

PROCEEDINGS

OF THE

COMMON COUNCIL.

REGULAR SESSION.

CHAMBER OF THE COMMON COUNCIL, }
Monday, September 3d, 1877—7½ o'clock P. M. }

The Common Council of the City of Indianapolis met in regular session.

Present—His Honor, the Mayor, John Caven, in the chair, and the following members: Councilmen Bagby, Case, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Walker, Watts, Wood, A. L. Wright, and W. G. Wright—19.

Absent—Councilmen Brown, Bugbee, Byram, Cochran, Dill, and Stoner—6.

The proceedings of the adjourned session, held August 27th, 1877, having been printed, and placed on the desks of the Councilmen, the reading of the same was dispensed with.

His Honor, the Mayor, read the first section of "An act regulating the indebtedness of cities having a voting population of over

sixteen thousand, as shown by the votes cast for Governor at the last preceding election," etc.; and then the following statement was read, and, on Councilman A. L. Wright's motion, was duly received, ordered to be spread upon the records, and inserted in newspaper to which had been awarded the contract for doing city's advertising:

Statement of the Bonded Indebtedness of the City of Indianapolis, and amount of Warrants and City Orders outstanding on the first day of May, A. D. 1877.

RAILROAD BONDS.

<i>Issued January 1st, 1869; due January 1st, 1889—To the Indianapolis & Vincennes Railroad Company; payable twenty years after date, bearing six per cent. interest per annum, payable, annually, at the office of the City Treasurer</i>	\$60,000 00
<i>Issued January 1st, 1869; due January 1st, 1889—To the Junction Railroad Company; payable twenty years after date, bearing six per cent. interest per annum, payable, annually, at the office of the City Treasurer.</i>	50,000 00
<i>Issued January 1st, 1870; due January 1st, 1890—To the Danville & Crawfordsville Railroad Company; payable twenty years after date, bearing six per cent. interest per annum, payable, annually, at the office of the City Treasurer</i>	45,000 00

SELLERS' FARM BONDS.

<i>Issued April 1st, 1873; due April 1st, 1893—To Wm. H. English, President, on account of purchase of Sellers' Farm; payable twenty years after date, bearing eight per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City.</i>	21,000 00
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LOAN BONDS.

<i>"Series A": Issued July 1st, 1873; due July 1st, 1893—Payable twenty years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City</i>	300,000 00
<i>"Series B": Issued July 1st, 1873; due July 1st, 1893—Payable twenty years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City.</i>	300,000 00

PARK PURCHASE BONDS.

Issued January 26th, 1874; due January 26th, 1894—To N. R. Ruckle, on account of the purchase of "South Park"; payable twenty years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City \$109,500 00

LOAN BONDS.

"Series C": Issued July 1st, 1874; due July 1st, 1894—Payable twenty years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City 300,000 00

"Series D": Issued July 1st, 1875; due July 1st, 1895—Payable twenty years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City 200,000 00

FIRE DEPARTMENT BONDS.

Issued July 1st, 1875; due July 1st, 1895—On account of purchase of real estate for Fire Department purposes; payable twenty years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City 7,000 00

Issued January 1st, 1876; due January 1st, 1886—On account of purchase of steam fire engines; payable ten years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City 9,000 00

LOAN BONDS.

"Series E": Issued January 1st, 1876; due January 1st, 1896—Payable twenty years after date, bearing 7 3-10 per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City 8,000 00

PATTERSON BONDS.

Issued July 1st, 1876; due July 1st, 1896—On account of constructing Levee; payable twenty years after date, bearing six per cent. interest per annum, payable, annually, at the banking house of Winslow, Lanier & Co., New York City 5,000 00

RAILROAD BONDS.

Issued January 1st, 1877; due January 1st, 1897—To the Union Railroad Transfer and Stock Yard Company; payable twenty years after date, bearing six per cent. interest per annum, payable, semi-annually, at the banking house of Winslow, Lanier & Co., New York City.... 500,000 00

[The above bonds were issued in aid of the Union Railroad Transfer and Stock Yard Company, and were delivered to a Board of Trustees, consisting of Hons. John Caven, Enos B. Reed, and Daniel M. Ransdell, to be held in trust, as required by the provisions of the ordinance under which said bonds were issued.]

TEMPORARY LOANS.

Non-interest bearing Warrants, were sold at a discount, to raise money to defray current expenses, as follows :

June 17th, 1876—Payable May 1st, 1877, to C. Knefler.....	\$26,000 00
June 20th, 1876—Payable May 1st, 1877, to Sinking Fund..	29,000 00
December 20th, 1876—Payable May 1st, 1877, to C. Knefler....	40,000 00
Outstanding City Orders.....	201,301 37

RECAPITULATION OF BONDS, ETC.

Amount of bonds bearing six per cent. interest :

Indianapolis & Vincennes Railroad Co. bonds.....	\$60,000 00
Junction Railroad Co. bonds.....	50,000 00
Danville & Crawfordsville Railroad Co. bonds	45,000 00
Union Railroad Transfer & Stock Yard Co. bonds.....	500,000 00
Patterson bonds	5,000 00
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	\$660,000 00

Amount of bonds bearing seven and three-tenths per cent. interest :

Loan bonds, "Series A".....	\$300,000 00
Loan bonds, "Series B".....	300,000 00
Loan bonds, "Series C".....	300,000 00
Loan bonds, "Series D".....	200,000 00
Loan bonds, "Series E".....	8,000 00
Park Purchase bonds	109,500 00
Fire Department bonds.....	16,000 00
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	\$1,233,500 00

Amount carried forward	\$1,893,500 00
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Amount brought forward	\$1,893,500 00
Amount of bonds bearing eight per cent. interest :	
Sellers' Farm bonds.....	21,000 00
Total amount of bonds.....	\$1,914,500 00
Temporary Loan Warrants.....	95,000 00
Outstanding City Orders	201,301 37
Grand Total	\$2,210,801 37

Respectfully submitted,

JOHN CAVEN, Mayor.
HENRY W. TUTEWILER,
City Treasurer.
BENJ. C. WRIGHT, City Clerk.

REPORTS, ETC., FROM CITY OFFICERS.

The City Civil Engineer submitted the following report; which was approved :

Indianapolis, September 3, 1877.

To the Mayor and Common Council :

Gentlemen :—I herewith report a first and final estimate allowed James Mahoney, for grading and graveling the first alley north of English avenue, between Cedar and Dillon streets—

310 lineal feet, at 15 cents.....	\$46 50
2 loads of gravel, at 50 cents.....	1 00
Total.....	\$47 50

Also, a second and final estimate allowed John Schier, for building a fire cistern at the corner of Williams and Mississippi streets, the Chief Fire Engineer having reported said cistern in good condition—

1330.33 barrels, at 38 cents per barrel.....	\$505 52
Less former payments	354 00
Balance due.....	\$151 52

Respectfully submitted,

BERNHARD H. DIETZ, City Civil Engineer.

