

COUNCIL CHAMBER, }  
Ann Arbor, Oct. 3d, 1898. }

Regular session.

Called to order by Pres. Luick.

Roll called. Quorum present.

Absent—Ald. Dieterle, Sweet, Ex-inger, Vandawarker, Spathelf, Howell,

PETITIONS AND COMMUNICATIONS.

A petition signed by Moses Seabolt and 3 others asking to have their names stricken from a petition was read and ordered filed.

A petition signed by E. M. Georg and 10 others protesting against the opening of an alley was read and ordered filed.

A petition signed by Ida Gollnick asking for damages for alleged injuries was read and referred to the Finance Committee and City Attorney.

To the Honorable Common Council of the City of Ann Arbor:

We the undersigned being a majority of all the owners of real estate subject to assessment for the pavement of Washington st., between Ashley st. and Fifth ave., respectfully petition your honorable body to pave that part of Washington st., between Ashley st. and Fifth ave. with brick or asphalt and in accordance with the provisions of an ordinance of the City of Ann Arbor, entitled, "An Ordinance Relative to Street Pavements," passed July 7th, 1897

SIGNED.

Rinsey & Seabolt, J. F. Hoelzle, L. C. Weinmann, F. A. Parker, John Heinzmann, William Herz, P. Fred Reimold, J. D. Ryan, J. W. Knight, John W. Morton, M. D., Will H. Morton, Otto Behr, Eberbach Hardware Co., Washington Building Co., by F. H. Belser, Treasurer, David Rinsey, Catherine Building Co., R. Kempf, President, O. M. Martin, William Illi, F.W. Bigalke, Mrs. A. Ball, A. Lentz, A. Reule, A. Marshke, E. L. Munyon, B. B. Sudworth, August G. Koch, F. Rettich, Wm. P. Groves.

By Ald. Koch:

Resolved, that the petition for paving Washington st., between Ashley st. and Fifth ave., be referred to the Board of Public Works to determine if the petitioners are the owners of the greater number of feet of real estate fronting on Washington st., where said street is proposed to be improved, and

for an estimate of the cost of grading and paving with brick or asphalt on concrete foundation; and for the curbing and other work necessary for the improvement of said street within said limits.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Brown, Weeks, Coon, Cady, Stevens, Pres. Luick—9.

Nays—None.

To the Common Council:

The Board of Public Works would recommend that your honorable body authorize them to purchase sufficient plank to cover Bridge No 1 and to build and repair crosswalks in the city.

Respectfully submitted,

Glen V. Mills,

Clerk of the Board of Public Works.

Referred to the street committee.

ESTIMATE FOR STORM SEWER ON SECOND ST.

350 ft. 18 in. pipe at 25c per ft.....	\$ 87 50
300 ft. 15 in. pipe at 17c per ft.....	51 00
650 ft. excavation and backfilling at 20c per ft.....	130 00
2 catch-basins at \$20 each.....	40 00
	<hr/>
	\$308 50

Geo. F. Key,

City Engineer.

Received and ordered filed.

To the Mayor and other City Officials and the Common Council of Ann Arbor, Mich.:

Gentlemen,—On behalf of our Carni-al Executive Committee, of our City authorities and of our entire people, a cordial emphatic invitation is extended for you to attend the Grand Rapids Carnival of Fun, which will begin Tuesday, October 25, and close Friday, October 28.

There is so much of magnitude, of real splendor, in the program for each day that no particular day is suggested for your visit. We hope you will accept this invitation, and we promise you every possible official and public attention and courtesy.

Please notify us of your action and inform us concerning the day of your intended visit, so that proper arrangements may be made.

Yours respectfully,

George R. Perry,

Mayor and Chairman of Committee on Official Invitations and Receptions.

Received and ordered filed.

