

Called Meeting of the City Council
Austin, Texas, July 27th 1907
Hon F. W. Maddox, Mayor, presiding.
Roll Called
Present Aldermen Armstrong Crocker Ames Haynes
Meredith Miller Moore Moreland Petri Peck Scott
Smith & Wilhelm 13
None

The following Call of the Council was read
Austin, Texas, July 26th 1907
A Special Meeting of the City Council of the
City of Austin is hereby called to meet in the
Council Chamber, City Office Building, at 8³⁰
o'clock P.M. Saturday July 27th 1907, for the
purpose of receiving and acting upon a message
from His Hon the Mayor, proposing and ordinance
passed by the City Council on July 18th 1907, granting
the Consolidated Construction Company a franchise
to erect a dam across the Colorado River etc.

Call Council

F. W. Maddox Mayor
A. E. Ames 2nd Ward
H. L. Haynes Aldermen 6th Ward
Tom O'Smith " 3
O. B. Moreland
Henry Petri
L. M. Crocker
J. M. Meredith
R. J. Wilhelm 5th "

Austin, Texas, July 27th 1907
I hereby certify that I have served the above
Call by having same read by Policemen Griffin and
Bustin to each of the following named Aldermen
to wit: J. M. Meredith H. L. Haynes A. E. Ames Tom
Smith L. M. Crocker J. M. Armstrong J. M. Meredith
Henry Petri H. L. Haynes J. A. Scott O. B. Moreland
C. O. Moore and R. J. Wilhelm

J. J. Morris
City Marshal, Austin, Texas.
The Mayor asked President Haynes to take the Chair
The following Message from the Mayor was read
Austin, Texas, July 26th 1907
To the Honorable City Council
Gentlemen:

W. J. Jones Secy
San Ordinance

I beg to return without my
approval "An ordinance granting to the Consolidated
Construction Company, a private corporation, a
franchise to erect and maintain a dam across
the Colorado River at, or near the location of the

dam formerly erected across said River by the City of Austin

Before stating my objections to said Ordinance, I shall briefly give my understanding of how the people voted and what they expected to obtain by their vote:

1st The people, through the local press and public speeches were given the understanding that, should said Consolidated Construction Company be granted the franchise, said Company would guarantee to maintain the dam and power house etc, for a term of forty years, and keep same insured in some reputable, solvent and responsible surety Company, for \$700,000.00 on the cost of the work, for same length of time

2nd Said Company would guarantee a flood of water that would produce a continuous power not less than one thousand horse power

3rd The City was to pay said Construction Company, seventy five thousand dollars per annum for a period of forty years, or until forty payments of seventy five thousand dollars had been paid

4th The people were given to understand that, upon the obtaining of a satisfactory franchise or contract from the City by the Consolidated Construction Company that J. G. White & Co of New York would build the dam etc, and assume all the liabilities, and obligations, and enjoy the benefits granted the Consolidated Construction Company

On March 15th 1907, three days before the election, a revised proposition was made, by which the guarantee of 1000 horse power was eliminated and a reduction of \$10,000.00 per year was made in the annual payments. This reduction was doubtless brought about by the demands for a more specific statement as to the 1000 horse power, and a telegram from J. G. White & Co "not to sign the 100 horse power guarantee"

5th March 18th 1907, the people voted in favor of the proposition by a vote of 1729 to 506

6th April 19th 1907, the following communication was written to Hon. Walter Dyer, U.S. Rep.:

Austin, Texas, Mar 19, 1907

Senator Walter Dyer

Chairman Citizen Committee on City -

Sir:

It is such an an incident, while in favor of rebuilding the dam, were asked to and voted against the proposition in the Consolidated Construction Company, we now claim to say that the action of the people,

shows conclusively, that the people, are in favor of the proposition, and we therefore wish here to say, that we consider the question as settled and wish to elect eligible and candidates now and to be, bow to the will of the people as expressed by their vote.

(Signed)

Respectfully-

J. M. Madley
John Robinson Jr
D. K. Caswell
A. J. Ziegen
Ed. L. Kume
A. A. Thompson
J. P. Schneider

7th. April 6, 1907, an ordinance (which had been prepared by a Committee from the City and City Council in which Mr. Gadsborough, a representative of the Sheld Co., in sub Committee was present and took active part) was passed by the City Council and approved by the Mayor.

