

Called Meeting of the City Council

Austin Texas June 20th 1885
Hon J. W. Robertson, Mayor, Presiding

Present aldermen Schneider, Metz, Hancock, Wells
Campbell, Schuber, Underhill, Warren, Cally, Barrington
Holman, Hill, Platt, Bruck & Brewster, 15

Absent Aldermen Pillow, Mads, Driskill Crooker
and Ervin - 5

Mayor's Office

Austin Tex June 20th 1885

Called Council To the Members of the City Council of the City of Austin
Gentlemen:— I hereby call a special meeting of the
city council to meet this evening, Saturday June 20th
1885, at 8.30. P. M. to consider the Mayor's objections
to an ordinance passed June 15, 1885, making an
appropriation to pay certain amounts against the
City and to consider an ordinance making nec-
essary appropriations for July interest and for other
purposes.

Yours resct.

J. W. Robertson,
Mayor.

Returned message The following veto message was received from his
Honor the Mayor.

Mayor's Office

Austin Texas June 20th 1885

Gentlemen of the City Council:

There are two items in the ordinance
making appropriations to pay approved accounts
against the city passed at the regular meeting
of the city council, June 15, 1885, to which I cannot
give my approval.

The items referred to are the following:
W. J. Burt, services rendered at small pox camp
\$200⁰⁰; and Ned Brown, payment of time lost by back
\$35⁰⁰.

The claim of Dr. W. J. Burt is thus stated in
his account filed:

City of Austin to W. J. Burt, M. D., Dr May, 1880 to amount to reimburse him for losses incurred by reason of exposure to small pox, under orders of the City Council - \$200⁰⁰. By way of explanation I will state that I have lost almost all my private and paying practice by my friends refusing to send for me by reason of my exposure to small pox, and who will not send for me for many days to come. In addition I have run the risk of having varioloid myself, as any man may who is exposed after vaccination. The City Council heretofore has paid the physician, at one time \$500⁰⁰ and at another \$1,000⁰⁰ for this loss and exposure, I therefore ask the above amount to reimburse me for actual losses under your orders
(Signed) W. J. Burt.

The claim of Med Green is stated in his account as follows: 'The City of Austin Dr to Med Green \$40⁰⁰. Time of hack laid off from work by order of the City Physician, to be disinfected after transporting A. H. Crow, to his home - Ten days @ \$4⁰⁰ per day \$40⁰⁰. This account is also approved and its payment by the City Physician.

Dr W. J. Burt is the City Physician, and was elected to this office, under the provisions of the amended charter, December 8, 1883 to serve for a term of two years. The salary of the City Physician is fixed under said amended charter, Art. 9, Section 1, as follows: 'The salary of the City Physician shall not exceed six hundred dollars per annum. The said amended charter, in the same article, further provides, that after every election of City Officers by the Council, the Council shall immediately proceed to fix the salaries of such officers, etc.

In obedience to this requirement of the City charter, the City Council, on December 10th, 1883 passed an ordinance fixing the compensation of all officers and employees of the City for the term of two years from that date, and the

June 20th 1885 Called

salary of the City Physician was fixed, as follows: "The City Physician shall receive an annual salary of \$600⁰⁰". The third section of said ordinance reads as follows: "Section 3 - No officer, agent, or employe of this City shall receive any salary, fees, commissions or compensation for his services, directly or indirectly, except as provided in Sec. 1 of this ordinance".

The maximum limit of the salary or compensation of the City Physician, as provided in the charter, is \$600⁰⁰ per annum, and this amount was fixed by the ordinance.

There is no authority given in the charter for the allowance of extra compensation to any officer for any services to the city, and the constitution of the state forbids the legislature from making such grants of power to municipal corporations, Art 11, Sec. 53 reads as follows: "The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, or servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part, nor pay or authorize the payment of any claim created against any county or municipality of the state, under any agreement or contract made without authority of law". This is a positive prohibition against this character of legislation, and applies directly to municipal corporations, But independent of all these restraining provisions, the allowance of this claim would be without authority, illegal and against a settled public policy, Judge Dillon, in his work on Municipal Corporations, Vol. 1, Page 256-257 treating this identical question, use this language:

"233 - It is a well settled rule that a person accepting a public office, with a fixed salary, is bound to perform the duties of the office

for the salary, the government legally claims additional compensation for the discharge of these duties, even though the salary may be very inadequate remuneration for the services; Nor does it allow the case that by subsequent statutes or ordinances his duties within the scope of the charter powers pertaining to the office are increased, and not his salary. Whenever he considers the compensation inadequate, he is at liberty to resign. The rule is of importance to the public, to allow changes and additions in the duties belonging or which may properly be attached to an office to lay the foundation for extra compensation, would soon introduce intolerable mischief. The rule, too, should be very rigidly enforced. The statutes of the legislature and the ordinances of our municipal corporations seldom prescribe with much detail and particularity the duties annexed to public offices; and it requires but little ingenuity to run nice distinctions between what duties may, and what may not, be considered strictly official; and if these distinctions are much favored by courts of justice, it may lead to great abuse.