The following estimate resolution was then offered :

Resolved, by the Common Council and Board of Aldermen, That the foregoing first and final estimate allowed James Mahoney, for grading and graveling the

first alley north of English avenue, between Cedar and Dillon streets, be, and the same is hereby, adopted as the estimate of the Common Council and Board of Aldermen, and that the property owners are hereby required to pay the sums set opposite their respective names.

Which was adopted by the following vote :

Affirmative—Councilmen Bagby, Case, Izor, Layman, Marsee, Morse, McGinty, Reading, Sindlinger, Steinhauer, Thomas, Tucker, Walker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

The same officer submitted the following report ; which was received, the contracts concurred in, and the bonds severally approved :

Indianapolis, September 3, 1877.

To the Mayor and Common Council :

Gentlemen:—Herewith I report the following contracts and bonds, for your consideration :

Contract and bond of J. J. McKnight, for grading and graveling Sixth street and sidewalks, between Delaware and Alabama streets. Bond, \$500 ; bondsman, Wm. Bohning.

Contract and bond of E. B. Elliott, for grading and graveling Herbert street and sidewalks, between Illinois and Meridian streets. Bond, \$600 ; bondsman, Isaac Russell.

Respectfully submitted,

BERNHARD H. DIETZ, City Civil Engineer.

The City Clerk submitted the following report ; which was concurred in :

Indianapolis, September 3, 1877.

To the Mayor and Common Council :

Gentlemen:—I herewith report the following affidavits, now on file in my office, for the collection of street assessments by precept, to-wit :

John Schier vs. Abram R. Colborn, for.....	\$6 97
John Schier vs. Abram R. Colborn, for.....	9 13
John Greene vs. George K. Cameron, for.....	8 25

And respectfully recommend that you order the precepts to issue.

BENJ. C. WRIGHT, City Clerk.

The precepts were ordered to be issued by the following vote :

Affirmative—Councilmen Bagby, Case, Izor, Layman, Marsee, Morse, McGinty, Reading, Sindlinger, Steinhauer, Thomas, Tucker, Walker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

The Street Commissioner submitted the following report; which was approved :

Indianapolis, September 3, 1877.

To His Honor, the Mayor, Common Council, and Board of Aldermen :

Gentlemen :—I have the honor to submit the following report of work done in my Department for the month of August, 1877 :

Repaired the following streets with gravel : Alabama street, from North to St. Clair street; Indiana avenue, from Ohio to Michigan street; Virginia avenue, from Buchanan to Dillon street; Mississippi street, from Washington to Market street; and the north side of the Market Space.

Repaired the bowldered streets, as follows : Massachusetts avenue, from North street to C., C., C. & I. R. R.; and on Washington street, from Illinois street to White River.

Repaired and re-set 92 foot-bridges.

Repaired 35 culverts.

Built 500 feet of fence, for protection, on Michigan street, along the old bed of Fall Creek; and placed new drive-way in front of No. 2 Engine House.

In repairing Massachusetts avenue, from Noble street to C., C. & I. R. R., I find 292 yards belonging to the Water Works; which I have repaired at a cost of 20 cents per yard; total, \$58.40.

Pay Rolls	\$3,171 98
Hamilton Bailie, gravel delivered	162 50
James Childers, bowlders delivered.....	55 50
P. E. Everett, repairing fountains	11 36
C. B. Howland, bowlders delivered	54 00
Ike King, smithing.....	16 46
Samuel Patterson, gravel	30 00
John Miley, oak lumber	154 09
Aaron Grube, oak lumber.....	74 69
McDonough & Townsend.....	4 93
Hartman & Drier, blacksmithing	8 30
W. H. Hoover, blacksmithing.....	102 59

Bracken & Thompson, lumber	52 00
James H. Jackson, oak lumber... ..	142 51
Total.....	\$4,040 91

Respectfully submitted,

L. A. FULMER, Street Commissioner.

The Superintendent of the City Hospital submitted the following reports; which were received:

Report of the City Hospital and Branch, for the month ending August 31st, 1877:

	First Week.	Second Week.	Third Week.	Fourth Week.	Three Days.	Total.
NO. OF BEDS IN HOSPITAL—100.						
Number of Patients at last report—adults.....	23	32	29	32	34	.....
Number of Patients at last report—infants	1	2	2	4	4	.....
Received New Patients adults.....	10	6	6	9	7	43
Births, or Received—infants.. ..	1	.....	2	.....	.....	3
Discharged—adults.....	.....	9	9	7	8	32
Discharged—infants.....	.....	.....	.....	.....	1	1
Died—adults.....	.....	.....	.....	.....	.....	.....
Died—infants .....	.....	.....	.....	.....	.....	.....
Number of Patients remaining—adults.....	32	29	32	34	33	.....
Number of Patients remaining—infants.. ..	2	2	4	4	3	.....
Number of Patients in Branch—adults.....	.....	.....	.....	.....	.....	.....
Number of Patients in Branch—infants.....	.....	.....	.....	.....	.....	.....
Aggregate No. days of Patients in Hospital—adults.....	112	207	211	237	212	979
Aggregate No days of Patients in Hospital—infants.....	8	14	20	28	20	90

Report of Expenditures on account of City Hospital and Branch, for the month ending August 31st, 1877:

Total Expenditures for month	\$762 29
Net Expenditures for the month.....	762 29
Aggregate number of days subsistence furnished.....	1069
Average expense per capita per diem of patients.....	70.4 cts.
Average expense per capita per diem of patients, officers and employes, 46 cts.	

W. H. DAVIS, M. D., Superintendent.

REPORT FROM BOARD.

The Fire Board and City Attorney submitted the following report; which was concurred in:

Indianapolis, September 3, 1877.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—The Fire Board and City Attorney, to whom was referred the communication from John R. Elder, President of the Water-Works Company of Indianapolis, would report that we have had the same under advisement, and find that section 3 of the charter of the Water-Works Company provides, among other things, as follows :

“The company shall supply to the city, upon the several streets and avenues in which pipes and conduits may be laid, and in such cisterns and localities off of the same, as the city may conduct the same to, *such quantity* of water as may be required by the City Council for public use or drainage and fire purposes”; and section 8 of the same charter provides, “That nothing in this ordinance contained shall be construed as a grant to said company, or its successors, any exclusive privilege of constructing and operating water-works in the City of Indianapolis, but the city hereby expressly reserves the right, at any and all times, to construct and operate water-works for itself, or to charter another company to construct and operate water-works in said city.”

