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Article Summary: As demand for electrification became common throughout Nebraska, the Legislature in 1930 legalized the use of revenue debentures to finance municipal systems that could extend beyond corporate limits. This method of financing, soon adopted by other states, allowed municipalities to use earnings from the sale of electric power to pay for power plants.

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Photographs / Images: sample ballot for November 4, 1930, showing initiative petition 324 regarding municipally owned power plants

MUNICIPALLY OWNED POWER PLANTS IN NEBRASKA

BY C. G. WALLACE AND HAROLD O. JOHNSON

IN MOST Nebraska communities before 1900 there were none of the utilities that are commonplace today. Heating was done with a coal stove. Light was supplied by kerosene lamps. Water came from individual wells. However, by the early years of the twentieth century, town water supplies, providing indoor plumbing and usually serviced by cesspools and later septic tanks, and artificial gas for lighting were becoming increasingly common.

Also, by the early 1900's more and more Nebraska towns had the beginnings of an electric system. It was typically the enterprise of an individual. The plant operated until midnight or some other announced hour after which the electricity in the town went off. Rates were high and electricity was used only for lighting in the first years.

Mr. Wallace is a citizen of Hastings and Mr. Johnson is employed in the Department of Banking. This article was envisioned by Mr. Wallace who was much involved in the activities described. He enlisted the aid of Mr. Johnson, Mr. E. J. Van Horne, former Director of the Department of Banking, Mr. J. W. Seacrest of the Lincoln Journal and the late Judge E. B. Perry among others in compiling an account of this part of Nebraska's development.

In many towns the owner of the light plant sold it to the village after several years as the expense of extending utility lines and the need for capital to increase the size and improve the plant made it increasingly difficult for him to operate. The village would improve the system, hiring an engineer, putting in new generating units which used cheaper fuel, and rebuilding the distributing system. The increased business proved profitable and the rates could be reduced. As rates were reduced other uses for electricity besides lighting were developed and electric refrigerators, fans, vacuum sweepers, irons, and other appliances became increasingly common.

The reduction in electricity rates and the expansion of the market for electricity in communities during the 1920's caused many newly established municipal power plants to experience the same kind of financial growing pains that had caused the original individual owners to sell out to the village government. Many towns found that they faced an acute demand for new equipment and capital investment at a time when they did not have the money at hand and found the taxpayers unwilling to vote general obligation bonds for this purpose. In this situation manufacturers of electrical generating equipment were willing to sell their equipment to the village or city for revenue warrants or debentures.

During the year 1927 Fairbanks Morse & Company sold the city of Sargent, Nebraska a large diesel engine and generating unit. Sargent had been using a smaller unit with the electric power generated by a hydro-power plant four miles distant. Neither the owner of the hydro-plant nor the city had money to improve the plant, and the taxpayers would not vote general obligation bonds. This meant Sargent was ready for Fairbanks Morse & Co. to make a sale for revenue warrants. This could be done by the village council passing an emergency resolution making it possible for the village to give debentures in exchange for the new unit. All payments on the debentures were to be made from the earnings of the sale of electric power. The deal was quickly consummated by Dr. H. C. Fenstermacher,

Mayor of Sargent and the company. The action of Sargent in issuing these debentures was then challenged, as Stanley V. Carr and Edward Williams filed an injunction against the city to prevent their issuance.

The city and the company immediately retained Judge E. B. Perry of Lincoln to defend their action. Judge Bruno O. Hostetler of the Twelfth District Court held in favor of the city of Sargent. The State Supreme Court upheld the decision on December 10, 1929 with two judges dissenting. Realizing that the court could reverse this stand, Fairbanks Morse, the company most affected, and a number of the cities and villages in the state using this method of financing, decided to go to the Legislature to have legislation passed specifically legalizing this method of financing. The law they wanted would authorize a municipality to issue revenue debentures and to extend lines of a municipal system beyond the corporate limits to serve rural customers and other municipalities.

Fairbanks Morse and the League of Nebraska Municipalities tried to have a law satisfactory to them passed in two separate sessions of the legislature, but they failed because of the lobbying activities of private power interests. They then decided to take the issue to the people and put it on the ballot by an initiative petition. Both the company and the League feared the possibility that a case similar to the one at Sargent, except for technicalities, might be decided differently, and that such a decision would place a large number of agreements under legal doubt. Mr. Hovey, Manager of Fairbanks Morse & Company in Chicago, agreed that the company would give \$10,000.00 to help the Nebraska League of Municipalities promote the passage of a clarified law.

