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New Jersey Supreme Court

WESLEY B. BIDDLE,
Prosecutor,
vs.
ATLANTIC CITY,
Respondent. } On Certiorari.

WRIT OF CERTIORARI.

(Returnable July 19, 1916.)

(Filed July 17, 1916.)

STATE OF NEW JERSEY, to Joseph A. MacNamee, City
[SEAL.] Clerk of Atlantic City, GREETING: 10

We being willing, for certain reasons, to be certified of the action of the Board of Commissioners of Atlantic City at a meeting held in the month of June, 1916, in dismissing Wesley B. Biddle from the office of Assistant Building Inspector of said city, and of the resolution touching said matter passed at said meeting, do command you, that you certify and send to our Justices of our Supreme Court of Judicature, at Trenton, on the 19th day of July next, as well the said resolution and all proceedings of said Commissioners relating thereto with all things touching and concerning the same, as fully and entirely as they remain before you, together with this, our writ, that we may cause to be done thereupon what of right and according to law and justice ought to be done. 20

Witness, Honorable William S. Gummere, Chief Justice of our said Supreme Court, this 30th day of June, in the year of our Lord one thousand nine hundred and sixteen.

C. L. COLE,
Attorney.

WM. C. GEBHARDT,
Clerk.

This writ is allowed. Let it be sealed.

10

CHAS. C. BLACK,
Justice of Supreme Court.

RETURN.

*To the Honorable the Justices of the Supreme Court of
Judicature of New Jersey:*

In obedience to the command of this writ, directed to
20 Joseph A. McNamee, Clerk of the City of Atlantic City,
within named, I, David H. Porter, Jr., Assistant City
Clerk, do hereby certify and send to you, the Honorable
Justices of the Supreme Court of Judicature of New
Jersey within named, the resolution passed on the 15th
day of June, 1916, dismissing Wesley B. Biddle from
the office of Assistant Building Inspector of said City
of Atlantic City with all things touching and concern-
ing the same, as fully and entirely as they remain before
me.

30 In witness whereof, I have hereunto set my hand
and affixed the official seal of the City of Atlantic City
this fifteenth day of July, in the year of our Lord
one thousand nine hundred and sixteen.

DAVID H. PORTER, JR.,
Assistant City Clerk.

Regular meeting of the Board of Commissioners held June 15, 1916.

President Bacharach presiding.

Present: Messrs. Bacharach, Beyer, Sooy, Thompson and White (5). Absent, (0).

Employment of Wesley B.

Biddle as Assistant Inspector in the Building Department Determined and Discontinued.

Be it resolved by the Board of Commissioners of the City of Atlantic City that the employment of Wesley B. Biddle as Assistant Inspector in the Building Department of Atlantic City be hereby determined and discontinued, and that the Director of Public Affairs be hereby authorized to appoint a suitable person as Assistant Inspector in said Department to receive a salary of \$91.66 per month, payable monthly, said employment being by the month. 10

Upon motion of President Bacharach this resolution was adopted by the following vote: Ayes, Messrs. Bacharach, Beyer, Sooy, Thompson and White (5). Nays, (0). 20

CITY OF ATLANTIC CITY

DEPARTMENT OF CITY GOVERNMENT

I, David H. Porter, Jr., Assistant City Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, do hereby certify, that the foregoing is a true copy of a portion of the Minutes of a Regular Meeting of the Board of Commissioners of the City of Atlantic City held on June 15, 1916. 30

In testimony whereof I have hereunto set my hand and affixed my official seal at Atlantic City, this fifteenth day of July, 1916.

DAVID H. PORTER, JR.,
Assistant City Clerk.

[L. S.]

STATE OF NEW JERSEY, }
 COUNTY OF ATLANTIC, } ss.

Wesley B. Biddle being duly sworn according to law upon his oath says that at a meeting of the Commissioners of Atlantic City held on the fifth day of October, 1912, he was by resolution appointed first assistant building inspector and that he immediately qualified and proceeded to discharge the duties of said office and continuously until the day of June, 1916, when
 10 said Commissioners passed a resolution dismissing him, and that such dismissal was without charges being preferred and without a hearing—no reason being assigned so far as deponent knows.

WESLEY B. BIDDLE.

Sworn and subscribed to before me this 26th day of June, 1916.

WM. M. CLEVINGER,
 S. C. C.

20

NEW JERSEY SUPREME COURT.

WESLEY BIDDLE, <i>Prosecutor,</i> <i>vs.</i> CITY OF ATLANTIC CITY, <i>Respondent.</i>	}	On Certiorari.
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DEPOSITIONS.

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Testimony of witnesses taken before William M. Clevenger, Esq., Supreme Court Commissioner, at his offices, 615-16-17 Bartlett Building, Atlantic City, N. J., on Friday, the twenty-second day of September, 1916, at 2 P. M.

Present—For Prosecutor, Hon. C. L. Cole. For Respondent, Harry Wootton,* Esq., City Solicitor, and Joseph B. Perskie, Esq., Assistant City Solicitor.

Evi Ware, stenographer, duly sworn.

Mr. Cole—Will it be admitted that Atlantic City has adopted the Walsh Act?

Mr. Perskie—Yes.

Mr. Cole—And, also, that this testimony be taken stenographically and the signatures of the witnesses waived?

Mr. Perskie—Yes, sir.

Dr. Jesse B. Thompson, sworn.

10

Direct examination, by Mr. Cole.

Q. Doctor, you are one of the Commissioners of Atlantic City?

A. I am.

Q. And did you vote for a resolution dismissing Mr. Wesley Biddle, one of the assistant building inspectors?

A. I did.

Q. Why?

A. Why did I vote?

Q. Yes.

20

A. Because I felt it was to the interest of the city to do so.

Q. Why?

A. It was recommended by Mr. Bacharach; he was in his department.

Q. Which department was that in?

A. The department of Public Affairs.

Q. Did you vote for the resolution solely upon the request or representation of Mayor Bacharach or upon independent investigation?

30

A. I didn't investigate especially.

Q. Did you investigate it at all?

A. No, I don't know that I did.

Q. What was the representation or request made by Mayor Bacharach?

A. I don't know that he requested me to vote for it. He didn't.

Q. What representation did he make?

A. Said it was to the interest of the department to change.

Q. Tell you why?

A. No.

Q. Did you ask him why?

A. No, I don't think so. I don't remember asking him.

Q. Was there a conference among the Commissioners touching Mr. Biddle's removal?

10 A. I don't recall any.

Q. When did you first know that the resolution which Mr. Bacharach offered was to be offered?

A. I don't remember. I couldn't say that I knew it at all ahead of the day.

Q. How soon before was it, before the resolution was actually offered, that you knew it was to be offered?

A. That is just what I answered, that I don't remember anything about it, except when I came in the Commission room there might have been some knowledge, but I have no recollection of it.

20 Q. You know—do you know that the office was immediately—that is the vacancy was immediately filled by another?

A. The records will show. I don't remember.

Q. Did you personally have any grievance against Mr. Biddle?

A. Personally none whatever.

Q. Had you lodged with you or did you know any complaint being lodged against Mr. Biddle?

30 A. Not in my office.

Q. Did the Mayor tell you that Mr. Biddle was inefficient, not qualified to hold the office?

A. I don't know that he did.

Q. So that solely upon his statement to you that it was for the good of the service that Mr. Biddle be dismissed you voted for the resolution?

A. So far as I remember.

Q. If there were any other reasons, you would recall them, wouldn't you?

A. I think so.

Q. Were there any discussions among the Commissioners as to who Mr. Biddle's successor was to be?

A. I don't think—I have no recollection there was.

Q. When did you first know who was to succeed Mr. Biddle?

A. That is rather—my memory is very hazy on those points. I couldn't tell you, Judge.

10

Cross-examination, by Mr. Wootton.

Q. Dr. Thompson, did you vote to discontinue the services of Mr. Biddle for any political reason?

A. None whatever. I didn't know which side he was on. I don't know to-day whether he was against us or for us.

By Mr. Cole:

Q. In other words, you didn't have any reason, did you, Doctor? 20

A. No special reason.

Q. No reason, special or otherwise?

A. Except what I gave you.

Q. You knew Mr. Biddle had been in the employ of the city for over four years?

A. Yes, I knew that.

Q. And you didn't think it worth while to inquire of the Mayor when he told you that it was for the good of the service that Mr. Biddle be dismissed as to why he thought that? 30

A. I didn't inquire, no.

Q. You didn't think it important to inquire?

A. We usually—

Q. Not usually, but in this case?

A. In this case?

Q. Did you think it important to inquire?

A. I relied on the Mayor's judgment, I didn't inquire.

Q. Are you in the habit as a Commissioner of voting for resolutions dismissing men, or any other resolutions, and taking the statement of a single member, member of the Board, as to the justice and propriety of the resolution?

A. We are in the habit of taking the judgment of the Commissioner and let each man run his own department, which was the right and proper way to do it so far as labor and employees are concerned.

10 Q. What I want to know, whether it is your practice when you are told by some other Commissioner that he wants something done, no reasons assigned, that you simply take his request or statement he wants it done and make no further investigation; is that your practice?

A. I don't know whether that is a proper question or not. It seems to me—sometimes I do and sometimes I don't.

Q. Inclined to answer the question?

20 A. No—what I usually do—I couldn't give you a definite answer anyway—what I usually do, I do differently at different times.

Q. Did you know when you voted to dismiss Mr. Biddle that you yourself had in 1912, on July twenty-third, then being one of the Commissioners, voted for a resolution as follows: "Be it resolved by the Board of Commissioners of Atlantic City that for the proper and efficient conduct of affairs of the city there be in said city the following offices to be filled by this Board"
30 —among others being two assistant building inspectors. The resolution further proceeds to say: "Said officers shall hold office for terms now fixed by law or ordinance, and any of said officers may be removed from office at any time for cause after public hearing." Did you know when you voted to dismiss Mr. Biddle that you voted for that resolution in 1912?

A. I presume I did. The records show it.

Q. Did you have that resolution present before you

when you voted for the resolution to dismiss Mr. Biddle?

A. What I had in my mind that his time expired.

Q. When did you understand his time expired?

A. I don't know exactly. I understood it expired.

Q. Who told you?

A. I couldn't say about that.

Q. Did the Mayor tell you his time had expired?

A. I don't know that he did.

Q. Did you or any of the Commissioners in your 10
presence seek the advice of your City Attorney as to
whether you had a legal right to dismiss Mr. Biddle?

