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Charter of the City of St. Louis, Missouri

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CHARTER

OF THE

CITY OF ST. LOUIS,

MISSOURI,

WITH THE

SCHEME OF SEPARATION

BETWEEN

COUNTY OF ST. LOUIS AND CITY OF ST. LOUIS

AND

**PROVISIONS OF THE CONSTITUTION OF MISSOURI
ESPECIALLY APPLICABLE TO THE CITY
OF ST. LOUIS.**

COMPILED IN FEBRUARY, 1915, BY HUGH K. WAGNER, SPECIAL
COUNSEL (REVISION OF THE CODE), AND PUBLISHED BY
MARTIN R. H. WITTER, REGISTER OF THE
CITY OF ST. LOUIS.

ST. LOUIS, MO.
WILSON PRINTING COMPANY
1915



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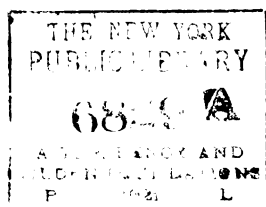
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Charter of the City of St. Louis^{*}

Adopted By Vote of the People

June 30, 1914

In Effect From August 29, 1914

*NOTE.—The city of St. Louis derives its charter from provisions of the constitution of Missouri, and the powers delegated therein are conferred by the state upon the municipality, and so long as they are not inconsistent with the constitution and laws of the state they are valid and binding upon everything that comes within the scope of their authority or operation. *St. Louis vs. Liessing*, 190 Mo., 464, 480; *St. Louis vs. W. U. Tel. Co.*, 149 U. S., 465, 467; *Kansas City vs. Oil Co.*, 140 Mo., 458, 471; *Grand Ave. Ry. Co. vs. Citizens Ry. Co.*, 148 Mo., 665, 671; *Stanton vs. Thompson*, 234 Mo., 11.

The Charter so conferred and adopted has all the force and effect of a legislative charter largely delegating the state power to the city. *Ex parte Robert C. Smith*, 231 Mo., 111, and such delegation of power is no infringement of the maxim that legislative power can not be delegated. *Sluder vs. Transit Co.*, 189 Mo., 107, 128; *Meier vs. St. Louis*, 180 Mo., 391, 409; *St. Louis vs. Fischer*, 167 Mo., 654, 660-661 (affirmed 194 U. S. 361); *State ex rel. vs. Lindell Ry.*, 151 Mo., 162, 182.

The city of St. Louis is not in any class of cities defined by the laws of Missouri, and it is not affected by legislation applicable to cities of the first-class as defined in the constitution, because the St. Louis charter is itself enacted in pursuance of a special constitutional provision, and does not fall under any classification. *State ex rel. vs. Mason*, 155 Mo., 486, 501 (overruling *Murnane vs. St. Louis*, 123 Mo., 479, and *St. Louis vs. Dorr*, 145 Mo., 466, and adopting the dissenting opinions in those cases); *State ex rel. vs. Hawes*, 153 Mo., 23, 52; *Kansas City vs. Stegmiller*, 151 Mo., 189, 204; *St. Louis vs. Bircher*, 76 Mo. 431; *State ex rel. vs. Clayton* 226 Mo., 292.

The charter of a city cannot confer on it the power of the state concerning such things as are outside the scope of municipal government, and not incidental to municipal functions; these are reserved to the state unless expressly conferred by the legislature. *State ex rel. vs. Telephone Co.*, 189 Mo., 83 (holding that Kansas City could not enforce a regulation as to telephone rates, expressly given in the charter. That such power to fix rates did not exist under the 1876 St. Louis charter, see *St. Louis vs. Bell Telephone*, 96 Mo., 623, and ordinance of St. Louis attempting to reserve the right to fix charges, Rev. Code, 1912, Sec. 1259, and note thereto, and note to Sec. 1158, and *State ex rel. vs. Police Commissioners*, 184 Mo., 109 (holding that the Kansas City charter could not confer powers respecting employment or discharge of policemen not in accord with the state law. As to the St. Louis police act, see *State ex rel. vs. Stobie*, 92 S. W., 191, 194 Mo., 14. As to right to regulate rates, see index to R. C., 1912, "Public Service Commission," but see Public Service Commission Act of Missouri legislature approved March 17, 1913 (1913 Laws of Missouri, 602).

And the charter must always be in harmony with the Constitution and laws of the state. See cases heretofore and hereinbelow cited; also *State ex rel. vs. Telephone Co.*, 189 Mo., 83; *State ex rel. vs. Police Commissioners*, 184 Mo., 109; *Twigg vs. Hoblitzelle*, 85 Mo., 64, 76 (discussing the objects in view in adopting the St. Louis Charter); *State ex rel. vs. Lindell Ry.*, 151 Mo., 1. c. 182 (same); *State ex rel. vs. Stobie*, 194 Mo., 14, 92 S. W., 191 (see discussion as to St. Louis Scheme and Charter in both majority and dissenting opinions.)

Hence, and also because the power of the legislature to supersede or modify the charter or ordinance provisions exists, it follows that when the ordinance or charter provisions are, or become, in conflict with prior or subsequent state statutes or state policy or with the constitution, such ordinances or charter provisions are, or become, void, and must yield to

the higher law. *Levy vs. Kansas City, Kan.*, 168 Fed., 524; *State ex rel. vs. Stoble*, 92 S. W. (Feb. 26, 1906), 191, 200; s. c. 194 Mo., 14 (holding a provision in the scheme repealed by the police act) *St. Louis vs. Meyer*, 185 Mo., 583; *State ex rel. vs. Police Commissioners*, supra; *Badgley vs. St. Louis*, 149 Mo., 122 (declaring a charter provision void as contrary to the code of civil procedure); *Ford vs. Kansas City*, 181 Mo., 137; *State ex rel. vs. Railway*, 117 Mo., 1, 11-12; *Ewing vs. Hoblitzelle*, 85 Mo., 64, 76; *State ex rel. vs. Bell*, 119 Mo., 70, 75; *State ex rel. vs. Matthews*, 94 Mo., 117 (scheme provision changed by statute).

Mere differences in details do not render such laws inharmonious, and do not make charter provisions ineffective. *Kansas City vs. Oil Co.*, 140 Mo., 458, 471 (a decision frequently approved in later St. Louis cases, in which the court holds that "A constitutional provision authorizing a city like Kansas City or St. Louis to frame its own charter implies the power to adopt a complete and harmonious system of local, municipal government.

The charter . . . being a law for the government of the municipality, it is binding upon all courts, and it violates no principle of our government to say that the courts, when called upon, must enforce these municipal laws unless they conflict with the constitution and are not in harmony with the constitution and laws, and, as already said, mere differences in detail do not render such laws inharmonious. . . . So long as the city . . . does not invade the province of general legislation or attempt to change the policy of the state as declared in her laws for the people at large, it will not be held to be out of harmony with such laws, notwithstanding the provisions of the special charter may be different from the general statutes prescribed for the government of other cities in their local affairs). To same effect is *St. Louis vs. Dorr*, 145 Mo., 466, 478 (to this extent this case has not been overruled); and see particularly *St. Louis vs. DeLassus*, 205 Mo., 578, fully discussing and sustaining the city's power to enact ordinances on subjects also covered by state statutes, though not identical therewith; also, *State vs. Vlc. De Bar*, 58 Mo., 395 (showing to what extent the city was regarded as independent of state laws under the earlier decisions); and see discussion in *State vs. Kessels*, 120 Mo. App., 1. c. 240, distinguishing the effect of the 1875 constitution and the former one on the power of St. Louis to pass ordinances inconsistent with the state laws.

For discussion of how far the city may enact ordinances declaring acts to be misdemeanors, where there are state statutes on the same subject, and the effect of concurrent enactments by the city and state, see note to *Rev. Code 1912*, Sec. 1863, and cases there cited.

And the power of the city to tax is specifically recognized by the constitution (Art. X., Sec. 11); and see notes in *R. C.*, 1912, at pages 298 and 340.

An ordinance is void when it conflicts with the charter, or when it is not authorized by the Charter, or enacted as the Charter requires. All powers of the Board of Aldermen emanate from the charter, and must find their support in it as the source of authority. See discussion of this subject and citation of cases in note at page 298, *R. C.*, 1912.

In some respects the charter bears the same relation to the ordinances that the constitution does to the statutes. *Quinette vs. St. Louis*, 76 Mo., 402, 404.

The constitution requires the courts to take judicial notice of the charter and of the city's incorporation. *Const.*, Art. IX., Sec. 21. *Barclay, J.*, in *Walsh vs. Mo. Pac. Ry.*, 102 Mo., 1. c. 589; *St. Louis vs. Lang*, 131 Mo., 412, 420. See also *State vs. Nolle*, 96 Mo. App., 524, 526.

The courts take judicial notice that St. Louis is the only city having 300,000 inhabitants. *State vs. Anslinger*, 171 Mo., 600, 610; *State ex rel. vs. Miller*, 100 Mo., 439, 450.

The charter is a public act, of which all persons interested are bound to take notice. *Perkinson vs. St. Louis*, 4 Mo. App., 322, 328.

The city of St. Louis is a political subdivision of the state of which the courts take judicial notice. *State vs. Nolle*, 96 Mo. App., 524; *State ex rel. vs. Bus*, 135 Mo., 1. c. 337; *State ex rel. vs. Ry.*, 195 Mo., loc. cit. 241 and 246; see also *State ex rel. vs. Finn*, 4 Mo. App., 347. Hence all appeals in cases in which the city is a party go to the Supreme Court. See note at page 419, *R. C.* 1912.

How far the city is treated as a county. The constitution provides that "the city as enlarged in 1876 shall be entitled to the same representation in the general assembly, collect the state revenue, and perform all other functions in relation to the state in the same manner, as if it were a county as in this constitution defined," etc. (*Const.*, Art. IX., Sec. 23). "The charter contains many provisions to define the mode in which the city should perform many essential governmental duties toward the state 'as if it were a county'; the city was practically put in the position of a county for the purposes of executing the functions of government in that locality; as those functions were to be performed by city officers, the scheme and charter undertook in the first instance to prescribe how, and by whom, those duties should be discharged. But matters of purely municipi-

pal and local concern the constitution intended to commit to local self-government, which the peculiar provisions in regard to St. Louis were designed to authorize." *St. Louis vs. Dorr*, 145 Mo., 466, 479.

The court-house is maintained not by virtue of the municipal functions of the city, but in the performance of a county function in the sense of the constitutional provision, and the relation of the city to the court-house is the same as the county to the court-house was before the separation. *Cunningham vs. St. Louis*, 96 Mo., 53. The city of St. Louis being for all necessary purposes a county in itself, the seat of justice of such quasi-county is the city itself, and not the court-house building, and a public office is located at the seat of justice when in the new city hall, though such locality was not part of the city when the court-house was originally erected. *Babcock vs. Hahn*, 175 Mo., 136, 140.

The city of St. Louis occupies the dual relation to the state of a county and of a city under the scheme and its charter. *State ex rel. vs. Bell*, 119 Mo., 1. c. 73.

Though the city is not a "county" in the ordinary sense used in the constitution, it is in a qualified sense a county, in that it is a "legal subdivision of the State" and performs the functions of a county. *State ex rel. vs. Finn*, 4 Mo. App., 347; *State ex rel. vs. Bus*, 135 Mo., 1. c. 337; *State ex rel. vs. Railway*, 195 Mo., loc. cit. 241, 246. But in all other respects the city as constituted by the scheme of separation, is a city proper and not a county, and the St. Louis county laws do not apply to the city. *State ex rel. vs. Walsh*, 69 Mo., 408.

The 1909 Revised Statutes, Sec. 8057, Subdiv. 19, provide that "whenever the word 'county' is used in any law, general in its character to the whole state, the same shall be construed to include the city of St. Louis, unless such construction be inconsistent with the evident intent of such law or of some law specially applicable to such city." (See *R. C.*, 1912, "Laws Specially Applicable to St. Louis," Sec. 410). This section is referred to or applied in the following cases. *Henderson vs. Koenig*, 168 Mo., 1. c. 363; *St. Louis vs. Clabby*, 88 Mo., 673; *State ex rel. vs. Dillon*, 87 Mo., 487; *State ex rel. vs. Wilder*, 198 Mo., 1. c. 173; *Bank vs. Umrath*, 55 Mo. App., 1. c. 48. *Rev. St.* 1899, p. 2562, Sec. 1 (Art XXV) provides that in certain cases moneys required to be paid out of the county treasuries shall in St. Louis be paid out of the city treasury; and *Rev. St.* 1909, Sec. 7633, enacts that respecting the statutes concerning justices of the peace and constables, "so far as applicable said city shall be considered as a county" and likewise a district in said city shall be held to be the same as a township in said chapter.

In *State ex rel. vs. Dillon*, 87 Mo., 491, the court says: "St. Louis is not by name a county, nor within the limits of any county. It is, for many purposes, throughout the statutes, treated as a county," but the case holds that the chapter on election laws relating to state officers which shall apply to St. Louis the "same as to counties" does not apply to those officers performing purely municipal functions, such as the mayor, and in the same case (p. 491) it is further said: "Many of the statutes are applied by the use of the word county. The general laws are in most cases designed to have and to take effect throughout the entire state. St. Louis, as we have seen, is not a county by name. Hence this paragraph, which is a part of the article of the general laws concerning the construction of statutes, declares that whenever the word county is used in any law, general in its character," etc.

The state statutes provide that "all laws requiring any officer of any county to perform any duty, service, or trust, under the laws of this state, shall include all corresponding city officers named in the charter and scheme of separation for the government of the city and county of St. Louis." *R. S.* 1899, Misc. Prov., Art. XXV., p. 2562, Sec. 3.

"Any act or duty authorized or required to be performed by the clerk of the county court shall be performed by the register of the said city of St. Louis, and the term 'county clerk' shall be construed to include the register, so far as the same relates to any, act or duty required to be performed in said city similar in character," etc. *R. S.* 1909, Sec. 8057, Subdiv. 18; and "all laws providing for the performance of any duty, service, or trust by any county clerk shall apply to the register of the city of St. Louis as if such office was specially named in such law, acts, or parts of acts." *R. S.* 1899, Art. XXV., p. 2562, Sec. 4 (see *State ex rel. vs. Tracy*, 94 Mo., 217; as to ordinances on register see *Rev. Code*, 1912, Secs. 2048-2055 and notes). With respect to justices of the peace and constables, *R. S.* 1909, Sec. 7633 provides that the duties and services concerning them required (in Chap. 28 of the *R. S.*) of the county clerk shall be performed by the register, and those by the county court by the mayor (except in case of a tie or contested election, as to which see *State ex inf. vs. Kramer*, 150 Mo., 89).

"All acts and parts of acts which provide for the performance of any duty or trust by any county court in this state, shall also include the municipal assembly and the mayor and comptroller of the city of St. Louis." *R. S.* 1899, Art. XXV., p. 2562, Sec. 2.

In the scheme, Sec. 24, it is provided that the municipal assembly (now

the Board of Aldermen) shall perform all functions (not otherwise provided for in the charter) which were formerly performed by the county court (see 127 Mo., l. c. 9).

By Sec. 34 of the scheme, powers then vested "in the county court of St. Louis county, or the clerk of said court, or the county collector or auditor, may be exercised by such tribunals or officers as may be provided by ordinance." Secs. 5, 6, and 18 provided for powers of sheriffs and marshal (see notes to said sections. Other officers were similarly treated (see scheme in general).

By the charter, Secs. 19 and 20 of Art. XV., the collector performs the duties with respect to the collection of the revenue formerly required by the county collector (except as modified by statute—see pages 348-349, R. C. 1912; and see Sec. 34, Art. V. of 1876 charter). And Sec. 11546, R. S. 1909 (see "Laws Specially Applicable to St. Louis," Chapter 26, Sec. 505) is to the same effect. Section 11547, R. S. 1909, "Laws Specially Applicable to St. Louis," Sec. 506, R. C. 1912,) provides that the council [now Board of Aldermen] shall with reference to the assessing and collecting of revenue in the city do those things performed by the county court, where not otherwise provided for in the scheme and charter. So by the 1876 charter, Art. V., Sec. 29, the comptroller was substituted for the county court in the general provisions respecting "land delinquent list," the "sale of land for taxes," and all other matters relating to the assessment books and tax bills, and he has those powers under the present charter by virtue of Art. XV., Sec. 16. Sec. 4 of Art. XVI. of the 1876 charter required the city counselor to perform the duties respecting street-opening cases which were looked after by the land commissioner prior to April 7, 1877; but under the present charter (Art. XXI.) this is under the jurisdiction of the Circuit Court. As to collection of railroad taxes, R. S. 1909, 11602, says that "all services required to be performed by county officers under this article shall be performed in the city of St. Louis by the corresponding officers of the city of St. Louis, and wherever the word 'county' occurs it shall be construed to include the city."

Speaking of these kind of provisions the court in the case of *State ex rel. vs. Powers*, 68 Mo., l. c. 324, said: "As the city government, authorized by the constitution for the city of St. Louis, is entirely different in its organization from that of the county . . . it became necessary to provide in the charter the requisite municipal agencies. . . . Proper officials were to be designated, the mode of their selection prescribed, and the duties which were previously performed by the officials designated in the general law were, by express enactment, to be imposed upon them," etc.

In *State ex rel. vs. Bus*, 135 Mo., l. c. 337, considering whether certain officers performed state, city, or county functions the court says: "While the city of St. Louis is strictly a municipal corporation its territory is also a sub-division of the state, in which officers are elected to perform the functions of the state government as distinguished from those pertaining to municipal government. Those officers are in no sense municipal officers. Their designation as officers of the city of St. Louis refers to their territorial jurisdiction rather than the governmental duties they perform. They are officers under the laws of the state and perform their duties within the city limits."

Section 9 of Art. XVI. of the 1876 charter was held to be void as inconsistent with the state law. *Badgley vs. St. Louis*, 149 Mo., 122. In lieu of it a statute was enacted authorizing the city to compel a plaintiff to bring in as co-defendant with the city one who is liable with the city on account of the same cause of action. *Laws*, 1901, p. 78 ("Laws Specially Applicable to St. Louis," as Sec. 246), cited in *Baker vs. St. Louis*, 189 Mo., 375.

ARTICLE I.

Corporate Name and Powers—Wards.

Section 1. The inhabitants of the City of St. Louis, as its limits now are or may hereafter be, shall be and continue a body corporate by name THE CITY OF ST. LOUIS, and as such shall have perpetual succession, may have a corporate seal, and sue and be sued.

Seal of St. Louis city: See Rev. Code, 1912, Sec. 2055.

(Register custodian of seal. Art. IX., Sec. 1.)

Boundaries, jurisdiction, etc.: The extension of the city to its present boundaries was expressly authorized by the constitution of Missouri: Art. IX., Sec. 20. "The authority conferred by that section on St. Louis was not the right of amendment, but was a grant to embrace in the charter it was authorized to frame for the first time other territory not then within its boundaries". *Kansas City vs. Stegmiller*, 151 Mo., loc. cit. 200, 201. See boundaries fixed in scheme, Sec. 1. Boundary on the east the Mississippi. See constitution, Art. I., Sec. 1: As to Mississippi being a public highway, obstruction of same by buildings or construction work in the river, extent of riparian ownership and rights, etc., see *State ex rel. vs. Longfellow*, 169 Mo., 109, and discussion; *Myers vs. St. Louis*, 82 Mo., 367; 8 Mo. App. 266, 113 U. S., 566; *St. Louis vs. Knapp Co.*, 104 U. S., 658, reversing 6 Fed., 221. Wharf boundaries and city ownership of wharf lands, see clause 16, Sec. 1, Art. I., and Art. XIII., Sec. 13, and Rev. Code, 1912, Sec. 1607, and following, and notes thereto. Jurisdiction over Mississippi between Missouri and Illinois. See *Sanders vs. N. O. Anchor Line*, 97 Mo., 26, and cases; *Swearingen vs. Steamboat*, 13 Mo., 519; *St. Louis vs. Rutz*, 138 U. S., 226. Owning lands by city outside of city limits, see *infra* Sec. 21 of scheme and note thereto. Taxation of lands beyond city limits, see note to charter, Art. XX. A city ordinance or a city contract designed for the city at large operates throughout its extent whatever the changes in its boundaries. *Gaslight Co. vs. St. Louis*, 46 Mo., 121. See, also, *Blair vs. Chicago*, 201 U. S., 1 c., 488-489 (*Chicago Traction Company case*).

As to right of state to determine the territorial limits of a municipality and alter or abrogate same, see *St. Louis vs. Russell*, 9 Mo., 503, 507; *McCormick vs. Railway*, 20 Mo. App., 640 and cases cited: *Forsythe vs. Hammond*, 166 U. S., 506; *Graham vs. Folsom*, 200 U. S., 248.

What considerations determine question whether an attempt of a city to extend its corporate limits is reasonable. *State ex rel. vs. Kansas City*, 233 Mo., 162.

It shall have power:

(1) To assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation.

See Art. XXV., Sec. 2.

(2) To adopt such classifications of the subjects and objects of taxation as may not be contrary to law.

(3) To make special assessments for local improvements.

See Art. XXII., Sec. 3.

See Art. XXIV., Sec. 3.

(4) To contract and be contracted with.

(5) To incur debts by borrowing money or otherwise, and to give any appropriate evidence thereof.

(6) To issue and give, sell, pledge or in any manner dispose of, negotiable or non-negotiable, interest-bearing or non-interest-bearing

ing bonds or notes of the city, upon the credit of the city, or solely upon the credit of specific property owned by the city, or solely upon the credit of income derived from and property used in connection with any public utility owned or operated by the city, or solely upon the credit of the proceeds of special assessments for local improvements, or upon any two or more of such credits.

See Art. XXIV.

(7) To expend the money of the city for all lawful purposes.

(8) To acquire or receive and hold, maintain, improve, sell, lease, mortgage, pledge or otherwise dispose of property, real or personal, and any estate or interest therein, within or without the city or state.

(9) To condemn private property, real or personal, or any easement or use therein for public use within or without the city or state.

See Art. XXI., Sec. 16.

(10) To take and hold property within or without the city or state upon trust; and to administer trusts.

(11) To acquire, construct, own, operate, and maintain or sell, lease, mortgage, pledge, or otherwise dispose of public utilities or any estate or interest therein, or any other utility of service to the city, its inhabitants, or any part thereof.

(12) To grant franchises for public utilities.

(13) To regulate the construction, maintenance, equipment, operation, service, rates, and charges of public utilities, and compel, from time to time, reasonable extensions of facilities for such service.

(14) To establish, open, re-locate, vacate, alter, widen, extend, grade, improve, repair, construct, reconstruct, maintain, light, sprinkle, and clean public highways, streets, boulevards, parkways, sidewalks, alleys, parks, public grounds and squares, wharves, bridges, viaducts, subways, tunnels, sewers, and drains and regulate the use thereof.

Establishment of streets, street openings, widenings, condemnation proceedings, etc. Art. XXI. and XXII. of charter, and notes and comments thereto appended.

Construction of streets, alleys, improvements, etc. Charter, Art. XXII., Secs. 3-13, 21-23, and of sewers *ib.*, Secs. 14-20.

Special tax bills for public improvements. Art. XXIII., and notes. Art. XXII., Sec. 23.

Street sprinkling. Art. XIII., Sec. 13.

Damages for change of grade. Art. XXII., Sec. 23, and notes.

Use of streets by electric companies for such purposes as telegraph and telephone poles, conduits, manholes, subways, etc. Notes to Rev. Code, 1912, Secs. 1158, 1243, 1259, 1252, in connection with the ordinances on the subject.

What included in terms street, alley, highway, etc. Note to Art. XXII., Sec. 2.

Condemnation, dedication, diversion to different use, ownership of fee in streets, and interests of abutting owners. Notes to Art. XXI.

Improvements of streets, etc. Art. XXII.

For what purposes streets may be used—the use of the streets must be a public one—appropriation to private use is void—temporary obstructions,

when permitted. The state holds a proprietary right in roads and streets in trust for the people; and to perform the trust the legislative authority is allowed such control that it may authorize structures to be built therein for the public use, even if some kinds of travel are thereby impeded. *Morie vs. Transit Co.*, 116 Mo. App., 1. c. 22.

A legislative grant to a city for power "to provide for lighting the streets" and to "care for and control the streets" will not warrant a grant by the city to a business corporation of the right to use the streets of the city forever for the purpose of conducting a general lighting business. *Omaha Electric Light and Power Co. vs. Omaha*, 179 Fed., 455.

A city having granted to a corporation an exclusive franchise to furnish lights to the city and its inhabitants for a given term, can not legally enter into competition with the company before the expiration of the term. *Monett E. L. & P. Co. vs. Monett*, 186 Fed., 360.

The right of the public to the free and unrestricted use is subject to reasonable limitations and restrictions, such for instance as delivery of fuel, goods, etc.; temporary obstructions of this kind are not invasions of the public easement, but incidents to or limitations of it, and can be justified when, and only so long as, they are reasonably necessary; and when unreasonably prolonged or done, such obstruction is unlawful. As to right to temporary obstructions of streets and highways, see note to Rev. Code, 1912, Sec. 1122, and authorities there cited. Many structures in the streets may be justified under legislative or municipal sanction which would otherwise be a nuisance. *Seibert vs. Railroad*, 188 Mo., 657, 1. c. 670; *Morie vs. Transit Co.*, 116 Mo. App., 12, and authorities; *Belcher S. & R. Co. vs. St. L. G. E. Co.*, 101 Mo., 1. c., 204.

The legislature has paramount authority over all public highways, no matter how acquired, which it has to a large extent delegated to the city of St. Louis over the streets therein; the power to regulate the use is not limited to a mere right of way, but extends to all beneficial uses which the public good and convenience may from time to time require. New uses for streets and highways are constantly arising. As civilization advances new uses may be found expedient. All these and many others may be made of the streets without the consent of the lot owners. Private rights must yield to them, without compensation. *Ferrenbach vs. Turner*, 86 Mo., 1. c. 419; *Julia Bldg Co. vs. Bell Tel. Co.*, 88 Mo., 258; *St. Louis vs. Bell Tel. Co.*, 96 Mo., 623; *W. U. Tel. Co. vs. Guernsey Light Co.*, 46 Mo. App., 120, 134; *Laclede Gas Co. vs. Murphy*, 170 U. S., 78. The words "to regulate the use thereof" are of broad import and confer comprehensive powers on the city. *Sluder vs. Transit Co.* 189 Mo., 107, 129; *St. Louis vs. West. Un.*, 149 U. S., 1. c. 469.

Gas, water, sewer pipes and the like are proper uses. *Ferrenbach vs. Turner*, 86 Mo., 1. c. 420. Stepping stones, hitching posts, etc. *Wolff vs. Dist. Col.*, 196 U. S., 152, and cases cited; but see *Fischer vs. St. Louis*, 189 Mo., 567. In *N. O. Gas Co. vs. Drainage Com'rs*, 197 U. S., 1. c. 461, the court says that "the need of occupation of soil beneath the streets in cities is constantly increasing for the supply of water and light and the construction of systems of sewerage and drainage," etc.

So of telephone and telegraph poles and wires, underground conduits, manholes, and subways. See cases cited in note to Sec. 1158 of Rev. Code, 1912.

Where the proposed extension by ordinance would end in a blind street or cul de sac, and for that reason not for a public use, it may be shown that another extension is proposed, to connect with the former so as to make a through street. *Kansas City vs. Hyde*, 196 Mo., 498.

The city may devote streets to public travel in a manner different from that in which it has before been used, so as to construct thereon an approach to a bridge over railroad tracks. *St. Louis vs. Terminal R. R. Assn.*, 211 Mo., 366.

A bridge from St. Louis to Illinois across the Mississippi river is a proper highway for a municipality to provide. *Haeussler vs. St. Louis*, 205 Mo., 656.

As to what is a bridge across railroad tracks within the meaning of a contract between the city and a railroad, see *St. Louis vs. Railroad*, 228 Mo., 712.

The streets and highways, whether dedicated or condemned, are held by the public authorities in public trust, primarily for the free and common use of the whole public, with special privileges to none, and secondarily for the benefit of abutting property owners to afford access to their property. *Corby vs. Railroad*, 150 Mo., 1. c. 468.

The public highways belong, from side to side and end to end, to the public, and the public are entitled to free passage along any portion of them. *State ex rel. vs. St. Louis*, 161 Mo., 1. c. 383, quoting from prior decisions. *Schopp vs. St. Louis*, 117 Mo., 131, 136-137; *Loth vs. Columbia Theatre*, 197 Mo., 328 (citing numerous authorities); *State ex rel. vs. Vandalia*, 119 Mo. App., 406, 417, and cases there cited.

Hence an ordinance the effect of which is to subject a street to the advertising of individual business of one person, by providing for placing boxes for waste matter on the streets, with the exclusive privilege of advertising thereon by the contractor, is void. *State ex rel. vs. St. Louis*, 161

Mo., 371. So also where the advertisement takes the form of a permanent balcony supported by posts in the streets; but a sign by an abutting owner so high as not to interfere with the public easement, and securely fastened, is not a nuisance per se. *Loth vs. Columbia Theatre*, 197 Mo., 328 (discussing numerous authorities as to when and what obstructions in the streets are unlawful). A city can not authorize the occupation of a part of a main street by a structure containing farm scales and a corn-sheller operated by machinery, so that travel on that side is impeded; or to withdraw a portion of a street from public use by authorizing the construction of a market house thereon privately controlled. *City vs. Peters*, 126 Mo., 26; *State ex rel. vs. Vandalia*, 119 Mo. App., 406 (holding such structure a nuisance). The city has no power by ordinance to lease out portions of the street for huckster or produce stands. *Schopp vs. St. Louis*, 117 Mo., 131, 136. *Railway Co. vs. Ins. Co.*, 154 U. S., 515 (holding a lease of a street void, though its declivity was such as to be of little use to the public). Private scales are not a public purpose and can not be maintained in the street. *Coal Co. vs. Coal Co.*, 62 Mo. App., 93. Nor can the city of St. Louis "vacate" a street by ordinance for a certain time during which period it is to be used by a private concern, and thereafter again to be used as a street. *Glasgow vs. St. Louis*, 87 Mo., 678. The city can not create a street in the name of the public for the purpose of vacating it in the interest of whom it may concern, nor to establish a street or a system of streets at the expense of the property owners in the district for the use of a private individual or a number of individuals. *Kansas City vs. Hyde*, 196 Mo., 498. Nor will the power in the charter authorize an ordinance that houses fronting on a certain street shall be used for residence purposes only. *St. Louis vs. Dorr*, 145 Mo., 466, 472, 485.

Unauthorized obstruction of a street or highway is a nuisance. See discussion and authorities in introductory note to Sec. 787, Rev. Code, 1912. See, also, charter, Art. XIII., Sec. 14 (a), and ordinances Rev. Code, 1912, Secs. 1126 et seq.

Steam railroads in a street, sidewalk, or alley so narrow or so operated that the use of the street by the railroads will destroy the use of the street by the public as a highway, are nuisances, and an ordinance purporting to permit such use or confer such right is void because an appropriation of a street to inconsistent uses and as destroying the rights of the abutting property holders, and injunctive relief may be had. *State ex rel. vs. Railroad*, 206 Mo., 251; *Lockwood vs. Wabash*, 122 Mo., 86, and cases cited; *Dubach vs. Railway*, 89 Mo., 483; *Morie vs. Transit Co.*, 116 Mo. App., 1. c. 23 et seq., citing numerous authorities; *Lackland vs. Railroad*, 31 Mo., 181; *Lumber Co. vs. Railroad*, 129 Mo., 455 (sidewalk obstruction—awarding injunction); *Corby vs. Railroad*, 150 Mo., 457 (alley—same) citing authorities; *Knapp, Stout & Co. vs. Railroad*, 126 Mo., 26; *Sherlock vs. Railroad*, 142 Mo., 172. Nor can the city condemn private property for a street in order afterwards to give it over to a railroad to be used for switches. *Kansas City vs. Hyde*, 196 Mo., 498.

But a switch, part of the road, is not a private use but a public one. *Knapp, Stout & Co. vs. Ry.*, 126 Mo., 26; *Brown vs. Railway*, 137 Mo., 529.

Unless it be shown that the use by the steam road will practically destroy the use of the street by the public the ordinance authorizing such use will not be held void although in the more recent cases the tendency is toward more strictness against the railways. *Seibel-Suessdorf Co. vs. Railway Co.*, 230 Mo., 59; *Morie vs. St. Louis Transit*, 116 Mo. App., 1. c. 25, citing authorities, especially *Sherlock vs. Ry.*, 142 Mo., 172; and see *DeGeofroy vs. Merchants' Bridge*, 179 Mo., 698; *St. Louis Transfer vs. Merchants' Bridge*, 111 Mo., 666; *Brown vs. Ry.*, 137 Mo., 529; *Randle vs. Ry.*, 65 Mo., 325.

Nor can the city authorize a private steam road to use the street for private purposes. *Glaessner vs. Anheuser-Busch*, 100 Mo., 508; *Brown vs. Ry.*, 137 Mo., 1. c. 537.

See further as to when steam railroads are nuisances in the streets, note to Secs. 787 et seq., R. C. 1912 on "Nuisances."

The rights of abutting owners as affected by steam roads is fully discussed and the authorities collated in *DeGeofroy vs. Merchants' Bridge Co.*, 179 Mo., 698, and it is held that no action lies where the road is built on the grade (only on the doctrine of stare decisis), but that an action lies where the road is not built on the grade or street level. The court holds the tendency to be toward more liberal relief against railroads in favor of property holders and that if the question were new damages could be recovered even if the road be on the grade.

Street railways in the streets, however, are not in all respects governed by the considerations applicable to steam roads in the streets, and the decisions above cited relating to the latter do not apply to street railways unless the tracks of such street roads are so defectively or peculiarly constructed as to prevent the current use of the highway by the public in the ordinary course of travel. *Placke vs. U. D. Co.*, 140 Mo., 634, 637. (See, also, discussion in *Morie vs. Transit Co.*, 116 Mo. App., 12, 25, and cases cited. The same principle applies to street as to steam roads. *Nagel vs. Street Railway*, 167 Mo., 89, 97. See as to the difference between the power of the

city over steam and street roads. *State ex rel. vs. Corrigan*, 85 Mo., 263, 275, and cases cited.

A street-car company (like a steam road) must lay its tracks on the street level or be liable to abutting owners for damages. *Farrar vs. Electric Co.* 101 Mo. App., 140. See *Rev. St.*, 1909, Secs. 9494-9497, providing for assessment of damages before the grant by any city of a franchise to any elevated, underground, or other street railway on, over, or under any street, etc. This act applies to surface street railways. *Ruckert vs. Grand Ave. Ry.*, 163 Mo., 1 c. 276, but it confers no right to damages where none would exist before its enactment. *Nagel vs. Lindell*, 167 Mo., 89, 98; *Ruckert vs. Grand Ave. Ry.*, *supra*. The right of the public over the highway is paramount; so that the city, when changing conditions and increasing travel in a navigable stream under which the street car company operates through a tunnel make it necessary, may require the company at its own expense to lower such tunnel and increase thereby the depth of the water. *West Chicago Ry. vs. Chicago*, 201 U. S., 506.

The city has no power to confer on one street car company the exclusive use of a street for its own business; and other companies, on making just compensation, can not be excluded from using its tracks. *Art. XIX, Sec. 5, Rev. Code*, 1912, Secs. 2411-2416. *Grand Ave. Ry. vs. Citizens' Ry.*, 148 Mo., 1 c. 672, and case cited; *Railway vs. Railway*, 132 Mo., 34, 43 and cases cited.

As to the rights and powers of the city over street railways, see *Art. XIX.*; *Rev. Code*, 1912, Secs. 2379 and following.

Temporary closing of street. A city has the right, for reconstruction purposes, totally or partially to interrupt the use, by the public, of a street. *Phelan vs. Paving Co.*, 227 Mo., 666.

If the street is partially closed the traveler may use the unclosed part under limitations and warnings of danger based on physical facts apparent to him. *Phelan vs. Paving Co.*, 227 Mo., 666.

Where the city does so, and in so doing renders the street dangerous, it is under obligation to exercise ordinary care in providing adequate danger signals. *Ahlfeldt vs. Mexico*, 129 Mo. App., 193.

Vacating streets. The city has power to vacate by ordinance a street or part thereof. *John K. Cummings Realty & Investment Co. vs. Deere Plow Co.*, 208 Mo., 66, 79.

If ordinance vacating street is void, the use of the street by person for whose benefit ordinance was passed is a public nuisance. *John K. Cummings Realty & Investment Co.*, 208 Mo., 66, 80, 85.

A street can not in one ordinance be lawfully "vacated" for a definite period after which it is again to become a street. *Glasgow vs. St. Louis*, 87 Mo., 678, 682. A street can not be created for the purpose of vacating it in the interest of whom it may concern. *Kansas City vs. Hyde*, 196 Mo., 498.

A street once vacated can not be reopened without new condemnation proceedings. *A. T. & S. F. Ry. Co. vs. City of Shawnee*, 183 F., 85.

The question whether or not a street or alley shall be vacated is wholly within the legislative discretion of the board of aldermen, with which (in the absence of fraud) the courts can not interfere. *Knapp, Stout & Co. vs. St. Louis*, 156 Mo., 343; *Glasgow vs. St. Louis*, 107 Mo., 198; *John K. Cummings Realty & Investment Co.*, 208 Mo., 66, 88. As to what is fraud in vacating street see *Kansas City vs. Hyde*, *supra*.

Quaere. Whether an ordinance may require the party for whose benefit a street is vacated to pay for the vacation. *Realty and Investment Co. vs. Deere & Co.*, 208 Mo., 66.

Only an abutting owner can complain. *Knapp, Stout & Co. vs. St. Louis*, 156 Mo., 343; 153 Mo., 560; *Glasgow vs. St. Louis*, 107 Mo., 198; *John K. Cummings Realty & Investment Co.*, 208 Mo., 66, 86-87; *Bailey vs. Culver*, 84 Mo., 531; *Rude vs. St. Louis*, 93 Mo., 408; *Fairchild vs. St. Louis*, 97 Mo., 85; *Heinrich vs. St. Louis*, 153 Mo., 560; 156 Mo., 353.

When a street is vacated the abutting owners take the land free from the former easement. *Thomas vs. Hunt*, 134 Mo., 403.

A highway can not be in effect vacated by way of estopping the city from claiming it to be public property because included in an action to condemn private land for public use. *Moses vs. St. L. Sect. Dock Co.*, 84 Mo., 1 c. 246-247.

For the vacation of a street or alley the abutting owner is entitled to recover any special damage he may suffer thereby. His right is a property right, and the vacation is subject to the constitutional provision against taking or damaging private property without just compensation, for which the courts will furnish him an adequate remedy, but not always an injunction. *Christian vs. St. Louis*, 127 Mo., 109; *Heinrich vs. St. Louis*, 125 Mo., 424 (discussing the lot owner's right to damages).

An ordinance, it was said, declaring an alley vacated is insufficient, because the abutting property owners have rights which could not be taken from them by the mere passage of an ordinance. *Mitchell vs. Railroad*, 116 Mo. App., 81, 88. Upon vacation of a street or alley the title reverts to the

abutting property owners: *Ib.*; see also note under Art. XXII. as to rights of abutting owners.

Liability for damages for negligent operations in connection with its municipal bridge. *City of Winona vs. Botzel*, 169 F., 321.

Control over sewers. The provision of Art. III., Sec. 26, Clause 2, "to regulate the use thereof" of the 1876 charter authorized an ordinance (now Sec. 1392 of Rev. Code, 1912) requiring payment of a special tax bill before a lot owner may get connection therewith. *Hill vs. St. Louis*, 159 Mo., 159. Sec. 20, Art. XXII., of the new charter is even clearer authority therefor. A city's right to lay sewers necessary for the public health is paramount to a company's right to water pipes laid in pursuance of an ordinance. *Nat'l Water Works Co. vs. Kansas City*, 28 Fed., 921; *New Orleans Gas Co. vs. Drainage Com'rs*, 197 U. S., 453 (maintaining the city's right to compel change of location at the company's expense.)

As to sewers and special tax bills therefor, see Art. XXII., Secs. 14-23 and Art. XXIII. and notes thereto.

Liability for damages caused by laying of sewer. See *Johnson vs. City of St. Louis*, 172 Fed., 31.

(15) To acquire, provide for, construct, regulate, and maintain and do all things relating to all kinds of public buildings, structures, markets, places, works, and improvements.

City Hall. See ordinance and note thereto in Rev. Code, 1912, Sec. 270.

Workhouse. See notes and cases cited under ordinances relating thereto in Rev. Code, 1912, Secs. 1970 to 2012, inclusive.

Poorhouse (Infirmary). See Rev. Code, 1912, Secs. 1036 et seq., and notes. **Insane Asylum (Sanitarium).** See Rev. Code, 1912, Secs. 1017 et seq., and notes thereto; also scheme, Sec. 10; Charter, Art. XIII., Sec. 14 (b).

Engine houses. See ordinances on fire department, Rev. Code, 1912, Secs. 557 et seq. See Art. XIII., Sec. 15 (c), and on fire telegraph department, see Rev. Code, 1912, Secs. 577-591.

Market places. Art. XIII., Sec. 14 (b). See comments and cases appended to ordinances on the subject. (Rev. Code, 1912, Secs. 2477 to 2548, inclusive, and especially to heading preceding Sec. 2477.)

Meat shops. See ordinances and notes, Rev. Code, 1912, Secs. 2535 to 2542.

Parks. Art. XIII., Sec. 14 (c). See notes and references to ordinances and cases at pages 398-400 R. C., 1912. See also Rev. Code, 1912, note to heading Chap. 19, Secs. 1539 et seq.

(16) To provide and maintain a harbor and wharves and regulate the use thereof, and impose wharfage and other charges therefor; license and regulate ferries and other boats; grant ferry privileges and regulate ferry charges; rent or lease for not exceeding twenty-five years portions of the wharf for any purpose tending to facilitate the trade of the city.

See Art. XIII., Sec. 13 as to repairs.

For harbor and wharf regulations, boundaries, offenses, etc., see ordinances and the comments and cases cited in notes appended thereto, in Rev. Code, 1912, Secs. 1607 to 1633.

For wharfage rates, leases, etc., see notes and comments in Rev. Code, 1912, Secs. 1634 to 1643. Note to Sec. 1639 thereof treats of leasing unimproved portions of the wharf, etc., by the city; and note to 1912 Rev. Code, Chap. 20, heading of Art. III. treats of right to collect wharfage.

For wharfboat regulations, license, etc., see ordinances Rev. Code, 1912, chapter 20, Art. IV., Secs. 1644-1652.

For ordinances on wood, see *ib.*, Art. V., Secs. 1653 to 1664.

Scavenger dumps, see *ib.*, Art. VI., Secs. 1665-1673.

For ferry regulations, license, etc., and power of city over ferries, see comments and cases in notes to ordinance on ferries in Rev. Code, 1912, chapter 20, Art. VII., Secs. 1674-1697, particularly Sec. 1674 thereof.

For ordinances relating to harbor and wharf commissioner, see Rev. Code, 1912, Sec. 1597-1605; employees: Secs. 1598, 1600-1602, 1672.

Grant by city to railroad company of right to lay tracks on public wharf is valid, but use under grant must be subsidiary and subservient to the use of wharf for river traffic. *State ex rel. vs. Dreyer*, 229 Mo., 201.

(17) To improve water courses and regulate the use thereof.

(18) To establish, impose and enforce water rates and rates and

charges for public utilities or other service, products or conveniences operated, rendered, or furnished by the city.

See Art. XIII., Sec. 13.

(19) To provide and maintain a sanitary system.

See Art. XIII., Sec. 14 (a).

(20) To provide and maintain a fire department.

(21) To provide and maintain police and excise departments when permitted by law.

(22) To collect and dispose of sewage, offal, ashes, garbage, and refuse, or to license and regulate such collection and disposal.

(23) To license and regulate all persons, firms, corporations, companies, and associations engaged in any business, occupation, calling, profession, or trade.

See Art. XX.

(24) To impose a license tax upon any business, vocation, pursuit, calling, animal, or thing.

See Art. XX.

Mile tax on street-car passengers. City of St. Louis vs. United Railways Co., 210 U. S., 266, 52 L. Ed., 1054; 220 U. S., 607, 55 L. Ed., 607. See note at page 1019 R. C. 1912.

Lawyers and doctors. R. S. 1909, Sec. 8532, forbids the imposition of a license tax upon lawyers, doctors, teachers and clergymen. Cases prior thereto: St. Louis vs. Sternberg, 69 Mo., 289; St. Louis vs. Laughlin, 49 Mo., 559.

Architects. St. Louis vs. Herthel, 88 Mo., 128.

Sewing machine agents. St. Louis vs. Bowler, 94 Mo., 630.

Auctioneers. Rev. Code, 1912, Secs. 2099-2109.

Bankers, brokers, and insurance companies. Rev. Code, 1912, Secs. 2110-2117, and notes.

Foreign insurance companies. Rev. Code, 1912, Sec. 2261.

Commission merchants and merchandise brokers. Rev. Code, 1912, Secs. 2118-2122.

Dramshops. See notes to Rev. Code, 1912, heading, and accompanying Secs. 2123-2136. This subject is now governed by state statutes. "Laws, Specially Applicable to St. Louis," Sec. 248, and following, and notes thereto. As to keeping saloons open on Sunday under old charter, State vs. Binder, 38 Mo., 451.

Electric batteries. Rev. Code, 1912, Secs. 2145 to 2147.

Fortune-tellers and astrologists. Rev. Code, 1912, Secs. 2148-2151.

Merchants license tax. Rev. Code, 1912, Secs. 2175 to 2186. As to who is a merchant and situs of a sale and when power to require license exists, see in general Canton vs. McDaniel, 138 Mo., 207, and cases cited; Kansas City vs. Grush, 151 Mo., 128.

Uniformity of tax. Aurora vs. McGannon, 138 Mo., 38.

Manufacturers. Rev. Code, 1912, Secs. 2164-2174, and notes.

Hawkers and peddlers. Rev. Code, 1912, Secs. 2200-2211, and see comments and references to cases there cited. See also St. Louis vs. Meyer, 185 Mo., 533.

House and real estate agents and brokers. Rev. Code, 1912, Secs. 2155-2157, and cases and comments in the notes thereto.

Hotels and boarding houses. See notes and ordinances Rev. Code, 1912, Secs. 2152-2154.

Hotel runners. Secs. 2217 et seq., R. C. 1912.

Intelligence offices. Rev. Code, 1912, Secs. 2158-2162.

Ordinaries or restaurants. Rev. Code, 1912, Secs. 2187-2189.

Pawnbrokers. Rev. Code, 1912, Secs. 2190-2199, and note to heading of that article.

Railroad ticket brokers. Secs. 2212-2216, 1912 R. C.

Steamboat, railroad, and hotel runners. Rev. Code, 1912, Secs. 2217-2227.
Horse and cattle dealers, stockyards, sales stables, etc. See ordinances and notes, Rev. Code, 1912, Secs. 2228-2237.

Street railway cars and companies. See full note and comments, and references to heading of Art. XX. of Chapter 31, Rev. Code, 1912, and of the ordinances in connection therewith, viz.: Secs. 2238-2245; also Secs. 2379-2420.

Steam railways. Rev. Code, 1912, Sec. 2367, and note to heading of that article.

Vault cleaners. Rev. Code, 1912, Secs. 2246-2250.

Sundry vocations, engraver, lithographer, photographer, mercantile agent (see note on merchandise), **keeper of billiard table, pool table, pistol gallery, shooting gallery.** See ordinances thereon in Rev. Code, 1912, Sec. 2251.

Fruit auctioneer. Rev. Code, 1912, Sec. 2263.

Ferries. Rev. Code, 1912, Secs. 1674-1676 and notes thereto.

Engineers. Rev. Code, 1912, Sec. 2065.

Bawdy houses. See note to Rev. Code, 1912, Sec. 2552.

Livery stables. Rev. Code, 1912, Sec. 828, and note and Secs. 829 and 2237.

Meat shops and market places. Rev. Code, 1912, Secs. 2477-2542.

Street vendors. A license to follow this vocation does not carry with it the right to erect and maintain in a street a structure that would obstruct travel. *Galloso vs. Sikeston*, 124 Mo. App., 380.

Vehicles, wagons, etc. Ordinances and notes thereto, Rev. Code, 1912, Secs. 2328 et seq.

Automobiles, motorcycles, etc. Rev. Code, 1912, Sec. 2329-2330.

Theater, show, billposters, exhibitions, and amusements. Rev. Code, 1912, Secs. 2251, 2636-2642; as to theaters, see also Secs. 479 et seq., 494-495.

Junk shop, rag-picking, roundabout, etc. Rev. Code, 1912, Secs. 2649, 2650, 2163.

City weighers. Rev. Code 1912, Sec. 1774.

Lumber measurers. Rev. Code, 1912, Sec. 1781.

(25) To define and prohibit, abate, suppress, and prevent or license and regulate all acts, practices, conduct, business, occupations, callings, trades, uses of property, and all other things whatsoever detrimental or liable to be detrimental to the health, morals, comfort, safety, convenience, or welfare of the inhabitants of the city and all nuisances and causes thereof.

See Art. XIII., Sec. 14 (a).

(26) To prescribe limits within which business, occupations and practices liable to be nuisances or detrimental to the health, morals, security, or general welfare of the people may lawfully be established, conducted, or maintained.

(27) To inspect, test, measure, and weigh any article of consumption or use within the city.

(28) To establish, regulate, license, and inspect weights and measures.

See Art. XIII., Sec. 15 (d).

(29) To regulate the construction and materials of all buildings and structures; and to inspect all buildings, lands and places as to their condition for health, cleanliness, and safety, and when necessary prevent the use thereof and require any alterations or changes necessary to make them healthful, clean, or safe.

See Art. XIII., Sec. 14 (a).

(30) To abolish or prevent grade crossings and provide for safe crossings and compel any street, steam, electric railroad, or other

transportation company or companies affected thereby to pay all or a part of the cost thereof.

(31) To provide for the support, maintenance, and care of children and sick, aged, or insane poor persons, and paupers.

(32) To provide and maintain charitable, educational, recreative, curative, corrective, detentive, or penal institutions, departments, functions, facilities, instrumentalities, conveniences, and services.

See Art. XIII., Sec. 14.

(33) To do all things whatsoever expedient for promoting or maintaining the comfort, education, morals, peace, government, health, welfare, trade, commerce, or manufactures of the city or its inhabitants.

See Art. XIII., Sec. 14 (e).

(34) To enforce any ordinance, rule or regulation by means of fines, forfeitures, penalties, and imprisonment or by action or proceeding in its own courts or in any other court of competent jurisdiction or by any one or more of such means, and to impose costs as a part thereof.

(35) To exercise all powers granted or not prohibited to it by law or which it would be competent for this charter to enumerate.

Sec. 2. The enumeration of particular powers in this charter is not exclusive of others, nor restrictive of general words or phrases granting powers, nor shall a grant or failure to grant power in this article impair a power granted in any other part of this charter; and whether powers, objects, or purposes are expressed conjunctively or disjunctively they shall be construed so as to permit the city to exercise freely any one or more such powers as to any one or more such objects for any one or more such purposes.

Sec. 3. The city is hereby divided into twenty-eight wards, bounded and numbered as the wards of the city now are; provided, that from time to time corrected ward boundaries may be established by ordinance which shall comprise, as nearly as practicable, compact and contiguous territory within straight lines, and contain as nearly as may be the same number of registered voters.

Ward boundaries. By ordinance No. 24734 the city of St. Louis shall be divided into twenty-eight wards, the boundaries of which shall be as follows:

First Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite the north line of the present city limits; thence in a direct line to the north boundary of the city of St. Louis, thence in a westerly and southwesterly direction with the city limits to the Wabash railroad, with the Wabash railroad to Broadway, with Broadway to Calvary avenue, with Calvary avenue to Florissant avenue, with Florissant avenue to Harris avenue, with Harris avenue to Algernon street, with Algernon street to Fair avenue, with Fair avenue to Florissant avenue, with Florissant avenue to Warne avenue, with Warne avenue to Carter avenue, with Carter avenue to Obear avenue, with Obear avenue to Florissant avenue, with Florissant avenue to Angelica street, with Angelica street and Angelica street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel of the river to the place of beginning.

Second Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Angelica street; thence in a direct line to and with Angelica street to Florissant avenue, with Florissant avenue to Glasgow avenue, with Glasgow avenue to Harper street, with Harper

street to Thompson avenue, with Thompson avenue to Natural Bridge road, with Natural Bridge road to Farrar street, with Farrar street to Twenty-fifth street, with Twenty-fifth street to Hebert street, with Hebert street to Eleventh street, with Eleventh street to St. Louis avenue, with St. Louis avenue to Broadway, with Broadway to Wright street, with Wright street to Second street, with Second street to St. Louis avenue, with St. Louis avenue and St. Louis avenue extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to the place of beginning.

Third Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of St. Louis avenue; thence in a direct line to and with St. Louis avenue to Second street, with Second street to Wright street, with Wright street to Broadway, with Broadway to St. Louis avenue, with St. Louis avenue to Eleventh street, with Eleventh street to Hebert street, with Hebert street to Twentieth street, with Twentieth street to Benton street, with Benton street to Nineteenth street, with Nineteenth street to Malden lane, with Malden lane to Hogan street, with Hogan street to Mullanphy street, with Mullanphy street to Sixteenth street, with Sixteenth street to Chambers street, with Chambers street to Fifteenth street, with Fifteenth street to Madison street, with Madison street to Blair avenue, with Blair avenue to Chambers street, with Chambers street to Thirteenth street, with Thirteenth street to Tyler street, with Tyler street and Tyler street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Fourth Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Tyler street; thence in a direct line to and with Tyler street to Thirteenth street, with Thirteenth street to Chambers street, with Chambers street to Blair avenue, with Blair avenue to Madison street, with Madison street to Fifteenth street, with Fifteenth street to Chambers street, with Chambers street to Sixteenth street, with Sixteenth street to Mullanphy street, with Mullanphy street to Hogan street, with Hogan street to Cass avenue, with Cass avenue to Twenty-second street, with Twenty-second street to O'Fallon street, with O'Fallon street to Twenty-third street, with Twenty-third street to Division street, with Division street to Twenty-second street, with Twenty-second street to Carr street, with Carr street to Sixteenth street, with Sixteenth street to Biddle street, with Biddle street to Fourteenth street, with Fourteenth street to O'Fallon street, with O'Fallon street to Thirteenth street, with Thirteenth street to Carr street, with Carr street to Eleventh street, with Eleventh street to Wash street, with Wash street to Fourth street, with Fourth street to Carr street and Carr street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Fifth Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Carr street; thence in a direct line to and with Carr street to Fourth street, with Fourth street to Wash street, with Wash street to Eleventh street, with Eleventh street to Carr street, with Carr street to Thirteenth street, with Thirteenth street to O'Fallon street, with O'Fallon street to Fourteenth street, with Fourteenth street to Biddle street, with Biddle street to Sixteenth street, with Sixteenth street to Carr street, with Carr street to Twenty-second street, with Twenty-second street to Pine street, with Pine street to Fifteenth street, with Fifteenth street to Locust street, with Locust street to Fourteenth street, with Fourteenth street to St. Charles street, with St. Charles street to Thirteenth street, with Thirteenth street to Market street, with Market street to Twelfth street, with Twelfth street to Pine street, with Pine street to Seventh street, with Seventh street to Market street, with Market street and Market street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Sixth Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Market street; thence in a direct line to and with Market street to Seventh street, with Seventh street to Pine street, with Pine street to Twelfth street, with Twelfth street to Market street, with Market street to Thirteenth street, with Thirteenth street to St. Charles street, with St. Charles street to Fourteenth street, with Fourteenth street to Locust street, with Locust street to Fifteenth street, with Fifteenth street to Pine street, with Pine street to Jefferson avenue, with Jefferson avenue to West Jefferson avenue, with West Jefferson avenue to Missouri Pacific railroad, with Missouri Pacific railroad and Cerre street to Fourth street, with Fourth street to Plum street, with Plum street and Plum street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Seventh Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Plum street; thence in a direct line to and with Plum street to Fourth street, with Fourth street to Cerre street, with Cerre street and the Missouri Pacific railroad to Twenty-second street, with Twenty-second street and Armstrong avenue to Hickory street,

with Hickory street to Mississippi avenue, with Mississippi avenue to Park avenue, with Park avenue to Thirteenth street, with Thirteenth street to Rutger street, with Rutger street and Rutger street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Eighth Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Rutger street; thence in a direct line to and with Rutger street to Thirteenth street, with Thirteenth street to Park avenue, with Park avenue to Dolman street, with Dolman street to Lafayette avenue, with Lafayette avenue to Eighteenth street, with Eighteenth street to Geyer avenue, with Geyer avenue to Eleventh street, with Eleventh street to Lafayette avenue, with Lafayette avenue to Tenth street, with Tenth street to Emmett street, with Emmett street to Ninth street, with Ninth street to Geyer avenue, with Geyer avenue to Eighth street, with Eighth street to Allen avenue, with Allen avenue to Seventh street, with Seventh street to Ann avenue, with Ann avenue to Broadway, with Broadway to Trudeau street, with Trudeau street to Second street, with Second street to North Trudeau street, with North Trudeau street and North Trudeau street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Ninth Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of North Trudeau street; thence in a direct line to and with North Trudeau street to Second street, with Second street to Trudeau street, with Trudeau street to Broadway, with Broadway to Ann avenue, with Ann avenue to Seventh street, with Seventh street to Allen avenue, with Allen avenue to Eighth street, with Eighth street to Geyer avenue, with Geyer avenue to Ninth street, with Ninth street to Emmett street, with Emmett street to Tenth street, with Tenth street to Lafayette avenue, with Lafayette avenue to Eleventh street, with Eleventh street to Geyer avenue, with Geyer avenue to Dolman street, with Dolman street to Allen avenue, with Allen avenue to Eighteenth street, with Eighteenth street to Russell avenue, with Russell avenue to Dolman street, with Dolman street to Ann avenue, with Ann avenue to Eighteenth street, with Eighteenth street to Lynch street, with Lynch street to Thirteenth street, with Thirteenth street to Pestalozzi street, with Pestalozzi street to Seventh street, with Seventh street to Arsenal street, with Arsenal street and Arsenal street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Tenth Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Arsenal street; thence in a direct line to and with Arsenal street to Seventh street, with Seventh street to Pestalozzi street, with Pestalozzi street to Thirteenth street, with Thirteenth street to Lynch street, with Lynch street to Jefferson avenue, with Jefferson avenue to Arsenal street, with Arsenal street to California avenue, with California avenue to Utah street, with Utah street to Iowa avenue, with Iowa avenue to Potomac street, with Potomac street to Ohio avenue, with Ohio avenue to Chippewa street, with Chippewa street to Jefferson avenue, with Jefferson avenue to Winnebago street, with Winnebago street to Stansbury street, with Stansbury street to Broadway, with Broadway to Salena street, with Salena street to Winnebago street, with Winnebago street to Marine avenue, with Marine avenue to Keokuk street, with Keokuk street and Keokuk street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Eleventh Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Keokuk street; thence in a direct line to and with Keokuk street to Marine avenue, with Marine avenue to Winnebago street, with Winnebago street to Salena street, with Salena street to Broadway, with Broadway to Stansbury street, with Stansbury street to Winnebago street, with Winnebago street to Jefferson avenue, with Jefferson avenue to Chippewa street, with Chippewa street to Ohio avenue, with Ohio avenue to Potomac street, with Potomac street to Iowa avenue, with Iowa avenue to Utah street, with Utah street to California avenue, with California avenue to Arsenal street, with Arsenal street to Grand avenue, with Grand avenue to Chippewa street, with Chippewa street to Nebraska avenue, with Nebraska avenue to Osceola street, with Osceola street to Minnesota avenue, with Minnesota avenue to Delor street, with Delor street to Nebraska avenue, with Nebraska avenue and Broadway to Maeder street, with Maeder street and Maeder street extended to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Twelfth Ward.—Beginning at a point in the middle of the main channel of the Mississippi river opposite foot of Maeder street; thence in a direct line to and with Maeder street to Broadway, with Broadway and Nebraska avenue to Delor street, with Delor street to Minnesota avenue, with Minnesota avenue to Itaska street, with Itaska street to Idaho avenue, with Idaho avenue to Eller street, with Eller street to Grand avenue, with Grand avenue to Bates street, with Bates street to Morganford road, with Morgan-

ford road to Gravois avenue, with Gravois avenue to Eichelberger street, with Eichelberger street and Eichelberger street extended to western city limits, with western and southern city limits to the middle of the main channel of the Mississippi river, up the middle of the main channel to place of beginning.

Thirteenth Ward.—Beginning at intersection of Grand avenue and Folsom avenue; thence with Folsom avenue to Thurman boulevard, with Thurman boulevard to McRee avenue, with McRee avenue to Klemm avenue, with Klemm avenue to Magnolia avenue, with Magnolia avenue to Tower Grove avenue, with Tower Grove avenue extended to Arsenal street, with Arsenal street to Bent avenue, with Bent avenue to Wyoming street, with Wyoming street to Morganford road, with Morganford road to intersection of Beck avenue and Meramec street, with Meramec street to Chippewa street, with Chippewa street to Gravois avenue, with Gravois avenue to Morganford road, with Morganford road to Bates street, with Bates street to Grand avenue, with Grand avenue to Eller street, with Eller street to Idaho avenue, with Idaho avenue to Itaska street, with Itaska street to Minnesota avenue, with Minnesota avenue to Osceola street, with Osceola street to Nebraska avenue, with Nebraska avenue to Chippewa street, with Chippewa street to Grand avenue, with Grand avenue to Folsom avenue, the place of beginning.

Fourteenth Ward.—Beginning at intersection of Dolman street and Russell avenue; thence with Russell avenue to Gravois avenue, with Gravois avenue to Ann avenue, with Ann avenue to Ohio avenue, with Ohio avenue to Russell avenue, with Russell avenue to Oregon avenue, with Oregon avenue to Lafayette avenue, with Lafayette avenue to Grand avenue, with Grand avenue to Arsenal street, with Arsenal street to Jefferson avenue, with Jefferson avenue to Lynch street, with Lynch street to Eighteenth street, with Eighteenth street to Ann avenue, with Ann avenue to Dolman street, with Dolman street to Russell avenue, the place of beginning.

Fifteenth Ward.—Beginning at intersection of Dolman street and Park avenue; thence with Park avenue to Mississippi avenue, with Mississippi avenue to Hickory street, with Hickory street to Armstrong avenue, with Armstrong avenue and Twenty-second street to Missouri Pacific railroad, with Missouri Pacific railroad to West Jefferson avenue, with West Jefferson avenue to Chouteau avenue, with Chouteau avenue to Montrose avenue, with Montrose avenue to Hickory street, with Hickory street to Cardinal avenue, with Cardinal avenue to Rutger street, with Rutger street to Montrose avenue, with Montrose avenue to Park avenue, with Park avenue to Pennsylvania avenue, with Pennsylvania avenue to Lafayette avenue, with Lafayette avenue to Oregon avenue, with Oregon avenue to Russell avenue, with Russell avenue to Ohio avenue, with Ohio avenue to Ann avenue, with Ann avenue to Gravois avenue, with Gravois avenue to Eighteenth street, with Eighteenth street to Allen avenue, with Allen avenue to Dolman street, with Dolman street to Geyer avenue, with Geyer avenue to Eighteenth street, with Eighteenth street to Lafayette avenue, with Lafayette avenue to Dolman street, with Dolman street to Park avenue, the place of beginning.

Sixteenth Ward.—Beginning at intersection of Jefferson avenue and Clark avenue; thence with Clark avenue to Ewing avenue, with Ewing avenue to Laclede avenue, with Laclede avenue to Vandeventer avenue, with Vandeventer avenue and Manchester avenue to Papin street, with Papin street to Missouri Pacific railroad, with Missouri Pacific railroad to Tower Grove avenue, with Tower Grove avenue to Folsom avenue, with Folsom avenue to Grand avenue, with Grand avenue to Lafayette avenue, with Lafayette avenue to Pennsylvania avenue, with Pennsylvania avenue to Park avenue, with Park avenue to Montrose avenue, with Montrose avenue to Rutger street, with Rutger street to Cardinal avenue, with Cardinal avenue to Hickory street, with Hickory street to Montrose avenue, with Montrose avenue to Chouteau avenue, with Chouteau avenue to West Jefferson avenue, with West Jefferson avenue and Jefferson avenue to Clark avenue, the place of beginning.

Seventeenth Ward.—Beginning at intersection of Twenty-second street and Carr street; thence with Carr street to Jefferson avenue, with Jefferson avenue to Franklin avenue, with Franklin avenue to Beaumont street, with Beaumont street to Lucas avenue, with Lucas avenue to Grand avenue, with Grand avenue to Delmar boulevard, with Delmar boulevard to Vandeventer avenue, with Vandeventer avenue to Laclede avenue, with Laclede avenue to Ewing avenue, with Ewing avenue to Clark avenue, with Clark avenue to Jefferson avenue, with Jefferson avenue to Pine street, with Pine street to Twenty-second street, with Twenty-second street to Carr street, the place of beginning.

Eighteenth Ward.—Beginning at intersection of Twentieth street and Hebert street; thence with Hebert street to Twenty-fifth street, with Twenty-fifth street to Farrar street, with Farrar street to Natural Bridge road, with Natural Bridge road to Glasgow avenue, with Glasgow avenue to Hebert street, with Hebert street to Jefferson avenue, with Jefferson

avenue to Carr street, with Carr street to Twenty-second street, with Twenty-second street to Division street, with Division street to Twenty-third street, with Twenty-third street to O'Fallon street, with O'Fallon street to Twenty-second street, with Twenty-second street to Cass avenue, with Cass avenue to Hogan street, with Hogan street to Maiden lane, with Maiden lane to Nineteenth street, with Nineteenth street to Benton street, with Benton street to Twentieth street, with Twentieth street to Hebert street, the place of beginning.

Nineteenth Ward.—Beginning at intersection of Jefferson avenue and St. Louis avenue; thence with St. Louis avenue to Coleman street, with Coleman street to Magazine street, with Magazine street to Webster avenue, with Webster avenue to Easton avenue, with Easton avenue to Cardinal avenue, with Cardinal avenue to School street, with School street to Compton avenue, with Compton avenue to Bell avenue, with Bell avenue to Leonard avenue, with Leonard avenue to Morgan street, with Morgan street to Compton avenue, with Compton avenue to Lucas avenue, with Lucas avenue to Beaumont street, with Beaumont street to Franklin avenue, with Franklin avenue to Jefferson avenue, with Jefferson avenue to St. Louis avenue, the place of beginning.

Twentieth Ward.—Beginning at intersection of Coleman street and St. Louis avenue; thence with St. Louis avenue to Prairie avenue, with Prairie avenue to St. Louis avenue, with St. Louis avenue to Warne avenue, with Warne avenue to Easton avenue, with Easton avenue to Vandeventer avenue, with Vandeventer avenue to Delmar boulevard, with Delmar boulevard to Grand avenue, with Grand avenue to Lucas avenue, with Lucas avenue to Compton avenue, with Compton avenue to Morgan street, with Morgan street to Leonard avenue, with Leonard avenue to Bell avenue, with Bell avenue to Compton avenue, with Compton avenue to School street, with School street to Cardinal avenue, with Cardinal avenue to Easton avenue, with Easton avenue to Webster avenue, with Webster avenue to Magazine street, with Magazine street to Coleman street, with Coleman street to St. Louis avenue, the place of beginning.

Twenty-first Ward.—Beginning at intersection of Glasgow avenue and Florissant avenue; thence with Florissant avenue to Obear avenue, with Obear avenue to Carter avenue, with Carter avenue to Warne avenue, with Warne avenue to Florissant avenue, with Florissant avenue to Fair avenue, with Fair avenue to Algernon street, with Algernon street to Harris avenue, with Harris avenue to Florissant avenue, with Florissant avenue to Carrie avenue, with Carrie avenue to Newstead avenue, with Newstead avenue to Taylor avenue, with Taylor avenue to Lee avenue, with Lee avenue to Camella place, with Camella place and Ashland place to Margaretta avenue, with Margaretta avenue to Newstead avenue, with Newstead avenue to San Francisco avenue, with San Francisco avenue to Fair avenue, with Fair avenue to Natural Bridge road, with Natural Bridge road to Clay avenue, with Clay avenue to Ashland avenue, with Ashland avenue to Sarah street, with Sarah street to St. Louis avenue, with St. Louis avenue to Prairie avenue, with Prairie avenue to St. Louis avenue, with St. Louis avenue to Jefferson avenue, with Jefferson avenue to Hebert street, with Hebert street to Glasgow avenue, with Glasgow avenue to Natural Bridge road, with Natural Bridge road to Thompson avenue, with Thompson avenue to Harper street, with Harper street to Glasgow avenue, with Glasgow avenue to Florissant avenue, the place of beginning.

