22

Jud

REPORT

—OF—

Attorney

On G. N. Alexanders

petition for converting

Grade scrip into City scrip

(see File #23 - being the petition of G. N. Alexanders)

FILED,
JUL 24 1884

Clerk City of Seattle

Opinion (3) [990022]

Seattle W.T. July 18 1884

To the Honorable Mayor and Common Council of the City of Seattle.

Gentlemen:

The petition of G. N. Alexander asking the payment to him of the sum of $981.20 in lieu of scrip issued to him on the Jackson street improvement fund, (which scrip he has refused to accept) having been referred to me, I have the honor to report as follows:

I recommend that the said petition be rejected.

This matter being of great importance, I deem it my duty to give my views of the law, relating to the subject matter of this petition for the information and guidance of the Council. If these views are incorrect, my successor will, no doubt, discover that fact.

The Common Council is the agent servant and representative of the people of this City. The City

as a municipality, is a creature of the law, endowed only with such powers as are conferred by Charter: The servants and representatives of the people of this City have no powers outside of those conferred upon the City by Charter.

The City has no power to grade and improve the streets of the City by use of its general funds. Such improvement can be made only by virtue of the power given and in the manner prescribed by Section 8 of the Charter. The grading of streets can be paid for by special assessment on property fronting on the street improved and in no other way.

The petition mentioned asks for payment by the City for the grading and improving Jackson street. A special tax has been levied for that purpose, but has not been paid. No general tax has been levied for the improvement of Jackson street or of

any other street neither has the City power under the Charter to levy a general tax on property for the purpose of paying for special improvements already made.

If the position assumed is correct it follows that the City has no funds which could be legally appropriated to pay the claim of Mr Alexander. The funds of the City now on hand or which may come into the City's general fund was raised by levy for a different purpose and an attempt to misappropriate such funds could be stopped by injunction. Any ~~attempt~~ diversion of municipal property to purposes not authorized is illegal on the double ground of its being a breach of trust and also ultra vires

Green's Brice's Ultra Vires page 58

Scrip or warrants have been issued to the claimant payable out of the "Jackson street Improvement Fund" These warrants were issued in pursuance of the provisions of the charter and of

the City ordinances and also in compliance with the provisions of the Contract between the city and said Claimant.

"If, by law, a particular claim is to be paid out of a special fund a warrant or order issued therefor should be made payable out of that fund; if made payable from the treasury generally by the officers issuing it the corporation is not bound by their act" Dillon on Munic Corp. Sec 505. The claim in question being payable out of the special fund known as Jackson street Improvement fund cannot be paid out of any other fund.

The fact that Alexander refuses to accept the warrants issued in payment for work on the Contract does not change the rights or obligations of the city in the least, in my judgment. He is bound by his contract to accept the warrants, and if he refuses to accept the same and asks for a different kind of payment he departs from the contract.

He is bound to wait for payment of his claim until it is collected in the manner prescribed by law. The city charter, ordinances and his own contract fix his legal status as well as that of the city.

But it claimed that the acts of the Council in ordering and making the improvement in question were illegal. If this be true it does not constitute a sufficient reason for compelling the tax-payers of the city in general to liquidate this claim. It is presumed that the contractor had as much knowledge about the facts in relation to this improvement as the members of the Council.

In the case of Newman vs Sylvester 42 Ind. 106 cited in Dil. on Munic Corp page 457 (Vol 1) where a contract was let for improvement beyond the city limits the court uses this language "The contractor having like knowledge with the members of the Council they cannot be held liable for the costs of such improvement" In the case of Bok vs Smith & others 55 Wis. page 81 the court uses this language: "Every contractor

who does work in improving and grading a street in a city where the cost of said improvement or grading is chargable to the owners of the abutting lots, and where he is compelled to resort to a special assessment upon such lots for his pay, or any portion thereof, must see to it that the proceedings of the city authorities in directing the same are regular, in those matters at least which are essential. The authorities are in some sense his agents in fixing the charge upon the adjoining property for his benefit and if they proceed irregularly he must suffer from such irregularity"

Without citing authorities, I will state that after a pretty thorough examination I have arrived at these conclusions that the City of Seattle through its Common Council is the agent of the property owners along the lines of our streets, with power given it by charter to compel the improvement

of the streets at the expense of the property owners; that in enforcing payments for such improvements the City is also the agent or trustee for the Contractor who makes such improvement: the improvement is made for the benefit of the property owner and the money collected by special assessment for the benefit of the Contractor; that the city does not assume to pay nor does it warrant or guarantee the payment of the Contract price; that there is no legal liability on the part of the City on its contract to pay the contractor or the holder of scrip any money except when the same is collected; that the city assumes no liability except to pursue the powers given it by charter. If the City should fail or refuse to exercise the powers given it by charter to enforce the payment of assessments that the proper course would be to compel action by a writ of mandamus. The only basis of a liability by the City to a contractor or holder of grade scrip would

by failure to do some act required by law or doing some act in violation of the rights of the contractor or scrip holder. If the City should do no wrong and do all required of it by law within a reasonable time and then there should be a failure to collect the amount due the contractor the city could not be held liable. This last proposition is fully sustained by the case of Fenny and others vs The City of Oshkosh 18 Wis. 220.

The Council must virtually condemn its own acts as illegal and decide that the tax payers of the city must pay for such acts by general taxation, before it can pay grade contracts or grade scrip out of the general fund. Such a decission I think should by left to the courts. If a legal liability should be established then and not until then would the council have the power to levy a tax to discharge such liability. I think it would

be an act of gross injustice as well as illegal for the Council to fasten upon all the tax payers of the city a debt of thousands of dollars, for expenditures made for the special benefit of a few without giving the general tax payer an opportunity of testing the validity of such debt. The city is not liable for every illegal act of the Council even if such illegality should be established.

Respectfully Submitted

Richard Osborn
City Attorney

Report and
Opinion of the
City Attorney
on the petition of
G. N. Alexander