MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Special Meeting

September 1, 1964
8:00 A.M.

Council Chamber, City Hall

The meeting was called to order with Mayor Palmer presiding.

Roll call:

Present: Councilmen LaRue, Long, Shanks, White, Mayor Palmer
Absent: None

Present also: W. T. Williams, Jr., City Manager; Doren R. Eskew, City Attorney

MAYOR PALMER announced this was a Special Called Meeting of the City Council to hear a report of its attorneys and to attempt to dispose of the Anit-trust suits involving Westinghouse and General Electric.

MR. JIM WILSON, Special Counsel for the City, reported his law firm was employed by the City to bring suit under the Anti-trust Laws against the manufacturers of electric equipment to recover any damages the City may have suffered as a result of the Anti-trust violations which were uncovered by the Federal Government, and which resulted in the 1960 prosecution of the major manufacturers of the electrical equipment in Philadelphia. There were many uncertainties in the picture at that time, not the least of which was the time element involved. It was anticipated because of the complexities of Anti-trust litigation that some 5 to 10 years might have been involved in bringing this litigation to a conclusion.

As it turned out, he said the City of Austin cases were only a few of some 1800 similar cases which were brought throughout the United States. In order to break the obvious log jam that this situation created with the Federal Courts, the Federal Judiciary set up a special national procedure to handle much of the initial pre-trial preparation for the cases. This was an extremely favorable development from the standpoint of the plaintiffs and permitted much more rapid preparation for trial than otherwise would have been possible. As a result, Austin's first case involving turbine generators is set for trial next week and will be tried unless this settlement is worked out.

Mr. Wilson stated the law firm associated MR. ROBERT SHER, Washington, D.C., a highly qualified and experienced Anti-trust lawyer, in the case, and they have had the pleasure of counsel and guidance of MR. DOREN ESKEW throughout the litigation. The cases were pursued vigorously both on the national level and on the

local level; and as a result of these efforts, a relatively early trial date has been fixed.

During the course of the trial preparation, a number of settlement offers had been made by the defendants to the City. The offers had been progressively increased as litigation had gone on; but up to now no recommendation to accept any of these offers were made.

The principle manufacturer involved in the turbine generator case, was the WESTINGHOUSE ELECTRIC CORPORATION from whom Austin purchased the turbine generators which were involved in the suit. WESTINGHOUSE'S latest offer, based on $6,121,726 of purchases in the suit, is $544,216 or about 9% of these purchases. The initial reaction to this offer was against acceptance. Since that time the question of settlement has been thoroughly explored and discussed in pre-trial conference with the Federal Judges handling the case. They have expressed the strong opinion repeatedly that this offer was reasonable under all the circumstances and that the City of Austin ought to accept it. The basis of this opinion by the Judges is the fact that some 90% of these 1800 cases that were originally brought throughout the country have now been settled and the offer of the WESTINGHOUSE CORPORATION to the City of Austin, is at least as good if not better than the offers made to every other plaintiff. This would be the considered opinion of each of the 40 or 50 Federal Judges who have been handling these electrical equipment Anti-trust cases throughout the country.

The opinion of the Federal Judges handling the cases, the only unbiased persons who are intimately familiar with the details of this mammouth complex litigation cannot be taken lightly; and as a result the City's Counsel have re-examined carefully the offer of the WESTINGHOUSE CORPORATION, and now recommend to the Council that it be accepted. The Counsel also recommended that the offer of GENERAL ELECTRIC COMPANY be accepted. Austin purchased substantially less from General Electric than that from Westinghouse, and G.E.'s offer of $94,883 is approximately 10% of the $953,013 in purchases from General Electric, on which the offer is based.

The City has claims against a number of other manufacturers involving some two to three million dollars in purchases. The offers, thus far received from these manufacturers are inadequate and do not measure up to the offers of WESTINGHOUSE and GENERAL ELECTRIC, and it is recommended that the litigation be proceeded against these manufacturers.

