

New Jersey Court of Errors and Appeals.

DANIEL HERRMANN et al.,

*Prosecutors,
Appellants,*

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v.

MAYOR AND COUNCILMEN OF THE
TOWN OF GUTTENBERG, *and* THE
TOWN OF GUTTENBURG, IN THE
COUNTY OF HUDSON,

*Respondents,
Appellees.*

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BRIEF OF APPELLANTS.

This appeal brings up for review the judgment of the Supreme Court dismissing a writ of certiorari allowed to review an ordinance of the Town of Guttenberg, entitled "An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation" (Case, p. 3), adopted December 1st, 1913, as amended December 15th, 1913, and all proceedings in connection therewith.

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The Supreme Court declared that the town had legislative authority to enact the ordinance under P. L., 1884, p. 326 (4 Comp. Stat., 5415), and to appoint the designated officers thereunder, and to pay them the salaries therein provided out of the municipal funds during the year 1914.

The appellants contend that the Supreme Court erred in each of these propositions.

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POINT ONE.

The Mayor and Councilmen had no statutory or other lawful authority to adopt this ordinance. (First reason, Case, p. 17.)

10 The Town of Guttenberg was incorporated in 1859 by an Act of the Legislature, entitled, "An Act to incorporate the Town of Guttenberg in the County of Hudson," (P. L., 1859, p. 199).

20 This Charter empowered the Councilmen to pass ordinances for designated purposes, and by Section 15 "the said corporation shall have power to appoint such municipal or subordinate officers and agents as they may deem proper to enforce all such ordinances as they may be authorized by this Act to pass, which officers shall have power to arrest all persons violating any of the ordinances of this corporation, and to bring them before one of the Councilmen, who may proceed, &c." No power was granted for the establishment of a police department.

Several supplements to this Charter have been enacted (P. L., 1864, p. 332, 379; 1868, p. 186; 1875, p. 612), but none of these supplements confers any additional power regarding the establishment of a police department.

30 In 1884 was enacted "An Act concerning incorporated towns in this State and certain officers thereof" (P. L. 1884, p. 326; 4 Comp. Stat., 5415), wherein it was provided that the Town Council or other governing body of every incorporated town in the State shall have power to pass, alter, amend and repeal ordinances for the following purposes:

40 "XXVII. To establish, regulate and control a day and night police and to regulate and define the manner of their appointment and removal, their duties and compensation."

The foregoing powers are conferred by Section 1 of that Act.

Section 6 of that Act provides that the qualified voters of the several incorporated towns of this State shall have power to raise in each year, by vote at the annual town meeting or charter or municipal election, such sum or sums of money as they shall deem expedient for the following purposes:

“V. For the support of the police department. 10

“XIII. But no appropriation *shall be raised or ordered except* by a majority of all the voters voting at such election.”

In 1889 the Legislature enacted “An Act concerning police in towns, boroughs and townships,” of which section 1 provides “that the Council or “Town Committee of any town, borough or town-
“ship in this State, authorized by law to estab- 20
“lish and maintain day and night police, are
“hereby authorized to appoint such number of
“policemen as in their judgment the public good
“shall require, and may also appoint a superin-
“tendent or captain and a sergeant of police;
“provided, however, that at no time shall the
“number of patrolmen appointed be more than
“one for every eight hundred inhabitants of such
“town, borough or township, &c.”

The foregoing embrace all the statutory law 30
pertaining to the subject matter so far as appellants have ascertained.

If, therefore, there be any statutory warrant for the assumption of the power to enact this ordinance, it must come from the Acts of 1884 and 1889.

I contend, by the terms of the Act of 1884, the question of the establishment of a day and night police force in any incorporated town must first be submitted to the voters of that town in the 40

form of a question of appropriation for such purpose, otherwise the enactment of Section 6, empowering the voters to raise an appropriation for the support of the police department in each year, and that *no appropriation shall be raised or ordered except by a majority of all the voters voting at such election*, becomes nugatory and meaningless.

10 Reading the first section of that Act in connection with the sixth section, the plain meaning is that the Town Council may establish such day and night police, after appropriation for such establishment has been voted upon by the voters of the town, and until such establishment has been authorized by appropriation, the power of the Council under Section 1, is in suspense.

20 If this contention be correct, then there was no power in the Councilmen of Guttenberg to enact the ordinance, as it is conceded that no election was held to fix an appropriation for such purpose. (Case, p. 25.)

Prior to the incumbency of Mayor Eypper as Mayor of the Town of Guttenberg, and as late as the year 1910, appropriations for town purposes were voted for at the town elections by the voters of said town. (Case, p. 70.)

30 The statute of 1798 (Paterson's Laws, page 284, Sec. 9) provides that the persons qualified to vote at town meetings shall be and they are hereby empowered, at their annual meeting, or at any other meeting duly held for the purpose, to vote, grant and raise such sum or sums of money for the maintenance and support of the poor, &c., and prosecuting and defending the common rights of such towns, and for such other necessary charges and legal objects and purposes thereof, as they or the major part of them, so assembled, shall deem proper or necessary; which money, so
40 voted and granted, shall be assessed, levied and collected by the same persons, in the same man-

ner, and under like fees, fines and penalties as the money raised in such towns by the Board of Chosen Freeholders of the County, shall be assessed, levied and collected, and at such times and in such proportions as the said town meetings respectively shall direct and appoint.

This power, so vested in the inhabitants to order money to be raised by taxation is in itself a delegated power and cannot be transferred to the Town Committee or any other officers.

State v. Sickles, 24 N. J. L., 127.

P. L., 1905, p. 16, "An Act concerning the levying of taxes in certain municipalities," provides that "in every municipality of this State where tax levies are raised or fixed by vote of the people at the local or charter elections, the said tax levies, for each annual tax levy for the succeeding taxing year, shall be hereafter voted for by the people on the first Tuesday after the first Monday of November in each year, and with the same registration and upon the same official ballots required by law for the election of State and County officers *and not otherwise*; and the said ballots, voted as aforesaid for such tax levy, shall be canvassed, and the result of any such election determined as now provided by law in the case of county officers, and certified to the Clerk of such town, township, village or other municipality."

P. L., 1905, p. 333, Chap. 178, "An Act establishing the fiscal year in all towns, townships, boroughs, villages and other municipalities, excepting first and second class cities, and the time for publishing and filing the various reports of the officers of the same," provides that the fiscal year of all towns, &c., excepting first and second class cities, shall begin on the first day of January of each year and shall terminate on the 31st day of December of the same year.

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The Act of 1884 deals only with "incorporated towns."

Quaere.—Is the Town of Guttenberg, created by a special charter in 1859, an "incorporated town" within the purview of that statute, and is the statute itself constitutional so far as classification is concerned? Appellants submit it is not.

The "Voorhees" Act (P. L. 1895, p. 218) was an Act entitled "An Act providing for the formation, establishment and government of towns."

10 In *Butler v. Monclair*, 67 N. J. L., 426,—held, did not apply to towns with special charters granted prior to the adoption of the constitutional amendments.

See also *Benson v. Bloomfield*, 29 Vr., 491.

20 The term "town" may include villages, boroughs, and cities (*Van Reyper v. Parsons*, 11 Vr., 4), and the subject matter of this statute would seem to be equally as applicable or desirable for unincorporated as for incorporated towns.

In *Goldberg v. Doorland*, 56 N. J. L., 367, Mr. Justice Lippincott said:

30 "Now it is to be observed that there are townships in this State upon which, by legislative enactment, special charters have been conferred, but they are no less townships than they were before they were governed either wholly or partially by special laws. They are neither towns nor boroughs as those appellations are commonly understood in legislative enactments or judicial determinations. This questioned statute recognizes these distinctions, and it is neither to be assumed nor determined that specially-chartered townships are either towns, villages or boroughs."

And in passing upon that statute, on page 368, Justice Lippincott observes:

40 "It will be perceived that this Act does not apply to all municipalities of the same class—

that is, to all townships—but only to the designated few of the class, namely, those governed under and by a special charter. I think it would be a vain inquiry to ascertain a rational ground of discrimination between townships governed under and by a special charter and other townships in this State, connected with the objects of this statute. There is no distinguishing feature in this Act showing a fair relation between the class legislated for and the purpose of the legislation, and which in this respect segregates this class from other municipalities of the same character.” 10

If an Act which applies only to towns governed by *special charters* be non-inclusive of the whole class, and, therefore, unconstitutional, why is not an Act which applies merely to *incorporated towns* also non-inclusive of the whole class and unconstitutional?

The Act of 1889 confers no power to establish a day and night police, but simply confers upon the council or town committee of any town, borough or township, authorized by law to establish and maintain such day and night police, the power to appoint such number as in their judgment the public good shall require, within prescribed limitations. 20

Neither at the time of the adoption of this Act, nor since, has the Town Council of Guttenberg been authorized by law to establish such day and night police, inasmuch as the law requires that in such town the appropriation for such purpose must be voted for by the people. 30

POINT TWO.

No appropriation has been made for the maintenance of the Police Department as established by the ordinance. (Second reason, Case, p. 17.)

Appellees admit that no appropriation was voted for by the voters of the Town in the year Nineteen hundred and thirteen. (Case, p. 25.)

10 It is argued on behalf of the appellees, that the ordinance passed by the Board of Council in the year 1913, regulating the finances of the Town and fixing and appropriating the amounts of money to be expended for Town purposes (Case, p. 25, line 20) is sufficient for that purpose.

20 By Section 1 of that ordinance there was appropriated for the year beginning January 1st, 1914, "for the maintenance of the police department, \$2900" (Case, p. 26, l. 18), and by Section 4 of the ordinance, the assessor was directed to levy and assess upon the taxable property such sum for the maintenance of the police department.

This ordinance was adopted July 21st, 1913 (Case, p. 28, l. 20), or about six months prior to the ordinance establishing the department.

30 The ordinance establishing the department, provides for an expenditure in salaries alone of \$6,100. (Case, p. 8, l. 20, &c.)

Upon the part of the appellants it is contended that such ordinance, so far as it fixed appropriation for the police department, was illegal, because such appropriation was not submitted to the voters of the Town for ratification.

The appellees contend that under Chapter 169 of the Laws of 1912, p. 257, such submission was unnecessary.

40 The last mentioned statute is entitled, "An Act to authorize any town in this State to pass ordi-

“nances and fix appropriations for the general
 “and incidental expenses of the town, and to pro-
 “vide for the raising of the same by taxation.’

The first section of that Act empowers the gov-
 erning body of any town to pass “an ordinance or
 “ordinances for the appropriation of and to ap-
 “propriate annually such sum or sums of money
 “as shall be necessary for all the general and in-
 “cidental expenses of said town, including the
 “support and maintenance of the free public
 “schools of said town, *for the then current year,*
 &c.” 10

It is obvious that under the terms of that sta-
 tute, the Board of Council in July, 1913, could
 not appropriate monies for the expenses of the
 Town from January 1st, 1914, to December 31st
 of said year, as such appropriation could not be
 held to be “the then current year”.

This section further provides that “no such
 “ordinance shall take effect until five days after 20
 “it shall have been published in the official news-
 “paper of the town, and if there be none, in at
 “least one newspaper published in the County
 “and circulating in the Town.” No such publica-
 tion was made.

Nor does this Act contain any repealer of any
 other or former acts upon the subject, and, there-
 fore, should be read in conjunction with Section
 6 of the Act of 1884. 30

POINT THREE.

The establishment of this department is an entirely useless and extravagant expenditure of the taxpayers' money. (Third reason, Case, p. 18.)

Under this ordinance the salaries of the police officials amount to \$6100 per annum. (Case, p. 8.)

10 For the year 1913 salaries of those who performed police duty for the Town amounted to \$2780.04. (Case, p. 50, l. 17.)

In 1912 it was	\$2579.16
In 1911 " "	1725.83
In 1910 " "	1969.14
In 1909 " "	1014.00
In 1908 " "	1501.88

(Case, p. 74.)

20 And there was no evidence that the Town was not always properly and thoroughly policed.

Prior to the incumbency of Mr. Eypper as Mayor, in 1908 police duty was done by Town officers appointed under the charter, and the expense was trifling. (Case, pp. 35 and 36.)

30 Mr. Lutz, one of the prosecutors, and a large taxpayer of the Town, testifies that the police force as contemplated by the ordinance is, in his opinion, neither necessary nor desirable for the Town. (Case, p. 29.)

40 This point is not made upon the notion that the Court, by certiorari, can control the discretion of this municipal board, but merely to emphasize the insistence of the prosecutors that the legislature, in adopting Section 6 of the Act of 1884, wisely foresaw the necessity of giving the voters of these towns precautionary control over the expenditure of town monies.

POINT FOUR.

Certiorari is the proper remedy to test the validity of this ordinance, although the right of these officials to their positions may be under collateral attack.

Lewis v. Newark, 65 Atl. Rep., 1039.

