

PROCEEDINGS
OF THE
COMMON COUNCIL.
REGULAR SESSION.

CHAMBER OF THE COMMON COUNCIL OF THE
CITY OF INDIANAPOLIS, }
Monday, October 30th, 1876—7 o'clock P. M. }

The Common Council met in regular session.

Present—His Honor, the Mayor, John Caven, in the chair, and the following members:

Councilmen Adams, Buehrig, Bugbee, Case, Craft, Darnell, Difle, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Pouder, Ransdell, Reasener, Reed, Schmidt, Steinhauer, Stratford, Thalmann, Thomas, Webster, Wright, Arthur L., and Wright, William G.—25.

Absent—Councilman Byram—1.

The proceedings of the regular session, held October 23d, 1876, were read and approved:

Sealed proposals for grading and graveling Japan or East street, from Morris to Nebraska streets, and the sidewalks thereon where not already improved, were received, opened, read and referred to the Committee on Contracts.

REPORTS FROM CITY OFFICERS.

The City Civil Engineer submitted the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis:

Gentlemen :—I would respectfully call the attention of your honorable body to the necessity for the passage of an ordinance regulating the cleaning and removal of the fallen leaves from the sidewalks, streets and gutters of the city. At this time of year, when the quantity of fallen leaves is immense, they are permitted to lie upon the ground until a rain washes them into the gutters and thence into the culverts and catch-cabins, which become choked up thereby, causing a back water and consequent damages from overflow. The recent rain demonstrated the necessity of taking some action in this matter, and I submit the same for your early consideration.

Respectfully submitted,

BERNHARD H. DIETZ,
City Civil Engineer.

Which was referred to the Committee on Streets and Alleys.

Also, the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—I herewith report the following estimates for work done :

A first and partial estimate allowed James W. Hudson for grading, graveling, bowldering and curbing East street between Massachusetts avenue and St. Clair street.

312.98 square yards bowldering at 49 cents.....	\$153 36
183.1 lineal feet curbing at 39 cents .. .	71 41
13.66 square yards rebouldering at 25 cents... ..	3 41

38.45 cubic yards gravel at 69 cents.....	26 53
14 cubic yards pit sand at 50 cents.....	7 00
	<hr/>
Present payment.....	\$261 71

Also, a first and final estimate allowed J. G. Sickler & Co., for grading Sullivan street from Bismarck to Buchanan streets—

818 lineal feet at 9 cents.. .. .	\$73 62
7 yards gravel at 75 cents.	5 25
	<hr/>
Total.....	\$78 87

Also, a second a final estimate allowed John L Hanna for building a wooden bridge across the State Ditch at Ruckle street—

9,847.51 feet pine lumber at \$15 per thousand...	\$147 71
2,700 feet oak lumber at \$16 per thousand.	43 20
55.5 cubic yards gravel at 60 cents	33 30
248.73 cubic yards wet excavation at 70 cents.....	174 11
232.4 cubic yards dry excavation as 20 cents.....	46 48
214.6 cubic yards refilling at 15 cents.....	32 19
	<hr/>
Total.....	\$476 96
Less former payment.....	119 44
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Present payment	\$357 55

Also, a third and final estimate allowed John L. Hanna for building a wooden bridge over State Ditch at Central avenue—

11,887.7 feet pine lumber at \$14.50 per thousand.....	\$172 37
2,160 feet oak lumber at \$15 per thousand.....	32 40
296.25 cubic yards wet excavation at 70 cents.	207 37
386.31 cubic yards dry excavation at 20 cents.....	77 26
352.72 cubic yards refilling at 16 cents.....	56 43
	<hr/>
Total	\$545 83
Less former payment.....	472 04
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Present payment.....	\$73 79

Also, a second and final estimate allowed John L. Hanna for building a two-foot brick sewer on St. Clair street—

490.4 lineal feet at 85 cents.....	\$416 84
3 manholes at \$6.....	18 00
50 feet one foot pipe (extra) at \$1.15.....	57 50
4 brick water chutes at \$1.50.....	6 00
1 brick arch (extra).....	5 00
3 catch basins at \$20.....	60 00
Total.	\$563 34
Less former payment.....	530 00
Present payment	\$33 34

Also, a second and final estimate allowed John L. Hanna, for building a brick sewer from the City Hospital to Fall Creek—

411.70 lineal feet at 60 cents.....	\$247 02
40 feet 10-inch pipe (extra) at \$1.50... ..	60 00
212 feet 6-inch pipe at 30 cents.....	63 60
60 feet 8-inch pipe at 40 cents.....	24 00
10 feet 4-inch pipe (extra) at 25 cents.....	2 50
1 catchbasin.....	35 00
2 manholes.....	36 00
3 loads cinders and iron stakes at \$1.25... ..	4 75
Extra foot depth on catch basin.....	4 00
Extra Ys and Ts and crooks, including laying..	27 40
Total	\$504 27
Less former payment.....	484 00
Present payment	\$20 27

Respectfully submitted,

BERNHARD H. DIETZ,

City Civil Engineer.

Which was concurred in.

Also, the following estimate resolution :

Resolved, That the foregoing first and partial estimate allowed James W. Hudson for grading, graveling, bowldering and curbing East street, between Massachusetts avenue and St. Clair street, be, and the same is, hereby adopted as the estimate of this Council, and that the property owners are hereby required to pay the sums set opposite their respective names.

Which was adopted by the following vote :

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Reasener, Reed, Schmidt, Thalman, Thomas, Webster, and Wright, William G. —18.

Negative—None.

