following, among other proceedings were had, viz:

In the matter of the Missouri)
Water Light & Traction Co.)

It is ordered that the Bond this day submitted to the Court be
approved and permission be granted to withdraw the former bond accepted
May 19, 1902.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
County of St. Louis,) SS.

I, WALTER E. MILLER, Clerk of the County Court in and for said County,
hereby certify the above and foregoing to be a true copy of the proceedings
of our said County Court, on the day and year above written, as the same
appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the
seal of said Court, at office in Clayton, this the

_____ 16th _____ day of _____ March _____, 1942

(Seal)

(Signed) _____ WALTER E. MILLER
Clerk County Court.

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

NOVEMBER TERM 1902

In the County Court of said county, on the 24th day of November, 1902, the following, among other proceedings were had, viz:

In the matter of the West St. Louis)
Construction Company,)

Now comes the West St. Louis Construction Company and files with the Clerk of this Court its written acceptance of all the terms, conditions and provisions of the order of this Court made on October 27th, 1902, also presents to the Court for approval its penal bond in the sum of FIVE THOUSAND (\$5000.00) DOLLARS, in full compliance with the provisions of Section 4 of said order. It is ordered by the Court that said acceptance be received and filed and further ordered that said Bond be received and filed and approved, and it is further ordered that the Old Bond approved by the Court on June 2nd, 1902 in the name of Missouri Water, Light & Traction Company, be ordered cancelled and returned.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
County of St. Louis,) SS.

I, WALTER E. MILLER, Clerk of the County Court in and for said County, heraby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office in Clayton, this the

_____ 16th _____ day of _____ March _____, 1942

(Seal)

(Signed) WALTER E. MILLER
Clerk County Court.

By _____ D.C.

CERTIFIED COPY OF ORDER

STATE OF MISSOURI,)
County of St. Louis,) SS.

MAY TERM 1899

In the County Court of said County, on the 3rd day of July, 1899, the following, among other proceedings were had, viz:

In the matter of the petition of)
Suburban Water Company.)

In the matter of the petition of the said Suburban Water Company for permission to lay water pipe in the County of St. Louis heretofore filed, and having been heard and considered by the Court, and the Court being fully advised in reference thereto, it is ordered and adjudged in said matter, as follows:

Section 1. Permission and authority is hereby granted to the Suburban Water Company, a corporation created by and existing under and in pursuance of the laws of the State of Missouri, its successors and assigns, to lay, construct and operate water pipes, together with the necessary man holes, fire plugs, connection and appurtenances, in, along and under the Bonhomme Road or any other roads, streets, alleys, or public highways within the district or territory in the County of St. Louis, and State of Missouri, bounded on the East by the St. Louis City Limits, on the South by a line parallel with and one half of a mile south of the Clayton Road, on the west by the Denny Road, on the North by the Natural Bridge Road, for the purpose of supplying St. Louis Country Club, the Court House of St. Louis County, and the citizens of St. Louis County within said district with water, to be obtained from the City of St. Louis, Missouri, the Mississippi, Missouri or Meramec River, or some other source of supply as may be determined upon by said company, for a period of fifty (50) years, all for the use and benefit of said Suburban Water Company, its successors and assigns, are hereby granted permission and authority to lay, construct, maintain and operate all pipes, man holes, fire plugs, connections, meters, appurtenances and other facilities, under or above the ground that may be necessary or suitable for the procurement or conveyance and distribution of said water supply from time to time, and to lay, construct, maintain and operate water main or supply pipes and appurtenances in, along or under any road, street, alley or public highway within the County of St. Louis for the purpose of reaching the source or sources of water supply from time to time used by said company, its successors or assigns.

Section 2. The said water pipes, man holes, fire plugs, connections, meters, appurtenances or other fixtures of said company, its successors or assigns, shall be constructed, maintained and repaired from time to time with least practicable delay or inconvenience to the public and at such places in, under and along the sides of said roads, streets, alleys or public highways as will least inconvenience the public, provided that this restriction to the use of the sides of said roads, streets, alleys and public highways, shall not effect or abridge the right of said company, its successors or assigns, to cross and recross under any of the roads, streets, alleys or public highways of St. Louis County at convenient angles; and the said company shall as soon as the work of laying or constructing said pipes, man holes, fire plugs, connections, appurtenances or fixtures, shall have been completed, at its own expense, replace the roads, streets, alleys public highways or side walk pavements of the same material and in the same condition

as they were previous to the laying or constructing of said pipes, man holes, fire plugs, connections, appurtenances and fixtures said company shall be required to fill up all places where pipes were laid, that have settled and keep the same level with the streets during one year after the pipes were laid.

Section 3. In order to insure the faithful compliance with the conditions of Section 2 of this order, the said company shall be required within ten (10) days after the tenth day of July to file with the County Clerk a penal bond in the sum of Five Thousand (\$5000.00) Dollars, with two or more good and sufficient securities to be approved by this Court, which bond shall be renewed from time to time upon further order of this Court.

Section 4. In furnishing water within said district of the County of St. Louis, it shall be unlawful for said company, its successors or assigns to make charges for water in excess of five (5) cents per one hundred (100) gallons, excepting that the County Court of St. Louis County shall have the privilege of purchasing water from said company, its successors or assigns for county purposes measured through meters at the rate not to exceed three (3) cents per one hundred (100) gallons. The Roll being called Judge James B. Brouster of the first district votes: Yes. Judge George Horneker of the second district votes: No. and Judge Henry L. Wilson, Presiding Justice votes: Yes.

HENRY L. WILSON,

Presiding Justice.

STATE OF MISSOURI,)
) SS.
County of St. Louis,)

I, WALTER E. MILLER, Clerk of the County Court in and for said County, hereby certify the above and foregoing to be a true copy of the proceedings of our said County Court, on the day and year above written, as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
the seal of said Court, at office in Clayton, this the

_____ 16th _____ day of _____ March _____, 1942

(Seal)

(Signed) WALTER E. MILLER
Clerk County Court.

By _____ D.C.

STATE OF MISSOURI :
 : SS
COUNTY OF ST. LOUIS :

I, the undersigned, Clerk of the County Court of St. Louis County, Missouri, hereby certify that I have made a search of the records in my office, and that the orders of the County Court of February 17, 1902; April 14, 1902; May 19, 1902; May 22, 1902; June 2, 1902; October 20, 1902; October 27, 1902; November 24, 1902; and July 3, 1899, certified copies of which orders are attached hereto, are the only records that I have found pertaining to franchises granted to or held by the Missouri Water, Light & Traction Company, a corporation, the West St. Louis Construction Company, a corporation, The West St. Louis Water & Light Company, a corporation, or the St. Louis County Water Company, a corporation, except order of September 15, 1902, granting West St. Louis Construction Company permission to erect poles and wires on public highways; except order of June 12, 1902, granting Missouri Water, Light & Traction Company authority to establish a switch track; except order of October 11, 1902, granting West St. Louis Construction Company authority to erect poles and wires on highways; except order of August 18, 1902, granting West St. Louis Construction Company authority to establish a switch track; except order of August 13, 1902, acknowledging receipt of One Thousand Dollars (\$1,000.00) paid under the provisions of order of September 15, 1902; and except orders made from time to time granting permits to excavate and lay pipes on certain streets, a list of which orders is attached hereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Clayton, Missouri, this 16th day of March, 1942.

(SEAL)

(s) WALTER E. MILLER
WALTER E. MILLER,
 Clerk of the County Court,

By _____
 Deputy.

LEGAL OPINION

The attached legal opinion is undated, but is believed to be at least seventy years old. The only original copy of the opinion in the Company's records is on carbon-produced tissue, attached to backing paper bearing the printed name of the law firm of **Polk, Fahey & Switzer, 509 Olive Street, St. Louis Missouri**. No other information regarding the origin of the opinion is known to exist.

ST. LOUIS COUNTY WATER COMPANY
HAS A PERPETUAL FRANCHISE.

(OUTLINE)

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MEMORANDUM

THE ST. LOUIS COUNTY WATER COMPANY HAS A PERPETUAL FRANCHISE FROM THE STATE OF MISSOURI TO LAY AND MAINTAIN ITS PIPES IN THE PUBLIC HIGHWAYS OF ST. LOUIS COUNTY.

FACTS

The Missouri Water, Light & Traction Company was incorporated on March 11, 1899, under the provisions of Chapter 42, Article 8, of the Revised Statutes of Missouri, 1889, for the purpose, among other things, of owning and operating water works, of buying, owning and selling franchises, pipes, conduits, reservoirs, and to do other acts necessary and desirable in carrying out the purposes stated.

On the 12th day of February, 1902, it appears by the records of the County Court of St. Louis County that the Court heard the petition of the Missouri Water, Light & Traction Company for permission to lay and maintain water mains under, along and across the public highways of St. Louis County. Thereafter, on February 17th, the Court entered an order giving and granting to the Missouri Water, Light & Traction Company, its successors and assigns, "permission, authority and license * * * to lay and maintain mains and pipes under, along and across the public highways of all that portion of the County of St. Louis lying west of the City of St. Louis and south of the Clayton Road; to connect mains and pipes in said district with supply pipes and mains under, along and across the public highways, with a pumping station to be located at or near the Missouri River * * *."

The order further provided that before any pipes are laid their location on the public highway must first be approved by the County Court; that all work on the highways should be done under the supervision of the County Road Commissioner, subject to the approval of the Court.

There follow provisions concerning the repair of the highways and the manner of laying pipes. It provides that all exca-

vations should be kept on a level with the plans of the streets that may be used "during the life of the franchise of said Company, its successors or assigns." There follow also provisions for changing the location when highways are changed.

The order contains the following provision:

"This order shall have no effect or force until said Company shall file with the County Court its acceptance in writing of the terms, conditions and provisions herein set out and accompany the same with the receipt of the County Treasurer of the sum of One Thousand Dollars (\$1,000.00), which said sum shall become the absolute property of the County as a guaranty."