Twenty-second Ward.—Beginning at intersection of Fair avenue and San Francisco avenue; thence with San Francisco avenue to Newstead avenue, with Newstead avenue to Natural Bridge road, with Natural Bridge road to Taylor avenue, with Taylor avenue to Ashland avenue, with Ashland avenue to Marcus avenue, with Marcus avenue to St. Louis avenue, with St. Louis avenue to Pendleton avenue, with Pendleton avenue to Garfield avenue, with Garfield avenue to Newstead avenue, with Newstead avenue to Cote Brillante avenue, with Cote Brillante avenue to Pendleton avenue, with Pendleton avenue to Lucky street, with Lucky street to Newstead avenue, with Newstead avenue to Easton avenue, with Easton avenue to Newstead avenue, with Newstead avenue to Cozzens avenue, with Cozzens avenue to Taylor avenue, with Taylor avenue to Cook avenue, with Cook avenue to Vandeventer avenue, with Vandeventer avenue to Easton avenue, with Easton avenue to Warne avenue, with Warne avenue to St. Louis avenue, with St. Louis avenue to Sarah street, with Sarah street to Ashland avenue, with Ashland avenue to Clay avenue, with Clay avenue to Natural Bridge road, with Natural Bridge road to Fair avenue, with Fair avenue to San Francisco avenue, the place of beginning.

Twenty-third Ward.—Beginning at intersection of Vandeventer avenue and Cook avenue; thence with Cook avenue to Pendleton avenue, with Pendleton avenue to Fairfax avenue, with Fairfax avenue to Whittier street, with Whittier street to West Belle place, with West Belle place to Newstead avenue, with Newstead avenue to Forest Park boulevard, with Forest Park boulevard to Boyle avenue, with Boyle avenue to Clayton avenue, with Clayton avenue to Boyle avenue, with Boyle avenue to Chou-

teau avenue, with Choteau avenue to Newstead avenue, with Newstead avenue to Manchester avenue, with Manchester avenue to Newstead avenue, with Newstead avenue to Swan avenue, with Swan avenue to Tower Grove avenue, with Tower Grove avenue to Norfolk avenue, with Norfolk avenue to Boyle avenue, with Boyle avenue to Old Manchester road, with Old Manchester road to Missouri Pacific railroad, with Missouri Pacific railroad to Papin street, with Papin street to Manchester avenue, with Manchester avenue to Vandeventer avenue, with Vandeventer avenue to Cook avenue, the place of beginning.

Twenty-fourth Ward.—Beginning at intersection of Thurman boulevard and Folsom avenue; thence with Folsom avenue to Tower Grove avenue, with Tower Grove avenue to Missouri Pacific railroad, with Missouri Pacific railroad to Old Manchester road, with Old Manchester road to Boyle avenue, with Boyle avenue to Norfolk avenue, with Norfolk avenue to Tower Grove avenue, with Tower Grove avenue to Swan avenue, with Swan avenue to Newstead avenue, with Newstead avenue to Missouri Pacific railroad, with Missouri Pacific railroad to Kingshighway boulevard, with Kingshighway boulevard to south line of Forest Park, with south line of Forest Park to Skinker road, with Skinker road to Clayton avenue, with Clayton avenue to western city limits, with western city limits in a southerly direction to a point where Eichelberger street extended would intersect the city limits, with Eichelberger street extended and Eichelberger street to Gravois avenue, with Gravois avenue to Chippewa street, with Chippewa street to Meramec street, with Meramec street to Morganford road, with Morganford road to Wyoming street, with Wyoming street to Bent avenue, with Bent avenue to Arsenal street, with Arsenal street to a point where Tower Grove avenue extended would intersect Arsenal street, with Tower Grove avenue extended to Magnolia avenue, with Magnolia avenue to Klemm street, with Klemm street to McRee avenue, with McRee avenue to Thurman boulevard, with Thurman boulevard to Folsom avenue, the place of beginning.

Twenty-fifth Ward.—Beginning at intersection of Pendleton avenue and Cook avenue; thence with Cook avenue to Taylor avenue, with Taylor avenue to Page boulevard, with Page boulevard to Clarendon avenue, with Clarendon avenue to Raymond avenue, with Raymond avenue to Kingshighway boulevard, with Kingshighway boulevard to Lindell boulevard, with Lindell boulevard and Lindell boulevard extended to city limits, with city limits to Clayton avenue, with Clayton avenue to Skinker road, with Skinker road to south line of Forest Park, with south line of Forest Park to Kingshighway boulevard, with Kingshighway boulevard to Missouri Pacific railroad, with Missouri Pacific railroad to Newstead avenue, with Newstead avenue to Manchester avenue, with Manchester avenue to Newstead avenue, with Newstead avenue to Chouteau avenue, with Chouteau avenue to Boyle avenue, with Boyle avenue to Clayton avenue, with Clayton avenue to Boyle avenue, with Boyle avenue to Forest Park boulevard, with Forest Park boulevard to Newstead avenue, with Newstead avenue to West Belle place, with West Belle place to Whittier street, with Whittier street to Fairfax avenue, with Fairfax avenue to Pendleton avenue, with Pendleton avenue to Cook avenue, the place of beginning.

Twenty-sixth Ward.—Beginning at intersection of Pendleton avenue and St. Louis avenue; thence with St. Louis avenue to Marcus avenue, with Marcus avenue to Natural Bridge road, with Natural Bridge road to Kingshighway boulevard, with Kingshighway boulevard to Cote Brillante avenue, with Cote Brillante avenue to Union boulevard, with Union boulevard to Theodosia avenue, with Theodosia avenue to Arlington avenue, with Arlington avenue to Page boulevard, with Page boulevard to Taylor avenue, with Taylor avenue to Cozzens avenue, with Cozzens avenue to Newstead avenue, with Newstead avenue to Easton avenue, with Easton avenue to Newstead avenue, with Newstead avenue to Lucky street, with Lucky street to Pendleton avenue, with Pendleton avenue to Cote Brillante avenue, with Cote Brillante avenue to Newstead avenue, with Newstead avenue to Garfield avenue, with Garfield avenue to Pendleton avenue, with Pendleton avenue to St. Louis avenue, the place of beginning.

Twenty-seventh Ward.—Beginning at intersection of Carrie avenue and Florissant avenue; thence with Florissant avenue to Calvary avenue, with Calvary avenue to Broadway, with Broadway to Wabash railroad, with Wabash railroad to western city limits, with western city limits to Page boulevard, with Page boulevard to Arlington avenue, with Arlington avenue to Theodosia avenue, with Theodosia avenue to Union boulevard, with Union boulevard to Cote Brillante avenue, with Cote Brillante avenue to Kingshighway boulevard, with Kingshighway boulevard to Natural Bridge road, with Natural Bridge road to Marcus avenue, with Marcus avenue to Ashland place, with Ashland place and Camella place to Lee avenue, with nue to Natural Bridge road, with Natural Bridge road to Newstead avenue, with Newstead avenue to Margaretta avenue, with Margaretta avenue to Ashland place, with Ashland place and Camella place to Lee venue, with Lee venue to Taylor avenue, with Taylor avenue to Newstead avenue, with

Newstead avenue to Carrie avenue, with Carrie avenue to Florissant avenue, the place of beginning.

Twenty-eighth Ward.—Beginning at intersection of Clarendon avenue and Page boulevard; thence with Page boulevard to western city limits, with western city limits to Lindell boulevard extended, with Lindell boulevard extended and Lindell boulevard to Kingshighway boulevard, with Kingshighway boulevard to Raymond avenue, with Raymond avenue to Clarendon avenue, with Clarendon avenue to Page boulevard, the place of beginning.

Note.—In the above ward descriptions where streets and avenues are named it is understood to be the center of each street or avenue, and where railroads are named, it is understood to be the center of the main track.

ARTICLE II.

Elections.

Section 1. A general city election shall be held on the first Tuesday in April, 1915, and every two years thereafter.

Sec. 2. At the general city election in 1917, and every four years thereafter, a mayor and a comptroller shall be elected each for a term of four years and until his successor qualifies.

Sec. 3. At the general city election in 1915 one alderman from each odd-numbered ward shall be elected for a term of two years, and at the same election, and every four years thereafter, one alderman from each even-numbered ward, and a president of the board of aldermen, shall be elected, each for a term of four years. At the general city election in 1917, and every four years thereafter, one alderman from each odd-numbered ward shall be elected, each for a term of four years.

Sec. 4. Every elective city officer, including the president and members of the board of aldermen, shall be elected by a general ticket; *provided*, that whenever the constitution and laws of the state permit, each alderman shall be elected only by the voters of the ward from which he is elected.

Sec. 5. The board of election commissioners shall designate the day for holding any special election under the initiative, referendum, or recall provisions of this charter.

Sec. 6. The board of election commissioners shall cause a notice to be published at least three times in at least two daily newspapers in the city, the first insertion to be at least twenty days prior to the holding of any election under the initiative, referendum, or recall provisions of this charter, such notice to state the time and place of holding such election and the general nature of each proposition or ordinance to be voted upon.

Sec. 7. Except as in this charter otherwise provided, all elections shall be held and proceedings had in relation thereto as may be provided by law or ordinance.

All the 1876 charter provisions were superseded by the state statutes, which now control elections in St. Louis. These election laws are set forth under "Laws Specially Applicable to St. Louis," Secs. 256-373, in R. C. 1913. The present law has been sustained by the courts. See notes to

said reference and cases there cited. For a history of election laws relating to St. Louis, see McQuillin's Amended Charter, p. 179, note.

Sec. 8. All necessary expenses incurred in preparing for and conducting any election under the initiative, referendum, or recall provisions of this charter shall be paid as follows: The board of election commissioners shall prepare its estimate of such expenses and submit same to the board of aldermen. The mayor and board of aldermen must then appropriate the amount so estimated. The board of election commissioners shall audit and approve all such expenses so incurred and certify them to the comptroller, who must draw his warrant therefor on the treasurer, who must pay the same. If no appropriation has been made for such payment the treasurer shall charge the same to any fund not otherwise appropriated or to any fund available therefor, anything in this charter to the contrary notwithstanding.

Sec. 9. Whenever it may be done in harmony with the state constitution and laws, the board of aldermen shall by ordinance provide for and regulate municipal elections and registration of voters and may provide by ordinance for non-partisan nominations, preferential voting, or proportional representation.

ARTICLE III.

Recall.

Section 1. Any elective officer may be recalled by the voters of the city, or if he shall have been elected by the voters of a ward or district, then by the voters of such ward or district, as hereinafter provided.

Sec. 2. A petition for such recall shall be signed by registered voters equal in number to twenty per cent of all the registered voters of the city at the time of the last preceding regular mayoralty election; *provided*, that in such number shall be included twenty per cent of the registered voters at said time in each of at least two-thirds of the wards of the city; *provided* further, that if the officer shall have been elected by the voters of a ward or district, the petition need be signed by only twenty per cent of all the registered voters therein at the time of said mayoralty election.

Sec. 3. The signatures need not all be appended to one paper, but all papers comprising the petition shall be uniform in character and shall each be verified by affidavit stating that each signature thereto was made in affiant's presence by, as affiant verily believes, the person whose name it purports to be. Each signer shall state, opposite his signature, his residence address. Any person shall be deemed a registered voter whose name is unerasured on the registration books.

Sec. 4. Each of the papers comprising the petition shall state

the name and office of the officer whose recall is sought and ask for his recall before any signature is appended thereto.

Sec. 5. All papers comprising the petition shall be assembled by the petitioners and filed with the board of election commissioners as one instrument, and within ten days thereafter said board shall find and certify as to the sufficiency of the petition, stating the number of registered voters signing. If the petition is certified to be insufficiently signed, supplemental papers conforming to the requirements for the originals may be filed within twenty days thereafter, and said board, within ten days after such supplements are filed, shall find and certify as to the sufficiency of the petition, so supplemented. If found still insufficiently signed, no further supplement shall be allowed, but a new petition may be filed.

Sec. 6. If such recall petition, with supplements, if any, be found sufficient, a certificate to that effect shall be mailed by said board to the officer, and if he does not resign within ten days after such mailing, said board shall provide for submitting the question of his recall at the first election, at which it may lawfully be submitted, not less than thirty nor more than ninety days after such mailing, and if there is no such election, then at a special election to be held within such ninety days if legally possible, otherwise at the earliest day at which said question may be submitted at either a general or special election. Any such election, at any stage thereof, shall at once be discontinued upon the death, resignation or removal of the officer whose recall is in question.

Sec. 7. The ballot shall state the proposition, "Shall (name of officer) be removed from the office of (name of office)?" and to the right thereof, in bold type, the words "yes" and "no," one above the other. To vote for the recall of said officer the voter shall strike out the word "no," and to vote against such recall, the word "yes." If the majority of the votes cast thereon at said election shall be in favor of such recall, the office shall be vacant five days thereafter.

Sec. 8. No petition shall seek the recall of more than one officer, but several propositions for recall may be separately submitted at the same election on the same ballot.

Sec. 9. No recall petition shall be filed against any officer within the first six months or the last six months of his term nor within six months after a proposition for his recall has been defeated at an election.

ARTICLE IV.

Board of Aldermen.

Section 1. The legislative power of the city shall, subject to the limitations of this charter, be vested in a board of aldermen, consisting of a president, elected as such by general ticket from the city at large, and twenty-eight members, one from each ward, to be known and elected by general ticket as alderman from the ward from which elected.

Powers of municipality in general. A municipal corporation possesses and can exercise the following powers and no others: (1) Those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the municipality, and the power is denied. 1 Dillon Mun. Corp. (4 ed.), 145, quoted and followed in *St. Louis vs. Kaimé*, 180 Mo., 309, 314, 322. To same effect: *State vs. Butler*, 178 Mo., 272, 312 et seq. and cases cited; *St. Louis vs. Telephone Co.*, 96 Mo., 623; *Independence vs. Cleveland*, 167 Mo., 384, 388; *Joplin vs. Jacobs*, 119 Mo. App., 134, 138; *Omaha Electric Light & Power Co. vs. Omaha*, 179 F., 455.

The construction of power must not be so strict as to defeat the evident objects and purposes of its creation. *State ex rel. vs. Allen*, 183 Mo., 283, 291. The construction should be in accordance with the intent of the charter framers, to be gathered from the language and object of the charter provisions, and giving that language an interpretation neither strict nor strained. *St. Louis vs. Herthel*, 88 Mo., 1. c. 130; *Railway vs. Railway*, 105 Mo., 562, 575-576.

Ordinarily, in the absence of express authority, the power to confer exclusive privileges or monopolies will not be implied as within the powers of a municipal corporation. *Kirkwood vs. Highlands*, 94 Mo. App., 637, 644; *Carroll vs. Campbell*, 108 Mo., 550; *Freeport Water Co. vs. Freeport*, 180 U. S., 587, 589; *Joplin vs. Light Co.*, 191 U. S., 150. Speaking of municipal powers in general, the U. S. Supreme Court says, in *Citizens' Ry. vs. Detroit Ry.*, 171 U. S., 1. c. 53: "There are reasons which insistently forbid that the future should be committed and bound by the conditions of the present time, and functions delegated for public purposes be paralyzed in their exercise by the existence of exclusive privileges," citing many cases. The city may, however, exclude itself from competing with a company upon which it confers certain franchises if the terms used are clear and explicit. *Vicksburg vs. Waterworks Co.*, 202 U. S., 453; *Walla Walla vs. Walla Walla Waterworks*, 172 U. S., 1, 13-19. But only by expression provision. *Joplin vs. Light Co.*, 191 U. S., 150.

Persons dealing with a municipal corporation do so with knowledge that it is a public agency with limited rights and powers. *Peters vs. St. Louis*, 226 Mo., 62.

As to specific powers under the charter, see Art. I., and notes; also, various powers designated in various sections. The board of aldermen is possessed of the powers formerly exercised by the county court; see note preceding Art. I.

Legislative functions of the board of aldermen—how far subject to judicial control—fraud. As will appear from the charter and authorities hereinafter cited, all legislative powers of the city are vested in the board of aldermen (subject to the approval of the mayor, unless the bill is passed over his veto; and subject to the power of initiative and referendum).

This power is limited to the extent that all ordinances relating to public work or improvements are required by the charter to emanate from the board of public service and which the board of aldermen can not even amend, but must only either pass or reject. (See Arts. XXI. and XXII. and notes thereto.) The power of the board of aldermen is further limited by Art. XVI., Sec. 3, in dealing with the annual appropriation bill submitted and recommended by the board of estimate and apportionment, and by Art. IV., Sec. 25-26.

The board of aldermen when engaged in the passage of an ordinance is engaged in legislative functions, and in doing so is exercising a part of the law-making powers of the state, and in so doing constitutes part of the legislative department of the state; and hence the courts have no jurisdiction to enjoin the municipal assembly from enacting a proposed ordinance or interfering with it in any way whatsoever. *Albright vs. Fisher*, 164 Mo., 56, 60, 65, reviewing the cases and overruling *State ex rel. vs. Meier*, 143 Mo., 439 (two judges dissenting as to overruling this case); *State ex rel. vs. Bersh*, 83 Mo. App., 657, 668 (see further, *infra*, this note).

Ordinances have the force and effect of laws within the city. The board of aldermen is a "miniature general assembly," and when acting within its sphere its ordinances are accorded the same effect as the laws of other legislative bodies. *State ex rel. vs. Bersh*, 83 Mo. App., 657, 668; *St. Louis vs. Foster*, 52 Mo., 513; *St. Louis vs. Boffinger*, 19 Mo., l. c. 15; *Taylor vs. Carondelet*, 22 Mo., 105; *Albright vs. Fisher*, 164 Mo., l. c. 64, and cases cited; *Keane vs. Cushing*, 15 Mo. App., 96, 101; *Railway vs. Railway*, 105 Mo., l. c. 575; *Jackson vs. Railway*, 118 Mo., l. c. 218; *Grand Ave. Ry. vs. Citizens' Ry.*, 148 Mo., 665, 671-672, and cases cited.

See further on this point comments and cases cited under introductory note preceding Art. I.

The board of aldermen is the authorized agent of the state so far as the state powers are delegated to it by the charter, and its acts are entitled to the same consideration as state acts. See cases above; see also cases cited under note preceding Art. I. See, further, *State vs. De Bar*, 58 Mo., l. c. 397.

That the public are presumed to have knowledge of ordinances, see note at end of Art. IV.

Ordinances conflicting with the statutory laws of the state on the subject are invalid. *St. Louis vs. Tielkemeyer*, 226 Mo., 130.

To the extent that the board of aldermen is clothed with legislative authority from the state it is as free from control by the judiciary as the general assembly; but it differs from the general assembly in that it is not the original and essential part of the legislative department of the state and possessed no inherent legislative power and can only exercise the power conferred by law; and an act, even strictly legislative, after having been passed by such board, may, when attempt is made to apply it to the injury of the rights of an individual, be assailed as the product of fraud or corruption; and the board in its ministerial functions, or acting in its contractual capacity, is under judicial control. *State ex rel. vs. Gates*, 190 Mo., 540, 556, 559, citing cases (distinguishing *Albright vs. Fisher*, 164 Mo., 56, which involved the exercise only of legislative power, with which the court denied the right of interference); *Knapp, Stout & Co. vs. St. Louis*, 156 Mo., 343; 153 Mo., 560; *Skinker vs. Heman*, 148 Mo., 349, 355; *Morse vs. Westport*, 136 Mo., 276. See other cases below.

When it is said that the validity of a city ordinance may be attacked after its passage on the ground of fraud in its procurement it is not meant that actual bribery or corruption must be shown but it is sufficient if the fraud charged is of that character that has been defined to be the willful doing of an unlawful act. Such fraud may be shown by parol evidence of the acts of the aldermen. In a condemnation proceeding, the objection of invalidity may be made by the property owner without formal pleadings. The courts will look through any sham of the board of aldermen and see the truth, and the best evidence obtainable, whether documentary or oral understandings, will be received to show the real purpose of the ordinance. *Kansas City vs. Hyde*, 196 Mo., 498.

Generally, in attacking an ordinance as having been procured by fraud or illegal influence, it is absolutely essential to plead the acts which constitute the alleged fraud and invalidate the proceedings. *Paving Co. vs. Field*, 188 Mo., 182, 203; *Nagel vs. Railroad*, 167 Mo., 89; *Knapp, Stout & Co. vs. St. Louis*, 153 Mo., 560; 156 Mo., 343.

Ordinances are presumptively valid and the burden to show the contrary, or that the legal steps required in their enactment have not been observed, is on the party attacking them. See note at end of Art. 4 and cases there cited.

When oppressive or unreasonable. Even if an ordinance is legally enacted and within the scope of municipal power over the subject, the courts will declare it void if it is unjust, oppressive, or unreasonable; but a clear case must be presented to warrant a court in annulling an ordinance. *St. Louis vs. Weber*, 44 Mo., 547 (prohibiting meat shops in territory added by extension of city limits upheld); *Springfield vs. Jacobs*, 101 Mo. App., 339, 342, citing numerous cases and text writers (license tax held void); *Gratiot vs. Mo. Pac.*, 116 Mo., 450, 467 (railroad speed ordinance held void); *Neier vs. Mo. Pac.*, 12 Mo. App., 25 (same); *Zumault vs. K. C. Line*, 71 Mo. App., 670, 676 (same held void); *White vs. Railroad*, 44 Mo. App., 540; *Plattsburg vs. Hagenbush*, 98 Mo. App., 669 (same); *Skinker vs. Heman*, 148 Mo., 349, citing numerous cases on p. 356 (upholding special tax legislation); *Hannibal vs. Tel. Co.*, 31 Mo. App., 23 (holding ordinance to change location of telephone poles as previously authorized to be void where no reason therefor existed); *Lamar vs. Weidman*, 57 Mo. App., 507 (ordinance requiring all weighing on scales to be void); *Cape Girardeau vs. Riley*, 72 Mo., 220 (ordinance allowing attorney fee in collecting tax is void).

Where the ordinance is sustainable only under a general grant of power and not specific authority, the reasonableness thereof may be in-

quired into by the courts. *Springfield vs. Starke*, 93 Mo. App., 70, 77; *St. Louis vs. Heitzeberg*, 141 Mo., 375 (holding void ordinance prohibiting emission of smoke).

See as to power to enact ordinances respecting nuisances. Art. XIII, Sec. 14, and note to Rev. Code, 1912, Secs. 787 et seq.

In the exercise of power specifically and directly granted, the municipal authorities are beyond the control of the courts and act legislatively; and their discretion can not, at least in the absence of fraud, or caprice, be reviewed judicially (most of the instances applying this rule are those of special taxation). *Prior vs. Construction Co.*, 170 Mo., 439, 451; *Skinker vs. Heman*, 148 Mo., 349, 355-356, citing numerous cases; *Heman vs. Schulte*, 166 Mo., 409; *Heman vs. Franklin*, 99 Mo. App., 346; *Heman vs. Allen*, 156 Mo., 534; *Morse vs. Westport*, 136 Mo., 276; *Lamar vs. Weldman*, 57 Mo. App., 1. c. 513; *Kansas City vs. Trieb*, 76 Mo. App., 478.

The enforcement of void ordinances by the city, threatening a multiplicity of suits, may be enjoined. *Sylvester Coal Co. vs. St. Louis*, 130 Mo., 325; but the validity of an ordinance can not be tested by injunction where plaintiff has an adequate remedy at law. *Tinsley vs. Caruthersville*, 121 Mo. App., 142.

Unauthorized ordinances. An ordinance is void which conflicts with a charter provision or which is not authorized by the charter or is not enacted in essential matters as the charter provides. *State ex rel. vs. Gordon*, 217 Mo., 103. All powers of the board of aldermen emanate from the charter and must there find their authority. *St. Louis vs. Kaime*, 180 Mo., 309; *State vs. Butler*, 178 Mo., 272, 299; *St. Louis vs. Clemens*, 43 Mo., 395, 404; *Ruggles vs. Collier*, 43 Mo., 353, 375; *Carr vs. St. Louis*, 9 Mo., 190; *State ex rel. vs. Johnson*, 123 Mo., 1. c. 50.

In some respects the charter stands to the ordinances as the constitution does to the statutes. *Quinette vs. St. Louis*, 76 Mo., 402. "The charter is the city's constitution and the common council, with the mayor's approval, is its legislative body." *Per Gill, in Forry vs. Ridge*, 56 Mo. App., 1. c. 624 (holding that a meeting of the council in Kansas City is void if not at the time and place authorized by the charter).

A large municipal body, entrusted with the execution of a power, must be allowed some discretion in the choice of means, unless it appears that it was plainly intended to confine it to a prescribed mode. *Page vs. St. Louis*, 20 Mo., 136, 142.

That matters of form prescribed by charter in enacting an ordinance are usually directory only, and a departure therefrom not fatal, see note at page 313 R. C. 1912.

Uncertainty and vagueness may be such as to invalidate an ordinance (*Ramsay vs. Field*, 115 Mo. App., 620; 92 Southw., 350; see *State vs. Railway Co.*, 146 Mo., 155, holding a statute void); but a reference to specifications on file in an official office is enough on that subject. *Asphalt Co. vs. Ullman*, 137 Mo., 543, 571; *Becker vs. Washington*, 94 Mo., 375, 380; *Sheehan vs. Gleason*, 46 Mo., 100 (in which the court says: "An ordinance may lack desirable precision and still may so provide for the manner in which an improvement shall be made, and be such a compliance with the law, although a loose one, that the courts would not be authorized to invalidate the action of the city officers under it").

Delegation of authority by the assembly. The general rule is that powers which are legislative in their nature can not be delegated by the board of aldermen, as that is the purpose of its creation, but powers that are merely ministerial, requiring no legislative discretion, may be delegated. *Seibel-Suessdorf Co. vs. Manufacturers Ry. Co.*, 230 Mo., 59; *Ruggles vs. Collier*, 43 Mo., 353, 365 (no authority to delegate question whether repaving to be done); *St. Louis vs. Clemens*, 43 Mo., 395, 403; 52 Mo., 133 (no authority to delegate determination of dimensions of sewers); *Neill vs. Gates*, 152 Mo., 585, 594 (same); *St. Louis vs. Russell*, 116 Mo., 248, 255 (no power to delegate power to determine location of livery stable to lot owners); *St. Louis vs. Howard*, 119 Mo., 41, 47 (no power to permit slaughter house location to be determined by adjacent occupants of houses); *Tipton vs. Norman*, 72 Mo., 1. c. 384 (power to provide for the convenient and proper work provided by ordinance; *St. Louis vs. Lamp Co.*, 139 Mo., 560 (authorizing assembly to provide for a board to examine, in behalf of the city, applicants for licenses as engineers, dentists, etc. Such ordinances are in nature of police functions). See *Fisher vs. St. Louis*, 194 U. S., 1. c. 371-372 ("the authority to delegate that discretion [singling out persons for certain privileges] to a board appointed for that purpose is sustained by the great weight of authority [citing cases] and by this court the delegation of such power even to a single individual was sustained in *Wilson vs. Eureka City*, 173 U. S., 32, and *Gundling vs. Chicago*, 177 U. S., 183").

The tendency of the later cases is to enlarge the power of delegation

and make many acts valid that formerly would have been held unauthorized.

As to delegation in cases of street improvement ordinances, see cases in note to Art. XXII., Sec. 12.

An ordinance may be made to go into effect on a future contingency, dependent on the action of certain persons, and this is not a delegation of legislative power. See cases in note at page 290 R. C. 1912.

Delegation of state power to city is lawful (note preceding Art. I.).

Legislation by resolution or permit. By the charter the mayor is a part of the law-making or ordinance-enacting power of the city government, and his concurrence in legislative action is essential to its validity, unless the ordinance is passed over his veto. Art. IV., Sec. 17, and note at page 291 R. C. 1912, citing *State vs. Butler*, 178 Mo., 1 c. 340; *State ex rel. vs. Carr*, 67 Mo., 38, and other cases. See, also, 50 Mo., 488; 60 Mo., 153; *St. Joseph vs. Wilshire*, 47 Mo. App., 125; *Sylvester vs. St. Louis*, 164 Mo., 601.

A resolution can not accomplish that which is required to be done by ordinance. *Young vs. St. Louis*, 47 Mo., 492, 495; *Cape Girardeau vs. Fangan*, 30 Mo. App., 551; *Trenton vs. Coyle*, 107 Mo., 193, and cases there cited; *Nevada vs. Eddy*, 123 Mo., 546; *Reed vs. Peck*, 163 Mo., 333; unless the action termed a resolution be in fact enacted with all the requisites of an ordinance and in fact is such. *Tipton vs. Norman*, 72 Mo., 380, 384; *Springfield vs. Knott*, 49 Mo. App., 612; *Crebs vs. Lebanon*, 98 Fed., 549; as in case of a resolution being ratified by a subsequent ordinance. *State ex rel. vs. Milling Co.*, 156 Mo., 620.

One house of a bicameral assembly can not by resolution make a valid contract. *State ex rel. vs. Dierkes*, 214 Mo., 578.

It seems that where the assembly alone has power to act (the concurrence of the mayor not being required) a resolution is sufficient. 156 Mo., 1 c. 632, citing *Eichenlaub vs. St. Joseph*, 113 Mo., 1 c. 402; *Alma vs. Bank*, 60 Fed., 203; 8 C. C. A., 564, 567.

Where an ordinance is required, a mere order or permit of the mayor without action of the assembly, confers no authority and is void. *Lockwood vs. Ry.*, 122 Mo., 86; *Carroll vs. St. Louis*, 12 Mo., 444.

Ordinances of a de facto legislative municipal body are valid. *Perkins vs. Fielding*, 119 Mo., 149, 159, and cases cited; *Hilgert vs. Barber Asphalt Co.*, 107 Mo. App., 385; so, ordinances passed by acting mayor and city council of St. Louis after the council was abolished by the adoption of the scheme of separation, but before the adoption was known, were not necessarily void. *Adams vs. Lindell*, 72 Mo., 198, affirming 5 Mo. App., 197; *St. Louis vs. Stoddard*, 15 Mo. App., 173, 177.

Construction of charter and ordinance provisions. Where there are two charter provisions or two ordinances, both on the same subject, one of which is special and particular upon the subject, and the other general so that if standing alone it would cover the same subject, and would conflict with the special act, the special act controls the general. *St. Louis vs. Kaime*, 180 Mo., 309, 313; *Ruschenberg vs. Railroad*, 161 Mo., 70, 82; *State vs. Butler*, 178 Mo., 272, 302; *Campbell vs. St. Louis & S. Ry. Co.*, 175 Mo., 161, 176-177; *Jaicks vs. Merrill*, 201 Mo., 91; *State ex rel. vs. Clifford*, 228 Mo., 194.

The provisions of the charter must be so construed that effect is given to all of them. *Hill vs. St. Louis*, 159 Mo., 1 c. 168; *St. Louis vs. Lane*, 110 Mo., 1 c. 258; *Verdin vs. St. Louis*, 100 Mo., 1 c. 122; *Jaicks vs. Merrill*, 201 Mo., 91.

Construction of ordinances is for the court and should not be left to the jury. *Barton vs. Odessa*, 109 Mo. App., 76.

The validity of an ordinance can never be left to the jury. *Fruin, etc., vs. Geist*, 37 Mo. App., 1 c. 516.

Charter provisions are construed against the implication of powers not expressly granted, but not so strictly as to defeat the municipal objects. See paragraph in note "Powers of Municipalities," at page 292, R. C., 1912.

Nor should an ordinance be so strictly construed as to defeat the intent thereof, even in case of a public improvement to be paid for by special tax bill. See cases cited in note at page 384, R. C., 1912.

In construing municipal ordinances dealing with important subjects it may reasonably be presumed that no provision escaped attention or was misunderstood. *Cleveland vs. Electric Ry.*, 201 U. S., 529.

The title of an ordinance may be considered in its interpretation. *St. Louis vs. Robinson*, 135 Mo., 460, 470.

As to construction of penal ordinances and their enforcement in police courts, see note to Rev. Code, 1912, Sec. 1863 (citing *St. Louis vs. Robinson*, 135 Mo., 460, 470).

Rule of ejusdem generis. *St. Louis vs. Laughlin*, 49 Mo., 559; *St. Louis vs. Herthel*, 88 Mo., 128; *St. Louis vs. Bell Tel. Co.*, 96 Mo., 623, 629.

The board of aldermen may define the terms used in an ordinance in the same manner as the general assembly. *St. Louis vs. Weitzel*, 130 Mo., 600.

As to certain rules of construction of ordinances, provided for by the ordinances of St. Louis, see Rev. Code, 1912, Secs. 49 to 59.

In the construction of ordinances, as in case of statutes, the courts lean to a construction which favors and upholds their constitutionality (*Brown vs. Ry.*, 137 Mo., 529; *Lamar vs. Weldman*, 57 Mo. App., 1 c. 513, citing *St. Louis vs. Griswold*, 58 Mo., 192; *State vs. Able*, 65 Mo., 357; and see on this point cases cited under the foregoing paragraphs that ordinances are prima facie valid, etc.). But this rule only applies where the ordinance is authorized by the charter. *State vs. Butler*, 178 Mo., 272, 311.

Where the construction upholds an ordinance partially, as to whether the whole ordinance is void or not, see cases on "Partial Validity of Ordinances" in note at page 286, R. C., 1912.

A construction of the charter and ordinances that leads to absurdity is not to be tolerated. *Fruin vs. Meredith*, 145 Mo. App., 586.

An ordinance fixing the salaries of municipal officers must be strictly construed. *Holman vs. City of Macon*, 155 Mo. App., 398.

Liability of city exercising legislative or ministerial functions. As to liability of city for defective highways and sewers, see cases in note at page 299, R. C., 1912. Change of grade, note to Art. XXII., Sec. 12. Condemnation for public use, Art. XXI., Sec. 1. Nuisances, see head note to Rev. Code, 1912, on "Nuisances," preceding Sec. 787.

Distinction between legislative and business functions of the municipality. *Tuttle vs. Cedar Rapids*, 176 F., 86.

As to liability of officers of city see note, Art. VIII., Sec. 4.

The general rule is that the city is not liable for damages resulting from acts done or omitted by it or its officers in the exercise of its legislative, public, or governmental capacity, but is liable for damages resulting from negligence in its ministerial, private, or proprietary capacity. *Simmons vs. City of Chadron*, 167 F., 974; *Ryan vs. Kansas City*, 232 Mo., 471; *Ely vs. St. Louis*, 181 Mo., 724; *Dinsmore vs. St. Louis*, 192 Mo., 255; *Ruppenthal vs. St. Louis*, 190 Mo., 213; *Murtagh vs. St. Louis*, 44 Mo., 479; *Barree vs. Cape Girardeau*, 197 Mo., 38; *Donohue vs. Kansas City*, 136 Mo., 657; *Heller vs. St. Louis*, 53 Mo., 159; *McKenna vs. St. Louis*, 6 Mo. App., 320; *Ulrich vs. St. Louis*, 112 Mo., 138; *Johnston vs. Dist. Col.*, 118 U. S., 21; *Gulath vs. St. Louis*, 179 Mo., 38; *Fuchs vs. St. Louis*, 167 Mo., 620; *St. Louis vs. Gurno*, 12 Mo., 414; *Foster vs. St. Louis*, 71 Mo., 157; *Kansas City vs. Lemen*, 57 Fed. (C. C. A.), 905.

Hence the city is not liable for failure to enforce its own ordinances. *Mehan vs. St. Louis*, 217 Mo., 35; *Kiley vs. Kansas City*, 89 Mo., 103; *Armstrong vs. Brunswick*, 79 Mo., 319; *Moran vs. Pullman Car Co.*, 134 Mo., 641, 651; *Harman vs. St. Louis*, 137 Mo., 494, 499; *Loth vs. Columbia Theatre Co.*, 197 Mo., 328, 357, and cases cited on p. 358. Nor for cases of defective legislation. *Carroll vs. St. Louis*, 4 Mo. App., 191; *Saxton vs. St. Joseph*, 60 Mo., 153. Nor where its officers act under a void ordinance believed to be valid. *Worley vs. Columbia*, 88 Mo., 106. Nor for a trespass committed by its officers. *Quinn vs. Schneider*, 118 Mo. App., 39.

Where the city official occupies a dual relation to the city, both as an officer charged with matters relating to the general public good and as an officer charged with carrying out matters for the city's private corporate benefit, it is a question of fact in which capacity he is acting. *Barree vs. Cape Girardeau*, 132 Mo. App., 182.

Liability of private persons inter sese for violation of ordinances was long a mooted question in Missouri. It is now held that a violation of a police regulation ordinance affords the basis of a civil liability in favor of one injured in consequence thereof. See authorities cited in note to Sec. 2380 of Rev. Code, 1912, especially *Sluder vs. Transit Co.*, 189 Mo., 107, where the question is elaborately discussed and the authorities on both sides are fully collated in both the majority and dissenting opinions, with suggestions as to the limitation as well as application of the principle involved. That case has since been uniformly followed as the law of the state.

Sec. 2. No person shall become an alderman except he be a voter and at least twenty-five years of age and shall have been next before his election five years a citizen of the United States, three years a resident of the city, two years an assessed taxpayer of the

city, and one year a resident of the ward from which elected, nor who shall have been convicted of malfeasance in office, bribery or other corrupt practice or crime; and if any alderman shall be so convicted or shall at any time not be a resident of such ward he shall thereby forfeit his office. The salary of each alderman shall be eighteen hundred dollars per annum.

Sec. 8531, R. S., 1909, provides that there shall be no requirement that such office-holder shall be owner of real estate. Therefore, two years' assessment for taxes on personal property and payment thereof fulfills the above requirement.

Appointed officers of the city are required to have been residents of the city at least one year. Art. VIII., Sec. 2.

It seems that payment of taxes on the day of election is in time to avoid ineligibility under a statute making a candidate in arrears for unpaid city taxes ineligible. *State ex inf. vs. Berkeley*, 140 Mo., 184; but a receipt made the day after election without naming any sum or specific property is worthless to show payment of taxes. *State ex rel. vs. Williams*, 99 Mo., 291.

Conviction for other corrupt practices or crimes in this section means those of the same class as those enumerated, and selling lottery tickets is not such. *State ex rel. vs. Bersh*, 83 Mo. App., 657, 666.

Sec. 3. The president of the board of aldermen shall preside at all its meetings and have the qualifications and forfeit his office for the causes provided with regard to the mayor. His salary shall be three thousand dollars per annum.

See Art. VII., Secs. 2 and 4.

Sec. 4. Whenever a member of said board, other than the president, is absent from a meeting, he shall forfeit ten dollars of his salary and such forfeiture shall not be remitted; provided that forfeitures by one member shall not exceed eight hundred dollars in any one year.

See ordinance No. —.

One not *de jure* but only *de facto* a member can not recover the salary from the city. *Sheridan vs. St. Louis*, 183 Mo., 25. See Art VII., Secs. 2 and 4.

Sec. 5. Any vacancy in said board shall be filled for the unexpired term at the next general city or state election held fifty days or more after such vacancy occurs; provided, that whenever three or more vacancies exist in said board such vacancies shall be filled at a special election; but no such special election shall be held within three months prior to any general city or state election.

Ordinance No. —. As to what constitutes a vacancy in general, see note to Art. VIII., Sec. 9.

When the house ousts one of its members-elect as ineligible, a vacancy occurs, and the house can not declare the candidate receiving the next highest vote as elected, but the mayor must call a special election to fill the vacancy (Art. IV., Sec. 5) unless the next general city or state election will take place within three months. *Sheridan vs. St. Louis*, 183 Mo., 25.

Sec. 6. Said board shall choose from its membership a vice-president to act in case of the absence, disability, or failure to act of the president; shall choose a clerk; and may select any other officers and employees.

The speaker of the former house of delegates held his office at the will of a majority of the delegates, and could at any meeting be removed by them. *State ex rel. vs. Alt*, 26 Mo. App., 673. For ordinances on speaker, see Rev. Code, 1912, Sec. 30.

The functions of the presiding officers are legislative: See *Albright vs.*

Fisher, 164 Mo., 1. c. 65 (overruling *State ex rel. vs. Meier*, 143 Mo., 439, in so far as the latter held that such officer could be compelled by mandamus to sign a bill).

Ordinance No. — prescribes mode of dealing with contumacy.

Sec. 7. Said board shall be the judge of the qualifications of its members, except of its president, and a majority of all its members shall constitute a quorum, but a smaller number may adjourn from day to day and may compel the attendance of absentees in such manner and under such penalties as the board may provide.

Sec. 8. Said board may determine the rules of its proceedings, subject to this charter; arrest and punish by fine or imprisonment, or both, any member or other person guilty of disorderly or contemptuous behavior in its presence; and with the concurrence of two-thirds of all its members, expel a member for cause, after notice and upon a hearing. It shall have power, and may delegate it to any committee, to subpoena witnesses and order the production of books and papers relating to any subject within its jurisdiction; to call upon its own officer or the city marshal to execute its process; and to arrest and punish by fine or imprisonment, or both, any person refusing to obey such subpoena or order. No fine for any one offense under this section shall exceed three hundred dollars nor shall any imprisonment for any one offense exceed ten days; but each day's continuance in any refusal as aforesaid shall be a separate offense. Its presiding officer or the chairman of any committee may administer oaths to witnesses. It shall keep a journal of its proceedings, and the yeas and nays on any question shall at the desire of any member present be entered thereon. The proceedings of each meeting of said board shall be published within five days in the paper or papers doing the city publishing.

See Art III., Sec. 8; Art. XI., Sec. 1.

Although the board of aldermen may oust a candidate returned as elected on the ground that he is disqualified by former conviction for crime, it can not declare the candidate against him elected and admit him as a member, because it can not fill a vacancy caused by its action. *Sheridan vs. St. Louis*, 183 Mo., 25. It was held at first by the Court of Appeals that notwithstanding the above charter provision the courts may exercise a supervisory control where the board departs from or exceeds its powers. *State ex rel. vs. Giovanoni*, 59 Mo. App., 41; but this case was overruled in *State ex rel. vs. Bersh*, 83 Mo. App., 657 (Biggs, J., dissenting) and it was held that it is solely within the sphere of the board to judge of the qualifications of its members and that its acts in that respect can not be controlled by the courts.

Rules may be suspended, waived, or modified. *Sedalia vs. Montgomery*, 109 Mo. App., 197, 210.

Ordinance on rules and regulations, No. —.

See ordinance provisions Rev. Code, 1912, Secs. 33-36. In *re Conrades*, 185 Mo., 411, it was held that such a charter provision was not applicable to compel attendance and submission of books and papers, where a committee is only authorized to "carefully and fully investigate the books, records and accounts in the several departments wherein returns are made of taxes. . . . and to subpoena witnesses and to send for persons and papers and to administer oaths;" and the court released by habeas corpus one who was about to be punished for contempt in refusing to obey such committee's orders to produce books and papers.

The Supreme Court in this case reversed the majority of the Court of Appeals in the same case (112 Mo. App., 21), which had held *Conrades* for contempt. See full discussion of authorities in the majority and dissenting opinions. In *re Dunn*, 9 Mo. App., 255, it is held that under this section

an ordinance empowering a committee of either house to send for witnesses and to compel the production of books and papers, is not unconstitutional as an assumption of judicial power; and that either house may punish for contempt any witness who refuses to produce books material to a pending inquiry and properly called for in a subpoena duces tecum.

As to yeas and nays, see Art. IV., Sec. 18.

The journal required by statute for cities of the third class is competent proof of the proceedings, but not conclusive in jurisdictional matters. *Sedalia vs. Montgomery*, 109 Mo. App., 197 (certified to the Supreme Court as in conflict with *Knopf vs. Roofing Co.*, 92 Mo. App., 279, and *Sedalia vs. Scott*, 104 Mo. App., 595).

The journal of a city council is conclusive evidence of the fact as to whether an ordinance was or was not passed on the date when it purports to have been passed. *O'Dwyer vs. Monett*, 123 Mo. App., 184.

Silence of a member does not evidence his consent to a measure. *Carle vs. De Soto*, 63 Mo. App., 1. c. 163.

Sec. 9. One session of said board shall be held annually, beginning on the third Tuesday of April, and the mayor may by three days' proclamation convene it in special session. All sessions shall be public and in the city hall, subject to change of place in case of emergency.

Ordinance provision as to how special session to be called, see Rev. Code, Sec. 28. A new ordinance is pending. See note at page 326, R. C., 1912.

Under the above charter provision the board of aldermen specially convened can legislate only on subjects specially stated to it at the time that it is so assembled, and not on any additional matter that is communicated to it by the mayor while in session but after the session began; and the mayor must "specially state" the object when convening the session. *St. Louis vs. Withaus*, 90 Mo., 646, affirming 16 Mo. App., 247, and holding an ordinance passed at such session void as not within the object stated in the opening message, although in the message it was stated that other matters might be submitted.

A reference in general terms that legislation was desired under designated articles and sections of the St. Louis charter was held to be sufficiently definite in *Allen vs. Rodgers*, 20 Mo. App., 290.

See *State ex rel. vs. Williams*, 222 Mo., 268, to the effect that the legislature may confirm appointments of the governor at a special session without mention of such purpose in the call for the session.

So, also, it was thought by the Kansas City Court of Appeals that where the Kansas City charter provided for special sessions on call of the mayor and publication of the papers as provided by ordinance, and there was no such ordinance, such session and ordinances passed thereat are void, because there was no publication; but the court further thought that, inasmuch as the popular construction was otherwise and had been acted on for several years, so that a different construction "would unsettle many titles, distract, if not destroy, many private interests, and impair the public faith and confidence in a great variety of merely governmental regulations adopted at these special meetings," it was constrained to uphold the validity of such meetings, notwithstanding the court thought them void. *Ferry vs. Ridce*, 56 Mo. App., 615, 622, followed in *McQuiddy vs. Vineyard*, 60 Mo. App., 1. c. 619.

Sec. 10. The style of ordinance shall be: "Be it ordained by the City of St. Louis, as follows:"

Sec. 11. No ordinance shall be passed except by bill and no bill shall be so amended in its passage as to change its original purpose.

See similar constitutional provision construed in *State ex rel. vs. Mason*, 155 Mo., 486, 502, where the court says: "This purpose means the general purpose of the bill, not the mere details through which and by which that purpose is manifested and effectuated."

Sec. 12. No ordinance shall be revived, or re-enacted except by bill setting it forth in full, nor amended except by bill setting forth the ordinance or section amended in full, as amended.

See like constitutional provision as to the statutes. Const., Art. IV.,

Secs. 33, 34. Construed *State ex rel. vs. Finn*, 8 Mo. App., 341; *French vs. Woodward*, 58 Mo., 66; 96 Mo., 602; 92 Mo., 325; 47 Mo., 29; 100 Mo., 439.

Sec. 13. No bill, except a general appropriation bill which shall only embrace matters on account of which moneys are appropriated, shall contain more than one subject, which shall be clearly expressed in its title.

See Art. XVI., Sec. 3.

No bill shall contain more than one subject, which shall be clearly expressed in the title. *St. Louis vs. Commission Co.*, 226 Mo., 148. This clause is not violated if all the provisions are germane to the one subject, and the generality of the title is no objection so long as it is not made to deceive, or to cover legislation incongruous in itself. Sound policy and legislative convenience dictate a liberal construction of the title and subject-matter to maintain their validity. *St. Louis vs. Llesing*, 190 Mo., 464, 489; *State vs. Whitaker*, 160 Mo., 59; *State ex rel. vs. St. Louis*, 169 Mo., 31; *Bergman vs. Ry.*, 88 Mo., 678, 683 (Henry, J., dissenting, 685); *Senn vs. Ry.*, 124 Mo., 621, 627; *Weber vs. Johnson*, 37 Mo. App., 601; *St. Louis vs. Weitzel*, 130 Mo., 600, 615-616. (Nearly all the above are decisions on *St. Louis* ordinances, but there are numerous decisions in this state upholding state statutes against a like constitutional provision on the same principle. These cases are to the effect that the title is sufficient if not deceptive as to the chief topic, and the minor features have a natural connection with the subject named in the title. *State ex rel. vs. Wiethaupt*, 231 Mo., 449; *Blair vs. Chicago*, 200 U. S., 400 loc. cit 451. The constitutional inhibition does not apply to an ordinance. *Tarkio vs. Cook*, 120 Mo., 1, l. c. 7). If the purpose of the bill is not expressed in the title, although the body of the bill expresses the object, it is void; it was said "the body of the bill expresses its object, the title disguises and conceals it." *State ex rel. vs. St. Louis*, 161 Mo., 371, 386 (Marshall, J., dissenting, p. 398). repeating a quotation found in *Kansas City vs. Payne*, 71 Mo., l. c. 162.

Sec. 14. The board of aldermen at any meeting held thirty days or more after any bill shall have been referred to a committee, shall, on motion of any member, determine by the yeas and nays entered on the journal, whether such committee shall be discharged from further consideration thereof.

Sec. 15. All amendments adopted shall be incorporated with the bill by engrossment under the supervision of a committee which shall report in writing such engrossment not later than the first meeting of said board held more than three days after the order to engross.

For similar constitutional provisions for statutes, see Const., Art. IV., Sec. 29.

Sec. 16. Every bill shall be read on three different days in open session before its adoption, and no bill shall become an ordinance unless a majority of all the members vote in favor of its adoption and the presiding officer signs the same in open session.

Three different readings held directory as to cities of the fourth class. *Aurora vs. Aurora Co.*, 129 Mo., 540, 577. As to city of *St. Louis*, *St. Louis vs. Foster*, 52 Mo., 513, l. c. 515 (holding that an ordinance regularly authenticated in the revision could not be impeached on that ground).

An entry that "the speaker in open session affixed his signature thereto in accordance," etc., is sufficient to show a signature in the presence of the house. *Construction Co. vs. Loevy*, 64 Mo. App., 430, 436 (see s. c. in Supreme Court, but not noticing this point, 179 Mo., 455); and the provision requiring the presiding officer to sign in open session being the only one in this section of the charter that is mandatory, a compliance therewith is sufficient, the other provisions, such as suspending all other business, etc., being directory. *Paving Co. vs. Hunt*, 100 Mo., 22, 26.

After the bill has gone through all the legislative stages, the mere signing by the presiding officer was held to be a ministerial duty which he can be compelled by mandamus to perform in case he refuses without

warrant to sign: *State ex rel. vs. Meier*, 143 Mo., 439 (Sherwood, J., dissenting); but this case was criticised as not announcing a correct rule of law by Judge Sherwood and overruled in *Albright vs. Fisher*, 164 Mo., 1. c. 65, 67-68 (Brace and Gantt, J.J., dissenting on the overruling of the *Meier* case). The *Albright* case regards the duties of the presiding officer as legislative instead of ministerial and beyond the reach of the courts.

Sec. 17. Each bill shall be presented to the mayor immediately after its adoption, but shall not be acted upon by him (except it be an emergency measure) within ten days after its adoption. He shall within twenty days after its presentation to him return it with his approval or disapproval endorsed thereon to the board of aldermen, or, if said board shall have finally adjourned, to the register. Failure so to return any bill within said time shall constitute approval thereof by the mayor. If the mayor approves the bill, or fails to return it as and when above provided, it shall become an ordinance, subject to the referendum provisions of this charter. If he returns it to the register, with his disapproval endorsed thereon, after said board shall have finally adjourned, but within said twenty days, it shall not become an ordinance. If he returns it to said board, with his disapproval endorsed thereon, within said twenty days and before said board shall have finally adjourned, said board shall reconsider it. If, on such reconsideration, two-thirds of all the members vote to pass the bill, the presiding officer shall certify that fact thereon over his signature and thereupon the bill shall become an ordinance, subject to the referendum provisions of this charter; otherwise it shall not become an ordinance. If a bill contains several items of appropriation, the mayor may disapprove one or more items while approving the others, and the items approved shall become an ordinance in like manner as a bill approved, and the items disapproved shall be proceeded with in like manner as a bill disapproved.

For ordinance provision, see Rev. Code, 1912, Sec. 47.

Under the former charter provisions there was room for doubt what effect followed the adjournment of the assembly within ten days after the passage of a bill which had not been returned by the mayor; but it was held that such bill did not become a law, otherwise it would have been in the power of the assembly to nullify the charter requiring the concurrence of the mayor in a bill. *State ex rel. vs. Carr*, 67 Mo., 38, affirming s. c. 1 Mo. App., 490. The present charter obviates the question; and an ordinance is not invalid because filed by the mayor in the register's office instead of the house, when it appears that both houses of the assembly had adjourned on the day of presentation to the mayor. *Paving Co. vs. Hunt*, 100 Mo., 22.

If the record shows the mayor's approval of a bill, the actual signature need not be proven. *Bank vs. St. Louis*, 10 Mo. App., 587 (memo. opin.).

"By the charter of St. Louis, the mayor is a part of the law-making, or ordinance-enacting, power of the city government, and his concurrence in legislative action is essential to its validity, unless the ordinance is passed over his veto." *Gantt, J., in State vs. Butler*, 178 Mo., 1. c. 340, citing *Elchenlaub vs. St. Joseph*, 113 Mo., 395.

Signature of name in personal handwriting not required. It is sufficient if his name is signed thereto under his immediate direction. *Porter vs. Paving Co.*, 214 Mo., 1.

Sec. 18. In all cases under the two next preceding sections the vote shall be determined by yeas and nays and the names of the

members voting for and against the bill shall be entered on the journal.

Yeas and nays. See *St. Louis vs. Foster*, 52 Mo., 1. c. 515-516, citing *N. Y. case*. As to construction of corresponding constitutional provision with respect to statutes (*Const.*, Art. IV., Sec. 31), *State ex rel. vs. Mead*, 71 Mo., 266. The court takes judicial knowledge of the number of senators and members of the state assembly. *State ex rel. vs. Mason*, 155 Mo., 486.

Sec. 19. No ordinance, unless it be an emergency measure, shall take effect until thirty days after its approval by the mayor or thirty days after adoption over his veto.

See constitutional provision as to statutes. *Const.*, Art. IV., Sec. 36.

This provision is essential in view of Art. VI., Sec. 2, concerning the referendum. Besides this provision in the charter fixing the time within which ordinances shall take effect is in the nature of a limitation upon legislative and ministerial power. It is founded in the policy of allowing a certain time to elapse within which the public may acquire knowledge of the ordinance before it shall become operative for any purpose; as in case of an act of the general assembly, so if any step founded on such ordinance is taken before it becomes operative no validity attaches to such step. *Keane vs. Cushing*, 15 Mo. App., 96, 101.

An ordinance may lawfully be made to depend and be made contingent in going into effect upon the happening of a future event within a reasonable time after the expiration of the thirty days. *Construction Co. vs. Loevy*, 64 Mo. App., 430, 432 (relying on *State ex rel. vs. Pond*, 93 Mo., 606 1. c. 621; the case was affirmed without notice of this point. 179 Mo., 455); *Sherwood, J.*, in *St. Louis vs. Howard*, 119 Mo., 41 1. c. 47.

Parol evidence and even the journal are inadmissible to show that an ordinance valid on its face was passed prior or subsequent to the date of its attestation. *Ball vs. Fagg*, 67 Mo., 481.

Sec. 20. An emergency measure is any ordinance necessary for the immediate preservation of the public peace, health, or safety and declared to be an emergency measure; any ordinance calling or providing for any election or vote by or submission to the people; any ordinance making an appropriation for the payment of principal or interest of the public debt, or for current expenses of the city government; any general appropriation ordinance; or any ordinance fixing any tax rate; but no ordinance granting, enlarging or affecting any franchise or amending or repealing any ordinance adopted by the people under the initiative shall be an emergency measure.

See Art. XV., Sec. 2.

Sec. 21. Every ordinance shall be immediately sent to the register, and by him numbered, filed and preserved in his office. Every ordinance shall be published within ten days after its approval by the mayor or adoption over his veto in the paper or papers doing the city publishing.

For ordinance provisions on numbering, printing, and repeal of ordinances, see *Rev. Code*, 1912, Secs. 50-54, and as to the effect of repealing a repealed ordinance, *Rev. Code*, 1912, Secs. 50, 60; and the effect of a repeal on tenure of office, *Rev. Code*, 1912, Sec. 61. How far repeals affect rights in pending matters, etc., *Rev. Code*, 1912, Secs. 51, 52, 55, and see notes to some of above sections.

Repeal. See provisions in ordinance No. 27,750 and in ordinance *Rev. Code*, 1912, Sec. 54.

In determining whether or not a later ordinance "in express terms" repeals a former one, the thing done and not the words used, is the determinative matter. *St. Louis vs. Kellman*, 235 Mo., 687, where held that the words "strike out," when used with reference to an existing ordinance, are as effective as the word repealed.

Under this provision of the charter it is held that where there is a special ordinance enacted on the same subject as a general ordinance, so that if standing alone the latter would include the same matter and conflict with the special act, the special and particular must be taken as intended to create an exception to the general, and not as a repeal thereof by implication. *Ruschenberg vs. Railroad*, 161 Mo., 70, 82; *Campbell vs. Ry.*, 175 Mo., 161, 176-177. See also other authorities to this effect cited in note (under paragraph "Construction of charter and ordinance provisions") at page 295, R. C., 1912.

Where the supposed sections are not materially variant the charter provision does not apply, and at all events the last section is invalid only to the extent of the conflict, and to that extent only leaves the original ordinance in force. *St. Louis vs. Weitzel*, 130 Mo., 1. c. 617.

A contention that an ordinance is void because in conflict with a former general ordinance not expressly repealed, under this section, is futile where such former ordinance is not offered in evidence or referred to in the trial. *St. Louis vs. Liessing*, 190 Mo., 1. c. 490.

This section does not apply where both ordinances are special; a special ordinance may be repealed by implication by a subsequent special ordinance in conflict with it: *Schumacher vs. St. Louis*, 3 Mo. App., 297.

But where a provision is of a general nature, no subsequent special or general ordinance which does not repeal the former in express terms will operate to affect it, and the first ordinance remains unrepealed. *Lemoine vs. St. Louis*, 72 Mo., 404, 1. c. 406. Hence a general ordinance imposing a license of \$100 not in express terms repealing a prior general ordinance imposing a license of \$50 for the same purpose is invalid, and remains so until the first is expressly repealed. *St. Louis vs. Sanguinet*, 49 Mo., 581.

It is manifest that since the general assembly's enactments are paramount to those of the municipal assembly, any ordinance in conflict with a prior or subsequent statute is to that extent simply void, independently of any question of express or implied repeal. See authorities and discussion in general note at page 292, R. C., 1912. These charter and ordinance provisions as to repeals do not, of course, apply to statutes.

As to repeal of an ordinance or part thereof not reviving a former ordinance repealed see Rev. Code, 1912, Sec. 50. In *State vs. De Bar*, 58 Mo., 395, it was held that where a charter provision operated to exclude a state provision on the same subject, within the city, a repeal of the charter provision did not revive the statutory provision as to the city. See, also, *State vs. Lewis*, 5 Mo. App., 465. Where a charter provision is enacted which renders certain parts of an ordinance theretofore passed in conflict with the new provision, the ordinance will be superseded only to the extent of the conflict, if that does not impair the remainder: *Quinette vs. St. Louis*, 76 Mo., 402. As to partial validity of ordinances, see note at page 286, R. C., 1912.

The requirement in this section of printing within ten days does not apply to a revising ordinance. *St. Louis v. Foster*, 52 Mo., 513, 516.

Sec. 22. There shall be a revision of the general ordinances every five years.

Effect of revision.

The revision of the ordinances does not have the effect of breaking the continuity of those provisions in force prior to the revision and carried into it, but only to continue their existence. *St. Louis vs. Foster*, 52 Mo., 513, 516; *St. Louis vs. Alexander*, 23 Mo., 483, 509.

The provision of the 1876 charter, Art. XV., Sec. 2 (now Art. IV., Sec. 21) that every ordinance passed shall be published in the papers doing the city printing within five days after its approval, did not apply to a revising ordinance. *St. Louis vs. Foster*, 52 Mo., 513, 516.

That the official revision purporting to contain the ordinances is admissible in evidence without more, to prove the ordinance provisions therein contained, see authorities and reference found in note at page 289, R. C., 1912.

By Rev. Code, 1912, Sec. 63, it is provided that a reference to this "Revised Code of St. Louis, 1912," by section number is a sufficient designation of any ordinance therein contained to which reference is desired.

It is to be observed that even in case of the revision of the state statutes it may be shown that a provision has been illegally carried into the official volumes, and the court may inform itself concerning the existence of a statute which is challenged by examining the original rolls in the office of the secretary of state. *Bowen vs. Ry.*, 118 Mo., 541.

Special and general ordinances.

These are thus distinguished by Mr. McQuillin (see Mun. Code, p. 224; also McQ. unofficial work "Amended Charter," p. 230): "All ordinances of

a general nature having an obligatory force on the community and upon the administration of the municipal government are denominated general. Those granting franchises, special privileges, as the making of excavations, etc., to persons or corporations, providing for public work or improvement, to establish sewer districts, the construction of sewers, streets and sidewalks, to fix the grade of streets, to authorize the city to borrow money, to authorize officials to do certain things, as the leasing of property, laying of water distribution pipes, etc., are usually special."

Function of revision.

A general revision of the ordinances, such as is provided for by this section of the charter, is in form but a single ordinance, adopted by the assembly as any other ordinance. The 1912 Revised Code (which covers only general ordinances) is Ordinance 26653, approved November 9, 1912. It is believed that the charter provision that no ordinance shall contain more than one subject, "which shall be clearly expressed in the title," applies to a revising ordinance; the provision for notifying the public of ordinances passed, within five days thereafter, by publication, does not apply (St. Louis vs. Foster, supra); and for these technical reasons (and others more potent which suggest themselves when we consider the practical situation, requiring a comparatively hasty examination and adoption by the municipal assembly of a reviser's voluminous work, which would make it almost impossible to notice the changes), it is believed that it was not intended that new ordinances, not enacted in the usual manner, should be included in a revision for the first time as a part thereof. The principal object of a revision is to put the existing ordinances in accessible form, chiefly by eliminating those repealed, inserting new ordinances enacted since the former revisions, indexing same, inserting head-lines, etc., and other matters of form. The revision of the revised statutes of one state is not based upon the same procedure, and the function of the revision thereof every ten years furnishes no safe guide to the effect of a revision of the ordinances. Changes in substance involve legislative discretion and deliberation in the board of aldermen, which can not be accorded by it to each of the voluminous general ordinances submitted in bulk by a reviser. Hence in revisions of 1907 and 1912 numerous changes were suggested to the municipal assembly for adoption, in a preliminary report by the reviser, many of which were adopted in time to be embodied in the 1907 and 1912 codes. The ordinance authorizing the 1912 revision is number 25964, which required in addition to the ordinance revision a collation of state laws especially applicable to the city of St. Louis and annotations thereof as well as of the charter and ordinances.

General revisions of St. Louis ordinances.

The revisions of the ordinances of St. Louis prior to the scheme and charter were as follows: By Wilson Primm in 1835-6; A. B. Chambers in 1843; Chas. D. Drake in 1846; John M. Krum in 1850; S. V. Papin, city register, in 1853; Thos. C. Chester in 1856; Chas. H. Tillson in 1861; J. Gabriel Woerner in 1866; E. W. Pattison in 1871. Under the 1876 charter revisions were made by M. J. Sullivan in 1881 (ordinance 11668); by the same in 1887 (ordinance 14000); by Chester H. Krum in 1892 (ordinance 17138); by Eugene McQuillin in 1900 (ordinance 19991, officially designated "Municipal Code of St. Louis"); by William F. Woerner in 1906 (being ordinance No. 22902, approved March 19, 1907, officially designated the "Revised Code of St. Louis"); and by Edgar R. Rombauer in 1912 (ordinance 26653), officially designated as "The Revised Code of St. Louis, 1912." Another general revision of the ordinances, to be officially known as "The Revised Code of St. Louis, 1914," is now in course of preparation by Hugh K. Wagner, the compiler of this pamphlet, which revision is necessary at this time in order to conform the ordinances to the many changes introduced by the charter adopted June 30, 1914, and which revision requires the redrafting and re-enactment of many ordinances to conform to the new charter.

Sec. 23. The board of aldermen shall have power by ordinance not inconsistent with this charter to exercise all the powers of the city, and provide all means necessary or proper therefor; also to do all things needful within or without the city or state to protect the rights of the city.

See ordinance precautions against fire in numerous sections of the Building Code (Rev. Code, 1912, Secs. 301-556 inclusive).

Regulate steam boilers and require licensed engineer, etc. St. Louis vs. Lamp Co., 139 Mo., 568.

Removal by mayor of appointed officer as penalty for misconduct is within general welfare clause. *State ex rel. vs. Walbridge*, 119 Mo., 383, 393.

Prohibit disturbance of the peace, drunkenness, gambling, further public safety, prohibit carrying concealed weapons, noises, immorality, and numerous other miscellaneous offenses, etc. See ordinances and notes thereto in Rev. Code, 1912, Chapter 39.

See further authorities under the particular subjects involved.

Sec. 24. No fine shall exceed five hundred dollars. Any one against whom any fine shall have been assessed, failing to pay the same and costs, shall be committed to the workhouse or other place provided therefor, and to such labor as may be provided by ordinance, until such fine and costs shall be fully paid, at the rate of one day's imprisonment for each three dollars of fine; provided, that no such imprisonment shall exceed one hundred days for any one offense, and provided further, that fines may be paid in installments in such manner as may be provided by ordinance, and provision may be made by ordinance for the detention, with the view to reform and cure, of habitual drunkards or other habitual delinquents, as may be defined by ordinance, for an indeterminate sentence not exceeding one year.

For ordinances on fines, penalties, and forfeitures. Rev. Code, 1912, Secs. 2694-2697, and in connection therewith the subjects below referred to.

Proceedings in police courts for violation of ordinances. See note discussing this subject in full, Rev. Code, 1912, Sec. 1863, together with references to charter and ordinance provisions, with general discussion and citation of authorities; also note to Sec. 1879.

Court criminal correction, and authorities relating thereto. See "Laws Specially Applicable to St. Louis," Secs. 96 to 161.

Workhouse ordinances and discussion. Rev. Code, 1912, Secs. 1970 to 2012, and also note to Sec. 1863.

House of refuge (now St. Louis industrial school). Rev. Code, 1912, Sec. 2013.

Sec. 25. Except as otherwise expressly provided in this charter no money shall be expended except in consequence of appropriations made by ordinance, and no improvement involving any expenditure of money shall be ordered except by ordinance. No ordinance making, changing or transferring an appropriation or contemplating or involving the payment of any money shall be adopted unless the board of estimate and apportionment shall have recommended or joined in recommending the same.

See Art. XIII., Sec. 5, clause (g).

Sec. 26. The board of aldermen shall not have power to relieve or exempt any person from the payment of any tax, or from any burden imposed by law; nor to authorize the compromise of any disputed contractual demand, or any allowance on account thereof not provided for in the contract, except on recommendation of the board of estimate and apportionment; nor to authorize the payment of any damages claimed for alleged injuries to persons or property, except upon recommendation by the city counselor; nor to appropriate any money for charitable purposes, except such as shall be subject to the administration or supervision of the city; nor to sell, lease or otherwise dispose of the water works; nor to sell any of the city's real estate except by ordinance adopted by a

vote of two-thirds of all the members; nor to acquire real estate by private purchase except by ordinance recommended by the board of public service.

Power of comptroller to correct manifest errors in tax assessments. Charter, Art. XV., Sec. 16.

The exception requiring a two-thirds vote, added at the end of the section, applies to the whole section and not only the last clause thereof: *State ex rel. vs. St. Louis*, 174 Mo., 125, 135 et seq., giving a history of similar section in the 1876 charter (Art. III., Sec. 30). Hence it is held that the city is not prohibited from reimbursing a police officer, who, when ordered to shoot a mad bull in the streets, wounded a boy, resulting in the officer's being compelled to pay damages therefor. *State ex rel. vs. St. Louis*, 174 Mo., 125.

The city is not prevented from purchasing water-pipe laid by private citizens and making it a part of the city system by a proper ordinance, although it is styled as a relief ordinance. *State ex rel. vs. St. Louis*, 169 Mo., 31, 37.

An ordinance making a donation of public money to a private institution or to an individual is void as beyond the power of the board of aldermen. *Hitchings vs. St. Louis*, 49 Mo., 484; *Campbell vs. St. Louis*, 71 Mo., 106, 109, 111. See also *Knapp vs. Kansas City*, 48 Mo. App., 485, and authorities cited.

For ordinances on the subject of ordinances, see Rev. Code, 1912, Secs. 47 to 63.

As to legislative powers of the municipal assembly, and its limitations, and the control of the courts to annual ordinances, see note to Section 1 of this article.

Ordinances in force at adoption of Charter not in conflict with it remain in force until repealed. Section 1 of schedule to charter.

Departure from prescribed form by omission of the ordaining clause or similar informalities is not fatal to the validity of the ordinance; such provisions are directory unless stated to be indispensable. *St. Louis vs. Foster*, 52 Mo., 513. See to same effect *Rockville vs. Merchant*, 60 Mo. App., 365, 371; *St. Louis vs. Stern*, 3 Mo. App., 48; see, also, *Tarkio vs. Cook*, 120 Mo., 1, 7-8.

It was held that, like statutes, city ordinances can not be shown to be invalid by going behind the formal attestation and showing that the requirements of the organic law were not complied with. *Ball vs. Fagg*, 67 Mo., 481, 484; but this case was overruled in subsequent cases, see note to Section 1 of this article.

