

Council Chambers,

June 24, 1901.

Adjourned session, called to order by Pres. Haarer.

Roll call—Present: Ald. Hamilton, Kearns, Clancy, Brown, Schumacher, Roberts, Coon, Fischer, Burg, Pres. Haarer—10. Absent: Ald. Richards, Schlenker, Koch, Weeks, Jenney—5.

Mayor's Office,

Ann Arbor, June 24, 1901.

To the Honorable Common Council:

Gentlemen—I hand you herewith a communication from H. W. Ashley, General Manager of the Ann Arbor Railroad. It is self-explanatory and seems to me deserving of your immediate attention.

My attention has been called to a request from the Board of Public Works for a Conference Committee relative to the hour and pay of labor on our streets. In accordance with that request I appoint President Haarer, Ald. Jenney and Clancy as the members from your honorable body. I hope these gentlemen will be willing to serve.

Respectfully,

R. S. COPELAND, Mayor.

Enter Ald. Richards, Schlenker, Weeks.

A communication from H. W. Ashley in regard to raising the tracks of the Ann Arbor R. R. was read and ordered placed upon file.

Toledo, O., June 14, 1901.

Mr. R. S. Copeland, Mayor, Ann Arbor, Mich.:

Dear Sir—The Detroit & Chicago Traction Company have made application for an overhead crossing of this company's tracks in your city—an opportunity to be heard will be given any interested party or community at the office of the commissioner of railroads at Lansing at 3 p. m., June 26.

I send you a blue print which shows the manner of the proposed crossing.

It is 22 feet above the present level of this company's tracks at Ann street.

The Detroit, Ypsilanti, Ann Arbor & Jackson Company have made a de-

mand for a similar crossing at Huron street.

If these roads are built in accordance with these plans the street railroads of your city must always—for a considerable distance—be above your streets 22 feet and this company's tracks always remain on a level with them—notwithstanding every citizen in your corporation prefers the contrary—that the steam road be above the streets and the street car tracks on a surface level with them.

The traction companies will expend \$25,000 or \$30,000 each more to elevate their tracks in order to make these crossings than would be necessary if this company's tracks were not already there.

While I cannot say accurately, I estimate that this company could elevate its tracks 14 feet above Miller avenue and Huron street and 10 feet above Washington street for \$80,000.

If each of the traction companies preferred to contribute one-third of the expense of so raising the steam railroad tracks I would recommend that this company contribute the remainder of the money necessary.

If the steam road were elevated at Miller avenue and Huron street, the public would be relieved of a continuing annoyance and danger and the street railroads would build where they will be useful and convenient to the public; whereas, if the construction contemplated is completed it will forever be impracticable to separate this company's tracks and the streets of your city, because this company's tracks cannot be raised if these bridges are built as proposed.

The substitute plan suggested is not of financial benefit to this company, we can handle as many tons of freight in each train, operating the tracks as they are at present, but I appreciate that before many years your citizens will seek to find a means by which the annoyance of these grade crossings can be abated, and this latter is written to suggest that those in charge of your corporation can never have such another opportunity to accomplish this desirable result.

Would it not be well for your authorities to send a representative to Lansing on the 26th inst.?

Respectfully,

H. W. ASHLEY,
General Manager.

Ald. Hamilton moved that the mayor go to Lansing at the expense of the city and meet the parties interested there on the 26th inst. and make such further arrangement as he deems best.

Adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns Clancy, Brown, Schumacher, Weeks, Roberts, Coon, Fischer, Burg, Pres. Haarer—13.

Nays—None.

Report of Board of Health was received and ordered filed.

Ald. Hamilton then presented the annual tax budget for the ensuing year.

By Ald. Hamilton:

Resolved, and it is hereby ordered, that the sum of forty-nine thousand and eight hundred dollars be and the same is hereby appropriated for and on account of the several regular funds of the city of Ann Arbor for the fiscal year 1901 and 1902, and that the same be and is hereby appropriated and distributed to the several regular funds as follows:

- To the Contingent fund, the sum of\$10,000
- To the Fire Department fund, the sum of 8,000
- To the Street fund, the sum of 17,000
- To the Water fund, the sum of 9,200
- To the Police fund, the sum of. 3,600
- To the Poor fund, the sum of.. 2,000

Resolved, further, that the sum of two thousand and eight hundred dollars be and the same is hereby appropriated by virtue of the act of the legislature authorizing the same, for the purpose of paying an installment of principal and interest of the main sewer bonds.

