

## Minutes of a Regular Meeting of the City Council.

Austin, Texas, July 4, 1889.  
 Hon. Joseph Kalle, Mayor presiding.

Roll Call. Present Aldermen Boland, A. Gross, Graham, Haigler, Lawrence, Metz, Morris, Nitschke, North, Pillow, Platt, Northam, Ziller - 13.

Absent Aldermen, Asmann, Jones, Linn, Newton, Schneider, Townsend, Wilson - 7.

The minutes of the last regular meeting of the City Council were changed so as to show that Aldermen Asmann, Boland and Platt voted no on the motions to suspend the rules and place on its third reading and final passage, "An Ordinance appropriating \$16,250.53 for the purpose of paying approved accounts and interest on the bonded debt of the City now due". They were then adopted.

Alderman Newton entered and answered to his name.

Alderman Morris moved to reconsider the vote by which an Ordinance appropriating \$16,250.53 for the purpose of paying approved accounts and the interest on the bonded debt of the City now due, was passed.

Alderman Townsend entered and answered to his name.

The Mayor then ruled that the motion made by Alderman Morris was out of order, the ordinance referred to having reached the Mayor for his action.

Aldermen Jones and Schneider entered and answered to their names.

A proposition from J. C. Raymond was laid before the Council. It is in effect that he will donate to the City for street purposes a strip of land extending from Brackett street to the Duval property, the same being on the South side of his property on West Pecan Street, provided, the City will bridge and grade the street for travel within a reasonable time.

It was referred to the Street Committee.

Minutes

Alderman Roland presented a petition from Mrs. S. Kreisker requesting permission to erect an open frame shed in rear of stone building No. 400 East Ocean Street.

Referred to the fire Commissioners.

Minutes

Alderman Jones presented a report of the Board of fire Commissioners on a petition of P. Cuneo for permission to erect a frame building within the fire limits, which states that the same was not granted.

Minutes

The Treasurer's report from January 7, 1889, to Feb. 4, 1889.

Balances, January 7.

General fund	\$4369.18
Cemetery "	15.50
School "	1815.20
Jno. J. Allan, estate	4056.60
Total	10,256.48

Receipts:

General fund	6465.19
School "	1720.36
Cemetery "	5.00
Total	\$18,447.03

Disbursements

	4504.20
Balances Feb. 4	
General fund	6330.17
Cemetery "	20.50
School "	3535.56
Spcl deposit Jno. J. Allan estate	4056.60
Total	\$18,447.03

Referred to finance Committee.

City 4/1/89

The City Physician's report for the month of Jan'y was read and referred to the Hospital Committee.

City 4/1/89

The City Assessor and Collector's report for the quarter ending January 31st 1889. Shows:

Ad Valorem taxes Collected	\$12,262.39
License and other taxes, etc.	3,729.49
Jno. J. Allan estate	4,056.60
Total	\$20,048.48
School tax Collected	3,995.95
Total	\$24,044.43

Referred to Finance Committee

City Clerk's statement of warrants issued during the month of January, 1889 fixes the amount at \$4753.65.

Referred to Finance Committee.

The City Sextons report for the month of Jan'y. 1889:

Total number of deaths 25.

White 15

Mexican 1

Colored 7

Referred to Cemetery Committee.

The Committee of the East Austin Hose Co. No. 4, appointed by that company to purchase a hose carriage for said company submitted a report stating that the hose carriage had been purchased and was satisfactory to the company. No action was taken on the report.

The City marshal's report for the month of Jan'y 1889:

Total amount of fines and costs assessed in the records Court \$760.65

Collected in Cash \$272.35

Worked out 261.10

Escaped 66.30

Carried forward 160.60

Total \$760.65

Total number of arrests made, 70.

Referred to the Police Committee.

Ritz. The City attorney presented a report stating that the action of the Supreme Court in refusing the motion for a rehearing filed by the Counsel for A. R. Ritz disposes of the case finally. He also presented a report on the communication from Messrs. J. H. Patterson and J. H. Raymond calling attention of the Council to depositions now being committed upon the property sold to the City by J. H. Patterson for Cemetery purposes, it having been referred to him at the last regular meeting of the City Council.

Patterson. He reports that inasmuch as the suit now pending in the district Court relative to the purchase involves the legality of the same, and the City's defense being that the City Council exceeded its lawful powers in making the

purchase, it would be inconsistent on the part of the City to disclaim all rights under the Contract of purchase and at the same time to exercise the right of ownership over the property brought to be conveyed thereby. No action was taken on the report.

The Street Committee presented a report on a petition of Citizens of the Sixth ward to have San Marcos street widened to its proper width, 60 feet, from 27th street to the northern limits of the City and directed attention of the Council to a report on the subject from the City engineer which reads as follows:

"I have made the survey necessary to widening San Marcos street between 27th and 28th streets to its proper limits of 60 feet, and if the same is enforced it will cause the removal of not only the fencing but several buildings on the west side of the same."

The matter was laid over subject to call.

