

could not take a share of stock or subscribe one dollar to aid any such corporation or association, and yet it could virtually donate property worth over \$100,000 to aid in the construction of a railroad by a corporation. If that be the construction of the act of Congress, then the mischief intended to be prevented is not prevented at all, for by a very simple device, i. e., by giving away all its property not dedicated, to the public use, the city could almost bankrupt itself.

"In construing statutes they should be so construed as to meet the mischief intended to be prevented.

"3—But if we admit for the sake of argument, that block 48, or Pioneer Square, has not been dedicated to the public use, either formally or by fair implication, and that the proposed lease is not within the letter or spirit of the said act of Congress, yet, I am fully convinced that the city has no power to virtually give away said square. In my judgment it would be *ultra vires*.

"The city holds this property in trust for the inhabitants thereof, and can only dispose of it, either by virtue of a power expressly conferred by the legislature or necessarily or fairly incident to the express powers, which would include such as are essential to the declared objects of the corporation.

"The power granted by the legislature is 'to appropriate money for corporate purposes only, and provide for the payment of debts and expenses of the corporation; and to purchase, receive, hold, sell, lease and convey and dispose of the property, real and personal, for the benefit of the city, both within and without its corporate boundaries, to improve and protect such property, and to do all other things in relation thereto, as natural persons.'

"It is conceded that powers conferred upon municipal corporations in respect to corporate funds and corporate property are public trusts, and the property owned by the corporations is held by them in trust for the purpose specified or authorized in their acts of incorporation.

"The grant of power to Salt Lake City corporation by the legislature in respect to property is, 'to purchase, receive, hold, sell, lease, convey and dispose of,' etc., for the benefit of the city.

"I take it that to dispose of the property, etc., for the benefit of the city, is to dispose of it at the best possible price and to apply the money so derived only to corporate purposes. It surely cannot be said that subsidizing a proposed railroad, by conveying to it property owned by the city, without compensation, is a corporate purpose. Nor can it be said that giving a valuable piece of real estate to a private railroad corporation is for the benefit of the city in the sense in which those words are used in the charter. True, the construction of the proposed railroad may benefit some or all of the inhabitants of the city, so it may with equal truth be said that the erection of any valuable improvement benefit the inhabitants of the city. The erection of a factory of any kind, or of a smelter, or of a stockyard, or a fine hotel in the city may be a benefit, but it would hardly be contended that it was within the power of the city to aid such enterprises by a donation of a part of the real property of the city. The city might own a square of ground in the city, which had no improvements thereon, and a syndicate might offer to put up a \$500,000 hotel or other building thereon. The erection of such a building and the money necessarily expended in such erection would doubtless benefit the inhabitants of the city, yet it would scarcely be contended that it would be within the powers granted to the city to give away the square to such syndicate. The same remarks would apply to any private enterprise where a

number of persons are to be employed for large sums of money to be expended in the city. If any project which benefits the inhabitants of the city is to be subsidized by the donation of city property, where is the limit to the powers of the city in the disposition of property held by it in trust as all city property is held?

"I don't think the words, 'for the benefit of the city,' will bear any such construction. In my judgment the words 'for the benefit of the city' mean a benefit to the city in its corporate capacity.

"I repeat again that it is a settled rule that municipal corporations may not apply their funds or other property to any other than corporate purposes.

"My attention has been called to the case of Adams vs. Memphis & Little Rock railroad company et al., decided by the supreme court of Tennessee, and reported in 2 Colwell's reports, where the supreme court of Tennessee decided that 'the power to hold real and personal or mixed property, and to sell, lease or dispose of the same for the use and benefit of the city, by necessary implication, comprehends the right to exercise such other powers, not expressly granted or forbidden, as are necessary to develop the growth or prosperity of the city.' In that case the city of Memphis had mortgaged certain of its real property to secure the bonds of a railroad company. There was no special or express legislative authority to the city of Memphis to aid a railroad by mortgaging its property to secure the bonds of the railroad company.