8th. The ordinance was referred to the Water, Light & Power Commission, who in turn referred same to Messrs Cochran & Penn for their consideration and advice, as per the following letter, viz:

Austin, Texas, April 11, 1907
Messrs Cochran & Penn
Austin, Texas.

Gentlemen:

Herewith we beg to hand you a copy of an Ordinance leasing franchise to Consolidated Construction Company, approved April 6, 1907; also proposition of the Sheld Construction Company. We submit the following for your consideration and advice:

First. Has the Water, Light and Power Commission the power under the Constitution and laws of the State of Texas and the Charter and ordinances of the City of Austin the right to use the earnings of the Water, Light and Power plant to rebuild or repair the old dam and power house, or to build a new dam and power house, etc, as contemplated by the said ordinance?

Second. Is the ordinance legal and binding, both on the City and the Consolidated Construction Company? In other words, if a contract between the City and the said Construction Company is made, will the same be of binding force upon each party?

Third. Should you answer both of the foregoing questions in the affirmative, then must we enter into a contract.

with the said Construction Company by the ordinance, or will it be our legal duty to consider the said Construction Company's proposition, or a proposition of any other person or corporation who will agree to rebuild the dam, powerhouse, etc as set out in the ordinance and proposition, for less money?

Please give us a reply to the above, and oblige,

Respectfully,

(signed) Geo. L. Kume
Pres Water, Light & Power Com

9th Messrs Cochran & Penn, through Judge Cochran, asked Judge Doorn, P. C. Von Rosenberg and Lex Vank, who represented the Citizens Committee of fifty to join him in consideration of the ordinance.

10th On, or about, May 6th 1907, a member of the Committee of lawyers came to my office and told me that the lawyers had about agreed upon an ordinance and asked me for suggestions, especially on the insurance clause. I told him that I would not make any suggestions, that the Committee of lawyers had the ordinance, that they represented the people, and so far as I was concerned they must bring to the City Council an ordinance, that in their opinion would fully protect the people, and which they, as lawyers, would endorse and recommend to the City Council; that when such an ordinance was presented to and passed by the Council, I, as Mayor, would approve same.

11 On May 9th 1907, the Committee of lawyers made the following report, viz:

Austin, Texas May 9th 1907

To the Mayor, City Council, and Water, Light and Power Commission of the City of Austin

Gentlemen:

We have together carefully examined the ordinance passed by the City Council embodying a proposed Contract with the Consolidated Construction Company for the rebuilding of the Austin dam across the Colorado River and other work, and have come to the conclusion that the ordinance ought to be amended in several particulars. We have therefore prepared another ordinance in which we think the interests of the City are carefully safeguarded, and herewith recommend it to you.

Very Respectfully,

(signed)

L. B. Conrath

J. W. Doorn

P. C. Von Rosenberg

Lex Vank

12th At the same time, viz May 20, 1907, Messrs
Cochran and Carr gave the Water, Light and Power
Commissioner the following opinion, viz:
To the Water, Light and Power Commissioner
of the City of Austin

Gentlemen:
In accordance with your request for our
opinion as to the validity, and sufficiency of the ordinance
passed by the City Council of the City of Austin, April 6th
1907, proposing to enter into a Contract with the
Consolidated Construction Company for the repair or
rebuilding of the dam across the Colorado River at its
present site, or the building of a new dam at another
site, also requesting our opinion with reference to
the proposition submitted by the Shields Concrete and
Construction Company upon the same subject, we beg
to say that we have given these matters full consideration,
and submit the following as our report.

- 1 Under the Constitution and Laws of this State no City
can enter into a Contract for the Construction of a public
improvement to be paid for after the fiscal year in which
it is made, whether bonds are issued or not, without
providing for the payment of the debt thus incurred by
the levy of a tax upon property.
- 2 The Supreme Court of the United States and the Courts
of some of the States have held that a City may enter
into a Contract running through a series of years
for water, light or other public service, to be paid for when
the service is rendered, and under these decisions
it is held that a debt does not arise until the service
is rendered and to the extent only that the other Contracting
party furnishes the consideration for the Contract.
This rule has been considered to a limited extent
in some cases in Texas, and our Courts have indicated
their approval of it.
- 3 As the City of Austin is already indebted to its Constitutional
limit, and as neither of these propositions contemplate
the levying of a tax upon property, their validity depends
upon the proposition whether they can be construed as a
Contract for future service to be rendered to the City,
and the duty of creating and maintaining an efficient
dam to render this service must rest upon the other
Contracting party.
- 4 Under this rule the Shields proposition, in our
opinion, does not conform to the law and cannot be
accepted.
- 5 With respect to the Consolidated Construction proposition,