Ordinances unauthorized by charter or in conflict with it, see note at page 294, R. C., 1912.

Ordinances to go into effect on certain contingency are valid. See note, Section 19 of this article.

Partial validity of ordinances. Where certain provisions of an ordinance are attacked, which are valid, and such provisions are severable from and not dependent upon invalid parts, the whole enactment will not be declared void because of such invalid portions, but the valid portion will be sustained, unless that would defeat the general object of the enactment, in which case the whole is void. *St. Louis vs. Liessing*, 190 Mo., 464, loc. cit. 489; *St. Louis vs. Grafeman Dairy Co.*, 190 Mo., 492; *Kirkwood vs. Highlands*, 94 Mo., App. 637; *Asphalt Co. vs. Ullman*, 137 Mo., 1 c. 569; *St. Louis vs. Ry.*, 89 Mo., 44; *Hannibal vs. Telephone Co.*, 31 Mo. App., 23; *Quinette vs. St. Louis*, 76 Mo., 402, 404; *State ex rel. vs. Clifford*, 228 Mo., 194; *Gist vs. Construction Co.*, 224 Mo., 369; *St. Louis vs. Cool*, 228 Mo., 209.

Ordinances presumptively valid. Ordinance is presumed to be valid and the burden to show that any of the steps required by law in its passage were not properly taken rests upon him attacking it. *Boonville ex rel. vs. Stephens*, 238 Mo., 339; *State ex rel. vs. Lowe*, 226 Mo., 308; *Savings Bank vs. Ridge*, 183 Mo., 506, 518 (special tax bill under ordinance); *State ex rel. vs. St. Louis*, 174 Mo., 125, 136 (two-thirds vote required being presumed unless contrary shown); *Young vs. St. Louis*, 47 Mo., 492 (two-thirds vote presumed when required). Ordinances are presumed to be passed as required by the charter. *State ex rel. vs. St. Louis*, 169 Mo., 31, 37; if not passed in a certain required manner necessary to their validity or if certain conditions precedent essential to their validity do not exist, that is special matter of defense to be pleaded and proved. *St. Louis vs. Gleason*, 15 Mo. App., 25, 29 (street opening). Parol evidence was at one time held inadmissible. *Ball vs. Fagg*, 67 Mo., 481; but this was said to have been practically overruled by *State ex rel. vs. Mead*, 71 Mo., 266. See *Fruin-Bambrick vs. Geist*, 37 Mo. App., 1 c. 516. See also cases under note to Art. IV., Sec. 8.

Attacking ordinance in the courts for fraud or as being unreasonable or oppressive, see note to Art. IV., Sec. 1.

Pleading ordinances—judicial notice. The courts will not take judicial notice of ordinances; the party relying on the same must set out so much of them as may be necessary for his position. *St. Louis vs. Henning*, 235 Mo., 44; *St. Louis vs. Ringold*, 235 Mo., 472; *St. Louis vs. Johnson*, 235 Mo., 478; *St. Louis vs. Liessing*, 190 Mo., 464, 490 (and see p. 485 that if one section of an ordinance, of many sections, is pleaded, it is very doubtful whether other sections of the same ordinance can be considered); *Mooney vs. Kennett*, 19 Mo., 551; *St. Louis vs. Roche*, 128 Mo., 541, 544-545; *Tarkio vs. Loyd*, 179 Mo., 600, 605; *Givens vs. Van Studdiford*, 86 Mo., 149 (distinguished in *Bragg vs. Railway*, 192 Mo., 1 c. 350); *St. Louis vs. Bippen*, 201 Mo., 528.

Reference merely to title and date of passage without more is insufficient. *St. Louis vs. Stoddard*, 15 Mo. App., 173, 179. But if the ordinance is a mere matter of evidence, and not the basis of the claim, and simply defines certain duties, the ordinance need not be pleaded, for the rule that evidence should not be pleaded is applicable to ordinances. *Bailey vs. Kansas City*, 189 Mo., 503, 514; *Bragg vs. Street Ry.*, 192 Mo., 331, 350; *Meng vs. Railroad*, 108 Mo. App., 553, 564; *Mulderig vs. Railroads*, 116 Mo. App., 655, 665. As to the sufficiency of pleading ordinances in a police court, charging violation of an ordinance, see annotation to *Rev. Code*, 1912, Sec. 1879. It may be that a strictly municipal court (e. g. one of the city courts, Art. XII.) will take notice of the city ordinances of a general nature. See McQuillin's "Amended Charter," note on page 200, citing cases from other states.

Although the case declares on an ordinance and pleads it, yet if there is sufficient pleaded and proved to make a case at common law the plaintiff may recover although the ordinance is not proved. *Winkelman vs. Electric Co.*, 110 Mo. App., 184, 190, citing cases.

Evidence of ordinances—how ordinances proved. *Rev. St. Mo.*, 1909, Sec. 6295, provides that printed copies of ordinances purporting to be published by authority of the city and certified to by the officer having charge of the same (register), with the seal of the city, are admissible in all the courts of the state without further proof; and any printed volume purporting to be published by such authority and to contain the ordinances is so admissible. See on this subject *Campbell vs. Railway*, 175 Mo., 171, 176 (in that case the *St. Louis* revised ordinances were involved); and no seal or attestation to printed volume is in such case required. *St. Louis vs. Foster*, 52 Mo., 513, 517 (also referring to the revised ordinances of *St. Louis*); *Tarkio vs. Cook*, 120 Mo., 1, 12, citing *Tipton vs. Norman*, 72 Mo., 381.

By ordinance provision a reference to the revision of the *St. Louis* ordinances by section number is sufficient. See *Rev. Code*, 1912, Sec. 63.

It may be observed that even in case of the official statutory revision, it may be shown that a provision has been illegally carried into it, and reference to the original rolls in the office of the secretary of state is permissible to ascertain the facts. *Bowen vs. Railway*, 118 Mo., 541.

Proof where original ordinance record torn out of regular ordinance record book. *Webb City vs. Parker*, 103 Mo. App., 295. Proof where original ordinance is lost. *Cavanev vs. Milan*, 99 Mo. App., 672; *Wells vs. Pressy*, 105 Mo., 164, 178; *Rockville vs. Merchant*, 60 Mo. App., 365, 370.

An ordinance can not be proved by having a witness state its contents. *Viernow vs. Carthage*, 139 Mo. App., 276.

That ordinances can not be impeached by parol, or going behind the formal attestation, to prove that the formalities required by the charter were not complied with, has been stated above in this note.

Public presumed to know ordinances. The residents within a municipality must be held to know and take notice of the ordinances of the city, and this requirement is not inconsistent with the rule that the courts do not take judicial notice thereof. *Jackson vs. Ry.*, 118 Mo., 199, 218-219.

The provisions enter into a contract made with the city, whether formally referred to therein or not. See note at page 419 R. C. 1912.

As to judicial and public notice of charter provisions, see note preceding Art. I.

Estoppel to attack ordinance as invalid by one who claims the benefit thereof. *California vs. Telephone Co.*, 112 Mo. App., 722; *Henderson vs. Koenig*, 192 Mo., 690. See also note at page 387, as to estoppel of owner to contest ordinance on which special tax bill is issued; and as to the doctrine of estoppel applying against and in favor of the city, see note at page 419 R. C. 1912.

Construction of ordinances. See note at page 295 R. C. 1912, and cases there cited.

Construction of ordinances is for the court, and should not be left to the jury. *Barton vs. Odessa*, 109 Mo. App., 76. Nor can validity be left

to the jury. *Fruin-Bambrick vs. Geist*, 37 Mo. App., 1. c. 516.

If an ordinance is susceptible of two constructions it must be given the construction that will uphold its validity. *Sedalia ex rel. vs. Smith*, 206 Mo., 346.

Where there is a doubt as to the meaning of an ordinance resort may be had to its title to clear away the doubt. *Sedalia ex rel. vs. Smith*, supra.

Where there is a doubt whether the legislative body had in contemplation the grading of a street under one section of an act or the grading as contemplated in another section of the act, resort may be had to extrinsic facts and means of explanation to find out the real meaning of the legislative body. *Sedalia ex rel. vs. Smith*, supra.

See certain ordinances on construction of city ordinances, Rev. Code, 1912, Secs. 49 to 59.

ARTICLE V.

The Initiative.

Section 1. The people shall have power, at their option, to propose ordinances, including ordinances proposing amendments to this charter, and to adopt the same at the polls, with the same effect as if adopted by the board of aldermen and approved by the mayor, such power being known as the Initiative. It shall be exercised as hereinafter provided, subject to the provisions of this charter.

Sec. 2. Such an ordinance shall be proposed by petition signed by registered voters equal in number to five per cent, or, in case the proposed ordinance is for the submission of an amendment to the charter, ten per cent, of all the registered voters of the city at the time of the last preceding regular mayoralty election. Each of the papers comprising the petition shall contain the proposed ordinance in full and designate by names and addresses five persons as the committee of the petitioners.

Sec. 3. Each such petition and the papers comprising same shall be governed by, and proceedings shall be had thereon in accordance with, the provisions of sections 3 and 5 of Article III. concerning the recall, but construing said sections with reference to the petition and the sufficiency thereof required by this article.

Sec. 4. If the board of election commissioners find that the petition, with supplements, if any, is sufficient, it shall forthwith certify that fact, together with a copy of the petition, omitting signatures, to the board of aldermen. Unless the proposed ordinance is, without amendment, adopted and approved by the mayor, or adopted, without amendment, over his veto, within sixty days after the regular meeting of the board of aldermen next after said certification, or unless four members of the committee of the petitioners shall, within fifteen days after the expiration of said sixty days, state in writing to the clerk of the board of aldermen that there is no necessity for submitting the proposed ordinance to the voters, said clerk shall forthwith certify the failure to adopt same to the board of election commissioners. Said board of election commissioners shall thereupon provide for submitting said pro-

posed ordinance, in its original form, to the voters at the first election, at which such submission may lawfully be had, not less than thirty days after such certification to it by said clerk, and if there is no such election within ninety days after such certification, and the petition shall be signed by registered voters equal in number to seven per cent, or in case the proposed ordinance is for the submission of an amendment to the charter, fifteen per cent, of all the registered voters of the city at the time of the last preceding regular mayoralty election, then such submission shall be at a special election to be held within such ninety days if legally possible, otherwise at the earliest day on which such submission may be had at either a general or special election.

For board election commissioners see Art. XXV., Sec. 7.

Sec. 5. The ballots shall state the nature of the proposed ordinance, and to the right thereof in bold type the words "Yes" and "No," one above the other. To vote for such ordinance the voter shall strike out the word "No" and to vote against it, the word "Yes." If a majority voting on the proposed ordinance vote in favor thereof, it shall be an ordinance of the city, in effect ten days thereafter, and the board of election commissioners shall certify a copy thereof and the fact of its adoption to the register, who shall number said ordinance and file and preserve said copy and certificate in his office. Such ordinance shall be published and printed copies thereof made for distribution as provided for other ordinances.

Sec. 6. No ordinance adopted at the polls under the Initiative shall be amended or repealed by the board of aldermen except by vote of two-thirds of all the members, nor within one year after its adoption.

ARTICLE VI.

The Referendum.

Section 1. The people shall have power, at their option, to approve or reject at the polls any ordinance (except it be an emergency measure as defined in section 20 of Article IV.), such power being known as the referendum and to be invoked and exercised as herein provided.

Sec. 2. If within thirty days after the approval by the mayor of any ordinance (not an emergency measure) or its adoption over his veto, there is filed with the board of election commissioners a petition purporting to be signed by registered voters equal in number to two per cent of all the registered voters of the city at the time of the last preceding regular mayoralty election, requesting that said ordinance be reconsidered and rejected or referred, then said board shall certify that fact to the register

and said ordinance shall not take effect except as hereinafter provided. Within ten days after such filing the said board shall find and certify the number of registered voters signing said petition and what percentage said number equals of the entire number of said registered voters at the time of said election. If the percentage so found is less than the two per cent aforesaid, said board shall certify that fact to the register, the said petition shall not be supplemented, and said ordinance shall take effect. If the percentage so found is not less than two per cent but is less than seven per cent of all of said registered voters at the time of said election, then within thirty days after the certification of such finding there may be filed with said board a supplemental petition, shown, by the affidavits appended thereto, to be signed by registered voters to a number which, with the number of registered voters who signed the original petition, equals in number said seven per cent. If such supplemental petition is filed, said board shall within ten days thereafter find and certify the number of registered voters signing same and whether such signers, added to registered voters who signed the original petition, equal in number said seven per cent. If it finds that the aggregate number of such signers does not equal said seven per cent, or if the committee of the petitioners make the statement in writing as hereinafter mentioned, said board shall certify the fact to the register, no further supplementing shall be permitted, and said ordinance shall take effect. If said board finds the original petition, or the original and supplemental petitions together, to be signed by registered voters equal in number to said seven per cent, it shall, forthwith after either such finding, certify that fact, together with a copy of the petition (omitting the signatures), to the register and to the board of aldermen, and the latter board shall reconsider said ordinance. If on such reconsideration the board of aldermen by a majority vote rejects said ordinance, it shall not take effect. If the board of aldermen fails to finally and wholly reject said ordinance within thirty days after such certification to it, then, unless four members of the committee of the petitioners, within fifteen days after said thirty days expire, state in writing to the clerk of the board of aldermen that there is no necessity for submitting said ordinance to the voters, such clerk shall forthwith certify said failure to the board of election commissioners, which shall thereupon make provision for submitting such ordinance, in such form as it then shall be, to the voters; *provided*, that the final percentage of signers required to compel submission to the voters of an ordinance amending or repealing an ordinance adopted at the polls under the initiative shall be three per cent instead of seven per cent as required in case of other ordinances. Such submission shall be at the first election, at which it may lawfully be had, not less than thirty days after the last mentioned certification, and if there is no such election within ninety days after such certification, and

the original petition or the original and supplemental petitions together shall be signed by registered voters equal in number to twelve per cent of all the registered voters of the city at the time of the aforesaid mayoralty election, or if the board of aldermen shall by resolution so request, such submission shall be at a special election to be held within such ninety days if legally possible, otherwise at the earliest day on which such submission may be had at either a general or special election. If the majority of the votes cast thereon at the election shall be for such ordinance, it shall take effect within ten days after such election.

Sec. 3. The provisions of section 5 of Article V. concerning the ballots and manner of voting, the duties of the board of election commissioners and the register, and the publishing of ordinances and printing of copies thereof, shall govern like matters under this article.

Sec. 4. The signatures need not all be appended to one paper, but all papers comprising any original or supplemental petition under this article shall be uniform in character and shall each set forth the ordinance in full and contain the request mentioned in section 2, and designate by names and addresses five persons as the committee of the petitioners, and each such paper shall be verified by an affidavit stating the number of signatures thereto and that each signature was made in affiant's presence, by, as affiant verily believes, the person whose name it purports to be; and all papers comprising an original or supplemental petition shall be assembled by the petitioners and filed with the board of election commissioners as one instrument. Each signer shall state opposite his signature his residence address. Any person shall be deemed a registered voter within the meaning of this article whose name is unerasured on the registration books.

Sec. 5. If the provisions of two or more initiated or referred ordinances adopted or approved at the same election conflict, the one receiving the highest affirmative vote shall prevail in so far as such provisions conflict.

Sec. 6. Any person may present to the city counselor at least twenty days prior to any election a written statement, not exceeding one thousand words, concerning any ordinance or recall proposition to be voted on at such election. The city counselor shall at least ten days before such election prepare and cause to be published in the paper or papers doing the city publishing a fair summary of all such statements.

ARTICLE VII.**Mayor.**

Section 1. The mayor shall be the chief executive officer of the city and, except as by law or in this charter otherwise provided, have and exercise all the executive power of the city. He shall exercise a general supervision over all the executive affairs of the city and see that each officer and employe performs his duty and that all laws, ordinances and charter provisions are enforced within the city. His salary shall be ten thousand dollars per annum. All process against the city shall be served upon him. He shall appoint and may remove all non-elective officers and all employes, except as otherwise in this charter provided, but shall not remove any office, department or division head appointed by him, except for cause. He shall execute all deeds and conditional bonds made in the name of the city and see that all contracts with the city are performed and that all legal proceedings necessary to enforce or protect the rights or interests of the city are brought and diligently prosecuted. He shall have a seat and a voice and may introduce ordinances, but not vote, in the board of aldermen, and shall make recommendations and give information to said board as to city affairs. He may remit, with or without conditions, fines, costs, forfeitures and penalties imposed for violation of any ordinance or charter provision, and shall annually make a report thereof to the board of aldermen. He may examine the affairs and conduct of any department, board or office and require all officers to exhibit their accounts and papers and make reports to him. He shall annually appoint a certified public accountant to thoroughly audit all books, accounts and records relating to the fiscal affairs of the city and to report the result to him. A copy of said report shall be filed with the register.

Ordinances specially respecting and relating to mayor are contained in Rev. Code, 1912, Secs. 1-25, inclusive. As to remission of fines, penalties, etc., see note to Sec. 5, Rev. Code, 1912, and regarding police court's power to remit, see note to Sec. 1908, Rev. Code, 1912. The authority of the mayor to remit a fine can only be exercised after the fine has been imposed. *State ex rel. vs. Noonan*, 59 Mo. App., 1. c. 529, relying on *State ex rel. vs. Francis*, 95 Mo., 44. See, also, ordinance relating to the mayor's grant of paroles.

Where the power to confer a grant is in the mayor and assembly a permit alone from the mayor is void. *Lockwood vs. Ry.*, 122 Mo., 1. c. 95; *State ex rel. vs. Noonan*, 59 Mo. App., 1. c. 528; nor can the mayor alone appoint an attorney so as to make the city liable for his services. *Carroll vs. St. Louis*, 12 Mo., 444. Mandamus lies to compel the mayor to revoke an illegal permit, the immunity from judicial control appertaining to the office of governor not attaching to the mayoralty. *State ex rel. vs. Noonan*, 59 Mo. App., 524.

As to proceedings for removal of non-elective officers, see Art. VIII., Sec. 9, and note.

Sec. 2. No person shall become mayor unless he be at least thirty years of age, and shall have been, next before his election, both a citizen of the United States and a resident of the city for five years and an assessed taxpayer of the city for two years, nor if he shall have been convicted of malfeasance in office, bri-

bery or other corrupt practice or crime. If the mayor be so convicted or become a non-resident of the city he shall thereby forfeit his office.

Sec. 3. During the mayor's temporary disability or absence from the city his powers and duties shall devolve upon the president of the board of aldermen, or if said president be also absent or disabled, upon the vice-president of said board.

Rev. Code, 1912, Sec. 20. The compensation of the mayor can not be reduced because of his absence. *Bates vs. St. Louis*, 153 Mo., 18, 22,

Sec. 4. The mayor may be removed from office by the board of aldermen for crime or misdemeanor in office, for grave misconduct showing unfitness for public duty, or for permanent disability, three-fourths of all the members of said board voting for such removal. The proceedings for such removal shall be upon specific charges in writing, which, with a notice stating the time and place of the hearing, shall be served on the mayor or published at least three times in a daily newspaper. The hearing shall be public, and the mayor shall have the right to appear and defend in person and by counsel, and have process of the board to compel the attendance of witnesses in his behalf. Such vote shall be determined by yeas and nays and the names of the members voting for or against such removal shall be entered on the journal.

Ordinances for vacancy in the office of mayor, see Rev. Code, 1912, Secs. 21, 22; for removal of mayor by council. Rev. Code, 1912, Sec. 19. Vacancy in mayor's office within six months of expiration of his term, see next section (Sec. 5).

Sec. 5. Whenever a vacancy occurs in the office of mayor, the president of the board of aldermen shall become mayor, and shall hold such office until a successor is elected and qualifies. Such election, if for an unexpired term, shall be at the first general city or state election held fifty days or more after such vacancy occurs. While so holding the office of mayor a temporary vacancy shall exist in the office of the president of the board of aldermen. The vice-president of the board of aldermen shall hold the office of president of said board during any vacancy therein with the right of succession to the office of mayor.

ARTICLE VIII.

Officers.

Section 1. The mayor shall appoint the following officers at his convenience, to hold for the term for which he was elected and until their successors qualify: assessor, collector, treasurer, supply commissioner, register, city counselor, city marshal, city court judges, clerk of city courts, president board of public service, director of public utilities, director of streets and sewers, director of public welfare, and director of public safety.

General qualifications of city officers are prescribed by this article and

by ordinance. Rev. Code 1912, Sec. 2269. By Const., Art. IX., Sec. 18, no person can be both state and city officer or fill two municipal offices (excepting from its operation, notaries, justices of the peace and militia). A member of the general assembly can not be appointed to a municipal office. State ex rel. vs. Valle, 41 Mo., 29. There is no constitutional inhibition against a sheriff or deputy sheriff (who is not a state officer within the meaning of this section) from also holding the office of school director. State ex rel. vs. Bus, 135 Mo., 325, with discussion of the various provisions and citation of cases construing same.

Free passes on railroads operate to forfeit office. Const., Art. XII., Sec. 24.

As to qualifications of board of aldermen, see charter, Art. IV., Sec. 2, and note at page 284, R. C. 1912.

A collector or receiver of public money or an assistant or deputy is ineligible to office until he has paid over the public money he may be accountable for. Const., Art. II., Sec. 19.

Residence and citizenship. "No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States and who shall not have resided in this state one year next preceding," etc. Const., Art. VIII., Sec. 12. See Barclay, J., in State ex inf. vs. Vallins, 140 Mo., l. c. 537. See as to residence in city being necessary qualification, charter, see next section.

Payment of taxes on the day of election is in time to avoid ineligibility. State ex inf. vs. Berkeley, 140 Mo., 184. A receipt for taxes made the day after an election without specifying amount of property is worthless as evidence to show payment of taxes. State ex rel. vs. Williams, 99 Mo., 291.

Officers not to be interested in city contracts. The provisions of this section of the charter do not apply to an election commissioner in the city of St. Louis, who comes neither within the letter nor spirit of the prohibition. State ex rel. vs. Meier, 96 Mo. App., 160.

Rev. St. 1909, Sec. 4877, provides that a city officer who becomes interested in a city contract is guilty of a misdemeanor and subject to removal. State vs. Kelly, 103 Mo. App., 711, 714. By charter, Art. VIII., Sec. 8, any officer or employee who becomes interested in such a contract thereby forfeits his office. As to validity of city contracts, see note to Sec. 9 of Art. XXV. of charter.

For authorities on analogous points and those of other states, see discussion in McQuillin's unofficial work on "Amended Charter," pp. 244-246; also in M. C., p. 230. The principle is the same as that which prevents a trustee or administrator in dealing with himself in the trust funds. See Dillon Mun. Corp., Sec. 444 (4th ed.); Woerner on Administration (2d ed.), Sec. 334, pp. *700 et seq; ib., Sec. 487, pp. *1082 et seq.

In view of the provisions of the constitution, statutes, charter and common law, there is little doubt that contracts by the city with a city official or with a firm or corporation in which a city official is interested are void, and recovery thereon can not be had against the city. It was so held in an opinion by city counselor Bates, reviewing the authorities and legal provisions applicable, in an opinion dated June 9, 1902 (number 534 of Law Dept. files). Among the cases cited by him are: Berka vs. Woodward, 125 Cal., 199 (45 L. R. A., 420); 4 Pa. Dist. Rep., 707; State vs. Alderman, 34 N. J. L., 390; Call Pub. Co. vs. Lincoln, 29 Neb., 149; Gas Co. vs. City, 28 Neb., 852; Bellaire Co. vs. Findlay, 5 Oh. C. C., 418; Bell vs. Quinn, 2 Sandf., 146; Currie vs. School District, 35 Minn., 163; Findlay vs. Pertz, 66 Fed., 427 (29 L. R. A., 188); Borough of Milford vs. Water Co., 124 Pa. St., 610; People vs. Township, 11 Mich., 222; Pickett vs. School District, 25 Wis., 551; Fort Wayne vs. Rosenthal, 75 Ind., 156; Smith vs. Albany, 61 N. Y., 444; State vs. Water Co., 56 N. J. L., 422; Sherlock vs. Village of Winnetka, 68 Ill., 530; McAdam vs. Alderman, 36 Hun. (N. Y.), 340; State vs. Richards, 28 L. R. A., 298 (Montana).

See Rev. Code, 1912, Sec. 2287.

An ordinance which in addition to the approval by the council required that the city chemist shall receive the approval of the board of health, even if such addition be unauthorized by the charter, does not render void the appointment in accordance therewith, as the greater includes the lesser requirement. St. Louis vs. Liessing, 190 Mo., 464, 491.

Where appointment is not effective if objected to by a majority of the council it is immaterial whether the objections are in good faith or are the result of fraudulent combination between the councilmen. State ex rel. vs. Bandel, 121 Mo. App., 516.

All terms of office are limited by the constitution not to exceed four years. Art. IX., Sec. 14; Art. XIV., Sec. 8. These provisions do not apply to an officer holding at pleasure of appointing power and not for a definite term. State ex rel. vs. Johnson, 123 Mo., 43, 49.

As to the effect of the provision "and until their successors shall have

been duly appointed and qualified," see State ex rel. vs. Smith, 87 Mo., 158; State ex rel. vs. Thomas, 102 Mo., 85.

What officers are to be appointed by the mayor. Art. VIII. These appointments do not require confirmation as was the case under the 1876 charter.

When appointment may be implied. See note to Rev. Code, 1912, Sec. 2288.

Sec. 2. In addition to other qualifications required by this charter, all officers and employes, except day laborers, and except in such cases requiring exceptional scientific, mechanical, professional, or educational qualifications as may be determined by the efficiency board, must have resided in the city for at least one year and failing or ceasing so to reside, shall forfeit their office or employment.

For a case where it was held that one elected was not entitled to office because under the facts in evidence he was not a citizen of the city of St. Louis as required by charter, see State ex rel. vs. Williams, 99 Mo., 291.

Sec. 3. Every officer, and every employe holding a position upon an annual salary, shall, before entering upon his duties and within such time as may be provided by ordinance, take and subscribe, and file with the register, an oath or affirmation that he has all the qualifications and is not subject to any of the disqualifications named in this charter for the office or employment he is about to assume; that he will support the constitution of the United States and of this state and the charter and ordinances of the city; that he will be influenced only by the consideration of fitness in the appointment, promotion, demotion, suspension, or discharge of officers or employes; that he will not expend nor authorize the expenditure of money otherwise than for adequate consideration and efficient service to the city and will faithfully discharge the duties of his office or employment.

Oath. For ordinance see Rev. Code, 1912, Sec. 2271. As to necessity of oath and concerning failure to take within the time limited, see Beach on Pub. Corp., Sec. 176.

Sec. 4. The board of aldermen shall determine by ordinance whether and when any officer or employe shall give a bond and the amount and character thereof, subject to the provisions of this charter. Premiums on all bonds of officers and employes shall be paid by the city, subject to such regulations as may be provided by ordinance. If any person elected or appointed to an office shall fail to take, subscribe, and file an oath or affirmation as aforesaid, or to give bond as required by this charter or by law or ordinance, he shall forfeit his right to the office or employment.

Bonds given by city officers are approved by comptroller. Art. XXV., Sec. 5. The bond of the comptroller is approved by the mayor. Rev. Code, 1912, Secs. 2272-2286.

As to compelling approval of bond by mandamus, where there is no valid objection to the bond itself, see State ex rel. vs. Shannon, 133 Mo. 139, 165-167; State ex rel. vs. Wear, 37 Mo. App., 325.

Officers. Under the definition of officers in this section a building inspector is not included. *Magner vs. St. Louis*, 179 Mo., 495, 503. State ex rel. vs. Longfellow, 95 Mo. App., 660; but a deputy inspector of boilers and elevators is. *Gracy vs. St. Louis*, 221 Mo., 1; 213 Mo., 384; *Williams vs. St. Louis*, 213 Mo., 403; *Butterfield vs. St. Louis*, 213 Mo., 402; *Basse vs. St. Louis*, 213 Mo., 401.

See as to interpretation of a similar provision. *Weesner vs. Bank*, 106 Mo. App., 668; *State ex rel. vs. Knott*, 207 Mo., 167.

A school director is a state officer, so as to confer jurisdiction on the Supreme Court to determine title to office. *State ex inf. vs. Fasse*, 189 Mo., 532. (See also as to school directors *State ex rel. vs. Bus*, 135 Mo., 325, and note at page 414, R. C., 1912).

So a circuit clerk. *State ex rel. vs. Rombauer*, 101 Mo., 499.

Board of police and metropolitan police officers are state officers. *State ex rel. vs. Commissioners*, 184 Mo., 1 c. 133 (Kansas City police), citing *State ex rel. vs. Mason*, 153 Mo., 1 c. 43 (St. Louis police). See *State ex rel. vs. Hawes*, 177 Mo., 360; *Marshall, J.*, dissenting in *State ex rel. vs. Stobie*; 92 Southw., 191, 1 c. 220; 194 Mo., 14.

But the police are city officers as well as state officers; the dual capacity is expressly provided and is recognized as lawful. *State ex rel. vs. St. Louis*, 174 Mo., 125, 131, citing *Carrington vs. St. Louis*, 89 Mo., 1 c. 214. See further *State vs. Boyd*, 108 Mo. App., 518, 524; *State ex rel. vs. Stobie* 194 Mo., 14; R. S. 1909, Sec. 9825, set out in "Laws Specially Applicable to St. Louis," Sec. 488.

Mayor is city officer, not state. *State ex rel. vs. Dillon*, 87 Mo., 487.

Member of the board of aldermen is a city officer. *State vs. Kelly*, 103 Mo. App., 711.

Election commissioner in St. Louis is a state officer in the sense that his functions are not limited to municipal elections and that he is not within the prohibition against city officers contracting with the city. *State ex rel. vs. Meier*, 96 Mo. App., 160.

He is not a state officer so as to confer jurisdiction on the Supreme Court of an appeal in a case where a state officer is a party. *State ex rel. vs. Higgins*, 144 Mo., 410.

So also a sheriff. *State ex rel. vs. Bender*, 91 Mo., 206; see *State ex rel. vs. Bus*, 135 Mo., 1 c. 337 (holding a deputy sheriff not to be a state officer within the constitutional inhibition against a state officer holding office also in a city or county. See discussion by the court as to when officers are state, county or city officers).

Constable is state, not city, officer. *State ex rel. vs. McKee*, 69 Mo., 504.

After calling attention to the different provisions and phraseology of the constitutional references to officers the court in *State ex rel. vs. Bus*, 135 Mo., 1 c. 337, says: "While the city of St. Louis is strictly a municipal corporation, its territory is also a subdivision of the state, in which officers are elected to perform the functions of the state government as distinguished from those pertaining to municipal government. Those officers are in no sense municipal officers," etc.

De facto officers. As to salary of such see note to Sec. 7 of this article and *Sheridan vs. St. Louis*, 183 Mo., 25. Where there is no office there can be no officer de facto. *Weesner vs. Bank*, 106 Mo. App., 668, 672; *State ex rel. vs. Finn*, 4 Mo. App., 347.

When a municipal legislative body may be such de facto. *Hilgert vs. Barber Co.*, 107 Mo. App., 385; see also *Adams vs. Lindell*, 5 Mo. App., 197, s. c. 72 Mo., 198; *St. Louis vs. Stoddard*, 15 Mo. App., 173, 177.

When appointment of one as officer will be implied, so far as the public are concerned. Note to Rev. Code, 1912, Sec. 2288.

Resignation. Under the constitution of this state any officer may resign at will. *State ex rel. vs. Bus*, 135 Mo., 1 c. 331 (citing Const., Art. XIV., Sec. 5).

Liability of officers. A public officer charged with discretionary duties is not liable for negligent performance thereof, nor erroneous performance not actuated by willfulness or corruption. *Edwards vs. Kirkwood*, 147 Mo. App., 599; *Schooler vs. Arrington*, 106 Mo. App., 607, 609, citing a number of Missouri cases. Liability of officer alleged to have done an act "in pursuance of an order of the city." *Quinn vs. Schneider*, 118 Mo. App., 39, 43.

A superintendent of a work house, or jailer, although not actuated by malice, who keeps a prisoner beyond the time authorized by law and character, by exercising a void power to extend the term as a matter of prison discipline, is liable for false imprisonment. *St. Louis vs. Karr*, 85 Mo. App., 608, 614 (distinguishing cases holding an officer to be protected for acting under a void commitment fair on its face).

A ministerial officer is liable in a civil action to one damaged by his negligent performance of his official duties. *State ex rel. vs. Green*, 124 Mo. App., 80.

A street commissioner who grades a street without the lawful authority of an ordinance (proceeding on simple resolution, which is void) is liable as for trespass, as well as the mayor and aldermen who are present assisting and encouraging the work of such grading, to the owner abutting on the street. *Reed vs. Peck*, 163 Mo., 333.

A collector is not personally liable for collecting taxes under an irregular assessment, but he is where the property is wholly exempt from taxation. Nor is he liable where he proceeds under a legislative act, the validity of which is afterwards assailed and overthrown as unconstitutional. *Walden vs. Dudley*, 49 Mo., l. c. 420-421, and cases cited. Even where the property is exempt, if such exemption is not absolute but conditional with a tribunal to review an assessment and determine the question, the collector has the right to suppose the unassailed decision of that tribunal to be correct. *Lee vs. Thomas*, 49 Mo., 112.

The criminal liability of municipal officers, agents, and servants is discussed in a note on p. 273 of Mr. McQuillin's unofficial work, "Amended Charter," and thirteen different ways of violation of law enumerated. See Art. VIII., Secs. 3 and 8.

Loss of office is also discussed by that author on the same page, and the different ways in which this may be incurred are set out.

Sec. 5. Each head of a department, office, or division shall be responsible for the acts or omissions of officers and employes appointed by him, and may require bonds or other securities from them to secure himself.

See Rev. Code, 1912, Sec. 196.

Sec. 6. Any vacancy in any elective office, except in the board of aldermen, shall be filled by appointment by the mayor until a successor is elected and qualifies. Such election, if for an unexpired term, shall be at the first general city or state election held fifty days or more after such vacancy occurs.

See for ordinance similar to this section Rev. Code, 1912, Sec. 2291; ordinance for filling vacancy in mayor's office, see Rev. Code, 1912, Secs. 21, 22.

As to the suspension and removal of officers, existence and filling of vacancies, see note to Sec. 9 of this article.

A provision in the 1876 charter like Sec. 6, providing for filling vacancies occurring in an elective office within six months of expiration of term, etc., did not (in view of Art. III., Sec. 26, Clause 8, of the old charter) exclude the right of the municipal assembly to make provision for filling a vacancy occurring more than six months before the expiration of the time for which the term ran, and the ordinance applying to such case (now Rev. Code, 1912, Sec. 2292) was held valid. *State ex rel. vs. Thomas*, 102 Mo., 85, 89.

Sec. 7. The board of aldermen shall by ordinance fix or provide for the fixing of salaries or compensation of officers and employes, jurors, and witnesses, subject to the provisions of this charter. Payment for services of specialists or experts under Article XIII., Section 8, may be made either with or without an ordinance fixing the compensation for such services. All salaries or compensation under the classified service shall be uniform for like service. No salary in the unclassified service of the city shall be changed during the term for which the recipient was elected or appointed. No city officer shall retain any fees received by virtue of his office, but all fees shall belong to the city and be paid into the city treasury daily, unless some other time is provided by this charter or by law or ordinance.

The Constitution (Art. XIV., Sec. 8) provides that "the compensation or fees of no state, county, or municipal officer shall be increased during his term of office."

In *State ex rel. vs. Johnson*, 123 Mo., 43, 48, and in *State ex rel. vs. Gordon*, 238 Mo., 168, it is held that this does not apply to any official whose term of office is not definitely fixed, and who holds at the pleasure of the appointing power. Both constitutional and charter provisions are held to apply to that part of an incumbent's term during which he holds over after the regular term, and before his successor is qualified. *State ex rel. vs. Smith*, 87 Mo., 158.

The right of a public officer to the salary of his office is a right created by law, is an incident to the office, not the creature of contract, nor dependent upon the fact of rendition or value of services actually rendered. *State ex rel. vs. Walbridge*, 153 Mo., 194, 203, citing numerous cases; *Bates vs. St. Louis*, 153 Mo., 18, and cases cited; *Cavanee vs. Milan*, 99 Mo. App., 672; *Sanderson vs. Pike Co.*, 195 Mo., 1. c. 605.

Not being fixed by contract, express or implied, a public officer is entitled to compensation, if at all, only where such right is created by law as an incident to the office; no implied liability to pay will arise. *Givens vs. Davless Co.*, 107 Mo., 603, 608-609, and cases cited; *Garnier vs. St. Louis*, 37 Mo., 554 (holding that there is no implied liability of the city); *Sanderson vs. Pike Co.*, 195 Mo., 1. c. 605.

If a city official is otherwise entitled to recover, the fact that there is not enough money appropriated to pay him will not defeat his claim. *Magner vs. St. Louis*, 179 Mo., 495, 501.

Absence from the city without leave suspends salary. Rev. Code, 1912, Sec. 2290.

Where an attempted removal of an officer is unlawful, he is still the incumbent, and he will not be prevented from recovering his salary in a mandamus proceeding against the proper officials. *State ex rel. Gieselman vs. Hawes*, 177 Mo., 387; *State ex rel. vs. Johnson*, 123 Mo., 43; *State ex rel. vs. Walbridge*, 153 Mo., 194; *U. S. vs. Wickersham*, 201 U. S., 390, 399.

Salary during suspension by mayor, see Rev. Code, 1912, Sec. 2307. An officer legally suspended is not entitled to the salary during such period whether finally removed or not. *Blackwell vs. Thayer*, 101 Mo. App., 661; *Westberg vs. Kansas City*, 64 Mo., 493; *Howard vs. St. Louis*, 88 Mo., 656; *Lewis vs. St. Louis*, 12 Mo. App., 570 (memo. opin.) *Contra. State ex rel. vs. Carr*, 3 Mo. App., 6 (allowing recovery for the period of suspension, under ordinance now Rev. Code, 1912, Sec. 2307).

As to salaries of police, see notes to metropolitan police act ("State Laws Specially Applicable to St. Louis," Secs. 465-495).

Salary attaches to the legal title, and an officer who is de facto such but not de jure can not recover the salary attached to the office. *Sheridan vs. St. Louis*, 183 Mo., 25 (house of delegates member).

Nor can an officer de jure recover from the city for salary paid in good faith to the officer de facto while in office. *State ex rel. vs. Babcock*, 106 Mo. App., 72. He who holds the commission is entitled to the salary until his authority is properly canceled. *State ex rel. vs. Clarke*, 52 Mo., 508.

An officer has no vested right to his office, and abolishing the office cuts off the right to the salary attached to it. *Magner vs. St. Louis*, 179 Mo., 495; *Primm vs. Carondelet*, 22 Mo., 22.

A de facto officer is entitled to be paid the necessary expense of earning the fees in derogation of the rightful officer to whom they belong and a fortiori the city should be allowed expenses and clerk hire paid for it relying in good faith upon the validity of a statute and ordinance authorizing that course though such laws be subsequently declared void. *Henderson vs. Koenig*, 192 Mo., 690. By accepting the benefits of compensation under an unconstitutional statute the officer waives its invalidity as to himself so far as recovering compensation. *Ib.*, *State ex rel. vs. Messerly*, 198 Mo., 351, 357.

An ordinance is valid, providing against assignability of salary or wages of city employees. *State ex rel. vs. Kent*, 98 Mo. App., 281.

Under general principles of law a partial assignment of salary not yet due is void. *Beal vs. McVicker*, 8 Mo. App., 202.

A contract by a public officer for the assignment or sale and collection of his future salary is void as against public policy. *State vs. Williamson*, 118 Mo., 146.

An ordinance providing that an employe of a city shall pay fees earned by him as a notary public in connection with the city's business into the city treasury and that his salary shall be in full of such services is void and the notary's fees may be recovered by him from the city which had received them. *Wood vs. Kansas City*, 162 Mo., 303.

Where the city has paid a city official his salary as understood to be due by it, and the same has been received by him as such, over a long period of time, he is thereafter estopped from claiming a greater sum. *Galbreath vs. Moberly*, 80 Mo., 484.

For elective and appointed officers, appointment, suspension and removal thereof, the filling and existence of vacancies, etc., see provisions of charter, Art. VIII., with discussion and citation of cases in the notes thereto.

The provision that "No officer receiving a salary shall receive any fees, or other compensation for his services," excludes deputy recorder of voters from compensation other than his salary for overtime. *Lemoine vs. St. Louis*, 120 Mo., 419.

It was held that a similar Kansas City provision did not apply to policemen, whose salary is fixed by the police board. *State ex rel. vs. Gifford*, 70 Mo. App., 522; but in St. Louis there is an ordinance on witness fees which prevents city officers and prosecutors to claim such fees in police courts. *Rev. Code*, 1912, Sec. 1897; and the *Rev. Statutes*, 1909, Sec. 5388, provide that no officer appointee, or employee, holding a state, county, township, or municipal office (including police officers and policemen) is allowed any witness fee for testifying before a coroner, grand jury, or in any criminal case. The provision that the "salary of no officer shall be changed during the term for which he is elected or appointed," is in accord with constitutional and statutory provisions to the same effect; and, since (it is held) the period during which an incumbent holds over after the expiration of his regular term "until his successor is appointed and qualified" is considered part of his term, he can not be permitted to participate in an increase in salary (enacted during the regular term) during that period for which he holds over thereafter. *State ex rel. vs. Smith*, 87 Mo., 158. Such provisions do not apply to officials who hold at the pleasure of the appointing power, but only where there is a definite term of office. *State ex rel. vs. Johnson*, 123 Mo., 43, 49.

The right of the city to fix compensation of officers does not confer the right to reduce, take away, or change the same. *Carr vs. St. Louis*, 9 Mo., 190. A city officer is entitled to the compensation fixed by ordinance and no more. *Carroll vs. St. Louis*, 12 Mo., 444. *Chamberlain vs. Kansas City*, 125 Mo., 430. An ordinance requiring one employed by the city to pay notary's fees for business done in connection with city matters (but paid by third persons) during city hours, into the city treasury, his salary as employee to cover such services, is void and the fees so paid to the city may be recovered. *Wood vs. Kansas City*, 162 Mo., 312.

The object of the provision "to regulate and provide for the election or appointment of city officers," etc., is "quite plain; it bestows, as its language imports, sufficient power . . . to make all necessary rules or laws in regard to municipal elections, whether those elections be general or special, whether occurring before the expiration of any official term of office and therefore anticipatory in their nature or after some regular election has failed of its purpose," etc. . . . "The authority thus delegated is plenary . . . a power which recognizes only such limitations as are marked out by the Constitution or laws of this State or some other provision of the charter," etc. *State ex rel. vs. Thomas*, 102 Mo., 85, 89-90 (upholding a special election under ordinance now Sec. 2292 of *Rev. Code*, 1912). The section was cited but not discussed in *St. Louis vs. Mnfg. Co.*, 139 Mo., 1, c. 568. See further on these subjects notes to Secs. 6 and 9 of this article, and to Sec. 5 of Art. VII.

As to lack of jurisdiction of city officials in contest of justice of the peace and constable elections, see *State ex rel. vs. Lobsinger*, 7 Mo. App., 106; *State ex rel. vs. McGee*, 69 Mo., 504; *State ex rel. vs. Kramer*, 150 Mo., 89.

As to mayoralty election. *State ex rel. vs. Dillon*, 87 Mo., 487. Contest is determined in circuit court. *State ex rel. vs. Hough*, 193 Mo., 615.

See ordinance on jury fees. *Rev. Code*, 1912, Secs. 1897, 1935; also jury law. *Rev. St.*, 1909, Secs. 7334-7364 ("Laws Specially Applicable to St. Louis," Secs. 162-192); *Rev. Code*, 1912, Sec. 1934; Scheme, Secs. 27, 28, 30, 31; as to witness and jury fees in police courts, see *Rev. Code*, 1912, Secs. 1897, 1898.

Sec. 8. All salaries shall be paid at least monthly. Salaries fixed in this charter at a certain sum shall be construed to mean not less than such sum, but no salary under the city shall exceed ten thousand dollars per annum, nor shall any officer or employee receive any additional compensation for serving in any other capacity under the city while in such office or employment; nor hold any office or employment under the state or United States except in the militia or as notary public, nor have a personal interest, directly or indirectly, in a contract with the city; and no elective officer shall be a member of the general city committee of any political party. Any person guilty of any wilful violation of this section shall thereby forfeit his office or employment.

Ordinance No. 27739, approved November 7, 1914, provides for semi-monthly payment of salaries, on the first and fifteenth days of each month.

Sec. 9. Any elective officer (except a member of the board of

aldermen), and any officer appointed by the mayor to fill any elective office, may be suspended by the mayor and removed by the board of aldermen for cause, three-fourths of all the members of said board voting for such removal. Immediately upon any such suspension the mayor shall notify the board of aldermen of same and within ten days shall file with the board charges in writing against such suspended officer, which, with a notice of the time and place of the hearing, shall be served on such officer or published at least three times in a daily newspaper. The hearing shall be public, and such officer shall have the right to appear and defend in person and by counsel, and have process of the board to compel the attendance of witnesses in his behalf. If the board be not in session, the mayor shall immediately call a special session to convene in not less than three nor more than ten days thereafter. If, upon a hearing, such officer be not removed, he shall be immediately reinstated in his office. The vote on such question shall be determined by yeas and nays, and the names of the members voting for or against such removal shall be entered on the journal. The clerk of the board shall forthwith certify the action of the board to the mayor. The mayor may appoint some suitable person to fill temporarily such office during the period of any such suspension.

This section is constitutional and in force. *State ex rel. vs. Wells*, 210 Mo., 601.

For ordinance provisions relating to suspension and removal of officers, causes, procedure, filling vacancies, etc., see Rev. Code, 1912, Secs. 2293-2308. For removal of mayor, Art. VII., Sec. 4. Rev. Code, 1912, Sec. 19. As to filling vacancies in appointive officers removed, see in addition to above charter provision (Sec. 9) Rev. Code, 1912, Secs. 2305, 2306. Filling vacancies by mayor where appointive officer removed, see Rev. Code, 1912, Sec. 2306. Filling vacancy in elective offices, see Charter, Sec. 6 of this article, and note; Rev. Code, 1912, Sec. 2291. Filling temporary vacancy caused by suspension, see also Rev. Code, 1912, Sec. 2296.

Filling vacancy in municipal assembly, see charter, Art. IV., Sec. 5.

Rev. St. 1909, Sec. 4877, provides that if any city officer becomes interested in any city contract, etc., he is guilty of a misdemeanor, and if appointive he shall be dismissed by the mayor; if elective the mayor shall suspend such official, report to the council, which shall try him and by two-thirds vote dismiss him. *State vs. Kelly*, 103 Mo. App., 711, 714.

An office is vacant in legal intendment for all purposes of election and appointment when the term has expired, as in case of death, resignation, or removal, and also where the incumbent is a *locum tenens* or holdover holding until his successor be appointed or elected and qualified, provided provision is made by law for filling the office by appointment or election. *State ex rel. vs. Thomas*, 102 Mo., 85, overruling *State vs. Lusk*, 18 Mo., 333, and following *State vs. Seay*, 64 Mo., 88 (holding a vacancy occurs where one dies after election and before commencement of term), and *State ex rel. vs. Stonestreet*, *infra*: but for purposes of salary, and continuing the office so that there is no vacancy in the functions thereof a different rule applies. See for instance *State ex rel. vs. Smith*, 87 Mo., 158.

The word "officer" in this section means such as is referred to in the charter. An inspector of buildings is not an officer within the meaning of this section. *Magner vs. St. Louis*, 179 Mo., 495, 502; *State ex rel. vs. Longfellow*, 95 Mo. App., 660.

As to who is an "officer," see note to charter, Sec. 4 of this article, and cases there cited.

Right to salary of suspended or removed officer is discussed in the note to Sec. 7 of this article; see also ordinances, Sec. 2307 of Rev. Code, 1912.

Power to remove ordinarily includes power to suspend. *Blackwell vs. Thayer*, 101 Mo. App., 661; *State ex rel. vs. Lingo*, 26 Mo., 496, 499 (under St. Louis ordinance and charter).

"The power to remove a corporate officer from his office, for reasonable and just cause, is one of the common law incidents of all corporations. . . .

For the reason of the thing, from the nature of corporations, and for the sake of order and government, the power is incidental." State ex rel. vs. Walbridge, 119 Mo., 1. c. 394, quoting from Dillon.

An appointment for a definite term implies that the incumbent can not be removed except for cause designated by law. Per Reyburn, J., in Horstmann vs. Adamson, 101 Mo. App., 119, 124; State ex rel. vs. Brown, 57 Mo. App., 1. c. 204.

And a right to remove only for cause implies that there must be reasonable notice, and specifications of the charges made, and an opportunity to be heard by the one sought to be removed, and this even where there is no express provision to that effect since this is implied as intended. State ex rel. vs. Walbridge, 119 Mo., 383, 394-395; State ex rel. vs. St. Louis, 90 Mo., 19; State ex rel. vs. Walbridge, 62 Mo. App., 162, 164; State ex rel. vs. Brown, 57 Mo. App., 199.

In such case, where neither the charter nor ordinances make any provision for the means whereby the motion or removal of an appointive officer is to be effected, yet if the grant of power is given all the means necessary to effectuate the power pass as incidents of the grant. State ex rel. vs. Walbridge, 119 Mo., 383, 394, 396. ("The mayor has all the power necessary to carry into effect the authority granted by the charter.") Mayor not disqualified to hear charges because made by himself or his secretary. State ex rel. vs. Wells, 210 Mo., 601.

The record of the proceedings in exercising power of removal vested by charter, should show, in case of an appointive officer, that charges sufficient in law were preferred against him, that due notice was given, and a trial had whereat he was permitted to be heard, and an order of removal for cause entered. State ex rel. vs. Walbridge, 62 Mo. App., 1. c. 164-165.

An attempted removal which is unlawful will not prevent the incumbent from recovering his salary by mandamus. See authorities in note to charter at page 424, R. C., 1912.

Where the charter permits removal "for cause" but does not specify what causes are sufficient, the question of what cause is sufficient is a judicial one to be determined by the court from the circumstances in each case; what would be cause as to one office might not be as to another office. State ex rel. vs. Walbridge, 69 Mo. App., 657, 1. c. 669.

A general allegation of misconduct in office is too vague and indefinite; the specific acts complained of should be stated in the record of the tribunal trying the officer, in order that it might appear, as a matter of law, that it has jurisdiction of the alleged offense; the proceeding is summary, and the record should be precise; no intendments can be indulged as to the jurisdiction and regularity of the proceedings. State ex rel. vs. Lupton, 64 Mo., 415, 417.

Where the law conferring the authority to make the appointment is silent as to the right of removal, and there is no limitation as to the tenure, the right to appoint carries with it the absolute right to remove, without notice, and at pleasure. Horstmann vs. Adamson, 101 Mo. App., 119, 125, citing a number of state and federal authorities on the point. State ex rel. vs. Johnson, 123 Mo., 43, 50; Shurtleff vs. U. S., 189 U. S., 311, 314.

An officer holding over after the expiration of his term, who is a mere *locum tenens* until his successor is appointed, may be removed at pleasure by the appointing power at any time without notice or cause. State ex rel. Rife vs. Hawes 177 Mo., 360, and cases cited; State ex rel. vs. Stonestreet, 99 Mo., 377 (holding also that in making subsequent appointments the executive can not disregard the term as fixed by law, but can fill only the unexpired portion of the term as it would be if there had been no holding over).

Neither above charter provision (Art. VIII., Sec. 9) nor ordinance provisions (now Rev. Code, 1912, Secs. 2293 et seq.) were repealed by the state statute providing for the removal of any state, county, or city officer guilty of willful and corrupt neglect of official duty and for trial by jury if demanded. State ex rel. vs. Walbridge, 119 Mo., 383; State ex rel. vs. Wells, 210 Mo., 601.

Mandamus is a proper remedy to compel restoration of an office to the rightful incumbent thereof who has been wrongfully deprived thereof by removal or suspension. State ex rel. vs. Wilson, 151 Mo. App., 723.

Sec. 10. Each executive board and the head of each department or office (except those under the board of public service, who shall report to said board) shall at least annually on a day or days fixed by ordinance make a full report to the mayor of the transactions of such board, department, or office for the year and shall furnish

to the board of aldermen or mayor at any time such information as either may require.

Sec. 11. All questions between officers as to their relative powers and duties shall be determined by the mayor except as in this charter otherwise provided.

Sec. 12. All city officers and employes except the mayor, members of the board of aldermen, members of the Mullanphy board, efficiency board, complaint board, city plan commission, board of engineers, board of examiners of plumbers, board of children's guardians, the board in charge of the zoological park and such others as may be excepted by ordinance, shall devote their entire time to the duties of their office.

"No person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State shall hold such office without personally devoting his time to the performance of the duties to the same belonging." Const., Art. II., Sec. 18.

By Sec. 6703, Rev. Stat., 1909, it is made the duty of heads of departments of cities of over 300,000, etc., where there are deputies, assistants, or clerks to close the doors of said office at 12 o'clock on Saturdays, except when the necessities of the service require them to work; and the provision does not apply to fire and police forces (See Laws Specially Applicable to St. Louis, Sec. 400.)

As to leave of absence, see Rev. Code, 1912, Sec. 2290.

No deduction from the legal salary can be made because an officer does not devote his time to his official duties. *Bates vs. St. Louis*, 153 Mo., 18 (see as to right to salary note at page 425, R. C., 1912).

ARTICLE IX.

Register.

Section 1. The register shall have custody of the city seal, original rolls of ordinances, contracts, conditional bonds, title deeds, certificates and papers, and all other records, papers and documents not required by this charter or by ordinance to be deposited elsewhere, and register them by numbers, dates and contents, and keep such index thereof as may by ordinance be provided. He shall by his signature and the city seal attest all instruments signed in the name of the city and all official acts of the mayor; provide, and when required certify, as may be provided by ordinance under his hand and the city seal, copies of ordinances, records, papers, and documents in his office; cause copies of all ordinances to be printed through the supply division and kept in his office for distribution; register and preserve in his office all oaths or affirmations by city officers or employes; may administer such oaths and affirmations; shall give such bond and appoint such deputies and employes as may be provided by ordinance. He shall receive a salary of four thousand dollars per annum.

Sec. 2. All blank licenses, tickets, receipts, permits, certificates, or other blank forms as may be provided by ordinance shall be attested and issued by the register, and delivered and charged to the comptroller, who shall countersign and deliver them to the proper

officers and take receipts therefor. All such blanks not used shall be returned to the comptroller, who shall cancel and return them to the register.

ARTICLE X.

Law Department.

Section 1. The law department shall consist of a city counselor, five associate and two assistant city counselors, and such other associates, assistants, and employes as may be provided by ordinance.

Sec. 2. The city counselor shall be the head of the law department; appoint all associates, assistants, and employes in his department; shall, through said department, direct the management of all the litigation in which the city is a party, including service in the city courts; represent the city in all legal matters and proceedings in which the city is a party or interested, or in which any of its officers are officially interested; advise the board of aldermen or any committee or member thereof and the mayor and the heads of all departments and through the mayor and heads of departments all other officers of the city, as to all legal questions affecting the city's interest; and approve as to form all contracts, deeds, bonds, and other documents to be signed in the name of or made to or with the city. He shall render the police department all legal advice and services required by it. He shall receive a salary of eight thousand dollars per annum.

Ordinances relating to city counselor, his duties, office, and associates and assistants. Rev. Code, 1912, Chapter 23, Art. 1.

For appeal bond by the city, see Art. XXV., Sec. 8.

Sec. 3. The city counselor and associate and assistant city counselors shall be attorneys-at-law entitled to practice in all the courts in the state for at least three years previous to their appointment.

ARTICLE XI.

City Marshal.

Section 1. The city marshal shall receive a salary of three thousand dollars per annum; execute and return all process, notices, and orders of the mayor, law department, health commissioner, and city court judges, and all other process, notices, and orders as in this charter or by ordinance may be provided. He shall appoint such deputies and employes as may be provided by ordinance.

Marshal's duties, etc. See Rev. Code, 1912, Secs. 1929-1933; scheme, Secs. 6, 18, 17, 30; charter, Art. IV., Sec. 8; Art. XXIV., Sec. 5; Art. XXV., Sec. 13; State ex rel. vs. Walbridge, 119 Mo., 1. c., 395-396 (citing charter, Art. IV.,

Sec. 31, of 1876 charter). As to marshal's deputies. Rev. Code, 1912, Sec. 1932.

The marshal serves special tax bills, thus providing an official record thereof. Art. XXIII., Secs. 2-3, 5.

Marshal liable to owner of special tax bill for false return thereon. See Art. XXIII., Sec. 3.

Sec. 2. In case the police department shall become a department of the city, the marshal's functions shall devolve upon it and be exercised in such manner as may be provided by ordinance, in which event the office of marshal shall be abolished.

ARTICLE XII.

City Courts.

Section 1. There shall be two city court judges, who shall have been for at least five years licensed attorneys, one to be known as judge of city court one, and the other as judge of city court two, each of whom shall receive a salary of three thousand dollars per annum.

For division of city into judicial districts, see ordinance No. 27757, approved December 19, 1914.

Sec. 2. The board of aldermen may by ordinance adopted by the vote of two-thirds of all the members, increase the number of city courts and judges. It may, by ordinance, divide the city into judicial districts and regulate the jurisdiction thereof, and may from time to time alter same. Whenever any such judge is absent or unable to hold court the mayor shall appoint an eligible person to act during such absence or inability, who shall receive such compensation as may be provided by ordinance. Such courts shall be held in places provided for by ordinance, and, in the absence of such ordinance provision, in such places as the mayor may direct.

Ordinances creating districts, holding court, jurisdiction, etc. Rev. Code, 1912, Secs. 1859 et seq. "Police Court South of Arsenal Street," Rev. Code, 1912, Secs. 1918 et seq., was not continued by new charter.

Sec. 3. The city courts shall have jurisdiction of all cases arising under this charter or any ordinance, subject to appeal by the city or the defendant to the St. Louis court of criminal correction in like manner as provided by law for appeals from justices of the peace in criminal cases to their appellate courts; may punish contempts of court by fine not exceeding fifty dollars or by imprisonment not exceeding ten days, or both; enforce its orders and judgments as a court of record may, and render final judgment on any forfeited bond or recognizance returnable to such court, subject to an appeal, as in other cases.

As to ordinances on police justices and police courts and officials connected therewith, see Rev. Code, 1912, Secs. 1859-1923.

For full discussion of matters relating to police courts under the charter provisions, and in general as to their jurisdiction, procedure, nature of the proceedings, effect thereof, appeals incident to police court matters, executions, violations of ordinances, and similar matters, see note to Rev. Code, 1912, Sec. 1863, and also notes to Secs. 1862, 1879, 1905, and other sections under Art. I. of Chap. 24, R. C., 1912.

Sec. 4. There shall be one clerk for all the city courts, who shall receive a salary of twenty-four hundred dollars per annum, and appoint such deputies and employes as may be provided by ordinance.

See ordinance No. 27757 approved December 19, 1914.

ARTICLE XIII.

Board of Public Service.

Section 1. There shall be a board of public service, consisting of the president of said board, and four directors, who shall be known as director of public utilities, director of streets and sewers, director of public welfare, and director of public safety. They shall be the heads of and exercise supervision over their respective departments hereby created, as follows: department of the president, department of public utilities, department of streets and sewers, department of public welfare, and department of public safety. They shall each receive a salary of eight thousand dollars per annum.

Sec. 2. The president of the board and the directors of public utilities and of streets and sewers shall be engineers of technical training, of at least ten years' experience, and qualified to design as well as to direct engineering work.

Sec. 3. Any member of the board of public service may designate any officer in any department under said board to act as his deputy, but such deputy shall have no vote on the board.

Sec. 4. The board of public service shall meet at least once each week at its office. The president of the board shall preside at its meetings. A majority of said board shall constitute a quorum for the transaction of business, but no final action shall be taken in any matter concerning the department of any absent member unless such matter has been made the special order of the day. Said board shall furnish through its president to the mayor and the board of aldermen such data and information as may be required, or which it may from time to time deem necessary; prescribe rules and regulations necessary and proper to carry out its functions; appoint a secretary and such other employes as may be provided by ordinance; and keep a record of its proceedings which shall be open to the public. Final action on any matter shall be taken by yeas and nays and entered on its record. An abstract of its proceedings shall be published in the paper or papers doing the city publishing.

For ordinances on board of public service in general, see Rev. Code, 1912, Sec. 184, and following. Ordinances on salaries and bonds of members of board of public service and employees, see reference in notes to each head of department as given below.

Under the city ordinance (now appearing as Sec. 189 in Rev. Code, 1912) in the absence of the street commissioner, the assistant and acting street commissioner had the right to attend the board meeting, but not to vote;

held that his attendance satisfied the provision that "no final action shall be taken in any matter concerning the special department of any absent commissioner," etc., when a unanimous vote is not required. *Construction Co. vs. Loevy*, 64 Mo. App., 430, 435; s. c. 179 Mo., 455, no discussion on this point by Sup. Ct. As to ordinance on quorum, see Rev. Code, 1912, Sec. 194.

An appellate court can not review the discretion of the board of public service unless it is so exercised as to be clearly subversive of public rights. *Gay vs. Tel. Co.*, 12 Mo. App., 485; *Forsythe vs. Tel. Co.*, 12 Mo. App., 494. However, a finding, after a hearing by the board, that there is probable cause for believing that a contractor is not carrying out a contract in good faith, can be set aside by a court unless the contract authorizing such finding and action based thereon abrogating the contract provides that such abrogation may take place if such cause exists "in its opinion or judgment or if it believes there is cause" *National Surety Co. vs. City of St. Louis*, 200 Fed., 387, 389. As to discretion and duties of the board respecting contracts for public improvements, see notes to Arts. XXI., XXII., and XXIII.

Record of board is admissible in evidence to show a departure from jurisdictional forms prescribed by the charter, but a finding of fact by the board is not conclusive. *Fruin-Bambrick Co. vs. Geist*, 37 Mo. App., 509, 515

Sec. 5. The board of public service shall have power:

(a) To exercise supervision and control over the aforesaid departments and the heads thereof.

(b) To grant permits to occupy or use portions of any public ground, highways, streets, alleys, or other public places, consistent with the public use thereof and not inconsistent with any law or general ordinance, including permits for switch connections, and any such permit may be revoked by said board at will; but this power shall never be deemed to vest in said board the right to grant franchises.

(c) To grant permits, according to such general rules and regulations as may be provided by general ordinance, in relation to any private business required by ordinance to have a permit as a condition of or in connection with its conduct or operation.

(d) To accept or reject grants or dedications, absolute or conditional, of highways, streets, boulevards, parkways, alleys, or other property for any public use. No plat of any addition or subdivision, or any plat or map attached to any deed, shall be filed or recorded in the recorder's office unless the same shall first be approved by the board as to public highways, streets, boulevards, parkways, alleys, or other public places represented thereon, and the grades thereof, except plats accompanying judgments or orders of court in partition and other suits where such plats form a part of such proceedings.

(e) To establish the grades of the center line of all public highways, streets, boulevards, parkways, and alleys. Upon demand of the owner of the property abutting on any public highway, street, boulevard, parkway, or alley, the board shall determine the grade of the line of said public highway, street, boulevard, parkway, or alley forming the boundary line of such property.

(f) To control and conduct any and all engineering, construction, and reconstruction work undertaken by the city and to supervise all such work in which the city is interested. All plans and specifications for such work shall be prepared under the direction of the board and be subject to its approval.

(g) To make such recommendations, exercise such powers and perform such duties as may be required of it by this charter or by ordinance.

Sec. 6. Said departments shall have divisions as herein established. The head of each department shall appoint all heads of divisions in his department and all officers and employes in his department not assigned to a division. The head of each division shall manage his division and appoint all officers and employes therein.

Sec. 7. All departments under the board of public service shall co-operate, and the employes or assistants in any one department or division may, under the order of the board, be temporarily utilized by any other department or division. All questions as to the distribution of powers or duties between such departments shall be determined by the board.

Sec. 8. The board may at any time, with the approval of the board of estimate and apportionment, appoint specialists or experts in connection with any public work or improvement for which an appropriation has been made and pay for their services out of such appropriation.

Sec. 9. DEPARTMENT OF THE PRESIDENT. The department of the president shall have charge and supervision of all public work and improvements undertaken by the city or in which the city is interested and prepare all plans and specifications therefor, except where such supervision work or preparation is herein or by the board of public service otherwise assigned or provided.

For ordinance on president board public service and as to his employes and their salaries, see Rev. Code, 1912, Secs. 217-240.

As to salaries and employes, see in addition to those in above sections, Rev. Code, 1912, Sec. 240.

As to duties in connection with special tax bills for improvements, etc., see charter, Art. XXIII., Sec. 1, and note. The duties of the president involve the exercise of high discretion and can not be delegated. *Stifel vs. Co.*, 38 Mo., 340.

See *State ex rel. vs. Reber*, 226 Mo., 229.

Sec. 10. DEPARTMENT OF PUBLIC UTILITIES. The department of public utilities shall have general supervision over the maintenance, equipment, operation, and service, and the assessment of rates and charges, of all public utilities owned or operated by the city. It shall execute or cause to be executed all ordinances regulating the construction, reconstruction, extension, maintenance, equipment, operation, service, or rates of public utilities operating under franchises, licenses, or permits, or compelling extensions of facilities for such service. The director of said department shall make investigations and reports in relation to any of the foregoing matters as may be provided by ordinance or required by the board of public service, and in connection therewith shall have power to subpoena witnesses and order the production of books and papers relating thereto. He shall have charge

of the supervision of city lighting, and of the municipal electric lighting plants and electrical equipment in city buildings.

- Sec. 11. There shall be a water division in this department and the head thereof shall be known as the water commissioner. It shall have under its special charge the operation and maintenance of the water works and of all facilities for the acquisition and distribution of water. It shall assess water rates as may be provided by ordinance and make out the bills therefor and deliver same to the comptroller who shall deliver them to the collector, take his receipt therefor and charge him therewith on the comptroller's books.

As long as any of the "St. Louis Water Bonds" or renewals thereof or bonds issued on the special credit of the water works or facilities remain unpaid the water rates shall be fixed at prices that will produce revenue sufficient at least to pay the running expenses of the water division and the interest on all such bonds and renewals.

For ordinances, see Rev. Code, 1912, Secs. 1437-1453; Secs. 1466-1469; Secs. 1471-1473.

R. S. 1909, Sec. 9905, confers power on city to contract to supply other municipalities with water from its works, also persons and corporations beyond the city limits; Sec. 9906 authorizes procurement of water from other cities; Sec. 9907 authorizes laying of pipes, etc., to carry out the foregoing sections; Sec. 9908 provides for condemnation proceedings, etc.

The city of St. Louis has power to contract for the appropriation to its own use of water mains laid in a public street by private citizens at their own expense but with the consent of the city, at a time when the city was short of money; and the city may pay therefor out of its revenue and make it a part of its water works system. State ex rel. vs. St. Louis, 169 Mo., 31 (holding also that such acquirement is not controlled by the provisions relating to letting of public work).

An ordinance for laying water pipes is valid although not declaring the laying to be necessary; the passage of the ordinance is equivalent to such averment and action thereon; nor is the ordinance invalid because it fails to show a two-thirds vote, the presumption being, in the absence of a contrary showing that it was legally enacted. Young vs. St. Louis, 47 Mo., 492.

See St. Louis vs. Tiefel, 42 Mo., 578, 1. c. 593.

Ordinances fixing water rates, licenses, and regulations, see Rev. Code, 1912, Secs. 1477-1511. See also notes of cases cited there. As to water bonds, see Rev. Code, 1912, Secs. 1536-1538, inclusive.

Authorities. As to effect of payment of a consumer of city water under express or implied threat of shutting off the water, and the exaction by the city of illegal rates, and also as to nature of obligation resting in contract not taxing power, and right to require particular hydrant, and matters of that kind, see Rev. Code, 1912, note to heading of Art. III. of Chapter 17; and to Secs. 1477, 1491.

Ordinances fixing water rates. Rev. Code, 1912, Secs. 1496, 1497. See note at page 854, R. C., 1912.

For ordinances relating to assessor and collector of water rates, see Rev. Code, 1912, Chap. 17, Art. 1., Secs. 1454 et seq.; duties, Sec. 1463; clerks and assistants, Secs. 1458, 1459, 1462. Ordinance fixing salary. Rev. Code 1912, Sec. 1456; bond: Rev. Code, 1912, Sec. 1457. His salary can not be increased during the term, and the period he holds over after the regular four-year term is a part of his term so that an increase in salary does not apply to that period. State ex rel. vs. Smith, 87 Mo., 158; and he and his sureties on his bond are liable for breaches during such holdover period. Ibid., 1. c. p. 160, citing Long vs. Seay, 72 Mo., 648, and State ex rel. vs. Kurtzeborn, 78 Mo., 99.

See ordinance No. 27733, approved August 26, 1914, creating office of supervisor of assessment of water rates.

