

REGULAR MEETING.

COUNCIL CHAMBER, CITY OF INDIANAPOLIS, }  
 MAY 16, 1892. }

The Common Council of the City of Indianapolis met in the Council Chamber, Monday evening, May 16, at 8 o'clock P. M., in regular meeting.

Present, Hon. Martin J. Murphy, President of the Common Council, in the Chair, and 19 members, viz.: Messrs. Allen, Colter, Cooper, Costello, Holloran, Laut, Linn, McGill, McGuffin, Olsen, Puryear, Rassmann, Ryan, Schmidt, Schrader, Sherer, White and Young.

Absent, 2, viz : Messrs. Gasper and Gauss.

The Proceedings of the Common Council for the special meeting, held Friday, May 6, 1892, having been printed and placed upon the desks of the Councilmen, said Journal was approved as published.

The Clerk proceeded to read the Journal, whereupon Councilman Ryan moved that the further reading of the Journal be dispensed with. Which motion prevailed.

COMMUNICATIONS, ETC., FROM MAYOR.

His Honor, the Mayor, presented the following communication :

EXECUTIVE DEPARTMENT,  
 CITY OF INDIANAPOLIS,  
 INDIANAPOLIS, IND., May 16, 1892. }

To the Members of the Common Council :

GENTLEMEN—I have approved General Ordinance No. 1, passed at your session held May 2. Also Appropriation Ordinance No. 4, passed at your session held May 6, 1892.

Respectfully submitted,  
 T. L. SULLIVAN,  
 Mayor.

Which was received and ordered spread on the minutes.

REPORTS, ETC., FROM CITY OFFICERS.

The City Attorney submitted the following report :

INDIANAPOLIS, IND., May 16, 1892.

To the Hon. President and Members of the

Common Council of the City of Indianapolis :

GENTLEMEN—Your resolution, introduced in Council by Mr. Olsen on the 2d day of May, 1892, with reference to the proceedings of the Board of Public Works in the matter of the improvement of Fletcher avenue and South street, and referred by you to me for my opinion as to the legality of the proceedings of said Board, has been received. Replying, I would respectfully say :

A careful examination of the records of the Board of Public Works discloses the following facts:

A resolution was passed on the 26th day of February, 1892, by the Board of Public Works for the improvement of South street and Fletcher avenue with asphalt.

Notice of the passage of said resolution was published in the Sentinel of February 29 and March 7, 1892, in which the 16th day of March was fixed as the time when said Board would hear complaints and take final action with reference to their resolution of February 26.

On the 16th day of March the Board confirmed its resolution of February 26.

On March 25, 1892, a remonstrance was filed signed by more than two-thirds of the resident freeholders upon said avenue and street against the improvement with asphalt, as provided in the resolution of February 26.

On March 30 the Board, by resolution placed of record, rescinded all former action taken by it with reference to the improvement of said street and avenue.

On April 1, 1892, the Board adopted an entirely new and different resolution for the improvement of said street and avenue with brick instead of asphalt.

Notice of the passage of said resolution of April 1 was given by publication in the Sentinel on April 4 and April 11, 1892, in which April 20 was fixed as the day upon which said Board would hear remonstrances and take final action upon said resolution.

On April 20 said Board, in all things, confirmed its resolution of April 1, which provided for the improvement of said street and avenue with brick.

Thereupon said Board advertised for bids, and fixed May 13, 1892, as the day when they would be received, opened and read.

On May 13, 1892, said Board met, received, opened and read said bids.

The foregoing is a complete statement of the proceedings taken by the Board of Public Works as shown by their records. The sole question presented is as follows: After the Board had passed its resolution on February 26 providing for asphalt; had given notice thereof, as required by law; had met on the 16th of March and confirmed its original resolution, and within ten days thereafter (March 25th) a remonstrance signed by two-thirds of the resident freeholders of said street and avenue had been filed with them, did the Board have the right to recede from its resolution of February 26 and rescind all action taken by it, or was it ousted of all jurisdiction for sixty days from that time and required, upon the filing of the remonstrance, to transmit the same with its resolution to the Common Council for its action?