"Judge Dillon, who is accepted as the best authority in the United States on municipal corporations, in commenting on that case says: 'And upon the accepted canons of construction of municipal powers the author cannot concur with the learned court in the doctrine, that the ordinary clause in the charter giving the municipality the power to sell and dispose of the property, empowered it to pledge it as security for the bonds of the railway company,' 2 Dillon, Mun. Corp., section 579.

"Upon the whole case I am of the opinion that the City Council has no power to grant the petition of James H. Bacon and make the lease asked by him. And further, I am of the opinion that any attempt to make said lease by the city could be successfully enjoined by the courts, in an action brought for that purpose by any taxpayer of the city.

S. A. MERRITT, City Attorney."

CITY COUNCIL.

The regular weekly session of the City Council convened Tuesday, March 3. Mayor Scott presiding. The following members responded to roll call: Armstrong, Anderson, Pembroke, Heath, Wolstenholme, Pickard, Hall, Pendleton, Noble, Lynn, Parsons, James, Karrick and Spafford.

PETITIONS.

J. E. Dooly asked permission to connect the Dooly block, on the corner of Second South and West Temple streets with as large a pipe as the rules of the Council will allow. Referred to the superintendent of waterworks.

Dallas & Hedges asked permission to pile building material on First South Street in front of the Jennings building. Granted.

Lewis and Parry asked that the city sand beds over Jordan be leased to them. Committee on public grounds.

Stoutwell & Demerest, dealers in second hand goods, asked for a remission of an unexpired license. Committee on license.

W. W. Rivers et al. asked for an extension of water mains on Fourth West Street, from corner of Third South and Fourth West streets to midway between Fourth and Fifth South streets. Committee on waterworks.

George Goddard et al. asked for the erection of an electric light in Goddard's Court. Committee on improvements.

Watson Bros. asked to be allowed to lay a railway switch from the Rio Grande Western track on Sixth West Street to their yards between First and Second South streets. Committee on streets.

W. Kiddle et al. asked to have a certain road graded over Jordan, or his road tax remitted. Committee on streets.

A. G. Paddock asked that the North Bench sand pits be leased to him. Committee on public grounds.

T. O. Angell et al. asked that the Utah Central Railway switch on Eighth South Street be removed. Committee on streets.

J. B. Reid et al. asked that the street grade at the corner of North Temple and Sixth West streets be reduced to the level of the sidewalk. Committee on streets.

GOING TO CALIFORNIA.

The following communication was received from the Mayor:

To the City Council of Salt Lake City:

Gentlemen—I have business calling me to California, and therefore respectfully request you to elect one of your members to act as Mayor *pro tem* during my absence.

Respectfully,

GEORGE M. SCOTT,
Mayor.

Mr. Parsons—I place in nomination the name of Mr. Anderson.

Councilman Anderson—I respectfully decline the honor, as I have more business than I can properly attend to.

Councilman Karrick nominated Mr. Pickard.

Councilman Anderson nominated Mr. Noble.

Mr. Noble—I will not accept it. I, too, expect to be absent from the city in the near future.

Mr. Noble nominated Mr. Parsons, who emphatically stated that he would not accept the position.

Mr. Hall nominated Mr. James, but that gentleman shook his head and said "No."

Mr. Wostenholme—I respectfully place in nomination the name of Mr. Hall.

Mr. Hall—I cannot consistently accept the honor, and therefore beg to be excused.

The balloting was finally proceeded with and resulted as follows:

Parsons.....	8
Pickard.....	5
James.....	1

Mr. Parsons was declared elected.

Mr. Pickard—I should like to know how long you expect to be absent, Mr. Mayor?

Mayor Scott—About four weeks.

PLATS OF SUBDIVISIONS.

City Attorney Doremus reported that plats of Midland and De Long's additions had been made in accordance with all requirements and filed with him for approval. Committee on streets.