

## REGULAR MEETING OF THE CITY COUNCIL:

Austin, Texas, February 11, 1926.

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 application of G. H. Park to use part of 13th Street at 13th and Congress Avenue was read and referred to Geo. P. Searight, Street Commissioner, by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen, and Searight, 5; naves, none.

The application of D. S. Pardue for permission to install a gasoline tank at 1107 Red River Street, together with the Committee's report upon same, was read and Councilman Avery moved that same be granted as recommended. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The application of J. A. Beck to erect a gasoline filling station at 803 $\frac{1}{2}$  East 23rd Street, together with the Committee's report upon same, was read and Councilman Avery moved that same be granted as recommended. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Avery, Haynes, Nolen and Searight, 5; naves, none.

The Mayor introduced his budget for the year 1926 and same was laid on the table for one week.

A committee composed of Tom Davis and others, appeared before the Council and asked that the date for the election of city officials be fixed for the first Tuesday in April, 1926.

Councilman Nolen introduced the following resolution:

WHEREAS, on August 9, 1924, the qualified voters of the City of Austin amended the Charter by repealing the provisions then existing in said Charter, relating to elective officers and the elections of such officers, and by providing, in lieu thereof, that five Councilmen shall be elected, and that the first election thereof shall be held on the first Monday in February, 1925; and

WHEREAS, the City Council, by majority vote, refused to call said election as provided in said Amendment, which action resulted in a mandamus suit against the City Council, which suit has been finally decided by the Supreme Court of the State of Texas; and

WHEREAS, the Supreme Court held, in its opinion in said case, that while the date named in said amendment for the holding of said first election was a void date, nevertheless, "it would be against common sense to say that the people in enacting this amendment intended that unless the election could be held on February 2, 1925, then there should be no change in the City Government, and the new plan of government should fail"; and

WHEREAS, the Supreme Court further held that "it is apparent from the Amendments that the Election of New Councilmen, different in number, with different and more limited duties, was the substance of the Election, and not the void date named"; and

WHEREAS, the Supreme Court further held that the date of a city election is merely a feature of said election, and that the City Council had the power under the Charter to provide any feature of a city election where there had been a

failure to provide name in the Charter, and that "the omission shall be supplied and the election held"; and

WHEREAS, the Supreme Court further held that "it is the duty of the City Council, in compliance with the terms of the Amendment and other relevant portions of the Charter, to call an election, to be held at a date fixed by the Council consistent with the general laws of the State"; and

WHEREAS, the question as to whether or not the City Council should call an election for the purpose of electing five Councilmen, as provided by said Amendments, has been clearly and distinctly decided by the Supreme Court, in its holding that it became the duty of the Council to call such election and that the Council should fix a date for the holding thereof; therefore,

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

THAT, in conformance with the requirements of the Charter and Amendments and the views announced thereon by the Supreme Court, it is the sense of the City Council that an election be held in the City of Austin on the 6th day of April, A. D. 1926, for the purpose of electing five Councilmen to serve until May 1, 1927, and that the City Attorney be instructed to draw an ordinance to this effect, and present same to the City Council for passage at the next regular meeting hereof.

Councilman Haynes moved that the resolution be laid on the table until November 16, 1926, to be acted upon on that date. Motion prevailed by the following vote: Ayes, Mayor Yett, Councilmen Haynes and Searight, 3; naves, Councilmen Avery and Nolen, 2.

The Council then recessed.

**SPECIAL MEETING OF THE CITY COUNCIL:**

Austin, Texas, February 16, 1926.

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 Nolen withdrew his resolution presented to the City Council on February 11th, 1926, asking that the City Council fix a date of election for city officials for the first Tuesday in April, 1926,

Mayor Yett introduced the following resolution:

WHEREAS, Chas. B. Cook has lost his mandamus suit against the Mayor and Councilmen of the City of Austin by judgment of the Supreme Court dismissing said suit and awarding all costs against him; and

WHEREAS, such final dismissal of said suit relieves the Mayor and City Council of the restraints imposed upon them by the writs of mandamus, which were suspended by the Supreme Court and have now been quashed and dismissed, and leaves us free to exercise in a proper manner of our own accord the discretion vested in us by law; and

WHEREAS, it is now our duty to call an election within a reasonable time for the election of members of the City Council of Austin, Texas; and

WHEREAS, the Supreme Court in the recent case decided against