## ENGINEER'S SEVENTH ESTIMATE.

## Paving Districts Nos. 1 and 2.

Grading, 3,337 cu. yds. at 25c per yd.....	\$ 834 25
Curbstone, 2,296 sq. ft. at 50c per ft.....	1,148 00
Concrete, 423 cu. yds. at \$3 per yd.....	1,269 00
Brick, 4,304 sq. yds. at 94c per yd.....	4,045 76
Sand, 4,304 sq. yds. at 4c per yard.....	172 16
Grout filler, 4,330 sq. yds. at 16c per yd	692 80

\$8,161 97

Less 10 per cent..... 816 19

Amount due contractor, pavement \$7,345 78

## Sewer Work.

10 in. pipe, 246 ft. at 9c per ft.....	\$ 22 14
12 in. pipe, 38 ft. at 15c per ft.....	5 70
15 in. pipe, 34 ft. at 16c per ft.....	5 44
Excavation, 284 ft. at 15c per ft.....	42 60
Excavation, 34 ft. at 20c per ft.....	6 80
Manholes 2 at \$25 each.....	50 00
Inlets 8 at \$13 each.....	104 00
Catch basins 2 at \$25 each.....	50 00
Covers 2 at \$7.00 each.....	14 00
Covers 2 at \$2.50 each.....	5 00

\$305 68

Less 10 per cent..... 30 56

Amount due contractor for sewer...\$275 12

Geo. F. Key,  
City Engineer.

O. K.

W. B. Smith,

President Board of Public Works.

I hereby certify that I have paid all claims for labor and material to date in accordance with previous estimates.

Wm. J. Clancy.

Ald. Brown moved that the estimate be referred to the Street and Finance Committees.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Brown, Weeks, Coon, Cady, Stevens, Pres. Luick—9.

Nays—None.

Ald. Dieterle and Sweet entered.

## REPORTS OF STANDING COMMITTEES.

## FINANCE.

To the Common Council:

Your Committee on Finance would respectfully report that they have had the following bills under consideration and would recommend their allowance and that warrants be drawn for the same.

Respectfully submitted,

Arthur Brown,

Emmett Coon,

F. M. Hamilton,

Committee on Finance

## CONTINGENT FUND.

Glen V. Mills, salary.....	\$ 83 34
Patrick O'Hearn ".....	83 34
Edward L. Seyler ".....	8 34
O. E. Butterfield, salary.....	50 00
Mrs. C. A. Greene, rent.....	29 17

Marvin Davenport, janitor.....	6 25
M. E. Easterly,.....	12 00
Frederick Schmid, rent.....	15 00
W. S. Teeple, supplies.....	2 40
Ann Arbor Argus, printing.....	21 13
Grace Bowen, stenographer for City Attorney.....	5 00
Ann Arbor Electric Co., lighting.....	560 30
Glen V. Mills, drafts and postage.....	2 20
D. Hiscock & Son, coal.....	1 50
M. M. Eisele, supplies.....	2 08
Ann Arbor Savings Bank, acct. assigned.....	18 36
W. W. Wetmore, supplies.....	1 00
John R. Miner, expert accountant.....	50 00
Wm. F. Stimson, supplies.....	50
Hausfreund & Post, printing.....	5 60
Mich. Tel. Co., rental.....	27 50
The Cook House, meals.....	3 50
Neue Washtenaw Post, printing.....	8 10
Geo. F. Key, salary.....	100 00
Henry Richards, coal.....	104 28
State Savings Bank, accts. assigned.....	39 08
<b>Total</b> .....	<b>\$1,239 97</b>

## SEWER FUND—GENERAL.

Schneider Bros., repairs.....	\$ 11 3
State Savings Bank, accts assigned.....	9 00
<b>Total</b> .....	<b>\$ 20 35</b>

## PAVEMENT DISTRICT NO. 1.

Wesley Hicks, inspector.....	\$ 57 50
Ann Arbor Water Co., repairs.....	60 45
Wurster & Kirn, tongs.....	5 00
State Savings Bank, accts. assigned.....	59 37
<b>Total</b> .....	<b>\$ 182 32</b>

## BRIDGE, CULVERT AND CROSSWALK FUND.

State Savings Bank, accts. assigned.....	\$ 78 01
<b>Total</b> .....	<b>\$ 78 01</b>

## STREET FUND.

Daniel J. Ross, salary.....	66 66
Geo. Fischer, labor.....	27 00
F. L. Sutherland, labor.....	25 50
Louis Rohde, supplies.....	117 18
Henry Richards, coal.....	39
Wurster & Kirn, supplies and repairs.....	8 30
Muehlig & Schmid, supplies.....	15 40
Geo. E. Moore, oil.....	1 45
M. C. R. R., freight.....	1 66
Dean & Co., supplies.....	2 12
John Baumgardner, labor.....	20 10
State Savings Bank, accts. assigned.....	1242 03
<b>Total</b> .....	<b>\$ 1532 79</b>