Your committee are of the opinion that these provisions are not such as compel the city to take a certain amount of water, or that she shall take and pay for all the water that the company might desire to furnish, but, on the contrary, they are direct provisions that the company will and shall furnish such *quantities* of water as *may be required* by the City Council. It is the duty of the City Council, as representatives of the people, to decide what amount of water the city needs, or can afford to take and pay for, and the company is under obligations to furnish that amount.

The charter of the company also provides, in section 4, that “Should the city or its citizens, at any time, through the willfulness or carelessness of the company, be deprived of necessary water for thirty-six consecutive hours, the company shall be liable to a forfeiture of its rights under this charter.” Under these provisions of the charter, your committee are of the opinion that if the Water-Works Company should refuse to furnish the city such water as the City Council and Board of Aldermen may require, for a period of thirty-six hours, they would thereby forfeit all their rights under the charter granted them by the city.

It can not be claimed, we think, that the charter granted by the city to this company was a contract, upon the part of the city, to take and pay rent for any particular number of hydrants forever or for an indefinite time; for the 8th section, before quoted, states explicitly that the city reserves all rights upon that point. The resolution of June 15th, 1874, it is claimed, was a contract to take and pay for 365 or 550 plugs, at the rate of \$50 per annum. If so, for how long? No time is fixed; and the inference must be that it means forever, or else it means so long as the City Council shall deem best. If the former construction is placed upon it, and it was a contract, then the city is

bound, forever, to pay to the company \$50 per annum for each of the 550 hydrants. We are of the opinion that no such construction can be placed upon the resolution.

But we desire to call the attention of the Council to the fact that the resolution was passed June 15th, 1874, by which the Council undertook to provide for 365 additional fire-plugs, but there was, at that time, an ordinance in force, that was ordained and established August 1st, 1872, in relation to the subject of fire-hydrants, and the 4th section of that ordinance provides as follows: "No fire-hydrants, to be paid for by the city, shall be located and established at any other point than as provided for in this ordinance, except by special ordinance regularly passed by the Common Council." The resolution of June 15th, 1874, was directly in conflict with this ordinance, and, for that reason, would be null and void.

And your committee are also of the opinion that if the city had entered into an agreement, in writing, to take a given number of plugs, and pay for them at the rate of \$50 per annum forever, or as long as the Water-Works Company furnished water for them, such a contract would have been void, for the reason that it is not within the power of a City Council to make such a contract. The Council have the power to legislate upon certain subjects. It is their duty to legislate in the interest of the public, and to do so as often as it becomes necessary; and they can not delegate that power, or do any act, or make any contract, that will prevent them, or any future Council, from doing so. This proposition is sustained by the decisions of the Supreme Courts of several of the States, and also by the United States Supreme Court. If it were not the case, the present City Council might make a contract running for a term of years, or forever, with some person or corporation, to carry on the street repairs, run the markets, take charge of the fire and police departments, etc., at a stipulated price, and no Council in the future would be able to regulate, change, or control any of these things, and the city and her citizens would be compelled, forever, to pay the prices fixed by the contract, independent of the fact whether she had the means to do so or whether the public good demanded any change in the management of city affairs.

Your committee are, therefore, of the opinion that there is no valid contract, upon the part of the city, to pay \$50 per year for 550 or 365 hydrants, but that she is only bound to pay for such as are required by the Council and Aldermen, and by their order used. That the company are, by their charter, required and obligated to furnish such water to the city. And that the Council and Board of Aldermen have the power and right, and it is their duty, to discontinue the use of any plugs that city can dispense with, or to increase the number when the public interests demand it.

The charter of the Water Works Company also requires that they "shall maintain the works in such condition as to be capable of throwing eight streams, at once, one hundred feet vertically, through one inch nozzles." Your committee are of the opinion that the company have failed to do this,

and that the works have always proven inadequate in cases of emergency, and they are of no use to the city in the extinguishment of fires, except to fill cisterns. But, owing to the fact that the company has always insisted that, in time of fire, their works had not been enabled to show what they could do, because of the opening of the hydrants to fill cisterns for the engines, your committee determined, for the purpose of testing the condition and efficiency of the works, to make a test, with as favorable conditions as possible. They, therefore, on the 31st of August, caused an alarm to be sent in from box "52," corner of Louisiana and Illinois streets, and eight hydrants were opened, and hose attached to them, and streams thrown as follows: 4 at the corner of Illinois and Georgia streets, 3 at the corner of Tennessee and Georgia streets, and one on Mississippi street, between Louisiana and Georgia streets. No more openings were made in the hydrants. The size of the streams were as follows: 4 were 1 inch nozzles, 2 were $1\frac{1}{2}$ inch, and 2 were 1 5-16—being equal to 8 streams of 1 inch, and one stream of $\frac{7}{8}$ of an inch. The result of the test is as follows: Alarm rung at 10:05 o'clock; water at 10:08; at 10:11, streams were thrown from the corner of Illinois and Georgia streets a distance of 20 to 30 feet; at 10:15, they were throwing about 40 to 50 feet; at 10:20, the same. After the first five minutes, there was no visible increase of pressure over that of 10:11 o'clock; and, during some of the time, the pressure ran down so that water was not thrown 10 feet from the nozzle, and, at no time, was more than one stream at once thrown as high as the telegraph wires; while, at the corner of Tennessee and Georgia streets, none of the streams could be thrown as high as the wires on the telegraph poles.

In view of the foregoing facts, and also of the fact that the Act of the last Legislature limiting the amount of the revenues of the city makes it absolutely necessary that there should be a reduction in the expenses of the city, and as the Water-Works Company have refused to reduce the price of water, but insist upon charging the maximum rate allowed by their charter, and the same that has been charged in years past, we are of the opinion that the city can get along with a less number of hydrants; and we therefore recommend that the former action of the Council and Aldermen be adhered to. And in view of the fact that the company have notified the city that they shall cut off all of the hydrants, and refuse to supply the city with any water after September 20th, we recommend that \$15,000 of the money provided for the payments of water-rents to the company be appropriated for the purpose of building cisterns and wells, and that the same be done at once, under the supervision of the Chief Fire Engineer, as your committee are of the opinion that such an expenditure of that amount will enable the Fire Department to afford the city a more efficient protection than she has under the present arrangement. And we would also recommend that, in the event the Water-Works Company shall refuse to supply the city with such water as she needs and desires, that the Council and Aldermen at once pass ordinances, repealing all ordinances now in force for the protection of the Water-Works Com-

pany's pipes and hydrants, and regulating the use of them, and which were passed for their benefit.

Respectfully submitted,

R. S. FOSTER,

J. L. CASE,

JAMES T LAYMAN,

Fire Board.

R. O. HAWKINS, City Attorney.

REPORTS FROM STANDING COMMITTEES.