Mr. Wilson stated although the offers from WESTINGHOUSE and GENERAL ELECTRIC were somewhat less than hoped for, it is only fair to say that they do exceed the expectations many had when the litigation was first commenced. The cases had been pursued vigorously; and in the process of settlement negotiations, some substantial concessions had been obtained which resulted in substantial benefits to the City. In view of all of the circumstances, the City's Counsel consider these to be reasonable settlement offers, and recommend them to the Council. The Washington Counsel, MR. SHER concurs in this recommendation, as does MR. ESKEW, the City Attorney.

MR. SHER concurred completely in the recommendation.

COUNCILMAN SHANKS stated since Mr. Eskew was the City Attorney, that he would like to hear whether or not he recommends this settlement. Mr. Eskew stated he had kept as closely informed and as closely in touch with this litigation as it progressed as it had been possible and explained this was a very

complicated and very highly specialized field of law and he stated the report which MR. WILSON had given fully covered the status of the matter as it now stands. The complexion of it has changed from time to time as Mr. Wilson pointed out. The City Attorney stated recommendation is for the acceptance of a sum certain immediately; and under all of the complicated circumstances surrounding the case, it was his opinion that this is a fair settlement. He said it was not his opinion that it is necessarily more or less than could be obtained in court; but under all circumstances, he would consider it as a fair settlement, and would recommend its acceptance by the City. Councilman Shanks stated his recommendation was that the City accept what it had won. He then asked the City Manager if this were his recommendation.

MR. WILLIAMS, City Manager, stated with the many other things to give attention to besides this litigation, that he had not followed it as closely as the City Attorney; however, he expressed full confidence in the City Attorney and the other Attorneys who were employed to represent the City; and for that reason, he would concur in their recommendation that the offer be accepted.

COUNCILMAN LaRUE stated he had some questions to ask MR. WILSON and stated the defendants were found guilty of criminal charges of conspiracy, and that being the case, the only question for the jury to decide was whether damages had been incurred by the City; and if so, how much. Mr. Wilson stated this was not completely accurate; that it was not simply the question of proving up the existence of conviction. MR. SHER explained that the defendants pleaded guilty to violiating the Anti-trust laws with respect to turbine generators. The guilty pleas are admissible in evidence in a civil case; however, it does not necessarily follow that because the defendants violiated the Anti-trust Laws that violation also occured in the City of Austin. If the defendants, for example, agreed to fix the prices they were going to charge Commonwealth Edison of Chicago, and Consolidated Edison of New York, they would be guilty of a violation of the Anti-trust Laws and their guilty plea would constitute a conviction of that violation; but it would not necessarily follow that because they violated the Anti-trust Laws in Chicago and in New York that they also violated the Anti-Trust Laws in Austin. As part of the Counsel's proof, it would be incumbent upon the Counsel to show that the violation of the Anti-trust Laws to which the defendants pleaded guilty also occurred here in Austin; and to that extent the issue was not solely a question of evidence. Councilman Shanks asked if the opposition argued it did not exist here in Austin. MR. SHER stated that was their position but he did not agree. Councilman LaRue asked Mr. Sher if it were his position that they had violated it here in the City of Austin and that turbines had been purchased under these conditions, as he had suggested. Mr. Sher stated that was correct. Councilman LaRue noted the Philadelphia case recently had been settled. He inquired as to the amount. It was stated by Mr. Wilson at almost $39,000,000. Councilman LaRue asked if turbines had been involved in that case. Mr. Wilson stated those were power transformers and added it was only fair to note that the damage theory that the plaintiffs generally had been pursuing in these cases was based upon the drop in prices which occurred at approximately the same time as the convictions. From this standpoint the price drop that occurred in the power transformers was significantly greater than it was in turbine generators. This occurred in 1959-1960. Councilman LaRue asked if during that same period of time if the City did not purchase its Holly No. 1, and about four years later purchase Holly No. 2 at about $850,000 less. It was stated the two units were purchased one in 1956 and one in 1960. Councilman LaRue stated it was after this conspiracy had been opened up and discovered. He asked Mr. Wilson if on August 21st he did not make a recommendation that the Council accept $1,070,000. It was stated the recommendation was that a counter offer be made. Councilman LaRue

