

TEXAS' SACRED HOMESTEAD LAW

HOW IT HOG-TIES MUNICIPAL DEVELOPMENT

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This homestead law, dating back to the old Republic of Texas, should have a prominent place in some historical museum. :: :: ::

IN its provisions relating to cities, the present constitution of Texas is worse than antiquated. It bristles with limitations that hog-tie the cities of to-day. At the time this constitution was written, 1875, Galveston was the largest city in the state, with fewer than 15,000 inhabitants; San Antonio was a little smaller, Houston still smaller, and Dallas was too small to be separately enumerated. Plainly, the limitations on cities written in 1875 do not fit to-day. They are worse than antiquated, because there were no such limitations in the constitutions of Texas anterior to 1875. Indeed, in these earlier constitutions there is no reference whatever to cities, except for the declaration that the city of Austin shall be the seat of government.

The limitations were written because of fears. Throughout the period of carpetbag government there had been a riot of extravagance and waste. The framers of the constitution of 1875 were fearful that the carpetbaggers might again obtain control. Against that contingency they wrote many limitations. Their idea was to hog-tie the carpetbaggers if they resumed control. The effect has been to hog-tie the people in many ways, especially in the development and operation of cities. The provisions of the constitution that relate to cities have undergone little change in the forty-six years since they

were written. None of the changes has been helpful to the larger cities.

HOME RULE MUCH RESTRICTED

In 1912 the home rule amendment was adopted. It is homerule, however, to limitations which the legislature may desire to impose. You will observe that none of the strings binding the major cities was loosed. They are still hampered both by constitutional and statutory limitations written in a time of stress and fear.

For example, the constitution limits the rate of taxation in cities of 5,000 or more inhabitants to \$2.50 on the \$100 of assessed valuation. There has been no change in this provision, notwithstanding a raise of 500 per cent made last year in the maximum rate applicable to smaller cities. We are close to the \$2.50 limit in Dallas, and in consequence our municipal development is hampered. City officials talk of obviating the difficulty by raising assessments, a thing that is fraught with danger of producing great inequality. What is needed is to raise this ancient limit or to abolish it altogether. Please bear in mind that it was written at a time when municipal needs were small and when the people had no power to check their officers at the ballot box. There is no longer a need for this lid, nor is there merit in a

low tax rate when vital needs are unsupplied.

THE "SACRED" HOMESTEAD LAW

The most serious and antiquated restriction is the celebrated homestead exemption provision of the constitution, often called the "sacred homestead law." It is not sacred. Conspicuous among its many faults is the hampering effect it has on our cities.

The government of the Republic of Texas was the first government in the world to provide for a homestead exemption. Nearly every other state and country in the world copied that law in substance. Every state and country in this world that has a homestead exemption law, in substance has the provision that was written by the congress of the Republic of Texas. There is one exception. It is Texas.

This law, enacted by the Texas congress, simply declared that a homestead consisting of fifty acres of land or a town lot, with improvements not exceeding \$500 in value, should be exempt from forced sale. It left the owners of the homestead free to waive the exemption and to pledge their homestead as security for debt, and this is the rule to-day in every state and country throughout the world except Texas.

Subsequently, the quantum of the homestead exemption in Texas was enlarged by successive acts, but always the owners were left free to waive the exemption, until 1875 when there was written into the constitution a declaration that the homestead should never be subject to forced sale except to pay the purchase price thereof, or for improvements thereon, or for taxes thereon. This invalidated all other liens, voluntary or involuntary.

In the early '90s the cities of Texas were just beginning to make real street

improvements. They assessed a part of the cost against abutting property, upon the theory that such assessments were taxes, as was then and is yet the case everywhere else in the civilized world.

Things went along nicely until the city of Beaumont endeavored to enforce a lien for a sidewalk against the property of a negro woman. In 1895 the supreme court of Texas decided in her favor, holding that such assessment was not a tax, and therefore could not be enforced against a homestead (*Higgins vs. Bordages*, 88 Tex. 458, 31 S. W. 52). *This decision killed very nearly all effort at street improvement for years.* Occasionally, a street was paved wholly out of public funds.

A SHOO-FLY AROUND THE WRECK

At length, one of the paving corporations built a shoo-fly around the wreck. It took the view that a street improvement might be considered an improvement on the abutting property, and that a lien given by the owners of a homestead to secure the payment for such improvement might be valid. Accordingly, in the last fifteen years street-paving operations have gone forward on that basis.

It is an unsatisfactory and unduly expensive plan. There is yet some doubt as to the validity of these liens. Prices must be loaded against the contingency. The expenses of promotion are great. It is necessary to send high-priced men around to induce all the property owners to consent to paving the streets, and then to get each of these owners to execute a mortgage. The price must be loaded to cover this expense. Still worse is the fact that many homestead owners will not sign up. In consequence, we have skips in the pavements, or the non-signers ride free at the expense of other prop-

erty owners, or at the expense of the city government. Upon the whole, the process of getting streets paved is slow and painful, and the cost of the work is much higher than in states that are not handicapped.

Following this decision of the supreme court, efforts were made to get the legislature to submit an amendment to the homestead provision of the constitution, so as to declare that an assessment for street improvements would constitute a valid lien. But the legislature refused to "tamper with the sacred homestead law." In 1907 the Hon. Thomas B. Love conceived the idea of reaching the end in view without touching the homestead law. He got the legislature to submit an amendment to the tax article of the constitution declaring in effect that an assessment for street improvement is a tax. This amendment was rejected at an election, because the people of the cities didn't go to the trouble of selling the idea to the farmers.

Subsequently there has been much

talk of resubmitting this amendment, but there has been neglect to present the proposal to the legislature at an appropriate time. I believe that an amendment ought to be submitted to add an entirely new section to the constitution authorizing special assessments against property benefited by public improvements.

If this amendment shall be adopted, then when a street needs to be paved, the city government can proceed at once to order the work done, and the work will be done. Every city ought to provide a revolving street improvement fund and pay the contractors spot cash for every job. The city ought to assess the entire cost against the property owners, and, when they have paid, it should put the money back in the revolving fund. Under such a plan as this, we would get pavements laid at the lowest possible cost, and our dream of having completely paved cities would be realized; the cities of Texas would be taken out of the mud.

COUNTY GOVERNMENT IN NORTH CAROLINA

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North Carolina is famous for its pioneer work in the improvement of country life and government, but the county is still a big problem. And it's the same elsewhere. :: :: :: ::

COUNTY government is a big affair in the United States. The year before the World War began it amounted to \$385,000,000, or about a third as much as the total expenses of the federal government.

And yet the average citizen knows little or nothing about county finances, about the tax list and the amazing in-

equities and delinquencies it discloses everywhere; about what county revenues are spent for, and whether they are spent wisely or unwisely, effectively or wastefully.

The annual county balance sheets required by law and given to the public in the county papers year by year in North Carolina are commonly unbusi-