

Grand Junction, Colorado  
June 18, 1952

The City Council of the City of Grand Junction met in regular session at 7:30 o'clock, P. M. Councilmen present and answering roll call were Harper, Severson, Colescott, Walt, Hanson and President Ela. Councilman Hoisington was absent. Also present were City Manager Toyne, City Attorney Groves and City Clerk Tomlinson.

It was moved by Councilman Colescott and seconded by Councilman Hanson that the minutes of the regular meeting held June 4, 1952 be approved as written. Motion carried.

GRANT PERMISSION TO MRS. WEIR TO TEACH SWIMMING CLASSES AT MOYER POOL. Mrs. Dimitra Weir appeared before the Council and requested that she be given permission to give private swimming lessons at Moyer Pool. It has been the usual custom that only those employed as life guards may give private swimming lessons.

After considerable discussion, it was moved by Councilman Hanson and seconded by Councilman Colescott that the City go along this year giving Mrs. Weir permission to teach swimming classes at Moyer Pool to those pupils who employed her, and that by next year a definite policy be established. Motion carried.

It was suggested that the City Manager and Park Superintendent determine on a definite policy for the use of Moyer Pool and present it to the Council.

ACCEPT AND FILE PETITION FROM WOMAN'S CLUB FOR MORE STREET MARKERS. The Woman's Club of Grand Junction presented a petition asking the City Council to erect more markers for streets especially in the newer parts of the City. It was explained to the ladies present that the City has a definite program for putting in street markers and they are being erected as rapidly as funds permit. City Manager Toyne explained that it costs between \$18 and \$19 to put in signs on each intersection, and that they were trying to put up as many as possible each year.

It was moved by Councilman Harper and seconded by Councilman Walt that the petition be received and filed, and a letter be sent to the Woman's Club telling them of the program that the Council has established and that it will progress as quickly as funds are available. Motion carried.

UNION AGREEMENT NOT APPROVED. A large delegation of City Employees who belong to Local Union #6, Teamsters Union, were present; also Mr. Ab Stucker and Mr. Tolliver representing the Union. Mr. Tolliver presented a box of Personnel Regulations which had been previously given to all City Employees to City Manager Toyne stating that the men "did not want anything to do with them."

It was later brought out that the main contention was that no sick leave would be paid hourly men for the first two days taken off duty on account of being ill, and that it was necessary for the foremen to check every day to see if the men were actually sick.

Mr. Stucker spoke to the Council concerning the proposed union agreement, and several members of the Council spoke in connection with the union agreement and the following opinion of the City Attorney:

"JAMES K. GROVES  
Attorney at Law  
Grand Junction, Colorado

June 5, 1952

Members of the City Council  
Grand Junction, Colorado

Gentlemen:

"This is in response to a request for an opinion with respect to the provisions which have been suggested for incorporation in an agreement between the City and Local Union No. 6 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America of the A. F. of L. This opinion is not concerned with the advisability of such a contract or of any particular provision nor with any matter of policy; rather, it is limited to a discussion of legality.

"Reference is made to the studied opinion to you of City Attorney John C. Banks dated August 10, 1950, in which he discussed many of the points of law involved in this matter supported by quotations of authority and in which he made the following summary:

"It is my conclusion that the employees of the city have the right to organize; that the city council has the right to make general rules and regulations concerning classifications, working conditions, vacations, sick leave, and wages and hours; that the city manager has the sole power to hire, discharge and discipline employees; that neither the city council nor the city manager has the power to enter into an agreement which delegates the power which is given to them by the City Charter; and that the city does not have the right to contract for a closed shop nor to discriminate against employees who are not members of the Union.'

"There may be added to the foregoing that neither the City Council nor the City Manager has the right to surrender or waive any powers granted by the Charter.

"Any approach to this subject must have as its foundation three fundamental matters: (1) Municipalities, as well as other governments, are not embraced within the state and federal statutes which govern largely the rights and responsibilities involved in

labor-management relationships of private industry; (2) neither the City Council nor the City Manager may act in a manner contrary to the Charter which places in the Council the power to fix compensation and prescribe the powers and duties of all employees, and which places in the City Manager the power to remove, suspend, demote or discipline any employee except those Council-appointed, and which specifically prohibits the Council from diminishing the power of the City Manager or altering his relations as established by the Charter with such employees; and (3) The Council and the City Manager are limited to the exercise of such powers as are expressly granted to them by the Charter, or as are necessarily or fairly implied in or incidental to the powers expressly granted.

"Also, there must be borne in mind the distinction between the rule making power of an employer and a contract between the employer and an employee or group of employees. Rules and regulations of the Council or Manager within their respective spheres are statements of the policies intended to be followed and may be changed by them at any time. A contract, on the other hand, involves a covenant to perform or forego the performance of an act over a period of time and generally involves the limitation during a future period of performance or non-performance. It follows that the Council and the Manager may in many matters pursue a certain policy or procedure under a rule but which they cannot contract to pursue in the future simply because they have the basic right, whether or not exercised, to change the rule.