Resolved, further, that the sum of six thousand and three hundred dollars be and the same is hereby appropriated by virtue of an act of the Legislature authorizing the same, and distributed among the several paving

funds of the city of Ann Arbor as follows:

- Paving District fund No. 1, the sum of\$2,500
- Paving District fund No. 2, the sum of 1,100
- Paving District fund No. 3, the sum of 1,250
- Paving District fund No. 4, the sum of 1,500

Resolved, further, and it appearing to this Common Council that to enable the City of Ann Arbor during the fiscal year aforesaid, to keep and maintain in good order and repair the several bridges culverts, sidewalks and crosswalks within the corporate limits of the said city a sum of money in excess of the percentum authorized to be raised under the authority granted to this Common Council by the provisions of the city charter is and will be necessary.

Therefore resolved, that by virtue of the authority granted to this Common Council by the general law of the state, the sum of twenty thousand dollars be and the same is hereby appropriated and to be expended for the purpose of maintaining in good order and repair the several bridges, culverts, sidewalks and crosswalks within the corporate limits of the city of Ann Arbor.

Resolved, further, and it is hereby ordered, that the said several sums of money aforesaid, be and the same are hereby levied and assessed on, upon and against the taxable property of the city of Ann Arbor, Michigan, and are hereby ordered to be spread on the tax rolls of the said city for the year A. D. 1901, for the said several purposes aforesaid, and it is ordered that all the several sums of money aforesaid be assessed, levied, collected and paid into the city treasury for the several purposes aforesaid and on account of the several funds aforesaid.

Resolved, further, that the City Clerk do certify this resolution and order of appropriation and assessment to the City Assessor under date June 3rd, 1901, and that when so certified, the City Assessor do spread the said several sums of money aforesaid on and

upon the tax rolls of the City of Ann Arbor, Michigan, for the year 1901, and assess the same against the taxable property of the city of Ann Arbor as the same shall be set down on the said tax rolls as valued and determined by the said Assessor or by the Board of Review of the said city and against the respective owners or occupants of the said taxable property pursuant to law.

Ald. Richards moved to amend by changing the amount in the bridge, culvert and crosswalk fund, from \$20,000 to \$10,000.

Adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Schumacher, Weeks, Roberts, Fischer, Burg, Pres. Haarer—9.

Nays—Ald. Kearns, Clancy, Brown, Coon—4.

Pres. Haarer then put the motion as amended, which was lost as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Schumacher, Weeks, Roberts, Fischer, Burg, Pres. Haarer—9.

Nays—Ald. Kearns, Clancy, Brown, Coon—4.

Ald. Brown moved to amend the budget so as to have the bridge, culvert and crosswalk fund read \$6,000 instead of \$20,000. Carried.

Pres. Haarer then put the motion as amended by Ald. Brown, which was adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns, Clancy, Brown, Schumacher, Weeks, Roberts, Coon, Fischer, Burg, Pres. Haarer—13.

Nays—None.

The liquor bond of William Frey and George Frey as principals and L. G. Pipp and Christian G. Koch as sureties was presented, and on motion was adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns, Clancy, Brown, Schumacher, Weeks, Roberts, Coon, Fischer, Burg, Pres. Haarer—13.

Nays—None.

On motion of Ald. Clancy the matter of the light in the fifth ward was left to the aldermen of the fifth ward which was adopted as follows:

Yeas—Ald. Richards, Hamilton,

Schlenker, Kearns, Clancy, Brown, Schumacher, Weeks, Roberts, Coon, Fischer, Burg, Pres. Haarer—13.

Nays—None.

Ald. Hamilton moved that the city clerk be directed to advertise for bids from the banks for custody of the city funds.

Adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns, Clancy, Brown, Schumacher, Weeks, Roberts, Coon, Fischer, Burg, Pres. Haarer—13.

Nays—None.

The finance committee reported that they would reject all bids offered for printing proceedings.

Ald. Clancy moved that the liquor bond just approved of William Frey and George Frey be allowed to be at fair grounds this week instead of Washington street.

Carried.

City Attorney Stivers made his report relative to the mandamus proceedings of E. B. Norris, relator, vs. the Common Council of the City of Ann Arbor, respondent, whereupon the answer of the Common Council in said matter, together with a resolution of Ald. Brown, was read and presented for approval as follows:

STATE OF MICHIGAN—The Circuit Court for the County of Washtenaw. The People Ex. Rel. Ezra B. Norris, Petitioner, vs. the Common Council of the City of Ann Arbor, Respondent.

The respondent hereby makes answer to an order to show cause heretofore served upon it in the above entitled cause as follows:

1. Respondent admits that relator was duly appointed city attorney of the City of Ann Arbor on or about the first Monday of May, 1899 at a salary of \$600.00 per annum and held the office aforesaid until the first Monday in May, 1901, but respondent denies that relator has been city attorney of said city since last named date. Respondent avers that Frank A. Stivers has been city attorney since said date.

2. Respondent further answering admits that relator presented a claim

to the finance committee of this respondent on or about the time stated in his petition in this cause which claim was substantially the form set forth in said petition.

3. Respondent further answering admits that said claim of relator was on or about the 3rd day of June, 1901, presented to said respondent by said committee without recommendation and by respondent laid upon the table, while at the same meeting respondent allowed the salary of city attorney to Frank A. Stivers and ordered the same paid; respondent further avers that said claim of said relator was not duly verified as required by the charter of said city, and further that no regular meeting of said respondent had been held after said 3rd day of June at the time of the filing of relator's petition in said cause whereby said action upon said claim was not final as will appear by reference to Common Council Rule 14, copy of which is hereto attached marked Exhibit A.

4. Respondent further answering admits that there was submitted to respondent at its meeting on May 6th, 1901, a communication from the Mayor of said city substantially in the form alleged in the relator's petition in this cause; that thirteen of the fifteen members of respondent were present and that the nomination of Andrew J. Sawyer failed of confirmation as stated in said petition.

5. Respondent further says that thereupon and after other business had intervened the following communication was submitted to respondent at the meeting last aforesaid, to-wit:

"Mayor's Office, May 6, 1901.

"In the absence of the Mayor from the city and acting under the authority of Section 49 of the Charter and the Statutes and laws of the State of Michigan, I hereby appoint Frank A. Stivers city attorney, subject to the approval of a majority of the members elect of the Common Council.

"JOHN W. HAARER,

"President of the Common Council."

Whereupon the nomination of said

Frank A. Stivers to be city attorney of said city was unanimously approved, said thirteen members of said respondent being present and voting affirmatively.

6. Respondent further answering admits the fact stated in the affidavit of R. S. Copeland attached to the petition in this cause that the mayor of said city was absent from said city throughout the meeting held by respondent on May 6th, 1901, and for four days thereafter, and avers that it was officially advised of said absence at the time it so voted for the approval of said last mentioned nomination; and respondent admits that the President of this respondent approved the minutes of said meeting of respondent substantially in the form alleged in said petition, but denies that said President pretended to act as mayor of said city, and avers that said President performed the duties of the mayor in the absence of the latter officer as it was his right and duty to do under the charter of said city, and respondent avers that thereby the said Frank A. Stivers became city attorney of said city de facto and de jure.

7. Respondent further answering denies that relator has performed the duties of the office of city attorney since said 6th day of May, 1901; but avers that so far as respondent is concerned the duties of the office have been performed by said Frank A. Stivers; avers that said relator has not attended a meeting of respondent since said 6th day of May, nor has he claimed the office to respondent except by his claim hereinbefore referred to filed with the finance committee, and avers that said Stivers has been recognized by respondent and other authorities of said city as the city attorney of said city since said 6th day of May, 1901. That said Stivers duly qualified as the city attorney on the day following his said appointment as appears of record in the office of the city clerk, certified copy of which record is hereto attached marked Exhibit B.