The Committee on Accounts and Claims, through Councilman Layman, submitted the following report; which concurred in:

Indianapolis, September 3, 1877.

To the Mayor and Common Council of the City of Indianapolis:

Gentlemen:—Your Committee on Accounts and Claims and City Attorney, to whom was referred the petition of J. G. Douglass, asking to have money refunded to him that was paid upon an erroneous tax-sale, would report that we have examined the same, and find that the allegations of the petition are true, and that the law requires the refunding of the amount, to wit, \$40.70, with interest at 6 per cent. from February 13th, 1877.

We would, therefore, recommend that the claim be allowed for the sum of \$41.20, and that it be included in the appropriation ordinance.

Respectfully submitted,

JAMES T. LAYMAN,

JOHN THOMAS,

JAS. E. WATTS,

T. E. CHANDLER,

Committee on Accounts and Claims

R. O. HAWKINS, City Attorney.

The same joint committee submitted the following report; which was also concurred in:

Indianapolis, September 3, 1877.

To the Mayor and Common Council of the City of Indianapolis:

Gentlemen:—Your Committee on Accounts and Claims and City Attorney, to whom was referred the petition of H. L. Benham & Co., asking that certain taxes be refunded to them, because of their mistake in making return of their property to the Assessor, would report that we have examined the same, and find that there is no legal liability upon the city to pay it; and, as the

tax has been paid and money expended by the city, we would recommend that the prayer of the petitioners be not granted.

Respectfully submitted,

JAMES T. LAYMAN,
JAMES E. WATTS,
JOHN THOMAS,
Committee on Accounts and Claims.
R. O. HAWKINS, City Attorney.

The same committee submitted the following report ; which was also concurred in :

To His Honor, the Mayor, and Members of the City Council :

Your committee, to whom was referred the claim of F. W. Hamilton, of \$650, for making and compiling an index of the city tax and street improvement sales, Vols. 1, 2, 3, and 4, find that the same was done by order of the Council.

We are of the opinion, as there was no specified contract made between the city and Mr. Hamilton (as we believe should have been done, before the work was ordered), that the sum of \$500 is a reasonable amount for said work ; and we recommend that \$500 be allowed at the next appropriation.

Respectfully submitted,

JAMES T. LAYMAN,
JAMES E. WATTS,
JOHN THOMAS,
Committee on Accounts and Claims.

The Committee on Gas-Light, through Councilman Izor, submitted the following report ; which was concurred in :

Indianapolis, September 3, 1877.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen:—Your Committee on Gas-Light, with the City Attorney, to whom was referred the motion in relation to dispensing with one thousand of the street lamps, would report: That the city is now lighting and paying for 2,784 lamps, for which the city is paying \$81,736 per year; that, in our opinion, one thousand of the same can be dispensed with, without detriment to the interests of the city.

The City Attorney has reported an opinion, in which he holds that it is within the power of the city to dispense with the lighting of any of the lamps that she desires.

In view of the fact that the Gas Company have refused to make any deduction in the price, or to consent to any change of the number of lamps lighted; and in view of the fact, that it is absolutely necessary for the city to, at once,

largely reduce the city's expenses, for the reason that the last Legislature passed an Act limiting and largely reducing the revenues of the city, we would recommend that the motion referred to us be passed, and that, when the City Civil Engineer and this committee shall have reported to the Council what lamps can best be discontinued, that a proper resolution be passed, and that the company be notified of the action of the Council.

Respectfully submitted,

ALBERT IZOR,
W. H. TUCKER,
T. C. READING,
Committee on Gas-Light.

In same connection, the City Attorney delivered the following opinion ; which was duly received :

Indianapolis, September 3, 1877.

To the Mayor and Members of the Common Council of the City of Indianapolis :

Gentlemen: At a meeting of the Council, on the 20th of August, a motion was introduced, authorizing "the City Civil Engineer and Committee on Gas-Light to select one thousand street lamps to be discontinued, in the most suitable locations," which was referred to the Committee on Gas-Light and City Attorney.

The legal questions involved are not entirely free from doubt.

On the 17th of July, 1876, the Common Council of the city and the Indianapolis Gas-Light and Coke Company entered into a contract, by which it was stipulated that said company should furnish gas for all the street lamps in the city then in use, and light, clean, and repair the same for the term of five years; that each post should be supplied with burners of a capacity to burn four cubic feet per hour; and that the city should pay said company therefor the sum of \$29 per year for each and every post. If this is a valid, binding contract, and one by which the city is bound, the effect of ordering one thousand of the lamps discontinued, would be to make the city liable in damages to the company; and the measure of the damages would be the amount of profits that the company would have realized, under the contract, from the lamps so discontinued.

The question then arises: Is this contract between the city and the gas company a valid one, and such an one as the Common Council had the power to enter into at the time of its execution?

Municipal corporations can exercise no powers but those which are conferred upon them by the Act by which they are constituted, or such as are necessary to the exercise of their corporate powers or performance of their corporate duties. The charter of this city provides that the Common Council shall have the power "To construct and establish gas-works, or to regulate the establishment thereof by individuals or companies, or to regulate the lighting of streets, public grounds, and buildings."

It is well settled that the powers conferred upon a municipal corporation constitute a trust, and they must be exercised for the public good; and they can not be delegated, conveyed away, or restricted by contract.

"Powers are conferred upon municipal corporations for public purposes; and as their legislative powers can not, as we have seen, be delegated, so they can not be bartered away. Such corporations may make authorized contracts, but they have no powers, as a party, to make contracts or pass by-laws which shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties."—*Dillon on Municipal Corporations*, Sec. 61.

Judge Cooley, in his work on Constitutional Limitations, says: "A trust created for any public purpose can not be assignable at the will of the trustee. Equally incumbent upon the State Legislature and these municipal bodies is the restriction, that they shall adopt no irrevocable legislation. No legislative body can so part with its powers, by any proceeding, as not to be able to continue the exercise of them. It can and should exercise them again and again, as often as the public interests require. Such a body has no power, even by contract, to control and embarrass its legislative powers and duties." *Cooley's Constitutional Limitations*, page 206. See, also, *Gale vs. Kalamazoo*, 23 Mich., 354; *State of New York vs. Mayor &c.*, 3 Duer, 131.

In the latter case, the court says: "No proposition of law is more evident and certain, than that a municipal corporation can not, by contract, or by any other act, abrogate or abridge its own legislative or discretionary power."

The power of the Council of the city to regulate the lighting of the streets is one conferred by the charter, the same as the power to regulate the markets, to establish and regulate the police and fire departments of the city, and the power to control and regulate the streets and alleys of the city. They are all powers conferred upon the Council, to be by them exercised for the public good; and they are granted, that their exercise may promote the public comfort and welfare. It is a part of the public duty of the City Council to furnish light for her streets, and the power to do so is conferred upon them, to be exercised in such a manner as to promote the welfare and safety of her citizens.

