(Continued from Page One.)

THE CITY ELECTION.

think there is anything to the holdover proposition. I take the view that the election should be held in November."

JUDGE C. BENNEY.

Answering yours of August 31st, I have to say:

My opinion is that in case no election of city officers is held on the Tuesday next after the first Monday in November of this year, the present city officers will hold their offices for an indefinite term, and that the offices will be vacant, in fact, until the legislature of the State shall provide for an election to fill such offices, and such election should be had and the officers so elected, pursuant to such legislative action.

If an election of city officers shall be held in November next the officers so elected will hold their respective offices until the State Legislature, at its first session, shall provide for the election of such officers, "and fix the time for the commencement and duration of their terms," and elections so had pursuant to such action of the State Legislature.

C. S. VARIAN.

I have to acknowledge the receipt of your communication of the 12th inst., requesting me to give an opinion upon the question of holding an election for municipal officers in November of the present year.

I have given the matter such examination and deliberation as the limited time at my disposal permitted, and have with care and my conclusions. The proper time for holding the annual municipal election in Salt Lake City is the first Monday in November, commencing in 1891, and on that day thereafter. By the general act approved March 5th, 1888, entitled, "An act providing for the incorporation of cities," the charter of existing cities (including Salt Lake City) were in other particulars amended. Cities with a population of twenty thousand or more inhabitants, were defined to be cities of the first class. It was enacted that the elective officers of such cities should hold their offices for two years, and until their successors were elected and qualified. No change was made in the time for holding municipal elections. In 1892, an act entitled "An act in relation to elections and terms of office, because a law," was passed by the legislature, and it provides as follows:

"Section 1. That the terms of all elective officers in all cities of the first class, whose terms of office are now provided by law to be two years, and until their successors are elected and qualified, shall be four years, and those for the Legislature, county, district, Territorial, county and precinct officers, shall be two years."

It declared that on the Tuesday next after the first Monday in November, 1892, and biennially thereafter, a general election for territorial and precinct and county officers should be held, which officers should qualify and take office on the first Monday in January, and assuming the duties of their offices on the first day of January, and to give effect to the act.

It was likewise provided that city, town, village and school elections should be held on the Tuesday in November, 1893, with an exception as to cities which should have held an election in 1892, and which should be of that year, and that the officers so elected should hold their respective offices until January 1st, 1894, and until their successors are elected and qualified. The act then proceeds to declare that on the Tuesday next after the first Monday in November, 1894, and biennially thereafter, the city, town, village and school elections should be held, and that the officers elected should qualify and enter upon their duties of office on the first day of January next succeeding their election, and continue in office for two years, etc. Specifically repealing enactments of all laws providing for the holding of elections or fixing the tenure of offices, otherwise than as provided by this act, and then we come to the scheme of the legislature clearly set forth. Territorial, county and precinct elections are to be held in even numbered years. Municipal and school elections, and those of members of the legislature are to be held in the odd numbered years. All elections have special, which we are sent to the Governor, and pending his examination of it, the election act of 1892 was passed by the Legislature. In providing that the act should not apply to cities of the metropolitan class, the Legislature undoubtedly had in mind its former bill providing for such cities. The act providing for metropolitan cities, however, was vetoed by the Governor.

