

PROCEEDINGS

OF THE

COMMON COUNCIL,

REGULAR SESSION.

CHAMBER OF THE COMMON COUNCIL OF THE }
CITY OF INDIANAPOLIS, }
MONDAY, JANUARY 31, 1870, 7 O'CLOCK P. M. }

The Common Council met in regular session.

Present—His Honor, the Mayor, Daniel Macauley, in the chair,
and the following members:

Councilmen Brown, Cottrell, Gimber, Harrison, Heckman, Kahn,
Kennington, Locke, Marsee, Newman, Pyle, Shepherd, Thalman,
Thoms, Weaver, Whitsit, Wiles and Woodburn—18.

Absent—None.

The proceedings of the adjourned session held January 26, 1870,
were read and approved.

Sealed proposals for building a City Station House were opened
and read, and referred to a select committee consisting of Council-
men Thoms, Kahn, Thalman, Whitsit and Shepherd.

REPORTS FROM COMMITTEES.

Dr. Woodburn, from the Committee on Accounts and Claims, introduced Special appropriation ordinance No. 5, 1870, entitled:

AN ORDINANCE appropriating money for the payment of sundry claims against the city of Indianapolis.

Which was read the first time.

Mr. Newman, from Committee on Judiciary, made the following report:

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—The Committee on the Judiciary to whom, with the City Attorney, was referred the affidavit and petition of W. C. Holmes and John A. Bradshaw, herewith report, that they have examined the same, and report the written opinion of the City Attorney, in which they fully concur.

Respectfully submitted,

JOHN S. NEWMAN,
AUSTIN H. BROWN,
TEMPLE C. HARRISON, } Committee.

INDIANAPOLIS, Jan. 31, 1870.

To the Chairman and Members of the Judiciary Committee: " " " "

GENTLEMEN:—I think that the Council cannot grant the relief prayed for by Messrs. Bradshaw & Holmes.

In assessments for street improvements the Council act judicially, and after a precept is issued their powers cease. This has been the uniform report of former Judiciary Committees.

The claim for street improvements is a private claim belonging to the contractor, and the only duty devolved upon the Common Council "is to put in motion the machinery for its collection." Of course the Common Council have no power to remit any part of it.

If the statements of the petitioners are correct, as doubtless they are, the title held under the sale is a mere nullity. The only thing that the petitioners need do is to tender the amount actually due the contractor, and the title claimed under the sale will be of no validity whatever. However this may be, I am clearly of the opinion that this is a matter between the contractor and the petitioners, and one over which the Council has no control.

If an officer has extorted an illegal fee, he is punishable by legal proceedings; but the Council cannot determine that question, except it be upon a proceeding to remove from office.

Respectfully submitted,

B. K. ELLIOTT, *City Attorney.*

20'
5'

Which was concurred in.

Also the following report :

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—The Judiciary Committee, to whom was referred a resolution of the Council in reference to taxation of the lines of Street Railway and the property of the Street Railway Company, beg leave to report the opinion of the City Attorney herewith, in which they fully concur. The proviso to the eleventh section of the ordinance authorizing the construction of Street Railways in the city only exempts "each line of railway" "from all taxation for two years immediately following its completion, and no longer." This evidently means that more lines than one would be constructed, and we think the fair construction would be that when a line on any street shall be constructed and put in use, that such line would be completed within the meaning of the proviso, although the Company might subsequently add to the line, or extend it along the street, or to another street: otherwise the Company, by adding an additional portion each year, might insist that they would hold it uncompleted an indefinite time.

The exemption in the proviso does not extend to the cars, live stock or motive power, or other property of the Company, consequently they are taxable at all times.

Your Committee, therefore, ask to be discharged from the further consideration of the resolution.

Respectfully submitted,

JOHN S. NEWMAN,
TEMPLE C. HARRISON, } Committee.
AUSTIN H. BROWN,

INDIANAPOLIS, Jan. 31, 1870

To the Chairman and Members of the Judiciary Committee :

GENTLEMEN:—I have examined the resolution concerning the taxation of the Citizens' Street Railway, and respectfully submit the following:

It is well settled that a statute exempting persons or property from taxation is to be strictly construed. In the case of *Deputy Grand Master, etc., vs. City of Indianapolis*, our Supreme Court decided that, under the statute exempting the property of charitable institutions from taxation, only that part of the Masonic Hall actually used by the Institution was exempt from taxation, although the revenues of the entire building were devoted to charitable purposes. If the same general rule is to be applied to the ordinance, the result will be:

1. The horses, mules, cars and other personal property of said Company are subject to taxation.

2. Each distinct line of railway is subject to taxation, after two years from the time of its completion.

I have very great doubt whether the Common Council have any power to exempt property from taxation which is not exempted by the statutes of the State.