Are these powers, to regulate the lighting of the streets, to regulate the markets, etc., granted to the city as a municipal corporation (which, we have seen, it is her duty to exercise for the public welfare, health, and comfort of her citizens), *governmental discretionary* powers? If they are, then the City Council have no power to delegate or restrict them by contract; and any such contract that the Council might enter into, would be void.

There are a number of authorities upon this point, and that establish and define the meaning and scope of the principle that the governmental discretionary power of a municipal corporation can not be restricted, impaired, or embarrassed by contract; and I cite some of them:

The City of Baltimore located a public building, and made a contract for its

erection. After the building was partly completed, the Common Council determined to abandon it, and not complete the work. The contractor brought suit for damages (his profits that he would have made in finishing the building), and the court held that he could not recover, because the city had the right, at any time, to repeal its former action. *Rittenhouse vs. The Mayor*, §c., 25 Md. 336.

The City of New York leased a lot to a church, with a covenant of quiet enjoyment, and that it might be used for burial purposes. The Common Council afterwards passed an ordinance, by which the church was prohibited from using the property for that purpose. The court held that the contract was void, and say: "The corporation had no power as a party to make a contract which should control or embarrass their legislative powers and duties." *Presbyterian Church vs. Mayor*, §c., 5 Cowen, 538.

The Supreme Court of the United States, in the case of *Goszler vs. Georgetown*, where the city had established the grade of a street, and provided that it should not be changed, and property owners had built upon it accordingly, and the city afterward changed the grade, upon suit being brought by the property holders, held that they could not recover, and the court say: "The power of this body to make a contract, which should so operate as to bind its legislative capacity forever thereafter, and disable it from enacting a by-law which the legislature enables it to enact, may well be questioned. We rather think that a corporation can not abridge its own legislation." *Goszler vs. Georgetown*, 7 Wheaton, 593.

Gale vs. Kalamazoo, 23 Mich. 344, was a case where the city entered into a contract with a person, that, in consideration that he would build a market house, etc., he should, for a term of years, have the rents, and that the city would not build or establish any other market house during the term of the contract. The court held the contract to be void; for the reason that the power to regulate and establish markets was a discretionary power, granted by charter, and the Council could not abridge or contract it away.

The City of St. Louis had, under its charter, power to erect, repair, regulate and establish wharves; and made a contract with a private corporation, by which the city granted the corporation the right to occupy a portion of a public wharf, for a grain elevator, for a term of fifty years. The court held this contract void, because it was an attempt to limit, by contract, powers conferred upon the city by charter. *Illinois, etc., Canal Co. vs. St. Louis*, 2 Dillon, 70.

When the charter of the City of New York conferred upon the Council the power to regulate and provide for the cleaning of the streets of the city, and the Common Council entered into a contract with a person to clean the streets, at a certain price, for a term of years, suit was brought on the contract, and the Supreme Court held the contract to be void, for the reason that the Common Council could not bind its legislative capacity by any private arrangement or stipulations, so as to disable itself from enacting any laws that might be deemed essential for the public good.

In the *State vs. Cincinnati Gas Light Co.*, 18 Ohio State, 262, the City of Cincin-

nati entered into a contract with a person, granting him the right to the exclusive use of the streets, for a term of years, for the purpose of laying mains and maintaining gas works. The court held the contract to be void, as by it the Common Council sought to divest itself of a part of its authority over the public streets.

The case of *Richmond, etc. vs. Middleton*, 59 New York, 228, was a case where the Town Auditors, under an authority to provide for the lighting of the streets, granted by the legislature, entered into a contract with the gas company to furnish certain streets with gas for the terms of five years. The following year, the legislature repealed the law granting them the power to provide for the lighting of the streets. The company continued to furnish the gas until the expiration of the contract, and brought suit to recover the contract price. The court held the contract to be void, and say: "There is another ground upon which I think it legally clear that the plaintiff cannot recover upon the contract. Under the act of 1865, the Board of Town Authorities had no power, once or for all, to determine that certain streets should be lighted, for an agreed number of years, and deprive those who should succeed to their places of all control over the subject, by entering into a contract with the plaintiff for this long term. An examination of the charter shows that it was intended to vest a discretion, at all times, in the Board, whether any, and which, of the streets should be lighted with gas. The Board could, therefore, contract for a supply only during its pleasure. When a majority, either from a change of views of its existing members, or the opinion of some of their successors, thought best to discontinue the lighting in some or all the streets, they could not be divested of the power so to do, by a previous contract entered into for the supply of gas."

The recent case of *Garrison vs. The City of Chicago et al.*, in the United States Circuit Court, is also in point. The City of Chicago, under the provision of her charter to provide for lighting her streets, entered into a contract with the People's Gas Light & Coke Co. to furnish gas to light certain streets for a term of years. The city determined to discontinue some of the lamps, and the company brought suit, and sought to enjoin the city from interfering with, or discontinuing the use of, the lamps. Judge Drummond denied the injunction, and held that the City Council had no power to make such a contract.

The cases I have cited are all decided upon the principle that the powers granted to municipal corporations, such as to regulate the cleaning of streets, to regulate and establish markets, to control the streets, and to light them with gas, are held by the Common Council in trust for the public good and welfare, and that it is the duty of the Council to legislate upon and make changes in them whenever, and as often, as the public interest demands it. For what might be for the best interest of her citizens at one time, might be directly the contrary at another; and, therefore, they are governmental discretionary powers, and the Council can not delegate them, or make any contract that will hinder or restrict a free exercise of them. In the language of one of the judges, "If any of these powers can be surrendered by the Council for five years, they may be for fifty or one hundred years; and what is the difference between such a surrender and an absolute alienation?" There-

fore, the Council can make no contract in reference to them that is not determinable at their will, or that will prevent a change or alteration whenever a majority of the Council shall, in their discretion, determine that the public interest demands it.

Does the contract in question restrict the power of the city to regulate the lighting of the streets? I am clearly of the opinion that it does; for it fixes, for a term of years, what number of lamps shall be lighted, the number of hours per year that they shall be lighted, and the amount that shall be paid each year per lamp. Under this contract, the city can not regulate or change, during its continuance, the number of lamps, the time that each shall be lighted, or the price to be paid for each; no matter what the ability of the city is to pay the price contracted for, nor how much the public interest and welfare might demand a change in other respects. In the light of the authorities I have cited, as well as a number of others that I have examined, I am forced to the following conclusions:

1st. That the City Council can not delegate, embarrass, or restrict, by contract, the legislative, governmental, or discretionary powers granted by the charter.

