

The Minutes of a Regular Meeting of the City Council.

Austin Tex. March 11, 1889.

Hon. Joseph Valle, Mayor, presiding.

Roll Call: Present, Aldermen - As many
 Boland, Graham, Haigler, Jones, Lawrence,
 Linn, Morris, Nitschke, North, Pillow,
 Townsend, Wortham, Zeller - 14.

Roll Call: Absent - Aldermen DeGress, Metz, Newton,
 Platt, Schneider, Wilson - 6.

Minutes. The minutes of the last regular and called meetings
 of the City Council were adopted as printed.

Resolution. On the recommendation of the Mayor the fines and costs
 assessed in the recorder's Court against L. E. Delfraisse
 and A. G. Gamble were remitted by the Council.

Austin-Parrish. Alderman Morris presented a proposition from
 Mrs Adill Swain for herself and as guardian
 of Guy L. Parrish and Clara Parrish - minors,
 and who together are the heirs of A. H. Parrish,
 deceased, to settle a disputed claim against the estate
 of their deceased father and mother, arising out of a
 tax sale of lots 5 and 6, block 72, Austin City, for
 taxes of 1877, and for subsequent assessments
 thereon. She offers in compromise of all claims
 and demand of the city up to date, including assessment
 and claimed tax for year 1888, the sum of \$300 and
 the costs of said sale due the City assessor and
 collector.

Alderman Morris moved that the proposition be
 accepted and that a release of the property be
 made by the city. Carried.

Vendors - etc. Alderman Jones presented a petition from
 merchants of the City asking that the street
 vendors of merchandise be required to pay a
 license of from \$3 to \$5 per day. Alderman Linn moved
 to refer it to the ordinance committee and City
 attorney with instructions to report an ordinance
 at the next meeting of the Council covering
 the petition as near as may be. Adopted.

And Alderman Schneider entered and answered to
 his name

Mr. J. H. Jones Alderman Jones presented a communication from the recorder of the fire department setting forth that the board of fire Commissioners had refused to grant the petition of Mrs. J. Hoiste, asking for permission to erect an open frame shed on Trinity street in rear of stone building No. 1100 East Pecan street. This petition was presented to the City Council at its last regular meeting, and by it referred to the board of fire Commissioners for its action.

Alderman Piclow presented a petition from the owners of all the property in block No. 119, asking for permission to close alley running through said block. Granted.

Alderman Kitschke presented a petition from Leslie Price and Lewis Governor, requesting the City to pave the gutter in front of their residences. Referred to the Street Committee.

Alderman Townsend presented a unanimously signed petition from citizens of the Fourth, Fifth, Sixth and Seventh wards and of Travis County north-east of the city, requesting the City Council to assist in bridging Waller Creek on Magnolia avenue, by permitting the Commissioner's Court of Travis County to use for this purpose the iron bridge formerly upon Shoal Creek on West Pecan street, and which is not now in use by the City.

Alderman Townsend introduced in connection with the above petition a resolution authorizing Travis County to place the bridge above named at the point named in the petition; provided, that said bridge shall be removed and placed in position without expense to the City of Austin. The resolution was adopted.

Alderman Graham presented a petition from Chas. Lundell asking the City to refund to him money paid at tax sale of Church property. Referred to finance Committee.

A communication from the recorder of the fire department was presented. It states that at a meeting of the board of fire Commissioners held February 4, 1889; said board adopted resolutions requesting the honorable City Council to purchase the Hamwell fire alarm

Telegraph system; to purchase 2500 feet of four ply 1/2 inch Cotton hose; to erect a new truck house for Protection Hose Company. No. 3. No action was taken on the communication.