8. Respondent admits that the Mayor of said city filed with the city

clerk and entered upon said minutes a message substantially in the form alleged in said petition on pages five and six thereof, but avers that under the law the same had no effect upon the proceedings of respondent relative to the approval of the appointment of said Stivers as city attorney other than to furnish record evidence of the absence of the Mayor from the city when said action of respondent was taken.

Respondent further answering refers to the charter of said city of Ann Arbor, and makes said charter, together with certified copies of the records hereto attached and the affidavits of John W. Haarer, James E. Harkins, Wm. McIntyre and Frank A. Stivers hereto attached, a part of this answer as fully to all intents and purposes as if the same were formally incorporated herein.

JOHN W. HAARER,

President of the Common Council.

STATE OF MICHIGAN—County of Washtenaw—SS.

On this 24th day of June, before me, a notary public in and for said county, personally came John W. Haarer and made oath that he had read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge.

M. J. CAVANAUGH,

Notary Public.

By Ald. Brown:

Resolved, That the return or answer hereto attached to the order to show cause heretofore issued by the circuit court for the county of Washtenaw upon the petition of Ezera B. Norris and the affidavits hereto attached when duly verified be and they are hereby determined to be the answer of this council to said order to show cause and that the President of this council be and he is hereby authorized to verify the same by oath.

Adopted unanimously.

City Attorney Stivers made a further report relative to the proposed alley between Liberty and William streets. Thereupon Ald. Coon offered the following resolution:

By Ald. Coon:

Whereas, this Common Council having ordered a certain public alley to be laid out and established within the corporate limits of the City of Ann Arbor, and running north and south through block three south of Huron street, Range four east, according to the plat of the village (now city) of Ann Arbor, and it appearing that condemnation proceedings have been had in the Circuit Court for the County of Washtenaw and that all necessary steps in the premises have heretofore been taken, with exception of making provision whereby the amount of damages awarded in the matter of said condemnation proceedings shall be secured to be paid, as provided by statute, now, therefore,

Resolved, That the sum of two thousand eight hundred and ninety-seven dollars, being the amount required to make compensation to the owners and persons interested for the private property taken as awarded by the jury in the said condemnation proceedings, be borrowed from the Contingent Fund, the said amount to be repaid to said fund from the money to be raised by tax and as a special assessment on the property situate in the special assessment district heretofore designated by a resolution by this Council, when the same shall be collected.

Resolved, further, and it is hereby ordered, that the said sum of two thousand eight hundred and ninety-seven dollars shall be set aside and provided by the City Treasurer for the purpose of securing payment of the compensation to the owners and persons entitled to the damages awarded by the jury in such condemnation proceedings. And the City Treasurer is hereby directed to pay to the persons respectively entitled to the money so set apart and provided, to each, his or her proportion, as ascertained and awarded by said verdict. And the City Treasurer is hereby directed to securely hold such money in the Treasury for the purpose of paying said damages, and pay the same to the persons entitled thereto, according to the verdict

of the jury, on presentation by them of warrants therefor, and not pay out the money for any other purpose whatever. And the City Treasurer is further directed to make and sign duplicate certificates, verified by his oath, showing that the amount of compensation awarded by the jury is actually in the Treasury for the purpose of paying said damages, and cause the same to be filed, one in the office of the Clerk of the Circuit Court for the County of Washtenaw, and one in the office of the City Clerk in manner and form as required by statute in such case made and provided.

Adopted as follows:

Yeas—Ald. Richards, Hamilton, Schlenker, Kearns, Clancy, Brown, Schumacher, Weeks, Roberts, Coon, Fischer, Burg, Pres. Haarer—13.

Nays—None.

Ald. Clancy moved that the City Clerk be instructed to readvertise for bids for printing the proceedings, Carried.

On motion the Council adjourned.

JAS. E. HARKINS, Clerk.

Per Clark, Deputy.