I quote as in point a part of section 73 of the City Charter as follows:

"If such original resolution be confirmed or modified it shall be final and conclusive on all persons, unless within ten days thereafter, two-thirds of all the resident free-holders upon such street or alley remonstrate against such improvement. In case of such remonstrance, such improvement shall not take place unless specifically ordered by an ordinance within sixty days thereafter, passed by a two-thirds vote of the Council, and approved by the Mayor."

The Board of Public Works is given large power in the matter of street improvements. The jurisdiction to order such work is lodged in the Board. The clear policy of the law, with but slight limitation, is to place the matter of making public improvements within their discretion.

On the day fixed for hearing property owners the Board sits and hears complaints or arguments pro and con with reference to the proposed improvement. Upon a sufficient showing, even by one person, it might conclude to terminate its proceedings entirely or merely modify the same, or, notwithstanding the opposition of property owners, it might confirm its original resolution and if so the Board's conclusion will be final, unless within the next ten days a proper remonstrance is filed. If this be done the Board has no power to proceed in the line of making the improvement, unless by reference of the Common Council, its action be confirmed by a two-thirds vote of that body. But, on the other hand, if at any time within the ten days a remonstrance is filed and the Board, rather than insist upon making the improvement, decides to recede from its original action, it seems clear that it has the power to do so. There is nothing in the statute which re-

quires the Board of Public Works, upon the filing of a remonstrance, to transmit the papers in the case to the Common Council, unless the Board adheres to its action and insists upon the improvement notwithstanding the remonstrance.

If the Board, upon the filing of a remonstrance, were required to immediately transmit the papers to the Council for its action, although the Board after the filing of such remonstrance had become convinced that the improvement as ordered by them should not be made and they were unanimously converted to the position taken by the two-thirds of the property owners remonstrating, we would then have this situation that an improvement might be ordered by the Common Council although the Board was opposed to it and two thirds of the property owners were opposed to it. Clearly the law does not contemplate any such thing. In other words to apply the law to the present facts. The Board after full examination is unanimously opposed to the improvement of Fletcher avenue and South street with asphalt (as originally ordered). Two-thirds of the property owners upon said street and avenue are opposed to the improvement with asphalt. If the law in this case gave jurisdiction to the Common Council and enable it to pass an ordinance requiring the improvement to be made with asphalt, we would have the law authorizing and requiring the improvement of a street against the affirmative action and discretion of the Board of Public Works and against the wishes of two-thirds of the property owners resident upon said street and avenue. The law, in my opinion, is not subject to such a construction.

Probably the Board has the power to rescind its action with reference to improvements at any time after the passage of its original order until the rights of some third parties have attached. Even after an advertisement for bids it may reject any and all bids and terminate the improvement there. Of course, after a contract is let it would be estopped. Or, after a remonstrance has been filed and the papers have been transmitted to the Council, it would then be beyond the jurisdiction of the Board, and it could not rescind its action. If a resolution for an improvement be passed and after advertisement and final confirmation thereof a remonstrance be filed and the Board takes no affirmative action upon such remonstrance, but remains wholly indifferent, probably the Council might take knowledge of that fact and, without the transmission of the papers, pass an ordinance ordering the improvement notwithstanding the remonstrance. But where the Board by resolution rescinds its order after the filing of a remonstrance, the proceeding is dead.

Upon the foregoing facts I am of the opinion that the Board of Public Works acted within its authority when, on the 30th day of March, it rescinded all former action taken, and on the following day passed a new resolution for a different improvement; and that by the mere filing of the remonstrance the Common Council did not acquire jurisdiction upon the subject of the improvement for sixty days or for any time.

Very respectfully submitted,

LEON O. BAILEY,  
*City Attorney.*

P. S.—I herewith return your resolution.

#### REPORTS FROM OFFICIAL BOARDS.

DEPARTMENT OF PUBLIC WORKS,  
OFFICE OF THE BOARD,  
INDIANAPOLIS, IND., May 16, 1892. }

*Mr. R. J. Abrams, City Clerk, City:*

DEAR SIR:—The Board directs me to transmit you herewith a contract made and entered into with The Indiana Lumber and Veneer Company, granting them the right to lay and maintain a switch or side-track across Fifteenth Street, off the tracks of the L. E. & W. R. R. Co.

Contract sent you for action thereon by the Common Council of the City of Indianapolis.

