

That said lots 9 to 14, both inclusive, and 20 to 24, both inclusive, in Block 10, Outlots 15, 16 and 17, Division "D" in the City of Austin be and the same are hereby declared exempt from taxation by the City of Austin for the year 1919, and the City Assessor and Collector be and he is hereby instructed to strike same from the tax rolls of the City; but it is not intended by this resolution to declare as exempt from taxation Lots 1 to 6, both inclusive, and Lots 27 to 32, both inclusive, in said Block and Outlots, same being declared to be taxable by the City of Austin, and the action of the City Assessor and Collector in assessing same for taxes is hereby approved.

The above substitute resolution was defeated by the following vote: Nays, Mayor Yett, Councilmen Alford, Graham and Ward, 4; ayes, Councilman Haynes:

A vote was then taken on the original resolution, which resolution was adopted by the following vote: Ayes, Mayor Yett, Councilmen Alford, Graham, and Ward, 4; nays, Councilman Haynes.

The Council then recessed.

SPECIAL MEETING OF THE CITY COUNCIL:

Austin, Texas, January 14, 1920.

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

J. Bouldin Rector, City Attorney, appeared before the Council and rendered his opinion on the referendum petition referred to him at the last regular meeting of the City Council on January 8th.

Councilman Haynes moved that the opinion of the City Attorney be received, recorded and filed in connection with the referendum petition without prejudice. Motion carried by the following vote: Ayes, Mayor Yett, Councilmen Alford, Graham, Haynes and Ward, 5; nays, none.

"Austin, Texas, January 14, 1920.

City Council,
Austin, Texas.

Gentlemen:

I have the honor to return herewith the petition of certain parties to the City Council, which is headed as follows:

"We, the undersigned qualified voters of the City of Austin, respectfully request that you submit to the qualified voters of the City of Austin at a special election called for that purpose, the reconsideration and repeal of an ordinance duly passed by the Council on or about the 5th day of June, A. D. 1919, providing and fixing the rates for sewerage in the City of Austin, and that no rental be collected for such service until the result of such election is determined."

Mr. D. H. Doom, who presented this petition on behalf of its signers, stated to the City Council that same was intended as a referendum petition. If this petition complies with the City Charter governing its initiative or referendum provisions, then same will have the effect of a mandate to the City Council; therefore, you have submitted said petition to me for my opinion as to its legal sufficiency as such.

Article X, Section 1 of the City Charter provides that no ordinance passed by the City Council shall go into effect before the expiration of

*Division of J.B. Rector
P. J. Rector*

ten days from the time of its final passage, with certain exceptions named in said section; and further provides that if during said ten days, a petition, signed by twenty-five per cent of the vote cast for Mayor in the last preceding general election, protesting against the passage of said ordinance, shall be presented to the Council, said ordinance shall thereupon be suspended from going into effect, and it shall be the duty of the City Council to reconsider such ordinance, and if the same is not entirely repealed the Council shall submit the ordinance to a vote of the people, as provided in the Article of the charter relating to initiative ordinances and hereinafter referred to.

The ordinance sought by the petition to be reconsidered and repealed was passed by the City Council on June 5, 1919. The petition in question was filed with the City Council on January 8, 1920. Thus it becomes obvious that the ten day period provided for in Article X, Section 1, of the charter, above referred to, in which time a petition shall be presented to require the Council to reconsider or repeal said ordinance or submit same to a vote of the people, has long since expired; and therefore the petition in question can have no effect as a referendum petition.

Therefore, it must follow that if the petition in question has any legal force at all under the charter, it must be considered as proposing an initiative ordinance. Article IX, Section 1 of the charter provides that the citizens of the City of Austin may propose and submit to the City Council ordinances in the following manner: By petition signed by at least twenty-five per cent of the entire vote cast for Mayor at the last preceding general election, and further requires that such petition shall "set forth" the proposed ordinance and contain a request that the same be enacted into law by the Council. This Section further provides, if the petition be shown to be sufficient by the certificate of the City Clerk, the Council shall either pass the ordinance "set out" in said petition without alteration within ten days after the date of the Clerk's certificate of sufficiency thereof, or submit said ordinance to a vote of the qualified voters at an election to be called for that purpose, and that such ordinance shall be submitted without alteration of any kind.

The above provisions of the Charter are the only provisions that are found to be pertinent to this inquiry, and in passing upon the legal sufficiency and force of the petition in question, either as an initiative or referendum proceeding, we are confined to the provisions contained in the two articles and sections above enumerated.

Summarizing, it will be noted that a referendum petition must be filed within ten days, after the passage of the ordinance sought to be reconsidered or repealed, in order to have any binding force on the City Council; and that an initiative petition must set forth the proposed ordinance and contain a request that same be enacted into law, before same can operate as a mandate to the City Council.

It would seem that the term "set forth", contained in the section of the charter governing initiative petitions in requiring that same shall set forth the ordinance proposed, has the plain meaning that such petition should contain the terms of the ordinance proposed, and this meaning becomes more obvious when it is required later in said section that the

Council must either pass the ordinance set out in said petition without alteration or submit same to an election without alteration of any kind. Thus, in the initiative proceeding nothing is left for the City Council to do except to obey the mandate of the petition by either passing same or submit same to a popular vote.

But I have undertaken to find if the term "set forth" has been construed by the Courts. I find that in *Seibe vs. Engelhardt* 78 Ala. 508, the term "set forth", as appearing in the Alabama general code, was construed to mean placing or putting the exact terms and items in a place to be seen or viewed. It has also been held in *Buffalo Forge Co. vs. Cleveland Steam Fitting & Supply Co.* 82 Ohio, 199, 92, N. E. 240, in construing a statute of that State providing that a copy of the act must be set forth in an action founded upon such act, the term "set forth" is held to mean the placing or putting of a copy in the proper place. These are the only two decisions that I have been able to find which construe the term "set forth", as found in the City Charter. But court authority is not needed upon a full reading of the entire section, to indicate that the City Council can do nothing in an initiative proceeding but pass the ordinance submitted or offer same to a popular vote.

Now adverting to the petition in question, since said petition was not filed within ten days after the passage of the ordinance sought to be reconsidered and repealed, it cannot have the status of a referendum petition, but if same has any binding force at all on the City Council it must be under the provisions of the charter relating to initiative ordinances. Limiting same to this consideration, it will be seen that the petition in question has failed to propose any ordinance to the City Council, much less set forth such ordinance for the Council's or the people's action; and since the City Council is not compelled under the terms of the charter to initiate any ordinance, that being the prerogative of the people, and since the City Council is not compelled by petition to repeal or refer any ordinance already passed by it after the expiration of ten days after such passage, it is my opinion that the petition in question wholly fails to have the legal aspects and binding force of either a referendum or initiative petition, and becomes a mere petition addressed to the City Council for such relief as your body may see fit to give.

It is not the purpose of this opinion to suggest a policy for the Council to pursue, nor to touch upon the principle that might be involved in this matter. If the Council chooses, it may under the present circumstances, submit the matter of a repeal of sewer rentals to a vote of the people, but such action would result merely in a straw vote, and the action of the people at such election would not result in the enactment of any law, nor could the city funds be lawfully used in defraying the expenses of such an election.

Respectfully yours,

(Sgd) J. Bouldin Rector,

City Attorney.

Attest: Jacob Hornsby
City Clerk