A. I did not.

Q. Did anybody in your presence?

A. None to my knowledge.

Q. Had any report come to you that there had been
an investigation of that kind?

A. No recollection of it.

By Mr. Wootton.

20

Q. Do you remember—did you vote for the resolu-
tion which Mr. Cole has just read into the minutes?

A. I don't remember anything about it, Mr. Wootton.
I said if the record shows it.

Mr. Cole—The record says they passed.

Mr. Wootton—Shows he voted for it? Signed
by him?

Mr. Cole—Shows that he passed.

Q. Then you didn't vote for that resolution?

A. I stand by the resolution.

30

Mr. Cole—The record says you passed.

Q. Doctor, preceding the matters which come before
the public meeting frequently conferences are held over
the matters, are they not?

A. Very frequently.

Q. And is there or is there not a great amount of
business—

A. A great deal considered at that time.

Q. Will you say that this question was not discussed or not considered in some of those conferences when you considered those matters?

A. I said I don't remember.

Q. It may have occurred?

A. It may have occurred, yes.

W. Frank Sooy sworn.

Direct examination, by Mr. Cole.

10 Q. You are also one of the Commissioners of Atlantic City?

A. I am.

Q. And you likewise voted for the resolution to dismiss Mr. Biddle?

A. I have no recollection whether I did or not. I assume I did.

Q. Why did you do it?

A. Why?

Q. Yes.

20 A. Well, there were several things entered into my vote. Prior to the time when I had taken my seat I had expected that the building department would be in my charge, that is, under the charge of the Director of Public Safety, and I wasn't altogether satisfied with the way the building department had been in the future—

Q. In the past.

A. —with reference to what I could see on the outside with reference to inspections, and without any deep investigation or anything of the kind I had formed
30 sort of a half idea that there needed to be a reorganization of that one department. When the distribution of the departments were made that went into the department of Public Affairs, and we had several conferences with reference to that department as well as every other department. Mayor Bacharach suggested that it would be a good idea to reorganize the department and put different men there, as I remember it. I was of the opinion that in a great many of the depart-

ments probably in the city there had been employees there who had been there too long, and it was suggested that Mr. Biddle was one of those employees, and I felt as if he was, and therefore I was in perfect accord with the Mayor in dispensing with his services.

Q. On what ground?

A. On the ground of the betterment of the department and putting in newer blood and in that way rebuild it.

Q. Any specific charge made against Mr. Biddle? 10

A. I don't remember that there was any specific charge, there was a general feeling as though there was a laxity to investigate in that department.

Q. On the part of Mr. Biddle?

A. On the department in general.

Q. Why was Mr. Biddle singled—

A. Because I thought Mr. Biddle had, I thought Mr. Biddle had been there longer than anyone, and that new blood would do the department good.

Q. Was any other blood in sight in substitution of 20
Mr. Biddle?

A. I think not. I don't remember of any.

Q. Wasn't there some special reason why Mr. Biddle was selected to be dismissed?

A. No; I don't know of any special reason other than I have given you.

Q. Was there any complaint lodged touching Mr. Biddle's efficiency?

A. I think there was a general discussion as to his efficiency. We determined he was not efficient. I 30
determined that in my mind.

Q. Did you vote for the resolution because you thought he was not efficient?

A. Because I thought he was not efficient and that they needed new blood in the department.

Q. Why didn't you arrange to have all new blood?

A. I wasn't called upon to vote upon as to whether there would be all new blood. I didn't think it would be necessary to have all new blood.

Q. You didn't think it was necessary to give Mr. Biddle a hearing on this charge or failing of efficiency?

A. No, there has been no charges preferred.

Q. You didn't think it was necessary to give him a hearing?

A. No.

Q. Was the question of the right of the Commission to dismiss Mr. Biddle without a hearing ever discussed?

A. I don't remember that there was any discussion,
10 yet it would seem to me there must have been something said about it.

Q. You don't recall it?

A. No.

Q. You recall whether you ever got the opinion of the legal department?

A. I never had an opinion addressed to me. There may have been an opinion there, and it may have been read. I had no opinion directed to me.

Q. Did you know when you voted for the resolution
20 who was to succeed him?

A. We had discussed a successor and did discuss a successor. Whether it was right at that time I don't know. If the resolution shows there was a successor, was appointed at the same meeting, then we had discussed his successor.

Q. Mr. Peterson the man who succeeded him?

A. Mr. Peterson, yes.

Q. Do you remember there was filed with the Commissioners a petition signed by a number of journeymen asking for the retention of Mr. Biddle?
30

A. I believe there was a petition filed by some bricklayers, bricklayers' union, setting forth, as I remember it, that they had some kind of recommendation for Mr. Biddle, by the bricklayers, yes. I had—

Q. Did you know of the resolution of July twenty-third, 1912, passed by the Commission, which I have just read in your hearing?

A. I don't think that was read. I have no recollection.

By Mr. Wootton:

Q. Did you vote to dismiss Mr. Biddle for any political reason?

A. I did not. Politics didn't enter into it.

By Mr. Cole.

Q. Mr. Sooy, was it ever discussed in your presence as to how Mr. Biddle stood in the Commission fight?

A. There were at least two of my good friends who came to me and said that Mr. Biddle had been with us in the fight, and he endeavored to get me to support Mr. Biddle in this matter. I had been present one time where Mr. Biddle was, and that time I didn't know he was for or against the side that I was running with. 10

(Question repeated.)

Q. I am speaking among the Commissioners.

A. Not that I remember.

Q. Was the question of how Mr. Peterson, who succeeded Mr. Biddle, stood in the commission fight? 20

A. I should say no.

Q. You didn't care whether the successor to Mr. Biddle had been favorable to the what was known as the "Bacharach ticket" or against it, did you?

A. I know he had been in favor of the Bacharach ticket.

Q. Mr. Peterson had?

A. I do, yes.

Q. Probably his—if he hadn't been you wouldn't have voted for him?

A. I wouldn't say. I have voted for people— 30

Q. Pardon me. I want an answer.

Charles D. White affirmed.

Direct examination, by Mr. Cole.

Q. Mr. White, the record shows that you voted to dismiss Mr. Biddle from the position of building inspector, and I ask you why you voted for the resolution?

A. I felt that it was for the good of the service and the city government, particularly in regard to the building department. I had felt for some time before that—that the building department needed some improvement, and I have been informed that Mr. Biddle was perhaps not as efficient an inspector as we could possibly get.

Q. Then your vote was based upon your belief that Mr. Biddle was inefficient?

10 A. Yes, I should say it was.

Q. Who told you that Mr. Biddle was not efficient?

A. I cannot remember exactly. I had a report of the head of the department, a verbal report from the Commissioner in charge of that department, and I heard it on the street besides in a general way. I can not remember the name of the people who told me on the street.

Q. Had you any specific case brought to your attention where Mr. Biddle had displayed inefficiency as an assistant building inspector?

20 A. I am not sure whether Mr. Biddle was at fault or not. I have had cases of—

Q. My question is addressed to Mr. Biddle, whether you had any specific case brought to your attention on his inefficiency?

A. Well, now, my answer to that would be that it was not. His name, in the particular case I have in mind, was not mentioned whatever. It blamed the inspection of the building department.

30 Q. How many men did you understand were in the building department as inspectors at the time you voted for this resolution?

A. I don't know.

Q. How did it happen that Mr. Biddle was singled to be dismissed and no one else?

A. It was on account of the recommendation of the Commissioner in charge of that department.

Q. Solely?

A. That was my reason for—that was one of my reasons for voting for the dismissal of Mr. Biddle.

Q. Did it occur to you that if you had in your mind, either by hearsay or what the Mayor told you, that Mr. Biddle was inefficient, that he should have been given a hearing before he was dismissed?

A. Well, if there had been charges against Mr. Biddle I suppose that would be true, but it seems to me that the Mayor was in charge of the building department and had investigated that himself.

10

Q. Didn't you regard the statement of the Mayor as a charge against Mr. Biddle of inefficiency?

A. It—I didn't regard it as a formal charge like the charges that have come from the Director of Public Safety as to policemen or others.

Q. Mr. White, you are a lawyer, aren't you?

A. I practiced in Philadelphia from 1896 for five years, never in New Jersey.

Q. Didn't it occur to you it was all the more reason why Mr. Biddle should be given a hearing on charges that came in in that, if I may use the expression, in an indirect way, than a case where it came directly?

20

A. No, I had the impression except where the men come within the tenure of office act that formal charges didn't have to be heard before the commission.

Q. You didn't think when you voted for this resolution that it was necessary that there should be charges against Mr. Biddle, and he should be given a hearing?

A. Before the commission?

Q. Yes.

30

A. No, not any more than the informal conferences.

Q. If you had known that the law under which the city was operating required that Mr. Biddle be given a hearing on any charge of inefficiency before he could have been dismissed you wouldn't have voted for this resolution, would you?

Mr. Perskie—I object to that.

(Question repeated.)

A. I should probably have insisted on a hearing.

Q. When the Mayor told you that he wanted Mr. Biddle removed from the department for the good of the service did you ask him what specific thing he had in mind?

A. I don't recall the Mayor asking that.

Q. I thought you said the Mayor told you that he ordered Mr. Biddle removed for the good of the service?

10 A. The Mayor, I think, recommended that the change be made.

Q. For the good of the service?

A. Yes.

Q. Did he say why it was necessary in his judgment that Mr. Biddle be removed for the good of the service?

A. My recollection is that he felt that, he stated to several of us—I am pretty hazy about it—my recollection is that he stated that the building department was not satisfactory, and he thought some changes there
20 should be made.

Q. When he told you that in his opinion the building department was not satisfactory, did he tell you why it was not satisfactory?

A. I think the Overbrook fire was one of the things that was very much on his nerves.

Q. Did he call your attention to the inefficiency or lack of diligence or what not of any particular member of that department?

A. He felt that Mr. Biddle, if changed, would—

30 Q. What did he say about Mr. Biddle?

A. Well, about what I say, that he felt a change there would stiffen up the whole department.

Q. In other words, the Mayor's idea was if he got rid of any one member of the department, that it would help the other department, rest of it?

A. That the discipline would all become—

Q. In other words, so far as Mr. Biddle was concerned, it was a lottery, and his name was drawn first, so far as Mr. Bacharach told you?

