



93 Md. 1, 48 A. 445

Court of Appeals of Maryland.
MAYOR, ETC., OF CITY OF BALTIMORE

v.

GORTER, City Collector, et al.
 HAYES

v.

SAME.

Feb. 21, 1901.

Appeals from circuit court No. 2 of Baltimore city.

Suits by the mayor and city council of Baltimore and by Thomas G. Hayes against James P. Gorter, city collector, and James H. Smith, comptroller. From a decree in favor of defendants, plaintiffs appeal. Reversed in part.

West Headnotes

Municipal Corporations 268 ↪107(3)

[268k107\(3\) Most Cited Cases](#)

Under Baltimore City Charter, § 23, providing that all ordinances, after being passed by the council, shall be sent to the mayor for his approval, and if he does not approve an ordinance, he shall return it, with his objections, to the branch of the council in which it originated, an ordinance of estimates was effectively vetoed by the mayor by being sent back, with his objection, to the first branch of the council though the second branch was the first to pass it, since, as such ordinance is drafted by the board of estimates and submitted to the council for approval, it does not originate in either branch of the council, and may therefore be returned to either branch.

Municipal Corporations 268 ↪890

[268k890 Most Cited Cases](#)

Baltimore City Charter, §§ 36-40, provide that the two branches of the city council may reduce the

amounts of city expenditures fixed by the board of estimates in the proposed ordinance of estimates submitted by the board, but prohibit the board from increasing such amounts or inserting new items in the proposed ordinance. The ordinance of estimates provided as new improvements, for purchase of lots, erecting buildings, and enlargement of existing buildings for school purposes, a certain amount, and for new pavements, designating the streets, the kind of pavement, and the amount of each, -in all, a certain sum. The city council amended the ordinance by striking out the specified items, and substituting for the first item the same amount to be appropriated for erecting buildings for school purposes, and for the second the same amount to be appropriated for new pavements. Held, that such action by the council was improper, since the amendments changed the form of the items, so as to give them a different force and effect, and amounted to an appropriation by the council.

Municipal Corporations 268 ↪890

[268k890 Most Cited Cases](#)

Under Baltimore City Charter, §§ 36-40, providing that the board of estimate shall make out in October of each year appropriation lists for the next fiscal year, one of which shall contain all amounts to be appropriated for improvements, and prepare a draft of an ordinance of estimates, to be submitted to the city council, providing appropriations sufficient to meet the amount called for in the lists, the board of estimates had the power to fix the items of expenditure for improvements on streets, and to state the purpose for which the amount appropriated for schools should be used.

Municipal Corporations 268 ↪890

[268k890 Most Cited Cases](#)

The appropriations proposed by the ordinance of estimates for new improvements did not contain matter of legislation, but only proposed legislation, since its action was not final, and only

became effective and binding by the act of the city council accepting it.

Municipal Corporations 268 ↪968(1)

[268k968\(1\) Most Cited Cases](#)

Under Baltimore City Charter, § 40, providing that the board of estimates shall send, with the ordinance of estimates, a report showing the taxable basis for the next ensuing fiscal year, stating a rate for the levy of taxes sufficient to realize the amount of the city expenditures, and that the mayor and city council shall fix a rate of taxation in the levy ordinance to be passed in November of each year, and as soon as practicable after passage of the ordinance of estimates, not less than the rate stated in the report, so that it shall not be necessary to create a floating debt, such report, sent in in December, after the veto of the ordinance of estimates, and after the time designated by reference to such ordinance for its return, could not be disregarded, as sent in too late, since the provision as to time was merely directory.

Municipal Corporations 268 ↪968(1)

[268k968\(1\) Most Cited Cases](#)

Where a tax rate has not been fixed by an ordinance of the city, but is merely a statement of a rate in the report of the board of estimates to the council, as required by the charter, it has no force as a rate on which to base a tax levy.

Municipal Corporations 268 ↪968(1)

[268k968\(1\) Most Cited Cases](#)

The city council had no power to pass an ordinance fixing the tax rate, before the report of the board of estimate fixing a rate of taxation had been sent to it, since it had no information on which to base its action.

Municipal Corporations 268 ↪969(1)

[268k969\(1\) Most Cited Cases](#)

Where an ordinance levying a certain tax rate on suburban property was duly passed by the city council, and repassed over the mayor's veto, it

was not invalid, because of a reference made in it to the tax rate fixed in the ordinance levying the tax for the city, passed at the same time, which was void, since such reference, being no essential part of the ordinance, was mere surplusage.

Argued before McSHERRY, C.J., and BRISCOE, PAGE, PEARCE, SCHMUCKER, and JONES, JJ.

Wm. Pinkney Whyte and Olin Bryan, for appellants mayor and council of Baltimore.

Edgar H. Gans, for appellant Hayes.

Bernard Carter, R.M. Venable, and H. Arthur Stump, for appellees.

JONES, J.

