

PROCEEDINGS OF COMMON COUNCIL.

ADJOURNED SESSION—APRIL 23, 1886.

The Common Council of the City of Indianapolis, met in the Council Chamber, Friday evening, April 23d, A. D. 1886, at eight o'clock, pursuant to adjournment.

PRESENT—Hon. Caleb S. Denny, Mayor, and *ex officio* President of the Common Council in the Chair, and 25 members, viz: Councilmen Benjamin, Burns, Coy, Cummings, Dell, Dunn, Edenharter, Haugh, Herig, Howes Mack, Markey, McClelland, McGroarty, Newland, Pearson, Reinecke, Reynolds, Rooker, Smith, Smither, Stuckmeyer, Swain, Thalman, and Waterman.

ABSENT—None.

Councilman Thalman offered the following motion; which was adopted :

That all business relating to telephone matters be allowed to be presented first.

Councilman Thalman introduced the following entitled ordinance; which was read the first time :

G. O. 25, 1886—An ordinance granting to The Citizens' Co-operative Telephone Company (a company legally organized and existing under the laws of the State of Indiana), permission to use the streets and alleys of the City of Indianapolis in constructing, operating and maintaining lines of telephone in said city.

His Honor, the Mayor, presented the following communication; which was read and received :

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

Gentlemen —I regret to find that the motives of the Central Union Telephone Company, in opening several public telephone stations and installing some private lines, have been entirely misunderstood, and I desire to state what the true motives were. I was not then connected officially with the company, but have obtained information on the subject, that beyond question is accurate.

Before the Supreme Court of the State had passed upon the validity of the law limiting the rental of telephones, the Company decided that if the law should be held valid, it could not do business under it, and that if no solution of the difficulty could be devised, it would be compelled to close its Indianapolis Exchange by the earliest day practicable.

When the decision of the court was rendered, this determination of the company was announced to its patrons and the public. About half our subscriptions were

determinable by April 1st; the others could not be terminated by us before the 1st of July. The question was then considered as to whether we should cease supplying service on the 1st of April to those patrons whose contracts terminated then, or continue to furnish service to all until the 1st of July, when all the contracts would terminate.

The legal phase of the question was submitted to our Indianapolis Counsel, Messrs. McDonald, Butler & Mason, and Messrs. Baker, Hord & Hendricks. They advised us that if we continued to furnish service to the one-half of our subscribers, when we were under no contract obligation to do so, the courts would probably hold that we continued to be common carriers of telephonic messages, engaged in a general telephone business until July, and as such would continue under legal obligation to the public to put in telephones, and put up wires connecting them with the exchange, for every person who might demand it; that for every refusal to comply with such demand, whether made in good faith, or for purposes of mere vexation, we should be liable to the one hundred dollar penalty prescribed by Act of April 8th, 1885.

It was thereupon decided to close the exchange as rapidly as expiring contracts would admit.

Many of our April subscribers insisted earnestly that we should continue their instruments in service as long as the exchange should remain open, and offered to pay the old price, and in some instances double that price. Of course this was impracticable, but the disappointment shown by many of those subscribers at the prospect of being left without telephone service, and the liberal inclination manifested by many of them, induced us to try to do for them the next best thing possible.

We were advised by our counsel, that in their opinion a system of public telephone stations, where the company did not rent any telephone, but used its own instruments by its own agents, charging for each message such price as it might be found by experience that the company could afford, would not be in violation of the law.

Accordingly several such stations were opened, also a number of private lines furnished to patrons. In opening these public stations, no new poles were set and no new lines of wire were built.

Again, in all contracts for public station service and for private wires, were made terminable on ten days notice, as it was not intended to continue those two kinds of service longer than the company's poles and wires should remain up.

In doing thus, we furnished service to many who desired it, while we added nothing whatever to street burdens. It did not for a moment occur to us that either law or courtesy required us to apply for leave to open these stations or put in these private lines.

