

PROCEEDINGS
OF THE
COMMON COUNCIL.

REGULAR SESSION.

CHAMBER OF THE COMMON COUNCIL OF THE
CITY OF INDIANAPOLIS,
MONDAY, JANUARY 29TH, 1866, 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 at first roll-call :

Councilmen Allen, Boaz, Brown, Coburn, Emerson, Glazier, Grosvenor, Jameson, MacArthur, Staub and Thompson—11.

Absent—Councilmen Colley, Fletcher, Kappes, Lefever, Loomis, Schmidt and Seidensticker—7.

The proceedings of the regular session, held January 22d, 1866, were read and approved.

On motion of Mr. Brown, permission was granted Dr. George W. Mears, Pres't of the Board of Health, to submit the following report :

INDIANAPOLIS, January 29, 1866.

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

In response to the resolution of your body requesting the Board of Health to submit some plan, if possible, to stay the progress of the Small Pox—that Board begs leave to suggest that, in their judgment, there is no remedy for the evil but primary vaccination in all subjects where it has not been introduced, and re-vaccination in all instances where vaccination, however successful, has been performed before the age of puberty.

It is at present not claimed for vaccination, as was the case when it was first introduced, that its preservative power is absolute—nevertheless, its salutary influence upon communities and States and countries has characterized its discovery as one of the greatest blessings vouchsafed to man—even before re-vaccination was regarded as necessary to confirm its usefulness, the comparative number of deaths from all causes in England was reduced from 96 to the 1,000, in the last half of the 18th to 35 to the 1,000 in first half of the 19th century—whereas, in Ireland, where vaccination is much less general, the proportion is 49 to the 1,000. While, on the other hand, in many of the European States, where vaccination is more or less compulsory, as in Bohemia, Lombardy, Venice, Sweden and Saxony, the comparative number of deaths is exceedingly small, varying from 2 to 8 (averaging about 5) deaths to the 1,000 attacks after vaccination.

Beside the benefit of saving lives, as exhibited in these statistics, general vaccination has the effect to prevent the appearance of the disease as an epidemic. In France Small Pox has not been known as an epidemic for near 40 years, owing, as is alleged, to the almost universal practice of vaccination. In this country, where governmental authority is rarely if ever exercised to enforce sanitary measures, it is impossible to obtain statistic evidence of the preservative power of vaccination. Yet we are not without abundant testimony of its efficacy in shielding the country from the epidemic prevalence of Small Pox. By the return of soldiers from the army and the exodus from the South of the thousands of refugees, the disease in some of its forms has been carried into nearly every hamlet, village and city of the Union, and yet, so far as we can learn, no instance of epidemic spread has been reported. The blessings which its discovery has conferred upon mankind can only be fully appreciated in those countries where by the enactment of laws to enforce its universal use, entire exemption from its attacks has been achieved. In Denmark, for instance, at one time the Small Pox had entirely disappeared before the defensive influence of compelled vaccination. So in Bavaria and other countries where the laws were vigorously enforced.

But, as before stated, the immunity from attacks of Small Pox in some of its phases, by the primary introduction of vaccine virus, is not absolute, and the protection not permanent. The latter circumstance has however led to the practice of re-vaccination, which has accomplished a success, equalled only by the preservative influence of Small Pox itself, either spontaneous or induced by inoculation.

It is generally admitted, as abundantly attested by statistics, that about one-third of the cases successfully vaccinated are liable on exposure to attacks of some modification of Small Pox. While it is established beyond controversy that an exceedingly small percentage, probably one-eighth of one per cent, after successful re-vaccination, are subject to attacks from any kind of exposure. Exemption nevertheless seems guaranteed to vaccinated children to the ninth year generally, occasionally to the eleventh or twelfth year—after that period they are never safe without re-vaccination.

Persuaded by the evidence thus adduced, as by a mass of other testimony which the limits of such a report will not permit us to present, that immunity from the invasion and spread of the disease in question can only be secured in that way, The Board of Health earnestly recommend primary vaccination with the pure and healthy lymph (which shall be procured as near to the cow as practicable) which shall embrace every child within the city and its vicinity, and re-vaccination in all subjects over nine years of age within the same territorial limits.