This case brings before this court for construction certain features of the present charter of the city of Baltimore. This charter is the scheme of municipal government provided for the city by Acts Assem.1898, c. 123. Prior to this act, article 4 of the Code of Public Local Laws (title, "City of Baltimore") contained the body of laws which prescribed and regulated the powers possessed by the city for the purposes of its government as a public municipal corporation. The constitution of the state (article 11) recognizes the city as a municipality, and, for its purposes as such, provides for the constitution of a mayor and common council as governing agencies. In section 7 of this article the city is prohibited from creating any debt except under the conditions therein prescribed. "All laws and ordinances" then in force, applicable to the city and "not inconsistent with this article," are continued in force "until changed in due course of law." The article then concludes with a section which is as follows: "The general assembly may make such changes in this article, except in section 7 thereof, as it may deem best; and this article shall not be construed or taken as to make the political corporation of Baltimore independent of or free from the control which the general assembly of Maryland has over all such corporations in this state." As respects

constitutional restriction, therefore, our legislature is left free, with the single exception named, as to its control over the public corporation whose powers are here the subject of judicial scrutiny,-as much so as it is with respect to all corporations existing for like purposes in the state. The full and ample powers possessed by the legislature over public corporations, created and existing as agencies of government, have repeatedly been declared by judicial decision. The effect of these, it is believed, is well stated by Chief Justice Le Grand in the course of his opinion in the case of Mayor, etc., of [City of Baltimore v. State, 15 Md. at page 491](#), where he says: "Under the constitution of Maryland, the city of Baltimore is recognized as a public corporation, established for public purposes, and in this character it is in no wise distinguished from that of the several counties, and, except in so far as may be forbidden by the constitution, like them, it is liable to the control of the legislature. Were this not so, civil government would be an impossibility, because of conflicting claims to the supreme power urged by the different geographical departments into which the *447 state is separated. The power *** which creates can revise, modify, annihilate. It can change, not only the limit, but the nature, of the power, and also the depository of it."

We are not confronted in this case with any constitutional question. We understand the power of the legislature as affecting any question we are to decide is not called in question, and what has been said merely evolves the initial proposition lying at the base of the inquiry we are called upon to make. This is that, in pursuing this inquiry, the will of the legislature, as it may be found expressed, or as indicated by fair and proper inference, is to be the dominating factor in determining the meaning and effect of its work, or any part of it, in conferring the chartered powers that the court is called upon to construe. In construing these powers, and determining their

extent and effect, reference must be had, not only to the grant of power, but to the restrictions and limitations that may be found imposed upon its exercise; for the restrictions and limitations imposed are as much the expression of the legislative will as is the grant of power. The power actually possessed, however general the terms in which it may be granted, standing alone, maybe, is that which will appear when read in the light of, and subjected to, the limitations intended to abridge and control it. These general observations express the rule by which the powers of the corporation are to be construed, when it is considered in its aggregate capacity. The rule applies with the same force in the construction of power conferred upon any one of its constituent parts, or upon any of the agencies provided for the execution of its purposes. The charter in question provided by the act of 1898 creates "the inhabitants of the city of Baltimore" a corporation "by the name of the Mayor and City Council of Baltimore." In section 6 of the charter, "the mayor and city council of Baltimore" are clothed with numerous powers, among them the power "to levy annually upon the assessable property of the city, by direct tax, with full power to provide by ordinance for collection of the same, such sum of money as may be necessary, in its judgment, for the purpose of defraying the expenses of said city over and exclusive of all expenses, charges, and sums of money which it is, or shall be, required by law to collect for other purposes, subject to the provisions and limitations herein contained." This power is conferred upon the corporation as a whole, and not upon any one constituent part or any department thereof, and it is to be exercised by the corporation, acting through all the corporate agencies that, under the law of its being, are concerned with duties in regard to it. It was in the attempted exercise of this power that the conditions transpired out of which arise the questions now presented for determination here. These conditions are due to the conflicting claims, as to their respective powers and duties in respect

to levying the necessary taxes for the purposes indicated in the quotation from section 6 of the charter, between the department of the city government denominated in the charter as the "City Council" and the body denominated therein as the "Board of Estimates."

This brings us to an inquiry into these respective powers and duties. The charter provides that the legislative department of the city government "shall be vested in the city council, which shall consist of two branches, one of which shall be the first branch, and the other the second branch." It then provides for the election of the respective branches by the people and for their organization into legislative bodies. Sections 209 to 222, inclusive, of the charter. Section 218 provides that "the mayor and city council of Baltimore shall have power to pass all ordinances necessary to give effect and operation to all powers vested in the corporation of the city of Baltimore." It may be conceded that the city council, being the department of the city government nearest to the source of power, was intended to be the chief depository of power; yet, as has been seen, this power must be taken as subject to the limitations and restrictions imposed by the law which brings the corporation of which it is but an agency, into being. Its chief function is municipal legislation in the way of passing ordinances for the various purposes of municipal government. It appears, however, from section 218, just quoted, that the power to pass ordinances is not the function of the city council as a separate and distinct department of the city government; but it is the corporation, "the mayor and city council of Baltimore," that "shall have power to pass all ordinances," etc. These ordinances, therefore, are to reflect the power of all the corporate agencies that may be found to be charged with a duty in regard to their origination, their subject-matter, or the character and form that are to be given to them when being formulated into law. As laws they must express the will of the entire corporation. A mayor, to be

elected by the people, is, under the charter in question, the chief executive officer of the corporation, and the executive power of the municipality is vested in the "mayor, the departments, subdepartments, municipal officers not embraced in a department, *** and such special commissioners or boards" as may be provided for by laws and ordinances not inconsistent with the charter.

