

PROCEEDINGS OF COMMON COUNCIL.

ADJOURNED SESSION—APRIL 10, 1890.

The Common Council of the City of Indianapolis, met in the Council Chamber Monday evening, April 10th, A. D. 1890, at 7:30 o'clock, in adjourned session, pursuant to adjournment.

PRESENT—Hon. Thomas L. Sullivan, Mayor, and *ex officio* President of the Common Council, in the Chair, and 22 members, viz: Councilmen Austin, Burns, Cooper, Coy, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Trusler, Weber, and Woollen.

ABSENT, 3—viz: Councilmen Hicklin, Martindale, and Yontz.

The Proceedings of the Common Council for the adjourned session held March 24th, 1890, having been printed and placed on the desks of the Councilmen, said Journals were approved as published.

REPORTS, ETC., FROM THE MAYOR.

His Honor, the Mayor, submitted the following report; which was received:

Indianapolis, April 10, 1890.

To the Common Council and Board of Aldermen:

Gentlemen.—I herewith report the amount of fees and fines due the city, collected in the Mayor's Court during the month of March, 1890, as follows, to-wit:

Marshal's fees.....	\$227 10
Mayor's fees.....	185 40
Fines in city cases.....	10 00
	<hr/>
	\$422 50

I paid said sum of \$422.50 to the Treasurer of Marion County, for the use of the City of Indianapolis, and filed said Treasurer's receipt therefor with the City Clerk, on April 4th, 1890.

Respectfully submitted,

T. L. SULLIVAN, Mayor.

REPORTS, ETC., FROM CITY OFFICERS.

The City Attorney submitted the following report; which was read and received:

To the Mayor, Common Council and Board of Aldermen:

Gentlemen.—Since your last meeting, the following matters have been disposed of:

1st. Is the case of Catharine Miller vs. City of Indianapolis and Fulmer & Seibert, contractors. This is the last of a series of cases between the city and the heirs of Gov. Noble, that in one way or another have occupied the courts of this State for many years. This suit was brought to reclaim what was known as Miami street, a very valuable street to the eastern part of the city. The case was tried

twice in Hendricks county; the first trial resulted in a hung jury, and the second trial in a verdict for the city. From there it went to the Supreme Court, and the judgment below was affirmed. The city has already passed an ordinance to improve that street, and this case has prevented that improvement. There is nothing now to prevent the city from going on and improving that street if it so desires, according to the original contract entered into between the city and Messrs. Fulmer & Seibert.

In this case the Supreme Court affirmed another very important principal that never before has been decided in Indiana, and that is that the plat-books in the Recorder's office are official records the same as are the deed records.

2d. Is the case of the Citizens' Street Railroad Company vs. The City and Roney, Street Commissioner, brought last year to enjoin the city from interfering with the street railway on Alabama street. This case the plaintiffs dismissed.

3d. Is the case of The Western Paving and Supply Company vs. the Citizens' Street Railroad Company, in which case the paving company demanded of the railroad company its proportion of the expense of improving Pennsylvania street, between Washington and Ohio streets. The railroad company defended on the ground that it never had accepted the ordinance of 1884, and was acting under the ordinance of 1878, which only required it to repair the space between the rails and two feet to the outside; and the court held this defense good. The paving company has to-day filed an additional paragraph of complaint, charging that when the ordinance of 1888 was passed approving the sale and transfer of the old company to the present company, that the present company accepted the provisions of the 1884 ordinance, which required the old company to pave and keep in repair a space of nine feet for single track and eighteen for double track. The court held that if this paragraph of complaint could be proven, that then the defendant company would be liable for street improvements. Of course, if the present decision stands, the property holders will be burdened with all the improvement in front of their respective properties, and the city for the proportion of the entire length occupied by the crossings of streets and alleys and public grounds.

Respectfully submitted,

WM. L. TAYLOR, City Attorney.

The City Civil Engineer submitted the following report; which was concurred in, and the amendments adopted:

To the Mayor, Common Council and Board of Aldermen:

Gentlemen:—Subject to your instructions, I have taken the levels and made the profile of Virginia avenue sewer, as provided for in Special Ordinance No. 43, 1890.

I find, after making the preliminary survey, that a sewer can be constructed from the intersection of Shelby street and Virginia avenue, in and along said avenue to South street, although it will require the excavation at some points to be made to a depth of twenty-five feet.

