

HOUSE No. 1411

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT, BOSTON, May 3, 1932.

To the Honorable Senate and House of Representatives:

By reason of the action of the Governor's Council in refusing approval of a warrant for the payment of \$363,000 to the Boston, Worcester and New York Street Railway Company in pursuance of a contract made by the Commonwealth through the Department of Public Works for such payment, and the elimination of the tracks of the Street Railway from the location of the proposed highway between Framingham and Boston, a very complicated situation has arisen which holds up the construction, already begun, from Framingham Center to the Wellesley-Natick line, and further prevents the program of the Department of Public Works from being carried out for the construction from the Wellesley-Natick line through to Brookline. I had hoped that by submitting certain questions for the opinion of the Supreme Judicial Court, it would be possible to arrive at a conclusion as to the legality of the contract under consideration, and as to the possibility of the Department revoking the locations without compensation. The refusal of the Governor's Council to approve of the questions sent to them by me has blocked this method of procedure. The message sent to you under date of April 28, 1932, in reference to this matter brings it directly to your attention.

I distinctly wish to disagree with the implied accusations of unfaithful conduct upon the part of the Department of Public Works, because such an implication also

reflects upon my predecessor in office and upon the members of the Governor's Council in office during the years 1929 and 1930, by all of whom the method followed in the contract of April, 1932, was adopted and approved. It is useless for those who composed the Council on January 6 and 7, 1931, to beg off by pleading a lack of memory because it was clearly their duty to understand the things to which they gave their approval, and I had a right to believe that the things which they had done were done in good faith and in accordance with the records presented.

This question, as I see it, depends quite largely upon the law which governs a street railway franchise granted in 1903. If such a franchise is revocable without compensation or without provision for compensation, then it is possible for the Commonwealth to proceed in one manner. If such a franchise is not revocable without compensation or provision for the determination of proper compensation, then there is no question in my mind as to the advisability of approval of the contract as made by the Department of Public Works. I say there is no question in my mind as to the advisability of the approval of that contract because the loss to the Commonwealth is definitely established and is less than would be the cost of construction of the highway leaving the tracks of the street railway in place. To state it another way, the elimination by purchase of the tracks of the Boston, Worcester Street Railway makes it possible to construct a highway from Framingham Center to Brookline at a net saving to the Commonwealth.

There may be a difference of opinion as to the value of the things purchased under the contract of April, 1932. I do not believe, regardless of our legal rights, that we should obliterate the franchise and the tracks of any company without providing opportunity for that company to present its claim and to have it determined by due process of law. Under such an arrangement if the franchise is worthless, due process of law should determine it to be worthless, and the Commonwealth should

escape from the payment of damages. If, by that process, the franchise is determined to be of value, then the Commonwealth should pay that which it is worth. Furthermore, I have grave doubt concerning the constitutionality of any bill that you might pass revoking the franchise of this company, or of any other company similarly organized, without providing for compensation by due process of law.

Regardless of the legality of the present contract, and the good faith of the Governor's Council in refusing to approve the warrant for payment of the moneys required by its terms, and regardless of the legal questions involved in these proceedings, there is another viewpoint of which we should not lose sight. The Commonwealth has spent several millions of dollars in the construction of a very modern, necessary and useful highway, which has been completed from Worcester to Framingham Center. This highway attracts most of the travel between the cities of Worcester and Boston. Under the present situation, and the tangled state of affairs created by this episode, it is impossible for the Commonwealth to proceed further with the construction of this highway until the questions involved are definitely settled. Such a holdup will act to the great inconvenience of the traveling public required to move between Worcester and Boston for a long period of time, and will result in at least a year's delay in the opening of this highway unless some means is devised to cut the knot.

I, therefore, recommend to you from the reasoning contained in this message that you enact legislation authorizing the Department of Public Works to take the rights of the Boston, Worcester and New York Street Railway Company in the highway layout made by the Department of Public Works, and in that legislation provide said street railway with the right to have its damages, if any, assessed in accordance with the general provisions of law in such cases made and provided, or the right to sue upon the contract of April, 1932, if it so elects, but with the distinct understanding that the legislation

which you enact does not make such contract legal or binding unless otherwise legal and binding. I further urge upon you the speedy enactment of such legislation made necessary by the action which has precipitated this issue if we are to proceed with the construction of this highway during this summer.

JOSEPH B. ELY.