Respectfully submitted,

B. K. ELLIOTT, *City Attorney.*

Which was concurred in.

On motion by Mr. Locke, the motion offered by himself January 26, 1870, instructing the City Treasurer to place upon the tax duplicate the taxable property of the Citizens' Street Railway Company, was amended by adding the words "in accordance with section thirty-four of the City Charter."

And then adopted.

Mr. Newman made the following report:

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—The Judiciary Committee, to whom was referred the case of Robert Patterson for grading and graveling Douglass street, between New York and North streets, beg leave to report:

Your Committee apprehend a serious mistake has been committed in the engineering, and in grading and graveling through the land of Captain W. Y. Wiley, for something over half of a square, where no street was ever platted, nor the land dedicated to public use. From West New York street north, to a line about parallel with the south line of West Vermont street, Douglass street is regularly platted, as appears by the city map; and from the east and west alley south of West Michigan street, north to North street, it is also properly platted, but the intervening land does not appear ever to have been platted or dedicated to public use. Your Committee would further say, that what is apparently Douglass street, from New York street to what should be the south line of Vermont street, is not in any way marked on the city plat as part of Douglass street; but as the Council ordered Douglass street, from New York to North street, graded and graveled, the City Engineer assumed that it extended continuously from New York to North streets, and set his grade stakes through Captain Wiley's land, and the contractor graded and graveled the entire distance, and as no steps were ever taken to open the street through Captain Wiley's land, your Committee assume that it was an error of the City Engineer to have a street graded and graveled through the land, and possibly it might be said to be an error in the contractor, but the most grave error was in the Council making the order they did, in the bungling, loose way it was made, and thus calculated to mislead the City Engineer and Contractor.

Your Committee are of opinion, under the circumstances, that the Contractor cannot recover (from Captain Wiley) pay for the grading and graveling through his land, who states that he knew nothing about the improve-

ment until after it was made, and however much he may be benefitted (a matter he disputes, however), there is no power under the City Charter to enable the Contractor to collect the money off of Captain Wiley, and as the work was no doubt done in good faith by the Contractor under the city authorities, they submit whether the city is not equitably bound to pay for doing the work.

Respectfully submitted,

J. S. NEWMAN,
TEMPLE C. HARRISON, } Committee.
AUSTIN H. BROWN,

Which was concurred in, and the Clerk directed to insert the amount of the assessment against said Wm. Y. Wiley, in the next account ordinance.

Mr. Newman made the following report :

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—The Finance Committee, to whom was referred the communication addressed to the City Treasurer by H. P. Randall, City Assessor, in relation to taxes charged against E. S. Field, for the year 1867-8, beg leave to report, that they have made some inquiries in regard to the matter and would say, that if Mr. Field did not reside within the corporation limits at the time the tax accrued, (that is the first day of January of that year,) that he should be relieved of the payment of such tax, or if paid, it shall be refunded to him. We are informed by Major Locke that Mr. Field did not reside within the corporation limits at the time such taxes accrued; they therefore deem it proper to recommend that such tax be remitted if not paid, or if paid, that it be refunded.

Respectfully submitted,

JOHN S. NEWMAN, } Committee.
J. H. WOODBURN, }
THO'S COTTRELL,

Which was concurred in.

Mr. Thalman, from the Committee on Streets and Alleys, made the following report :

INDIANAPOLIS, Jan. 31, 1870

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

GENTLEMEN:—The Committee on Streets and Alleys, to whom was referred a petition asking for the opening of Davidson street, between Market and Washington, and vacating Benton street, between Market and Washington streets, would recommend that the said petition be referred to the City Commissioners, and that the City Clerk give the requisite notice.

Respectfully submitted,

ISAAC THALMAN, } Committee.
JOHN L. MARSEE, }
C. HECKMAN,

Which was concurred in.