Sec. 12. The accounts of all public utilities owned and operated

by the city and dependent for their revenues upon the sale of their products or services shall be kept separate and distinct from all other accounts of the city, and shall contain proportionate charges for all services performed for such utilities by other departments, as well as proportionate credits for all services rendered.

Sec. 13. DEPARTMENT OF STREETS AND SEWERS. The department of streets and sewers shall include street and sewer divisions.

(a) The street division shall have charge of the repairing, cleaning and maintenance of all public highways, streets, boulevards, alleys, bridges, wharves, and levees; the sprinkling of streets and the collection and disposal of garbage, ashes, and refuse, and except as otherwise provided by law or ordinance shall have charge of the enforcement and execution of all ordinances relating to any of the matters referred to in this section or to the harbor.

Regulation of wharves. Art. I., Sec. 1, clause (16): See authorities cited in Rev. Code, Sec. 1607. See also *Belcher Sug. R. Co. vs. St. L. G. El. Co.*, 82 Mo., 121; 101 Mo., 192.

For ordinances relating to harbor and wharf commissioner, see Rev. Code, 1912, Secs. 1597, 1605, 1606, for employees, Secs. 1598, 1600-1602 and 1672.

Boundaries of the city by the Mississippi, jurisdiction, etc., see note Art. I., Sec. 1.

Boundaries of wharf, see note to heading of Chapter 20 of Rev. Code, 1912; also, Rev. Code, 1912, Secs. 1607-1611.

Commissioner's duties and authority. See Rev. Code, 1912, Sec. 1597; also, in general Chapter 20 of Rev. Code, 1912; charter, Art. I., Sec. 1, clause (16). Regulations as to landings, moorings, wreckage, obstructions on wharves, penalties, etc., see Rev. Code, 1912, Secs. 1611-1632.

See also "The Maggie P.," 25 Fed., 202 (as to contracts by city respecting wrecked boats, etc., and duty to keep levee and harbor free from obstructions, referred to in note to Rev. Code, 1912, Sec. 1616).

Ordinances as to wharfage, rates, etc., see Rev. Code, 1912, Art. III. of Chapter 20, being Sec. 1634 et seq. As to the right of the city to charge wharfage for the use of its wharves, the nature of such rights, etc., see authorities in note to heading "Wharfage," in Art. III. of Chapter 20 of Rev. Code, 1912, citing state and federal cases.

Crediting fines to harbor fund. Rev. Code, 1912, Sec. 1632.

Ordinances. Rev. Code, 1912, Sec. 1645 (seeking to impose, however, a penalty of not exceeding \$250).

(b) The sewer division shall have charge of the repairing, cleaning, and maintenance of all sewers and drains and the disposal of sewage.

For ordinances in general on sewer commissioner and his office, see Rev. Code, 1912, Secs. 1383-1389, and note. As to provisions concerning sewers, see Art. XXII., Secs. 14-20; ordinances Rev. Code, 1912, Secs. 1390 and following, and notes.

Repairs and other incidental expenses of district sewers must be paid out of the general revenue; hence the city can not regulate the sewers by making persons desiring to connect pay any sum to be used by the city in repairing or inspecting the sewers. *Hill vs. St. Louis*, 159 Mo., 159, 1. c. 171.

Liability of city for insufficient or defective sewers and for overflows and surface water. There is no liability for overflow occasioned by an extraordinary and unusually heavy rainfall, nor where the sewer is sufficient to carry off the water under ordinary conditions. *Gulath vs. St. Louis*, 179 Mo., 38 (Mill Creek sewer); nor is there any liability, even if the sewer is insufficient and out of repair, if the excessive rainfall would have produced the same damage whether the city had been negligent or not. *Brash vs. St. Louis*, 161 Mo., 1. c. 440, followed in *Gulath vs. St. Louis*, supra. But if the defects in the sewer are the result of municipal negligence and cause damage or contribute with other causes to do so, the city is liable. *Brash vs. St. Louis*, 161 Mo., 433.

It is incumbent on plaintiff to show that the cause of a sewer explosion

was due to the city's culpable neglect in order to recover. *Fuchs vs. St. Louis*, 167 Mo., 620.

The city can not be held for injuries resulting from causes which it could not in the exercise of ordinary caution and foresight have anticipated. *Fuchs vs. St. Louis*, 167 Mo., 620.

Upon the question of liability for insufficiency in the plan under which the sewer was built, so as to make it inadequate even when it is not out of repair and there is no neglect causing obstructions, etc., see *Gulath vs. St. Louis*, 179 Mo., 1. c. 53 (where the question was raised but the case decided on other grounds; see cases cited in briefs of respective counsel); *Steinmeyer vs. St. Louis*, 3 Mo. App., 256; see also *Foster vs. St. Louis*, 71 Mo., 157 (overflows caused by defective plan of street grade, city not liable); *Johnson vs. Dist. Col.*, 118 U. S., 19.

As to liability of city for changing the flow of surface waters, see *Rychlicki vs. St. Louis*, 98 Mo., 497; *Stewart vs. Clinton*, 79 Mo., 603; *Foster vs. St. Louis*, 71 Mo., 157, and cases cited on p. 158; *Payne vs. Ry.*, 112 Mo., 6; *Barnes vs. Hannibal*, 71 Mo., 449; *Carson vs. Springfield*, 53 Mo. App., 289. As to pollution of streams, obstruction, etc., being nuisances, note subject of "nuisances" in Rev. Code, 1912, preceding Sec. 787. Damages for defective water main, etc., causing flooding of premises. *Rice vs. St. Louis*, 165 Mo., 636.

Sec. 14. DEPARTMENT OF PUBLIC WELFARE. The department of public welfare shall include divisions of health, of hospitals, of parks and recreation, and of correction.

(a) The head of the division of health shall be known as the health commissioner. Said division shall have general supervision over the public health and shall see that the laws and ordinances in relation thereto are observed and enforced, and for that purpose the health commissioner is authorized and empowered, with the approval of the director of public welfare, to make such rules and regulations, not inconsistent with this charter or any law or ordinance, as will tend to preserve or promote the health of the city; to enter into, or to authorize and require any employee or police officer to enter into, and examine any building, lot, or place within the city, and to ascertain the condition thereof so far as the public health may be affected by it; and to declare and abate nuisances as herein or by law or ordinance provided. Where, in the judgment of said commissioner, the existence of a nuisance is plain and its continuance a danger to public health, he may declare such nuisance a danger, and enter such declaration in the records of his office. He shall then immediately abate such nuisance without notice. In all other cases before abating a nuisance on private property he shall give a hearing, after notice thereof given either personally to the owner or his agent or by posting on or near the premises, whereupon he may declare the nuisance and order its abatement. In case such nuisance is not abated as ordered, he shall abate the same. In case of abatement of nuisance on private property, the cost thereof may be assessed and collected as a special tax and be a lien on such property as may be provided by ordinance. Any person causing or maintaining any nuisance shall be liable to the city in a civil action for the expense incurred in abating such nuisance. Failure to abate a nuisance after an order so to do as aforesaid shall constitute a misdemeanor, punishable as may be provided by ordinance.

The ordinances on the health department appear in Rev. Code, 1912, as

Chapter 9, divided into 27 articles. Art. II. of said chapter treats of the health commissioner and his office and employees.

Rev. Code, 1912, Secs. 592, 593, 605.

The members of the board of health are not state officers within the meaning of the constitution relative to appeals. *State ex rel. vs. Board of Health*, 90 Mo., 169.

The Supreme Court touched upon the functions of the board of health in the opinion in *State vs. Butler*, 178 Mo., 1. c. 303 et seq.

On duties and powers of commissioner and board of health hereunder with reference to abatement of nuisances, see *State ex rel. vs. St. Louis*, 207 Mo., 354.

For ordinances pursuant hereto on abatement of nuisances, see Rev. Code, 1912, Sec. 839 and following sections.

For discussion of authorities on the subject of nuisances and the abatement thereof, see Rev. Code, 1912, Secs. 787-895.

As to the sufficiency of service of notice provided for prior to abatement of nuisances, see *St. Louis vs. Flynn*, 128 Mo., 413.

As to former power of board of health to abate and the effect ascribed to its findings and adjudications, see *St. Louis vs. Steele*, 12 Mo. App., 570; *St. Louis vs. Schnuckenberg*, 7 Mo. App., 536; also see note to heading of Article XV. of Chapter 9 of Rev. Code, 1912.

See Rev. Code, 1912, Sec. 872, and sections preceding the same (869, 870, 865, etc.).

Quarries. See notes appended to ordinances on the subject: Rev. Code, 1912, Secs. 828, 830, 2604. Also note to heading "Nuisances," in Rev. Code, 1912, preceding Sec. 787.

Slaughter houses. See ordinances with notes thereto, Rev. Code, 1912, Secs. 828, 830, 803 to 805; note to "Nuisances," Rev. Code, 1912, Secs. 787 et seq.

Stock driving. Rev. Code, 1912, Secs. 2615-2623, and note to Sec. 2620.

Factories, etc. R. C., 1912, Secs. 807, 808, 811, 812.

Pig pens, cow stables, dairies, factories, etc. See ordinances, Secs. 787 et seq. For dairies, see Rev. Code, 1912, Secs. 665 et seq., and notes.

Soap factories, bone and rendering, etc. See Rev. Code, 1912, Secs. 807 et seq.

Where the power to prohibit is given the lesser power to permit on condition is included. *St. Louis vs. Fisher*, 167 Mo., 662, approving *St. Louis vs. Howard*, 119 Mo., 41; see s. c. ib., 37.

"Regulate or prevent the carrying on of any business which may be dangerous or detrimental to the public health." *St. Louis vs. Lamp Mfg. Co.*, 139 Mo., 1. c. 568; *St. Louis vs. Fischer*, 167 Mo., 1. c. 662 (affirmed 194 U. S., 361).

"To secure the general health of the inhabitants by any measure necessary." See as to power to pass milk and cream inspection ordinances, *St. Louis vs. Liessing*, 190 Mo., 464, 480; to require owner to destroy weeds, *St. Louis vs. Galt*, 179 Mo., 8, 18. See also note to charter to general welfare clause: Art. XIII., Sec. 14 (e).

This, with other sections, does not operate to take from the board of public improvements and confer on the board of health the power to make contracts for disposal of garbage or for other public work. *State vs. Butler*, 178 Mo., 1. c. 300.

"To declare, prevent, and abate nuisances on public and private property, and the causes thereof, etc." See note on subject of "Nuisances" in connection with ordinance provisions in Rev. Code, 1912, Secs. 787-899, and discussion of the subject and cases there cited. As to abatement of a nuisance caused by the city at the expense of the city, see Art. XXII., Sec. 12.

See, also, Sec. 3, Art. XXV., of the charter.

Whenever any malignant infectious or contagious disease is prevalent in the city, or will probably become so, the mayor may proclaim such fact to the inhabitants, and thereupon anything in this charter or any ordinance to the contrary notwithstanding, the health commissioner, with the approval of the director of public welfare and the mayor, shall have power, until the mayor shall proclaim that the occasion therefor is past, to take such steps, use such measures, and incur such expense as may in the opinion of

the commissioner be necessary to avoid, suppress, or mitigate such disease.

See Rev. Code, 1912, Sec. 13.

As to preventing introduction and spread of contagious diseases. Rev. Code, 1912, Secs. 750-783.

Quarantine and infectious diseases in charge of health commissioner. See Rev. Code, 1912, Secs. 750-783.

Said commissioner shall keep a record of his acts and orders and shall file in his office all petitions, documents, and papers belonging thereto. Copies of such records, petitions, documents, and papers when certified by him or as may be provided by ordinance shall be prima facie evidence in any court of the facts therein contained.

All police officers shall observe the sanitary conditions in their districts and, through the chief of police, shall report to the health commissioner promptly, any disease or nuisance in the city.

Duty of police to report. See Rev. Code, 1912, Sec. 835; also 802, 825.

The health division shall have charge of the registration of all births and deaths within the city. It shall have charge of the markets, the quarantine, and the morgue, and the health commissioner, with the approval of the director of public welfare, shall make all necessary rules for the government thereof.

Registration of births and deaths. Rev. Code, 1912, Sec. 926.

Quarantine. Rev. Code, 1912, Secs. 917-925, and note to Sec. 917.

(b) There shall be a division of hospitals which shall include, and have under its special charge and supervision the operation and maintenance of all the hospitals, infirmaries, medical laboratories, dispensaries, and other charitable institutions of the city. The head of said division shall be known as the hospital commissioner.

Hospitals. For ordinances on the city institutions, see Rev. Code, 1912, Chapter 10, and notes.

(c) There shall be a division of parks and recreation, which, except as may be otherwise herein or by law provided, shall have supervision and control of all public parks and places and of all facilities provided by the city for recreation, amusement, or instruction, and execute all ordinances of the city relating to the management or use thereof. It shall also exercise such supervision and control as may be provided by ordinance over public recreative functions, amusements and entertainments not conducted by the city. The head of said division shall be known as the commissioner of parks and recreation. He shall appoint and control the city forester.

For ordinances on park commissioner and his office in general, see Rev. Code, 1912, Secs. 1539 et seq. Salaries and employees, Rev. Code, 1912, Secs. 1546, 1551, 1547-1550.

As to public parks, see Art. I., Sec. 1 (14, 33, 8, 9); Art. XXI., Secs. 11, 15, 16.

Ordinances concerning public parks, and regulations, etc., see Rev. Code, 1912, Chapter 19, Secs. 1553 to 1570, inclusive. And see note at page 870, R. C., 1912, giving references to the various provisions relating to parks in general, as well as to the respective city parks in particular. As to Tower

Grove park (which was specifically excepted from the 1876 charter provisions), see Session Laws Mo., 1867, pp. 172 et seq.; Sessions Laws 1872, p. 469, and Laws 1871, p. 189; "Laws Specially Applicable to St. Louis," Secs. 438-464.

As to the park commissioner's office, see Rev. Code, 1912, Secs. 1539-1542; and as to his employees and salaries, Secs. 1546 et seq. Under its charter powers the city can provide rules for the management and government of the parks, and secure by contract some one to serve refreshments therein for the service of the public. The control of the city is a discretionary one and a matter of local concern, the park being held and owned by the city, not in its political or governmental capacity, but in a quasi-private capacity, in which the municipal authorities act for the exclusive benefit of the corporation whose interests they represent. State ex rel. vs. Schweickardt, 109 Mo., 497.

A public park is a public use authorizing condemnation of private property therefor by proper proceedings. County Court vs. Griswold, 58 Mo., 175 (upholding establishment of Forest Park under the act "repealed" by Sec. 6 of Art. VIII. of the 1876 charter. Kansas City vs. Ward, 134 Mo., l. c. 177; Shoemaker vs. U. S., 147 U. S., 282, 297. It must be established at the expense of those to be benefited by it, and must be for public and municipal purposes. State ex rel. vs. Leffingwell, 54 Mo., 458, 471 et seq.

Special taxation upon those specially benefited, to pay the cost (as in case of streets) is sustained. Kansas City vs. Ward, 134 Mo., 172, 178; Shoemaker vs. U. S., 147 U. S., 282, 302; Kansas City vs. Bacon, 147 Mo., 259, 273; Craighill vs. Lambert, 168 U. S., 611.

Ordinances providing for lease for residence purposes of buildings in certain parks, see Rev. Code, 1912, Secs. 1560-1561; leasing boat privileges, Secs. 1562 et seq.

A contract pursuant to ordinance, made in writing by the former board of public improvements of the city of St. Louis, with one for the exclusive privilege of selling refreshments and intoxicating liquors in Forest Park, and giving the so-called "lessee" possession of certain buildings on the premises, is held not to be in effect a technical lease nor in violation of the provisions of the charter that no sale or lease shall be made unless the ordinance providing therefor shall be submitted to a vote of the people. State ex rel. vs. Schweickardt, 109 Mo., 496.

City forester. Ordinances. 1912 R. C., Secs. 1363 et seq.

(d) There shall be a division of correction, which shall include and have under its special charge and supervision the operation and maintenance of all detentive, penal and corrective institutions of the city. The head of said division shall be known as the commissioner of correction.

(e) The board of aldermen may by ordinance include in the department of public welfare and make provision for research and publicity concerning the causes of poverty, delinquency, crime, and disease, or concerning other problems relating to the public health, morals, and welfare, and to promote the education of the city with regard thereto; for free legal aid; for a municipal lodging house; for a city free employment bureau; and provide for such officer or officers in charge thereof as may be necessary.

This reads like a general welfare clause, but in this charter the real general welfare clause seems to be Art. I., Secs. 33, 35, et seq.

General welfare clause. The powers broadly conferred under this clause may be limited and qualified by special and particular powers expressly conferred, the general clause not enlarging nor annulling those specifically conferred by the special clauses undertaking to confer powers over that subject. St. Louis vs. Kaime, 180 Mo., 309, 317 (denying power to compel agent to remove unsafe building); State vs. Butler, 178 Mo., 272, 302; St. Louis vs. Bell Telephone, 96 Mo., 623, 631 (denying power to fix telephone rates).

While the foregoing is in accordance with well-settled principles of law, and the conclusions necessary under the 1876 charter, the same appear no longer to apply to St. Louis because of the broad language of Art. I., Secs. 33-35, et seq. See also Art. XIX., Sec. 2.

Inspection of milk under general welfare clause. St. Louis vs. Liessing, 190 Mo., 464, 480.

Regulation or suppression of bill boards. *St. Louis Gunning Advertising Co. vs. St. Louis*, 235 Mo., 99.

Temporary closing of street. *Haller vs. St. Louis*, 176 Mo., 606, 620.

Vagrancy. *St. Louis vs. Benty*, 11 Mo., 61.

Prohibiting keeping open place of business on Sunday. *St. Louis vs. Cafferata*, 24 Mo., 94.

Prohibiting cruelty to dumb animals. *St. Louis vs. Schoenbusch*, 95 Mo., 618 (in which the court says that "The cases show that general welfare clauses are not useless appendages to the charter powers of municipal corporations. They are designed to confer other powers than those specifically named. The difficulty in making specific enumeration of all such powers as may be properly delegated to municipal corporations renders it necessary to confer such powers in general terms. Ordinances relating to the comfort, health, good order, convenience, and general welfare of the inhabitants are regarded as the exercise of police regulations").

Dramshops in parks. *State ex rel. vs. Schweickardt*, 109 Mo., 496.

Abolish wells in streets. *Ferrenbach vs. Turner*, 86 Mo., 416.

Sec. 15. DEPARTMENT OF PUBLIC SAFETY. The department of public safety shall include the following divisions:

(a) When the city is permitted by law to establish and maintain a police department, such department shall be a division hereunder. The head of said division shall be known as police commissioner. He may be removed, with or without cause, by the director of public safety or by the governor of the state.

(b) When the city is permitted by law to establish and maintain an excise department, such department shall be a division hereunder. The head of said division shall be known as excise commissioner. He may be removed, with or without cause, by the director of public safety or by the governor of the state.

(c) There shall be a division of fire and fire prevention which shall manage, control, and conduct the fire department, and take all proper steps for fire prevention or suppression. The head of said division shall be known as chief of the fire department. In case of emergency, with the approval of the director of public safety, he may purchase or hire whatever may be required for the emergency, with or without authority or appropriation by ordinance therefor. He or any assistant in charge at any fire shall have the same police powers at such fire as the chief of police, under such regulations as may be prescribed by ordinance. He may appoint a fire marshal, whose duty it shall be, subject to the chief of the fire department, to investigate the cause, origin and circumstances of fires and the loss occasioned thereby and assist in the prevention of arson. The chief of the fire department shall have charge of the fire and police telegraph and telephone systems.

For ordinances on the fire department, its chief, composition of the department, salaries, duties, and qualifications of the men, regulations as to right of way, police power, authority, and other regulations, see Rev. Code, 1912, Chapter 7, Secs. 557-576, inclusive. For fire and police telegraph department, see Rev. Code, 1912, Chapter 8, Secs. 577-591, inclusive.

For statute relating to firemen's pension fund, etc., see Laws Mo., 1903, p. 87; "Laws Specially Applicable to St. Louis," Secs. 374 to 398; and see ordinances in pursuance thereof, Rev. Code, 1912, Secs. 575, 576.

Adjustment of damages caused by fire department, when claim is under fifty dollars. Rev. Code, 1912, Sec. 573.

The city is not liable for damages caused by the carelessness of the

employees of the fire department in the discharge of their duties, nor for the insufficiency or defectiveness of the apparatus; the fire department was not created in the proprietary capacity of the city, for its own benefit, but for the benefit of the public, and the officers of that department are not the city's agents in the sense that renders the city liable. *McKenna vs. St. Louis*, 6 Mo. App., 320; *Heller vs. Sedalia*, 53 Mo., 159.

Ordinance provision Rev. Code, 1912, Sec. 561, is pursuant to this provision. Contracts not included in the authority above specified are controlled as provided in charter, Art. XXV., Sec. 9 (or Art. XXII., Secs. 22 et seq., if it be public work).

Under the Rev. Ord. 1856, p. 438, the inspector of the fire department had power to order repairs to engine houses where they exceeded fifty dollars. *Robinson vs. St. Louis*, 28 Mo., 488, holding that it was not necessary that he should use the name of the city in contracting if he made the contract officially as inspector.

See for fire limit ordinances, Rev. Code, 1912, Secs. 341, 342, 343, and note.

The duties of fire chief under this section are separate from those of the building commissioner (clause e of this section). See ordinances, Rev. Code, 1912, Sec. 301, and *Magner vs. St. Louis*, 179 Mo., 1 c. 500; note to Rev. Code, 1912, Chap. 7.

(d) There shall be a division of weights and measures which shall execute all ordinances regulating or relating to weights and measures or the inspection thereof. The head of said division shall be known as the commissioner of weights and measures.

Inspection weights and measures, see charter I, Sec. 1, clause 28. For discussion and authorities, see ordinances on the subject. Rev. Code, 1912, Secs. 1717 et seq.

State institutions. Can not be compelled by ordinance to weigh supplies on scales inspected by a city officer, where the statute provides that the institution may purchase its own supplies. *Fulton vs. Sims*, 127 Mo. App., 677.

Standard and inspection of weights and measures. For discussion and cases, see notes to ordinances on this subject, Rev. Code, 1912, Secs. 1717 and following.

Lumber inspection, etc. See Rev. Code, 1912, Secs. 1781-1789.

Steam boilers inspection, licensing engineers, etc. See notes in Rev. Code, 1912, Secs. 2056 to 2098.

Inspection of meat, fish, vegetables, fruit. See Rev. Code, 1912, Secs. 687 to 696; forestalling and vending same or designating where same to be sold, see markets, meat shops, etc. (Rev. Code, 1912, Secs. 2477 to 2548). Fruit and vegetables to be sold only in original packages at depots or landings, nor to anybody but licensed dealers: Rev. Code, 1912, Secs. 2546-2547.

Coal, hay, etc. See notes to Rev. Code, 1912, Secs. 1754 et seq.

Gas inspection. Rev. Code, 1912, Secs. 1804 to 1814.

Hucksters. Rev. Code, 1912, Sec. 2530.

Inspection of milk, cream, butter, cheese, etc. For ordinance provisions, see Rev. Code, 1912, Secs. 630 to 664 and notes thereto. See as to upholding the ordinances based on above charter provision. *St. Louis vs. Liesing*, 190 Mo., 464; *St. Louis vs. Grafeman Dairy Co.*, 190 Mo., 492, 506; *Same vs. Same*, 190 Mo., 507; *St. Louis vs. Reuter*, 190 Mo., 514; *St. Louis vs. Polinsky*, 190 Mo., 516; *St. Louis vs. Schuler*, 190 Mo., 524.

(e) There shall be a division of building and inspection. It shall superintend all buildings belonging to or under the control of the city and have charge of the condemnation of unsafe buildings and the prevention of the use of buildings while unsafe, the granting of building permits, the inspection of all buildings in course of construction, the enforcement of all building ordinances, the supervision of all plumbing, the abatement of the smoke nuisance, and the inspection of all boilers, elevators, and mechanical plants. The head of said division shall be known as the building commissioner.

Ordinances have been enacted in pursuance of these provisions. Most of these ordinance provisions will be found under what is known as the build-

ing code, comprising Rev. Code, 1912, Secs. 301-556, inclusive, containing many and minute provisions and regulations. A new building code is being prepared. As to the ordinances on gunpowder, etc., see Rev. Code, 1912, Secs. 293-300; firecrackers and fireworks, Secs. 2594-2596; lamps in stables, ib., Sec. 509. For fire limits for wooden buildings, see Rev. Code, 1912, Sec. 343 (and note to Sec. 341 as to authority of city to remove buildings erected in violation thereof).

An ordinance prescribing appliances for the protection of buildings against fire may be made to apply to existing buildings. *St. Louis vs. Commission Company*, 226 Mo., 148.

This section authorizes the board of aldermen to enact a reasonable ordinance to prevent spread of fire in large buildings. *St. Louis vs. Commission Company*, 226 Mo., 148.

Right to enter and examine premises, etc., to ascertain sanitary conditions. See as to right of health commissioner in this respect, charter, Art. XIII., Sec. 14 (a), and as to such right in the members of former board of appeals from building commissioner's rulings, see Rev. Code, 1912, Sec. 335. Right of sewer commissioner to enter premises, Rev. Code, 1912, Sec. 1403. See in general under "Right of Entry," etc., in the index to Rev. Code, 1912, for references.

Power to require owners to remove or put in safe condition does not authorize an ordinance requiring the agents of owners to do so. *St. Louis vs. Kalme*, 180 Mo., 309 (the ordinance has since been amended in this respect. Rev. Code, 1912, Sec. 500).

Power to provide for safe construction, inspection, and repairs does not confer power on the city to change the common law rule as to lateral support between adjacent owners in case of excavations. *Carpenter vs. Reliance Realty Co.*, 103 Mo. App., 480, 494 (Rev. Code, 1912, Secs. 350, 351).

ARTICLE XIV.

Public Welfare Boards.

Section 1. The Mullanphy fund shall be administered by a board of three members to be appointed by the mayor for terms of one, two, and three years, respectively. Each year thereafter the mayor shall appoint one member for a term of three years. Members shall hold office until their successors qualify. The board may appoint such employees as may be provided by ordinance.

Mullanphy bequest. For ordinances upon this subject, see Rev. Code, 1912, Secs. 2015 to 2033, and note at heading of said chapter, discussing the Mullanphy bequest and ordinances, and referring to adjudications touching the same.

Sec. 2. There is hereby established a complaint board to consist of three members to serve without compensation. Said members shall be appointed by the mayor for terms of one, two and three years, respectively. Each year thereafter the mayor shall appoint one member for a term of three years. Members shall hold office until their successors qualify. Said board shall employ a secretary, and may appoint such other employees as may be provided by ordinance. It shall receive complaints against any department, board, division, officer, or employe of the city, or against any public utility corporation, and examine the same. It shall recommend to the proper city or state authorities any action deemed advisable.

Sec. 3. Provision may be made in accordance with law or ordinance for: (a) a board of parole and probation; (b) a board of children's guardians; (c) a city art museum, and (d) a zoological park.

ARTICLE XV.**Department of Finance.**

Section 1. The department of finance shall include the office of the comptroller and the assessment, collection, treasury, and supply divisions.

Sec. 2. **THE COMPTROLLER.** The comptroller shall have the qualifications and forfeit his office for the causes provided with regard to the mayor; receive a salary of eight thousand dollars per annum; give bond to the city for not less than three hundred thousand dollars, and appoint one deputy comptroller and such other deputies and employes as may be provided by ordinance. The comptroller shall be the head of the department of finance and exercise a general supervision over its divisions, over all the fiscal affairs of the city and over all its property, assets, and claims, and the disposition thereof. He shall preserve the credit of the city, and for that purpose, or in case of any extraordinary emergency of any kind, he may, with the approval of the board of estimate and apportionment, and with or without any ordinance or other authority or appropriation therefor, draw warrants on the treasurer or effect temporary loans to pay debts and judgments and other liabilities of the city, or to meet any such emergency, charging such warrants to any excess balances in appropriations made by the general annual appropriation bill and specifically reporting his action to the board of aldermen at its first meeting thereafter. He shall have a seat and a voice but no vote in the board of aldermen. He shall be the general accountant and auditor of the city and the records in his office shall show the financial operations and condition, property, assets, claims, and liabilities of the city, all expenditures authorized, and all contracts in which the city is interested. He shall require proper fiscal accounts, records, settlements and reports to be kept, made and rendered to him by the several departments and offices of the city, including the license collector's office so far as consistent with law, and shall control and continually audit the same, and prescribe forms, rules, and regulations therefor and require their observance. He shall regulate the making of all requisitions for supplies. Except as by this charter or by law or ordinance otherwise provided he shall prescribe and regulate the manner of paying creditors, officers and employes of the city. He shall audit all pay-rolls, accounts and claims against the city, and certify thereon the balance as stated by him and draw his warrant on the treasurer therefor, but no pay-roll, account, or claim, or any part thereof, except for the preservation of the credit of the city, or in case of extraordinary emergency as hereinbefore provided, shall be audited against the city unless certified by the officer having knowledge of the facts, and authorized by law or ordinance, and the amount required for payment of

the same appropriated for that purpose by ordinance and in the treasury. He shall see that no contract liability is incurred except for the preservation of the city's credit, or in case of emergency, as hereinbefore provided, without previous authority of law or ordinance. He shall, at least monthly, adjust the settlements of all officers engaged in the collection of the revenue. He may temporarily transfer employes from one division of the department of finance to any other division thereof. He shall have power to administer oaths. He shall receive and preserve in his office all books, vouchers, and papers relating to the fiscal affairs of the city. He may destroy any documents, books, vouchers, papers, or canceled blank forms pertaining to any department, board or office if he, the city counselor and the head of such department, board, or office certify that they are useless and the board of estimate and apportionment so directs. He shall keep a register of all delinquent and special tax bills or other claims of the city in the nature of liens on property and shall release any such bill or claim thereon on proof of payment thereof.

For ordinance specially relating to comptroller hereunder, see Rev. Code, 1912, Secs. 102-117; respecting treasury department, see Secs. 64-82.

There are other charter provisions and ordinances affecting the rights and duties of comptroller.

A city contract is not invalid where an appropriation sufficiently large to pay the contract price has been made for doing the work, merely because the contract price exceeds the comptroller's estimate of funds that would be required to do the work. *Curran Printing Co. vs. St. Louis*, 213 Mo., 22.

Sec. 3. Any officer or employe in the comptroller's office may be designated by him to draw warrants upon the treasurer with the same effect as if signed by the comptroller, such designation to be in writing, in duplicate, filed with the mayor and in the treasury division; provided, that the mayor may make such designation if the comptroller be absent or disabled and there be no one in his office designated to act. Any such designation may be revoked by the comptroller while acting as such by filing the revocation in duplicate with the mayor and in the treasury division.

Sec. 4. **ASSESSMENT DIVISION.** The assessment division shall consist of the assessor and such deputy assessors and employes as may be provided by ordinance.

See Rev. Code, 1912, Secs. 130, 144. By Sec. 8 of the scheme the office of president of the board of assessors is declared a city office and placed under the control of the city government. By this new charter provision, the old office is abolished, and a new one under the title of assessor created. The former district assessors are now deputy assessors, and are appointed by the assessor.

Sec. 5. The assessor shall have the qualifications provided with regard to the mayor; receive a salary of five thousand dollars per annum, and before entering upon the duties of his office, take an oath similar to that required by law of county assessors. He shall be the head of the assessment division; appoint the deputy assessors and employes in his division; preserve all maps, plats, books, and papers belonging to said division; cause all plats to be prepared, altered, and corrected as required by law;

receive lists, statements, or returns of property; and furnish blanks and information to those desiring to appeal to the board of equalization.

Rev. Code, 1912, Sec. 132. The original provision also required the assessors to be freeholders but was superseded by the state law (R. S. 1909, Sec. 8531).

Regarding plats, etc., see Sec. 18 of this article and "Laws Specially Applicable to St. Louis," Sec. 504, R. S., 1909, Sec. 11373.

Sec. 6. Each deputy assessor shall take the same oath as the assessor and have the same powers, subject to his control, and shall have been a resident of the city for five years next before appointment.

Sec. 7. The assessor and his deputies before entering upon their duties shall give bond to the state; the assessor for twenty thousand dollars and the deputies each for five thousand dollars, or such other sums as may be fixed by ordinance. Each bond shall be executed in duplicate and one forwarded to the state auditor, the other deposited with the comptroller.

Sec. 8. The assessor, or his deputies under his direction, shall severally assess all the taxable property, real or personal, within the city in the manner provided by law, and for that purpose the assessor may divide and assign the work or any of it among them. They shall commence their assessment on the first day of June in each year, and complete the same, and the deputies make their final reports thereof to the assessor, on or before the first day of January next following. The assessor shall see that the assessment is made uniform and equal throughout the city.

See in connection herewith R. S. 1909, Sec. 11373, "Laws Specially Applicable to St. Louis," Sec. 504. For ordinances, see Rev. Code, 1912, Secs. 130-160; deputies, Sec. 133.

The action of the assessor in assessing the property of owners is quasi-judicial, and when his jurisdiction attaches by the due service of notice and blanks, his valuation and assessment made where the property owner fails to do so is, unless appealed from, conclusive upon the taxpayer; and that the valuation is of a lump sum, not itemized, is at most a mere irregularity of which the taxpayer, when sued, can not complain. *State ex rel. vs. Cummings*, 151 Mo., 49, 60; *State ex rel. vs. Seahorn*, 139 Mo., 582; *State ex rel. vs. Hoyt*, 123 Mo., 348. The assessor can not raise the return made by the taxpayer without notice. *State ex rel. vs. Spencer*, 114 Mo., 574.

By charter, Art. XV., Sec. 11, the comptroller has a right to correct manifest errors in assessments.

Act March 24, 1881 (Laws 1881, p. 178) fixes the dates of assessment.

Duties, etc. Rev. Code, 1912, Sec. 143. As to bonds, etc., see Rev. Code, 1912, Sec. 131.

State, school, and city tax bills, how prepared by assessor, and what to contain, charter, Art. XV., Sec. 15.

This section makes impossible a different rate of assessed valuation for acre or farm lands within the city. *State ex rel. vs. O'Brien*, 89 Mo., 631; *Benoist vs. St. Louis*, 15 Mo., 668.

Sec. 9. The assessor shall make up the assessment books in proper alphabetical order from the reports made by the deputy assessors, the lists or statements made of property, his own view, or the best information he can otherwise obtain, and complete said books on or before the third Monday in March of each year.

Sec. 10. There shall be a board of equalization consisting of

the assessor, who shall be its president, and four taxpaying, property-owning citizens resident in the city for ten years next before their appointment, who shall be appointed annually by the mayor on or before the second Monday in March. Each member shall take an oath similar to that required by law of members of county boards of equalization. Their compensation shall be fixed by ordinance.

Sec. 11. Said board shall have the power and duty to hear complaints and appeals, and to adjust, correct and equalize the valuations and assessments of any taxable property, real or personal, within the city and to assess and equalize the value of any taxable property, real or personal, within the city, and to assess and equalize the value of any taxable property, real or personal, omitted from the assessment books then under examination by them, and to adjust and correct the assessment books accordingly; *provided*, that if said board proposes to increase any assessment or to assess any such omitted property, it shall give notice of the fact to the person owning or controlling the property affected, his agent or representative, by personal notice, by mail, or by advertisement, specifying when and where a hearing shall be granted.

Sec. 12. When the assessment books are completed the assessor shall give two weeks' notice in at least two daily newspapers that said books are open for inspection, and stating when the board of equalization will be in session.

Board of equalization has power to send for books, papers, and witnesses on appeals relating to assessment of property, whether such appeal is taken by the taxpayer, or whether the board has itself increased the assessment, and he appears to protest against the increase, and in such case the board has power to punish a witness for contempt for refusing to testify concerning the amount of money he knows a taxpayer had on the first of June. In *re* Sanford, 236 Mo., 665.

Where board of equalization finds no inequality in individual assessments, but finds that all property within its jurisdiction has been under-assessed ten per cent, it may by one order increase the assessor's valuation ten per cent. *State ex rel. vs. Bank*, 234 Mo., 194. Notice by publication that the board will under such circumstances hear reasons why valuation of all property in county should not be increased ten per cent. is a sufficient notice to all taxpayers. *State ex rel. vs. Bank*, 234 Mo., 194.

Ordinances on board of equalization, Rev. Code, 1912, Secs. 161-164. Assessments must be corrected by appeal. If the assessed owner does not appeal to the board of equalization as provided by law, he will not be heard to dispute the assessment of the assessor, which then is conclusive, if the property is taxable under any law. *State ex rel. vs. Tobacco Co.*, 140 Mo., 218. The right to appeal is equivalent to "a day in court." *State ex rel. vs. Cummings*, 151 Mo., 1 c. 59 (holding failure to make an itemized list of property at best only an irregularity); see on same point *State ex rel. vs. Seahorn*, 139 Mo., 1 c. 609-610.

A board of equalization, being a tribunal of special and limited powers, acts outside of its jurisdiction are void; but in the performance of its duties it acts judicially and its orders can not be collaterally impeached except for fraud. *State ex rel. vs. Valle*, 122 Mo., 33; *St. Louis Mut. vs. Charles*, 47 Mo., 426.

The action of the board of appeals is judicial and hence certiorari is the proper mode of reviewing its acts. *State ex rel. vs. Dowling*, 50 Mo., 134; but only matters on the face of its record can be reviewed. *Ward vs. Board*, 135 Mo., 309; *State ex rel. vs. Bank*, 234 Mo., 194.

Sec. 13. The said board shall meet on or before the third Monday in March, annually, and remain in continuous session for

at least three hours in the forenoon and at least three hours in the afternoon of each day, except Sunday, for four weeks and no longer. It shall have power to subpoena witnesses and order the production of books and papers, and any member may administer oaths, in relation to any matter within its jurisdiction. It shall hear and determine all appeals summarily, and keep a record of its proceedings which shall remain in the assessment division.

Sec. 14. Any person may appeal in writing to the board of equalization from the assessment of his property, specifying the matter of which he complains.

Sec. 15. After the assessment books have been corrected, the assessor shall make an abstract thereof showing the amount of the several kinds of property assessed and specifying the amount of value of all taxable property within the city, and certify thereon that the same is a true and correct abstract of all such property in the city so far as he has been able to ascertain. One copy of the abstract, verified by his oath, shall be delivered on or before the fourth Monday in May to the mayor, and another to the state auditor. The assessor shall extend in said assessment books the state, school and city taxes and include in said books such matter as the law shall provide or the comptroller require. The assessor shall then cause tax bills to be made out for such taxes in such forms as the law shall provide or the comptroller prescribe, and deliver them with a duplicate schedule thereof to the comptroller, who shall compare said bills with said books and schedule and test the footings, and then officially stamp said bills and deliver them with one schedule to the collector, and take his separate receipts: one for the aggregate of said bills, and another for the state taxes, which last receipt the comptroller shall transmit to the state auditor.

As to proper officers to extend the taxes (under the old law), see State ex rel. vs. Tracy, 94 Mo., 217. Now the taxes must be extended by the assessor.

School taxes are fixed by the board of education. See Secs. 20, 22.

Sec. 16. The comptroller shall hear and determine all complaints of manifest error in the assessment of property for taxes, and in all cases when it shall appear that any property, real or personal, has been erroneously assessed, cause the same to be corrected on the assessment books, and certify to the state auditor all such corrections for credit to the collector. The comptroller shall perform all duties and acts within the city, in regard to the "land delinquent list," the "sale of land for taxes," and the assessment books and tax bills that are imposed on county courts by general law; and make out the "back tax books" and the back tax bills required by law.

The board of aldermen is prohibited from relieving any citizen from payment of any tax or exempt him from any burden, etc. See charter, Art. IV., Sec. 26; and from making any appropriations for charitable purposes, etc.

Sec. 17. The costs and expenses of the assessment for each year shall be paid by the city. The comptroller shall, as soon as the amount is ascertained, certify the same to the state auditor and obtain his warrant in favor of the city for one-half thereof as provided by law.

Rev. Code, 1912, Sec. 160.

Sec. 18. The day after any instrument affecting the title to real estate is filed in the office of the recorder of deeds, the recorder shall deliver to the assessor an abstract thereof and to the board of public service a copy of such abstract. The assessor shall promptly change the plats in his division accordingly.

Sec. 19. COLLECTION DIVISION. The collection division shall consist of the collector and such deputies and employes as may be provided by ordinance.

Sec. 20. The collector shall have the qualifications provided with regard to the mayor and be the head of the collection division. He shall receive such compensation as may be provided by law or ordinance. He shall collect all state, city, and school taxes, wharfage, water rates, and dramshop licenses, and may collect special assessments, and, unless otherwise provided by ordinance, all indebtedness and claims due the city, and daily pay the same to the city treasurer, except the state taxes which shall be paid by him as provided by law, and except the school taxes, which shall be paid by him to the board of education of the city monthly, or oftener when required in writing by the treasurer of said board. He shall collect license taxes as permitted by law. He shall appoint the deputies and employes in his division. Each deputy shall have all the powers of the collector, subject to his control.

See ordinance, Rev. Code, 1912, Sec. 168. The duty cast on the collector to collect licenses was by state law transferred to a "license collector" created by that act; and the issuance of dramshop licenses was by statute conferred on the excise commissioner. See note on these points and references to these statutes in note below. To that extent the duties of the collector were modified.

Commissions of collector for collecting revenue. See state law, R. S. 1909, Sec. 11481; "Laws Specially Applicable to St. Louis," Sec. 522.

State statute on collector's right to deputies. R. S. 1909, Sec. 11445; "Laws Specially Applicable to St. Louis," Sec. 518.

For ordinance, see Rev. Code, 1912, Secs. 170, 173.

In an action on tax bill, the bill can not be excluded because signed by deputy. State ex rel. vs. Miller, 16 Mo. App., 539.

For ordinance provisions on collector, see Rev. Code, 1912, Secs. 166-175.

That provision of this section which requires the collector to collect all licenses is superseded by the statute creating the office of license collector and conferring on him the duties respecting licenses theretofore performed by the city collector or license commissioner. (Water, dramshop, boat, and wharf licenses are excepted). See said statute with notes in "Laws Specially Applicable to St. Louis," Chap. 17, Secs. 417-426; being Laws 1901, pp. 80-82; and see further on this subject, particularly the annotations to the Rev. Code, 1912, Secs. 182 et seq. See also Secs. 166 et seq.; and as to dramshop licenses, see Secs. 248-255 of "Laws Specially Applicable to St. Louis," with annotations, being R. S. 1909, Sec. 7230, and notes to Rev. Code, 1912, Secs. 2123-2136.

"Laws Specially Applicable to St. Louis," Secs. 505, 507, 531, and notes.

Collector to collect state, school, and city taxes. See next section. He

may establish claim for such taxes against estate of decedent. State ex rel. vs. Tittmann, 103 Mo., 553.

Ordinance on tax rebate, Rev. Code, 1912, Sec. 169, no longer in force, because no authority under new charter.

Sec. 21. The collector, before entering upon the duties of his office, shall give bond to the state, as required by law, and to the city, as may be required by ordinance. Said bond to the state shall be executed in duplicate and one filed with the comptroller and the other with the state auditor.

See also R. S. 1909, Secs. 11434-11443; "Laws Specially Applicable to St. Louis," Secs. 507-516.

By Sec. 11438, R. S. 1909 (Laws, etc., Sec. 511 with note) the bond is a lien on the realty owned by the collector.

Sec. 22. The payment of all city and school taxes may be enforced in like manner as may be provided by law for enforcing the payment of state taxes.

Sec. 23. TREASURY DIVISION. The treasury division shall consist of the treasurer, and such deputies and employes as may be provided by ordinance.

Sec. 24. The treasurer shall have the qualifications provided with regard to the mayor and be the head of the treasury division. He shall receive to salary of five thousand dollars per annum; before entering upon the duties of his office, give bond to the city for at least one hundred thousand dollars; and appoint the deputies and employes in his division. He shall receive and keep the money of the city, and pay out the same on warrants drawn by the comptroller and not otherwise. All money belonging to the city received by any officer or agent thereof shall be deposited daily in the treasury division unless otherwise provided by law or ordinance, and any delinquency in this respect shall be reported promptly by the treasurer to the mayor and to the comptroller. The treasurer shall deliver duplicate receipts for all money received, one to the party paying, the other to the comptroller, stating the source, the amount, and to what account credited. The treasurer shall daily report the balance in the treasury to the comptroller and to the mayor.

Rev. Code, 1912, Sec. 121.

Sec. 25. Depositories of the city funds shall be selected and deposits made therein as provided by law or by ordinance recommended by the board of estimate and apportionment.

For ordinances applicable to treasurer hereunder, see Rev. Code, 1912, Secs. 120-129; for treasury department, see Rev. Code, 1912, Secs. 64-82.

For state law concerning selection of banks for deposit of city funds, see R. S. 1909, Sec. 9858: "Laws Specially Applicable to St. Louis," Sec. 433.

Sec. 26. SUPPLY DIVISION. The supply division shall consist of the supply commissioner and such deputies and employes as may be provided by ordinance.

Sec. 27. The supply commissioner shall be the head of the supply division, receive a salary of five thousand dollars per

annum; give bond as required by ordinance; and appoint the deputies and employes in his division.

Ordinance on supply commissioner, see Rev. Code, 1912, Secs. 1698-1716 (a new one is pending).

Sec. 28. The Comptroller, supply commissioner and president of the board of public service shall personally or by deputy constitute the board of standardization, whose duty it shall be to classify and standardize all supplies and materials purchased by the city or used for municipal purposes, and prepare precise specifications for all supplies to be purchased through the supply division. The board may maintain such laboratories or other methods of testing as may be necessary.

Sec. 29. Supplies for all departments, boards, or offices, exclusive of material for public work or improvements, shall be purchased only through the supply division, according to such standards and specifications, if any, adopted or prepared by the board of standardization, and by advertising for proposals therefor. Bids may be for one or more, or all the articles advertised for, but there shall be a specific bid on each article. The award may be made to the lowest bidder for any article or to the lowest bidder for the entire requisition or any part thereof; but the board of standardization may reject any or all bids or any part of any bid. The supply commissioner may contract for supplies in any amounts or for any periods as may be approved by the board of standardization, and subject to the provisions of this charter. In cases of emergency, to be determined by said board, purchases may be made without advertising. Purchases in amounts not exceeding five hundred dollars under any one contract may also be made, with the written approval of the comptroller, without advertising, after securing competitive bids, but there shall be no division of requisitions or contracts for the purpose of securing this privilege. The supply commissioner shall inspect and receipt for all supplies.

Supplies shall not be ordered or contracted for by the supply division unless the comptroller shall certify that a fund is applicable for payment thereof.

Judge Sherwood in his elaborate dissenting opinion in *Verdin vs. St. Louis*, 131 Mo., 1. c. 161-164, considers a similar section, and distinguishes it from a section similar to Art. XXII., Sec. 4, showing that the former applies only to the supply commissioner and applies only to a limited extent to the board of public service when performing the duties assigned to it under Art. XXII., and that the commissioner awards the contract to the lowest bidder without discretion. But see present provision in Rev. Code, 1912, Sec. 1703.

Art. XXII., Sec. 4, applies to letting contracts for public work. Art. XV., Sec. 30, applies to contracts for printing and binding.

Sec. 30. The supply commissioner shall have general supervision of the public printing and publishing and shall see that it is executed as may be provided by ordinance, letting the contract or contracts to the lowest bidder in conformity with the provisions of this article so far as they may be applicable. Until

otherwise provided by ordinance, and except in condemnation proceedings, all newspaper publishing shall be in at least two daily newspapers, one in the English and one in the German language. Provision may be made by ordinance for the city doing its own printing and publishing.

The provisions hereof followed by ordinance. Rev. Code, 1912, Secs. 2317, 2318. See also other ordinance provisions following said section. The provision in Art. IV., Sec. 21, requiring publication of ordinances within ten days after approval "was designed to notify the public at as early a period as possible of the passage and provisions of the laws which were to govern them;" and this provision applies only to new ordinances and not to a revision and digest of existing ordinances contained in a general revision. *St. Louis vs. Foster*, 52 Mo., 513, 516.

See as to effect of failure to publish an ordinance, in a case arising under a charter of a smaller city, requiring publication of ordinances, but providing that failure to publish should not render the same void except under certain conditions, etc., *Schweitzer vs. City of Liberty*, 82 Mo., 309, 315.

Where a publication is required, a failure to publish generally renders the ordinance void. *Bank vs. Granada*, 4 C. C. A., 212, 219 et seq.; 54 Fed., 100 (distinguished in *Alma vs. Bank*, 60 Fed., 203; 8 U. S. C. C. A., 564).

Rev. Code, 1912, Sec. 2320. When printing is done under an unauthorized contract, no recovery can be had against the city, and the municipal assembly can not lawfully provide that it shall be paid for; such an appropriation would be a donation of city money and is prohibited by law. *Campbell vs. St. Louis*, 71 Mo., 106. Art. IV., Sec. 26.

ARTICLE XVI.

Board of Estimate and Apportionment.

Section 1. There shall be a board of estimate and apportionment which shall consist of the mayor, comptroller and president of the board of aldermen. It shall keep a record of its proceedings and appoint an employe of the comptroller's office to act as secretary without additional compensation.

Sec. 2. The head of every department, board, or office shall furnish to the board of estimate and apportionment such statements of receipts and expenses and estimates of receipts and requirements, of such department, board, or office, as said board of estimate and apportionment may require.

Sec. 3. The board of estimate and apportionment shall submit to the board of aldermen, at the beginning of its annual session or as soon thereafter as possible, a statement showing the estimated receipts and requirements of each department, board, or office for the current fiscal year and a comparative statement of receipts and expenses during the previous year, first, however, affording taxpayers an opportunity to be heard thereon as may be provided by ordinance.

It shall also annually submit and recommend to the board of aldermen a bill appropriating the amounts deemed necessary for the use of each department, board, and office for the current fiscal year and a bill establishing the city tax rates for the current year: provided, that the appropriations for payment of salaries and compensation of officers and employes, may, in the discretion of

the board of estimate and apportionment, be embodied in a separate bill. The board of aldermen shall immediately proceed to the consideration of said bills and shall meet from day to day until they are finally acted upon. If such tax rates be not established by ordinance on or before the fourth Monday in May of any year, the rates last previously established shall be the rates for the current year. The board of aldermen may reduce the amount of any item in such appropriation bill, except amounts fixed by statute or for the payment of principal or interest of the city debt or for meeting any ordinance obligations, but it may not increase such amount nor insert new items.

Sec. 4. All appropriations shall be specific and in detail and be segregated according to the functions or kinds of work for which the money is appropriated.

Sec. 5. Except in the general appropriation bill and bills providing for the payment of the principal or interest of the public debt, no appropriation shall be made from any revenue fund in excess of the amount standing to the credit of such fund, and no appropriation shall be made from any fund for any purpose to which the money therein is not lawfully applicable.

See Art. XXIV., Sec. 4.

Constitutional limit of municipal indebtedness. Const., Art. IX., Sec. 19, and Art. X., Sec. 12, q. v. at end of this pamphlet.

Duty of comptroller to see that no improper expenditure incurred, and that appropriations are not overdrawn. Art. XV., Sec. 2; Rev. Code, 1912, Sec. 102. Formerly similar duties were assigned to the auditor, but his office is now abolished. Sec. 13 of schedule to 1914 charter. Warrant to specify appropriation out of which payable. Rev. Code, 1912, Secs. 87, 88, 96.

See as to wisdom of provisions such as these, the remarks of Marshall, J., in *Fryor vs. Kansas City*, 153 Mo., 151 et seq.

See Rev. Code, 1912, Sec. 87.

Sec. 6. Any accruing, unappropriated city revenue may be appropriated from time to time by ordinance recommended by the board of estimate and apportionment; and whenever an appropriation exceeds the amount required for the purpose for which it has been made, the excess or any portion or portions thereof may by ordinance recommended by the board of estimate and apportionment be appropriated to any other purpose or purposes.

Sec. 7. All unexpended appropriated money, not appropriated by special ordinance for a specific purpose, shall at the end of the current fiscal year revert to the fund or funds from which the appropriation was made.

Sec. 8. A fiscal year as mentioned in this charter shall commence on the second Tuesday in April of each year, or at such other time as may be provided by ordinance recommended by the board of estimate and apportionment.

ARTICLE XVII.**City Bonds.**

Section 1. Some of the purposes, hereby specifically authorized, for which the bond of the city may issued and given, sold, pledged or disposed of on the credit of the city or solely upon the credit of specific property owned by the city or solely upon the credit of income derived from and property used in connection with any public utility owned or operated by the city or upon any two or more such credits, are the following:

For the acquiring of land; for the purchase, construction, reconstruction or extension of water works, public sewers, buildings for the fire department, bridges and viaducts, subways, tunnels, railroads, street railroads, terminals, ferries, docks, wharves, warehouses, gas or electric light works, power plants, telephone and telegraph systems, or any other public utility; for hospitals, insane asylums, orphan asylums, poorhouses, industrial schools, jails, workhouses, and other charitable, corrective and penal institutions; for court houses, and other public buildings, public parks, parkways, boulevards, grounds, squares, river, and other public improvements which the city may be authorized or permitted to make; and for paying, refunding, or renewing any bonded indebtedness of the city.

The foregoing enumeration shall not be construed to limit any general provisions of this charter authorizing the city to borrow money, or issue and dispose of bonds, and such general provisions shall be construed according to the full force and effect of their language as if no specific purposes had been mentioned; and the authority to issue bonds for any of the purposes aforesaid is cumulative and shall not be construed to impair any authority to make any public improvements under any provisions of this charter or of any law.

Sec. 2. Bonds may be so issued as to be payable serially or subject to call.

Sec. 3. No bonds of the city, except bonds for paying, refunding or renewing bonded indebtedness, and except bonds payable only from proceeds of special assessments for local improvements, shall be issued without the assent of two-thirds of the voters of the city voting at an election to be held for that purpose. All forms, proceedings and other matters with respect to any such election and the amounts, purposes, issue and disposition of bonds may be prescribed by ordinance recommended by the board of estimate and apportionment.

It shall not be necessary in the ordinance calling the election, in the notice of election, in the question submitted, or on the ballot, or in any of the matters preceding the said election, to state the amount of bonds proposed to be issued for each purpose, but

it shall be sufficient if the ordinance and notice of election state the total amount of bonds proposed to be voted upon at the said election and in general language the purpose or purposes for which such total amount of bonds is to be issued, and if two-thirds of the voters of the city voting at such election assent to the issuance of such amount of bonds, then such amount may be issued and such bonds or the proceeds thereof may from time to time, by ordinance recommended by the board of estimate and apportionment, be appropriated in any amount or amounts to the purpose or purposes for which such total amount was voted.

Sec. 4. The board of aldermen shall annually levy a tax which will yield not less than one million two hundred thousand dollars to be used exclusively for the payment of the bonded indebtedness of the city existing on the seventh day of April, 1890, and renewals thereof and interest thereon. That portion of each such annual tax levy not required for the payment of the interest maturing during the year on said bonded indebtedness and renewals, shall be credited to and shall constitute a sinking fund to be used exclusively for the payment of said bonded indebtedness and renewals. Such levy need not be made except for such interest after the amount in such sinking fund is sufficient to pay all such bonded indebtedness and renewals at maturity. The board of aldermen shall annually levy taxes sufficient to meet the sinking fund and interest requirements of each bond issue.

Sec. 5. In addition to the foregoing, until there is a sufficient sum in a sinking fund or funds to pay the "St. Louis Water Bonds" and renewals thereof and applicable thereto, the whole net income from the water works in excess of what may be necessary for (1) the ordinary construction, reconstruction, extension, operation and repair of the water works and facilities, (2) the interest on said water bonds, and (3) the running expenses of the water division, shall be credited to, and with the sinking funds heretofore created therefor constitute, a sinking fund to be used exclusively for the payment of said "St. Louis Water Bonds" and renewals.

Sec. 6. The board of estimate and apportionment shall administer all sinking funds and in the course thereof may purchase with any sinking fund, as an investment therefor, bonds of the city, state or United States, preferably city bonds, and may provide for the payment of maturing bonds out of the sinking fund created therefor, and to that end sell bonds held in such sinking fund; provided, that all bonds purchased with the particular sinking fund created therefor shall not be regarded as an investment or be reissued, but shall be canceled. Bonds forming part of any sinking fund and not required to be canceled shall be deposited in a safe deposit vault in the city to which access can be had only by at least two members of the board of estimate and apportionment jointly, one of whom shall be the comptroller. All interest

earned on investments or deposits belonging to any sinking fund shall belong to such fund. Whenever the amount in any sinking fund exceeds an amount sufficient to pay all the bonds for which such fund is created, the board of estimate and apportionment may transfer the excess to other sinking funds.

Sec. 7. All warrants for the payment of bonded indebtedness or for disbursements out of any sinking fund shall be approved by the mayor and president of the board of aldermen.

Constitutional sinking fund, Const., Art. X., Sec. 12 (construed in *Saleno vs. Neosho*, 127 Mo., 1. c. 639 et seq). As to ordinance provisions on sale, transfer, payment, cancellation, etc., of bonds see Rev. Code, 1912, Secs. 67-82; as to provisions concerning water bonds, see Art. XVII. Sec. 5, and Rev. Code, 1912, Secs. 1536-1538; World's Fair bonds, see constitution (amended 1900), Art. X., Sec. 12, and note at page 299, R. C. 1912.

ARTICLE XVIII.

Efficiency Board.

Section 1. There is hereby established an efficiency board, consisting of three members who shall be appointed by the mayor for terms of one, two and three years respectively. Each year thereafter the mayor shall appoint one member to serve for three years and until his successor shall qualify. No more than two members shall be adherents of the same political party, and no person holding any salaried public office shall be eligible to appointment as a member.

Sec. 2. The board shall designate one of its members as chairman, shall appoint a secretary and may appoint such other officers and employes as may be necessary. The salary of the secretary and other officers and employes shall be fixed by the board.

Sec. 3. The service of the city is hereby divided into the unclassified (not subject to the examination herein provided) and the classified service.

(1) The unclassified service shall include:

- (a) All officers elected by the people;
- (b) All heads of departments, offices and divisions;
- (c) The members of all boards appointed by the mayor, or serving without compensation, however appointed;
- (d) One secretary, deputy or assistant and one stenographer for each officer or board in the unclassified service, who are or may be provided by ordinance with such subordinates;
- (e) All officers of the board of aldermen;
- (f) Surgeons, physicians or other experts serving in a consulting or other capacity without compensation.
- (g) In addition to the above, on the unanimous vote of the board, there may be included in the unclassified serv-

ice such other offices or positions requiring exceptional scientific, mechanical, professional or educational qualifications as may be ordered by rule of the board.

(2) The classified service shall comprise all not specifically included by this charter in the unclassified service.

Sec. 4. The board shall prescribe, amend and enforce rules for the classified service, shall keep minutes of its proceedings and records of its examinations, and shall make investigations concerning the enforcement and effect of these efficiency provisions and of the rules thereunder. It shall make an annual report to the mayor.

The rules shall provide among other things:

(a) For the classification and standardization of all positions in the classified service.

(b) For open competitive examinations and tests, with public notice thereof, to test the relative fitness of applicants for positions in the classified service and for reasonable regulations concerning promotion, which shall include the recognition of efficient prior service.

(c) For the rejection of candidates who fail to comply with reasonable requirements as to age, residence, sex, physical condition and moral character.

(d) For the certification, as occasion may require, to the appointing authority, from the appropriate eligible list (composed of the names of successful applicants in the order of their standing in examinations or tests) of the three persons standing highest on such list, or of the person or persons on such list when it contains three names or less.

(e) For temporary employment for not exceeding sixty days, without examination, in the absence of an eligible list.

(f) For transfer from a position to a similar position in the same class and grade, and for reinstatement on the eligible list of persons who, without fault or delinquency on their part, are separated from the service or reduced in rank.

(g) For the appointment of unskilled laborers in the priority of application after such tests of fitness as the board may prescribe.

(h) For investigating and keeping a record of the efficiency of officers and employes in the classified service, and for requiring reports relative thereto from appointing officers.

(i) For the publication of the rules of the board.

Sec. 5. The board shall maintain a list of all persons in the city service, showing in connection with each name the position held, the date and the character of appointment, and of every subsequent change in status. Each appointing officer shall promptly

transmit to the board all information required by it for the establishment and maintenance of said list.

Sec. 6. All examinations shall be practical and impartial and relate solely to matters which will reasonably test, in a practical way, the ability of the persons examined to perform the duties of the position for which appointment is sought. The board may call on other persons to frame questions and conduct any examinations or tests and report the result thereof to it.

Sec. 7. The appointing officer may suspend or discharge or reduce in rank or compensation any officer or employe under him, with or without cause, except as in this charter is otherwise provided. Should the officer or employe thus affected request it, the employing officer shall furnish him with a written statement of the reason or reasons therefor, and file a copy thereof with the efficiency board.

Sec. 8. No appointment or promotion in the classified service shall be made except from names certified by the board as herein provided, or as herein provided for temporary service.

Sec. 9. All persons in the city service holding positions in the classified service, as established by this article, at the time this charter takes effect, shall be entitled to retain their position until discharged, reduced, promoted or transferred in accordance with the provisions of this charter. Employees of any public utility which may at any time in the future be taken over by the city, who are in the service of said utility at the time of such acquisition, shall come under the provisions of this efficiency system without examination, but vacancies thereafter occurring in said public utility service shall be filled as herein provided.

Sec. 10. It shall be unlawful for the treasurer or other public disbursing officer to pay any salary or compensation for service to any person holding a position in the classified service unless such person is holding such position in conformity with the provisions of this article.

Sec. 11. In any investigation conducted by the board it shall have the power to subpoena witnesses and order the production of books and papers pertinent to the investigation and to administer oaths.

Sec. 12. No person in the classified service or seeking admission thereto shall be appointed, reduced, suspended, discharged or in any way favored or discriminated against because of his political or religious opinions or affiliations.

Sec. 13. Any person who shall wilfully, by himself or in cooperation with any other person or persons, defeat, deceive or obstruct any person in respect of his right of examination according to any of the rules prescribed by the efficiency board under this article, or who shall wilfully and falsely mark, grade, estimate or report upon the examination or proper standing of any person ex-

amined hereunder or aid in so doing, or who shall wilfully make any false representations concerning the same or concerning the person examined, or who shall wilfully furnish to any person any secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, or to be examined, being appointed, employed or promoted, or who shall solicit directly or indirectly any assessment or contribution for any political party from any person in the classified service, shall for each such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than five hundred dollars, or by imprisonment for not more than one hundred days, or by both such fine and imprisonment.

ARTICLE XIX.

Franchises.

Section 1. All grants or renewals of franchises shall be subject to the right to amend, alter or repeal the same in whole or in part, and to forfeit the same at any time for misuse or nonuse; and subject always to the city's power of taxation and its authority to regulate rates, quality of use, service and products, and methods of conduct and operation; subject also to the right of the city at the end of ten years after the beginning of operation and at the end of every five year period thereafter, at its option to be exercised by ordinance, to acquire the plant and property used in the operation of the franchise, upon terms and conditions to be ascertained in the manner provided in the granting or renewing ordinance, but in no event is the franchise itself to enter as an element into such compensation. Upon such acquisition the franchise shall cease. Every such grant shall cease unless construction thereunder is begun within the time specified in the ordinance and completed with reasonable speed, and no grant shall be exclusive or for a longer term than fifty years. Any ordinance granting or renewing a franchise may also provide for regulating, from time to time, the amount of capitalization, indebtedness and expenditure of the grantee or assignee in operating thereunder. Such ordinance may also provide that the franchise shall be sold at public sale, and nothing in any such ordinance shall prevent the city from acquiring the property of any such utility by condemnation proceedings or in any other lawful way subject to the limitation of time herein provided.

Every grantee of a franchise for any public utility shall keep such reports of its finances and operations as may be prescribed by ordinance, and the city may at any time, examine its records and accounts. No ordinance granting or renewing a franchise shall be adopted until a report thereon in the form in which

it is put upon its adoption has been made to the board of aldermen by the board of public service with its recommendations as to the action that should be had thereon, nor until the bill and the report of the board of public service, or a fair summary thereof, shall have been published as provided by ordinance. No franchise shall be assignable except with the city's approval expressed by ordinance.

Sec. 2. The board of aldermen shall at all times have full power, to be exercised by ordinance, over all public utilities now or hereafter existing in the city, and may regulate the charges for the use, service or product thereof and establish whatever requirements may be necessary to secure efficient use, service or products, and no terms or conditions contained in any grant shall limit or impair this power.

Sec. 3. The board of aldermen shall, in the granting or renewal of any franchise as herein provided, prescribe or provide for the character of construction and equipment, the kind and quality of use, service or product to be furnished; the rate to be charged therefor; manner in which the streets, public grounds, or other public property shall be used or occupied; and any other terms and conditions in the interest of the public, including, among others, provision for compensation to the city for the use of such streets, public grounds or property, based on a share in the gross or net receipts, or on the number of passengers transported, or number of cars owned or operated, or on any one or more of such bases, or on any other basis or bases.

Section cited. *State ex inf. vs. Lindell Ry.*, 151 Mo., 1 c. 181.

As to the effect of the reservation by the city in the conferring of franchises of the "right to alter, amend, or repeal" the provisions thereof, see *San Antonio Traction Co. vs. Altgelt*, 200 U. S., 304 (subsequent legislation affecting fares allowed); *Detroit vs. Ry.*, 184 U. S., 368 (same not allowed, having been expressly contracted for and no effective reservation made); *Railway vs. Philadelphia*, 101 U. S., 528 (allowing increase in license on cars); *Bank vs. Owensboro*, 173 U. S., 636 ("the reserved power deprives the contract of its irrevocable character and submits it to legislative control," p. 644); *Sioux City Street Ry. vs. Sioux City*, 138 Mo., 98 (allowing imposition of additional expenses on company for paving street).

A provision that failure to comply with certain terms makes a franchise null and void is not self-operating. *Daly vs. City of Carthage*, 143 Mo. App., 564.

For ordinances regulating the hours and frequency of trips, see Rev. Code, 1912, Sec. 2383, with note thereto. For repair of tracks, character of rails, speed limit, surrender of franchise, and numerous police regulations, see Rev. Code, 1912, Secs. 2379 to 2420, inclusive, with notes thereto; also charter, *infra*.

Power to "license, tax and regulate" street cars is conferred by charter, Art. I., Sec. 1, clause (23), (24) and on this point see ordinance, Rev. Code, 1912, Sec. 2238, with discussion and citation of cases in note thereto. But in general the powers of the city on the subject of street railways, granting of franchises, effect thereof, forfeiture, etc., are set out in Section 1 of this article, which, together with the note to Section 5 of this article, should be read in connection herewith in determining the effect of this section as to street railways.

For regulations concerning steam railroads, see Rev. Code, 1912, Secs. 2367-2378, with notes thereto.

By Charter, Art. XIX., Sec. 1, every franchise granted shall cease unless the work of construction shall be begun within the period fixed in the ordinance granting the franchise, and continued to completion with all reasonable practical speed.

A franchise may be forfeited for non-user; and the city has no right to contract that a forfeiture proceeding must be brought within six months. The state may institute quo warranto to declare a street car company's charter forfeited and even at the relation of the city, no matter what the ordinance conferring the franchise provides. *State ex rel. vs. Railway Co.*, 140 Mo., 539. A forfeiture proceeding can not be brought by a private citizen. *Hovelman vs. Railway*, 79 Mo., 632, citing numerous cases to the effect that the state must bring the proceeding.

In *Springfield vs. Railway*, 69 Mo. App., 514, it seems to be held that a city can bring a proceeding to annul and declare forfeited the company's rights for non-compliance with the conditions annexed to the use of the streets by it; and at all events, a city is entitled to relief in equity against a nuisance maintained by a company growing out of such failure to observe said conditions.

Where a right of way is granted on condition of completion within a certain time, and that in the event of failure the franchise might be recalled, the provision is a condition subsequent, and the rights are vested, subject to be defeated at the election of the city, for breach of condition, but not at the instance of a private person. *Hovelman vs. Railway*, 79 Mo., 632; so also where the condition was that the company's shops should not be removed. *Knight vs. Ry.*, 70 Mo., 231.

Sec. 4. Street railroad companies shall keep the street between the rails and between the tracks and to the extent of at least twelve inches outside of each rail in perfect repair, and as nearly on a level with such rails as practicable, and that portion outside the rails shall be of the same material as the street itself or such other material as may be approved by the board of public service, and give such bond or other security for compliance with the provisions of this section as may be provided by ordinance.

Ordinance provision requiring repairs of space between rails, and regulations concerning same. *Rev. Code*, 1912, Sec. 2399.

This provision applies to street railways having an extension of their franchises after the adoption of the charter. *St. Louis vs. Railway*, 13 Mo. App., 524. Especially true where the company agrees that the ordinance conferring the rights shall be subject to all general ordinances and charter provisions relating to street railways and applicable to extensions. *St. Louis vs. Mo. Ry.*, 87 Mo., 151. (It now applies to every street railway company in the city, and in addition the requirement is uniformly included in the special ordinances conferring the franchises.) But such a provision does not apply to a franchise wholly granted prior to the charter provision. See *State ex rel. vs. Corrigan Street Ry.*, 85 Mo., 263, 1. c. 282-283. See as to the old state law as to repairs. *St. Louis vs. St. Louis Railroad Co.*, 50 Mo., 94.

