

City Council Rooms,  
Austin, May 6<sup>th</sup> 1872.

The City Council met at its regular Meeting.  
His Honor the Mayor in the Chair.  
The Roll being called, the following Alderman  
answered to their names:

Alderman: W. Brueggerhoff, S. Medina  
J. H. Robinson, H. Madison,  
E. M. Wheelock.

Absent: Alderman: J. L. Bucas.

Report of City Sexton was read and referred  
to Cemetery Committee.

Report of City Attorney.

Austin Texas, April 25<sup>th</sup> 1872.

To the City Council of the City of Austin.  
Gentlemen!

In pursuance of the resolution passed  
at your regular meeting, I have made an  
investigation as to the authority of the  
City, to dispose of Lots dedicated to the  
use of the Public.

Directly bearing upon the point in issue  
or exactly analogous thereto, I find in our  
own Texas Reports three cases, to wit:

Lewis vs. San Antonio.	47. 7. 320.
San Antonio vs. Lewis.	15. 392.
Galveston vs. Menard.	23. 357.

and also one case in the United States Re-  
ports 10. Peters 730. -

In the above cases the Land Law  
is enunciated to be: That property which  
has been dedicated to public use, is with-  
drawn from commerce, and vested in  
the public, and can not become the pro-  
perty of any individual.

The justice and wisdom of the pol-  
icy of such a law is conceived to be be-  
yond question. It is just to the man

who purchases property in our midst and to every citizen, who constitutes one of the public, that the rights which accrue to him by reason of his purchase & citizenship, with reference to public dedications, shall remain inviolate, and it is wise, that this dedications shall be perpetual and not a subject of defeat by constituted authorities - for, to grant that the city has in it such power, as to dispose of this property at will, then the city has in it such title as can be sold under execution of a creditor and the proceeds of the sale appropriated to the individual benefit of one man.

Respectfully submitted

E. S. Moore

City Attorney

Opinion of G. Davis,

On the powers of the City of Tustin and other Municipal Corporations, to Alienate in Fee Simple, Squares, Plazas, Avenues and other Public Grounds within their Corporate Limits, which have been dedicated to the Use of the Public, by the State.

A municipal corporation has the authority to make by-laws or private statutes, for the better government of the corporation; which are binding upon themselves, unless contrary to the laws of the land, in which case they are void.

1<sup>st</sup> Blackstone sec. 476.

Such institutions are auxiliaries of the State government in the important business of municipal rule, and cannot have the least pretensions to sustain their privileges or their existence upon any thing like a contract between them and the legislature: because there can be no reciprocity of stipulating and because their objects and duties are incompatible with every thing of the nature of compact.

Angell v. Ames on corporation sec. 31.

Lands having been dedicated to public use, are withdrawn from commerce, and so long as they continue to be thus used, can not become the property of any individual.

L. i. B. j. Tit. 16. Novissima Recopilacion. And it is not competent for the local authorities to sell land so dedicated to public use.

10. Peters 734.

The authorities of a municipal corporation hold the title to Streets &c. in trust for the public use and cannot convey them or grant leaseholds upon them except in the execution of that trust.

Milham v. Sharp 15. Bab.

(N. Y.) 193: | *Plummesant vs Pearall* Id 244:

*Giltner vs Trustees of Carrollton* 7. D. Morr. 680.

"The Mayor and City Council have power within the city by ordinance to prevent and remove all encroachments in and upon all streets, lanes, avenues and alleys, established by law or ordinance"

Sec. 40. Art 8. City charter, as amended by act approved October 27th, 1866.

I think it is plainly shown by the above and the following authorities, that an act of the legislature incorporating a City or Town, conveys to that City or Town, a right of use only, to all streets and other public grounds, and not a title in fee. If it did, then the City of Austin has in it such title to these public grounds, as can be sold under execution, thereby giving the purchaser such title as would enable him to enclose, build upon and withdraw them from the use of the <sup>public</sup> entirely:

7. T. 288. 15. T. 388. and 23. T. 351.

Respectfully submitted to the  
City Council of the City of Austin.  
May 6th 1872.