234 - Not only has an officer, under such circumstances, no legal claim for extra compensation, but a promise to pay him an extra fee or sum beyond that fixed by law is not binding, though he may render services and exercise a degree of diligence greater than could legally have been required of him.

This statement of the law by Judge Dillon is supported by authorities cited from almost every state in the Union. The rule is a safe one and cannot be violated without producing evil consequences.

But it is asserted that this allowance to Dr. Burt is not in the nature of extra salary or compensation, but only an allowance for losses incident to a faithful discharge of public duties. This position is equally untenable.

June 20th 1885. called

It is just as well to call it extra salary or extra compensation. It is precisely the same thing in effect. The officers salary is \$600⁰⁰, and \$200⁰⁰ is added to it, and that is all you can make out of it. Call it by what name you may, the result is precisely the same.

In this case Mr. A. H. Crow, who had small pox, came into the city on the evening of May 23rd 1885, and as I understand, summoned Dr. Curt as his private physician. The council took action on Saturday following, and on Monday May 25th 1885, Mr. Crow was moved across the Colorado river under your instructions. The City Physician had been in contact with the disease twentyfour hours before any action by the city council, and the danger of infection was certainly as great at that period as subsequently. The city physician made no objections to the performance of the duties imposed upon him in your order to remove the patient beyond the limits of the City. His duties in such cases are prescribed by ordinance passed March 9, 1878, and read as follows: "Art. 274 - It shall be the duty of the Health Physician whenever he is informed of the existence of any pestilential, contagious or infectious disease within this city, to cause the person or persons so diseased to be taken to such place as he may designate, away from all probable danger of communication, for treatment, and such place shall become a pesthouse, and shall be under the exclusive control of the Health Physician, who shall issue such orders as will, if possible, prevent the spread of such disease."

Dr. Curt was attending the patient as a private Physician, and no duties were imposed upon him by the city council not coming strictly within his official duties as defined by the ordinance quoted. So far as I am informed Mr. Crow continued a private patient until his recovery, and the only interference by the city was to provide for his removal.

It is said that physicians have been employed on other similar occasions at heavy salaries, this I doubt not is true, but the physicians so employed were not officers of the city at the time. And even if it were shown that such extra allowance had been made to city officers, I would regard it as a dangerous precedent and one never to be followed.

I do not doubt that the performance of this duty has been attended with inconvenience and loss, but we must remember that he who receives the emoluments of office must likewise bear its burdens. There was no duress or force in this matter, and there is no fact or circumstance connected with it to relieve it of the general rule in such cases.

As to the claim of Med Green, I understand this to be the facts. He is a hack driver, and hauled Mr Crow from the depot to his home, on the evening of his arrival in the city. This was a private employment for which he was paid his proper hire. No one then knew of the existence of small pox. When this fact was discovered the city physician, in the discharge of his duties to the public, ordered the hack quarantined and disinfected. This was a necessary precaution, and resulted from a voluntary act on the part of Green, which which the city had nothing to do, and for which it is in no manner responsible. When Mr. Crow was moved across the river on Monday, I offered Mr. Green \$30.00 for the use of his hack to remove him, and proposed to have it disinfected and returned to him in a reasonable time.

He declined this offer, His claim against the city is entirely without merit, it is no more nor less than a donation or gift for a private purpose, and this cannot be allowed.

To other matters in the ordinance I have no objections, I cannot disapprove of a part, and approve the remainder, It therefore, becomes my duty, under my view the law to disapprove the ordinance under consideration.

June 20th 1888. caled

for the reasons I have stated, and return the same to you for reconsideration.

Very Respectfully
J. W. Robertson
Mayor

Reconsider
vote. Alderman Platt moved that the vote by which the vitord ordinance passed be reconsidered
motion to reconsider carried

Base not
withstanding, pass notwithstanding the veto of the mayor
veto of mayor motion lost by the following vote yea Alderman Metz, Kaye Aldermen Schneider, Hancock, Wells, Campbell, Schubert, Underhill, Warren, Odell, Carrington, Holman, Hill, Platt, Brunner & Bruck 14.

Ordinance
\$9,792.50. Alderman Odell introduced an ordinance appropriating the sum of \$9,792.50 for payment of July interest on public debt, and for payment of other claims and salaries
The ordinance was read second and third times under suspension of the rules and passed by the following vote yea Aldermen Metz, Schneider, Hancock, Wells, Campbell, Schubert, Underhill, Warren, Odell, Carrington, Holman, Hill, Platt, Bruck & Brunner.

Ordinance
Sorrow from
Bankrupts Alderman Odell, introduced an ordinance providing for the collection of taxes against persons becoming bankrupt or making an assignment
The ordinance was read then read second and third times under suspension of the rules and passed by the following vote yea Aldermen Schneider, Metz, Hancock, Wells, Campbell, Schubert, Underhill, Warren, Odell, Carrington, Holman, Hill, Platt, Bruck & Brunner.