## POLICE FUND.

Zenus Sweet, salary.....	\$ 75 00
George Isbell, salary.....	50 00
Reuben Armbruster, salary.....	50 00
John O'Mara, salary.....	50 00
David Collins, salary.....	50 00
Henry Marsh, special.....	4 00
Thomas Blackburn, special.....	4 00
Elmer Meade, special.....	8 00
W. W. Wetmore, supplies.....	1 25
Wm. Addis, meals and lodging.....	1 25
<b>Total</b> .....	<b>\$ 293 50</b>

## FIRE DEPARTMENT FUND.

Fred Siple, salary.....	\$ 60 00
C. A. Edwards, salary.....	55 00

W. H. McLaren, salary	50 00
Albert West, salary	50 00
Eugene Williams, salary	50 00
Herman Kirn, salary	50 00
Samuel McLaren, salary	50 00
Chas. Andrews, salary	40 00
Charles Carroll, salary	20 00
A. W. Sorg, salary	8 00
Michael Ryan, salary	8 00
Ed. Hill, salary	8 00
Fred Nordman, salary	8 00
Ralph Edwards, salary	4 00
Mrs. Ream, washing	6 00
W. S. Teeple, brushes	2 00
Ed. McMahon, supplies	50
Goodale & Co., bran	1 32
Henry Richards, coal	18 70
J. E. Harkins, supplies and repairs	54 81
Patrick Gibney, hay	7 21
<b>Total</b>	<b>\$ 551 54</b>

POOR FUND.

Fred Siple, salary and express	\$ 10 70
Ann Arbor Railroad, freight	57 31
Goodale & Co., wood	13 86
F. Bigalke, groceries	5 00
J. A. Brown, groceries	3 01
Davis & Seabolt, groceries	1 13
Eberbach Drug Co., medicine	1 75
John Goetz, Jr., groceries	3 08
John Goetz & Son, groceries	4 71
Mrs. Hillman, board for Mrs. Evans	5 00
G. Hoefler, groceries	2 00
J. J. Goodyear, medicine	25
A. Kearney, groceries	3 00
A. G. Koch, groceries	4 17
W. F. Lodholz, groceries	4 66
F. C. Miller, groceries	1 00
John Miller, milk	1 00
J. H. Maynard, groceries	6 89
O'Hara & Boyle, groceries	2 00
C. Rinsey, groceries	5 96
Rinsey & Seabolt, groceries	9 37
Geo. Spathelf, Jr., meat	1 00
W. F. Stimson, groceries	5 31
C. W. Vogel, meat	1 33
L. C. Weinmann, meat	30
C. Zuern, meat	30
Ann Arbor Railroad, freight	7 86
A. W. Nowlin, wood	203 93
<b>Total</b>	<b>\$ 365 88</b>

CEMETERY FUND

Nelson Garlinghouse, labor	\$ 13 50
<b>Total</b>	<b>\$ 13 50</b>

DOG TAX FUND.

States Savings Bank, acct. assigned	\$ 1 50
<b>Total</b>	<b>\$ 1 50</b>

RECAPITULATION.

September Bills, October Orders.

Contingent Fund	\$ 1239 97
Sewer Fund, general	20 35
Pavement District No. 1	182 32
Bridge, Culvert and Crosswalk Fund	78 61
Street Fund	1532 79
Police Fund	293 50
Firemen's Fund	551 54
Poor Fund	365 88
Cemetery Fund	13 50
Dog Tax Fund	1 50
<b>Total</b>	<b>\$ 4279 36</b>

Adopted as follows:

Yeas—Ald. Hamilton, Richards,

Koch, Dieterle, Sweet, Brown, Weeks.  
Coon, Cady, Stevens, Pres. Luick—11,  
Nays—None.

To the Common Council:

Your Committee on Sidewalks would recommend that \$25.00 be appropriated to build a plank crosswalk across Geddes ave. at the corner of Oxford st., and for necessary grading for sidewalk on west side of Oxford between Geddes and South University aves.