It provides for the use of said money in repairing highways under certain circumstances, and provides that the Company, its successors and assigns, shall keep the fund deposited in the amount of One Thousand Dollars (\$1,000.00).

The order further provides for a bond in the sum of Five Thousand Dollars (\$5,000.00), conditioned that the Company will hold the County harmless from all claims for damages, and that they will comply with all the terms, conditions and provisions of the franchise for and during the term of five (5) years from the date of the acceptance of the provisions of the order. Finally, the order provides that, upon failure of the Company, its successors or assigns, to comply with all the conditions of the franchise, the same shall be forfeited.

On the 24th of February, 1902, the County Court read the minutes of the meeting of February 17th but did not approve the minutes of the order pertaining to the Missouri Water, Light & Traction Company and continued the matter. On April 14th, the Court entered an order granting the Company until June 2, 1902, to file its acceptance of the order of February 17th, in writing, and make the payment of One Thousand Dollars (\$1,000.00). On May 19th, the record shows that the Company appeared before the Court and accepted and ratified the order of February 17th, as amended, and presented its bond, which was accepted and approved. The order further stated: "It is ordered by the Court that said

acceptance be received and filed."

On May 22, 1902, the Court entered an order that, in consideration of the payment of an additional One Thousand Dollars (\$1,000.00), the Court amended the order of February 17th to provide that "permission, authority and license is hereby given to the said Missouri Water, Light & Traction Company, its successors and assigns, to lay and maintain mains and pipes along and across all the public highways as they now exist, or may hereafter be laid out, of the County of St. Louis, is hereby given and granted to the said Missouri Water, Light & Traction Company, its successors or assigns, under and upon the following conditions:", the conditions being that a new bond be filed. On June 2, 1902, it was ordered that the new bond be approved.

On October 27, 1902, on petition of the West St. Louis Construction Company, assignee of Missouri Water, Light & Traction Company, the County Court by order, acknowledging that the Missouri Water, Light & Traction Company, or its assigns, had paid the sum of Two Thousand Dollars (\$2,000.00) and filed an approved bond and had otherwise complied with the orders of the County Court, amended or supplemented the above mentioned orders in respects not material here.

By deed dated May 23, 1902, and recorded in Book 137, Page 270, in the office of the Recorder of Deeds, St. Louis County, Missouri, the Missouri Water, Light & Traction Company sold and assigned to the West St. Louis Construction Company, its successors and assigns, all its rights, franchises, privileges and contracts, and other interests in the County of St. Louis, Missouri, and especially all franchises and contract rights from the City of Kirkwood, City of Webster Groves, and other cities, towns and villages in St. Louis County, and also its rights and privileges acquired from the County of St. Louis of any kind and nature whatever, the West St. Louis Construction Company assuming all the obligations and undertaking to perform said obligations under the franchises assigned.

On August 11, 1902, the St. Louis County Court granted the West St. Louis Construction Company the right to erect poles and wires over any public roads, highways, avenues and alleys in St. Louis County necessary to the use of its water plant. Other similar orders were made at the petition of the St. Louis County Water Company.

By deed dated August 1, 1902, and recorded in Book 139, Page 428, in the office of the Recorder of Deeds, St. Louis County, Missouri, the West St. Louis Construction Company granted and assigned to the West St. Louis Water & Light Company, and to its successors and assigns, certain franchises and contract rights granted to the Missouri Water, Light & Traction Company by ordinance of the City of Kirkwood of November 23, 1901, by ordinance of the City of Webster Groves of the 17th of February, 1902, and by order of the County Court of St. Louis County February 17, 1902, as amended by order of April 14, 1902, and subsequent orders, and to West St. Louis Construction Company by the City of Ferguson June 17, 1902, and by other cities and towns in St. Louis County, said West St. Louis Water & Light Company to have and to hold the same, its successors and assigns, forever, the latter undertaking to perform the obligations of said franchises.

By deed dated April 29, 1903, and recorded in Book 142, Page 72, in the office of the Recorder of Deeds, St. Louis County, Missouri, the West St. Louis Construction Company granted and assigned to the West St. Louis Water & Light Company, its successors and assigns, all franchises acquired by the Construction Company from August 1, 1902, from the County of St. Louis, or from any other city, town, corporation or person in St. Louis County, the Water Company agreeing to perform all the obligations of said franchises.

By deed dated January 20, 1926, and recorded in Book 744, Page 599, in the office of the Recorder of Deeds, St. Louis County, Missouri, the West St. Louis Water & Light Company granted and

assigned to St. Louis County Water Company all its rights, privileges, rights of way, franchises, easements and licenses, from whomsoever secured or acquired, including all its goodwill, real estate and all its personal property.

After the West St. Louis Construction Company undertook to construct the water works and distribution system, it was completed promptly, and the distribution system and plant have been extended and enlarged constantly from time to time in accordance with orders secured from the County Court by the Construction Company, or its assignees, as provided in the order of the County Court.

At the time of the granting of the franchise by the County Court of St. Louis County to the Missouri Water, Light & Traction Company and West St. Louis Construction Company, there were certain incorporated cities in St. Louis County, namely, Kirkwood, Webster Groves, Ferguson, Bridgeton, and Florissant or St. Ferdinand. Subsequent to 1902, a number of other unincorporated towns or villages were incorporated as cities, towns or villages, and, in the case of a number of these later towns or villages, the West St. Louis Water & Light Company or the St. Louis County Water Company have obtained, at various times, twenty-year franchises for the use of the streets, avenues and other public places within such cities, for the purpose of maintaining mains and pipes. In the case of most of these cities incorporated subsequent to the granting of the county franchise, the ordinance granting the franchise contains a paragraph along the following lines:

"Said St. Louis County Water Company is now operating under the rights and privileges given by the County Court of St. Louis County to the Missouri Water, Light & Traction Company and the West St. Louis Construction Company, which rights and privileges now belong to the St. Louis County Water Company, and nothing herein contained shall deprive the Company of any rights to which it may be entitled under the above mentioned orders of the County Court of St. Louis County."

In the case of two cities, incorporated after 1902, namely, Ladue and Shrewsbury, the ordinance granting the twenty-year franchise does not include a reference to the rights and privileges granted by the St. Louis County Court.

I.

THE COUNTY COURT OF ST. LOUIS COUNTY, IN THE YEAR 1902, WAS AUTHORIZED TO GRANT PERPETUAL FRANCHISES FOR THE USE OF THE PUBLIC HIGHWAYS OF ST. LOUIS COUNTY THEN OR THEREAFTER EXISTING.

A. NATURE OF A FRANCHISE.

In general, it has been determined by the great weight of authority, including the Courts in Missouri and the Federal Courts, that no person or corporation has the inherent power or right to use the public highways and roads of the State for the installation and maintenance of public utility facilities unless granted the privilege by the State. This right to use the public ways for such purposes is called a "franchise" and can be granted only by the Legislature or by some local authority to whom the Legislature has delegated such power.

See Dillon on Municipal Corporations, Fifth Edition,
Sec. 1214.

In the case of State vs. Springfield City Water Co., 345 Mo. 6, 131 S.W. (2) 523, the Court stated, page 530:

"It is unquestioned law that neither an individual nor a corporation has any natural or inherent right to use public streets except for ordinary traffic; that if a corporation possesses the right to make special uses of public streets for its equipment, that right must have been specially conferred upon it by the state in the form of a franchise. Although such franchise must in the final analysis come from the state, it may be granted by a municipality within the scope of its charter as the agent of the state."

See also State vs. Mo. Utilities, 331 Mo. 337,
53 S.W. (2) 394.

A municipal corporation, city or county, has no inherent power to grant a franchise or license to use the public ways and its power is limited to that conferred on it expressly or by implication by the State Constitution or Legislature. The ultimate source of franchises is the State, and, where a franchise under authority is granted by a municipal government, the grantee thereafter occupies the streets not as a licensee but by virtue of a grant by the State.

Louisville vs. Cumberland Tel. & Tel. Co., 224 U.S.
649, 56 L. Ed. 934.

Grand Trunk Western Ry. Co. vs. South Bend, 227 U.S. 544.
3 Dillon, Fifth Edition, 1942, Sec. 1745, and Sec. 1750, page 665.

A franchise once granted is not a mere revocable license nor an interest in real estate, but is in the nature of a contract constituting property within the protection of the Fifth and Fourteenth Amendments of the Constitution of the United States as soon as the franchise is accepted and acted upon.

Louisville vs. Cumberland, 224 U.S. 649, 56 L.Ed. 934.
Owensboro vs. Cumberland Tel. & Tel. Co., 230 U.S. 58, 57 L. Ed. 1389.
State ex rel Kansas City vs. East 5th St. Ry. Co., 140 Mo. 539, 548.
Boise Artesian Water Co. vs. Boise City, 230 U.S. 84, 57 L. Ed. 1400.
Ohio Pub. Ser. Co. vs. Ohio, 274 U.S. 12, 71 L. Ed. 898.
Old Colony Trust Co. vs. Omaha, 230 U.S. 100, 57 L.Ed. 1410.
Grand Trunk Western Ry. Co. vs. South Bend, 227 U.S. 544.
City of Fort Worth vs. Southwestern Bell Tel. Co., 80 Fed. (2) 972 (1936).
Dillon, Fifth Edition, Sec. 1214.

Where the Supreme Court of the United States is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract involved in a franchise, the Court will determine upon its own independent judgment whether, under the existing state law, there was a contract, what obligations arose from it, and whether those obligations have been impaired by subsequent legislation.