Certainly no discourtesy to the authorities of the city was intended, and we much regret that we should have been supposed guilty of anything of the kind, since possibly the misunderstanding may have had some influence in bringing about your resolution requiring the poles and wires to be taken down within fourteen days,

It is now proposed, if the order for the removal of the poles and wires may be temporarily suspended, to extend the scope of the toll system so that all those of our former patrons who may desire to use the telephone, can be accommodated to the same extent, and with the same convenience, as before April 1st, and without the addition of any new poles or wires by us, to those already erected.

Yours, etc.,

GEO. L. PHILLIPS, Pres't.

23d April, 1886.

G. O. 22, 1886, was taken up for consideration, it having been read the first and second times at the last meeting of the Common Council.

Councilman Thalman offered the following motion:

That all matters relating to telephone business, and ordinances now pending, be referred to the Judiciary Committee and City Attorney, with instructions to draft a general telephone ordinance, under which any and all companies may come in.

All to use the same wires, poles and exchange. The cost of plant to be paid pro rata by each company using the same. The manner of determining pro rata cost to each, be embodied in such ordinance. Fix maximum prices for general service and private use.

The city reserving the right to grant franchises to other companies to attach wires to their poles, under certain conditions, when it is found impracticable to use their instruments through same exchange, and over same wires.

To reserve the right to assess a special tax, and compel them to put their wires underground, should the conduit system ever go into use in our city, and any other matters guarding the public interest, they may think advisable.

Councilman Swain moved to lay the above motion on the table.

Which was adopted by the following vote:

AYES, 14—viz: Councilmen Cummings, Dell, Dunn, Edenharter, Haugh, Mack, McClelland, McGroarty, Newland, Reinecke. Reynolds, Rooker, Smith, and Swain.

NAYS, 11—viz: Councilmen Benjamin, Burns, Coy, Herig, Howes, Markey, Pearson, Smither, Stuckmeyer, Thalman, and Waterman.

By consent of the Common Council, G. O. 22, 1886, was read by Sections.

Councilman Edenharter offered the following as a substitute for Section four; which was adopted:

Amendment to Section four:

In case said parties named in the first section of this ordinance shall voluntarily cease to furnish telephone service to the inhabitants of said city, or in case they shall forfeit their rights under this ordinance, by failing to comply with all its provisions, then in either of such events, all the poles, towers, wires and lines of said parties shall become the property of the city. If said parties shall become permanently enjoined from using any and all telephone instruments, and by reason of such injunction or injunctions, and without any fault on their part, they shall be unable to go on with business, then in that event, all poles, towers, wires and lines of said parties shall pass under the control of the city, and be disposed of by it to any succeeding person, company or corporation, at its fair value, and the proceeds arising from said sale shall be turned over to the parties named in section one, or their successors, under the provisions of this ordinance.

Councilman Markey offered the following amendment, to be designated as Section 9½, of G. O. 22, 1886:

That the following Section be added to G. O. 22, 1886:

Sec. 9½. Said parties shall permit any corporation or individual desiring to do so, to use its lines, poles, exchange, and other facilities necessary to the enjoyment of the privileges hereby granted, on request and in consideration of a reasonable

rental therefor, and in case of disagreement respecting the amount of rental, the same shall be fixed by arbitrators, one of whom shall be chosen by the Mayor and President of the Board of Aldermen of said city, and one by the said parties, and the two, in case they disagree, shall select a third, and the judgment of the majority shall determine the rental. Every such rentor or lessee shall enjoy exactly the same privileges over the wires as the said parties, and no partiality shall be shown to any corporation, individual or instrument. To secure this result, there shall be likewise appointed, on the petition of any telephone company or individual aggrieved, and also two reputable citizens of said city, a disinterested and competent person to make inspection, and report to the Council and Board concerning the due observance of this provision, and if he shall report adversely to the parties holding this franchise, the latter, if his report shall be confirmed, shall be repealed. The cost of said inspection shall be fixed by the Mayor and President of the Board, and shall be paid by the party or company applying therefor if they be not sustained; otherwise by the adverse party.