asked if that was his opinion that this was the amount that could be received? Mr. Wilson stated that was his opinion; that it was a fair counter offer for the City of Austin. Councilman LaRue asked if, with his firm, he could maintain that position. At the same time, the Council was asked to arrive at a conclusion as to what they as a group, thought would be the proper amount for which to ask and was that information ever given? Mr. Wilson stated the information was not given. Councilman LaRue stated the Council had about a week to get that together. Mr. Wilson stated he conveyed to the Court, even though the Council had not acted upon it, the recommendation that they had made, and the Court was quite firmly of the opinion it was an excessive demand. Councilman LaRue asked if he had explained that this was not the figure arrived at by the Council, but that Mr. Wilson had arrived at this figure himself. Mr. Wilson stated that was right, that he had recommended it as a counter offer. Councilman LaRue asked if he had been told why the Council had not come back with a counter offer. Mr. Wilson replied he did not know that he did; that he just surmised there was a difference of opinion of the Council on a figure. Councilman LaRue said Mr. Wilson had been told that a counter offer had been made by the Company, Westinghouse. Mr. Wilson did not recall that. Councilman LaRue stated he and Mr. Wilson, just before Mr. Wilson went to San Antonio on the 28th, had a conference, and that he had told Mr. Wilson that he had discussed the situation, and it was his first reaction if this offer were accepted that Mr. Wilson would lose $100,000 and that Mr. Wilson said he had been told that he would be paid on the higher amount and Councilman LaRue had told Mr. Wilson under those circumstances, not only was he opposed to it, but he was unalterably opposed to it as this would reduce the amount the City would receive as a net from some $400,000 to some $300,000. Mr. Wilson said that was part of the conversation, but not all of it. In that connection this was based on his recommendation at that time; but as of now, as they see it, they reiterate this is the best offer. In that connection, if there are any doubts in your mind, they were certainly not under any illusions that they would be entitled to any greater fee than their agreed fee on the basis of the original offer. Councilman LaRue stated he realized his position had changed as he spoke to him again on Saturday after the pre-trial in San Antonio and that he indicated under the circumstances, and under certain occurrences that happened in the Court over there, that he was of the opinion that he should change his opinion; but after leaving him that evening, Councilman LaRue said he was still convinced that Mr. Wilson was going to recommend to the Council that this be taken to trial and not be settled out of Court. That was his opinion Friday afternoon, after Mr. Wilson had been to the pre-trial hearing in San Antonio. He said he thought this was an acceptable conclusion because he had checked that with someone else, and they thought also that he would recommend that this case would go to trial. The next day, he was informed that Mr. Wilson had changed his mind, and it was quite a shock to him. He asked why Mr. Wilson had decided to change the recommendation from $1,070,000 to approximately half that amount.

MR. JIM WILSON said that looking at the realities of the situation this is his best judgment of what a good and reasonable settlement would be. If any indications had been received Friday that his recommendation would be otherwise, he was sorry because he had ever intention, before making any final conclusion in thinking it over carefully, discussing it thoroughly with Mr. Sher and others in his law firm, and they did that and the conclusion he had recommended today, is the conclusion they had reached.

The difference between Thursday night and his recommendation now is very plainly the very strong opinion expressed by the Judges in the pre-trial conference Friday. He said he could not help but say he was an advocate in the

case; and as such it is impossible for me to maintain an unbiased outlook. He said he represented his client to the best of his ability, and this is why there are Judges. Anytime a Judge of the caliber that they have in these cases, indicates as strongly as they have, that they are of an opposing view, that he thought it was encumbent upon the Counsel to reexamine their own opinions and recognize someone with a less biased view point may be better able to judge in this situation than he. That is precisely what happened. Councilman LaRue stated then the pre-trial hearing on the 28th caused Mr. Wilson to change his mind and to change his recommendation from $1,070,000 to approximately one half of that. Councilman LaRue said Mr. Wilson had stated the strong opinions the Judges seem to have, and asked that he quote some of the statements that were made from the Judges at that time.