Very respectfully,

BART PARKER,  
*Clerk Board Public Works.*



## REPORTS, ETC., FROM STANDING COMMITTEES.

Mr. McGill, on behalf of a majority of the Committee on Judiciary, to whom was referred G. O. No. 8, 1892, together with the City Attorney's opinion thereon, made the following report:

INDIANAPOLIS, IND., May 16, 1892.

*Mr. President:*

Your Committee on Judiciary, to whom was referred General Ordinance No. 8, 1892, together with the written opinion of the City Attorney, beg leave to report that we have carefully considered the same, and would recommend the ordinance be passed.

Respectfully submitted,

ROBERT C. MCGILL,  
EMIL C. RASSMANN.

Mr. Young, on behalf of a minority of the Committee on Judiciary, made the following report:

INDIANAPOLIS, IND., May 16, 1892.

*Mr. President:*

The minority of the Committee on Judiciary, to whom General Ordinance No. 8 was referred, begs to report that the same has been carefully considered, and recommend that, for several reasons, the same do not pass as at present drawn.

Respectfully submitted,

A. A. YOUNG.

Mr. Young moved that the minority report be substituted for the majority report.

Mr. Olsen moved to lay Mr. Young's motion on the table.

Which motion was adopted by the following vote:

AYES—12, viz.: Councilmen Colter, Costello, Laut, McGill, Olsen, Rassmann, Ryan, Schmidt, Shrader, Sherer, White, and President Murphy.

NAYS—7, viz.: Councilmen Allen, Cooper, Holloran, Linn, McGuffin, Puryear and Young.

The question being on the adoption of the majority report.

Which was concurred in.

Mr. White, on behalf of the Committee on Public Morals, to whom was referred

G. O. No. 18, 1892. An ordinance to provide for licensing riding galleries, etc.

Made the following report:

*Mr. President :*

Your Committee on Public Morals, to whom was referred General Ordinance No. 18, respectfully report that they have had the same under consideration, and recommend that it be amended by striking out all matter after the enacting clause and substituting the following appended sections in lieu thereof, and that when so amended that the same do pass.

Respectfully submitted,

J. F. WHITE,  
W. B. LINN.

An Ordinance providing for the licensing and regulation of "Riding Galleries," "Flying Dutchman" or "Merry-Go-Round," or other similar device; fixing the fee to be paid for said license; providing penalties for the violation thereof, and repealing all ordinances in conflict therewith.

SECTION 1. *Be it ordained by the Common Council of the City of Indianapolis,* That it shall be unlawful for any person to run, operate or control, or cause to be run or operated, any "Riding Gallery," "Flying Dutchman," "Merry-Go-Round," or other similar device, within the city of Indianapolis except as provided in this ordinance, and after having procured a license so to do, as hereinafter provided.

SEC. 2. The license fee for the operation of any of the concerns named in Section 1 shall be ten dollars per month, no reduction to be made for any number of days having elapsed before the issuing of the license. Said license shall be issued by the City Comptroller, and may be issued for any number of months.

SEC. 3. It shall be unlawful for any of the concerns named to be in operation at an hour later than 10 o'clock on any night during the week, except Saturday night, when said concerns may run until 11 o'clock.

SEC. 4. If at any time any one of the concerns for which the above license is issued is conducted in such manner as to become harmful to the community in which it is operated, or so as to become a gathering place for noisy and boisterous crowds, or persons of lewd or bad character, or indecent conduct is practiced by patrons of said concerns, the Mayor shall have power, upon being convinced of such facts, to revoke such license.

SEC. 5. Any person or persons who shall violate any of the provisions of this ordinance shall, upon conviction thereof, be fined in any sum not less than five and not exceeding fifty dollars, to which may be added imprisonment not to exceed thirty days. A third conviction shall forfeit all rights to any of the privileges granted in this ordinance.

SEC. 6. All ordinances in conflict with this ordinance are hereby repealed.

SEC. 7. This ordinance shall take effect and be in force from and after its passage and publication for one day each week for two successive weeks, in the Indianapolis Sentinel, a daily newspaper of general circulation printed and published in the city of Indianapolis, Indiana.

Which was read and concurred in.