Detroit United Ry. vs. Detroit, 242 U.S. 238, 249, 61 L.Ed. 26
Louisville Gas Co. vs. Citizens Gas, 115 U.S. 683, 697.
Stearns vs. Minn., 179 U.S. 223, 232, 233.
Louisiana Ry. vs. Behrman, 235 U.S. 164, 170, 59 L.Ed. 175.
Railroad Commission vs. Eastern Texas Railroad Co., 264 U.S. 79, 86, 68 L. Ed. 569.

However, where a contract relied upon arises from a State law or ordinance, the Federal Court will not give to such law or ordinance a meaning in conflict with the settled rule of the State at the time the law or ordinance was enacted.

Annis Water Works vs. Annis, 233 U.S. 652, 58 L. Ed. 1139.

B. THE COUNTY COURT OF ST. LOUIS COUNTY, IN THE YEAR 1902, HAD GENERAL SUPERVISION AND CONTROL OF THE PUBLIC HIGHWAYS OF ST. LOUIS COUNTY.

At that time, the State exercised no direct control over public highways. There was no public State Highway Department or State Highway Engineer, or any analogous official or department. The first legislation of such nature was enacted in 1907 (Laws 1907, page 406) when the office of State Engineer was created. The engineer was to be appointed by and be under the supervision of the State Agricultural Department, and his duties were to devise plans of construction and maintenance and to assist county courts, city councils and township boards and road commissioners having authority in road construction, when requested, and to send out informative material. In 1915, (Laws 1913, page 697), the Highway Department was first created with a State Highway Commissioner. The only power this official had, in addition to the powers of the former State Highway Engineer, was "with the consent and assistance of the County Court and the County Highway Engineer of the several counties * * * to establish certain roads, to be known as standard gauge roads, by prescribing the width of the roadbed, also the grading, also the rise and elevation by rod." The first legislation creating a State Highway Department having supervision of roads in any sense comparable to that they now have was enacted in 1917.

So, in 1902, the only legislation governing roads and highways in unincorporated areas was that found in the legislation governing the construction and maintenance of roads in counties.

The pertinent constitutional provisions are as follows:

Article VI, Section 36, provided:

"In each county, there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law."

Article X, Sec. 22:

"The County Court * * * may, in their discretion, levy and collect, * * * a special tax * * * to be used for road and bridge purposes, * * *."

Article X, Sec. 12:

"That with such assent, any county may be allowed to become indebted to a larger amount for the grading, construction, paving or maintaining of paved, gravel, macadamized or rock roads and necessary bridges and culverts therein * * *."

The construction, maintenance and supervision of public highways in St. Louis County in 1902 was governed by Article I, Chapter 151, Revised Statutes of Missouri, 1899, as modified by the provisions of Article IV, Chapter 151, pertaining particularly to repairs and maintenance. Article I, as modified by Article IV, provided for the construction of new roads on petition to the County Court if the County Court was of the opinion that the facts justified the location of the change at the expense of the County, provided that the width of the roads was to be determined by the County Court, and provided that the elected County Surveyor should be ex officio Commissioner of Roads and Bridges. Under the provisions of Article IV, the County was divided into divisions by the County Court and an overseer of each division appointed by the County Court and removable by the County Court. The County Court contracted for the repair of roads, same to be done under the supervision of the overseer, and all contracts were let by the County Court. Sec. 9431 of Article I, Chapter 151, Revised Statutes, 1899, provided that "the Board shall have sole, exclusive and entire control and jurisdiction over all public highways within their district, outside of any incorporated city, town or village, to construct and improve such highways, and shall keep the same in * * * order * * *." However, under the setup in St. Louis County, there were no boards or road commissioners, but rather overseers appointed as provided in Article IV. Article VI, Chapter 151, Revised Statutes, 1899, Sec. 9549, applicable to roads in unincorporated towns and villages, provided as follows:

"All streets and alleys in unincorporated towns and villages shall be under the control of the County Court, and governed by the laws relating to roads and highways."

While the County Court is only the agent of the County, with only those powers granted by laws (see State ex rel vs. Harris, 96 Mo. 29, Jensen vs. Wilson Tp., Gentry County, 145 S.W. (2) 372) and has only such implied powers as are necessary to carry out and make effective the purposes of the authority expressly granted, (see King vs. Maries County, 249 S.W. 418; Blades vs. Hawkins, 240 Mo. 187, 195), it is apparent from the above constitutional and statutory provisions that the County Court of St. Louis County, in the year 1902, had general supervision and control of the highways. The Commissioner of Roads and Bridges could not act without the authority of the County Court, and overseers were appointed and removable by the County Court and acted only under the supervision of the County Court. No authority over highways in unincorporated areas was lodged in any authority but the County Court of the County. Whatever administrative authority existed was lodged in the County Court.

C. THE POWER TO GRANT FRANCHISES TO PUBLIC UTILITIES FOR THE USE OF PUBLIC HIGHWAYS IS INCIDENTAL TO THE POWER TO CONTROL AND SUPERVISE THOSE HIGHWAYS, AND IT HAS BEEN HELD THAT SUCH POWER IS, IN EFFECT, DELEGATED BY THE LEGISLATURE ALONG WITH SUCH AUTHORITY TO CONTROL AND SUPERVISE THE PUBLIC WAYS.

In Owensboro vs. Cumberland Tel. & Tel. Co., 230 U.S. 58, 1.c. 68, 57 L. Ed. 1389, it was held that a city, having the power to regulate the streets, had the power to grant franchises to use the streets. The Court stated, 1.c. 58:

"Owensboro was granted a special charter in 1882, by which among other things, it was given power 'to regulate the streets, alleys, and sidewalks and all improvements and repairs thereof.' If the county fiscal courts had power to grant to such companies a franchise to place their poles and wires along the public roads of a county under the statute giving them 'general charge' and the right to 'supervise' such roads, it logically follows, as stated in American Car & Foundry Co. vs. Johnson County (147 Ky. 89, 71) supra, that the City of Owensboro, under the power 'to regulate' its streets and alleys, had ample authority to grant a franchise to the telephone company to place and maintain its poles and wires upon the streets."

In Covington vs. South Covington Street Ry. Co., 246 U. S. 413, 62 L. Ed. 802, the Court stated:

"The question of the power of the city to grant

a perpetual franchise needs but a few words. By statute the streets were 'vested in the city,' and the authorities of the city were given 'exclusive control over the same,' and in another section the council was given 'exclusive power to establish and regulate * * * all sidewalks, streets, alleys, lanes, spaces and commons of the city' * * *. No decision of the state court is brought to our attention that calls for any hesitation in following the authority of *Owensboro vs. Cumberland Tel. & Tel. Co.*, 230 U.S. 58, 57 L. Ed. 1389, and pronouncing the authority complete."

In *Old Colony Trust Co. vs. Omaha*, 230 U.S. 100, it was held that the City of Omaha had the power to grant franchises "by virtue of its charter under which it had the power to care for, manage and control the city, to provide for the lighting of the streets and to care for and control streets, avenues, parks and squares within the City."

See also *Blair vs. Chicago*, 201 U.S. 400, 454, 50 L.Ed. 801.

In *State ex rel St. Louis Underground Service Co. vs. Murphy*, 134 Mo. 548, 561, it was held that the city had the right to grant a franchise for underground electric wires for public use, but not for private use, by virtue of the provisions of the charter vesting in the city the power and control over the streets and other public property and the power to establish, open and vacate all streets, public grounds and squares and regulate the use thereof. The Court stated:

"Under the power thus delegated it cannot now be questioned that the municipal authorities can permit the use of the surface of the streets for the erection of telegraph and telephone poles, and the laying of railroad tracks; the space above the surface for stringing electric wires for the transmission of messages and the creation of light, and may also permit the laying of water and gas pipes, and sewers, beneath the surface. *Julia Building Assn. vs. Bell Tel. Co.*, 88 Mo. 258; *St. Louis vs. Bell Tel. Co.*, 96 Mo. 626; *Ferrenbach vs. Turner*, 86 Mo. 416; *Schopp vs. St. Louis*, 117 Mo. 136."

In *State ex rel Kansas City vs. Corrigan Street Ry. Co.*, 85 Mo. 265, the Court held that the city had the power to grant by ordinance to a railroad company the right to construct, maintain and operate a horse railroad, by virtue of the usual powers of a general nature enjoyed by municipal corporations over streets.

See also *Pike's Peak Power Co. vs. Colorado Springs*, 105 Fed. 1.

Detroit Citizens Railroad Co. vs. Detroit, 64 Fed. 628,
26 L.R.A. 667.
Dillon, Municipal Corporations, Fifth Edition,
Sec. 575.

Before counties were given any specific authority by the Legislature to consent to the use of public highways, county franchises were, nevertheless, recognized by the Supreme Court. In Westport vs. Mulholland, 159 Mo. 86, 80 S.W. 77, the Court recognized a franchise granted in 1877 by the County Court of Jackson County to a railroad to construct and maintain a street railway on the county road.

Apart from any specific legislation, the County Court of St. Louis County, by virtue of its control over the public highways of the County, very probably had the power to grant a franchise for the maintenance of water mains in the highways.

D. IN 1902, THE COUNTY COURT OF ST. LOUIS COUNTY HAD EXPRESS LEGISLATIVE AUTHORITY TO GRANT A FRANCHISE TO LAY AND MAINTAIN WATER MAINS IN THE PUBLIC HIGHWAYS.

Section 1 of the Act approved March 19, 1901, Session Laws, 1901, page 233, is as follows:

"No * * * corporation shall * * * lay and maintain pipes * * * mains, * * * for any purpose whatever, through, on, under or across public roads or highways of any county in this state without first having obtained the assent of the county court of such county therefor * * *."

This Act was declared to be an emergency Act because of the doubt existing as to the authority of county courts in such matters.

This statute is apparently merely prohibitory and does not expressly, in so many words, grant to the County Court of St. Louis County the power to grant franchises. It merely prohibits the laying of pipes without the assent of the County Court. However, this form of statute is very common and has been universally construed to delegate to the municipal authority involved the power, not only to consent to the use of the highways, but to determine the conditions upon which the highways shall be used and to stipulate the duration of the right to use the highways and, in effect, to grant a franchise.

