

The New Orleans Crescent.

THURSDAY MORNING, OCTOBER 15, 1908.

COMMON COUNCIL.

BOARD OF ASSISTANT ALDERMEN.

REGULAR SESSION.

CITY HALL, NEW ORLEANS, Oct. 15, 1908.

The board met pursuant to adjournment; present: President Kearny, Messrs. Rose, Aitkens, Walker, Pemberton, Camp, Strucken, Grandpre, Fisher, Morphy, Pandey, Wynne and Farrell.

The reading of the minutes of last meeting was, on motion of Mr. Farrell, dispensed with.

The following communication from the mayor was received:

MAYORALTY OF NEW ORLEANS, City Hall, Oct. 10th, 1908.

To the Honorable the Common Council:

Gentlemen:—The following preamble and resolutions are laid before me for my approval or disapproval:

"WHEREAS, the numerous complaints of property holders paying taxes and licenses, of the bazaar situated between the Meat and Vegetable Markets, as a public nuisance and detrimental to the public interests; be it, therefore,

"Resolved, That the street commissioner be and he is hereby authorized and instructed to remove, or cause to be removed, after one month's notice, any and all stalls, or other obstructions now obstructing the levee streets or sidewalks between the Meat and Vegetable Markets of the Second District."

The stalls and stands constituting what is usually called the bazaar were erected in 1865 by permission of the corporate authorities, and the privilege of collecting the revenues for the same adjudicated to the highest bidder, and the market authorized to enter into notarial contract. Since that time a large income has been paid into the city treasury from that source.

I am at a loss to perceive in what manner the bazaar, situated as it is, can be called a nuisance. It interferes neither with the rights of pedestrians or owners of vehicles, and certainly is no encroachment upon the rights of the property holders in the vicinity.

The ground upon which it stands belongs to the city, and the articles of merchandise sold at its stands and stalls are such as can not either offend the eye or nostrils. Instead of being a detriment to the public interests, it is a thing of public convenience, as well as public revenue. As adjacent dealers in similar articles of trade cannot afford to vie in cheapness with the retail sales of the stalls and stands, on the contrary, it is a duty which we owe to the poor people who deal with these lesser to give them every facility in our power to supply their wants as cheaply as possible.

There is, however, another reason, and one conclusive to my mind, why this bazaar should not be removed agreeably to the above resolution. This is no time to curtail the revenues of the city. You will every day observe the members of the market places for the payment of persons having legitimate claims against the city. To deprive us of any portion of revenues springing from such sources, would be as suicidal as it is unwise. It is no time to curtail the revenues of the city. You will every day observe the members of the market places for the payment of persons having legitimate claims against the city. To deprive us of any portion of revenues springing from such sources, would be as suicidal as it is unwise.

I beg to add that this law change, in one important respect, the existing laws as to the former, is in conformity with the provisions of the constitution, which vests the power in the controller of deciding as to the correctness of the bills due to the official paper for printing. It declares that "it shall not be necessary for any other officer or department of the city to examine or approve any account."

I have been asked whether the contract made under the act of 1865 is not void because of the fact that the publisher of the Republican is a member of the General Assembly. The answer is that the act of 1865 is not void because of the fact that the publisher of the Republican is a member of the General Assembly. The answer is that the act of 1865 is not void because of the fact that the publisher of the Republican is a member of the General Assembly.

For the reasons above assigned, I cannot consent to affix my signature to the resolution, and therefore respectfully return it to the board in which it originated.

Very respectfully, etc., JOHN R. CONWAY, Mayor.

Mr. Wynne moved that the resolution accompanying the above communication be persisted in notwithstanding the veto of the mayor. The resolution was read as follows, and passed over the veto by the necessary two-thirds vote:

"WHEREAS, the numerous complaints of property holders paying taxes and licenses, of the bazaar, situated between the Meat and Vegetable Markets, as a public nuisance and detrimental to the public interests; be it, therefore,

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Ayes—Messrs. Kearny, Rose, Aitkens, Walker, Camp, Grandpre, Fisher, Morphy, Pandey, Wynne and Farrell.

Nays—Messrs. Pemberton and Strucken.

The treasurer's report for the week ending October 10, 1908, showing receipts for week \$55,185.97; expenditures \$257,988.89; balance on hand in city notes \$75,235.39; balance on hand in city bonds \$30,000. Total balance on hand \$105,235.39. Referred to finance committee.

Mr. Breen entered and took his seat.

