

Common Council Chamber)
Thursday, July 7th 1853.)

Common Council met. Present Messrs. Bradshaw, Carlisle, Dunlap, Delzell, Durham, Edwards, Karns, Maguire, Nelson, Pitts, Strickland & Wingate. Councilmen, & Scudder, President.

The minutes of the preceding meeting read and approved.

The Treasurer because of sickness failed to make monthly report.

The Street Commissioner made the following report:

The cistern at the crossing of Tennessee & South sts. is full of water. Being perfectly water tight.

Upon examination of the well at the crossing of Washington St. & Pennsylvania St. it is my opinion it should be filled up. Wm. Hughey, St. Com.

1181. Allowed, Brown & Kemper; for Lumber, 2894 ft Oak, \$1.30	\$37.62
1182. Allowed, Philip Juners, Well at W.L.F. Co's Eng. H. \$33.35	
Do. Allowed, Philip Juners Well at Cr. Washington & Meridian St. <u>22.50</u>	55.85
1187. Allowed, J. & J. Bradshaw, 20 lbs Star Candles	5.25
1183. Allowed, Weaver & Williams Common Council Chamber fixtures	51.50
1185. Allowed, Field & Day Common Council Chamber fixtures	26.00
1186. Allowed, H.S. Kellogg Common Council Chamber Spittoone	5.25
1184. Allowed, J F. Ramsay Common Council Chamber fixtures	25.50

The Engineers certificate of the capacity of the cistern erected by George D. Pipher at the intersection of East street and Massachusetts Avenue, as on motion, Referred to the committee on cisterns.

The following communication from the Street Commissioner was read:

"The bridge across the canal on Maryland street will have to be taken down and new timbers put in the abutments.
Wm Hughey, St. Com."

On Motion:

Referred to the committee on bridges.

The Committee on the Judiciary reported the following ordinance.

An ordinance to provide for the lighting of a part of Washington Street with gas.

Whereas, The owners of real estate fronting on the North side of Washington Street, between Pennsylvania and Meridian streets in the city of Indianapolis, have petition their Common Council to provide for lighting that part of said street with gas in accordance with the provisions of an ordinance approved November 10th, 1851, Wherefore,

(Engineers estimate at the end of Proceedings)

Section 1. Be it ordained by the Common Council of Indianapolis, That there shall be erected under the supervision of the Civil Engineer three lamp posts, on the North side of Washington street between Pennsylvania & Meridian streets, with the necessary lamps and fixtures. And that for the purpose of defraying the expense of furnishing such posts and lamps, providing their necessary apparatus, and of lighting, extinguishing and cleaning the lamps, furnishing gas and repairing said posts and lamps for one year from the passage of this ordinance, there is hereby levied a tax of thirty nine and one half cents on each lineal foot of real estate fronting on Washington street between the points aforesaid, making in all the sum of One hundred and sixty dollars, that being the estimate of the civil engineer for the purposes aforesaid.

Sec. 2. Said tax shall be collected in accordance with the provisions of the ordinance entitled "An ordinance in relation to lighting the city", approved November 10th 1853."

Which was adopted by the following vote:

Those who voted in the affirmative were: Messrs. Bradshaw, Carlisle, Dunlap, Delzell, Durham, Edwards, Karns, Maguire, Nelson, Pitts, Strickland, and Wingate. - 12.

Those who voted in the negative were: None.