Mr. Marsee, from the Committee on Fire Department, made the following report :

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—The Committee on Fire Department, to whom was referred the resolution of Mr. Locke relative to an increase of the Fire Department, beg leave to report as follows :

Your Committee find on examination that Indianapolis, as compared with other cities of like population, is deficient in the number of steam fire engines. Many cities of less size have from five to seven steamers.

The following propositions have been submitted to your Committee, and are referred to the Council for its action :

1. The Allerton Iron Works, of Naugatuck, Conn., propose to leave an engine for three months, and if found satisfactory, the city to take the same and pay \$5,000.

2. C. Ahrens & Co., Cincinnati, propose to sell one of their second-class engines at \$5,600, or two of them for \$10,700, and a third-class engine at less figures.

3. The Silsby Manufacturing Company, Seneca Falls, New York, propose to furnish one of their first-class engines (larger than those now in use in this city) for \$6,000, or two for \$12,000, taking in payment bonds of the city payable within five years, bearing ten per cent. interest.

The two engines first named, your Committee have not had an opportunity of seeing tested, and therefore know nothing of their real merits. Of the last named engine, two are here in use, and have given general satisfaction. The Committee believe the proposition of the Silsby Manufacturing Company to be the best offered, especially as to terms of payment, and therefore recommend that the same be accepted.

Respectfully submitted.

JOHN L. MARSEE,
AUSTIN H. BROWN. } Committee.
ISAAC THALMAN, }

I concur in the above report.

CHARLES RICHMANN, *Chief Fire Engineer.*

Which was received.

In reference to the above report, Mr. Kahn offered the following motion :

That the propositions of the Silsby Manufacturing Company and of the Allerton Iron Works, to leave one of their first-class steam fire engines in this city, in charge of the Fire Department, for a three month's trial, be accepted, the Council reserving the right, at the end of that time, to purchase either or both of such engines, or neither, as it may deem best; and that all agents of other engines are invited to bring their engines here for trial on the same conditions.

Which was adopted.

Mr. Harrison, from the Committee on Printing and Stationery, introduced Special appropriation ordinance No. 6, 1870, entitled :

AN ORDINANCE appropriating money for printing.

Which was read the first time.

Dr. Woodburn, from Committee on Benevolence, presented the following :

RECAPITULATION OF THE WEEKLY REPORT OF CONTENTS OF REGISTER OF PATIENTS OF CITY HOSPITAL, ENDING JANUARY 8, 1870.

Number of patients in Hospital at last report	40
Number of patients received in Hospital since last report	5
Number of patients born in Hospital since last report	0
Number of patients discharged from Hospital since last report	4
Number of patients died in Hospital since last report	0
Number of patients remaining in Hospital at present report	41

Also the following :

RECAPITULATION OF THE WEEKLY REPORT OF CONTENTS OF REGISTER OF PATIENTS OF CITY HOSPITAL, ENDING JANUARY 15, 1870.

Number of patients in the Hospital at last report	41
Number of patients received in the Hospital since last report	5
Number of patients born in Hospital since last report	1
Number of patients discharged from Hospital since last report	7
Number of patients died in the Hospital since last report	1
Number of patients remaining in the Hospital at present	39

Also, the following :

RECAPITULATION OF THE WEEKLY REPORT OF THE CONTENTS OF REGISTER OF PATIENTS OF CITY HOSPITAL ENDING JANUARY 29, 1869.

Number of patients in Hospital at last report	37
Number of patients received in Hospital since last report	2
Number of patients born in Hospital since last report	1
Number of patients discharged from Hospital since last report	3
Number of patients died in Hospital since last report	0
Number of patients remaining in Hospital at present report	37

Which were received.

Mr. Brown, from select committee, made the following report :

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—The select committee, to whom was referred the petition of T. A. Morris and others, and William Essman and others, report the following ordinance.

Respectfully submitted,

JOHN L. MARSEE,
AUSTIN H. BROWN, } Committee.
LEON KAHN,

Also General ordinance No. 6, 1870, entitled :

AN ORDINANCE to amend an ordinance entitled "An ordinance to prohibit any person or persons from soliciting passengers or baggage on any street in the vicinity of the Union Depot, except McNabb street," ordained and established November 29, 1869.

Which was read the first time.