The following communication from the city attorney was received:

OFFICE CITY ATTORNEY, City Hall, Oct. 15, 1908.

To the Honorable the Common Council of New Orleans:

For the first time since the incorporation of the city in 1805, (so far as State legislation informs me) the city laws and proceedings of the council are published in two papers. As it is desirable, in my opinion, to avoid all unnecessary delay, the Common Council have asked if, in my opinion, they are compelled, under existing laws, to submit to the expense of double advertising. To question the propriety of such a course, and I return that no little time has been afforded me for its investigation.

In communicating my views upon this subject, I shall abstain from comments on points of expediency, as considerations of policy in no manner pertain to the duties of my office. I shall confine myself to a statement of the law and a review of the decisions of the Supreme Court on the subject.

The proprietor of the Crescent claims the printing for one year, by virtue of a contract made with the city under the act of 1866, commonly called the "City Charter." Every Constitution adopted by the people of Louisiana, from 1812 to this date (except the Constitution of 1868) gave to the citizens of New Orleans the right to appoint the public officers necessary for the administration of the city government.

The city charter of 1852 and 1866 provided, in substance, for the appointment of public officers, and among others, the city printer. Section 20 of the present city charter provides that "it shall be the duty of the mayor to appoint, by ordinance, all public officers, and that the ordinance shall be published with the proceedings, and no ordinance or resolution which shall have passed one board shall be acted upon by the other board on the same day unless by unanimous consent, except in case of invasion, insurrection or pestilence."

Accordingly, when the Common Council met in June last, at a joint session, the Crescent was elected city printer for one year. The duties and emoluments of the office had been previously defined by law, and are to be found in the Digest of the City Laws, page 347. That act of the council, it appears to me, is a solemn contract, and is binding on the city.

If the vote of the council be considered as the election of an officer, and he is dismissed without cause, he is, by law, entitled to the pay of the office for the year. This is an elementary principle of our law, and may be found in any treatise on the law of contracts. It is a principle of our law, and may be found in any treatise on the law of contracts.

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and not an appointment to office, the city is equally bound for one year, and responsible, if the contract be annulled, for the loss of the business of the Crescent. See 16th Annual, p. 19.

The proprietors of the Republican also claim the printing of the city advertisements.

This bill is based on the act of the Legislature, approved July 23d, 1868, which provides that the governor, lieutenant governor and speaker of the House of Representatives shall contract with some party for all necessary printing. Section 10 of the act reads as follows:

"Be it further enacted, That all printing for the State, or for any department of the State government, or for the Supreme Court, or for the corporation of New Orleans, shall be performed by the State printer, who shall execute the same according to the specifications, and at prices set down in the following items," etc.

In section 11 it is said that the State printer shall publish for the State, and at the expense of the State, all advertisements required to be published in the public of Orleans, etc., and "Also all municipal advertisements, of every description whatsoever of the corporation of the city of New Orleans, whether parochial or municipal, shall be published in the official journal; Provided, That the advertisements of the city of New Orleans may be published in one or more additional papers, whenever in the opinion of the Common Council the public interest may demand such additional publication. And the sheriff of the parish of Orleans is hereby authorized to insert notices of elections in one or more papers in addition to the official journal."

Under the act of the Common Council is compelled to obey this law, or, in other words, whether or not it is constitutional. I look in vain in the Constitution of 1868 for any provision which prohibits on the subject of this Constitution contained the clause to be found in those of 1812, 1845, 1852 and 1861, there could be no difficulty for the power to appoint city officers and to administer the business of the city was given by those instruments to the citizens of New Orleans, and the Legislature could not divest them of the right. Under the Constitution of 1868, however, the city is bound in respect to the Legislature possesses the power even to direct that the city advertisements be printed in all the journals of the city, and however we might question the policy of the extension of such a right, their constitutional right would be indisputable.

It has been frequently decided that where no constitutional restrictions exist, municipal corporations, established for public purposes, are entirely subject to the legislative will. The most elaborate of these decisions was that rendered by Chief Justice Jones, in 1848, to be found in the 31 Annual Reports, page 100.

It has been said that the act in question is unconstitutional, because it violates the contract made with the Crescent, and that no law can be passed that impairs the obligations of a contract. But, no such contract was made with the Crescent, and the agreement made with the Crescent. The act recognizes the right of the city to print in more than one paper. It does not propose to give to the Crescent the exclusive right. It is in no way subject to the legislative will. The most elaborate of these decisions was that rendered by Chief Justice Jones, in 1848, to be found in the 31 Annual Reports, page 100.

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