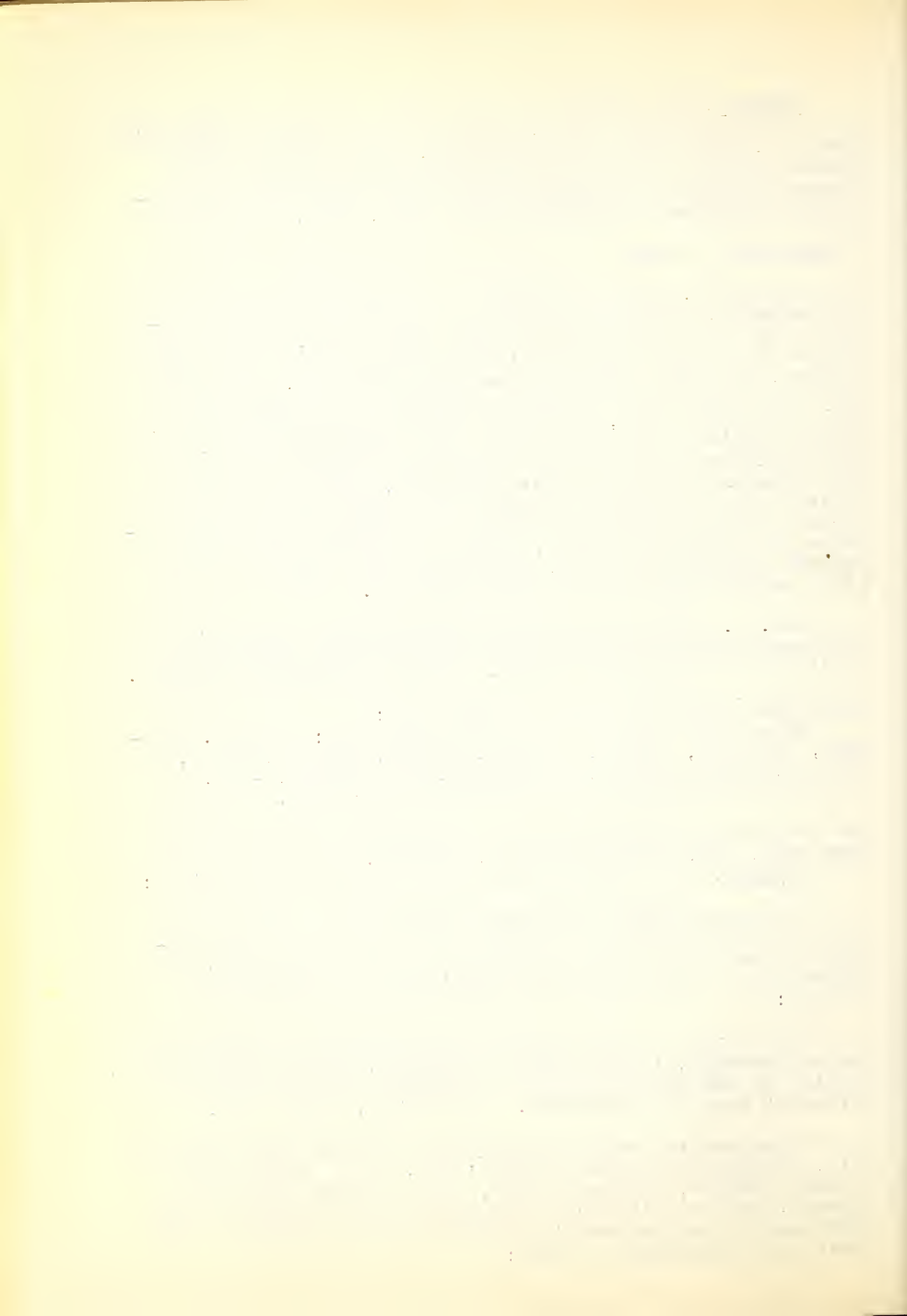
The following communication from the City Attorney having been read, was, on motion by Mr. Maguire.

Ordered, To be entered upon the record of proceedings:

The undersigned to whom was referred the petition of the citizens of West Indianapolis with instructions to report his opinion of the legality of granting the same, and removing the toll gate to the Donation line reports as follows:

"The City of Indianapolis embraces all that portion of Center Township, in the County of Marion, East of White River, donated by the United States to the State of Indiana for a permanent seat of government. Local laws, 1847, p 57.