To accomplish so desirable an object as that of general vaccination, may, and doubtless will, be attended with some difficulty, but is, as we believe, by no means as formidable a work as it appears without examination. At Boston, where they do most things connected with the sanitary condition of their city well, they have in practice a plan of enforcing the duty, which, in some modification, we beg to suggest as the most feasible means for accomplishing the object in view.

It is there made the duty of the police officer of each ward to visit once a fortnight each house in his ward and inquire whether any of its occupants are without vaccination; finding such, he notifies them that they must attend to the duty within ten days. Those having family physicians and being able to pay to provide for it in that way, while the indigent are ordered to report to the Board of Health for vaccination or re-vaccination, as the case may be. In all cases of failure to comply, a fine of five dollars is assessed for every individual case, and collected by the Marshal.

Thus attended to it is believed that within ninety days every vestige of Small Pox would be removed from the city.

GEORGE W. MEARS,
Pres't Board of Health.

On motion, the report was received and ordered to be spread upon the minutes.

By Dr. Jameson—Petition:

INDIANAPOLIS, January 29, 1866.

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

I propose to start a Variety Concert in your city, provided I can get the license at reasonable terms. I can stand \$30 per month and no more. I send this in, and if not agreed to no harm done. But \$30 per month the year round is better than not getting it. If agreed to inform the City Clerk, so I will know to-morrow. I remain, as ever, your humble servant,

ELI BURK, *Showman.*

Which, on motion, was laid upon the table.

By Mr. Staub—Remonstrance:

INDIANAPOLIS, January 29, 1866.

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

The undersigned, property holders in the square between Washington and Market and Liberty and Noble streets, understanding that a proposition is before your honorable body to change the boundary of the fire limits in said square, from Market street to a line 195 feet north of Washington street, respectfully remonstrate against said change. They would show that only through a part of said square there is an alley running of the width of 15 feet; through the other part there is no alley at all; and that neither said alley, much less an imaginary line, gives any protection to the buildings in the north half of said square in case of fire in the south half of the square. Wherefore they pray that the present ordinance remain unchanged.

Samuel M. Seibert,
J. P. Fowler,
Catharine Buchanan.

Fr. Ostemeyer,
W. R. Clinton,
O. Nicolai.

Which, on motion, was referred to Councilmen Seidensticker and Staub, together with petition and pending ordinance on same subject.

Mr. Brown introduced general ordinance No. 34 entitled:

AN ORDINANCE giving the Board of Public Improvements further powers to grant permits for removing frame buildings from one part of the city to another,

Which was read the first time, and, on motion, was read the second time.

On motion of Dr. Jameson, the ordinance was then referred to the Committee on Streets and Alleys.

By Mr. Seidensticker, from the Board of Public Improvements :

OFFICE BOARD OF PUBLIC IMPROVEMENTS, }
Indianapolis, January 29, 1866. }

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

GENTLEMEN :—The Board of Public Improvements, to whom the matter was referred, would respectfully report to your honorable body that we find the following to be the lowest bids for the public works bid upon :

1. For grading and graveling west sidewalk of East street, between Virginia Avenue and Louisiana street, S. W. Elliott, at 30 cents per cubic yard for grading, and \$1.30 for graveling.

2. For grading and graveling Washington street, between Pogue's Run and East Corporation line, Michael O'Connor, at 50 cents per cubic yard for grading, and \$1.75 cents for graveling.

3. To grade and gravel first alley south of South street running through out-lot 94, John Welsh, at 39 cents for grading, and \$1.39 for graveling.

4. To grade and gravel Mississippi street and sidewalks, between North street and corporation line, Samuel Hanway and William Kown, for grading 60 cents, for graveling \$1 74.

5. For grading and graveling (with pit gravel) Illinois street and sidewalks, between McCarty and Ray streets, Thomas R. Shea and H. Timmermann, at 39 cents for grading, and \$1.25 for graveling.

