

Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The Council then adjourned.



REGULAR MEETING OF THE CITY COUNCIL:

Austin, Texas, June 21, 1923.

The Council was called to order by the Mayor. Roll call showed the following members present: Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; absent, none.

The Minutes of the last meeting were read and upon motion of Councilman Avery were adopted by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

Upon the recommendation of Capt. J. H. Rogers, Councilman Nolen nominated D. Hamilton as special policeman at Barton Springs. Nomination was confirmed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes and Searight, 4; naves, none, Councilman Nolen not voting.

The following communication from J. Bouldin Rector, City Attorney, was read and ordered, recorded, by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

" June 20, 1923.

Hon. Harry W. Nolen,

Superintendent Police & Public Safety,

Austin, Texas.

Dear Sir:

Complying with your instructions, I have prepared and am handing you herewith the drafts of two ordinances, which have for their purpose the revocation of the licenses of J. J. Hegman and C. W. A. MacCormack, respectively, to operate motion picture shows in Austin.

The City Charter requires the City Attorney to approve all ordinances, or in the event of his disapproval to file with the City Council his written objections thereto.

I am, therefore, addressing you with reference to the enclosed drafts, and will ask that you present this communication to the City Council at the proper time.

Complying with your instructions that I look into the law of this matter, I beg to advise you that I have found that the courts hold generally that a license confers no right or estate or vested interest, and that it would seem to follow that it is at all times revokable at the pleasure of the authority from which it emanates. It is a general rule that the grant of a privilege license, being a governmental power, may be withdrawn at the discretion of the legislature or of the municipality to which its authority is delegated. It is also a general rule that a licensee takes his license subject to such conditions as the legislature may see fit to impose, and that one of the conditions may be that such license can be revoked by the municipality at its pleasure or for cause.

Our city ordinances provide that the operators of motion picture shows must pay a certain license fee, and also that any license granted by the city may be revoked by the city council at any time upon the payment of the amount that may have been paid for such license after deducting the amount due on the time expired. The city charter contains the power to license and regulate motion picture shows. The general rule is that the power of a municipality to revoke licenses to carry on a business may arise from either express grant or from the

power to regulate or control; but when the power of revocation has been conferred, it can not be exercised in an unreasonable or arbitrary manner. It is also a general rule that a license is not revoked as a punishment, but in the exercise of the state's discretion, under its police powers, as to whether the person holding the license is properly qualified to continue in his profession or business. These are some of the general rules that I have learned in the study of this matter.

There is no doubt in my mind that a state of legislation can be created, beginning with sufficiently broad and explicit charter provisions and followed by ordinances containing conditions precedent to the issuance of the particular licenses and prescribing a procedure for their revocation in the event of the violation of such conditions, whereby the city would without question be in a position to revoke licenses issued by it. But I am not prepared to say without some question that the city at this time has the power, even under the terms of the ordinances expressing the right, to revoke without cause a license theretofore granted, although it might be contended that the general ordinance, having been in existence at the time that the licenses in question were issued, was read into such licenses, and that the right to revoke same was thereby reserved.

If it should be the fact that the right to revoke exists at all, but that same can be exercised only for cause, then the grounds that present themselves for the consideration of the city council are the repeated violations of the law by these licensees, each violation of which is a matter of court record, and which I have attempted to express in the enclosed drafts.

However, I am unable to determine with sufficient certainty to definitely advise you whether or not there is now contained in the City Charter in the delegation of power to license and regulate motion picture shows, in the language as expressed, also the implied power to revoke such licenses, and also whether or not the ordinances, providing that the city council may revoke at any time any license issued under the city ordinances, can be exercised and again, whether or not repeated violations of the law with reference to the operation of these motion picture shows, create sufficient grounds to revoke their licenses; and for these reasons, I am qualifying my approval of the enclosed drafts.

Very respectfully yours,

(Sgd) J. Bouldin Rector,

City Attorney."

Councilman Nolen introduced the following ordinance:

AN ORDINANCE TO REVOKE THE LICENSE OF QUEEN MOTION PICTURE SHOW, ISSUED TO J. J. HEGMAN, TO OPERATE A MOTION PICTURE SHOW, HERETOFORE ISSUED BY THE CITY OF AUSTIN, AND TO REFUND TO SAID QUEEN MOTION PICTURE SHOW AND TO SAID HEGMAN THE UNEARNED PART OF THE LICENSE FEE.

Councilman Haynes moved that action upon same be deferred until the next regular meeting on June 28th, 1923. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

Councilman Nolen introduced the following ordinance:

AN ORDINANCE TO REVOKE THE LICENSE OF MACCORMACK & COMPANY, ISSUED TO C. W. A. MACCORMACK, TO OPERATE A MOTION PICTURE SHOW, HERETOFORE ISSUED BY THE CITY OF AUSTIN, AND TO REFUND TO SAID MACCORMACK THE UNEARNED PART OF THE LICENSE FEE.

Councilman Haynes moved that action upon same be deferred until the next regular meeting on June 28th, 1923. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

AFTERNOON SESSION:

Councilman Avery moved that W. R. Canion be granted permission to haul sand from the City's property near the Disposal Plant at 10¢ per cubic yard so long as the same is satisfactory to the City Council. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

Bids for supplies for the City of Austin for the period beginning July 1st, and ending December 31, 1923, were opened and read.

The bid of C. B. Cook for ambulance service and coffins for white paupers was accepted as the lowest and best bid.

The bid of the Austin Statesman for newspaper printing at 4½¢ per agate line, upon motion of Councilman Haynes, was accepted as the lowest and best bid, by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The bid of N. W. Rhambo to furnish ambulance service and coffins for colored paupers was accepted as the lowest and best bid, by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

All bids for lumber, hardware and stock feed were rejected. All other bids were referred to the heads of various departments for comparisons and recommendations and report back to the Council.

The Council then recessed.

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, June 22, 1923.

The Council was called to order by the Mayor. Roll call showed the following members present; Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; absent, none.

H. F. Kuehne appeared before the Council in the interest of the Lake Austin Transportation Company. Councilman Avery moved that a contract be made with said Lake Austin Transportation Company on a basis of 2½% gross receipts for all purposes, same to expire March 1st, 1925. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The contract between the City of Austin and C. W. Moore and A. A. Mundt, Contractors, for concrete work in the settling basin at the city water plant was signed and ordered filed.

Councilman Nolen introduced the following ordinance:

AN ORDINANCE AMENDING AN ORDINANCE ENTITLED "AN ORDINANCE REGULATING THE SALE OF MILK AND CREAM IN THE CITY OF AUSTIN, AND PROVIDING PENALTIES FOR THE VIOLATION OF THE PROVISIONS THEREOF", PASSED BY THE CITY COUNCIL OF THE CITY OF AUSTIN ON NOVEMBER 3, 1916, AND RECORDED IN ORDINANCE BOOK F, PAGES 657 TO 662, BOTH INCLUSIVE.

The ordinance was read the first time and Councilman Avery moved that the rule be suspended and the ordinance be placed on its second reading. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The ordinance was read the second time and Councilman Avery moved that the rule be further suspended and the ordinance be placed on its third reading and final passage. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The ordinance was read the third time and Councilman Avery moved that same do now finally pass. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

Mayor Yett nominated W. D. Walker as Inspector of Dairies, Markets and Slaughter Houses, said appointment effective July 1st, 1923. Motion prevailed by the following vote: Ayes, Councilman Avery, Haynes, Nolen and Searight, 4; naves, none, Mayor Yett not voting.

The Council then adjourned.

Joey Forsythe
City Clerk