There are two modes of annexing territory adjoining the city, pointed out by the Statute; and, as it is not stated in the petition, whether or not, the territory described therein, has been laid off and platted, and a record of the same made in the Recorder's office of Marion County, I will state the proceedings in each:



1. By Section 3 of an act approved March 2d, 1853, entitled "An act to amend an act entitled "An act for the Incorporation of cities" approved June 18, 1852," "Whenever there shall be, or shall have heretofore been lots laid off and platted, adjoining such city, and a record of the same is made in the Recorder's office of the proper county, the Common Council may, by a resolution of the board, extend the boundaries of such city so as to include such lots; and the lots thus annexed shall thereafter form a part of such city, and be within the jurisdiction of the same. The Common Council shall immediately thereafter, file a copy of such resolution together with plat and map of survey, defining the metes and boundaries of such addition, in the office of the Recorder aforesaid, which plat shall be recorded." Acts 1853 p22, sec. 3.

2. If the city desires to annex contiguous territory, not platted or laid off, the Common Council must present a petition to the Board of County Commissioners, setting forth the reasons for such annexation, and accompany the same with a plat or map accurately describing by metes and bound the territory proposed to be attached, which must be verified by affidavit. The Council must give thirty days notice, by publication, in one or more newspapers of the city of the intended petition, stating in such notice the territory sought to be annexed. Upon the reception of such petition, the Board of County Commissioners considers the same, hears the testimony offered for or against such annexation, and if, after inspection of the map, and of all proceedings, had in the case, the Board is of opinion that the petition should be granted, it shall cause an entry to be made in the order book, specifying the territory annexed with the boundaries of the same according to the survey, and they shall cause an attested copy of such entry to be filed with the Clerk of the Circuit Court of such county, which shall be conclusive evidence in all courts of such annexation; and the Common Council shall cause a plat of the annexed territory to be recorded. R.S. 1852, Vol. 2, p. 221, Sec. 82, & 83.

But can the toll gate be removed from the East end of the bridge across White River, to the Donation line, west of White River? The toll gate is on the Cumberland or National Road. That road was constructed by the United States. It diverges from Washington street at a point nearly opposite McCutcheon's store, and runs in a direction considerably North of West to the river, where said toll gate is erected, thence across said river on the bridge, thence through West Indianapolis in a Westernly direction.

By an act of Congress, approved April 11, 1848, so much of said road as lies within the state of Indiana, and all the interest of the United States in the same, together with all the timber, stone, and other materials belonging to

the United States and procured for the purpose of being used in the construction of said road, and all the rights and privileges of every kind belonging to the United States as connected with said road in said state, was transferred and surrendered to the State of Indiana. Acts of Congress 1848 p 133.

The "Central Plank Road Company" by whom said toll gate was erected and is maintained at the east end of said bridge, was incorporated by an act of the legislature of this state. Approved Jany 16, 1849.

Section 17 of said act authorized said company to take possession of, occupy, and use for the purpose of constructing a plank road thereon, all that portion of road known as the "National Road" together with, etc. lying between the eastern line of the county of Hancock, and the western line of the county of Putnam; and all the rights and privileges heretofore belonging to the United States in regard to such part of said National Road, and which have been surrendered to the State of Indiana, were transferred to and vested in the said company, for the purposes contemplated in said act.

Sec. 19 after authorizing said company on the completion of a certain portion of said road, as provided in said act to erect a half toll gate, &c., provides that for every additional four miles of said road so completed, said company may erect either half or whole toll-gates, and at such places in said road as the directors of said company may judge for the best interests of said company, and demand and receive tolls for passing said gates at the rates, etc.

This corporation is to continue for the term of fifty years. But the legislature may at any time, when said company shall have violated any of the provisions of their charter repeal the same; and the charter may at any time be altered or amended at the request of two thirds of the stockholders of said company. Local Laws 1849 pp. 195, 201.

The Central Plank Road Company was formed under this act, accepted the charter, proceeded to the construction of the road according to its provisions, and have completed the greater portion of said road.

The charter of said company is a contract between the State & the corporators, and can be altered or amended only according to the terms of the charter; nor can it be repealed except in case of the violation of some one of its provisions.

If two-thirds of the Stockholders request the legislature to make an alteration or amendment, the alteration or amendment, made, to be binding on the company, must be such as is requested. But if the alteration or amendment made by the Legislature should differ from that requested and be accepted



by the company, or should the company accept or act under any part of the amendment, the company would be bound to observe the whole. The charter of said company was amended by an act of the Legislature, approved January 8th 1850. This act altered the charter in several important particulars, and repealed a part, but did not interfere, in the least with the provisions of Section 19. This act was passed at the request of the requisite number of stockholders and accepted by the company.