And we recommend that the contracts be awarded accordingly.

HENRY COBURN, }
AD. SEIDENSTICKER, } *Board.*

Which, on motion, was laid upon the table.

By Dr. Jameson, from Finance Committee :

INDIANAPOLIS, Jan. 29, 1866.

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

The Committee on Finance, to whom the petition of Jeff. C. Davis, presented to Council on the 22d of January, 1866, was referred, would respectfully report that the papers are incomplete, in consequence of which the Committee can form no opinion.

P. H. JAMESON.

On motion, the report was received and the papers laid upon the table.

By Dr. Jameson, from Finance Committee :

INDIANAPOLIS, January 29, 1866.

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

The Committee on Finance, to whom was referred the petition of Benedict Fisher, presented to Council on the 22d of January, 1866, respectfully report it back to Council for its action in the premises.

P. H. JAMESON.

On motion of Mr. Brown, the City Clerk was directed to issue duplicate city order to Benedict Fisher in place of the one destroyed, on his filing a bond with good freehold security in double the amount.

By Dr. Jameson, from Finance Committee :

INDIANAPOLIS, January 29, 1866.

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

The Committee on Finance, to whom was referred the petition of Rubush & Hanway, concerning discount on city orders, and asking Council to pay discount of 30 per cent., presented to Council on the 15th of January, 1866, respectfully report, with recommendation that the prayer of the petition be granted, and the amount be paid petitioners in money, and that Committee on Claims be instructed to report an ordinance therefor.

P. H. JAMESON, *Chair. Com. on Finance.*

Which, on motion, was concurred in.

By Dr. Jameson, from Finance Committee :

INDIANAPOLIS, January 29, 1866.

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

The Committee on Finance, to whom was referred the petition of Fred. Ostermeyer and others in relation to refunding taxes, or striking from the tax duplicate certain school property, presented to Council January 8th, 1866, respectfully report and recommend that the within named property be stricken from the tax duplicate.

P. H. JAMESON, }
C. F. SCHMIDT, } *Committee.*

Which, on motion, was concurred in.

By Dr. Jameson, from Finance Committee :

INDIANAPOLIS, January 29, 1866.

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

GENTLEMEN:—The Committee on Finance have had the petition of E. C. Mayhew under consideration, and find that he returned \$37,800 of taxable personal property on his last year's statement, consisting of notes due at 6, 12, 18, 24, 30 and 36 months, none of which bore interest for one year. The petitioner claims that in giving in these notes at par he made his return too large, since said notes were really not worth over about ninety per cent. He therefore prays that \$3,940 be deducted from the amount of his taxables, or that he be allowed an order for \$58.10 cents toward the payment of his taxes. Your committee would recommend that the Committee on Accounts, &c., be directed to draft an ordinance appropriating to said Mayhew the \$58.10 above named. Respectfully submitted,

P. H. JAMESON, *Chair. Com. on Finance.*

Which, on motion, was concurred in.

By Dr. Jameson, from Finance Committee :

INDIANAPOLIS, January 29, 1866.

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

The Committee on Finance, to whom was referred the petition of David Sibert, presented to Council December 18th, 1865, would respectfully report, with recommendation, that the prayer of petitioner be granted.

P. H. JAMESON, }
C. F. SCHMIDT, } *Committee*

Which, on motion, was concurred in.

By Mr. Brown, from Committee on Streets and Alleys:

INDIANAPOLIS, January 29, 1866.

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

The Committee on Streets and Alleys, to whom was referred the petition of George Lowe and others, asking that the wood and hay market be removed from the north side of Washington street, between Delaware and Alabama streets, beg leave to report that there is no need of further legislation upon the subject, and recommend that the prayer of the petitioners be not granted.

AUSTIN H. BROWN,
HENRY COBURN,
P. H. JAMESON, } *Committee.*

Which, on motion, was concurred in.

By Mr. Emerson, from Committee on Bridges:

INDIANAPOLIS, January 29, 1866.

