

Council Chamber,
February 10, 1902.

Special session.

Called to order by Pres. Haarer.

Roll call. Present—Ald. Hamilton, Kearns, Clancy, Brown, Jenney, Coon, Fischer, Burg, Pres. Haarer—9. Absent—Ald. Richards, Schlenker, Koch, Schumacher, Weeks, Roberts—6.

THE CALL.

Ann Arbor, February 10, 1902.

Jas. E. Harkins, City Clerk.

Dear Sir:—Please issue the usual notice and call for a special meeting of the Common Council this evening at 7:30 local time, in the Council Chamber, for the purpose of:

- I. Making provision for the outstanding claims against the city.
- II. Hearing the report of the Special Committee on Water Works.
- III. Taking such action as is necessary to protect the interests of the City in the Water Company litigation.

Yours truly,

R. S. COPELAND, Mayor.

Ann Arbor, Mich., Feb. 10, 1902.

To the Honorable the Common Council.

Gentlemen: The financial condition of the City of Ann Arbor is deplorable. The year is but half gone and the treasury is empty. Our charter is not so clear that he who runs may find a way to provide for the necessary maintenance of the city.

The City Attorney, in the annexed opinion, shows that the Common Council may pass on the merits of accounts against the City and issue its orders payable when the treasury is replenished in May, by the payment of the liquor tax, or in July, by the payment of next year's taxes. When the treasury is filled again these orders may be classified, and by order of the Council, charged against the several funds.

This plan provides a way of paying our honest debts without violating the letter or spirit of the law. We all regret the necessity of anticipating next year's income to care for the immediate needs of the city, but it is not the fault of this council or this administration that carelessness in times past

left us so unfortunately situated. By strict economy and careful scrutiny of every item of expense we must do our best to cut down the overdraft as much as possible. There are certain expenses, however, which must be provided for and this plan offers a means of escape from our present dilemma.

Respectfully,

R. S. COPELAND, Mayor.

Ann Arbor, Feb. 8, 1902.

Hon. R. S. Copeland, Mayor.

My Dear Sir: You submitted to me the question whether sections 52 and 186 of the charter of the City of Ann Arbor are in conflict, and, if not, what construction should be given to each of these sections.

I have given the subject such consideration as I have had an opportunity to do, and beg leave to submit to you the following views in relation to the matter:

CITY CLERK:

Section 52 is a part of that portion of the charter of the city which provides for, and defines, the duties of the city clerk. It is devoted to the office of city clerk, and is headed, "City Clerk," and that subject embraces sections 51, 52, 53, 54 and 55 of the charter.

Section 52, to which you call my attention, provides that the city clerk shall be the general accountant of the city, and all claims against the corporation shall be filed with him for adjustment, and, after examination thereof, he shall report the same with all accompanying vouchers and counter claims of the city, and the true balance as found by him, to the common council for allowance, and, when allowed, shall draw his warrant upon the treasurer for the payment thereof, designating thereon the fund from which payment is to be made. . . . But forbids any warrant to be drawn upon any fund after the same has been exhausted, and declares any warrant so drawn void.

The powers conferred upon the clerk by this section refer to such claims against the city as may be examined and prepared for adjustment by the clerk, and therefore which arise out of

the contracts entered into by the city, and the business dealings of the city relating to any one of the funds which the charter provides shall be kept separate, and in his report to the council of the particular fund out of which the claim is to be paid, and, if the claim is allowed by the council, the clerk is not to draw his warrant on any fund after the same has been exhausted; but this section has no reference whatever to the incidental claims that are constantly arising against the city, like claims for injuries received by the negligence of the city, of which latter class is the claim of Mrs. Newman, the claim of Mr. Allen for injuries to his horses in falling into an excavation, and the injury to Dr. Solis' horse and carriage caused by the running away of the fire department team, and many others. Such claims differ entirely in their nature and mode of presentation and settlement, from any claim contemplated by section 52. They are claims against no fund, but claims against the city. That the construction to which I call your attention is the proper construction of section 52 is made doubly certain by reading section 53.

Section 53 contemplates that the clerk shall keep himself conversant with the doings of all officers charged in any manner with the receipt and disbursements of the city revenues. That he shall have charge of the books, vouchers and documents relating to the accounts, contracts, debts and revenues of the city. He is required to keep a complete set of books exhibiting the financial condition of the corporation in all its departments, funds, resources and liabilities, with a proper classification thereof showing the purpose for which each fund was raised.

Manifestly nothing in either of these sections could possibly apply to any claim against the city for damages or liabilities not arising from any of the sources included in the duties of the clerk as defined by this portion of the charter; and that portion of section 52 declaring all orders void which shall

be drawn upon any fund that has been exhausted in no way relieves the city from any debt, obligation or liability that might accrue against the city, even though every fund in the city were exhausted and the city a bankrupt. Suit might be brought upon such claims against the city, judgment rendered and mandamus obtained compelling the proper officers to spread that claim upon the tax roll, regardless of whether the limit of taxation had been reached or not.

FINANCE AND TAXATION.

Section 186 of the charter to which you call my attention, and which some have thought is in conflict with section 52 is a part of the system of finance and taxation provided for in the charter. This portion of the charter begins with section 170 and ends with section 187.

Section 186, to which you call my attention, and which is supposed to be in conflict with section 52, provides that no bond, note, or other obligation or evidence of indebtedness (except orders of the treasurer as hereinbefore provided) shall be given or issued by the city, or any officer thereof, unless the same shall have been duly authorized by the legislature and submitted to a vote of the people.

This portion of the section has reference entirely to the borrowing of money, and bonding the city therefor, and prohibits the city from doing so except by special enactment of the legislature, and a vote of the people.

