

Regular Meeting, of the City Council

Austin Texas Oct 20, 1884

Hon J. W. Robertson (Mayor Presiding)

Roll call. present Aldermen Hancock, Wells, Campbell, Schuber, Underhill, Warren, Carrington, Hill, Platt, Erwin, Beckner.

Absent Aldermen Schneider, Sutor, Pillow, Maas, Quirkie, Robertson, Bruck, Crooker and Odell.

Minutes of Oct 6 & 8, 1884 adopted

Pet of Geo
H & L Co
application
to truck house

The petition of Protection H & L Truck Company asking that additional ground be leased from A. Bertrian, north of present truck house for the purpose of erecting a shelter for the horse cart now in use of said company, was read and referred to the Fire Committee.

Pet. of St John
damages for
horse. at corner

Alderman Wells presented a petition from Ben St John asking for \$50.00 damage done to a horse of his which fell through the state sewer on east avenue. referred to the street committee

Pet.
Brown
spec. Police

Application of Henry Brown and Wm. Wagenfuhr for positions of special police was referred to the Police Committee

Rep't of St.
Comm on
nuisance
on W. Pecan St.

The street committee reported on the petition of citizens of west Pecan Street, who complained of a nuisance, that the same had been abated

St Comm on
ord. to build
bridge over
Waller creek

The street committee submitted the following report on an ordinance appropriating money to build a bridge over Waller creek on Pine St. To the Hon Mayor and Board of Aldermen of the City of Austin

Your committee to whom was referred an ordinance appropriating five hundred dollars for constructing a bridge across Waller creek

by leave to report that they have had the same under consideration and are of the opinion that only iron or rock bridges should be built and the sum asked for is not sufficient to erect a permanent bridge, and there being bridges on the crossings one block above and one below said crossing, giving ample traveling facility to said locality, your committee would therefore respectfully recommend that it do not pass.

J. Schubert
Jno. W. Quirk

The report of the committee was adopted by the following vote: Yeas Hancock Wells Campbell Schubert Underhill Warren Carrington Hill & Mayr Blath Erwin and Brewster. C.

St. Council on
Ord. 8300. East
Pecan St.

The street committee submitted the following report on an ordinance appropriating three hundred dollars for improvement of Pecan Street east of East Avenue. The report of the committee was adopted and the ordinance read first time and laid over.

To the Hon Mayor and City Council of the City of Austin

Your committee to whom was referred and ordinance appropriating three hundred dollars for the grading of east Pecan Street would most respectfully recommend that the work should be done and would therefore recommend the following substitute for the original ordinance, That the sum of four hundred dollars be and is hereby appropriated for the purpose of purchasing two mules and a wagon for the use of the city to perform the said work and for the greater facility in getting work done on the streets, and that the street committee in conjunction with the city engineer be authorized to purchase the same as soon as practicable and that this ordinance take effect and be in force from and after its passage.

J. Schubert

Receipt Com
on Bond

The Hospital committee submitted submitted

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the following report on the petition of W J Burt asking for additional pay a Physician in charge of the City Hospital

We recommend that the within be referred to the Hospital board of trustees

J Warren

Wm Ervin

J Schubert

Hospital

Consider

Alderman Hancock moved to add to the committee appointed to select sites for the location of the Fire Department Building. The foremen of each of the companies of the Fire department motion adopted

The City attorney submitted the following report.

City attorney
on using
school
blocks for
Parks.

To the Honorable City Council

Memorandum. In response to a resolution adopted at your last ^{regular} meeting asking my opinion as to the power of the City Council to convert the blocks known as the University block and Academy block into a public park I beg to submit that in my opinion the City Council does not possess the power under the charter of the City to use said property for the purpose indicated.