Among the departments created in this distribution of executive power is the "Department of Finance," one of the subdepartments of which is a "Board of Estimates," composed of the mayor, city solicitor, comptroller, president of the second branch of the city council, and president of the board of *448 public improvements, which officers fill the positions of highest dignity and responsibility known to the city government. The powers and duties of the board of estimates are in the main defined in sections 36 to 40, inclusive, of the charter. It is empowered to summon before it at any time the heads of departments and subdepartments, and all municipal officers and special commissions or boards, and is required annually, between the 1st days of October and November, to meet, and by affirmative vote of a majority of all the members make out three lists of moneys to be appropriated by the city council for the next ensuing fiscal year. The first list is to include the amounts estimated to be required to pay the expenses of conducting the public business for the next ensuing fiscal year, prepared in such detail as to the aggregate sum and the items thereof as the board shall deem advisable. The estimates are to "specify, in detail, the objects thereof, and the items required for the expenses of the city council, and the respective departments, subdepartments, municipal offices not embraced in a department, and special commissions or boards, *** including a statement of each of the salaries of the members of the city council and its officers and clerks, and the salaries of the

deputies, assistants, clerks, employés, and subordinates in each department, subdepartment, municipal office, or special commission or board.” To enable the board to make this list, the presidents of the two branches of the city council and the heads of departments and subdepartments, municipal officers, and special commissions and boards are required to send to the board of estimates, in writing, at least 30 days before the list is required to be made, estimates of the amounts needed for the conduct of their respective departments or offices for the next ensuing fiscal year, verified by oath or affirmation. The second list is to contain “all amounts to be appropriated by the city council for new improvements to be constructed by any department of the city during the next ensuing fiscal year,” and to be known as “the estimates for new improvements”; and, to enable this list to be made up, heads of departments and subdepartments, municipal officers, and special commissions and boards are required to file in writing with the board of estimates, 30 days before the time such list is required to be made, “their recommendations as to the amounts which they may consider will be needed in their respective departments for new improvements during the next fiscal year.” The third list is to contain “all amounts which by previous laws, ordinances, or contracts are required to be annually appropriated to charities, and educational, benevolent, or reformatory institutions by the city, as well as all other sums, if any, which may be required by laws or ordinances to be appropriated for other purposes, not embraced in the preceding lists.” It is declared to be “the purpose and object” of the provision requiring these lists to be so made up that they “shall embrace all moneys to be expended for the next ensuing fiscal year for all purposes by the city.” After these lists are prepared the board of estimates is required to “cause to be prepared a draft of an ordinance, to be submitted to the city council, providing appropriations sufficient to meet the amount called for by said three lists,”

and, after making publication of the same for two days, to send “a copy of the draft of said proposed ordinance to the president of each branch of the city council.” The mayor is then required to call a special meeting of the city council forthwith to consider the “proposed ordinance,” and it is made “the duty of the two branches of the city council, when so assembled, to consider and investigate the estimates contained in said proposed ordinance, and to hold daily sessions for its consideration until said ordinance is passed.” The two branches of the city council, by a majority vote of all the members elected to each branch, are authorized to reduce the amounts fixed by the board of estimates in the proposed ordinance, except such items as are fixed by law, such as are inserted to pay state taxes, and such as are intended to pay the interest and principal of the municipal debt; but it is provided they shall not have the power to increase the amounts fixed by the board of estimates, “nor to insert any new items in the proposed ordinance.” When this proposed ordinance has been passed “by both branches of the city council and approved by the mayor,” it is to be known as the “Ordinance of Estimates” for the year for which the appropriations provided for therein are intended; and the sums therein appropriated, “after the beginning of the next ensuing fiscal year,” are to “become appropriated” and available “for the several purposes therein named, to be used by the city council, departments, subdepartments, municipal officers not embraced in a department, and special commissions or boards therein named, and for no other purpose or use whatever.” The city council is expressly denied the power “to enlarge any item contained” in this ordinance, after it is passed, “by any other or subsequent ordinance or resolution.” It is also provided that the city council shall not, by any subsequent ordinance or otherwise, appropriate any sums of money to be used for the next ensuing fiscal year for any of the purposes embraced in “the ordinance of estimates, and that no appropriation

provided for in this ordinance” shall be diverted or used under any circumstances for any other purpose than that named in “the ordinance of estimates,” and that no temporary loans shall be authorized or made to pay any deficiency arising from a failure to realize sufficient income from revenue and taxation to meet the amounts provided for in said ordinance. In case there is a deficiency, it is provided *449 there shall be a pro rata abatement of all appropriations, with certain exceptions; and, in case there is a surplus of revenue over expenditures, such surplus is to “be passed to the commissioners of finance, to be credited to the general sinking fund.” Section 36.

The board of estimates is given entire control over the grant by the mayor and city council of any “franchise or right to use any street, avenue, alley, or highway, *** or right for the use of any public property” belonging to the city. The proposed grant of any such right is to be in the form of an ordinance, which, after having been introduced into the city council, is to be referred to the board of estimates, which is to “make diligent inquiry as to the money value of the franchise or right proposed to be granted, and the adequacy of the proposed compensation to be paid therefor to the city”; and the board is charged with the duty to fix in the ordinance the compensation to be paid for the grant at the largest amount that can be obtained, etc., and the grant shall not be made by the city council, except for the compensation and on the terms approved by the board of estimates in the manner prescribed in the charter. The like provision is made to apply to any renewal or extension of any right relating to the use of the public property. Section 37. The board of estimates is required to include annually in this ordinance of estimates “the sum of fifty thousand dollars, to be used as a contingent fund” by the board, under regulations prescribed; and “the city council shall not have the power to increase or decrease, or strike out, said amount from the said ordinance of estimates.” Section 38. The mayor