MR. WILSON said he had a copy of the transcript here. He stated perhaps Mr. Sher could summarize those better than he. MR. SHER said basically what both judges stated was that settlement proposals based on a national formula had been made by these defendants all over the United States, and had been accepted by a very large percentage of plaintiffs in similar law suits. They just could not understand why, if these proposals were satisfactory for the rest of the United States, they were not satisfactory for Austin. They did not see that the Austin situation was sufficiently unique to take it out of that general category, and they pointed out that plaintiffs in other jurisdictions representing private utilities and the publicly owned utilities were also represented by able Counsel doing their best to represent their clients; and if they saw fit to accept the settlements they could not understand why Austin would not accept them here. He said that was not in his opinion an unreasonable point of view, as he knew a good many of the Counsel for the plaintiffs in other cases, and they were as conscientious as this Counsel is, and did the best for their clients, and they concluded that these settlements would be more reasonable. When one finds himself in this situation one has to re-examine in the point of view to the contrary to see if maybe they were out of step. Councilman LaRue asked if this recommendation were not accepted, then what would transpire. It was stated the case would go to trial. Councilman LaRue asked then what would be the circumstances if it did go to trial. MR. SHER stated he was unable to say what would happen if the case went to trial. It is perfectly apparent the Judges who were going to try these cases think they should not go to trial but that they should be settled. He thought under those circumstances, the climate of judicial opinion would not be favorable to the plaintiff. He did not think one ever wanted to get into a trial where he thought the climate was unfavorable. If there is a jury case, and it is seen that the jury for some reason or another does not like one, why that would be taken into consideration. Mr. Sher said if you have a case before a Judge, and he indicates as surely as these Judges have indicated, that settlement would be proper he thought that should be taken into consideration. He said he would not want to make a guess of what the outcome would be if they went to trial.

COUNCILMAN LaRUE asked if Mr. Sher remembered the statements that were used by the Judge at that time? Mr. Sher replied he could not recall them verbatum, but he could state generally what the conditions were. One condition was that in these cases, settlements had been widely accepted and they could not understand why they would not be accepted here. JUDGE FISHER went beyond that and indicated that he would take into consideration the amount that had been offered by the defendants if the verdict were returned for the plaintiff in determining whether or not the verdict should be allowed to stand.

COUNCILMAN SHANKS asked if the City goes on to trial, is there a possibility that the City may not get anything out of it. Mr. Sher stated there was

always that possibility that the City could get an adverse verdict. He said he would not say that it would. Councilman Shanks said he could not say anything would have been received one way or the other. Councilman Shanks said in talking about the $1,070,000 the way he understood that, was that was what the City was "shooting" for and that the recommendation was qualified that anything reasonable, that they would come up with a good hard look, so he did not believe the $1,070,000 was a real firm thing that the City was just going to do or die on; that he did not construe it that way.

COUNCILMAN LONG stated the $1,070,000 was not what the City was "shooting" for. The City has a law suit which would in this particular instance might bring the City around $5,000,000 if it went to trial, if it got a favorable judgment, and it would not have to be a real favorable judgment to realize that much money out of it. The $1,070,000 was a counter offer that when the Judge asked that a counter offer be brought in and this offer was brought in; and under the Counsel's calculation she felt that this was the least the Counsel felt at that time the City could try to settle for. Councilman Shanks said that he did say if they came in with something less, that they would take a good hard look at it.

MR. WILSON said it would go without saying, that would be the process. He also wanted to say with reference to Mrs. Long's statement about the $5,000,000 that $5,000,000 would have been a fantastic recovery really beyond their expectations if they went to trial. As far as that figure is concerned, it is based entirely on an assumption that the jury believes all our witnesses and disbelieves all of their witnesses and finds no reason to discount anything. It is extremely unrealistic.

COUNCILMAN SHANKS said in speaking of the counter offer, he did not know what they were talking about on a counter offer. Mr. Wilson explained the $1,070,000 was the figure that he recommended that the City submit as a counter offer

MAYOR PALMER said one Council Member thought the City should get around $2,500,000; one thought $1,500,000 and Mr. Wilson's recommendation was $1,070,000 and he did not know if he heard any other figures from any of the rest. It looked as though, as far as the Council was concerned, they could not reach a decision as to what they would submit as a counter offer; and that is why Mr. Wilson was unable to submit one on that Friday.