If it is your desire to construct said sewer under said S. O. 43, 1890, I would respectfully recommend to amend the ordinance, to construct said sewer from South street to the north line of Coburn street; also, to strike out of lines five and six, the words "or Shelby street, or if deemed best, with both sewers."

Respectfully submitted,

A. P. SHAWVER, City Civil Engineer.

The City Civil Engineer submitted the following report, which was concurred in, and the contract and bond approved:

To the Mayor, Common Council and Board of Aldermen:

Gentlemen:—I herewith report the contract and bond of Michael Flaherty, for grading and graveling Hill street and sidewalks, from Meridian street to Chestnut street. Bond, \$600.00; surety, John Johnson.

Respectfully submitted,

A. P. SHAWVER, City Civil Engineer.

The City Clerk submitted the objections of W. H. Drapier against the proposed improvement of Virginia avenue; of Albert B. Yohn et al., against the proposed improvement of Central avenue, and of Christopher Hilgenberg, George Knodle et al., against the proposed improvement of Ohio street; which were read and ordered filed with their respective ordinances.

The Street Commissioner submitted the following report; which was read and received:

To the Mayor, Common Council and Board of Aldermen of the City of Indianapolis:

Gentlemen:—I herewith report expenditures in the Street Repairs Department for the month of March, together with total expenditures to April 1st, 1890:

Pay-rolls.....	\$ 2,198 92
Gravel.....	127 40
Bowlders.....	29 25
Sand.....	13 20
Broken stone.....	24 00
Stone crossing and curb.....	74 14
Hardware.....	3 71
Lumber.....	10 79
Sewer pipe.....	2 60
Cement.....	2 00
Rubber goods.....	3 50
Fountain repairs.....	69 99
Yard rent.....	15 00
Miscellaneous.....	60 45

Total expenditures for March.....\$ 2,634 95

Total expenditures to March 1st, 1890..... 2,469 07

Total expenditures to April 1st, 1890.....\$ 5,104 02

Respectfully submitted,

D. DERUITER, Street Commissioner.

The Chief Fire Engineer submitted the following reports; which were referred to the Committee on Fire Department:

Indianapolis, April 7th, 1890.

To the Mayor, Board of Aldermen and Common Council:

Gentlemen:—I would respectfully report to your honorable bodies that I have promoted George H. Holderman to the position of Superintendent of Fire-alarm Telegraph, in our Department, and ask your approval of the same.

Respectfully yours,

FRANK L. DOUGHERTY, Chief Fire Engineer.

Indianapolis, April 7th, 1890.

To the Mayor, Board of Aldermen and Common Council:

Gentlemen:—I would respectfully report to your honorable bodies that I have appointed William Gano, John N. Winters, Dennis Fleming, Newton Gosney, Thomas McQuit, John Loughlin, John Powers, John Barlow, Joseph Steinrock, Henry Sulgrove, James Campbell and William Sullivan to membership in the Fire Department, and ask your approval of the same

Respectfully yours,

FRANK L. DOUGHERTY, Chief Fire Engineer.

The Committee on Judiciary, through Councilman McGill, submitted the following reports; which were concurred in: °

Indianapolis, Ind., March 7th, 1890.

To the Mayor and Common Council:

Gentlemen:—Your Committee on Judiciary, to whom was referred the petition of Will. F. A. Bernhamer, asking that he be paid the sum of \$400 00 due him as Councilman from the Twenty-second Ward from May 1881 to December 31st, 1883, have carefully investigated the facts and the law bearing on said case.

We find that the petitioner was elected Councilman from said Ward in May, 1880, and was serving as such in May, 1881. That he was again a candidate for the same office in the last named month. That one John Egger was his opponent. That they received on equal number of votes, but that said Egger was admitted to the seat, and the Council and Board of Aldermen refused to order a new election, as the law directed. That Bernhamer claimed to have the right to hold the office under his former qualification, until a new election should be called and held, and when ousted by the action of the Council, he immediately commenced his suit in the Superior Court contesting the right of Mr. Egger to hold said seat, and notified the city that he claimed the seat and the emoluments of the office. That the suit was continued from time, and did not finally reach trial until after the full term of two years and eight months had expired; but that on the final trial before the Hon. Daniel W. Howe, Judge of the Superior Court, Mr. Bernhamer's right to the office for the full term during which he had been excluded, was established and adjudged. (See Order Book of the Superior Court No. 124, page 446.) Said judgment was never appealed from, and now stands as the law of the case.

