

REGULAR MEETING OF THE CITY COUNCIL:

Austin, Texas, May 25, 1922.

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

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

Councilman Copeland introduced the following ordinance:

AN ORDINANCE REGULATING TRAFFIC ON THE STREETS OF THE CITY OF AUSTIN, CUMULATIVE OF CERTAIN ORDINANCES HERETOFORE ORDAINED, REPEALING ALL ORDINANCES IN CONFLICT HERewith, AND PRESCRIBING PENALTIES.

The ordinance was read the first time and upon motion of Councilman Eyres the rule was suspended and the ordinance placed on its second reading, by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; naves, none.

The ordinance was read the second time and upon motion of Councilman Eyres the rule was suspended and the ordinance placed on its third reading and final passage, by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; naves, none.

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

The Council then recessed.

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, May 27, 1922.

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

The following written opinion of J. B. Rector, City Attorney, was read, and upon motion of Councilman Haynes was ordered recorded by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; naves, none.

"May 27, 1922.

The City Council,

Austin, Texas.

Gentlemen:

Replying to your inquiry as to whether or not the provisions of the city charter require that the city council shall submit to an election of the voters an ordinance proposed under the initiative provisions of the charter for the repeal of a tax levy theretofore made by the city council and the fixing of a different rate therein, you are advised as follows:-

On December 29, 1921, the city council passed an ordinance levying the tax rate for the current year. This action of the council embraced a levy of 95 cents on the hundred dollars valuation for the current expense of the city government.

On May 4, 1922, a petition was filed with the city clerk, requesting the city council to pass an ordinance, repealing the action of the council in making the levy for the previous year and making a new levy, which embraced a levy of 75 cents on the hundred dollar valuation for current expenses of the government. This petition was examined by the city clerk, and found to contain the requisite number of qualified voters as provided by the charter.

Thereupon, it became necessary for your body to determine its course in adopting either of the alternatives provided in the charter, that of passing the proposed ordinance without alteration, or submitting same to the popular vote.

Immediately after the tax rolls of 1921 had been finally approved by your body and you had passed the tax ordinance, the city collector began collecting taxes for the year 1921 at the rate fixed in your ordinance, and at the present time has collected over sixty-nine per cent of the total taxes shown on the 1921 rolls.

The charter requires that the city council shall in the beginning of each fiscal year make provision for the payment of interest and the creation, setting aside and preservation of a legal sinking fund upon all the outstanding legal indebtedness of the city, and make provision for the maintenance of the public school system in accordance with the law governing the public school system of the city, and shall then make such appropriations as the remaining revenues of the city may justify to be appropriated among the respective departments, or otherwise appropriated for public uses, as to the council may seem best. It is further required that these appropriations shall be based upon estimates submitted by the Mayor, and that the entire appropriations so made shall not exceed the estimated available resources, based upon the probable revenues of the city to be derived from ad valorem taxes and other sources.

The charter further requires that the city council shall at its second regular meeting in June of each year, or as soon thereafter as practicable, levy the annual tax for such year; but that the city council shall not have the power of repealing any tax levy after it has once finally passed same and after taxes have been partially collected thereunder.

The charter also provides that the citizens may propose and submit to the city council ordinances by petition signed by at least twenty-five per cent of the entire vote cast for Mayor at the last preceding general election, which petition shall set forth the proposed ordinance and contain a request that the same be enacted into law by the council; and if the petition is shown to contain the requisite number of voters, the city council shall either (a) pass the ordinance without alteration within ten days, or (b) submit the same to a popular vote.

It, therefore, becomes necessary, in determining whether or not the initiative provisions of the charter are operative in the proposed tax reduction, to consider particularly the provision of the charter which denies the power to the city council to repeal the tax levy after taxes have been collected thereunder. The initiative provision, if operative, would require the council to repeal its tax levy of 1921, or submit same to the popular vote. It is clear from the facts and the charter provision above quoted, that the council is prevented by express act of the legislature from exercising at least the first of the above alternatives, which if exercised would result in it repealing its former tax levy, and that the initiative provision in that particular must be imperative. The council would then have only the last alternative left, that of submitting the ordinance to popular vote, and in order to hold that the initiative provisions are operative at all we are confronted with the proposition that they can only be operative in the last alternative.

While the language of the charter is very broad in its provisions for direct legislation by the voters, yet it can not be denied that the powers of the electorate itself are prescribed by the limitations of the charter; and it seems after a careful consideration of the limitation against the council to repeal a tax levy after taxes have been collected thereunder, that same was intended by the legislature to be a general limitation on the powers of the city and would extend to the electorate as well.