Also, the following estimate resolution :

Resolved, That the foregoing first and final estimate allowed J. G. Sickler & Co. for grading Sullivan street, from Bismarck to Buchanan streets, be, and the same is, hereby adopted as the estimate of this Council, and that the property owners are hereby required to pay the sums set opposite their respective names.

Which was adopted by the following vote :

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Reasener, Reed, Schmidt, Thalman, Thomas, Webster, and Wright, William G. —18.

Negative—None.

Also, the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—I would respectfully report the following estimate for work done, and submit a statement regarding the same :

A second and final estimate allowed Wm. Neal for grading and graveling Camp street and sidewalks, from First to St. Clair streets—

1,755.33 lineal feet at 33 cents.....	\$579 25
1 yard of gravel at 60 cents.. .. .	60
Total.	\$579 85
Less former payment.....	278 25
Present payment.....	\$301 60

The street is complete and in good order, and as above, received and an estimate reported thereon, but there are claims for labor done on the street and material furnished, amounting to over two hundred dollars, and I would recommend that the City Civil Engineer be instructed to withhold the estimate until all claims are adjusted, and that some plan be agreed upon by which said claims shall be settled as soon as possible, as the laborers need and should have their money.

Respectfully submitted,

BERNHARD H. DIETZ,

City Civil Engineer.

Which report was concurred in.

Also, the following estimate resolution :

Resolved, That the foregoing second and final estimate allowed Wm. Neal for grading and graveling Camp street and sidewalks, from First to St. Clair streets, be and the same is, hereby adopted as the estimate of this Council, and that the property owners are hereby required to pay the sums set opposite their respective names.

Which was adopted by the following vote:

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Reasener, Reed, Schmidt, Thalman, Thomas, Webster, and Wright, William G. —18.

Negative—None.

The City Clerk submitted the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen:—The City Clerk respectfully reports the following affidavits now on file in his office for the collection of street assessments, by precept, to-wit:

Geo. Wm. Seibert vs. Joseph Jackson for.....	\$ 3 90
Holtz & Hennessee vs. Alvin M. Makepeace for.....	4 80
Patterson & Dunning vs. Willis W. Wright for.....	84 96
Patterson & Dunning vs. Willis W. Wright for.....	17 70

Patterson & Dunning vs. Willis W. Wright for..	17 70
Patterson & Dunning vs. Willis W. Wright for..	17 70
Patterson & Dunning vs. Willis W. Wright for.	17 70

And respectfully recommend that you order the precepts to issue.

Respectfully submitted,

BENJ. C. WRIGHT,

City Clerk.

Which was concurred in, and precepts ordered to issue by the following vote :

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Reasener, Reed, Schmidt, Thalman, Thomas, Webster, Wright, Arthur L., and Wright, William G.—19.

Negative—None.

The City Attorney submitted the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—In the matter of the communication of John Schier, which was referred to me at the last meeting of Council, I would report that I have investigated the matter and find that the said Shier has been awarded the contract for paving the north side of Washington street, from East to Noble streets ; that he has partly completed the work, but has been ordered by W. H. English not to proceed with the work in front of his property. I also find on the 4th day of October, 1875, the Council granted Mr. English permission to grade and pave the sidewalk in front of his property at the corner of Washington and Noble streets, at his own expense and under the direction of the City Civil Engineer. I am informed by the Engineer that he has not done so, and that the sidewalk is in need of repair. The permission granted Mr. English to grade and pave his sidewalk does not state or stipulate within what time it shall be done, and the legal construction of it would be that it should be done within a reasonable time. As the permission was granted over a year ago, and as Mr. English has not seen fit to grade and

pave his sidewalk under it, I think it is the duty of the contractor to proceed to finish the work under his contract.

Respectfully submitted,

R. O. HAWKINS,

City Attorney.

Which was concurred in.

The Board of Health submitted the following report:

Indianapolis, October 30, 1876.

To the Common Council of the City of Indianapolis:

Gentlemen:—We recommend that the Street Commissioner be instructed to fill low place in West, between Second and Third streets. It has been partly filled, but still holds water.

Respectfully submitted,

F. M. HOOK,

S. A. ELBERT,

J. W. MARSEE,

Board of Health.

Which was concurred in.

Also, the following report:

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis:

Gentlemen:—We respectfully recommend that the Street Commissioner be instructed to raise the grade at the junction of Lincoln and Columbia avenues. This was ordered by the last Council, but was never performed.

Respectfully submitted,

F. M. HOOK,

S. A. ELBERT,

J. W. MARSEE,

Board of Health,

Which was concurred in.

Also, the following report:

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis:

Report of deaths in the city of Indianapolis from 6 o'clock P. M., on the 14th day of October, to 6 o'clock P. M., on the 21st day of October, 1876.

Under 1 year	3
1 to 2 years.....	5
2 to 3 "	1
3 to 4 "	1
4 to 5 "	1
5 to 10 "	0
10 to 20 "	5
20 to 30 "	2
30 to 40 "	0
40 to 50 "	0
50 to 60 "	1
60 to 70 "	1
70 to 80 "	0
80 to 90 "	2
90 to 100 "	0
Above 100 "	0
Unknown	1
Total.....	<u>23</u>

Respectfully submitted,

F. M. HOOK, M. D.,

President Board of Health.

J. W. MARSEE,

Secretary Board of Health, pro tem.

Which was received.

Also, the following report :

Indianapolis, October 30, 1876.

To the Common Council of the City of Indianapolis:

Report of deaths in the city of Indianapolis from 6 o'clock P. M., on the 21st day of October, to 6 o'clock P. M., on the 28th day of October, 1876.

