

HOUSE No. 1271.

Commonwealth of Massachusetts.

COMMONWEALTH OF MASSACHUSETTS,
OFFICE OF THE ATTORNEY-GENERAL, BOSTON, April 13, 1900.

To the Honorable the Senate and House of Representatives.

I have the honor to acknowledge the receipt of a copy of a joint order of the Legislature, adopted April 10, requiring the opinion of the Attorney-General upon certain questions touching the construction of a contract which has been executed between the city of Holyoke and the Holyoke Water Power Company, in which contract it is stipulated that it shall be in force only when approved by the Legislature.

The contract provides that "the party of the second part shall have the right to maintain and use an overhead system of lighting, and the right to lay down and maintain its pipes in said highways for the distribution of gas, subject to such provisions of the general laws of Massachusetts now in force (and of the present revised city charter of said city of Holyoke) as relate to the erection and maintenance of said overhead system and the laying and maintaining of said pipes." The joint order requires the opinion of the Attorney-General upon the question whether "the effect of this clause would not be to exempt the company from the operation of all general laws relating to gas pipes and overhead wires which may be enacted by future legislation during the period covered by the contract."

I presume it may be contended that the Legislature, by approving the contract, so far becomes a party thereto that the use of the expression in the contract "general laws of Massachusetts now in force" binds the Commonwealth as a contracting party not to impair the obligation of its contract so created by making any changes in existing general laws which shall affect any rights or duties of the company as they exist under the laws now in force.

I am of opinion, however, that this contention is not well founded. The approval of the contract in question does not amount to a contract between the Commonwealth and the Holyoke Water Power Company that it will not amend or repeal existing laws relating to gas pipes and overhead wires. The contract itself is between the city and the company, and the effect of the clause in question is to estop the city from objecting to the maintenance by the company of gas pipes and overhead systems of lighting such as are authorized by existing laws. As a contract, it binds only the parties thereto. The Commonwealth by an act approving the contract authorizes the parties so to bind themselves, but does not bind or estop itself.

The Legislature has, under the constitution, the right to "make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they judge to be for the good and welfare of this Commonwealth." *Const. of Massachusetts*, chap. 1, sect. 1, art. 4. The power granted by this clause is frequently referred to as the police power of the Legislature. The clause itself has been considered in many cases before the supreme judicial court, and has almost uniformly been construed liberally as a grant of power to the Legislature. I am of opinion that the approval of the existing contract cannot be construed as a restraint upon the power of the Legislature granted to it by the article of the constitution quoted, and that it may, at any time, notwithstanding this contract, enact such general laws relating to gas pipes and overhead wires as they deem to be for the welfare of the Commonwealth and its citizens.

The second question contained in the order is whether “the provisions in the said contract which relate to taxation and tax valuation are not in conflict with the laws of the Commonwealth relating to these matters.”

The clause referred to in this question is as follows: “The foregoing prices are based upon the valuations for taxation on the tax list of the said city of Holyoke for the year 1898 of the electric light and gas plants belonging to said Holyoke Water Power Company within the city of Holyoke, including the valuation of the pipes and structures within the limits of the highways. If any of said valuations are hereafter increased or decreased with the result that the taxes to be paid by said Holyoke Water Power Company upon said properties are increased or decreased, then the gross amount to be paid annually thereafter by the city for said lighting shall be increased or decreased by the amount of said increase or decrease of said taxes. *Provided, however,* that this clause shall not apply to any general increase in valuation for the purpose of taxation of property throughout the city in which increase the said Holyoke Water Power Company shall share pro rata, nor to any extensions and improvements in said gas and electric light plants since May 1, A.D. 1898, nor to any new building on said plants which shall be erected in lieu of or for the purpose of taking the place of present buildings connected with said plants, provided such new buildings exceed in value the present buildings, in which case this clause shall not apply to such excess of value.”

This clause is not in conflict with the general laws of the Commonwealth relating to taxation. It does not modify nor affect them. It merely provides that the prices fixed in the lease for the use of lighting apparatus shall be increased or decreased as the values put upon the property by the assessors of Holyoke are increased or diminished. It does not and cannot bind the assessors in any way. They are a board of public officers, acting under the authority of the statutes of the Commonwealth. They are independent of and are not the agents of the city of Holyoke. The municipality, which is the only

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party to the contract in question, has nothing to do with the matter of taxation. The contract does not attempt to fix the valuation, but only the price as dependent on such valuation.

I therefore answer both questions submitted by the order in the negative.

Respectfully submitted,

HOSEA M. KNOWLTON,
Attorney-General.