Respectfully submitted,

F. M. Hamilton,  
A. B. Stevens,  
Geo. W. Weeks,  
Arthur Brown,  
Committee on Sidewalks.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,  
Koch, Dieterle, Sweet, Brown, Weeks,  
Coon, Cady, Stevens, Pres. Luick—11.  
Nays—None.

REPORTS OF CITY OFFICERS.

CITY TREASURER'S REPORT.

Month ending Sept. 30, '98.

MONEY RECEIVED.

Bridge, Culvert and Crosswalk fund	
Ross D. J., built sidewalk for Mrs. T. Kearnes, 3d ward	\$30 00
For Ann Arbor Savings Bank, West Huron st, Hunter property	3 65
For A. A. Savings Bank, 8 rods on Ashley street	20 00
For White estate 2½ rods on Ashley street	10 00
Contingent fund	
Mills Glen V., Licenses	36 50
City Cemetery Fund	
Mills Glen V., Lot sold to A. M. Bucklin, lot 15 block 15	15 00
Dog Fund	
Mills Glen V., licenses	32 00
Police Fund	
Sweet, Marshall, fees for Sept.	3 90
Street fund	
Ross D. J. Gutter Paving	
Brown, H. J.	6 25
Clarcken, Geo.	5 00
Quarry, James	3 13
Kittridge, Mrs. K.	3 13
Worden, C. H.	10 00
Gwinner, Mrs. A.	2 50
Gwinner, William	2 50
Wright, Miss C.	3 75
Clark, Dr. E. A.	3 75
Rinsey, David	8 00
<b>Total</b>	<b>\$199 06</b>
Balance on hand last report	8190 26
	<b>8389 32</b>

MONEY DISBURSED, WARRANTS PAID.

Bridge, culv't and crossw'lk fund	\$ 768 99
Contingent fund	1323 98
City cemetery	67 09
Fire fund	593 90
Poor	86 90
Police	290 00

Street " .....	1897	51	
Total .....	\$5028	37	
Balance on hand .....	\$3360	95	
Condition of City funds Sept. 1 '98.			
		On	Over-
		hand	drawn
Bridge, culv't' crossw'k fund .....		\$132	53
Contingent fund .....		3196	08
City cemetery fund .....	8	01	
Dog license fund .....	303	00	
State dog tax " .....	584	25	
Delinquent tax fund .....		1554	27
Fire fund .....	5922	02	
Poor " .....	2252	75	
Police " .....	1874	90	
Street " .....	462	84	
University aid bond fund .....	300	00	
Uncollected city tax .....		10274	28
Water fund .....	3472	40	
Excess of city rolls .....	204	83	
Sidewalk tax uncollected .....	29	61	
Rejected " .....		3	50
Main sewer Appropriation .....	3100	00	
Total .....	\$18518	11	15157 16
Balance on hand .....	\$3360	95	

MONEY RECEIVED.

Tax acc't lat sewer no 3 .....	\$72	97
" " " " " 4 .....	18	08
" " " " " 5 .....	50	86
" " " " " 6 .....	13	13
Total .....	\$155	04
Balance on hand last report .....	11696	41
Total .....	11851	45

MONEY DISBURSED, WARRANTS PAID.

Main Sewer Fund .....	Amt	Cr
	\$ 14	55
Total .....	\$ 14	55
Balance on hand .....	11836	90
Condition of sewer funds Oct. 1 '98.		
	Dr	Cr
Main sewer fund .....	\$	\$4011 60
Labor acc't lat sewer no 1 .....	39	90
Tax " " " " 1 .....	430	83
Labor " " " " 2 .....		27 28
Tax " " " " 2 .....		278 72
Labor " " " " 3 .....	5805	82
Tax " " " " 3 .....		3484 03
Labor " " " " 4 .....	836	21
Tax " " " " 4 .....		897 49
Labor " " " " 5 .....	980	24
Tax " " " " 5 .....		4789 21
Labor " " " " 6 .....		2950 24
Tax " " " " 6 .....		2936 40
Labor " " " " 7 .....		147 15
Tax " " " " 7 .....		422 29
Delinquent sewer tax .....	451	60
Uncollected " " .....		437 09
Total .....	\$8544	60 20381 50
Balance on hand .....	\$11836	90
Labor Acct. pav. Dis No. 1 .....	\$15362	66
Total .....	\$15362	66
Balance overdraft .....	\$15362	66
	Dr	Over'dft
Labor Acct Pav. Dis No. 1 .....	\$15362	66 \$15362 66
Total .....	\$15362	66 \$15362 66

Respectfully submitted,  
 E. L. SEYLER,  
 City Treasurer.