and city council are prohibited from appropriating any money “for the payment of any private claim against the city, unless such claim shall have first been presented to the board of estimates, together with the proofs upon which the same is founded, and reported favorably by the said board.” Section 39. The board of estimates are further charged with the duty to procure, on the 1st day of October in each year, or as soon thereafter as practicable, from the proper municipal department, and to “send with the ordinance of estimates to both branches of city council, a report showing the taxable basis for the next ensuing fiscal year, and the amount which can reasonably be expected to be realized by taxation for said year.” This report is to be made up to show the difference between the income that can reasonably be expected to be received by the city for the next ensuing fiscal year from licenses, fees, rents, and all other charges, including the amount believed to be collectible from taxes in arrear, and the anticipated expenditures during such year, and “shall state a rate for the levy of taxes sufficient to realize the amount required to meet the said difference.” It is then provided that “in the ordinance making the annual levy of taxes, which ordinance shall be passed by the mayor and city council of Baltimore in the month of November in each year, and as soon as practicable after the passage of the ordinance of estimates, the mayor and city council of Baltimore shall fix a rate of taxation not less than the rate stated in the aforesaid report, so that it shall not be necessary at any time for the city, its officers or agents, to create a floating debt to meet any deficiency, and it shall not be lawful for the city, its officers or agents, to create a floating debt for any purpose.” Section 40. Again, in section 85 of the charter (which is here referred to only in the way of illustration), it is provided that, when any ordinance for a public improvement, not included in the ordinance of estimates, exceeding in cost the sum of \$2,000, has passed its first reading in the branch of city council in which it originates, it

is to be first referred to the board of public improvements as to its advisability and the needs of the city for such an improvement, and then referred by that board, with its opinion in writing attached to the ordinance, to the board of estimates for its opinion in writing as to the probable cost and whether the financial condition of the city will justify such an expenditure, and further action is forbidden to be taken by the city council in regard to said ordinance until these reports shall have been made to both branches of the city council and entered on their respective journals.

From this general review of the powers and duties, under the charter here in question, of the city council and the board of estimates, the two agencies of city government with which we are here concerned, it is quite obvious that it was the intention of the charter that the board of estimates should have a very important and controlling influence in operating the financial department of the city government. The amount of official influence and responsibility brought together in its makeup, the nature of the duties assigned to it, and the clear and emphatic negation of power to the legislative department that might be inconsistent with or might embarrass the exercise of functions assigned to it, are considerations that go to make this manifest. The evident object of the board of estimates, as a feature of the charter, was to provide a more orderly administration of the finances of the city and to secure more deliberate and careful judgment as to expenditure of the public money, and greater watchfulness over and economy in making this expenditure, thereby avoiding as far as practicable unnecessary taxation and the accumulation of debt by reason of unsystematic methods. This being so, the powers of such an agency in a system of municipal government are not to receive at the hands of the courts a narrow or illiberal construction, but rather one that will tend to advance the purpose of its creation. It is not meant

*450 by this that the courts are to determine any question of construction according to their notions of the wisdom or expediency of the means adopted to secure the purpose, or of the policy that dictated their adoption. These are considerations that are properly addressed only to the lawmaking department of the government. Where, however, this department has indicated a purpose to be accomplished, and in its wisdom has provided the means of its accomplishment, a proper respect for its judgment and a proper recognition of its independent function of government require the courts, in passing upon its act in this regard, to have in view the effectuating of the main purpose. In this view the considerations mentioned must have influence in determining the meaning and effect of every part of the legislative act, because the legislature must have intended the means to be in harmony with the purpose. In the case in hand, that the legislature intended the board of estimates as a principal means of accomplishing the wise and proper objects already indicated seems quite obvious. Therefore it is that its powers are not to be narrowed and restricted by construction.

We come now to the questions of more immediate concern in the case before the court. It appears from the record that the board of estimates provided for in the charter of the city of Baltimore, here under consideration, in pursuance of the duty prescribed to it in the charter, prepared the draft of an ordinance of estimates for the fiscal year 1901, and on the 30th of November, 1900, this draft was submitted simultaneously to both branches of the city council. No action was taken in the second branch until the next day, December 1, 1900, when, on motion, the ordinance was referred to a joint special committee composed of three members from each branch. On December 4, 1900, the ordinance was passed by the second branch. When the ordinance was received in the first branch, upon motion, the consideration of it was postponed to the next meeting; and on

December 1st, on motion, the members of the second branch were invited to confer with members of the first branch in regard to the ordinance of estimates. This invitation was accepted, and then, on motion in the first branch, a committee was appointed to confer with a similar committee of the second branch; said joint committee to take charge of and consider the ordinance and report to their respective branches. On December 5th, the first branch amended the ordinance, which had been the day before passed by the second branch, and passed it as amended. On the 6th of December, the ordinance thus amended was received by the second branch, where a substitute was offered and adopted for the amendment made in the first branch. On the same day this substitute was adopted by the first branch, and the ordinance, as amended by this substitute, was finally passed by both branches of the council. When the ordinance was sent to the city council by the board of estimates, it provided for new improvements as follows: "Purchase of lots, with the approval of the mayor, city comptroller, and president of the school board, erecting buildings, enlargement of existing buildings for school purposes, \$190,000. New pavements: Carey street, from Lexington to Columbia avenue, Belgian blocks, \$44,000; Chase street, from Broadway to Wolfe street, sheet asphalt, \$11,300; Thames street, from Philpot to Wolfe street, Belgian blocks, \$13,200; Madison street, from Buren street to Greenmount avenue, Belgian blocks, \$11,300; Baltimore street, from Chesapeake street to Grove street, sheet asphalt, \$4,500; Block street, from Drawbridge to Thames street, Belgian blocks, \$7,900; North avenue, from Eutaw Place to St. Paul street, sheet asphalt, \$60,000; McCulloh street, from Lanvale street to Lafayette avenue, asphalt blocks, \$5,400; Barnet street, from Charles street to Liberty street, asphalt blocks, \$2,500; Fort avenue, from B. & O. crossing to Hull street, Belgian blocks, \$20,000." The amendment that was made to it by the city council was the striking out of all the items that