G. Davis  
Atty at Law Texas.

Mayor Aldermann Messina offered the following Resolution:

Be it resolved by the City Council of the City of Austin, that the City Attorney be instructed to institute the necessary legal proceeding for the recovery of such portions of Avenues, Squares & other parts of the City of Austin dedicated to the public use, which have been encroached of by the City contrary to its powers in the premises: as following:

- Bl. 180. Lots 1 to 9. George Hancock.
- " 181. " 1. 2. 3. Mrs. M. A. Goodrich
- " 181. " 4. 5. 6. Dr. M. Wilson.
- " 181. " 7. 8. James L. Brown.
- " 181. " 9. 10. 11. 12. Leander Brown.
- " 182. " 1. 2. 3. P. Hall.
- " 182. " 4. W. 1/2. James Hickey.
- " 182. " 4. E. 1/2. 5. 6. Mrs. Payne.
- " 182. " 7. Samuel Mason.
- " 182. " 8. Rayford Mason.
- " 182. " 9. Geo. Mason.
- " 182. " 10. 11. 12. J. D. Cope.
- " 183. " 1. 2. 5. 6. Thos. Eborn Estate.
- " 183. " 3. 4. Albert Dietrich.
- ~~" 183. " 7. 8. 9. 10. 11. 12. A. H. Barnes.~~
- " 184. " 1. 2. 3. J. W. Whipple.
- " 184 1/2 " 1. 2. 3. 4. Mrs. Ann. Dietrich / Whipple
- " 184 1/2. " 5. 6. G. A. Sauvignat.

The aforesaid Resolution was adopted by an unanimous Vote.

Petition of Mrs. V. L. Roberts was read and on Motion of J. H. Robinson the following Resolution was passed:

Be it resolved by the City Council of the City of Austin, that Five Dollars a month be paid the said Mrs. Roberts as a charitable fund, the said donation to be discontinued at the discretion of the Council.

Aldermann W. Prueggendorf  
H. Madison. S. Muiind.  
J. H. Robinson. E. M. Thellock

Petition of A. Scholz was read and on Motion of Alderman Mussina the following resolution was passed:

Be it resolved by the City Council of the City of Austin, that Mr. A. Scholz be allowed to keep his Beer Garden as set forth in the Petition.

Petition of A. F. Otto was read and on Motion of Alderman J. H. Robinson, the following Resolution was adopted:

Be it resolved by the City Council of the City of Austin, that Mr. F. Otto be allowed to extend his fence to the Stone Bridge on Wallace Creek as set forth in his petition, said fence to be removed at the will of the City.

Petition of B. Melasky, Alexander & Bro J. B. Costa and others, requesting the permission to remove the Birna Tree, standing near the Sidewalk in front of B. Melasky's Store, was read and on motion of Alderman Brueggerhoff, that a Committee be appointed to investigate and report at the next meeting of the City Council, the following named Aldermen were appointed said Committee.

Alderman: S. Mussina & H. Madison.

Petition of J. A. Webb, to be appointed a City Weigher, was read and on motion of Alderman Robinson, the following Alderman were appointed a Committee to investigate in reference to the matter and report at the next meeting of the Council.

Alderman, Brueggerhoff, Mussina and Whidlock.

Alderman J. H. Robinson offered the following Resolution:

Be it resolved by the City Council of the City of Austin, that J. A. Webb, be authorized to erect a four Ton Hay Scale on Pecan Street under the supervision of a committee of three Alderman to be appointed by the Mayor. Said Scales to be subject to removal at any time by order of City Council.

For aforesaid Committee were appointed:

Alderman: Brueggerhoff, Madison, & Mussina.

This Resolution was passed by an unanimous vote.

Petition of City Attorney for an increase of Salary was read and referred to a committee appointed by his Honor the Mayor of Alderman: S. Mussina; Wheelock & Madison.

*Church*  
Petition of Rev. Green asking for a donation from the City of a lot to build a church on; for the African Methodist Church, was discussed and referred to a Committee of three, to consider and report at next meeting of City Council. The Committee appointed were:

Alderman Brueggerhoff Robinson & Edison.

On Motion of Alderman Brueggerhoff the following Ordinance was ordained:

Be it ordained by the City Council of the City of Austin; That the Mayor be authorized to have a wooden Tower constructed and the Fire Bell mounted thereon, and that the sum of Two Hundred Dollars or as much thereof as may be necessary, be and the same is hereby appropriated for that purpose.

On Motion of Alderman Robinson the rules were suspended, and after passing its second & third reading, the Ordinance was passed by the following vote to wit:

years:  
 Alderman Puggenhoff  
 P. Musina, H. Madison  
 J. H. Robinson, E. M. Wheelock

On Motion of Alderman Puggenhoff the Council adjourned until the next meeting.

Ch. Doolittle  
 Recorder

City Council Room

Austin, June 13<sup>th</sup> 1872

Called Meeting of his Honor Col. J. W. Glenn  
 Mayor

The Roll called, the following named Aldermen answered to their names:

Alderman Wm Puggenhoff, J. Musina, H. Madison,  
 J. H. Robinson, E. M. Wheelock

Mr Henry Phillis presented to the Council his appointment from Governor Davis as an Alderman of the City of Austin, the appointment was accepted and Mr Phillis took his seat in office.