#447

...e in the official journal, to receive sealed proposals for making the necessary repairs to the iron fence around Lafayette square; the contractor to use such portions of the fencing thrown down as may be suitable for the new fencing; and the work to be done under the supervision of the City Surveyor.

Mr. Burbank moved to amend by adding: Provided, The whole cost of the repairs shall not exceed $500.

The amendments were adopted, and the resolution, as amended, passed its first reading.

A resolution inviting the Board to meet the Board of Assistant Aldermen in joint session this evening, for the purpose of electing one expert to act with two experts to be chosen by the Canal Carondelet company, was concurred in.

PETITIONS.

1. Of Jean Barriere, claiming the reimbursement of the price of a mule sold by the Street Commissioner.

2. And of Felix Robin, offering to sell to the city certain office furniture.

Were referred to the Finance Committee.

3. Of E. H. Laineyer, asking the payment of $18 60 to him for rent of certain premises used by the Street Commissioner since 1861.

4. And of Mrs. W. C. Block, corresponding secretary of the Poydras asylum, asking for the donation of certain burial lots for the use of the asylum.

Were referred to the Committee on Streets and Landings.

ORIGINAL RESOLUTIONS.

By Mr. Woolley:

Resolved, By the Common Council of the City of New Orleans, that the Superintendent of the Fire Alarm Telegraph be and he is hereby authorized and required to place a "signal box" at the depot buildings of the Canal and Claiborne Streets Railroad company on Common street, between Tonti and Rocheblave streets.

Which under a suspension of the rules was read twice and adopted.

Yeas: President Graham and Messrs. Burbank, Carriere, Clay, Dewees, Kellogg, and Woolley.

Nays: None.

By Mr. Dewees:

WHEREAS, By resolution No. 194, new series, a contract was entered into between the city of New Orleans and William Tobin for furnishing the city with 250,000 feet of wharf plank, at $22 75 per thousand feet, the said contractor has furnished on his contract 101,700 feet as appears from two certificates from the Surveyor, now on file in the Controller's office, whereby $231 36 was retained as the ten per cent condition of the contract. The said William Tobin proposes to fulfill his contract by furnishing the city the balance remaining due, 148,300 feet, at $22 75 per thousand, contract price, or to annul the contract by the payment of the ten per cent retained on the two certificates issued; therefore be it

Resolved, That the contract entered into by the city of New Orleans with William Tobin, according to resolution No. 194, new series, for furnishing 250,000 feet of lumber, be and the same is hereby declared canceled.

Be it further resolved, That the Controller be and he is hereby authorized to warrant on the Treasurer for the sum of two hundred and thirty-one thirty-six and one hundredths dollars, ($231 36), being a final settlement with William Tobin on his contract for furnishing lumber to the city, as per resolution No. 194, new series.

Which under a suspension of the rules was read twice and adopted.

Yeas: President Graham, and Messrs. Burbank, Carriere, Clay, Dewees, Kellogg, and Woolley.

UNFINISHED BUSINESS.

The following resolutions came up in their regular order on their second reading.

The following was laid on the table:

Resolved, That the Street Commissioner be and he is hereby authorized to give thirty days notice to the owner or owners of the slaughterhouse, situated on Seventh street, between Tchoupitoulas and Fulton streets, to remove said slaughterhouse within the limited time, in default of which, the Street Commissioner is hereby authorized to cause the same to be removed at the expense of the owner or owners.

The following were concurred in by the votes annexed:

Resolved, That the Mayor be and he is hereby authorized to establish a police stationhouse in the vicinity of the LeBreton market, second district, and to place the necessary policemen required at said station for the protection of the inhabitants of that locality, the rent of said stationhouse not to exceed twenty-five dollars per month.

Resolved further, That the Mayor be requested to accept, as a temporary arrangement, the offer of C. H. Slocomb, Esq., tendering free of expense to the city the use of one of the ticket offices at the entrance of the Fair grounds on Gentilly road, to serve as a police stationhouse until a permanent one is provided.

Yeas: President Graham, Messrs. Burbank, Carriere, Clay, Dewees, Kellogg, and Woolley.

Nays: None.