Under 1 year	6
1 to 2 years.....	3
2 to 3 "	1

3 to 4 years	2
4 to 5 "	1
5 to 10 "	2
10 to 20 "	3
20 to 30 "	4
30 to 40 "	2
40 to 50 "	3
50 to 60 "	2
60 to 70 "	1
70 to 80 "	1
80 to 90 "	1
90 to 100 "	1
Above 100 "	1
Unknown	1
Total	34

Respectfully submitted,

F. M. HOOK, M. D.,

President Board of Health.

J. W. MARSEE,

Secretary Board of Health, pro tem.

Which was received.

INTRODUCTION OF ORDINANCES.

Mr. McGinty introduced special ordinance No. 120, 1876, entitled:

An ordinance to provide for the erection of lamp-posts, lamps and fixtures on Missouri street, between McCarty and Ray streets.

Which was read the first time.

Mr. Thalman introduced special ordinance No. 121, 1876, entitled:

An ordinance to provide for grading and graveling the first alley east of the lower arm of the Canal, from Washington street to its southern terminus.

Which was read the first time.

Dr. Stratford introduced special ordinance No. 122, 1876, entitled :

An ordinance to provide for grading and graveling the first alley east of Wright street, from McCarty street to the first alley south of Coburn street.

Which was read the first time.

ROLL CALL.

Mr. Craft presented the following petition :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—The undersigned respectfully represents that on the 11th day of May, 1874, a contract was made between petitioner and the city for grading and graveling Morris street and sidewalks, between Tennessee street and White river bridge; that he duly and faithfully performed his contract; that on the 7th day of September, 1874, an estimate was duly issued to him; that in said estimate the Lafayette Railroad Co. was taxed and charged with the bed of Canal, 69 feet, \$89.01; that affidavit was duly made; precept issued; appeal taken therefrom by Lafayette R. R. Co. to Superior Court of Marion county, and a decision was made against the precept, all of which appears in record of case No. 8,451, Superior Court.

Your petitioner shows that the assessment was for crossing of Missouri street, but which is used by the canal, and is south of part of said street already taken possession of by the city of Indianapolis.

Your petitioner shows that the city ought, in law and in justice, to pay the amount of said assessment, to-wit, \$89.01 to him, as he is justly entitled to receive payment thereof from the city, and he further suggests that for the city to assert that the claim is really against said Railroad Co., is in effect to acknowledge and recognize the Railroad Co's claim to said Missouri street and to set aside the claim of the city thereto.

Respectfully,

RICHARD CARR.

Which was referred to the Committee on Judiciary and City Attorney.

Mr. Izor offered the following motion :

Moved, That the City Civil Engineer be instructed to examine and devise some means for draining the surface water that stands in the gutters at the crossing of Davidson and North streets.

Which was adopted.

Also, the following motion :

Moved, That the Street Commissioner be, and is, hereby instructed to place a plank culvert at the crossing of St. Clair and Dorman street to allow the water to run off.

Which was adopted.

Mr. Laughlin offered the following motion :

Moved, That the Indianapolis Social Turn-Verein have permission to pave with brick the sidewalk in front of their property, No. 70 and 72 on Virginia avenue, between Maryland and Georgia streets, the same to be done at their own expense, under the supervision and to the satisfaction of the Civil Engineer, and the same to be done within sixty days.

Which was adopted.

Also, the following motion :

Moved, That Charles Rusch have permission to place a coal vault under the sidewalk fronting his property, Nos. 214 and 216 South Delaware street, and the same to conform with the ordinance governing the same.

Which was adopted.

Also, the following motion :

Moved, That Herman T. Brandt have permission to grade and pave the sidewalk fronting 184 East McCarty street, the same to be done within sixty days. The work to be done at his own expense, and the Civil Engineer is instructed to set the grade stakes.

Which was adopted.

Attorney

Also, the following motion :

Moved, That Charlas Rusch have permission to grade and pave the sidewalk fronting 186 East McCarty street. The same to be done at his own expense, and the work to be done within sixty days, and the Civil Engineer is instructed to set the grade stakes.

Which was adopted.

Also, the following motion :

Moved, That the Street Commissioner be and is hereby instructed to open the gutter in the alley between New Jersey and High streets, from Coburn to Wyoming streets.

Which was adopted.

Mr. Schmidt offered the following motion :

Moved, That the City Treasurer be and is here directed to tender the amounts assessed as damages to property owners on Winston street in opening and widening said street between Walnut and St. Clair, provided the benefits have been collected.

Which was adopted.

Mr. Webster offered the following motion :

Moved, That the Street Commissioner be and he is hereby directed to put down stone crossings at the crossing of East and Walnut streets.

Which was referred to the Committee on Streets and Alleys.

Mr. Buehrig offered the following motion :

Moved, That the Street Commissioner be and is hereby ordered to fill the chuck holes on South street, between Illinois and Delaware streets.

Which was adopted.

Mr. Bugbee offered the following motion :

Moved, that the Street Commissioner be directed to place wooden culverts over the ditches on the south and north sides of Lincoln avenue, at the crossing of Yandes street.

Which was referred to the Committee on Streets and Alleys.

Mr. Ransdell offered the following motion :

Moved, That the City Civil Engineer be directed to make a survey and stake the boundaries of the two parks, one at the junction of Valley Drive and Hill avenue, the other at the junction of Valley Drive and Beech street.

Which was adopted.

Also, the following motion :

Moved, That Henry Clay be permitted to remove dirt from Oregon or Nebraska street to make the fill on Deloss street, under the direction of the City Civil Engineer; provided the property owners consent to such removal of earth.