Ann Arbor, Mich., Oct. 1, 1898.  
 This is to certify that there is an overdraft in the account of Edward L. Seyler, treasurer, of one hundred sixty-eight dollars and eighty-one cents. (\$168.81).

Truly,  
 W. J. BOOTH, Pres.

Ann Arbor, Mich., Oct. 3, 1898.  
 To the Hon. Mayor, and members of the Common Council.  
 Gentlemen:

Your board of health begs leave to make their monthly report.  
 There have been 36 inspections, nearly all of such nuisances inspected abated.

We have taken particular pains to look after sickness which might be due to the water supply, but as far as we have investigated we cannot find a single case of sickness due to the water of the city.

There have been 20 deaths during the month from the following diseases:—

Cholera Infantum .....	2
Accidental .....	1
Enteritis .....	1
Old Age .....	2
Kidney Disease .....	1
Tuberculosis .....	5
Shock .....	1
Suicide .....	1
Gastro Enteritis .....	1
Paralysis .....	1
Anaemia .....	1
Cancer of the stomach .....	1
Inanition .....	1
Acute Nephritis .....	1

ELI W. MOORE, President  
 H. B. DODSLEY, Inspector  
 ERNEST A. CLARK,  
 Health Officer.

To the Honorable Common Council of the City of Ann Arbor.

Gentlemen: Attached hereto is a report of all ordinance cases before me during the quarter ending September 30th, A. D. 1898.

And I further certify that all fines collected have been paid to the City Treasurer and all costs to the proper officers and that I have no money in my hands belonging to the City of Ann Arbor or to any officer thereof.

JOHN L. DUFFY,  
 Justice of the Peace.

Subscribed and sworn to before me this 3rd day of October, A. D. 1898.  
 THOS. D. KEARNEY,  
 Notary Public.

Date.	Name	Offense Charged	Judgment	Fine	Costs	Sentence	Remarks
July 29 1898	William W. Whedon	Violation Sidewalk Ordinance	Not Guilty				Appealed to Circuit Court
" 29	Mary Kingsley	" " " "	"			" " " "	Warrant not returned
Aug. 3	Emmet McMahon	Dray	"			" " " "	Discharged on recommendation City Marshal
" 3	George Darrow	" " " "	Guilty	\$5 00	\$3 70	" " " "	Not paid
" 4	Lawrence Clinton	" " " "	"		6 20	Or 5 Days in Jail	Committed
" 8	Rudolph Fisher	" " " "	"		3 45	" 10	Paid
Sept. 20	Thomas Barhydt	" " " "	Guilty		3 45	" 10	Pending
" 23	Oscar Tessmer	" " " "	"			" " " "	Paid
" 23	Henry Frey	" " " "	"			" " " "	Paid

To the Honorable Common Council of the City of Ann Arbor.

Gentlemen: It becomes my duty herewith to submit to your honorable body the opinion of the Supreme Court of the State of Michigan, adverse to the city's claim, in the case of Bryant Walker, administrator of the estate of Corydon L. Ford, deceased, against the City of Ann Arbor involving the validity of the assessment for the cost of the lateral sewer in district number 3.

The opinion explains itself and vitiates the ordinance of the City of Ann Arbor passed in 1894 entitled, "Ordinance Relative to Sewers."

I would recommend that a bill be prepared to be passed at the next session of the legislature authorizing an assessment on a basis which would exclude the value of improvements, and which would furnish a foundation broad enough to support the ordinance of 1894; which would in express terms render valid and legal all the proceedings and acts of the Common Council and officers of the City of Ann Arbor heretofore taken and had by virtue of the sewer ordinance; which would provide for the certification back to the city treasurer by the county treasurer of all delinquences which have been reported to the county upon the sewer assessment rolls; and which would defer the payment of all delinquent sewer taxes for the period of four years from and after the passage of the act.

I think such an act of the legislature would be valid and would release the City of the costly burden of a re-assessment of the sewer taxes.