Councilman Markey moved the adoption of the amendment.

Councilman Edenharter moved to lay that motion on the table.

Which failed of adoption, by the following vote:

AYES, 10—viz: Councilmen Cummings, Dell, Dunn, Edenharter, McClelland, McGroarty, Reinecke, Rooker, Smith, and Swain.

NAYS, 15—viz: Councilmen Benjamin, Burns, Coy, Haugh, Herig, Howes, Mack, Markey, Newland, Pearson, Reynolds, Smither, Stuckmeyer, Thalman, and Waterman.

Councilman Cummings offered the following amendment to the amendment; which was adopted:

7 To amend the amendment so that the arbitrators shall be chosen as follows: One by the Mayor and President of the Board of Aldermen, the other by all the companies doing business with said exchange, and in case of disagreement between said arbitrators, they shall select a third arbitrator, and a majority of these arbitrators shall decide such question.

Councilman Edenharter moved to lay the amendment offered by Councilman Markey, on the table.

Which failed of adoption, by the following vote:

AYES, 11—viz: Councilmen Cummings, Dell, Dunn, Edenharter, Haugh, McClelland, McGroarty, Reinecke, Rooker, Smith, and Swain.

NAYS, 14—viz: Councilmen Benjamin, Burns, Coy, Herig, Howes, Mack, Markey, Newland, Pearson, Reynolds, Smither, Stuckmeyer, Thalman, and Waterman.

And the amendment offered by Councilman Markey, as amended, was adopted, by the following vote:

AYES, 13—viz: Councilmen Benjamin, Burns, Coy, Howes, Mack, Markey, Newland, Pearson, Reynolds, Smither, Stuckmeyer, Thalman, and Waterman.

NAYS, 12—viz: Councilmen Cummings, Dell, Dunn, Edenharter, Haugh, Herig, McClelland, McGroarty, Reinecke, Rooker, Smith, and Swain.

By consent, Councilman Benjamin was excused for the balance of the evening.

Councilman Swain moved that the Council do now adjourn.

Which failed of adoption, by the following vote :

AYES, 2—viz: Councilmen Cummings, and Swain.

NAYS, 22—viz: Councilmen Burns, Coy, Dell, Dunn, Edenharter, Haugh, Herig, Howes, Mack, Markey, McClelland, McGroarty, Newland, Pearson, Reinecke, Reynolds, Rooker, Smith, Smither, Stuckmeyer, Thalman, and Waterman.

Councilman Pearson offered the following amendment to Section 15 ; which was adopted :

To amend Section 15, so that the rental of all telephones for private houses shall be \$1.50 per month.

It being now eleven o'clock, on motion by Councilman Pearson, Rule 61 was suspended, and the time of the meeting extended, by the following vote :

AYES, 24—viz: Councilmen Burns, Coy, Cummings, Dell, Dunn, Edenharter, Haugh, Herig, Howes, Mack, Markey, McClelland, McGroarty, Newland, Pearson, Reinecke, Reynolds, Rooker, Smith, Smither, Stuckmeyer, Swain, Thalman, and Waterman.

NAYS—None.

On motion by Councilman Edenharter, G. O. 22, 1886, was ordered engrossed and then read a third time, and it was passed, by the following vote :

AYES, 20—viz: Councilmen Burns, Coy, Dell, Dunn, Edenharter, Haugh, Herig, Howes, Mack, Markey, McClelland, Newland, Pearson, Reynolds, Rooker, Smith, Smither, Stuckmeyer, Thalman, and Waterman.

NAYS, 4—viz: Councilmen Cummings, McGroarty, Reinecke, and Swain.

On motion, the Common Council then adjourned.

C. S. DENNY, Mayor,

President of the Common Council.

Attest: MICHAEL F. SHIELDS, City Clerk.