

to serve during the interim between the second Tuesday of January next and the 1st day of July following, respectfully submit the following opinion.

At the charter election two years ago William Parkinson was elected City Treasurer. At that time the city charter provided that the City Treasurer's official term should commence on the second Tuesday of January ensuing his election. (Chap. 2, sections 14 and 16.) It also provided that the City Treasurer and a number of other officers should hold their respective offices for the term of two years: "Provided, however, That all officers, whether elected or appointed, shall hold their offices respectively until their successors shall be duly elected or appointed and qualified, and shall enter upon the discharge of their duties." (Chap. 2, sec. 13.)

At the last session of the legislature, section 14 was amended, and the City Treasurer's official term made to commence on the first day of July. (See Local Acts of 1879, when published.) Under this amendment the City Treasurer who is elected at the ensuing election cannot enter upon the duties of his office until the first day of July next, and the question is, what becomes of the office during the interim. The resolution introduced by Ald. Rousseau assumes that after the second Tuesday of January there will be a vacancy in the office, and that it is competent to fill that vacancy at the coming election. We are of the opinion that this is not a correct view of the case, for the following reasons:

1. The charter provision in regard to filling vacancies in this office is as follows:

"If a vacancy occurs in any elective office other than that of Mayor, Recorder, or Alderman, the Common Council shall appoint some person, eligible under this act, to serve in such office until the next annual election, when the vacancy shall be filled for the residue of the official term." (Chap., 2, sec. 25.)

Under this provision a vacancy cannot be filled until it occurs; that is, one cannot be elected to a corporate office in reversion, and an election to fill an anticipated vacancy is not valid. (1 Dillon on Mun. Corp., Sec. 161.) A notable instance where this principle was applied is the case of the nomination by President Hayes of Secretary McCrary to the judgeship to be made vacant by the resignation of Judge Dillon. The point being made that the appointment could not take place until the resignation had taken effect, the President withdrew the nomination. *Biddle vs. Willard*, 10 Ind., 363, is also a case directly in point. It follows, that even if the office is to be deemed vacant after the second Tuesday in January, still it is not competent to fill that vacancy at the coming election.

2. It appears that the term of office of the City Treasurer is two years, and until a successor is elected and qualified, etc. Mr. Parkinson will, therefore, hold over until the first day of July. The City Treasurer to be elected at the ensuing election cannot enter upon his office until July, and hence Mr. Parkinson must necessarily hold over. It cannot be said that there is a vacancy when there is an incumbent, who is lawfully in possession of the office under a provision authorizing him to hold over until his successor is elected. (*Tappan vs. Gray*, 9 Paige 507.) Therefore the Council cannot on or after the second Tuesday of January appoint a Treasurer to hold until July. Where a vacancy is filled the person appointed, according to the language of the charter, must hold until the next annual election, which in this case would be beyond the first day of July. This makes it clear that the Council cannot appoint. (*People vs. Lord*, 9 Mich. 227.) It has been held that the legislature may expressly extend the term of an officer who under the constitution must be elected by the people or appointed by the local authorities. (*People vs. Batchelor*, 22 N. Y. 128.) We think that case goes too far. (See *People vs. Bull*, 46 N. Y. 57.) But we are of the opinion that where the legislature merely changes the time when the official term shall commence, and an interim occurs, that the person in office will

as a matter of law hold over until the new term begins.

F. A. BAKER,
City Counselor.
WILLIAM C. MAYBURY,
City Attorney

Accepted and placed on file.

FROM THE CITY ATTORNEY.

To the Honorable the Common Council:

GENTLEMEN—In compliance with the instructions of your honorable body, I herewith transmit the necessary resolution for vacating a portion of the alley in the rear of lot twenty-three (23), of block seventy-eight (78), of the subdivision of part of the Cass farm north of the Grand River road.

Respectfully submitted,
WILLIAM C. MAYBURY,
City Attorney.

Resolved, That that portion of the alley in block seventy-eight (78) of the subdivision of part of the Cass farm north of the Grand River road, described as follows: commencing at the north-west corner of lot twenty-three (23), block seventy-eight (78), of the subdivision of part of the Cass farm north of the Grand River road and running thence south sixty-seven (67) degrees thirteen (13) minutes west thirty-seven and five (37 5-100) hundredths feet; thence south sixty-one (61) degrees and six (6) minutes east fifty-nine and seventy-five (59 75-100) hundredths feet; thence north twenty-two (22) degrees and forty-seven (47) minutes west forty-six and eighty-eight (46 88-100) hundredths feet to the place of beginning, be and the same is hereby vacated as an alley.

The resolution was adopted as follows:

Yeas—Ald. Alter, Boydell, Chene, Connor, Daly, Finney, Gies, Griffin, Gross, Guiney, Haller, Herrick, Jackson, Jacob, Karrer, Monaghan, Ralph, Raynor, Rousseau, Russell, Warriner and the President—22.

Nays—None.

FROM THE CITY ASSESSOR.

To the Honorable the Common Council:

GENTLEMEN—I herewith transmit to your honorable body assessment roll No. 402, for grading and paving Locust street from Fourth street to Trumbull avenue.

The usual notice required by law has been given to the parties in interest, as will appear by the annexed notice and affidavit of publication. No person has appeared to object to said roll, or to ask any correction thereof. I have therefore signed the same, and now report it to you.

Very respectfully,

GEO. W. GILBERT.

City Assessor.

Accepted, and the following resolution was adopted:

By Ald. Jacob:

Resolved, That assessment roll No. 402 for paving and grading Locust street from west curb line of Fourth street to east curb line of Trumbull avenue, is hereby approved and confirmed, that the description of premises and the names of persons contained therein are received as correct, and that the sums which the said assessment roll states to be the correct ones which each individual or set of individuals should be assessed at and pay, be the assessment and be collected from the several persons liable to pay the same according to law.

Adopted as follows:

Yeas—Ald. Alter, Boydell, Chene, Connor, Daly, Finney, Gies, Griffin, Gross, Guiney, Haller, Herrick, Jackson, Jacob, Karrer, Monaghan, Ralph, Raynor, Rousseau, Russell, Warriner and the President—22.

Nays—None.

FROM THE CLERK.

That he presented the proceedings of the last session of the Council, held on the 14th inst., to his honor the Mayor for approval, on the 15th, and that they were approved on the 17th day of October, 1879.

Accepted and placed on file.