Resolved, That the Street Commissioner be and he is hereby authorized to select a suitable place in the neighborhood of the Jackson Railroad depot as a dumping ground for the deposit of accumulated manure of stables in the first and fourth districts.

Yeas: President Graham, and Messrs. Burbank, Carriere, Clay, Dewees, Kellogg, and Woolley.

ORDER OF THE DAY.

Resolved, That the City Surveyor be and he is hereby authorized to employ a sufficient force of men, not to exceed three hundred, to clean the draining canals of the city, the men to be hired upon the most economical terms.

Mr. Graham offered the following substitute:

WHEREAS, Although the commissioners of the first draining district—a body created by an act of the Legislature of this State, approved March 18, 1858—have received their proportion of the $81,000 appropriated by said act, and are now collecting the sixth installment of the tax imposed, with the object of draining said district, they have in return done nothing whatever but to make the required plans and to take the legal steps necessary to enforce payment of the tax by subjecting the property to mortgage; and

Whereas, The large amount of money which the commissioners have received and collected should be at once used to meet the general demand for the much needed drainage of said district; be it therefore

Resolved, That the City Attorney be and he is hereby authorized to take such legal steps as he may deem proper to compel the said Board of Commissioners to perform the duties imposed on them by the said act, or to show cause why their duties have not been performed.

Which was adopted on its first reading.

The Board then proceeded to the hall of the Board of Assistant Aldermen in joint session.

[For proceedings see minutes of the Board of Assistant Aldermen.]

The Board returned to the hall and adjourned until April 9 at 7 P. M.

HUGH J. CAMPBELL,
Secretary.

BOARD OF ASSISTANT ALDERMEN.

Regular Meeting.

CITY HALL, NEW ORLEANS, Tuesday, April 7, 1868.

The Board met pursuant to adjournment.

Present: Mr. W. T. Hepp, President; and Messrs. Sterry, Sampson, Scott, Perkins, Davies, Flood, Thezan, Dunn, Straight, Sullivan, Sauvinet, and Joubert.

The minutes of the last meeting were read and approved.

The following message from the Mayor, and documents accompanying, were read and referred on motion of Mr. Dunn to a committee of three, to be appointed by the chair, with instructions to report at the next adjourned meeting:

MAYORALTY OF NEW ORLEANS, City Hall, April 7, 1868.

To the Honorable the Members of the Board of Assistant Aldermen:

GENTLEMEN—Brevet Major General Buchanan, commanding the fifth military district, having requested the opinion of the city council on two points: First, as to the regular day under the city charter for holding the election of municipal officers for the government of this city; and second, whether there was anything in the constitution of the state inaugurated by the convention which recently held its session in this city which was inconsistent with the charter in respect to the day of such election, thinking it advisable, before submitting these queries to you for consideration and judgment, that the judgment of the city attorney should be had on the subject, I verbally requested Judge Buchanan to express his opinions on the points raised; but his response not coming in until a late hour, and fearing it would not reach me in season, I in the meantime applied to Judge Whitaker for counsel in the case. These gentlemen, both distinguished in their profession, came to different conclusions in respect to the points referred to them. I herewith transmit their respective communications, in which you will see that in the opinion of Judge Buchanan the 154th article of the new constitution requires that an election of city officers be held on the 17th and 18th instant, and that the article controls the act of the legislature (Leovy's Digest, p. 58) fixing the second Monday in March as the day of the city election.

On the other hand it will be seen that Judge Whitaker, after giving the subject much consideration, gives it as his deliberate and carefully formed opinion that article 154 of the proposed new state constitution gives no authority in law for an election of officers of the city of New Orleans at the time the vote is taken on the acceptance or rejection of that constitution.

In support of his opinion Judge Whitaker assigns the following weighty reasons:

1. That under the act of Congress of March 12, 1868, it is provided "that the constitutional convention of any of the states mentioned in the acts to which this is amendatory may provide that at the time of voting upon the ratification of the constitution the registered voters may vote also for members of the house of representatives of the United States, and for all elective officers provided for by the said constitution."

2. "The late convention in this state adopted the proposed constitution as a whole on the second day of March, and adjourned their labors on the ninth, three days before the act referred to became a law."