Mr. Sherer, on behalf of the Committee on Public Safety and Comfort, and Public Health, to whom was referred :

G. O. No. 11, 1892. An ordinance authorizing the Board of Public Safety to establish a Bureau of Inspection; enlarging the powers of the Building Inspector, providing for the appointment of an Inspector of Plumbing and House Drainage, a Boiler Inspector and for the inspection of elevators and electric wires, and relating to all other matters properly connected therewith; fixing penalties for the violation of the provisions of this ordinance, and repealing all ordinances in conflict therewith.

Made the following report :

INDIANAPOLIS, IND., May 16, 1892.

*Mr. President :*

Your joint Committee of Public Safety and Comfort, and Public Health, to whom was referred General Ordinance No. 11, respectfully report that they have had the same under consideration, and recommend that said ordinance be separated and considered under its several headings and passed upon as separate ordinances with appropriate titles thereto; that the Council go into the Committee of the whole for the purpose of considering certain amendments herewith submitted, and that when such amendments are made that the same do pass.

Respectfully submitted,

E. J. SHERER,  
ROBT C. MCGILL,  
J. B. MCGUFFIN,  
J. R. ALLEN,  
H. W. LAUT,  
T. B. LINN.

Which was read and concurred in.

Mr. Costello, on behalf of the Committee on Sewers, Streets and Alleys, to whom was referred :

G. O. No. 19, 1892. An ordinance to change the name of Peru Street, in the city of Indianapolis, to Cornell Avenue.

Made the following report :

INDIANAPOLIS, IND., May 16, 1892.

*Mr. President and Members of the Common Council :*

GENTLEMEN—Your Committee on Streets, Sewers and Alleys, to whom was referred General Ordinance No. 19, 1892, have considered same, and recommend that it be passed.

JAS. H. COSTELLO,  
ANTON SCHMIDT,  
A. A. YOUNG.

Which was read and concurred in.

#### INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

Under this order of business the following entitled ordinances were introduced :

By the Board of Public Works :

G. O. No. 21, 1892. An ordinance approving a certain contract granting the Indiana Lumber and Veneer Company the right to lay and maintain a switch or side-track across Fifteenth Street, in the City of Indianapolis, Indiana.

Read first time and referred to Committee on Railroads.

By Mr. Rassmann :

G. O. No. 22, 1892. An ordinance authorizing and providing for the sale and conveyance of what is known as the Pest House property, belonging to the City of Indianapolis, and situated north of Fall Creek, the same being lots 10, 11 and 12 in Brook's subdivision of a part of the southwest quarter of section 35, township 16, range 3 east, in Marion County, Indiana.

Read first time and referred to Committee on Public Property and Improvements.

By Mr. Rassmann :

G. O. No. 23, 1892. An ordinance concerning the prevention of fire.

Read first time and referred to Committee on Public Safety and Comfort.

Mr. Linn moved that G. O. No. 21, 1892, be called from the Committee on Railroads.

Which was adopted.

Mr. Young moved that G. O. No. 21, 1892, be re-referred to the Committee on Railroads.

Which motion was adopted by the following vote :

AYES 19—viz. : Councilmen Allen, Colter, Cooper, Costello, Holloran, Laut, Linn, McMill, McGuffin, Olsen, Puryear, Rassmann, Ryan, Schmidt, Schrader, Sherer, White, Young and President Murphy.

NAYS—None.

#### ORDINANCES ON SECOND READING.

On motion by Councilman Ryan, the following entitled ordinance was taken up and read second time :

G. O. No. 8, 1892. An ordinance providing for the inspection of steam boilers and all steam generating apparatus under pressure.

Mr. Olsen offered the following amendment to G. O. No. 8, 1892 :

Amend G. O. No. 8, 1892, by striking out, "shall be appointed by the Mayor," and inserting instead, "shall be appointed by the Board of Public Safety."

O. R. OLSEN.

Which amendment was adopted by the following vote :



AYES, 19—viz.: Councilmen Allen, Colter, Cooper, Costello, Holloran, Laut, Linn, McGill, McGuffin, Olsen, Puryear, Rassmann, Ryan Schmidt, Schrader, Sherer, White, Young and President Murphy.

NAYS—None.

Mr. White offered the following amendment to G. O. No. 8, 1892:

“He shall be appointed only from such number of applicants who have passed a successful examination before a board of three expert boilermakers appointed by the Board of Public Safety; said examination to take into account the general trustworthiness of the applicant, as well as skill in workmanship.”