The rule seems to be settled that in arriving at the proper meaning of an act of the Legislature, we may refer to the history surrounding its passage. Following the rule it is clear that the expressions excepting cities of the metropolitan class from the operation of the election law meant such cities as were so defined by the bill which was afterwards vetoed by the governor. There is no need, therefore, to look beyond this for the meaning of this phrase in the election law. As the bill providing for and defining cities of the metropolitan class never became operative, it seems to me that the provision of the election law excepting such cities from its operation should fall with it. It is a question of legislative intent. In view of the law defining cities of the metropolitan class and making various regulations and provisions for such cities, the legislature for some reason deemed it best to exclude such cities and leave them, as vetoed, from the general operation of the election law; but it seems reasonably clear that if such a law had never been enacted, the election provisions would have been made. The legislature evidently intended to create cities of the metropolitan class and took the proper steps in that direction. These same cities they intended to exclude from the operation of the general election law, and they so declared; but the attempt to create metropolitan cities proved abortive and the intent to create such cities was never carried out. There is, therefore, no such conflict with the act, they being contemplated that if the metropolitan city bill became a law, the amendment would harmonize both measures, and that if it did not so harm would follow in adoption. See Council Journal 1892, page 84. The amendment suggested by the governor was not made in section four, but was adopted, still leaving section six. The metropolitan city bill was not approved but in the meantime the other bill became a law. I do not deem it necessary to pursue the discussion. It is quite evident that section 6 was added in the expectation of the metropolitan city bill becoming a law, when its provisions could have become operative by having something to operate upon. As the legislation now stands, the section which is really a proviso to preceding sections, is meaningless and cannot be held to change, modify or except from, the clear and unmistakable provisions of the act. I think we effect is to be given to section 6, and the existing law requires the holding of an election for municipal officers in November. This construction has been adopted by the Territorial, Municipal and Federal officials charged with administering the election laws. We have held one municipal election in accordance therewith and a session of the legislature has intervened since such election. These circumstances with such contemporaneous construction are, while perhaps not controlling, of great weight. It does not seem to me necessary to consider the provisions of the proposed constitution. That instrument will not be operative unless ratified by the people and proclaimed by the President. The question whether a municipal election or Salt Lake City must be held in November, 1895, is to be determined by the present law, the law of the Territory. Whether persons elected at such elections will hold their respective offices for a longer or shorter term, or at all, should the State be admitted, will depend upon the interpretation to be given the language of the schedule, and also (possibly) upon the time of admission. Thus section 10 of the schedule provides that "All officers, civil and military, now holding their offices and appointments in the Territory by authority of law, shall continue to hold and exercise their respective offices and appointments, until superseded under the Constitution."

If the existing law requires an election in November, and that the officers elect shall qualify on Jan. 1st, 1896, and they do so, and are in office when the President makes proclamation, such offices will be within the very letter of the schedule. If, on the other hand, the proclamation shall precede the first day of January, and the Constitution becomes operative, the question will arise whether section 10 of the schedule includes municipal officers. Nevertheless, in the apparently conflicting provisions I am not convinced that it does. At all events there are cogent reasons against such construction. But, as before intimated, there is no necessity of determining this question now. We are only to deal with the present law, which I am constrained to believe requires the holding of an election for municipal officers in November next.

GEORGE SUTHERLAND.

You submitted to me two questions: first, whether or not the claim of each one of the city officers that an municipal election can be held until February next under the laws of the Territory, is well founded, and, secondly, whether or not in the event of statement the present city officers hold over until the State Legislature makes some provision for a city election.

1. I answer the first question in the negative. The claim seems to be based upon the language of the act of the Legislature of 1892. The act provides that on Tuesday next after the first Monday in November, 1893, and biennially thereafter, an election shall be held in each city, town, etc., to fill all offices, etc.

Section 6 provides that nothing in this act shall apply to cities of the metropolitan class.

It is claimed that under this latter section, Salt Lake City is excepted from the provisions of the law requiring an election in November, 1893, and biennially thereafter. The question, therefore, is, what is meant by cities of the metropolitan class. If Salt Lake is a city of the metropolitan class within the meaning of this act, of course it is not affected by the provision of the law requiring elections in November, and the claim of the city officers that elections should specially and solely work their duties of office on the first day of January next, according to section, and continue in office for two years, etc. Specifically repealed enactments of all laws providing for the holding of elections or fixing the tenure of offices, otherwise than as provided by this act, and then we come to the scheme of the legislature clearly set forth. Territorial, county and precinct elections are to be held in even numbered years. Municipal and school elections, and those of members of the legislature are to be held in the odd numbered years. All elections have special, which we are sent to the Governor, and pending his examination of it, the election act of 1892 was passed by the Legislature. In providing that the act should not apply to cities of the metropolitan class, the Legislature undoubtedly had in mind its former bill providing for such cities. The act providing for metropolitan cities, however, was vetoed by the Governor.

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