

COUNCIL CHAMBER,  
ANN ARBOR, Sept. 7th, 1894. }

Special session.

Called to order by President Wines.  
Roll called. Quorum present.

Absent--Ald. Wagner, Allmendinger, Prettyman.—3.

COMMUNICATIONS.

FROM THE MAYOR.

MAYOR'S OFFICE,  
ANN ARBOR, Sept. 6th, 1894. }

*To the Aldermen of the City of Ann Arbor and the President of the Common Council:*

By the power vested in me, I hereby call a special meeting of the Common Council of the City of Ann Arbor, to be held in the Council Chamber on Friday evening, Sept. 7, '94, at 7:30, p. m., to consider the lateral sewer specifications, reported by the Board of Public Works, the question of repairing the bridge over the M. C. R. R., also the grade of sidewalk in front of the property of E. E. Calkins, Mr. Toop and others in this locality, that may be affected by any change of grades.

C. G. DARLING,  
Mayor.

FROM THE BOARD OF PUBLIC WORKS.

*To the Common Council:*

The Board of Public Works respectfully report that they have had under careful consideration the recommendations of your honorable body in regard to alterations and amendments in the specifications for sewer construction and concur in the alterations suggested in the title and the following sections: Sections 38, 39 and 40; and the Board of Public Works further report that it does not concur in the alterations of Section No. Three nor of Section No. 114; but the Board of Public Works return Section Three unchanged and recommend the following alteration of Section 114 and incorporate the same in the specifications herewith submitted.

Respectfully submitted by order of the Board of Public Works.

W. J. MILLER,  
Clerk.

The Council then proceeded to consider various alterations and recommendations in the specifications from the Board of Public Works.

The City Attorney was called on, as to the legality of Section 114 of the specifications.

City Attorney Bennett had a brief prepared quoting several cases in the premises.

Ald Manly moved that the City Attorney file said opinion as to the legality of Section 114, with the City Clerk, and the same be printed and made part of this meeting. Adopted.

*To the Hon. Common Council of Ann Arbor, Michigan:*

In response to your request for my opinion regarding the legal effect of embodying the provisions of Section Number 114, as amended by resolution of your honorable body, in the specifications for the construction of lateral sewers in this city, I beg leave to submit the following:

In my opinion the incorporation of this section in the specifications, and of restrictions and limitations upon the right of any person bidding upon this work to employ labor at the lowest price that it can be obtained, in the contract that the city will make with the lowest bidder, would operate to establish a monopoly in this item of the expense of constructing such sewer system, and would render the assessment made to meet said expenses illegal and invalid.

The sole effect of such a provision must be to compel the employment of laborers residing in this city, at a price of not less than \$1.25 a day, so long as a sufficient number of such persons present themselves.

Accordingly, all bidders would be compelled to figure upon the item of labor at a fixed price, and thus this item is withdrawn from competition.

It must be remembered that this assessment is for a local improvement, and the expense falls not upon the entire property of the city, but upon such pieces of land as lie within the particular assessment district to be benefited, as fixed and determined by your body.

The Council in this matter is acting as the agent of a limited number of the citizens, each one of whom has the right to demand that every provision of our charter and ordinance be strictly followed out.

In the case of Twiss vs. City of Port Huron, reported in 63 Mich. 528, it was held: That when a city charter requires all contracts for public improvements to be let to the lowest bidder, if the lowest bidder was permitted to withdraw his bid on the ground of an alleged mistake, the contract could not be legally let to the next lowest bidder, but must be re-advertised. Mr. Justice Campbell says, in this opinion: "The Council had no power to deprive the city, and the parties who would be assessed, of the benefit of a letting to the lowest bidder."

The provisions of our charter and ordinance are similar. The Board of Public Works is required by ordinance to advertise for tenders for the construction of lateral sewers, and "shall contract therefor with the lowest responsible bidder," and the contractor is required "to do all the work and furnish all the material."

In the case of McBrien vs. Grand Rapids, 56 Mich. 65, is the following language: "What

the Board is required to do is for the benefit of the public, the object being to invite competition and prevent favoritism and fraud in awarding contracts for public works. If under the statutes contracts can only be let to the lowest bidder it follows as a necessary consequence that no other manner of contracting can be legal and any bid or contract which leaves the payment for substantial and material subjects as parts of the improvement contemplated, either in *work* or material to be agreed upon by private arrangement or agreement, is unauthorized, contrary to the express provisions of law and void."

Mr. Justice Cooley used this language in the case of Atty. General vs. Detroit, 26 Mich. 263: "If a patented article were desired which was owned by a single person who refused to sell the right to territory or to fix a royalty, or if stone or any other material were required and a single person owned all within a practicable distance of the place where it was used, nothing could be more obvious than proposals which confined bids to the particular article or material would invite no valuable competition."

In the article on Public Improvements in the American and English Encyclopedia of Law, it is said: "How contracts shall be let depends on the statutes and ordinances. If the statute limits the city to one method such as letting by contract to the lowest bidder, no other method can be employed, and in such case the work cannot be divided so as to contract for a part by one method and a part by another, nor can the city evade the law by requiring all bidders to agree upon a stated price for one part of the work leaving the other parts to competition."

An instance of this was seen in the case of the Matter of Mahan, 20 Hun. (N. Y. Reports) 302.

This was an assessment for the constructing of a sewer in New York. By the terms of the advertisement for bids, the price to be paid for rock excavation was fixed and the competition therefore only extended to the price to be paid for the remainder of the work to be performed. The assessment was finally vacated, and the decision reads as follows:

The omission to submit the item of rock excavation for competition was a departure from the statute relating to the subject. The fact that the price allowed was not in excess of

what would have been demanded by any contractor is not sufficient to override the plain terms of the statute.

It appears to me from an examination of these authorities that the Council must comply strictly with the provisions of our ordinance, and that a strict compliance compels the submitting of every item of expense of the proposed improvement to open competition, labor as well as material.

Respectfully submitted,  
J. W. BENNETT,  
City Attorney.

Ald. Kitson moved that the sewer specifications, as submitted by the Board of Public Works, be approved and confirmed.

Adopted as follows:

Yeas—Ald. Bodmer, Martin, Wood, Snyder, Ferguson, Brown, Manly, Taylor, Kitson, Pres. Wines—10.

Nays—None.

By Ald. Kitson:

Resolved, That the City Clerk have the sewer specifications printed in such manner as is usual in such cases.

Adopted as follows:

Yeas—Ald. Bodmer, Martin, Wood, Snyder, Ferguson, Brown, Manly, Taylor, Kitson, Pres. Wines—10.

Nays—None.

On motion a vote of thanks was extended Ald. Manly for a basket of his delicious peaches, which he presented the Council with.

On motion the Council adjourned.

W. J. MILLER,  
City Clerk.