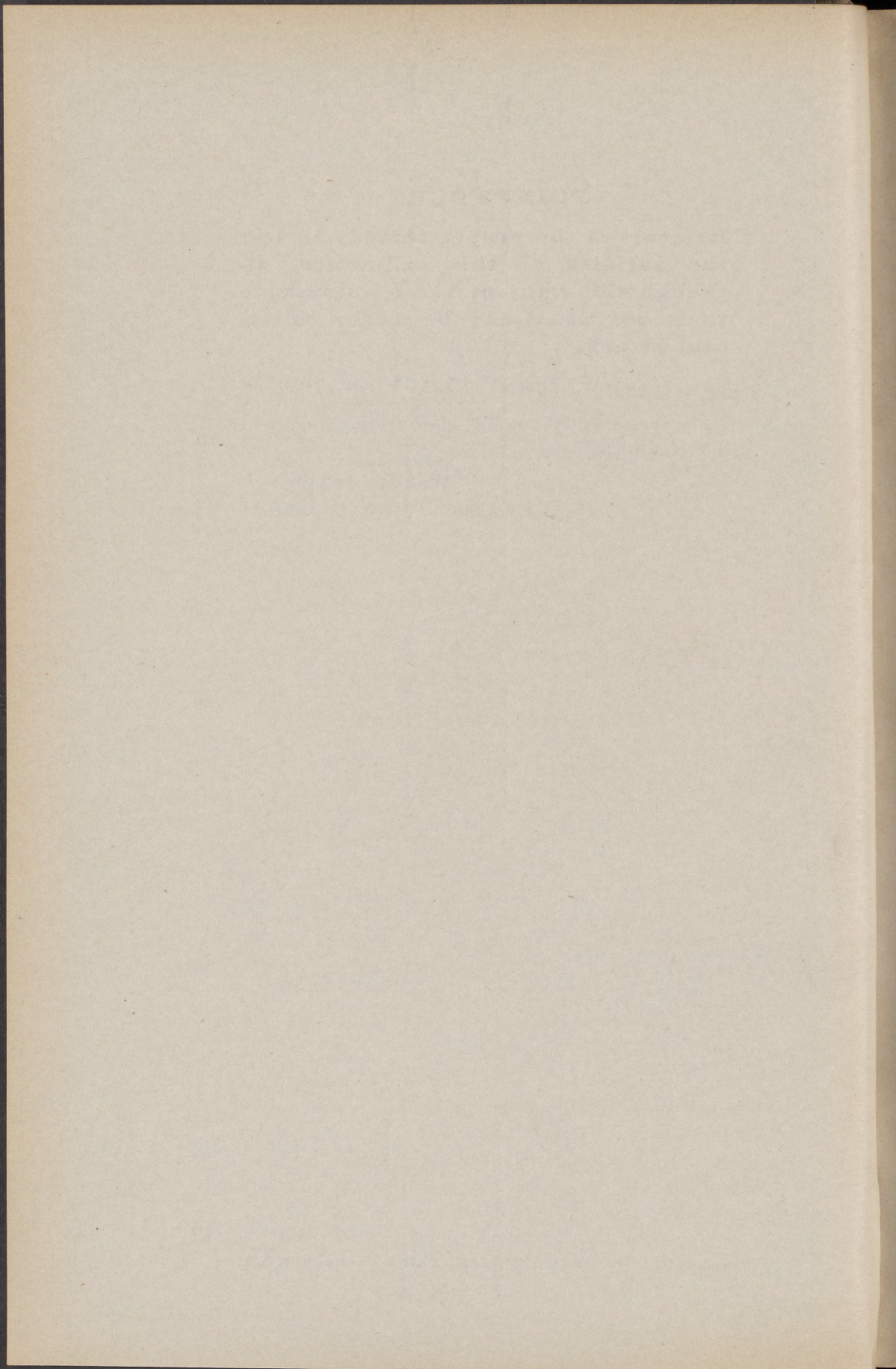
It is respectfully submitted that the judgment below should be reversed. 10

WARREN DIXON,
Of Counsel with Appellants.

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New Jersey Court of Errors and Appeals. 10

DANIEL HERMAN et al., <i>Prosecutors-Appellants,</i>	}	On Certiorari. On Appeal.
<i>vs.</i>		
THE TOWN OF GUTTENBERG IN THE COUNTY OF HUDSON, <i>Respondents-Appellees.</i>		

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BRIEF OF APPELLEE.

Statement.

This appeal brings up for review the judgment of the Supreme Court dismissing a writ of certiorari allowed to review an ordinance of the Town of Guttenberg, entitled "An ordinance to establish, regulate and control a day and night police, to regulate and define the matter of their appointment and removal, their duties and compensation" (case, p. 3), adopted December 1st, 1913, as amended December 15th, 1913, and all proceedings in connection therewith. 30

The Supreme Court declared that the town had legislative authority to enact the ordinance under P. L. 1884, p. 326 (4 Comp. Stat., 5415), and to appoint the designated officers thereunder, and to pay them the salaries therein provided out of the municipal funds during the year 1914. 40

Facts.

The Supreme Court allowed a writ of certiorari bringing up for review an ordinance adopted by the Town of Guttenberg on Dec. 1, 1913, to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation (p. 3) as said ordinance was amended by another ordinance adopted Dec. 15, 1913 (p. 8).

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The ordinance as amended creates a day and night police for the town to consist of a captain, a sergeant and five patrolmen (p. 8, folios 10-20).

It provides that the officers and patrolmen shall be appointed by resolution (p. 3, folios 10-20), that they shall hold office during good behavior (p. 3, folios 10-20) and that they shall be removed only for cause (p. 3, folios 20-40).

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It provides for the duties of the day and night police (p. 4, folios 30-40; p. 5, p. 6, p. 7, folios 1-10) and their compensation (p. 7, folios 1-10).

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On December 19th, 1913, there was appointed, under this ordinance, a captain, a sergeant and five patrolmen; these officers were immediately sworn into office and entered upon their duties; their appointment and their oaths of office are part of the return pursuant to the command of the writ to return "all proceedings taken thereunder," *although these officers are not parties to this writ and cannot be heard in this cause.*

Argument.

The appellants present four reasons why this ordinance and *the proceedings* brought up should be set aside. The appellee will deal with these reasons in the order in which they are argued on the brief of the appellant.

REASON NO. 1.

The Town had no authority to enact said ordinance as amended.

The power to enact the ordinance as amended is found in the following statutory provisions:

Section 1, subdivision 27, of L. 1884, p. 326; 4 C. S. 5415 at p. 5417, provides that all incorporated towns shall have power, by ordinance, "To establish, regulate and control a day and night police and to regulate and define the manner of their appointment and removal, their duties and compensation." 16

Public Laws of 1889, p. 262—2 C. S., p. 2462, provides that council may appoint such number of patrolmen *as in their judgment* the public good shall require and may also appoint a superintendent or captain and a sergeant of police—provided *patrolmen* do not exceed more than one for every eight hundred inhabitants. 20

The census of 1910 gives Guttenberg a population of 5647. Guttenberg therefore under this act is entitled to *seven* patrolmen; the ordinance provides for five.

Public Laws 1907, p. 442—2 C. S. 2464, provides for one policeman for every seven hundred inhabitants in *discretion* of council—this act entitles Guttenberg to eight men—officers and patrolmen. 30

Public Laws 1907, p. 50, as amended L. 1910, p. 16, 2 C. S., p. 2498, provides for tenure of office of officers and men and lays down the qualifications of the members of the force.

The original ordinance was faulty in that it provided an age limit of 55 years (see 2 C. S., p. 2498, Sec. 655), did not specify the number of patrolmen to be appointed and provided the captain with a salary of \$1100.00, which was more than 25% more than patrolmen were paid (see 40 2 C. S., 2462, Sec. 516).

The amendment was passed to remedy these defects.

Appellant advances two reasons why this statutory authority is insufficient, namely:

1. Because Section 6 of L. 1884, p. 326—the act authorizing the ordinance, provides that the qualified voters of the several incorporated towns of this State shall have power to raise *in each year*, by vote at the annual town meeting or municipal election, such sum or sums of money as they shall deem expedient for the following purposes:

“V. For the support of the police department.

“XIII. But no appropriation shall be raised or ordered except by a majority of all the voters voting at such election.”

Hence according to appellant the question of the *establishment* of a *police department* must first be submitted to the voters of the town in the form of a question of appropriation for such purpose, and until such *establishment* has been thus authorized the power of council to create by ordinance a day and night police force granted by Section 1 of the same act is in suspense.

We contend that a police department cannot be supported *until it is in existence*, nor can the voters know how much is required for the support of a *department* until such police department *has been established*. Section 1 and Section 6 of this act are therefore independent. The ordinance establishing the department must precede a vote of moneys for *the support* of the department.

We also contend the section is no longer operative and was not operative when the ordinance was passed in December, 1913.

On March 26, 1912, the legislature adopted “An act to authorize any town in this State to pass ordinances and fix appropriations for the general and incidental expenses of the town and to pro-

vide for the raising of the same by taxation." P. L. 1912, p. 257. By that act it authorized and empowered the governing body of any town to pass an ordinance for the appropriation of and to appropriate annually such sum or sums of money as shall be necessary *for all general and incidental expenses of said town* * * * and the money or moneys so appropriated or such part thereof as in the judgment of said governing board shall be necessary shall be raised by taxation.

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The maintenance of a police department is legitimately a part of "general expense" of a town.

The act of 1912 repealed the power to raise money provided by Section 6 of the act of 1884 and placed that power without any limitations in the hands of the town council.

And this is so because the provisions of the act of 1912 are *mandatory* and impose a *public duty* upon the board of council.

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Where a statute confers authority to do a judicial act, or, indeed any other act, which the public interest or even individual right may demand, it is imperative on those so authorized to exercise the authority when the case arises * * *. In giving one person the authority to do an act the statute impliedly gives to others the right of requiring that the act be done, the power being given for the benefit not of him who is invested with it, but of those for whom it is to be exercised. The legislature in such cases imposes a positive and absolute duty, and not merely gives a discretionary power; and it must be exercised on proof of the particular facts out of which the power arises. When, therefore, the language in which the authority is conferred is only directory, permissive or enabling—for instance, when it is enacted that the person authorized 'may' or 'is empowered' or 'shall if he deem it advisable' or that 'it shall be lawful' for him to do the act,—

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it has been so often decided as to have become an axiom, that such expressions have a compulsory force, unless there be special grounds for a different construction.

Clark v. Elizabeth, 32 Vroom, 565, at pages 581-2;

Seiple v. Elizabeth, 3 Dutcher, 407.

The annual appropriation for all general and incidental expenses of the town *shall*, therefore,
 10 be made by ordinance of the town council. Since this power cannot be exercised by the people and by the board at the same time it follows that the earlier provision is repealed by implication.

But even though the court should hold that the later act does not repeal the provisions of section 6 of the act of 1884 still, in order to give effect to the act of 1912, action under that act, where taken must be considered an *elective method*
 20 of raising taxes superceding the procedure laid down in the act of 1884, and especially must this be so where the people refuse or fail to exercise the right conferred by section 6 of the act of 1884.

In Guttenberg no appropriations have been voted by the people since 1910 and ever since 1912 the board of council has *solely* exercised this right and power by means of an ordinance (case, p. 25, fols. 20-40; case, p. 28, fols. 20-40).

30 The result then is that the ordinance could be adopted independent of any appropriation either voted or raised by the town.

2. Because the act of 1884 deals only with "incorporated towns" and the Town of Guttenberg created by special charter 1859 is not an "incorporated town" within the purview of that statute, and because the statute is itself, because of the classification it attempts, unconstitutional.

40 A complete answer to this attack is found in the case of *Herman v. Guttenberg*, 34 Vroom, 616,

dealing with the status of *this defendant* in relation to an act regulating the affairs of "incorporated towns."

This case holds that Guttenberg is an incorporated town, that the classification given by the Legislature is conclusive upon this point, and that "incorporated towns as such are recognized by the constitution as classes for legislation.

But, even if that case had not been decided, and the word "town" were given the generic interpretation contended for by the appellant, the Act of 1884 would be good because all of the municipal sub-divisions of the State of New Jersey, by whatever name known, are incorporated, and if the word "town" is to include townships, villages, boroughs and cities, the words "incorporated towns" in the title of the Act of 1884 would of necessity mean incorporated towns, townships, villages, boroughs and cities.

The court would, if necessary, be forced to adopt this interpretation to save the Act.

Brown v. Town of Union, 33 Vroom, 142.

REASON NO. 2.

No appropriation has been made for the maintenance of said police department attempted to be created by said ordinance as amended.

The police ordinance as amended makes *no appointments to office*. It does not appropriate or expend any money. It provides in Section 2, "The captain, sergeant and patrolmen shall be appointed * * * *by resolution* and shall hold office during good behavior." The return shows that the men were appointed by resolution *4 days after the adoption of the amended ordinance*, that they qualified and entered upon their duties before the allowance of the writ.

The question of appropriation, therefore, does

not affect the legality of the ordinance, either in substance, form or method of adoption. *The money is expended by means of the resolutions of appointment.*

10 These resolutions of appointment do not constitute a part of the ordinance nor are they properly a part of the return to the writ. They are returned because called for by the writ *but they are beyond the scope of the writ.* If the ordinance is otherwise legal any illegality appearing in *these resolutions* of appointment cannot be reviewed on certiorari because:

Certiorari is not the appropriate remedy for testing the legality of a *mere* appointment to public office even though the appointee has not entered upon the office so as to be liable to an information in the nature of quo warranto.

20 *Simon v. Hoboken*, 23 Vroom, 307;
Haines v. Freeholders, 18 Vroom, 454.

These cases discountenance the doctrine laid down in *Bradshaw v. Camden*, 10 Vroom, 367.

There is a line of cases of which *Fitzgerald v. New Brunswick*, 18 Vroom, 479, affirmed 19 Vroom, 457, is the type in which resolutions of appointment to office were returned in certiorari. But in those cases the error complained of appeared in proceedings preceding the resolutions of appointment and the resolutions fell *incidentally* with the preceding illegal proceedings.

30 See also:

Lewis v. Newark, 65 Atl., 1039.

40 In the case at bar, if the objection of lack of appropriation does not affect the legality of the ordinance *itself* and there are no other defects in the ordinance *itself*, then the judgment of the Supreme Court must be sustained because *the ordinance cannot be set aside for error in the subsequent proceedings*, and it is *illegal* to review the subsequent proceedings, i. e., the resolu-

tions of appointment, except it be by quo warranto.

It is, therefore, immaterial in *this* cause if no appropriation had been made for the maintenance of said police department.

Even where certiorari proceedings do not involve appointments to office, but where the consequences of judgment may injuriously affect the interest of third parties the Court will defer judgment until the interested parties can be brought in.

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McFall v. Dover, 41 Vroom, 518;
Allen v. Freeholders, 42 Vroom, 247.

But the statement that no appropriation had been made for the maintenance of said police department is not true in fact.

The fiscal year of the Town of Guttenberg runs from January 1st to December 31st. 3 C. S. 3669, Sec. 740.

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The police ordinance was adopted December 15th, 1913. It provided for the payment of the men in equal semi-monthly installments (p. 8, folios 20-30).

In the fiscal year 1913 the police force under the ordinance would cost:

Captain, Dec. 15-Dec. 31, 1913,	\$41.66	
Sergeant, Dec. 15-Dec. 31, 1913,	37.50	
5 patrolmen, Dec. 15-Dec. 31, 1913	\$35x5, 175.00	30
	<hr/>	
Total,	\$254.16	

Expenditure of public money where there is no appropriation is illegal *only* because of section 31 of the Crimes Act, 2 C. S., p. 1754, Sec. 31.