Dated, Ann Arbor, Mich., Oct. 3d, 1898.  
Respectfully submitted,

O. E. BUTTERFIELD,  
City Atty.

SUPREME COURT. }

Bryant Walker, administrator of the estate of Corydon L. Ford Deceased.

-vs-

City of Ann Arbor and William Reh-fuss, County Treasurer.

Filed September 27, 1898.

This bill was filed to restrain the collection of a special assessment upon property of the estate represented by complainant, to meet the cost of a lateral sewer. The court below dismissed the bill and complainant appeals. It is contended by the defendant that the decree should be affirmed without reference to the irregularities in the proceedings, if any, for the reason that there is no showing of fraud

and the complainant waited before taking any proceedings until the work of the construction of the sewer was completed. Defendant cites to sustain this contention - *Undrom vs. Manistee*, 93 Mich., 170; *Bryan vs. Detroit*, 50 Mich., 56; *Doodwillie vs. Detroit*, 1032 2/3 Howell; *Fitzhugh vs. Bay City*, 67 N. W. R. 904.

We regard the rule laid down in the cases cited as salutary and just and if the facts in this case admitted of the application of that rule we should apply it with great satisfaction to ourselves. For although, as will be shown later, we feel constrained to hold that the basis adopted for assessment was erroneous and therefore jurisdictionally defective, yet we are left in doubt as to whether the complainants *cestuis que trusts* have really suffered any substantial injury by reason of this departure. We find, however, in this case an admission of record that the complainant had no knowledge of these proceedings until long after they were taken and feel that we cannot in view of this admission ignore jurisdictional defects without doing violence to established principles. We need discuss but one defect in the proceedings, Local act 313 of laws of 1895 provides, "That all lateral and connecting sewers may be constructed at the cost and expense of the lands, tenements and premises adjacent thereto and benefited thereby, and the cost thereof may be levied on and assessed against such lands, tenements and premises, and collected from the owners thereof by foot frontage, according to benefits, or by land values as the Common Council shall or may determine by ordinance."

The record shows that the assessment was made on the basis of the value of each parcel "exclusive of improvements erected thereon." While it was doubtless competent for the legislature to have authorized an assessment on a basis which would exclude the value of improvement, (Cooley on Taxation, 456) the statute in question does not do so but authorizes an assessment based upon the value of the land. Land of course includes the structures and improvements thereon. Blackstone, 2nd Book, p. 12. It follows that the basis adopted was unauthorized and the assessment was jurisdictionally defective. The assessment must be set aside but without prejudice to a re-assessment if the city shall be advised

that one may be lawfully made.

Complainant will recover costs against the city.

The other Justices concurred.

STATE OF MICHIGAN,—ss.

I Charles C. Hopkins, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the opinion now on file in said Court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at Lansing, this 28th day of September, A. D. 1898.

CHAS. C. HOPKINS,  
Clerk.

Ald. Coon moved that the recommendation be concurred in by the council.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Brown, Weeks, Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

To the Hon. Board of Public Works of the City of Ann Arbor:

Gentlemen:—You have requested my opinion as to the power of the city to compel the owners of property included in paving district Nos. 1 and 2 to adjust the sidewalks in front of their property to the grade of the street as paved.

The charter gives the council power to establish and change the grades of streets and sidewalks and power to cause the sidewalks to be constructed in accordance with the same. In cases where no grade is to be found of record it probably would not be denied that the council would have the power to establish a grade above or below the present sidewalk and compel the property owner abutting thereon to conform the sidewalk to the grade.

In cases however, where the sidewalk has been constructed in accordance with an established grade, some question has been made as to the power of the city to compel the abutting owner to conform the sidewalk to a changed grade without rendering compensation for the damage sustained, but it is the settled law of this state and has not been questioned by the court of last resort since 1875 that no action will lie against a city for damages for the injury to adjacent property caused by a

change having been made lawfully, by the proper city authorities in the grade of a public street. The particular hardship may be made more manifest, but the principle is not affected by the circumstance that the grade of the street had once before been fixed, and that the property owner had built with reference to it. This might be a reason for the exercise of great caution and prudence in determining upon a change, but it could neither deprive the city of the power to establish a new grade, nor could it bring into the case any new elements which could constitute the basis of a right of action. A city cannot even by contract, deprive itself of any of its legislative powers; they are conferred upon it to be exercised again and again as long and as often as occasion shall require. There is precisely the same reason and the same justification for changing a grade once established, when the public convenience is found to require it, that there was in fixing a grade in the first place where it was then believed it would subserve the public convenience. The circumstances of towns, as they bear upon the propriety or convenience of a grade, must often change with its growth, and what was suitable for a small settlement becomes wholly unsuitable when the town has outgrown the expectation of its founders. The reasons for a second exercise of a particular legislative authority may often be quite as imperative as those requiring the first. The injury in all cases is incidental to an exercise of public authority, and in the language of the law is "demnum absque injuria."