In *Ohio Public Service Co. vs. Ohio ex rel Fritz*, 274 U.S. 12, 71 L. Ed. 898, the Court construed a similar statute, which provided that:

"No person or company shall place, string, construct or maintain any line, wire, fixture or appliance of any kind for conducting electricity for lighting, heating or power purposes through any street, alley, lane, square, place or land of any city, village or town, without the consent of such municipality " * * *."

It was held that the city had the power under this statute to grant an irrevocable franchise.

In *Louisville vs. Cumberland Tel. & Tel. Co.*, 224 U.S. 649, 56 L. Ed. 934, the Court held that the city had ample power to grant a franchise where a company was chartered to construct and maintain telephone lines in the streets of Louisville "with and by the consent of the City."

In *State vs. Missouri Standard Tel. Co.*, 85 S.W. (2) 613, 1.c. 618, 337 Mo. 542, it was held that a city had the right to grant a franchise, limited in duration, under the provisions of a similar statute:

"We think it is well settled by the decided weight of authority that, where a city is authorized by statute to give or to withhold its consent to the use of its streets by a public utility, upon giving its consent, the city can impose reasonable conditions upon the exercise of the right or franchise granted, and that among the conditions that it can rightfully impose is one limiting the duration of the franchise."

In *Hook vs. Bowden*, 144 Mo. App. 331, it was held that a city had the power to grant a franchise to a telephone company for twenty years under a statutory provision authorizing telephone companies to erect poles in cities after obtaining consent of the municipal authorities.

In *State vs. Springfield Water Co.*, 131 S.W. (2) 525, 345 Mo. 6, the Court held that a city had the right to grant a franchise under Section 981, Revised Statutes, 1879, providing that a water company should have the power to lay pipes for water through the streets of any municipality with the consent of the municipal authorities, under such reasonable regulations as they might prescribe.

In *Ghee vs. Northern Union Gas*, 158 N.Y. 510, 513, referring to the legal consent of the municipal authorities under a statute empowering a corporation to lay gas conduits on streets on such consent, the Court stated:

"It operates to create a franchise by which is vested in the corporation receiving it a perpetual and indefeasible interest in the land constituting the streets of a municipality. It is true that the franchise comes from the state, but the act of the local authorities, who represent the state by its permission, and for that purpose, constitutes the act upon which the law operates to create the franchise."

In *State ex rel Hagerman vs. Electric Ry. Co.*, 279 Mo. 616, the Court stated:

"Under the Constitution of this State, its right to operate its street railway over the public highway (the bridge) could only be exercised by the consent of the local authorities having control of the highways proposed to be occupied by such street railway (Constitution, Article 12, Section 20). When it obtained this permission to operate its street railway on this public highway for fifty years, the legislative grant instantly became effective and vested in appellant a valuable franchise wholly distinct from its franchise of artificial entity."

In *McQuillian on Municipal Corporations*, Fifth Edition, Section 1750, page 665, the author states:

"The ultimate source of franchises to use the streets in all cases being the state, 'the difference between municipal power to grant them and authority to consent to the exercise of them is a difference of words rather than of substance,' and constitutional provisions or statutes prohibiting the use of the streets of a municipality, without the consent of the municipality, are to be construed the same as if they expressly authorized the municipality to grant the use of the streets to such companies."

Andrews vs. National Foundry, 61 Fed. 782, 788.
Houston vs. Houston City Ry. Co., 83 Tex. 548,
 19 S.W. 127.
Lager vs. San Antonio, 57 S.W. 61.

In *Houston vs. Houston*, supra, the Constitution prohibited the Legislature from granting a right to operate a street railway within any city or on any public highway without the consent of the local authorities having control of the street or highway proposed to be occupied. The Court stated, page 129:

"While Section 7 of Article 10 of the State Constitution is entirely prohibitory, and not permissive, still it is a clear recognition of the

right of any city to give its consent to the use of its streets by street railway companies, and it contains no limitation of the length of time for which such consent may be given."

In *Andrews vs. National Foundry and Pipe Works*, 61 Fed. 788, the City of Oconto, Wisconsin, was authorized by its charter to enact ordinances for the benefit of the health of its citizens to provide for the supply of water, and every city of Wisconsin was authorized "to permit," subject to rules and conditions of its own choice, "the laying of pipes in the streets and alleys and the maintenance and use of such pipes for the purpose of conveying water." The company was incorporated with authority to establish and operate water works. The Court stated, page 788:

"By its act of incorporation, the Oconto Water Company came into being, endowed, not with the right to establish and operate water works in Oconto, but with capacity to receive that right or privilege upon such terms as the city should consent to grant, but, though capable of receiving, it could acquire no complete or effective right or franchise without the consent, and there is no impropriety, legal or verbal, in saying without the grant, of the city. The ultimate source of such franchises in all cases being the state, the difference between a municipal power to grant them and authority to contract for or to consent to the exercise of them is a difference of words rather than of substance * * *."

"So here, not by reason of a constitutional provision, but by statute, the ultimate efficient right could be acquired only by act and consent of the city authorities, which they could grant or refuse at their pleasure."

Statutes similar to the one involved here are very common and it is clear that the ordinary method of authorizing local authorities to grant franchises is by a prohibition of the use of the highways without the consent of such authorities. Many examples are set out in 3 Dillon, *Municipal Corporations*, page 1934, Fifth Edition.

B. THE COUNTY COURT OF ST. LOUIS COUNTY, IN THE YEAR 1902, HAD THE POWER TO GRANT IRREVOCABLE OR PERPETUAL FRANCHISES, SUBJECT ONLY TO FORFEITURE FOR CONDITION BROKEN.

It has been established by the great weight of authority that, unless restricted by constitution, statute or its own charter, a municipality, with the power to grant franchises,

has the power to make such franchises irrevocable or perpetual. There were no constitutional, statutory or other restrictions on the power of the County Court to determine the duration of the franchise in this case.

In State vs. Springfield City Water Co., 345 Mo. 6, 131 S. W. (2) 525, the City of Springfield granted a perpetual franchise.

Section 951, Revised Statutes, 1879, provided that a water company should have the power to lay pipes for water through the streets of any municipality with the consent of the municipal authorities, under such reasonable regulations as they might prescribe.

Section 952, Revised Statutes, 1879, authorized the municipal authorities to contract with a water company for supplying water to public places for any length of time not exceeding twenty years. The City of Springfield granted a franchise which the Court construed to be a perpetual one. The Court stated that, unless there was some specific limitation upon the power of the City of Springfield to grant the perpetual franchise, the same was intra vires. After discussing Sections 951 and 952 above, the Court stated:

"A careful reading of the two sections discloses that they were intended to deal with two separate matters: first, the power of the municipality to grant its consent to the utility to use its streets for the purpose of laying mains, etc., as a necessary incident to its ordinary business of supplying service to private consumers * * *. This matter is dealt with in Section 951; second, the right of the city to contract with the utility for lighting the public streets and for supplying water for the public streets, that is, for fire extinguishing, sewer flushing, etc. This latter subject is dealt with in Section 952 and it is this type of contract which, under Section 952, was at this time subject to the twenty-year limitation and the requirement of popular approval. It will be seen that, under the view thus taken of the two statutes, the mere granting of the street easement was not subject to any limitation as to time, nor was it necessary to submit that proposition to the voters of the city. On this base, we hold that the City of Springfield had power to grant a franchise to use its streets for the location of water mains."

In State ex inf. Chaney vs. West Missouri Power Co., 313

No. 283, 300, the Court stated:

"At the time the franchise involved in this controversy was granted, no limitation with respect to the duration of such franchise was imposed by the general law of the state or by the charters of cities of the third class. It must, therefore, be held, in view of the decisions just referred to, that the ordinance of the City of Warrensburg in expressly granting a right in perpetuity was valid and effectual for that purpose."

Northern Ohio Tra. & Lt. Co. vs. Ohio, 245 U.S. 574,
82 L. Ed. 481.
Ohio Public Service Co. vs. Ohio, 274 U.S. 12,
71 L. Ed. 898.
Louisville vs. Cumberland Tel. & Tel., 224 U.S. 649,
56 L. Ed. 934.
Russell vs. Sebastian, 233 U.S. 195, 58 L. Ed. 912.
Old Colony Trust Co. vs. Omaha, 230 U.S. 100.
Grand Trunk Western Ry. Co. vs. South Bend,
227 U. S. 544.

A perpetual non-exclusive franchise does not violate the constitutional provision against the irrevocable grant of special privileges.

In Old Colony Trust Co. vs. Omaha, 230 U.S. 100, it was expressly held that the grant of a perpetual non-exclusive franchise did not violate the provision of the Nebraska Constitution, Section 16, Article I, which declares: "No law making any irrevocable grant of special privileges or immunities shall be passed."

State ex inf. Chaney vs. West Missouri Power Co., supra.
State vs. Springfield, supra.

We have found no constitutional, statutory or other limitations upon the right of the County Court to make the franchise irrevocable or perpetual. Therefore, the County Court had the power to grant a perpetual franchise.

F. THE MISSOURI WATER, LIGHT & TRACTION COMPANY HAD THE POWER TO RECEIVE A PERPETUAL FRANCHISE.

The Missouri Water, Light & Traction Company was incorporated under the provisions of the Revised Statutes, 1889, Chapter 42, Article 8, governing manufacturing and business corporations. Section 2768 provides that the article shall state among other things:

"Sixth, the number of years the corporation is to continue, which in no case shall exceed fifty years."

Section 2770 provides that:

"The persons so acknowledging such article * * * shall, for the period not to exceed fifty years next succeeding the issuing of such certificate by the Secretary of State, be a body corporate."