it was our opinion, after careful consideration, that the ordinance submitted to you by the City Council was objectionable, and, in view of its importance, it occurred to us that it was advisable to ask for an exchange of views with the attorneys who acted for the City in its preparation. To that end we offered to Judges J. D. Brown and Messrs. P. C. Von Rosenberg and Albion Hart, on April 15th, to submit a written review of the terms of the ordinance, with our objections, and they, on April 16th, agreed to receive our communication. Accordingly on April 17th, we submitted to these gentlemen an expression of our views and, after duly considering the same, they gave us their reply on April 30th, and suggested the advisability of further personal consultation between us with a view of correcting the ordinance.

5 Pursuant to this request, the writer hereof was in frequent consultation with these gentlemen, and the result of our labors is expressed in the enclosed communication, from which you will see that it has been agreed that the original ordinance would be amended in several particulars, and that such amendments are expressed in a new ordinance which has been agreed upon as necessary to fully safeguard the interests of the City and carry out the proposition submitted to the City by the Consolidated Construction Company, so far as it can be done in conformity with the laws of this State.

6- It has been agreed that the other gentlemen will submit to the City Council a duplicate report and copy of this revised ordinance after it has been submitted to you.

In this connection we beg to say that there are some things in the amended ordinance which have not met our full approval, but we concur in the statement that the interests of the City have been "carefully safeguarded" by this new ordinance in so far as it can be done in conformity with the proposition submitted by the Consolidated Construction Company.

We, therefore, suggest that you return the original ordinance to the City Council without your approval, and with such expression of your views as to the revised ordinance as you may see fit to give.

Very Respectfully,

Cochran & Penn

8th Immediately after the receipt of the revised ordinance a call for a special session of the City Council was issued to consider the report and ordinance. The Council met on May 10th 1907, and passed the revised ordinance without amendments. It would have

approved by me and also the Water, Light and Power Commission on the same date

14th Nothing was heard from the Consolidated Construction Company for sixty days, viz, July 10, 1907, at which time Judge Briggs and Mr. J. A. Rickland presented me with another ordinance proposing changes in eleven of the twenty seven sections of the ordinance of May 10, 1907, the most material being in sections 9 and 12. No change was proposed for section 3, which provides that the Company should accept the ordinance within ninety days from its passage and approval by the Water, Light and Power Commission. If the proposed ordinance should have passed without change of section 3, then the Consolidated Construction Company would have had ninety days from its passage in which to accept the same, and ninety days more in which to begin work on the dam. I most positively told Judge Briggs that I would not consent to any extension of time; then section 3 was changed as it now stands in your ordinance.

My reasons for vetoing your ordinance are as follows:

First. Section 3 as passed May 10th 1907 was good and sufficient because the insurance provided for in section 12 required a deposit of \$700,000.00 in convertible bonds to insure, on the part of the Construction Company, full performance of contract, but it is not good in your ordinance because section 12 has been changed so that no deposit of insurance is required until the power house is completed, when \$100,000.00 insurance on the machinery shall be provided, and when the dam, etc. is completed, then insurance is to be furnished to the amount of the cost of the power house, dam, etc., hence the Company could at the expiration of thirty days accept the ordinance and thus extend the time sixty days longer. Then at the end of sixty days the Company could put a small force at work and thus at small cost hold the contract for two years.

This section 3 should be amended so as to require said Company as a pledge of good faith, at the time it accepts the ordinance, to deposit not less than twenty five thousand dollars in cash or convertible bonds, with the City Treasurer, to be held by him subject to forfeiture to the City should said Company fail to actually begin active work on said dam, etc., within sixty days thereafter, and further, that after beginning said active work that it will expend not less than twenty five thousand dollars each month thereafter until the completion of said work, which shall be completed within two years from date of acceptance of this ordinance.