In connection with the assessment of the cost of the pavement in districts No. 1 and 2 certain facts have been brought to my notice which it may not be unwise for me to mention. I am informed by a communication from your city engineer under date of Sept. 29, 1898, and referred to me by you, that the estimated cost of the pavement in the two districts as given by the engineer to the Board of Review and as embodied in the certificate of the common council to the assessor, included the cost of placing all sidewalks upon a grade to conform to the grade of the street, and all filling between the sidewalks and the curb stone with cement. This work is not properly a part of the paving improvement and could not under the ordinance relative

to street paving be included in the estimated cost of the improvement for which the special assessment roll could be made.

Very respectfully yours,  
O. E. BUTTERFIELD,  
City Attorney.  
Ann Arbor, Mich., Oct. 3rd, 1898.

Referred to the Sidewalk Committee.

To the Hon. Common Council of the city of Ann Arbor:

Gentlemen:

I have the honor herewith to submit a draft of a proposed contract between the city and the Michigan Central Railroad Co., relative to the overhead bridge on Detroit st., in accordance with your resolution passed at a former meeting, and also a letter communicated to the council at the second meeting in May and a letter from the Company which was enclosed with the contract. You have been advised by my predecessor not to enter into any formal contract relative to the subject matter herein contained and I therefore submit the draft and letters without recommendation.

Dated, Ann Arbor, Mich., Oct. 3rd, 1898.

Respectfully submitted,  
O. E. Butterfield,  
City Attorney.

O. E. Butterfield, Esq., City Attorney,  
Ann Arbor, Mich.

Dear Sir:

Inclosed herewith, as requested, find draft of contract which this company is willing to make, whereby it will assume in the future the maintainance of the entire structure of the overhead bridge on Detroit st., and will waive claims which it has against the city for repairs to the same in the past. It meets the popular demand of your city and, I trust, will be accepted as a concession on the part of this company.

Kindly advise me whether the city desires to enter into such an amendatory contract, or will merely hold the letter heretofore submitted to the city as an assurance on the part of the company that it will hereafter maintain the bridge. Awaiting advices,

Yours truly,  
Henry Russel,  
General Att'y.

Michigan Central Railroad Company,  
Legal Department, Detroit, Mich.,  
May 4, 1898.

John F. Lawrence, Esq., Attorney,  
Ann Arbor, Mich.

Dear Sir:

In reply to your letter of March 11th, 1898, in regard to the controversy which has arisen between the city of Ann Arbor and this company relative to maintenance of the overhead bridge:

We have had the situation carefully looked into, and in view of your suggestions and all the circumstances, I am authorized to say that, for so long as the situation remains unchanged—that is, with the overhead crossing at Detroit st. and no dangerous grade crossing within the depot grounds—this company will assume, at its expense the maintenance and repair of the entire bridge, and will not present claims which it has against the city for expenditures made upon the bridge in the past. Upon receiving the assurance of the city that it will take over the approaches on either hand and maintain and care for them as a part of the roadway, we will enter into a formal agreement modifying the present contract in the above respect, or we will consider this correspondence as such an amendment and let it go at that

Yours truly,  
Henry Russel,  
General Att'y.

ARTICLES OF AGREEMENT, made and entered into this — day of —, A. D. 1897, by and between the Michigan Central Railroad Company, a corporation organized and existing under the laws of the State of Michigan, party of the first part, and the city of Ann Arbor, a municipal corporation organized and existing under the laws of said State, party of the second part.

