

Regular Meeting of the City Council

Austin Texas June 18th 1900

Hon. Geo. W. Webb Mayor presiding
Roll called

Present Aldermen Glass and Stumpf

Absent Aldermen Blunham Fischer Morris Mortimer & Nolan 2
5

On motion of Alderman Glass the Council adjourned
until Friday evening June 22nd 1900 at 8 o'clock P.M.

Geo. O. Johnson
City Clerk

Adjourned Regular meeting of the City Council
Austin, Texas, June 22nd 1900
Hon. Geo. W. McCall Mayor presiding
Roll Called

Present Aldermen Durham Fischer Glass Mortimer Nolan
and Stumpf 6

Absent Alderman Morris 1

On motion of Alderman Mortimer the minutes
were approved as recorded by the Clerk without reading

Petitions Memorials etc

Pet A. Frank
Reduce
Assessment

The Mayor laid before the Council a petition from A. Frank as
Guardian asking reduction of Assessment for taxes of 1899
as fixed by the Board of Equalization - which was read and on
motion referred to the Committee on Claims & Accounts

Pet Kingsbury
Assessment

By Alderman Glass - Petition of J. Kingsbury asking reduction
of Assessment for 1899, as fixed by the Board of Equalization - Read
and on motion referred to the Committee on Claims & Accounts

Pet O. Del Puerto
Assessment

By Alderman Glass - Petition of O. Del Puerto asking reduction of
Assessment as fixed by the Board of Equalization for the year 1899
Read and referred to the Committee on Claims & Accounts

Pet Citizens
protest Market
square

By Alderman Nolan Petition of Citizens protesting against the
establishment of a Market Square on the Alliance Ward Block
The petition was read. S. J. Fried, E. H. Caldwell, A. P. Bull and
S. A. Maxwell addressed the Council on behalf of the petitioners
after which it was referred to the Market Committee with
instructions to report at the next regular meeting of the Council

Pet E. Steiner
Refund dog tax

By Alderman Durham Petition of Conrad Steiner asking the
Council to refund him the amount of tax & penalties paid on
his dog - On motion the petition was granted

Mr Crosby
City Council

Alderman Fischer presented a communication from R. S. Crosby
regarding the moving of the City Pound, which was read and
ordered filed

City Engineer
Dam RR track

The Mayor laid before the Council a communication from the City
Engineer regarding the track of the Austin Dam & Suburban R.R.
which was read and on motion referred to the Street Committee
& City Engineer

Engineer to pay \$3
per day for teams

Alderman Glass moved that the City Engineer be authorized to
pay \$3.00 per day for hire of teams which motion prevailed

\$300. for graded
Cone Ref

Reports of Standing Committees
Alderman Fischer for the Street Committee to whom was referred
An Ordinance appropriating the sum of \$300. to purchase a Graden
presented a report recommending that the Mayor and
Street Committee advertise to purchase a Street Graden -
The report was adopted

Cone Ref
Engineer to pay \$3

Alderman Fischer for the Street Committee to whom was
referred An Ordinance appropriating the sum of \$300.00 - to
build a bridge across Waller Creek on E 7th Street
presented a report recommending the passage of the

St. Louis
Pet. S. H. J. J.

Rep. Fire Bond.
on pet.

E. P. Braline

P. L. Meyer

W. C. Ellis

Anderson & Caldwell

At. Kirby

ordinance, provided the amount stipulated shall include all necessary grading - The report was adopted - Alderman Fischer for the Street Committee to whom was referred the petition of M. M. Stipe asking that he be refunded certain sums of money paid out by him for repairing streets and bridges in Hyde Park, presented a report recommending that the petition be granted - The report was adopted - The Mayor laid before the Council the reports of the Fire Commissioners upon the applications of the following named persons for permits to erect certain buildings within the fire limits, recommending that the permits be not granted, viz E. P. Braline, P. L. Meyer, A. C. Ellis & Anderson & Caldwell - On the application of R. H. Kirby for permission to erect four wooden buildings within the fire limits - they referred the petition back to the Council for its action, without any recommendation from the Commission - On motion the reports of the Commission was adopted except as to the petition of R. H. Kirby, which was re-referred to them with instructions to report on same, either for or against granting the petition - The Mayor laid before the Council the following opinion of the City Attorney which was read and on motion ordered filed