The Nebraska League of Municipalities at the advice of Mr. C. A. Sorensen, then Attorney-General of Nebraska, agreed to promote an initiative petition. A preliminary organization was formed in Lincoln on March 21, 1930 at a meeting endorsed by the mayors of forty Nebraska towns. This new organization was to be assisted by the League

and its president, Mr. C. E. Beals. It was to contact each city and village that was a member of the League for financial help and to secure the 65,000 names (seven per cent of voters in the previous election) necessary for an initiative petition. The Nebraska Constitution required that these names represent five per cent of the voters in each of two-fifths of the counties in the state. To prepare for the petition drive, C. E. Beals called a mass meeting in the Lincoln Hotel in Lincoln, Nebraska on April 23, 1930. There was a good crowd consisting of many of the advocates of municipal ownership, among them:

O. A. Abbott, Mayor, Grand Island,
C. E. Beals, Mayor, Crete,
Dr. Harold Gifford, Sr., M. D., Omaha,
Fred R. Kingsley, Jr., Mayor of Minden,
C. W. McConaughy, Holdrege,
C. A. Sorensen, Attorney-General, Lincoln,
C. G. Wallace, Hastings.

At this meeting they organized the People's Light and Power Association with C. A. Sorensen president. A large committee made up of representatives from cities over the state and from heads of organizations that were interested in the power question was chosen. All funds were handled and bills paid by Mr. R. W. Lee, Assistant Manager of Fairbanks Morse & Co., Omaha, Nebraska. The People's Light and Power Association proceeded to secure the names on the petition, sending sheets to each city and village mayor requesting they get busy during the summer, as they wanted the proposed law on the ballot for the 1930 November election. It was suggested they pay the circulators of the petition two cents for each name they received. In the city of Hastings, 4,000 people signed the petition. The Association asked Senator Norris how to get names in Omaha. He advised that they contact the clerk of the district court, which they did, and he gave them the name of a woman who had helped take the census. She was hired and secured 15,000 names at two cents each. The completed petitions were counted by the Secretary of State, Mr. Frank Marsh, and the proposed law was placed on the ballot.

Now the big push was on. Mr. C. A. Sorensen had a little newspaper called the *New State*. The People's Light and Power Association used it, publishing a picture of the ballot that contained the proposed law. To vote for the amendment one would mark the box beside the number 324; to vote against it, mark 325. They left 325 off the picture and ran an ad saying, "Vote for 324" in four inch high letters with pictures of Senator Norris, Mr. C. A. Sorensen, and Mr. C. E. Beals. They sent these papers to 110,000 Post Office box holders in the state, the Friday before the election. Also on that day they had front page ads in all the state daily papers. The coverage was complete. They put out an eight by ten inch card to all city, village, and county clerks reading in three inch high letters at the top, "Vote for 324", and at the bottom, "Please Post".

The private power companies had a bogus bill placed on the top and bottom of the ballot to try to fool the public. Their numbers were 322 for and 323 against on the top and 326 for and 327 against on the bottom. The People's Light and Power Association was in a tough position down to the last minute, but they sold the public on 324 and the result was they carried the amendment by a majority of 151,353 votes besides carrying every precinct in the state. C. A. Sorensen predicted the amendment would carry the state by a 150,000 majority. His prediction came true and the People's Light and Power Association efforts succeeded.

This law made Nebraska a leader in this method of financing and shortly thereafter it was copied by surrounding states. It proved to be one of the most important laws concerning public utilities passed in the state. All financing of revenue bonds in Nebraska for city and village improvements are based on this statute, which has since been amended to include such improvements as sewer systems, water plants, and gas lines.

This proposed legislation, which was voted into law on election day November 4th, 1930, was signed by Governor Weaver on the 3rd day of December, 1930. It can be found in the Nebraska Statutes of 1943, State Law 324, Section 70-502, Article 5, Chapter 70.

SAMPLE BALLOT

General Election November 4, 1930

Proposed By Initiative Petition

- 322 ☐ YES This Act relates to cities and villages and public electric light and power districts which own or operate electric light and power plants, distribution systems and transmission lines. It authorizes the extension of such lines and systems for the purpose of serving farmers and others living outside such cities and villages and also authorizes the owners of such plants to provide means for financing same.
- 323 ☐ NO

Proposed By Initiative Petition

- 324 ☒ YES This law (1) gives cities and towns owning electric light and power plants the right, provided cost is paid out of net earnings, to extend their lines beyond their border to serve farmers and others, and (2) the right to pay for power plants, etc. by pledging future earnings instead of by taxation, and (3) provides that no publicly-owned plant may be sold except upon approval of sixty percent of voters and filing of statement of original cost, etc. with Department of Public Works, and limits amount of money which may be spent in campaign for sale of plant.
- 325 ☐ NO

Proposed By Initiative Petition

- 326 ☐ YES This is an Act relating to cities, villages, and public electric light and power districts which own or operate electric light and power plants, distribution systems and or transmission lines, prohibiting the sale of such plants, systems, or lines, except for cash, and unless authorized by a vote of the electors; regulating such election; forbidding the giving or receiving of anything of value in connection with such sale or purchase for such plants, systems or lines, and to fix a penalty for violation thereof.
- 327 ☐ NO

To the County Clerk:

The Legislative Session of 1921 passed an act in the following language:

"All proposals submitted by initiative or referendum shall be submitted on a separate ballot."

This you will find in Section 1940, Compiled Statutes of Nebraska for 1922, or at page 327, Session Laws of 1921.

Very truly yours,