2d. That the power granted by the charter to regulate the lighting of the streets, public grounds, and buildings is a governmental, discretionary power, and that it is the duty of the Council, at all times, to exercise it for the best interest of the city; and, therefore, any contract by which it is restricted or embarrassed, that may be entered into by the Council, is only binding so long as a majority of that body shall deem that is for the best interest of the city and her citizens.

3d. That the contract between the city and the Gas Company does restrict the power of the Council to regulate the lighting of the streets.

And, therefore, I am of the opinion that, whenever a majority of the Council shall determine that it is for the interest of the city and her citizens to change or alter the present regulations for lighting the streets, by dispensing with part of the lamps, or by lighting them for a shorter period per night, or in any other manner, it is her duty and right to do so.

I have used the terms "City Council" and "Common Council," in what I have said, meaning thereby the governing power of the city. At the present time, of course, that power, in our city, is composed of the Council and the Board of Aldermen.

I have expressed my opinion upon the legal questions presented, purely from a legal standpoint. What the action of the Council should be, is a question for them to determine.

Respectfully submitted,

R. O. HAWKINS, City Attorney.

The motion referred to in above report [see page 374, *ante*], was then taken up, and formally adopted by the following vote, a call of the "ayes and noes" having been demanded:

Affirmative—Councilmen Bagby, Case, Izor, Layman, Marsee, Morse, McGinty, Reading, Sindlinger, Tucker, Walker, Watts, Wood, A. L. Wright, and W. G. Wright—15.

Negative—Councilmen Pouder, Reed, Steinhauer, and Thomas—4.

Councilman Reed moved that a special committee of five be appointed, whose duty it should be to confer with the Water and Gas Companies, and make due endeavors to secure a re-adjustment and reduction of their contract terms for the furnishing of public water and gas.

Above motion failed to be adopted by the following vote :

Affirmative—Councilmen McGinty, Pouder, Reed, Steinhauer, and Thomas—5.

Negative—Councilmen Bagby, Case, Izor, Layman, Marsee, Morse, Reading, Sindlinger, Tucker, Walker, Watts, Wood, A. L. Wright, and W. G. Wright—14.

Councilman Izor asked leave of absence for Councilman Brown, who was out of the city, and said privilege was duly accorded.

Councilman Izor submitted sundry claims on account of the East Market, and Councilman Tucker submitted a claim on account of University Square Park; which were referred to the Committee on Accounts and Claims, without being read.

Councilman Walker was excused for the balance of this session.

The Committee on Streets and Alleys, through Councilman Watts, submitted the following report; which was read, considered, and concurred in by clauses :

Indianapolis, September 3, 1877.

To the Mayor and Common Council :

Gentlemen :—Your committee, to whom was referred sundry papers, would respectfully report thereon as follows, to-wit :

1st. Is a motion, directing the Street Commissioner to raise or lower the west gutter of Mississippi street.

We recommend that said gutter be raised.

2d. Is a motion, directing the Street Commissioner to fill the chuck-holes in New York street, between the Canal and Indiana avenue.

As the street is worn out, we recommend that an ordinance be prepared for re-graveling said street, between the points referred to.

3d. Is a motion, directing the Street Commissioner to fill the chuck-holes in New York street, between the Canal and West street.

We recommend that said work be done.

4th. Is a motion, directing the Street Commissioner to fill the chuck-holes in Vermont street, between the Canal and West street.

We recommend said work be done.

5th. Is a motion, directing the Street Commissioner to scrape the dust, and fill the chuck-holes, in Ohio street, between Illinois and Alabama streets.

We recommend said work be done.

6th. Is a motion, instructing the Street Commissioner to build a wooden culvert over east ditch on Cady street, from Lord street to the I. C. & L. R. tracks.

We recommend that said work be done.

7th. Is a motion, directing the Street Commissioner to put in a wooden culvert at crossing of North and California streets, south side of North street.

We recommend that said work be done.

8th. Is a motion, authorizing the Street Commissioner to clean the gutter of St. Clair street, between Broadway and Plum streets.

We recommend said work be done.

9th. Is a motion, instructing the Street Commissioner to clean the gutters of Bismark street, from Virginia avenue to Sullivan street.

We recommend the work be done.

Respectfully submitted,

JAMES E. WATTS,
JAMES T. LAYMAN,
GEO. P. WOOD,

Committee on Streets and Alleys.

The same committee submitted the following report; which was duly concurred in:

To His Honor, the Mayor, and the Common Council:

Your committee, to whom was referred the sealed proposals received by your honorable body August 13th, 1877, beg leave to make the following report:

We have given the matter a careful investigation, and justly believe that these now almost impassable streets should, in some way, be repaired

Yet, when we consider the cost of repairing these streets, as per proposals received (of which we enclose an itemized statement), and the plain, stubborn fact staring us squarely in the face that we have not the money, nor the power legally to raise the money, to improve these streets, we can see no other course for us to pursue, except to recommend that none of the proposals received be accepted, for reasons above stated.

SCHEDULE OF PROPOSALS FOR REPAIRING, ETC., THE WOODEN-BLOCK PAVEMENTS.

DELAWARE STREET.

From north side of Massachusetts avenue to south side of St. Clair street.

	Per lineal foot front, each side.	TOTAL COST.
J. J. Palmer	\$2 02	\$ 9,456 00
Columbus Paving Co.....	3 04	*14,465 00
Hanna, Carr & Gansberg.....	90	4,676 95
J. B. Smith.....(From the manner of repairing, it is impossible to estimate the cost from this bid.)		

*Includes the crossing of St. Clair street.

From south side of St. Clair street to Tinker street.

	Per lineal foot front, each side.	TOTAL COST.
J. J. Palmer.....	\$ 3½	\$ 265 00
Columbus Paving Co.....	2 37	*17,831 00
J. B. Smith.....(Cost can not be estimated.)		

*From north side of St. Clair street, instead of south side.

From Washington street to Massachusetts avenue.

This part of Delaware street was not advertised.

	Per lineal foot front, each side.	TOTAL COST.
Hanna, Carr & Gansberg.....	\$1 25	\$ 4,097 25

MERIDIAN STREET.

From south side of New York street to south side of St. Clair street.

	Per lineal foot front, each side.	TOTAL COST.
J. J. Palmer	\$1 11½	\$ 5,575 00
Columbus Paving Co.....	3 05	15,238 00
J. B. Smith, (Specification No. 1).....	1 38½	6,944 00
" " (" " 2).....	1 80½	9,027 20

From north side of St. Clair street to Tinker street.

	Per lineal foot front, each side.	TOTAL COST.
J. J. Palmer.....	\$ 87	\$ 6,616 00
Columbus Paving Co.....	2 30	17,484 00
J. B. Smith, (Specification No. 1).....	1 11	8,455 00
" " (" " 2).....	1 44½	10,991 50

TENNESSEE STREET.