The charter was further amended by an act approved February 13th, 1851. In this act it is provided among other things, "that said company shall not be permitted to erect or maintain any toll gate or gates within three miles of the city of Indianapolis either East or West." Local Laws 1851 p 313.

The amendments in the last act, differed, I am informed, from those requested, it is, also, burdened with provisos, and has therefor, never been accepted, or any thing done under it by the said company. If this be true, said last named act is void; it is not binding on the company. But if it is otherwise, and said company has done or omitted to do any other act which amounts to a forfeiture of the charter, it would be competent for the Legislature to repeal the same, or the company might be dissolved according to the provisions of Article 44, chap 1, vol. 2, Rev. St. 1852.

As between the city and the plank road company, therefore, the case stands thus: The toll gate in question is on the National Road; that road was constructed by the government of the United States, and so much of the same as lies within the State of Indiana surrendered by said government to said State: The State of Indiana transferred a portion of said road to said company, and authorized said company whenever six continuous miles were completed to erect a half toll gate, etc., and for every additional four miles completed to erect toll gates, at such places on said road, as they might judge for the best interests of the company; and the said toll gate is on that portion of said road so transferred to said company. The city, then, cannot remove said toll gate, from its present position. But if it should be contended that the portion of the National Road East of White River between the bridge and the point where the said road diverges from Washington street, is a street of and belongs to the city, and, as such, is under the jurisdiction of the Council, which would seem to be contrary to the decision in the case of the Common Council vs McClure "D. Carter Ind. Rep. p 147, the Council has no jurisdiction over streets, &c.; on the west side of White River, and can acquire none that would authorize it to interfere with or abridge the rights of the plank road company, while the charter of the company remains in force. The Common Council may annex the territory embraced in the petition if it has been or should be laid off and platted, and a record of the same made in the Recorder's office, by a resolution of the board



of Councilmen filing a copy of the resolution &c. as provided in Section 3 of the act of 1853, above cited, but such annexation would confer no right on the Council to remove the toll gate to the donation line; the directors might remove the gate to the West end of the bridge, if they should deem it for the best interest of the company.

Section 57 of the Act Incorporating cities, R.S. 1852 vol 1 p 215, which act has been adopted as the charter of this city, gives the Common Council no authority to control the exercise of or deprive a corporation of any of its chartered rights; in territory which may be annexed to the city. If territory, where such rights have been granted by the State is annexed such territory comes in and the Common Council exercises jurisdiction over it, subject to the rights, which have been granted.

Respectfully Submitted
 Napoleon B. Taylor, City Attorney

On Motion by Mr. Carlisle

The City Clerk was required to report to next Council what contracts have been made requiring cash payments.

Mr. Bradshaw from the committee on claims reported as follows:

"The committee on claims to whom was referred the petition of Abner Smith asking a allowance \$1 50/100 per day for labor under direction of the Street Commissioner, report that they are of opinion that the petition should not granted.

W.A. Bradshaw,
 H.H. Nelson
 N. Edwards

On Motion concurred in.

1175. Allowed Abner Smith for $9\frac{1}{2}$ days labor @ 1.25 \$11.87

Mr. Karns from the committee on Bridges made the following report:

Your committee to whom was referred an account of Comegys & McCord for widening the bridge on Delaware street across Pogues Run, have examined the Records of Proceedings of the Council for the purpose of ascertaining whether the Council authorized any contract of said bridge and find the following antry upon the minutes of the Council of September 6th, 1852.

Resolved, That the Commissioner repair the bridge over Pogues Run at the crossing of Delaware Street and make it straight with the street."

Whether the Council intended by this order to authorize an out lay as great as the bill presented we leave the Council to say. The committee on bridges who it appears was a party to the contract & had no such authority given them, as far as the proceedings of the Council show.

The committee leave the whole matter to the Council for the consideration.

William H. Karns)
E.H. Wingate)
Daniel Carlisle)

The report was received and the committee discharged.