Whereas, a certain contract bearing date March 26th, 1886, was entered into by and between the parties hereto relative to the construction of a certain bridge over the right of way of the said railroad company on Detroit street in said city, under which agreement differences have arisen between the parties hereto as to the respective duties of the parties in respect to the maintenance and repair of the floor of said bridge, the said city contending that it is the duty of said Railroad Co. to repair the floor of said bridge, while the said Railroad Co. contends that it is the duty of the city so to do;

Now, therefore, this agreement witnesseth that, in order to do away with such cause of controversy, the said parties hereto have amicably agreed

and do hereby agree as follows, to wit:

1. That said party of the first part shall, for so long as no grade crossing is established within the depot grounds of said railroad company at Ann Arbor, maintain and repair, at its expense, the entire bridge aforesaid, and will not present claims which it now has against the city aforesaid for expenditures made by said railroad company upon said bridge in the past.

2 In consideration of the above burden hereby assumed by said railroad company relative to the bridge aforesaid, the said city, said party of the second part, will at all times in the future maintain and care for the approaches to said bridge upon either hand as a part of the highway.

3. It is understood by the parties hereto that this agreement is a modification of the said contract of March 26th, 1886, existing between the parties hereto.

Witness our hands and seals the day and year first above written.

MICH. CENTRAL RAILROAD CO.  
(SEAL) By — —, Pres.  
THE CITY OF ANN ARBOR.  
(SEAL) By — —.

Ald. Coon moved that the Mayor and Clerk enter into the contract with the M. C. R. R.

Ald. Hamilton moved as a substitute that the contract be laid on the table.

Adopted as follows;

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Brown, Weeks, Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

Ald. Brown moved that the City Engineer prepare a map of 3rd street giving the location of Christian Mack's lot.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Brown, Weeks, Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

Ald. Brown moved that the subject of connecting with sewers on 13th st. be referred to the sewer committee.

Adopted.

By Ald. Brown:

Resolved that the general re-registration of voters for the several wards of the city of Ann Arbor to be held Tuesday and Wednesday November 1st and 2nd 1898 be and the same is hereby appointed to be held in the several wards of the city at the following places, viz:

First ward, German School building,  
Washington st. and N. Fifth ave.

Second ward, Sid W. Millard's office,  
111 W. Liberty st.

Third ward, basement of Court House.

Fourth ward, Engine House.

Fifth ward, " "

Sixth ward, " "

Seventh ward, Weinberg's shop rear  
904 S. State.

And be it further resolved, that the  
City Clerk do give notice of said registra-  
tion pursuant to law.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,  
Koch, Dieterle, Sweet, Brown, Weeks,  
Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

By Ald. Sweet;

Resolved that the Board of Public  
Works be directed to advertise for bids  
for constructing a storm sewer on  
Washington st. between 5th ave. and  
Main st.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,  
Koch, Dieterle, Sweet, Brown, Weeks,  
Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

By Ald. Koch;

Resolved that the bowling alley at  
308 S. Main st. be and the same is here-  
by declared to be a public nuisance  
whenever the same is open for bowling  
after 10 p. m. standard time; and the  
police department is hereby ordered to  
abate the same after the hour of 10 p.  
m. standard time.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,  
Koch, Dieterle, Sweet, Brown, Weeks,  
Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

By Ald. Richards:

Resolved that the petition of Moses  
Seabolt and others to have their names  
stricken from the petition for the open-  
ing of Catherine st. be granted.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,  
Koch, Dieterle, Sweet, Brown, Weeks,  
Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

Ald. Cady moved that the Council  
take up the subject of opening the  
alley in the rear of John Wagner's on  
Main street.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,  
Koch, Dieterle, Sweet, Brown, Weeks,  
Coon, Cady, Stevens, Pres. Luick—11.

Nays—None.

Ald. Hamilton moved that the  
prayer of the petitions protesting  
against the alley be granted.

Lost as follows:

Yeas—Ald. Hamilton, Richards—2  
Nays—Ald. Koch, Dieterle, Sweet,  
Brown, Weeks, Coon, Cady, Stevens,  
Pres. Luick—9

Ald. Cady moved that Council order  
the proper proceedings taken to open  
the alley between Main and 4th Ave.  
running between Liberty and William  
Streets.

Adopted as follows:

Yeas—Ald. Koch, Dieterle, Sweet,  
Brown, Weeks, Coon, Cady, Stevens,  
Pres. Luick—9.

Nays—Ald. Hamilton, Richards—2.

On motion the Council adjourned.

GLEN V. MILLS,  
City Clerk.