

given or even loaned to private parties, in order that they may use it in their individual business enterprises, is not recognized as an employment of the power (of taxation) for public use.

"In contemplation of law it would be taking the common property of the whole community and handing it over to private parties for their private gain, and consequently unlawful. Any incidental benefits to the public that might flow from it could not support it as legitimate taxation."

On page 115, on this subject, he says: "All useful laborers, no matter what the field of labor, serve the state by increasing the aggregate of its products, its wealth."

"There is nothing of a public nature any more entitling the manufacturer to public gifts, than the sailor, the mechanic, the lumberman or the farmer."

"Our government is based upon equality of rights. The state cannot rightfully discriminate among occupations, for a discrimination in favor of one branch of industry is a discrimination adverse to all other branches. The state is equally to protect all, giving no undue advantage or special or exclusive preference to any."

In a note he adds "taxation in aid of private enterprises is properly characterized by Dickson J. in opinions of Justices 58 Me., 590-603, as taxation 'to load the table of the few with bounty that the many may partake of the crumbs that fall therefrom.'" Suppose that tomorrow application should be made to the Council to appropriate \$25,000 to purchase land to enable, as in the present case, the owners of the land to donate it in aid of a private enterprise of more importance to the prosperity of the city than the present one, and that on the following day another like application in aid of a private enterprise of still more importance than the last should be made, with what show of justice and equality could the Council deny such applications? I make these suppositions to direct your attention to the danger of the precedent which such a purchase will establish. Its danger, if the electors of the city should in the future ever be so unfortunate as to place in power a Council less cautious, wise and incorruptible than the present one, or one more yielding to popular demands, for the exercise of powers *ultra vires* or one still more skillful in evading and getting around fundamental principles and plain provisions of the statutes of the Territory, established and passed for the protection of the people, against municipal infractions of common rights, is too manifest to dwell upon.

From the doctrine announced in the authority from which I have before quoted, that the Legislature cannot levy a tax for the purpose of aiding a private enterprise, it follows that money already raised for general municipal purposes cannot be, directly or indirectly, expended except for corporate purposes.

And if the appropriation be viewed in the light of a loan it is still illegal, because the city has no right to collect money by taxation for any such purpose, or so use any money legitimately raised for corporate purposes. It is equally clear that the city cannot lawfully buy real estate on speculation or for any other than for public uses. The Legislature has not left these limitations to rest on the fundamental doctrine of the common law of America on the subject, but on the contrary very wisely enacted them in the charter of the city. In article IV, section 1 of the charter, Revised Statutes of 1888, page 620, it is enacted:

"The City Council [shall have the following powers: To appropriate money for corporate purposes only."

This provision is as terse and plain as

the eighth commandment. There is no room for the claim of ambiguity as an excuse for its violation.

The invalidity of the appropriation is conclusively admitted in the admission that it was not made to buy land "for corporate purposes." Our oaths as the trusted officials of the city should restrain us from so flagrantly violating an act of the Legislature, so plain, independent of the consideration of the danger of such a precedent. The action of the Council is illegal because it delegates to the trustees named the power to expend the money appropriated in the purchase of real estate. This is a power which the Council cannot delegate.

The section of the charter before quoted vests the City Council with the power "to purchase, receive, hold, sell, lease, convey and dispose of property, real and personal (for corporate purposes only)."

The purchase of real property for corporate purposes calls for the exercise of discretion and judgment on the part of the Council, not only as to whether the real estate to be purchased is needed for corporate purposes, but whether the land to be purchased is suitable for that purpose and whether the price is reasonable and fair.

On this subject Judge Dillon lays down the doctrine in this language: "The principle is a plain one, that the public powers or trust devolved by law or charter upon the Council or governing body when exercised by it when and in such manner as it shall judge best cannot be delegated to others."

The action of the Council is illegal and in violation of the act passed by the last Legislature entitled, "An act giving the Mayor a qualified veto power."

The first section of that act provides that "every ordinance and every resolution adopted or contract approved by the City Council appropriating or involving expenditure of money shall be presented to the Mayor for his approval." Now the approval or disapproval of any of these things if intelligently made involves the exercise of the same judicious discretion and judgment as is required of the Council regarding the same.

And how can the Mayor act intelligently in the case under consideration unless he is advised of the purpose for which the real estate authorized to be purchased is intended; how can he determine whether the real estate is suitable for corporate purposes or whether the price is reasonable until the property is identified? The purchase involves the making of a contract which must of necessity involve the expenditure of money, yet in violation of the section quoted, the Council has authorized a committee to make the purchase with the money appropriated, without submitting the same to the Mayor for approval or submitting the same to the council for ratification.

Although I much desire to see the private enterprise contemplated succeed, and have personally subscribed for its aid, for the reason which I have stated my sense of duty as a public officer will not permit me to give my sanction to an appropriation which, in my estimation, is so manifestly against both law and public policy. Respectfully submitted.

R. N. BASKIN, Mayor.

Moran said he wished the communication laid on the table until later in the evening, as he did not believe it was right to vote on it directly simply because that could be done. He said he knew how he was going to vote. He did not hesitate to say that he was going to vote just as he did the other day.

Folland said that some of the reasons given by his honor appeared to be very tenable. He believed that under zeal and pressure hasty action had

been taken by the Council. He suggested that the Council purchase \$25,000 worth of grounds on the North Bench and convert it into a park for public purposes. There could be no illegality about that nor any unwise expenditure of money.

Moran said there was language used in that veto that was personal and objectionable. It referred to the eighth commandment. "What does that mean?" shrieked Mr. Moran.

Horn—It means that "Thou shalt not steal." There is no ambiguity about that. (Laughter.)

Moran—I wonder if the Mayor knows what the eighth commandment is?

Horn—You bet he does. (Laughter and applause from the audience.)

The appropriation was then passed over the Mayor's veto.

#### BOND REFERRED.

Deputy Dog Tax Collector Galleazzi sent in his bond of \$500 with H. T. Duke and A. H. Parsons as sureties. Committee on finance.

#### AN ILL ENGINEER.

The city engineer sent in a communication reporting that the expert engineer recently employed to come here from New York and inspect the proposed gravity sewer line was unwell and could not now fill his part of the contract. Referred to the city attorney.

The same official reported his estimate of the cost of constructing asphalt sidewalks on both sides of State street from Fourth South to Sixth South street. The total was \$4480. The report was adopted and the city recorder instructed to publish notice of intention.

The same official reported adversely upon the petition of J. G. Mitchell for a permit to connect four buildings in plat D with the E street sewer. Referred to committee on sewers with power to act.

#### FINES ON FIREMEN.

Chief Stanton of the fire department reported that he had deposited in the bank the sum of \$100.65 as fines imposed on the firemen for rules transgressed during the year 1892. He asked that the money be set apart as a relief fund for sick and disabled members of the department. Committee on fire department.

#### THE BOULEVARD QUESTION.

The committee on streets recommended in the matter of the proposed boulevard, that the city engineer be instructed to immediately survey a driveway from the southeast corner of the Capitol grounds into City Creek canyon to a point at or near the waterworks, thence back on the east side of the canyon to a connection with Tenth street and also with Seventh street; also that a special committee be appointed to confer with the authorities in command at Fort Douglas and secure the consent necessary to have a boulevard constructed across the military reservation. Committee on improvements.

#### BUILDING INSPECTOR'S REPORT.

The report of the building inspector for the year 1892 was received and filed.

The report of city sealer of weights and measures, Montgomery, was referred to the committee on markets.