James Woods estimate of the filling at the ends of bridge over Pogues' Run, on Alabama street, was read, and on motion, Laid on the table.

The bids for the building of a bridge over canal at Indiana Avenue were opened, read and compared.

On Motion by Mr. Dunlap

The City Clerk was authorized to contract with Owen Cullings for the building of said bridge;

On Motion by Mr. Pitts,

The City Clerk was requested to present said contract, in writing to the Council at next meeting.

Mr. Carlisle asked if what action the judiciary committee had taken on the resolution of the Council requiring them to report a suitable law relative to establishing a House of Refuge, or a vagrant Law.

The Chairman, Mr. Newcomb, being absent,

Mr. Carlisle moved that the committee have further time.

Which was adopted by the following vote:

Those who voted in the affirmative were: Messrs.

Carlisle, Dunlap, Edwards, Karns, Maguire, Nelson, & Mr. President - 7

Those who voted in the negative were: Messrs. Bradshaw, Delzell, Durham, Pitts, Strickland & Wingate - 6

Geo. W. Pitts from the committee on cisterns made the following report.

Your committee to whom was referred the report of the Street Commissioner relative to the Cisterns erected by W. Woods report that the cisterns located as follows, viz: one in front of 3d Ward School House, one in front of McCords House, one at crossing of Delaware and Washington streets have been received & paid for heretofore; the cisterns at the crossing of Ohio & Meridian street, one at the intersection of East and Washington streets are in good order and agreeable to contract. They therefore recommend the adoption of the following resolution:

Resolved, That the City Clerk be authorized to settle with Wm Woods for the building of said cisterns and draw an an order upon the Treasury for the amount yet due him.

George W. Pitts, Chair.

The report was received and the resolution adopted by the following vote:

Those who voted in the affirmative were: Messrs. Bradshaw, Carlisle, Dunlap, Delzell, Durham, Edwards, Karns,

Maguire, Nelson, Pitts, Strickland & Wingate. 12
Those who voted in the negative were: None.

Mr. Pitts from the committee on Markets presented the following report.

The committee on Markets offer the following report, we believe, the repairs made on East Market House by Mr. Allen Wilson to be done according to contract, the roofing measures 84 40/100 squares. Your committee recommends the adoption of the following resolution:

"Resolved, That the City Clerk be directed to settle with Mr. Wilson for said work, and draw an order upon the Treasury for the amount found due him." George W. Pitts.

The Report was received, and the resolution adopted by the following vote:

Those who voted in the affirmative were: Messrs. Bradshaw, Carlisle, Dunlap, Delzel, Durham, Edwards, Karns, Maguire, Nelson, Pitts, Strickland, & Wingate - 12.

Those who voted in the negative were: None.

Mr. Wilson prayed the Council for an allowance of \$27.20. being the amount he paid for the building of brick pillars in the Markets more than he received under his contract.

Referred to the committee on Accounts.

Mr. Carlisle from the committee on the Fire Department presented the following report:

The committee who was directed to inquire into the expediency of purchasing a lot for the use of Invincible Fire Company No. 2, would report favorable, and recommend the Council to purchase one.

D. Carlisle
E. H. Wingate

Mr. Delzell moved the committee on the Fire Department be authorized and directed to purchase a lot now owned by Mr. Woods, on East street, at a price not to exceed four hundred (\$400) dollars.

Which motion prevailed.

Mr. Nelson moved that the vote be reconsidered.

Which motion prevailed.

Mr. Maguire moved to amend the motion by adding "from any moneys in the Treasury not otherwise appropriated."

The question recurring upon the adoption of the motion as amended, was not put by the chair.

Mr. Karns from a select committee on that subject reported as follows:

"The Committee who was authorized to cast about for a location for a house for the Hook & Ladder Company have



attended to that duty, and report as follows: They can procure a lease of a lot of ground suitable for such house of Mr. Culley for \$40 per year with the privilege of three years. They, therefore, recommend, the adoption of the following resolution:

Resolved, That the committee on the Fire Department be instructed to procure a lease of David V. Culley of a sufficient quantity of ground lying on Pennsylvania street between Market & Ohio streets, for the purpose of erecting a house for said Hook & Ladder Co's wagon, at the sum not greater than forty Dollars.