An ordinance requiring the street railway company to keep and maintain the space between the rails and two feet on either side of its track, etc., in good repair, does not impose any duty on the company to reconstruct; an obligation to repair is not one to reconstruct; and a subsequent general ordinance can not require such additional burden without the company's consent, either as an exercise of the police power or as an inalienable right of control over the street. *State ex rel. vs. Corrigan Street Ry. Co.*, 85 Mo., 263 (arising under Kansas City charter); and the same principle applies where it is sought to compel the company to pave the street with designated material—this duty is not included in the obligation to repair. *Kansas City vs. Corrigan*, 86 Mo., 67.

Although a street car company be required to keep the space between its rails in repair, yet for injuries resulting because of the streets being unsafe by reason of said space being out of repair, the city remains primarily liable. *Springfield vs. Robertson Street Ry.*, 69 Mo. App., 1. c. 523.

A special tax bill for the improvement of a street can not be avoided by the property owners on the ground that the space between the railway tracks has not been improved by the conductor, where such duty rests upon the railroad company. *Farrar vs. St. Louis*, 80 Mo., 1. c. 393; *Springfield vs. Weaver*, 137 Mo., 650, 668; *Bank vs. Haywood*, 62 Mo. App., 550, 554 et seq.

It was at one time held by the Court of Appeals that in the absence of statutory authority, the cost of street improvements can not be made a lien on the abutting right of way of a railroad company; but this ruling was overruled by the Supreme Court, and the matter is now also regulated by statute. See note to Art. XXI., Sec. 5.

The land of railroad companies used for depot and yard purposes is not exempt from special tax for street improvement. *Nevada vs. Eddy*, 123 Mo., 546, 560; *Railroad vs. Decatur*, 147 U. S. 190.

It was held under a case arising in Massachusetts that the legislature of a state may relieve a street car company from the obligation to repair the street between the rails, etc., which it assumed in ordinances conferring the consent of the city, and the city can not complain that this operates as the impairment of a contract. *Worcester vs. Street Ry. Co.*, 196 U. S., 539.

Sec. 5. Any street railroad company shall have the right to run its cars over the track of any other street railroad company in whole or in part, upon the payment of just compensation for the use thereof, under such rules and regulations as may be provided by ordinance.

Ordinances in pursuance of this provision, see Rev. Code, 1912, Secs. 2411 to 2416, inclusive.

The above charter provisions and the ordinances in pursuance thereof have been fully sustained. *Grand Ave. vs. Lindell Ry.*, 148 Mo., 637; *Grand Ave. vs. Citizens' Ry.*, 148 Mo., 665; *Union Dep. vs. Southern*, 105 Mo., 562.

The city can not confer on one street car company the exclusive use of a street for its own business. *Grand Ave. Co. vs. Citizens' Co.*, 148 Mo., l. c. 672; *Railway vs. Railway*, 132 Mo., l. c. 43. See also *Citizens' Ry. vs. Detroit Ry.*, 171 U. S., l. c. 53. Nor so as to exclude the public from the use of the street as a public thoroughfare. *Nagel vs. Lindell Ry.*, 167 Mo., 89, 97; *Ruckert vs. Grand Ave. Ry.*, 163 Mo., l. c. 278. See also cases cited in note to charter, Art. I., Sec. 1, clause (14).

Sec. 5 of Art. XIX. of the charter is in pursuance of the constitutional powers conferred on the city. A railway company accepting the provisions of the charter containing the provision that any company shall have the right to run over its tracks by paying just compensation, such acceptance creates a contract between the city and the company, and is binding on the latter; nor are condemnation proceedings necessary by such other company; the charter confers the power to make rules and regulations for determining the compensation to be paid, and also confers on the assembly power to make the award of the commissioners reviewable by the circuit court. *Union Depot Ry. Co. vs. Southern Ry. Co.*, 105 Mo., 562; *Grand Ave. vs. Lindell Ry.*, 148 Mo., 637; *Grand Ave. vs. Citizens' Ry.*, 148 Mo., 665.

The phrase "just compensation" as used in the charter of the city and its ordinance has the same meaning which that phrase has when used in the federal and state constitutions with respect to the exercise of the right of eminent domain, and when thus used "means a fair and full equivalent for the loss sustained by the taking for public use;" and under an ordinance providing that the court may make such order as justice may require, the court may require the company desiring the use of the tracks to give a bond to the other to secure payment of one-half the cost of renewals of rails, etc., where the ordinance further provides for periodical readjustments. *Railway vs. Railway*, 132 Mo., 34.

As to what elements are proper to be taken into consideration in fixing the compensation, see *Grand Ave. Ry. vs. Citizens' Ry.*, 148 Mo., 665; *Grand Ave. Ry. vs. Lindell Ry.*, 148 Mo., 637.

Where all elements of damages have been considered and the new claims are thereafter made, but which result from the legitimate use of the other company's tracks, injunction is not the proper remedy of the complaining party, but plaintiff should follow his statutory remedy. *People's Ry. vs. Grand Ave. Ry.*, 149 Mo., 245.

For further charter powers, in addition to those in this article, to grant right to construct railways, subject to the right to amend, alter, or repeal, to regulate same, etc., see Sec. 3 of this article. As to effect of reservation of right to alter, amend, or repeal, see cases cited in note to that section.

For ordinances (and discussion of authorities thereon) enacting numerous regulations for street cars and street railways, see Rev. Code, 1912, Secs. 2379 to 2420, inclusive, and notes thereto appended as to the power and authority of the city to enact same, and as to the effect thereof. As to whether a violation of those police regulations (such as speed, ringing gong, vigilant watch, etc.) confers a right to recover on a private person injured in consequence, see also note to same.

Power to "license, tax, and regulate" street cars is conferred in charter, Art. I., Sec. 1, Clauses (23) and (24), and in pursuance thereof, see ordinances in Rev. Code, 1912, Secs. 2238-2245, inclusive; see discussion and cases on the city's right to charge license taxes, in note to heading of Rev. Code, 1912, preceding Sec. 2238.

For statutes on street railways, relating especially to St. Louis, see Secs.

644 et seq. of "Laws Specially Applicable to St. Louis;" and for statutory limitations of cities to grant street railway franchises, see provisions of R. S. 1909, Secs. 9494-9497.

The act of 1860 or "Third Parallel Law" is repealed by virtue of the constitution of 1875 and the provisions of the charter. *State ex rel. vs. Lindell Ry.*, 151 Mo., 162. For the prior application of the third parallel street law see *St. Louis Ry. vs. St. L. Ry.*, 72 Mo., 67; *St. L. Ry. vs. Northw. Ry.*, 69 Mo., 65; 2 Mo. App., 69.

The state law of 1895 (Julian law), providing for sales at public auction of all franchises involving the use of streets, was held void because too uncertain and indefinite to permit of intelligent enforcement. *State ex inf. vs. Street Ry. Co.*, 146 Mo., 155.

Franchise is property subject to be mortgaged, but only with the consent of the city. *Kavanaugh vs. St. Louis*, 220 Mo., 496.

The Constitution of the state forbids the general assembly to grant street railway franchises in a city without first acquiring the consent of the local authorities, nor can the franchise so acquired be transferred without similar assent. Const., Art. XII., Sec. 20 (see cases *infra*, this note).

State policy respecting railways in St. Louis. Speaking of the constitutional and charter provisions the court in *banc* in *State ex rel. vs. Lindell Ry.*, 151 Mo., 162, after reviewing the street railway legislation and policy of the state, says on pp. 182-183. "Looking at these constitutional provisions, together, it is plain that it was the purpose of the constitution of 1875, to grant to St. Louis and other cities and localities the benefit of 'home rule' so far as it was possible. . . . This intention is clearly evidenced not only by the affirmative grant of sole power, but by the negating of such power over grants or transfers of such rights to the general assembly. And when to these provisions we add the power given by its charter. . . . [power over streets] it conclusively appears, hedged about directly and prohibitively, that the power which the state primarily had over all streets and highways in the state, or in any city of the state, has in St. Louis been transferred to the city," etc. So in *Grand Ave. Co. vs. Lindell Ry.*, 148 Mo., 637, the court in *banc* says, commenting on constitutional and charter provisions (p. 645): "When it is considered that the people of the state have confided the subject-matter of street railways in her streets and highways, exclusively to the city, that such control and regulation is a matter strictly within municipal regulation, the ordinances of the city . . . have the force and effect of laws . . . binding on all persons who come within the scope of their operation," etc.

Grant of privileges to street car companies. Under the constitutional provisions, a city may impose such conditions upon which it gives its consent in conferring a franchise or right of way as it sees fit. It is not limited to a mere "yes" or "no," but may prescribe terms and conditions; and if its consent be given on condition, and the condition be void, the railway company is without any right at all. *St. Louis & Mer. R. vs. Kirkwood*, 159 Mo., 239, 252-253, 259; *Union Depot Ry. Co. vs. Southern Ry.*, 105 Mo., 1 c. 571.

In connection with the right of the city to impose conditions and limit the duration of the company's franchise, see *Chicago Traction Co. case*, *Blair vs. Chicago*, 201 U. S., 400, loc. cit. 457 et seq.; dissenting 499 et seq.

Sec. 20, Art. XII. of the constitution requiring the city's consent to the transfer of street railway franchises is not violated by a lease from a company to an operating company where the ordinance authorizes the several street railway lines, their successors, and assigns to lease to certain other corporations. *Moorshead vs. United Rys.*, 119 Mo. App., 541, certified to Supreme Court, and affirmed in Feb., 1907, 203 Mo., 121, holding the United Railways Co. not liable for Transit Co. debts.

As limitations upon all cities in granting franchises to street railway companies see Rev. St. 1909, Secs. 9494-9497, requiring designation of route, depots, assessments of damages, petition of majority of property owners along the route, etc. But see the interpretations as to damages to property owners. *Nagel vs. Lindell Ry.*, 167 Mo., 89; *Ruckert vs. Grand Ave. Ry.*, 163 Mo., 278.

While franchises are derived directly by ordinance from the city it is by virtue of the delegated power of the state that the city acts, so that the power conferred on the company is derived indirectly from the state, acting through the city as its agent. *State ex rel. vs. Ry.*, 140 Mo., 539, 550; *Hovelman vs. Ry.*, 79 Mo., 1 c. 643, and cases cited. See also *Brewer, J.*, in *Blair vs. Chicago*, 201 U. S., 1 c. 492 et seq. Hence a quo warranto proceeding may be brought by the state to forfeit the franchise, or at the relation of the city. *State ex rel. vs. Ry.*, *supra*; see also 201 U. S., 1 c. 460. The excess of the company's corporate powers is remediable by the state only, not a private person. *Hovelman vs. Ry.*, 79 Mo., 1 c. 639-640, and cases cited.

It was held by the court of appeals that the city may resume rights

granted by ordinance upon non-compliance with the conditions by the grantees, and may sue in its own name; and the city is entitled to apply to a court of equity for relief against the company for maintaining a public nuisance growing out of a failure to comply with the conditions annexed to the use of the streets by the company. *Springfield vs. Robertson Ry.*, 69 Mo. App., 514.

A street railway in the streets without authority is in law a nuisance. *St. L. & Mer. Ry. vs. Kirkwood*, 159 Mo., 239, 255; *Heer D. G. Co. vs. Citizens' Ry.*, 41 Mo. App., 63.

The granting of rights of way to public street railroads is a proper use to which the city may subject the streets; and the cases deciding that the city can not authorize such a use of a street by a railroad as will destroy its use as a public thoroughfare (thereby practically appropriating it to the railroad alone) have been held not to apply to a street railroad, unless so defectively constructed as to prevent the current use of the highway by the public in the ordinary course of travel. *Placke vs. U. D. Ry.*, 140 Mo., 634, 637; *Morie vs. Transit Co.*, 116 Mo. App., 12, 25. There does not appear to be any difference so far as the application of the principle is concerned; and this is implied in the opinion in *Nagel vs. Lindell Ry.*, 167 Mo., 89, 97; see also *Ruckert vs. Grand Ave. Ry.*, 163 Mo., 1 c. 278. See authorities when such ordinances are invalid, as authorizing a misappropriation of the public highway, cited in note to charter, Art. I, Sec. 1, clause (14); also in note to Rev. Code, 1912, Art. XV. of Chapter 9 on "Nuisances."

A street railway company, although authorized to operate on certain streets, must lay its tracks on the street level, or if it raises its tracks and interferes with the abutting owner it is liable for damages. *Farrar vs. Electric Co.*, 101 Mo. App., 140. (See R. S. 1909, Secs. 9494-9496, requiring before a franchise is granted to any elevated, underground, or other street railway on, over, or under any street or alley an ascertainment of damages, etc.).

As to the right and duty of the city to require, under the police power, the street car companies so to operate as not to interfere with a public highway, and when necessary to lower a tunnel under a navigable stream, at the expense of the company, where such a course becomes necessary because of increased travel or changing conditions, see *West Chicago Ry. vs. Chicago*, 201 U. S., 506.

The ordinances by which the city confers on the street car company the right to construct, operate, and maintain a street railroad is in effect a contract which the city can not violate or change so far as its contractual provisions go; and the courts will protect such rights. *Springfield Ry. vs. Springfield*, 85 Mo., 674; *State ex rel. vs. Corrigan Street Ry.*, 85 Mo., 263, 282, and cases cited; *Detroit vs. Detroit Ry.*, 184 U. S., 368; *Cleveland vs. Electric Co.*, 201 U. S., 529.

Nor after the company's rights are vested under the ordinance, can the state legislate to impair the same. *Hovelman vs. Railway*, 79 Mo., 632, 643.

The rights of street railways in the streets are franchises and vested rights which can be mortgaged by the company to which the franchise belongs. *Hovelman vs. Railway*, 79 Mo., 643, cited with approval in *State ex rel. vs. Ry. Co.*, *infra*. This can only be done with the consent of the city. *Kavanaugh vs. St. Louis*, 220 Mo., 496.

As to what privileges may be transferred and assigned by a street car company, or subjected to execution, and what not, see *State ex rel. vs. Railway Co.*, 140 Mo., 539 (distinguishing the franchise of being a corporation which can not be transferred by ordinary conveyance, nor sold on execution, from its corporate franchise privileges of laying tracks, running cars, taking tolls, etc., which can).

As to leasing by one street railway to another, see *Moorshead vs. United Rys.*, 119 Mo. App., 541, certified to Supreme Court and affirmed, 203, Mo., 121.

The provisions of the charter do not affect franchises of roads existing prior to the time that the charter was adopted. *State ex rel. vs. Corrigan Street Ry.*, 85 Mo., 263, 1 c. 262-263; but when extensions of the franchise are given the charter then applies. *St. Louis vs. Missouri Ry.*, 13 Mo. App., 534; *St. Louis vs. Ry.*, 87 Mo., 263; *Union Depot Ry. vs. Southern Ry.*, 105 Mo., 562, 570. (It may be observed that all street car companies in St. Louis are now governed for one reason or another by the city charter; and it was the policy to wipe out the special provisions. See *State ex rel. vs. Lindell Ry.*, 151 Mo., 162.)

Nothing passes in a grant of privileges, as against the public and in favor of the company or corporation, except what is clearly expressed or necessarily implied; the grants are to be strictly construed. *St. Louis vs. Railway*, 13 Mo. App., 524, 530; *Blair vs. Chicago*, 201 U. S., 1 c. 463, 467, 471-473, and numerous other cases referred to by the court; see also dissenting opinion 1 c. 498.

Particularly true is this where a claim in the nature of an exemption from taxes, license fees, or other burden, is made by the corporation. See authorities cited in note to Art. XX. of Chapter 25 of Rev. Code, 1912, citing among other cases *Springfield vs. Smith*, 138 Mo., 645; *Met. Street Ry. vs. N. Y.*, 199 U. S., 1; *New Orleans Street Ry. vs. New Orleans*, 143 U. S., 192.

Forfeiture for abandonment and non-user of franchise can be taken advantage of only by quo warranto. *Kavanaugh vs. St. Louis*, 220 Mo., 496.

The police powers of the city can not be contracted away, and the railway corporations remain subject to the exercise of that power by the city irrespective of the ordinance provisions conferring their franchises; such police regulations are binding on the car companies without reference to any question of acceptance by them; and the power of the city of St. Louis concerning police regulations is plenary. See authorities cited in note to Sec. 2380 of Rev. Code, 1912.

Since the right to legislate is conferred on the law-making power a permit from the mayor alone purporting to confer authority to construct a railroad is void. *Lockwood vs. Railroad*, 122 Mo., 86 (steam road in this case, but the principle is applicable to street roads).

Provisions and limitations in an ordinance apply to territory annexed to the city subsequently. See note charter, Art. I, Sec. 1: *Blair vs. Chicago*, 201 U. S., 1 c. 489; at least in so far as police power restrictions are concerned. *Westport vs. Mulholland*, 159 Mo., 86.

Additional charter right to regulate fares, hours and frequency of trips. Note to Sec. 3, of this article.

Ordinance regulations and adjudications thereon, on time and manner of running street cars, etc., see Rev. Code, 1912, Secs. 2379-2420, inclusive, and notes thereto appended; as to the powers of the city, etc., see general note to Sec. 2380; speed limits, note to Sec. 2381; time schedules, Sec. 2383; right of companies to make rules, note to Sec. 2386; fenders, note to Sec. 2389; right of way, note to Sec. 2405; periodical reports, note to Sec. 2406; changing rate of fare, note to Sec. 2410.

Charter power to license, tax and regulate. Art. I, Sec. 1, clauses 23-26.

As to steam railroad regulations, see Rev. Code, 1912, Secs. 2367, 2371, 2372, 2376, and adjudications in notes.

ARTICLE XX.

License Taxes.

License taxes may be imposed by ordinance upon merchants, commission merchants, manufacturers, professions, auctioneers, hotels, restaurants, assembly buildings, halls and gardens, theaters, moving pictures, exhibitions, circuses, slot machines, dance halls, billiard and pool rooms, museums, shooting galleries, bowling alleys, retailers of beer, wine gardens, beer gardens, saloons, dram-shops, brewers, distillers, agents, real estate agents, mercantile agents, second-hand dealers, junk dealers, junk peddlers, photographers, contractors, insurance companies, telephone companies, telegraph companies, steam railroad companies, electric and all other kinds of railroad companies, gas companies, electric companies, cold-storage companies, pipe lines, public utilities, pipes, poles, wires or conduits of public utility companies, livery stables, sales stables, public garages, aerial transportation vehicles, public vehicles, private vehicles, bicycles, street railway cars, public automobiles, private automobiles, automobile dealers, ferry and other boats, peddlers, hawkers, hucksters, billboards, publishers, newspapers, railroad ticket brokers, pawnbrokers and those engaged in loaning money, lenders on chattel mortgages, intelligence offices, agencies, rectifiers, undertakers, laundries, dye houses, dry clean-

ers, engravers, bankers and banking corporations, safe deposit establishments, trust companies, bonding companies, brokers, bond and stock brokers, express companies, transfer companies, towel supply companies, trading stamp companies, slaughter houses, storage houses and barber shops; and a separate license tax may be imposed for each place of business conducted or maintained by the same person, firm or corporation.

The foregoing enumeration shall not be taken to affect or impair the general power of the city to impose license taxes upon any business, vocation, pursuit, or calling or any class or classes thereof now or hereafter not prohibited by law.

The city is specially authorized by the constitution (Art. IX., Sec. 21) to provide in its charter for the levy of taxes for the maintenance of the city government upon such subjects and in such manner as is not inconsistent with the constitution and laws of the state, and is not included in the cities deriving their authority to levy taxes from legislative grant mentioned in Art. X., Sec. 1. *St. Louis vs. Bircher*, 76 Mo., 431; *St. Louis vs. Sternberg*, 69 Mo., 289, 298. The constitutional provisions in respect to taxation do not apply to license taxes. *St. Louis vs. Green*, 7 Mo. App., 468, s. c. 70 Mo., 562.

So long as there is no inequality, discrimination, or favoritism, and the ordinance applies alike to all members of a class it is not objectionable as not being uniform in its operation. *St. Louis vs. Bowler*, 94 Mo., l. c. 634, and cases cited; *Aurora vs. McGannon*, 138 Mo., l. c. 48, and authorities cited; *St. Louis vs. Sternberg*, 69 Mo., l. c. 301.

A license can not be imposed of a certain amount for one part of the city and a different amount for persons in the same class for another part. *St. Louis vs. Spiegel*, 75 Mo., 145; *St. Louis vs. Spiegel*, 90 Mo., 587.

The courts will presume the ordinance to be valid and reasonable unless the contrary is clearly shown. *St. Louis vs. Weber*, 44 Mo., 547; and see cases on invalidity of ordinances on the ground of unreasonableness referred to in note to charter, Art. IV., Sec. 1.

The city may determine in what manner the tax is fixed and what the amount shall be, and acts in this legislatively and the courts, where authority to the city is specifically given, can not review the same. *Green vs. St. Louis*, 7 Mo. App., 468; affirmed 70 Mo., 562; *St. Louis vs. Weitzel*, 130 Mo., 600, l. c. 620.

The method of tax is for the city to determine. *Aurora vs. McGannon*, 138 Mo., l. c. 46, and cases cited; *St. Louis vs. Weitzel*, supra.

Where the legal requirements have been complied with by one applying for a license, its issuance by the proper officer may be compelled by mandamus. *St. Louis vs. Weitzel*, 130 Mo., 600.

A contract by the city to exempt a particular corporation from a license tax is void. *Springfield vs. Smith*, 138 Mo., l. c. 655, being within the principle decided in *State vs. Railroad*, 75 Mo., 208.

The city has power to enforce by prosecution a penalty for violating license tax provision. *St. Louis vs. Green*, 70 Mo., 562; *St. Louis vs. Weitzel*, 130 Mo., 600; *St. Louis vs. Sternberg*, 69 Mo., 289, 302. See as to enforcement of ordinances in the city courts, note to Sec. 1863 of Rev. Code, 1912.

The city has power as the delegated agent of the state to collect an ad valorem tax on property used in a calling and, also, to impose a license tax on the pursuit of that calling. *Monett vs. Hall*, 123 Mo. App., 91; *Aurora vs. McGannon*, 138 Mo., 38; *St. Louis vs. Green*, 70 Mo., 562; 7 Mo. App., 468; *St. Joseph vs. Ernest*, 95 Mo., l. c. 367; *St. Louis vs. Weitzel*, 130 Mo., l. c. 619.

The city can not impose a tax unless authorized by charter. *Kansas City vs. Grush*, 151 Mo., 128, 131; *St. Louis vs. Laughlin*, 49 Mo., 559; *St. Louis vs. Kalme*, 180 Mo., 309.

On the tax of one mill per passenger carried by street railways within the city of St. Louis, the following are the decisions so far rendered and reported: *City of St. Louis vs. United Rys. Co.*, 210 U. S., 266, 52 L. Ed., 1064; 220 U. S., 607, 55 L. Ed., 607.

The United Railways Co. case is now pending in the Supreme Court of the United States on appeal from the Supreme Court of Missouri.

"And all other business, trades, avocations or professions whatever." (words found in the 1876 charter, their substance being repeated in Art.

XX.) includes those ejusdem generis, and hence covers architects. *St. Louis vs. Herthel*, 88 Mo., 128; telephone companies, as ejusdem generis with telegraph companies. *St. Louis vs. Bell Telephone*, 96 Mo., 623, 629. Sewing machine agents: *St. Louis vs. Bowler*, 94 Mo., 630. Plumbers are included. *Ex parte Robert C. Smith*, 231 Mo., 111. Authorizes licensing, regulation, and suppression of bill boards. *St. Louis Gunning Co. vs. St. Louis*, 235 Mo., 99.

See as to vocations, licensed and taxed hereunder, *Rev. Code*, 1912, Sec. 2251.

Width of tires. An ordinance prescribing the width of tires of all vehicles, whether engaged in heavy transportation or not, is invalid. *State ex rel. Transfer Co. vs. Clifford*, 228 Mo., 194; *St. Louis vs. Cool*, 228 Mo., 209.

Powers of taxation. General power to levy and collect taxes, borrow and appropriate money. See charter, Art. I., Sec. 1, Clauses (1) and (5).

For ordinances as to license collector see *Rev. Code*, 1912, Chapter 4, Art. V., and notes thereto.

Under the constitution the taxing power must be exercised by municipal corporations for county or corporate purposes and taxes must be uniform in proportion to value, etc. *Const.*, Art. X., Secs. 1 to 4, etc. See 195 Mo., 228; 76 Mo., 431; 89 Mo., 631, and 49 Mo., 512.

As to the limit of municipal indebtedness of St. Louis under the last amendment to the constitution, see note to Sec. 12, Art. X., of the constitution in this volume.

The assessment and collection of the revenue and taxes in the city of St. Louis is governed largely by the state laws (*Rev. Statute*, 1909, Secs. 11334-11649 inclusive), and those provisions thereof which are specially applicable to St. Louis are set out with notes under "Laws Specially Applicable to St. Louis," Secs. 504, 534. See Secs. 504-506 for assessment; Secs. 507-518, the collector; Secs. 519-523, settlements of collector; Secs. 528-531, delinquent and back taxes; Secs. 532-533, assessment and taxation of railroads; Secs. 534, 535, taxation of merchants and manufacturers. These provisions should be consulted in connection with the charter provisions. The ordinance provisions covering the revenue department are found in *Rev. Code*, 1912, Secs. 130 et seq.; see as to board of assessors, Secs. 130-160; board of equalization; Secs. 161-164; of taxes, Sec. 165.

Special taxation for local improvements is not included in general taxation, and is discussed in note at bottom of page 367, *R. C.* 1912.

If the state can tax for state purposes it can confer upon one of its municipalities the power to tax for local purposes. *Henderson Co. vs. Henderson*, 173 U. S., 1 c. 614; for "a municipality without the power of taxation would be a body without life, incapable of acting, and serving no useful purpose." *U. S. vs. New Orleans*, 98 U. S., 381, 393; and hence when the power to contract a debt by bond is given the power to levy taxes to pay same goes with it, unless there is an express limitation which repels the inference, *ib.*, pp. 393-394 (allowing mandamus against the city to pay judgments on bonds); and a lawful issue of bonds is not only binding upon the municipality, but even the power of the state itself to alter or destroy its municipal corporations or change the boundaries thereof can not be so exercised as to impair the obligation of such bonds, and if that be done, the proper officers of the old municipality may be compelled by mandamus to make an assessment and levy of taxes for their payment. *Graham vs. Folsom*, 200 U. S., 248.

The constitution of Missouri, Sec. 23 of Art. IX., distinctly recognizes the right of the city of St. Louis to make provision in its charter for levying and collecting city taxes for the maintenance of the city government; the city was empowered to make provision in its charter for the levy of taxes by its municipal assembly upon such subjects and in such manner as would not be in contravention of the constitution and laws of the state, nor does the city derive its powers to levy taxes from legislative grant, not being included in those affected by constitution. Art. X., Sec. 1. *St. Louis vs. Bircher*, 76 Mo., 431, 533.

"The power to tax is explicitly given in the charter adopted in pursuance of the constitutional provisions; in view of those provisions there can be no doubt that it was the intent of the framers of the constitution that the charter to be framed by the board of freeholders for the city of St. Louis, should contain such provisions in regard to taxation as should be found by them expedient, and violate no constitutional provision. To hold otherwise would be to hold that the framers of the constitution offered to St. Louis a charter under which she could have no revenue, and consequently no police, no waterworks, no street lighting or paving, no means of subsistence and no life." *St. Louis vs. Sternberg*, 4 Mo. App., 1 c. 457 (affirmed 69 Mo., 289).

"As the city government, authorized by the constitution for the city of St. Louis, is entirely different in its organization from that of the counties, and as the duty of collecting the state revenue which devolved upon the

county of St. Louis under the general law, was thereafter to be performed by the city, it became necessary to provide in the charter the requisite municipal agencies for the performance of that duty. Proper officers were to be designated, the mode of their selection prescribed, and the duties which were previously performed by the officials designated in the general law were, by express enactment, to be imposed on them," etc. *State ex rel. vs. Powers*, 68 Mo., 320, 324. See as to transfer of old county functions to city officials on the separation of city and county, note at page 268, R. C. 1912.

Under the charter and state laws annual assessments of real estate in St. Louis are lawful. *State ex rel. vs. Powers*, 68 Mo., 320.

The power of taxation by municipalities is among the most valuable and important of the public trusts and powers conferred upon municipal corporations, without the exercise of which municipal government would cease to exist; and a contract by a city not to exercise the same, or attempting to limit the exercise thereof by exemption or commutation of taxes, is void, and of no effect. *State vs. Railroad*, 75 Mo., 208, 210, applied also in *Springfield vs. Smith*, 138 Mo., 1. c. 655; an attempted exemption from either general or special taxation is void. *Vrana vs. St. Louis*, 164 Mo., 146, 152.

There being (at that time) a direct conflict between the charter of St. Louis and the general state law, so far as they relate to the method of extending the taxes levied upon railroad property and the subsequent proceedings for collecting the same, it was held that the state law superseded the charter in that respect. *State ex rel. vs. Railway*, 117 Mo., 1, 11-12. (As to assessment and taxation of railroads, see "Laws Specially Applicable to St. Louis," Chapter 29, Art. V.)

Personal property of a non-resident is taxable here if it be found within the local jurisdiction, regardless of whose hands it may happen to be in. *Curtis vs. Wood*, 58 Mo., 295; and see *Lionberger vs. Rowse*, 43 Mo., 67; *Bank vs. Meredith*, 44 Mo., 500. Personal property is to be assessed where owner resides, etc. *Rev. Statute*, 1909, Sec. 11337.

The legislature can not authorize a municipal corporation to tax, for its own local purposes, lands lying beyond the corporate limits. *Wells vs. Weston*, 22 Mo., 384. (But as to issuing bonds for street railway running out of the limits, see *Henderson vs. Jackson Co.*, 12 Fed., 676); and the city may issue bonds for bridge over Mississippi. *Haeussler vs. St. Louis*, 205 Mo., 656. As to what is within the limits where the boundary is a river, see extended discussion in *Henderson Bridge Co. vs. Henderson* (a Kentucky river case), 173 U. S., 592, to be interpreted in connection with our laws as to the boundary (see note to Art. I., Sec. 1). and see *State ex rel. vs. Longfellow*, 169 U. S., 109; *Haeussler vs. St. Louis*, 205 Mo., 656 (bonds for free bridge across Mississippi).

The state has a right to increase the boundaries of St. Louis without consent of property holders who are thereby brought within its limits, and are thereafter required to pay city taxes. *Russell vs. St. Louis*, 9 Mo., 503. *Benolist vs. St. Louis*, 19 Mo., 1. c. 184.

A stockholder can not be taxed on his stock and the corporation on its property. This would be double taxation. *State ex rel. vs. Brinkop*, 238 Mo., 298.

Public property of the city is by the constitution exempt from taxation (Art. X., Sec. 6), but this does not apply to property held by the city as trustee of a charitable bequest for the benefit of a particular class; in such case the tax should be assessed against the city as trustee. *St. Louis vs. Wenneker*, 145 Mo., 230, 239 (*Mullanphy Emigrant Fund*. See note to *Rev. Code*, 1912, Secs. 2015 et seq.)

Neither does constitutional nor statutory exemption from taxes apply to special taxation for local improvements, as to which see note to charter, Art. XXI., Sec. 5, "Property subject to special taxation."

In holding void Sec. 11a of Art. X. of the state constitution, as in conflict with the 14th amendment of the U. S. Constitution, the court said in *State ex rel. vs. Ry.*, 195 Mo., 1. c. 241-242: "If the constitutional (state) amendment only excepted the city of St. Louis, a very different question would also have been presented for adjudication, for the city of St. Louis is a political subdivision of the state as much as any county and is treated as a county, and any law that is passed applicable thereto applies to all persons within its territorial limits; and taxes which are imposed on property in the city of St. Louis are necessarily uniform, because they subject the same class of subjects, within the territorial limits of the city, to the tax. In fact the laws relating to taxation in St. Louis have for many years been different from the laws applicable to other parts of the state."

Under the charter of 1841 there might be different levies or rates of taxes in the same year, provided the aggregate did not exceed the charter limit, and the council might levy taxes either for the fiscal or calendar year. *Benolist vs. St. Louis*, 19 Mo., 179.

ARTICLE XXI.**Condemnation.**

Section 1. Condemnation of or damage to private property, real or personal, or any easement or use therein, for public use, shall be effected as herein provided and as may be further provided by ordinance not inconsistent with this charter. Upon the board of aldermen providing by ordinance, recommended by the board of public service, (1) for the appropriation of any private property or any easement or use therein for any public use, or (2) for any public improvement or work which will damage private property, the city counselor, in the name of the city, shall apply promptly, and in no event later than six months after such ordinance is effective, to the circuit court of the eighth judicial circuit, or to any judge thereof in vacation, by petition setting forth the general nature of the public use for which the property is to be appropriated or damaged, a description of the property and the estate or interest therein in each instance which the city seeks to appropriate or damage, and praying the appointment of three disinterested commissioners to assess damages and benefits as hereinafter provided, to which petition the owners shall be made defendants by name, if known, and if unknown, by describing their claims and interests in such property and how derived by them. If the action affects the property of persons under guardianship, the guardians shall be made defendants; if the property of married women, their husbands shall be made defendants; if an estate or interest less than a fee, the persons having the next vested estate in remainder or reversion shall be made defendants or their interests will not be bound; but only persons in actual possession of and claiming title or who have record title appearing upon the proper records of the city to property affected, need be made defendants. Notice of the filing of the petition, describing the property to be taken or damaged, shall be filed and recorded in the office of the recorder of deeds, otherwise purchasers of such property shall not be bound by the proceedings under the petition.

Condemnation for water works purposes. See Sec. 12 of this article.

Ordinances on street and sewer condemnations and street openings. See Rev. Code, 1912, Secs. 1067-1074.

What are street purposes, such as authorize an ordinance of condemnation. *Kansas City vs. Hyde*, 196 Mo., 498, and other cases cited in note to Art. I., Sec. 1, Clause 14..

Right to condemn. "The charter provisions of St. Louis and Kansas City as to condemnation proceedings have been so long before this court, and have never been held to be out of harmony with the constitution and laws, that a declaration at this late date that said cities were without such a power, and that these charter provisions were ultra vires, would invite a flood of litigation. . . . We think it was properly ruled that the special charter superseded the general statutes where the two conflicted as to a mere municipal regulation, and we hold that condemnation proceedings to acquire lands for streets, parks, water works, sewers, and the like, clearly fall within municipal regulations. It follows that notwithstanding the charter did not follow the civil practice as prescribed in the code of prac-

stice . . . the special provisions must control." *Kansas City vs. Oil Co.*, 140 Mo., 1. c. 472.

The city of St. Louis had the right to provide, under the laws passed by congress, by this state, by the charter, and by its own ordinances for the free bridge across the Mississippi river from St. Louis to the Illinois side, and it seems it has the right to condemn property therefor, not only in the city, but in the state of Illinois, without the consent of the latter. *Graves, J.*, in *Haeussler vs. St. Louis*, 205 Mo., 656, following *Luxton vs. North River Bridge Co.*, 153 U. S., 525, Judge Lamm concurring in this proposition, *Gantt* expressing no opinion, *Burgess* not sitting, *Valliant* and *Fox* dissenting.

The framers of the scheme and charter had power to confer jurisdiction in street opening proceedings upon the circuit court. *St. Louis vs. Greeley*, 14 Mo. App., 578 (memo. opin.); *St. Louis vs. Gleason*, 15 Mo. App. 25 (reversed on another point, but approved in this. 93 Mo., 33; 89 Mo., 67). *St. Louis vs. Ranken*, 96 Mo., 1. c. 504.

Street openings begun under the 1876 charter after November 22, 1876, and before March 5, 1877, when it became known that the new scheme had been adopted, were valid under the *de facto* principle. *St. Louis vs. Stoddard*, 15 Mo. App. 173; *Adams vs. Lindell*, 72 Mo., 198. See Sec. 2 of schedule.

Suit begun need not be dismissed because thereafter charter is amended in matters not of substance, but relating merely to methods of procedure. *St. Louis vs. Calhoun*, 222 Mo., 44.

In proceedings of eminent domain in the opening of streets every material requirement of the law authorizing such proceedings must be strictly complied with; and unless it affirmatively appear upon the face of the proceedings that every essential prerequisite of the law conferring the authority has been complied with, such proceedings will be void. *St. Louis vs. Koch*, 169 Mo., 587, loc. cit. 591, with citation of numerous cases; *Spurlock vs. Dorman*, 182 Mo., 242, 250; *St. Louis vs. Gleason*, 93 Mo., 33, 37-38; *Schaffner vs. St. Louis*, 31 Mo., 264; *St. Louis vs. Cruikshank* 16 Mo. App. 1. c. 497; *State ex rel. vs. St. Louis*, 67 Mo., 113, 117.

Where preliminary notice of proceedings to take property for public use is required, the giving of such notice is jurisdictional. *Webb vs. Strovah*, 143 Mo. App., 459.

"It is the duty of the judicial tribunal to insist that every provision intended for the benefit of the owner be complied with. . . . The mode prescribed must be strictly and guardedly complied with, although unreasonable nicety is not required." *St. Louis vs. Franke*, 78 Mo., 41 (quoting *Dillon*).

The ordinance which was the basis of the proceeding can not be amended and the proceedings continued thereunder. *Shaffner vs. St. Louis*, 31 Mo., 264.

Where condemnation was authorized only in case no agreement could be reached, the proceedings must show this condition to be the case. *Moses vs. St. Louis Sec. Dock Co.*, 84 Mo., 242, 245; *Graf vs. St. Louis*, 8 Mo. App., 562; *Leslie vs. St. Louis*, 47 Mo., 474; *Anderson vs. St. Louis*, 47 Mo., 479.

Provisions in a charter requiring the recommendation of a certain board of commissioners preliminary to an ordinance of condemnation are valid. *Kansas City vs. Mastin*, 169 Mo., 80, 93.

The petition must allege the jurisdictional facts (see cases *supra*); and since a valid ordinance is necessary to the jurisdiction of the court an ordinance which is to take effect on a certain condition is insufficient unless it be alleged and proved that the condition has been complied with. *St. Louis vs. Cruikshank*, 16 Mo. App., 1. c. 496-497. The passage of the ordinance authorizing a street improvement does not make out a *prima facie* case of compliance with precedent conditions, all of which must be alleged. *St. Louis vs. Frank*, 9 Mo. App., 579 (memo. opin.)

The names of the known owners must be alleged; if unknown there must be publication and a correct description of the land. *Sleferer vs. St. Louis*, 141 Mo., 586.

Notice by publication valid, and what notice is sufficient. *Kansas City vs. Mastin*, 169 Mo., 80 1. c. 90.

Conclusiveness and effect of the proceedings. The proceeding when consummated is a judgment, having the same incidents as other judgments; hence it was held the benefits assessed against the property, evidenced by tax bills, may be recovered at any time within ten years; and no matters are reviewable which have not been properly preserved by exceptions; and it was further at one time held that no new defenses can be made against the collection of the tax bills that were available in the first proceeding. *St. Louis vs. Annex Realty Co.*, 175 Mo., 63, following *Eyssell vs. St. Louis*, 168 Mo., 607, where the nature of the proceeding is fully discussed by the court; but the decision in the *Eyssell* case was expressly overruled by the

Supreme Court in this respect in the recent case of *St. Louis vs. Brinckwirth*, 204 Mo., 280, which held that the first or condemnation proceedings was not broad enough to be a judgment warranting execution for the benefits found therein, but that the benefits could only be recovered by suit on the special tax bill issued in accordance with the legal requirements; that the ruling in the *Eyssell* case in fact would make the court assess the tax, which the law requires the municipality to issue and perfect; the court will not uphold the doctrine that the law allows both the assessment and collection of taxes in a single suit or confers on the court the governmental function of levying the tax.

When the court has taken final action upon the report, and the board of aldermen appropriated money for the damages for the property taken, such assessment becomes final and conclusive upon the question of benefit to the taxpayers and the amount thereof, the lien attaches, and these questions can not be relitigated in any subsequent suit that the city may find it necessary to bring to enforce the lien in collecting the tax assessed; the only question that can be raised in such a suit is as to the validity of the assessment and levy. *St. Louis vs. Ranken*, 96 Mo., 497; approved in *St. Louis vs. Brinckwirth*, *supra*.

Nor can the defense be made in an action on the tax bill that there was no compensation for land taken or damaged. *Springfield vs. Baker*, 56 Mo. App., 637, 640. Nor that the property was not subject to special taxation. *Vrana vs. St. Louis*, 164 Mo., 146, 153.

The court having acquired jurisdiction over the parties and the res in the condemnation proceedings, every presumption is to be indulged in favor of the jurisdiction of the court in a collateral proceeding; hence the question whether the city had, before the condemnation proceeding, acquired the property sought to be condemned, can only be tried in such proceeding, and not in a suit to enforce a special tax bill for benefits or enjoin its collection. *Buddecke vs. Ziegenhein*, 122 Mo., 239, 243-244; *Michael vs. St. Louis*, 112 Mo., 612; *Vrana vs. St. Louis*, 164 Mo., 146, 153.

Under the rules relating to tax bills for construction of streets, sewers, etc., the owner can not contend in an action to enforce the bill that he has not been benefited, nor that there was no necessity for the work, etc.; but this is on the ground that such matters are legislative in character with which the courts will not interfere; while the rule that assessment of benefits in street opening cases can not be reviewed is on the ground of res judicata. (See cases on former point cited hereafter in note to Art. XXI., Sec. 5.)

Distinction between taking property and assessing benefits, or taxing for local improvements. The opening of the street, and assessment of special benefits, are different things, though had in one cause. But the proceeding by which private property is taken by the city for the public use by condemnation under the power of eminent domain, is distinct in character from that by which the city raises funds under the power of taxation (by way of assessing benefits) to make compensation for property so taken. *St. Louis vs. Buss*, 159 Mo., 9, 12.

The distinction between taxing by assessment of benefits against property under these sections and the taxing for local improvement such as construction of streets, etc. (*infra*, note to Art. XXII., Sec. 3), was pointed out in *Eyssell vs. St. Louis*, 168 Mo., 1. c. 621, which was, however, overruled by the Supreme Court in *St. Louis vs. Brinckwirth*, 204 Mo., 280.

Special taxation is sustainable under the taxing power; and the constitutional provisions relating to the taking or damaging for public use apply to the power of eminent domain. *Keith vs. Bingham*, 100 Mo., 300; *Springfield vs. Baker*, 56 Mo. App., 1. c. 640 (see cases on special taxation in note to Art. XXI., Sec. 5).

Ordinance provisions on street openings, etc., and sewer condemnations. Rev. Code, 1912, Secs. 1067-1074.

The power of eminent domain extends to tangibles and intangibles, including choses in action, contracts, and charters. *Cincinnati vs. L. & N. R. R.*, 223 U. S., 390.

The nature of the proceeding to open or widen a street and the effect thereof was discussed in *Eyssell vs. St. Louis*, 168 Mo., 607, and recently in the case of *Brinckwirth vs. St. Louis*, 204 Mo., 280, which expressly overruled the said *Eyssell* case.

Elevations of alleys and streets—city directrix. Under the charter prior to amendments of 1901, it was held that Sec. 1 of Art. VI. did not require the elevation of an alley to be fixed by the assembly, but that the street commissioner could do that as a ministerial matter. *Weber vs. Johnson*, 37 Mo. App., 601. See the present provision in Sec. 3, Art. XXII.

In *St. Louis* elevations are determined by a point called the city directrix. See interesting discussion as to origin and location in note in *McQuillin's* (unofficial) work "Amended Charter," p. 303 and in *Mun. Code*, p. 254.

How far opening and improvement of streets is legislative and how far

ministerial. The city acts in two capacities: first, governmental; second, ministerial. When it declares by ordinance that land embraced within certain lines is a public street, then, when the city obtains the title or easement either by gift or condemnation, it becomes a public street. But it is not then necessarily opened to the public for use. If after that an ordinance provides for the improvement of the street so as to render it fit for use, even then it is not, by the mere passing of the ordinance, opened for use. So far the city acts in its governmental and legislative capacity. The whole street need not be included in the improvement, but so much and such parts as the legislative body in its discretion thinks proper. Nor is the city liable to an individual for neglect of duty in such capacity. But, after the improvement ordinance is passed, the city undertakes the work of construction as in the ordinance required, its acts are ministerial, and for neglect in the same, or keeping the same thereafter in repair, the city is liable. *Ely vs. St. Louis*, 181 Mo., 723; *Rupenthal vs. St. Louis*, 190 Mo., 213; *Hannibal vs. Campbell*, 86 Fed. (C. C. A.), 297.

In how far the municipal assembly is subject to review for fraud in the passage of an ordinance establishing a street, see *Kansas City vs. Hyde*, 196 Mo., 498, and other cases cited in note to Art. IV., Sec. 1.

What is a street, highway, or sidewalk, and what included. A street, in the legal acceptation, includes the portion provided for passage of vehicles, and also the sidewalk provided for pedestrians. *Seibert vs. Railroad*, 188 Mo., 657, 671; *Straub vs. St. Louis*, 175 Mo., 413; *Knapp, Stout & Co. vs. Ry.*, 126 Mo., 26, 35.

The term "street" is sometimes used in a more restricted sense so as to include only the roadway. *Knapp Stout vs. Ry.*, 126 Mo., 26, 35.

Where the entire space from curb to lot line is set aside for a sidewalk, that portion thereof set apart for a grass-plot constitutes part of the sidewalk which the city must keep in safe condition. *Coffey vs. Carthage*, 186 Mo., 573.

The word "street" usually means a public street, not private ways, though the public be permitted to use the same. *Collier Est. vs. Paving Co.*, 180 Mo., 362, 388. See also *Restetsky vs. Railroad*, 106 Mo. App., 382, 388. See also Rev. Code, 1912, Sec. 2370.

A municipal free bridge across the Mississippi river from St. Louis to the Illinois side is as much a highway as any other highway, and is for a municipal purpose; and it seems that congress may grant power to the city, and has done so, to condemn property therefor situated in the other state. *Haessler vs. St. Louis*, 205 Mo., 656.

Distinction between streets and alleys. *Dries vs. St. Joseph*, 98 Mo. App., 611; *Corby vs. Railroad*, 150 Mo., 457, 468 (pointing out the functions of alleys); *St. Louis vs. Lane*, 110 Mo., 1. c. 258 (pointing out the reason of the difference in benefit districts, although the specific provision in the charter as there construed was later amended and changed).

Property owners abutting on a street have in addition to the general use of the street common to the public, certain special rights peculiar to themselves, amongst which is the right of ingress and egress.

This gives them a special right not shared by the public; when such ingress and egress is interfered with, to damages or other redress. See cases in note to what uses a street may be used for, Art. I., Sec. 1, clause (14); also cases cited under same note on "vacating streets;" and see note to "Nuisances" in Rev. Code, 1912, preceding Sec. 787. See further *Downing vs. Corcoran*, 112 Mo. App., 645, 649; *De Geofroy vs. Merch. Bridge*, 179 Mo., 698; *Ruckert vs. Grand Ave. Ry.*, 163 Mo., 1. c. 278; *Dries vs. St. Joseph*, 98 Mo. App., 611, 614; *Corby vs. Railroad*, 150 Mo., 457; *Schopp vs. St. Louis*, 117 Mo., 131; *Stephenson vs. Ry.*, 68 Mo. App., 642; *Thomas vs. Hunt*, 134 Mo., 1. c. 398.

Ownership of fee. When lots abutting on a highway or platted street are sold, the purchaser takes title to the center of the street, if the grantor owned that far, unless a contrary intention appears from the deed. *Restetsky vs. Railroad*, 106 Mo. App., 382, 387; *Grant vs. Moon*, 128 Mo., 43; *Snoddy vs. Bolan*, 122 Mo., 479 (a leading case in this State).

In Missouri the abutting owner presumptive owns the fee to the center of the street subject only to the easement of the public; for all other purposes, not inconsistent therewith the owner has the full rights. *Un. El. Co. vs. Ry.*, 135 Mo., 353, 366; *Thomas vs. Hunt*, 134 Mo., 392, 399, 401; *Snoddy vs. Bolan*, 122 Mo., 483, 488; *Gordon vs. Peltzer*, 56 Mo. App., 599, 604.

A valid statutory dedication by plat, etc., operates to vest the fee in the city for public purposes and dispenses with the necessity of an acceptance by the public, and the dedicator can not thereafter change the boundaries, etc. *Brown vs. Carthage*, 128 Mo., 10, 17, and cases cited (holding that it made no difference that there was a reservation of "trees and rocks" on the surface).

Such fee in the city is only for public purposes, and it is not meant by the statute to vest in the city a right to dispose of it by deed, but only the

control of the street, for the use of the public, subject to the public easement. The owned adjoining owns to the center of the street or alleys. *Union Elev. Co. vs. Ry.*, 135 Mo., 353, 366, and cases cited; *Thomas vs. Hunt*, 134 Mo., 392, 402-403.

How highways may be established. A public highway may be acquired over property of a private individual by, first, a grant or deed; second, a dedication by plat or deed; third, by acts in pais which amount in law to a dedication. *Railway vs. Railway*, 190 Mo., 246, 253, and cases cited.

A street railway may, by its acts in pais, dedicate for street purposes a private right of way over which it is operating, and the city's acceptance may be established by its acts, and thereafter it may authorize another street railway company to operate thereover. *Railway vs. Railway*, 190 Mo., 246.

Common law dedication is effected where the owner has done an act which clearly indicates his intention to dedicate the street, and the city does an act clearly indicating its purpose to accept. *Naylor vs. Harrisonville*, 207 Mo., 341; *Granite Bituminous Paving Co. vs. McManus*, 144 Mo. App., 593. In such case it is not necessary to show user, and limitation has nothing to do with the city's title. *McGrath vs. Nevada*, 188 Mo., 102.

There can be no dedication without an intention so to do; permissive use to the public by the owner, by permission to drive or walk over the private way constitutes no dedication, no matter how long continued. *Collier Est. vs. Paving Co.*, 180 Mo., 362, 388.

Where an owner holds out land as a street and sells lots according to the plat he is estopped from denying that it is as he held out. *McGinnis vs. St. Louis*, 157 Mo., 791, and cases cited. *Longworth vs. Sedevic*, 165 Mo., 221, 230.

There is no dower in lands dedicated for public streets, whether dedication be by prescription or otherwise. *Benton vs. St. Louis*, 217 Mo., 687.

Dedication by plat, etc. Mere purported dedication to public use does not make a public street; there must be an acceptance in some manner by the city, such as public user for that purpose, though a formal acceptance is not necessary. Until such acceptance there is no street. *Skrainka vs. Oertel*, 14 Mo. App., 474, 480; *St. Louis vs. University*, 88 Mo., 155, 158 (holding that there could be no acceptance of a dedication for a street outside the city limits). *Milling Co. vs. Riley*, 133 Mo., 1 c. 584.

Mere user by the public will not establish a street; and an approval of a plat, by the municipal authorities, of a proposed addition, filed in conformity with the statute, only goes to show that the same conforms to the general plan of the city, and is not an acceptance by the city of the proposed dedicated land as a street. *Downend vs. Kansas City*, 156 Mo., 60, 67. (For ordinance on how plats of subdivisions to be submitted to board of public improvements, see also Rev. Code, 1912, Sec. 197). Whether acceptance need be shown in case of statutory dedication or street by prescription, see *Meiners vs. St. Louis*, 130 Mo., 274, and cases there cited. An acceptance by the city may be implied from any act tending to recognize it, though there be no ordinance of acceptance. *Buschmann vs. St. Louis*, 121 Mo., 523; *Heitz vs. St. Louis*, 110 Mo., 618; *Milling Co. vs. Riley*, 133 Mo., 1 c. 585; *Meiners vs. St. Louis*, 130 Mo., 274.

As to what constitutes a statutory dedication, see *Brown vs. Carthage*, 128 Mo., 10 (containing reservation); *Buschmann vs. St. Louis*, 121 Mo., 523, and cases cited; *Heitz vs. St. Louis*, 110 Mo., 618; *Milling Co. vs. Riley*, 133 Mo., 574 (holding also that no one but the owner can make either statutory or common law dedication).

Conveyance does not affect one not joining who holds a deed of trust on the land. *McShane vs. Moberly*, 79 Mo., 41.

A defective statutory dedication by acceptance and user may become a good common law dedication. *Heitz vs. St. Louis* supra, and cases therein cited; *Milling Co. vs. Riley*, supra; *Longworth vs. Sedevic*, 165 Mo., 221, 230.

A statutory dedication of a street must be by the owner of the fee and accepted by the public. *Granite Bituminous Paving Co. vs. McManus*, 144 Mo. App., 593.

As to whether the fee goes to the city or remains in the owner of abutting property, see supra, this note.

Title in the city may be acquired by prescription, without dedication, by long use, and acquiescence by the owner. See *Meiners vs. St. Louis*, 130 Mo., 1 c. 284; *State vs. Walters*, 69 Mo., 463; *State vs. Proctor*, 90 Mo., 334; *Baummann vs. Boeckler*, 119 Mo., 189.

Common law dedication gives the city the right not only to pass over the servient land, but to enter and prepare it and keep in suitable condition for particular use to which dedicated. *Gamble vs. Pettijohn*, 116 Mo., 375.

Title to public property not lost by adverse possession. Since the statute of 1865 (Rev. Statute 1909, Sec. 1884) no person can acquire title by adverse possession to any part of a public street. *St. Louis vs. Ry.*, 114 Mo., 13, 24; *Columbia vs. Bright*, 179 Mo., 441; *Wright vs. Donovan*, 169 Mo., 601

(where the land had been taxed to such claimant against the city). *State ex rel vs. Vandalia*, 119 Mo. App., 406, 423.

Prior to that time it was otherwise. *Crigler vs. Mexico*, 101 Mo. App., 624.

The city may acquire title by adverse possession. *Mitchell vs. Railroad*, 116 Mo., 81, 88 (alley); *Baumann vs. Boeckler*, 119 M., 189; *State vs. Walters*, 69 Mo., 463; *Longworth vs. Sedevic*, 165 Mo., 221, 230-231.

Conditional conveyances to public use. Board of public service has authority to approve maps or plats of subdivisions "which fully dedicate" streets, etc.

A valid statutory dedication by plat, etc., vests the fee in the city, notwithstanding a reservation of "trees and rocks" on the surface, etc. *Brown vs. Carthage*, 128 Mo., 10, 17.

A dedication on condition precedent can not take effect until the condition has been complied with, and if that is not done the land may be treated as unaffected thereby. *St. Louis vs. Meier*, 77 Mo., 13 (upholding its condemnation as in other cases); *Creamer vs. McCune*, 7 Mo. App., 91; *Kemper vs. Collins*, 97 Mo., 644; *Clark vs. Brookfield*, 81 Mo., 503; *St. Louis vs. Cruikshank*, 16 Mo. App., 495.

A provision in a dedication that the property on streets to be opened shall not be subject to special taxation, is void; the city can not make any such agreements. *Vrana vs. St. Louis*, 164 Mo., 146.

Where persons convey land to a municipality by ordinary deed for a pecuniary consideration without reservation of the use to which it is to be put, they will not be heard to contend that the property was intended to be used only for street purposes. *Pickett vs. Mercer*, 106 Mo. App., 689.

Where an easement is created the title remains in the grantor and is freed from the easement on its abandonment, and if the title is conveyed on condition, reverts when the condition falls; but land dedicated to a particular use without reservation of right of re-entry on the diversion or abandonment of the use, may be used for any other purpose without re-investing the grantor's title; relief to compel the execution of the trust should be sought. *Hand vs. St. Louis*, 158 Mo., 204, citing and distinguishing numerous city cases.

Proprietors dedicating land to public use remain for all other purposes the owners, and the city can not divert the property to a private use in violation of the trust. *Cummings vs. St. Louis*, 90 Mo., 259.

Nor when dedicated for one public use can it be diverted to another. *Belcher Co. vs. St. L. G. Co.*, 82 Mo., 121; 101 Mo., 190; *Gaskins vs. Williams*, 235 Mo., 563.

Land conveyed to be used as a market place and so long as so used, and when it ceased to be so used to revert to donor, the donee (city) to reconvey, is held by the city not as determinable fee, but on condition subsequent, and though condition broken, estate is not defeated before entry by donor. *Adams vs. Lindell* 72 Mo., 198, affirming 5 Mo. App., 197. Where the covenant is that the land shall revert and grantee reconvey when the city ceases to use same for market, an abandonment gives a right of re-entry, the grantor retaining the fee. *Baker vs. St. Louis*, 75 Mo., 671, affirming 7 Mo. App., 429.

A dedication on condition that adjacent owners likewise dedicate is not consummated until such condition is complied with. *St. Louis vs. Meier*, 77 Mo., 13, 18-19.

Sec. 2. Upon the filing of the petition, summons shall be issued, giving the defendants at least ten days' notice of the hearing on the petition; and the city marshal shall serve such summons and make return as required by law for service and return of writs of summons. If the name or residence of any owner be unknown, or if any owner does not reside in the state, a notice giving the general nature of the petition, with a description of the property of such unknown or non-resident owners, and the day fixed for the hearing, shall be published once each week for four consecutive weeks, the last publication to be at least ten days before the hearing, in the newspaper publishing at the time the notices of said court.

Parties. The notice required by the charter previous to the 1876 charter was not waived by a recital in the journal of the triers of the fact that the parties appeared. "The appearance of the mostly interested can not affect the others." *Shaffner vs. St. Louis*, 31 Mo., 1 c. 273.

One not served is not bound. *Moses vs. St. L. Sec. Dock Co.*, 84 Mo., 242.

Where complainant has no knowledge of proceedings by a city to condemn property for public uses and to assess the cost thereof on an adjoining district until after the time to appeal from the assessment has expired, he is not guilty of laches. *V. F. R. Co. vs. Flynn*, 180 F., 565.

Under the present charter, known parties must be served; if unknown, there must be publication and a correct description of the land must be set forth. *Sieferer vs. St. Louis*, 141 Mo., 586.

One who is within the benefit district and hence assessable for benefits to become a lien on his property, but whose property is not taken for public use, need not be made a party to the original summons; he has his notice and hearing at a later stage of the proceedings. *St. Louis vs. Calhoun*, 222 Mo., 44; *St. Louis vs. Ranken*, 96 Mo., 497, 505 et seq.; *Buddecke vs. Ziegenhein*, 122 Mo., 239, 243. And the fact that such notice is by publication "does not militate against the validity of the assessment." Per Marshall, J., in *Eysseil vs. St. Louis*, 168 Mo., loc. cit. 616, and cases cited there. If the notice is insufficient to identify the district or property to be benefited (as where there are two alleys to be opened in one block, and the notice refers to an alley), the property owner is not bound. *St. Louis vs. Brinckwirth*, 204 Mo., 280. That the same summons is not required, results from the difference between the power of eminent domain exercised in taking of property for the public purpose of opening the street and the taxing power exercised in assessing the special benefits resulting therefrom. See note to preceding section.

As to sufficiency of notice of hearing before commissioner. *St. Louis vs. Calhoun*, 222 Mo., 44.

Sec. 3. The court, or a judge thereof in vacation, when notice has been given as herein provided, shall appoint three disinterested commissioners, freeholders resident in the city for five years next before their appointment, to assess the damages which the owners may severally sustain by such taking or damaging, and to assess benefits as hereinafter mentioned; provided, that the court or judge in appointing commissioners shall exclude from their consideration the assessment of all damages for the trial of which a jury has been duly demanded.

Any party entitled to and desiring trial by jury of his rights to compensation, shall file in the cause, before the appointment of the commissioners, written demand therefor, including therein a description of his property to be taken or damaged, and failure so to do shall be a waiver of the right of trial by jury. Upon such demand being filed the court shall award a jury trial and proceed therewith as in trials of civil actions; but before final judgment shall be rendered on the verdict of the jury and before the commissioners shall make their report, the court shall certify the verdict of the jury to the commissioners and they shall include in their report, with their separate findings, assessments and awards, the damages as assessed by the jury, reciting the fact. The claims for damages of all parties demanding jury trial in any action under this article shall be heard at the same time before one jury. The commissioners shall assess damages for property appropriated or damaged for the trial of which a jury is not demanded as aforesaid.

Jury. Since the constitution of 1875 an incorporated company (such as a railroad company) interested either for or against the exercise of the right of eminent domain (but not private citizens nor municipal corporations) may demand a jury to try the cause. *St. Louis vs. Roe*, 184 Mo., 324, distinguishing *Kansas City vs. Smart*, 128 Mo., 272, and other cases.

With respect to awarding damages as compensation for property taken in condemnation for street purposes, the owner under the constitution is entitled to have same determined by a jury or board of not less than three freeholders, as may be prescribed; but with respect to assessment of special benefits to the owner's lots resulting from the street opening, the constu-

tional provision does not apply, but the charter provides that they be ascertained by the commissioners subject to the power of the court to review their appraisal and modify same; and such modification is not an impairment of the right to a jury. *St. Louis vs. Buss*, 159 Mo., 9, 13.

The proper amount of compensation for private property taken for a public use can not be fixed by the legislature. What is just compensation must be determined by a jury or appraisers. *Co. Ct. vs. Griswold*, 58 Mo., 175, 199.

Sec. 4. It shall be the duty of the commissioners, except as herein otherwise provided, in the condemnation or the damaging of property for highways, streets, boulevards, parkways, alleys, wharves, sewers, markets, public squares, and parks, or widening or enlarging the same, or in the changing of grade of streets or other public ways or the making of other public work or improvements, to ascertain the value of the property proposed to be taken and the actual damage done to private property, but no allowance shall be made for improvements begun on property after service of summons on or notice by publication to the owner thereof as herein provided; and the public work, improvement or use contemplated shall not be considered in determining the value of property taken. For the payment of all such damages the commissioners shall assess against all the lots or parcels of property or interests therein especially benefited by the proposed public work or improvement, separately, and in the name of the several owners thereof, the amount that each such lot or parcel of property or interest therein so assessed shall be especially benefited by the proposed public work or improvement, and against the city the balance of the damages over and above the aforesaid special benefits assessed; provided, that in the opening of an alley there shall be assessed against the lots or parcels in the blocks in which the alley is opened benefits sufficient to pay all damages.

In addition to this section, see Sec. 12 of this article.

Sec. 5. The commissioners shall view the property to be taken, damaged, or assessed; fix the benefit or taxing district; publish in said newspaper for ten days before beginning their assessment a notice of the boundaries of the benefit or taxing district and of the time and place at which they will assess such damages and benefits; hear the evidence submitted by the parties interested; assess the damages and benefits as of the date said ordinance became effective; and make report, in which at least two commissioners shall concur, of such assessment in writing and under oath to the circuit court. In such report the compensation allowed to and the benefits assessed against each owner shall be separately stated. When the commissioners both assess benefits and allow damages against any one property owner they shall deduct the lesser from the greater.

Deductions of benefits from damages. Such provisions as above have been sustained. *State ex rel. vs. Kansas City*, 89 Mo., 34, 40.

Damages. A railroad company is not entitled to have assessed as damages certain structures and fixtures which a valid ordinance required it to put in at its own expense as a condition of its franchise. *Kansas City vs. Railroad*, 187 Mo., 146.

If a lessee is conducting a business on the premises, which will be broken up or interrupted by the taking of the property for public use, he is entitled

to compensation. *St. Louis vs. Abein*, 170 Mo., 318, 326, citing Missouri authorities. The damage should be separately assessed and not adjusted by deduction from the sum allowed the landlord. *St. Louis vs. Abein*, 170 Mo., 318, 326.

It was held (under the act of 1875, p. 319) that where the commissioners report that the improvement standing on the property should remain until removed, and it appears that no allowance for such improvement was made, as was required if it was included, the city acquired the right only to the land and not the building thereon. *St. Louis vs. Ins. Co.*, 90 Mo., 135 (this building still remains as an obstruction on west side of Jefferson avenue and Morgan street).

Where the damages assessed are just and reasonable, that they exceed the value of the property is not fatal. *St. Louis vs. Frank*, 9 Mo. App., 579 (memo. opin.). Other cases on questions of damages. 77 Mo., 13; 112 Mo., 361; 139 Mo., 315; 197 Mo., 392; 198 Mo., 698; 77 Mo., 13; 124 Mo., 129; 89 Mo., 646; and see remarks and cases cited in *Martin vs. St. Louis*, 139 Mo., loc. cit. 258.

Award will not be set aside as inadequate unless it is flagrantly so. *St. Louis vs. Calhoun*, 222 Mo., 44.

In determining whether damages to one piece of property can be reduced by benefits to another piece owned by the same person, it is necessary to ascertain whether the property is held as one piece and for a general purpose. *Drake vs. Bosworth*, 139 Mo. App., 37.

Benefits. A conditional dedication where the condition has not been complied with is of no effect, and the owners of land can not avoid assessment of benefits by consenting to an opening through their lands on condition that no benefits be assessed and an acceptance by the commissioners of such offer is illegal, as tending to render the benefits assessed against others unequal. *St. Louis vs. Meier*, 77 Mo., 13.

Benefits can not be assessed in gross upon several contiguous lots and recovery can not be had upon a tax bill issued upon such an assessment. *St. Louis vs. Provenchere*, 92 Mo., 66, citing and approving several cases from the Court of Appeals so holding.

One whose land is not taken for public use, but who is within the benefit district, so that a lien for benefits assessed may be charged thereon, need not be included as one of the original defendants summoned; with respect to the question of benefits he has notice and an opportunity to appear and be heard in the method pointed out by charter and ordinances (now Secs. 1069 et seq. of Rev. Code, 1912, requiring notice also by publication). *St. Louis vs. Ranken*, 96 Mo., 497; *Buddecke vs. Ziegenhein*, 122 Mo., 239, 243 (both holding that a special tax bill for benefits could not be attacked on that ground); and the fact that only notice by publication is given does not militate against the validity of the assessment. *Eysell vs. St. Louis*, 168 Mo., loc. cit. 616, and cases cited. If the notice is not sufficient to identify the property to be affected or the benefit district (as where there are two alleys in one block and the notice does not designate which of the two are to be considered at the sitting of the commissioners), the owner is not bound by the notice or proceeding. *St. Louis vs. Brinckwirth*, 204 Mo., 280.

Under the former law the rule was different and notice and summons was required in the same manner as those whose lands were condemned. *State ex rel. vs. St. Louis*, 67 Mo., 113.

It is proper to charge reasonable benefits against defendants whose land has been taken for a public alley running through it. *St. Louis vs. Calhoun*, 222 Mo., 44.

Assessment of benefits against the property of one whose property is within a benefit district but no part of whose land is taken for such street, is a legitimate exercise of the taxing power. *St. Louis vs. Speck*, 67 Mo., 403.

Damages and benefits under former suspended Charters. See *Shafner vs. St. Louis*, 31 Mo., 264; *McKee vs. St. Louis*, 17 Mo., 184; *Garrett vs. St. Louis*, 25 Mo., 508.

Grading and changing grade of streets and alleys. See note to Sec. 12 of Art. XXII.

In opening of alleys, benefits shall be paid by the "owners of such lots in the block as are afforded access," etc. Under the former provision they were to be paid by the "owners of property in said block abutting on the proposed alley," which was held to include all owners of abutting property on an alley as completed, which was a continuation of one theretofore partly opened through the block. *St. Louis vs. Lane*, 110 Mo., 254.

Special assessments for public improvements are not referable to the power of eminent domain, but are referable to the taxing power and sustained thereunder. *Meier vs. St. Louis*, 180 Mo., 391, 408; *Independence vs. Gates*, 110 Mo., 374, 380 (the court pointing out that this species of taxation can not be defended on logical grounds, but is upheld as a matter of law). *Keith vs. Bingham*, 100 Mo., 300; *Farrar vs. St. Louis*, 80 Mo., 379 (with a review of the prior cases, the court holding that the city "might adopt any

method in apportioning the cost which the legislature could adopt," p. 393). In holding such special taxation valid, Burgess, J., in *Heman Const. Co. vs. Wabash Ry.*, 206 Mo., 172, says: "While a distinction is made between local assessments and taxes levied for general revenue purposes, in that an assessment for a local proceeding is not a tax within the meaning of the constitutional provision for uniformity of taxation, it is in a sense a tax, not however for the purpose of sustaining the government, but imposed upon individual property upon the theory that such property receives a special benefit different from the general one which the owner enjoys in common with others; in other words an assessment for benefits."

What property is subject to special taxation. State constitutional provisions on taxation are held to be inapplicable to special taxation. *Meier vs. St. Louis*, 180 Mo., 391, 408; *Farrar vs. St. Louis*, 80 Mo., 379 (reviewing the cases); *St. Joseph vs. Owen*, 110 Mo., l. c. 455; *Adams vs. Lindell*, 72 Mo., 198; see cases cited in *Barber Asp. Co. vs. St. Joseph*, 183 Mo., l. c. 458; *Heman Const. Co. vs. Wabash R. R.*, 206 Mo., 172.