A. No, he seemed to have reason for—

Q. But didn't give it to you, did he?

A. I am inclined to think he did, but I cannot recall particularly what it was.

Q. The fact of the matter is you weren't very much concerned why Mr. Biddle was dismissed if the Mayor told you he wanted to get rid of him, were you?

A. No, I don't think I was; not much concerned other than the change.

Cross-examination, by Mr. Wootton.

Q. You refer to the Overbrook fire, what occasion was that?

A. That was a fire which occurred on Pacific Avenue near Illinois, where there were many lives lost, and where there seemed to be the laws regarding the building or the fire escapes had not been lived up to.

Q. Had not been enforced?

A. Had not been enforced.

Q. Did you vote to discontinue the services of Mr. Biddle for any political reason?

A. I did not. I didn't know how Mr. Biddle stood.

10

By Mr. Cole:

Q. Did you know how his successor stood?

A. I do know it now; I didn't know it then, and I don't know now how Mr. Biddle stood.

Q. You felt reasonably certain that Mr. Biddle was to be succeeded by somebody who was for the Bacharach ticket?

A. No, I didn't feel certain at all about that.

Q. You didn't ask?

A. No, I didn't know. I didn't care.

20

Q. You didn't care whether he was a Riddle man or a Bacharach man?

A. Yes, I cared, but I didn't know.

Q. Since you cared, you didn't make any inquiry?

A. No, I made no inquiry at all.

Q. I suppose you felt perfectly safe to leave that to the Mayor?

A. I felt virtually safe.

Harry Bacharach, sworn.

Direct examination, by Mr. Cole.

Q. Now, Mayor, you are one of the Commissioners?

A. I am.

Q. And you were on July twenty-third, 1912, when
10 there was a resolution, that I read in your hearing and—

A. Yes.

Q. —the record shows that Mr. Thompson and you passed on that resolution?

A. I suppose it does; I don't recall; that is over four years ago.

Q. You might read the book.

Mr. Perskie—I object to that. I think it is immaterial at this time.

20 Mr. Cole—I think that objection is good.

Q. Did you have this resolution of July twenty-third, 1912, before you when you introduced the resolution to dismiss Mr. Biddle?

A. I did not.

Q. Had you forgotten it?

A. Probably did.

Q. Who actually drafted that resolution?

Mr. Perskie—Objected to as being irrelevant and immaterial.

30 A. I don't recall.

Q. Did you introduce it?

A. I think I did.

Q. Why?

A. Because I felt it was to the best interests of the city.

Q. Why?

A. Well, for general inefficiency. You may have an employee in your office that he has shown he is not

efficient, and that you feel a better man could get there, you couldn't exactly describe why—that was one of the reasons. Other reasons I felt an inspector of the department should not charge ten dollars a month for the storage of the city automobile, when the city had a number of places to put the automobile, which had not occurred, as I said, only very shortly before election. I felt that Mr. Biddle had devoted too much time to running the automobile up and down Atlantic Avenue and not attending to the duties which he was employed 10 by the city to attend to. Also, I think he had passengers in at times that didn't add to the credit of the department; in fact, a number of citizens came to me before I was Mayor and didn't approve of the automobile, the city automobile, going around the town so much, looked like the man wasn't attending to his duties.

Q. That all?

A. There were perhaps other things that you cannot recall. Whatever was done was done I believe for the best interests of the department. I believed that a 20 change should be made in that department, and that at least a start should be made immediately to see if some improvement could not be made upon the other employees generally. Other changes perhaps would have been made, but the chief of the building department has been practically blind ever since I have assumed charge of the department, and has placed it in rather an embarrassing position.

Q. How long before you were made Mayor were complaints made to you about the car—I suppose you 30 mean by that the city automobile?

A. City automobile.

Q. —being driven by Mr. Biddle going up and down Atlantic Avenue with improper persons in it?

A. I couldn't state the time.

Q. Was it a month before or two months before?

A. I presume several months.

Q. At that time you were Commissioner, weren't you?

A. I was.

Q. Did you make any complaint against Mr. Biddle?

A. I think I talked it over with the chief of that department.

Q. Did you file a complaint against him?

A. I did not.

Q. Why didn't you?

A. I thought it would be of no use.

Q. Why did you think it would be of no use?

10 A. Well, I felt that the other Commissioners wouldn't vote for his removal.

Q. Why did you think they wouldn't vote for his removal?

A. Well, for political reasons.

Q. Then you thought he was with them?

A. What?

Q. Did you think he was with them?

A. Not necessarily, but if I made the complaint they would immediately think that it was started to give a
20 political position.

Q. I understand you now to say, Mayor, that notwithstanding the fact months before you were made Mayor, and while you were Commissioner, and knew of these complaints, that you didn't lodge any complaint when it came, when you felt he would be guilty; is that right?

A. Possibly.

Q. Was that your course of action in all matters while you were Commissioner during the five years?

30 Mr. Perskie—Objected to as irrelevant and immaterial.

Mr. Cole—I think it is quite relevant and quite material.

A. Well, in most cases, yes.

Q. Now, having these complaints in your mind against Mr. Biddle, did it occur to you that he had a right to be heard in defense before he was dismissed?

A. No, I asked the City Solicitor's opinion whether

when his term had expired whether another man could be placed in his position.

Q. Did you get his opinion in writing or verbally?

A. I don't recall.

Q. Did you tell the City Solicitor about these complaints that had been made against him?

A. I don't know as I made them specific. I think I told him that the building department, as numerous other departments, needed changing, men had been lax in their methods.

10

Q. What I want to know is this: Did you present that resolution and vote for its passage because you felt that Mr. Biddle was not an efficient building inspector?

A. Absolutely.

Q. And that was the only reason you did it, was it?

A. Absolutely. And another reason that I naturally felt that there might be others that were wrong and that any change would show the others if they didn't improve—

20

Q. Did you ever go to Mr. Biddle after you were Mayor and being the head of the department in which he was employed and mention any of these complaints to him?

A. I don't believe I did.

Q. Did it occur to you that possibly by any legal aspect of the question that you should have given Mr. Biddle his day in court touching these things that are in your mind?

A. No, I felt that Mr. Biddle had got so set in his ways, being there for a period, that probably would be useless.

30

Q. When did you—did you select his successor?

A. I did.

Q. When was he selected?

A. I don't know the date, but the resolution there—

Q. I don't mean the date he was actually selected, but when you mentally selected him?

A. Possibly not over a week, possibly, before the passage of the resolution.

Q. Did you know when you appointed Mr. Peterson, or voted to appoint him, that he had been with your ticket—

A. I did.

Q. —at the election?

A. I did.

Q. Was he recommended to you by anybody?

10 A. I had personal experience with him.

Q. My question was whether he was recommended by anybody?

A. No—well, some people, perhaps, did talk for him at that time, and a great many was coming around, something in the paper was out that Mr. Biddle might go, and a number came in behalf of Mr. Biddle, political friends of mine, and I think people came and spoke to me about Mr. Peterson and Mr. Conway, and perhaps a dozen others, but I had personal experience
20 with Mr. Peterson that made me select him as the inspector.

Cross-examination, by Mr. Wootton.

Q. Mr. Bacharach, you have spoken of the apparent uselessness of submitting complaints to the old commission in regard to several, or any offices. What was the situation which made it in your mind useless to submit his case?

A. Well, it was probably on the eve of the cam-
30 paign for new commissioners.

Q. Was there a division at that time in the Commission things?

A. Well, there was a division, and had been probably for four years.

Q. Were you in the minority?

A. I was in the minority, yes.

Q. Do you recall the situation surrounding the Overbrook fire? That have any effect upon your judg-

ment regarding what was best to do in the building department?

A. I do. I thought the building department was generally inefficient; someone was to blame generally.

Q. Did you vote to discontinue the services of Mr. Biddle for any political reasons?

A. I did not, positively did not. I understood he was for me in the campaign. Two of my closest friends in his ward, that did more for my election than anyone else, both asked me, practically pleaded with me to have him retained, and from a political standpoint— 10

Mr. Cole—I want to call attention to the fact that you are the one who injected politics in this case, I haven't.

Q. I show you a copy of a resolution, certified by the City Clerk of Atlantic City, his assistant, which reads as follows, it being a copy of the minutes of October fifteenth, 1912: "Be it resolved, that Wesley B. Biddle be hereby appointed first assistant inspector in the Building Department, at a salary of \$1,100 per year, and that Walter D. Kauffman be appointed second assistant inspector in said department, at a salary of \$1,000 per year, and that Michael H. Towhey be appointed gas pipe, gasoline and heater inspector, at a salary of \$1,000 per year, said officers to hold office for one year. Upon motion of Mr. Bacharach this resolution was adopted by the following vote: Ayes, Messrs Bacharach, Bartlett, Beyer, Thompson and Riddle." Are you the Mr. Bacharach who voted for that resolution? 20 30

A. I am.

Q. And was the department at that time under your control, the building department?

A. In 1912?

Q. 1912, and Mr. Biddle thereby was appointed at your instigation or direction?

A. Yes.

(Resolution just referred to received in evidence and marked Exhibit R 1.)

By Mr. Cole:

Q. Who were the objectionable people that you say were in the city's car while it was being driven by Mr. Biddle?

A. I didn't say objectionable.

Q. What did you say?

10 A. I said there were people in the car that should not have been in there, as I recall.

Q. How do you know that?

A. Which should not have been in there, and their appearance in the car, the words I want to say, would be misconstrued largely by the public. Perhaps that is nearer to what I want to say.

Q. Do you know whether or not these people that you have in mind had any right to be in the car?

A. No one had a right, in my opinion, to be in the
20 car but someone connected as an inspector or the Chief Inspector, the head of the building department.

Q. Your attention has been called to the Overbrook fire, you told us. What did Mr. Biddle have to do with the Overbrook Hotel?

A. I don't know what he did have to do. I said the general efficiency of the building department.

Q. You didn't mean to imply that Mr. Biddle had anything to do with the Overbrook fire or fire escapes?

A. I said there was a general inefficiency of the build-
30 ing department.

Mr. Cole—I want to offer the Public Ordinance Book of Atlantic City, and ordinance number 46, entitled "An Ordinance providing for the appointment of two assistant inspectors in the Building Department of Atlantic City," which ordinance reads: "Be it ordained by the City Council of Atlantic City, That there be appointed two Assistant Inspectors in the Building Department of Atlantic City, one of which Inspectors

shall attend to the inspection of gasoline and the other of which Inspectors shall attend to the inspection of gas and gas fixtures.