Which was adopted.

Dr. Stratford offered the following motion :

Moved, That the Committee on Bridges be directed to examine the city's bridges and report whether it is necessary that any of them should be painted, and if so, name them.

Which was adopted.

Mr. Case offered the following motion :

Moved, That the Street Commissioner be directed to protect the gutters on Cedar street and English avenue with cinders, to keep from washing.

Which was adopted.

REPORTS FROM COMMITTEES.

Mr. Thalman, from Committee on Streets and Alleys, submitted the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—Your Committee on Streets and Alleys, to whom was referred sundry papers, respectfully report on the same, as follows :

First—Is a petition from Bennett, Moore & Co. asking permission to extend a railroad switch half way across Delaware street, near Pogues Run. We recommend that the following resolution be passed :

Resolved, That Bennett, Moore & Co. be granted permission to extend a railroad switch from the south side of their ware-house half way across Delaware street, the work to be done according to the ordinance governing the same. Should said switch ever become a nuisance, and the Council order the same removed, said Bennett, Moore & Co. shall take up the same and put the street in good repair. The laying of said switch to be under the direction of the Civil Engineer.

Second—Is an ordinance and remonstrance against the improvement of the first alley west of Missouri street, between Walnut and St. Clair streets. The alley is filthy ; the improvement will cost but little. We recommend that the ordinance be passed.

Third—Is a motion that the Street Commissioner improve the gap on Washington street, at the crossing of Noble street. We recommend the motion be concurred in.

Fourth—Is a motion that the Street Commissioner repair the wooden block pavement on Market street, between Pennsylvania and Delaware streets. We recommend that the Street Commissioner be directed to repair so far as is practicable.

Fifth. Your Committee on Streets and Alleys would further recommend that the resolution permitting the T. H. & I. R. R. Co. to erect telegraph poles as stated in said resolution be adopted. We herewith return the same for your action.

Respectfully submitted,

ISAAC THALMAN,

ALBERT IZOR,

W. F. REAESNER,

Committee on Streets and Alleys.

The first section was concurred in and the resolution adopted by the following vote :

Affirmative—Councilmen Adams, Buehrig, Bugbee, Craft, Darnell, Diffley, Kenzel, Laughlin, Morse, McGill, McGinty, Ransdell, Reasener, Reed, Schmidt, Stratford, Thalman, Thomas, Webster, Wright, Arthur L., and Wright, William G.—21.

Negative—None.

The second, third, and fourth sections were concurred in.

The fifth section was concurred in and the following resolution was adopted by the following vote :

Resolved, That the Terre Haute and Indianapolis Railroad Company be granted the right to erect and maintain a telegraph line, and erect and maintain the necessary poles therefor along Walnut street, from the I. C. & L. R. R. Co's track to the alley between Alabama and New Jersey streets (now known as Tremont street), in out-lot 39, thence north on said Tremont street to the south half of lot 4 in said out-lot. Provided, that in putting up polls the streets and sidewalks shall be left in as good condition as before the erection of said polls, and that said polls shall not be placed in the street or gutters so as to obstruct travel or the flow of water in the gutters, and that this grant may be rescinded at any time at the pleasure of this Council.

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Darnell, Diffley, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Pouder, Ransdell, Reasener, Schmidt, Stratford, Thalman, Thomas, Wright, Arthur L., and Wright, William G.—22.

Negative—None.

Mr. Morse, from the Committee on Bridges, submitted the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—By a motion adopted at a meeting of the Council, October 23, 1876, the City Civil Engineer was instructed to solicit and receive bids for building a stone abutment on the west side of Pogues Run at the crossing of Ray street, and repairing stone abutment at same place on the east side of

Pogues Run, said bids to be opened and contract awarded by the committee on bridges. The following are the bids received :

Richter & Bro.—Stone work, \$5 per cubic yard.

Wet excavation, 40 cents per cubic yard.

Dry excavation, 19 cents per cubic yard.

Timber, \$1.80 per 100 feet. ;

Michael Faust—Stone work, \$5 per cubic yard.

Wet excavation, 35 cents per cubic yard.

Dry excavation, 10 per cubic yard.

Timber, \$1.80 per 100 feet.

Helm & Co.—Stone work, \$5.50 per cubic yard.

Excavation, 50 cents per cubic yard.

Timber, \$1.90 per 100 feet.

John Stumph & Co.—Stone work, \$5.25 per cubic yard.

Wet excavation, 65 cents per cubic yard.

Dry excavation, 30 cents per cubic yard.

Timber, \$2 per 100 feet.

H. Burke & Co.—Stone work, \$5.10 per cubic yard.

Wet excavation, 60 per cubic yard.

Dry excavation, 25 cents per cubic yard.

Timber, \$2.00 100 feet.

J. S. Whitsit—Stone work, \$4.80 per cubic yard.

Wet excavation, 90 cents per cubic yard.

Dry excavation, 25 cents per cubic yard.

Timber, \$2 per 100 feet.

Koss & Fritz—Stone work, \$4.49 per cubic yard.

Wet excavation, 45 cents per cubic yard.

Dry excavation, 20 cents per cubic yard.

Timber, \$1.75 per 100 feet.

Thomas Cummins—Stone work, \$9 per cubic yard.

Wet excavation, 55 cents per cubic yard.

Dry excavation, 23 cents per cubic yard.

Timber, \$1.80 per 100 feet.

Koss & Fritz be the lowest and best bidders, we have awarded to them the contract.