Reports of Officers for the month of February 1889.
The Marshal's report:

Total amount of fines and costs assessed in the Recorder's Court		\$1146.15
Collected in cash	\$125.60	
Marked out	190.10	
Escaped	12.70	
Appealed	35.05	
Turned over to Travis County	14.70	
Carried forward	68.30	
Total	\$1146.15	

Back fines and costs collected \$50.30
Fees collected from City pound 1.00
Total number of arrests made 147.
Referred to the police committee.

Sexton. Sexton's Report:

Total number of deaths 18
White 15
Colored 3

City Phys. Referred to the Cemetery Committee.

The City Physician's report was read and referred to the Hospital Committee.

City Clerk. City Clerk's report:

Total amount of warrants issued \$14,394.14
Referred to finance committee.

Treas. Report of the City Treasurer from February 11, 1889, to March 3d, 1889:

Balances, February 4:

af. Seal fund	\$6,330.17
" City Cemetery	20.50
" " Schools	3535.56
" Spl fund Jno. S. Allan, 604	1056.60
Total	\$13,942.83

Receipts:

af. Seal fund	17,810.00
" School "	5,150.53
" City Com "	28.00
Total	\$23,000.00

\$36,942.83

Disbursements:

Paid City warrants from Feb 21, to March 3, 1889	\$18,494.10
Balance, March 3, 1889:	
City Bank fund	5,646.05
" City Am. "	118.50
" School "	8,686.07
" Spl. " Jno. S. Allan, est.	11,256.60
Total	\$36,731.40

Referred to finance Committee

The Sanitary inspector presented a report suggesting the necessity for grading and crocking the alley running north and south on the west side of West San Marcos street, from 21st to 24th street - 6th ward. Referred to the Committee on Sanitation and Sewerage.

The Street Committee presented a favorable report on a proposition from J. C. Raymond to open a street east and west through his property, lying between Keegan and Block streets. The report was adopted.

The Police Committee presented reports on the Marshal's reports for the months of Dec and January, stating the reports were examined and found correct. No action was taken on the reports of the Committee.

Aldermen Pillsow and Wortham of the Ordinance Committee, presented a majority adverse report on an Ordinance to repeal Article 137, Chapter Six, title III of the Revised Penal Ordinances of the City of Austin.

Alderman Morris of the same Committee, presented a minority report favorable to the Ordinance.

Alderman Wortham moved the adoption of the majority report. Carried.

The Ordinance relates to milk cows and suckling calves running at large in the city and was intended to prevent them from doing so.

Alderman North, Chairman, and Alderman Linn, member of the special Committee on the Jno. S. Allan fund, reported as follows:

To the Honorable the Mayor and Aldermen of the City of Austin:

Your special Committee, to whom was referred the Communication of Messrs. Eggleston & Goldbeck, dated January 7, 1889, suggesting that they could loan \$40,560.00 of the funds of the Allan Estate, paid by them to the City Collector, on ample City real estate security at 8 per cent. per annum; and also the Communication of Messrs. Richardson and Goldbeck, executors of the Allan estate dated February 11, 1859, asking the City of Austin to accept the property and trust, consisting of \$70,879 in money, besides the real estate as specified in the will of the late J. J. Allan; beg leave to report as follows: The act of April 3, 1879 (p. 76) provides two modes under which Cities may "acquire the exclusive Control" of their public Schools. One of these modes vests the "exclusive Control of any or all of the public free schools and institutions of learning" in the Council. The other vests the same exclusive Control in a board of trustees. See Sections 1 and 2.

This act of 1879 does not by implication or otherwise, repeal articles 3781 to 3793 of the Revised Statutes, relating to public City Schools. It merely creates an additional mode of Control of public Schools in Cities to that already provided for by law and directs that the provisions of the Revised Statutes shall apply to each mode of Control respectively.

The City of Austin acquired the exclusive Control of its public Schools, after the passage of and under this very act and chose the second of these modes by a vote of the people nearly ten years ago, and the authority of the School trustees to exclusively Control its School matters has never been questioned until quite recently. Sections 3 and 4 of that act of 1879, provides that the board of School trustees shall consist of six trustees elected by the people, the Mayor and the County Judge.