Hence the compensation clause under eminent domain for property taken, uniformity clause, taxation according to value clause, etc., do not affect such legislation. See cases cited above, especially *Meier vs. St. Louis* (uniformity clause, etc.); *Keith vs. Bingham* (eminent domain and compensation inapplicable); *Heman Const. Co. vs. Wabash*, supra (uniformity clause, etc.).

Constitutional provisions of exemptions from taxations do not apply to special taxation. *Clinton vs. Co.*, 115 Mo., 557.

Statutory exemption of a company or association from "all taxes" does not include exemption from special assessments. *Sheehan vs. Good Samaritan Hosp.*, 50 Mo., 155; *State ex rel. vs. Kansas City*, 89 Mo., 34, 39; *Railroad vs. Decatur*, 147 U. S., 190.

Church property is subject to it as any other. *Lockwood vs. St. Louis*, 24 Mo., 20.

The city can not enter into an agreement that property shall not be subject to special taxation; such agreement is void. *Vrana vs. St. Louis*, 164 Mo., 146.

Being "a public highway" does not exempt railway property. *Gilsonite Construction Co. vs. Railroad*, 240 Mo., 650; *Nevada vs. Eddy*, 123 Mo., 546, 560; *Heman Const. Co. vs. Wabash R. Co.*, 206 Mo., 172; see also *Railroad vs. Decatur*, 147 U. S., 190.

It was held by the Court of Appeals that the lien could not be charged against the abutting right of way of a railroad company (*Sweeney vs. Railroad*, 54 Mo. App., 265. See also *Bank vs. Haywood*, 62 Mo. App., 265) but the supreme court in *Heman Const. Co. vs. Wabash R. Co.*, supra, expressly overruled that case and holds that the railway property is subject to special taxation like any other. Railroad property in cities liable to special taxation as in case of other property and persons. *Session Laws 1907*, pp. 92-93.

So in case of burial grounds, *Laws 1907*, p. 86. See *Mullins vs. Cemetery Assn.*, 239 Mo., 631 (*Kansas City Charter*).

But public property, held for public uses, is not subject to a special tax, since it can not be held therefor, except in so far as the law making power so designates. *St. Louis vs. Brown*, 155 Mo., 545, 560; *Barber Asp. Co. vs. St. Joseph*, 183 Mo., 451, 455.

The provisions of the U. S. Constitution are generally not applicable to protect against special taxation. *French vs. Barber Asp. Co.*, 181 U. S., 394, reviewing the prior cases in that court, and affirming s. c. 158 Mo., 534, and explaining and interpreting the case of *Norwood vs. Baker*, 172 U. S., 269. In the last case (subject to the later modification as explained by the U. S. Supreme Court) the limits were pointed out beyond which the courts would annul special taxation as void for unconstitutionality where same was unreasonably oppressive in its operation. See vigorous dissenting opinions as well as majority opinions in both the above cases in U. S. Supreme Court. The limitations put on the *Norwood-Baker* case have been followed in subsequent decisions.

A law is not unconstitutional because it makes it possible that the assessment for benefits is greater than the benefits can possibly be. *Railroad vs. Barber Asp. Co.*, 197 U. S., 430, 433.

The city is not entitled to judgment assessing damages and benefits against a property owner, incident to the grading of a street, if the grading of the street will not result in any benefit to the property in the benefit district or be of any use to the public. *Kansas City vs. Frisco Railroad Co.*, 230 Mo., 369.

Front foot tax under former provisions upheld. *Paving Co. vs. Peck*, 186 Mo., 506, 515-516; *Paving Co. vs. Munn*, 185 Mo., 552, 563 (*Kansas City*); *French vs. Barber Asphalt Co.*, 181 U. S., 324, affirming s. c. 158 Mo., 534; *Heman vs. Gilliam*, 171 Mo., 258, 264; *Farrar vs. St. Louis*, 80 Mo., 379, and cases cited.

Under the 1876 charter amendment only one-fourth of the entire cost

was assessed according to the ground fronting or adjoining on the improved street; this includes all lots abutting the improved street, whether the latter be the main street upon which they "front," or a side street which they "adjoin," and the pro rata is independent of the depth of the lot. *Collier Est. vs. Paving Co.*, 180 Mo., 362, 374.

This has now been changed to one-third. Art. XXII., Sec. 10.

Area district. The validity of both the front foot and area district is settled beyond question. *Collier Estate vs. Paving Co.*, 180 Mo., 362, 374; *Prior vs. Const. Co.*, 170 Mo., 349, 448, and cases cited. *Farrar vs. St. Louis*, 80 Mo., 379, 393 (holding that the city "might adopt any method in apportioning the cost which the legislature could adopt"); *St. Joseph vs. Farrell*, 106 Mo., 437.

The benefit district, under the new charter provisions, and the method of ascertaining same, has received a full and elaborate discussion in the case of *Collier Est. vs. Western Pav. Co.*, 180 Mo., 362, decided by the court in banc; the court points out the general midway line rule to be observed under the new provisions and under what conditions the same is altered by the exception thereto made.

The midway line is to be determined regardless as to whether the next parallel street is or is not within 600 feet of the street to be improved. *Construction Co. vs. Shovel Co.*, 211 Mo., 524.

The words "fronting," "adjoining," and "abutting" as used in the amendment, are not synonymous. *Collier Est. vs. Paving Co.*, supra.

As to what is abutting property, see *Joplin ex rel. vs. Freeman*, 127 Mo. App., 717.

In the exception to the "midway line" in the charter which provides that "if the property adjoining the street to be improved is divided into lots, the district line shall be so drawn as to include the entire depth of all lots fronting on the street to be improved," etc., the words "fronting on the street to be improved" refer only to the street on which the buildings front. *Collier Est. vs. Paving Co.*, 180 Mo., 362; *Meier vs. St. Louis*, 180 Mo., 362, 410 (the court observing that it did not modify the case of *Wolfert vs. St. Louis*, 115 Mo., 139, in a case where applicable).

An assessment of so much per square foot in the district is not illegal because due to a converging street some lots are deeper than others. *Gilsonite Co. vs. St. Louis Fair Assn.*, 231 Mo., 589.

Definition of "lot." *Collier Est. vs. Paving Co.*, 180 Mo., 362.

The benefit district for platted lots (under the 1876 charter), which lots end on the midway line, extends only to such midway line, although the owner disregarded the lot lines and for residence purposes use them as one lot extending beyond the midway line and from street to street. *State ex rel. vs. Paving Co.*, 183 Mo., 230; *Collier Est. vs. Paving Co.*, 180 Mo., 362; *State ex rel. vs. Reber*, 234 Mo., 110.

Where the platted lots extend beyond the midway line the benefit district should include them to their entire depth, deviating to that extent. *State ex rel. vs. Paving Co.*, 183 Mo., 230; *State ex rel. vs. St. Louis*, 211 Mo., 591.

Where the tract fronting the street is unplatted (or if so, the platting is unrecorded) only that part between the improved street and the midway line to the next parallel street should be included. *State ex rel. vs. Paving Co.*, 183 Mo., 230; *Collier Est. vs. Paving Co.*, 180 Mo., 362; *Meier vs. St. Louis*, 180 Mo., 391.

To be a parallel street it is not necessary that it should be one that parallels the street to be improved for the whole length of the improvement. *Construction Co. vs. Shovel Co.*, 211 Mo., 524.

Under the old provision a judgment declaring liens against two lots in aggregate, where suit brought on two bills against two different lots belonging to same person, is erroneous. *Brockschmidt vs. Cavender* (memo. opin.), 3 Mo. App., 568.

If several contiguous lots are treated as one lot the assessment is void and will not authorize a separate judgment as to each or against the whole. *Christian vs. Taussig*, 8 Mo. App. (memo. opin.), 602.

Unless the two lots are used as one, in which case they may be treated as one lot in assessing special tax bills against them. *Fruin vs. Meredith*, 145 Mo. App., 586, whether improved or not. *Loevy vs. Const. Co.*, 64 Mo. App., 430; *Hill-O'Meara vs. Sessinghaus*, 106 Mo. App., 163, and cases cited.

Actions on special tax bills, essentials thereof and incidents thereto, etc., see notes to Sec. 4, Art. XXIII.

Sec. 6. At any time after the commissioners file their report the city may pay into court the amount of damages assessed, less benefits, if any, and thereupon it shall be entitled to take possession of

or damage the property, assuming the lien of all general taxes not then payable on property actually appropriated.

Sec. 7. Within twenty days from the filing of the commissioner's report, exceptions in writing thereto may be filed by any party interested; and upon such exceptions the court shall review the report and may order, on cause shown, a new assessment by other commissioners, or make such other orders thereon as justice may require. The court shall hear and dispose of such exceptions with all reasonable speed and may itself assess benefits anew.

On exceptions to the report the latter is presumptively correct; the proceeding to review is not entirely *de novo* and, while the court must hear evidence as to the correctness of the valuation of the commissioners, the same will not be disturbed unless clearly shown to be inadequate or excessive. *St. Louis vs. Abeln*, 170 Mo., 318, and cases referred to in the opinion.

A *fortiori* the supreme court will not disturb the findings of fact by the circuit court in affirming the report. *St. Louis vs. Wetzels*, 110 Mo., 260, 264-265.

On exception the commissioners are competent witnesses. *St. Louis vs. Abeln*, 170 Mo., 318.

The owner against whom benefits are assessed may except to the report on the ground that the ordinance upon which the proceeding is founded is void. *St. Louis vs. Cruikshank*, 16 Mo. App., 495.

Exceptions may be filed by leave of the court after ten days, if good cause is shown, and by contesting such exceptions the city waives the irregularity after an adverse ruling. *St. Louis vs. Weber*, 140 Mo., 515, 521.

If improperly filed out of time, such exceptions, as in other cases, may be stricken out. *St. Louis vs. Lang*, 131 Mo., 1 c. 421.

Modification of report. The court may modify the report under this section by cutting down the benefits assessed and adding the amount to that assessed against the city, and this is not a violation of the landowner's right to have damages assessed by a jury or commission of freeholders. *St. Louis vs. Lawton*, 189 Mo., 474. The court may cut down or modify as to some or all the assessment of benefits, but not as to the damages; and the action of the court with respect to the assessments of benefits in ordering a new appraisal or not is largely discretionary, and the appellate courts will only set same aside in case of abuse. *St. Louis vs. Buss*, 159 Mo., 9; *St. Louis vs. Lawton*, *supra*.

Sec. 8. The court upon approving the commissioner's report shall render final judgment thereon reciting the report and adjudging that the city have and hold the property petitioned for, describing the same, for the purposes specified, upon payment of the damages less the benefits assessed in each instance; that so much of the report as is a judgment for benefits against specific property be a lien on such property for ten years from entry of the judgment, and prior to all other liens thereon; and that the city recover the respective benefits in excess of damages assessed in each instance against private property with interest from date of judgment and have execution therefor. The clerk shall forthwith make and deliver a certified copy of such judgment to the comptroller, who shall record the same in a book kept and conveniently indexed for that purpose. The comptroller may, forthwith, and if no appeal be taken from such final judgment, he shall, at the expiration of the time for such appeal, forward a copy of the judgment to the board of aldermen; and within sixty days after the receipt of such copy, unless an appeal is pending, and, in no event later than sixty days after disposition of all appeals, the board of aldermen shall make an appropriation for the payment out of the city treasury of the

damages assessed in favor of each party entitled less his benefits as determined by such final judgment, and the city treasurer, on warrant of the comptroller, shall cause payment to be made to the several parties entitled or into court for their use, as the case may require.

Should the board of aldermen fail to make such an appropriation the judgment for damages shall be collected by the owners concerned as other judgments against the city are collected; and if any part of such assessment of benefits be not paid when due, special execution shall issue on request of the comptroller against the property charged with the lien, and proceedings thereunder shall conform, as near as may be, to the proceedings under special executions on ordinary judgments foreclosing liens on lands.

Should any such final judgment be reversed on appeal and a new assessment be ordered, the city or any defendant shall have judgment for any excess due by reason of payment having been made by such party under a prior final judgment in the cause.

Lien. As to right of the city to create a lien on private property being dependent on strict compliance with legal provisions, see note to Art XXIII., Sec. 1.

It was at one time held that the fact that Sec. 5 of the 1876 charter provided that the assessment shall be a lien, did not show that it contemplated any special tax bill at all or any subsequent suit; and the right to recover the amount was held not barred in five years, but in ten, as any other judgment, and the lien of that judgment expires in three years, like any other judgment lien. *Eyssell vs. St. Louis*, 168 Mo., 607, 619, followed in subsequent cases. It, therefore, followed that execution could be had without any special tax bill. But the decision in the *Eyssell* case was expressly overruled in so far as it held that execution or *scire facias* could be issued for benefits assessed in the original condemnation proceeding, or that suit need not be brought on a special tax bill thereafter regularly issued in accordance with the legal provisions governing the same. *St. Louis vs. Brinckwirth*, 204 Mo., 280.

Conclusiveness of the proceedings is the same as in case of any other judgment. As to the effect thereof and what may not be retried in the proceeding to enforce a tax bill for benefits assessed, see authorities in note to Sec. 1 of this article.

Appeal. Until the court acts finally upon the report of the commissioners no appeal can be taken. *St. Louis vs. Thomas*, 100 Mo., 223; see also 168 Mo., 1. c. 615. As to what is a final judgment in street opening case so as to authorize appeal, see *State ex rel. vs. Klein*, 140 Mo., 502; *Martin vs. St. Louis*, 139 Mo., 1. c. 261; *St. Louis vs. Nelson*, 169 Mo., 461.

Appeal after interplea by contending claimants, see Section 8 of this article.

Compensation for damages can not be claimed until final action approving the report. *Whyte vs. Kansas City*, 22 Mo. App., 409. Even thereafter a refusal of the board of aldermen to appropriate the money to pay the damages, operates as a refusal by the city to take the property; and such appropriation must be by ordinance, subject to veto by the mayor. *Silvester vs. St. Louis*, 164 Mo., 601.

Jurisdiction on appeal in condemnation proceedings is in the Supreme Court, as title to realty is involved, whatever may be the amount of damages awarded. *Kansas City vs. Railroad*, 187 Mo., 146, 151, and cases cited; *Tarkio vs. Clark*, 186 Mo., 285, 294.

Action on special tax bill against property does not involve title so as to confer jurisdiction on Supreme Court. *Ross vs. Gates*, 183 Mo., 338; *State ex rel. vs. Smith*, 177 Mo., 69. Unless a constitutional question is raised. *Curtice vs. Schmidt*, 202 Mo., 703, following prior cases.

Sec. 9. The losing party shall pay the costs caused by litigation subsequent to the filing of the commissioners' report and the city shall pay all other costs, including the compensation of the commissioners, which shall be five dollars per day for each commis-

sioner for not exceeding five days in any one action unless the court makes an order allowing further time at like compensation.

For ordinance provision, see Rev. Code, 1912, Sec. 1073, and note thereto. Before the amendment to the 1876 charter adopted October 22, 1901 (under ordinance 20444), when the provision was that there should be a "reasonable compensation," it was held that an ordinance fixing a definite sum of three dollars per day, was void, the compensation being required to be ascertained by the court. *Green vs. St. Louis*, 106 Mo., 454.

Payment of costs to filing of report does not include attorneys' fees, expert witnesses, developing character of deposit on lands, etc., but only the ordinary fees. *St. Louis vs. Meintz*, 107 Mo., 611. See further on this point the recent cases cited in the next section, discussing what are costs where the proceeding is dismissed by the city, etc.

Sec. 10. If the city dismisses any action for condemnation for any reason other than defect in the proceedings, it shall not begin a like action within ten years after such dismissal, unless upon the petition of the owners of three-fifths of the property to be taken or upon condition that the city shall pay all the damages assessed therein.

The disapproval of the commissioners' report by the assembly does not of itself operate as a dismissal of the case, and a dismissal in court is required to end the cause. *St. Louis vs. Lawton*, 189 Mo., 474, 483.

The object in permitting the city to dismiss after the report, giving the city counselor time to report to the assembly, etc., is to enable the cost of the improvements to be ascertained and if too great to permit the public to abandon the same, and as a result the city can not again tie up the property by another proceeding except on the terms pointed out. *Eysell vs. St. Louis*, 168 Mo., 607, 617. A refusal by the board of aldermen to appropriate the damages assessed operates to dismiss the proceedings (note to Section 7).

Upon the dismissal by the city of the condemnation proceedings, the city (though it is to pay costs) is not liable to the land owner for attorneys' fees, expert witness fees, etc., incurred in defending the case and protecting his rights, unless it is alleged and proved that the proceedings were needlessly, wrongfully, and vexatiously continued against the land owner's protest when within the power of the city to dismiss and avoid such injury. *Lester Real Estate Co. vs. St. Louis*, 170 Mo., 31; *Brewing Ass'n vs. St. Louis*, 168 Mo., 37, and cases cited. See as to costs up to filing of report of commissioners the preceding section, and note thereto.

Voluntary dismissal is not evidence of wrongful institution of such proceedings. *Simpson vs. Kansas City*, 111 Mo., 237.

Under a charter permitting the repeal of the ordinance providing for the proposed improvement it is held that in such case when new proceedings are brought the former assessment of benefits and damages is without any effect. *Kansas City vs. Mulkey*, 176 Mo., 223.

Refusal to proceed by the city leaves the court nothing to do but dismiss the proceedings. *St. Louis vs. Weber*, 140 Mo., 515, 522-523.

Sec. 11. In establishing, opening, and widening boulevards and converting streets into boulevards or parkways, compensation shall be allowed to owners of property abutting thereon for damages occasioned by any limitation that may be put upon the owner's use of such property; and the city may regulate by ordinance the character of traffic and vehicles that shall be permitted on boulevards or parkways, prohibit the erection of any structure on property abutting on a boulevard or parkway outside a specified building line, and forbid the use of any property so abutting for all or any business purposes. An ordinance establishing a boulevard or parkway may be repealed, upon recommendation of the board of public service, and thereupon the boulevard or parkway shall become a street, which, together with the property abutting thereon, shall be free from all restrictions imposed by the repealed ordi-

nance. Damages and benefits resulting from such repeal after the boulevard or parkway has been opened shall be ascertained and paid as herein provided for establishing boulevards or parkways.

Boulevards. An ordinance providing that all houses fronting on a certain street shall be used for residences only, and no business vocation shall be allowed therein, is void as an invasion of personal rights. *St. Louis vs. Dorr*, 145 Mo., 466, 472, 485; and an act of the legislature providing for establishing a building line by the city to which all buildings must conform, without providing for compensation, is unconstitutional. *St. Louis vs. Hill*, 116 Mo., 527.

The assembly may establish different building lines along the same boulevard; but an ordinance which fixes a line and exempts certain properties is void. *City of St. Louis vs. Handlan*, 145 Southw., 421.

Sec. 12. When the city takes or damages private property for a public use other than those enumerated in Section 4 of this article, all damages shall be ascertained as hereinbefore provided and shall be paid by the city.

Where condemnation is authorized only in case no agreement can be otherwise attained, the proceeding to condemn must show such inability to agree. *Graf vs. St. Louis*, 8 Mo. App., 562. See other cases cited in note to Sec. 1 of this article.

For power of the city to use private water mains in the public street, see note to Art. XIII., Sec. 11.

Sec. 13. The vacation of highways, streets, boulevards, parkways, and alleys shall be provided for by ordinance recommended by the board of public service, and easements and rights therein shall be condemned and the special damage and benefits caused thereby shall be ascertained and assessed, in the manner, by the proceedings and according to the rules hereinbefore prescribed as to other appropriating or damaging; provided, that benefits sufficient to pay all damages shall be assessed against the lots or parcels of land abutting the highway, street, boulevard, parkway or alley to be vacated.

Sec. 14 Nothing herein shall limit the power of the city by ordinance, recommended by the board of public service, to acquire property by private purchase, or to vacate any highway, street, boulevard, parkway, or alley without proceeding hereunder when the owners of all property specially damaged petition therefor and waive all damages.

Sec. 15. Ordinances for appropriating or damaging property for markets, public squares, public parks, and other like public uses and improvements may provide for payment of the special assessments made on lands specially benefited by such uses and improvements in one installment or in equal annual installments not to exceed seven in number, in which event the judgments shall so recite; such judgments shall bear interest payable annually at the rate of six per centum per annum on any unpaid part thereof from entry until paid, but any part thereof not paid when due shall thereafter bear interest at the rate of eight per centum per annum; and for the purpose of anticipating the collection of such judgments the city may issue and sell local improvement bonds, following the procedure, as far as the same is applicable, provided in

Article XXIV. for bonds issued in anticipation of the collection of special assessments to pay for local improvements; provided, that the city shall not be liable to pay bonds herein provided for, but the same shall be payable solely out of the collections of the particular judgments.

Payment into court and interest—appeal after Interplea by different claimants. *St. Louis vs. Nelson*, 108 Mo. App., 210.

By session laws 1907, p. 118, it was provided that in cities of over 100,000 the city could pay into court the money awarded as damages and take possession of the property and proceed with the improvement contemplated.

If the ownership of the property is in dispute and the city wishes to avoid payment of interest the money should be paid into court. Otherwise the city is required to pay lawful interest for the time subsequent to the ascertainment of the value of the land taken; interest is allowable as in case of any other judgment, and not from the time the city takes possession. *Martin vs. St. Louis*, 139 Mo., 246, 261, with discussion by the court.

Where the ownership of the funds awarded in condemnation is in controversy the city has the right to pay same into court; and when the city is sued for the amount it may file an answer in the nature of an interpleader, and one claiming to be the owner may enter voluntary appearance and assert his claim. *Hilton vs. St. Louis*, 99 Mo., 199.

Under the charter of 1853 where the title to the land taken for street openings was in dispute between parties, no cause of action against the city accrued until the question of title was determined by the proper court. *Soulard vs. St. Louis*, 40 Mo., 144.

Sec. 16. Whenever it may lawfully be done, the board of aldermen, in the ordinance providing for the appropriation of private property or any easement or use therein for any highway, street, boulevard, parkway, park, wharf, bridge, viaduct, subway, tunnel, or sewer, or providing for any public work or improvement which will damage or benefit private property, may provide for the appropriation in fee by the city of private property or any easement or use therein in excess of that actually required for such specific purpose, and in the same or a different ordinance may authorize the sale of such excess for value with or without restrictions. Such excess shall be condemned and compensation therefor ascertained and rendered in the same proceeding, and in the same manner as near as may be, as the property, easement, or use actually needed as aforesaid; provided, that the value of such excess shall be paid for by the city.

As to condemnation for water works, see Art. I., Sec. 1, clauses 9, 11, 18; Art. XIII., Sec. 11.

A public park is such a public use as will authorize condemnation of private property to establish the same. See note at page 398, R. C., 1912. So a wharf. See Art. I., Sec. 1, clauses 14, 16, 9, 11, and cases in note at p. 881, R. C., 1912.

ARTICLE XXII.**Public Work.**

Section 1. No ordinance for public work or improvements of any kind, or repairs thereof, shall be adopted, unless prepared and recommended by the board of public service with an estimate of the cost endorsed thereon.

For ordinance provisions concerning the advertisements of public improvements and the awarding of contracts, see Rev. Code, 1912, Secs. 241-260, inclusive; also Secs. 1229, 1235.

Under the charter provisions (Art. XXV., Sec. 9) neither the board of aldermen nor a committee thereof has authority, but the board of public service alone is authorized, to let contracts (Art. XXII., Sec. 4). See cases below cited. The water division has "under its special charge the operation and maintenance of the waterworks and of all facilities for the acquisition and distribution of water" (Art. XIII., Sec. 11). All contracts must be either signed or countersigned by the comptroller (Art. XXV., Sec. 9). Art. XV., Sec. 2. The supply commissioner purchases all articles needed by the city in its departments, etc. Art. XV., Secs. 29-30; but the chief of the fire department in emergencies may make certain purchases with the approval of the director of public safety. Art. XIII., Sec. 15 (d). So, also, may the health commissioner, with the approval of the director of public welfare and the mayor, "whenever any malignant infectious or contagious disease is prevalent in the city." Art. XIII., Sec. 14 (a). All printing and binding is contracted for by the supply commissioner, on public lettings, with provision for temporary contracts, etc. Art. XV., Secs. 29-30.

What is public work. Under the provision that the B. P. S. is to let all contracts for public work, the board of health has no power to contract for removal of garbage, and such a contract is void. *State vs. Butler*, 178 Mo., 272. See as to garbage ordinances, Rev. Code, 1912, Chapter 12, Art. X., and see notes thereto.

A contract for erecting boxes on the streets for waste paper is public work and must emanate from the B. P. S. or be void. *State ex rel. vs. St. Louis*, 161 Mo., 371.

An ordinance authorizing the present purchase of existent property (water-pipe laid by citizens with the city's consent) can not be considered as public work within the meaning of this section. *State ex rel. vs. St. Louis*, 169 Mo., 31, 37.

Sec. 2. Such ordinances shall authorize the particular work or improvement; specify the general character and extent thereof, the material to be used therein and in the alternative if desirable; the manner and regulations under which it shall be executed; the term for which it shall be guaranteed, if at all; the fund or source from which payment shall be made; that it shall be done in accordance with detailed plans and specifications finally adopted and approved by the board of public service before bids are advertised therefor; and shall contain a specific appropriation of an amount sufficient to pay the city's part of the estimated cost; provided that emergency work and repairs requiring prompt attention may be done under supervision of the board of public service as provided by general ordinance.

Ordinances may provide for a greater work or improvement than can be paid for at the time out of an available fund in the city treasury, in which event they shall provide that the work be let and done in parts as appropriations are made therefor.

Sec. 3. Before the board of public service shall recommend an ordinance for any public work or improvement, including the construction or other improvement of any public highway, street,

boulevard, parkway, alley, sidewalk, or sewer, or any part thereof, to be paid for by special assessments, the board of aldermen, on recommendation of the board of public service, shall establish a benefit or taxing district, and as to a sewer shall establish or shall have established a sewer district or joint-sewer district, against the property in which it is proposed to assess benefits for the payment in whole or in part of the cost and expense of such work or improvement; and the board of public service shall thereupon designate a day on which it will consider the projected work or improvement and shall give two weeks' public notice in the paper or papers doing the city publishing, of the time, place and matter to be considered, and of the estimated cost of the work or improvement, which estimate may cover several classes of material.

Within three days after such hearing is concluded, the board shall file in its office its decision, stating the class or classes of material and the work or improvement determined upon, if any. If within eighteen days after such decision the owners of the greater area of the land in such district shall file in the office of the board of public service their written remonstrance against the proposed work or improvement, the board, at its next meeting, shall reconsider and either reverse its action or transmit to the board of aldermen the ordinance authorizing the proposed work or improvement, together with said remonstrance.

Ordinance provisions upon street constructions and repairs (and preventing obstructions), see Rev. Code, 1912, Secs. 1075-1134; see also as to duties of B. P. S. recommending ordinances Rev. Code, 1912, Secs. 193, 199; and what conditions to be contained in contracts let by board Rev. Code, 1912, Secs. 2456 and 199 et seq.

For distinction between exercise of eminent domain by taking property for a public use such as a street and the exercise of the taxing power by raising funds to pay for property so taken and, also, for distinction between issuance of tax bills for benefits because of street openings and tax bills for public improvements, see note to Sec. 1, Art. XXI.; also, Keith vs. Birmingham, 100 Mo., 300; St. Louis vs. Buss, 159 Mo., 9, 12; Burgess, J., in Heman Const. Co. vs. Wabash, 206 Mo., 172.

As to the strictness with which the legal conditions precedent to imposition of special taxation for street construction, etc., and the contract provisions, must be complied with, see in connection herewith notes to Art. XXIII. As to same respecting street openings and benefit assessments therefor, see notes to Art. XXI.

The validity of a similar section in the 1876 charter substantially identical with this was attacked as being unconstitutional on a number of grounds, but it was sustained as valid in all respects. Gilsonite Co. vs. St. Louis Fair Assn., 231 Mo., 89; Construction Company vs. Shovel Company, 211 Mo., 524; Meier vs. St. Louis, 180 Mo., 391, 408, and cases cited.

The notice to the property owners of the proposed meeting of the board is sufficient when naming a day, hour, and place of meeting for the purpose of considering the matter of reconstructing with asphaltum certain designated streets, even though a particular kind of asphaltum had already been determined on. Verdin vs. St. Louis, 131 Mo., 26, 81, et seq.; see Sherwood, J., on p. 158, et seq.

The notice to the property owners of the material to be used is sufficient, if the published notice refers to the specifications on file in the office of the board. Swift vs. St. Louis, 180 Mo., 80, 96.

A notice required to be published a certain number of days may include Sundays. Barber Asphalt Co. vs. Muchenberger, 105 Mo. App., 47; Clapton vs. Taylor, 49 Mo. App., 117, 126; Curtice vs. Schmidt, 202 Mo., 703.

Notice of the letting. See note to Sec. 4 of this article.

Owner estopped to dispute benefit or necessity of work. Where the taxing district is fixed by valid legislation, as is also the apportionment of the cost, the owner of the property taxed can not be heard to contend in court

that his property was not in fact benefited, that being a legislative question. *Meier vs. St. Louis*, 180 Mo., 391, 409, and cases cited; *Gilsonite Co. vs. St. Louis Fair Assn.*, 231 Mo., 589; *Mexico vs. Lakenan*, 129 Mo. App., 180; *Prior vs. Construction Co.*, 170 Mo., 439, 451, and cases cited; *French vs. Asphalt Co.*, 181 U. S., 324; *Railroad vs. Barber Asphalt Co.*, 197 U. S., 430, 433.

Nor that there was no necessity for the construction or reconstruction of the pavement, that being a legislative question, not reviewable in the absence of bad faith. *Heman vs. Franklin*, 99 Mo. App., 346; *Skinker vs. Heman*, 148 Mo., 349; *Heman vs. Schulte*, 166 Mo., 409; *McCormick vs. Patchin*, 53 Mo., 33 (holding the power to pave or repave is a continuing one to be exercised whenever the city thinks necessary); *Heman vs. Ring*, 85 Mo. App., 231, and cases cited. But as to when the courts will review the legislative action of the board of aldermen, and how far, see authorities in note to Art. IV., Sec. 1.

Nor in an action on a special tax bill for benefits assessed on account of a street opening or widening, can the defense be raised that there was no benefit, nor adequate compensation, nor any other question that could have been raised in the original cause; this is *res judicata* as to such matters. See cases on this point in note to Sec. 1 of Art. XXI.

Where an ordinance is fair on its face, objections as to methods adopted or that the ordinance is void for want of authority of the city, or for fraud or collusion, should be shown in a timely suit for injunctive relief. *Heman vs. Ring*, 85 Mo. App., 231.

Maintenance clause or work guaranteed and kept in repair by contractors. See notes to next section of this article.

Special taxation for construction of sidewalks. As to general ordinance for width of sidewalks, see Rev. Code, 1912, Sec. 1090. The tax bill is not void because the ordinance does not prescribe the width of the walk, if the suit is not for the making thereof. The construction may be done by one contractor and the paving by another. Nor is the tax bill void if the president of the board does not personally compute, levy, and assess the cost, if he signs the tax bill. *Heman Const. Co. vs. Loevy*, 179 Mo., 455; (64 Mo. App., 1. c. 434).

Determination of width of sidewalks can not be delegated. *Ramsey vs. Field*, 115 Mo. App., 620.

Where the paving is to be done by separate contractors for different work (one for the street, the other for the sidewalk) the tax bills may be issued on the completion of either to that contractor. *Heman vs. Loevy*, 179 Mo., 455. See Sec. 8 of this article.

Special taxation for abatement of nuisances. See Art. XXV., Sec. 3; and Art. XIII., Sec. 14. Rev. Code, 1912, Secs. 869, 870, 872.

Partial completion insufficient. A city can not partially complete the improvement called for by ordinance and issue tax bills therefor before full completion of the contract. *Independence vs. Gates*, 110 Mo., 374, 383; *Heman Const. Co. vs. Loevy*, 64 Mo. App., 1. c. 437-438 (reversed in 179 Mo., 455 *supra*, because there were two contracts and the bill was issued as to the completed work under the first, as indicated in the preceding paragraph of this note). *McGrath vs. Clemens*, 49 Mo., 552.

A tax bill will not be invalidated merely because some of the details of the work were not strictly in accordance with the specifications of the contract. *Porter vs. Paving Co.*, 214 Mo., 1.

This applies to the partial fulfillment of the contract; the city has in its legislative discretion the right to provide for the improvement of such parts of a street and at such times, as it sees fit. *Moran vs. Lindell*, 52 Mo., 229; *Stifel vs. McManus*, 74 Mo. App., 558, 562; *Springfield vs. Weaver*, 137 Mo., 1. c. 669. See authorities cited in note to Sec. 1 of Art. XXI. in how far street improvement is legislative and how far ministerial.

That the contractor does not improve the space between railroad tracks, which is a duty imposed by law on the railroad, is no ground to defeat the tax bill. *Farrar vs. St. Louis*, 80 Mo., 1. c. 393; *Bank vs. Hayward*, 62 Mo. App., 550; *Springfield vs. Weaver*, 137 Mo., 650, 668 *et seq.*

An imperfect compliance with the contract will not prevent a recovery for the value of the work as rendered, but only furnish basis for a reduction. See express provision in note to Sec. 5, Art. XXIII.; and as to pro tanto recovery, see also note to Sec. 12, Art. XXII.

Remonstrance. The provision in the charter provides that in case the owners of the major part in area file a remonstrance a two-thirds vote of the B. P. S. is required to recommend the ordinance, otherwise a majority vote.

Where a remonstrance deprives the board of aldermen of power it has no jurisdiction to pass on ordinance to improve. See discussion in *Sedalia vs. Montgomery*, 109 Mo. App., 197, certified to the Supreme Court for final decision as being in conflict with the decisions of the Kansas City Court

of Appeals decisions in *Sedalia vs. Scott*, 104 Mo. App., 575, and *Knopf vs. Co.*, 92 Mo. App., 279.

A finding by the B. P. S. that a majority of the owners had not signed a remonstrance is not conclusive (though it may be *prima facie* evidence) of such fact, which is jurisdictional to the validity of the ordinance passed in pursuance. *Construction Co. vs. Geist*, 37 Mo. App., 509, 514.

It is not necessary that an owner should sign a remonstrance in person; his authorized agent may sign for him. *Construction Co. vs. Geist*, 37 Mo. App., 509, 514, 515.

An administrator not legally in charge of the real estate can not sign as a remonstrator. *Sedalia vs. Montgomery*, 109 Mo. App., 197, 220; *Sedalia vs. Scott*, 104 Mo. App., 595, 604.

For ordinances on this subject, see Rev. Code, 1912, Secs. 199, 200.

For construction of a section substantially like this as it stood prior to the amendment of 1901, see *Heman vs. St. Louis*, 213 Mo., 538.

Sec. 4. All public work, except emergency work or repairs requiring prompt attention, shall be let by the board of public service in pursuance of the ordinance authorizing the same. It shall advertise for bids in the paper or papers doing the city publishing, three times, the last publication to be at least ten days before the day appointed for opening the bids (unless a different time and medium of advertising are prescribed in the ordinance), stating the general nature of the work and the time and place of receiving bids therefor. Bids submitted shall be sealed and accompanied by a cashier's or treasurer's check of a bank or trust company in the city payable to the city treasurer in the amount of the deposit required. Said board shall let the work by contract to the lowest responsible bidder on the plans and specification finally adopted except as herein otherwise provided, first requiring a bond to be approved by it and the comptroller. Said board may reject any or all bids submitted and readvertise the work. Provided, that any ordinance for any public work or improvement to be paid for by special assessment or otherwise may authorize the board of public service to do the same in a manner prescribed in such ordinance without letting a contract therefor.

Letting out work to lowest responsible bidder. (See also Rev. Code, 1912, Secs. 252 et seq.).

This clause is not violated because the contract included provisions of ordinance requiring dressing of all stone to be done in Missouri. See cases under note "Contract provisions" *infra*.

This clause (Sec. 4) is not violated because of the selection by the board of public improvements of a patented cement, manufactured by only one company, as a binding for the macadam used. *Swift vs. St. Louis*, 180 Mo., 80, and authorities cited.

Nor because of the selection of an article of paving exclusively made by a given group of persons, or exclusively within the control of one concern. *Asphalt Co. vs. Hunt*, 100 Mo., 22; *Swift vs. St. Louis*, 180 Mo., 80; *Verdin vs. St. Louis*, 131 Mo., 26, 91, 100, 168; *Paving Co. vs. Field*, 188 Mo., 182.

In *Verdin vs. St. Louis*, 131 Mo., 26, Judge Sherwood points out (pp. 161-164) that Sec. 29 of Art. IV., (new charter, Art. XV., Sec. 29.) of the charter applies exclusively to the supply commissioner, who has no discretion, and that it is independent of Sec. 27 of Art. VI., (new charter, Art. XXII., Sec. 4) which applies to the board of public improvements letting out the contracts to the lowest responsible bidder, thus according discretion. In the one case it is a contract of purchase, in the other for work.

As to discretion in selecting lowest responsible bidder, and the presumption of right acting by the board to the citizens as well as property owners. *Bank vs. Woesten*, 147 Mo., 1. c. 483; *Clapton vs. Taylor*, 49 Mo. App., 1. c. 123 et seq.; *Gibson vs. Owen*, 115 Mo., 258 (allowing award to next lowest bidder without readvertising where the lowest one declines to comply with

the requirements after being selected). Where there is such discretion mandamus will not lie. *State ex rel. vs. McGrath*, 91 Mo., 386 (State printing). Also see cases in notes to Sec. 5, Art. XXIII., as to presumption of right acting by the officials.

Nor is a contract invalidated on the ground of interference with the determination of who is the lowest bidder, or as including terms for repairs with those of construction because it contains a clause that the street or improvement, after construction, shall be maintained by the contractor for a number of years, even when the advertisement for bidders, and contract itself, includes separate terms and conditions for the construction and for the maintenance. *Bank vs. Woesten*, 147 Mo., 467.

That such a provision is not one for repairs but merely for the quality of the work at the outset being sufficiently good to last for the time specified is held in numerous cases cited in notes following:

It was held in *Allen vs. Rogers*, 20 Mo. App., 290, that a contract was not invalidated because of uncertainty as to the lowest bidder because containing a clause that the contractor shall do such extra work as the street commissioner shall direct at a price fixed by the commissioner; the court holding such clause to refer only to work resulting from unforeseen circumstances in carrying out the contract.

That there is but one bid does not, of course, invalidate the contract. *Barber Asp. Co. vs. Hezel*, 76 Mo. App., 1. c. 152.

Where the city has accepted the bid of the lowest bidder, who declines to enter into the contract, and the city declares forfeited the deposit theretofore made by him, the rights of the parties are not affected by the subsequent action of the city council in declaring another the lowest bidder and accepting his bid. *Turner vs. City of Fremont*, 170 Fed., 259.

Mistake in bid; withdrawal of bid by contractor, etc. See *Moffett vs. Rochester*, 173 U. S. 373 (under charter of city of Rochester).

As to lost bid; see *Morley vs. Weakley*, 86 Mo., 451, 457.

Contractor's bond; and also for contract provisions, time for completion of work, etc., see note following.

Notice of letting of a contract for public work, the cost of which is to be collected from the citizens *nolens volens* by special assessment is a condition precedent which must be fairly complied with, whether prescribed by charter or ordinance. *Clapton vs. Taylor*, 49 Mo. App., 117, 126, and cases there cited; *Keane vs. Cushing*, 15 Mo. App., 96; see s. c. 21 Mo. App., 485.

In the computation of time in advertising public lettings, the first day should not be counted. *Michel vs. Taylor*, 143 Mo. App., 683.

Where one of the days of such a publication is Sunday, this does not make the notice illegal. *Clapton vs. Taylor*, supra; *Barber Asp. Co. vs. Muchenberger*, 105 Mo. App., 47; *St. Joseph vs. Landis*, 54 Mo. App., 315, 324.

The publication is not invalid because not published on intervening Sundays if published ten successive week days. *Porter vs. Paving Co.*, 214 Mo., 1.

It is fatal that on the day of the letting there is no publication (at least if there can be no publication on that day). *Clapton vs. Taylor*, supra; *Barber Asp. Co. vs. Muchenberger*, supra (where the last publication was on Sunday, so that there could have been none on the day of opening the bids). A newspaper does not prove itself; the publisher's affidavit is *prima facie* correct; to show that a publication did not take place as therein stated it is not sufficient simply to produce what purports to be a copy of the newspaper, but such copy must be shown to have been intended for circulation. *Ross vs. Gates*, 117 Mo. App., 237, 246 et seq. (discussing also effect of a special or "Four O'clock" edition omitting the advertisement). It was held by the Court of Appeals that where the advertisement for the letting of the contract was had before the expiration of the 10 days after the approval of the ordinance which must elapse before the ordinance goes into effect, the tax bill issued for the work done under the contract was void. *Keane vs. Cushing*, 15 Mo. App., 96; 21 Mo. App., 485; but this case was overruled by the Supreme Court in *Springfield vs. Weaver*, 137 Mo., 650 (holding that under the charter, in that case of Springfield, it was immaterial whether the advertisement preceded or followed the passage of the ordinance).

Delay in the letting does not invalidate the tax bill. *Jaicks vs. Middlesex*, 201 Mo. 111. As to delay by contractor in completing the work, see time for completion of work, infra.

Substantial changes in specifications, by amending ordinance, require readvertising for bids, otherwise tax bills invalid. *City of Maryville vs. Lippmann*, 151 Mo. App., 447.

Execution of contracts. See Art. XXV., Sec. 9, and notes thereto.

Contract provisions. See ordinances Rev. Code, 1912, Secs. 2456, 198 et

seq., 1075 and following. A provision in pursuance of an ordinance that all stone used be dressed in the State of Missouri is valid. *Allen vs. Lab-sap*, 188 Mo., 692, 698; or at least will not make a tax bill void when it is shown that in the particular case competition was not restricted thereby. *St. Louis Quarry Co. vs. Frost*, 90 Mo. App., 677, 689. The ordinance upon which that clause was based was held void in *St. Louis Quarry Co. vs. Von Versen*, 81 Mo. App., 519; it was omitted from the Mun. Code, 1901, and is not incorporated in present contracts, and may presumably be considered as repealed, although no express repealing act has been discovered. See note to Rev. Code, 1912, Sec. 201.

Restriction in contract that laborers work only eight hours per day is valid. *St. Louis Quarry Co. vs. Frost*, 90 Mo. App., 677, 690; *Curtice vs. Schmidt*, 202 Mo., 703. (See Rev. Code, 1912, Sec. 2456, and note thereto; also *Atkin vs. Kansas*, 191 U. S., 207.) See Art. XXV., Sec. 14.

An ordinance for street improvements is not void because it leaves certain details of construction to the discretion of the proper city officials. See cases in note to Sec. 12 of this article.

A provision in a contract for public work that in order to prevent disputes and litigation, the city's commissioner shall determine the amount of the work to be paid for, and shall decide all questions which may arise relative to the execution of the contract, is valid and his estimate will not be set aside except for fraud, partiality, or misapprehension of fact. *McCormick vs. St. Louis*, 166 Mo., 315 (two judges dissenting on the ground that the commissioner had no power to construe the contract).

An agreement between the city and a bidder for public work that a deposit of five per cent of the amount of his bid required to be made by him "shall be considered as liquidated damages" and forfeited to the city if the bidder's proposal is accepted and he fails to enter into a contract is one for liquidated damages and not for a penalty. *Turner vs. City of Fremont*, 170 F., 259.

The power to make improvements and to let contracts therefor and to exact of the contractor a bond for the faithful performance of his contracts necessarily implies the power to do everything necessary for the faithful performance of the work, for the protection of the city and its citizens, and for securing the best and lowest possible bids. Indeed, it is difficult to conceive of any matter of detail incident to the contract and the work, that the city might not require that a private person could require. *St. Louis vs. Von Phul*, 133 Mo., 1. c. 567.

Bond of contractor. (See also Rev. St. 1909, Sec. 1248, and Rev. Code, Sec. 254, as to provisions in favor of material men and laborers in case of municipal contracts.) The bond may be properly conditioned to require the contractor to pay to the proper parties all amounts due for material or labor employed in the performance of the contract; and such provision may be enforced by the persons sought to be benefited thereby. *St. Louis vs. Von Phul*, 133 Mo., 561; *Kansas City vs. Surety Co.*, 196 Mo., 281, 305. See also as to contract of school district to same effect. *School District vs. Livers*, 147 Mo., 580. The city should not sue in its own name but shall use that of the material man. *Bethany vs. Howard*, 149 Mo., 504. The contract between material men and the contractor is independent of the contract between the city and the contractor; the fact that the contract between the city and the contractor may be invalid can have no effect upon the contract between the material men and the contractor; and after the work is done and paid for by the city to the contractor, the latter's sureties on his bond to the city for the benefit of the material men are estopped from claiming the invalidity of the bond and contract with the city. *Kansas City vs. Surety Co.*, 196 Mo., 281, 1. c. 302.

It was held by the Supreme Court in *St. Louis vs. Wright Contracting Co.*, 210 Mo., 491, that the city can not sue as trustee of an express trust for the benefit of property owners on the bond of a contractor who had entered into contract with the city for the grading and paving of streets, but who in violation of his contract refuses to do any work, thus compelling the city to relet the work to another at a higher price, which the property owners have to pay in special tax bills. The form of bond as at present in use in such cases does not explicitly confer on the property owners a right to sue on it, and the court held no such right existed, thereby depriving the property owner of all redress against a contractor who violates the contract made by the city, thus announcing that while the city may bind the owner's property to pay to the contractor for the improvement, yet it has no right to protect him if the contractor violates his agreement to the city.

Time of beginning work. The time for beginning work of street improvement is not of the essence of the contract if the work is completed within the time specified. *Merini vs. Paving Co.*, 125 Mo. App., 623.

Time for completion of work. The tax bill will not be void if the work is completed within a reasonable time, provided no ordinance provisions regulate the time and the contract provides certain deduction to be made

if the work be not completed within a certain specified period, thus manifesting the contemplation of a non-completion in that time. *Paul vs. Burress*, 152 Mo. App., 39; *Brigham vs. Hickman*, 136 Mo. App., 216; *Paul vs. Trust Co.*, 125 Mo. App., 483; *Platte City to use vs. Paxton*, 141 Mo. App., 175; *Allen vs. Labsap*, 188 Mo., 692, 696; *Heman vs. Gilliam*, 171 Mo., 258, 267 et seq., reviewing all the cases distinguishing them, and overruling *Ayers vs. Schmoll*, 86 Mo. App., 349; *Curtice vs. Schmidt*, 202 Mo., 703.

Even under the above conditions if the work is not finished in reasonable time and the contractor does not proceed in reasonably good faith to finish in the time specified in the contract, the tax bill is void. *Schibel vs. Merrill*, 185 Mo., 534, and cases cited.

If the ordinance does provide within what time the work is to be completed, the work must be completed within the time so specified, or the tax bill will be void. *Construction Co. vs. Field*, 157 Mo. App., 577; and this even if the contract in pursuance of such ordinance contains provisions fixing penalties for non-completion in time, or undertakes to extend the time, for the ordinance controls the contract whenever repugnant. *Paving Co. vs. Munn*, 185 Mo., 552, 568, reviewing the cases; and see *Hund vs. Rackliffe*, 192 Mo., 312, 323 et seq. If there is a general ordinance requiring the work to be completed "within the time agreed on" and the contract fixes that time, though the special ordinance providing for the work does not, the tax bill is invalid if not completed according to contract. *Springfield vs. Davis*, 80 Mo. App., 574, as explained and distinguished in *Heman vs. Gilliam*, 171 Mo., loc. cit. 267-268; see also *Hund vs. Rackliffe*, 192 Mo., 312, 323. If the contract contain no time limit but the letting notice did specify a limit, which formed the basis of the bids, such limit will be considered as intended. *Turner vs. Springfield*, 117 Mo. App., 418.

Delays caused by injunctions, bad weather, etc. (when not contracted against) furnish no excuse. *McQuiddy vs. Brannock*, 70 Mo. App., 535, 543-545, approved in *Trust Co. vs. James*, 77 Mo. App., 616; and even when the contract contains a saving provision against delays on account of such matters the tax bills are void if the work is delayed beyond the specified time for reasons other than those excepted. *Springfield vs. Schmook*, 120 Mo. App., 41.

Where the work is not completed within the time required, the municipal assembly can not, after the expiration of such time, extend the time for completion and no valid tax bill can issue; vitality can not be given to an expired and forfeited contract. *Neill vs. Gates*, 152 Mo., 585; *Hund vs. Rackliffe*, 192 Mo., 312, 322 et seq., distinguishing the cases; see also *Spalding vs. Forsee*, 109 Mo. App., 675; *Barber Asp. Co. vs. Ridge*, 169 Mo., 376.

Prior to the expiration of the time fixed for the completion of the work and during the life of the contract, the assembly may enact a valid extension of the time. *Montague vs. Kolkmeyer & Co.*, 138 Mo. App., 288; *Jones vs. Paul*, 136 Mo. App., 524; and in the absence of fraud, the courts will not interfere with the legislative determination as to what is a reasonable extension. *Hund vs. Rackliffe*, 192 Mo., 312, 325; see also *Hilgert vs. Barber Asp. Co.*, 108 Mo. App., 384, 395 et seq., and cases cited. So where no time is fixed and the extension is given before the expiration of a reasonable time. *Sparks vs. Villa*, 99 Mo. App., 489.

Where a charter authorizes the municipal legislative body to fix the time for completion with a proviso for a subsequent extension, an ordinance fixing the time, but providing for additional time allowances as an allowance on account of bad weather, etc., is void. *Rackliffe vs. Peters*, 136 Mo. App., 168.

Delay in the letting of the contract (the terms of the contract being observed by the contractor) after the passage of the ordinance, will not defeat recovery on the tax bill. *Jaicks vs. Middlesex*, 201 Mo., 111.

Guarantee of contractor to maintain pavement in repair for a certain time. For ordinances, see Rev. Code, 1912, Secs. 1075, 1082, also charter preceding section 2 of this article. Such a clause means that the work shall be of such a quality that it will last for the guaranteed time under the ordinary wear and tear incidental to the use of the street or pavement for the purposes intended, and is not a contract to repair. *Asphalt Co. vs. St. Louis*, 188 Mo., 576; *Barber Asphalt Co. vs. Ullman*, 137 Mo., 543, 566; *Bank vs. Woesten*, 147 Mo., 467, 476; *Barber Asp. Co. vs. Hezel*, 155 Mo., 391; *St. Louis Quarry Co. vs. Frost*, 90 Mo. App., 667, 688; *Allen vs. Labsap*, 188 Mo., 692, 703.

Hence where the contract is between the contractor and the owners, the former can not recover against the city for injuries to the pavement, and if he repairs the pavement for injuries caused by the city, he is a mere volunteer. *Asphalt Co. vs. St. Louis*, 188 Mo., 576; and hence payment of a tax bill can not be avoided because of a clause to maintain in repair on the ground that such provision makes the contract one for repair (which is to be paid by the city). See cases supra; also repairs of streets to be paid by city, *infra*.

Board specifies material to be used. The right to select the material of which the paving shall consist rests with the board; and their action is valid, though a material is selected which is owned and controlled by one concern, or of which the whole supply is in the hands of one applicant, although competitive bidding is thereby practically prevented. *Swift vs. St. Louis*, 180 Mo., 80; *Verdin vs. St. Louis*, 131 Mo., 26; *Barber Asp. Co. vs. Hunt*, 100 Mo., 22; *Paving Co. vs. Field*, 188 Mo., 182; *Field vs. Paving Co.*, 194 U. S., 618; *Allen vs. Labsap*, 188 Mo., 692, 702. But in the recent case of *Curtice vs. Schmidt*, 202 Mo., 703, the Supreme Court manifested a distinct tendency not to extend the doctrine of those cases, and held that where the designation is of a material not of such peculiarity as to be manufactured by one concern, then a designation of that material "as manufactured by" a particular concern named, is void because stifling competition and throwing open the door to favoritism; although the court recognizes the doctrine of the former cases to the extent that "if there is a patented article, or an article not patented but in the hands of one person or company, which article is necessary for the public improvement, and there are no other persons having the same general character of material which could be brought into competition, then the municipality is not forced to use other clearly inferior material on account of the requirement for competitive bidding." See also *Trinidad Paving Co. vs. McLord*, 145 Mo. App., 141.

Estimate of cost. Where a statute or charter requires an estimate of the cost of the contemplated work, such estimate is a prerequisite to the letting, and it has been said that the contract must be within the price. *De Soto vs. Showman*, 100 Mo. App., 323, 326, citing several authorities; see also as to the necessity and purpose of an "estimate" and what is an "estimate." *Booneville vs. Rogers*, 125 Mo. App., 142.

As to the effect of the provision in the St. Louis charter, see *Sherwood, J.*, dissenting, in *Verdin vs. St. Louis*, 131 Mo., loc. cit. 133; and in *Hill vs. Swingley*, 159 Mo., 45, 48, referring to Sec. 28 of Article VI. of 1876 charter (new charter, Sec. 2, Art. XXII.) requiring every ordinance for improvements to contain a specific appropriation "based upon an estimate of cost to be endorsed," etc., the court says that "it is very apparent that that clause refers only to contract for work to be paid for out of the public treasury. The limit that is put on the price to be paid is the amount of the specific appropriation, not the estimate submitted," and held that the section did not apply to work to be paid for by special tax against private property affected. See to same effect, *Seibert vs. Cavender*, 3 Mo. App., 421.

Where after introduction an ordinance is submitted to the board of public service improvements by the board of aldermen with certain recommendations, which are adopted by the board of public service and the ordinances returned to the board of aldermen so amended, but without any alteration of the original estimate of cost by the board, and as so resubmitted is passed by the board of aldermen, the original endorsement is sufficient. *Bambrick vs. Campbell*, 37 Mo. App., 460. Nor is a separate estimate required for each street, where a number of streets are included in one ordinance. *Seibert vs. Cavender*, 3 Mo. App., 421. But where the original ordinance is amended so as to include paving of other streets at increased cost and no new estimate is submitted, the ordinance so passed is void as is the tax-bill under it. *Kinealy vs. Gay*, 7 Mo. App., 203.

Repairs of streets to be paid by city. For ordinances on repairs, see Rev. Code, 1912, Sec. 1081 and following.

A contract providing for special deposit by a contractor to maintain his construction work for a certain period is not a contract for repairs (which is required to be paid out of general revenue), but is to insure fidelity for the character of the work in the first instance, and a special tax bill can not be avoided on that ground. See *Allen vs. Labsap*, 188 Mo., 692, 703, and numerous cases cited as to guarantee of contractor, *infra*.

Distinction between rules applicable to streets and those applicable to alleys and sidewalks (before amendment). *Skinker vs. Heman*, 148 Mo., 349, 359, citing the charter provisions before the amendment of the 1876 charter, October 22, 1901.

As to what is to be considered as repairs and what reconstruction, see *Farrell vs. Rammelkamp*, 64 Mo. App., 425, 429; *Perkinson vs. Schnaake*, 108 Mo. App., 255, and cases *infra*.

Repairs must be paid by the city and the city can not shift the cost on the abutting owner by calling the work reconstruction. *O'Meara vs. Green*, 25 Mo. App., 198; and abutting owners are not liable for repairs where the streets were constructed before the locality was taken into the city limits. *O'Meara vs. Green*, 16 Mo. App., 118.

Nor can there be a recovery on a special tax bill for repairs (allowable under former charter provision), where the work was reconstruction. *Farrell vs. Rammelkamp*, 64 Mo. App., 425, 428; the latter requiring an ordinance to authorize the work, but repairs being permissible under the

order of the street commissioner on notice to the owner. *Ritterskamp vs. Stifel*, 59 Mo. App., 510. (See in connection herewith Rev. Code, 1912, Secs. 1095 to 1101.)

Under the old provision which provided that the cost of "paving, guttering and materials . . . shall be charged upon the adjoining property," etc., it was endeavored to charge four lots in one tax bill, one of which adjoined the improved street and all four fronted on a cross street. An aggregate assessment can not be made against all the lots, unless it be shown that all were used as one lot by the owners. *Paving Co. vs. Peck*, 186 Mo., 506. Under that provision (before amendment), there was full authority to charge the cost of paving alleys against the adjoining property. *Heman vs. Gilliam*, 171 Mo., 258, 264.

As to cost to intersections of streets and for "grading," "cross-walks," and "curbing," see *Gibson vs. Kayser*, 16 Mo. App., 404; intersections, *Allen vs. Krenning*, 23 Mo. App., 561.

Sec. 5. All contracts shall recite that they are subject to the charter and that payments thereon of the city's portion shall be limited to the amount of the particular appropriation.

Sec. 6. All contracts for the construction of sewers shall provide that owners of property, with approval of the director of streets and sewers, may make a connection during construction with the sewer or any temporary drain made by the contractor, payment to be made to him for such connection equal to the extra cost caused to him thereby.

Sec. 7. The board of public service shall investigate written complaints that any public work or improvement is not being done according to contract and if well founded the board shall immediately require the contractor to comply with the contract and pay the costs of such investigation.

Sec. 8. The board of public service may let contracts for the grading and for the improvement of any public highway, street, boulevard, parkway, alley, or sidewalk or portions thereof, separately in which event the city may either impose one special assessment to pay for the grading and another to pay for the improvement, or it may pay the cost of the grading and add the same to the cost of such improvement and include the cost of both the grading and improvement in one special assessment, the contractor reimbursing the city for the grading.

Sec. 9. If any property in a benefit or assessment district other than public highways, is not liable to any special assessment herein provided for, the city shall pay the part of the cost of the work or improvement which would otherwise have been assessed against such property.

Sec. 10. Ordinances for grading, regrading, preparing roadbed, placing foundation, building of superstructure, including curb, gutters, roadway, paving and cross-walks, and intersections of public highways, streets, boulevards, and parkways, or for reconstruction of any such work, shall provide for payment therefor by special assessment, as follows: one-third of the entire cost shall be levied and assessed against the lots or parcels of ground abutting on the work or improvement ratably by lineal feet so abutting, and the remainder of the cost shall be levied and assessed ratably by area

against all the lots or parcels of ground within the benefit or taxing district, exclusive of public highways. The improvement of thirty feet of any wharf farthest from the stream may be paid for in like manner or at the city's expense.

Sec. 11. Ordinances for grading, regrading, preparing roadbed, placing foundations, and building of superstructure of all alleys, and all reconstruction and repairs thereof, including intersections of alleys and the crossing of sidewalks in the continuation of alleys, shall provide for payment therefor by special assessment as follows: one-third of the entire cost shall be levied and assessed against the lots or parcels of ground abutting on the work or improvements ratably by lineal feet so abutting, and the remainder of the cost shall be levied and assessed ratably by area against all the lots or parcels of ground abutting such alleys or having access thereto.

Sec. 12. Ordinances for the grading and preparing for and placing the superstructure, of sidewalks or for the regrading and reconstruction thereof, with necessary intersections, shall provide for payment therefor by special assessment levied and assessed against the property abutting thereon; provided that ordinances for grading or regrading of streets and boulevards may include as a part thereof the grading and regrading of the sidewalks thereon.

Nuisances. As to the powers of the city where the nuisance is not caused by the city, but by third persons, see charter, Art. XIII., Sec. 14 (a), Rev. Code, 1912, Secs. 787-895, and notes thereto.

For statutory provisions respecting change of grade. See R. S. 1909, Secs. 9827 et seq., which are set out, with notes, "Laws Specially Applicable to St. Louis," in Secs. 638-643.

Change of grade. Prior to the constitution of 1875 the city in the legitimate exercise of its powers could change the grade by ordinance without being liable for consequential damages, unless the injury could be shown to have resulted from the negligent or improper manner in which the work was done. *St. Louis vs. Gurno*, 12 Mo., 415; *Taylor vs. St. Louis*, 14 Mo., 23; *Hoffmann vs. St. Louis*, 15 Mo., 651. (A contrary decision was made in *Thurston vs. St. Joseph*, 51 Mo., 510, but the former rule was again followed in later cases); *Schattner vs. K. C.*, 53 Mo., 162; *Imler vs. Springfield*, 55 Mo., 119; *Wegman vs. Jefferson City*, 61 Mo., 55; *Stewart vs. Clinton*, 79 Mo., 603; and see dicta in the cases cited *infra*.

To uproot this doctrine the constitution was so amended in 1875 that compensation was required when property was damaged as well as taken for public use; and since that time it is settled law that when property is damaged by establishing the grade of a street, or by raising or lowering the grade already established, it is damaged for public use within the meaning of the Constitution. *Hickman vs. Kansas City*, 120 Mo., 1 c. 116; *Werth vs. Springfield*, 78 Mo., 107, 110; *Householder vs. K. C.*, 83 Mo., 488; *Clemens vs. Ins. Co.*, 184 Mo., 1 c. 53.

It is well settled that the constitutional provision is self-enforcing, and, although the legislature may have enacted no law providing for a mode for ascertainment and payment of the compensation provided for, resort may be had to any common-law action affording an appropriate means of redress. *Hickman vs. Kansas City*, 120 Mo., 110, 117; *Householder vs. K. C.*, 83 Mo., 488; *Keith vs. Bingham*, 100 Mo., 300; *Sheehy vs. Cable Co.*, 94 Mo., 574, 578 et seq.

A statutory remedy purporting to be an exclusive remedy must, in order to be exclusive, be commensurate with the constitutional right and the remedies which by force of the constitution the owner is entitled to for his protection. *Hickman vs. Kansas City*, 120 Mo., 110, 118-119; *Markowitz vs. Kansas City*, 125 Mo., 485.

Under the statutes (see present statutes cited at beginning of this note), the city may institute proceedings for assessment of damages and benefits on change of street grade without the consent of the owners of the property affected. *St. Louis vs. Lang*, 131 Mo., 1 c. 421.

As to what is a final judgment in such a proceeding, and that final

judgment can not be rendered as to some and not others on the commissioner's report, so as to allow an appeal, see *St. Louis vs. Nelson*, 169 Mo., 461.

A railroad company is as much liable as a city for damages in causing a change of grade. *Sheehy vs. Cable Co.*, 94 Mo., 574, 579.

The question of the abandonment of a highway, in a proceeding to enforce a grading ordinance, is a question for a jury. *Kansas City vs. Smith*, 238 Mo., 323.

In an action to enforce a special tax bill for improvements the defense can not be made by the property owner that he has not been paid for the damages caused by the change of grade. The first is an exercise of the taxing power, the latter of eminent domain. Although the city may be liable under the constitution for an improper exercise of the power of eminent domain, yet the defense can not be made in the tax suit. *Springfield vs. Baker*, 56 Mo. App., 637, 640, quoting and following *Keith vs. Birmingham*, 100 Mo., 306. See as to this distinction cases in note to Sec. 1 of Article XXI.

Overflows on private land resulting from inadequate sewer is not taking or damaging property for public use. *Gulath vs. St. Louis*, 179 Mo., 38, 56.

Where the property of a citizen is not taken, and his proprietary rights are not disturbed, but the damages to his property are consequential, due to a change in the grade, the constitutional provision prohibiting taking or damaging of private property without just compensation, does not entitle the owner to damages before the work is done, and he is not entitled to an injunction until the same are ascertained and paid. *Clemens vs. Ins. Co.*, 184 Mo., 46. As to when an injunction will lie, see cases cited in the opinion; also *MacMurray-Judge Iron Co. vs. St. Louis*, 138 Mo., 608.

Although an abutting property owner is entitled under the constitution to be compensated for injury to his property before the improvement can be made and may maintain injunction to enforce his right, yet if the conditions are such that the ordinance providing for the improvement, though unrepealed, can not well be carried into effect, an injunction will not be granted though the plaintiff may have apprehensions, if they are not really well grounded. *Lester Realty Co. vs. St. Louis*, 169 Mo., 227.

While it is true that the owner, since the amendment to the constitution of 1875, is entitled to compensation not only when his property is taken for public use, but also when it is damaged, yet the ground of recovery is his easement or property interest in the street; and the plaintiff, in order to recover, or to bring himself within the amendment, must show a special and peculiar injury to his property, or some easement connected therewith, different in kind from that of others. *Clemens vs. Ins. Co.*, 184 Mo., 46, 54, and cases there cited; *Van De Vere vs. Kansas City*, 107 Mo., 83; *Rude vs. St. Louis*, 93 Mo., 408; *Knapp Stout & Co. vs. St. Louis*, 153 Mo., 572; see also (where a street railroad was constructed). *Rucker vs. Grand Ave. Ry.*, 163 Mo., 1. c. 278; and (steam railroad) *De Geofroy vs. Merchants' Bridge*, 179 Mo., 705 et seq.

In a suit by an abutting owner for damages caused by changing the grade whether the change be from the natural to an artificial or from one artificial to another, the measure of damages is the difference in value of the property before and after the change of grade, less any special benefit not common to all property in the neighborhood, caused by such a change of grade; and this is the rule whether the cost of the improvement be paid by the city or taxed as benefit assessments against the abutting property; the cost of the improvement taxed against the abutting property should not be considered. *Investment Co. vs. St. Joseph*, 191 Mo., 459.

As to measure of damages where access to a highway is cut off, being the difference in market value before and after such cut-off, see also *Slattery vs. St. Louis*, 120 Mo., 183; *Chouteau vs. St. Louis*, 8 Mo. App., 48.

The benefits to be deducted from the damages sustained by the landowner by the taking or damaging his property is only the direct and peculiar benefit that would result in particular to his tract and not the general benefit that his lands would derive in common with the lands of other owners in his neighborhood. *Cole vs. St. Louis*, 132 Mo., 633, 640.

The city is liable for damages in a material change in the grade from the natural surface. *Abercrombie vs. Kansas City*, 149 Mo. App., 539; *Investment Co. vs. St. Joseph*, 191 Mo., 459; *Cole vs. St. Louis*, 132 Mo., 633, 640, and cases cited; *Davis vs. Ry.*, 119 Mo., 180; *Fred vs. Railway*, 65 Mo. App., 121.

The change of grade need not be the whole width of the roadbed. *Stickford vs. St. Louis*, 7 Mo. App., 217; *Quinn vs. City of Columbia*, 152 Mo. App., 511.

Action for damages for changing grade is in nature of trespass; possession alone is sufficient; title need not be shown. *Schrodt vs. St. Joseph*, 109 Mo. App., 627; but see *Clemens vs. Ins. Co.*, 184 Mo., 1. c. 56 et seq.

City not liable in absence of valid ordinance authorizing such change of grade. *McQuarter vs. St. Joseph*, 134 Mo. App., 640; *Gardner vs. St. Joseph*, 96 Mo. App., 657; *Clay vs. Mexico*, 92 Mo. App., 611; *Calvert vs. St. Joseph*, 118 Mo. App., 503. In the absence of an ordinance the officers doing the grading, or assisting or encouraging same, are liable for trespass. *Reed vs. Peck*, 163 Mo., 333 (proceeding where the only authority to grade was a void resolution, not an ordinance). A mere technical departure from the mode in which the power to grade is exercised will not discharge the city, at all events not if such ordinance has been, even impliedly, ratified by the corporate authorities. *Schumacher vs. St. Louis*, 3 Mo. App., 297, 298-299.

An allegation in a petition by a city for assessment of damages for change of grade which alleges the due enactment of an ordinance defining the limits of benefits and damage district affected by a change of grade, inferentially states the passage of an ordinance for the grading of a street in that district, where that would be necessary as a condition precedent to the other ordinance. *St. Louis vs. Lang*, 131 Mo., 412, 420-421.

A party dedicating a street impliedly consents to a slight change of grade so as to make it safe. *Alton vs. Columbia*, 145 Mo. App., 182.

An abutting owner is not estopped to claim damages from change of grade resulting because of grant of street car franchise because he signed a request for such franchise over the street in question. *Fred vs. Cable Co.*, 65 Mo. App., 1. c. 124; nor because the plaintiff, after the grading of the roadbed by the cable company, requests that the grading of the street be finished. *Hickman vs. Kansas City*, 120 Mo., 110, 120.

Damages for change of grade—landlord and tenant. *St. Louis vs. Nelson*, 108 Mo. App., 210.

Damages because of removal of shade trees, when allowed. *Walker vs. Sedalla*, 74 Mo. App., 70. When not. *Colston vs. St. Joseph*, 106 Mo. App., 714; *Scott vs. Marshall*, 110 Mo. App., 178 (condemnation of sidewalk improved by shade trees).

Damages by grading of street may extend to two lots, one of which abuts on the street. *Burde vs. St. Joseph*, 130 Mo. App., 453.

Damages to a building by laying a sewer in an adjoining alley are not recoverable where there would have been no damages to the lot in its natural state, and where the owner was advised of the proposed laying of the sewer in time to protect the building. *Johnson vs. St. Louis*, 172 Fed., 31.

Damages on condemnation of property for public use. See note to Art. XXI., Sec. 1.