Respectfully submitted,

T. J. MORSE.

ISAAC THALMAN,

I. W. STRATFORD,

Committee on Bridges.

Which was concurred in.

Mr. Morse presented the contract and bond of Koss & Fritz for the performance of the above work.

Which was concurred in, and bond approved.

Mr. McGill, from the Committee on Opening and Laying Out of Streets and Alleys, submitted the following report :

Indianapolis, September 11, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—Your Committee on opening and laying out streets and alleys, to which was referred the petition of W. W. Butterfield et al., asking for the opening of an alley to the width of twelve (12) feet, beginning at St. Clair street, at the south east corner of lot number eight (8) of A. Birds addition, running thence due north to intersect the west end of Arch street, have examined the premises, and recommend the opening of said alley, and herewith submit resolution for your adoption.

Respectfully submitted,

ROBT C. MCGILL,

ENOS B. REED,

MICHAEL STEINHAEUER.

Committee on Opening Streets and Alleys.

Which was concurred in.

Also, the following resolution :

Resolved, That the petition of W. W. Butterfield et al., praying for the laying out and opening of an alley 12 feet wide, beginning at St. Clair street at the south east corner of lot No. eight (8) of A. Birds addition, and running due north to intersect the west end of Arch street, be referred to the Com-

missioners, with instructions to assess benefits and damages, and to make due report; and that for the purpose of opening and laying out such alley, the Common Council do propose to appropriate such real estate and property as may be necessary therefor.

The said Commissioners are instructed to return, as part of their report, all petitions and notices.

The City Clerk is hereby directed to issue, and the City Marshal to serve the proper notices upon the Commissioners and property owners.

Which was adopted by the following vote :

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Darnell, Diffley, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Ransdell, Reasener, Reed, Schmidt, Stratford, Thalman, Thomas, Webster, Wright, Arthur L., and Wright, William G.—23.

Negative—None.

Also, the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—Your Committee on opening and laying out Streets and Alleys, to which was referred the petition of Wm. H. English and John S. Spann & Co., asking for the laying out and opening of Dillon street in the width of 60 feet, running from the first alley north of Deloss street, at intersection of Cedar street with Dillon street in a northerly direction to the Michigan road, have examined the same, and report in favor of such opening, and recommend that the following resolution be adopted.

Respectfully submitted,

ROBT. C. MCGILL.

ENOS R. REED.

Committee on opening Streets and Alleys.

Which was concurred in.

Also, the following resolution :

Resolved, That the petition of Wm. H. English and John S. Spann & Co., praying for the laying out and opening of Dillon Street in the width

of 60 feet, running from the first alley north of Deloss street at intersection of Cedar street, in a northerly direction to the Michigan Road, be referred to the Commissioners, with instructions to assess benefits and damages, and to make due report; that for the purpose of such opening and laying out of said street the Common Council do propose to appropriate such real estate and property as may be necessary therefor.

The said Commissioners are instructed to return, as part of their report, all petitions and notices.

The City Clerk is hereby directed to issue, and the City Marshal to serve the proper notices upon the Commissioners and property owners.

Which was adopted by the following vote :

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Darnell, Diffley, Izor, Kenzel, Laughlin, Morse, McGill, McGinty, Ransdell, Reasener, Reed, Schmidt, Stratford, Thalman, Thomas, Webster, Wright, Arthur L., and Wright, William G.—23.

Negative—None.

By consent, Mr. Thalman offered the following motion :

Moved, That the Committee on Sellers Farm be directed to report what parties are delinquent in rents on said Farm. Also, a full statement of all parties holding leases, and when said leases expire.

Which was adopted.

Mr. Craft, Chairman Fire Board, submitted the following report :

Indianapolis, October 23, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen:—The undersigned members of the Fire Board, to which was referred the motion of Mr. Pouder, directing the City Marshal to remove the telegraph poles from Court street, between Alabama and East streets, would report that the said poles were not erected by the fire department, but by the Atlantic & Pacific Telegraph Company. We would therefore return the

motion, and recommend that it be referred to the Committee on Streets and Alleys.

Respectfully submitted,

W. H. CRAFT,

J. C. ADAMS,

J. L. CASE,

Fire Board.

Which was concurred in.

Also, the following report :

Indianapolis, October 23, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—The undersigned members of the Fire Board would report to the Council, that the steam engine No. 4 is in a dangerous and unserviceable condition, by reason of its being almost wholly worn out.

The estimate for repairs and putting it in good serviceable condition, will require an expense almost equal to the purchase of a new engine. Therefore, in order to furnish proper fire protection to the southwest part of the city, and as a matter of safty and economy, we would recommend the acceptance of the proposition of C. Ahrens & Co., to furnish one of their third sized engines for three thousand dollars and the old Silsby and Dean Silsby engines, and the City Attorney be instructed to prepare and present an ordinance on next Monday night, authorizing the issue of twenty year bonds for payment of the same.

Respectfully submitted,

W. H. CRAFT,

J. C. ADAMS.

J. L. CASE,

Fire Board.

Which was concurred in by the following vote :

Affirmative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Diffley, Izor, Kenzel, Laughlin, McGinty, Pouder, Reasener, Reed, Stratford, Thalman, Thomas, Webster, Wright, Arthur L., and Wright, William G.—19.

Negative—Councilmen Darnell, Morse, McGill, Ransdell and Schmidt—5.

Mr. Adams, from Committee on Judiciary, submitted the following report :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—Your Committee on Judiciary, to whom was referred general ordinance No. 51, 1876, providing for the issuing of five hundred thousand dollars in twenty year bonds of the city of Indianapolis, to the Indianapolis Belt Railroad and Stock Yards Co., and certain amendments and conditions, with instructions to examine into and report as to whether the recent decision of the Supreme Court, in the case of the Indiana N. & S. Railway against the City of Attica, affects the contract between the city and Belt Railroad and Stock Yards Company.