Section 2771 provides that corporations may be created under that article for the purpose, among others, as stated:

"Ninth, to supply any town, city, district, neighborhood or village with gas or water; * * *."

Section 2783 provides that any corporation organized under the article should have the authority to carry on its operations in any part of the state.

Section 2793 provides:

"Any corporation formed under the provisions of this article, for the purpose of supplying any town, city or village with gas, electricity or water, shall have full power to manufacture and sell, and to furnish such quantities of gas, electricity or water as may be required in the city, town or village, district or neighborhood where located, for public and private buildings, or for other purposes; and such corporations shall have the power to lay conductors for conveying gas, electricity or water through the streets, lanes, alleys and squares of any city, town or village, with the consent of the municipal authorities thereof, and under such reasonable regulations as said authorities may prescribe."

Section 2794 provides that municipal authorities of any city were authorized to contract with any such corporation for the supply of water for a term not to exceed twenty years.

Section 2795 provides as follows:

"Any corporation, company or individual proposing to supply with water any city, town or village shall have the right to * * * lay pipes for the conveyance of water in, over or through any lands situated between the source of water supply and the point of delivery of said water, and to acquire by condemnation sufficient lands upon which to build works for the pumping, storage, distribution and management of water."

The above statutes were not changed in the Revised Statutes, 1899.

The Missouri Water, Light & Traction Company was incorporated March 10, 1899. The Articles of Incorporation state that the corporation was formed for the purpose of constructing, acquiring and operating water works, with the right to buy and own franchises. While its corporate life was limited to a period of fifty years, it had the power, nevertheless, to acquire a franchise extending beyond the life of the corporation.

II.

THE COUNTY COURT OF ST. LOUIS COUNTY GRANTED A PERPETUAL FRANCHISE TO THE MISSOURI WATER, LIGHT & TRACTION COMPANY TO MAINTAIN ITS MAINS AND PIPES IN THE PUBLIC HIGHWAYS AND ROADS OF ST. LOUIS COUNTY.

A. THE GRANT OF A FRANCHISE WAS PROPERLY MADE AND ACCEPTED.

The grant of the franchise in this case was in the form of an order entered on the records by the County Court, giving to the Missouri Water, Light & Traction Co., its successors and assigns, "permission, authority and license * * * to lay and maintain mains and pipes along all the public highways as they now exist, or may hereafter be laid out, of the County of St. Louis * * *." While consent of a municipality to use the streets, which, as we have seen, constitutes a franchise, requires no particular form of words or need not necessarily be in writing, and, while the consent may be either expressed or implied and may be presumed from external circumstances (see 3 Dillon on Municipal Corporations, page 1947), there can be no question that the terminology used in this case contains all of the essential requirements, not only to comply with the statute authorizing the County Court to consent to the use of the streets, but also the requirements of an affirmative grant of authority to use the streets. While the difference between a prohibition of use without consent and the affirmative power to grant a franchise is one of words rather than of substance, we have here a clear, positive grant of authority to use the streets, which constitutes a franchise.

The County Court gave the grantee until June 2, 1902, to accept in writing the terms, conditions and provisions of the order and to make the payment of \$1,000.00. The records of the County Court show that the grantee accepted and ratified the order on the 19th of May and filed its bond, and the bond was approved by the Court. The record of the Court on May 22, 1902, provides that, in consideration of the payment of an additional \$1,000.00,

the County Court amended and extended the grant of authority previously made. In compliance with the order of May 22nd, the grantee filed another bond, which was approved by the Court on June 2, 1902. The order of October 27, 1902, acknowledged the receipt of Two Thousand Dollars (\$2,000.00). The grantee not only accepted the grant of the franchise but acted upon this grant and constructed the water works and installed the distribution system, and has since complied with all the conditions of the franchise.

Section 6759, Revised Statutes 1899, provides as follows:

"No county, city * * * shall make any contract unless the same shall be within the scope of its powers or be expressly authorized by law * * * and such contract shall be in writing and dated when made, and shall be subscribed by the parties thereto."

Section 6760 provides that duplicate copies of such contracts shall be made and one filed in the office of the Clerk of the County Court.

In this case, the Missouri Water, Light & Traction Company, as appears in writing in the records of the Court, appeared before the County Court and accepted the provisions of the order authorizing the grantee to use the highways, and filed a bond in writing subscribed by the grantee, conditioned upon the failure of the grantee to comply with the provisions of the order of the County Court.

The records of the County Court further show that on the 19th of May, 1902, the Missouri Water, Light & Traction Company accepted the order, and assumed and undertook to comply therewith, and the order further states: "It is ordered by the Court that said acceptance be received and filed." It would appear, therefore, that the Company filed a written acceptance of the order.

In our opinion, this sufficiently complies with the provisions of the statute requiring a contract to be in writing if this contract is applicable.

In *State ex rel Kansas City Ins. Assn. vs. Kansas City*, 4 S.W. (2) 427, 319 Mo. 336, it was held that a provision of

the city charter requiring that a contract with the city be in writing was complied with where an ordinance was enacted by the council and accepted in writing by the other party.

B. THE FRANCHISE GRANTED BY THE COUNTY COURT TO THE MISSOURI WATER, LIGHT & TRACTION COMPANY IS PERPETUAL AND IRREVOCABLE.

1. A franchise is irrevocable and perpetual unless limited in duration expressly or by law.

We have previously determined that the County Court had the power, if it so desired, to grant a perpetual franchise. In this case, the County Court actually granted the Missouri Water, Light & Traction Company, "its successors and assigns," the right to maintain pipes on all public highways "as they now exist, or may hereafter be laid out." There is no express limitation upon the duration of the franchise. The order mentions that the highways are to be restored in a certain manner and that all excavations shall be kept on a level with the plans of the streets and highways "that may be used by said Company for the purposes aforesaid, during the life of the franchise of said Company, its successors and assigns." This might be construed as a reference to the corporate life of the Company, but, inasmuch as it refers to its successors or assigns also, it could hardly be implied from this reference that the franchise was for a period of fifty years, the period for which the Missouri Water, Light & Traction Company was incorporated. It is more likely that the reference is to the life of the franchise therein granted to use the streets. The mere reference to the life of the franchise would not indicate that there was a definite limit on the life of the franchise but is a recognition of the fact that the franchise could be forfeited for condition broken or by mutual consent. The order further required a bond that the Company would comply with all the terms, conditions and provisions of the franchise for and during the term of five years from the date of the acceptance of same. In our opinion, this does not indicate that the franchise

was for a period of five years, but merely a recognition of the difficulty in securing sureties on a bond of a longer period.

The Federal Courts, including the Supreme Court of the United States, have definitely adopted the rule that a franchise to use the public ways of a municipality, when there is no expressed limitation in the franchise itself on its duration and no constitutional, statutory or other restriction, is a perpetual franchise and irrevocable, except upon condition broken, when the grant runs to the grantee, its successors and assigns. The weight of authority, consisting chiefly, however, of Federal cases, is in accordance with this view.

In *Louisville vs. Cumberland Tel. & Tel.*, 224 U.S. 649, 56 L. Ed. 934, the company was chartered to construct and maintain telephone lines in the streets of Louisville with and by the consent of the city, and the city granted it the right to use the streets. The Court stated, page 658:

"These provisions of the charter gave the municipality ample authority to deal with the subject * * * but when the assent was given, the condition precedent had been performed, the franchise was perfected, and could not thereafter be abrogated by municipal action. For, while the city was given the authority to consent, the statute did not confer upon it the power to withdraw that consent and no attempt was made to reserve such a right * * *."

"Those charter franchises have become fully operative when the city's consent was given, and thereafter the company occupied the streets and conducted its business not under the license from the City of Louisville but by virtue of a grant from the State of Kentucky."

Page 664:

"This grant was not at will nor for years nor for the life of the city. Neither was it made terminable upon the happening of a future event, but it was a necessary and integral part of the other franchises conferred upon the company, all of which were perpetual and none of which could be exercised without the essential right to use the streets."

In *Owensboro vs. Cumberland Tel. & Tel. Co.*, 230 U.S. 58, 57 L. Ed. 1389, the City of Owensboro granted a franchise to the "Cumberland Telephone Company, its successors and assigns." The Court stated, page 64:

"That the right conferred by the ordinance involved is something more than a mere license is plain. A license has been generally defined as a mere personal privilege to do acts upon the land of the licensor, of a temporary character, and revocable at the will of the latter, unless, according to some authorities, in the meantime expenditures contemplated by the licensor when the license was given have been made * * *."

"That the grant in the present case was not a mere license is evident from the fact that it was upon its face neither personal nor for a temporary purpose. The right conferred came from the State through delegated power to the city. The grant was clothed with the franchise to be a corporation and to conduct a public business, which required the use of the streets, that it might have access to the people it was to serve. Its charges were subject to regulation by law, and it was subject to all the police power of the city.

"That an ordinance granting the right to place and maintain upon the streets of a city poles and wires of such a company is the granting of a property right has been too many times decided by this Court to need more than a reference to some of the latter cases.

"The grant by ordinance to an incorporated telephone company, its successors and assigns, of the right to occupy the streets and alleys of a city with its poles and wires for the necessary conduct of a public telephone business, is a grant of a property right in perpetuity, unless limited in duration by the grant itself, or as a consequence of some limitation imposed by the general law of the state, or by the corporate powers of the city making the grant."

