

Regular meeting of the City Council, Austin, Texas Sept 15th 1909.

Hon A P Wooldridge, Mayor Presiding: Roll called:

Present Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5

Absent None.

The minutes of the last regular and adjourned meetings were read and approved.

On the suggestion of Mayor Wooldridge, Prof McCallum of the City Public Schools was invited to read a petition, and make such suggestions in regard thereto, a petition from the Board of School Trustees requesting the Council to pass an ordinance forbidding the sale of candies, tamales, Chili, etc by street vendors within two blocks of Public School buildings when schools are in session. On motion the petition was referred to Councilman Hart, Prof Mc Callum, Dr Matthews, President of the Board of Health, and the City Attorney, to frame and submit an ordinance covering the matters suggested in the petition, and report the same to the Council for their action.

#### Reports of City Officers:

The Mayor laid before the Council the reports of the City Treasurer, the City Engineer, & the City Assessor and Collector, which were read and ordered filed.

by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5

Nays none.

The City Attorney submitted the following report and opinion.

Austin, Texas, Sept 15th 1909.

The Honorable City Council, Austin, Texas.

Gentlemen:

On March 23, 1909, the City Council enacted an ordinance, appropriating the sum of \$ 6,500.00 out of the General fund in the City treasury, for the purpose of paying said amount over to the City School Board, to be used by that body for the building of school buildings. This ordinance provided that said amount should not be collected by the School Board until July 1, 1909.

It, therefore, became your duty to inquire into the legality of this act of the former Council, in view of the fact that the payment of said amount would necessarily be made during your administration. You have, therefore, referred the question to me as to whether or not the City Council had the power by ordinance to appropriate money out of the General fund of the City for the purpose of erecting school buildings.

In August, 1880, the City of Austin, under the authority of the Constitution and general laws relating to the creation of independent school districts, assumed control of the Public Free Schools within its limits. By this act, the City of Austin became an independent school district, subject to all the provisions of the general laws, in so far as same were applicable. The City Charter, enacted February 3, 1909, provides that all laws in force at the time of its enactment pertaining to the public free schools shall be retained in full force and effect, and said schools shall be continued, managed and controlled, as heretofore.

The general laws pertaining to this subject provides that in all Cities which have assumed exclusive control and management of the public free schools within their limits, and which have determined that such exclusive control and management shall be in a board of trustees, the title to all houses and other property owned,

*Petition School Board  
to forbid sale of candies,  
Tamales, etc near Public  
School buildings*

*Report City Officers*

*Opinion of City Attorney,  
in regard to ordinance  
passed by School Board*

. held, set apart, or in any other way dedicated to the use and benefit of said schools, shall be vested in a board of trustees, in trust for the use and benefit of such free schools, and such board shall have and exercise the exclusive control and management of such school property, and shall have and exercise the exclusive possession thereof for said purposes. These laws constitute such board of trustees a body corporate, with full power to protect the title and use of such properties. The City of Austin by its act above referred to, determined that the exclusive control and management of the public free schools within its limits shall be in a board of trustees.

In determining whether or not the City Council can legally appropriate money from the General fund of the City for the purpose in question, the powers granted the City of Austin in its charter must be scrutinized. It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise only those powers granted it in express words, or those necessarily or fairly implied in or incidental to the powers expressly granted, or again, those essential to the declared objects and purposes of the corporation. Article XII, Section 2, subsection 1, of the charter, provides that an annual tax not exceeding 1 percent shall be levied and collected, the money raised by said taxes to be used for current expenses and for general improvement of the City and its property, and at least one-fourth thereof shall be set apart and devoted to the improvement of streets and building of bridges; and a part of said general revenue may be appropriated for paying the City's obligations heretofore made for the purchase of a water, light and power plant. The certain fund which accrues from the taxing power derived from this provision of the charter, is the fund from which the former City Council has sought to make the appropriation for school purposes. In addition to this, in subsection 2, of said article and section, it is provided that a tax may be levied and collected, to raise such further amount as may be necessary for the support and maintenance of the public schools, within certain limitations. The provisions just quoted are the only provisions contained in the charter that bear on this question. We must, therefore, look to the powers granted in these two sections, applying to them the well recognized rules of construction, and to the general laws where applicable, in arriving at our determination.