By consent, Mr. Wiles presented the following petition :

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—We the undersigned property owners abutting on Severn street or alley, between St. Clair and Pratt street, in the city of Indianapolis, now under contract for grading and graveling by William Kown, respectfully represent, that we believe the reason why said work has not been completed before this time is on account of bad weather, high water, and consequent inaccessibility to river gravel; that it is and always was the intention of said Contractor to complete his said contract as soon as practicable, and that he is now engaged in said work, and expects to have the same completed within ten days from the present time—January 31, 1870—and that there is no good and sufficient cause of further action of the City Council in regard to said contract.

Respectfully submitted,

WILLIAM SULLIVAN,
DELOSS ROOT,
A. L. WRIGHT,
W. C. COX,
And 4 others.

Which was received.

Mr. Wiles moved to reconsider the motion passed at last meeting,

declaring William Kown's contract annulled, for improving Severn alley.

The question being on reconsidering.

Those who voted in the affirmative were Councilmen Brown, Cottrell, Gimber, Harrison, Heckman, Kahn, Kennington, Locke, Marsee, Newman, Pyle, Shepherd, Thalman, Thoms, Weaver, Whitsit, Wiles and Woodburn—18.

Noes—none.

So the motion was reconsidered.

Mr. Wiles moved to reconsider the vote passed at last meeting, annulling the contract of W. J. Robison for straightening Pogues run.

The question being on reconsidering.

Those who voted in the affirmative were Councilmen Cottrell, Gimber, Harrison, Heckman, Kahn, Locke, Newman, Pyle, Shepherd, Thalman, Thoms, Weaver, Whitsit, Wiles and Woodburn—15.

Those who voted in the negative were Councilmen Brown, Kennington and Marsee—3.

So the motion was reconsidered, and Mr. Robison was instructed to begin said work in twenty days, and to complete it within sixty days.

ORDINANCES ON SECOND READING.

On motion, the following ordinances were read the second time, and ordered to be engrossed:

Special ordinance No. 1, 1870.

Special ordinance No. 2, 1870.

Special ordinance No. 3, 1870.

Special ordinance No. 4, 1870.

Special ordinance No. 5, 1870.

Special ordinance No. 6, 1870.

Special ordinance No. 7, 1870.
 Special ordinance No. 8, 1869.
 Special ordinance No. 9, 1870.
 Special ordinance No. 10, 1870.
 Special ordinance No. 11, 1870.
 Special ordinance No. 12, 1870.
 Special ordinance No. 13, 1870.
 Special ordinance No. 14, 1870.
 Special ordinance No. 131, 1869.
 Special appropriation ordinance No. 5, 1870.
 Special appropriation ordinance No. 6, 1870.

By consent, Mr. Wiles offered the following motion :

That the City Marshal be instructed to notify the owners of the property condemned by the city for the straightening of Pogues run, to vacate the same immediately.

Which was adopted.

REPORTS FROM CITY OFFICERS.

By consent, the Civil Engineer made the following reports :

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—I hereby report the following work finished according to contract:

Daniel Mahoney—For grading and graveling the alley running from Delaware street west to Pennsylvania street, through Danforth and Knox's subdivision of the south part of out-lot 173.

Length on north side,	-	-	-	-	-	458 feet
Length on south side,	-	.	-	-	-	458 feet
Total length,	-	-	-	-	-	916 feet
At 17 cents per lineal foot,	-	-	-	-	-	\$155 72

Respectfully submitted,

R. M. PATTERSON, *Civil Engineer.*

INDIANAPOLIS, Jan. 31, 1870.

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

GENTLEMEN:—In addition to my report of January 17, in favor of Samuel Lefever, contractor, for paving and curbing the sidewalks in front of the

State building, on the corner of Washington and Tennessee streets, I hereby report the following as belonging to the State's portion :

5 superficial yards of stone pavement, at \$4 05 per yard, : \$20 25

Respectfully submitted,

R. M. PATTERSON, *Civil Engineer.*

Which were concurred in.

The City Clerk made the following report :

OFFICE OF CITY CLERK,
Indianapolis, Jan. 31, 1870. }

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

The City Clerk respectfully reports to Council:

First. First and final estimate allowed Daniel Mahoney, for grading and graveling the alley running from Delaware street west to Pennsylvania street, through Danforth and Knox's sub-division.

Second. First and final estimate allowed Samuel Lefever, for paving in front of State Building, on corner of Washington and Tennessee street.