have been here set out, and the substitution therefor in the ordinance of the following: In lieu of the first item, appropriating \$190,000 for "erecting buildings," etc., "for school purposes," amount to be appropriated by the city council for new improvements, to be constructed by the inspector of buildings for the board of school commissioners during the fiscal year, 1901, \$190,000. In lieu of the several items for new pavements, "amount to be appropriated by the city council for new pavements, to be constructed by the city engineer during the year 1901, \$180,000." After the ordinance had been passed as amended, it was sent to the mayor for his approval, in accordance with the provisions of section 23 of the charter. This section requires all ordinances, after being duly passed by the city council, to be sent to the mayor for his approval; and, if he shall not approve an ordinance, he is required to "return the same, with his objections in writing, to the branch in which the said ordinance originated, within five days of actual regular sittings of said branch," etc. When these objections are received by the branch of the council to which they are thus sent, the same are to be forthwith read and entered at large on the journal of the branch, and the said branch is required, after five and within ten days after the return of the ordinance and the objections, to "proceed to reconsider and vote upon the same," and, if passed over the veto by the said branch by a vote of three-fourths of all the members elected to said branch, it shall be sent, with the mayor's objections, to the other branch, and within the same limitations as to time it is to be reconsidered and *451 voted upon by the said other branch, and, if therein passed by a vote of three-fourths of all the members elected to said branch, it becomes an effective ordinance notwithstanding the veto. It is also provided that, "if any ordinance or resolution duly passed by the city council shall not be returned by the mayor to the branch of the city council in which the same originated within five days of its actual regular sittings, excluding special sittings called by the

mayor, after it shall have been delivered to him, the same shall become an ordinance or resolution of the mayor and city council of Baltimore in the same manner as if the mayor had approved it, unless the city council by an adjournment sine die, or for a period exceeding one month, shall prevent its return." It is further provided that, in case an ordinance shall embrace different items of appropriation, the mayor may approve the provisions of the ordinance relating to one or more of the items, and disapprove others. Those that he approves "shall become effective," and "those which he shall not approve shall be reconsidered," in the same "manner and form" as provided in case of the veto of an entire ordinance; and the same mode and manner of procedure of both branches of the city council are to be observed as prescribed in case of the veto of an entire ordinance. The mayor, upon receiving the ordinance of estimates, within the time prescribed by section 23, returned the same to the first branch of city council, with his approval of all the items contained in the ordinance, except the items which had been incorporated therein by the city council by way of amendment, and which have been recited. These last-named items he vetoed, accompanying his veto with a message to the first branch of the council, giving reasons therefor. The first branch returned the ordinance and the veto message to the mayor, claiming that the same should have been sent to the second branch of the council, because the ordinance was to be considered as having originated in the last-named branch. Whereupon the mayor again sent the ordinance and message to the first branch, with a second message, controverting the claim that the said branch was not the proper one to receive and act upon them. The first branch, after thus receiving the ordinance and message, took no action in regard to the same, as prescribed in section 23 of the charter. The facts which have been so far stated, in connection with the provisions of the charter that have been set out, give rise to certain of the questions propounded in

the record for the court's decision.

The first of these is: "Had the board of estimates the power to fix the items of expenditure for new improvements, amounting to \$180,100, and to state the purpose for which the \$190,000 to be appropriated for schools should be used, in the form and manner in which it was done by them in the draft of the proposed ordinance submitted by them to the city council?" This question must receive an affirmative answer. As against this right or power of the board of estimates, it is insisted that the board of estimates is not authorized to do more, under the head of estimates for new improvements, than to fix the sum or amount as a whole that is to be appropriated to any one department that has supervision or control over works of new improvements, and that it is to be left to the city council to distribute and apply such sum or amount to specific uses, or, if the board of estimates itemizes such sum or amount, and indicates the specific uses to which it is to be applied in the ordinance of estimates which the board is required to submit to the council, it is in the power of the city council, by amending the ordinance, to strike out the items, and substitute in gross the sum of the items to be applied to new improvements in the discretion and judgment of the city council by subsequent ordinances. By reference to article 4, Code Pub.Loc.Laws (title, "City of Baltimore"), as the same stood prior to the adoption of the charter we are here dealing with, it will be found that if the view of the powers of the city council, which has been stated as claimed for it, is to prevail, the city government, as to its department of finance, will be very largely remitted to the methods which obtained under the system which was superseded by the present charter. The legislature, by making, as it has done, an entire substitution for the body of laws which at the time of the adoption of the present charter regulated the powers of the municipal government and of its constituent parts and agencies, indicated a purpose to make a