Section 6 directs the board of trustees shall "have,

and exercise exclusively the same powers, control, management and government of and over such public free schools and institutions of learning as are or hereafter may be by law conferred upon the Councils in such cities, where such Councils are invested with the control of such public free schools."

Section 8 further provides that "the board of trustees herein provided for to act in the place of the Councils shall receive no compensation for their services."

It would therefore seem to be clear that under the act of '79, above quoted, a board of trustees is substituted for, takes the place of, and exercises the rights and the powers of the "Mayor and aldermen in all cities situated like Austin, and the rights and powers of those trustees, are defined in Articles 3781 to 3793 of the Revised Statutes, while Act 3788 further provides that each city having control of its schools (like Austin) shall constitute a separate school district, and shall be subject to the general laws so far as the same may be applicable.

Under the law, as it now stands the Council has no discretion as to the rate, and levy of the school tax, for the act of March 26, 1881 (p. 64) provides that the school tax established by the vote of the people shall annually be levied until changed or discontinued by another popular vote.

The present school tax is therefore neither levied nor its rate fixed by the Council, but it rests on the popular vote cast for it years ago, and the Council could not legally either change the rate or refuse to levy it. Section 9 of the act of February 4, 1884 (p. 40) provides that "All requests for the benefit of the public schools, made by any one for any County, City, town, district or community, shall, when not otherwise directed by the

devisor, next said property in the County judge of the County, or the Mayor of the City or town, or the trustees of the School district or Community, and their successors in office, as the trustees for those to be benefited thereby, and the same when not otherwise directed, to be administered by said officers under such rules as may be established by the State Superintendent."

The remaining sections of the same act, where they treat of, and govern trustees of School districts, make them responsible to the State authorities and not to the City Councils. Therefore under Article 3788, above quoted, Austin being a separate School district, the School board is accountable to the State authorities and not to the City Council. Hence it follows that the City Council cannot control the School board, nor pass on its accounts, nor interfere with the trustees exclusive control of the City Schools. The act of May 15, 1888, (p. 6) also requires the treasurers of School boards in cities like Austin to report to the Commissioners' Courts and not to the City Councils.

The above appear to be about all the Statutory law relevant to the matter in hand, and under these enactments the County Collector of Travis County still pays and always has paid the City's portion of the County School tax to the treasurer of the School board, and not to the City treasurer or Collector of Austin * * * And the Comptroller still pays, and always has paid the City's portion of the available School fund to the treasurer of the School board and not to the City treasurer or Collector of Austin * * * And the attorney general in a long and well considered opinion furnished to the Superintendent of public education has fully endorsed the correctness of this interpretation of the law.

In this connection our attention has been called to a communication from George H. Pendexter, City attorney, to Hon. Joseph Nalle, Mayor, under date

of April 14, 1858, in which the writer arrives, "with hesitancy" at the conclusion that the Council has the power to purchase building sites and erect school houses, and the trustees have the full and exclusive power to govern, manage, and control the schools.

Under the second clause of the writer's conclusion it would seem that the school board, and not the city Council, should have the control of the funds wherewith to exclusively govern, manage and control the schools and institutions of learning of Austin.

This view of the law accords with what has been the practice de facto for years, for state, county and city officers all over the state; with the ruling of the attorney general, and with the will of the people of Austin as manifested by their satisfaction of the one-third of ten per cent. annual levy made for years under their original rate, and its central and distribution disbursement of the school board during that long period. The bequest of the late and lamented J. T. Allan, is as follows:

"I give all the rest of my property real, personal and mixed, to the City of Austin, in Travis County, State of Texas, in trust for the following purposes to-wit: To establish in the City of Austin, aforesaid, an industrial school in which shall be taught practical use of tools, as well as scientific principles as applied to labor".