W. H. Karns.)
H. H. Nelson)
Geo. W. Pitts)

The report was received and the resolution adopted by the following vote:

Those who voted in the affirmative were: Messrs. Carlisle, Delzell, Durham, Edwards, Karns, Maguire, Nelson, Pitts, Strickland & Wingate. 10

Those who voted in the negative were: Messrs. Bradshaw & Dunlap.

F. Foltz acct for repairs of "O.K's Bucket wagon amounting to \$47.25, was on motion referred to the committee on accounts.

Mr. Carlisle offered the following resolution:

"Resolved, That the committee on Bridges be instructed to have the abutments of bridge crossing the canal immediately repaired and put in good condition so that the work may be done **before** the water is again let into the canal."

Adopted by the following vote:

Those who voted in the affirmative were: Messrs. Bradshaw, Carlisle, Dunlap, Durham, Edwards, Karns, Maguire, Nelson, Pitts, Strickland & Wingate - 11 - Negative - Delzell.

Mr. Bradshaw offered the following resolution for adoption:

"Resolved, That the Street Commissioner be directed to open gutters on South Street beginning at or near the Madison & Indianapolis R.R. Depot, running west to Pennsylvania St. without delay, and assess the expense against the property holders."

Which was adopted by the following vote:

Those who voted in the affirmative were: Messrs. Bradshaw, Carlisle, Dunlap, Delzell, Durham, Edwards, Karns, Maguire, Nelson, Pitts, Strickland, & Wingate. 12

Those who voted in the negative were: None.

On Motion adjournment to meet on Monday, July 11th 1853
Caleb Scudder Mayor.

Attest

Daniel B. Culley
City Clerk.

Estimate of the cost of three lamp posts, lamps and apparatus, and fixing up the same, and also, of the cost of furnishing gas, lighting, extinguishing, and cleaning the lamps, and repairing the posts and lamps, for one year. Said lamps to be put up on the North side of Washington Street, between Meridian & Pennsylvania Streets:

To 3 lamp posts @ \$12 each	\$36.00	
" 3 lamps @ \$ 6 "	18.00	
" 3 burners, pipes, & copper cocks, @ \$2.50 each	7.50	
" erecting and fixing the lamps & posts, etc.	<u>8.50</u>	\$70.00
" furnishing gas for one year @ \$25. each lamp.	75.00	
" lighting, extinguishing, and cleaning the lamps.	7.00	
" probable cost of keeping the lamps in repair	<u>8.00</u>	<u>90.00</u>
		<u>\$160.00</u>

Which sum is to be paid by the owners of property, on said street, in proportion to the number in proportion to the number of feet owned by each; viz:

	ft in	3)
Isreal Phillips' heirs,	17.6	\$ 6.91.
Jas. C. Gohn	17.0	6.71 $\frac{1}{2}$
Mrs. Edgar	20.6	8.10
Little & Wiley	17.0	6.71 $\frac{1}{2}$
S.A. Fletcher	28.1 $\frac{1}{2}$	11.11
C. Garner	17.0	6.71 $\frac{1}{2}$
Ward	17.6	6.91
Jas. P. Drake	55.7 $\frac{1}{2}$	21.97 $\frac{3}{4}$
Morrison & Talbott	64.1 $\frac{1}{2}$	25.33 $\frac{3}{4}$
	<u>254.4$\frac{1}{2}$</u>	<u>\100.48\frac{3}{4}$</u>

Brought Up \$100.48 $\frac{3}{4}$

	254.4 $\frac{1}{2}$	
	ft in	
Adam Knodle	12.1 $\frac{1}{2}$	4.79
Stephen Tomlinson	18.6.	7.31
Isaac N. Phipps	20.0.	7.90
Daniel Yandes	28.6	11.26
Wm Hannaman	45.0	17.78
S. G. Patterson	8.6	3.36
Mrs. Brown	18.0	7.11 $\frac{1}{2}$
	<u>405.0</u>	<u>\$160.00</u>

James Wood, Civil Engineer