

Baltimore Sunday Herald
February 3, 1901

Waiting for the Verdict

Mayor and Solons Are on the Anxious Bench

Expect Early Decision

Intent of the Charter the Real Point at Issue

Arguments of the Lawyers

Mayor Hayes Not Afraid of an Attack on the Charter During the Extra Session

With one accord, since Wednesday last Mayor Hayes and the members of the city council have spent their days and—to judge by their careworn looks—a good part of their nights in wondering how the Court of Appeals will decide the fate of the ordinance of estimates.

When the six judges stepped down from the bench Wednesday afternoon and entered their consultation room they carried with them the hopes and fears of the 24 zealous gentlemen whose main aim in life is the discomfiture of the mayor. And since then no word of their thoughts has emerged from their sanctum.

Early Decision Expected

In the ordinary course of events a decision should be handed down by Tuesday. Chief Judge McSherry, it is said, will write the court's opinion, and thereat both parties to the suit are much pleased, for Judge McSherry's opinions are famous for their fairness and acute analysis. However he decides the questions at issue, the opposing parties realize that what he says will be based upon a thorough knowledge of the law. It is regarded as fortunate that one of the members of the Court of Appeals—Judge Samuel D. Schmucker—was a member of the charter commission. With Mayor Hayes, he made the final draft of the instrument, and his unusual familiarity with the details and intents and purposes should aid his colleagues very much.

Points at Issue

There are three points at issue in the case, and, according to the algebraic theory of combinations, the number of possible decisions is seven. Each of the three questions may be answered "yes" or "no," and any one of the three may be answered unlike the other two. The questions are as follows:

"1. Did the city council have the right to amend the ordinance of estimates?"

“2. Did the mayor violate the charter by sending his veto of the amendments to the first branch instead of to the second?”

“3. Had the council power to fix a tax rate without waiting for a report from the board of estimates?”

The court may answer No. 1 in the negative or may say “yes” to Nos. 2 and 3. In this case the taxpayers will pay \$380,000 for improvements that will not be made and the money will go into the sinking fund, where it is not needed. This contingency has been suggested to Mayor Hayes, and he admits the possibility of its realization. If it comes to pass it will certainly lead to an amendment of the charter.

Solons Favor Amendment

That the councilmen look forward to a campaign of wholesale amendment is certain. Their counsel fired the first gun in their arguments before the Court of Appeals, and it is openly rumored that they will make a strong fight at the expected extra session of the Legislature. The mayor’s claim that the charter was intended to curtail the powers of the council is a thorn in the flesh of the solons. They hold that they are still the absolute lords of and over the city treasury, and that the board of estimates is merely an advisory body. This difference of opinion, in fact, is the keynote of the present suit. What the mayor thinks was ably expressed by Mr. Gans on Wednesday.

“The charter,” he said, “was designed to guard against bad city councils, and in this way we must look at it. Criminal laws are made for the bad and not for the good. By the charter the board of estimates has the right to itemize municipal expenditures, and the city council has no power to change them. The power of the board of estimates over these items is the central thought and gives color to all the questions before the court. Similarly, the power to levy has been taken away from the mayor and city council. If you deal with the intention of the charter you try to find out what was the antecedent condition of things. Under the old system the tax rate was kept down for political purposes, while each year a floating debt was created and a large debt was fastened on the city. So the keynote of the charter is, ‘We will create a system by which there shall be no deficit.’ So the board of estimates was established to cut down expenses when there was no money to meet them. So a new system was created. The board has a veto power on the council. This is the clear light that makes the charter plain.”

No Compromise

The views of the solons were similarly crystallized in the concluding portion of Mr. Carter’s argument.

“The board of estimates,” he said, “is merely a conduit. Its sole duty is to send a report to the city council upon the estimated expenditures and receipts of the city. There is not a single item in this report that can be definitely determined. The board has no duty greater than that of a messenger boy.

These opposing views, it will be seen, are entirely irreconcilable, and for this reason the decision of the court, in the nature of things, cannot be satisfactory to both sides. Either the board of estimates is a body of great powers or it is purely an ornament. No compromise opinion regarding it is possible.

What the Mayor Says

Mayor Hayes, who had a hand in the charter making pie, and in consequence should know something of the intents of its framers, holds that it was designed primarily to limit the powers of the solons.

“In all municipal government,” he said yesterday, “the legislative branch is always the weakest. It was because of reckless expenditures by the city councils that Baltimore rolled up such an appalling debt during the ring days. Money was appropriated which was not in the treasury, and in consequence the city was forced to borrow. The tax rate, however, was kept down for political reasons, and in consequence we are paying interest today upon a debt of \$40,000,000.

“The charter was designed to correct this evil, and in pursuant of this intention the council’s power of expenditure was much restricted and the possibility of acquiring a floating debt was entirely removed. This is the keynote of the charter and the very reason of its existence. The preparation of the ordinance of estimates by the board of estimates and its advertisement are designed to keep the taxpayers informed as to the handling of their money, and thus to discourage squandering expenditures by making the responsibility for them evident to all. If the council can amend and destroy the ordinance of estimates, we might as well go back to the old methods of ‘budle,’ ‘influence’ and corruption. Then the work of the charter commission will have been in vain, and Baltimore will sink to the level of those luckless cities in which the ancient doctrines obtain.”

The mayor claims that he will be able to defeat any attempts that may be made at the extra session to amend the charter. Among the politicians it is rumored that his consent to the extra session was only obtained after solemn promises had been made that the charter is not to be attacked.