“Each of said Inspectors shall also perform such other duties as shall from time to time be assigned to them by the Building Inspector. Each of said Inspectors shall receive a salary of Seventy-five Dollars per month, payable semi-monthly.

“Section 2. That this ordinance shall take effect immediately. Passed at a Regular meeting of City Council May 23, 1910. Approved June 1, 1910.” 10

Mr. Wootton—We object to the offer of the ordinance because it does not apply to the Prosecutor in this case, Mr. Biddle. He was not at the time of his removal one of the Inspectors mentioned by that ordinance.

Mr. Cole—I offer a resolution passed by the Board of Commissioners on July twenty-third, 1912, entitled “A Resolution to fill certain offices.” It reads: “Be it resolved by the Board of Commissioners of Atlantic City that for the proper and efficient conduct of affairs of the city there be in said city the following offices to be filled by this Board.” Among them being two assistant building inspectors. The resolution proceeds: “Said officers shall hold their office for terms now fixed by law or ordinance, and any of said officers may be removed from office for cause after public hearing, and each officer shall be paid the compensation provided by this Board, payable monthly.” 20

Wesley Biddle sworn. 30

Direct examination, by Mr. Cole.

Q. Mr. Biddle, you are a resident of Atlantic City?

A. Yes, sir.

Q. How long have you lived here?

A. About twenty-one years.

Q. How long?

A. About twenty-one years.

Q. You are the Prosecutor of this writ, are you not?

A. Yes, sir.

Q. When were you appointed Assistant Building Inspector?

A. I was first appointed about eight years ago. It has been eight years the first of this September.

Q. Have you been in the building department ever since?

A. Yes, sir.

10 Q. Continuously?

A. Yes, sir.

Q. During all that time has there ever been any charge against you to your knowledge of inefficiency?

A. No, sir; never to my knowledge.

Q. And were you appointed or reappointed Assistant Building Inspector after the city adopted the Walsh Act?

A. Yes, sir.

20 Q. And you continued thereunder continuously until when?

A. Until the fifteenth day of last June.

Q. When you were dismissed by the resolution that is under review in this case; is that right?

A. Yes, sir.

Q. At the time you were dismissed how many inspectors and assistant inspectors were there in the department?

A. There were three besides myself.

Q. And how many are there now?

30 A. There is three—there is four there now, with the one that took my place.

Q. Has there been any change in the department except in your case?

A. Not to my knowledge.

Q. And who succeeded you?

A. James Peterson.

Q. Was there a change in the Commissioners in May of this year?

A. Yes, sir.

Q. Who were the Commissioners up to May of this year?

A. I think there was William H. Bartlett, William Riddle, Dr. Thompson, Mayor Bacharach, and Albert Beyer.

Q. And who are the present Commissioners?

A. Charles White, Mayor Bacharach, Mr. Beyer, Thompson and Frank Sooy.

Q. When did you first learn that you were likely to be dismissed?

10

A. From the street rumors about a month.

Mr. Wootton—We object to street rumors.

A. I learned it from street rumors, parties told me about that. They said I was to be dismissed.

Q. Did you thereafter see any of the Commissioners touching that matter?

A. Yes, sir.

Q. Who did you see?

A. Mayor Bacharach.

Q. Tell us what took place.

20

A. One noon I was coming down taking Mr. Lawson home—

Q. Mr. Lawson being the Chief Inspector?

A. Yes, and he had expressed himself as to want to see Mayor Bacharach, and just as we got down to the platform of the steps there I said, "Here comes the Mayor now." So he said, "Just call him." I called him over and Mr. Lawson talked to him on the subject or went to speak to him. I afterwards said, "Mayor, I would like to speak to you a minute." I said, "I understand that I am to be removed; is there any truth in this case?" "Well," he said, "we haven't got to that point yet. The building department has not been considered, and," he said, "if there is anything coming up previous to that I will let you know in person."

30

Q. Did you ever see him again?

A. Not to speak to him on that subject.

Q. Did he ever speak to you or send to you to—

A. No, sir.

Q. Did he ever speak to you of your lack of attention or efficiency?

A. No, sir.

Q. Did you cause to be presented to the Commission a petition asking for your retention?

A. Yes, sir.

Q. Who signed it?

A. Most of the architects and all the builders I could
10 come in contact with in the two or three days I had it before the commission meeting.

Mr. Wootton—Objected to as irrelevant and immaterial.

Q. Was that filed with the Commissioners?

A. Yes, sir.

Q. Was it before them before they dismissed you?

A. Yes, sir.

Q. How many names do you suppose were on there?

Mr. Wootton—Object to what he supposes.

20 Q. Approximate the number of names.

A. Between forty and fifty.

Q. Something has been said of the Overbrook fire. What had you to do with the Overbrook Hotel?

A. Nothing whatever.

Q. Something was said by the Mayor about your carrying people in the City's car. Do you know to what he refers?

A. Not unless he means Miss Lane, the stenographer in the office.

30 Q. You mean in the employ of the city?

A. Yes.

Q. In this very department?

A. Yes, sir.

Q. Did you ever carry anybody else around in the City's car?

A. Only those I was doing business with and come to the office to have me go and make an inspection, and I took them and brought them to and fro.

Q. Did you ever carry people around in the City's

car unless it was city employees or those on city business?

A. Not at all.

Q. The Mayor testified something about the storage of the car somewhere; you know what he meant by that?

A. Yes, sir. When they first got the car they were storing up over the fire department at Maryland and Arctic Avenue, and there was some dissatisfaction about the storage of it and not having a room. Mr. Lawson 10 said to me, "Mr. Biddle, haven't you got room in your garage to store that car?" I said, "Yes, I got room to store it there, but I don't propose to store it there unless I am paid for it." He said, "What do you want a month?" I said, "I haven't given it any consideration, but I think ten dollars." So he said, "I shall see Mr. Bartlett about it." So he saw Mr. Bartlett about it and there was nothing done or said for probably a month or more after that, so Mr. Glenn called for me in regard to some other matter that somebody had told 20 him about and asked me to go and attend to it. He said, "By the way, have you got that car fixed up down at your place yet?" I said, "In what way?" He said, "Storing it down there?" I said, "No, sir." "Well," he said, "can't you take care of it?" I said, "If I get paid for it." "Mr. Lawson saw Mr. Bartlett." Going on speaking about it so he said, "You would be glad to get that ten dollars a month." I said, "For it helps considerable, it amounts to one hundred and twenty dollars a year." He said, "I will take it up and see 30 what I can do for you." So in a week or two Mr. Lawson notified me that I had better go take the car down to my garage, and also there was a barrel of oil at the fire house, that I better have that taken down, too. Mr. Lawson arranged with Mr. Shinnen, of the Electrical Department, to have that oil hauled down there. So that was what Mr. Bacharach is alluding to in regards to the storing of the car.

Cross-examination, by Mr. Wootton:

Q. Mr. Biddle, when you went from the City Hall at the close of your day's work did you go to your home in the City's car?

A. Yes, sir.

Q. When you came from your home to the City Hall in the morning did you do that in the City's car?

A. Yes, sir.

10 Q. And did you use the City's car in going home to lunch, back and forth to meals?

A. Yes, sir.

Q. What were your duties, what office of the building department?

A. Assistant building inspector.

Q. You say you had nothing to do with fire escapes?

A. No, sir.

Q. What were you to do? The Overbrook, who is responsible for the inspection there, were you?

A. No, sir.

20 Q. What were your duties? What were you to inspect?

A. The construction end of the building.

Q. Attend to the inspection of gasoline?

A. No, sir.

Q. Were you attending to the inspection of gas and gas fixtures?

A. No, sir.

30 Q. Then the inspectors referred in the ordinance of June first, 1910, which Mr. Cole read in the evidence, did not affect your office, did it?

A. No, sir.

Q. You are one of the inspectors provided for in that ordinance, are you?

A. If you permit me, I—

Q. Are you one of the inspectors provided for by that ordinance?

Mr. Cole—We cannot answer.

A. I shall have to answer in my own way. You will be satisfied when I answer.

Q. I think you can answer the question.

A. When Mr. Towhey was absent I was generally appointed to look up Mr. Towhey's end of it, which was gas pipe and gasoline, and at his absence is the only time I act in that capacity.

Q. Were you an assistant inspector whose duty it was to attend to the inspection of gas and gas fixtures?

A. No, sir.

Q. Were you an assistant inspector, the inspector whose duty it was to attend to the inspection of gas- 10
line?

A. No, sir.

Q. Then you are not one of the inspectors provided in that ordinance?

A. Not for that part of it.

Q. I show you the resolution of October fifteenth, 1912, providing for the appointment of Wesley B. Biddle as first assistant building inspector in the building department, at a salary of eleven hundred dollars per year, said officer to hold office for one year. You 20
are the Wesley B. Biddle mentioned in that resolution?

A. Yes, sir.

Q. You accepted office under that resolution?

A. Yes, sir.

Q. When were you reappointed?

A. I was reappointed the only, the first time, under Mayor Riddle, was Commissioner.

Q. Mayor Riddle?

A. Yes, when he was first made Mayor after Mr. Lawson, Kauffman and Towhey and those fellows were 30
appointed. We were all appointed for one year together, and I don't remember just when, what month, that was.

Q. Was there any reappointment after that?

A. No, sir.

Q. You simply held over, did you?

A. Yes, sir.

Mr. Cole—I want to offer Mr. Beyer's testimony.

(Mr. Beyer's testimony reads as follows:)

"*Albert Beyer*, a witness produced on behalf of the Prosecutor, being first duly sworn, on this twenty-first day of September, 1916, upon his oath says:

By Mr. Cole.

Q. Mr. Beyer, you are one of the Commissioners of Atlantic City, are you not?

A. Yes, sir.

Q. You know Wesley Biddle, who at one time was Assistant Building Inspector of Atlantic City?

10 A. Yes.

Q. Why was he dismissed?

A. Well, Mr. Bacharach had charge of that department and he offered a resolution to dismiss him, and I voted for it knowing that he must have had a reason. He did not tell me, but I supposed it was for the good of the service. That is all I know.