complete change of system; and in no one department of the present city government is change of methods more carefully prescribed, or the purpose of change of system more emphasized, than in the department of finance. The general presumption, therefore, does not favor the contention of the city council. As we have seen, the city council has no inherent function that the legislature cannot control. It has the powers conferred upon it by the legislature, to be exerted to the extent that the legislature has not seen fit to restrict them. It would seem that it could not have been the intent of the charter to confine the board of estimates to the comparatively perfunctory duty of indicating general amounts for appropriation and application by the city council, without reference to the judgment of the board of estimates as to the purposes for which expenditures were to be made. In the discharge of its duty this board is authorized and required, as has been seen, to make up its list of amounts to be appropriated for new improvements from information furnished the board by heads of departments, etc., "as to the amounts which they may consider will be needed in their respective departments for new improvements during the next fiscal year." Now, if the board of estimates must blindly accept the amounts recommended by *452 these departments as fixing the appropriations to be made, and simply transmit them to the city council for its absolute control of them within the amounts, and only subject to the general purpose of the appropriation recommended, why did the law provide that the departments should send their recommendations to the board of estimates? Why not have them sent direct to the city council? Why this complication of the system with machinery and routine that effected nothing? When we take into consideration the composition of the board of estimates, the powers conferred upon it, and the careful provisions of the charter for having appropriations made upon information sent to this board, and by it prepared for submission to the

city council, it seems obvious that this information and the recommendations of the departments were to be subjected to the scrutiny and judgment of the board of estimates as to the necessity and propriety of the appropriations recommended to be made. The exercise of such scrutiny and judgment intelligently and effectively requires imperatively a knowledge of the items of the proposed expenditure for which an appropriation may be recommended, together with as fair and close an estimate of and approximation to the cost of any particular improvement as it may be practicable to obtain. The judgment of the board in reference to the necessity and propriety of an expenditure for improvements must have reference to particular improvements specified in the items furnished to it as a basis of the estimates to be made. A particular locality might present needs for improvements so urgent as to justify an increase in the burden of taxation for the purpose of making them, while improvements asked for in other localities might be unnecessary, or, if they presented merits at all, might be more judiciously postponed for a more favorable condition of finances. This would require discrimination as to the object of expenditure,-an important element of judgment in adjusting the relations between the revenues and expenditures of a municipality. The board of estimates, therefore, in making up the aggregate of the appropriations to be provided for in the ordinance of estimates, which it is made their duty to prepare and send to the city council, has to judge relatively between the public needs for which appropriations are asked to be made. This can only be done by a comparison of items through which the board is made acquainted with the particular uses to which moneys appropriated are to be applied.

The considerations adverted to seem to point irresistibly to the conclusion that, in estimating amounts to be inserted in the ordinance of estimates as the appropriations for the fiscal year

for new improvements, the board of estimates has the right, and it is its duty, to have before it and pass judgment upon the items of any proposed expenditure as the basis and groundwork of its final judgment fixing the appropriation to be made for such improvements. If this be so, the board would be doing a vain and useless work, if, after having made up its judgment as to the necessity or propriety of an appropriation for this purpose, based upon the needs appearing from the items furnished and the specific purposes to which the money appropriated was to be applied, its power was limited, when drafting the ordinance of estimates, to inserting therein simply the aggregate amount of the proposed appropriation, leaving the application of the amount solely to the will of a different tribunal. In such case the law would set up one official judgment, to be counteracted and set at naught by another acting without reference to the first. On the other hand, the inserting of items indicating the specific uses of an appropriation would not only seem to be a proper exercise of power on the part of the board of estimates, from the considerations that have been adverted to, but its exercise must tend to harmony and efficiency in the working of the system of municipal government, in that it supplies to the city council itself a more intelligent basis for its own action upon the ordinance of estimates. The council can adopt the ordinance in its entirety, or it can reduce the amounts proposed to be appropriated. Either the one action or the other can be taken more intelligently by the city council, with the information disclosed to it in the ordinance itself as to the purposes for which the money to be appropriated is intended to be used. It is further insisted that the appropriations proposed by the ordinance of estimates under the head of new improvements contained matter of legislation. It is not perceived how this is material. It would not vitiate the act of the board in providing the appropriations in question in the ordinance. It would only be proposed legislation. No act of the

board of estimates in respect to appropriations is final; and it is not capable of any legislative act that would be binding upon anybody. The proposed legislation could only become final and effective by the act of the city council adopting it. The matter of legislation being proposed by the board of estimates could not in any manner affect the right or power of the city council to reduce the appropriations proposed by the board; and, if the matter proposed in the way of legislation should be adopted by the city council, no power that this body possesses as to subsequent legislative action in reference to the appropriations made would be in any wise impaired.

The second question propounded in the record is: "Had the city council the right to amend the said draft of proposed ordinance by changing the item as to street pavements and public schools as hereinbefore set forth?" A negative answer to this question results from the conclusions reached in regard to the *453 matter of the first question. If the proposition be established that the ordinance of estimates, as drafted by the board of estimates and proposed to the city council, properly specified the purposes for which the appropriations were to be used, the only power the city council had to deal with the proposed ordinance was to adopt it or reduce the amounts of the proposed appropriations. To reduce the amounts is the only power conferred upon the city council to control the judgment of the board of estimates. They are expressly forbidden to increase amounts or to insert any new items. There is no substantial difference between the right to insert new items and the right to change the substance and form of items, by amendment, so as to give them different force and effect. The amendments of the city council change the whole effect of the ordinance in respect to items embraced in the amendments. Instead of the moneys appropriated in the items being applied to the specific purposes therein indicated, they are reserved by the amendments to be thereafter