From south side of Market Street to north side of Indiana avenue.

	Per lineal foot front, each side.	TOTAL COST.
J. J. Palmer	\$ 12½	\$ 275 00
Columbus Paving Co.....	2 98	*27,438 00
J. B. Smith, (Specification No. 1).....	1 39	3,083 00
" " (" " 2).....	1 80½	4,007 90

*This bid covers the work from Market street to north side of First street.

From north side of Indiana avenue to north side of First street.

	Per lineal foot front, each side.	TOTAL COST.
J. J. Palmer	\$1 36	\$ 9,500 00
J. B. Smith, (Specification No. 1).....	1 38½	9,702 00
" " (" " 2).....	1 80½	12,612 60

From north side of First street to Tinker street.

	Per lineal foot front, each side.	TOTAL COST.
J. J. Palmer.....	\$ 89½	\$ 4,620 00
Columbus Paving Co.....	2 47	12,751 00
J. B. Smith, (Specification No. 1).....	1 11	5,746 00
" " (" " 2).....	1 44½	7,469 80

TOTAL COST OF WORK.

<i>Delaware street</i> —J. J. Palmer.....	\$ 9,721 00
Columbus Paving Co.....	32,296 00
J. B. Smith, (not estimated.)	
Hanna, Carr & Gansberg.....	8,774 20
<i>Meridian street</i> —J. J. Palmer.....	\$12,191 00
Columbus Paving Co.....	32,722 00
J. B. Smith, (Specification No. 1).....	15,399 00
" " (" " 2).....	20,018 70
<i>Tennessee street</i> —J. J. Palmer.....	\$14,395 00
Columbus Paving Co.....	40,189 00
J. B. Smith, (Specification No. 1).....	18,531 00
" " (" " 2).....	24,089 50

2d. We would recommend that the Street Commissioner be instructed to repair the Delaware street pavement, from the south side of St. Clair street to Tinker street, at a cost not to exceed \$175.

JAS. E. WATTS,
JAMES T. LAYMAN,
GEO. P. WOOD,

Committee on Streets and Alleys.

The same committee submitted the following report; which was also duly concurred in:

Indianapolis, September 3, 1877.

To the Mayor and Common Council :

Gentlemen :—Your Committee on Streets and Alleys, to whom were referred special ordinances Nos. 24 and 25, 1877, and remonstrances against the passage of same, beg leave to make the following report :

We have viewed the premises of the contemplated improvements for the second time, and will state that, on our last visit, we found this location in a worse condition than on the first. Not less than four dead dogs, swelled up ready to burst, floated around in the water. We, also, found an increase of water, in a green and stagnant condition.

We consider this location, in its present condition, as seriously detrimental to health and a breeder of sickness. We, therefore, adhere to our former action, and recommend the passage of the special ordinances for the improvement of the street and alley named therein.

We would, also, recommend (should our report be concurred in), that the contractors for the improvement under the aforesaid ordinances be requested to give employment to the owners of the property to be assessed for such contemplated improvement, paying such parties the same rates for their labor and teams as like laborers and teams could be hired for. We make this suggestion, for the reason that several of the property owners residing on the lines of the proposed improvement would be favorable thereto, if the means were afforded them to discharge their assessments upon some such plan as we have now recommended.

2d. Is a motion requesting your committee to examine the alley running south from South street, between Madison avenue and Pennsylvania street, with power to act.

We have attended to the duty with which we were charged, and do now recommend that the Board of Police be directed to instruct the sanitary policeman to notify the parties offending to immediately remove the obstructing ashes and cinders.

Respectfully submitted,

JAMES E. WATTS,
JAMES T. LAYMAN,
GEO. P. WOOD,

Committee on Streets and Alleys.

MESSAGE AND PAPERS FROM THE BOARD OF ALDERMEN.

The following message from the Board of Aldermen was received :

Indianapolis, September 3, 1877.

To the Mayor and Common Council :

Gentlemen :—I herewith transmit the report of the Aldermanic Committee on Gas-Light, accompanied by a proposition from the Indianapolis Gas-Light and Coke Company for lighting the Illinois street Tunnel with gas.

The aforesaid report was duly concurred in by the Board, at its last session, held August 28th, 1877.

These papers are now submitted to your honorable body, with the recommendation of the Board of Aldermen that you take favorable action upon the same.

Respectfully,

GEO. T. BREUNIG,
Clerk of Board of Aldermen.

The several papers accompanying above message [see Aldermanic Proceedings, page 187], were then read, and, on motion, referred to the Council Committee on Gas-Light.

APPROPRIATION ORDINANCES.

The Fire Board, through Councilman Layman, introduced the following ordinance; which was read the first time:

Ap. O. 62, 1877—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis, on account of Fire Department.

The Hospital Board, through Councilman Izor, introduced the following ordinance; which was read the first time:

Ap. O. 63, 1877—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis, on account of City Hospital and Branch.

The Board of Police, through His Honor, the Mayor (Councilmen Brown and Bugbee being both absent), introduced the following ordinance; which was read the first time:

Ap. O. 64, 1877—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis, on account of Station Houses.

The Committee on Accounts and Claims, through Councilman Layman, introduced the following ordinance; which was read the first time:

Ap. O. 65, 1877—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis.

The Committee on Printing, Stationery, and Advertising, through

Councilman Reed, introduced the following ordinance; which was read the first time:

Ap. O. 66, 1877—An ordinance appropriating money for the payment of sundry claims against the City of Indianapolis, on account of Printing, Stationery, and Advertising.

The Committee on Streets and Alleys, through Councilman Watts, introduced the following ordinance; which was read the first time:

Ap. O. 67, 1877—An ordinance appropriating money on account of the Street-Repair Department of the City of Indianapolis.

The Committee on Accounts and Claims, through Councilman Layman, introduced the following ordinance; which was read the first time:

Ap. O. 68, 1877—An ordinance appropriating money for the payment of sundry claims incurred during the "Railroad Strike" of July, 1877, being for Supplies, etc., furnished the State Militia.

Appropriation ordinance No. 62, 1877, was then read the second time, ordered to be engrossed, read the third time, and passed by the following vote:

Affirmative—Councilmen Bagby, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

Appropriation ordinance No. 63, 1877, was then read the second time, ordered to be engrossed, read the third time, and passed by the following vote:

Affirmative—Councilmen Bagby, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

Appropriation ordinance No. 64, 1877, was then read the second

time, ordered to be engrossed, read the third time, and passed by the following vote :

Affirmative—Councilmen Bagby, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

Appropriation ordinance No. 65, 1877, was then read the second time, ordered to be engrossed, read the third time, and passed by the following vote :

Affirmative—Councilmen Bagby, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

Appropriation ordinance No. 66, 1877, was then read the second time, ordered to be engrossed, read the third time, and passed by the following vote :

Affirmative—Councilmen Bagby, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

Appropriation ordinance No. 67, 1877, was then read the second time, ordered to be engrossed, read the third time, and passed by the following vote :

Affirmative—Councilmen Bagby, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

Appropriation ordinance No. 68, 1877, was then read the second time, ordered to be engrossed, read the third time, and passed by the following vote :

Affirmative—Councilmen Bagby, Izor, Layman, Marsee, Morse, McGinty, Pouder, Reading, Reed, Sindlinger, Steinhauer, Thomas, Tucker, Watts, Wood, A. L. Wright, and W. G. Wright—17.