Siedler v. Hudson, 10 Vroom, 632.

This act makes it a misdemeanor to exceed the "appropriation", "limit of expenditure" and "amount appropriated and limited by law".

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The evidence in this case is uncontradicted that since, and including the fiscal year 1908, money has been annually appropriated *and raised* for town purposes by means of a tax ordinance or resolution which was annually transmitted to the County Board of Taxation and to the local assessors of the Town as required by Section 25 of the General Tax Act (4 C. S. 5105, Sec. 25) (case, p. 65, folios 20-40)—and the budgets for 1908-1913 inclusive (case, p. 65, folios 30-40) show that in
 10 this manner there was annually *appropriated* and raised “for the maintenance of the police department” the following sums: (case, pp. 66-67-68-69).

	1908,	\$2,100.00	
	1909,	2,100.00	
	1910,	2,100.00	
	1911,	2,100.00	
	1912,	2,7000.00	
	1913,	2,900.00	\$14,000.00
			<hr/>
20	Total,		\$14,000.00

There was also transferred into the police fund from the liquor license account during that time under said ordinances:

	Feb. 1, 1908,	\$1,658.00	
	Dec. 8, 1913,	3,000.00	
			<hr/>
	Total appropriated for police, 1908-1913, inclusive		\$18,658.00
	To this sum there is added for fines credited to the police fund, 1908-1913,		1,966.40
30			<hr/>
	Total receipts for police fund 1908-1913, inclusive		\$20,624.40
	Total receipts for police fund, 1908-1913, inclusive,		\$20,624.40
	Total disbursements, 1909 to 1913, inclusive, as per tabulation, p. 74,		12,672.21
			<hr/>
	Fund <i>on hand</i> for maintenance Jan. 1, 1914,		\$7,952.19
40	The difference between the foregoing figures		

and the figures of the schedule shown on page 74 of the case is brought about by the fact that the expert accountant makes deduction from the *appropriations* for allowances upon tax appeals which we think should not be made.

From Dec. 15th, 1913, to Jan. 1st, 1915, the police department under the ordinance would cost:

Dec. 15 to Dec. 31/13	\$254.16	
Jan. 1/14 to Dec. 31/14	6,100.00	\$6,354.16
		<hr/>
Deducting from		\$7,952.19
the tax appropriation for		
the year 1914 of	2,900.00	
		\$7,952.19
and the actual cost of de-		
partment for 1913	2,780.29	5,680.29
		<hr/>
Leaves <i>on hand</i> to pay \$254.16		\$2,272.90

There was therefore *on hand* in the fiscal year 1913 to pay salaries amounting to \$254.16, the sum of \$2,272.90.

All of this money was raised by tax ordinances.

We will now trace the right of the town to raise money by taxation.

Guttenberg is incorporated under a special charter, L. 1859, p. 199. Section 7 of the act grants power of taxation to extent of \$200.00 P. L. 1868, p. 186, increases this power to \$600.00. There is no other power of taxation—affecting this case granted under this charter, and no further power is found until 1884, when the act found upon page 325 of the laws of that year was passed. Section six of that act enumerates a number of purposes for which money may be raised by taxation, including the support of a police department and provides a method of making the appropriations—namely, by vote of the majority of the qualified voters of the town. This method was the

only legal method of raising taxes generally or for the support of a police department applicable to Guttenberg, until 1912, when the legislature provided that:

10 “The governing body of *any* town in the state is hereby authorized and empowered to pass an ordinance or ordinances for the appropriation of, and to appropriate *annually* such sum or sums of money as shall be necessary for *all* general and incidental expenses of said town, * * * and the money or moneys so appropriated *or such part thereof*, as in the judgment of said governing board shall be necessary, shall be raised by taxation.”

P. L. 1912, p. 257.

This act we contend, repealed the method of raising moneys by taxation provided by section six of the act of 1884 and placed the power in the hands of council.

20 The maintenance of a police department is legitimately a part of the “general expense” of a town.

 The only limit placed upon town appropriations by this act is that they must be for *general or incidental expenses* of some kind; and it is submitted that an appropriation, by ordinance, in the language of the act “For all general and incidental expenses the sum of \$100,000.00” without making any other detailed appropriations would satisfy the language of this act, *and that any expenditure for lawful town purposes within that limitation would then be lawful*. If this is true then any additional limitations placed upon the power of council *by the ordinance* will not run counter to this statute.

40 The town of Guttenberg in 1913 adopted an ordinance, which we think is justified by this act, fixing and appropriating the amount of money to be expended for *town purposes* during the fiscal year 1914 *and providing for raising part of the same by taxation*. (Case, p. 25, folios 20-40).

Section one of this ordinance makes specific appropriations, first for school purposes and then for a number of lawful town purposes, including the maintenance of the police department, all of which fall within the limit of expenditures fixed by the Act of 1912 i. e. "General and Incidental Expenses of the Town." The section then provides that the total of these town appropriations shall be the limit of expenditures for said fiscal year, *except as thereafter provided.*

Section two of this ordinance provides that council may at any time transfer moneys appropriated to or for any of the *town purposes.* The section is plainly intended to refer to the appropriations fixed in the preceding section. It is intended to permit the transfer of funds from one town fund to another, thus virtually reducing these several town funds to one fund which might be labelled, "*For all General and Incidental Expenses of the Town*" as provided by the act.

Section three of the act *applies* and appropriates to the several town appropriations, *and in reduction of the amounts necessary to be raised therefor by taxation.*

1. The balance in hands of Treasurer Jan. 1, 1914 including therein arrears of taxes collected to that date.

2. Franchise taxes collected during year 1914.

3. License fees collected during year 1914.

4. All other fees received during year 1914.

Section four directs the assessors to levy and assess the amounts first fixed by section one of the ordinance.

Section five provides that all moneys and revenues received during the fiscal year 1914 by the town, *other than moneys raised by local taxation,* may be added and expended by Council for any and all purposes enumerated in the first section *in addition* to the *sum and limit* of expenditure mentioned in said section.

It is admitted that a similar ordinance was passed in 1912, 1911 and 1910—(Case, p. 28) and the undisputed testimony shows that this was done since 1908.

This ordinance appropriates, *all taxes* in arrears which have come to hand as of Jan. 1, 1914, the balances in the town funds as of that date, all franchise taxes, license fees and other fees collected during 1914, *together with the specific appropriation* for town purposes contained in section one for “all general and incidental expenses” of the town for the year 1914 and then provides by section four that \$41,300.00, a portion of the total sum, shall be raised by taxation. It then provides by section five that any town moneys not drawn into the appropriation by the preceding section aforesaid, collected by the town in 1914, may be expended for any of the town purposes *as additions to the limit of expenditures fixed.*

This ordinance, we contend, allows the town to expend for any one specific town purpose enumerated in the ordinance, *any* money which may be available for *any* town purposes, over and above the specific sum of money mentioned for such specific town purpose in sections one and four of said ordinance. In other words, *the sums specifically appropriated by section one and by section four ordered to be raised by taxation do not represent the limit of expenditure* for the purposes enumerated, but merely show in the language of the act of 1912, *such part* of the money appropriated “as in the judgment of said governing board shall be necessary” to be “raised by taxation.” The limit of expenditure for police purposes for 1914, under this ordinance, is the *sum of \$2900 plus the moneys provided by sections three and five of this ordinance.*

This includes all *license moneys* and all other moneys on hand Jan. 1, 1914, or which may come into the town treasury during 1914 *not raised by*

taxation for any other town purpose. And these same statements hold true for the year 1913—under the ordinance passed for that year.

And if the foregoing argument is sound then the question of the legality of the tax budgets for the years *preceding 1912* is immaterial, since all money raised by levies preceding 1912, in hand Jan. 1st, 1913 or collected thereafter, or outstanding and unpaid as of Jan. 1st, 1913, will be governed and controlled as to disposition by sections three and five of the ordinances adopted in 1912 and in 1913, and *this includes liquor license moneys, franchise taxes and any and all other moneys whatever.*

10

The only limitation upon expenditures by the Town of Guttenberg is therefore found in the Act of 1912. This limitation is the sum or sums of money by ordinance *annually appropriated* "for all the general and incidental expenses" of the town and the fact that a *part of this appropriation is raised by taxation does not limit the expenditures to the moneys thus raised.*

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The *limit of taxation* is not the limit of appropriation or of expenditures either under the Act of 1912 or under Section 31 of the Crimes Act.

The word *taxation* does not appear in Section 31 of the Crimes Act.

In the case of *Sheehy v. Hoboken*, 33 Vroom 182, a case analogous to the one at bar, an attempt was made to limit expenditures to the amount *levied* by taxation, the city claiming the right to apply certain moneys not thus levied but raised to any lawful purpose as council might direct. Mr. Justice Dixon, speaking about Section 31 of the Crimes Act said:

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"This being a criminal statute, must not be extended beyond the plain import of its terms, and we discover nothing which clearly indicates a design to take away from the council the discretion vested in it by the charter

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respecting the money now under consideration. On the contrary we think these moneys, with authority to direct their particular application, enter into the appropriation and limit of expenditure provided by law for the council, and the council has the same right to disburse these moneys for the respective purposes to which it appropriates them as it has to disburse the moneys appropriated to it by other legal agencies."

10 And *the resolution adopted at the meeting of Council held Nov. 17, 1913 authorizing the transfer from the license fund to the police fund of the sum of \$3,000 is justified by this tax ordinance and by P. L. 1912, p. 257.*

The resolution is found upon p. 10 as part of the return and upon p. 52. The transfer was actually made as will appear from the communication of the treasurer of the town, p. 11, p. 53, and from the testimony (p. 56 folios 10-20).

20 Under the third section of the ordinance in evidence (Case, p. 27) the license moneys referred to in the resolution, without the adoption of that resolution, can be used for the maintenance of a police department.

30 Under section five of the same ordinance the license moneys received may be *expended* for any purpose enumerated in section one of the ordinance, in addition to the sum specified in said section and in addition to the limit of expenditure fixed by said section.

40 This is permissible under the Act of 1912, p. 257, and there is nothing in any other act which we have been able to find, which in any way appropriates the revenues derived from liquor licenses to any specific purposes. It is therefore lawful to expend these moneys for any lawful town purpose even without the resolution. The resolution is a mere bookkeeper's guide indicating to the town treasurer the total amount which council intends to devote to police purposes.

It therefore follows that the sum of \$2900.00 in

the tax ordinance adopted in 1913; the sum of \$2700.00, adopted in the tax ordinance of 1912, and the various other sums adopted in the years 1908-11, do not constitute limitations of appropriation for police purposes but merely limitations of the amount to be raised by taxation for that purpose and that the town has the right to use for maintenance of police departments any other moneys *not raised by taxation* which may be at hand or available.

Upon the part of the appellants it is contended that this tax ordinance is illegal, first, because the appropriations were not submitted to the voters of the town; second, because the tax ordinance of 1913 ought to have been of moneys to be used "for the then current year" of 1913, and third, because the ordinance has not been published as required by the act of 1912.

To these objections we desire to enter the counter objection, that the courts will not *collaterally* review the methods adopted by Guttenberg to raise its revenues by taxation; that if the moneys are *actually in hand* or are *actually appropriated* and *collectible* and are being collected, this will be satisfactory to the court in this proceeding. The tax ordinances or tax proceedings of Guttenberg are not brought up for review under the mandate of this writ.

We concede that prior to 1912 there was no statutory authority for the methods employed by Guttenberg in making and raising the appropriations necessary to maintain its government, but neither this nor any other of the foregoing objections avail the appellant even in a *direct* attack upon the proceedings.

No tax * * * imposed or levied in this state shall be set aside or reversed in any court of law or equity * * * for any irregularity or defect in form, or *illegality* in assessing, laying or levying any such tax * * * or in the pro-

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ceeding for collecting the same, if the person against whom, or the property upon which such tax * * * is assessed or laid, is in fact liable to taxation, * * * in respect of the purpose for which such tax * * * is levied, assessed or laid.

P. L., 1881, p. 184;
4 C. S., 5171, Sec. 191.

See also 4 C. S., 5124, Sec. 39.

10 The acts should be liberally construed.

State v. Montclair R. R. Co., 14 Vroom, 524, p. 528.

Defects of form or irregularities in the assessment of taxes cannot be set up on certiorari or writ of error.

State Vail v. Runyon, 12 Vroom, 98, at p. 102;

20 *Conover v. Hance*, 17 Vroom, 347;
Dilts v. Taylor, 28 Vroom, 369, p. 370.

And taxes *illegally assessed* will not be set aside on certiorari *unless* it appears that the prosecutor was not subject to taxation in the place where the taxes were levied or that the taxes exceed the sum for which he was legally liable to taxation.

Saunders v. Morris, 19 Vroom, 99.

30 In the Saunders case, just cited, taxes had been assessed under a repealed law, i. e., without warrant in law as to procedure, while the legal method was ignored. We submit that this is in point with the facts in this case, prior to 1912 at least.

See also *Flaherty v. Atlantic City*, 44 Vroom, 458.

40 We contend that under the act of 1884, p. 326, property in Guttenberg was liable to taxation for the support of a police department; that it was also liable for the support of the special police called for by section 15 of the charter, L. 1859,

p. 199, and that since a tax might always have been lawfully imposed, the levies for the years 1908, 9, 10, 11, 12 and 13 are protected by the tax acts last cited and must stand in this proceeding.

Then again, the prosecutor cannot assail those tax levies because he is in laches as to all of them.