Judge Whitaker acutely says, in this view of the facts:

"Its act, of course, conferred no power on a body that had ceased to exist. But if it could have conferred any power upon the late convention, it does not attempt to confer any authority for the election of city officers in New Orleans on a day different from that fixed by the municipal charter. The act," he says, "provides for the election of all elective officers provided for by the proposed constitution. But city officers are not provided for by that constitution. The state, legislative, judicial, and executive departments, with their various officers, are provided for, but the convention did not, in the constitution, touch upon the city officers, their duties, compensations, or terms of office, or disturb the city charter in any respect. That would fall properly within the supervision of the state legislature alone." Again

3. "Article 154 does indeed include the word 'municipal' in its enumeration of officials to be chosen on the 17th and 18th of April, but this was evidently," says Judge Whitaker, "an oversight of the convention, as such officers are not elsewhere alluded to, and especially are not referred to in article 138, providing for the entrance of officers elect upon the discharge of their duties and for the date of the term of their offices."

Judge Whitaker cites the article as follows:

"All civil officers, thus elected, shall enter upon the discharge of their duties on the second Monday after the return of their election shall have been officially promulgated, or as soon as qualified according to law, and shall continue in office for the terms of their respective offices herein prescribed, etc.

"All civil officers thus elected shall continue in office for the terms of their respective offices herein prescribed. The only officers whose terms are thus prescribed are the state officers, those constituting the executive, judicial, and legislative department of the state government."

I can add nothing to the clearness and force with which these matters are treated by Judge Whitaker. I can only say his views meet with my entire concurrence, but the subject is left to the mature consideration of your honorable board.

Very respectfully,
E. HEATH, Mayor.

OFFICE CITY ATTORNEY, New Orleans, April 7, 1868.

Hon. E. Heath:

DEAR SIR—I should say, in answer to the queries submitted to the commanding general by the City Council, and left by you at my office this morning:

1. That the regular day for holding elections for city officers under the amendment to the city charter, (Leovy's Digest, page 58), is the second Monday of March.

2. That the new constitution, article 154, requires an election to be held for city officers at the same time and place as the election for the ratification of the constitution itself, viz: the 17th and 18th April instant. This, of course, controls the act of the legislature above quoted (the city charter) in case the constitution is ratified; and if it be rejected at the election held the same day, then the other election on that day, (for state, judicial, parish, and municipal officers), will be a nullity.

Very respectfully,
A. M. BUCHANAN,
City Attorney.

No. 57 CAMP STREET, New Orleans, April 7, 1868.

Hon. E. Heath, Mayor of New Orleans:

SIR—In reply to your verbal inquiry upon the subject, I give it as my deliberate and carefully formed opinion that article 154 of the proposed new state constitution gives no authority in law for an election of officers of the city of New Orleans at the time the vote is taken on the acceptance or rejection of that constitution. I present for your consideration the following as some of the most apparent of the reasons that bring me to that conclusion:

Under the act of Congress of March 12, 1868, it is provided "that the constitutional convention of any of the states mentioned in the acts to which this is amendatory may provide that at the time of voting upon the ratification of the constitution, the registered voters may vote also for members of the house of representatives of the United States, and for all elective officers provided for by the said constitution."

The late convention in this state adopted the proposed new constitution as a whole on the second day of March, and adjourned its labors on the ninth, three days before the act above referred to became a law. The act of congress conferred no power on a body that had ceased to exist. But if it could have conferred any power upon the late convention, it does not attempt to confer any authority for the election of city officers in New Orleans on a day different from that fixed by the municipal charter. The act provides for the election of all elective officers provided for by the proposed constitution. But city officers are not provided for in that constitution. The state, legislative, judicial, and executive departments, with their various officers, are provided for, but the convention did not in the constitution touch upon the city officers, their duties, compensations, or terms of office, or disturb the city charter in any respect. That would fall properly within the supervision of the state legislature alone.

Article 154 does indeed include the word "municipal" in its enumeration of officials to be chosen on the 17th and 18th instant; but this was evidently an oversight on the part of the convention, as such officers are not elsewhere alluded to, and especially are not referred to in article 138, providing for the entrance of officers elect upon the discharge of their duties, and for the date of the terms of their offices. That article reads as follows:

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