Negative—None.

INTRODUCTION OF ORDINANCES.

Councilman Thomas presented the following petition; which was received:

Indianapolis, August 27, 1877.

To the Mayor and Common Council of the City of Indianapolis:

Gentlemen:—The undersigned, owners of the real estate fronting on alley between McCarty and Phipps streets, and first east of Meridian street, respectfully petition for the passage of an ordinance, providing for grading and graveling the alley described in the accompanying ordinance.

And your petitioners will ever pray, etc.

Thomas Madden, 33½ feet; Chas. H. Schwomeyer, 100 feet; Anthony Raesener, 40 feet; Kasimir Seiter, 67 feet; Frederick Zscheck, 33½ feet; Gustav Waegemann, 33½ feet; J. Henry Meyer, 26 feet; Emma Walk, 33½ feet; Patrick Walsh, 33½ feet.

Also, introduced the following special ordinance; which was read the first time:

S. O. 26, 1877—An ordinance to provide for grading and graveling the first alley east of Meridian street, between Phipps and McCarty streets.

Councilman W. G. Wright introduced the following special ordinance; which was read the first time:

S. O. 27, 1877—An ordinance to provide for grading and graveling the first alley east of East street, running from Merrill to Valley street.

Councilman Watts was excused for balance of session.

INTRODUCTION OF MISCELLANEOUS BUSINESS.

Councilman Bagby offered the following motions; which were adopted:

Moved, That the Street Commissioner be instructed to fill the chuck-holes on Ellsworth street, at a cost not exceeding fifteen dollars.

Moved, That Conrad Bauer and W. A. Cox be granted privilege to lay a bowlder-crossing across the sidewalk, at No. 111 W. New York street.

Councilman Izor offered the following motions; which were adopted :

Moved, That the Chief Fire Engineer be instructed to examine the stairways and halls of the building known as the "Surgical Institute," on Illinois street, and report if the same is furnished with sufficient modes of escape, in case of fire.

Moved, That the Columbus Paving Company be granted permission to lay a quantity of their pavement, at any place that the property owners may see proper to pay for the same.

The same gentleman offered the following resolution :

Resolved, That the Market Master of the East Market be granted permission to hold market on Saturday evening, at the East Market, as the citizens are demanding the same; and that he be permitted to use Delaware and Alabama streets, north from the Market Space, so far as the public interest may demand, but that he be required to clean the streets after each market.

Councilman Marsee moved that preceding resolution be referred to the Committee on Markets; upon which motion, a call of the "ayes and noes" was demanded, and the reference was ordered by the following vote :

Affirmative—Councilmen Bagby, Layman, Marsee, Morse, McGinty, Thomas, Wood, and A. L. Wright—8.

Negative—Councilmen Izor, Reading, Reed, Sindlinger, Steinhauer, Tucker, and W. G. Wright—7.

Councilman Morse offered the following motions; which were adopted :

Moved, That the Street Commissioner be directed to repair the floor of the bridge over the mill-race, on W. Washington street.

Moved, That the Street Commissioner be, and is hereby, directed to fill the chuck-holes on West street, between New York and North streets.

Councilman Reed offered the following motions ; which were adopted :

Moved, That Scott & Coats have permission to lay a stone-crossing opposite their place on N. Illinois, between Market and Ohio streets, the grade stakes to be set by the City Civil Engineer, and the work to be done in sixty days ; the work to be done at their own expense.

Moved, That the City Attorney be instructed to prepare, and report, an ordinance repealing the ordinance, now in force, prohibiting the giving of theatrical or other exhibitions in any room or building where intoxicating liquors are sold, and also providing for a license of \$100 to concert saloons, and providing for a forfeiture of the license, in case a disorderly house is kept.

Councilman Sindlinger offered the following motion ; which was adopted :

Moved, That the property owners on the line of the alley running north and south between Tennessee and Mississippi streets, and between Pearl and Maryland streets, be granted permission to improve the same, at their own expense, under the supervision of the Civil Engineer, the work to be done within the next ninety days.

Councilman Steinhauer offered the following motion ; which was adopted :

Moved, That the Street Commissioner be, and is hereby, instructed to fill the south and east sidewalks around the City Hospital Grounds, with gravel, up to the grade of the same, at a cost not exceeding twenty dollars.

Councilman Tucker offered the following motion :

Moved, That the Military Park Policeman be authorized to close the gates against vehicles on Sundays, and that driving faster than a walk be prohibited at all times, in said park, during the months of May, June, July, August, September, and October.

Councilman Reading moved to lay the preceding motion upon the table ; and the same was done by a vote of "ayes and noes" (duly demanded) :

Affirmative—Councilmen Bagby, Marsee, Morse, McGinty, Reading, Reed, Sindlinger, and Thomas—8.

Negative — Councilmen Izor, Layman, Steinhauer, Tucker, Wood, A. L. Wright, and W. G. Wright—7.

Councilman Wood offered the following motions; which were referred to the Committee on Streets and Alleys :

Moved, That the Street Commissioner be, and is hereby, ordered to clean out and fill (where needed), the gutter on the south side of Washington street, between California street and the canal.

Moved, That the Street Commissioner be, and is hereby, instructed to notify property owners to remove obstructions off the sidewalk of California street, between Washington and Maryland streets.

Councilman A. L. Wright moved a reconsideration of the vote by which permission was granted the Columbus Paving Company to lay their "concrete pavement," on the request and at the expense of property owners [see page 412, *ante*]; and said vote was reconsidered by the following "ayes and nays" :

Affirmative—Councilmen Bagby, Layman, Marsee, Morse, McGinty, Reed, Thomas, Wood, A. L. Wright, and W. G. Wright—10.

Negative—Councilmen Izor, Reading, Sindlinger, Steinhauer, and Tucker—5.

And then, on Councilman Marsee's motion, the above matter was referred to the Committee on Streets and Alleys and City Civil Engineer, with power to act, the amount to be laid having been limited to one square.

On motion, the Common Council then adjourned.

JOHN CAVEN, Mayor.

Attest :

BENJ. C. WRIGHT, City Clerk.