Then also the objection that the ordinance was not published as required by law does not find support in the evidence. The ordinance was proved by the production of the ordinance book of the town containing the original ordinance under the seal of the town signed by the Mayor and properly attested by the clerk. Besides this the adoption of the ordinance was admitted by appellant. So too the alleged irregularity in the tax ordinance consisting in the fact that the *town appropriations* do not provide for the *town expenditures* "for the then current year," can be met by the proposition that the *appropriation* is for the then current year but the expenditures are to be made in the year following, or by the contention that the words "for the then current year" do not apply to the *town appropriations* but apply only to the money necessary for the support and maintenance of the free public schools. And this contention gains force, we believe, from the fact that the fiscal school year runs from the first of July to the first of July, whereas the town year runs from the first of January to the first of January, and these appropriation ordinances are of necessity passed between the 20th day of May in each year and the 3rd Tuesday of August of each year, the first date being the date of which taxes are assessed and the latter date being the date upon which the assessor of the municipality is to receive the *annual* taxing ordinance, pursuant to section 25 of the General Tax Act.

The same contention, we believe, gains further strength from P. L., 1905, p. 16, "An Act concerning

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“the levying of taxes in certain municipalities,” which provides that “in every municipality of this State “where tax levies are raised or fixed by vote “of the people at the local or charter elections, the “said tax levies, *for each annual tax levy for the “succeeding taxing year*, shall be hereafter voted “for by the people on the first Tuesday after the “first Monday of November in each year, and with “the same registration and upon the same official “ballots required by law for the election of State
 10 “and County officers *and not otherwise*; and the “said ballots, voted as aforesaid for such tax levy, “shall be canvassed, and the result of any such “election determined as now provided by law in “the case of county officers, and certified to the “Clerk of such town, township, village or other “municipality.”

This act was passed at the time of the abolition of the Spring elections in towns, townships, vil-
 20 lages and the other municipalities except cities in which Spring elections were then abolished. At the time of the adoption of this act most of these municipalities were raising their taxes by popular vote *in April* for the tax year then next beginning on the twentieth day of May following. When the tax vote was transferred to the Fall election it became impossible to vote the appropriation for the then current tax year because the vote was taken after the assessment of the taxes for the then
 30 *current tax year*, and had been completed.

(The tax assessment must be completed before the third Monday in August and the assessment must be made as of the twentieth day of May.)

4 C. S., p. 5085, sec. 6.

It therefore became necessary to vote in the fall the annual tax levy for the then succeeding year in all municipalities voting their levies by popular vote and this was the procedure when the act of
 40 1912 was adopted, and since this act contains no

repealer and merely changes the method of making the appropriation from a vote by the people to a vote by council, we contend that the appropriations when thus voted by council shall be levied as heretofore for the succeeding tax year and that the words in the act "for the then current year" apply to the expenses for the "support and maintenance of the free public schools of the said town."

For the foregoing reasons we urge that the objection that no appropriation has been made for the maintenance of the police department as established by ordinance must fail.

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REASON NO. 4.

The establishment of the department is an entirely useless and extravagant expenditure of the tax-payers money.

Since the adoption of the act of 1912, p. 257, the assent of the voters to the expenditure of money by the town under section 6 of the Laws of 1884, p. 330, is no longer necessary.

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Under the provisions of the act of 1884, p. 330, the adoption of a police ordinance is vested in the discretion of town council and under the provisions of P. L., 1889, p. 262, the council may appoint such number of patrolmen *as in their judgment the public good shall require* and may also appoint a captain and a sergeant of police *provided* patrolmen do not exceed more than one for every eight hundred inhabitants.

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The judgment of the town council and not that of appellant shall therefore decide the necessity of a police department.

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REASON NO. 4.

Certiorari is the proper remedy to test the validity of this ordinance, although the right of these officials to their positions may be under collateral attack.

10 If there is error in the police ordinance or in the adoption of the same which makes the ordinance or the adoption of the same void then the foregoing reason states a valid objection to the resolutions of appointment and the resolutions of the appointment fall with the ordinance. If however there is no error or illegality in the police ordinance or the adoption of the same then the ordinance must stand. In either event certiorari is the proper remedy to test the validity of the ordinance but only in the first case—that of error or illegality in the ordinance—it is a proper
20 remedy to reach the resolution of appointment.

We contend there is no error or illegality in the ordinance or its adoption and that therefore the resolutions of the appointment cannot be reviewed on certiorari.

The police officers are in possession of the offices created by the resolution. They have all been sworn in.

30 These resolutions cannot be reviewed on certiorari—*quo warranto* is the only remedy.

Simon v. Hoboken, 23 Vroom, 367;
Haines v. Freeholders, 18 Vroom, 454;
Henry v. Camden, 13 Vroom, 337.

For the foregoing reasons we submit that the Judgment of the Supreme Court should be sustained.

June Term, 1914.

Respectfully submitted,

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Gilbert Collins & J. EMIL WALSCHEID,
Of Counsel with Defendants.

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Notice of Appeal.

(Filed, May 6, 1914.)

New Jersey Supreme Court.

DANIEL HERRMANN, et al.,

Prosecutors,

vs.

MAYOR AND COUNCILMEN OF THE
TOWN OF GUTTENBERG and THE
TOWN OF GUTTENBERG in the
County of Hudson,

Defendants.

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Notice of
Appeal.

To J. Emil Walscheid, Esq.,
Attorney of Defendants.

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TAKE NOTICE, that the prosecutors appeal from the whole of the judgment entered in this cause on the following grounds:

1. The Supreme Court ordered judgment to be entered for the defendants.

2. The Supreme Court declared that the defendants had lawful authority to pass the ordinance in question, and to make the appointments of policemen thereunder.

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3. The Supreme Court declared that the defendants had legal authority to adopt the ordinance in question, and to make the appointments of policemen thereunder, and to pay them the salary as provided therein for the year Nineteen hundred and thirteen.

4. The Supreme Court declared that the statute of 1884 (P. L. 1884, p. 326; 4 Comp. Stat.

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5415) empowered the defendants to enact the ordinance in question, and to make the appointments of police officers thereunder, without an appropriation having been voted upon by the townsmen of the Town of Guttenberg, as provided in said statute.

5. The Supreme Court declared the statute of 1884, page 326, applicable to the Town of Guttenberg.

10 6. The Supreme Court declared the statute of 1884 above referred to, constitutional.

7. The Supreme Court declared that lawful appropriation had been made to provide for the payment of the officers appointed under the ordinance in question for their services in the year 1913.

Dated, May 6th, 1914.

Yours truly,

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WARREN DIXON,
Attorney of Prosecutors.

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Opinion of the Court.
New Jersey Supreme Court,

DANIEL HERRMANN and KILLIAN
 V. LUTZ,

against

MAYOR AND COUNCILMEN OF THE
 TOWN OF GUTTENBERG and THE
 TOWN OF GUTTENBERG in the
 County of Hudson.

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DECISION.

SWAYZE, J.

The court has come to the conclusion that the judgment in this case ought to be for the defendants, I think that the act of 1884 authorizes the Council to establish a police department; and while in order to make their action effective an appropriation by the voters was necessary under that act, the fact that there is no antecedent appropriation could not affect their right to establish the police department. The two acts must concur under the statute of 1884. It follows that they had a right to make the appointments of the policemen, and they had money enough in hand to pay them for the year 1913; that, it seems to me, prevents the court from setting aside either the ordinance or the resolution of appointment.

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Whether the Council had the right in 1913 to make an appropriation for 1914 is, I think, a more difficult question, for it seems to be probable that under the act of 1912 the words "for the current year" applied to all the appropriations, and not merely as Mr. Collins contended to the school appropriations. But I do not think it necessary now to decide that question.

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The judgment will be for the defendants.

Judgment.

(Filed, April 24, 1914.)

New Jersey Supreme Court,

DANIEL HERRMANN and KILLIAN V.
LUTZ,

vs.

TOWN OF GUTTENBERG, et al.

Rule for
Judgment.

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The above entitled cause having been brought on for argument before Mr. Justice Swayze at chambers, on five days' notice and by consent of counsel, in the presence of Warren Dixon, Esq., of counsel with the prosecutors, and J. Emil Walscheid, Esq., of counsel with the defendants, on the fourth day of April, A. D., 1914, and the evidence taken and reasons filed in the cause having been examined and considered, and the argument of counsel having been heard and considered, it is now, on this twenty-fourth day of April, A. D., Nineteen hundred and fourteen,

ORDERED that the writ of certiorari heretofore allowed in the above entitled cause be and the same hereby is dismissed.

Entered on motion of

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J. EMIL WALSCHEID,
Attorney of Defendant.

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Writ of Certiorari.

NEW JERSEY, SS:

The State of New Jersey, to the
Mayor and Councilmen of the 10
(SEAL) Town of Guttenberg, and to the
Town of Guttenberg, in the County
of Hudson, Greeting:

We being willing, for certain reasons to be certified of an ordinance entitled, "An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensations," and an amendment thereto and of all proceedings taken thereunder or in pursuance thereof made, or pretended to be made. 20

We command you that the said ordinance and amendment thereto and all proceedings taken thereunder or in connection therewith or touching and concerning the same, as they remain before you, by whatsoever name the said ordinance or proceedings may be called therein, to our Supreme Court at Trenton, on the thirtieth day of December, Nineteen hundred and thirteen, you certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of this State ought to be done. 30

WITNESS, William S. Gummere, Chief Justice,
at Trenton, this twentieth day of December, Nineteen hundred and thirteen.

Wm. C. Gebhardt,
Clerk.

WARREN DIXON,
Attorney.

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Return.

TO THE HONORABLE, THE JUSTICES OF THE SUPREME
COURT OF JUDICATURE OF THE STATE OF NEW
JERSEY.

I, Emil Nothacker, Town Clerk of the Town of
Guttenberg, in obedience to the command of the
writ hereto annexed, do hereby certify and send
to you the said Justices, the ordinance entitled:
10 "An ordinance to establish, regulate and control
a day and night police, to regulate and define the
manner of their appointment and removal, their
duties and compensation," together with the
amendments thereto and all proceedings taken
thereunder, or in connection therewith, or touch-
ing or concerning the same, as fully and entirely
as the same remains in my hands and possession,
as by the said writ I am commanded, as appears
by the schedule hereunder written.

20 In witness whereof, I have hereto set my hand
and the seal of the Town of Guttenberg in the
County of Hudson this 29th day of December,
1913.

(SEAL)

Emil Nothacker,
Clerk.

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Schedule.

An Ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation.

The Board of Council of the Town of Guttenberg in the County of Hudson does ordain as follows:

Section 1—There shall be a day and night police in the Town of Guttenberg in the County of Hudson; it shall consist of patrolmen and two officers, a captain and a sergeant. 10

Section 2—The captain, sergeant and patrolmen shall be appointed by the Board of Council of the Town of Guttenberg by resolution, and shall hold office during good behavior.

Section 3—No member of the day and night police of the Town of Guttenberg in the County of Hudson shall be removed from his office or employment in said day and night police except for just cause and then only in the manner prescribed by law, after written charge or charges of the cause or causes of complaint shall have been preferred against such officer or employe, signed by the person or persons making such charge or charges, and filed in the office of the Clerk of the Town of Guttenberg in the County of Hudson, and after said charge or charges have been publicly examined into by the Board of Council of the Town of Guttenberg in the County of Hudson, upon such reasonable notice to the person charged, and in such manner of examination as reasonable rules and regulations, for the purpose adopted by said Board of Council may provide. 20 30

Section 4—There shall be appointed annually by the Board of Council of the Town of Guttenberg in the County of Hudson, from among the 40

Schedule.

members of the Council, a committee, to be known as the "Committee on Police," consisting of not less than three members; it shall be the duty of said Committee to enforce the provisions of this Ordinance and all such rules and regulations for the government, control and discipline of the day and night police as shall be from time to time adopted by the Council. Such Committee shall

10 have power to inflict such penalties for neglect of duty, misbehavior, incompetency or inability to serve, as are authorized by this ordinance or such rules and regulations as may hereafter be laid down by the Council, provided, however, that said Committee shall not have power to reduce an officer in rank or to dismiss an officer or patrolman from the day and night police.

Section 5—The day and night police of the

20 Town of Guttenberg in the County of Hudson shall be under the direct charge, control and supervision of the Committee on Police, provided for by the preceding section, and of the Chairman of such Committee, and any orders issued by the Chairman of such Committee to the officers or members of said day and night police shall be deemed the action of said Committee of the Board of Council of the Town of Guttenberg in the

30 County of Hudson.

Section 6—Subject to rules and regulations of the Board of Council of the Town of Guttenberg in the County of Hudson and of the Committee on Police of said Board of Council, the day and night police of the Town of Guttenberg shall be under the control and direction of the Captain of Police of said Town.

Section 7—The Captain of Police shall be the chief executive officer of the department and, sub-

40 ject to the laws of the State, the provisions of this ordinance, the orders of the Council, or of the Committee on Police of said Council, he shall be

Schedule.

in absolute command of the same. He may immediately suspend from duty, without pay, any officer or patrolman acting under him until the final hearing and disposition of any charges that may be preferred against such officer or patrolman in the manner provided by this ordinance. It shall be his duty to repair to serious fires and riotous or tumultuous assemblages within the town, to take command of the police there present, to save and protect property, to arrest such persons as may be there violating the laws, disturbing the peace or inciting others to do so. He shall, under the direction of the Committee on Police, detail and assign the patrolman to duty, and may order, temporarily, any or all of the police force to any place in the Town where their service may be necessary, but he shall make no permanent detail without concurrence of the Committee on Police. He shall attend the meetings of the Committee on Police and of the Council, whenever thereunto, in writing, requested by the Chairman of the Committee on Police or the Clerk of the Town of Guttenberg. He shall communicate to the Committee on Police of the Town of Guttenberg, the presence of any infectious or contagious diseases or the presence or the evidence of any nuisance detrimental to the public health. He shall from time to time promulgate to the subordinates such orders as he may deem proper, subject to the order of the Committee on Police, and it shall be the duty of all the officers and members of the day and night police to render to him and to his orders, implicit obedience; but any important order not given by him in person must be given in writing. The Captain of the Police shall report to the Committee on Police at least once in each month, and oftener, if required, the number of arrests made and robberies reported (where no arrests have been made), and such

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Schedule.

other occurrences as may have transpired in the Town of Guttenberg in the County of Hudson, and as he considers proper subject for the examination of the Council. He shall divide the Town into day and night beats, or districts, and designate the patrolmen who are to patrol the same. He shall designate relieving points within the boundaries within each district or beat, and direct the route to be taken by patrolmen going to and from such relieving points. Such relieving points shall always be located, where the situation will admit of it, at points on the districts of beat most remote from station house. He shall, on the occasion of any election, detail at least one patrolman to each election poll to see that the laws of the State of New Jersey concerning election are properly enforced, to preserve the peace and protect the ballot boxes there used.