Austin Texas June 18. 1900

Opinion City
Atty on

right of Mayor
to nominate
persons for office
more than one
time

To the Honorable, The Mayor and City Council of the City of Austin:
Gentlemen:

In response to the question submitted to me by your body, as to whether or not the Mayor of the City has the legal right to nominate for the offices of Water and Light Commissioners persons whose names have been once submitted to the Council for election to these positions and who have been rejected by the Council, I have to state, that in my opinion, the question should be answered in the affirmative.

Section 102, of the City Charter provides that these officers shall, until the next regular City election, be elected by the Council, upon the nomination of the Mayor.

My reasons for the conclusion reached as to the proper construction of this provision, are briefly stated as follows: viz:

1. It is well settled by Court decisions that where, under Charter provisions similar to that under consideration, the officer intrusted with the duty of making the nomination serves in for a second or any subsequent time the name of a person who has been previously rejected by the electing body, and as such nominee, upon second or subsequent nomination, receives the requisite number of votes, he becomes the legal incumbent of the office; and so great a statesman as Andrew Jackson, himself, did not scruple to take advantage of this rule of law in order to secure the confirmation of a nominee for the office of Associate Justice of the Supreme Court of the United States.

2. No Court, so far as I am able to ascertain, has ever decided, or been called upon to decide, whether or not the nominating officer has the Legal Right under such circumstances to send in for a second or subsequent time the name of a person whose nomination has been previously rejected.

Probably, the reason for this lack of Court decisions on the subject can be accounted for by the fact that no contest between rival claimants for office can arise under such circumstances. If the nominee, who has been previously been rejected by the electing body, at length receives the requisite number of votes, he becomes the legal incumbent of the office. If the electing body continues to reject the nomination, he never becomes the legal incumbent. In neither contingency, does the question of the right of the nominating officer to send in the same nomination more than once, become a material question to the nominee; and a purely Platonic love for the solution of abstract questions of law, divorced from every prospect of securing official position or emolument as the result of the contest, has heretofore not proven itself a sufficient incentive to impel litigants to put in motion the machinery of the Courts with the object of obtaining a judicial solution of the question.

The only method by which the question, of the Right of the nominating officer to send in for a second or subsequent time the name of a rejected nominee, could be brought before the Courts, would be a mandamus proceeding, or other analogous proceeding, by the electing body to compel the nominating officer to send in a different nomination.

If such a proceeding were instituted, the Courts would probably hold that the duty to send in a new nomination was not of such a purely ministerial character as to warrant its enforcement through the medium of a writ of mandamus.

While there is an absence of Court decisions upon the question propounded, there exists legislative construction of similar Constitutional and Charter provisions which sustains the view above expressed. Until recently, the Charter of the City of Galveston contained provision for the election of certain of the City Officers by the Council upon the nomination of the Mayor. While this provision was in force, the Mayor of the City repeatedly nominated persons for various City Offices who had been rejected by the Council for the same offices upon previous nominations by him. The right of the Mayor to pursue this course was not contested in the Courts; but the

Legislature, upon consideration of the subject, finally amended the Galveston Charter so as to prohibit the Mayor from sending in the name of the same person more than three times for the same office. This action would indicate the legislative opinion to be that in the absence of express legislative restrictions, the question of how many times the same person may be nominated, is one addressed to the discretion of the nominating officer.

Besides the amendment to the charter of the City of Galveston above mentioned, there are various Constitutional provisions in the Constitutions of other states, as well as Charter provisions in the Charters of other Cities, indicating the same legislative opinion by expressly limiting the number of times that the same nomination may be made.