Second. In section 5 the words "and when said repairs

are made said payments shall begin again and the life of this Contract shall be extended a period equal to that period during which said annual payments are suspended" These words do not appear in the first ordinance, nor in the ordinance reported by the Committee of Lawyers, and should be stricken out Third, Section 12 as reported by the Committee of Lawyers requires, at the time of acceptance of this ordinance, a deposit of seven hundred thousand dollars in convertible bonds to secure for and during the term of the Contract the rebuilding, repairs and permanency of the power house, dam, etc., these lawyers, at the time of placing this requirement in the ordinance, must have had some good reason for such deposit - they must have believed it was their duty to safely and permanently insure the power house, dam, etc., In fact, they must have believed such deposit was the only way to insure the dam, etc., and thus secure the same as the Consolidated Construction Company had proposed.

I know that Mr. Goldborough stated in the sub-committee that such insurance could not be obtained, and wanted to strike the insurance feature out of the ordinance, but a lawyer of high standing, who was present, but not a member of the Committee, promptly and emphatically told him that insurance had been promised the people, and that was one of the main arguments that carried the proposition with the people, and that if he proposed to cut out the insurance feature, the Committee had just as well adjourn and quit talking.

Mr. Goldborough consented to secure the dam as set out in Section 12 of the first ordinance, and it was this Section 12 as written in the first ordinance that the Committee of Lawyers had before them when they wrote Section 12 of the second ordinance passed May 10, 1907. A careful comparison of Section 12 of the first ordinance as passed April 6th, 1907, and Section 12 of your ordinance passed July 18, 1907, will show that so far as absolute surety goes, there is little if any difference. I am advised that it is a settled rule of law that one cannot contract an impossible act. It is further claimed by lawyers of high standing that should it now, or hereafter, be found impossible to obtain the insurance as proposed in your ordinance, those chief feature of the Contract would become worthless and of no effect, but the City Council, nevertheless, have to pass the ordinance just as they have the annual ordinance. It is true that the ordinance should be rewritten so as

to make it the duty of the Consolidated Construction Company, or its assigns, in the event that the security, as now proposed cannot be secured, to make a deposit in convertible bonds to the amount of the cost of the dam, power house, etc, and when such deposit is made, it to be done as required by Section 12 as proposed by the Committee of Lawyers. I am of the opinion that the deposit of \$700,000.00 in convertible bonds as required in Section 12 as written by the lawyers, viz: on the acceptance of the Contract is burdensome, but that Company promised to insure the dam, etc, to that extent for the cost of the dam, and that the people voted, relying on the fulfillment of their promise, and they are entitled to such security, and it is the duty of you and other officers of the City to see that the people get the dam, etc, together with the security as promised.

Fourth. Owing to the fact that the amount of insurance to be furnished depends entirely upon the cost of the work, the ordinance should make some definite provision how to ascertain how much said work cost.

I cannot refrain from warning you of one danger in the insurance feature in this ordinance, viz: it will, unless carefully guarded, be a disturbing element in your City elections. You all know the trouble and litigation we have had with the old water Company. Should you not make this insurance feature so as to remove it entirely from your City adjustment, you will have a repetition of your troubles.

Fifth Section No 21 should be amended to agree with the Amendments suggested for Section 3.

Sixth Section No 22 should be amended so as to fix certain at what date the City shall have the right to purchase the dam and property; and further the rate of discount should be at the rate of 6% compound interest. In other words, what the City should pay the Company for the dam, etc should be such a sum which at 6% interest compounded annually will produce at the expiration of the time such payment has to run \$65,000.00 for each payment.

Seventh Section No 3 should be amended so as to provide for the Appointment by one of the District Judges of Travis County, of a third Engineer in the event of a disagreement between the Engineer of the Company and the Engineer of the City. Otherwise it may become impossible to have the claim to be placed.

Eighth Section No 23 should be amended by striking out the words "except those caused by earthquakes or the public enemy". These words were in the other sections.

of the proposed ordinance, and were stricken out,
and should be taken from Section 24

In conclusion I wish to say, this Veto will be filed
with the City Clerk, and copies furnished the Daily paper,
with the hope that they will publish same in order
that you and the public may read and carefully consider
same. Should you think the objections good for our City,
I am confident you will sustain them. Should you not
think so, you will, as you should, ignore them and pass
the ordinance notwithstanding the Veto.

Respectfully Submitted,

A. M. Meadley Mayor

Message ordered
filed

Alderman Crocker moved that the ^{message} ~~ordinance~~ be
received and filed, which motion prevailed.

On Motion of Alderman Crocker, Judge Briggs
the Attorney for the Consolidated Construction Company
was invited to address the Council.

After remarks by Judge Briggs, on motion the
Council adjourned.

J. W. Johnson
City Clerk