Q. Did you yourself have any specific reason for voting for dismissing Mr. Biddle?

20 A. No. Except what the resolution said, that it was under Mr. Bacharach's department, and I voted for it because of that.

Q. It is a fact, is it not, that immediately thereafter another was appointed or elected to take the place of Mr. Biddle, who had been dismissed?

A. Yes.

Q. Did Mr. Bacharach name any objection to Mr. Biddle before the resolution was voted upon?

A. Not to my knowledge, no.

30 Q. So that your vote for that resolution was based solely upon the resolution introduced by Mr. Bacharach and that this man was under his department?

A. Yes, sir.

By Mr. Wootton.

Q. Did you vote to discontinue Mr. Biddle for any political reasons?

A. No.

By Mr. Cole.

Q. Did you make any inquiry whatever of Mr. Bacharach as to why he wanted Mr. Biddle dismissed?

A. No.

Q. When did you first know that there was to be a resolution dismissing him?

A. I don't remember whether it was the day before when they had a conference or whether it was the day the resolution was offered.

Q. Is it not true that there was a discussion in a 10
conference before the public meeting at which this resolution was introduced touching Mr. Biddle's dismissal?

A. Before he was removed?

Q. Was there not a conference before the resolution was introduced at the public meeting of the commissioners at which the subject of his dismissal was discussed?

A. There probably was, I don't remember.

Q. Do you remember what character or turn the discussion took concerning his discharge? 20

A. No, I do not.

Q. No reason offered as to why they wanted to get rid of Mr. Biddle?

A. Not to my knowledge.

Q. Then, simply out of a clear sky was the resolution of Mr. Bacharach introduced, and just because he was under Mr. Bacharach's department you voted for it?

A. Yes."

30

Wesley Biddle, recalled.

Direct examination, by Mr. Cole.

Q. Mr. Biddle, what was your business before you were made Assistant Building Inspector?

A. I was general contractor before I went in the office.

Q. What sort of a contractor?

A. General builder.

Q. In the building line?

A. Yes.

Q. That is all.

Testimony closed.

Mr. Wootton—The City reserves the right to introduce one ordinance providing for the appointment of building inspectors relative to this situation.

10 Mr. Cole—This ordinance is to be handed to the Commissioner not later than Monday, otherwise the Commissioner is to return the testimony.

Further hearing before William M. Clevenger, Esq., Supreme Court Commissioner, at his offices, 615-16-17 Bartlett Building, Atlantic City, N. J., Monday, September 25th, 1916.

The following ordinance was offered in evidence by Mr. Wootton, City Solicitor:

20 “An ordinance increasing the number of Assistant Building Inspectors from one to two; determining the qualifications therefore of the Assistant Building Inspector provided for by this ordinance, and the manner of appointment of all Assistant Building Inspectors.

Section 1. Be it Ordained by the City Council of Atlantic City, That in addition to the present Assistant Building Inspector there shall be one additional Assistant Building Inspector, who shall be a practical bricklayer, with at least five years' experience as such, and shall be a resident of Atlantic City. He shall receive a
30 salary of one thousand dollars per year, payable monthly.

It shall be the duty of said Assistant Building Inspector, in addition to such other duties as shall be assigned to him to be performed by the Building Inspector, to inspect buildings of brick, stone and concrete construction.

Sec. 2. All Assistant Building Inspectors shall hereafter be recommended by the Building Inspector and appointed by the City Council, and the additional Assist-

ant Building Inspector, which is provided for by this ordinance, shall hold office until December thirty-first, 1910; and his successor shall thereafter be appointed for a term of three years.

Sec. 3. Be it Further Ordained, That all ordinances or parts of ordinances inconsistent with this ordinance be and the same are hereby repealed to the extent of such inconsistencies, and this ordinance shall take effect immediately.

Passed at a regular meeting of City Council, May 10 25th, 1908.

Approved June 4th, 1908."

The following portion of minutes of the meeting of City Council was offered by Mr. Wootton, City Solicitor:

"Atlantic City, N. J., June 22, 1908.

A Regular Meeting of City Council was held this evening at City Hall at 8:00 o'clock, President Leeds presiding.

Councilmen present: Messrs. Bacharach, Buzby, 20
Cuthbert, Donnelly, Gale, Johnson, Kessler, Lane,
Moore, Murtland, Parker, Phoebus, Reilly, Riddle,
Wescott, White and Leeds (17), Absent (0).

Wm. Biddle Appointed Assistant
Building Inspector.

Mr. Parker moved that Council go into the nomination and election of an Assistant Building Inspector.

So ordered.

Mr. Parker placed in nomination the name of William Biddle for this position. 30

A communication was then read from Building Inspector Gillison presenting the name of W. B. Biddle for the position of Assistant Building Inspector subject to the approval of Council.

Mr. Parker moved that the recommendation of the Building Inspector be approved by this Council.

So ordered.

Mr. Parker then moved that he be placed on salary.

September 1st, after the appropriation ordinance is passed and that his appointment take effect September 1, 1908.

So ordered."

Mr. Cole—I object to the offer of the ordinance and portion of the minutes of June 22, 1908, on the ground they are irrelevant and immaterial.

20 I certify that the above is a true transcript of the testimony taken before me in the above-entitled cause.

WM. M. CLEVINGER,
Supreme Court Commissioner.

NEW JERSEY SUPREME COURT.

20 WESLEY B. BIDDLE,
Prosecutor, }
vs. } On Certiorari.
ATLANTIC CITY,
Respondent. }

REASONS.

(Filed July 24, 1916.)

The prosecutor assigns the following reasons why the
30 proceedings under review should be set aside:

1. The Commissioners were without power to pass the resolution under review.

2. Because no charges were preferred against the prosecutor and he was denied a trial as required by law.

3. Because his dismissal was purely for political reasons and in violation of law.

4. Because the Commissioners dismissed prosecutor in order to appoint in his place one who had favored

and supported them at the Commissioners' election held in May, 1916.

5. Because the prosecutor held his appointment and position during good behavior and could only be dismissed for cause after a hearing had.

C. L. COLE,
Attorney of Prosecutor.

NEW JERSEY SUPREME COURT,
NOVEMBER TERM, 1916.

WESLEY B. BIDDLE,
Prosecutor,)
vs.)
CITY OF ATLANTIC CITY,
Respondent.)

10

(Filed March 15, 1917.)

Argued, November Term, 1916. Decided, February Term, 1917.

C. L. Cole, for prosecutor; *Harry Wootton*, for respondent.

Argued before Justices SWAYZE, MINTURN and 20
KALISCH.

PER CURIAM:

At a regular meeting of the City Council, held on June 22d, 1908, the prosecutor was nominated and appointed to the position of assistant building inspector, to take effect September 1st, 1908 (S. of C., pp. 35-36).

The prosecutor continued in office from that date up to and until June 15th, 1916, at which time he was dismissed without any charges having been presented against him, or any hearing afforded him, and one James 34
Peterson succeeded him (S. of C., p. 26).

The City Council, on May 25th, 1908, passed an ordinance increasing the number of inspectors from one to two, and prescribing their qualifications, powers and duties.

10 The city adopted the provisions of the Walsh Act in 1912, and the Commissioners elected thereunder adopted a resolution which provided for the appointment of two assistant building inspectors, to hold office for the terms now fixed by law or ordinance, to be removed for cause, after hearing, and to be paid monthly. Thereafter the Commissioners, on October 15th, 1912, adopted a resolution appointing the prosecutor first assistant building inspector at a salary of \$1,100 per annum, and one Kaufman second assistant building inspector at a salary of \$1,000, "the said officers to hold office for one year." On June 15th, 1916, the Commissioners, by resolution, determined the prosecutor's tenure, and directed the Director of Public Affairs to
20 appoint a suitable person, by the month, at a salary of \$91.60 per month. The legality of this resolution is before us for determination upon this writ.

The theory of counsel seems to be that the Walsh Act of itself amounted to the adoption of a permanent tenure, similar to that secured by the Civil Service Act. With that contention we cannot agree, for if such was its effect the option given to municipalities to adopt or reject the Civil Service Act would be supererogatory and of no avail or practical effect.

30 The fact that the Walsh Act indicates an attempt to dispense with political considerations, in municipal government, is not sufficient to warrant us in holding that by adopting that act the voting population also adopted the Civil Service Act or a measure of law tantamount to it.

In any view of the case, however, Biddle's term had expired when this resolution was passed, and he occupied the status of a hold-over. If he claim under the resolution of October 15th, 1912, he was appointed for

a definite term of one year, and this was equally true of the later resolution appointing him. It may be conceded, as is contended, that he was entitled to claim under the resolution of July 23d, 1912, providing that the officers shall hold their offices for terms now fixed by law or ordinance. That term, however, was for three years, and it expired on July 23d, 1915.

The resolution dismissing him was adopted in June, 1916, more than a year after his term under that resolution had expired. In any view of the case, therefore, 10 it must be obvious that he was an official holding office at the will of the appointing body.

The resolution in question should be affirmed.

NEW JERSEY SUPREME COURT.

WESLEY B. BIBBLE,

Prosecutor,

vs.

CITY OF ATLANTIC CITY,

Defendant.

} On Certiorari.

ORDER AFFIRMING RESOLUTION. 20

This cause having been duly argued at the November Term, 1916, of this Court by Theodore W. Schimpf, of counsel for the prosecutor, and Harry Wootton and Joseph Perskie, of counsel for defendant, and the Court having considered the same, and the resolution in question appearing to be valid,

It is thereupon ordered and adjudged that the said resolution which was certioraried in this cause be affirmed, with costs.

Order actually entered March 23, 1917. 30

On motion of

HARRY WOOTTON,

JOSEPH B. PERSKIE,

Attorneys of Defendant.

NEW JERSEY SUPREME COURT.

WESLEY B. BIDDLE,
Prosecutor-Appellant, }
vs. }
 ATLANTIC CITY, }
Defendant-Respondent. }

NOTICE OF APPEAL.

(Filed April 11, 1917.)

10 To ATLANTIC CITY:

Take notice that the prosecutor appeals to the Court of Errors and Appeals from the whole of the rule and judgment entered in this cause on the following grounds:

1. The Supreme Court held that the respondent was legally justified in dismissing the appellant when it should have decided that his dismissal was without warrant of law.

20 2. The Supreme Court held that the appellant was not entitled to a hearing after charges preferred before his dismissal when it should have decided that he was entitled to a hearing after charges preferred.

