REGULAR MEETING.

COUNCIL CHAMBER,
CITY OF INDIANAPOLIS,
November 15, 1897.

The Common Council of the City of Indianapolis met in the Council Chamber, Monday evening, November 15, 1897, at 8 o'clock, in regular meeting.

Present, Hon. John H. Mahoney, President of the Common Council, in the chair, and 17 members, viz.: Messrs. Allen, Bernauer, Bowser, Clark, Colter, Costello, Crall, Harston, Higgins, Knight, Madden, Moffett, McGrew, Scanlon, Shaffer, Smith and Von Spreckelsen.

Absent, 2—viz.: Messrs. Merrick and Rauch.

The Clerk proceeded to read the Journal, whereupon Councilman Bernauer 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,
November 11, 1897.

Hon. John H. Mahoney, President of the Common Council:

Dear Sir—I have this day approved General Ordinance No. 61, 1897, the same being an ordinance regulating the driving of stock through the streets, etc., of the city.

Respectfully,
T. TAGGART,
Mayor.

Which was read and ordered spread on the minutes.

His Honor, the Mayor, presented the following communication:

EXECUTIVE DEPARTMENT,
CITY OF INDIANAPOLIS,
November 15, 1897.

Hon. John H. Mahoney, President of the Common Council:

Dear Sir—I respectfully refer to you the within communication addressed to me by the Secretary of the "League of American Muncipalities" and some printed matter in connection therewith. Will you kindly have the proper consideration given to the same? Whatever action may be taken by the Council in any way needing my assistance, it will be cheerfully given.

Respectfully,
T. TAGGART,
Mayor.

LEAGUE OF AMERICAN MUNICIPALITIES.
OFFICE OF THE SECRETARY,
NEW YORK, Nov. 4, 1897.

Hon. Thomas Taggart, Mayor, Indianapolis, Ind.:

Dear Sir—I beg to acknowledge receipt of your favor of November 2d, and enclose you herewith a copy of the invitation which was recently sent out by the Executive Committee to the various municipalities. I also send you a copy of the Constitution, as well as a clipping of the resolution which was recently passed by the Board of Aldermen of New York City, making Greater New York a member of the "League." So far, about one hundred of the largest municipalities have joined the League of American Municipalities, and its success is assured. We would feel, however, that our membership was incomplete without the City of Indianapolis. I trust that you will present this matter to your Council at the earliest possible moment. Permit me to thank you, in behalf of the "League," for your very kind wishes for its success.

Trusting to hear from you soon, I beg to remain,
Yours very respectfully,
B. F. GILKISON,
Secretary.

Which was read and referred to Committee on Judiciary.

REPORTS FROM CITY OFFICERS.

Communication from City Attorney:

CITY OF INDIANAPOLIS,
OFFICE OF THE DEPARTMENT OF LAW,
November 12, 1897.

Hon. John H. Mahoney, President of the Common Council:

I have been asked for an opinion touching the eligibility of Edward W. Little to election as a member of the Common Council to fill a vacancy occasioned by the resignation of Thomas J. Montgomery.

From the facts as presented to me, it appears that Mr. Little is a resident and voter of the city, and the only question as to his eligibility grows out of the fact that he is surety on the bonds of one or more persons who have made contracts with the Board of Public Works for street or other improvements, which contracts are either not entirely

performed, or are continuing for a term of years, under stipulations contained therein that the work performed thereunder shall be kept in repair for a given period.

It is urged, I understand, that Mr. Little is ineligible by reason of the provisions of Section 7 of the charter, which reads as follows:

"No member of the Council, nor any other officer, clerk or deputy, or employe of such city, shall either directly or indirectly be a party to, or in any manner interested in any contract or agreement, either with such city or for any matter, cause or thing, or by which any liability or indebtedness is in any way or manner created or passed upon, authorized or approved by said Council or either of them, or by any officer, board, clerk, deputy or employe of such city. Any contract in contravention of the foregoing provisions shall be absolutely void. Whoever shall knowingly violate the provisions of this section shall be fined not more than $1,000, to which may be added imprisonment for any period not exceeding one year."