We have authority for stating that educational institutions are not regarded as as necessarily belonging to municipal government, and the support of public schools is not necessarily a matter germane to a municipal organization. (See *Cleveland School Furniture Co vs City of Greenville*, 41 Southern, 862; *Wolf vs Taylor*, 13 Southern, 588, and numerous authorities cited in *Century Digest*, under these cases.)

By the general law the public school system in this City is managed by a corporation, separate and distinct from the municipality. In this body is vested the title to all school property. The schools are supported and maintained by a special tax levied for that purpose, by virtue of the express power granted by charter. The General fund of the City is used for current expenses and for the general improvement of the City

and its property, and for other specially enumerated purposes, no one of which expressly or inferentially relates to school purposes. Should the City Treasurer pay to the School Board the money which has been appropriated for the purpose of building school buildings, it immediately passes beyond the control of the City, and passes into property, the title of which is by law in another corporation than the municipality.

I am, therefore, of the opinion that the City Council that made this appropriation was without authority in law to do so, and that to employ the money thus appropriated for the purpose stated in the ordinance, would be a diversion of municipal funds.

Very truly yours ,

J Bouldin Rector , City Attorney .

On motion the opinion was received and filed, by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

The City Attorney submitted the following opinion:

Austin, Texas, Sep 16, 1909.

Hon D B Gracy, Supt. of Receipts, Disbursements and Accounts, Austin, Texas.

Dear Sir:

I have the honor to acknowledge the receipt of your inquiry as to whether or not the laws of the State of Texas, prescribing and governing fees of Officers in State and County Tax suits would apply to and govern the costs and fees of Officers in tax suits brought by the City of Austin.

Your attention is called to Article XIV, Section 8, of the charter of the City of Austin, which reads as follows :

" The laws of the State of Texas, prescribing and governing costs and fees of Officers of Court in State and County tax suits, shall apply to and govern suits brought by the City of Austin ."

The Charter was enacted on February 3, 1909, and carried with it the emergency clause and therefore became effective on that date.

You are advised that in my opinion that the laws prescribing and governing costs and fees of Officers in County and State tax suits must be held to apply to and govern in all things the costs and fees of officers in suits brought by the City, from and after the date that the charter became effective, whether such suits were pending at the time said charter became effective or have been subsequently filed. The amount of costs allowed to Officers in civil suits is determined by the law in force at the time the judgement is rendered, regardless of whether or not such law was enacted after the commencement of said suits. The right to costs is purely incidental, and depends on the state of the law when the suit is determined. Until judgement is pronounced, the right to costs does not become vested.

This seems to be the uniform holding of the Courts upon the question. Please see Raden vs Southeasterly road district, 36 New Jersey law, 273.; Gardenshire vs Sheldrick et al, 33 Tennessee, 83, Taylor vs Keeler, 30 Connecticut, 324.

Yours truly ,

J Bouldin Rector, City Attorney .

On motion the opinion was ordered filed, by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

*Opinion of City Attorney  
on fees or costs of officers  
in tax suits in the City*

## Unfinished business :

*upbra Street work  
San Antonio street*

The Mayor laid before the Council an ordinance appropriating the sum of \$ 50.00 for the purpose of paying for street work on San Antonio street. The Ordinance was read the third time and passed by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

*upbra for Nordberg  
Pump*

The Mayor laid before the Council an ordinance appropriating the sum of \$ 5,705.35 for the purpose of paying balance due on the Nordberg Pump. The ordinance was read the third time and passed by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

## New business:

Councilman Gracy offered the following resolution,

Whereas, it has come to the attention of the City Council of the City of Austin that there is now held by the Sheriff of Travis County certain monies collected by him in tax suits brought by the City against numerous parties;

Therefore, be it resolved by the City Council of the City of Austin,

That the City Attorney be instructed to request the Sheriff of Travis County to pay into the treasury of the City of Austin at once all moneys due the City by virtue of any collections of taxes and judgements in said suits, and to submit to the City Council as soon as practicable an itemized bill of his costs in all City tax suits, in order that same may be acted upon by the Council.

The resolution was adopted by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

By Councilman Hart an ordinance to regulate the running of Automobiles and motor vehicles, within the corporate limits of the City of Austin, etc.

The ordinance was read the first time and laid on the table, subject to call.

Mayor Wooldridge offered the following resolution:

Whereas there is an uncertainty in the Charter of this City as to the Councilman upon whom devolves the lighting of our streets, and whereas it is important to remove this uncertainty, and whereas it would appear reasonable and proper that the head of the Department furnishing light should also see to its proper distribution.

