

SPECIAL MEETING.

COUNCIL CHAMBER, CITY OF INDIANAPOLIS, IND.,

MONDAY, March 8, 1915.

The Common Council of the City of Indianapolis met in the Council Chamber, Monday evening, March 8, 1915, at 7:30 o'clock in special session, President Thomas C. Lee in the chair, pursuant to the following call:

INDIANAPOLIS, IND., March 8, 1915.

*To the Members of the Common Council of the City of Indianapolis, Ind.:*

GENTLEMEN—You are hereby notified that there will be a special meeting of the Common Council held in the Council Chamber on Monday evening, March 8, 1915, at 7:30 o'clock, for the purpose of the consideration of and final action on Appropriation Ordinance No. 4, 1915, and Appropriation Ordinance No. 7, 1915. Yours respectfully,

THOMAS C. LEE,  
*President.*

I, Thomas A. Riley, Clerk of the Common Council, do hereby certify that I have served the above and foregoing notice to each and every member of the Common Council, prior to the time of meeting, pursuant to the rules.

THOMAS A. RILEY,  
*City Clerk.*

Which was read:

The Clerk called the roll.

Present: The Hon. Thomas C. Lee, President of the Common Council, and 8 members, viz.: Messrs. Barry, Young, McGuff, Miller, Porter, Connor, Graham and Shea.

## REPORTS FROM STANDING COMMITTEES.

At the request of President Lee the following opinion from the Legal Department relative to Appropriation Ordinance No. 4, 1915, was included in the Journal of Proceedings:

DEPARTMENT OF LAW,  
CITY OF INDIANAPOLIS.  
INDIANAPOLIS, IND., March 8, 1915.

*Hon. Jacob P. Dunn, City Controller, City:*

DEAR SIR—In answer to your questions as to the validity of the claims against the Recreation Department, and as to the power of the Council to vote an appropriation for their payment, I would say that any contract made in excess of the revenues of that department would probably be held void by the courts.

Where a city has received value, and the party holding the claim had no knowledge that the revenues of the department were being exceeded when he made his contract with the city, a court might hesitate to permit the city to retain the benefit of the contract and relieve it from payment. It has often been held where a corporation has made a contract which is beyond its power to make, and which ordinarily could not be enforced, the corporation will be held liable and required to pay for any benefit it has received and retained as a result of the contract.

In the limited search I have made, I do not find that the courts have construed that section of the city charter which controls in this case.

As to your second question, I am of opinion that the Council may waive any objection to the validity of the claims and appropriate money to pay for value the city has received. Such an appropriation would be a ratification of the contract, and would validate the acts of the commissioner of the department who made them. There is never a legislature meets that does not pass some act to make valid the void acts of some public officer, and an ordinance by the Council in this case would be an enactment very similar in principle to such an act of the legislature.

I understand the matters in question here would be within the powers of the Council as defined in clauses 47, 51 and 53 of section 53 of the city charter, and I am quite clearly of the opinion that there could be no personal liability of any councilman for the exercise of his discretionary power in making the appropriations for the discharge of the obligations of the Recreation Department by the payment of the claims in question.

Yours truly,

WM. A. PICKENS,  
*Corporation Counsel.*

From the Committee on Finance:

INDIANAPOLIS, IND., March 8, 1915.

*To the President and Members of the Common Council of the City of Indianapolis, Ind.:*

GENTLEMEN—We, your Committee on Finance, to whom was referred Appropriation Ordinance No. 4, 1915, entitled "An ordinance appropriating \$10,981.48 to the Department of Public Health and Charities for the payment of old bills of the Recreation Department," beg leave to report that we have had said ordinance under consideration, and recommend that the same be passed.

Respectfully submitted,

JOHN F. CONNOR,  
MICHAEL J. SHEA,  
FRANK GRAHAM,  
EDW. MCGUFF,  
W. T. YOUNG.

Mr. Connor moved that the report of the committee be concurred in. Carried.

ORDINANCES ON SECOND READING.

Mr. Connor called for Appropriation Ordinance No. 4, 1915, for second reading. It was read a second time.

Mr. Connor moved that Appropriation Ordinance No. 4, 1915, be ordered engrossed, read a third time and placed upon its passage. Carried.

Appropriation Ordinance No. 4, 1915, was read a third time and passed by the following vote:

Ayes, 9, viz.: Messrs. Barry, Young, McGuff, Miller, Porter, Connor, Graham, Shea and President Thomas C. Lee.

Mr. Connor called for Appropriation Ordinance No. 7, 1915, for third reading.

By Mr. Miller :

INDIANAPOLIS, IND., March 8, 1915.

MR. PRESIDENT—I move to amend Appropriation Ordinance No. 7, 1915, by striking out the last cipher in the figures \$5,000, where the same appears in the title and in section 1, thereby making it read \$500.

E. R. MILLER.

Seconded by Mr. Porter.

The Clerk called the roll and Mr. Miller's motion was lost by the following vote :

Ayes, 4, viz.: Messrs. Barry, Miller, Porter and Shea.

Noes, 5, viz.: Messrs. Young, McGuff, Connor, Graham and President Thomas C. Lee.

Councilmen Barry, Porter and Connor explained their vote.

Appropriation Ordinance No. 7, 1915, was read a third time and failed to pass for lack of a constitutional majority by the following vote :

Ayes, 5, viz.: Messrs. Young, McGuff, Connor, Graham and President Thomas C. Lee.

Noes, 4, viz.: Messrs. Barry, Miller, Porter and Shea.

Before the result of the vote on Appropriation Ordinance No. 7, 1915, was announced, President Lee and Councilmen Barry, Young, Miller and Shea explained their vote.

On motion of Mr. Porter, the Common Council, at 8:55 p. m.,  
adjourned.

*Thomas C. Lee*

.....  
*President.*

ATTEST:

*Thomas A. Paly*

.....  
*City Clerk.*

