

Minutes of a called meeting of the City Council held
 Austin, Texas, July 12th 1902
 Hon R.E. White Mayor presiding

Roll Called

Present Aldermen Crocker Davis Low Maddox Mortensen
 Shumate Stumpf Thier 8

Absent Aldermen Hume Nitcho Redd Schneider Shelley 5

The following call of the Council was read

To the members of the City Council of the City of Austin, Texas, July 12th 1902

City Council of the City of Austin:

A special meeting of the City Council of the City of Austin is hereby called to convene in the Council chamber at the City Hall in said City on Saturday July 12, 1902, at 8³⁰ o'clock P.M. for the purpose of considering and taking such action as to the Council may seem proper on a Communication from the City Attorney with reference to Cause No. 2292 E.C. Bartholomew Receiver, et al vs. City of Austin et al, pending in the Circuit Court of the United States at Austin

R.E. White Mayor
 Shumate 6th Ward
 H.D. Shelley
 J.M. Maddox

Austin Texas July 12/1902

I hereby certify that all the Aldermen has been served with the foregoing by having it read to them in person with the exception of Alderman J.C. Nitcho, he being out of the City a true copy was left at his residence
 H. Montgomery Jr.

City Marshal

The following Communication from the City Attorney was read.
 July 12, 1902

The Honorable, the Mayor and board of Aldermen of the City of Austin:

Gentlemen:

In my opinion the status of the litigation in Cause No 2292 E.C. Bartholomew, Receiver et al vs The City of Austin, et al pending in the Circuit Court of the United States for the Western District of Texas, at Austin, is such as to render prompt action by the City Council essential to the proper protection of the interests of the City of Austin and I therefore beg to submit to the Council the following report of the present condition of that litigation, and to recommend that the Council in time take such action thereon as in their judgement may seem proper.

On March 11, 1902 a mandamus judgment was entered in said Cause the material part of which reads as follows, viz:

"And it appearing to the Court that Joseph Nalle, Receiver, & the City Water Company and the Austin Water Light and Power

Communication
 from City
 atty.
 regarding
 suit in
 U.S. Court

X

Company is the owner of a subsisting and unsatisfied judgment against the City of Austin for the sum of \$39,925.00 with interest on same at the rate of 6% per annum from May 30th, 1899 and all costs of suit, and that execution has been duly issued on same and has been returned unsatisfied, and that the City of Austin has paid no part of same, and has failed and refused to pay same, and that the City of Austin has no property out of which said indebtedness, on any substantial part thereof, can be realized by execution or otherwise, and that said City has not in its treasury, subject to the payment of said debt, money sufficient to pay said debt, or any substantial part thereof, and that R.E. White is the Mayor of said City, and that its City Council is composed of R.E. White Mayor, and the following Aldermen: Joseph Stumpf, J.B. Nichols, Theo. Low, H. S. Shelley, M. Shumate, R. A. Gillis, J. P. Schneider, H. B. Redd, J. M. Maddox, J. M. Crocker, J. H. Hume, J. M. Ullrich, P. D. Mortimer and H. B. Davis, and that the City is authorized to levy a tax of \$1⁰⁰ on every \$100.⁰⁰ valuation for current expenses and general improvements, a levy of 70 Cents on every \$100.⁰⁰ valuation being sufficient, with other sources of income to furnish funds for carrying on the Municipal Government of said City, and paying the reasonable expenses thereof, and that said City is also authorized to levy and collect an additional tax to pay said judgment, and that said City Council is authorized and it is its duty, to levy and collect by ordinance all necessary and proper taxes, and by ordinance to appropriate all money necessary and proper for the payment of the debts of said City, and that Fred Marging is the Assessor and Collector of said City of Austin, whose duty it is to assess and collect the taxes levied under the authority of the City Council, and that John O. Johnson is the City Clerk of the said City of Austin, and that it is the duty of said Mayor, R.E. White, to sign warrants, and of the Clerk John O. Johnson, to attach the same, and it is their joint duty to deliver said warrants to the beneficiary for the payment of any indebtedness of the City of Austin to the said beneficiary, and that H. P. Hilliard is the Treasurer of the said City of Austin, and that it is his duty to pay out upon said warrants, the monies of the City of Austin: it is therefore ordered, adjudged, and decreed by the Court that the Mandamus prayed for by the plaintiff be granted to the extent of the levy and collection for the year 1901, and for all years subsequent thereto until the judgment aforesaid is paid in full.