Under the facts above stated, the authorities all seem to be to the effect that the petitioner is entitled to his salary from the city. We here cite only a few of the many cases so holding: Glascock vs. Lyons, 20 Ind., 1; Douglass vs. The State, 31 Ind., 429; Mayfield vs. Moore, 53 Ill., 428, and Andrews vs. City of Portland, 79 Maine, 484. The Attorney General of Indiana, in an elaborate opinion in the Robertson case, printed in his annual report of 1888, pages 134 to 139, reviews the authorities at length, and comes to the same conclusion.

The Council has also made a precedent in favor of the petitioner's claim. See the case of Henry Geisel, Proceedings of Council of 1863, page 147. We therefore recommend that the claim be allowed, without interest, and that the \$400 be placed in the next appropriation ordinance.

Respectfully submitted,

Robt. C. McGill,
David A. Myers,
Jno. A. Weber.

To the Common Council and Board of Aldermen:

Gentlemen:—Your Committee to whom was referred the petition of Ada E. Nutting, to secure the cancellation of the city's claim against her lot for opening Rohampton street, would respectfully recommend that her offer of ten dollars be accepted, and that the said claim be cancelled.

Robt. C. McGill,
Jno. A. Weber,
David A. Myers.
Judiciary Committee.

To the Common Council and Board of Aldermen:

Gentlemen:—Your Committee to whom was referred the petition of Sarah E. Cromlich, for the refunding of taxes, after a full and complete investigation of the same, would respectfully recommend the payment of said sum of \$21 60.

Robt. C. McGill,
Jno. A. Weber,
David A. Myers.
Judiciary Committee.

The Committee on Judiciary and Committee on Finance, through Councilman McGill, submitted the following report; which was concurred in:

To the Mayor and Common Council:

Gentlemen:—Your Committees on Judiciary and Finance, to whom were referred the report of the City Attorney and General Ordinance No. 14, 1890, with reference to the issue of street improvement bonds, report as follows. We recommend—

1st. That said bonds be lithographed, and that nineteen (19) coupons be attached to cover the semi-annual interest payments and the annual payments of the principal.

2d. That a separate bond be issued to cover the property owned by each person on the street improved.

3d. That all payments of principal and interest be made on June 1st and December 1st, of each year, and be so stated on said bonds and coupons.

4th. That any such bond may be redeemed and cancelled at any time by paying the amount of the principal, plus the interest coupon then first maturing.

5th. All said bonds shall bear six per cent. interest, principal and interest being payable at the city treasury.

6th. That all bonds be issued to the contractor in payment for the work.

7th. That the Mayor and City Clerk be permitted to have their signatures lithographed on said coupons.

8th. That General Ordinance No. 14, 1890, providing for the issuance of three bonds to Robert Kennington, for improving Merton street, be passed, and that such bonds be issued pursuant to the provisions contained therein and in this report.

Respectfully submitted,

Robt. C. McGill,
D. A. Myers,
Jno. A. Weber,

Committee on Judiciary.

William Wesley Woollen,
Emil C. Rassman,
Edw. A. Austin,

Committee on Finance.

The Committee on Railroads, through Councilman Yontz, submitted the following report; which was received:

To the Mayor and Common Council:]

Gentlemen.—We, your Committee to whom was referred General Ordinance No. 17, 1890, would respectfully recommend that the same pass.

Respectfully submitted,

M. D. Yontz,

J. L. Gasper,

William Wesley Woollen,

The Committee on Streets and Alleys, through Councilman Rassman, submitted the following report; which was read and further time granted:

To the Mayor and Common Council:

Gentlemen:—Your Committee on Streets and Alleys, to whom was referred the petition of P. G. Porter and others, for the opening of Tennessee street, between Twenty second and Thirty-second streets, and the remonstrance of Frederick Topp and others against the same, report progress and ask for further time.

Respectfully submitted,

Emil C. Rassmann,

Chas. A. Gauss,

Committee on Streets and Alleys.

The Committee on Streets and Alleys, through Councilman Rassman, submitted the following report, accompanied with resolution;

To the Mayor and Common Council:

Gentlemen:—Your Committee on Streets and Alleys, to whom was referred the petition of F. G. Hay and others, praying for the vacation of the first alley south of Lincoln avenue, between Ash street and College avenue, report that having examined the same, recommend that the prayer of the petitioners be granted, and that the accompanying resolution be adopted.