Section 8—The Sergeant of Police shall be the officer second in command of the department, taking orders only from the Captain of Police, the Council, or the Police Committee of said Council. He shall, in the absence or inability of the Captain, be the chief executive officer of the department, assuming in that event, all the powers and authority of the Captain, including the power to suspend. He shall, together with the Captain, and under the supervision of the Captain, have charge and control of the station house and be directly responsible to the Captain for its good order and cleanliness, and for the conduct, discipline and efficiency of the patrolmen.

Section 9—The duties of a patrolman shall be to patrol the post to which he is assigned, to act as a peace officer, to enforce all the laws of the State, all ordinances of the Town, and implicitly to obey all lawful orders issued to him by any officers of the department.

Schedule.

The Captain of the Police and the Sergeant shall perform all duties of a patrolman except that they need not patrol any specific posts in the performance of their duties.

Section 10—The salary or compensation to be paid to the members of the day and night police of the Town of Guttenberg in the County of Hudson, shall be as follows:

Captain of Police.....	\$1,100 per annum	10
Sergeant of Police.....	900 per annum	
Patrolmen	840 per annum	

Said amount shall be paid in equal semi-monthly installments.

Section 11—No person shall be eligible for appointment as an officer or patrolman in the day and night police of the Town of Guttenberg in the County of Hudson unless (1) he is able to read and write the English language, (2) he is a citizen of the United States and a resident of the Town of Guttenberg of the County of Hudson at the time and at least one year prior to his appointment, (3) has never been convicted of a crime, (4) shall be at least 5 feet 7 inches in height, (5) weigh not less than 150 pounds nor more than 199 pounds, and be not more than 36 inches about the waist, (6) be not less than 21 years nor more than 50 years of age, (7) be of good health, sound body and of good moral character.

Section 12—The officers and members of the day and night police of the Town of Guttenberg in the County of Hudson shall wear a police uniform, the details of which may be from time to time laid down, described, altered and amended by resolution of the Board of Council of the Town of Guttenberg in the County of Hudson.

Section 13—This ordinance shall go into effect immediately.

Schedule.

An Ordinance to Amend—“An ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation.” Passed and approved December 1, 1913.

10 The Board of Council of the Town of Guttenberg, in the County of Hudson, does ordain as follows:

Section 1—Section 1 of the ordinance, of which this ordinance is amendatory, be, and the same is hereby amended so as to read as follows:

There shall a day and night police in the Town of Guttenberg in the County of Hudson. It shall consist of five (5) patrolmen and two officers; a captain and a sergeant.

20 Section 2—Section 10 of the ordinance, of which this ordinance is amendatory, be, and the same is hereby amended so as to read as follows:

The salary or compensation to be paid to the members of the day and night police of the Town of Guttenberg, in the County of Hudson, shall be as follows: Captain of Police, \$1,000 per annum; Sergeant of Police, \$900 per annum; Patrolmen, \$840 per annum, which said amounts shall be paid in equal semi-monthly installments.

30 Section 3—Section 11 of the ordinance, of which this ordinance is amendatory, be, and the same is hereby amended, so as to read as follows:

No person shall be eligible for appointment as an officer or patrolman in the day and night police, in the Town of Guttenberg, in the County of Hudson, unless (1) he is able to read and write the English language; (2) he is a citizen of the United States, and a resident of the Town of Guttenberg, in the County of Hudson, at the time and
40 has been such for at least one year prior to his

Schedule.

appointment; (3) has never been convicted of a crime; (4) shall be at least five feet seven inches (5' 7") in height; (5) weigh not less than 150 pounds, nor more than 199 pounds, and be not more than thirty-six inches (36") about the waist; (6) be not less than twenty-one (21) years nor more than forty-five (45) years of age; (7) be of good health, sound body and of good moral character. 10

Section 4—This ordinance shall go into effect immediately.

EXTRACT FROM THE MINUTES of a meeting of the Board of Council of the Town of Guttenberg in the County of Hudson, held November 17th, 1913, at the TOWN HALL, at eight o'clock in the evening: 20

Present: Mayor Eypper and Councilmen Handwerk, Muller, McElwreath and Shultz.

Absent: None.

An ordinance entitled "An ordinance to establish, regulate and control a day and night police to regulate and define the manner of their appointment and removal, their duties and compensation" was introduced by Councilman Shultz and seconded by Councilman Muller and, after receiving its first reading, was upon roll call unanimously adopted. Mayor Eypper then invited anyone in the audience to address the Board of Council on this ordinance. No one desiring to do so the said ordinance entitled "An ordinance to establish, regulate and control a day and night police to regulate and define the manner of their appointment and removal, their duties and compensation" was upon motion read, and then upon motion of Councilman Muller, was upon roll call 30 40

Schedule.

unanimously adopted upon its second reading, the ordinance being spread in full upon and forming part of these minutes.

The following resolution was introduced and on roll call unanimously adopted:

- 10 "RESOLVED that the treasurer be and is hereby ordered to transfer from the license fund to the police fund \$3,000 to cover the increases in salary and the salaries for the additional police to be appointed."

EXTRACTS FROM THE MINUTES of a meeting of the Board of Council of the Town of Guttenberg in the County of Hudson, held Monday, December 1st, 1913, at the TOWN HALL, at eight o'clock in the evening:

- 20 Present: Mayor Eypper, Councilmen Shultz, Muller, McElwreath and Buesser.

Absent: None.

Upon motion the ordinance entitled "An ordinance to establish, regulate and control a day and night police to regulate and define the manner of their appointment and removal, their duties and compensation" received its third reading and was adopted upon roll call by the following vote:

- 30 Ayes: Councilmen Muller, McElwreath, Shultz, Buesser and Mayor Eypper.

Nays: None.

The said ordinance being attached to and forming part of the minutes of the meeting held on November 17th, 1913, (p. 77).

Schedule.

EXTRACT FROM THE MINUTES of a meeting of the Board of Council of the Town of Guttenberg in the County of Hudson, held Monday, December 8th, 1913, at the TOWN HALL at eight o'clock in the evening:

Present: Mayor Eypper, Councilmen Shultz, Muller, McElwreath, Buesser.

Absent: None.

10

A communication from Town Treasurer Eypper was read and upon motion approved and ordered spread in full upon the minutes:

December 8, 1913.

Hon. Mayor and members of the Council Board of the Town of Guttenberg, New Jersey.

Gentlemen:

In accordance with your resolution adopted at a recent meeting of the Board I have this day transferred from the license account, which shows a balance of over \$7,000, the sum of \$3,000 to the police account, which will be more than sufficient to take care of the additional police authorized by the ordinance recently adopted.

20

Yours truly,

(Signed) W. J. Eypper,
Town Treasurer.

Upon motion and roll call it was unanimously decided to introduce, and there was introduced, an ordinance entitled "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police to regulate and define the manner of their appointment and removal, their duties and compensation' (Passed and approved December 1st, 1913)".

30

Upon the reading of this ordinance, which is attached to and forms a part of these minutes, it was upon roll call unanimously adopted as having received its first reading.

40

Schedule.

Upon motion the ordinance entitled "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police to regulate and define the manner of their appointment and removal, their duties and compensation' (Passed and approved December 1st, 1913)" was read and upon roll call was unanimously adopted as having received its second reading, and is attached to and forms part of these minutes.

EXTRACT FROM THE MINUTES of a meeting of the Board of Council of the Town of Guttenberg in the County of Hudson, held Monday, December 15th, 1913, at the TOWN HALL, at eight o'clock in the evening:

Present: Mayor Eypper, Councilmen Shultz, Muller, McElwreath, Buesser.

Absent: None.

Upon motion of Councilman Shultz an ordinance entitled "An ordinance to amend 'An ordinance to establish, regulate and control a day and night police force to regulate and define the manner of their appointment and removal, their duties and compensation' (Passed and approved December 1st, 1913)" was read and upon roll call was unanimously adopted upon its third reading, the Clerk and Mayor being authorized to sign same and advertise on December 16th, 17th and 18th, 1913, said ordinance having received its first and second reading on December 8th, 1913.

Schedule.

EXTRACT FROM THE MINUTES of a meeting of the Board of Council of the Town of Guttenberg of the Town of Guttenberg in the County of Hudson held December 19th, 1913, at the TOWN HALL at eight o'clock in the evening.

Present: Mayor Eypper and Councilmen Muller, McElwreath, Buesser and Shultz.

Absent: None.

10

The following resolutions were introduced by Councilman Muller and seconded by Councilman Shultz:

RESOLVED that John Handwerk be and he hereby is appointed Captain of the day and night police of the Town of Guttenberg in the County of Hudson.

RESOLVED that John Buckley be and he hereby is appointed Sergeant of the day and night police of the Town of Guttenberg in the County of Hudson.

20

RESOLVED that Peter Handwerk be and he hereby is appointed Patrolman of the day and night police of the Town of Guttenberg, in the County of Hudson.

RESOLVED that Christopher Bardt be and he hereby is appointed Patrolman of the day and night police of the Town of Guttenberg in the County of Hudson.

30

RESOLVED that William Tallmann be and he hereby is appointed Patrolman of the day and night police of the Town of Guttenberg in the County of Hudson.

RESOLVED that Stephen Bostwick be and he hereby is appointed Patrolman of the day and night police of the Town of Guttenberg in the County of Hudson.

RESOLVED that George Bell be and he hereby is

40

Schedule.

appointed Patrolman of the day and night police of the Town of Guttenberg in the County of Hudson.

And upon separate roll call each of the foregoing resolutions was adopted by the following vote:

Ayes: Mayor Eypper, Councilmen Muller,
10 Buesser, McElwreath and Shultz.

Nays: None.

The following oaths of office were then received and ordered filed:

STATE OF NEW JERSEY }
County of Hudson } ss.:

20 I, John Handwerk, do solemnly promise and swear that I will faithfully, impartially and justly perform all the duties of the Captain of the day and night police of the Town of Guttenberg in the County of Hudson and State of New Jersey to the best of my abilities and understanding.

(Signed) JOHN HANDWERK.

Sworn and subscribed to }
before me this 19th day of }
30 December, 1913. }
(Signed) HENRY SPITZ,
Justice of the Peace.

STATE OF NEW JERSEY }
County of Hudson } ss.:

40 I, John Buckley, do solemnly promise and swear that I will faithfully, impartially and justly perform all the duties of the Sergeant of the day and night police of the Town of Guttenberg in

Schedule.

the County of Hudson and State of New Jersey
to the best of my abilities and understanding.

(Signed) JOHN BUCKLEY.

Sworn and subscribed to }
before me this 19th day of }
December, 1913. }

(Signed) HENRY SPITZ,
Justice of the Peace.

10

STATE OF NEW JERSEY }
County of Hudson } ss.:

I, Peter Handwerk, do solemnly promise and
swear that I will faithfully, impartially and justly
perform all the duties of the Patrolman of the
day and night police of the Town of Guttenberg
in the County of Hudson and State of New Jersey
to the best of my abilities and understanding.

20

(Signed) PETER HANDWERK.

Sworn and subscribed to }
before me this 19th day of }
December, 1913. }

(Signed) HENRY SPITZ,
Justice of the Peace.

STATE OF NEW JERSEY }
County of Hudson } ss.:

30

I, Christopher Bardt, do solemnly promise and
swear that I will faithfully, impartially and justly
perform all the duties of the Patrolman of the
day and night police of the Town of Guttenberg
in the County of Hudson and State of New Jersey
to the best of my abilities and understanding.

(Signed) CHRISTOPHER BARDT.

Sworn and subscribed to }
before me this 19th day of }
December, 1913. }

40

(Signed) HENRY SPITZ,
Justice of the Peace.

Schedule.

STATE OF NEW JERSEY }
 County of Hudson }^{ss.:}

I, William Tallmann, do solemnly promise and swear that I will faithfully, impartially and justly perform all the duties of the Patrolman of the day and night police of the Town of Guttenberg in the County of Hudson and State of New Jersey
10 to the best of my abilities and understanding.

(Signed) WILLIAM TALLMANN.

Sworn and subscribed to }
 before me this 19th day of }
 December, 1913. }

(Signed) HENRY SPITZ,
 Justice of the Peace.

20 STATE OF NEW JERSEY }
 County of Hudson }^{ss.:}

I, Stephen Bostwick, do solemnly promise and swear that I will faithfully, impartially and justly perform all the duties of the Patrolman of the day and night police of the Town of Guttenberg in the County of Hudson and State of New Jersey to the best of my abilities and understanding.

(Signed) STEPHEN BOSTWICK.

30 Sworn and subscribed to }
 before me this 19th day of }
 December, 1913. }

(Signed) HENRY SPITZ,
 Justice of the Peace.

STATE OF NEW JERSEY }
 County of Hudson }^{ss.:}

I, George Bell, do solemnly promise and swear
40 that I will faithfully, impartially and justly perform all the duties of the Patrolman of the day

and night police of the Town of Guttenberg, in the County of Hudson and State of New Jersey to the best of my abilities and understanding.

(Signed) George Bell.

Sworn and subscribed to }
before me this 19th day of }
December, 1913. }

(Signed) HENRY SPITZ,
Justice of the Peace.

10

Reasons.

(Filed January 7, 1914.)

New Jersey Supreme Court,

DANIEL HERRMANN, et al.,

Prosecutors,

vs.

MAYOR AND COUNCILMEN OF THE
TOWN OF GUTTENBERG, AND THE
TOWN OF GUTTENBERG IN THE
COUNTY OF HUDSON,

Respondents.

On Certiorari
Reasons.

20

The prosecutors present the following reasons for setting aside the ordinance and proceedings brought before this honorable Court by the writ of certiorari in the above entitled cause.

30

FIRST.—That the said Mayor and Councilmen had no statutory nor other lawful authority to enact said ordinance and amendment.

SECOND.—That no appropriation has been made for the maintenance of said police department

40

Testimony
New Jersey Supreme Court,

DANIEL HERRMANN and KILLIAN
 V. LUTZ,

Prosecutors,

vs.

