



CHAPTER 53.

An Act to ratify By-law No. 54 of the District Municipality of Penticton, being "The Kettle River Valley Railway Aid By-law, 1911."

[27th February, 1912.]

WHEREAS on the eleventh day of May, in the year of our Lord Preamble
one thousand nine hundred and eleven, the Municipal Council of the Corporation of the District Municipality of Penticton passed a by-law, being "The Kettle River Valley Aid By-law, 1911," numbered 54, to ratify and confirm an agreement made between The Kettle River Valley Railway and the said Municipality, dated the second day of May, 1911, a copy of which said by-law and agreement are contained in the Schedule to this Act:

And whereas afterwards, on the twenty sixth day of May, 1911, the said by-law was submitted to the electors of the said municipality, who were entitled to vote upon a by-law to contract a debt, and was assented to by a majority of three fifths of such electors who voted thereon:

And whereas after the said election, to wit, on the twenty seventh day of May, 1911, the said by-law was reconsidered and finally passed by the Municipal Council of the said municipality:

And whereas doubts have arisen—

- (a.) As to the power of the municipality to grant to The Kettle River Valley Railway Company the right to operate trains over the streets and street crossings of the said municipality; and
- (b.) As to the right to include within one by-law of the municipality a grant to the said company of the said running rights and a bonus of land and an exemption from taxation:

And whereas it is expedient to remove said doubts from the said by-law, and to declare that the terms of the said agreement are binding upon the said The Kettle River Valley Railway Company and the Corporation of the District Municipality of Penticton:

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Ratification of By-law No. 54.

1. It is hereby declared that it shall not be competent for any Court to quash, set aside, or otherwise refuse to recognize the validity of By-law No. 54, being "The Kettle River Valley Aid By-law, 1911," of the Corporation of the District Municipality of Penticton, a copy whereof forms a Schedule to this Act, by reason of the fact that the said by-law gives to The Kettle River Valley Railway Company the right to operate trains over the streets and crossings of the municipality, or by reason of the fact that the said by-law includes a grant of land by way of bonus and at the same time an exemption from taxation and the said running rights.

Ratification of agreement

2. That the agreement referred to in the said by-law, a copy of which agreement is contained in the Schedule hereto, as also the rights, privileges, and immunities thereby granted, are hereby ratified and confirmed and declared to be binding upon the Corporation of the District Municipality of Penticton and The Kettle River Valley Railway Company, now the Kettle Valley Railway Company.

Freehold not to vest in company.

3. Nothing herein contained shall be deemed in any way to grant to the Kettle Valley Railway Company the title in the soil or freehold of any of the streets to which the said agreement applies, but the company shall have and enjoy all easements therein contained.

Short title

4. This Act may be cited as the "Penticton Municipality By-law No. 54 Validation Act, 1912."

SCHEDULE.

BY-LAW No. 34.

A BY-LAW TO GRANT AID TO THE KETTLE RIVER VALLEY RAILWAY.

Whereas by an agreement bearing date the second day of May, 1911, and made between the Corporation of the District Municipality of Penticton and The Kettle River Valley Railway, the Municipality thereby agreed, in consideration of the Railway establishing a divisional point at Penticton, with roundhouse and machine-shops, to grant to the Railway running rights over certain streets, avenues, and lanes at Penticton, the parcel of land therein described, and the exemption therein set forth:

And whereas the said agreement is to have no force or effect until it is submitted to and approved by the electors of the Municipality, and it is deemed advisable to submit a by-law to the electors for approval of the said agreement:

Be it therefore enacted by the Reeve and Council of the Corporation of the District Municipality of Penticton, in open meeting assembled, as follows:—

1. That the said agreement made between the Municipality and The Kettle River Valley Railway of date the second day of May, A.D. 1911, and which is set forth in the Schedule hereto, be and the same is hereby ratified and confirmed.

2. That there be granted to the Railway the fee-simple in the premises and hereditaments in the said agreement mentioned, and that they shall have the right from time to time and at all times hereafter to enter upon any of the streets, avenues, or lanes, as shown on any registered plans of subdivisions of lands at or near Penticton as set forth in said agreement, for the purpose of excavating, laying, and constructing lines of railway, including spurs therefrom; to maintain, rebuild, or repair such line and spurs, and to operate trains thereon.