The proviso that the highway must have been opened, dedicated or established, according to the provisions of "this Charter and law," comprehends both statutory and common law, and does not exclude a common-law dedication of a street. *McGinnis vs. St. Louis*, 157 Mo., 191, 198.

For ordinances regulating water-pipe connections see Rev. Code, 1912, Secs. 1512-1535, inclusive, as to gas-pipe connections, see Rev. Code, 1912, Secs. 1806, 446, 1089, 1103, 1104. Laying of water-pipe see charter, Art. XIII., Sec. 11.

The ordinance. That an ordinance required to be recommended by the board of public service is void if not enacted in that manner, see cases cited in note below.

The power of a city to impose special taxes can only be exercised by ordinance enacted in the manner prescribed by charter. *Gilsonite Co. vs. Handlan*, 150 Mo. App., 239; *Trenton vs. Coyle*, 107 Mo., 197, 196, and cases cited, *Saxton vs. St. Joseph*, 60 Mo., 153.

In the absence of any evidence to the contrary, it will be presumed that the officers acted rightly in passing an ordinance authorizing an improvement, and that the meeting at which it was passed was properly convened. *Rutherford vs. Hamilton*, 97 Mo., 543, 548-549. As to presumptive regularity in passage of ordinances in general, see cases in note to charter, Art. IV., Sec. 1, and as to presumption that the city officers act rightly in case of tax bills for improvements, see *Asp. Co. vs. Ullman*, 137 Mo., 568, cited in note to Art. XXIII., Sec. 1. Street opening cases, see note to Sec. 1, Art. XXI.

While it is true that the board of aldermen can not delegate legislative duties imposed by the charter, an ordinance for street improvements is not invalid because it leaves details of construction to the discretion of the street commissioner or other proper city officers, to whom some discretion must necessarily be left. *St. Louis vs. Swift*, 180 Mo., 80, 91, 96; *Sheehan vs. Gleeson*, 46 Mo., 100, 104; *Moran vs. Lindell*, 52 Mo., 1. c. 231; *St. Joseph vs. Owen*, 110 Mo., 1. c. 455; *Gallaher vs. Smith*, 55 Mo. App., 116; *Bank vs. Woesten*, 147 Mo., 1. c. 481-482; *St. Louis vs. Von Phul*, 133 Mo., 1. c. 567.

It is sufficient if such matters be regulated by general ordinance, in which case the special ordinance need not set such matters forth. *Loevy*

vs. Construction Co., 65 Mo. App., 430, 434; 179 Mo., 1. c. 465; State ex rel. vs. St. Louis, 56 Mo., 277.

Specifications may in the ordinance be referred to as on file with the proper municipal officer without being embodied in the ordinance. Becker vs. Washington, 94 Mo., 375; Asphalt Co. vs. Ullman, 137 Mo., 543, 570, 571; Dickey vs. Porter, 203 Mo., 1. Swift vs. St. Louis, 180 Mo., 80, 1. c. 96, shows that a like principle applies to the board of public service.

A contract on specification of which a formula not then in existence is to become a portion some time in the future is invalid. City of Independence to use Knoepker, 134 Mo. App., 601; Parker Washington Co. vs. Clinton, 155 Mo. App., 383.

Matters of substance requiring legislative discretion are to be determined by the board of aldermen and can not be delegated to other officials. Sheehan vs. Gleason, *supra*; Ruggles vs. Collier, 43 Mo., 353 (determining what streets should be paved); St. Louis vs. Clemens, 43 Mo., 395; 52 Mo., 133 (determining the dimensions of sewers); King Hill Co. vs. Hamilton, 51 Mo. App., 120 (determining what material paving shall be made of); St. Joseph vs. Wilshire, 47 Mo. App., 125 (material of sewer); but see Gallaher vs. Smith, 55 Mo. App., 116 (material of sidewalk at option of contractor); Ramsey vs. Field, 92 Mo. App., 350 (Kansas City Ct. App., width of sidewalks, but in St. Louis this is determined by general ordinance).

The later charter provisions and decisions have continually enlarged the power of delegation, and attention was called to this as far back as State ex rel. vs. St. Louis, 56 Mo., 277, 281, distinguishing the provisions in force under which Ruggles vs. Collier, *supra*, and St. Louis vs. Clemens, *supra*, were decided. See also Bank vs. Woesten, 147 Mo., 1. c. 481-482; Gibson vs. Owen, 115 Mo., 267.

Formerly a void ordinance could not be validated by legislation after the work was done so as to charge the property owners with the improvements thereunder. St. Louis vs. Clemens, 52 Mo., 133, 144; Dickey vs. Holmes, 109 Mo. App., 721, and see cases in note at page 390, R. C. 1912. However, see new charter provision, Art. XXIII., Sec. 9. Neither can a right of action against the property be taken away by legislation subsequently to the ordinance and contract under which the work was done. Firth vs. Broadhead, 7 Mo. App., 563.

Pro tanto recovery. Ordinances for improvements should be upheld so far as possible in cases of partial validity, where the valid and invalid portions are susceptible of segregation, and a partial recovery allowed. Asphalt Pav. Co. vs. Ullman, 137 Mo., 1. c. 569; Farrar vs. St. Louis, 80 Mo., 1. c. 393; Bond, J., in Steffen vs. Fox, 56 Mo. App., 1. c. 23-24, citing Creamer vs. Bates, 49 Mo., 523; St. Joseph vs. Wilshire, 47 Mo. App., 1. c. 133-134; Neenan vs. Smith, 60 Mo., 292; Springfield vs. Weaver, 137 Mo., 650; Eyer-mann vs. Provenchere, 15 Mo. App., 256, 266; Prendergast vs. Richards, 2 Mo. App., 187; Johnson vs. Duer, 115 Mo., 366.

The charter itself recognizes that the owner can only defend for bad or insufficient work by reduction of the bill, and after tendering a just amount for the work done. See the note to Sec. 4, Art. XXIII.

The ordinance need not contain a provision for advertising for bids. Bambrick vs. Campbell, 37 Mo. App., 460, 465.

An ordinance is not fatally defective because it fails to state the time in which the improvement is to be made. Halsey vs. Richardson, 139 Mo. App., 157.

See amendment to 1876 charter adopted October 22, 1901, submitted by Ordinance 20444.

Where the recommendation of the board of public service is required, it is jurisdictional, and an ordinance without it is invalid. St. Louis vs. Franke, 78 Mo., 41; St. Louis vs. Gleason, 93 Mo., 33, 37 (both these cases under superseded charter provisions, but the principles are still applicable).

Where a majority of the owners remonstrate, it was held (when in such case a unanimous recommendation was required by the then charter) that an ordinance was void, where the board erroneously found that a majority had not remonstrated, such fact could be shown as being jurisdictional. Const. Co. vs. Geist, 37 Mo. App., 509.

An ordinance is valid although after its introduction the board of aldermen submits a suggestion for amendment to the B. P. S., which is adopted and embodied in the ordinance by the B. P. S., the ordinance being returned to the board of aldermen with recommendation for passage without altering the endorsement of estimated cost and thereupon passed. Bambrick vs. Campbell, 37 Mo. App., 460, 463.

Where a remonstrance against an improvement has been made it is not necessary that the remonstrance be read in the assembly. Gilsonite vs. Handlan, 150 Mo. App., 239.

Elevation of streets and alleys, how determined. See Art. XXI., Sec. 1, and notes.

As to presumption that an ordinance has been enacted according to the legal requirements, see note to Art. IV., Sec. 1, showing that where two-thirds vote is required it will be presumed to have been so passed; but see also notes above.

Sec. 13. At least one-fourth of the cost of reconstruction of any public highway, street, boulevard, parkway, sidewalk, or alley done within ten years after the same has been fully paved shall be paid by the city.

Sec. 14. There shall be four classes of sewers, viz: public, district, joint-district, and private sewers, as hereinafter defined, but otherwise without regard to the area drained, the size, character, or purpose of the sewer.

Public sewers are those which have been or may be constructed or acquired and paid for wholly out of general revenue.

District sewers are those which have been or may be constructed or acquired, under authority of ordinance, within the limits of an established sewer district, and paid for by special assessments upon the property in the district.

Joint-district sewers are those which have been or may be constructed or acquired under the authority of ordinances uniting one or more districts and unorganized territory, or uniting districts or unorganized territory, into a joint sewer district, for the purpose of providing main, outlet, or intercepting sewers, for the benefit of such joint sewer district, and paid for by special assessment upon the property in such joint sewer district.

Private sewers are those paid for by private parties constructing the same.

Sec. 15. All public, district, and joint-district sewers shall be constructed along streets, alleys, and other public ways whenever practicable; and no such sewer shall be built or acquired by the city except it be on a public way or a right-of-way owned by the city. Such sewers may be connected with any other sewer of any class or with a natural course of drainage.

Sec. 16. All ordinances for constructing, reconstructing or acquiring district and joint-district sewers shall provide for payment thereof by special assessment as follows: The entire cost and expense shall be levied and assessed as a special tax ratably by area on all the lots or parcels of ground within the district or joint district, excluding public highways only.

Ordinances creating a joint-sewer district may provide for the construction of the sewer or sewers therein in one or more sections and for the levy and assessment of the cost of any section upon the completion thereof as a special tax in the manner herein provided.

If any district or joint-district sewer shall drain territory lying outside the city limits and not included in the district or joint district, the city shall pay so much of the cost of such sewer as

would have been assessed ratably against such territory, if it were included in the district or joint district.

State law. See in connection with the charter, Laws Mo., 1905, p. 62, Secs. 1-6, set out in "Laws Specially Applicable to St. Louis," Secs. 586, 601, authorizing drainage and sanitary districts between the city and the county.

Charter authority to construct, keep in repair, and regulate the use of sewers. See Art. I., Sec. 1, clause (14) and notes, and Art. XIII., Sec. 13, clause (b) and note thereto.

For ordinances respecting sewers in general. See Rev. Code, 1912, Secs. 1390-1410, inclusive. Sewer condemnation proceedings. Secs. 1067-1074 (see also notes to Charter, Secs. 3 et seq. of this article). Sewer connections Rev. Code, 1912, Secs. 1089, 1433, 428, 1390, 1402. Permit construction, etc. Secs. 1391 and following.

Liability of city for damages for defective sewers and sewer overflows. Note to Art. XIII., Sec. 13, clause (b).

Definition and object of sewer in general. *Fuchs vs. St. Louis*, 167 Mo., loc. cit. 636 (as to importance of drainage of cities to preserve the public health, as a police power, see also *New Orleans Gas Co. vs. Drainage Com.*, 196 U. S., 453, cited in note to clause (14), Sec. 1, Art. I., "Control over Sewers."

The classification of sewers under the new charter provision and the right of the city so to classify, is discussed, and the several kinds defined, in *Prior vs. Construction Co.*, 170 Mo., 439. The court in that case also shows the difference between the new and the former classification. This distinction should be borne in mind in applying the decisions under the former law to the present conditions.

Under the former provisions. Public sewers can be created only by ordinance, not by the user alone. *Heman vs. Payne*, 27 Mo. App., 481, 486.

What are public, district, or private sewers prior to present charter, see *Heman vs. Allen*, 156 Mo., 534, 542; *Hill vs. Swingley*, 159 Mo., 45; *Eyer- man vs. Blakely*, 78 Mo., 145.

In how far the board of aldermen must fix the construction, materials, route, dimensions, etc., of a sewer by ordinance and in how far the details thereof may be delegated to the proper officials, see *State ex rel. vs. St. Louis*, 56 Mo., 277, showing that the power of the city in this respect was enlarged by charter amendments so as not to be governed by the decisions in *Murphy vs. Clemens*, 43 Mo., 395 and *Ruggles vs. Collier*, id. 375.

See cases on the same subject with respect to street improvements, notes to Secs. 4 and 12, Art. XXII.

Discretion as to location of branch or lateral sewers in B. P. S. State ex rel. vs. St. Louis, 56 Mo., 577; *Eyer- mann vs. Provenchere*, 15 Mo. App., l. c. 267-268.

The action of the board of public service in accordance with charter authority to recommend creation of private sewer to the board of aldermen, which enacts an ordinance in pursuance thereof, is conclusive that such sewer is a private sewer, no matter how beneficial it is to the public. *Heman vs. Allen*, 156 Mo., 534 (affirmed without discussion of this point in 181 U. S., 402). The recommendation of the board and subsequent enactment of the ordinance relieves the contractor from the obligation of inquiring as to the grounds on which the work is done. *Eyer- mann vs. Provenchere*, 15 Mo. App., l. c. 270.

The board of aldermen, when thereto moved by the board of public service, may pass ordinances looking to the construction of sewers, public and district, and the policy of constructing sewers is delegated to them. It is for the board of aldermen, acting in the manner prescribed by charter, to say when and where sewers are to be constructed, and the kind, whether public or district. It can not, by ordinance or otherwise, authorize the construction of a public sewer to be paid for by special assessment, nor authorize a district sewer to be paid for out of the treasury. The difference between a public and district sewer is not a mere difference in name, but it is a physical fact, so that the board of aldermen can not authorize what is in fact a public sewer and by merely denominating it a district sewer tax the cost of its construction on the lots in the district named. Such an act would be a fraud and the special tax bill issued in pursuance of it would be void. *Hill vs. Swingley*, 159 Mo., 45, 49-50.

Courts have no power to issue a mandatory injunction requiring a municipality to construct a sewer in a particular manner or location, disregarding the exercise of discretion vested by law in the municipal authorities to determine the practicability of the sewer ordered, the availability of taxation for the purpose, and like matters; the exercise of this authority is primarily vested in the municipality and not the courts. *Vicksburg vs. Water Works Co.*, 202 U. S., 453, 471-472.

As to special taxation, see in connection with the cases below, also the notes to Sec. 5 of Art. XXI., and to Sec. 1 of Art. XXIII., for those points common to streets, alleys, etc., as well as sewers.

Special taxation for the construction of sewers assessed either according to the area, benefit district, or the front foot rule, is now valid beyond question. Prior vs. Construction Co., 170 Mo., 439, 448; St. Joseph vs. Farrell, 106 Mo., 437; Heman vs. Allen, 156 Mo., 534, affirmed as Schumate vs. Heman, 181 U. S., 402.

The question whether a lot owner is benefited by the sewer so as to make his land taxable therefor is legislative, and he will not be heard to the contrary after the board of aldermen has established the district and fixed the rate of benefits without fraud or oppression; and such benefits may be indirect as well as direct to justify the action of the board of aldermen. Prior vs. Construction Co., 170 Mo., 439, 450-451; Heman vs. Schulte, 166 Mo., 409; Heman vs. Allen, 156 Mo., 534, 544-551, affirmed 181 U. S., 402; Akers vs. Kollmeyer, 97 Mo. App., 520, 529; Johnson vs. Duer, 115 Mo., 366.

Area taxation without reference to value of land is valid. Johnson vs. Duer, 115 Mo., 366.

Ascertaining assessment. Creamer vs. Allen, 3 Mo. App., 545.

The basis of the work is an ordinance, and a void ordinance can not be made valid after the work has been done. Dickey vs. Holmes, 109 Mo. App., 721; St. Louis vs. Clemens, 52 Mo., 133, 144. As to the requirements of an ordinance for public improvements in general, see note to Sec. 4 of this article.

Where two lots are used as one property, they may be treated as one in assessing special tax bill against them, whether improved or not. Hill-O'Meara vs. Sessinghaus, 106 Mo. App., 163, and cases cited.

A proper assessment in accordance with the charter is the basis of taxation, and the special tax bill is void unless grounded on a valid assessment made by the tribunal designated by the charter. As to what is or is not such a compliance under the charter, see Heman vs. Farish, 97 Mo. App., 393, 401; Heman vs. Allen, 156 Mo., 534; also authorities generally in notes to Secs. 3 and 4 of this article. The special tax bill need not recite the basis of apportionment. Dickey vs. Porter, 101 S. W., 586, 594 (March 30, 1907, Sup. Ct. Kansas City charter).

The ordinance for improvements by sewers should be strictly complied with and construed, but not so strictly that it would defeat its obvious intent. St. Joseph vs. Landis, 54 Mo. App., 1 c. 326; Dickey vs. Porter, 203 Mo., 1.

Special tax bills for sewer improvements are not void because the board of public service in apportioning the cost against the lots of land in the district inadvertently omitted the right of way of a railroad as part of the area of the district and failed to charge the land of the railroad company included in the right of way with the cost of the improvements. Neil vs. Ridge, 220 Mo., 233.

Special tax is not the exclusive remedy of the contractor; there is nothing in the charter preventing the city from enacting that other regulations, such as the payment of the tax before permitting a connection with the sewer, must be observed under its other powers. Hill vs. St. Louis, 159 Mo., 159, 167 (upholding an ordinance to that effect, now Sec. 1392 of Rev. Code, 1912).

Under the former provisions the city could direct construction of district sewers without a petition from a majority of the property owners or recommendation of the board of health. Creamer vs. Oeters, 36 Mo., 456. Under the later provisions "the assembly can authorize the construction of sewers in sewer districts, only when a majority of the property holders petition for it, or when the board of public improvements shall recommend it as necessary for sanitary or other purposes, nor can the assembly establish a sewer district except by ordinances as approved by the B. P. I.; when that board approves such an ordinance the board need not wait until the passage of that ordinance before it shall recommend the construction of a sewer for the district." Eyerman vs. Blakely, 78 Mo., 145, 149-150. Nor is it necessary for the board in its recommendation to state the reasons for which the sewer is necessary; a statement that it is "in accordance with the provisions of the charter" is sufficient. Ibid, p. 150.

Under the present charter, still greater authority and latitude is given the board. Before a lien can attach to property in a taxing district for the cost of construction of sewers the board of public service must make an assessment of the entire cost against the property liable. In an action on the tax bill the failure so to allege in the petition is waived if no objection thereto be taken until after judgment. Heman vs. Allen, 156 Mo., 534, 539-540; Dickey vs. Porter, 203 Mo., 1.

Repairs and other incidental expenses of district sewers must be paid

out of the general revenue: hence the city cannot regulate the sewers by making persons desiring to connect pay any sum to be used by the city in repairing or inspecting the sewers. *Hill vs. St. Louis*, 159 Mo., 159, 171.

Sec. 17. The city may by ordinance recommended by the board of public service acquire any private sewer by gift, condemnation, or purchase, and provide for reimbursement by special assessment in the manner hereinbefore provided to be levied against the property in the district or joint-district for which such private sewer is acquired; and an ordinance making a private sewer or any part thereof a part of a proposed district or joint-district sewer may provide that the contractor shall pay for such private sewer at the price fixed in such ordinance and the cost thereof shall be included in the total cost of constructing such district or joint-district sewer.

Sec. 18. When any public work or improvement, to be paid for in whole or in part by special assessment, is completed, the board of public service shall cause the entire cost and expense thereof to be computed, and shall levy and assess such cost and expense or the part to be paid by special assessment, as a special tax, in accordance with the requirements of this article, and shall cause to be issued a special tax bill against each lot or parcel of ground liable in the manner provided by Article XXIII., or by ordinance not inconsistent therewith.

The validity of special taxes, though not sustainable on any logical ground, is no longer to be questioned. See cases cited in note to Sec. 3 of this article.

This section places no limit to the amount chargeable by way of special taxation on the property owner, whereas prior to the amendment adopted October 22, 1901 (under Ordinance 20444) to the 1876 charter the limit was 25 per cent of the assessed value. Reference to decisions upon the old law on this point are, therefore, omitted. It is, also, to be observed that, differing from the former law, repairs for alleys, sidewalks and boulevards are now paid for by special tax, as well as construction work, etc. On this and other points the changes must be borne in mind in determining the application of the cases cited below.

Sec. 19. Should it be necessary for any reason to reconstruct any district or joint-district sewer, the board of aldermen, by ordinance recommended by the board of public service, may establish the same or a different district for such reconstruction. It may also alter any district or joint district at any time before the construction of the sewers therein is completed.

Sec. 20. Private sewers shall be constructed, repaired, and maintained and connected with other sewers at private expense under such restrictions and regulations as the board of public service may prescribe, the city reserving the right to connect with, utilize, and acquire such sewers.

Sec. 21. The board of public service may grant permits for the improvement of public highways, streets, boulevards, parkways, alleys, and sidewalks by property owners, but such improvement shall conform to the established or proposed grades and to specifications approved by the board.

Sec. 22. If any part of the work or material put into the im-

provement of a public highway, street, boulevard, parkway, alley, or sidewalk can be utilized by the city in its improvement thereof, the board of public service shall determine the amount that shall be credited to the owner of the abutting property for such work or material and adjust it in issuing special tax bills.

Sec. 23. The ordinance for any public work, or improvement may require the board of public service to levy the special assessment therefor immediately upon such ordinance becoming effective such assessment to be based on the estimated cost and expenses of such work or improvement; and should any assessment so levied be insufficient to pay the entire cost and expenses of the work or improvement required to be paid for by special assessment, the board of public service shall, on the completion of the work or improvement, levy a supplemental special assessment to pay the deficiency, in the same manner as nearly as may be as in the first special assessment; and should the whole of the original special assessment not be required to pay the cost and expenses of the work or improvement, the excess shall be credited ratably on the special tax bills or refunded to the parties who paid them.

Specific appropriation. See Rev. Code, 1912, Sec. 200. The provision of Sec. 2, Art. XXII., applies only to contracts for work to be paid out of the city treasury; the limit put on the price to be paid is the amount of the specific appropriation, not the estimate submitted to the assembly by the board of public service. This section has no application to work to be paid for by special tax bill against the realty affected by a sewer construction. *Hill vs. Swingley*, 159 Mo., 45, 48; nor to part of the cost of a public improvement, which private corporations have by contract agreed to pay. *St. Louis vs. Terminal R. R. Assn.*, 211 Mo., 364.

See remarks as to the wisdom of such requirements of specific appropriations by Marshall, J., dissenting in *Pryor vs. K. C.*, 153 Mo., 151.

A contractor can not recover for work, under order of a city official, in excess of the appropriation therefor. *Perkinson vs. St. Louis*, 4 Mo. App., 322.

No subordinate officer has power to make any change in the city's contract with the contractor. *McGrath vs. St. Louis*, 215 Mo., 191.

The city is not liable for trespass on abutting property by an independent contractor for alley paving if his contract with the city required no such trespass, and if he was not instructed by any authorized representative of the city to commit it. *McGrath vs. St. Louis*, 215 Mo., 191.

Estimate of cost. See cases in note to Sec. 4 of this article; see also *Probert vs. Girard Investment Co.*, 155 Mo. App., 344; *Hill vs. Swingley*, supra, 159 Mo., 1 c. 48; *Bambrick vs. Campbell*, 37 Mo. App., 460, 464; *Kinealy vs. Gay*, 7 Mo. App., 203; *Selbert vs. Cavender*, 3 Mo. App., 421; *Sherwood, J.*, dissenting in *Verdin vs. St. Louis*, 131 Mo., 1 c. 133.

Suspension of work on complaint of citizens, and investigation by B. P. S., etc. Ordinances carrying out this charter proviso, and providing for investigation on complaint of tax-paying citizen, etc., see Rev. Code, 1912, Secs. 203-213, inclusive.

As to reduction of amount of tax bill for imperfect work, see Sec. 4 of Article XXIII., and note thereto; as to pro tanto recovery where ordinance partially void, see Sec. 12 of this article.

ARTICLE XXIII.**Special Tax Bills.**

Section 1. For all special assessments for public work or improvements under this charter and ordinances adopted in pursuance thereof, special tax bills shall be prepared and signed by a person designated by the board of public service by resolution entered on its records; and shall be made payable to the parties entitled, either at the collector's office or at some bank or trust company in the city, at the option of the party so entitled. They shall be promptly registered and certified both in the office of said board and of the comptroller by persons designated by said board and by the comptroller respectively to make such registration and certificate, and then delivered by the comptroller to the parties entitled and their receipts taken therefor; and the city shall not be liable in any manner for any work or improvement to be paid for in special tax bills.

Substitution of new tax bills for void ones; amendments of tax bills irregularly issued or void. New special tax bills in payment for improvement work must be issued on demand and surrender of those incorrect because the district was wrongfully defined under the charter; and mandamus lies to enforce the contractor's right thereto. *State ex rel. vs. St. Louis*, 183 Mo., 230.

If the original bill was void and recovery defeated on that ground, the power to issue is not exhausted, but a new assessment may be had and new bills may be issued. *Eyermau vs. Provenchere*, 15 Mo. App., 256, 262, 270; *Eyermau vs. Payne*, 28 Mo. App., 72, 76.

If the original bill was not void, but irregular only, a final judgment for defendant will bar another action on the same bill after it has been corrected. *Weber vs. Schergens*, 28 Mo. App., 587; *Eyermau vs. Payne*, 28 Mo. App., 1. c. 76; *Eyermau vs. Scollay*, 16 Mo. App., 498; but an amendment of the petition after correcting the bill is proper. *Galbreath vs. Newton*, 45 Mo. App., 312.

A special tax bill, whether void, voidable, or merely imperfect, as issued, may be amended within the time limited for its enforcement. *Vieths vs. Planet Co.*, 64 Mo. App., 207. See as to limitation of tax bills, *infra*, note to Section 5.

The particular officer may erase the wrong and insert the true name of the owner, even after expiration of his term. *Stadler vs. Roth*, 59 Mo., 400. So after expiration of his term he has the right to make proper amendments in other respects. *Morley vs. Weakley*, 86 Mo., 451 (changing blocks and lots). *Riley vs. Stewart*, 50 Mo. App., 594, 600 (issuing three in place of one, where such necessary); *Galbreath vs. Newton*, 45 Mo. App., 312 (holding that the fact that the late official had become non-resident made no difference; and allowing the amendment in the cause pending after remanding by the appellate court). The amendment must be made by the persons in office when the proceedings were had, though their terms have expired. *Kiley vs. Cranor*, 51 Mo., 541.

As to right to amend the tax bill, see also *Eyermau vs. Blakely*, 13 Mo. App., 407; *Pendergast vs. Richards*, 2 Mo. App., 187.

Computation and signatures of president of board and comptroller. A special tax bill is not void because the president of the board of public service does not personally compute, levy, or assess the cost of the improvement; if he attaches his name to the tax bill, it is his act, and it is immaterial whether the actual computation is by him or an appointee. *Heman Const. Co. vs. Loevy*, 179 Mo., 455, 466, distinguishing *Eddy vs. Nevada*, 123 Mo., 546. To same effect see *Dickey vs. Porter*, 203 Mo., 1; *Jaicks vs. Merrill*, 201 Mo., 91. As to power of delegating computation. *Nevada vs. Morris*, 43 Mo. App., 586; *Sedalia vs. Donohue*, 190 Mo., 407; *Jaicks vs. Merrill*, *supra*. In *Stifel vs. Cooperage Co.*, 38 Mo. App., 340, it was held that the duties imposed on the president of the board of public improvements are discretionary, personal, and not ministerial and can not in his absence be executed by a member of the board acting as president "pro tem"; and that tax bills signed by such "president pro tem." are void; they must be signed by the president of the board. In *Eyermau vs. Payne*, 28 Mo. App., 72, it is held that while special tax bills may be countersigned by a deputy

comptroller in the comptroller's absence or sickness, where it is shown that there is such an officer, because the duty to countersign is ministerial or formal, yet the ordinance under which such deputy was appointed must be proved; and if signed by the deputy the special tax bill is void unless signed by him in the name of his principal.

An ordinance authorizing the president of the board to designate a clerk or assistant to sign his name to tax bills is valid. *State ex rel. vs. Reber*, 226 Mo., 229; *Barber Asphalt Pav. Co. vs. Railroad*, 136 Mo. App., 642.

Sec. 2. Any special tax bills may be divided, if the ordinance authorizing the particular work or improvement so provides, into any number of equal annual installments, not to exceed ten, whereof the first shall be due upon service of the notice hereinafter provided for or upon a "not found" return by the marshal as hereinafter mentioned, and the other installments successively on the corresponding day of each subsequent year, with interest payable annually on each installment at the rate of six per centum per annum from such notice or "not found" return until maturity or prior payment and at the rate of eight per centum per annum after maturity.

All such special tax bills not payable in installments shall mature upon notice or "not found" return as aforesaid and draw interest at the rate of eight per centum per annum after maturity; provided, that the entire bill or any number of installments may be paid within thirty days after such notice or "not found" return without any interest.

Sec. 3. The owner of any special tax bill shall serve a written notice of the issuance thereof on the parties named therein, or the city marshal at such owners' request shall serve such notice and make return of such service in the manner provided as to writs of summons in civil causes; and he shall receive therefor the fees then allowed for serving such writs. Such marshal's return shall be conclusive of the facts therein stated, and any person injured by a false return on any such notice shall have his right of action for damages resulting therefrom against the marshal on his official bond.

Sec. 4. All special tax bills shall be *prima facie* evidence of what they contain and of their own validity, and no mere informality or clerical mistake in any of the proceedings leading to the issuance of or in any special tax bill shall be a defense thereto; provided, that if the work was not done in a good and workmanlike manner according to the class of work mentioned in the contract the property charged with the payment of said bill shall be liable only for the value of such work done, and the recovery on the special tax bill shall be reduced accordingly.

Prima facie evidence of a certified special tax bill. *Parker-Washington Co. vs. Cole*, 137 Mo. App., 530; *Heman vs. Larkin*, 108 Mo. App., 392, 397; *Eyermann vs. Blakesly*, 78 Mo., 145, 148 (upholding such laws); *Moberly vs. Hogan*, 131 Mo., 19; *Heman vs. Farish*, 97 Mo. App., 393; *Asphalt Co. vs. Ullman*, 137 Mo., 543, 560; *St. Joseph vs. Farrell*, 106 Mo., 437; *Nevada vs. Morris*, 43 Mo. App., 586.

Not conclusive. *Haegele vs. Mallinckrodt*, 3 Mo. App., 329, 335; *Creamer vs. Allen*, 3 Mo. App., 545; *Gallaher vs. Bartlett*, 64 Mo. App., 258, 262.

Tax bills are not *prima facie* evidence against persons whose names as

owners are omitted. *Farrell vs. Rammelkamp*, 64 Mo. App., 425, 428; *St. Louis vs. De Noue*, 44 Mo., 136; *Kansas City vs. Surety Co.*, 71 Mo. App., 315. Nor do they become so even when afterwards corrected by erasure and substitution by proper officer. *Stadler vs. Roth*, 59 Mo., 400. It is otherwise where the tax bill is amended and properly re-executed by the officials. *Vieths vs. Planet Co.*, 64 Mo. App., 207-210, holding it as *prima facie* evidence as if originally so issued. Tax bills not properly signed are not *prima facie* valid. *Eyerman vs. Payne*, 28 Mo. App., 72.

Nor are tax bills for repairs *prima facie* valid for construction work. *Farrell vs. Rammelkamp*, 64 Mo. App., 425, 428.

Reduction of the bill because of failure to furnish the work as called for in the contract and faulty construction as may be shown. *Hill-O'Meara vs. Hutchinson*, 100 Mo. App., 294, 297; *Heman vs. Franklin*, 99 Mo. App., 346.

Where the case is tried on the theory that substantial compliance entitled the recovery of the whole amount, an instruction for *pro tanto* recovery is properly refused. *Heman vs. Larkin*, 108 Mo. App., 392, 397; *Heman Const. Co. vs. Loevy*, 179 Mo., 455, 470.

The defense (in reduction in the amount) that the contract was not performed in a workmanlike manner, can only be made upon tender of the amount justly due for the work done. *Asphalt Co. vs. Ullman*, 137 Mo., 1. c. 570 (under *St. Joseph* charter, which in this respect is like that of *St. Louis*).

So recovery *pro tanto* is also allowed where the ordinance under which work was done was partly valid and partly invalid. See cases in note to Sec. 12 of Article XXII.

By Art. XXII., Sec. 7, provision is made for timely objection by any citizen or taxpayer that the work is not being done according to contract (while in progress), and for an examination and decision by the board, etc., with power to make such order as shall be just and reasonable. See ordinances, *Rev. Code*, 1912, Secs. 203-213.

Action to enforce tax bill; nature of liability; essentials to validity.

There must be a special tax bill made out in accordance with law; and there can be no recovery unless the special tax bill sued on is put in evidence; there can not be *scire facias* or execution on the original condemnation judgment in which the amount of benefits is fixed. *Brinckwirth vs. St. Louis*, 204 Mo., 280, overruling *Eyssell vs. St. Louis*, 168 Mo., 607.

Proceedings against property owners to enforce special tax bills for local improvements are in the nature of proceedings in rem to enforce the lien on the property, and compulsory payment can only be made by a sale of the assessed property, not by judgment in personam. *Barber Asphalt Co. vs. St. Joseph*, 183 Mo., 451 (citing numerous cases and showing the abandonment of the former theory that they could be enforced as personal judgments); *Heman Const. Co. vs. Loevy*, 179 Mo., 455, 471; *Hill-O'Meara vs. Sessinghaus*, 106 Mo. App., 163 (construing a sewer bill judgment as not being personal); *St. Louis vs. Allen*, 53 Mo., 50.

The lien is against each lot severally, though the bills be issued serially, and where in a condemnation proceeding, in order to clear the title of the liens of tax bills, a certain sum is paid into court by the city by consent of all persons interested, such sum stands in lieu of the lots, and if insufficient in the end to pay the bill and interest, that will not make such bills a lien on adjacent lots against which the bills were not severally issued. *Ross vs. Gates*, 117 Mo. App., 237.

Public property held for public uses is not subject to special taxes, nor can a general judgment be rendered against a public corporation, unless the legislative power has clearly so enacted. *St. Louis vs. Brown*, 155 Mo., 545, 560; *Barber Asphalt Co. vs. St. Joseph*, 183 Mo., 451, 455, and cases cited; *Clinton ex rel. vs. County*, 115 Mo., 557.

As to what property is subject to special taxation and what is exempt, see note to Sec. 5 of Art. XXI.

The proceeding is not so strictly in rem as to bind persons not parties, etc. See *Jaicks vs. Sullivan*, 123 Mo., 177, 182 et seq., and cases there cited; *Stadler vs. Roth*, 59 Mo., 400.

Payment of part of cost of improvement in cash by city does not invalidate special tax bills for remainder of cost under ordinance providing that the contractor should accept special tax bills for the entire cost. *Boonville ex rel. vs. Stephens*, 238 Mo., 339, 355.

The ability of a city to create a lien on the property of the abutting owner for street improvements is not founded on any pre-existing right, but is in invitum, and rests exclusively on a substantial adherence to the method prescribed by the ordinances authorizing the same, and of the charter as the basic power. *Paving Co. vs. Munn*, 185 Mo., 546, 574; *Kiley vs. Oppenheimer*, 55 Mo., 374; *Rose vs. Trestrail*, 62 Mo. App., 352; *Smith vs. Westport*, 105 Mo. App., 221, 224; *Construction Co. vs. Geist*, 37 Mo. App., 509.

512-513; *Independence vs. Gates*, 110 Mo., 1. c. 385; *Elsberry vs. Black*, 120 Mo. App., 14, 23; *Excelsior Springs vs. Ettenson*, 120 Mo. App., 215.

There must be a fair compliance with all conditions precedent, whether required by charter or ordinance; but a construction so strict as to defeat the obvious intent of the ordinance for improvement is not required, nor is a literal compliance required. *Cole vs. Skrainka*, 105 Mo., 303, 308-309; *St. Joseph vs. Landis*, 54 Mo. App., 315, 322, 325; *Allen vs. Rogers*, 20 Mo. App., 295-296.

A strict compliance with ordinance and contracts thereunder prescribing the manner in which the public improvement shall be made, has never been required as a condition to the acceptance of the work by the city or to the validity of the tax bill for the cost. *Steffen vs. Fox*, 124 Mo., 630, 635; 56 Mo. App., 9; *Sheehan vs. Owen*, 82 Mo., 458; *Sedalia ex rel. vs. Smith*, 206 Mo., 346.

Especially is this the case where the non-compliance was not the fault of the contractor, but of the city officials. *Eyermann vs. Provenchere*, 15 Mo. App., 256 (conflict between plans and ordinance).

Acceptance of the work is not a judicial act of the commissioner, and he may correct his decision if rendered in consequence of clerical error in his office. *Eyermann vs. Provenchere*, *supra*, citing *Prendergast vs. Richards*, 2 Mo. App., 187.

Where the tax bill is void, recovery may be had on new tax bills thereafter issued which are valid. See note to Sec. 1 of this article.

A material departure, going to its substance, avoids the tax bill. *King-Hill vs. Hamilton*, 51 Mo. App., 120, 124.

As to partial completion of work called for, see note to Sec. 3 of Article XXII.

In an action on a special tax bill for benefits growing out of a street opening or widening proceeding or change of grade, the claim that there was no benefit, or that there has been no compensation for property taken or other matters that could have been or were raised in the original proceeding, can not be raised in an action to enforce the special tax bill issued therefor. See cases in note to Sec. 1 of Art. XXI., (under "Conclusiveness of Proceeding," etc.).

Nor can the owner in an action on a special tax bill for street construction or other local improvement (where there was no original court proceeding), raise the question that he has not been benefited, nor that there was no necessity for the improvement, nor other matters of that kind, which are legislative in character. See authorities in note to Sec. 3, Art. XXII.

"All these obstructive measures and technical defenses upon which property owners resist the payment of special tax bills after getting the benefit of the work, result in permanent injury to the city and to the holders of property therein," as it compels the contractors to demand higher prices for the work. *Thompson, J.*, in *Eyermann vs. Provenchere*, 15 Mo. App., 1. c. 263.

The officers under the charter are selected presumably on account of their fitness and integrity, and their intentions are presumed to be honest, and that in performing their public duties they deal fairly and justly with citizen and property owner. *Edwards vs. Kirkwood*, 147 Mo. App., 599; *Bank vs. Woesten*, 147 Mo., 1. c. 481; *Barber Asphalt Co. vs. Hezel*, 76 Mo. App., 1. c. 152.

"Action by the city officials in regard to imposition of special taxes for a street improvement comes within the protection of the general maxim that public officers are presumed to have rightly acted until the contrary is made to appear. It is a grave error to suppose that the law looks with any disfavor upon these special bills for street improvement. They are to be treated with the same fairness and justice that should be accorded all public acts . . . and a want of conformity to law is not to be presumed as to such governmental action any more than to other proceedings of public functionaries." *Barclay, J.*, in *Asphalt Pav. Co. vs. Ullman*, 137 Mo., 1. c. 568. To same effect, *St. Joseph vs. Farrell*, 106 Mo., 437.

Persons dealing in special tax bills or taking contracts for city work are conclusively presumed to know the law, and at their peril to see that it is complied with. *Carroll vs. St. Louis*, 4 Mo. App., 191, 192-193; *Pryor vs. Kansas City*, 153 Mo., 135, 142, 150. See cases and discussion in note to Art. XXV., Sec. 9.

An action on a tax bill is an action at law. *Fruin vs. Meredith*, 145 Mo. App., 586.

Sec. 5. All special tax bills shall be a first lien on the property charged therewith from the day of issuance thereof; provided, there shall be no priority between special tax bills issued under this

charter, regardless of the date of such bills. The entire bill or any installment thereof, together with interest, may be collected by action in any court of competent jurisdiction; and such action may be brought by attachment when the owner of the land affected is a non-resident of the state or after a "not found" return is made by the city marshal on any such notice, in either which event the suit shall be equivalent to notice and a demand of payment.

Interest under former section. See *Paving Co. vs. Peck*, 186 Mo., 506; *Bank vs. Woesten*, 176 Mo., 49; *Perkinson vs. Schnaake*, 108 Mo. App., 255 (character of demand necessary); *Eyerma vs. Blakely*, 78 Mo., 145, 152 (power of city to impose penalties upheld).

A judgment on a special tax bill bears 6 per cent interest only. *Gilsonite Co. vs. St. Louis Fair Assn.*, 231 Mo., 589; *Boonville ex rel. vs. Stephens*, 238 Mo., 339.

Owners and names. As to where owners hold undivided interests, see *Louisiana vs. McAllister*, 104 Mo. App., 152.

Where name of one co-owner is omitted from bill, see *Farrell vs. Rammelkamp*, 64 Mo. App., 425 (bill not prima facie evidence as against him).

Where minors hold undivided interests, see *Horstmeyer vs. Connors*, 56 Mo. App., 115, 121.

Life-tenant and remaindermen, see *Bobb vs. Wolff*, 54 Mo. App., 515.

Property held in trust, beneficiary proper person, but trustee's name not necessary as owner. *St. Louis vs. Creamer*, 43 Mo., 552.

Parties to deed of trust on the property. *St. Louis vs. De Noue*, 44 Mo., 136.

"The owner" against whom the proceeding to enforce the special tax is brought, in the absence of notice to the contrary, is the record owner, and a purchaser at the sale thereunder gets a good title against an unrecorded deed of which the purchaser has no notice. *Vance vs. Corrigan*, 78 Mo., 94; *Smith vs. Barrett*, 41 Mo. App., 460, 465; but as to actual notice, see cases cited in *Stuart vs. Ramsey*, 196 Mo., 1 c. 414. (See cases to same effect under sales for delinquent general taxes, referred to in note to Sec. 530 of "Laws Specially Applicable to St. Louis", R. C. 1912. If the person in whose name the property stands of record be dead when the suit is instituted, it is void; the interests of his heirs or devisees in the land are not divested. *Jaicks vs. Sullivan*, 128 Mo., 177, 187. The record "owner" at the commencement of the suit, not when the special tax bill is issued, is the proper party to proceed against. *Smith vs. Barrett*, 41 Mo. App., 460, 465 (Kansas City charter).

Mistake or omission of the name of the owner is not fatal as to the tax bill and does not vitiate it; but the rights of such owner are not affected until he has his day in court. *McCormick vs. Clopton*, 150 Mo. App., 129; *Eyerma vs. Scollay*, 16 Mo. App., 498; *St. Louis vs. De Noue*, 44 Mo., 136; *Stadler vs. Roth*, 59 Mo., 400 (holding that the correction could be made by erasure and insertion by the successor in office, but that this destroyed the prima facie effect of the bill). *Galbreath vs. Newton*, 45 Mo., 312; *Veiths vs. Planet Co.*, 64 Mo. App., 207 (holding that the new tax bill, properly re-executed, has the prima facie proof of validity the same as if originally so issued).

Defects in apportioning cost. A slight error in computation does not make the bill void. *Creamer vs. McCurry*, 7 Mo. App., 91; *Neenan vs. Smith*, 60 Mo., 292.

Error in theory of apportionment of cost may be corrected by issuance of new bills. See note to Sec. 1 of this article.

A computation not according to law, or erroneous, may be shown in defense of the bill. *Creamer vs. Allen*, 3 Mo. App., 545; *Haegle vs. Malinckrodt*, 3 Mo. App., 329, 334; *Gallagher vs. Bartlett*, 64 Mo. App., 258, 262.

A special tax bill is void unless grounded on a valid assessment. *Heman vs. Farish*, 97 Mo. App., 393, 401; *St. Louis vs. Brinckwirth*, 204 Mo., 280.

A tax bill is not invalidated by the fact that a small amount of work, other than that called for by the contract, has been apportioned and assessed in the tax bill. *Boonville ex rel. vs. Rogers*, 125 Mo. App., 142.

Real party in interest as plaintiff in suit on special tax bill which has been pledged to secure a debt. *Dickey vs. Porter*, 203 Mo., 1, with discussion of authorities.

As to proper assessment district, method of ascertaining benefits, etc. See Sec. 5, Art. XXI., and note.

Description of property in special tax bill is sufficient if the property is identified thereby. *Const. Co. vs. Loevy*, 64 Mo. App., 430.

An attachment of the property subject to the tax can be maintained against non-residents not served, in aid of a suit on a special tax bill, under the St. Louis charter. *Syenite Granite Co. vs. Bobb*, 37 Mo. App. 483.

Demand before suit was not under the old provision a condition precedent to a recovery on the tax bill. *Eyermann vs. Provenchere*, 15 Mo. App., 256, 271.

Sufficiency of allegations in petition. *Joplin vs. Hollingshead*, 123 Mo. App., 602; *Joplin ex rel. vs. Freeman*, 125 Mo. App., 717; *Mexico vs. Lakenan*, 129 Mo. App., 180; *Barber Asphalt Paving Co. vs. Bath Co.*, 136 Mo. App., 555. A petition alleging making of tax bill, its contents with dates thereof, its assignment, its filing, and that defendant owns the lot described therein, is sufficient. *Turner vs. Patton*, 54 Mo. App., 654 (Kansas City); *Vieths vs. Planet Co.*, 64 Mo. App., 207, 211 (St. Louis); *Bank vs. Wright*, 68 Mo. App., 144.

The description of a lot as a lot in a given city block, having a given frontage and depth "bounded north by Sanders and self, east by self, south by self and west by Euclid avenue" is insufficient. *Bell vs. Johnson*, 207 Mo., 281.

Estoppel of owner. A property owner is not estopped from defending against a tax bill as being void on the ground that he stood by and made no protest when the plaintiff was doing the work which benefited his property, nor because he petitioned for the improvement to be made. A void tax bill can not be made valid by any act of the owner. *Perkinson vs. Hoolan*, 182 Mo., 189, and cases cited; *Keane vs. Klausman*, 21 Mo. App., 485, 488; *Verdin vs. St. Louis*, 131 Mo., 26 l. c. 98; but see contra *Sherwood, J.*, dissenting, pp. 143 et seq. Nor is the owner estopped by such acts from questioning the bill on account of an unauthorized extension of time of completion of the work. *Cushing vs. Bullock*, 151 Mo. App., 281. It was held that the owner of an undivided interest is estopped from setting up his partial ownership in reduction of the tax bill where he has held himself out as sole owner. *Louisiana vs. McAllister*, 104 Mo. App., 152. That a property owner can not affirmatively induce a departure from the ordinance and contract by his own acts, and then avail himself of the change to escape payment. *Hill-O'Meara vs. Hutchinson*, 100 Mo. App., 294, 301. And see also *St. Joseph vs. Landis*, 54 Mo. App., 613, 626. So also the owner who stands by and sees the work properly done and gets the benefit thereof will not be heard to complain afterwards in a suit on the tax bills that there were irregularities in the proceedings in the obtaining of the contract of the contractor, such as vague specifications as to materials, manner of work, etc., so as to prevent competitive bidding. *Jaicks vs. Merrill*, 201 Mo., 91.

A requirement that the property owner file objections to tax bills in writing with a board, within a certain time after issuance thereof, and be concluded from making any other defense against the tax bills, is unconstitutional and void. *Barber Asp. Co. vs. Rithye*, 169 Mo., 376, 382.

Owner can not dispute benefits assessed, nor necessity for the work, for which special tax bills are issued in an action thereon. See cases cited in note to Art. XXII., Sec. 3.

Constitutional exemptions from taxation do not apply to special tax bills. *Clinton vs. Co.*, 115 Mo., 557, and on this and analogous points, note to Sec. 5, Art. XXI.

Limitation of special tax bills. Under the charter the original condemnation for street purposes being a judgment, the collection of the benefits assessed as resulting from the street opening, and evidenced by special tax bill, was not barred in five years, but only after ten years, like any other judgment. *Eysell vs. St. Louis*, 168 Mo., 607; *St. Louis vs. Annex Co.*, 175 Mo., 63. This does not apply to a special tax bill for improvements. *Eysell vs. St. Louis*, supra, p. 621. See as to benefits from street openings, note to Secs. 1, Art. XXI. As to limitations of lien under Kansas City Charter, providing for payment on installment plan, and in case of default in payment of principal or interest authorizing collection of all unpaid installments, see *Barber Asp. Co. vs. Meservey*, 103 Mo. App., 183 (three opinions, all concurring that limitation only runs from maturity of last installment); *Ross vs. Gates*, 117 Mo. App., l. c. 244.

It is held that limitation of special tax bill runs from date of delivery to contractor, not date of bill. *Folks vs. Yost*, 54 Mo. App., 55 (Kansas City); so under the St. Louis Charter it was held that the limitation begins to run from the date of the bill and not from the completion of the work (the question whether it begins to run from delivery or date was not raised) so that where new bills are issued in place of former void ones time begins from the date of the new bills which supersede the former. *Eyerman vs. Payne*, 28 Mo. App., 72, 76. This does not apply unless the bills first issued are void; if only irregular, as in case of erroneous name of owner, time runs from the first. *Eyerman vs. Scollay*, 16 Mo. App., 498. So where the proper party is brought in by amendment after the time limited for the

lien, the lien is dead and can not be enforced. *Smith vs. Barrett*, 41 Mo. App., 460, 468; *Jaicks vs. Sullivan*, 128 Mo., 177, and cases cited (where the suit was originally brought against one deceased).

The statute of limitations of three years on a judgment does not begin to run on a special assessment for a street improvement until there has been a judgment on the tax bills. The limitation of tax bills against property in the benefit district is five years and not two years. *Pleadwell vs. Glass Co.*, 151 Mo. App., 51.

Suit must be begun against the true owner within the statutory time, unless the holder of the tax bill has no knowledge or notice of the true owner. *Parker-Washington Co. vs. Kemper Investment Co.*, 143 Mo. App., 244.

Delivery is presumed on day of date of bill in the absence of any evidence. *St. Louis vs. Armstrong*, 38 Mo., 29, 33.

The lien attaches (it was held, under a former charter) from the date of the assessment, which can not be made until the work is fully completed and the precise amount of its costs ascertained. *Anderson vs. Holland*, 40 Mo., 600, 601, relying on *St. Louis vs. Clemens*, 36 Mo., 467 l. c. 473.

Under the present charter (Art. XXIII., Sec. 1), the special tax bills do not become a lien on the property chargeable with the cost of the work until they are delivered to the party designated in the charter to receive them. *Mercantile Trust Co. vs. Niggeman*, 119 Mo. App., 56, 62 (relying upon *Everett vs. Marston*, 186 Mo., 587, construing the Kansas City charter, as determining the question).

Priorities. Special tax bills have priority over like tax bills subsequently issued. *Parker-Washington Co. vs. Corcoran*, 150 Mo. App., 188; and have priority over existing incumbrances. *Mowrey, etc., Co. vs. St. Louis Artificial Ice Rink* (Sup. Ct. of Mo.), 146 S. W., 1142.

Action against city for failure to permit contractor to complete work, when barred. *Ash vs. Independence*, 103 Mo. App., 299. The city of St. Louis is liable to a contractor for street improvements where by its own acts it prevents the issuance of tax bills and orders the work it contracted for to be stopped without cause. *Steffen vs. St. Louis*, 135 Mo., 44, 51; *Chambers vs. St. Joseph*, 33 Mo. App., 536, and *Dist. Columbia vs. Lyon*, 161 U. S., 200. Where the charter provides that the city shall not be liable on the special tax bills, the fact that the supposed street is really not such, which renders the tax bill void, does not entitle the contractor to recover from the city, though the work be completed according to contract. *Carroll vs. St. Louis*, 4 Mo. App., 191; but see *Murray vs. Kansas City*, 47 Mo. App., 105 (where there was no such limitation shown as existed in the St. Louis charter).

An action lies against the city to remove a cloud on title caused by the issuance of a void special tax bill purporting to be a lien. See full discussion in *Verdin vs. St. Louis*, 131 Mo., 26, 74-80, 100, and in dissenting opinion in the same case, 108 et seq.; also 152 et seq. See also as to cancelling special tax bill, *Heman vs. Skinker*, 148 Mo., 379.

Installments (under Kansas City charter, when due and how pleaded). *Jaicks vs. Merrill*, 201 Mo., 91.

The word "paid" as used in the section means "payable" making the provision read "Where tax bills are not made payable in installments, the lien shall terminate within two years after their date." *Fruin vs. Meredith*, 145 Mo. App., 586.

Sec. 6. If any installment of any special tax bill or any interest thereon be not paid when due, then all remaining installments, together with interest thereon as aforesaid, shall, at the option of the holder if exercised by suit thereon, immediately become due; and a judgment on such bill shall bear interest at the rate of eight per centum per annum.

Sec. 7. Special tax bills and the lien thereof may be assigned and the place of payment thereof changed to the office of the collector or to any bank or trust company in the city. But any such assignment or change of place of payment to be valid must be in writing, countersigned by the comptroller or by one of his deputies, acknowledged before an officer authorized to take acknowledgments, and registered in the office of the comptroller.

Special tax bills were assignable under the old charter provision as a

matter of law; as to this, and what is sufficient to establish assignment under the old charter, see *Bambrick vs. Campbell*, 37 Mo. App., 460, 462. As to assignment under Kansas City charter. *Dickey vs. Porter*, 203 Mo., 1.

A person suing as the assignee of a special tax bill must prove the assignment. *Cushing vs. Hartwig*, 138 Mo. App., 114.

Substitution of assignee by amendment in pending suit. *Springfield vs. Weaver*, 137 Mo., 1. c. 670.

Sec. 8. It shall be the duty of the collector to receive payment of all special tax bills made payable at his office and thereupon deliver the same receipted; and he shall, upon warrants of the comptroller, pay over all such collections to the parties entitled. The persons paying any such bill shall be entitled to have the same satisfied on the register in the comptroller's office, in whole or in part, as the case may be, immediately on presentation to the comptroller of either the receipted tax bill or a receipt from the collector or the proper bank or trust company showing such payment thereof; and the lien of any bill shall cease and be of no effect against the land charged therewith at the end of two years after the maturity of the bill or the last installment thereof, unless proceedings at law shall then be pending to collect the same, and written notice of the institution thereof setting forth when and in what court such proceedings were brought shall have been filed in the office of the comptroller within ten days after the institution of such suit.

Sec. 9. If any ordinance authorizing a public work or improvement, or fixing a benefit or taxing district, shall be irregular, defective, or invalid by reason of any omission, error, or irregularity therein or in the proceedings leading to its adoption, or if for any reason it shall be necessary to the validity of any special assessment, the board of aldermen may, on recommendation of the board of public service, adopt an ordinance ratifying all things done under or in pursuance of the original ordinance, and supplying, correcting, and curing all such omissions, errors, defects, and irregularities, and making such special assessment valid.

Sec. 10. Where public work or improvement has been done under an ordinance providing that it should be paid for by special assessment and the whole or part of such special assessment has been adjudged invalid for any reason other than the failure of the contractor to perform his contract, the board of public service shall levy a new assessment and evidence the same by tax bills in the same manner and with like effect as if validly done hereunder in the first instance.

Sec. 11. Special assessments or tax bills evidencing the same may be amended by the officer or officers authorized at the time to prepare special tax bills or by the courts in proceedings to enforce the same, to correct or supply descriptions, names, and other errors, omissions, and irregularities on the part of the city; and may be divided by said officer or officers at the request of any of the parties concerned according to divisions of the property

made subsequent to the bills being prepared, and without affecting the interest on such amended or divided bill.

Sec. 12. The city by ordinance recommended by the board of public service may, from time to time, make further provision by ordinance, not inconsistent with this charter, for special assessments, the issuance of special tax bills therefor, the collection thereof, and all matters incidental thereto.

ARTICLE XXIV.

Improvement Bonds and Funds.

Section 1. The board of aldermen, by ordinance recommended by the board of public service, in anticipation of the collection of a special assessment for any public work or improvement, may provide for the issuance of improvement bonds to be delivered to the contractor in payment for so much of the work or improvement as is payable by such special assessment, or to be sold by the city and the proceeds paid to the contractor in full for such work and improvement; provided, the city shall not be liable either to pay such bonds or to pay for such part of the work or improvement, but the bonds shall be paid only out of the particular special assessment in anticipation of which they were issued, and no such issue shall be in excess of the cost and expenses or estimated cost and expenses of the work and improvement and the interest on the bonds, which may be treated as a part of such cost, and all proceeds of said bonds shall be applied in payment of the cost and expenses of such work and improvement.

If the special assessment in anticipation of which such bonds are issued shall be payable in equal annual installments the particular bonds shall be payable serially, each series maturing with approximate regard to the several maturities of such installments; and all such special assessments shall be collected promptly by the city at its expense and applied, whenever sufficient thereto after paying accrued interest on all such issue of bonds, to the redemption of one or more of such bonds in numerical order at maturity.

The form and denomination of such bonds; the date of maturity or maturities thereof not to exceed eleven years in any instance; the rate of interest thereon and date and place of its payment; the price at which they shall be sold, if to be sold; by what officers and in what manner they shall be executed and attested; and the place and method of payment, save only the fund out of which payment shall be made, together with other provisions and regulations concerning such bonds and not inconsistent herewith, shall be prescribed by the ordinance authorizing the particular issue.

Sec. 2. The board of aldermen, by ordinance recommended by the board of public service, may appropriate out of the general revenue sufficient money to pay, or to provide a fund in advance

to pay, such part of any improvement bond issue as the proceeds of special assessments securing same may prove insufficient to pay as they become due, not exceeding ten per centum of the amount of such bond issue, and provide for reimbursement, if possible, out of the proceeds of such special assessments after all such bonds and interest have been fully paid.

Sec. 3. The board of aldermen may, by ordinance recommended by the board of public service, provide for the creation of a local improvement fund out of which the city shall pay in cash, to contractors or otherwise, the cost and expense of local improvements, and for the levy, assessment, and collection of special assessments to cover cost and expenses, the proceeds of which assessments shall be paid into such fund or funds.

Sec. 4. For the purpose of anticipating the levy and collection of any special assessment for any public work or improvement, the board of aldermen may, by ordinance recommended by the board of public service, appropriate a fund to pay for the work or improvement as it progresses, and reimburse the city either by the issue and sale of local improvement bonds as in this article provided, or by the collection of such special assessments.

Sec. 5. All special assessments contemplated by this article shall be evidenced by special tax bills in accordance with the provisions of Article XXIII., so far as applicable, such bills to be made payable to the city, which shall be deemed the owner thereof, at the office of the collector, to whom the comptroller shall deliver the same and take his receipts therefor. The marshal shall serve the notice of the issuance of such bills and make return of such service without receiving any fees therefor.

ARTICLE XXV.

General and Miscellaneous.

Section 1. The board of aldermen may by ordinance adopted by vote of two-thirds of all the members, on the recommendation of the board of estimate and apportionment, discontinue any division established by this charter, create new or additional divisions, and determine, combine, and distribute the functions and duties of divisions, officers, and employees.

Similar section construed. *State ex rel. vs. Reber*, 226 Mo., 229.

Board of aldermen may create an office. *St. Louis vs. Liessing*, 190 Mo., 464, 491; or board may transfer duties from one office to another or abrogate the office altogether. It may define the duties, and may change, increase, or diminish same.

The board may repeal an ordinance creating an office, and thereupon the office is abolished and the term of the incumbent ended, together with the right to the salary. The power to enact an ordinance includes the power to repeal it. *Magner vs. St. Louis*, 179 Mo., 495; *State ex rel. vs. Longfellow*, 95 Mo. App., 660, 665; *Primm vs. Carondelet*, 23 Mo., 22.

Sec. 2. The raw material and finished products of manufacturers in the city, as well as all tools, machinery, and appliances used

by them and the stock in trade and appliances of merchants in the city, may be taxed as a separate class under the laws of the state and a lower rate may be levied by the city on such property so classified than on real estate and other property, and the city may by ordinance levy a tax upon the sales made by manufacturers and merchants in the city.

See Art. I., Sec. 1, clauses (1) and (2).

Sec. 3. The board of aldermen may provide by ordinance for assessing against the abutting property the cost of planting shade trees and of removing from sidewalks accumulations of snow, ice, and earth and for assessing against property the cost of cutting and removing therefrom noxious weeds and rubbish.

See notes to Sec. 14, clause (a), Art. XIII.

See, also, Sections 797, 822 and 1313, R. C. 1912.

Sec. 4. Unless otherwise provided in this charter all bonds shall be approved as to their sufficiency by the comptroller. The bond of the comptroller as to its sufficiency shall be approved by the mayor. All official bonds shall, among other things, be conditioned for the faithful performance of the duties of the office. For any breach of the condition of any bond, suit may be instituted thereon by the city, or by any person or persons in the name of the city, for the use of such person or persons.

Sec. 5. If at any time it appears to the mayor or comptroller that the surety or sureties on any official bond are insufficient, he shall require the officer or employe to give additional bond, and, if such officer or employe fails to give such additional bond within ten days after he shall have been notified, his office shall be vacant.

See, also, Art. VIII., Sec. 4.

Sec. 6. A contingent fund shall be provided by ordinance for the mayor, to be used by him at his discretion, and at the end of his term he shall make a report in general terms to the board of aldermen of the disposition thereof.

Sec. 7. Any reference in this charter to the board of election commissioners shall be taken to include any board or persons having charge of elections in the city.

Sec. 8. The city in taking an appeal in any judicial proceeding shall give bond as required by law, but need not furnish security therefor.

See Rev. Code, 1912, Sec. 2274, as to appeal bond. An appeal in a suit to which the city of St. Louis is a party goes to the Supreme Court whatever the amount involved, because that city is a political subdivision of the State. *Steffen vs. St. Louis*, 135 Mo., 44, 48-49; *Straub vs. St. Louis*, 175 Mo., 413; *Northcutt vs. Eager*, 132 Mo., 265, 273.

Sec. 9. All contracts relating to city affairs shall be in writing, signed and executed in the name of the city. In cases not otherwise provided by law or ordinance, they shall be made by the comptroller, and in no case by the board of aldermen or any committee thereof. Contracts not made by the comptroller shall be

countersigned by him, and all contracts shall be filed and registered by number, date, and contents with the register.

See Sec. 4, Art. XXII.

Contracts. Constitution, Art. IV., Sec. 48, provides that the general assembly has no power to . . . pay nor authorize the payment of any claim against state, county, or municipality under any contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

State law. No city, etc., shall make any contract unless within the scope of its powers or expressly authorized by law and upon consideration to be performed subsequently; and same shall be in writing and dated when made, and subscribed by all parties or agents duly authorized in writing. R. S. 1909, Sec. 2778. *Cook vs. City of Cameron*, 144 Mo. App., 137. (An ordinance and written acceptance is sufficient to meet this section. *California vs. Telephone Co.*, 112 Mo. App., 722, 727.) Duplicate copies to be made, one to be kept with proper officer, which in case of variance controls. Sec. 2779 (but such filing and execution in duplicate is only to preserve the contract as evidence and is not a condition precedent of its validity. *Saleno vs. Neosho*, 127 Mo., 627, 638). All contractors for public work to give bond, etc. Sec. 1247. Material men or laborers may sue on the bond. Sec. 6762. (On last point, see also Rev. Code, 1912, Sec. 254; *St. Louis vs. Von Phul*, 133 Mo., 567.)

By the charter also (by this provision, i. e. Sec. 9, Art. XXV., all contracts must be in writing, etc. And by charter, Art. VII., Sec. 1, it is made the duty of the mayor to see that the contracts of the city are enforced. See Art. VIII., Sec. 3.

By ordinance contracts must be in writing, countersigned by proper officer designated or comptroller, etc., filed with register, etc. Rev. Code, 1912, Sec. 72. (The filing is, however, not a condition precedent to the validity of the contract. See *Saleno vs. Neosho*, 127 Mo., 1 c. 637 et seq.) Contracts to be registered, numbered, etc., and be in custody of register. Rev. Code, 1912, Sec. 2048.

After a contract is complete and is formally executed by the mayor (see Art. VII., Sec. 1) and countersigned by the comptroller the erasure of his name thereon by the comptroller, with the intention of withdrawing his approval, does not affect the validity of the contract or destroy the effect of his official act in countersigning the same. *Curran Printing Co. vs. St. Louis*, 213 Mo., 22.

Validity of city contracts and liability of city. Those who deal with the officers of a municipal corporation must ascertain at their peril, that such agents are acting within the scope of their powers; and the city may plead *ultra vires* and the invalidity of a contract made in violation of law. *Cheaney vs. Brookfield*, 60 Mo., 53, 54; *Mister vs. Kansas City*, 18 Mo. App., 217, 227; *Verdin vs. St. Louis*, 131 Mo., 1 c. 98; *Construction Co. vs. Geist*, 37 Mo. App., 1 c. 513; *Keating vs. Kansas City*, 84 Mo., 415; *Carroll vs. St. Louis*, 4 Mo. App., 191; *Pryor vs. Kansas City*, 153 Mo., 135, 142, 150, citing numerous cases.

Aldermen act for the city in its governmental and not in its private capacity and can bind the city only by such acts and contracts as by law the board is entitled to make. *O'Dwyer vs. Monett*, 123 Mo. App., 184.

The city can not be held on a quantum meruit or on an implied contract. See cases *supra*.

Hence where a contract exceeds the appropriation allowed, the city is liable only to the extent of the appropriation. *Mister vs. Kansas City*, 18 Mo. App., 217, approved but distinguished in *Pryor vs. Kansas City*, 153 Mo., 135.

Where one is otherwise entitled to lawfully recover against the city (as salary out of the general revenue), the fact that there is not enough money appropriated to pay him, will not defeat a judgment on the claim. *Magner vs. St. Louis*, 179 Mo., 495, 501. Nor is one who is entitled to a claim against a city required to obtain a warrant before suing. *Kansas City Loan Co. vs. Kansas City*, 200 Mo., 159.

For a case apparently on contract against the city, in which "no law or ordinance requiring it to be in writing was brought to the attention" of the court, and where a verbal contract was held sufficient, see *McQuade vs. St. Louis*, 76 Mo., 46, 48 (but only the title indicates that the suit was against the city; nor is mention made of the provisions first above referred to from constitution, statute and charter); see also "*The Maggie P.*," 25 Fed., 202.

A verbal contract is absolutely void as to a city. *Savage vs. Springfield*, 85 Mo. App., 323, 329 (incapable of ratification) citing the constitution; but the point must be raised in the trial court. *Lancaster vs. Briggs*, 118 Mo. App., 570.

All persons dealing with the city must take notice of the charter and ordinance provisions (see note preceding Art. I.), and these enter into and form part of the contract, whether expressly so made or not. *Pryor vs. Kansas City*, 153 Mo., 135, 142, 150; *Carroll vs. St. Louis*, 4 Mo. App., 191; *St. Charles vs. Hackman*, 133 Mo., 1. c. 642; *State ex rel. vs. Kent*, 98 Mo. App., 281, 286; *San Antonio vs. Altgelt*, 200 U. S., 304, 308; *Citizens' Bank vs. Owensboro*, 173 U. S., 636, 644.

Contracts referring to ordinances incorporate the latter in the contract. *St. Louis vs. Gas Co.*, 155 Mo., 1. c. 17, and cases cited.

The board of aldermen can not make contracts. See charter, Art. XXII., Sec. 4 (public work); Art. XV., Sec. 29 (supplies); Art. XV., Sec. 30 (printing). Compensation on a contract not authorized (such agreement being void) can not be provided for by the board of aldermen. Such action would amount to a prohibited donation of the city's money. *Campbell vs. St. Louis*, 71 Mo., 106.

The rule of contemporaneous interpretation of contracts largely controlling their effect in case of ambiguity, applies to contracts with the city. *St. Louis vs. Laclede Gas L. Co.*, 155 Mo., 1, 19, and cases cited; but see *National W. W. Co. vs. School Dist.*, 48 Fed., 523.

The same equity exists and the same moral obligation rests upon the city to protect those whose labor and material is employed in the improvement of its streets under contract with a contractor as rest upon those making private improvements; and hence the furnishing of such material or such work, creates such a privity between those furnishing same and the city as will entitle them to the benefits intended to secure them against loss, under a bond expressly so providing, exacted by the city from the contractor doing public improvement work; the city has authority under its charter powers to require such provisions. *St. Louis vs. Von Phul*, 133 Mo., 561, 566 et seq.; *Kansas City vs. Surety Co.*, 196 Mo., 1. c. 305; (see also *Rev. St.*, 1909, Sec. 1248; *Rev. Code*, 1912, Sec. 254). And the contract between the material men and the contractor is independent of the contract between the city and the contractor; the fact, therefore, that the contract between the city and the contractor is invalid has no effect upon the contract between the material men and the contractor. *Kansas City vs. Surety Co.*, 196 Mo., 1. c. 302. So also the city may contract that enough of the contract price be withheld to meet the claims of laborers and material men. *St. Louis vs. Lumber Co.*, 114 Mo., 82. After the contract is executed, the sureties on the contractor's bond to the city are estopped from claiming that the contract was void. *Kansas City vs. Surety Co.*, 196 Mo., 1. c. 302. But where there is no privity between the city and a third person for whose benefit a contract is made by it, such contract is invalid; hence a private citizen can not recover for loss by fire, from a water company which had obligated itself to furnish water sufficient to extinguish all fires and be responsible for a failure so to do. *Howsman vs. Trenton*, 119 Mo., 305.

A city can not contract to do for a compensation that which is a public duty imposed upon it by law; but it may contract to do things of a private nature not inconsistent with its municipal powers (such as raising a sunken boat), and be liable for a breach thereof. "*The Maggie P.*," 25 Fed., 202.

City officials are disqualified from being directly or indirectly interested in any contract with the city (see charter, Art. VIII., Sec. 8, including members of the board of aldermen. Art. VIII., Sec. 8. R. S. 1909, Sec. 4877, makes this a misdemeanor, and Art. VIII., Sec. 8, provides that the office is thereby forfeited; and in view of these and the other statutory, charter and constitutional provisions cited at the beginning of this note, there is little doubt that such contracts are void. (See note to Sec. 9 of this article).

