

prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, and Searight, 4; naves, Councilman Nolen.

The Council then recessed.

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, July 2, 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.

Councilman Haynes moved that the Council reconsider the application of Morton Brown to excavate under the sidewalk at 2208 Guadalupe Street. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

Councilman Searight moved that said application be granted. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The following opinion of City Attorney, J. Bouldin Rector, in the matter of the recall petition of Commissioner Harry W. Nolen, Superintendent Police and Public Safety, was read and ordered recorded :

" Austin, Texas, July 2, 1923 "

The City Council,

Austin, Texas.

Gentlemen:

You have referred to me the petition for the recall of Hon. Harry W. Nolen, with instructions that I advise you whether or not same has been presented in compliance with law. This petition consists of fifty-three separate papers, each with an affidavit attached, and is purported to be signed by 1926 qualified voters.

The City Charter provides that the signatures in a recall petition need not all be appended to one paper, and that each signer shall add to his signature his place of residence, giving the street number; but it is required that one of the signers of each such paper shall make oath that the statements therein made are true as he believes, and in addition, that each signature to the paper appended is a genuine signature of the person whose name it purports to be.

I have examined the affidavit attached to each of these fifty-three papers. I find that to forty-nine of same the following affidavit is attached: "I (name of affiant), circulator of attached petition, being duly sworn, say that each of the signers of said petition is a qualified voter of the City of Austin, Travis County, Texas, and resides on the street at the number thereof set opposite each name respectively, as to the best of my knowledge and belief."

I also find that to four of said papers the following affidavit is attached: "I (name of affiant), one of the signers of the attached petition, being duly sworn, state that each of the signers of said petition stated that they were qualified voters in the City of Austin, Travis County, Texas, and resides at the street and number thereof set opposite each name respectively."

The charter requires that a signer of each paper shall swear that the statements therein made are true as he believes. This requirement certainly includes the grounds upon which the recall is demanded. None of the fifty-three affidavits comply with this requirement of the charter, as is shown by the above quotations.

The charter also requires that the person who makes the affidavit to a

particular paper shall be one of the signers of that particular paper. In most instances this has not been done.

The charter further requires that the person making the affidavit shall swear that each signature to the particular paper is a genuine signature of the person whose name it purports to be. In none of the fifty-three affidavits has this requirement been complied with.

The purpose of this last requirement is obvious. It is necessary that the genuineness of the signatures shall be tested in some way, and therefore, the legislature has required that some one make oath to that fact. It is not the duty nor should it be necessary for the City Clerk to determine the genuineness of these signatures. He is only required to ascertain whether or not the signatures presented are the names of qualified voters.

It is not required by the charter that the persons who made these affidavits should swear to the residence of the signers nor that they are qualified voters, although each of the affidavits contain an oath to such facts, and nothing more. On the contrary, the charter does require an oath that the statements made in said petition are true as affiant believes, and further that each signature is genuine. None of the affidavits contains either of these very essential requirements.

Therefore, it is my opinion that none of these papers constituting the petition is supported in any particular by the affidavit required by the charter.

Very respectfully yours,

(Sgd). J. Bouldin Rector,

City Attorney."

Mayor <sup>Yett</sup> moved that the said petition of Henry Radam and others, demanding the recall of Commissioner Harry W. Nolen, Superintendent of Police and Public Safety, be returned to Jno. E. Shelton, Esq., Attorney for said petitioners, together with a certified copy of the opinion of City Attorney J. Bouldin Rector attached, for the reasons as stated in said opinion.

The above motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; nays, none.

#### REGULAR MEETING OF THE CITY COUNCIL:

Austin, Texas, July 5, 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; nays, none.

The application of Sparks & Wear to erect an iron clad open shed was read and upon motion of Councilman Haynes same was referred to the Safety Committee by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; nays, none.

The application of the Lone Star Ice Company to erect an ice station at the corner of 28th and Guadalupe Streets was read and upon the recommendation of Councilman Avery same was referred to the Safety Committee by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; nays, none.

Upon the recommendation of J. H. Rogers, City Marshal, Councilman Nolen nominated L. D. McClain as police officer to succeed J. B. Piper resigned. Nomination was confirmed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes and Searight, 4; nays, none, Councilman Nolen not voting.

Upon the recommendation of J. H. Rogers, City Marshal, Councilman Nolen nominated

J. T. Martin as special policeman with duties as watchman at the State University. Nomination was confirmed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes and Searight, 4; naves, none, Councilman Nolen present but not voting.

The Council then recessed.

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, July 10, 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.

Councilman Searight introduced the following resolution:

WHEREAS, Oscar Thoresen is the owner of Lots 4 and 19, and Mrs. Marie Hehl is the owner of Lots 1, 2, 3 and 4, in Oakwood Subdivision, a part of Outlots No. 72 and 75, in Division "D" of the City of Austin, Travis County, Texas, according to plat of said Subdivision, of record in the office of the County Clerk of Travis County, Texas, in Plat Book No. 2, at page 148; and

WHEREAS, it is shown on the plat of said Subdivision that there is a short alley between said Lots 1, 2, 3 and 4 on the north and said Lot 19 on the south, extending from Oakwood Avenue or North San Gabriel Street eastwardly for the distance of said alley to an intersecting alley, which runs north and south; but said first named alley has never been actually used by the public since same was dedicated for such use; and

WHEREAS, said Oscar Thoresen and said Marie Hahl have petitioned the City Council to close said alley between said lots; and it is shown to the City Council that they are the owners of all the property abutting on said alley in said block, and that a closure of said alley will not affect the public convenience, therefore,

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

That the dedication of the certain alley, as described in the preamble of this resolution, is refused by the City of Austin, and said certain alley be and the same is hereby perpetually closed and vacated.

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

The application of the Magnolia Petroleum Company to install an underground storage tank and pump at the southeast corner of Red River and East 11th Street was read and Councilman Haynes moved that same be granted as recommended by the Safety Committee. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The Council then adjourned.

*James Searight*  
City Clerk