appropriated to specific purposes in the judgment of the city council. The amendments also contravene the intent of the charter that the ordinance of estimates, when passed, should fix the appropriations for the fiscal year, and the purposes to which they are to be applied. As has been seen, it is provided that the said several sums contained in the ordinance of estimates shall, when the ordinance has been passed, be and become appropriated "for the fiscal year, *** for the several purposes therein named," and "for no other purposes and uses whatever." Plainly, the charter does not contemplate a change to be made in the ordinance of estimates by the city council which would reserve to itself the right to appropriate the moneys indicated by the board of estimates as proper appropriations after the ordinance is passed. The moneys are appropriated by the ordinance, and for the purposes indicated and fixed in the ordinance. Even though it should be that the specific purposes are not to be named in the ordinance, still moneys are not to be appropriated, after the passage of the ordinance, at the pleasure of the council, which would be the effect of the amendments in question; for these leave it to the subsequent action of the city council whether the moneys in question will be appropriated or not. Each of the amendments reads, "Amount to be appropriated by the city council."

The third question in order is: "Was the mayor's veto of date of December 10, 1900, a legal and effective veto?" It is contended this veto is not effective, because it was not sent to the branch of the city council in which the vetoed ordinance originated, in accordance with the provisions of section 23 which have been set out; and because of the fact that the second branch was the first to pass the ordinance of estimates it is further contended that this branch is to be held to be the one in which the ordinance originated. The ordinance of estimates does not originate in either branch of the city council, nor with the city

council at all. It has already been seen what a small control the city council has over it. It originates in the board of estimates. It is not simply a composition by the board of estimates, as has been suggested. It is a measure for legislative action, created by the board of estimates by the express requirements of the law and by the board as an official body. When it goes to the city council, it goes with legal and official sanction, and immediately becomes, by the express command of the law, a subject of consideration and action by both branches of the city council. As has been seen, the charter provides that a copy of the draft of the ordinance is to be sent to the president of each branch of the city council "immediately" after the publication provided for. A meeting of the city council is to be "forthwith called by the mayor to consider such proposed ordinance." It is then made the duty of "the two branches of the city council," not of one alone, when assembled, "to consider and investigate the estimates contained" in the ordinance, "and to hold daily sessions for its consideration until" it "is passed." The ordinance, therefore, when it reaches the city council, becomes in contemplation of law the subject of legislative consideration, and action immediately, and so remains in each branch of the council until it is passed. It is precisely the same measure in each branch. It is not in the category of an ordinary legislative measure, which may in like verbiage and terms be introduced simultaneously in the two members of a dual legislative body. Such a measure is an independent and different one in each body, and acquires no legislative status without some action by the body into which it is introduced. The two measures, when given a legislative status, are distinct and different because of the difference of origin. Here the measure is the same one, though pending in the two bodies. It has its origin as the creation of the law. It is created for the purpose of being made the subject of legislative action, and was made so by the law in each body, to which it was sent

immediately upon its creation. It cannot be said, because the ordinance in question did not originate in either branch of the council as distinct and separate from the other, therefore it is not subject to the veto of the mayor. It is expressly made subject to approval by the mayor. Section 36. As it must be submitted for the mayor's action, it must have been intended, as a matter of fair construction, that it was to be, like other ordinances, subject to the powers vested in him, as a constituent part of the corporation, over legislation. So far as it could be said to have originated with the city council at all, it had origin simultaneously in both branches of the city council; and this was so by the express terms of the *454 law, and therefore known to the mayor. It does no violence, in this view, to the terms of section 23, upon which the contention against the effectiveness of the veto rests, to hold that the veto, in case of its being applied to the ordinance of estimates, may be sent to either branch of the city council. An important official power or function ought not to be defeated or embarrassed by too strict a construction in a matter of this sort. To which body in a dual legislative assembly a veto message is to be sent is not a matter of substance or of principle or policy. It is more a matter of orderly procedure. It could scarcely be a matter of great importance to which body it was sent, to affect a matter of legislation by both in any case; and the common provision that a veto of a matter of legislation by a dual body is to be sent to the body in which it originated was probably primarily suggested only by a certain propriety in so doing. The question just discussed will be answered affirmatively. And this answer carries with it a negative answer to the part of question 7 whether the two items of the ordinance of estimates relating to public schools and pavements are valid and binding parts of said ordinance, and an affirmative to that part of the same question, "Are the said items stricken from said ordinance by the mayor's veto thereof?"

The remaining questions propounded in the record relate to the validity of the ordinances establishing the tax rate for the year 1901. These ordinances were passed by the city council on the 19th of December, 1900, were vetoed by the mayor, and subsequently passed by the city council over the mayor's veto. On December 22d, immediately after the expiration of 10 days from the time of the receipt by the city council of the mayor's veto of the ordinance of estimates, the board of estimates sent to the city council a report, made up as directed in section 40 of the charter, and fixing the tax rate therein for the year 1901 at \$1.81 1/2 on the \$100. The ordinance passed by the city council on the 19th of December fixed the tax rate for the city of Baltimore proper at \$1.95 on the \$100, and the rate for the annex at 60 cents on the \$100, and was passed, as appears from the dates given, before the report of the board of estimates fixing a rate of taxation had been sent to the city council.