Page 66:

"If there be authority to make the grant and it contains no limitation or qualification as to duration, the plainest principles of justice and right demand that it shall not be cut down, in the absence of some controlling principle of public policy. This conclusion finds support from a consideration of the public and permanent character of the business such companies conduct and the large investment which is generally contemplated. If the grant be accepted and the contemplated expenditure made, the right cannot be destroyed by legislative enactment or city ordinance based upon legislative power, without violating the prohibition placed in the Constitution for the protection of property rights. To quote from a most weighty writer upon municipal corporations, in approving of the decision in *People vs. O'Brien*, supra, (111 N.Y. 1, 18 N.E. 692), a decision accepted and approved by this court in *Detroit vs. Detroit St. Ry.*, supra, * * * 'the grant to the railway company may or may not have been improvident on the part of the municipality, but having been made and the rights of innocent investors and of third parties as creditors and otherwise having intervened, it would have been a denial of justice to have refused to give effect to the franchise according to its tenor and import, when fairly construed, particularly, when the construction adopted by the court was in accord with the general understanding. In the absence of language expressly limiting the estate or right of the company, we think the court correctly held under the legislation and

the facts that the right created by the grant of the franchise was perpetual, and not for a limited time only.' Dillon on Municipal Corporations, Fifth Edition, Section 1265."

In Old Colony Trust Co. vs. Omaha, 230 U.S. 100, where the City of Omaha granted the right to an electric company and its assigns to erect and maintain poles and wires on the streets, it was held that the grant was in perpetuity, there being no limitation in the ordinance granting the right to use the streets.

In Covington vs. South Covington Ry. Co., 246 U.S. 413, 62 L. Ed. 802, page 416, the Court stated:

"As there is no hint of any limitation of time in the grant to Abbott, and on the other hand the city grants all the right and authority that it has the capacity to grant, there can be no question that the words taken by themselves purport a grant in perpetuity more strictly than those held to have that effect in Owensboro vs. Cumberland Tel. & Tel., 230 U.S. 53."

In Ohio Public Service Co. vs. Ohio ex rel Fritz, 274 U.S. 12, 71 L. Ed. 398, the decision of the Owensboro case was followed and it was held that an ordinance granting authority to use the streets of the city for the purpose of erecting, maintaining and operating electric wires, which had provided no limitation on the duration of the franchise, was an irrevocable one.

See also Grand Trunk Western Ry. Co. vs. South Bend, 227 U.S. 544.
State vs. Iowa Telephone Co., 154 N.W. 678.
And cases annotated in 2 A.L.R. 1105, and 71 A.L.R. 121.
Ga. vs. Cincinnati Southern Ry., 248 U.S. 26, 28, 63 L.Ed.103.
Denver vs. Denver Tramway, 23 Fed. (2) 287 (Cert. denied 278 U.S. 616, 73 L. Ed. 539.
Contra: Cases 71 A.L.R. 125.

In State vs. Springfield City Water Co., 345 Mo. 6, 131 S.W. (2d) 525, the Court, in construing a franchise to an individual "for the term of twenty years or until purchased by said city," construed it to be a perpetual franchise.

In State ex inf. Chaney vs. West Mo. Power Co., 313 Mo. 283, 299, the Court approved the rule of Owensboro vs. Cumberland Tel. & Tel., 230 U.S. 58, Boise Artesian Water Co. vs. Boise City, 230 U.S. 84, and Covington vs. South Covington, 246 U.S.

413, 62 L. Ed. 802, that a grant of a privilege to use the streets of the city, unless expressly limited, is in perpetuity. The Court in that case decided that, there being no limitation on the power of a city of the third class with respect to the duration of a franchise granted by the city, that the city had the power to grant a perpetual franchise. While the holding in that case is not exactly in point on this matter, it is analogous and specifically proves the rule of the Owensboro case.

Once a perpetual franchise has been granted, the franchise is not affected by subsequent legislation, such as legislation limiting the duration of a franchise granted by a municipality.

In *City of Benton Harbor vs. Michigan Fuel Co.*, 231 N.W. 52, 250 Mich. 614, it was held that the right acquired by a gas company under a franchise from a city was not affected by subsequent incorporation of the city under a statute limiting franchises to thirty years.

Since it has been held by the Supreme Court of the United States that a franchise is a contract and property within the protection of the Fifth and Fourteenth Amendments to the Constitution, and cannot be impaired by subsequent legislation, any subsequent legislation limiting the duration of franchises obviously is not controlling in the case of a previously granted franchise.

2. The duration of a franchise granted to a corporation is not limited to the corporate life of the grantee where the franchise has no express limitation on its duration.

In *Owensboro vs. Cumberland*, supra, the appellant specifically argued that the grant was limited to the corporate life of the grantee at the time of the grant, but the Court held the franchise was perpetual where it was granted to a corporation, its successors and assigns. In this case, however, the corporation had a right to secure an extension of its corporate life. In support of its argument, the appellant cited *State vs. Cape Girardeau R. R. Co.*, 207 Mo. 85, and *State ex rel Hines vs. Scott*

County Road Co., 207 Mo. 54. Both of these Missouri cases cited by the appellant in the Owensboro case are turnpike cases.

In State ex rel Hines vs. Scott, a road company was incorporated by an act of the Legislature in February, 1853, for a period of fifty years, with the exclusive privilege of constructing a road across the Big Swamp in Cape Girardeau County and charging tolls. The company acquired the roadway by condemnation and constructed and maintained the road and charged the tolls until 1903, when it conveyed its property rights and franchises to the defendant company. The Court held that the turnpike is a public easement, not private property, and the easement is vested in the public for the use of the public, and, when the turnpike's charter expires, its easement ceases, but the easement of the public continues until revoked by law. The Court held that the franchise of the turnpike company to take tolls was limited to a period of fifty years.

State ex rel Hines vs. Cape Girardeau R.R. Co., 207 Mo. 85, is a similar case. The decision of the Supreme Court in the Scott case was affirmed by the United States Supreme Court in Scott County R.R. Co. vs. State ex rel Hines, 215 U.S. 336. The Court pointed out that Section 8 of the charter of the company provided that:

"The privileges granted in this charter shall continue for fifty years * * *."

and held that this provision referred to the privilege of collecting tolls granted in the charter itself. It is submitted that these turnpike cases are clearly distinguishable from the principle enunciated in the Owensboro case.

In Old Colony Trust Co. vs. Omaha, 230 U.S. 100, 57 L. Ed. 1410, it was held that a franchise, silent as to its duration, was not limited to the corporate life of the grantee.

The holding in the Owensboro case was confirmed in Ga. vs. Cincinnati Southern Ry., 245 U.S. 26, 28.

In *State ex rel vs. Laclede*, 102 Mo. 472, 100 Mo. 482, 14 S.W. 974, 100 Mo. 979, 15 S.W. 383, it was held that the St. Louis Gaslight Company had the power to contract with the City of St. Louis for lighting of the streets for a period extending beyond the corporate life of the company. The Court stated:

"The capacity of a corporation to take and its power to convey property, real, personal or mixed, differs in no essential particular from the capacity and power of natural persons in like circumstances. *Morawetz, Priv. Corp.*, Secs. 330, 1031, and cases cited; *Angell & Ames on Corp.* (11 Ed.) sec. 195, and cases cited. To deny this proposition would be to deny to an individual the capacity to take title in fee, because life's narrow span would not admit of his perpetual enjoyment of the title thus taken.

"But this is not the only answer to this objection; the contract in question was entered into not only with the St. Louis Gaslight Company, but with its 'successors and assigns' whoever they might be, and the ordinance under consideration clearly contemplates that all rights granted to the original company would be by that company granted to another company whose longer lease of corporate life would enable it to perform the contract and fulfill its various conditions."

See also Annotation 71 A.L.R. 121.
People vs. O'Brien, 111 N.Y. 1, 18 N.E. 692.
Re Consolidated Gas Co., 106 N.Y.Sup. 407.
Des Moines Ry. vs. Des Moines, 158 Fed. 854 (214 U.S. 179).
Nat'l. Water Works vs. Kansas City, 65 Fed. 691.

There are some cases, however, which hold that a franchise not limited by its terms, when granted to a corporation, is construed to terminate with the life of the corporation.

4 McQuillan, Municipal Corporation, Section 1783,
 page 741.
 71 A.L.R. 125.

It is submitted, however, that, there being no conflicting cases in Missouri, the principle of the Supreme Court cases cited above would prevail here.

III.

EXTENT OF THE FRANCHISE.

A. THE FRANCHISE EXTENDS TO ALL COUNTY HIGHWAYS THEN IN EXISTENCE OR SUBSEQUENTLY OPENED, AND EXTENDS TO COUNTY HIGHWAYS NOT NOW OCCUPIED BY THE COMPANY.

The franchise in this case expressly extends to all public highways whether in existence at the time the franchise was granted or constructed later, and this is the rule even where it is not expressly stated in the franchise. Neither can the franchise be terminated as to parts of the county highways not occupied by the owner of the franchise. It has been held that a franchise when once accepted cannot be revoked in whole or in part, and it is effective throughout the territory of the governmental authority granting the franchise.

In *Russell vs. Sebastian*, 233 U.S. 195, the Court, construing a constitutional provision of California providing that in any city where any company shall, under such regulations as the municipality may prescribe, have the privilege of using the public streets and of laying down pipes and conduits for gas light, said, page 207:

"When accepted and acted upon, it would become binding -- not foot by foot as pipes were laid -- but as an entirety, in accordance with its purpose and express language. *Grand Trunk Ry. Co. vs. South Bend*, 227 U.S. 544, 555, 556.

"In *People ex rel Woodhaven Gas Co. vs. Deehan* (153 N.Y. 528) * * *, a grant of authority to lay conduits for conveying gas through the streets of a town, so as to render service to the people of the town, was held to extend as a property right, not only to the streets then existing, but to those subsequently opened."

3 *Dillon, Muni. Corporations*, Fifth Ed., page 1915.
Note 4.

The order of the County Court of February 17, 1902, as amended, provides that the location of pipes on public highways shall be subject to the approval of the County Court. This does not mean that the franchise is effective only step by step and that the County Court may arbitrarily refuse to approve any loca-

tion. It means merely that, within reason, the County Court can choose or indicate the location on the highway that shall be used by the grantee or its assigns. By this provision, the County Court has merely reserved a supervisory power over the location of the pipe.