Your committee would report that after a careful examination of the above decision and consultation with eminent legal authority, we are forced to the conclusion that the ordinance, embodying, as it does, the several amendments and annexed conditions, is virtually void as far as any protection to the city and security against loss is concerned. And the guarantees, sought to be incorporated in the ordinance for the purpose of securing the city in her loan of credit, as contemplated in the petition of the majority of the freeholders, can not be enforced.

We find in section sixty (60), of the statutes governing cities in relation to donations, loans, etc., after stating the conditions necessary for the securing of such donations, as follows ; “And when so far completed it shall be obligatory upon the Common Council of said city to contract and do whatever may be necessary to carry into effect the substantial meaning of such petitions.”

Now, it is evident that that the Common Council, in the passage of the Belt Railway and Stock Yards ordinance, with the amendments incorporated and the conditions imposed therein, sought to comply with the terms and carry into effect, not only the letter, but the very spirit and substance of the petition itself—namely, that the city, in extending to the Belt Railroad and Stock Yards Co. the proposed assistance in the way of a loan of credit, should be amply secured against any possible loss, and that the company should be compelled to carry out and complete her part of the contract ; and for the substantial enforcement of those conditions and the accomplishment of the above ends the recent legislation of the city Council was directed.

While there is a wide difference of opinion in regard to the literal construction of the statute, as set forth in the decision of the Supreme Court in the Attica case, the fact nevertheless exists that the Supreme Court is the highest judicial tribunal of the State, and its interpretation of the laws of the

State stand as final, unless changed by a subsequent decision of the same court or the statute is amended by the legislature.

Your committee is therefore of the opinion that the decision of the Supreme Court, in the case of the Indiana North and South Railroad against the City of Attica, materially affects the contract between the city and the Belt Railroad and Stock Yards Co., and would recommend that the Council take such action as may be necessary to protect the city against any possible loss.

In regard to the question as to whether the City Council can recede from a contract once entered into, there is some difference of opinion. The attorneys whose opinion was sought by the committee, Messrs. Harrison, Hines & Miller, gave it as their opinion that upon the completion of the road so far as to admit the passage of trains between the points named, and the execution of the mortgage, the city could be compelled to issue the bonds.

On the other hand, the Council, in its legislation, is governed by its rules and regulations. Rule 15 says: "A resolution once adopted may be rescinded by a subsequent resolution, and ordinances passed may be repealed by subsequent ordinances. If the Council should determine to reconsider her action in the matter by striking the ordinance from the files, in order to cover any question that may arise as to the sufficiency of such a course, your committee would recommend that a repealing ordinance be introduced and passed. If the Council should determine to let the ordinance stand as it now is on the files until the legislature should pass an enabling act legalizing the action of the Council, where the same is in conflict with the statute as set forth in the late decision of the Supreme Court, your committee would recommend that the Council exact an agreement from the Belt Railroad and Stock Yards Co. that in the event of the legislature refusing to so amend the statute as to legalize the action of the Council in the matter, that they will not resort to the courts to enforce the city to issue her bonds without the security and protection sought for in the ordinance.

Respectfully submitted,

J. C. ADAMS.

J. J. DIFFLEY,

D. M. RANSELL.

Committee on Judiciary.

Also, the following opinion :

Indianapolis, October 28, 1876.

To the Mayor and Common Council of the City of Indianapolis :

Gentlemen :—At the last meeting of the Council the ordinance in aid of the

Union Railroad Transfer and Stock Yard Company was referred to the Judiciary Committee and myself, with instructions to report whether or not the several conditions and provisions of the ordinance could be enforced against the company, and they be required to comply with them before they would be entitled to receive the five hundred thousand dollars in city bonds.

The statute under which it is proposed to donate the bonds was passed March 6, 1873, and is an amendment to the 60th section of the general laws of 1867, for the incorporation of cities. That statute, after providing that incorporated cities may subscribe stock, donate bonds, etc., in aid of railroads, bridges and public improvements, upon petition of a majority of the resident freeholders of such city, provides, "That said donation shall not be payable either in money or bonds until the roads or bridges or public improvements or public works, in aid of which it is given shall be so far completed as to admit the running of trains from the point or commencement to such point or points as are designated in the petition, in case of a railroad or railroad bridge, or the passage of wagons in case of other roads or bridges, in case of other public improvements or public works, upon the completion thereof. And when so far completed it shall be obligatory on the common council of said city to contract and do whatever may be necessary to carry into effect the substantial meaning of such petition, and the obligation herein enjoined may be enforced in the courts of this State having competent jurisdiction, etc."

The second section of the ordinance referred to us, provides, among other things, that when a certain part of the road shall have been completed in a good and workmanlike manner, and the trustees shall have certified to the Council that the railroad company have actually expended five hundred thousand dollars in such work and equipments, then, and not before, they shall deliver four hundred thousand dollars of the city bonds and receive back a like amount of the bonds of the railroad company, secured by a first mortgage on the road stock, yard, etc., and there is a like provision and condition with reference to the delivery of the other one hundred thousand dollars of the city bonds upon the completion of the work, and the actual expenditure by the company of six hundred and fifty thousand dollars in the entire enterprise. The third section of the ordinance provides that until the city bonds are fully paid and satisfied, the Common Council shall have power to elect two members of the board of directors of said company. And the fourth section provides that the company shall extend certain privileges to parties doing business upon the line of the road, and that they shall carry and transport freight for such persons at a rate per car not exceeding that charged by the company for transporting through freight of a like class and character.