COUNCILMAN WHITE wanted to say when those turbines were purchased, the Council thought they were getting a good deal, and would have always thought it had this not come up. This came up; and of course the Council all thought if there was any money in the pot, they naturally wanted it. They would like to have had a million dollars or two million dollars; but since the Council has had these Attorneys, as he had said before, he had confidence in them and he thought all the Council had confidence in them at the time. Since they have gone through all of this from top to bottom and have come back here and made their recommendation, he could not do anything else but accept it himself personally.

COUNCILMAN LONG said she wanted to make a statement: "In fact, I'll start way back. Once upon a time, long time ago, some little companies were started and they got along just fine and prospered. Finally they grew into larger companies and finally grew into corporations and made lots of money and became great and strong. Then they started...got so strong and power hungry and greedy that they started flaunting the law and breaking the Anti-trust law and sooner or later they were caught, which most people that break the law and think they can

get by with it are caught and brought to justice. The question was raised a-while ago about whether or not these people were guilty of the breaking of the Anti-trust laws here in the City of Austin. The very fact they settle these cases all over the country, or tried to, 80% of them so they say, and still trying to settle others is an admission that they feel that they were doing this not only in the East but all over the country and it is fairly well established I would think. Now, in the case here of Westinghouse, we started out with conferences. First we started out with the lawyers on the other side. They asked us if we would come in and talk to them and we said, 'Yes, we would.' So we went in and talked to them and they offered us around $250,000 if we would settle. They said 'we want to be fair to Austin, we love Austin and Austin is one of our preferred customers and we want to stay in this favorable position and we want to offer you this $250,000 for settlement.' Well, of course, at that time, the Council did not come to any conclusion. We didn't say yes or we didn't say no. But time went on and then we were called into another meeting and at that time they said 'now, this is our formula, we can't go above it. This is all we can do. This is the way we have settled with everybody else and we just want to treat all of our customers alike because we can't treat one any better although we do love Austin.' So then we were called back just a few weeks later and they said 'Well, we love Austin and we got to thinking about this and we thought maybe we might do a little bit better' and said, we jiggled this formula around (they didn't say that, but that's what they had done) and they came up with a figure $500,000. Well, that looked much better than the first $250,000. They just doubled their ante. Well, we went off and thought about that. Of course, we had our own lawyers, and were depending upon them to advise us; but then last week our own attorneys came to us or we went to them because we felt that these proceedings should be kept fairly quiet until we did come to some understanding of mind. We did not want to hurt our case by talking about it publicly. We thought we could. So last week we met with our attorneys and they said that they had been called in and the Judges in this conference with the Judges had told them that they wanted the City of Austin to tell them what we would settle for. We had made no counter-offer and we had been made an offer. We asked our lawyers what they would suggest and after much conference and talk and scaling around the figures, they came up with $1,070,000 that they thought would be a fair settlement. Now, we have 'dead cinch' of $850,000 that we saved on our transformer, I mean our turbine for the Holly Plant No. 1 and No. 2 between 1956 and 1960 which is certainly one of the best cases in the whole country you have saved $850,000 above the price that you had paid before. It was such a good case that our lawyers were in high glee and the other side was scared to death because they came in making offers of $500,000 after they couldn't get $250,000 settlement. But the Council went off to think about this $1,070,000. We couldn't get together. I felt that with this $850,000 if we took it to court as other things that we have concerned that if you got a judgment of the $850,000 which was just a cut and dried case, almost, that you would at least get $2,400,000 worth,...which were triple damages and I felt that the $1,070,000 was not enough to settle for in this case. Then, just about that time a little mystery dropped into this and a little plum that I'll not go into any further because I doubt if it ever comes to.. But then our lawyers went back over to San Antonio and last Friday and had this pre-trial discussion with the Judges. Now, I have a copy of that transcript and I think that what our lawyers tell us is certainly true. The Judges all but read them off, if you ask me and told them, in fact, in no uncertain terms that they were disappointed in them that they ought to settle for what these companies had told them they would settle for and just get on and get these cases out of the way. In fact, in one place the Judge said, 'I don't know, maybe the litigants' and that's talking about our attorneys, I mean, no 'litigants' all over the United States just don't have smart lawyers who don't know what it is all about are protecting the interest