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

GENTLEMEN:—The Committee on Bridges beg leave to report that in their opinion it would be inexpedient to cut down the bridges on St. Clair and North streets to the grade of those streets, as it would prevent thousands of cords of wood being brought into the city, for the benefit of the rich as well as the poor; it is also the opinion of your committee that the more wood there is brought into the city the cheaper it makes fuel.

All of which is respectfully submitted.

R. B. EMERSON,
WM. BOAZ,
WM. ALLEN, } *Committee.*

Which, on motion of Dr. Jameson, was laid upon the table.

Dr. Thompson, from Committee on Gas Light, reported that the contract for lighting and extinguishing the Street Lamps expires soon, and that it would be necessary for the Council to make another contract for same.

Which, on motion of Mr. Brown, was received, and the Civil Engineer directed to contract with Fed. Schulmeyer and Charles Balls, the old contractors, for lighting and extinguishing the Street Lamps, from the time of the expiration of the present contract until the 3d of March, 1866.

Dr. Thompson, from Committee on Gas Light, also reported that it would be necessary for some person to be authorized and directed to purchase glass and other articles, necessary to repair street lamps, as the I. G. L. & C. Co. had refused to furnish same as before.

Which, on motion, was received, and the Civil Engineer directed to purchase the necessary articles for repairing the street lamps.

Dr. Jameson asked for further time for the Select Committee on general ordinance No. 33.

Which, on motion, was granted.

From the City Attorney—Report:

INDIANAPOLIS, January 29, 1866.

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

GENTLEMEN:—I have examined the questions presented by Mr. Brown's motion, and submit the following opinion:

The legal title to the school property is in the Trustees. They are invested with the control of school funds out of which all necessary and proper expenses are to be paid, and can, by mandamus, be compelled to pay all necessary expenses. The cost of improving streets is a necessary expense and should be paid by them. The charter provides that the legal owners of property shall be liable for street improvements, and as the Trustees have the legal title they are the parties from whom the assessment should be collected.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Which, on motion, was concurred in.

From the City Attorney—Report:

INDIANAPOLIS, January 29, 1866.

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

GENTLEMEN:—The motion of Mr. Seidensticker, relative to the effect of the new charter upon ordinances and contracts for street improvements, necessarily involves an examination of two questions:

First. What is its effect upon those cases in which contracts have been executed?

Second. What is its effect upon those cases in which ordinances have been enacted but no contracts made?

There is no difficulty in the first question. The rights, in those cases where contracts have been made, are vested and cannot be taken away by the legislature. The expense of improvements in such cases must be assessed and collected as provided by the former charter.

The second question is not without difficulty. The present charter preserves intact all rights acquired under former charters, and continues in force all such ordinances as are not in conflict with its provisions. If there is no conflict between the provisions of the ordinances and the present charter, then the ordinances continue in effect and the expense of improvements is to be assessed as therein provided.

The ordinances provide that the cost of improving the crossings of streets and alleys shall be assessed against the city, which is in accordance with the provisions of the act of incorporation in force at the time of their passage. The present charter provides that "The city shall be liable for so much only as is occupied by public grounds of the city" bordering "on the street improved." There is, therefore, a conflict between the provisions of the present charter and the ordinances, the latter creating a much greater liability than that contemplated by the present charter. There is between the ordinances and the charter an evident inconsistency, and the ordinances are, in my opinion, abrogated by the last act of incorporation.

The ordinances, if carried into effect, would impose upon the city greater liabilities than the Council have, under the present charter, the right to create. In *Johnson v. City of Indianapolis*, 16 Ind. 227, it was decided that the city could not be made liable for any greater portion of the expense than

that which the charter imposed upon the city. It is not within the authority of the Council to bind the city to pay any greater portion of the expense than that provided by the charter, and a contract binding the city to pay more would be invalid. All contracts made since the enactment of the present act of incorporation are governed by it, and it follows that the Council can make no contracts in accordance with the provisions of the ordinances enacted under the former charter. The act of incorporation is the paramount law, to which the ordinances of the city must yield.