MAYOR AND COUNCIL OF THE TOWN
 OF GUTTENBERG, and THE TOWN
 OF GUTTENBERG,

Defendants.

On Certiorari
 Depositions. 10

Depositions of witnesses on the part of the prosecutor in the above-entitled case, taken before me, George W. Black, one of the Examiners of this Court, at his office, No. 47 Montgomery Street, Jersey City, New Jersey, this ninth day of February, 1914, at the hour of ten o'clock in the forenoon, pursuant to notice hereto annexed. 20

A P P E A R A N C E S :

WARREN DIXON, ESQ., Attorney of Prosecutor,
 J. EMIL WALSCHEID, ESQ., Attorney of Defendants.

It is stipulated and agreed by counsel that the depositions taken under this notice shall be taken stenographically and reduced to typewriting, and that the signatures of the witnesses to their respective depositions shall be dispensed with. 30

Daniel Herrmann—Direct, Cross.

DANIEL HERRMANN, a witness produced on the part of the Prosecutors, being first duly sworn according to law, upon his oath deposes and says:

DIRECT EXAMINATION BY MR. DIXON:

Q. Mayor, you reside in the Town of Guttenberg? A. Yes, sir.

10 Q. And have been such a resident how long?
A. Well, all my life.

Q. How long is that? A. 36 years.

Q. You are at present Mayor of the Town?
A. Yes, sir.

Q. And entered office on the first day of January of this year? A. Yes, sir.

Q. Were you elected by the people at the November election? A. Yes, sir.

Q. 1913? A. 1913.

20 Q. Do you know whether or not, in the Town of Guttenberg, in the year 1913, there was any Town election held for the purpose of submitting to the voters of the Town the question of an appropriation for the maintenance of the Police Department of the Town? A. I do.

Q. Was there such an election? A. No.

Q. Do you know Killian V. Lutz, one of the Prosecutors of this writ? A. I do; yes, sir.

30 Q. Is he a taxpayer of that Town? A. Yes.

Q. Do you know how long he has lived in that Town? A. I couldn't tell you exactly how long.

Q. How long have you known of him living in that Town? A. I have known him to live in that Town over 15 years.

CROSS EXAMINATION BY MR. WALSCHEID:

Q. Do you own real estate in Guttenberg? A. I am—

40 Q. Do you own real estate in Guttenberg, yes or no? A. No.

Daniel Herrmann—Re-Direct.

Q. Are you personally a taxpayer of the Town of Guttenberg? A. Personally?

Q. Yes. A. No.

Q. You say there was no Town election held? A. Well, I don't know what you mean by that, Counsellor.

Q. You said there was no Town election held. What do you mean by that?

10

MR. DIXON: No, he didn't say that.

Q. Well, what did you say? A. I said there was no election held for the adoption of the maintenance of a Police Department.

Q. You say there was no election held for the adoption or maintenance of a Police Department? A. Yes.

Q. And that was what you meant when you answered Mr. Dixon's question? A. Yes.

20

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. Well, you said more than that.

MR. WALSCHEID: Oh, I object to that.

Q. Was there any election held, at which the question was presented to the voters, as to fixing any appropriation for the maintenance of the Police Department was the question that I asked you? A. No.

30

Q. No election held upon that question whatsoever? A. No election whatsoever.

Q. You say you are the owner of no property or that you are no taxpayer; what do you mean by that?

MR. WALSCHEID: I object to that; his answer was very plain.

A. Well, I am a taxpayer, that is, I am interested in the F. W. Herrmann Company and the F. W. Herrmann Real Estate Company.

40

Daniel Herrmann—Re-Cross.

Q. Are they large property owners? A. Yes, sir. I am President of one company and secretary of the other.

Q. Owner of stock in both? A. Yes, sir, and real estate.

Q. So that in that way you are a taxpayer? A. Yes, sir; in that way.

10 Q. You meant that you do not individually own any title to real estate in your own individual name? A. Yes, sir.

RE-CROSS EXAMINATION BY MR. WALSCHEID:

Q. How long have you voted in the Town of Guttenberg? A. Well, since I was 21 years old.

Q. Were there any appropriations whatever voted for at the last election? A. None whatever.

20 Q. When should appropriations be voted for, according to your opinion? A. At the regular elections.

Q. What regular elections? A. Regular elections of the Town.

Q. When are those held? A. On the same day as the general elections are held.

Q. That is in the Fall? A. Yes, sir.

30 Q. Then, according to your opinion, the Fall election of each year should provide a means for the voting of appropriations, is that right? A. Well, that is the only election we have, and we should have that right, yes.

Q. No appropriations then were voted for at the last year's election? A. Not that I know of, there were none.

Q. Were any appropriations voted for at the election of 1912? A. I don't think so.

Q. Well, as a matter of fact, they were not, were they? A. No.

40 Q. Were any appropriations voted for at the

Daniel Herrmann—Re-Cross.

election of 1911? A. I don't think there were then, either.

Q. Were any appropriations voted for at the election of 1910? A. You are going pretty far back there now.

Q. Well, there weren't any, were there? A. I don't think there were.

Q. So far as you can remember, no appropriations had been voted for in the Town of Guttenberg, have they? A. Yes; I have voted for appropriations. 10

Q. How long ago was that? A. Oh, well, that would be maybe ten years ago.

Q. But during the last ten years, however, you have not had an opportunity of voting for appropriations in the Town of Guttenberg? A. It may be less than ten years, if I can think it over.

Q. Well, give us the exact date. A. It was less than ten years; I can swear it was less than ten years. 20

Q. Well, how long is it since appropriations had been voted for at the elections in the Town of Guttenberg? A. Well, I would say I believe in about seven years.

Q. Seven years ago? A. I think so.

Q. During the last seven years no appropriations have been voted for in the Town of Guttenberg? A. No, I don't think they have; I won't be positive about it. 30

Q. You mean you wouldn't be positive as to whether it was seven, six or five years ago? A. That is what I mean.

Q. But you know in the last five years no appropriations have been voted for in the Town? A. Yes, sir.

Q. And moneys have been raised without the vote of the people? A. Yes. 40

Killian V. Lutz—Direct.

KILLIAN V. LUTZ, a witness produced on behalf of the Prosecutors, after being first duly sworn according to law, on his oath deposes and says:

DIRECT EXAMINATION BY MR. DIXON:

Q. Mr. Lutz, you are a resident and a taxpayer of the Town of Guttenberg? A. Yes, sir.

10 Q. How long have you been such resident? A. I have been a resident of the Town for 25 years.

Q. You own considerable property in the Town of Guttenberg? A. Yes, sir.

Q. And were you an official of the Town at any time? A. Yes, sir; for ten years.

Q. From what year to what year? A. From 1889 to 1908.

20 Q. Holding what official position? A. Councilman of the Town of Guttenberg and Chairman of the Board of Council.

Q. That is the same office that is now represented by the Mayor? A. By the Mayor, yes.

Q. But you were Chairman of the Board of Council? A. Yes, sir.

Q. And you were succeeded by whom? A. I was elected by the people and seated in the Board of Council by a majority vote as Chairman.

30 Q. Who succeeded you in that position? A. Mayor Charles A. Eypper.

Q. When was he first elected? A. In 1908.

Q. How long did he continue to be Mayor? A. Up to January 1st of last year, 1913.

Q. In the year 1913 was there any Town election held in the Town of Guttenberg? A. A general election, in the Fall.

Q. During Mayor Eypper's term there have been no elections held to fix appointments? A. Yes, sir; there was.

40 Q. During his first term? A. Yes, sir; positively.

Killian V. Lutz—Direct.

MR. WALSCHEID: It is admitted by the Respondents that during the year 1913 the qualified voters in the Town of Guttenberg, in the County of Hudson, did not, by vote, raise at any election, any sum or sums of money for Town purposes, or for any other purposes enumerated in Section 6 of the Act, entitled "An Act concerning incorporated towns in this State and certain officers thereof" (P. L. 1884, p. 326; C. S. p. 5415, s. 6, at p. 5418). 10

It is further admitted, that in the year 1913 the Board of Council of the Town of Guttenberg, in order to raise the moneys necessary for Town purposes, passed and adopted an ordinance, of which the following is a true copy:

TOWN OF GUTTENBERG, HUDSON COUNTY, 20
N. J.

AN ORDINANCE.

AN ORDINANCE regulating the finances of of the Town of Guttenberg and fixing and appropriating the amounts of money to be expended for town purposes in the Town of Guttenberg, in the County of Hudson, in and during the fiscal year commencing January first, one thousand nine hundred and fourteen and ending December 31st, one thousand nine hundred and fourteen, and providing for raising part of the same by taxation. 30

The Board of Council of the Town of Guttenberg, in the County of Hudson ordains as follows:

Section 1. There is hereby appropriated for the several purposes hereinafter 40

Killian V. Lutz—Direct.

in this section mentioned, for the fiscal year commencing January first, one thousand nine hundred and fourteen, and ending December 31st, one thousand nine hundred and fourteen, the several sums of money hereinafter set forth, to wit:

	Redemption of school bonds....	\$2,000.00
	Interest on school bonds.....	2,300.00
10	Special school purposes.....	6,200.00
	For the general and incidental expenses of the town the sum of	5,500.00
	For the care, maintenance, cleaning and repairing of roads and sewers, the sum of.....	600.00
	For the maintenance of the fire department	500.00
	For the maintenance of the police department.....	2,900.00
20	For the relief of the poor.....	300.00
	For interest on Town Bonds....	17,700.00
	For fire house bonds.....	1,000.00
	For interest on fire house bonds	500.00
	For interest on improvement certificates	1,800.00

Amounting in the aggregate to the sum of\$41,300.00

Which last mentioned sum is hereby fixed and determined as the limit, except as hereinafter provided for the expenditures to be made for the several above enumerated town purposes, in and during the said fiscal year, and no expenditures shall be made or debt incurred in said fiscal year, in excess of said sum of \$41,300.00, except as hereinafter authorized.

Section II. The Town Council may, at any time, by the vote of a majority of the members thereof, transfer moneys appropriated to or for any one or more purposes, however, that no transfer shall be made of

Killian V. Lutz—Direct.

any moneys appropriated for the sinking fund, or for the payment or principal or interest on the bond debt of the town, or for school purposes.

Section III. The balance of the money in the hands of the town treasurer at the close of the last fiscal year, including arrears of taxes collected amounting in the aggregate to the sum of 10 Dollars of franchise taxes received during the fiscal year, all fees for license, and all other fees received, are hereby applied to the several town purposes, as hereinafter set forth, for and in reduction of the amount necessary to be received for taxation for said purposes.

Section IV. The assessor or assessors of the Town of Guttenberg is or are hereby directed to levy and assess in the manner described by law upon the taxable property, within the limits of the town, to wit: 20

Redemption of school bonds.....	\$2,000.00	
Interest on school bonds.....	2,300.00	
Special School purposes.....	6,200.00	
For the general and incidental expenses of the town, the sum of..	5,500.00	
For the care, maintenance, cleaning and repairing of roads and sewers, the sum of.....	600.00	30
For the maintenance of the fire department	500.00	
For the maintenance of the police department	2,900.00	
For the relief of the poor.....	300.00	
For interest on Town Bonds:.....	17,700.00	
For fire house bonds.....	1,000.00	
For interest on fire house bonds..	500.00	
For interest on improvement certificates	1,800.00	40

Amounting in the aggregate to the sum of.....\$41,300.00

Killian V. Lutz—Direct.

10 Section V. All moneys and revenues received during the said fiscal year, by the town or for its use, other than moneys raised by local taxation may be added and expended by the Town Council for any and all purposes enumerated in the first section of this ordinance, in addition to the sum specified in said section, and in addition to the limit of expenditures mentioned in said section, or in the discretion of the Town Council, may be used for any other lawful town purpose whatsoever.

20 Section VI. The town clerk is hereby directed to transmit a certified copy of this ordinance to the Hudson County Board of Taxation, before the 18th day of August next.

Adopted at a regular meeting of the Council Board. Adopted July 21, 1913.

30 It is also admitted that a copy of this ordinance was certified before the third Tuesday of August, 1913, by the Clerk of the Town of Guttenberg to the assessor of said Town as the annual taxing ordinance or resolution or other evidence showing the amount to be raised by taxation for the purpose of said taxing district, and that this procedure for the raising of money for town purposes has been in force for the last four years.

MR. DIXON: This admission of the fact with regard to the adoption of the ordinance above mentioned is made subject to the objection of the Prosecutors that the evidence is immaterial.

Killian V. Lutz—Direct.
Daniel Herrmann—Direct, Cross.

KILLIAN V. LUTZ, Recalled:

DIRECT EXAMINATION BY MR. DIXON:

Q. Mr. Lutz, in your opinion is a police force such as is contemplated by this ordinance necessary or desirable for the Town of Gutenberg?

MR. WALSCHEID: I object to that as immaterial, it being a topic that is regulated by statute, the policy as to the number of policemen being laid out by statute. 10

A. No, sir.

DANIEL HERRMANN, recalled.

DIRECT EXAMINATION BY MR. DIXON:

20

Q. Mayor, in your opinion is a police force such as is contemplated by this ordinance under review either necessary or desirable in the Town of Guttenberg?

MR. WALSCHEID: I object to that as immaterial, it being a topic that is regulated by statute, the policy as to the number of policemen being laid out by statute.

30

A. No, sir.

CROSS EXAMINATION BY MR. WALSCHEID:

Q. Then do I understand you to say that you would not vote during your term of office for such a police force? A. Not the kind that is contemplated in this ordinance.

Q. What kind is contemplated in this ordinance? A. Why, it is an ordinance to establish a day and night police and to allow, that is, to have these officers come under the tenure of office 40

Daniel Herrmann—Cross.

act; I don't think that the Town is in a position to stand that expense at this time.

Q. What expense? A. Of putting the police under an act of this kind.

Q. How much did the police force under the old system cost the Town of Guttenberg during the last year? A. Well, I never figured that up.