of their stockholders or the public or whoever it is they are representing, but I find it awfully difficult in my mind to rationalize the attitude of the City of Austin and San Antonio, City of San Antonio and City of Austin in these cases. Now, to belittle our lawyers to say that they think they are smarter than the lawyers all over the country are just.... I was just shocked and amazed and I was also amazed that Judge Spears, Adrian Spears, made the statement that he thought these cases ought to be settled and that it seems to me he has prejudged these cases and the same thing with Judge Fisher. Judge Fisher took about the same attitude and although he said he hadn't gone into the case quite so much and also I think it ought to be a matter of public record that Judge Fisher is the brother-in-law of the .... one the law firms.... of the chief head of one of the law firms that is on the defendant side. I don't suppose that has anything to do with it, but I think it ought to be a matter of public record, and I do know that after these Judges got through with their little lesson, urging, or at least telling, our lawyers that they wanted them to settle these cases and that they weren't looking friendly upon going to trial. Then they finally came back and they were in a very good mood, according to this. Judge Fisher said, 'Now, I love to go to trial; I just love to try cases; and if you all want to try that, it is just fine' and was all very jolly, and said, 'I'm ready,' and I think that possibly he meant it and I think possibly he could be fair and I think after reading this transcript over maybe he might think he was a little unfair when he told our people they ought to go ahead and settle on the terms of Westinghouse and not on the terms of the City of Austin or on a compromise. He just said 'Take their terms, take it or leave it.' That was their attitude but I think now that if he reread this and could see that he was possibly a little strong and maybe prejudging this and thinking that all cases are the same. I think Austin's case is different. We bought these things in good faith and we find that we weren't actually buying. the prices were fixed. They were violating the anti-trust laws and whatever the courts should allow or would allow us would be triple damages under the law and I think it would be a mistake to accept the recommendation of our lawyers although I think they are in a very bad position, but I think if they went into court, the position would change. I think that our courts are there to be fair and hear both sides of the questions but when we have our courts come in and dictate a case before it is even gone to trial and say, 'We don't want you to go to trial', I think there is something wrong. I would like to go to trial just for the principle of it. I think there is a principle involved and I don't see how in the world the City can sit back and just let this thing go by default and I think that is what it is and, furthermore, I think we are losing a half million dollars at least.

COUNCILMAN SHANKS stated in view of what had been said on this, and the entire Council more or less throughout this entire litigation had always taken the position that it had competent attorneys; it had confidence in its attorneys; and it would more or less follow the advice of its attorneys.

MAYOR PALMER asked if there were any further statements to be made.

MR. WILSON said only to the effect the terms of the offer are such that the figures are subject to audit and it may be the actual money received might be more.

MAYOR PALMER asked if Mr. Wilson's recommendation was based solely on what happened at the pre-trial Friday in San Antonio, and the illusion to a little plum, and so on, has no bearing on your decision or judgment in one way or another as far as the settlement of the case is concerned? Mr. Wilson answered none whatsoever.

COUNCILMAN LONG inquired why is the settlement with WESTINGHOUSE 9% of the purchases, and the settlement with GENERAL ELECTRIC 10%. Do they not have about the same formulas? Mr. Wilson answered that they had similar formulas; but the price behavior has been different in different product lines and in the product lines in which you bought from General Electric there have been some general price changes; and under these circumstances, they resulted in slightly more from an overall percentage standpoint than from Westinghouse in which the principal product was turbine generators. Mr. Sher said book prices increased considerably after 1956; and went up until 1958, and then started down. If a purchase was made in 1957 or 1958 under the formula, you will get more than the purchases made in 1956.

COUNCILMAN LONG asked if in his testimony he didn't state that this 10% was not always the same? That in some cases it was as much as 12% to 17%, and the City was not getting that. Mr. Sher said had Austin purchased a turbine in 1958, at the top of the market, under either the General Electric or Westinghouse formula, it would get more refund now than it is getting; but it made this purchase in 1956. After this purchase by the City, there had been three separate book price increases. Councilman Long said, "you mean they fixed them up, up, up." Mr. Sher said, that was right. The City did not pay those prices, so those increases will not be gotten back.

COUNCILMAN SHANKS asked if he were satisfied with this 9 and 10%. Mr. Sher said he was.