It would, I think, be expedient to repeal all ordinances for the improvement of streets where no contracts have been awarded, as such a course would remove all questions. While there may be no necessity for doing so, it will, at least, be productive of no harm, and may result in much good.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Mr. Brown moved—

To concur, and that the Board of Public Improvements be instructed to report ordinances repealing all ordinances for street improvements that have been passed but under which no contracts have been made.

Which motion was adopted.

From the Civil Engineer—Report :

INDIANAPOLIS, January 29, 1866.

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

The Civil Engineer would respectfully report the contract and bond of Bennett Brooks for building a wooden bridge over the Central Canal at its crossing with St. Clair street, for your approval. Also,

The contract and bond of Joseph Kruger for grading and paving the sidewalk on the south side of Washington street, between Alabama and New Jersey streets, for approval.

JAMES WOOD, *Civil Engineer.*

On motion, the report was received.

On motion, the contract and bond of Bennett Brooks for building the bridge over the Canal at the crossing of St. Clair street, were accepted and approved.

On motion, the contract and bond of Joseph Kruger for grading and paving the sidewalk on the south side of Washington street, between Alabama and New Jersey streets, was referred back to the Civil Engineer to have time for completing contract changed from 1st of July to the 1st of May, 1866.

From the City Treasurer—Report :

INDIANAPOLIS, December 29, 1865.

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

The City Treasurer herewith submits the following monthly report of receipts and disbursements from December 13th, 1865, to January 12th, 1866, inclusive:

RECEIPTS.

From balance from last report.....	\$ 9,432 75
From bank loan	100,075 00
From current tax	22,687 60
From delinquent tax	1,994 77
From license	286 50
From City Marshal's sale of hogs.....	40 50
From printing on precepts.....	12 75
Total receipts	\$134,529 87

DISBURSEMENTS.

Bank loan.....	\$100,075 00
War fund.....	16,342 00
Street improvement.....	2,092 88
Fire department.....	1,163 65
Police.....	779 25
Salary	487 75
Specific.....	45 00
War fund substitutes.....	400 00
Jail expenses.....	2,000 00
Improvement University Square.....	200 00
Interest on orders.....	502 86
Per centage	488 25
Street repairs	200 00
Cisterns	50 00
Removing nuisances	50 00
Wood for the poor.....	100 00
Interest on bonds.....	570 00
Printing	92 50
Total disbursements.....	\$125,639 14
Balance to next report.....	8,890 73
Total	\$134,529 87

WM. H. CRAFT, *City Treasurer*

Which, on motion, was accepted and approved.

Mr. Brown called up general ordinance No. 31, entitled :

AN ORDINANCE to regulate the running of locomotives and cars in the City of Indianapolis, and requiring flagmen to be stationed at certain Railroad crossings, defining the duties of such flagmen, and prohibiting locomotives and cars from running across certain streets unless a flagman is stationed at such crossings,

And moved to amend section 6 by inserting after the word "street" in lines two and four, the word "sidewalk."

Which amendment was adopted.

And also moved to amend the ordinance by striking out "fifty," where it occurs before "dollars," and insert "one hundred."

Which amendment was adopted.

The ordinance was then referred to a Special Committee, consisting of Councilmen, Allen, Brown, Emerson, Glazier, Grosvenor and Seidensticker, for the purpose of filling the blank in section 3d.

UNFINISHED BUSINESS.

Mr. Brown moved—

That this Council meet in special session on Friday night, February 2d, for the purpose of considering what action is necessary to improve the sanitary condition of the city.

Which motion was adopted.

On motion of Mr. Allen, the Council adjourned.

Present at roll-call on adjournment: Councilmen Allen, Boaz, Brown, Coburn, Emerson, Glazier, Grosvenor, Jameson, Kappes, MacArthur, Seidensticker, Staub and Thompson—13.

JOHN CAVEN, *Mayor.*

ATTEST:

C. S. BUTTERFIELD, *City Clerk.*