These conditions are not specifically mentioned in the petition of the free holders and the statute does not in terms require them. And the question is can the Common Council inforce the conditions precedent to issuing the city bonds.

The case of the Indiana North and South Railroad Company *vs.* the City of Attica, recently decided by the Supreme Court, involved the same question. That was a case in which a majority of the free holders of the city of Attica petitioned the council of that city to donate to the Indiana North and South Railroad Company sixty thousand dollars in bonds of said city, to aid in the construction thereof, and in consideration that the railroad company should permanently locate the shops for the manufacture of rolling stock, in or adjacent to the city of Attica, and upon failure so to do, the company to reimburse the city in the sum of sixty thousand dollars. The common council of the city of Attica passed an ordinance providing, among other things, that before the bonds should be delivered, the railroad company should execute and deliver to the Mayor of the city a bond in the sum of sixty thousand dollars, with good security, conditioned that said company should permanently locate the shops in or adjacent to the city of Attica, and on failure so to do, to reimburse said city in the sum of sixty thousand dollars. The railroad company, after the completion of the road, demanded the city bonds and refused to execute to the city a bond as provided in the ordinance; and the city refusing to deliver her bonds to the company, proceedings were instituted to compel her to deliver her bonds to the railroad company. The Supreme Court decided (Judge Downey dissenting) that the company were entitled to receive the bonds and that the common council had *no power* to annex any other condition than those imposed by the statute, and that any such conditions imposed by the council were void. This being the construction placed upon the statute by the Supreme Court, I am of the opinion that the conditions of the ordinance heretofore mentioned can not be enforced against the railroad company, and that they could not be required to comply with them before receiving the bonds of the city. There is a condition in the petition of the free holders requiring the execution of a first mortgage by the company to the city, to indemnify and secure the city upon any failure of the company to pay and satisfy the interest and principle of the city bonds. But under the decision of the Supreme Court above referred to, and the reasoning of the court in the opinion, I very much doubt whether the company could be required to comply with that condition before being entitled to the bonds.

At the request of the Judiciary Committee, I would also say that I am very much in doubt whether the action of the Council last Monday night in reconsidering the vote by which the ordinance was passed, places it back upon the

calendar to come up again upon its passage. The ordinance had been passed at a previous meeting of the Council, and the last section of the ordinance provides that, "This ordinance shall be in force from and after its passage and filing with the Mayor of the said city, a certified copy from the records of the board of directors of said company accepting the terms and conditions herein set forth." This certificate had been filed with the Mayor, and the ordinance had been duly signed by the Mayor, and attested by the Clerk before the vote was taken to reconsider. The 15th rule of the Common Council provides, "When any question except the passage of any appropriation ordinance, has been once decided in the affirmative or negative, any member voting with the majority may move a reconsideration thereof, on the same or next subsequent regular meeting. A resolution once adopted may be rescinded by subsequent resolutions, and ordinances passed may be repealed by subsequent ordinances." Under the operation of this rule there is some doubt whether the motion to reconsider, passed last Monday night, places the ordinance in such a position that if the Council should now see fit to strike the same from the files, or vote in the negative upon the question of its passage, it would be conclusive, and make all former action of the Council inoperative. I would therefore recommend that in case the ordinance should be defeated upon the question of its final passage, then for the purpose of settling any doubt in the matter, an ordinance be passed repealing the ordinance in aid of the Railroad and Transfer Stock Yard Company.

Respectfully submitted,

R. O. HAWKINS,

City Attorney.

Also, the following opinion :

Indianapolis, October 25, 1876.

To the Judiciary Committee of the Common Council of the City of Indianapolis :

Gentlemen :—The question upon which our professional opinion is desired, we understand to be whether the several provisions of the ordinance providing for the issuing of bonds to the Union Railroad Transfer and Stock Yard Company, and prescribing conditions upon which such bonds shall be issued are, under said ordinance, binding upon said company so as to make their performance a condition precedent to the issuance of the bonds by the city.

The aid of the railroad company is sought under the provisions of the act of May 4, 1869, in connection with the 60th section of the act in relation to the incorporation of cities, as amended in 1873, which acts and sections au-

thorize cities to make donations to railroads in certain cases. The conditions prescribed are—

First. That the road for which aid is sought shall run into or through the city.

Second. That the road shall be completed so as to admit the running of trains from the point of commencement to such point or points as are designated in the freeholders' petition, before payment in money or bonds.

Third. That such aid shall be granted only on petition of a majority of the resident freeholders of the city.

Section 60, above referred to, provides that after the completion of the work it shall be obligatory on the Common Council to contract and do whatever may be "necessary to carry into effect the substantial meaning" of the petition.

Had the questions arising out of the petition (taking the company's propositions as a part thereof,) and the ordinance based thereon, been submitted to us prior to the recent decision of the Supreme Court of the State, in the case of the Indiana, etc., R. R. Co. vs. City of Attica, we should have had little hesitation in expressing the opinion that any action of the Common Council in imposing conditions within the substantial scope of the petition of freeholders, would be binding upon the company. But taking that decision as the law, applicable to donations by cities, we are of opinion that any conditions imposed outside those prescribed in the petition are not binding upon the company, and that upon the completion of the road so far as to admit of running trains between the points named, and the execution of the mortgage, the city could be compelled to issue her bonds. But as to all other conditions attempted to be imposed by the ordinance, under the authority of said decision, we are of opinion they could not be enforced. Among those not referred to in the petition are the requirements of certain expenditures, the election by the Council of two members of the Board of Directors of the company, the extension of railroad facilities to certain persons, and the terms of transportation of freight. The decision above referred to is clear that no limitations beyond those named in the petition can be enforced.

