

with proposed ordinance changing the name of Jahn Avenue between Evanston Avenue and Guilford Avenue to Old Town Avenue.

Very truly yours,
CLARENCE E. WILCOX,
Corporation Counsel.

By Councilman Hall:

AN ORDINANCE changing the name of Jahn Avenue between Evanston Avenue and Guilford Avenue to Old Town Avenue.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That the name of the 2 public street and highway known 3 as Jahn Avenue between Evanston 4 Avenue and Guilford Avenue, be 5 and the same is hereby changed to 6 and shall hereafter be known as 7 Old Town Avenue.

Read twice by title, ordered printed and laid on the table.

From the Corporation Counsel

March 4, 1930.

To the Honorable, the Common Council:

Gentlemen—In your letter of February 27, you request an opinion as to whether it is within the province of the Common Council to regulate street railway fares by ordinance.

There are two provisions of the Charter which refer to the matter of regulation and control of public utilities by the Common Council.

Title 3, Chapter 1, Section 12, subdivision (j) which includes among the legislative powers and duties of the Common Council, the following:

"To have general regulative control of all persons, partnerships, associations or corporations operating any public utility within the city and to have power to fix rates of fares and charges which may be received in the operation of such public utilities, such powers to be exercised in the manner and with the effect prescribed in this charter."

Title 7, Chapter 1, relative to Public Utilities; Section 2 provides:

"The council may fix and establish, by ordinance, rates of fares and charges which may be exacted and received by such persons, partnerships, associations, or corporations, for any service rendered or commodity sold by them in the course of such public utility business within the city limits. The fixing of rates and charges hereunder shall not confer upon any such persons, partnership, association or corporation, any right whatever in the streets, alleys or highways of the city."

We also have the two following provisions: Title 4, Chapter 13, relative to the powers vested in the Street Railway Commission, provides in Section 13 as follows:

"The board, subject to the approval of the mayor, shall have supervision, management and control of the entire public street railway system of Detroit, both in its construction and maintenance and operation, as fully and completely as if said board represented private owners. Contracts for construction, purchases or other matters entered into by the board relative to the street railway system shall not be required to be made through the department of purchases and supplies but shall require the confirmation or approval of the common council. The board shall report its doings to the common council annually and at such other times as the council may direct. Any part of this charter inconsistent herewith is hereby repealed. (As amended October 11, 1921. In effect November 2, 1921.)"

Title 4, Chapter 13, relative to Rate of Fare, Section 14 provides as follows:

"Rate of fare:
Sec. 14. The rate of fare on said street railway system shall be sufficient to pay, and the said board shall cause to be paid:

(a) Operating and maintenance expenses, including paving and watering between tracks;

(b) Taxes on the physical property of the entire street car system, the same as though privately owned;

(c) Fixed charges;

(d) A sufficient per cent per annum to provide a sinking fund to pay the principal of the mortgage bonds issued at their maturity and such other additional per cent per annum to provide, in the sound discretion of the board, a sinking fund to pay the principal of the general bonds issued as soon as practicable, to the end that the entire cost of said street railway system shall be paid eventually out of the earnings thereof."

The answer to your question turns upon the interpretation of the following four propositions:

1. Do the above provisions of the Charter vest the regulation of street railway fares in the Common Council or the Street Railway Commission?

2. If there is a conflict in the general provisions of the Charter and the specific provisions of the charter, which control?

3. What legal effect has the practical construction previously given these sections?

4. Does the charter amendment of November 2, 1921, repeal any provisions inconsistent with section 13?

1. As to the first proposition, it is my opinion that the reference in the above two sections to regulation of rates by public utilities operated by persons, partnerships, associations or corporations was intended to apply to

third persons, operating public utilities within the city of Detroit and not to municipally-owned public utilities. For instance, water board rates are fixed by the Water Board and are not controlled by the Common Council under these provisions. It will be noted in the public utilities provision of the charter a provision that the fixing of rates and charges under the charter shall not confer upon any such person, partnership, association or corporation any right whatever in the streets, alleys or highways of the city. This obviously does not refer to the city itself but to a third person.

2. If there were any inconsistency between the paragraphs referring to the Common Council and the Street Railway Commission sections, the general language of the charter under well-settled rules of law would give way to the specific provisions of the charter. The Supreme Court has held this a proper interpretation.

In the construction of a city charter (Woodworth v. Kalamazoo, 135 Mich. 237) the Supreme Court held:

"Where there are two acts or provisions, one of which is special and particular and certainly includes the matter in question, and the other general, which, if standing alone, would include the same matter, and thus conflict with the special act or provision, the special must be taken as intended to constitute an exception to the general act or provision, especially when such general and special acts or provisions are contemporaneous, as the legislature are not to be presumed to have intended a conflict."

A maxim of construction of statutes is that express mention of one thing implies the exclusion of other similar things.

Marshall v. Wabash, 201 Mich. 167
Taylor v. Michigan, 217 Mich. 400

3. From the time the City commenced the operation of a municipal street railway, the question of the rate of fare to charge has frequently come up. The original rate of fare on the first constructed municipal ownership lines was fixed by the Street Railway Commission at five cents. This fare continued during the acquisition and operation of the day-to-day agreement lines. The reciprocal fare arrangements existing between the City of Detroit and the Detroit United Railway when both were operating in the City were decided by the Street Railway Commissioners. Upon acquisition of the entire street railway system the Board fixed the fare at five cents. Later the Board increased the fare to six cents. At various times as the street railway tracks have been extended into former interurban territory, the rate of fare for the extensions have been deter-

mined by the Street Railway Commission. When bus lines have been installed the rate of fare has been decided by the Commission. At the time of the installation of the deluxe motorbus service a rate of fare under a zone system was fixed by the Street Railway Commission. At no time has the Common Council ever participated in the matter of fixing street railway rates. The Council's action has been limited to the three matters which the Street Railway chapter expressly require of the Council, i. e.,

(1) Approval of deeds, leases and contracts and purchases.

(2) Approval of track extensions.

(3) Approval of the issuance of bonds.

This is a practical interpretation of the charter which must necessarily influence the answer to your question. Our Supreme Court in various cases has held that practicable interpretation of laws will largely influence the interpretation by the courts.

Long-established usage may be shown to demonstrate the sense, in which a law previously enacted was understood by those having the fittest opportunity of knowing.

Smith's Constitutional Construction, page 348.

Detroit Common Council v. Engel, 207 Mich. 119.

Frey v. Michie, 68 Mich. 327.

Cameron v. Merchants National Bank, 37 Mich. 243.

Westhoff v. Miller, 56 Mich. 151.

Drain Commissioner v. Baxter, 57 Mich. 127.

"It has become a rule of law that the interpretation placed upon a statute by the different departments of the State having a duty to perform under the statute, while not absolutely binding upon the judicial department is to be given weight in a doubtful case."

Moore v. McIntyre, 110 Mich. 237.

A construction of statutes indulged in for several years by the department administering them and having the approval of the attorney general should not be overthrown.

People v. Robinson, 241 Mich. 497.

If, however, there were any doubt about the correctness of the above rules, it would be definitely settled by the language of Section 13 above. At the time municipal street railway properties were being acquired by the City of Detroit it was realized that there were many provisions of the charter which appeared inconsistent with the full and complete management of the street railway system by the Street Railway Commission, provided in Section 13. In the many law-suits started to hinder and delay the construction and operation of lines, questions as to its relationship to the purchasing department, as to