10 Q. How much will it cost under the new system during the next year? A. It will cost considerably more.

Q. How much will it cost; you never figured it up, did you? A. Yes.

Q. How much will it cost? A. Between six and seven thousand dollars.

Q. For salaries? A. Yes.

Q. Then you never figured it up, did you? A. Yes, I did; there was \$1100. for the captain.

20 Q. It isn't \$1100. for the captain, you know it, don't you? A. Well, the ordinance originally called for that.

Q. The ordinance that you certioraried does not call for \$1100. for the captain. A. The original ordinance.

Q. The ordinance that you certioraried, do you know what it calls for? A. Well, then \$1000.

30 Q. How much the salaries amounted to you haven't figured up, have you? A. Yes, I have, but I haven't kept them in my mind.

Q. You say it is an increase over the cost of the old force? A. Yes, sir.

Q. How much of an increase? A. Well, I would have to figure that up.

Q. You never figured it up, did you? A. Not figured up the increase; I haven't figured it up exactly.

40 Q. How do you know what the increase would be if you don't know what the old force cost? A. I figured the salaries on this last bill.

Daniel Herrmann—Cross.

Q. How much did the old force cost? A. I don't know what the old force spent.

Q. Then you don't know whether that is an increase of money or not? A. Well, no, not to swear properly.

Q. That is so, isn't it? Then your objection is not at all caused by the increase in expense, is it? You don't know anything about the increase in expense, so your objection does not go to the increase of expense, does it? A. Well, it is an increase of expense, that is, these officers are increased, the wages for the officers. 10

Q. How do you know; you don't know the old wages? A. Well, I do know the old wages.

Q. How much are the old wages? A. This one, the 20th of December to the 1st of January, I say where the warrant is for \$32.50.

Q. On this one warrant? A. Yes, without the 20 officers.

Q. You don't know anything about the officers, do you? A. I presume they are all alike.

Q. You don't know how many officers are being paid and were being paid during the last year? A. That I don't know; I don't think I remember.

Q. You don't know how much money was drawn out by these so-called police officers out of the treasury of the Town of Guttenberg last year? A. No, I do not. 30

Q. Then, of course, you could not make a comparison as to expenses, couldn't you? A. I could make a comparison of the expenses of what we used to call regular officers at this rate of wages the former Board paid between the 22d of December and the 1st of January.

Q. Based on this one warrant? A. Based on this one warrant.

Q. You didn't have that information when you 40

Daniel Herrmann—Cross.

applied for your writ of certiorari, did you? A. No, I did not.

Q. So that when you applied for your writ of certiorari you had no information as to the expense sheet of the old Board? A. Not to the expense of the old board, no.

10 Q. Then that wasn't your objection to this force, was it, when you applied for the writ of certiorari? A. When I applied for the writ of certiorari?

Q. Yes. A. I thought that the salary of \$1000 was more than what these people were getting.

Q. You thought that the salary of one superior officer was more than what the other people were getting? A. The other two, yes.

20 Q. Then, in your opinion, you think the Town of Guttenberg ought to have a police force without a superior officer? A. In my opinion we have no right to have any police force, according to the charter of the Town.

Q. In your opinion did you believe that the Town of Guttenberg ought to have a police force without a superior officer or without superior officers? A. Well, I should think they ought to have a head.

30 Q. You think they ought to have a head? A. Yes.

Q. And you certainly believe you ought to pay that head a little more money, don't you? A. Not in the Town of Guttenberg.

Q. Why not? A. Why, we don't have any salaries, that is, we Councilmen got to serve without any salary.

40 Q. What has that got to do with the question of paying a man who is devoting all his time, a proper salary? A. He should have a proper salary, that is right.

Daniel Herrmann—Cross.

Q. So that you are satisfied that there should be a head of police in Guttenberg? A. It should have a head but it would not be necessary to have an officer, we could have a commission or committee from the Board to do that service.

Q. You wouldn't expect a committee from the Board? A. Yes.

Q. You wouldn't expect a committee from the Board to chase up policemen and patrol the streets, would you? A. That isn't the duty of the captain. 10

Q. Isn't the duty of the captain to take charge of the officers and see that they do their duty in the Town? A. I suppose it is to detail the police and to see that the officers are doing their duty.

Q. Don't you approve of such methods of regulation? A. Why, sure I approve of people seeing that they do their duty. 20

Q. You wouldn't expect a Committee of the Council to give up their time without pay to run around the streets and watch policemen, would you? A. Well, no not exactly to run around the streets.

Q. Then that wasn't your objection to this ordinance. What was your objection to this ordinance? A. I objected to it because we had no right, no appropriation voted for by the people. 30

Q. Well now, suppose you had the money actually in the treasury with which to pay for these policemen, what does the question of voting the money by the people have to do with it then? A. The people should have the say in how this money should be raised and spent.

Q. Did anybody stop them from having a say? A. They weren't asked.

Q. Is there anything in law that provides that they should be asked? 40

Daniel Herrmann—Cross.

MR. DIXON: I object to that.

A. I am not a lawyer to tell you that.

Q. Then why do you say that they should be asked? A. I believe they should be asked.

Q. Well, they didn't vote on anything, did they? A. No.

Q. And the money was in the treasury with
10 which to pay for these police officers, you know that, don't you? A. I don't know whether it was or not.

Q. Did you know before you applied for your writ? A. No.

Q. So that you didn't know anything about that, did you? A. About the money?

Q. Yes. A. I don't think there is any money there to pay for it.

Q. Mayor, wasn't your real objection to the ap-
20 pointment of these police officers the fact that it was being done at a time when you could not vote for it, and without your having anything to say in the matter? A. No.

Q. You swear to that? A. Yes, I do.

Q. That didn't move you at all? A. Not at all.

Q. You also say that if this ordinance is now repealed you in turn will not adopt, during your
30 term of office, another ordinance providing for a police force under tenure of office, is that right?

A. I will not, without I have the necessary sanction from the people; if the people will vote that they want this force, if they will vote to that effect, I will bring that subject up.

Q. Under what law can you submit to the people the question or whether or not they shall have a police force? A. I don't know.

Q. Don't you know there is no provision for
40 submitting that question to the voters, and don't you know that as a member of the Board of

Daniel Herrmann—Re-Direct.

Council you are in duty bound to exercise your judgment in that matter? A. I know that.

Q. Then why shouldn't you exercise that judgment? A. I think the people are supreme and they should exercise that power; we are only servants of those people.

Q. You have been elected their servants and they give you certain powers, and don't you know that one of those powers is to decide whether or not there should be a police force? A. I don't think we have that right. 10

Q. Then you don't know just what powers you have, as Chairman of the Board and as Mayor?

MR. DIXON: I object to that as argumentative.

A. In this case I don't know.

Q. I ask you again, now to state to me just what objections you have to a regular day and night police force in the Town of Guttenberg? 20

A. Well, I have already answered that, I think that the people of the Town have not been called to vote upon that subject.

Q. On what subject? A. On the subject of raising the money to create this here police force.

Q. Then that is your only objection? A. That is the only objection I have.

Q. You believe the police force is necessary, then? A. I believe the force is necessary, certainly. 30

Q. And you believe further that a well-organized police force requires superior officers? A. Yes.

RE-DIRECT EXAMINATION BY MR. DIXON:

Q. Isn't it a fact that a large part of the police duty could be done and has been done by men appointed as subordinate officers without pay? A. 40

Daniel Herrmann—Re-Cross.

Yes, it has always been that way before the past administration of Mayor Eypper's.

Q. Under that administration, the last administration of Mayor Eypper, neither you as a citizen nor any other citizen of the Town were kept informed of what money was being paid to policemen or for police duties, were you? A. No.

10 RE-CROSS EXAMINATION BY MR. WALSCHEID:

Q. How do you know that it has always been done without pay? A. Why, I know a lot of these special officers are subordinate officers and had shields and badges from the Town; they were special officers without pay.

Q. You know that they were paid whenever they did work? A. They must have been paid when they done work, yes. If they made an arrest

20 I presume they were paid.

Q. You presume when the made an arrest they were paid for that particular arrest? A. I presume they were.

Q. But they weren't under particular duty, they could leave the Town when they pleased and come back when they pleased, isn't that right?

A. That is right.

BY MR. DIXON:

30 Q. Mr. Walscheid says that the Mayor is not the Chief of Police, don't you know that the Mayor has always acted as Chief of Police? A. Yes; Mayor Eypper acted as Chief of Police.

The further hearing in the above-entitled matter was thereupon adjourned to Tuesday, February 10th, 1914, at ten o'clock in the forenoon.

Paul D. Chase—Direct.

PAUL D. CHASE, sworn on behalf of the Respondents, testified as follows:

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Chase, where do you live? A. Brooklyn.

Q. And your address in Brooklyn? A. 39 Remsen street.

Q. What is your business or profession? A. **10**
Public Accountant.

Q. And where do you practice your profession?
A. In New York, 45 Nassau street, with the firm of Townsend & Dix.

Q. Did the firm of Townsend & Dix do any work for the town of Guttenberg in the line of examination of books of accounts for the year 1913? A. Yes.

Q. And you make any such examination personally? A. Yes. **20**

Q. Did you, in the latter part of December, 1913, make an examination of the books of account of the Town of Guttenberg for any particular purpose? A. Yes.

Q. And for what particular purpose did you then make the examination? A. To ascertain the condition of the Police Fund as of the 31st of December, 1913.

Q. In other words, to ascertain what funds **30**
would be available for police purposes? A. Yes.

Q. As of that date, and for what period of time? A. I don't quite understand the question.

Q. Available for what period of time after that date? A. For the ensuing year.

Q. For the ensuing fiscal year? A. Yes, sir.

Q. Which you compare from what time to what time? A. The calendar year, from the first of January.

Q. As a result of that examination can you tell **40**

Paul D. Chase—Direct.

us how much was on hand as of January 1st, 1913, in this so-called Police Fund? A. Yes.

Q. How much was there?

MR. DIXON: I object to that as being immaterial.

A. \$4,398.16.

10 Q. And can you tell us, from your examination, from what sources this money was derived? A. Yes, sir.

Q. From what sources?

MR. DIXON: My objection reaches all of this testimony.

MR. WALSCHEID: As immaterial?

MR. DIXON: Yes.

20 A. The sources of that amount were the tax levies from 1908 to 1912 inclusive, minus the balance overdrawn, brought forward from the prior administration; also minus, of course, the expenses for the period, resulting in this balance at this time. That is the only way I can state it. You don't want me to go into all the details?

Q. No. So that in finding this sum of \$4,398.16 you go back five years? A. I go back to the first of January, 1908.

30 Q. And there you find in the Police Fund an over-drawal? A. An overdraw balance of \$201.90

Q. (BY MR. DIXON). By that you mean a deficiency? A. Yes.

Q. And then, according to the books, what were the levies provided for in the subsequent years? A. Do you want me to detail them?

Q. Yes. A. In 1908, \$2,091.71; 1909, \$2,086.82; 1910, \$2,049.78; 1911, \$2,043.92 and 1912, \$2,674.87.

40 Q. These levies, according to the bookso, and according to your examination, were levies specifically made for police purposes? A. Yes

Paul D. Chase—Direct.

Q. (BY MR. DIXON) :Now, is that a fact? A. Yes, it was a regular levy. The Town books would show it if you want to go back and verify it. It was a proportion of the tax levy that was specifically set aside.

Q. Where do you get that from? A. From the books.

Q. You say "set aside"; who set it aside? A. The Town, confirmed by the Board of Assessors; it was a regular tax levy. 10

Q. Did you credit any other sums into this so-called Police Fund? A. Yes.

Q. What other sums? A. I can't give you the details from my present papers here, but they amounted to \$3,345.80. These are the result of the fines and other miscellaneous sources of receipts which, during those four or five years, had been received and credited to the Police Fund. A greater part of them, as I remember it, were fines levied by the Recorder, etc. 20

Q. And are there any other credits? A. Those are the only credits.

Q. And that gives a total fund, for the period of from 1908 to and including 1912, of how much? A. It gives me total credits of \$1,429.90.

Q. That does not take into consideration, does it, the amount appropriated or fixed by the Town for police purposes for the year 1913? A. I wouldn't want to swear to that without going back and looking at the record. 30

Q. Then what you have down as the figures for 1912 are the figures which compose the tax levy for 1913? A. Probably. I should want to verify that before I actually swore to it. I am referring to the tax levies of 1908, 1909, 1910, 1911 and 1912.

Q. Those are the levies you have spoken about and are the levies which were made in those years? A. Yes. 40

Paul D. Chase—Direct.

Q. To be made in December of that year? A. Yes.

Q. And to be used in the next subsequent year?
A. I think that is right. You will notice that the record shows that I have got the five years in.

10 Q. Now, what were the disbursements against these total credits for the same period of time as is covered by the credits? A. First, \$9,690.01 for ordinary expenses; second, the technical expense of \$201.90, being the debit balance brought over by the prior administration; and, third, the item of \$2.82, representing the Police Fund share of said remitted taxes. We find, of course, that certain taxes had been remitted and we had to charge back the distributive share that the Police Fund had in the original taxes, and those figures will give you the balance which I spoke of.

20 Q. That gives a total expenditure against credits of how much? A. \$9,894.74.

Q. Leaving a balance as of January 1st, 1913, of how much? A. \$4,398.16.

Q. As of what date? A. As of December 31st, 1913, or January 1st, 1914.

Q. Now, does that include the appropriation for police purposes, levied in the year 1913 for use in the year 1914? A. It does not.

30 Q. And from your examination of the books and records what does that amount to? A. That amounts to \$2,900. In addition there was also received during the year 1913, up to the 29th of December, for fines and so forth \$278.60, which is in addition to the amount I have already spoken of.

Q. And in addition to that do you find upon the books the transfer of any moneys into the Police Fund? A. I did.

40 Q. What did you find? A. I found from the minutes a duly authorized transfer from the

Paul D. Chase—Direct.

Saloon License Fund to the Police Fund of \$3,000, taken December 8, 1913.