Respectfully submitted,

Emil C. Rassman,
Chas. A. Gauss.

Committee on Streets and Alleys.

Resolved by the Common Council and Board of Aldermen of the City of Indianapolis, That the petition of F. G. Hay and others, praying for the vacation of the first alley south of Lincoln avenue, between Ash street and College avenue, be referred to the Board of City Commissioners, together with the plat accompanying the same, with instructions to assess benefits and damages caused by such vacation, and to make due report to the Common Council and Board of Aldermen; the said Board of City Commissioners to return all petitions, plats and notices.

The City Clerk is hereby required to issue, and the Superintendent of the Metropolitan Police Force to serve, the proper notices upon the City Commissioners; and the petitioners are hereby required to serve the proper notices upon the property owners, and to show, by affidavit, due service of such notices: *Provided*, That before the City Clerk issue the said notices to the City Commissioners, a bond shall be filed with the said City Clerk, to the approval of the Mayor, guaranteeing the payment of all the costs and charges of said Commissioners in this matter.

Which report was concurred in, and the resolution adopted, by the following vote:

AYES, 20—viz: Councilmen Austin, Burns, Cooper, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Weber, and Woollen.

NAYS, 1—viz: Councilman Trusler.

The Committee on Streets and Alleys, through Councilman Rassman, submitted the following report, accompanied with resolution:

To the Mayor and Common Council:

Gentlemen:—Your Committee on Streets and Alleys, to whom was referred the petition of Edward Hawkins and others, praying for the vacation of the alley between Lincoln avenue and Seventh street, and extending from Broadway west to the first alley west of Broadway, recommend that said petition be granted, and the accompanying resolution adopted.

Respectfully submitted,

Emil C. Rassmann,
Chas. A. Gauss,

Committee on Streets and Alleys.

Resolved by the Common Council and Board of Aldermen of the City of Indianapolis, That the petition of Edwin Hawkins and others, praying for the vacation of the alley between Lincoln avenue and Seventh street, and extending from Broadway west to the first alley west of Broadway street, be referred to the Board of City Commissioners, together with the plat accompanying the same, with instructions to assess benefits and damages caused by such vacation, and to make due report to the Common Council and Board of Aldermen; the said Board of City Commissioners to return all petitions, plats and notices.

The City Clerk is hereby required to issue, and the Superintendent of the Metropolitan Police Force to serve the proper notices upon the City Commissioners; and the petitioners are hereby required to serve the proper notices upon the property owners, and to show, by affidavit, due service of such notices: *Provided*, That before the City Clerk issue the said notices to the City Commissioners, a bond shall be filed with the City Clerk, to the approval of the Mayor, guaranteeing the payment of all the costs and charges of said Commissioners in this matter.

Which report was concurred in, and the resolution adopted, by the following vote :

AYES, 20—viz: Councilmen Austin, Burns, Cooper, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Weber, and Woollen.

NAYS, 1—viz: Councilman Trusler.

The Committee on Streets and Alleys, through Councilman Rassman, submitted the following report, accompanied with resolution :

To the Mayor and Common Council :

Gentlemen:—Your Committee on Streets and Alleys, to whom was referred the petition of J. H. Thompson, David Gilliland and others, asking for the opening of a street thirty seven (37) feet in width, from Ludlow Lane to Pendleton Pike, at the western termini of the first street and first alley north of the C., C., C. & I. R. R. tracks and through lots marked 42 and 51 on the plat filed herewith and made a part hereof, and marked "Exhibit A." We recommend that the prayer of said petitioners be granted, and the accompanying resolution adopted.

Respectfully submitted,

Emil C. Rassmann,
Chas. A. Gauss,
Committee on Streets and Alleys.

Resolved by the Common Council and Board of Aldermen of the City of Indianapolis, That the petition of J. H. Thompson and David Gilliland and others, praying for the opening of a thirty-seven (37) foot street from Ludlow Lane to Pendleton Pike, at the western termini of the first street and first alley north of the Cleveland, Columbus, Cincinnati & Indianapolis Railroad tracks east of Nevada street through lots marked 42 and 71 on the plat accompanying said petition, and made a part thereof, and of this resolution, and marked "Exhibit A," as prayed for in said petition, be referred to the Board of City Commissioners, with instructions to assess benefits and damages, and to make due report to the Common Council and Board of Aldermen; the City Commissioners to return all petitions and notices.