Therefore, be it resolved by the City Council of the City of Austin, that the Superintendent of the Department of Parks and Public Property be and he is hereby charged with the duty of lighting the streets of this City .

The resolution was adopted by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

Mayor Wooldridge offered the following resolution :

*City Attorney directed  
to request Sheriff Brown  
to pay monies  
collected by him for the  
City in tax suits, etc.*

*Automobile Ordinance*

*Resolution designating  
the Super of Parks & Public  
Property as the proper  
person to have charge  
of street lighting*

*Whereas there is some uncertainty in the Charter of this City, as to which of the Councilmen has proper charge of, and supervision over the Fire Halls of this City, and whereas, it is desirable to remove this uncertainty, and whereas, it seems to be the reasonable and proper thing that the Superintendent of the Department of Police and Public Safety, who has, by the charter, a general supervision over the Fire Department, its administration and other properties, should also have the charge of and supervision over the Fire Halls.*

.Whereas there is some uncertainty in the Charter of this City, as to which of the Councilmen has proper charge of, and supervision over the Fire Halls of this City, and whereas, it is desirable to remove this uncertainty, and whereas, it seems to be the reasonable and proper thing that the Superintendent of the Department of Police and Public Safety, who has, by the charter, a general supervision over the Fire Department, its administration and other properties, should also have the charge of and supervision over the Fire Halls.

Therefore, be it resolved by the City Council of the City of Austin, that the charge of and supervision over all of the Fire Halls of the City of Austin be and the same is hereby placed with the Superintendent of Police and Public Safety. The resolution was adopted by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

On motion the Council recessed until 3 O'clock P M, this day.

Austin, Sept 16th 1909., 3 P M

The Council was called to order by the Mayor, with all members present. The Mayor laid before the Council the following petition, viz:

Austin, Texas, September 16th 1909.

To the Hon Commissioners of the City of Austin:

I hereby request permission of the City Commission to connect the small two story building on the rear end of Lot No 1 Block No 98, on alley adjoining the Colorado Fire Hall, with the sewer running north through said alley to the mains of the Austin Sewerage Company on West 9th street.

Mrs M S Pendexter,

By Geo E Shelley, Her Agent.

On motion the petition was laid over for further investigation.

The Mayor laid before the Council the following resolution, viz:

Be it resolved by the City Council of the City of Austin, that a cordial invitation be and is hereby extended to the American Association of Traveling Passenger Agents to hold their annual Convention for the year Nineteen hundred and ten ( 1910 ) in the State of Texas.

The resolution was adopted by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

On motion the Council recessed subject to call of the Mayor.

Friday Sept 17th 1909.

The Council was called to order by the Mayor, with all members present. The Mayor laid before the Council the following resolution :

Be it resolved that the petition of Mrs M S Pendexter for permission to connect the two story building on the rear end of Lot No 1, in Block No 98, of the City of Austin, with the private sewer main owned by the City of Austin and located in the alley running through said Block No 98 from 8th street to ninth street: upon conditions however, that said Mrs Pendexter pay to the City the sum of \$ 12.50 in cash before said connection is made, be and the same is hereby granted.

The resolution was adopted by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5  
Nays none.

*Mrs Pendexter on permission to connect with sewer*

*American Association of Traveling Passenger Agents invited to hold annual Convention in Austin*

*Mrs Pendexter petitioned to connect building with sewer*

. On a tion the Council recessed subject to call of the Mayor.

Saturday September 18th 1909.

The Council was called to order by the Mayor, with all members present

The Mayor laid before the Council the petition of the Austin Dam and suburban R R Co for permission to lay a track across Bowie street and West Avenue in the City of Austin, and offered the following resolution:

Resolved by the City Council of the City of Austin:

The the petition of the Austin Dam and suburban Railway Company to lay an additional track over and across Bowie street in said City about fifty ( 50 ) feet north of 3rd street, and to lay a track over and across West Avenue at or near its intersection with 4th street in the City of Austin, be and the same is hereby laid upon the table, for the reasons that under the advice of the City Attorney of this City, and in the opinion of this Council it, ( the Council ) has no jurisdiction over the subject matter of said petition.

The resolution was adopted by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5

Nays none.

On motion the Council adjourned .

*J. W. Johnson*  
City Clerk.

*Petition Austin Dam  
Suburban R R Co  
to lay tracks refused*