"The agreement now under consideration contains the provision that it "'shall be subject to any and all limitations contained in the Charter of the City of Grand Junction.' Assuming that this provision carries with it that the agreement is subject to ordinances of the City, it casts the cloak of legality over any contract made because it nullifies any provision in the agreement which may be contrary to the Charter and the ordinances. To illustrate, a contract might be made wherein an individual agrees to drive down Main Street at a speed of 90 miles an hour under a contract which also provides that it will be subject to all applicable laws; in which event, the latter provision of the contract would render the former a nullity.

"With these principles in mind, there follows an analysis of the provisions of the suggested agreement and the effect thereof.

"In the first paragraph, the City and the Union agree to be bound by the terms and provisions of 'Personnel Regulations' heretofore adopted by the Council and Manager. Many of the provisions of these Regulations are statements of certain courses of procedure with respect to matters in which the two employing entities may exercise discretion. For the City to agree to be bound by any of these provisions during any future period is to deprive the two employing entities of the discretion which under the Charter they are to possess from time to time. With respect to such matters, the joinder of the City in such covenant is contrary to the Charter and the covenant without effect.

"There is a provision that the City recognizes the Union as the sole and exclusive bargaining agent for members of the Union. There is no legal restriction against the Council or Manager conferring with any agent of any employee, including a union, in a discussion of problems. However, the adjective 'bargaining' contemplates 'an agreement between parties to a transaction settling what each shall give and receive.' Webster's Collegiate Dictionary, Fifth Edition. Our courts have held that an agreement to bargain carries with it the covenant that the employer will bargain in good faith (Rapid Roller Co. vs. N.L.R.B., 126 F. 2d 452), i.e. that the employer in good faith will negotiate towards giving and receiving certain privileges which would not otherwise be involved. Since the Charter requires the Council and Manager to preserve unto themselves their respective rights and powers in order that they as individuals and their successors may exercise these rights and powers, to recognize any employee's representative as a bargaining agent implies that the officials of the City may in the future surrender some of these rights and powers. Therefore, it would seem that the adjective 'bargaining' is misleading and largely ineffective.

"Under Mr. Banks' opinion, the provision that 'there shall be no discrimination against any employee because of union membership or activity or because of non-union membership or activity' is a statement of the law whether or not it is contained in an agreement.

"There is a provision to the effect that at meetings with respect to certain grievances, a representative of the Union shall have the right to be present and participate in discussion. Attention is directed that this provision is contained in Section 15c of the Personnel Regulations now in effect.

"The provision that 'recognized rules and standards of safety shall govern the operations included under this agreement' is a statement of law and adds nothing to the rights and responsibilities of the contracting parties.

"No objection is seen to the provision that the Employer will give notice to the Union representative in the change of the work status of any of its members.

"One of the suggested terms of the contract is to the effect that there shall be no strike or lock-out. With respect to the Union's covenant against a strike, it is a statement of the law otherwise in effect that a strike against a City is illegal. Miami Water-works, Local No. 654, vs. Miami, 26 So. 2d, 194; 165 A.L.R. 967. A lock-out is generally defined as a cessation of furnishing work in an effort to obtain for the employer more favorable terms with employees. 25 Words & Phrases, 566. Since the Charter imposes upon the Council and Manager the exclusive rights to fix the terms of employment, thereby depriving any other entity of authority in the matter, it would seem impossible for there to be a lock-out. If the lay-off or discharge of employees by the City were interpreted to be a 'lock-out', then the suggested provision is meaningless as the City Manager has this exclusive right under the Charter.

"It is suggested that there be a covenant that vacancies be advertised and kept open for five days. As is the case with many matters mentioned herein, this might be the subject of inclusion in the Personnel Regulations, but it is clearly a restriction upon the City Manager's Charter-power to hire.

"The provision that the employer, when deviating from principles of seniority, shall contact the Union representative and advise him of reasons, who may concur with the employer or request that certain provisions of the Personnel Regulations be followed, is to some extent a duplication of the Personnel Regulations. While probably minor in degree, the remainder of it constitutes a restriction of the City employing entities' rights under the Charter and is without effect.

"It is proposed that the contract contain a clause that, while serving a probationary test period in an advanced position, an employee retain his seniority in his previous position. While this is embraced to a certain extent in Section 3 and other portions of the Regulations, as a part of a contract it is clearly a restriction on the Charter right to discharge and, therefore, without effect.

"The provision that wages, hours, overtime, differential and general working conditions shall be maintained throughout each calendar year is in direct violation of the Charter powers of the Council and Manager. The accompanying provision that amendments to the Regulations shall not be effective with respect to members of the Union until the following January 1st is not only in direct violation of the Charter but is discriminatory. The further provision that 'the Union and the Employer may, by mutual agreement, negotiate at any time such matters as referred to above, including wages, hours and working conditions, without jeopardizing the general provisions of this agreement or affecting the term and/or expiration of this agreement,' has the effect of saying "if both of us agree, we will change this agreement." That is a right that any contracting parties always have and the provision neither adds to nor detracts from the agreement.