3. The Supreme Court decided that the Commissioners of respondent had a legal right to dismiss the appellant when it should have decided that it had no such right.

4. The Supreme Court decided that the writ should be dismissed and the proceedings affirmed when it should have decided that the proceedings should be set aside.

30 5. The Commissioners were without power to pass the resolution under review.

6. Because no charges were preferred against the appellant and he was denied a trial as required by law.

7. Because his dismissal was purely for political reasons and in violation of law.

8. Because the Commissioners dismissed prosecutor in order to appoint in his place one who had favored and supported them at the Commissioners' election, held in May, 1916.

9. Because the prosecutor held his appointment and position during good behavior, and could only be dismissed for cause after a hearing had.

10. Because the prosecutor's appointment was for an indefinite time and he could not be dismissed except for cause and after hearing.

10

11. Because it appears that the prosecutor was dismissed not because his term had expired, but either for political reasons or because of some supposed inefficiency on his part as to which no charges were preferred and no hearing had.

C. L. COLE,
Attorney of Appellant.

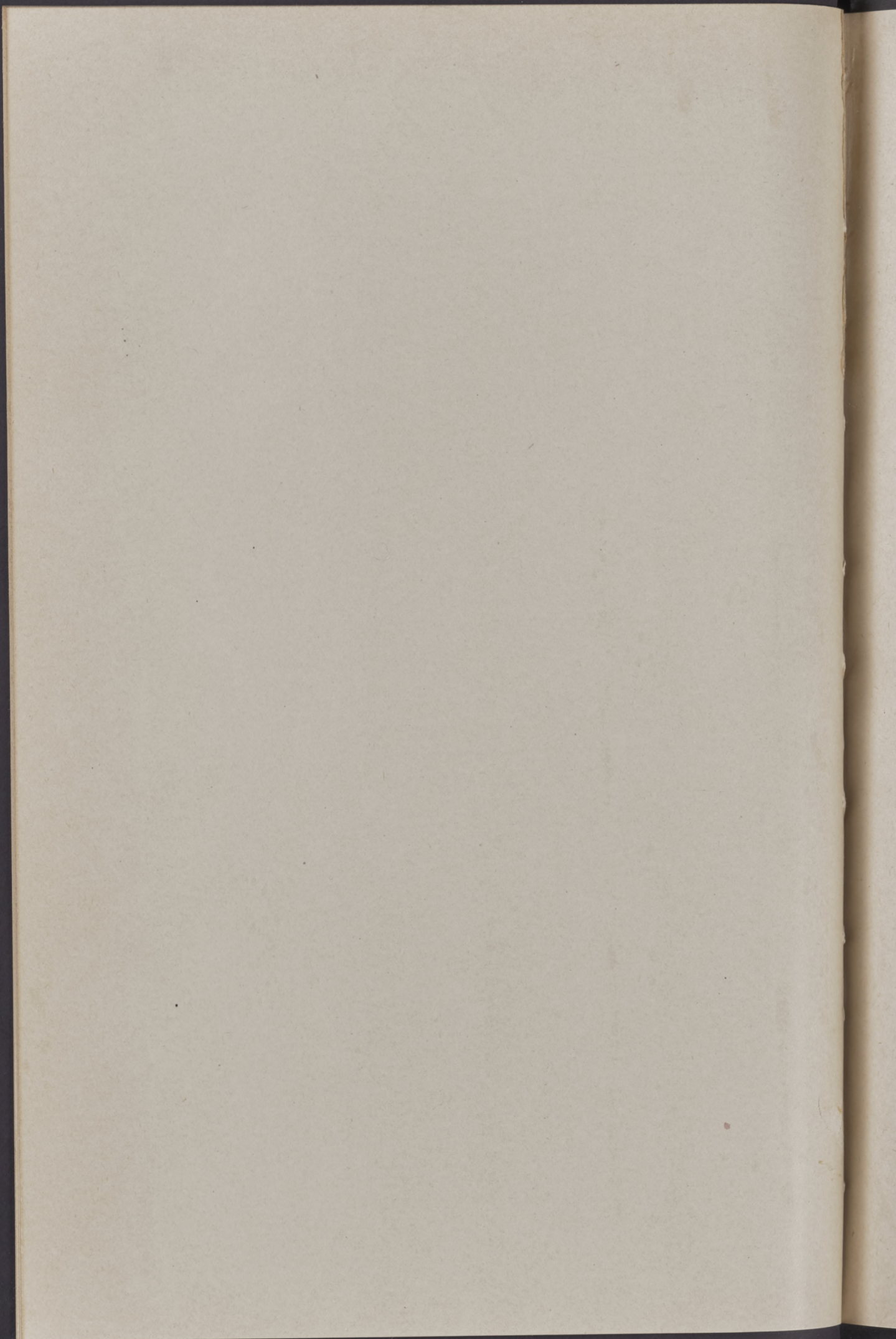
I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed, and also of a rule entered in the minutes of the Court in the above-stated cause.

20

In testimony whereof I have set my hand and the seal of said Court, at Trenton, this sixteenth day of April, A. D. nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

[SEAL.]



B

MACCRELLISH & QUIGLEY Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

WESLEY B. BIDDLE,
Prosecutor-Appellant,
vs.
CITY OF ATLANTIC CITY,
Defendant-Respondent.

} On Appeal from
Supreme Court.

Appellant's Brief.

FACTS.

Atlantic City adopted the Walsh Act, P. L. 1911, page 462. At the meeting of the Commissioners held July 23, 1912, it was resolved:

"Be it resolved by the Board of Commissioners of Atlantic City, that for the proper and efficient conduct of affairs of the city there be in said city the following offices, to be filled by this board."

Two assistant building inspectors are provided for, and then the resolution proceeds:

"Said officers shall hold their office for terms now fixed by law or ordinance, and any of said officers may be removed from office for cause, after public hearing, and each officer shall be

paid the compensation provided by this board, payable monthly. (Case, page 25.)

Prosecutor was appointed under this resolution as an assistant building inspector, and he served as such continuously until June 15, 1916, when he was dismissed pursuant to a resolution of the Commissioners. (Case, page 3.)

The office or position was not abolished, but was continued, and one Peterson appointed in his stead. (Case, pages 12 and 22.)

Atlantic City's charter is Chapter 107 of the Laws of 1902, P. L., 284.

FIRST POINT.

THE PROSECUTOR WAS ENTITLED TO HOLD HIS POSITION UNTIL DISMISSED FOR CAUSE AFTER HEARING.

The Supreme Court erroneously determined that prosecutor's appointment was for a term of three years. This determination was reached by assuming that the ordinance, at page 34, was valid and that the prosecutor's appointment in 1908 was pursuant to the provisions of that ordinance and for a term of three years.

In the first place, under the Walsh Act the terms of all officers or employees ended when the Commissioners organized. The language of the second section of the act is:

“And upon the organizing of the Commissioners in any such city elected under this act the city council or other governing body or bodies theretofore acting as governing body or bodies in such city and having any other functions shall be *ipso facto* abolished, and the terms of all councilmen or aldermen and all other officers, whether elective or appointive, shall immediately cease and determine.”

Salter v. Burk, 83 Law 152; *Keffer v. Gas-*
kill, 95 *Atlantic Reporter* 629.

This proposition assumes that the prosecutor held office within the meaning of the quoted language or that the word officers is broad enough to cover employees. Upon this assumption whatever term prosecutor had was ended at the organizing of the Commissioners. But his original term was not for three years, as held by the Supreme Court, for the reason that the ordinance of 1908 was wholly void. There was no authority in the city council to pass the ordinance and create the office or position of assistant building inspector, and, if there was such authority, they could not fix the term for three years. Section 29 of the act of 1902 expressly provides for the appointment of "a building inspector, who shall be appointed by the city council for a term of three years." As there is no provision in the charter for the office or position of assistant building inspector, there is certainly nothing which would permit to fix the term for three years. The ordinance is wholly void.

Mathis v. Rose, 64 Law, page 45; *Trowbridge v. Newark*, 46 Law, page 140.

In *Trowbridge v. Newark* the Court said:

"The provisions of the city charter as to duration of terms of officers must be strictly observed, and an ordinance beyond the scope of the powers granted by the charter is void."

We understand counsel for the city concede this, and cite *O'Rourke v. Newark*, 66 Law 109 in support thereof.

The language of the charter quoted in the brief of counsel for the city seems to justify the appointment of assistant building inspectors, so that it may be conceded that the prosecutor's appointment was legal but was without a definite term. In this posture the resolution of the Commissioners of 1912 becomes pertinent and controlling. It says that the officers to be appointed

are to hold for terms now fixed by law or ordinance. No term having been fixed, we contend that he cannot be removed except for cause and after hearing. The Supreme Court concedes this by saying:

“It may be conceded, as is contended, that he was entitled to claim under the resolution of July 23, 1912, providing that officers shall hold their office for the term now fixed by law or ordinance. That term, however, was for three years and expired on July 23, 1915.”

The ordinance passed in 1910 (Case, page 24) provides for the appointment of two assistant building inspectors and no term is fixed. That was passed after the ordinance of 1908, and must be conceded a repealer.

Having shown that prosecutor held for an indefinite term, we come now to consider the right of the Commissioners to remove him without cause and before a hearing. Chapter 22 of the Laws of 1913, which is an amendment of the Walsh Act, provides:

“Any board created may be abated; or any officer or employee appointed by the Board of Commissioners may be removed from office by them at any time for cause, after public hearing, provided their action shall be taken in accordance with the Civil Service and Tenure of Office Acts in municipalities where such acts have been adopted, and such action shall be subject to review by the courts as heretofore.”

Section 9 of the original act (1911) removes all officers and employees from political consideration.

As we read *Brokaw v. Burk*, 98 *Atlantic*, page 11, the Supreme Court decides that under the Walsh Act there is no right of removal except for cause and after a hearing. The resolution of the Commissioners—if not expressly, certainly impliedly—has that in mind, for it says:

“Said officers shall hold their office for terms now fixed by law or ordinance, and any of said

officers may be removed from office for cause after public hearing," etc.

The case shows that no cause was assigned and no hearing had. In fact the testimony plainly shows that the new Commissioners who were installed in office in June, 1916, voted for the resolution under review just to please the mayor, and he appointed prosecutor's successor as a purely political move and to reward a political friend.