Respectfully,
V. L. Brooks

City Attorney

Unfinished Business

The Mayor laid before the Council the following Message
Mayors Office, Austin Texas, June 9th 1900
To the Honorable City Council:
Gentlemen:

I herewith return without my

Mayors Veto
Rep. Comm on
appeals

Approval the report of the Special Committee on appeals and the order of the Council concerning the same, passed by your honorable body on June 6th 1900. for the following reasons: The law says that taxation shall be equal and uniform. To allow these appeals to pass as a whole would be an injustice to others. For payers of the City. The valuations in many of these appeals are much less than that of surrounding property. Some of the appeals are meritorious, and should pass, and if they are presented in such a way that each appeal will stand on its own merits they will be so considered.

Respectfully,

John McCall
Mayor

Alderman Dunham moved that the Message lie on the table subject to call which motion prevailed.

Appeal of
A.W. & Power Co.
Aug 1899
not sustained

Alderman Dunham moved to take up the appeal of the Austin Water Light & Power Co. which motion prevailed.

Alderman Dunham moved that the appeal be not sustained which motion prevailed and the Clerk was directed to Notify the Assessor & Collector of this action of the Council.

New Business

Alderman Fischen offered the following resolution which was read and adopted.

"Be it resolved by the City Council of the City of Austin, That the City Engineer is hereby authorized to expend the balance

City Engineer
Authorized to expend
out of approp. fund a go
W 11th St
of an appropriation made by an Ordinance entitled An
Ordinance appropriating the sum of \$600 - for building a
bridge across Little Shoal Creek, said balance being \$180 - that
said balance be expended in grading & filling on said bridge
on W 11th street

\$30. for Contingent
fund Police Dept
By Alderman Nolan An Ordinance appropriating the sum
of \$30. to provide a Contingent fund for the benefit of the
Police Dept The Ordinance was passed under suspension
of the rules by the following Vote
Yeas Aldermen Durham Isaac Fischer Mortimer
Nolan & Stumpf
Nays None

\$350. to repair
approach to Colorado
bridge
By Alderman Nolan An Ordinance appropriating the sum
of \$350. to pay part of the cost of repairing the south western
approach to the Colorado bridge at the foot of Congress Avenue
The Ordinance was passed under suspension of the rules by
the following Vote
Yeas Aldermen Durham Fischer Isaac Mortimer Nolan
& Stumpf
Nays None.

The Mayor laid before the Council the following Communication
from the Water Light Commission, which were read and on
motion referred to the Finance Committee

Austin Texas June 18th 1900

To the Honorable City Council:
Gentlemen:

I beg herewith to quote you
a resolution from the minutes of the meeting of the Commission
passed June 14th 1900, as follows: "On Motion duly
seconded and Carried the Secretary was instructed to advise
the City Council that the rates for arc lamps to private
consumers have been fixed at \$175.00 each per year, and to the
City at \$75.00 each per year"

Respectfully
D. W. Dorn

Secretary, Water, Light & Power Commission

Austin Texas June 18th 1900

Water Commission
request the City
to advance \$10,000
on W & L
To the Honorable City Council,
City of Austin,

Gentlemen:

Herewith I beg to transmit to you a resolution
passed by the Commission at its meeting June 14th 1900, as
follows:

"On Motion duly seconded and Carried the City
Council was requested to advance the Commission the sum of
\$10,000. on account of water light to be furnished - Respectfully

D. W. Dorn
Secretary, Water, Light & Power Commission

\$2500. bridge By Alderman Fischer An Ordinance appropriating the sum of
W 12th St Shoal \$2500. to build a bridge across Shoal Creek on W 12th street
Creek The ordinance was passed under suspension of the rules by the
following Vote