The said Board of Experts shall be allowed five dollars each for said examination of said applicants.

WHITE.

Which was adopted.

Mr. Linn moved that G. O. No. 8, 1892, be referred to the Committee of the Whole.

Mr. Olsen moved to lay Mr. Linn's motion on the table.

Which motion was adopted by the following vote:

AYES, 10—viz.: Councilmen Colter, Laut, McGill, Olsen, Rassmann, Ryan, Schmidt, Schrader, Sherer and President Murphy.

NAYS, 9—viz.: Councilmen Allen, Cooper, Costello, Holloran, Linn, McGuffin, Puryear, White and Young.

Mr. Olsen moved that G. O. No. 8, 1892, be ordered engrossed.

Mr. Young moved that action on G. O. No. 8, 1892, be deferred until the Council go into the Committee of the Whole.

Mr. Ryan raised the point of order that the motion of Mr. Young had been decided.

The President ruled that the point of order was well taken.

The question being on the engrossment of G. O. No. 8, 1892.

Which motion was adopted.

Mr. Ryan moved that G. O. No. 8, 1892, be read the third time and placed on its final passage.

Which motion was adopted.

The question being on the passage of G. O. No. 8, 1892.

Which was passed by the following vote:

AYES, 12—viz.: Councilmen Colter, Costello, Laut, McGill, Olsen, Rassmann, Ryan, Schmidt, Schrader, Sherer, White, and President Murphy.

NAYS, 7—viz.: Councilmen Allen, Cooper, Halloran, Linn, McGuffin, Puryear, and Young.



Mr. Cooper moved to adjourn.

Mr. Ryan moved to lay Mr. Cooper's motion on the table.

Which motion was adopted.

Mr. Olsen called up G. O. No. 18, 1892, on second reading.

Mr. Olsen offered the following amendment to G. O. No. 18, 1892.

Amend G. O. No. 18, 1892, by striking out "ten dollars," license fee, and insert instead "fifty dollars," license fee.

Mr. Puryear moved to lay Mr. Olsen's amendment on the table.

The ayes and nays being called for by Mr. Cooper and Puryear.

The roll was called which resulted as follows :

AYES 10—viz.: Councilmen Allen, Colter, Cooper, Laut, Linn, Puryear, Schrader, Sherer, White and President Murphy.

NAYS 8—viz.: Councilmen Costello, Holloran, McGuffin, Olsen, Rassmann, Ryan, Schmidt and Young.

Mr. Young offered the following amendment to G. O. No. 18, 1892.

*Moved,* That the words ten dollars per month be stricken out and that the words twenty-five dollars be inserted in lieu thereof.

YOUNG.

Mr. Schrader moved to lay Mr. Young's amendment on the table.

Which motion was adopted.

Mr. Ryan moved that G. O. No. 18, 1892, be ordered engrossed read third time and placed on its final passage.

Which motion was adopted.

The question being on the passage of G. O. No. 18, 1892.

Which failed for want of constitutional majority by the following vote:

AYES 10—viz.: Councilmen Allen, Colter, Laut, Linn, Puryear, Rassmann, Schrader, Sherer, White and President Murphy.

NAYS 9—viz.: Councilmen Cooper, Costello, Holloran, McGill, McGuffin, Olsen, Ryan, Schmidt and Young.

Mr. Linn called up G. O. No. 19, 1892, on second reading.

Mr. Rassmann moved that G. O. No. 19, 1892, be ordered engrossed, read third time and placed on its final passage.

Which motion was adopted.

The question being on the passage of G. O. No. 19, 1892.

Which was passed by the following vote :

AYES—19, viz.: Councilmen Allen, Colter, Cooper, Costello, Holloran, Laut, Linn, McGill, McGuffin, Olsen, Puryear, Rassmann, Ryan, Schmidt, Schrader, Sherer, White, Young, and President Murphy.

NAYS—None.

Mr. White moved that when the Council adjourn that it be to meet Monday evening, May 23, at 8 o'clock p. m.

Which motion was adopted.

On motion of Mr. Rassmann, the Common Council, at 9:45 o'clock P. M., adjourned.

ATTEST:

*M. J. Murphy*  
.....  
*R. J. Adams*  
.....

President.

City Clerk.