

Minutes of a Regular Meeting of the City Council.

Austin Tex. July 18 1887.

Hon. J. W. Robertson, Mayor, presiding.

Roll Call. Present - Aldermen Alexander, Campbell, Fisher, Jones, Odell, Platt, Phillips, Schneider, Schuber, Walster, Warren, Wellmer - 12.

Call. Absent - Aldermen Anderson, Brush, Caldwell, Cummings, Graham, Metz, Townsend, Wartham - 8.

Minutes. The minutes of the last meeting of the City Council were adopted as printed.

Hydrant. Alderman Odell presented a petition from citizens of the Seventh ward asking that a hydrant be located on San Jacinto Street, between Twelfth and Thirteenth Streets, for the purpose of protecting property in that vicinity in case of fire. The petition was referred to the Committee on Water & Gas.

gutters Alderman Schuber, for the Street Committee, presented a report on a petition from citizens requesting the improvement of the Sanitary Condition of the gutters on East Seventh Street, between Congress Avenue and "The Griskie", which favors the paving of the gutters so they can be flushed or that the City Marshal be instructed not to allow any animals to be hitched on that portion of the Street. The report was adopted.

Marshals reports. Alderman Schneider, of the Police Committee presented reports on the marshals' reports for the months of April and May, stating that he had examined them and that they are correct. No action was taken on the reports.

City atty. The City Attorney was granted a leave of absence for ten days from July 21, 1887.

Opinion of city atty. In compliance with a motion which was adopted at the last meeting of the City Council, the City Attorney submitted the following opinion

and Communication from the City Treasurer:

Austin, July 14, 1887.

To the Honorable City Council:

Gentlemen - In response to a resolution of your honorable body requesting my opinion as to the validity of an Ordinance of the City of Austin, entitled "An Ordinance providing for the establishment of a new Cemetery for the City of Austin, to be known as Greenwood Cemetery, and providing for the purchase of land therefor," approved July 21, 1886, I beg to submit that I have given the questions involved my careful consideration, and, after a thorough examination of all accessible authorities, have reached the conclusion that the Ordinance in question is void, because the City Council did not possess the power, under the Constitution of the State and Charter of the City, to pass it; and, for this reason, the notes executed pursuant to said Ordinance do not constitute a valid claim against the City. The Charter of the City does not expressly confer on the City Council the power to issue negotiable promissory notes for any purpose whatever; and, therefore, to sustain this Ordinance it is necessary that such power should exist by implication, as it is a well-settled rule of law that a municipal corporation can exercise only such powers as are expressly conferred by its Charter, and such as are necessarily implied from the powers that are granted. The only authority given the City Council by the Charter to establish and regulate Cemeteries is found in Section 40, Article 6, of that instrument, which is as follows:

"To establish Cemeteries within or without the City limits of the City, and to regulate the same."

I doubt not that under the authority to establish Cemeteries the Council had the power to acquire the land necessary to effectuate that object, but I do not think that it had the implied power to issue interest-bearing negotiable notes

therefore. The latter person is certainly not necessarily incident to the former, nor is it essential to the desired objects and purposes of the compensation.

Moreover, there are other reasons, which, in my opinion, are absolutely conclusive of this question.

First- The Ordinance in question is in violation of the Constitution of the state. By the terms of the Ordinance, the Mayor is authorized and required to issue and deliver interest-bearing notes of the City of Austin, aggregating \$16,000.

Using the unpaid purchase money of the land bought for the use of the City for Cemetery purposes. The Ordinance makes no provision to assess or collect a sum sufficient to pay the interest on this debt, nor does it provide for a sinking fund to be used in the ultimate redemption of these obligations.

Section 5, Article 11, of the Constitution of Tex., which relates to cities having more than 10,000 inhabitants, among other things, provides: "No debt shall ever be created by any City, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon, and create a sinking fund of at least 2 per cent. thereon". That these notes, if valid, would constitute a debt, seems too clear to require argument; therefore, the Ordinance under which they were issued is void because not in conformity to the requirements of the Constitution.

Second- The notes, in my opinion, would, if valid, constitute a part of the bonded indebtedness of the City, and, therefore, they are invalid, if, at the time they were issued, the City Council had no power under the Charter to increase the bonded indebtedness. In other words if at the time these notes were given there was outstanding a bonded indebtedness as large

as the City Council could legally create, then this addition to that indebtedness would, of necessity, be void.