The question, then, is whether, by reason of this statutory provision and the facts stated, Mr. Little is rendered incapable of holding the office of Councilman-at-Large.

The right of eligibility to office belongs equally to all persons whomsoever not excluded by constitutional or legislative provisions.

19 Am. and Eng. Encp. 398.

Barker vs. People, 3 Cowan (N. Y.) 686.

In the case last cited it was said:

"Eligibility to office is not declared as a right or principle by any express terms of the Constitution, but it results from a just deduction from the express powers and provisions of the system. The basis of the principle is the absolute liberty of the electors and the appointing authorities to choose and to appoint any person who is not made ineligible by the Constitution."

That decision applied to an office provided for by the Constitution. A mere legislative office—that is, one created by the State Legislature—is subject to be controlled and regulated by legislative act, and an act of the Legislature making certain persons ineligible to fill any legislative office would unquestionably be valid.

But to disqualify any citizen from holding an office created by the Legislature, there must be some constitutional or legislative prohibition.

As was said by the Supreme Court of Kansas:

"As the people with respect to certain offices have seen fit by express constitutional provisions to restrict their freedom of choice, it is a fair inference that, where the Constitution is silent, they intended no restriction."

Wright vs. Noell, 16 Kan. 601.

The same might be said as to offices of legislative creation. Where certain qualifications are required by express enactment to render one capable of holding an office, it may be fairly inferred that no other restrictions should be placed upon the subject.

McCarthy vs. Froelke, 63 Ind. 507, was a case where Froelke, who while a voter of the township, was not a citizen of the United States, had been elected to the office of township trustee. His election was contested on the ground that, not being a citizen, he was ineligible to hold the office.

The Supreme Court, after noting the constitutional requirement that the Governor and Lieutenant-Governor, Senators and Congressmen must be citizens of the United States, and the provision concerning county officers, says:

"If the framers of the Constitution had intended to require the same degree of eligibility for a county office that they declared necessary for

the office of Governor, Lieutenant-Governor, Senator and Representative, they would doubtless have so declared in plain terms. * * * We must hold that an elector of the county, having the other necessary qualifications, is eligible to a county office, although he may not be a citizen of the United States. We can find no provision, either in the Constitution or the statutes prescribing the eligibility necessary to hold the office of township trustee; we must therefore look to other provisions and their fair interpretations to settle the question before us. Under the Constitution, it is clear that the contestee was eligible to any county office, and we think it would be illogical to hold that a township office, which is of lesser magnitude, should require a higher degree of eligibility than a county office." The contestee was awarded the office.

It will be observed that in this case, when the question of eligibility was presented to the Supreme Court, that tribunal at once turned to the Constitution and statutes to ascertain what was there provided as to the eligibility of persons to hold the office in question.

Keeping in mind these general principles, let us look to the Constitution of the State to ascertain the provisions of that instrument applying to the case in hand. There are three, and only three, general provisions bearing on the question.

In Article 2 it is provided:

"Sec. 6. That every person shall be disqualified for holding office during the term for which he may have been elected who shall have given or offered a bribe, threat or reward to secure his election.

"Sec. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit."

"Sec. 10. No person who may hereafter be a collector or holder of public moneys shall be eligible to any office of trust or profit until he shall have accounted for," etc.

Section 8 of the same article authorizes the General Assembly to render ineligible any person convicted of an infamous crime, and the next section prohibits the holding of more than one lucrative office by any person at the same time.

The above are the constitutional prohibitions. Let us now turn to the statute creating the office of Councilman-at-Large and ascertain the qualifications for such office fixed therein.

Section 11 of the charter provides that "The whole city shall elect six Councilmen-at-Large," etc.

Section 12 provides that "No person shall hold the office of Councilman-at-Large unless he is a resident and voter of said city."