Under section 9 of the act of 84, above cited, the school board is entitled to the Allan fund, and estate, and we are at a loss to understand by what authority Messrs. Eggleston & Goldbeck have paid said sum of \$4,056.60 to the city collector, instead of to the treasurer of the school board.

We are of the opinion that the city Council has no authority over the Allan fund, and we therefore recommend that the said communication of Messrs. Eggleston &

Goldbeck and Richardson & Goldbeck be referred to the board of school trustees of the City of Austin for their action in these premises.

Alderman A. H. Newton does not concur in the above.

(Respectfully Submitted

William A. North,
Henry A. Linn.

Alderman Morris moved that the report of the Committee be adopted, and that the communication of the executors of John S. Allan, deceased be referred to the board of school trustees of the City of Austin, and that the report of the Committee be printed in the synopsis of the proceedings of the City Council. Alderman Boland moved as substitute for the motion made by Alderman Morris, that the matter be postponed until the bill now pending in the legislature be disposed of. The substitute was lost.

Yeas - Aldermen -
Assmann, Boland, Haigler, Jones - 4.
Nays - Aldermen - Graham, Lawrence, Linn,
Morris, Kitchie, North, Pillow,
Schneider, Townsend, Wertham, Giller - 11.
The original motion was then adopted.
Yeas - Aldermen -
Graham, Lawrence, Linn, Morris, Kitchie,
North, Pillow, Schneider, Townsend,
Wertham, Giller - 11.

Nays - Aldermen - Assmann, Boland, Haigler,
Jones - 4.

School money
Veto:

The mayor presented the following Veto message:

Mayor's Office, Austin, Texas, March 4, 1889.
To the Honorable Board of Aldermen:

Gentlemen: I herewith return to your honorable body, without my approval, an Ordinance entitled "An Ordinance authorizing the mayor to draw warrants in favor of the treasurer of the board of school trustees, and making appropriations to

meet the same!

Since the Ordinance has been presented to me, suits have been instituted in the district Courts against the assessor and collector and the treasurer of the City by the board of School trustees, to recover the money now in the hands of treasurer belonging to the School fund, and to require the assessor and collector to pay the tax collected for school purposes to the treasurer of the School board. I think that as the matter is now before the Courts that no action should be taken by the Council until the legal phase of the question is decided, and the duties of the respective officers be fully defined. To permit this Ordinance to become a law, would stop the suits already commenced, and leave the matter in its present condition, to be taken up and agitated by the present or succeeding Administration, at any time. I am anxious to see this question brought before the Courts and thoroughly investigated, in order that we may know just what the law is.

I will do all that I can to facilitate an early decision of this much vexed question. The delay incident to the settlement of this question by the Courts need not cause any inconvenience to the public schools as it will only be necessary for the school board to present the proper vouchers to the Council to secure such appropriations as are needed for their efficient maintenance. I therefore recommend that you reconsider the vote by which the ordinance passed:

Joseph Nalle, Mayor.

Alderman Linn moved to reconsider the vote by which the ordinance considered in the veto was passed. Carried.

Alderman Linn then moved that the ordinance pass, notwithstanding the veto of the Mayor.

The motion was lost.

Yeas - Aldermen - Graham,

Lawrence, Linn, Morris, Nitschke, North,
Pillow, Schneider, Townsend, Wortham, Zeller-11
Aldermen - Assmann, Boland, Naigler,
Jones - 4.

Alderman Jones introduced an Ordinance
appropriating \$2,000 to purchase fire hose for the
use of the fire department. Referred to the
finance Committee.

Alderman Nitschke presented a resolution
instructing the printing Committee to advertise and
invite bids for doing the City's job and news-
paper printing from April 1, to December 31, 1889,
and also for furnishing stationery for the use
of the City for the same period. Adopted.

Alderman Wortham, by request, introduced an
Ordinance establishing the standard of milk
and regulating and licensing milk dealers.
It was read first time, and a motion
of Alderman Jones laid on the table.