Before discussing the main question, we think the view of counsel for the appellant, that the provision in section 40 of the charter as to the time when the report of the board of estimates fixing the tax rates is to be sent in must be held as directory, is correct. "Generally, when no rights will be impaired, provisions with no negative words or implications concerning the time and manner, and more especially the time, in which official persons shall perform designated acts, are directory." Bish.Writ.Laws, § 255. The substantial thing to be accomplished here is to get before the city council the information in official form upon which they were to fix the tax rate for the ensuing fiscal year. A definite and fixed time is not provided for the report in question to be sent in. There is no express prohibition against sending it in after the time which is designated by reference to the ordinance of estimates; nor is there any reasonable implication that it can be disregarded, if sent in after such time. On the contrary, it is reasonable to suppose that it was not intended that

the object to be accomplished by the furnishing officially of the information the report is required to give was to fail because the report was not sent in with strict reference to the time of sending it. We agree, also, to the view that a fair construction of the law indicates that the report in question is to be sent in after the passage of the ordinance of estimates. Section 40, which begins with the provision for sending in the report in question, deals entirely with the perfected ordinance of estimates; and when it is seen that, by provision contained in the same section, the rate of taxation which the report is to fix is not to be fixed by the city council until after the passage of the ordinance of estimates, in connection with the consideration that it would not be practicable to fix a rate of taxation with certain reference to the amount to be raised for appropriations until after the ordinance of estimates had passed and fixed the appropriations to be made, the force of the view just alluded to will abundantly appear.

Now, was it competent for the city council to adopt a tax rate before it received the report of the board of estimates containing the information therein required to be given and fixing a rate of taxation? If this could be done by the city council, it would be equivalent to striking out of the charter the entire provision in reference to making up and sending this report in question by the board of estimates. Would the court be justified in doing this? Courts ought to construe laws so that all parts of the law should, if possible, be upheld and given effect; and they ought to hesitate to destroy the effect of any clear provision of the law in the process of construing it. There is no middle course in dealing with the provision here in question. It must be given effect or it must be rendered nugatory. If the city council had the right to proceed with the making of the tax levy, without reference to a report in official form and under official sanction from the board of estimates, as provided in section 40, then, in effect, this provision is to be pronounced without

force. Can this be done? It was evidently in the minds of the lawmakers an important provision. The greater part of section 40 of the charter, which prescribes how the tax rate is to be fixed, consists in prescribing how the report in question is to be made up, what it shall contain in the way of statistical information as a basis for the tax levy, and that it shall state a rate for the levy of taxes sufficient to realize the amount *455 of taxes needed. The intention of the provision in question seems to be plain, and is that there shall be an official channel through which the information and statistics necessary to fix a proper tax rate shall go to the city council, which is to make the final provision in the way of legislation for establishing a rate at which taxes are to be levied and collected. That the charter intended that the city council should have this report before them when the tax levy is made is plain from the provision that the council shall not fix a rate for the levy of taxes less than the rate stated in the report of the board of estimates. This is a provision that, in a legal sense, it is impossible to gratify without having the report as a guide to the rate to be fixed. The reason for the provision is explained and stated in the law to be "that it shall not be necessary at any time for the city, its officers or agents, to create a floating debt to meet any deficiency," and it is then provided that "it shall not be lawful for the city, its officers or agents, to create a floating debt for any such purpose." Here, then, it is declared in the law itself that the provision in question is intended to serve a most important public end. In view of this, it would be unreasonable to hold that it need not be observed and can be disregarded. It would be much more in consonance with its evident spirit and declared purpose to hold it to be a limitation upon the power of the city council, and that in the distribution of powers under the charter, and fixing those of the several agencies of the city government in reference to taxation, the city council has not been clothed with the power to make levy for taxes, except in the mode

prescribed in the provision of the charter we have been here considering and under the limitations therein imposed.

From this it follows that there was no power in the city council "to consider and adopt the tax rate before the receipt of the report of the board of estimates and its statement of the tax rate, as was done by the council, December 19, 1900," which is an answer to question 5; nor is the ordinance passed by the city council, laying the rate of \$1.95 on the \$100 for the city of Baltimore, a valid and legal ordinance, which is an answer to part of question 6. The tax rate of \$1.81 1/2 not having been fixed by an ordinance of the city, and being the mere statement of a rate in the report of the board of estimates, can have no force as a rate to levy taxes, which answers question 8.

No reason is perceived for questioning the validity of the ordinance laying a tax rate of 60 cents on the \$100 on suburban property, etc. None of the considerations which have been discussed have any reference to that. It was duly passed by the council, and afterwards repassed over the mayor's veto. The reference made in the ordinance to the tax rate fixed in the ordinance levying the taxes for the city of Baltimore passed at the same time with it is mere surplusage. It is no essential part of the ordinance, and can have no effect upon its validity. This answers the remaining part of the inquiry in question 6.

We have been asked to construe section 85 of the charter. We do not find, however, that the construction of this section is involved in any of the inquiries that have been propounded to the court, or that its construction is in any way necessary to determine the questions that have been presented by the record in this case. If this section is to be pronounced invalid and void, as has been suggested and argued, this ought not to be done by the court, unless the question of its validity was directly or necessarily presented for decision. If, for any other reason than invalidity, it

is incongruous or out of harmony with the system of which it is a part, this cannot be cured by construction. More properly it is to be left to be reformed and made to consist with the system by the power to which it owes its origin.

The case is before the court upon a case stated under the provisions of equity rule 47. The appeal is from a pro forma decree of circuit court No. 2 of Baltimore city. This decree, except as respects the ordinance for levy of taxes on suburban property, is inconsistent with the views herein expressed. It will be affirmed as to the ordinance last mentioned, and reversed in all other particulars. Decree affirmed in part and reversed in part, with costs to the appellants, and cause remanded, that a decree may be passed in conformity with the opinion of this court.

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