For additional authorities that city contracts not in accordance with law are void, see cases below on ratification, estoppel, etc.

Contracts lawfully made by a city are binding on it (*Steffen vs. St. Louis*, 135 Mo., 44), and the obligations of contracts made by franchise ordinances can not be impaired by the city; and such impairment will be prevented by the courts, as a matter of law, and as contrary to the constitution prohibiting such legislation. See cases cited in note to Sec. 5 of Art. XIX. of the charter, as to street railway ordinance franchises; and see in general, *Vicksburg vs. Waterworks Co.*, 202 U. S., 453, and cases cited; *Walla Walla vs. W. W. W. Co.*, 172 U. S., 1.

But a mere repudiation of a contract by a city, in the absence of legislation, amounts to a mere breach of contract, and does not amount to the impairment of its obligation within the federal constitution. *Dawson vs. Columbia Trust Co.*, 197 U. S., 178.

A city may be held to have received money to the use of another; the obligation to do justice rests upon all persons, natural and artificial, and if a municipality obtains the money or property of others without authority,

the law, independent of any statute, will compel restitution or compensation. *Wood vs. Kansas City*, 162 Mo., 303, 1. c. 312.

A clause in a contract between the city and a contractor, leaving disputes as to the amount of the work to be paid for and questions as to the execution of the contract work, to be determined by the city's commissioner is valid and his decision is final in the absence of fraud, partiality or misapprehension of the facts. *McCormick vs. St. Louis*, 166 Mo., 315 (see also dissenting opinion and cases cited); but such provision does not give the commissioner jurisdiction to determine the legal question whether the contractor has incurred a penalty provided for in the contract. *King, etc., Mnfg. Co. vs. St. Louis*, 43 Fed. (C. C.), 763, (appeal dismissed. 149 U. S., 769).

Ratification. A city may ratify the unauthorized acts and contracts of its officers when within the scope of the corporate powers. But the ratification must be by the same authority that could have done the act lawfully originally. *Dougherty vs. Excelsior Springs*, 110 Mo. App., 623, 627, 629; *Unionville vs. Martin*, 95 Mo. App., 28; *State ex rel. vs. Milling Co.*, 156 Mo., 620, 634; *Clay vs. Mexico*, 92 Mo. App., 611; *Ruggles vs. Collier*, 43 Mo., 353, 367; *Kolkmeier vs. Jefferson City*, 75 Mo. App., 678.

A sewer not legally constructed by ordinance may be accepted and used by a city, and such subsequent ratification estops the city, but not an abutting owner to dispute a tax bill. *Akers vs. Kolkmeier*, 97 Mo. App., 520; see further, *St. Louis vs. Clemens*, 43 Mo., 395.

Nor can a void contract be ratified. *Savage vs. Springfield*, 85 Mo. App., 323, 329.

The doctrine of estoppel applies to a municipal corporation when it enters into a contract which it has authority to make, with the same force as that doctrine applies to individuals. *Un. Dep. Co. vs. St. Louis*, 76 Mo., 393, 396; *Unionville vs. Martin*, 95 Mo. App., 28, 38; see also *National Subway Co. vs. St. Louis*, 169 Mo., 319 (refusing to allow the city to charge as per contract for the use of its streets during the period it itself prevented such use); *The "Maggie P."*, 25 Fed. (C. C. Dist. Mo.), 202, 206. See also *King, etc., Co. vs. St. Louis*, 43 Fed. (C. C. Mo.), 763.

But estoppel can not be applied against the city to validate a contract the city had no authority to make. *Unionville vs. Martin*, 95 Mo. App., 28, 38; *Wheeler vs. Poplar Bluff*, 149 Mo., 36.

Although it may be invoked against one dealing with the city who has received the benefit of an unauthorized contract which is not prohibited by charter or law. *Unionville vs. Martin*, 95 Mo. App., 28, 38; *Kansas City vs. Surety Co.*, 196 Mo., 281, 301; *St. Louis vs. Davidson*, 102 Mo., 149; *Henderson vs. Koenig*, 192 Mo., 690; *California vs. Telephone Co.*, 112 Mo. App., 722. But see *Wood vs. Kansas City*, 162 Mo., 312, holding that one can not be estopped by a void ordinance from claiming fees received as notary public, though obtaining his employment by such ordinance which required him to pay said fees to the city, his salary to be in full thereof, and such fees being earned in connection with city business and in city hours.

A city can not be estopped from claiming property to be a highway because it had been included in a cause seeking to condemn private land for public use. *Moses vs. St. L. Sec. Dock. Co.*, 84 Mo., 1. c. 246-247.

It was held that where the city of Joplin entered into a contract with a water company to supply it with water, it can not accept the benefits of the water supplied and defeat a recovery because the amount supplied was not as much as agreed; if it intends to escape payment altogether it should refuse to accept the water and terminate the contract, otherwise it will be liable for the amount received, and if it fails to enforce the provisions of the contract intended to meet the default claimed, it waives the right that the company can recover only on the quantum meruit. *Water-works Co. vs. Joplin*, 177 Mo., 496.

Assignability of contract. The rule that a contract is assignable applies against a municipal corporation, unless there be some statute or ordinance forbidding. *Gordon vs. Jefferson City*, 111 Mo. App., 23, 27; *St. Louis vs. Sullivan*, 42 Mo., 69, 73; *Kansas City Loan Co. vs. K. C.*, 200 Mo., 159. Whether a city has a right by ordinance to forbid the assignment of earned or unearned wages or claims was raised in the last cited case (200 Mo., 159), but the case was decided on the point that the particular ordinance there in question did not apply to the facts, and the assignee of earned claims was permitted to recover; the court construed an ordinance prohibiting issuance or payment of a warrant to any other than the party working for the city, as not preventing recovery by the assignee of the claim, in the same manner as the assignor could have recovered had no warrant been issued.

Deeds by municipal officers. acting in pursuance of ordinances or resolutions of the law-making power need not recite such authority, nor show that the contingency has happened which authorized the sale; the rule

applicable to trustees does not apply to a city. *Jamison vs. Fopiarea*, 43 Mo., 565.

Where the city has charter power to dispose of lands, its deed therefor is presumed to be executed in pursuance of that power, and no special authority by ordinance or resolution need be shown. *Chouquette vs. Barada*, 33 Mo., 249; a deed by a city, regular on its face, under the corporate seal, is *prima facie* evidence that all prerequisites authorizing the sale have been complied with. *Wells vs. Pressy*, 105 Mo., 164, 179, and cases cited.

Sec. 10. All books, records, and papers in any department, office, or division shall be open to the mayor, comptroller, or any committee of the board of aldermen.

For ordinances making provisions for reports from all fiscal officers and board, see Rev. Code, 1912, Sec. 71; water rates collector, Rev. Code, Sec. 1470.

Sec. 11. The mayor may appoint any number of civil engineers as city surveyors for a term of four years, whose duties and powers shall be as provided by law in regard to county surveyors. Each city surveyor shall when appointed give bond to the city for fifteen thousand dollars, conditioned for the faithful performance of his duties. Such bond may be sued upon by any person injured by the official acts of such surveyor.

Bond approved by comptroller. See Sec. 4 of this article.

Sec. 12. All publications not otherwise herein provided for shall be published in the paper or papers having the contract to do the city publishing at the time.

See Art. XV., Sec. 30.

Sec. 13. Any board or officer authorized by this charter to subpoena witnesses and order the production of books and papers shall have the services of the city marshal to execute process, and provision shall be made by ordinance for punishing failure to obey any such subpoena or order.

Sec. 14. Except in case of emergency not to exceed eight hours shall constitute a day's work for all mechanics and laborers employed by the city, and not less than the prevailing rate of wages shall be paid.

See note "Contract provisions" to Sec. 4, of Art. XXII.

Sec. 15. Where the word "office" is used in this charter to indicate a branch of the city government, it shall be construed to refer to any branch not in or under any department, and shall include the office of the mayor, register, marshal, city court judges, and clerk of the city courts.

Sec. 16. Unless the context indicates a different intent and except when referring to a person holding an office of employment under the city the words "person" or "persons" in this charter will be construed to include person, firm, corporation, company, or association, and the plurals thereof.

Sec. 17. The board of aldermen may by ordinance make any provision necessary to carry into execution the laws of the state relating to state, school, city, and other revenue; and any power,

duty, or trust under the laws of the state, vested in or imposed upon any body or officer of any county or of this city by the laws of the state may be exercised by such body or officer of the city as may be provided by ordinance consistent with the provisions of this charter.

SCHEDULE.

Section 1. All ordinances or parts thereof in force when this charter takes effect and not inconsistent therewith shall continue in force until amended or repealed; and all rights, actions, prosecutions, and contracts of the city, or for its benefit, all recognizances, bonds, obligations, and instruments entered into or executed to the city, all fines, taxes, penalties, and forfeitures due or owing to the city, and all writs, prosecutions, actions, and causes of action, shall be valid and continue unaffected by this charter taking effect.

Sec. 2. All ordinances authorizing or contemplating the appropriation or damaging of private property for public use or authorizing public work or improvements in force when this charter takes effect, and all things done thereunder, shall remain valid, and subsequent proceedings thereunder, including those in pending condemnation proceedings, shall be conducted as nearly as practicable in accordance with the provisions of this charter.

Sec. 3. Any assessment for taxation commenced before this charter takes effect shall be availed of and completed by the assessor and his deputies under this charter, and the same and any taxes based thereon shall be valid notwithstanding any change effected by this charter.

Sec. 4. Ordinances, or parts thereof, not inconsistent with this charter, referring to any present body, board, officer, or employe, shall be construed to refer to the body, board, officer, or employe having the same or similar powers or duties under this charter or ordinances consistent therewith.

Sec. 5. Ordinances authorizing a fine or punishment greater than is permitted by this charter shall continue valid so far as to authorize a fine or punishment not exceeding the limitations of this charter.

Sec. 6. Whenever any approval, order, or action by any board or officer, discontinued by this charter, is required by any law or present ordinance as a condition precedent to any payment, commitment to any institution, or other action by any city officer, it shall be sufficient to obtain such approval, order, or action from the body, board, or officer having the same or similar power in the premises under this charter, and if there be no such board or officer, such approval, order, or action may be secured from the mayor until otherwise provided by ordinance.

Sec. 7. It shall be the duty of all boards, commissions, and officers whose powers or duties are vested in others by this charter, to turn over all books, records, property, and funds to such others, and if any board, commission, or office be abolished without the duties thereof being vested in others the incumbents thereof shall turn over all books, records, property, and funds to the comptroller.

Sec. 8. The present municipal assembly, with its present officers or such as the respective houses may lawfully choose under the present charter, shall continue until the first Monday in April, 1915, with all the powers and duties given to the board of aldermen by this charter, and subject to its provisions; and until said date the provisions of the present charter with regard to the filling of vacancies in the office of mayor or the temporary performance of the duties of the mayor shall remain in force.

Sec. 9. All terms of office of present officers and employees, except those terms expressly saved or continued by this charter, are abolished.

Sec. 10. The present city officers mentioned in this section shall hold office under this charter and subject to its provisions, as follows: the present mayor, comptroller, and city counselor shall hold the like offices; the present police justices and district assessors shall hold office as city court judges and deputy assessors, respectively; the present street, sewer, water, park, health, and hospital commissioners, commissioner of supplies, and commissioner of public buildings, and chief of fire department, shall hold office, respectively, as heads of the appropriate divisions created by this charter; the present president of the board of assessors, president of the board of public improvements, and inspector of weights and measures shall hold office as assessor, president of the board of public service, and commissioner of weights and measures, respectively; and all other present incumbents of elective offices made appointive shall hold such appointive offices. Each such present city officer shall continue in the office above provided for him to hold until the end of the term for which he was elected or appointed and until his successor qualifies, with all the powers and duties given by this charter to such office.

Sec. 11. The present jailer and all superintendents of institutions and the superintendent of fire and police telegraph, shall continue in office subordinate to the head of the appropriate division and subject to the provisions of this charter.

Sec. 12. The present city surveyors shall continue in office until the end of the terms for which they were respectively appointed.

Sec. 13. The office of city auditor, as it at present exists, is abolished, but the present city auditor shall continue in office until the end of the term for which he was elected. In the meantime he and the deputies and clerks under him shall be part of the comptroller's office and under the control of the comptroller.

Sec. 14. The city attorneys' offices as such are abolished, but until the law department is organized in accordance with this charter the city counselor's office and the city attorneys' offices shall constitute the law department and be under the control of the city counselor.

Sec. 15. All persons now occupying positions which are created solely by ordinance not inconsistent with this charter and which are not exempted from the efficiency provisions of this charter, including those mentioned in Sec. 9 of Article XVIII., and all persons occupying positions which are so created and which are exempted from said efficiency provisions by subdivisions d and f of Sec. 3, of Article XVIII., shall continue in such positions, each in the appropriate branch of the city government and subordinate to the proper head officer. Where transfers of duties are effected by this charter the mayor may transfer any of said officers and employes to conform thereto. Tenure of office or employment under this section shall be subject to this charter and the ordinances of the city.

Sec. 16. All present boards, commissions, and officers created by charter or ordinance and not provided for or authorized or expressly continued by this charter, are hereby abolished, save only the city plan commission, board of engineers and board of examiners of plumbers, which said commission and boards until abolished by ordinance shall hereafter be appointed by and under the control of the board of public service.

Sec. 17. The mayor may, and on the written advice of the city counselor shall, require any renewal or substitution of the official bond or security of any present officer or employe as a condition precedent to such officer or employe continuing in office; and any officer or employe failing to comply with any such requirement within fifteen days after being notified thereof shall thereby forfeit his office. It shall be the duty of the city counselor forthwith on this charter being adopted to examine all official bonds and securities and advise the mayor whether on account of any changes effected by this charter it will be necessary to require such bond or security to be renewed or substituted.

Sec. 18. Every present city officer or employe who, if appointed or elected, would be required by this charter to take an official oath, shall take, subscribe, and file such oath as provided in this charter.

SCHEME

— FOR THE —

SEPARATION AND REORGANIZATION OF THE GOVERNMENTS

— OF THE —

CITY AND COUNTY OF ST. LOUIS AND THE ADJUSTMENT OF THEIR RELATIONS

WHICH SCHEME WENT INTO EFFECT OCTOBER 22, 1876

The following Scheme for the separation of the governments of St. Louis city and county, the definition of the boundaries of said city as enlarged, the reorganization of the government of said county, and the adjustment of the relations between said city and county so that they shall hereafter be independent of each other, is hereby adopted as the organic law thereof.

The Scheme and Charter of St. Louis City was framed by a board of freeholders in pursuance of the provisions of Art. IX., Secs. 20 to 25, of the State Constitution of 1875, and was adopted by the people at an election held on August 22, 1876; it became the organic law of the city and county sixty days thereafter (Oct. 22, 1876), and all former charters and special laws of St. Louis county were superseded. State ex rel. vs. Finn, 4 Mo. App., 347, 356; State ex rel. vs. Mason, 4 Mo. App., 377; Badgley vs. St. Louis, 149 Mo., 122, 129; St. Louis vs. Fischer, 167 Mo., 654, 660; State ex rel. vs. Sutton, 3 Mo. App., 388 (deciding the question whether the adoption had actually been carried); State ex rel. vs. St. Louis, 174 Mo., 1. c. 140; Northcutt vs. Eager, 132 Mo., 1. c. 273.

The separation of the city and county did not relieve St. Louis from the operation of such laws specially applicable to St. Louis County as were then in force and consistent with the altered circumstances. Elchelmann vs. Weiss, 7 Mo. App., 87, 89 (sheriffs' and marshals' act). The constitution limits the displacement to "special laws relating to St. Louis County inconsistent with such scheme," Const., Art. IX., Sec. 20. But in all other respects the city became independent of the county, and is a city proper, though in some respects performing the functions of a county. State ex rel. vs. Walsh, 69 Mo., 408. As to how far the city is to be treated as a county see *infra*, this note.

It may be added that while the absolute general power of the legislature to alter or destroy its municipalities or to change their boundaries, without consulting the wishes of the inhabitants, is unquestioned (St. Louis vs. Russell, 9 Mo., 503, 507; McCormick vs. Rv., 20 Mo. App., 640 and cases cited; Forsyth vs. Hammond, 166 U. S., 506), yet it can not be lawfully so exercised as to impair the obligations of contracts (such as bonds) previously entered into by such municipalities. Graham vs. Folsom, 200 U. S., 248; St. Louis vs. Russell, *supra*, 1. c. 508.

Section 1. Boundaries of the city of St. Louis—territory of St. Louis county.—The boundaries of the city of St. Louis are hereby enlarged, settled and established as follows:

The corporate limits of the city of St. Louis shall comprise all that district of country situated in the county of St. Louis and state

of Missouri, to-wit: Beginning at a point in the middle of the main channel of the Mississippi river, and running thence westwardly at right angles to said channel, to a point on the west bank of said river two hundred feet south of the center of the mouth of the River des Peres; thence westwardly and parallel to the center of the River des Peres, and two hundred feet south thereof, to the eastern line of the Lemay Ferry road; thence westwardly to a point in the west line of said Lemay Ferry road at its intersection with the center of the Weber road; thence westwardly along the center of the Weber road to its intersection of the east line of lot one (1) of the Carondelet commons, south of the River des Peres; thence westwardly to the southeast corner of Rudolph Overman's, or northeast corner of B. H. Haar's land; thence westwardly to said Harr's northwest corner; thence northwestwardly to a point in the center of the Gravois road six hundred (600) feet southwardly from the center of the bridge across the River des Peres; thence northwestwardly to the southeast corner of lot thirty-one (31) of the subdivision of the Mackenzie tract in United States survey one thousand nine hundred and fifty-three (1,953); thence northwestwardly in continuance of said last mentioned line to the southern line of lot twenty-one (21) of the subdivision of the said Mackenzie tract; thence northwestwardly to a point in the southern line of United States survey two thousand and thirty-five, twenty-six (26) chains eastward from the southwest corner of said survey; thence northwardly to a point in the north line of the subdivision of East Laclède, six hundred (600) feet west of the McCausland road; thence northwardly and parallel with the center of the McCausland road, to a point on the Clayton road six hundred (600) feet west of its intersection with the McCausland road; thence northwardly and parallel with the Skinker road, and six hundred (600) feet west thereof, to its intersection with the old Bonhomme road; thence northeastwardly to the intersection of the center line of McLaran avenue and Mead street; thence in a northeastwardly direction to a point in the Bellefontaine road six hundred (600) feet north of its intersection with the Columbia Bottom road; thence northwardly and parallel with center line of the Columbia Bottom road to the northern boundary line of the United States survey number one hundred and fourteen (114); thence eastwardly along said line to the center of the main channel of the Mississippi river; thence with the meanderings of said channel southwardly to the point of beginning; and the residue of what now constitutes the county of St. Louis shall hereafter be called St. Louis county.

See note to Art. I., Sec. 2, at page 271, R. C. 1912.

Sec. 2. City and county declared separated; authority of county court annulled.—The city of St. Louis, as described in the preceding section, and the residue of St. Louis county, as said county is now constituted by law, are hereby declared to be distinct and separate

municipalities, and all authority heretofore exercised by the county court of St. Louis county, or any officer of said county, is hereby forever abrogated and annulled, except for the purposes and in cases as hereinafter provided.

Sec. 3. Election of officers for St. Louis county—judicial and representative districts established—county seat.—At the general election for state and other officers, on the Tuesday next following the first Monday in November, 1876, and every two years thereafter, there shall be elected officers for St. Louis county, as follows: A sheriff, who shall be ex officio collector, coroner, assessor, treasurer; a clerk of the county court, who shall be ex officio recorder of deeds; they shall hold their offices for the term of two years, and shall perform such duties as are now provided by law for such officers, until their successors are duly elected and qualified; also, a public administrator, who shall be elected at said election, and every four years thereafter, and shall hold office for four years, and perform the duties now prescribed by law. There shall also be elected at said election three justices of the county court, who shall constitute the county court of said county, and their powers, duties, and terms of office shall be as defined and governed by the general law at present applying to other counties in this state. And for that purpose the county of St. Louis, as established by this scheme, shall be divided into two districts by a line commencing at a point where the Clayton road intersects the boundary between the city and county of St. Louis, as established by this scheme and charter, and running thence westwardly with the Clayton road to the eastern boundary of Bonhomme township, as now established; thence north with the eastern boundary of said township to the Missouri river. So much of said county as lies north and east of said line shall constitute district number one, and so much of said county as lies south and west of said line shall constitute number two. One justice of the county court shall be elected by the qualified voters of each of said districts, and the presiding justice of said county court shall be elected at large by the qualified voters of said county. Said county shall be divided and numbered in the same manner into two representative districts, and until otherwise districted by law, one representative in the general assembly of the state shall be elected by the qualified voters of each of said districts. Immediately succeeding the election in November, 1876, and when the result thereof is officially determined as hereinafter provided, the justices of the county court shall meet at James C. Sutton's house, on the Manchester road, for the purpose of organizing the new government of the county, determining the bonds of the county officers, and making such appointments as may be authorized by law. Said court may determine at what place in said county said court shall meet and the county offices be located until the question of a permanent seat of justice may be determined. And for that purpose the following persons shall be and

they are hereby appointed commissioners, to-wit: Robert G. Coleman, William W. Henderson, and Thomas J. Sappington, who shall, after the scheme goes into effect, select a suitable place for the county seat of said county, and report such selection to the county court of said county, when it shall be the duty of said court to submit to the qualified voters of said county, at a special election to be ordered by said court, within six months from the filing of said report, the question as to whether the place so selected shall be the place for the permanent seat of justice of said county; and if a majority of the qualified voters of said county voting at said election, shall be in favor of said location, then the same shall be and remain the seat of justice or county seat of such county; but if a majority of the qualified voters, voting at such election, shall be against such location, then the permanent seat of justice shall be established in the manner as at present provided by law in regard to new counties. There shall be elected at said election such justices of the peace and constables for the county as said county may be entitled to under existing laws, who shall hold their offices according to the general provisions of law applying to other counties in this state.

The legislature has power to change the tenure of office and dates of election of officers as fixed by this section of the scheme, and it did so as to clerks of courts by Laws 1877, p. 192. *State ex rel. vs. Matthews*, 94 Mo., 117.

Sec. 4. Present county court to order election November, 1876—duties and responsibilities of court in connection with separation.—The present county court of St. Louis county shall order and make all necessary arrangements for the general state election in November next, and shall order at the same time the election of the justices and officers for St. Louis county, as specified in the preceding section, and the members of the present county court thereof shall continue in authority and in the discharge of their present duties, except as herein otherwise provided, until the new county government is organized, and the proper county officers, as provided herein, are commissioned and qualified, and thereupon their terms of office and that of clerk of said court shall cease, and the offices of justices of the county court and clerk of the said county court, as now established, shall be forever abolished; provided, that nothing in this section shall relieve said court and its officers and employes from full responsibility for the management and custody of all interests and property of the county of St. Louis, as constituted previous to the adoption of this scheme, until a formal transfer of the same to the proper authority, as herein provided, has been effected.

See note at page 319, R. C. 1912.

Sec. 5. Election of sheriff, coroner, and public administrator for city—duties and compensation.—It shall be the duty of the mayor of the city of St. Louis to order an election on the same day as the general election in November, 1876, and every two years there-

after, for a sheriff for the city of St. Louis, and coroner for said city, who shall be elected by the qualified voters of said city, and shall hold their offices for two years and until their successors are duly elected and qualified, and they shall be commissioned by the mayor. A public administrator for said city shall also be elected at the general election aforesaid, and every four years thereafter, whose term of office shall be four years, and whose duties shall be as provided by law. The official bond of said officers shall be fixed and determined by the municipal assembly, in conformity with the constitution and laws; and pending such action the sheriff, coroner and public administrator shall give bond in such amounts as now required of like officers for the present county of St. Louis, with not less than two securities, owners of unincumbered real estate in the city of St. Louis, to be approved by the mayor; and said bonds, when so approved, shall be filed with the register; and said officers shall respectively perform within the city limits such duties as are now provided by law in regard to the sheriff, coroner, and public administrator of St. Louis county, and shall receive the same compensation allowed said officers of St. Louis county prior to the adoption of this scheme, until otherwise provided by law. The coroner shall discharge the duties of sheriff in all cases in which coroners are authorized to discharge those duties by law.

See as to elections, terms, etc., note at page 319, R. C. 1912. The adoption of the scheme and charter was at first supposed to be defeated, and no election for sheriff was called in November, 1876, for the city of St. Louis; but that office for the old county no longer existed owing to the fact that the scheme of separation had actually, as it developed, been adopted, and it was held that one elected as sheriff for the supposed county had no more than color of the title and it devolved on the governor to appoint the first lawful sheriff. *State ex rel. vs. Finn.*, 4 Mo. App., 347.

As to duties and powers of sheriffs and coroners in St. Louis, see page 319, R. C. 1912.

Sec. 6. City marshal to assume duties of former county marshal.—The marshal of the city of St. Louis, in addition to his other duties, shall assume and discharge all the duties heretofore discharged by the marshal of St. Louis county, within the limits of the city of St. Louis; and the present county marshal shall deliver to said city marshal all books, documents, and property of every kind in his possession by virtue of said office, except such property as may properly belong to the reorganized county government, which shall be delivered to the sheriff of St. Louis county, elected in November, 1876.

Effect of scheme on old county marshal was to abolish the office and confer same on the new city marshal until otherwise provided, etc. See discussion as to duties of marshal, sheriffs, etc., in *State ex rel. vs. Mason*, 4 Mo. App., 377. See also scheme, Secs. 18, 27, 30; 1876 charter, Art. IV., Sec. 31; Rev. Code, 1912, Secs. 1929-1933.

Sec. 7. County sheriff ex officio collector—county clerk ex officio recorder—present recorder to continue in office.—The sheriff of St. Louis county, elected as provided in section 3, shall be ex officio collector of the revenue of said county; and the clerk of said county court shall be ex officio recorder of deeds for said county; and

the present recorder of deeds for St. Louis county shall hereafter be known as recorder of deeds, and shall hold his office for his term as now prescribed by law, and until his successor shall be elected and qualified; and at the general election in November, 1878, and every four years thereafter, a city recorder shall be elected by the qualified voters of the city of St. Louis.

Sheriff ex officio collector of St. Louis county under this section. See Webster vs. Smith, 78 Mo., 163.

Sec. 8. Assessment and collection of taxes under scheme—duties of collector and treasurer as to moneys—uncollected tax bills—office of county auditor abolished.—The office of the president of the board of assessors is hereby declared a city office, and is placed under the control of the city government, but the president of said board shall cause the books and plats of said office to be divided and such portions thereof as exclusively refer to St. Louis county shall be delivered to the proper officer for the use of said county; but if this can not be done, or can be done only in part, then abstracts shall be made thereof and the cost of same paid out of the city treasury. The present state and county collector shall continue in office until the expiration of his official term, and thereafter his duties shall be discharged by the city collector, and upon this scheme going into operation the said state and county collector shall pay over all collections for city and county taxes levied for general purposes, and for licenses collected within the city limits, as herein extended, and all county taxes for interest and parks, to the treasurer of the city of St. Louis; and all collections for county and school taxes on property and licenses, except all county taxes for interest and parks, in St. Louis county, he shall pay to the present county treasurer, until the treasurer of said county is elected, as provided for in section 3; and when that officer has duly qualified, the present county treasurer shall pay over to him all such collections for the use of said county, and from and after the time the county treasurer of St. Louis county, as constituted by this scheme, is elected and qualified, and during the continuance in office of said county collector, he shall in like manner pay over all revenue collections, above mentioned, to the city and county treasurers respectively. At the close of his term of office he shall effect a settlement with the city and county authorities, and shall account for all tax bills placed in his possession, and shall turn over all uncollected bills in his possession, as follows: To the comptroller all tax bills on property within the city limits as herein established, and to the clerk of the St. Louis county court all tax bills on property outside of city limits. The office of county auditor, as it at present exists, is abolished, but that officer shall continue in office, and be responsible on his bond until all books, documents, moneys, and other property in his hands, or under his charge by virtue of his office, have been properly accounted for and turned over to the parties authorized by law to receive them.

The assessment of property for the taxes of the year 1877 in the city as constituted by this scheme, shall be made by the president of the board of assessors of the present county of St. Louis, in the manner provided by law; said president shall keep a separate set of books for the property in the city as now constituted, and for that in the enlarged limits of the city. As soon as the assessment books for the city and for the enlarged limits shall have been completed and corrected as required by law, they shall be turned over by said president with the other books and plats of his office to the proper officer of said city. After the assessment books have been corrected, the president of assessors shall make out a fair copy of the same and shall make an abstract of said books, showing the amounts of the several kinds of property taxed, specifying: First, the amount of all property within the old limits of the city of St. Louis; second, the amount of value of all property within the new or extended limits, and outside the old limits, and add thereto his certificate that the same contains a true and correct list of all taxable property in the city of St. Louis, so far as he has been able to ascertain the same. Said abstract shall be verified by oath and delivered to the mayor of St. Louis on or before the fourth Monday of June, 1877. As soon as the assessor of St. Louis county shall be elected and qualified, the president of the board of assessors shall deliver to the said assessor the books, plats, and all papers appertaining to the property of said county, as herein provided, and it shall be the duty of the assessor of said county to assess the property of said county in the same manner as now provided by law for other counties of this state.

Sec. 9. County court to transfer public buildings, moneys, etc., to city—employees to continue until, etc.—mayor may retain or discharge appointees of court.—It shall be the duty of the present county court of St. Louis county to see that all buildings, moneys, and other property belonging to the county, which are placed under the control of the city under this scheme, shall be formally and properly transferred. Said court shall cause all records, books, papers, etc., now in the office of said court to be turned over to the register, who shall duly schedule same, and report the same for inspection of the mayor. All employees and officers now in the service of the county in connection with public institutions or otherwise, under appointment of said court, and within the limits of the city of St. Louis as herein established, shall continue in the discharge of their duties under the present rules and regulations until notified to the contrary by the mayor of the city, who shall have authority to retain or for unfitness discharge such as he may deem necessary and to fill any vacancies that may occur, until the municipal assembly can provide by ordinance for the government of such institutions and regulations of such service.

The mayor, under this section, had power to remove or suspend, pending the period of doubt as to the adoption of the scheme and charter. Howard v. St. Louis, 88 Mo., 656, 660.

Sec. 10. Title to public buildings, parks, etc., transferred to city—assumption of county debt by city.—All the public buildings, institutions, public parks, and property of every character and description heretofore owned and controlled by the county of St. Louis, within the limits as extended, including the court house, the county jail, the insane asylum and the poor house, are hereby transferred and made over to the city of St. Louis, and all the right, title and interest of the county of St. Louis in said property, and in all public roads and highways within the enlarged limits, is hereby vested in the city of St. Louis, and divested out of the county; and in consideration of the city becoming the proprietor of all the county buildings and property within its enlarged limits, the city hereby assumes the whole of the existing county debt, and the entire park tax; and the municipal assembly shall, as soon as practicable after the adoption of this scheme and charter, provide by ordinance for the management of the property and public institutions hereby placed under its charge.

Cited in *St. Louis vs. W. U. Tel. Co.*, 149 U. S., loc. cit. 469. Title to public property under this section passed to the city. *St. Louis vs. Ry.*, 114 Mo., 1. c. 20.

The insane asylum is a private institution belonging to and controlled by the city of St. Louis, and is not included under the general statutes as one of the state eleemosynary institutions. *State vs. Seibert*, 123 Mo., 424, 429. See charter provisions as to infirmaries and charitable institutions of the city, Art. XIII., Sec. 14, Clause b. Ordinances regarding the insane, etc., Rev. Code, 1912, Secs. 1017 et seq.

Under Sec. 10 of the scheme the building commissioner and not the criminal court appoints the janitor. *State ex rel. vs. Smith*, 82 Mo., 51.

Sec. 11. Municipal assembly to provide for payment of county debt.—The municipal assembly shall from time to time make provision by ordinance for the payment of the county debt, and interest thereon, as the same matures, and in all respects said debt shall be considered a city debt, and shall be transferred to the books of the city, and embraced in all official statements of its funded liabilities.

Sec. 12. City officers to qualify under charter—election of municipal assembly—city offices to be filled in April, 1877.—Until provision is made by ordinance for carrying out the provisions of the preceding sections, and until the officers provided for under the charter framed and adopted by this board are elected and qualified, and after this scheme and the charter framed hereunder go into operation, the present city officers shall qualify under such charter, and perform all the duties and exercise the powers of their office under such charter, except as otherwise provided in this scheme and charter, and under the ordinances of the city not inconsistent therewith, within the enlarged city limits. For the purpose of electing a municipal assembly under such charter, an election for members of the municipal assembly shall be held at the same time as the general state election to be held in November, 1876, and the term of office of the members of said assembly shall continue for the same time and on the same condition as if the same com-

menced after the city election in April, 1877, as provided for in such charter; provided, that in case of vacancy in the office of the mayor, the present comptroller of the city shall be authorized to act and shall act as such mayor until such vacancies shall be filled as provided in the charter framed under this scheme; and provided further, that all city officers, except the municipal assembly and such offices whose incumbent are specifically continued in office till the expiration of their term by this scheme and charter, and all appointive offices of the city or of any of its departments, shall be vacant from and after the city election provided for in the charter, to be held in April, 1877, and shall be filled by the officers then elected, and by appointments by the mayor and officers then elected, as in such charter prescribed.

Sec. 13. Board of finance and its duties—term of county treasurer ceases, when—tax collections for school purposes—debts due county payable to city.—A board of finance is hereby created, to consist of the mayor and comptroller of the city of St. Louis and the justices of the county court from the fifth and sixth districts of St. Louis county, whose duty it shall be, immediately after this scheme goes into operation, to examine and verify the county indebtedness, as the same existed at the time this scheme went into operation, on the books of the county, as to bonds and all other claims, and to ascertain and declare the amount necessary for the payment of the current expenses of the county to such time, and to ascertain the balance of cash, after deducting the amount necessary for the payment of such current expenses, in the hands of the county treasurer and the source whence derived. And all collections made on account of taxes for interest and the parks, and that portion of said balance which was collected for general purposes within the extended city limits, shall be paid into the city treasury; and that portion which was collected for general purposes within the county of St. Louis, as constituted by this scheme, shall be paid into the treasury of said county; and the same course shall be pursued with reference to all moneys coming into the hands of the present county treasurer after this scheme shall go into operation. The term of the present county treasurer shall cease when the treasurer for the county of St. Louis, as herein constituted, shall have been elected and qualified. The county auditor shall properly account for all school moneys for which he is in any way responsible to the proper authorities, and all tax collections for school purposes, made either by the city or county of St. Louis for the present or any other year, shall be applied only to the support of public schools. All debts and obligations due or payable, or belonging to the present county of St. Louis shall be considered due and payable to the city of St. Louis; and the right to sue for and to adjust and collect same, or any part thereof, shall be vested in such city. The amount above ascertained for the payment of current expenses

shall be paid in the manner provided by law out of the sum above reserved for such purpose.

Sec. 14. Metropolitan police.—The Metropolitan police force of the city of St. Louis, as now established by law, shall be maintained at the cost of the city of St. Louis; provided, however, that the Metropolitan police of the city of St. Louis shall have the same power and jurisdiction in the county of St. Louis, as constituted by this scheme, as now provided by law; provided, that upon a petition of the county court of St. Louis county the board of police commissioners shall appoint and equip not more than twenty policemen, as provided in the act approved March 13, 1867, for duty in said county. The cost of equipping and maintaining said police shall be paid by the county as herein established.

Charter provisions concerning police. Art. XIII, Sec. 15, Clause (a). State law now controls. 1912 "Laws Specially Applicable to St. Louis," Secs. 465-493, and annotations. Sec. 14 of the scheme, in so far as it purports to confer power or jurisdiction on the city police to act in the county of St. Louis, is superseded and annulled by the metropolitan police act of 1899, and the police force of the city has no authority to act as such in the county. State ex rel. vs. Stobie, 194 Mo., 14 (Marshall and Valiant, JJ., dissenting).

Sec. 15. Justices of the peace and constables—bonds of constables and notaries.—Until otherwise provided by law, all the present justices of the peace and constables shall hold their offices until the expiration of their present terms, and only such justices and constables shall be elected in November, 1876, as may be necessary to fill vacancies. All commissions of justices of the peace and constables elected in the city of St. Louis shall be issued by the mayor, and a record thereof kept by the city register. All bonds of constables, and of all notaries public appointed, shall be approved by the mayor, and a record of the same shall be kept in said register's office.

It being at first supposed that the adoption of the scheme and charter was defeated, the act of the county court in approving a constable's bond in the interim was validated by the de facto principle. Schaeffer vs. Bernero, 11 Mo. App., 562, 564. Approval of constables' bonds. See Rev. Code, 1912, Sec. 2274. As to justices of the peace and constables generally in St. Louis, see "Laws Specially Applicable to St. Louis," Secs. 193-222; also, Rev. Code, 1912, Secs. 1924-1928.

Sec. 16. City and county surveyors.—The mayor of the city of St. Louis, with the approval of the council, may appoint any number of competent persons, being civil engineers, as city surveyors, whose duties and powers shall be as now provided by law in regard to county surveyors; but all applicants shall produce satisfactory testimonials of good character and competency, and when appointed shall give bond in the sum now required by law from surveyors in St. Louis county, and the county court of St. Louis may appoint county surveyors under the same restrictions. The present county surveyors, commissioned by the county court under an act entitled "An act to amend chapter 27 of the general statutes of Missouri, relating to county surveyors," approved March 25, 1872, may continue in authority and in discharge of their present duties

in the city and county of St. Louis until the expiration of the commissions held by them respectively, and the said city surveyors shall have power to execute in the county of St. Louis all orders of the circuit court of the eighth judicial circuit, as they were authorized to do before this scheme went into operation.

Ordinances as to city surveyors. Rev. Code, 1912, Secs. 2421-2424.

Sec. 17. Notaries public.—All notaries public now commissioned by the governor for St. Louis county shall exercise the official powers and duties of such office within the city and county of St. Louis, as constituted by this scheme, and the city register shall keep a complete record of all notaries acting within the city of St. Louis, and of their bonds and the dates of their commissions, and of the expiration thereof.

Sec. 18. Powers of sheriffs of city and county—duties of city marshal.—The sheriff of the city of St. Louis shall, within the limits of said city, exercise the authority now vested by law in the sheriff of the county of St. Louis, and after this scheme shall go into operation, all writs and other process which are now by law provided to be executed by the sheriff of the county of St. Louis, within the city limits, shall be directed to and executed by the sheriff of the city of St. Louis. The city marshal, after this scheme goes into operation, in addition to the duties now required by law to be performed by him, shall, within the city limits, exercise the same power and perform the same duties as are now provided by law in regard to the county marshal. And the sheriff of St. Louis county shall execute all process directed or delivered to him by any court of record of the county of St. Louis, as are now established by law.

Sheriff. See note at page 319, R. C. 1912. *Deputies of sheriff.* See page 336, R. C. 1912, charter, Art. IV., Sec. 14. *Ordinances as to marshal* see Rev. Code, 1912, Secs. 1929-1933. *As to whether sheriff is state or city officer,* see note at page 336, R. C. 1912.

Sec. 19. Judges of election for November, 1876—returns, etc.—The judges of the election for state and other offices to be held in November, 1876, and for officers of the city and county as provided in this scheme, shall be appointed as now provided by law, and the same judges shall act in the election for city and county officers at such November election, 1876, and the returns shall be made to the clerk of the present county court, who shall officially certify to the result; and in the event of any neglect or failure on the part of said county court, or any officer of the city or county, to order and arrange for the election herein provided, the St. Louis court of appeals, or any judge thereof, may cause the same to be done, and may in such event appoint judges and take all other steps necessary to insure the holding of said election in the manner contemplated herein.

Sec. 20. Public officers to assist in carrying out scheme.—It shall be the duty of all existing officers of St. Louis city and county to assist in carrying out the provisions of this scheme, so far as

any official act is necessary for that purpose; and in all cases in which said officers are continued in office under this scheme, their duties and compensation shall be the same as are now provided by law.

Sec. 21. City may hold real estate in county.—The city of St. Louis may purchase, take and hold real estate in the county of St. Louis for the use of the city.

St. Louis may hold property outside city limits, etc. Charter, Art. I., Sec. 8, and note at page 270, R. C. 1912.

Sec. 22. Salaries of judicial officers.—Until otherwise provided by law, the salaries of all the judges of courts now paid out of the county treasury, and of all judicial officers not affected by the operation of this scheme, shall be paid proportionately by the city and county of St. Louis, according to the aggregate of taxable values in each; and to carry out this section the municipal assembly shall annually provide for paying such expenses, and it shall be the duty of the county court of said county, and a binding obligation thereon, to pay into the city treasury annually an amount equal to the proportion of the expenses herein indicated; and the officers of said city may make any temporary arrangement necessary to carry out the provisions of this section, until the municipal assembly can regulate the subject by ordinance.

Sec. 23. Tax bills on property intersected by city limits.—Immediately after this scheme goes into operation, the present state and county collector of revenue shall turn over to the president of the board of assessors all the tax bills then in his hands that apply to lots or parcels of land which shall have become intersected by the new city limits line, for which bills the said president shall return him a detailed receipt, to be held by him (the collector) as his sufficient voucher, against the corresponding tax amounts for which he may stand charged; and the said president shall proceed at once to make, in lieu of the bills received, new bills, whereon the amounts of taxes shall be separated in the proportion of quality and value of land, or land and improvements, respectively lying within and without the newly established city limits, to the end that the taxes distributable to the county and those distributable to the city shall all be represented by separate bills. The new bills thus ordered when completed by the said president, shall be by him delivered to the comptroller to be examined and stamped, and they shall next, with the least practicable delay, be returned by the comptroller to the collector for collection. The old tax bills herein above named shall likewise be by the president surrendered to the comptroller, who shall cancel them.

Sec. 24. Authority of county court conferred on municipal assembly.—The municipal assembly shall have power within the city of St. Louis to do all acts and perform all functions not otherwise provided for in this charter and not inconsistent with its terms, which

have heretofore been done and performed by the county court of the county of St. Louis.

Section cited. *Kenefick vs. St. Louis*, 127 Mo., 1, 9.

Sec. 25. Admission to poorhouse, insane asylum, etc.—Until the county of St. Louis, as organized by this scheme, shall otherwise provide, the county court thereof shall be authorized to send the paupers of said county to the poorhouse or county farm, now in use, and the insane paupers of said county to the insane asylum now in use, and for the maintenance of such paupers shall pay to the treasurer of the city the cost of maintaining paupers in those institutions, to be ascertained by the annual reports of the same.

As to insane asylum see Rev. Code, 1912, Secs. 1017 et seq., and references in notes thereto.

As to poorhouse, see Rev. Code, 1912, Secs. 1036 et seq., and note.

Sec. 26. Prosecuting attorneys and clerks of eighth judicial district continued in office.—The circuit attorney and assistant circuit attorney for the eighth judicial circuit, the prosecuting attorney, the assistant prosecuting attorney, and the clerk of the St. Louis court of criminal correction, and the clerk of the St. Louis criminal court, shall continue to hold their offices and discharge the duties thereof, as now provided by law, until the expiration of their respective terms of office, and until their successors are duly elected and qualified.

Sec. 27. Grand jury, how selected and summoned.—After this scheme goes into operation, and until otherwise provided by law, the grand jury of the eighth judicial circuit shall be selected by the judge of the St. Louis criminal court from the city and county of St. Louis, and shall be summoned by the marshal of the city of St. Louis.

Selection, etc., of the grand jury, see R. S. 1909, Secs. 7363-7364, "Laws Specially Applicable to St. Louis," Secs. 191-192.

Sec. 28. Grand jury, how paid.—All members of grand juries selected from the city of St. Louis shall be paid out of the city treasury, and those from the county of St. Louis shall be paid out of the county treasury. All payments shall be upon certificates of the clerk of the St. Louis criminal court.

Pay of grand jurors. Rev. Code, 1912, Sec. 1935.

Sec. 29. Costs in criminal cases.—In the criminal cases occurring in the city of St. Louis, in which, by the law in force prior to this scheme going into operation, the county of St. Louis was liable to pay costs, such costs shall, after that time, be paid out of the city treasury, and in like cases occurring in the county of St. Louis, shall be paid out of the treasury of the county of St. Louis.

Sec. 30. Petit jurors—how selected and summoned—jury commissioner to continue in office.—Petit jurors to serve in the circuit court of the eighth judicial circuit, in the St. Louis criminal court and in the St. Louis court of criminal correction, shall, until other-

wise provided, be selected and summoned as now provided by law, except that jurors for the said circuit court shall be summoned by the sheriff of the city of St. Louis, and jurors to serve in the said other two courts shall be summoned by the marshal of the city of St. Louis. And the act to provide a jury system in St. Louis county, approved March 3, 1857, and the acts amendatory thereof, shall remain in force until altered or repealed, and the present jury commissioner of St. Louis county shall remain in office until the expiration of his official term, and perform all the duties now required of him by law.

Jury commissioner, summoning petit jury, etc. R. S. 1909, Secs. 7334-7364. "Laws Specially Applicable to St. Louis," Secs. 162-192. Ordinance on jury commissioner, see Rev. Code, 1912, Sec. 1934.

Section 31. Petit jurors—how paid.—For all services of petit jurors rendered in the circuit court of the eighth judicial circuit, they shall be paid out of the city treasury, and for all such services rendered by citizens of St. Louis, in the St. Louis criminal court and the St. Louis court of criminal correction, they shall be paid out of the city treasury, and for all such services rendered in the last mentioned courts by citizens of St. Louis county, they shall be paid out of the county treasury.

Pay of petit jurors. R. S. 1909, Sec. 7357; "Laws Specially Applicable to St. Louis," Sec. 185; Ordinances, Rev. Code, 1912, Sec. 1935; in police court, Rev. Code, 1912, Sec. 1897.

Sec. 32. Collections payable into city treasury—payments into county treasury—appropriations by municipal assembly.—In all cases where, according to the laws in force up to the time when this scheme shall go into operation, any public officer or other person was required to pay any money coming into his hands from any source whatever into the county treasury of St. Louis county, and where it is not otherwise provided in this scheme, or the charter framed under it, such officer or person shall, after the time aforesaid, pay all such money into the treasury of the city of St. Louis, at or within such times as he was theretofore required to pay the same into the county treasury; and if no time shall be prescribed by law for any such payments, then he shall pay the same monthly on the first Monday of each month, into said city treasury, and shall take triplicate receipts therefor, stating the account on which such payment was made, one of which he shall file in the city auditor's office, and one with the comptroller, who shall charge the treasurer with the amount so paid; and the said auditor and treasurer shall keep accounts showing the account on which such payments were made and the source from which the money was derived. All such money shall be applied and used for the purposes for which it was collected, or for which it was made applicable by law and in all cases where such money is not set apart or appropriated by law for specific purposes, the municipal assembly of the city may appropriate it to such municipal uses as it may deem proper: Provided, however, That all fines, penalties, and

forfeitures collected or accruing in the county of St. Louis, or on account of said county or the people thereof, shall be paid in the manner and at times aforesaid into the county treasury of said county, and duplicate receipts shall be taken as aforesaid by the officer or person paying the same, one of which he shall file with the county clerk of said county, who shall charge the treasurer with the amount so paid, and such money shall be appropriated and used as it is or may be provided by law; and provided further, That if any public officer or other person shall, at the time this scheme goes into operation, be in default in the payment of any such money into the said county treasury, he shall immediately pay the same into the said city treasury in the manner aforesaid, and the same shall be disposed of as herein provided.

Sec. 33. Power of former county collector vested in sheriff of county.—All powers heretofore vested in the collector of the county of St. Louis, and all duties required to be performed by him in reference to taxes on property situated outside of the limits of the city of St. Louis, as enlarged, and in reference to the sale of such property for taxes and the redemption thereof, shall, after the election and qualification of the sheriff of the county of St. Louis, as provided by this scheme, be executed and performed by such sheriff; and all deeds for the sale of land for taxes made by him shall be acknowledged before the clerk of the county court of St. Louis county.

See Webster vs. Smith, 78 Mo., 163, 165.

Sec. 34. Authority of municipal assembly as to revenue.—The municipal assembly shall have power to enact all ordinances that may be necessary to carry into execution the laws relating to state, county, city, and other revenue within the city of St. Louis, as enlarged; and such powers as are now vested by law in the county court of St. Louis county, or the clerk of said court, or the county collector and auditor, may be exercised by such tribunals and officers as may be provided by ordinance.

Sec. 35. Regulations as to animals running at large.—It shall be unlawful for any domestic animal of the species of horse, cattle, mule, ass, swine, sheep, or goat to be suffered to run at large, by the owner thereof, in the city or county of St. Louis; and if any such animal be found running at large in said city or county after this scheme and charter go into operation, it shall be lawful for any person to take up and restrain the same forthwith; and such person shall, within three days after so taking up and restraining such animal, give notice thereof to the owner, if known, and thereupon such owner shall pay a reasonable compensation for taking up, keeping and feeding such animal, and for damages actually caused by such animal. If the owner be not known, or fails to make such reasonable compensation after being notified, any animal so taken up shall be deemed an stray, and may be proceeded against by the

taker up thereof, in the manner provided by law in regard to strays: Provided, however, That this section shall not be so construed as to prohibit any person from driving, herding and guarding such stock upon the uninclosed lands belonging to said county, the State, or the United States.

See note and references to Chapter 2 of 1912 "Laws Specially Applicable to St. Louis," Secs. 4-11, and for ordinances see Rev. Code, 1912, Secs. 2617-2620 and notes.

Sec. 36. School districts intersected by city limits.—In all cases where the limits of the city of St. Louis as herein extended, include a part only of any school district, the following shall be the mode of adjustment as to property held by or for the use or benefit of such district: First, where the part of such district, included within such extended limits, contains any school house or other real estate belonging to the district, the board of president and directors of the St. Louis public schools shall pay into the county treasury of St. Louis county, for the use of that part of the district not so included, such proportion of the valuation of said school property as the taxable value of property in the part of such district not so included bears to the taxable value of all property in such district, as constituted before such extension. Second, where the part of such district, not included within such extended limits, contains any school house or other real estate belonging to the district, the inhabitants of the district not so included shall pay to the board of president and directors of the St. Louis public schools such proportion of the valuation of said school property as the taxable value of property in the part of such district included within the city limits bears to the taxable value of all property in such district, as constituted before such extension. The valuation of school property mentioned in this section shall be made by arbitrators, one of whom shall be selected by the board of president and directors of the St. Louis public schools, and one by the directors of the school district affected, who, if disagreeing, may select a third; or, if unable to agree on the selection of such third arbitrator, any school director, or member of the board of president and directors of the St. Louis public schools, may apply to the circuit court of the eighth judicial circuit to appoint one. A report of the valuation made by such arbitrators, or a majority thereof, shall be filed as soon as practicable in the clerk's office of the circuit court of the eighth judicial circuit. Any money to be paid to the board of president and directors of the St. Louis public schools shall be provided for by the assessment, levy and collection of a special tax on all taxable property within such districts not so included.

Sec. 37. School property transferred to St. Louis public schools.—All property, real, personal, or mixed, of every kind and description, and the evidence of title thereto, now held by the county of St. Louis, or by the county court of St. Louis county, in trust

or for the use of the inhabitants of township forty-five north, of range seven east, for school purposes, and all such property, and the evidences of title thereto, held by any public officer for the use of any school district in said township, or held by or for the benefit of any such district, shall, as soon as this scheme goes into effect, pass and be delivered to the board of president and directors of the St. Louis public schools; and the title to any and all such property shall, by operation hereof, vest in said board.

School property is now controlled and vested in the board of education of St. Louis. R. S. 1909, Secs. 11030 et seq., set out in "Laws Specially Applicable to St. Louis," Secs. 540 et seq. As to charter provisions, see Art. XV., Sec. 20, 22, Art. XXV., Sec. 17.

Sec. 38. Enumeration of children within school age—division of school property.—The board of president and directors of the St. Louis public schools shall, forthwith after this scheme goes into effect, cause an enumeration to be taken of all children within school ages within the limits of the city of St. Louis, as herein established, and the county court of St. Louis county shall cause forthwith a similar enumeration to be taken within the county of St. Louis, outside of the city limits, as herein established, showing the enumeration in each school district and fractional school district separately, a correct report of which enumeration shall be filed by said board and said court respectively, in the clerk's office of the circuit court of the eighth judicial circuit, within sixty days after this scheme and charter go into operation. So much of all property of every nature whatsoever, and the evidences thereof, belonging to the school fund of St. Louis county, or of congressional townships affected by the extension of the present city limits, as, according to such enumeration, falls to the share of the district lying within the limits of the city of St. Louis, shall at once pass and be delivered by the county court of St. Louis county, or public officers in charge thereof, to the board of president and directors of the St. Louis public schools, and the residue of all said property and the evidences thereof shall pass and be delivered by the present county court of St. Louis county, or public officers in charge thereof, to the proper authorities of the county of St. Louis, as constituted by this scheme. From and after the date this scheme goes into operation all public officers within the city of St. Louis shall account for and pay over to the board of president and directors of the St. Louis public schools, all fines and penalties and other moneys collected within said city, and heretofore payable into, and forming part of the county school fund of St. Louis county.

Distribution of school funds on separation of city from county, see State to use, etc. vs. Rechtien, 7 Mo. App., 339.

Sec. 39. Expenses of board of freeholders.—All claims for the printing, clerk hire, and other expenses of this board of freeholders shall be made out and certified to by the president of the board immediately after the adjournment of this board, and such

claims, so certified, shall, as soon as this scheme and the charter framed thereunder are adopted, be paid by the treasurer of the present county of St. Louis out of the general revenue of said county, and such payments shall be allowed to said treasurer in the settlement of his accounts as provided for in this scheme.

Provisions of the Constitution of Missouri Especially Applicable to the City of St. Louis

Art. IX., Sec. 10. Sheriffs and coroners.—There shall be elected by the qualified voters in each county on the first Tuesday next following the first Monday in November, A. D. 1908, and thereafter every four years, a sheriff and coroner. They shall serve for four years and until their successors be duly elected and qualified, unless sooner removed for malfeasance in office. Before entering on the duties of their office, they shall give security in the amount and in such manner as shall be prescribed by law and shall be eligible only four years in any one period.

Whenever a county shall be hereafter established, the governor shall appoint a sheriff and coroner therein, who shall continue in office until the next succeeding general election and until their successors shall be duly elected and qualified.

[As amended, adopted in 1906.]

See note to scheme, Sec. 5, and note on page 319, R. C. 1912.

The following are the provisions of Article IX. of the state constitution under which the 1876 scheme and charter and the 1914 charter were adopted.

Sec. 20. Extension of limits—adoption of charter.—The city of St. Louis may extend its limits so as to embrace the parks now without its boundaries, and other convenient and contiguous territory, and frame a charter for the government of the city thus enlarged, upon the following conditions, that is to say: The council of the city and county court of the county of St. Louis shall, at the request of the mayor of the city of St. Louis, meet in joint session and order an election, to be held as provided for general elections, by the qualified voters of the city and county of a board of thirteen freeholders of such city or county, whose duty shall be to propose a scheme for the enlargement and definition of the boundaries of the city, the reorganization of the government of the county, the adjustment of the relations between the city thus enlarged and the residue of St. Louis county, and the government of the city thus enlarged, by a charter in harmony with and subject to the constitution and laws of Missouri, which shall, among other things, provide for a chief executive and two houses of legislation, one of which shall be elected by general ticket, which scheme and charter shall be signed in duplicate by said board or a majority of them, and one of them returned to the mayor of the city and the other to the presiding justice of the county court within ninety days after the election of such board. Within thirty days there-

after the city council and county court shall submit such scheme to the qualified voters of the whole county, and such charter to the qualified voters of the city so enlarged, at an election to be held not less than twenty nor more than thirty days after the order therefor; and if a majority of such qualified voters, voting at such election, shall ratify such scheme and charter, then such scheme shall become the organic law of the county and city, and such charter the organic law of the city, and at the end of sixty days thereafter shall take the place of and supersede the charter of St. Louis and all amendments thereof, and all special laws relating to St. Louis county inconsistent with such scheme.

For authorities and comments on the bearing and effect of this provision of the constitution (as well as the following sections) see note at page 266, R. C. 1912.

Sec. 21. Authentication of scheme and charter—judicial notice.—A copy of such scheme and charter, with a certificate thereto appended, signed by the mayor and authenticated by the seal of the city, and also signed by the presiding justice of the county court and authenticated by the seal of the county, setting forth the submission of such scheme and charter to the qualified voters of such county and city, and its ratification by them, shall be made in duplicate, one of which shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of the recorder of deeds of St. Louis county, shall be deposited among the archives of the city, and thereafter all courts shall take judicial notice thereof.

See *Walsh vs. Railroad*, 102 Mo., 582, 589; *St. Louis vs. Lang*, 131 Mo., 412, 420; *State ex rel. vs. Sutton*, 3 Mo. App., 338; *State ex rel. vs. Finn*, 4 Mo. App., 348. For further authorities and discussion see note at page 266, R. C. 1912.

Sec. 22. Charter, how amended.—The charter so ratified may be amended by proposals therefor submitted by the lawmaking authorities of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals and accepted by three-fifths of the qualified voters voting for or against each of said amendments so submitted; and the lawmaking authorities of such city may order an election by the qualified voters of the city of a board of thirteen freeholders of such city to prepare a new charter for such city, which said charter shall be in harmony with and subject to the constitution and laws of the state, and shall provide, among other things, for a chief executive and at least one house of legislation to be elected by a general ticket. Said revised charter shall be submitted to the qualified voters of such city at an election to be held not less than twenty nor more than thirty days after the order therefor, and if a majority of such qualified voters voting at such election ratify such charter, then said charter shall become the organic law of such city, and sixty days thereafter shall take effect and supersede the charter of such city and all special laws inconsistent therewith.

Section as amended adopted in 1902.
See note at page 425, R. C. 1912.

Sec. 23. Charter in harmony with constitution and laws—miscellaneous provisions under said charter.—Such charter and amendments shall always be in harmony with and subject to the constitution and laws of Missouri, except only that provision may be made for the graduation of the rate of taxation for city purposes in the portions of the city which are added thereto by the proposed enlargement of its boundaries. In the adjustment of the relations between city and county, the city shall take upon itself the entire park tax; and in consideration of the city becoming the proprietor of all the county buildings and property within its enlarged limits, it shall assume the whole of the existing county debt, and thereafter the city and county of St. Louis shall be independent of each other. The city shall be exempted from all county taxation. The judges of the county court shall be elected by the qualified voters outside of the city. The city, as enlarged, shall be entitled to the same representation in the general assembly, collect the state revenue and perform all other functions in relation to the state, in the same manner, as if it were a county as in this constitution defined; and the residue of the county shall remain a legal county of the state of Missouri, under the name of the county of St. Louis. Until the next apportionment for senators and representatives in the general assembly, the city shall have six senators and fifteen representatives, and the county one senator and two representatives, the same being the number of senators and representatives to which the county of St. Louis, as now organized, is entitled under sections eight and eleven of Article IV of this constitution.

For full discussion and reference to authorities upon this section, see note at page 266, R. C. 1912. As to power of taxation, see note and cases at page 340, R. C. 1912.

Sec. 24. Courts of St. Louis city and county.—The county and city of St. Louis, as now existing, shall continue to constitute the eighth judicial circuit, and the jurisdiction of all courts of record, except the county court, shall continue until otherwise provided by law.

By Act of 1877, St. Louis County was taken out of the Eighth circuit. See *State ex rel. vs. Walsh*, 69 Mo., 408, 411; *State ex rel. vs. Laughlin*, 75 Mo., 147. See also in connection herewith note at pages 267-268, R. C. 1912.

Sec. 25. Subordination of St. Louis to state.—Notwithstanding the provisions of this article, the general assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this state.

State ex rel. vs. Ry. Co., 151 Mo., 162, 182; *State ex rel. vs. Walsh*, 69 Mo., 408, 411; *State ex rel. vs. Walton*, 69 Mo., 556. And see further discussion and cases cited in the note at page 266, R. C. 1912.

ARTICLE X.**Revenue, Taxation and Municipal Indebtedness.**

Sec. 11. Rates for local purposes—limits—how increased for schools and erecting public buildings.—Taxes for county, city, town and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property in such town, city or school district for state and county purposes. For county purposes the annual rate on property, in counties having six million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars valuation; in counties having six million dollars and under ten million dollars, said rate shall not exceed forty cents on the hundred dollars valuation; in counties having ten million dollars and under thirty million dollars, said rate shall not exceed fifty cents on the hundred dollars valuation; and in counties having thirty million dollars or more, said rate shall not exceed thirty-five cents on the hundred dollars valuation. For city and town purposes the annual rate on property in cities and towns having thirty thousand inhabitants or more shall not, in the aggregate, exceed one hundred cents on the hundred dollars valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars valuation; and in towns having one thousand inhabitants or less, said rate shall not exceed twenty-five cents on the hundred dollars valuation. For school purposes in districts composed of cities which have one hundred thousand inhabitants or more, the annual rate on property shall not exceed sixty cents on the hundred dollars valuation, and in other districts forty cents on the hundred dollars valuation; provided, the aforesaid annual rates for school purposes may be increased, in districts formed of cities and towns to an amount not to exceed one dollar on the hundred dollars valuation, and in other districts to an amount not to exceed sixty-five cents on the hundred dollars valuation, on the condition that a majority of the voters who are taxpayers, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings in counties, cities or school districts, the rate of taxation herein limited may be increased when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two-thirds of the qualified voters of such county, city or school district, voting at such election, shall vote therefor. The rate herein allowed to each county shall be ascertained by the amount of taxable property therein, according to the last assessment for state and county purposes, and the rate allowed to each city or town by the number of inhabitants, according to the last

census taken under the authority of the state, or of the United States; said restrictions as to rates shall apply to taxes of every kind and description, whether general or special, except taxes to pay valid indebtedness now existing, or bonds which may be issued in renewal of such indebtedness; provided, that the city of St. Louis may levy for municipal purposes, in addition to the municipal rate of taxation above provided, a rate not exceeding the rate which would be allowed for county purposes if said city were part of a county.

Section as amended (2 amendments) adopted in 1902. See notes at pp. 298 and 340, R. C. 1912.

Sec. 12. Municipal indebtedness, limit of.—No county, city, town, township, school district or other political corporation or subdivision of the state, shall be allowed to become indebted in any manner or for any purpose to an amount exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes, previous to the incurring of such indebtedness; provided, that with such assent any county may be allowed to become indebted to a larger amount for the erection of a court house or jail, or for the grading, construction, paving, or maintaining of paved, graveled, macadamized or rock roads and necessary bridges and culverts therein; and provided further, that any county, city, town, township, school district, or other political corporation or subdivision of the state, incurring any indebtedness, requiring the assent of the voters as aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same.

*And provided further, that the corporate authorities of the city of St. Louis are hereby authorized to issue interest-bearing bonds of said city in the amount of five million dollars, at a rate of interest not to exceed four per cent. per annum, the principal payable within thirty years from the date of their issue, and the proceeds thereof shall be paid to the corporation organized for the celebration of the Louisiana Purchase centennial in said city, to be used by said corporation for said celebration, in holding a world's fair or exposition in said city. And said corporate authorities of St. Louis shall be repaid as large a proportionate amount of the aid given by them as shall be repaid to the stockholders of said corporation on the sum subscribed and paid by them, and any surplus remaining from the assets of said corporation after said stockholders and said city shall have been paid in full, shall be divided between

said stockholders and said city in proportion to the aggregate amount of said stocks so paid in and the amount so loaned by said city; and any amount so received by said city from said corporation shall be paid into the sinking fund of said city for the redemption of its outstanding bonds; provided, that if at the election for the adoption of this amendment to the constitution a majority of the votes cast within the limits of said city of St. Louis voting for and against this amendment, shall be against its adoption, then no bonds shall be issued under this amendment; and provided further, that no such indebtedness so created shall be in any part thereof paid by the state or from any state revenue, tax or fund, but the same shall be paid by the city of St. Louis alone; provided, that in the city of St. Louis the amount of bonds now aggregating \$6,111,000, that being the amount assumed by said city in the scheme of separating from the county of St. Louis, and the sum of \$5,808,000 heretofore prior to January 1, 1901, expended in the construction of waterworks for the city of St. Louis, and any bonds which may be hereafter issued by said city in the construction and improvement of waterworks, the payment of the interest whereon and the principal whereof shall be provided from the revenues of said waterworks; that is to say, the amount of said bonds which shall be outstanding at any time shall not be included in the computation of the existing bonded indebtedness in determining the amount of bonds authorized to be issued by said city with the assent of two-thirds of the voters under the provisions of this article, but said city shall be authorized at any time to issue bonds, with the assent aforesaid, to an amount, including outstanding indebtedness, other than that above named, to the amount of five per cent. of the value of the taxable property in said city, to be ascertained as above provided and said city shall have power, with such assent of the voters, to issue bonds for the construction and improvement of waterworks, the interest whereon and the principal whereof shall be provided for from the income of said waterworks. Said city shall establish a sinking fund for the payment of bonds so authorized according to the times fixed from the maturity of the same.*

See notes at pages 298 and 340, R. C. 1912. Sinking fund to pay city bonds, see charter, Art. XVII., Sec. 6. It is to be observed that in the resolution submitting the amendment to be adopted in November, 1906, that portion added by the amendment adopted in 1902 (indicated by enclosure between ** above was omitted altogether. The amendment in 1906 added the portion between the words "jail" and the next "and provided further," to the original section, without noticing the intervening amendment in 1902 which had added that part referring to St. Louis and Kansas City. See resolution set forth in 1905 Session Laws, pp. 309-310. See *State ex rel. vs. Allen*, 183 Mo., 283.

Amendments—The 1876 charter was amended (Art. III., 26, clause 1) at the charter amendment election (held on June 23, 1903, pursuant to Ordinance 21105). It amended the former provision by designating specifically the objects for which bonds could be issued, it being deemed doubtful whether such power existed under the former general provision. The amendment added that portion beginning with "Negotiable bonds of the city," etc., to end of clause. The city availed itself of these powers at the bond election on June 12, 1906, in pursuance of Ordinance 22366 and the issuance of bonds was authorized for each subject enumerated in the nine clauses. This section had also been amended at the charter amendments election of October 22,

1901, pursuant to Ordinance 20444. The issuance of the bonds was held valid by the Supreme Court as to all the subjects in general, but as to the free bridge bonds in particular, in the case of *Haeussler vs. St. Louis*, 205 Mo., 656.

Borrow money. Power limited by Constitution, Art. IX., Sec. 19; Art. X., Sec. 12. By the amendments to the latter section, passed in 1900, the city was authorized to issue the then proposed five millions in bonds in aid of the World's Fair. (This was done by Ordinances 20641 and 20758; see ordinance to issue bonds in renewal of one million dollars in former city bonds; Ordinances 21543 and 22865, and ordinance authorizing the issuance of bonds for each of the purposes specifically enumerated in the above charter section; see Ordinance 22366; ordinance declaring result of election called by latter ordinance, and directing the issue of said bonds for \$11,200,000; see Ordinance 22674). The bond issue for the free bridge across the Mississippi river was sustained on various grounds, one of them being that they were within the debt limit allowed by the constitution to St. Louis, in the case of *Haeussler vs. St. Louis*, decided in banc by Supreme Court, 205 Mo., 656, discussing also the right of the city in general to issue bonds. See the provisions of the constitution referred to as to the limit of indebtedness and the manner in which bonds can be issued, *supra*, and the note appended to Sec. 12 of Art. X. of the constitution, at page 55, R. C. 1912. See also discussion generally on the subject in note at page 340 R. C. 1912; and also McQuillin's (unofficial) work "Amended Charter," introductory note pp. 124 et seq., and his note on pp. 280-282; also *Pryor vs. Kansas City*, 153 Mo., 135, 151. As to what is included under the term "indebtedness" in the constitution, see *Saleno vs. Neosho*, 127 Mo., 627, 638; *State ex rel. vs. Neosho*, 203 Mo., 40. Charter provisions as to sinking fund for payment of city bonds, see Art. XVII., Secs. 4-7. As to ordinances concerning sale, transfer, and payment of bonds, etc., see Rev. Code, Secs. 67 to 82; and as to provisions concerning water bonds, see Revised Code, 1912, Secs. 1536-1538, and charter, Art. XVII., Sec. 5. In submitting to the voters the question of issuing bonds, two propositions can not be united in the proposition so as to have one expression of the vote answer both propositions. *State ex rel. vs. Wilder*, 217 Mo., 261.

A purchaser of bonds of a municipality which is subject to a constitutional provision limiting its indebtedness to a certain percentage of its assessed valuation is bound to ascertain at his peril from the public records the amount of such valuation and recitals in the bonds that they do not exceed the valuation afford him no protection in that respect. *St. Lawrence Tp. vs. Furman*, 171 Fed., 400.

A municipal corporation which denies liability on a contract on the ground that it imposes an indebtedness beyond the constitutional limit has the burden of proof affirmatively to establish that fact. *Quackenbush vs. City of Yankton*, 186 F., 901.

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