In *Old Colony Trust Company vs. Omaha*, 230 U.S. 100, the franchise provided that "whenever the city * * * shall declare the necessity of removing * * * the * * * poles or wires * * * said company shall * * * remove all poles and wires * * *." The Court held that this provision empowered the city to require the removal of the poles and wires only when paramount public necessity required and not arbitrarily or unreasonably.

B. THE FRANCHISE IS NOT TERMINATED IN WHOLE OR IN PART BY SUBSEQUENT INCORPORATION OF TERRITORY IN ST. LOUIS COUNTY INTO MUNICIPAL CORPORATIONS.

Where proper governmental authorities grant a franchise to a public utility to use the highways in a certain territory, such as the County, the subsequent incorporation of said territory into a city does not terminate the franchise as to such territory. It is well established that later incorporation of a territory in which a public utility enjoys a franchise in the public streets does not invalidate the franchise as to such territory.

In *West Port vs. Mulholland*, 159 Mo. 86, 60 S.W. 77, the County Court of Jackson County, in 1837, granted a railway company the right to construct and maintain its street railway on a county road under the jurisdiction of the County Court. In 1891, the City of West Port extended its limits to take in this road. The company in violation of an ordinance tore up the street in the reconstruction of a switch. The Court said:

"That the city could not by its ordinance deprive the railroad company of its franchise or impair the obligation of its contract with the County Court, treating the grant of the franchise and its acceptance as a contract, is a proposition of law that has not been gainsaid in this country since the decision in the *Dartmouth College* case in 1819.

The Court held that the railroad must submit to reasonable police regulations, but that the Board of Aldermen could not refuse permission under reasonable regulations to tear up the streets when it was needed to do so.

In *City of Grand Rapids vs. Grand Rapids Hydraulic Co.*, 66 Mich. 606, 33 N.W. 749, the Court held that where a corporation was granted the privilege of supplying a village with water the subsequent incorporation of the village as a city did not destroy or abridge the privileges conferred.

In *City of Prichard vs. Alabama Power Co.*, 175 So. 294 (Ala., 1937) where, by authority of statute, a company was granted the right to erect poles and wires on public roads, and did so, it was held that the company could not be forced to remove its poles where the territory was subsequently incorporated as a city and the roads became streets of the city.

In *Washburn Water Co. vs. Washburn*, 129 Wis. 73, 108 N.W. 194, the plaintiff water works company, under an ordinance passed by a town board, constructed its water works in an unincorporated village and supplied the village and its inhabitants with water in pursuance of an ordinance of the town in which the village was located. Subsequently, the village incorporated into a city and the plaintiff continued to supply the city with water under the terms of the ordinance. It was held that the city was liable under the ordinance for hydrant rental.

Where a municipality grants a franchise and is annexed to another, the franchise continues to exist as to the territory to which it originally applied.

Baltimore vs. Baltimore County Water Co., 95 Md. 232, 52 Atl. 670.
People ex rel vs. Deehan, 153 N.Y. 528, 47 N.E. 783.

The great weight of authority holds that the subsequent incorporation of territory does not terminate franchises previously existing in that territory.

Woodhaven Gas Co. vs. Deehan, 153 N.Y. 528, 47 N.E. 783.
Jersey City vs. Borough of Garfield, 68 N. J. Law 587.

People vs. Detroit R.R. Co., 37 Mich. 195.
 Detroit vs. Flank Road Co., 12 Mich. 333.
 Cases annotated in 47 L.R.A. New Series, 607.

But see Illinois cases referred to in Dillon, Muni.
 Corporations, Fifth Edition, page 2057.
 People vs. Economy L. & P. Co., 241 Ill. 290.
 Blair vs. Chicago, 201 U.S. 400, 50 L. Ed. 801.

The statutes concerning the incorporation of cities are in harmony with the above cases. They provide that change of a town or city from one class to another shall not affect any right existing previous to the change.

Section 5258, Article I, Chapter 91, Revised Statutes, 1899, provides that all rights and property vested in any city are vested in such city upon its becoming reorganized, and further provides: "but no rights or liabilities either in favor of or against such city, existing at the time of so becoming reorganized, * * * shall be affected by such change * * *."

C. THE FRANCHISE, HOWEVER, MAY NOT APPLY TO STREETS IN CITIES INCORPORATED SUBSEQUENT TO JUNE, 1902, WHICH WERE NEVER COUNTY HIGHWAYS.

It will be noted that the franchise applies to public highways of St. Louis County "as they now exist, or may hereafter be laid out." It appears, therefore, that the franchise extends only to roads which were then county highways or which later became county highways. However, where a city is incorporated and subsequently constructs streets within the city, they are not county highways but rather are city streets, and, in our opinion, the county franchise of the Water Company would not apply to such streets.

In Ark. Power & Light Co. vs. West Memphis Water Co., 58 S.W. (2d) 206, (Ark. 1933), the Arkansas Power & Light Company constructed its poles and equipment under a statute authorizing such corporations to construct and maintain poles and wires over the public highways and on streets of municipalities, provided that permission of the proper municipal authorities be obtained

for the use of said streets. The company constructed its system prior to the incorporation of the town of West Memphis. The Town Council, after its incorporation, thereafter granted an exclusive franchise to the appellee, West Memphis Power & Water Co., to use the streets of the town. The Ark. Power & Light Company had, before the incorporation of West Memphis, laid its pipes in certain private streets, which had not been dedicated to the public, without the consent of the owners of the streets. After the incorporation of the town of West Memphis, these private streets became public city streets, but the Arkansas Power & Light Company never secured the permission of the town of West Memphis to occupy these streets.

It was held that the Arkansas Power & Light Company had the right to use the highway where it had built its line, even where said highway traversed the town of West Memphis, but it was held that it had no right to use the streets of the town. The Court stated, page 208:

"If the appellant had a contract (with the state) as it claims, any ordinance of the town of West Memphis or a state statute that impaired the obligation of that contract would be void. But if the appellant had a contract with the state, which we do not decide, it is a contract that must be strictly construed, and, when so construed, its rights are necessarily limited to the public highways outside of municipalities.

"The ordinance of the town of West Memphis does not and cannot interfere with the appellant's occupancy of the highway through the town of West Memphis * * *."

D. THE FRANCHISE GRANTED BY THE COUNTY COURT DOES NOT APPLY TO AREAS INCORPORATED AS CITIES, TOWNS OR VILLAGES AT THE TIME THE FRANCHISE WAS GRANTED.

At the time of the franchise granted by the St. Louis County Court to the Missouri Water, Light & Traction Company and the West St. Louis Construction Company, there were in existence a number of incorporated cities in St. Louis County, namely, Bridgeton, Webster Groves, Kirkwood, Ferguson and St. Ferdinand. The St. Louis County Court had no jurisdiction over the roads in these incorporated cities and the roads and streets in these in-

incorporated cities were not county highways to which the franchise of the St. Louis County Court was applicable. The St. Louis County Court had no power to and did not attempt to grant franchises for the use of the streets in these cities.

See Ark. Power & Light Co. vs. West Memphis Water Co.,
58 S.W. (2) 206.

E. THE FRANCHISE RIGHTS IN COUNTY HIGHWAYS IN AREAS INCORPORATED SUBSEQUENT TO THE GRANTING OF THE FRANCHISE BY THE ST. LOUIS COUNTY COURT WERE NOT FORFEITED OR WAIVED BY THE ACCEPTANCE OF FRANCHISES FROM SUCH INCORPORATED CITIES FOR THE USE OF THE CITY STREETS.

In practically all the cities incorporated after 1902, the St. Louis County Water Company, or its assignors, has accepted, from time to time, twenty-year franchises for the use of the city streets, which franchises also include a contract for the supply of water to the city. It might be argued that, by accepting franchises from these cities, the Water Company has recognized the control and jurisdiction of the cities over the streets in the incorporated area, some of which were formerly county highways, and accepted in substitution of its franchise from the County in that area a franchise from the city limited to a period of twenty years, and, therefore, after the expiration of the twenty years, the Water Company is without a franchise for the use of the streets in the city and particularly for the use of those streets which were formerly county highways.

For instance, in the case of State vs. Missouri Standard Telephone Co., 85 S.W. (2) 613, 337 Mo. 642, the company contended that it had an unlimited franchise from the City of Lebanon which took precedence over a subsequent limited franchise. The Court was evidently of the opinion that it did not have an unlimited franchise, but stated further, page 618:

"Furthermore we are of the opinion that, even if the city had previously granted a franchise of unlimited duration to the Lebanon Company or to the Laclade Company or to both, the merger of the companies in 1910 into the Laclade Company and the acceptance by the latter company in 1918 and 1922 of franchises of limited duration would have constituted an abandonment and relinquishment of the prior franchise or franchises."

Conceding, however, the correctness of the Court's view in the above case, the question we are considering is clearly distinguishable from the case of a company having an unlimited city franchise and thereafter accepting a limited one from the same city. In the first place, of course, the perpetual franchise of the Water Company has been secured from the County Court and extends throughout the County, while the city franchises are, of course, limited to the corporate area. But the important distinction is that it is necessary for the Company, regardless of its franchise to use the County highways, even County highways which are now located in cities and are, therefore, now city streets, to secure from the city a franchise for the use of city streets in order to properly serve the inhabitants of the city. While the Company's franchise extends to County highways now located in cities, it does not, as we have seen, extend to the use of city streets which were never County highways and which have been opened up subsequent to the incorporation of the city. The franchise secured from the city itself extends only to city streets. Therefore, since it is necessary for the Company to secure a franchise to use all city streets, there is no basis for arguing that there was an intention to substitute the franchise from the city for the previously granted and existing franchise to use streets which were formerly County highways. In those cases where the rights granted by the County Court are specifically reserved in the ordinance granting the city franchise, it seems clear that there is no possible basis for arguing an abandonment or waiver of the rights secured from the County Court. In the case of those cities where no reference is made to the rights secured from the County Court, we submit that there is still no basis for abandonment, forfeiture or waiver. The elements of waiver or forfeiture do not exist, and, since it was necessary to secure a city franchise, there is no evidence of an intention to substitute the city franchise for the rights secured from the County Court and to abandon the latter.