3. In each and every year hereafter, for the period of ten years, the Municipality doth hereby give and grant to the Railway an exemption from all municipal rates, charges, and taxes in respect of all rateable property owned, held, or enjoyed, or to be owned, held, or enjoyed, by them for railway purposes within the corporate limits of such Municipality; but such exemption shall not extend to existing water agreements.

4. This by-law shall, before the final passage thereof, receive the assent of the electors of the Municipality of Penticton in the manner provided for by the "Municipal Clauses Act" and amending Acts.

5. This by-law shall come into force and take effect on the first day of June, A.D. 1911.

6. This by-law is passed upon the express condition that a failure on the part of The Kettle River Valley Railway to commence and complete the said works within the times referred to in the said agreement shall render it void.

7. This by-law may be cited for all purposes as "The Kettle River Valley Railway Aid By-law, 1911."

Passed by the Municipal Council this 11th day of May, A.D. 1911.

Received the assent of the electors of the Municipality of Penticton on the 26th day of May, A.D. 1911.

Reconsidered and finally passed by the Municipal Council the twenty-seventh day of May, A.D. 1911.

E. FOLEY BENNETT,

EDWARD CANNELL,
Clerk.

Rece.
[SEAL.]

SCHEDULE REFERRED TO IN THE WITHIN BY-LAW.

ARTICLES OF AGREEMENT, made in duplicate this second day of May, in the year of our Lord one thousand nine hundred and eleven,

Between,

THE CORPORATION OF THE DISTRICT MUNICIPALITY OF PENTICTON, in the Province of British Columbia (hereinafter called "the Municipality"), of the first part;

and

THE KETTLE RIVER VALLEY RAILWAY (hereinafter called "the Railway"), of the second part.

Whereas, by an agreement bearing date the fifteenth day of June, 1910, and made between the parties hereto, after reciting that the Railway thereby agreed to establish a divisional point at Penticton and to commence construction-work thereat within six months from the date thereof, providing the Municipality grant to the Railway, by way of bonus, (a) running rights over certain streets, avenues, and lanes at Penticton, (b) the parcel of land therein described, and (c) partial exemption from municipal taxation, the Municipality did then agree to grant to the Railway the fee-simple to the lands and premises therein and hereinafter described, the right from time to time to enter upon certain streets, avenues, and lanes, therein and hereinafter referred to, for the purpose of constructing and operating a railway, and exemption from municipal rates and taxes over and above two hundred and fifty dollars in each year for a period of twenty years, and the Railway on their part agreed to establish and maintain a divisional point at Penticton, to employ necessary labour to maintain the same for twenty years, and to commence construction within six months from date of said agreement;

And whereas the said agreement was embodied in a by-law and submitted to the electorate of the Municipality for their consent, and, such consent having been given, the Municipality conveyed the said lands to the Railway and they thereupon commenced construction-work:

And whereas a doubt having arisen as to the right of the Municipality to grant exemption from taxation for a longer period than ten years, and otherwise as to the by-law submitted to the electorate as aforesaid, the parties hereto have agreed to enter into these presents, and if and when ratified by the electors as hereinafter mentioned the same shall constitute the agreement between the parties hereto and supersede the said agreement of the fifteenth day of June, 1910:

Now, this Indenture witnesseth that, in consideration of the mutual covenants herein contained, the parties hereto each covenant and agree to and with the other of them in manner following:—

1 That the Municipality shall grant and shall confirm the grant already made to the Railway of the fee-simple of and in the following described lands, situate at Penticton aforesaid, that is to say: Block lettered "H.H." on registered plan Four hundred and fifty-two (452), Lots numbered from One (1) to Eight (8), both inclusive in Block numbered Thirty-nine (39), registered plan numbered Five hundred and thirteen (513); Lots numbered from One (1) to Five (5), both inclusive, in Block numbered Forty (40), and Lots numbered One (1) to Five (5), in Block numbered Forty-one (41), registered plan Six hundred and nineteen (619), and also those portions of Forbes and Main Streets north of Lake Shore Drive. The Municipality shall pass all necessary by-laws and take such other proceedings as are necessary to close the said streets and vest the fee-simple in the Railway, and do all other acts necessary to confirm the vesting of the fee-simple in said lands and streets in the Railway.