The City Clerk is hereby instructed to issue the proper notices, and the Superintendent of the Metropolitan Police Force is hereby directed to serve said notices on said City Commissioners and upon the property owners: *Provided*, That before the City Clerk issue said notices to said City Commissioners, a bond shall be filed with the said City Clerk, to the approval of the Mayor, guaranteeing the payment of all costs and charges of said Commissioners in this matter.

Which report was concurred in, and the resolution adopted, by the following vote :

AYES, 20—viz: Councilmen Austin, Burns, Cooper, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Weber, and Woollen.

NAYS, 1—viz: Councilman Trusler.

APPROPRIATION ORDINANCES.

Under this order of business the following entitled ordinances were introduced and severally read the first time :

By Councilman Woollen, on behalf of the Hospital Board :

Ap. O. 20, 1890—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis, on account of the City Hospital and Branch. [Amount appropriated, \$1,568.42.]

By Councilman Olsen, on behalf of the Fire Department :

Ap. O. 21, 1890—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis, on account of the Fire Department. [Amount appropriated, \$1,515.13.]

By Councilman Weber, on behalf of the Committee on Accounts and Claims :

Ap. O. 22, 1890—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis. [Amount appropriated, \$8,890.78.]

By the City Clerk, on behalf of the Board of Police Commissioners :

Ap. O. 23, 1890—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis, on account of Station House. [Amount appropriated, \$262.06.]

By Councilman Woollen, on behalf of the Finance Committee :

Ap. O. 24, 1890—An ordinance appropriating money for the payment of the salaries and compensation of the officers and members of the Fire and Police Departments; of the Committee Clerk; of the Janitor and Assistant Janitor of the City Hall, of the Janitor and Assistant Janitor of Tomlinson Hall, and of the East and West Market Masters. [Amount appropriated, \$12,468.33.]

On motion by Councilman Rassman, the Rules were suspended for the purpose of placing the above entitled ordinances on their final passage, by the following vote :

AYES, 22—viz: Councilmen Austin, Burns, Cooper, Coy, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Trusler, Weber, and Woollen.

NAYS—None.

Ap. O. 20, 1890, was then read the second time, ordered engrossed, read the third time and passed, by the following vote :

AYES, 22—viz: Councilmen Austin, Burns, Cooper, Coy, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Trusler, Weber, and Woollen.

NAYS—None.

Ap. O. 21, 1890, and then read the second time.

Councilman Cooper moved that the sum of three hundred dollars (\$300.00) payable to the Chief Fire Engineer for incidental expenses, be inserted.

Which motion was adopted.

Ap. O. 21, 1890, was then ordered engrossed, read the third time and passed, by the following vote :

AYES, 22—viz: Councilmen Austin, Burns, Cooper, Coy, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Trusler, Weber, and Woollen.

NAYS—None.

Ap. O. 22, 1890, was then read the second time, ordered engrossed, read the third time and passed, by the following vote :

AYES, 22—viz: Councilmen Austin, Burns, Cooper, Coy, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Trusler, Weber, and Woollen.

NAYS—None.

Ap. O. 23, 1890, was then read the second time, ordered engrossed, read the third time and passed, by the following vote :

AYES, 22—viz: Councilmen Austin, Burns, Cooper, Coy, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Trusler, Weber, and Woollen.

NAYS—None.

Ap. O. 24, 1890, was then read the second time, ordered engrossed, read the third time and passed, by the following vote :

AYES, 22—viz: Councilmen Austin, Burns, Cooper, Coy, Davis, Dunn, Gasper, Gauss, Markey, Murphy, Myers, McGill, Nolan, Olsen, Pearson, Rassman, Sherer, Stechhan, Sweetland, Trusler, Weber, and Woollen.

NAYS—None.

By consent, Councilman Davis offered the following motion ; which was referred to the Committee on City Improvements :

That the Street Commissioner be ordered to repair the Patterson levee, between the Mill Race and White River.

On motion by Councilman Coy, all ordinances on file prepared under the " Barrett Law," were referred to the Committee on Streets and Alleys.

On motion by Councilman Coy, the Common Council adjourned to meet Monday evening, April 14th, 1890, at 7:30 o'clock.

J. L. Sullivan Mayor,

President of the Common Council.

Attest: *C. P. Swift*, City Clerk.