In any case, if a company, accepting a franchise from a newly incorporated city, forfeited rights previously granted by the County, such forfeiture would extend only to the newly incorporated area.

In McQuillan, Municipal Corporations, Fifth Edition, Sec. 1800, the following principle is stated:

"Only so much of the franchise as is clearly forfeited will be so adjudged, and hence forfeiture of a separable part of the franchise will not work a forfeiture as to the balance."

People vs. Broadway Co., 9 N.Y.S. 6.
Houston vs. Houston Railroad Co., 84 Tex. 581,
19 S.W. 788.

C O N C L U S I O N

We are of the opinion that the rights, privileges and franchises granted to the Missouri Water, Light & Traction Company and West St. Louis Construction Company by the orders of the County Court of St. Louis County as stated above, for the use of county highways, were validly granted and are now legally held and enjoyed by the St. Louis County Water Company, and that such rights, privileges and franchises are in full force and effect and apply to all county highways in St. Louis County existing on February 17, 1902, and to all highways thereafter accepted or constructed by the County Court and now existing, as well as to all county highways in areas later incorporated into cities, towns or villages, and that said rights, privileges and franchises are perpetual and have not been waived, abandoned, forfeited or substituted by later franchises accepted from cities incorporated subsequent to 1902. We are of the opinion, however, that said rights, privileges and franchises do not extend to streets of cities, towns and villages incorporated prior to February 17, 1902, nor to streets in other cities, towns and villages which were opened and dedicated to public use subsequent to the incorporation of such cities, towns or villages.

No. 00064981

STATE OF MISSOURI



Rebecca McDowell Cook
Secretary of State

CORPORATION DIVISION

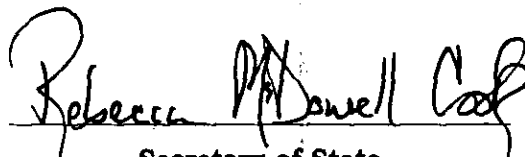
CERTIFICATE OF CORPORATE GOOD STANDING

I, REBECCA McDOWELL COOK, Secretary of State of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

ST. LOUIS COUNTY WATER COMPANY

was incorporated under the laws of this State on the 8th day of DECEMBER, 1942, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 23rd day of OCTOBER, 2000.


Secretary of State



377455



State of Missouri

No. X

Rebecca McDowell Cook, Secretary of State

Corporations Division

Registration of Fictitious Name

(Submit in duplicate with filing fee of \$7)

(Must be typed or printed)

This information is for the use of the public and gives no protection to the name. There is no provision in this Chapter to keep another person or business from adopting and using the same name. (Chapter 417, RSMo.)

We, the undersigned, are doing business under the following name, and at the following address:

Name to be registered: Missouri-American Water Company

Missouri Business Address: 535 N. New Ballas Road
(P.O. Boxes not accepted)

City, State and Zip Code: St. Louis, MO 63141

The parties having an interest in the business, and the percentage they own are (if a business entity is owner, indicate business name and percentage owned. If all parties are jointly and severally liable, percentage of ownership need not be listed).

Name of Owners, Individual or Business Entity	Street and Number	City	State and Zip Code	If listed, Percentage of ownership must equal 100%
St. Louis County Water Co.	535 N. New Ballas	St. Louis	63141	100%
64981				

Return to: Secretary of State
Corporations Division
P.O. Box 778
Jefferson City, Mo. 65102

(Over)

FILED

AUG 14 2000

Rebecca McDowell Cook
SECRETARY OF STATE

The undersigned, being all the parties owning interest in the above company, being duly sworn, upon their oaths each did say that the statements and matters set forth herein are true.

Individual
Owners
Sign Here

{ X _____ X _____
X _____ X _____
X _____ X _____

The undersigned business entity has caused this application to be executed in its name by its

President

, on this

8-7-00

Title of Authorized Person

month/day/year

If
Business Entity
Is
Owner,
Authorized
Person
Execute
Here

[Signature] Eric W. Thornburg President
Authorized Signature (If corporation, President or Vice President) Printed Name Title
[Signature] Robert D. Maul Asst. Secretary
If corporation, Signature of Secretary or Asst. Secretary Printed Name Title

(Corporate Seal)
If no seal, state "none".

377455

State of Missouri

County of St. Louis

ss

I, Staci A. Olsen, A Notary Public, do hereby certify that on 8-7-00
month/day/year

personally appeared before me Eric W. Thornburg, and being duly sworn by me, acknowledged that he/she signed as his/her own free act and deed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

(Notarial Seal or Stamp)

[Signature]
Notary Public

My commission expires Staci A. Olsen, Notary Public

My County of Commission County Of St. Louis, State Of Missouri
My Commission Expires March 20, 2001

No. X00377455

STATE OF MISSOURI



Rebecca McDowell Cook
Secretary of State

CORPORATION DIVISION

CERTIFICATE OF CORPORATE RECORDS

MISSOURI-AMERICAN WATER COMPANY

I, REBECCA McDOWELL COOK, Secretary of State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of the original documents on file and of record in this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 23rd day of OCTOBER, 2000.

Rebecca McDowell Cook
Secretary of State



Missouri Revised Statutes

Chapter 46 **Establishment and Boundaries of Counties** **Section 46.145**

August 28, 1999

St. Louis, county and city.

46.145. Beginning at a point in the middle of the main channel of the Mississippi River, due east of the mouth of the Meramec River; thence due west to the middle of the main channel of the Meramec River at the mouth thereof; thence up the Meramec River, in the middle of the main channel thereof, to a point where the township line between townships forty-three and forty-four, north, crosses the same; thence west with said line to the main channel of the Meramec River, where the said township line crosses the same; thence up the Meramec River, and with the middle of the main channel thereof, to the point where the range line between ranges two and three, east, crosses the same; thence north with said range line to a point in the middle of the main channel of the Missouri River; thence down the Missouri River, in the middle of the main channel thereof, to the mouth of said river; thence down the Mississippi River, in the middle of the main channel thereof, to the place of beginning, excepting, however, all that district of country which is comprised within the corporate limits of the city of St. Louis, to wit: Beginning at a point in the middle of the main channel of the Mississippi River, and running thence westwardly at right angles to said channel to a point on the west bank of said river, two hundred feet south of the center of the mouth of the River des Peres; thence westwardly and parallel to the center of the River des Peres, and two hundred feet south thereof, to the eastern line of the Lemay Ferry Road; thence westwardly to a point in the west line of said Lemay Ferry Road at its intersection with the center of the Weber Road; thence westwardly along the center of the Weber road to its intersection of the east line of lot one of the Carondelet Commons, south of the River des Peres; thence westwardly to the southeast corner of Rudolph Overman's, or northeast corner of B. H. Haar's land; thence westwardly to said Haar's northwest corner; northwestwardly to a point in the center of the Gravois Road, six hundred feet southwardly from the center of the bridge across the River des Peres; thence northwestwardly to the southeast corner of lot thirty-one of the subdivision of the Mackenzie Tract in United States survey one thousand nine hundred and fifty-three; thence northwestwardly in continuation of said last mentioned line to the southern line of lot twenty-one of the subdivision of the said Mackenzie Tract; thence northwestwardly to a point in the southern line of United States survey two thousand and thirty-five, twenty-six chains eastward from the southwest corner of said survey; thence northerly to a point in the north line of the subdivision of East Laclede, six hundred feet west of the McCausland Road; thence northwardly and parallel to the center of the McCausland Road to a point on the Clayton Road, six hundred feet west of its intersection with the McCausland Road; thence northerly and parallel with the Skinker Road, and six hundred feet west thereof, to its intersection with the old Bonhomme Road; thence northeasterly to the intersection of the center lines of McLaren Avenue and Mead Street; thence in northeasterly direction to a point in the Bellefontaine Road, six hundred feet north of its intersection with the Columbia Bottom Road; thence northerly and parallel with the center line of the Columbia Bottom Road to the northern boundary line of United States survey numbered one hundred and fourteen; thence easterly along said line to the center of the main channel of the Mississippi River; thence with the meanderings of said channel southwardly to the point of beginning.

(RSMo 1939 § 13654)

Prior revisions: 1929 § 11995; 1919 § 9397; 1909 § 3614

Non-Scannable Maps

(Can be viewable in the Data Center)

EXHIBIT G
Franchises presently held by Applicant

Bella Villa	Bellefontaine Neighbors
Bellerive	Bel-Ridge
Berkeley	Beverly Hills
Black Jack	Breckenridge Hills
Brentwood	Calverton Park
Charlack	City of St. George
City of Velda City	Clarkson Valley
Clayton	Cool valley
Country Club Hills	Country Life Acres
Creve Coeur	Crystal Lake Park
Des Peres	Edmundson
Fenton	Ferguson
Flordell Hills	Florissant
Frontenac	Glen Echo Park
Glendale	Grantwood Village
Greendale	Hazelwood
Hillsdale	Huntleigh
Jennings	Ladue
Lakeshire	MacKenzie
Marlborough	Moline Acres
Normandy	Northwoods
Norwood Court	Oakland
Olivette	Overland
Pagedale	Pasadena Hills
Pasadena Park	Peerless Park
Pine Lawn	Richmond Heights
Riverview	Shrewsbury
St. John	Sunset Hills
Syscamore Hills	Town and Country
Uplands Park	Velda Village Hills
Village of Bel-Nor	Village of Hanley Hills
Vinita Park	Vinita Terrace
Warson Woods	Westwood
Wilbur Park	Woodson Terrace