2. The Railway shall have the right from time to time, and at all times hereafter, to enter upon any of the streets, avenues, or lanes, as shown on any registered plan of subdivision at or near Penticton, for the purpose of excavating, laying, and constructing crossings thereover, and to maintain, rebuild, or repair such crossings or any of them, and the Railway Company shall have the like right to enter upon such of the said streets, avenues, and lanes (excepting Lake Shore Drive) as are not shown on plans Two hundred and sixty-nine (269) and Four hundred and seventy-nine (479), and also on Martin or Winnipeg Streets, north of Estabrook Avenue, as shown on said plan numbered Two hundred and sixty-nine (269), for the purpose of excavating, laying, and constructing lines of railway, including spurs therefrom; to maintain, rebuild, or repair such line and spurs, and to operate trains thereover and also over the said crossings. The Railway shall also have the like right, upon such terms as shall be mutually agreed upon by the parties hereto, to enter upon any of the other said streets, avenues, and lanes upon said plans Two hundred and sixty-nine (269) and Four hundred and seventy-nine (479) for the purpose of laying, excavating, and constructing any line of railway or spurs, and to maintain, rebuild, or repair same, and to operate trains thereover.

3. In each and every year hereafter, for the period of ten years, the Municipality doth hereby give and grant to the Railway an exemption from all municipal rates, charges, and taxes in respect of all rateable property owned, held, or enjoyed, or to be owned, held, or enjoyed, by them for railway purposes within the corporate limits of such Municipality, but such exemption shall not extend to existing water agreements.

4. In consideration of the foregoing, the Railway agrees to establish at Penticton a divisional point of its railway system, and will build in a proper and workmanlike manner, and with suitable material, all necessary trackage, roundhouse, and machine-shops, and all other requisite buildings for the due establishment and maintenance of such divisional point. For a period of twenty years after construction of the said railway into Penticton, the Railway shall employ at such divisional point during each year such number of workmen and mechanics as may be necessary for the business and undertaking of the Railway at such point.

5. The Railway shall commence actual construction, other than surveying, of its railway and divisional point within the Municipality of Penticton within two months from the date hereof, and they further agree to complete such work within three years from the date hereof. The Railway shall employ and keep employed on such construction-work a suitable number of engineers, mechanics, and workmen, and will proceed expeditiously and with all due dispatch to complete the said work.

6. Provided always, and it is hereby agreed by and between the parties hereto, that if the Railway shall not construct the said railway-line or shall not establish a divisional point at Penticton, then the Railway shall forfeit its rights to the lands to be granted to them hereunder, and, if granted, shall forthwith, upon request, reconvey the same to the Municipality.

7. This Agreement shall have no force or effect until the same is approved by the electors of the said Municipality, and the said Municipality hereby agree to submit the same for approval to such electors forthwith after the execution hereof in the manner provided by the "Municipal Clauses Act." The said by-law when passed shall become void if the Railway shall fail to commence and to complete the construction of the said railway within the Municipality and the divisional point at Penticton within the time mentioned in paragraph 5 hereof.

8. This Agreement shall be binding upon and inure to the benefit of as well the parties hereto as their respective successors and assigns.

CHAP. 53. KETTLE RIVER RAILWAY AND PENTICTON. 2 GEO. 5

In witness whereof the Municipality and the Railway have caused these presents to be signed by their proper officers and their corporate seals to be affixed hereto.

Signed, sealed, and delivered in
the presence of—

NORLEY F. TUNBRIDGE

E. FOLEY BENNETT,
Reeve.

EDWARD CANNEILL,
Clerk.

[Seal of the Municipality of
Penticton.]

KETTLE RIVER VALLEY RAILWAY.

FRED. BILLINGS

JAMES J. WARREN,
President

[Seal of Railway.]

VICTORIA, B.C.

Printed by WILLIAM H. CULLEN, Printer to the King's Most Excellent Majesty
1912