Yeas Aldermen Dunham Fischer Glass Mortimer & Nolen 5
Nays Alderman Stumpf 1

Dog ord
amended

By Alderman Dunham An Ordinance amending an ordinance
regulating the running at large of dogs etc The ordinance
was passed under suspension of the rules by the following Vote

Yeas Aldermen Dunham Fischer Glass Mortimer Nolen
Stumpf 6
Nays None

\$2180. bridge By Alderman Glass. An Ordinance appropriating the sum of
Waller Cr E 5th St \$2180. to build an arch culvert bridge across Waller Creek
on E 5th street. The ordinance was passed under suspension
of the rules by the following Vote.

Yeas Aldermen Dunham Fischer Glass Mortimer & Nolen 5
Nays Alderman Stumpf 1

Alderman Glass offered the following resolution which was
read and adopted.

to authorize to
audit books
city officers

"Be it resolved by the City Council of the City of Austin:
That a Committee of two citizens of Austin qualified for
the duties shall be created by the Council for the purpose of
auditing the books of the several departments of the City Government
The compensation to each of said Committee to be five dollars
per day - not to exceed 30 days time"

\$3400. = St. Leon By Alderman Fischer An Ordinance appropriating the
sum of \$3400 - for the purpose of purchasing a Steam Road
Roller. The ordinance was read the first time and on
motion the rule was suspended and the ordinance placed on
its second reading by the following Vote

Yeas Aldermen Dunham Fischer Glass Mortimer & Nolen 5
Nays Alderman Stumpf 1

The ordinance was then read a second time and on motion
was laid on the table subject to call.

Alderman Fischer offered the following resolution which
was read and adopted

St Leon to advertise

public bridge
W. 12th St

"Be it resolved by the City Council of the City of Austin:
That the Street Committee be hereby authorized to advertise for
bids for a bridge on Shoal Creek at the intersection of W. 12th street"

Bridge bridge
E 7th St Waller
Creek

Alderman Mortimer called up the ordinance appropriating
the sum of \$3000. to build a bridge across Waller Creek on
E 7th street, together with the report of the Street Committee
thereon The ordinance was read the first time and a motion
made to suspend the rule and place the ordinance on its second
reading which motion prevailed by the following Vote

Yeas Aldermen Dunham Fischer Glass Mortimer & Nolen 5
Nays Alderman Stumpf 1

The ordinance was then read the second time
 Alderman Glass moved to amend the ordinance by striking
 out Section 2. which motion prevailed and the ordinance as
 amended was passed under suspension of the rule by the
 following Vote

Yeas Aldermen Dunham Fischer Glass Mortimer & Nolan 5
 Nays Alderman Stumpf 1

Extending time to
 Oct 1. 1900 to pay
 taxes 1898

By Alderman Glass An Ordinance extending the time for
 the payment of taxes for the year 1899 until October 1, 1900
 and providing that no penalty accrue against any person
 who shall pay his taxes before that date. The ordinance
 was passed under suspension of the rules by the following Vote
 Yeas Aldermen Dunham Fischer Glass Mortimer & Stumpf 5
 Nays Alderman Nolan 1

Bids for bonds for
 sinking fund

The Mayor read to the Council letters & telegrams from parties
 preparing the sale of bonds for the sinking fund of the city bonds.
 On motion the matter was laid over until the next regular
 meeting of the Council

Mayors Veto
 appeals.
 Veto overruled

Alderman Glass moved to take up the Message of the Mayor
 vetoing the report of the Special Committee on appeals, which
 motion prevailed - Alderman Glass then moved to reconsider
 the Vote by which the report was adopted which motion prevailed
 Alderman Glass then moved that the report be adopted
 notwithstanding the Mayors objections which motion prevailed
 by the following Vote

Yeas Aldermen Dunham Fischer Glass Mortimer & Nolan 5
 Nays Alderman Stumpf 1

On Motion the Council adjourned

Geo. O. Johnson
 City Clerk