1st A tax of \$10 of 1% on all property within the limits of said City made taxable by law as a part of the tax of 1% authorized by law for current expenses and general improvements of the City.

2nd A tax of 1/5 of one per cent. of all property within

said City made taxable by law as a part of the $1\frac{1}{2}$ per cent authorized by law to be levied over and above the tax of one per cent for current expenses and general improvements of the City. Said tax of $\frac{3}{10}$ of one per cent as aforesaid and said tax of $\frac{1}{5}$ of one per cent as aforesaid, to be appropriated and used for the discharge of said judgment and the costs of this case, and defendant, the City of Austin, and R.E. White the Mayor thereof, and the following Aldermen thereof: Joseph Strumy, J.B. Hixson, Theo. Low, H.D. Shelley, J.M. Shumate, R.A. Gillis, J. Schneider, W.B. Redd, R.M. Maddox, L.M. Crocker, J.L. Hulse, H. Miller, P.D. Mortimer and W.B. Dairs, composing with said Mayor, the City Council of said City, and their successors in office are hereby commanded and ordered, under pains and penalties of Contempt of this Court, to levy and collect for the year 1901, and for all years subsequent thereto until the judgment aforesaid is paid in full:

1st A tax of $\frac{3}{10}$ of one per cent of all property within the limits of said City made taxable by law as a part of the tax of one per cent authorized by law for current expenses and general improvements of the City.

2nd A tax of $\frac{1}{5}$ of one per cent of all property within said City made taxable by law as a part of the $1\frac{1}{2}$ per cent authorized by law to be levied over and above the tax of one per cent for current expenses and general improvements of the City. Said tax of $\frac{3}{10}$ of one per cent as aforesaid, and said tax of $\frac{1}{5}$ of one per cent as aforesaid, to be appropriated and used for the payment and discharge of said judgment and the costs of this case; and Fred Styring, the Assessor and Collector of said City of Austin, and his successors in office, are hereby commanded and ordered, under pains and penalties of Contempt of this Court, to assess and collect said taxes levied under authority of the City Council; and the said R.E. White, and his successors in office are hereby commanded and ordered to sign warrants drawn on the funds arising from the collection of said taxes in favor of plaintiff to the amount of the sums necessary to pay said judgment and costs, and warrants to be drawn in favor of plaintiff, and said John Johnson, Clerk of the City of Austin, and his successors in office, are hereby commanded and ordered under pains and penalties of Contempt of this Court, to attest said warrants, and the said Clerk and Mayor and their successors in office, are further commanded and ordered, under pains and penalties of Contempt of this Court to deliver said warrants to plaintiff, the same being made payable to him, and the said H. R. William, Treasurer of said City of Austin, and his successors in office, are hereby commanded and ordered, under pains and penalties of Contempt of this Court, to pay to this plaintiff, upon said warrants, out of the respective funds aforesaid, the amounts necessary to pay said judgment.

and the costs of this proceeding, which money when so paid shall be in full satisfaction of said judgment, to which the defendant and respondents there and there in open Court excepted.

March 11, 1902

Aleck Doanman, Judge

This judgment which with interests accrued to date amounts to upwards of \$47,000. must either be obeyed by the persons against whom it is directed, or it must be superseded by appeal perfected in the manner authorized by law.

In order to supersede the judgment and properly perfect an appeal it is necessary (1) That bills of exception in proper form should be prepared by counsel for the City, approved by the trial Judge, and filed with the Clerk of the Court at Austin, (2) That a bond in proper amount and with good and sufficient sureties thereon should be executed, approved and filed with the Clerk of the Court (3) That assignment of errors in proper form should be prepared by Counsel for the City and filed with the Clerk of the Court, and (4) After these things have been done, that a transcript of the record be made out and filed with the Clerk of the Circuit Court of Appeals at New Orleans.

