

REGULAR MEETING OF THE CITY COUNCIL:

Austin, Texas, November 2, 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 meetings 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.

The communication of J. T. Hurt regarding his taxes for 1921 was read and Councilman Searight moved that same be referred to Councilman Haynes. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; naves, none.

The communication of Morton Filter Process Company was read and Councilman Haynes moved that the Mayor be instructed to reply, stating that the City would pay nothing for their demonstration, but would extend the time for said demonstration to November 15th, 1922, such demonstration to be at their expense. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; naves, none.

The application of Morris Levi to build a garage inside of the fire limits, upon motion of Councilman Haynes was referred to the Safety Committee, by the following vote: Ayes, Mayor Yett, Councilmen Copeland, Eyres, Haynes and Searight, 5; naves, none.

Councilman Haynes introduced the following resolution:

WHEREAS, Messrs. Stoner, Gallagher & Groos, Incorporated, have completed their contract with the City for installing the Unit System of taxation with proper blank forms and block maps for such work,

Therefore,

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

That the work be and is hereby officially accepted by the City and that the final payment of Five Hundred Dollars (\$500.00) due said company under this contract is hereby approved.

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

The monthly reports of the Public Health Nursing Association, Fred Sterzing, Assessor and Collector of Taxes and Mrs. R. C. Walker, Pure Food Inspector, were read and ordered filed.

The Council then recessed until 3:00 P. M.

AFTERNOON SESSION

The following opinion of J. B. Rector, City Attorney, was read:

"Austin, Texas, November 1, 1922

The City Council,

Austin, Texas.

Gentlemen:

Answering your inquiry as to whether or not the petition of certain citizens of Austin, recently submitted to your Body, requesting the passage

as an ordinance of the instrument set out in the petition, would operate as a mandate to you, if properly prepared and presented, to pass this instrument as an ordinance or submit same to the popular vote, you are advised as follows:

Article IX, Section 1 of the city charter provides that the citizens of Austin, by petition, may propose ordinances to the City Council; and if the formalities required by the charter in preparing and presenting the petition are complied with by the petitioners, the council is compelled to either pass the proposed ordinance or submit same to an election of the voters. This provision places in the electorate the power to initiate ordinances. It must be observed, however, that the language of the quoted section is limited to the term "ordinances", and it would therefore seem to be necessary to understand what is meant by the term, as judicially defined.

Local laws of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform and permanent rules of conduct, relating to the corporate affairs of the municipality, are defined as ordinances. Dillon's Mun. Corp. 4th Ed. #307; Citizens Gas & Min. Co. vs. Eddinsburg, 16 N. E. 624; Shattuck vs. Smuth, 69 N.W. 5; Mason vs. Shawneetown 77 Ill. 523; Bills vs. City of Goshen, 3 L. R. A. 261; State vs. Lee, 29 Minn. 445; Armatage vs. Fisher, 26 N. Y. Supp. 364; Vanderbeck vs. Ridgewood, 50 N. J. Law, 514; Kempner vs. Commonwealth, 40 Pa. 124; Campbell vs. Cincinnati, 49 Ohio 463; Tipton vs. Norman, 72 Mo. 380; and numerous other authorities.

An ordinance of a municipal corporation is a local law, and binds persons within the jurisdiction of the corporation. Railway vs. Lighthouse, 71 N. E. 218; Penn Co. vs. Stegomeier, 10 Am. St. Rep. 136; Stemmler vs. Borough of Madison, Ann. Cas. 1913D, 767; Kersey vs. Terre Haute, 161 Ind., 471; Taylor vs. Carondelet, 22 Mo. 105; New Iberia vs. Moss, 112 La. 525; Pearson vs. Wimbish, 124 Ga. 701; Indiana R. Co. vs. Calvert, 10 L.R.A. (n.s.) 780; and many other authorities.

Notwithstanding express power may exist to enact, an ordinance must provide a uniform rule of action; it must contain permanent legal provisions, operating generally and impartially; and its enforcement cannot be left to the will or unregulated discretion of the authorities, nor its observance to the mere will of persons within the corporate limits of the municipality. Yick Wo vs. Hopkins, 118 U. S. 356; Barthet vs. New Orleans, 24 Fed. 563; Bennett vs. Birmingham, 31 Penn, 15; State vs. Conlan, 65 Conn. 478; State vs. Heidenhain, 21 Am. St. Rep. 388; St. Louis vs Heitsburg P. & P. Co., 39 L. R. A. 551, Helena Vs. Dwyer, 64 Ark, 424; May vs. People, 27 Pac. 1010; Lake View vs. Letz, 44 Ill, 81; Richmond vs. Dudley, 129 Ind. 112; Crawford vs. Topeka, 51 Kan. 750; State vs. Morris, 47 La. Ann. Cas. 1660; Newton vs. Velger, 143 Mass, 598; Pieri vs. Shieldsboro, 42 Miss. 493; New York vs. Dry Dock R. Co., 133 N. Y. 104; State vs. Weber, 107 N. C. 962; and numerous other authorities.

The instrument proposed as an ordinance by the petitioners is a mere request to the charter commission to frame a charter embodying the city manager plan of government. The charter commission, once elected and organized, is an independent body and cannot be subjected to the mandates of the city council, or even of the electorate. Its functions are only to prepare and submit a charter to the voters, and it need not be controlled in that work by any expression from the voters.

If the city council should pass this instrument as an ordinance and present it to the charter commission, or if the voters should adopt same at an election, it would, in either event as its terms plainly show, go to the charter commission as a request only. It would have no more force with the charter commission than the individual members chose to give it.

Does then the instrument contained in the petition have any of the elements of an ordinance? Does it prescribe any rule of conduct relating to the corporate affairs of the city? Will it, if enacted, carry the force of a law of the city, with the power of penalties or forfeitures, if disobeyed? It must be apparent that the instrument submitted by the petitioners has none of these elements, and if these elements are lacking, it is not an ordinance, as same has been defined by the courts.

While the language of the charter provides for direct legislation by the electorate, yet it cannot be denied that the powers of the electorate itself are prescribed by the limitations of the city charter. The charter says that the electorate may act only through ordinances, and this term being expressed, it becomes a limitation on the electorate to act in any other way.

The instrument in question, containing none of the tests of an ordinance, even as that term has been used and applied in its broadest sense, it is my opinion that your Body is not bound by the action of the petitioners to do either of the things required by the charter in the matter of initiative ordinances.

If you should wish to accommodate the petitioners in their desire to ascertain the will of the electorate on the question of a city manager plan of government, for the information of the charter commission, you may call an election probably without legal interference, provided that no part of the public funds is used to pay the expenses of such election, but such election would have no other effect than to discover the desires of the voters who may vote at such election.

Very respectfully yours,

(Sgd) J. Bouldin Rector,

City Attorney. "

WHEREAS , certain citizens of Austin have presented to the City Council their petition to pass as an ordinance an instrument requesting the charter commission to frame a charter embodying the city manager plan of government; and

WHEREAS, it is the opinion of the City Attorney that said instrument does not contain the elements of an ordinance and that the City Council is not bound in such case to observe the requirements of the city charter to either pass said instrument as an ordinance or submit same to a vote of the people, Therefore,

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

That on account of the premises, the petition is hereby respectfully declined.

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

The Council then adjourned.

James H. Searight
City Clerk