Alderman Wilson entered and answered to his name. The Street Committee also presented a report on a petition from O. M. Roberts to have a nuisance in a street in the Sixth ward abated, which states that the petition was complied with.

The same Committee reported adversely on an ordinance establishing and regulating stands for vehicles. Adopted.

A report from the City engineer was read. It states that he attempted to get the old building, corner of North Avenue and San Jacinto streets made secure and safe but failed to succeed. He states that the building is in an extremely unsafe condition.

In regard to the encroachments on Orange street in front of the Sixth ward school house he states that they were determined on the third day of December, 1886, by Messrs. Dennis Corwin and Wm. Von Dorseberg, Commissioners appointed by the Court to determine the true north and south boundary lines of said Orange street. That the encroachment amounted to 23 1/2 feet and he has set the stakes to relieve

the same. No action was taken on the report. The Cemetery Committee submitted a report on the insufficiency of burial ground in the City Cemetery which states that there is ground on the South side of the old and new addition, in all about thirty half lots, that can be utilized and submitted a resolution instructing the City Sexton to lay off the said ground in lots which shall measure twelve and one half feet by thirty feet each; also instructing him to lay off two full lots lying in the north east and south east corners of said new addition, said lots to conform in size to other full lots in the Cemetery. The resolution also instructs the City assessor and Collector to sell said lots for \$25; one half lots for \$12.50; single grave for adults \$5; single grave for child \$3. The resolution was adopted.

Alderman North, Chairman of the special Committee on the John S. Allan fund, requested further time in which to prepare a report. Granted.

The Committee on water and gas was given further time in which to report on the petition of O. M. Roberts asking that more fire hydrants and street lights be furnished in Sixth Ward.

On motion the City Marshal was instructed to notify the president of the Austin Water, Light and Power Company to move the light now on Seventh street between Congress avenue and Brazos street to the corner of Fifth and Brazos street.

An Ordinance authorizing the mayor to draw warrants in favor of the treasurer of the board of school trustees and making appropriation to meet the same, was taken up on its third reading and read and on motion further action on it was postponed until the next meeting of the Council, unless a meeting be sooner called to consider the same.

An Ordinance ordering an election by

the tax paying citizens of Austin for the purpose of procuring their consent to the extension of the bonded debt of the City of Austin in the sum of two hundred thousand dollars beyond and in addition to the present bonded debt of one hundred and twenty five thousand dollars, was taken up on its third reading and read. A motion was then made that the ordinance do now pass, which was lost by the following vote:

Yeas - Aldermen: Boland, DeGross, Haigler, Jones, Metz, Newton, Platt, Wilson, Wortham - 9.  
Nays - Aldermen: Graham, Lawrence, Morris, Kitchick, North, Pillow, Schneider, Townsend, Ziller - 9.

The mayor presented a copy of a letter addressed to Messrs. Eggleston & Goldbeck, agents for Jno. J. Allen estate from S. W. Blount, Jr., San Augustine, Texas, in which Mr. Blount states that he has agreed, so far as he has authority to do so, to a compromise of the suit involving the John Gilbert League of land in Sabine County, and states that he writes for the purpose of obtaining the names of the executors of Mr. John J. Allen's will and their consent to the proposed compromise that he make them parties intervenors and have agreed judgment in the case. He states that the basis of compromise is that each party, plaintiff, intervenor and defendant take one third of the land. On motion of Alderman Kitchick, Messrs. Eggleston & Goldbeck were authorized to accept the proposition.

The mayor presented the following Veto:

Mayor's Office, Austin, Jan. 30, 1889.  
To the Honorable Board of Aldermen:

Gentlemen: - I herewith return to you without my approval an Ordinance entitled "An Ordinance appropriating the sum of \$16,250.53 for the purpose of paying approved accounts and interest on the bonded debt now due." My reasons for withholding my approval to this

Ordinances are:

Under the terms of the Contract between the City Water Company and the City of Austin, it is expressly provided in Section 11 that the City shall have the right to use the water free of charge from the hydrants, for the purpose of flushing gutters and sewers; x x x, the City shall also have water free of charge for the fire department buildings, City Hall and offices occupied for City, for all public schools of the City, for fifteen public watering places for man and beast, and also for one fountain in each park and public ground; x x x and also shall have water free of charge, for the uses and purposes of the City Cemetery; in consideration for all of which the property of the City Water Company shall lie, and the same is, hereby exempt from municipal taxation during the full term for which this Contract is executed."

In the ordinance referred to, I find the item of \$2722.80 appropriated to pay the water Light and Power Company for "water used in flushing gutters, the fire department buildings, City Hall and offices, for fifteen public watering troughs, the Cemetery and all the public schools in the City for the year ending December 31, 1888, under Section 11 of the Contract".