Prosecutor was qualified and experienced, and his removal may well be regarded as a detriment to the public service. His long tenure, his wide experience, and the fact that forty or fifty contractors petitioned for his retention, indicate that he should not have been removed. None of the Commissioners pretend to have had any reason for voting for the resolution except that the mayor wanted it. Counsel for the City contended that prosecutor's appointment in 1912 was for only a year, and that thereafter he was subject to dismissal at any time. The first answer is that it was not pretended he was removed because of the expiration of his term. If his appointment, in the first instance, was for one year, his term ended in 1913, and yet he was allowed to continue uninterruptedly until the resolution under review. There might have been some moral justification for the action of the Commissioners had they said that prosecutor's term had ended and he was being dismissed for that reason. Evidently they did not feel that his term had ended. This is not a case of abolition of the office or transference from one position to another. It is a plain case of dismissal, and the only reason was that the new Commissioners or the mayor wanted to reward a political friend. The fact that the Walsh Act makes no provision for a definite term to any office, position or employment is a strong indication that appointments are to be held during good behavior so long as there is need for the office or position. The Commissioners recognized the need of two building inspectors, and that

need was also recognized by the mayor, who appointed the successor to the prosecutor.

In *Keffer v. Gaskill*, *supra*, the Court said:

"In *Salter v. Burk*, 83 N. J. L. 152, it was held that the Walsh Act did not alter general laws or charter provisions relating to the government of the city, except when inconsistent with its provisions, but imposed on the Commissioners the duty of filling existing charter offices made vacant by the adoption of the act and the organization of the Commissioners, and that such new appointments must be for the charter term."

Atlantic City is still governed and controlled by its charter of 1902. Section 7 provides:

"Any city or ward officer, except officers of the police department, may be removed from office by resolution of city council for disability or other good cause shown upon complaint in writing, setting forth such cause supported by one or more affidavits of the truth of the facts therein alleged; provided, however, that no such removal shall take place until the persons sought to be removed has had five days' notice of the proceedings and an opportunity to be heard in his defense, nor unless two-thirds of all the members of the city council shall vote for such removal."

It is plain that under the charter of Atlantic City the prosecutor could not have been removed without cause and a hearing, and our insistence is that the charter provision still obtains. If it be claimed, notwithstanding the resolution of July, 1912, that the appointment of the prosecutor was for one year under resolution of October 15, 1912, then our insistence is that the failure of the Commissioners to act at the end of his first year of employment was the equivalent of an appointment without a term, or an appointment from year to year; so that, viewed in the most favorable light for the City,

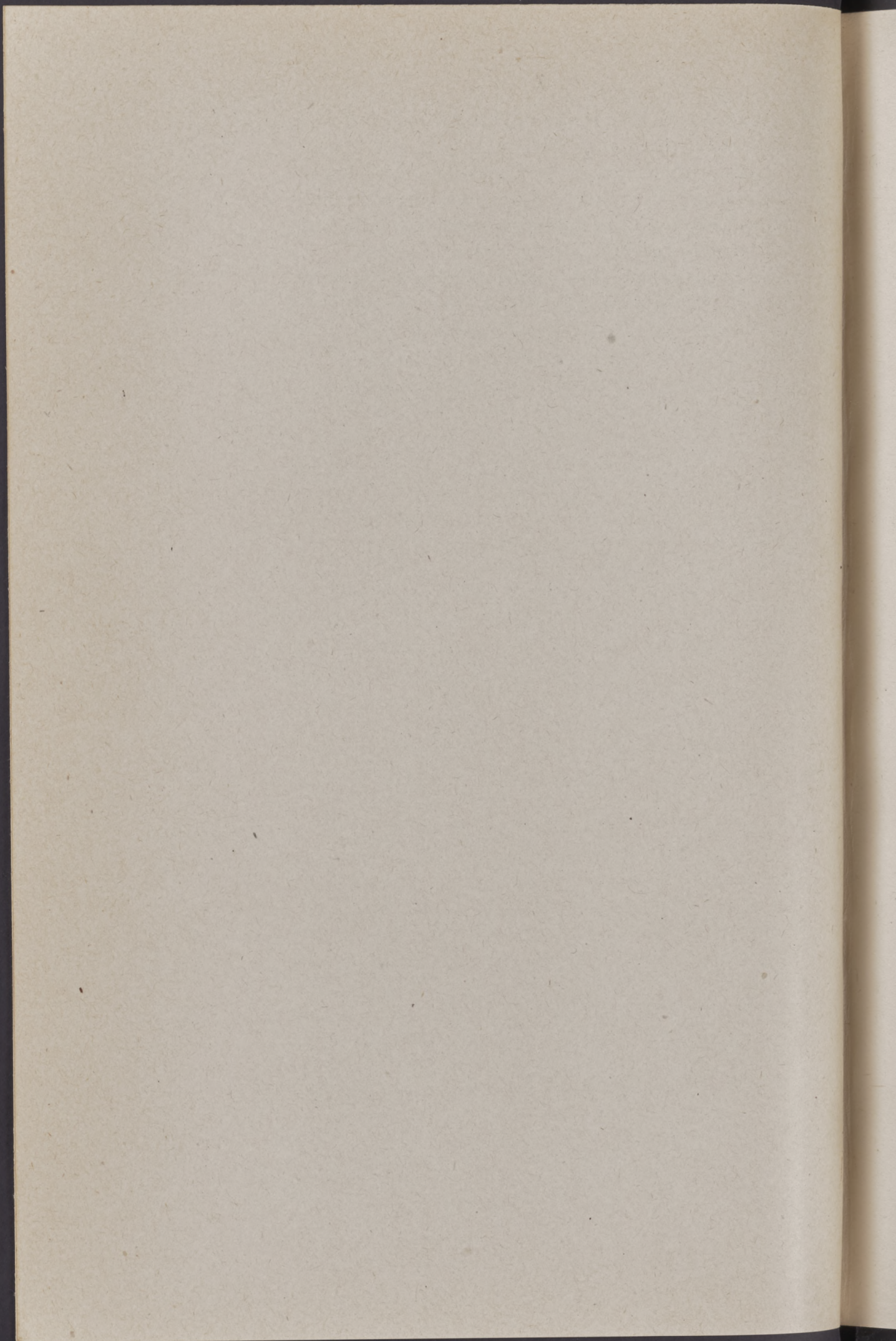
his term would have run until October, 1916. He was dismissed in June, 1916.

But our contention is that under the Walsh Act the Commissioners could not bargain away the plain intent of the statute, which contemplates an appointment without term, by making the term definite.

The judgment of the Supreme Court should be reversed, and the resolution under review set aside.

Respectfully submitted,

C. L. COLE,
Attorney for Appellant.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

WESLEY BIDDLE,
Prosecutor-Appellant,

VS.

CITY OF ATLANTIC CITY,
Respondent-Defendant.

ON CERTIORARI.

BRIEF OF HARRY WOOTTON, CITY SOLICITOR,
AND JOSEPH B. PERSKIE, ASSISTANT
CITY SOLICITOR, FOR RESPONDENT.

The state of case discloses the following

FACTS.

That at a regular meeting of City Council, held on June 22nd, 1908, the prosecutor was nominated and appointed to the position of assistant building inspector, to take effect September 1st, 1908 (S. of C., pp. 35-36).

That the prosecutor continued in office from that date up and until June 15th, 1916, at which time he was dismissed without any charges having been presented against him; or any hearing afforded him; that one James Peterson succeeded him (S. of C., p. 26).

That the City Council did, on May 25th, 1908, regularly pass the following ordinance:

“An ordinance increasing the number of assistant building inspectors from one to two; determining the qualifications therefor of the assistant building inspector provided for by this ordinance, and the manner of appointment of all assistant building inspectors.

Section 1. Be it ordained by the City Council of Atlantic City, That in addition to the present assistant building inspector there shall be one additional assistant building inspector who shall be a practical bricklayer with at least five years' experience as such, and shall be a resident of Atlantic City. He shall receive a salary of one thousand dollars per year, payable monthly.

It shall be the duty of said assistant building inspector, in addition to such other duties as shall be assigned to him to be performed by the building inspector, to inspect buildings of brick, stone and concrete construction.

Section 2. All assistant building inspectors shall hereafter be recommended by the building inspector and appointed by the City Council, and the additional assistant building inspector, which is provided for by this ordinance, shall hold office until December thirty-first, 1910; and his successor shall thereafter be appointed for a term of three years.

Section 3. Be it further ordained, That all ordinances or parts of ordinances inconsistent with this ordinance be, and the same are, hereby repealed to the extent of such inconsistencies, and this ordinance shall take effect immediately.”

which ordinance was approved June 4, 1908 (S. of C., p. 35).

That the City of Atlantic City did, in 1912, adopt the provisions of the Walsh Act;

That the commissioners of Atlantic City did, on July 23rd, 1912, adopt the following resolutions (S. of C., p. 25):

“Be It Resolved by the board of commissioners of Atlantic City that for the proper and efficient conduct of affairs of the city there be in said city the following offices to be filled by this board.”

Among them being two assistant building inspectors. Then the resolution proceeds:

“Said officers shall hold their office for terms now fixed by laws or ordinance, and any of said officers may be removed from office for cause, after public hearing, and each officer shall be paid the compensation provided by this board, payable monthly.”

That the commissioners did, on October 15, 1912, adopt the following resolution (S. of C., p. 23):

“Be It Resolved, that Wesley B. Biddle be hereby appointed first assistant inspector in the building department at a salary of \$1100 per year, and that Walter D. Kauffman, be appointed second assistant inspector in said department at a salary of \$1000 per year, and that Michael H. Towhey be appointed gas pipe, gasoline and heater inspector at a salary of \$1000 per year, said officers to hold office for one year.”

ARGUMENT.

The respondent relies upon the following propositions:

Point I.

One Complaining of the Illegality of the Election to Office of Another in His Stead, Must First Show That He Himself Has Legal Title Thereto.

Point II.

Where the Law Prescribes the Term of a Municipal Officer, It Is Beyond the Power of the Board of Commissioners of a Municipality to Elect for a Greater or Less Term, or for an Indefinite Term, and an Attempt to Do So Will Not Constitute a Valid Appointment; and a Vacancy, in Contemplation of Law, Will Still Exist in Such Office.

Point III.

