

GAS CONTRACT IS CONDEMNED

Eight Dollar Ordinance Denounced as Excessive, Unfair, Unjust.

COUNCIL ENJOINED FROM CARRYING IT OUT

Judge Sutton Declares Company Cannot Require Larger Price than Fixed by Franchise from the City.

Judge Sutton has sustained the fight of T. W. Blackburn against the contract entered into by the city with the Omaha Gas company for gas at \$24 per lamp per year.

The mayor and city council will be temporarily enjoined from carrying out the contract or paying out any money thereunder.

In rendering his decision the judge pronounced the five-year contract at \$24 "excessive, unreasonable, unjust and unenforceable."

The court is not informed fully as to all the facts surrounding this case. The city has made no answer, though the city attorney has said it would answer later.

The gas company has filed no answer and offered no testimony as to the cost of the equipment, which it was averted to do.

The five contracts for gas noted for the ordinance have all answered. The court is not fully informed as to the cost of the equipment, on which it is claimed royalty is paid, but is satisfied as to what the cost should be.

The court is satisfied that \$14 is the highest price the city should pay for gas under the franchise requirements for a six-candle power lamp, and also that such a lamp is the only practicable and necessary one.

Cannot Exceed Franchise Price. "In no event can the gas company ever require a larger price than is fixed in its franchise. That provides for \$22 per lamp per year for five feet of gas per hour.

The testimony here, uncontradicted, is that only two and eight-tenths feet of gas per hour is consumed in producing a six-candle power light and three feet and seven-tenths in producing an eight-candle power light.

"The court is satisfied that \$14 for the gas alone is the maximum amount the council has any power to pay to the company for a six-candle power light. This would include lighting, extinguishing and cleaning.

The court is satisfied that \$14 is the highest amount the council can pay for the company for an eight-candle power light. I have personally examined the meters and burners used and have reached the conclusion that \$14 would be a fair and equitable price to allow for the same.

Indisputed Evidence at Hand. "There is undisputed evidence here, given by Mr. Zimman and by Mr. Michaelson, that to pay for extra candle power beyond sixty would be a dissipation of the funds of the city, without any value to the taxpayer or benefit to the city itself.

From personal observation of the contrivance used on the street lamps I am convinced that a contract for an eight-candle power light would be imprudent and could not be carried out, as the equipment is too delicate.

Such a contract would be void or invalid. The city attorney does not believe such a light can be furnished.

Beyond \$4 as an allowance for the meter there is no discretion in the council, any more than there would be for the councilmen to contract for lead pencils at \$1 each, when other pencils could be had for the same price for 5 cents.

Beyond \$18 for a six-candle power light there is no discretion in the council. The total amount to be paid in any one year should not exceed \$25.00, and for five years, as this contract contemplates, not exceed \$125.00, beyond these amounts the contract is of no force and should not be sustained, as the court believes.

The contract under consideration would give the company in excess of these amounts \$12.00 per year, or \$60.00 for five years. Such a contract ought not to be entered into.

Unusual Circumstances in Case. "There are unusual circumstances connected with this case, the first of which is that the councilmen would not take the legal advice of the city attorney, but took the advice of the attorney of the gas company. In the second place they deliberately violated the order of the court in pursuance of their agreement with the gas company. In the third place the method of crowding this matter through the council was very unusual.

The mayor and councilmen had no business in that council chamber at all, under the circumstances, and were merely incidental, however, and are considered only as circumstances.

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Other Points Overshadowed. Judge Sutton replied that the other points involved had overshadowed this in his mind to the extent he had really given that point no consideration and did not think it necessary to pass upon it at this time.

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"The decision is along lines exactly that I have contended for. It is a just decision. I sincerely hope it will be finally sustained. One point brought out that particularly pleases me is the ruling that there is no appreciable difference between a six-candle power and an eight-candle power gas lamp. This is the finding of every disinterested expert in the United States. That one point alone was enough to give us the decision.

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