We do not desire to be understood as saying that in our opinion the execution of the mortgage named in the petition can be enforced. If we take the reasoning of the opinion of the court as having the force of law, it might fairly lead to the conclusion that even that condition could not be insisted on by the city. In the case referred to the court distinctly says that the parties undertook to annex conditions other than those imposed by statute and holds that as the City Council of Attica undertook to impose conditions not provided by law, but in plain and flagrant violations of the statute, and the

railroad company, plaintiff, having performed all the conditions imposed by statute, it was entitled to receive the bonds authorized to be issued. The provision that the Union Railroad Transfer, etc., Company should first execute a mortgage of its property to the city of Indianapolis to save it harmless from its donation, would seem to be as great a violation of the statute as a provision to reimburse the city of Attica should not be located and maintained as named in the petition in that case. The Common Council of Attica undertook to provide by its ordinance for the reimbursement of that city in event the railroad company should not locate and permanently maintain its shops as named in that petition. But the Supreme Court, one of its five members dissenting, held that this provision was in violation of the statute, although it would seem to have been the clear intent of the petitioners that there should be a provision for reimbursement in the event named, and that such a provision would only be "carrying into effect the substantial meaning of the petition," as named in the statute under which the donation was to be made.

The decision of the highest tribunal of the State, sustained by the reasoning referred to, may well excite grave doubts as to whether the condition of the execution of the mortgage referred to in the petition need be complied with to enable the company to secure the possession of the bonds of the city. There is nothing in the law authorizing the city to make contracts with railroad companies in reference to donations, or to prescribe terms upon which they may be made. The city is only authorized to subscribe stock, or make donations of money or bonds. If the reasoning of the Court shall eventually be sustained in all its breadth of expression, it is not only possible, but probable, that the donation might be insisted upon without any protection or conditions whatever.

Very respectfully,

HARRISON, HINES & MILLER.

Mr. Craft presented the following communication :

Indianapolis, October 30, 1876.

To the Mayor and Common Council of the City of Indianapolis :

WHEREAS, The Board of Directors of this company has been advised that doubts have arisen in the minds of some of your Council as well as those of some citizens as to the validity of the stipulations expressed and provided in an ordinance entitled, "An ordinance providing for the issuing of certain bonds in aid of the Union Railroad Transfer and Stock Yard Company, and prescribing the con-

ditions upon which such bonds are issued and delivered," ordained and established at a regular meeting of your Council, upon the 16th day of October, 1876; and,

WHEREAS, Said Board of Directors has fully considered the matter and taken the opinion of counsel, in whom it has entire confidence, and is fully satisfied that the ordinance is valid and operative in its provisions, both in respect to the city and this company; and,

WHEREAS, It is the design of this company to abide by and comply with all the provisions, stipulations and conditions provided in said ordinance, to be done and performed by this company, and it is willing to do all in its power to remove all doubt as to its being bound by the provisions of said ordinance.

THEREFORE, At a meeting of the Board of Directors of this company, held on the 30th day of October, 1876, the following resolution was adopted:

Resolved, That this company agree to, and will unite with the Mayor and Common Council of the city of Indianapolis, in a memorial to be submitted to the General Assembly of the State of Indiana at its first session, requesting such legislation as will remove all question as to the validity of the provisions and conditions of the contract made by and between the city of Indianapolis and this company by the ordinance, ordained and established by said Mayor and Common Council on the 16th day of October, 1876, entitled, "An ordinance providing for the issuing of certain bonds in aid of 'The Union Railroad, Transfer and Stock Yard Company, and prescribing the condition upon which such bonds are issued and delivered," and the acceptance of said ordinance by this company.

W. R. McKEEN,

Attest:

President.

E. F. CLAYPOOL,

Secretary.

[SEAL.]

Which was received.

Mr. Thalman offered the following motion:

Moved, That the report be received, and the ordinance be stricken from the file.

Dr. Stratford called for a division of the question.

The first clause of the motion in regard to receiving the report was adopted.

The second clause of the motion, viz: To strike the ordinance from the files, failed to pass by the following vote:

Affirmative—Councilmen Laughlin, Morse, McGill, Reasener and Thalman—5.

Negative—Councilmen Adams, Buehrig, Bugbee, Case, Craft, Darnell, Diffley, Izor, Kenzel, McGinty, Pouder, Ransdell, Reed, Schmidt, Steinhauer, Stratford, Webster, Wright, Arthur L., and Wright, William G.—19.

Mr. Thomas was excused from voting on the subject.

Mr. Craft offered the following motion:

Moved, To postpone, and make the Belt Road matter the special order for next Monday night.

Mr. Thalman moved to amend by postponing the subject until the second Monday in January, 1877, and making the subject the special order for that evening.

Which amendment was adopted by the following vote:

Affirmative—Councilmen Adams, Bugbee, Craft, Darnell, Diffley, Izor, Laughlin, Morse, McGill, Ransdell, Reasener, Reed, Schmidt, Steinhauer, Thalman, Wright, Arthur L., and Wright, William G.—17.

Negative—Councilmen Buehrig, Case, Kenzel, McGinty, Pouder, Stratford and Webster—7.

The motion as amended was then adopted.

On motion, the Council adjourned.

J. Loren Mayor.

Attest :

Benj. W. Smith City Clerk.