The Resolution of the Board of Commissioners of October 15, 1912, Appointing Prosecutor Assistant Inspector, Terminated His Office at the Expiration of One Year from Date of His Appointment.

Point IV.

If the Appellant Claims Under the Resolution of July 23rd, 1912, It Was for a Term of Three Years, and Thus Expired on July 23rd, 1915.

It is respectfully submitted that there is no provision in the City Charter of Atlantic City (P. L. 1902, p. 284), for the appointment of an assistant building inspector, term of his office, or method for his appointment. Section 29 of said Act provides:

Sec. 29. "There shall be in every such city a building inspector, who shall be appointed by City Council for a term of three years; whose special duty it shall be to enforce the laws, etc. —; and to this end said building inspector *and his assistants* shall have authority to enter upon and inspect any place," etc.

There is no suggestion in this section of the Act or any other part thereof, that the respondent can discover, that there shall be an assistant building inspector, as it is provided for a building inspector, no provision as to term of an assistant building inspector, nor the manner of his appointment; unless therefore, under general powers provided in Subdivision XXXVI of Section 4 of said Act, which provides as follows:

"To appoint from time to time such subordinate officers and employees as may be deemed necessary to carry into effect the powers and duties hereby created or otherwise conferred or imposed, and to fix and determine their compensation, duties, terms of office or employment, provided, however, that City Council shall not have the power to decrease the salary or compensation of any officer during his term of office."

City Council could pass an ordinance creating such an office, and the prosecutor could not complain, for

“The prosecutor having shown himself wrongly in the office, cannot complain of injustice or illegality in the resolution of his removal. Wrongfully in the office, the resolution could not wrongfully disturb him. Nor can this writ be used as a means to support his illegal possession of the office.”

State (Loper) vs. City of Millville, 53 N. J. L. 362;

Pettit vs. Atlantic City;

Postal vs. Atlantic City, Decided June Term, 1914.

If Subdivision XXXVI of Section 4 of said Act does confer upon the governing body power to legislate on the subject of an assistant building inspector, and if the prosecutor was, at the outset, duly appointed, it is submitted that he got his appointment under the provisions of the ordinance duly passed May 25th, 1908, approved June 4, 1908, and not under the provisions of the ordinance passed May 23, 1910, approved June 1, 1910. The resolution or motion of appointment of Councilman Parker (S. of C., pp. 35-36), was made on June 22, 1910—18 days after the ordinance creating the position was enacted, term of his appointment, by reason of the annual appropriation ordinance, to commence September 1, 1910. Surely it cannot be contended, as it is by the prosecutor, that he at that time obtained his appointment, *i. e.*, in 1908, by reason of ordinance that was passed two years later, *i. e.*, in 1910. The ordinance of 1910 provided for two assistant inspectors in the building department, one for the inspection of gasoline, and the other for the inspection of gas and gas fixtures.

That the prosecutor did not obtain nor hold office

by virtue of that ordinance is manifest from his own admission.

“Q. What were your duties? What were you to inspect?

A. The construction end of the building.

Q. Attend to the inspection of gasoline?

A. No, sir.

Q. Were you attending to the inspection of gas and gas fixtures?

A. No, sir.

Q. Then the inspectors referred to in the ordinance of June 1, 1910, which Mr. Cole read in the evidence, did not affect your office, did it?

A. No, sir.” (State of Case, p. 30.)

Later in the record discloses the following:

“Q. Were you an assistant inspector whose duty it was to attend to the inspection of gas and gas fixtures?

A. No, sir.

Q. Were you an assistant inspector—the inspector whose duty it was to attend the inspection of gasoline?

A. No, sir.

Q. Then you are not one of the inspectors provided by that ordinance?

A. Not for that part of it.” (S. of C., p. 31.)

The state of case does, however, show that his appointment to take effect September 1, 1908, was made by reason of the ordinance of May 25, 1908, and that the prosecutor is the William Biddle referred to in the Parker appointment.

“Q. When were you appointed assistant building inspector?

A. I was first appointed about eight years ago. It has been eight years the first of this September." (S. of C., p. 26.)

The state of case further shows that the duties the prosecutor assumed were the duties set forth in the ordinance of May 25, 1908:

"It shall be the duty of said building inspector, in addition to such other duties as shall be assigned to him, to be performed by the building inspector, to inspect buildings of brick, stone and concrete construction."

"Q. What were your duties—what were you to inspect?

A. The construction end of the building." (S. of C., p. 30.)

If the prosecutor was therefore appointed by virtue of the ordinance of May 25th, 1908, his appointment was from September 1st, 1908, to December 31st, 1910, for Section 2 of said ordinance provides:

"All assistant building inspectors shall hereafter be recommended by the building inspector and appointed by the City Council, *and the additional* assistant building inspector, which is provided by this ordinance, shall hold office until December 31st, 1910, and his successor for a term of three years."

After December 31st, 1910, the prosecutor was holding over, and as a holding over officer he cannot complain at his dismissal without charges or hearing.

Prior to October 15th, 1912 (date of prosecutor's appointment for one year), the City of Atlantic City

adopted the Walsh Act. Immediately prosecutor's office, irrespective of its term, ceased and determined, for

“On the organization of the commissioners elected under the Act, the City Council or other governing body or bodies theretofore governing in such city shall be *ipso facto* abolished, and the terms of all councilmen, or aldermen, and all other officers, whether elective or appointive, shall immediately cease and determine.”

Loudenslager vs. Heston, 86 N. J. L. p. 382.

Nor did the omnibus resolution of July 23rd, 1912, cure the prosecutor's position, for said resolution provided:

“Said officers shall hold their office for terms now fixed by law or ordinance, etc.” (S. of C., p. 25.)

because there was no law or ordinance fixing the prosecutor's term—he was then holding over, and when the resolution of October 15th, 1912, appointing him for one year, was passed, at a salary of \$1100, in direct violation of Section 1 of the ordinance of May 25th, 1908, which provides, among other things:

“He shall receive a salary of \$1000 per year.” (S. of C., p. 34.)

without any explanation or authority in law for the increase, and continued to hold office until date of dismissal, June, 1915, under same conditions, he did not legally have such title to the office as to warrant any complaint for his dismissal.

Slater vs. Burke, 83 N. J. L. p. 152;

Volk vs. Burke, 83 N. J. L. p. 204;

Wilson vs. Burke, 83 N. J. L. p. 205;

Zeigler vs. Burke, 83 N. J. L. p. 207.

Point II.

If it be contended that on October 15th, 1912, prosecutor succeeded himself, his appointment was invalid, for under the ordinance of May 25th, 1908, it should have been for three years. The ordinance must be strictly followed, nor can it be contended, as it is by the prosecutor, that he held for an indefinite term, for

“Where the law prescribes the term of a municipal officer, it is beyond the power of the Board of Commissioners of a municipality to elect for a greater or less term, or *for an indefinite term*, and an attempt to do so will not constitute a valid appointment; and a vacancy in contemplation of law, will still exist in such office.”

Slater vs. Burke, 83 N. J. L. 152.

In the case of *O'Rourke vs. Newark*, 37 Vroom, 109, held:

“The fact that Common Council attempted to fix a term for the position to which the prosecutor was appointed different from that which the City Charter fixes, is of no consequence. Such a resolution is of no force as against the express provisions of the City Charter.”

The resolution in this case is of no force as against the provisions of the ordinance fixing the term for three years and salary \$1000.

Point III.

The resolution of October 15th, 1912, appointing the prosecutor for one year was for a definite term, for one (1) year. As the resolution employing him specifically states, there can be advanced no reason why he should not be bound by that contract.

Karrer vs. Atlantic City, 95 Atlantic, 608.

Prosecutor lays much stress on the case of *Brokaw vs. Burke*, 98 Atl. page 212. In that case the facts clearly show that the City of Trenton, by its inhabitants, adopted the Civil Service Act (P. L. 1908, 235), and that the prosecutors in that case were not only protected by that Act but were employees *legally* appointed. Atlantic City never adopted the Civil Service Act, nor was the prosecutor in this case legally appointed.

Much stress is laid by the prosecutor on the fact that the Walsh Act breathes the spirit of civil service, and manifests a determination on the part of the Legislature to insure an appointee in his office or position so long as he is qualified and fit.

If that was the intention of the Legislature, why the special exemption therefrom of policemen, firemen, veterans of war or any other official or employee now protected by a tenure of office Act? Was there any suggestion that the respective complainants in the cases of *Slater vs. Burke*, *Volk vs. Burke*, *Wilson vs. Burke*, *Zeigler vs. Burke*, *Loudenslager vs. Heston*, and *Karrer vs. Atlantic City*, were unfit for their respective positions? If not, and if the Act breathes of civil service, why were these dismissals sustained? Is it not because they had no legal status, and therefore the Court was without power

to assist or aid them? Prosecutor contends that he was removed to make room for a political friend, and will undoubtedly urge upon this Court the fact that the Commissioners relied upon the recommendation of the Mayor, the head of the building department. The Walsh Act divides the administration into branches, and places a head at each department, contemplating a responsibility without the intermeddling by one department with any other department—in the performance of the duties imposed upon each department. Is it to be contemplated that personal investigation is to follow by each head of his department into every other department, when the director in charge of his duties feels that it be for the interest of all that a change be made, especially so when the employee or officer sought to be removed is without legal standing to complain?

Point IV.

If the appellant claims under the resolution of July 23rd, 1912, it was for a term of three years, and thus expired on July 23rd, 1915.

The opinion of the Supreme Court seems to be conclusive on this phase of the case, the language of which is as follows:

“In any view of the case, however, Biddle’s term had expired when this resolution was passed, and he occupied the status of a hold over. If he claimed under the resolution of October 15th, 1912, he was appointed for a definite term of one year, and this was equally true of the later resolution appointing him. It may be conceded, as is contended, that he was entitled to claim

under the resolution of July 23rd, 1912, providing that the officers shall hold their offices for terms now fixed by law or ordinance. That term, however, was for three years, and it expired on July 23rd, 1915.

“The resolution dismissing him was adopted in June, 1916, more than a year after his term, under that resolution, had expired. In any view of the case, therefore, it must be obvious that he was an official holding office at the will of the appointing body.”

The judgment of the Supreme Court should be affirmed with costs.

Respectfully submitted,

HARRY WOOTTON,
City Solicitor.

JOSEPH B. PERSKIE,
Assistant City Solicitor.

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WILSON

HAMMER MILL