Councilman Shanks moved that the Council accept the recommendation of our Attorneys and accept this settlement from Westinghouse Electric Corporation for not less than $544,216 and from General Electric Company for not less than $94,883. The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen Shanks, White, Mayor Palmer
Noes: Councilmen LaRue, Long

Councilman LaRue made the following statement:

> "I would like to state before my vote that after much discussion that has taken place here this morning and there are a lot of unknown factors as we all agree that I feel the only way we can determine what those unknown factors are and to evaluate those unknown factors is in Court, and I vote 'no'."

Councilman Long made the following statement concerning her vote:

> "On top of those unknown factors that were mentioned by Mr. LaRue, the question of the fairness of the Courts has been raised, and I think if we cannot expect these particular Judges to be fair, and it is shown that they are prejudiced, possibly we could get these cases transferred into another area. I vote 'no'."

Mayor Palmer made the following statement regarding his vote:

> "I do want to express as one member of the Council our sincere appreciation to our Attorneys. I do think they

have proceeded in processing this case vigorously and that they have looked after the best interest of the people of Austin, and I, for one, would like to state that I think I would have to go by their recommendation since they are so familiar with all the facts in the case; and for that reason I will accept the recommendation of our Attorneys and vote 'aye'."

COUNCILMAN SHANKS said he would like to have one more word; that whatever slander had been put against the Court had been done by individuals, and not by the Council.

Mr. Sher stated he would like to say a word.

COUNCILMAN LONG stated she would like to question the word "slander" and she did not think anybody had been slandered.

MR. SHER said he would not like to have silence be construed as acquiesence; that he for one, did not think there was anything wrong for a Court to indicate that it feels a case should be settled. It is done all the time, in this kind of litigation and every other kind of litigation where Judges try to get the litigants together. If it seems to be going in the direction that the Court thinks is not the right one, the Court so indicates. So the fact the Judges here indicated how they felt about it, he did not think it is improper at all. Of course all would have been happier had they said the City would have gotten more but the Judges told them what they thought. He did not think they are entitled to be criticized at all.

COUNCILMAN LONG said after they told Mr. Sher that he immediately decided to settle the case. Mr. Sher said any lawyer who did not pay any attention to what the trier of the facts indicates what his views are before the Court ruled against him would be unworthy. They had found out before the case got underway how the Judges felt and reported back to the Council.

MR. WILSON said he would like to echo the same sentiments and add that there was no question in his mind that the Judges concerned had acted in absolute honesty and integrity in this manner. They cast a tremendous burden on Judge Spears in this district by filing these suits and Judge Spears had labored and he had done an excellent job, and he has every aspect in the case both locally and the national level where he has participated in the handling of cases. Mr. Wilson said he did not think any lawyers, both in the plaintiffs' side and defendents' side would say that he acted in any manner other than judiciously and in the exercise as to what is now accepted as traditional function of the Courts. Like Mr. Sher, he would have been pleased had the Judge indicated the defendents were not offering enough. He said he could appreciate his point of view, and admired him as much now as he did before. He said he thought Judge Fisher was not in the case all during the pre-trial conferences. No doubt from the circumstances here that the view expressed by both represented considered, honest judgment of every Federal Judge who is working on these cases.

Councilman Shanks moved that the Council reaffirm its confidence in the Federal Judiciary. The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen LaRue, Long, Shanks, White, Mayor Palmer
Noes: None

Councilman Long made the following statement:

> "I have no reason to say that I have lost confidence in all of the Federal Judiciary, and I do not know why the vote was brought up. I am very disappointed in the Court that pressured our lawyers in saying, and making them think it was better to capitulate rather than take this to trial, but that does not mean that all of our courts are bad, and they are there for the good of the people of the country, and we have a great country, so I will vote 'yes' on that."

There being no further business Councilman Shanks moved that the Council adjourn. The motion, seconded by Councilman White, carried by the following vote:

Ayes: Councilmen LaRue, Long, Shanks, White, Mayor Palmer
Noes: None

The Council adjourned subject to the call of the Mayor.

APPROVED Lyndon B. Palmer
Mayor

ATTEST:
Edie Rowley
City Clerk