"In making a contract with the Union the City is in a situation vastly different from that of most employers who may negotiate, bargain and agree with respect to a large number of matters involved in employment relationships. Your powers and restrictions are those fixed by the people of the city in the Charter. If these powers, which you must keep unto yourselves, and the restrictions, which you must recognize, are not to your liking or to the liking of others, you do not have the authority to remedy them by making a contract; rather, any remedies must come from the people of the city in appropriate amendments of the Charter. I have not been asked to, and do not, pass upon any contract that may have been made in the past; but it is in mind that the execution of any previous contract containing provisions which may be violative of the Charter does not legalize any present violation of the Charter. In candor, it must be stated that any valid contract must be so limited in order not to restrict or surrender Council and Manager authority with respect to employment that the result will be that it will not embrace most of the subjects usually contained in agreements of this nature. Any matters which

validly may be included in such a contract are also proper subjects for inclusion in the Regulations.

"Respectfully submitted,

/s/

James K. Groves."

Mr. Stucker and Mr. Ashley had previously submitted a union agreement incorporating some of the controversial paragraphs that had been in the old agreement. In considering the opinion of Mr. Groves, City Attorney, it was brought out by the Council that anything in conflict with the City Charter designating power away from the City Manager was illegal. Councilman Hanson asked Mr. Stucker if he wanted the Council to vote on this particular contract. It was moved by Councilman Walt and seconded by Councilman Hanson that every member of the Council signify whether they were in favor or not in favor of the adoption of this particular proposal. Roll was called on the motion with the following results;

Councilmen voting "AYE:" Colescott

Councilmen voting "NAY:" Hanson, Severson, Harper, Walt and President Ela.

A majority of Councilmen present voting "NAY," the President declared the proposal submitted not approved.

Mr. Stucker then asked where he stood so far as the union agreement with the City was concerned, and he was advised that there was no union agreement in effect at the present time but that he could if he desired to do so, submit an agreement that would conform to the Charter of the City of Grand Junction and the Council would be glad to give it consideration.

PASS ORD. #862 COLLECTION OF GARBAGE. The Proof of Publication to the proposed ordinance entitled "AN ORDINANCE CONCERNING THE COLLECTION AND DISPOSAL OF GARBAGE: PROVIDING PENALTIES FOR THE VIOLATION THEREOF: AND REPEALING ALL ORDINANCES CONCERNING GREASE TRAPS AND ALL OTHER ORDINANCES IN CONFLICT WITH THIS ORDINANCE," was introduced and read. It was moved by Councilman Harper and seconded by Councilman Walt that the Proof of Publication be accepted and filed. Motion carried.

It was moved by Councilman Hanson and seconded by Councilman Colescott that the Ordinance be called up for final passage. Motion carried.

The ordinance was then read, and upon motion of Councilman Colescott and seconded by Councilman Harper was passed, adopted, numbered 862 and ordered published. Roll was called on the motion with all members of the Council present voting "AYE." The President declared the motion carried.

TO ADVERTISE HEARING ON BEER APPLICATION - Arthur J. Rice & Chas. E. Caywood dba Circle Cafe & Pastime at 319 So. 2nd St. presented an application for a 3.2 beer license at 319 So. 2nd St. It was moved by Councilman Colescott and seconded by Councilman Walt that the application be advertised for hearing on July 16th. Motion carried.

GRACE FINNEGAN TO APPEAR BEFORE COUNCIL JULY 2, 1952. Mr. Joe Keith, Chief of Police, had made a report that Mr. Daniel J. Finnegan was arrested for selling liquor from the Crown Liquor Store, 119 South 4th on Sunday, June 15th. He was taken into Police Court on plea of "Not Guilty," although he later admitted that Manuel Haglan had obtained liquor from his store on the date in question. He was found "Guilty," and fined \$200.00 and the fine was paid. The license for this store is in the name of Grace Finnegan, wife of Daniel J. Finnegan. It was moved by Councilman Harper and seconded by Councilman Walt that Mrs. Finnegan be requested to appear before the Council at the regular meeting July 2nd and show cause why her license should not be revoked or suspended. Motion carried.

GRANT REVOCABLE PERMIT TO E. R. STOCKER, 3RD & COLO. Mr. E. R. Stocker applied for a revocable permit to erect a parking lot building at 3rd and Colorado. This building will be of wood frame, covered with sheet iron similar to the one on the parking lot at 6th & Rood Ave. It was moved by Councilman Colescott and seconded by Councilman Harper that a revocable permit be granted to Mr. Stocker under the supervision of the City Engineer's office. Motion carried. It was moved by Councilman Hanson and seconded by Councilman Walt that the meeting adjourn. Motion carried.

/s/ Helen C. Tomlinson  
City Clerk