This is the sole prohibition of the statute.

Section 7 of the charter, which I have already quoted in full, does not deal with the question of eligibility of men to become members of the Council. It deals with the duties of men who are already members of that body. It does not prohibit certain men from becoming Councilmen, but prohibits all Councilmen who have theretofore been elected or appointed from being a party to or interested in any contract with the city.

It emphasizes this prohibition in two ways—first, by declaring the contract void, and second, by punishing the member of the Council who violates its provisions.

The contract it declares void is not that entered into by an individual before he became a Councilman, but the contract entered into after he becomes a member of that body.

The punishment provided for is not denounced against the man who becomes surety on a bond to the city, and afterwards becomes a Councilman, but against the member who, after he is elected and qualified, enters into or becomes interested in a contract with the municipality.

It would be absurd to say that a man who is surety on a bond executed to the city could be convicted and fined and imprisoned because he became a Councilman by election or appointment while the bond was still in force. Of course, the execution of the bond long prior to his election or appointment would not be a crime, so that if he were convicted at all it would be for becoming a Councilman while the bond was yet in force.

This provision of the charter is by no means new. A similar statute, applying to all the cities in the State, has been in force since 1867 (Sec. 3104, 1 Horner's Stat.), and in the statutes of nearly every State are to be found provisions almost identical. The books are full of cases construing these statutes, but, after a very thorough examination, I have not been able to find one wherein it was claimed that the provisions referred to had any reference whatever to the eligibility of the members of the Council.

Section 2049, Horner's Statutes, makes it a penitentiary offense for any State officer, County Commissioner, Township or Town Trustee, Mayor, Common Councilman of any city, etc., to be interested directly or indirectly in any contract for the construction of any State house, court house, school house, bridge, public building, or work of any kind, erected or built for the use of the State or any county, township, town or city in the State in which he exercises any official jurisdiction.

Let us suppose that, prior to his election, Governor Mount had become surety on the bond of some contractor who was engaged in public work of the kind described, and had been unable to secure his release before the day fixed by the Constitution for his inauguration as Governor. According to the theory urged here by some, he would have had presented the alternative of giving up the office of Governor or going to the penitentiary.

As has been already suggested, the general law of the State on this subject, which has been in force more than thirty years (Sec. 3104 supra), is in substantially the same language as the section of the charter under consideration. The first clause of Section 3104 is as follows:

"No member of the Common Council or other officer of such city shall, directly or indirectly, be a party to, or in any manner interested in, any contract or agreement with such city for any matter, cause or thing, by which any liability or indebtedness is in any way or manner created against such city; and if any contract should be made in contravention of the foregoing provisions, the same shall be null and void."

It will be seen that the prohibition of this section as to Councilmen and other officers being interested in contracts with the city is precisely the same as that of Section 7 of the charter.

The Supreme Court of the State has been called upon to construe Section 3104 several times in cases where contracts have been entered into between city officers and the city, during the terms of office of the former, and, while the contract was uniformly held void, there was in no case a suggestion that the violation of this section of itself operated to vacate the office or in any wise affect the status of the officer, and this for the reason that the prohibition is directed against the validity of such contracts.

The purpose of this and similar statutes has been over and over again declared by the highest courts of the country to be to prevent a city officer from reaping any advantage his position may give, or from speculating while in office at the expense of the municipality, or from making the business of the city an object or source of pecuniary profit to himself. In no case which has come under my observation has any attempt been made to apply such a statute to the eligibility of a person to hold office.

I do not deal with questions submitted to me from any standpoint save that of the law, and I will state, as a proposition of law, that there is nothing in any of the bonds on which Mr. Little is surety that would in any way interfere with the proper discharge of his duties as a member of the Council. These bonds are to secure contracts made with the Board of Public Works, and any liability accruing on the same would have to be enforced by that board. The Council could not release him from liability, nor in any way interfere with the enforcement thereof.