This property was set apart under and by virtue of section 14 of an act of congress of the republic of Texas entitled an act for the permanent location of the seat of government approved January 14th 1839. This section authorizes the agent of the republic, before making sale of lots in the place selected as the seat of government, to set a part sufficient number of the most eligible for a capitol, arena, magazine, university, academy, churches, common schools, hospital, penitentiary, and all other necessary public buildings and purposes, it would therefore seem to me that property thus set apart was dedicated to a specific use, and that it would require the express authority of the legislature to enable the City Council to appropriate it to any

use inconsistent with the ^{one} original named
 That it was not the intention of the
 government to vest in the City of Austin the
 absolute fee in said property, or to confer upon
 the City Council the power to dispose of it at will
 it is made manifest by section 6 of "an act to incor-
 porate the City of Austin," approved December 7th. 1839
 wherein this express limitation occurs, Provided
 however, that this act shall not be construed to
 give the Mayor and Council any power or authority
 to alter, occupy, or change in any manner the
 ways, squares, streets, roads or alleys as laid down
 and surveyed according to the plan of the City,
 made under the superintendence of Edwin Waller,
 agent of the government; nor to interfere in any
 way with the roads, streets, squares, or lots which
 may be laid off within the precincts of the ~~city~~
 selected by the commissioners appointed to locate
 the seat of government.

Section 41 of the amended charter of the City
 of Austin, approved April 17, 1853. enlarges the power
 of the City Council with reference to the management
 and control of the commons and all the property
 real or personal, belonging to the City, and confers
 the right upon the council "to sell or lease the same
 or to dispose of it absolutely or within limitations."

But as broad and comprehensive as
 this grant may seem, I do not believe that it confers
 upon the Council the power to appropriate public
 property to any use inconsistent with that for
 which it was originally dedicated.

Mr Dillon, in his work on Municipal corpora-
 tions, thus states the rule for the construction of
 charters of municipal corporations. It is a general
 and undisputed proposition of law that a munici-
 pal corporation possesses and can exercise
 the following powers and no others:

First those granted in express words
 Second. Those necessarily or fairly implied in
 or indicated to the powers expressly granted

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Third those essential to the declared objects and purposes of the Corporation, not simply convenient but indispensable. Section 87, volume 1 Dillon on municipal corporations. The same authority treating of the powers of municipal corporations says: "A municipal corporation has no implied or incidental authority to alien or dispose of, for its own benefit, property dedicated to or held by it in trust for the public use, nor can it extinguish the public use in such property." Section 658, volume 1. Dillon on municipal corporations.

In support of the views herein expressed I respectfully refer to the following authorities: Williamson's 2^d Davidson 43^d Texas Reports; Corporation of Reguina's Ireland 58th Texas Reports; County of Harris's Taylor 58 Texas Reports; Lamar County's Clements 49th Texas Reports; Board's Exon, & Ohio reports.

Very Respectfully

Geo. F. Fenderson
City Attorney

Further
time to
Spec. Com.
Abbots and
water

On motion of Alderman Hancock the Committee on permanent improvements and on the claim of the City water Company were granted further time in which to report.

time to
market
Comm-

On motion of Alderman Platt the market house committee was granted further time in which to report an ordinance in regard to markets and market licenses.

Coal
ord.

Alderman Platt called up an ordinance entitled an ordinance making it a misdemeanor to sell coal or any other commodities by false, short weight or measure.

The ordinance was read third time and passed by a unanimous vote.

Resolution

Alderman Platt introduced a resolution to annul the contract with E. Von Borchman for painting.

printing the minutes of the City Council and recommending that the same be printed in a daily paper read and referred to the Printing Committee

5. 1900. for
bridge on
in question over
roadway Alderman Hill introduced an ordinance appropriating the sum of \$1400. to build a bridge over waller creek on East Mesquite Street. The ordinance was read first time and then referred to the Street Committee

Street Comm.
on what is
petition The Street Committee submitted the following report on a petition in regard to obstructions in the alley running through block 109.

The committee to whom was referred the within petition would respectfully beg leave to report that they find that the obstruction exists in said block and would respectfully refer the matter back to the City Council for further action

J. Schubert

Excused
Platt

Alderman Platt was excused from further attendance at this meeting

On motion the Council adjourned

J. L. Purvill
 City Clerk