Section 2, article 6, of the charter provides that the bonded indebtedness of the City should at no time exceed \$125,000 and defines what character of obligations shall be regarded as bonded indebtedness, interest-bearing warrants, as well as bonds, fall under this head. I cannot think that there is any essential difference between an interest-bearing bond, or warrant, and an interest-bearing negotiable note. This clause of the Charter was intended as a restriction and limitation on the debt creating power of the City Council. By its terms the City Council is prohibited from issuing bonds and interest-bearing warrants above a stated amount, and it occurs to me that it would be a palpable evasion of the plain meaning and intention of the legislature to issue an interest-bearing negotiable note when the power did not exist to issue a bond or warrant for a like purpose, as they would each have the same effect, so far as the City is concerned. The attached letter from the City Treasurer shows that at the date of the passage of the Ordinance in question, the bonded indebtedness of the City was \$125,000, exclusive of interest; therefore, no power existed in the City Council to increase that amount by the addition of the notes executed under this Ordinance.

In Conclusion, I regret to say that I have not been able to find any case decided by the Courts of this State involving the identical question here presented, but the opinion of the Supreme Court of Texas in the case of the City of Waxahachie vs Brown, decided in March last, persuades me to the belief that the views here expressed will be sanctioned by the Courts.

Very Respectfully,
Geo. F. Pendexter,
City Attorney.

Treasurer. Hon. Geo. L. Dexter, City Attorney:

Dear Sir - In answer to your inquiry, I beg to state that the bonded indebtedness of the City of Austin on the twenty first day of July, 1886, was as follows:

145	10 per cent Bonds of \$500 each	\$72,500
105	6 " " " " "	52,500
Total		\$125,000

The interest on these bonds is payable semi-annually, on the first of January and first of July, each year. The interest, if computed (though not due) from July 1 to July 21, inclusive, would amount to \$606.66. The amount of 6 per cent interest-bearing warrants outstanding, and interest accrued thereon, is \$172.73, but I hold an equal amount, as a special fund, to pay these warrants on presentation.

Very respectfully,

J. R. Howard,

City Treasurer.

No action was taken on the question.

Aldermen Come. Aldermen Anderson, Townsend, Graham and Wortham Come in.

Salaries. Alderman Walker introduced an Ordinance appropriating the sum of \$3412 for the purpose of paying officers and regular employes of the City and City and County hospitals, each for the month of July, 1887. The Ordinance was read first time, after which motions were made to suspend the rules and place the Ordinance on its second and third reading, and that the Ordinance do pass, all of which were adopted by the following vote:

Aye - Aldermen Alexander, Anderson, Campbell, Fisher, Graham, Jones, Odell, Platt, Phillips, Schneider, Schuber, Townsend, Walker, Warren, Wellmer and Wortham - 16.

Water Co. Alderman Walker presented an Ordinance repealing an Ordinance entitled "An Ordinance setting forth a Contract between the City Water Company of the City of Austin", approved April 13, 1882, and all Ordinances Supplementary thereto and amendatory thereof. In connection with the above, the following opinion was read,

and together with the Ordinance, referred to, the
Committee on water and gas:

water Co.

Austin, Texas, July 11, 1887.

Hon. W. B. Walker, Alderman South Ward:

Dear Sir- In compliance with
your late request for my opinion touching the
Validity of the Contract entered into between
the City of Austin and the City Water Company.
On April 13, 1882, I beg to submit that,
since the Supreme Court of Texas, in the case
of the City of Brenham vs. the Brenham Water
Company, delivered at Galveston in March
last, I do not doubt that the Contract under
Consideration would be declared void by the Courts.
The grant of the privilege of furnishing water
to the City of Austin and its citizens for a
period of twenty years renders the Contract
obnoxious to the provisions of the
Constitution of Texas, which inhibits monopolies.
The only difference between the Contract
under Consideration and the one declared
void by the Supreme Court is that the latter
covered a period of twenty five years, while
the former is operative for twenty years, and
this difference, in my opinion, does
not relieve the Contract. We are considering
from the objections held fatal to the other.
Therefore, I have no hesitancy in expressing
the opinion that the City Council has no power
to make the Contract under which water is
now being supplied to the City.

Very respectfully,

Geo. F. Pendexter,
City Attorney.

Ald. Cummings Alderman Cummings came in.

Mrs. Baycot Alderman Walker introduced a resolution authorizing
the City Assessor and Collector to take Credit for
\$7.50, that amount being erroneously assessed on
the property of Mrs. P. H. Baycot for the year 1886. Referred to
Finance Committee.

On motion the Council then adjourned

Milton Morris, City Clerk.