My investigation of the question presented compels the conclusion that there is no legal obstacle to Mr. Little's election, and that he is entirely eligible, under the Constitution and statutes, to hold the office of Councilman-at-Large.

Respectfully submitted,
JOHN W. KERN,
City Attorney.

Which was read and ordered spread on the minutes.

REPORTS, ETC., FROM STANDING COMMITTEES.

Mr. Costello, on behalf of the Committee on Finance, to which was referred:

App. O. No. 20, 1897. An ordinance appropriating certain sums of money to the Department of Finance, to the Department of Public Works, to the Department of Public Safety, and to the Department of Public Health and Charities, and fixing the time when the same shall take effect.

Made the following report:

INDIANAPOLIS, November 15, 1897.

Mr. President:

Your Committee on Finance, to whom was referred App. O. No. 20, 1897, have had the same under consideration, and recommend its passage.

Respectfully,
JAS. H. COSTELLO,
FRANK S. CLARK,
E. D. MOFFETT,
JNO. H. MAHONEY,
W. F. SMITH,
ROBERT M. MADDEN,
Committee.

Which was read and concurred in.

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

Under this order of business the following ordinances were introduced:

By Mr. Von Spreckelsen:

G. O. No. 67, 1897. An ordinance establishing the location of a market for hay and cereals in the City of Indianapolis, providing for the weighing of the same by the City Weighmaster, prescribing a penalty for the violation of the said ordinance, and repealing all ordinances in conflict therewith.

Section 1. Be it ordained by the Common Council of the City of Indianapolis, That the city market for the sale of hay, cereals and other farm products is hereby located and established on lots ——, ——, ——, at the corner of Pine and Washington streets, in said city, which said market shall have located thereupon the city public scales to be used in weighing all farm products and other commodities to be sold on said market or at other places in said city; said market and scales to be in the care and custody of the City Weighmaster, according to the ordinances of said city now in force.

Sec. 2. It shall be unlawful for any person or persons to sell or offer or expose for sale on said market or at any other place in said city any hay, cereals or other farm products or commodities from wagons, except wheat and oats, without having first weighed the same upon said city public scales and received from the City Weighmaster a certificate of the correct weight of the same.

Sec. 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Sec. 4. This ordinance shall be in force from and after the first day of January, 1898, after having been theretofore published two weeks consecutively in *The Indianapolis Sun*.

Which was read a first time and referred to Committee on Public Property and Improvements.

By Mr. Shaffer:

G. O. No. 68, 1897. An ordinance requiring street railroad companies to provide electric alarm bells on their cars for the use, convenience and safety of passengers.

Section 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That every street railroad company operating a line or lines of street railway in said city shall provide on each car an electric alarm bell for the use of passengers thereon, with not less than ten electrical connections therewith on each side of such cars as have only two seats therein extending lengthwise through the same, which connections shall be so made and arranged that the passengers may, by pressing a button which shall be a part of each of such connections, ring the said alarm bell and thereby notify the conductor or other person having charge of any such cars that the person so ringing the said bell desires to leave the car at the next street crossing, said button to be similar in design to those usually on elevators, and usually connected with other electric call bells; and that on all cars having seats arranged across the same, one behind the other, there shall be not less than two of such connections and buttons on the back of each of such seats except the one in the rear, and two in front of the front seat, so that the passengers occupying any of such seats may without inconvenience reach the same and by pressing thereon sound said alarm bell.

Sec. 2. That when any passenger on any street car shall, by pressing upon any of such buttons attached to said electrical appliances, cause the bell mentioned in the preceding section to ring, it shall be the duty of the conductor or other person having charge of said car to cause such car to be stopped at the next street crossing reached by such car, without any further notice or request, provided that such bell shall have been rung before such car has reached a point within one hundred feet of such crossing.