Respectfully submitted,

D. M. RANDELL, *City Clerk.*

Which was concurred in.

Also the following resolution :

Resolved; That the foregoing first and final estimate allowed Samuel Lefever, for paving in front of State Building, on corner of Washington and Tennessee street, be and the same is hereby adopted as the estimate of this Council, and that the property owners are hereby required to pay the sums set opposite their respective names.

The question being on the passage of the resolution.

Those who voted in the affirmative were Councilmen Brown, Cottrell, Gimber, Harrison, Heckman, Kahn, Kennington, Locke, Marsce, Newman, Pyle, Shepherd, Thalman, Thoms, Weaver, Whitsit, Wiles and Woodburn—18.

Noes—none.

So the resolution passed.

Also the following resolution :

Resolved, That the foregoing first and final estimate allowed Dan. Mahoney, for grading and graveling the alley running from Delaware street west to

Pennsylvania street, through Danforth and Knox's sub-division, be and the same is hereby adopted as the estimate of this Council, and that the property holders are hereby required to pay the sums set opposite their respective names.

The question being on the passage of the resolution.

Those who voted in the affirmative were Councilmen Brown, Cottrell, Gimber, Harrison, Heckman, Kahn, Kennington, Locke, Marsee, Newman, Pyle, Shepherd, Thalman, Thoms, Weaver, Whitsitt, Wiles and Woodburn—18.

Noes—none.

So the resolution passed.

ORDINANCES ON THIRD READING.

Special appropriation ordinance No. 1, 1870—entitled :

c AN ORDINANCE appropriating money for the payment of sundry claims on account of City Hospital, for the month of December, 1869.

Was read the third time and placed upon its passage.

The question being, shall the ordinance pass ?

Those who voted in the affirmative were Councilmen Brown, Cottrell, Gimber, Harrison, Heckman, Kahn, Kennington, Locke, Marsee, Newman, Pyle, Shepherd, Thalman, Thoms, Weaver, Whitsitt, Wiles and Woodburn—18.

Noes—none.

So the ordinance passed.

Special appropriation ordinance No. 2, 1870—entitled :

c AN ORDINANCE appropriating money for the payment of claims on account of repairs of City Hospital.

Was read the third time and placed upon its passage.

The question being, shall the ordinance pass ?

Those who voted in the affirmative were Councilmen Brown, Cottrell, Gimber, Harrison, Heckman, Kahn, Kennington, Locke, Marsee, Newman, Pyle, Shepherd, Thalman, Thoms, Weaver, Whitsit, Wiles and Woodburn—18.

Noes—none.

So the ordinance passed.

Mr. Kahn moved to adjourn.

The question being on adjournment.

Those who voted in the affirmative were Councilmen Brown, Gimber, Kahn, Kennington, Locke and Shepherd—6.

Those who voted in the negative were Councilmen Cottrell, Harrison, Heckman, Marsee, Newman, Pyle, Thalman, Thoms, Weaver, Whitsit, Wiles and Woodburn—12.

So the motion to adjourn was lost.

Special appropriation ordinance No. 3, 1870—entitled :

AN ORDINANCE appropriating money for the payment of sundry claims against the city of Indianapolis. a

Mr. Cottrell moved to strike out the appropriation of \$500 to the Young Men's Christian Association.

The question being to strike out.

Those who voted in the affirmative were Councilmen Brown, Cottrell, Gimber, Heckman, Kahn, Kennington, Locke, Shepherd and Whitsit—9.

Those who voted in the negative were Councilmen Harrison, Marsee, Newman, Pyle, Thalman, Thoms, Weaver, Wiles and Woodburn—9.

There being a tie vote, his Honor, the Mayor, voted in the negative.

So the motion to strike out was lost.

The ordinance was then read the third time and placed upon its passage.

The question being, shall the ordinance pass?

Those who voted in the affirmative were Councilmen Harrison Heckman, Marsee, Newman, Pyle, Thalman, Thoms, Weaver, Whitsit, Wiles and Woodburn—11.

Those who voted in the negative were Councilmen Brown, Cottrell Kahn, Kennington, Locke and Shepherd—6.

So the ordinance passed.

On motion, the Council adjourned.

Daniel Macauley
DANIEL MACAULEY, Mayor.

ATTEST:

S. M. Ransdell
~~City Clerk~~
City Clerk.