I cannot see the justice or validity of a portion of this claim, nor can I lend it my approval. The tax levied against the water Company aggregates the sum of \$2722.80. Of this amount \$2042.10 is credited to the general revenue, and 680.70 to the School fund. It is against the release or exemption of this latter amount that I enter my protest. While the water Company, in my judgment, is equitably entitled to be reimbursed to the amount of municipal tax that may be levied upon its property, in consideration of the water furnished under the provisions of Section 11 of the Contract, there is neither expressed nor implied understanding that it shall be released from the

payment of any special tax, like that assessed and collected for the maintenance of our public schools, or for any special purpose. When the present contract with the water Company was entered into, the question of release from special or school taxation, was not even remotely touched upon, and the fact that the language of the contract defines in plain terms, that the City only waived its right, as to the collection of municipal taxes, to my mind, is proof positive that the intention to include therein the school, or any other special tax, was not contemplated. My judgment in this view is strongly corroborated by the opinion of the City attorney, which I herewith submit to your Honorable Body in connection with this message.

It is a matter of regret to me, that I am compelled to interpose my objections against the unanimous approval of this body; I feel assured that your former action in this matter has been hasty and without due consideration, and that your attention has only to be called to the fact, as it now is, in order to secure a reconsideration.

I therefore recommend that the vote by which the Ordinance was passed be reconsidered.

Joseph Nalle, Mayor.

City Atty - Water  
Co. - School Tax.

The following is the opinion of the City attorney above referred to:

Hon. Joseph Nalle, Mayor:

Dear Sir:- at your request I have examined the Contract between the City Water Company and the City of Austin, set forth in an Ordinance approved April 13th, 1882. My opinion is asked as to the proper construction of section 11 of said Contract, wherein the City Council undertook for consideration there enumerated, to exempt the property of the Water Company from municipal taxation during the existing of the Contract. In my opinion the words "Municipal Taxation" would not include the tax levied for the support of the public free schools of the City, as this tax is levied for



Special purpose under a general law of the state, made applicable to this city by a vote of the people. The Council would have no power to exempt from the payment of this tax any property made taxable by law for state and county purposes. I do not wish to be understood as holding that the City Council had the power to exempt the property of the Water Company from any character of taxes, indeed no such power existed, as was explicitly held by the Supreme Court of this state in the case of the Austin Gaslight and Coal Company vs. the City of Austin.

Very Respectfully,  
Geo. T. Pendexter,  
City Attorney.

Reminded

Alderman Morris moved to reconsider the vote by which an Ordinance appropriating \$16,250.00 for the purpose of paying approved accounts and interest on the bonded debt of the City now due, was passed. Carried.

The question "shall the Ordinance now pass notwithstanding the veto of the Mayor?" being put, it was decided in the negative by the following vote:

Ayes - Aldermen - Ireland, De Gress, Graham, Haigler, Jones, Lawrence, Metz, Morris, Newton, Kitschke, North, Pillow, Platt, Schneider, Townsend, Wilson, Wortham, Giller - 18.

Alderman Wilson was excused.

Alderman Lawrence introduced an Ordinance to repeal article 137, Chapter 6, title 111 of the Revised Penal Ordinances of the City of Austin. Its object is to prevent cows in use as milk cows from running at large in the day time between Waller and Shoal Creeks and the river and Orange Street, and also to prohibit suckling calves running at large at night in the district named. It was referred to the Ordinance Committee.

Alderman De Gress presented an Ordinance appropriating the sum of \$3,100 for the purpose of paying officers and regular employees of the City for the month of February, 1889. It was read first, after which corrections were made.

Ad. Wilson.

art. 137

\$3100

to suspend the rules and place it on its second and third readings and that it do pass, all of which were adopted by the following vote, and duly complied with:

Yeas. Aldermen: Boland, DeGross, Graham, Haigler, Jones, Lawrence, Metz, Morris, Newton, Nitschke, North, Pillow, Platt, Schneider, Townsend, Wortham, Zeller 17.

Alderman DeGross also introduced an ordinance appropriating the sum of \$1,070.80 for the purpose of paying approved accounts. It was read first time after which a motion was made to suspend the rules and place it on its second reading, which was adopted by the following vote:

Yeas. Aldermen: Boland, Graham, Haigler, Jones, Lawrence, Metz, Morris, Newton, Nitschke, North, Pillow, Platt, Schneider, Townsend, Wortham, Zeller - 16.

The ordinance was then read a second time after which motions were made to suspend the rules and place it on its third reading and that it do pass, both of which were adopted by the following vote and duly complied with:

Yeas. Aldermen: Boland, DeGross, Graham, Haigler, Jones, Lawrence, Metz, Morris, Newton, North, Pillow, Platt, Schneider, Townsend, Wortham, Zeller - 16.

Nay. Aldermen:

Nitschke

Alderman DeGross then offered an ordinance appropriating \$15,569.83 for the purpose of paying approved accounts and interest on the bonded debt of the City now due.

It was read after which motions were made to suspend the rules and place it on its second and third readings, and that it do pass; all of which were adopted by the following vote, and duly complied with:

Yeas. Aldermen: Boland, DeGross, Graham, Haigler, Jones, Lawrence, Metz,

Newton, Nitschke, Platt, Schneider, Townsend,  
 Wartham, Zeller - 14.

Sup. Aldermen: Morris, North, Picard - 3.

On motion the Council then adjourned.

Milton Morris,  
 City Clerk.