By a special order entered in the Cause a period of 150 days from date of judgment has been allowed for filing bills of exception and otherwise perfecting an appeal.

The Judge who tried the case is said to be at present at Obedt Island and in the State of New York; and it is necessary to secure his approval of the bills of exception before they can be filed.

It will, therefore, be seen that it is urgently necessary that the Council should promptly decide the following questions, viz:

1st Shall an appeal be perfected in the Case?

2d If so, how shall the necessary bond be secured?

The requisites of the bond are prescribed by rule 13, Circuit Court of Appeals rules, which reads as follows, viz:

"Supersedeas bonds in the Circuit Court must be taken with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ on appeal to effect, and answer all damages and costs if he fails to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal + this rule is held to apply against Municipal Corporations when the money directed to be paid has already been collected; although it is otherwise where the judgment is secured by the lien of an uncollected tax."

In conclusion I beg to state that, in my opinion, it is imperatively necessary that the City should have the benefit of the services of special Counsel to prosecute this appeal. The City Charter does not make it the duty of the City Attorney under any circumstances to attend to City litigation outside the state. While I would not refuse on this ground to conduct the litigation at New Orleans, I consider that the volume of City business at present pending in my office is such that this litigation must be placed in other hands.

By a Contract made between the City of Austin and J. R. Fisher Esq, the latter has obligated himself to represent the City in Cause No 2292, E. B. Bartholomew, Receiver vs. City of Austin, from the date of said Contract to the final termination of the litigation. Subsequently Mr Fisher associated Judge D. W. Down with him in the case. These two gentlemen have represented the City so far, are thoroughly familiar with all the details of the above mentioned litigation, and have expressed themselves as confident that the City can perfect, and will prevail on, appeal in the Mandamus case. Mr Fisher does not think that his present Contract with the City obligates him to represent the City also in the Mandamus proceedings to collect the judgment. I, therefore, recommend that the Council, if practicable, secure the services of Mr Fisher or Judge Down, or both of them to continue to represent the City in the litigation. In addition to the above mentioned judgment, there is also another subsisting and unpaid judgment against the City rendered by the Federal Court in Cause No 2325, E. B. Bartholomew, Receiver vs. City of Austin. The amount of this latter judgment with costs and interest accrued to date is \$27,76.15. Both these judgments grow out of a Contract for hydrant rentals between the City and the Water Company. Other claims against the City on the same Contract have accrued since the last judgment was obtained; and similar claims will continue to accrue until the final expiration of the Contract. Other Mandamus suits will no doubt follow in due course. I therefore recommend that the Contract for services of special attorneys be so made as to secure to the City the benefit of special Counsel in all litigation either at present pending or to be instituted in the matter of this waterworks controversy.

Respectfully

D. L. Brooks City Attorney

Aldermen Hume & Schneider entered the Council Chamber. Alderman Stumpf moved that Judge D. W. Down, who was present be invited to address the Council which motion prevailed. After remarks by Judge Down, Judges Fisher & Cochran were invited to address the Council on the matter before them.

Alderman Wadday moved the whole matter be referred to a special Committee of 3. for investigation and that they report back to the Council at a meeting to be called for that purpose, which motion was lost by the following Vote
 Yeas Aldermen Crocker Wadday Mortimer & Shumate 4-
 Nays Aldermen Davis Harris Low Schmidt Stumpf & Whit 6.

Alderman Davis moved that the Council accept the proposition of Messrs. Brown Fisher & Cochran

Proposition
 of Brown Fisher
 & Cochran
 accepted

Alderman Davis moved that the proposition of Messrs. Brown, Fisher, & Cochran, to assist the City Attorney in the matter of appealing the case to a higher Court, free of charge, except traveling and other necessary expenses in case they should have to go to New Orleans, be accepted and that the necessary papers in the matter be prepared by them and submitted to the Council at a meeting to be called for that purpose, which motion prevailed.

On motion the Council adjourned

J. O. Johnson
 City Clerk