By this section the city would be prohibited from issuing bonds to purchase the electric light plant, the water works, or street railway, or any other public utility, except by a special act of the legislature, and then only when submitted to the people, but it will be noticed that in this first clause of this section there is an exception which excepts certain orders on the treasurer.

This section also contains the following clause: "But the common council may allow just claims against the city and may issue orders therefor on the treasurer, payable on presentation

from any moneys then in the treasury."

It will be noticed that this provision has no reference whatever to any fund, but the order issued is made payable out of any moneys on hand, and may be made payable at any time the common council may order and may bear interest.

If, therefore, at any time claims shall be presented against the city of the character of the claim of Mrs. Newman, or other claims not provided for, the city may, in order to save costs and expense, and litigation, make settlement and adjustment with the claimants for the payment of such claims, regardless of the condition of the respective funds or of the financial condition of the city at the time, and may issue its orders payable at any time when in the judgment of the council the finances of the city may render such payment possible.

Any other construction of these two sections would render the city powerless to protect itself from litigation, which might prove disastrous to the city.

In conclusion, therefore, I am unable to see any conflict between the two sections. I think they are both useful and necessary when applied to that portion of the city's business for which they were intended. That both sections contemplate an entirely different condition of things, and both are necessary and in no way conflict.

Respectfully,

A. J. SAWYER,

City Attorney.

Enter Ald. Richards, Schlenker, Schumacher.

By Ald. Hamilton:

Resolved, That the resolution of last meeting directing the borrowing of money at the bank and placing it to the credit of the Contingent Fund be rescinded.

Adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns, Clancy, Brown, Schumacher, Jenney, Coon, Fischer, Burg, Pres. Haarer—12. Nays—0.

By Ald. Hamilton:

Resolved, that fifteen hundred dollars be transferred from the fire fund to the contingent fund, the amount to be repaid when the contingent fund shall have been replenished.

Adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns, Clancy, Brown, Schumacher, Jenney, Coon, Fischer, Burg, Pres. Haarer—12. Nays—0.

The following communication from H. W. Ashley was received and ordered printed in the proceedings and was referred to the city committee and the ordinance committee:

Whereas, The main track of the Ann Arbor railroad company now crosses Miller avenue, Huron, Washington and Liberty streets in this city on the same grade, and

Whereas, It would conduce to the general public convenience and safety and add to the value of all property west of such crossings if the said main track were elevated and viaducts provided of such altitude as to enable the public travel on the said streets to pass beneath.

For the purpose of permitting a change of the grade line of the said railroad company's main line in order to make possible these separations of streets and railroad company tracks, it is

Resolved. First. That the established grade, at the point of intersection of said railroad company's tracks and the following named streets, be, at Main street, 2.1 feet; at West Jefferson street, 6.2 feet; at Ashley street, 6.9 feet; at West Williams street, 11.4 feet, and at High street, 4.6 feet above the present grade line at the points at which the said railroad company's main track crosses said several streets. Also that the grade of Cedar and Wright streets be established 2.2 feet, of Pontiac street 3.3 feet, and of Jones and Traver streets 3.1 feet below the surface of said streets as they are at present at the point where said railroad track crosses said several streets.

Second. That Charles, Felch and First streets be vacated for a space of

30 feet on either side of the center of the main line of the said Ann Arbor railroad.

Third. That the culvert under Ashley, between West Jefferson and West Williams streets, be constructed parallel with instead of under the said railroad company's tracks; provided, that said railroad company will without expense to the city of Ann Arbor provide sufficient and suitable means of conducting the water so diverted from Ashley to West Williams streets.

Fourth. That the preceding sections shall be invalid, null and void unless the said Ann Arbor railroad provides and places steel viaducts at Miller avenue, Huron, Washington and Liberty streets, which shall give a clear head room of 15 feet at Miller avenue, 14 feet at Huron street, 13 feet at Washington streets and 12 feet at Liberty street on or before January 1st, 1904.

Fifth. That the plan of said viaducts shall be approved by the city engineer of the city of Ann Arbor before they are put in place as hereinbefore contemplated.

Sixth. That the Ann Arbor company be authorized to maintain at the street grade the siding now laid across Liberty and Washington streets for the purpose of accommodating industries already served by it.

The blue print marked Ex. I. attached hereto indicated by the white line the present and by the red line the proposed grade of the main track of the said railroad at the points where it now crosses the several streets involved in the changes hereby contemplated.

The blue print attached hereto mark-

ed Ex. II. indicates in red letters B. C. the present and B. A. the change in location of the culvert referred to in section 3.

.....
.....
.....
..... Witness.
..... Witness.
..... Witness.

Ald. Jenney of the special water committee made a verbal report on the work of the committee and then presented the following resolution:

Resolved, that his honor the Mayor and the city attorney be and they are hereby authorized to employ such assistance as they shall deem necessary to aid in the defense of the city of Ann Arbor in the suit now pending or hereafter to be brought by the Ann Arbor Water Co. against the city of Ann Arbor.

Adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns, Clancy, Brown, Schumacher, Jenney, Coon, Fischer, Burg, Pres. Haarer—12. Nays—0.

City Attorney Sawyer called attention to the fact that he needed some aid from different sources in preparing for some of the different suits against the city, whereupon Ald. Jenney offered the following resolution:

Resolved, that it is the sense of this council that Mr. Sawyer be allowed the help necessary in hunting up the necessary records, etc., for the different cases against the city. Carried.

On motion the council adjourned.

JAS E. HARKINS,
City Clerk.

Per G. O. CLARK, Deputy.