Alderman Wortham then withdrew another Ordinance
on the same subject which he had
introduced by request.

Alderman Wortham, by request, presented a
resolution providing for the appointment of
a special Committee of three to obtain from
Mr Geo. A. Brush data concerning his
sewer with a view to the City taking control
and management of same.

On motion of Alderman Morris the resolution
was laid on the table.

Alderman Wortham moved that the Mayor
appoint a special Committee of ten Aldermen -
one from each Ward - to cooperate with a
Committee of Citizens in receiving and
entertaining the Texas Veterans, who will
hold their annual reunion in this City
on the twenty first day of April, 1889.

The motion was unanimously adopted and the
Mayor named the following Aldermen as the
Committee: First Ward - Schneider,

Second " Pillow,

Third " Morris

Fourth - Ward - Wilson,
 Fifth " Linn,
 Sixth " Wertham,
 Seventh " Kitchke,
 Eighth " Newton,
 Ninth " Platt,
 Tenth " Haigler.

Second and
 Third and
 Fourth and

Alderman Morris introduced the following resolution:

Resolved, That it is the sense of this Council that the suits by the Board of School Trustees against the assessor and Collector of taxes and the City Treasurer are indefensible from a legal standpoint and that no defense be made to said suits; that no reflection is intended upon the action of either of said officers, inasmuch as they acted upon an Ordinance, which, though invalid, nevertheless was respected by them in the belief that said Ordinance was valid.

On motion the resolution was adopted by the following vote:

Yes - Aldermen - Graham,
 Lawrence, Linn, Morris, Kitchke,
 North, Pillow, Schneider, Townsend,
 Wertham, Zeller - 11.

Nays - Aldermen - Assmann, Boland, Haigler,
 Jones - 4.

Light.

Alderman Zeller stated that the incandescent light at the corner of W. Eleventh street and West avenue could be spared from that point, and was much needed at the bridge over Shoal Creek in the rear of the graded School building.

Alderman Wertham moved that the alldaman of the ward be permitted to have the light removed and placed at the point named at the expense of the City. Adopted.

Alderman Pillow moved the Council stand adjourned until Monday night March 11, 1889. Carried.

Milton Morris, City Clerk.

The minutes of an adjourned meeting of the City Council.
(Austin, March 11, 1889.)

Hon. Joseph Kalle, Mayor presiding.

Roll

Roll Call - Present - Aldermen Graham, Haigler, Lawrence, Metz, Morris, Newton, North, Pillow, Schneider, Giller - 10.

Roll

Absent - Aldermen - Assmann, Boland, DoGress, Jones, Linn, Kitschke, Platt, Townsend, Wilson, Wortham - 10.

Quorum Absent

Alderman Morris moved that enough Aldermen to make a quorum be brought in.
Carried.

Aldermen Boland, Linn, Kitschke, and Wortham entered and answered to their names.

\$ 2,208.02

Alderman Wortham introduced an ordinance appropriating \$2,208.02 for the purpose of paying approved accounts. It was read the first time 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, Graham, Haigler, Lawrence, Linn, Metz, Morris, Newton, Kitschke, North, Pillow, Schneider, Wortham, Giller - 14.

\$ 3.00.

Alderman Wortham also presented an ordinance appropriating the sum of \$3.00 for the purpose of paying salaries of officers and regular employes of the city for the month of March, 1889. It was read the first time 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, Graham, Haigler, Lawrence, Linn, Metz, Morris, Newton, Kitschke, North, Pillow, Schneider, Wortham - 14.

Roll

Alderman Morris offered a resolution instructing the Austin Water, Light & Power Company to remove the incandescent light at the corner of Rio Grande and Eighth streets, and place it at

The corner of West Avenue and West Eleventh
Street. Adopted.

On motion the City Council then adjourned.
Milton Morris,
City Clerk.