A consideration of the decisions and dicta of the State and Federal Courts on this subject seems to be conclusive against the theory that the electors have the right under the initiative to exercise those powers which are peculiarly confided to the governing boards of the cities; and I find that it has been held in the cases of same charters with initiative provisions quite as broad as our charter, that there are some matters which cannot be submitted to the popular vote.

In view of the above quoted provisions of the charter, providing for the administration of the public funds, the creation of budgets to care for the same, the proper allocation of such funds to current as well as fixed debts of the city, which matters are by the charter peculiarly confided to the city council, as well as the express inhibition against the repeal of a tax levy, I do not believe that your body is bound by the action of the petitioners to submit the matters contained in the ordinance to a popular vote. It is my judgment that these matters are confided to the city council, because in the nature of things they can be more accurately passed upon, as they require methods of financing and accounting which cannot be done at the polls.

Therefore, I do not believe that when such matters come squarely before our courts, there will be given to the sweeping language of the initiative provisions of the charter such a construction as may hamper and embarrass the fiscal arrangements of the city, if not prevent it from carrying out the constitutional obligations it has incurred. I cannot imagine a court giving to the initiative provisions of the charter a construction which will lead to such mischievous consequences to the general government in its administration of the public funds.

Very truly yours,

(Sgd) J. Bouldin Rector, City Attorney."

The Mayor introduced the following resolution:

WHEREAS, on December 29, 1921, the City Council passed an ordinance fixing the tax levy for 1921 at Two Dollars and Twenty Cents (\$2.20) per one hundred dollars valuation of property; and

WHEREAS, on May 4th, 1922, a petition was filed with the City Clerk signed by the requisite number of qualified voters requesting the City Council to pass an ordinance repealing the action of the Council in making the levy for said year and making a new levy; and

WHEREAS, more than sixty-nine per centum of the taxes due under the levy of the City Council has already been collected and disbursed; and

WHEREAS, interminable confusion and disaster would result if the proposed ordinance to repeal said tax levy is passed, either by the City Council or by a vote of the people; and

WHEREAS, it is the opinion of the City Attorney that the City Council is without power to pass the proposed repealing ordinance, and that same is not a proper subject to be submitted to popular vote under the initiative provisions of the charter;

Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That said petition is declined and that the City Council hereby refuses to call an election thereon.

The above resolution was adopted by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; nays, none.

The application of C. W. Heath to erect shelving on north wall of building situated at corner of East 10th Street and Congress Avenue for display of books was read and upon motion of Councilman Haynes was declined by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; nays, none

The Council then recessed.

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, May 29, 1922.

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

Councilman Haynes introduced the following resolution:

Whereas, Mrs. S. M. Morley protested within the time prescribed against the valuation placed by the Board of Equalization on her property for taxes of 1921; and

Whereas, the Council by resolution of April 6, 1922, reduced the valuation of the Board \$1,000.00, of which action Mrs. Morley claims not to have received notice and therefore had delayed the payment of her taxes, on which in the meantime interest had accrued, amounting to \$5.73,

Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the Assessor and Collector be and he is hereby authorized to receive

the taxes on the assessments without interest and to take credit therefor.

The above resolution was adopted by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; nays, none.

Councilman Haynes introduced the following resolution:

Whereas, E. B. Robinson has made affidavit herewith attached that the improvements assessed on Lots Nos. 7, 8 and 10, Oakland Square Addition, being part of Outlot 78, Division "D", City of Austin, was not placed on said property until after January 1, 1921, and not, therefore, subject to taxation for said year,

Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the Assessor and Collector be and he is hereby instructed to strike out the assessment of said improvements on his rolls for taxes of 1921 and to take credit for amount of taxes.

The above resolution was adopted by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; nays, none.

The application of Walter Glover to operate as service car Ford #133900 was granted by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; nays, none.

The Council then recessed.

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, May 31, 1922.

The Council met with the following members present: Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; absent, none.

The communication of the Texas Radio Corporation, asking for permission to erect a radio station in the City of Austin, Texas, was read and upon motion of Councilman Eyres was referred to a committee composed of J. B. Rector, City Attorney, Bob Rockwood, Fire Marshal, C. E. Leonard, City Engineer, Walter Seaholm, City Electrician, and W. L. Eyres, Superintendent of the Water, Light and Power Department, by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; nays, none.

The Council then adjourned.

James H. Rector
City Clerk