Sec. 3. Any person on such car who shall ring or cause to be rung any such alarm bell as herein described for the purpose of annoying the conductor or other person in charge of any such car, or for any other

purpose than of giving notice in good faith that he or she desires to leave such car at the next crossing, shall, on conviction therefor, be fined in any sum not less than one nor more than twenty dollars.

Sec. 4. Any conductor on any street car who shall fail to stop said car at the next crossing, after any passenger has caused the alarm bell mentioned herein to ring, as hereinbefore provided, at a point more than one hundred feet distant from such crossing, shall, upon conviction therefor, be fined in any sum not less than one nor more than twenty dollars.

Sec. 5. It shall be unlawful, after the taking effect of this ordinance, for any street car company to run or operate upon any of the streets of said city any car for the transportation of passengers which is not provided with the alarm bell and the appliances and buttons herein provided for; and any conductor or other person having charge of any such car, which is not provided with such bell, appliances and buttons, who shall demand or receive or attempt to collect fares from passengers on any such car shall, upon conviction, be fined in any sum not less than five nor more than fifty dollars.

Sec. 6. This ordinance shall take effect on the —— day of ————, 1897, after it shall have been published in *The Sun*, a daily newspaper having general circulation in said city, once each week for two consecutive weeks.

Which was read a first time and referred to Committee on Public Safety and Comfort.

MISCELLANEOUS BUSINESS.

The following communication was received from the Board of School Commissioners:

BOARD OF SCHOOL COMMISSIONERS,
SECRETARY'S OFFICE,
INDIANAPOLIS, IND., Nov. 8, 1897.

Thomas Taggart, Mayor of the City of Indianapolis:
John H. Mahoney, Chairman Common Council City of Indianapolis:

Gentlemen—Herewith I hand your honorable body the following resolution of the Board of School Commissioners of the City of Indianapolis, which was had on Friday, November 5, 1897:

Resolved, It is the sense of the Board of School Commissioners of the City of Indianapolis that the so-called "curfew law" now in operation in other cities be fully indorsed by this board, and that the Common Council of this city take such steps looking toward the enactment of such an ordinance, to be enforced throughout the City of Indianapolis.

Very respectfully,
FRANK L. REISSNER,
Ass't Secretary Board of School Commissioners.

Which was read and referred to Committee on Public Morals.

Mr. Bernauer offered the following resolution:

Whereas, A vacancy exists on the Committee on Rules, by reason of the resignation of Mr. T. J. Montgomery, and it being desirous that a code of rules be adopted as early as possible for the government of this Council; therefore, be it

Resolved, That the President at once proceed to fill said vacancy, and that the Committee on Rules be ordered to report at as early a date as possible.

Which was read and, on motion of Mr. Bernauer, adopted by the following vote:

AYES, 18—viz.: Messrs. Allen, Bernauer, Bowser, Clark, Colter, Costello, Crall, Harston, Higgins, Knight, Madden, Moffett, McGrew, Scanlon, Shaffer, Smith, Von Spreckelsen and President Mahoney.

NAYS—None.

And President Mahoney appointed Mr. Harston as member of the Committee on Rules, in compliance with above resolution.

ORDINANCES ON SECOND READING.

On motion of Mr. Costello, the following entitled ordinance was taken up, read a second time, ordered engrossed, and then read a third time:

App. O. No. 20, 1897. An ordinance appropriating certain sums of money to the Department of Finance, to the Department of Public Works, to the Department of Public Safety, and to the Department of Public Health and Charities, and fixing the time when the same shall take effect.

And was passed by the following vote:

AYES, 18—viz.: Messrs. Allen, Bernauer, Bowser, Clark, Colter, Costello, Crall, Harston, Higgins, Knight, Madden, Moffett, McGrew, Scanlon, Shaffer, Smith, Von Spreckelsen and President Mahoney.

NAYS—None.

On motion of Mr. Clark, the Common Council, at 8:25 o'clock P. M., adjourned.

Jno H Mahoney
President.

ATTEST:

Chas H Stuckmeyer
City Clerk.