Q. And you found such an actual transfer upon the Treasurer's books? A. I did.

Q. That brought us down to what date? A. So far as the credits are concerned, down to the first of January, 1914.

Q. Will you tell us, then, what the total credits in favor of this Police Fund were as of January 1, 1914? A. Before I do that I must tell you about the expenses for 1913. **10**

Q. I want the gross credits as appears upon the records. A. I answer that the total amount available—

Q. Are you giving me the gross credits now or the net? A. I was going to give you the net.

Q. Give me the gross credits first for the year 1914? A. I can't give them to you in that shape. I haven't deducted the expenses for 1913 yet. **20**

Q. I want to show upon the record just how you arrive at them; in other words, I want to make that subtraction upon the record, and then I want the gross credits without the charges against them for the year 1913, and then I want you to put the charges against them and give me the net result. A. Oh, I see. The ledger shows that on December 31, 1913, there was a gross credit of \$10,576.76, and that the actual expenses of the Police Department for the year 1913, as shown by the books, were \$2,780.29, which, deducted from the ledger credit before spoken of, shows a credit balance to the Police Fund, as of the first of January, 1914, available for use, of \$7,796.47. **30**

Q. And is that the sum which you say is available for Police purposes during the calendar year of 1914? A. It is. **40**

Paul D. Chase—Cross.

CROSS EXAMINATION BY MR. DIXON:

Q. You made these examinations and calculations yourself, did you? A. I did.

Q. For the firm of Townsend & Dix? A. Yes.

Q. Is that the firm that made the investigation of the general accounts of the Town of Guttenberg in 1913? A. Yes.

10 Q. And made it at the solicitation of Mayor Eypner to the Grand Jury of Hudson County, if you know? A. I know we were originally employed by the Grand Jury and subsequently by the Town of Guttenberg as well.

Q. And did you have to do with the actual examination made at that time? A. Yes.

Q. And you are familiar with that report? A. Why, is this a copy of our report (witness referring to paper)?

20 Q. That is a copy, errors and omissions excepted. A. Then I am familiar with it. If it is a correct printed copy of our report I do not know about it.

Q. Did you examine the so-called Police Fund at that time? A. Yes.

Q. And make a report upon it? A. I don't remember that I made a special report as to what the balance stated in the balance-sheet would
30 finally show.

Q. You have made these calculations from the year 1908? A. Yes.

Q. In making those calculations it was, of course, necessary for you to ascertain the amount expended in each year for the maintenance of the Police Department, was it not? A. Yes.

Q. Will you state what was expended in each year for that? A. I haven't the figures for that in each year; I gave you the total.

40 Q. Where did you get the total from if you

Paul D. Chase—Cross.

haven't the years? A. I got it from the books of the Town, and my working papers here do not contain the details of the expenditures, but the amounts given were taken from the ledger of the Town of Guttenberg.

Q. Well, can you furnish us with that detail?

A. I could.

Q. Will you send a statement of that as soon as possible? A. Yes. 10

Q. I would like to have in detail the expenses of the Police Department in each of those years. Now, you credit this fund with a certain amount that you say was levied as a tax in each year; where did you get the information with regard to that? A. From the official assessment roll—roll book, I believe they call it.

Q. You found no special appropriations made by the Board of Council or any other authority during those years, have you? A. I don't remember. 20

Q. Any appropriation voted upon by the people?

A. These amounts, as I told you, are the official amounts levied in the tax levy and confirmed by the proper authorities.

Q. As I understand it, you ascertained the sources from which this credit is made up? A. Yes. 30

Q. Did you ascertain whether or not any moneys raised upon bonds have been appropriated or placed in the Police Fund account? A. In answer to that I will say that I don't remember. I don't say "no, but I say I don't remember; this happened a long while ago.

Q. When did you make this examination? A. Oh, this examination was made last spring. You mean this particular thing?

Q. Yes. A. This was made late in December, but I didn't go into anything like that. 40

Paul D. Chase—Cross.

Q. Didn't you ascertain from the year 1908 up to January 1st, 1914, the sources from which the Police Fund was made up? A. Oh yes, I told you that.

Q. You mean to say now, then, that there was some of that money from the sale of the bonds of the Town? A. No, I don't say anything of that sort. I say the credits which I have put to
 10 this Police Fund were entirely derived from the tax levies.

MR. WALSCHEID: Tax levies and fines?

A. (Continuing) Tax levies and fines, yes.

Q. Do you mean that all moneys had been collected from taxes? A. I didn't say it all had been collected; I say it had been levied.

Q. Then you mean there had been a paper levy; it was all shown upon paper? A. I say the official
 20 levy by the Board of Assessors amounts to that fund and it is therefore available for the Police Fund.

Q. Did you find out how much there is actually in hand? A. In cash? Yes.

Q. How much? A. I can't tell you, because I haven't got my figures here, but it is all of record on the books.

Q. That wont help us. A. I haven't the books
 30 of the Town here; if I had I would show you in a few minutes.

Q. Is there anything on hand in cash? A. You mean, is there still anything paid?

Q. I mean, is there in cash in hand any fund in the treasury? A. It is impossible for me to answer that, but if you will put your question in another way I will say that there were unpaid taxes, in which the Police Department was entitled to share,
 40 —not paid at the time in cash, but a good asset.

Q. Can you refer to this report and tell us how

Paul D. Chase—Cross.

much there was of uncollected taxes up to 1913?

A. The answer that I am about to make is made from a printed copy of our report and I reserve the right to see that it agrees with the facts. I answer that there were uncollected taxes of \$83,177.74.

Q. Now, under the book-keeping that you adopted in order to find this so-called balance, what proportion of that should be charged against the Police Fund, so-called, from the year 1908 to 1914? 10

A. That should be charged against the Police Fund?

Q. Yes. A. May I ask you to put that question in this way: "How much of that uncollected taxes was derived from the police levy?" That is a little more exact. This \$83,000, Mr. Counselor, represents the total of uncollected taxes levied against the real estate; as you know, those taxes are apportioned by the Council to various departments and the tax levy, as levied, contains an exact percentage of the whole levy applicable to each department. 20

MR. WALSCHEID: And applicable to each year?

A. (Continuing) Yes, each year.

Q. That percentage, then, is a part of that deficiency of \$83,000? A. I can't use the word "deficiency"; it is an asset, not a deficiency. 30

Q. It is a debt, that is all? A. It is not a debt; properly, it is an asset—absolutely good asset, with a lien on real estate.

Q. I think it is not a good asset. A. I give it to you as my opinion that it is a good asset.

Q. And I give it to you as my opinion that it is not a good asset, because it has never been legally appropriated. A. Well, that is another matter. 40

Q. What I am calling a deficiency you call an

Paul D. Chase—Cross.

asset, but we wont quarrel about that. What I want to know is what proportion of that goes into your computation to make up the credit balance of 1914 of the Police Fund? A. I cannot answer that question without reference to the books of account.

10 Q. (BY MR. WALSCHEID:) The percentage would vary each year, wouldn't it? A. That is impossible to answer. I am talking about what the condition was at the first of January, 1913.

Q. (BY MR. DIXON:) All you are giving us there are sohe figures that you found in the books? A. No, sir; I am giving you the facts in regard to the amount of the uncollected tax levy which was applicable to the Police Fund, but I cannot give you the exact figures because I have not the books of the Town of Guttenberg here. If I had them
20 here I would give it to you in two minutes.

Q. Well now, in making up accounts of this kind you don't take into consideration the legal propositions involved at all? A. That is a general question, is it?

Q. Yes. AI can't answer it that way. You had better ask me particularly in regard to this case.

Q. Well, did you investigate to find out by what methods these various appropriations for the so-called Police Fund were made during the years
30 that you have testified? A. No.

Q. What books did you use to make your calculations? A. What calculations? Please be a little more specific.

Q. Why, the calculations to which you have testified? A. The official assessment roll.

Q. Any others? A. I can't answer that generally.

Q. What do you mean by "the official assessment
40 roll"? A. Why, the assessment roll which had

Paul D. Chase—Cross.

been certified by the County Board of Assessors.

Q. And, of course, in arriving at these balances you also used the other books used by the Treasurer and Collector of Taxes, did you not? A. Certainly.

MR. WALSCHEID: I would like to offer, as a tabulation of the results of Mr. Chase's investigation, the report of Messrs. Townsend & Dix, which is dated December 29th, 1913. 10

MR. DIXON: I object to it, on the ground that it is immaterial and irrelevant; and further, upon the ground that it is not competent at this time.

MR. WALSCHEID: You don't object to it as a tabulation of what Mr. Chase has testified to, do you? 20

MR. DIXON: Well, the objection does go to that, for this reason: That Mr. Chase has been unable to give any kind of detail. I think he has not given us a single detail in respect to the final figures he arrived at.

MR. WALSCHEID: Well, you have Mr. Chase here and he will furnish you with anything you want; or if you want him to do so he will come back here for further cross-examination equipped with such further data as you may require. If you will state to Mr. Chase just what you want he will furnish it. He has told you that the only reason he didn't answer was that he didn't have the details here. 30

Q. Mr. Chase, didn't you understand what you were to be asked about here? A. If the Town of Guttenberg books were here I would answer you in two minutes. 40

Q. Well, Mr. Chase, I wish you would furnish

Paul D. Chase—Cross.

me with a statement containing the details of the Police expenses for each of these years—I say “details”; I don’t mean each voucher, but the yearly expense; and also furnish me with a statement of the amount of the tax arrearages that would affect the Police Fund, up to December 31, 1913. I think those are all that I require in connection with this offer. A. When will those be required?

10

Q. I would like them as soon as possible.

MR. WALSCHEID: Do you want Mr. Chase to come back here and swear to that?

MR. DIXON: No, if he will send me a copy of them.

MR. WALSCHEID: If he will send you a copy and send me a copy of what he sends you that will satisfy you, so far as this offer is concerned?

20

MR. DIXON: Yes.

Q. Would you at the same time be able to find out what moneys had been transferred to the Police Fund from other sources during that time, that is, from liquor licenses or any other sources? A. Yes. You want transfers to the Police Fund during the while period.

30

MR. WALSCHEID: I now offer this tabulation, as a tabulation of the testimony of Mr. Chase.

MR. DIXON: I object to it, on the ground as being immaterial.

(The document referred to is marked Exhibit D-1 and is as follows:)

40

Colloquy.

TOWN OF GUTTENBERG:

Report re Amount of Funds Available for the
Police Department For the Fiscal Year
Beginning January 1st, 1914.

December 29th, 1913.

Honorable Mayor and Council 10
of the Town of Guttenberg, Guttenberg, N. J.

Dear sirs:—

In accordance with your instructions, we have examined the records of the Town of Guttenberg to ascertain the amount of funds available for the Police Department for the fiscal year beginning January 1st, 1914, and beg to report as follows:

We find the balance on hand unexpended at January 1st, 1913, was..	\$4,398.16	20
and that there has been received during the year to and including December 29th, for Fines.....	278.60	
and that upon December 8th, 1913, there was transferred from the Saloon License Fund to the Police Fund.....	3,000.00	

This transfer was duly authorized by the Council at the meeting of November 17th, 1913 (see page 78 of Minute Book), in accordance with Section V of Tax Ordinance (see page 55 of Minute Book) adopted July 21st, 1913,
To wit: 30

Forward.....\$7,676.76

Colloquy.

SECTION V:

“All moneys and revenues received during the said fiscal year, by the Town or for its use, other than moneys raised by local taxation may be added and expended by the Town Council for any and all purposes enumerated in the first section of this Ordinance, in addition to the sum specified in said section, and in addition to the limit of expenditures mentioned in said Section or in the discretion of the Town Council, may be used for any other lawful Town purposes whatsoever”.

10

Brought forward . . . \$7,676.76

The expenses for the year 1913 were:

For salaries of the Police Force,
\$231.67 per month, . . . \$2,780.04

And a charge of 25
for the share of the Police Fund
in certain Taxes on Lot No. 736,
remitted by the order of the
Council.

20

2,780.29

\$4,896.47

We find that the amount appropriated by the Tax Levy for the Police in 1914 is 2,900.00

(See Minutes of Meeting July 21st, 1913, pages 55 and 56 of the Minute Book) making a total fund available for the Police Fund in 1914 \$7,796.47

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We find that the Minutes show that the cost of the Police Department for the fiscal year, beginning January 1st, 1914, as constituted, amounts to 6,100.00

Showing excess of appropriation and unexpended balances for the fiscal year \$1,696.47

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Yours faithfully,
TOWNSEND & DIX.

Emil Nothacker—Direct, Cross.....

EMIL NOTHACKER, sworn on behalf of the Respondents, testified as follows:

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Nothacker, where do you reside? A. 224 Twenty-seventh street, Guttenberg.

Q. Do you hold any official position in the Town of Guttenberg? A. Yes sir, I am Clerk of the Town of Guttenberg. 10

Q. How long have you been Clerk of the Town? A. Since January 1st, 1908.

Q. And as such do you keep the minutes of the Town Council? A. Yes, I keep the minutes of the Town Council.

Q. And as such do you have charge of the ordinance book of the Board of Council? A. Yes, sir.

Q. Have you that ordinance book with you? A. Yes, sir. 20

Q. Will you please produce it? A. (The witness produces the ordinance book).

Q. Have you an ordinance under date of July 21, 1913, in relation to taxes? A. Yes, sir.

Q. Is that the signature of Charles A. Eypper? A. Yes, sir.

Q. Was he then Mayor of the Town? A. Yes, sir.

Q. And is that your signature? A. Yes, sir. 30

Q. As Clerk? A. Yes, sir.

Q. And that is the seal of the Town? A. Yes, sir.

MR. WALSCHEID: I offer this ordinance, it being the ordinance which was read in evidence yesterday (Monday, February 9, 1914) as Schedule A.

Q. Now, have you the Minute Book, Mr. Notacker? A. Yes, sir. 40

Emil Nothacker—Direct.

Q. Have you in the Minute Book a resolution in the year 1913, directing the Town Treasurer to transfer the sum of \$3,000 into the Police Fund?

A. I know I have got it in here, yes sir (witness referring to the Minute Book).

Q. Can you find it? A. Yes sir, I have it.

10 Q. What minutes do you refer to? A. Minutes of regular meeting of the Council, held Monday, November 17, 1913, at the Town Hall.

Q. Will you read from those minutes the resolution making this transfer? A. The resolution reads as follows:

20 On motion of Councilman Muller, and seconded by Councilman Buesser, it was unanimously RESOLVED, that the Treasurer transfer from the Saloon License Fund to the Police Fund the sum of \$3,000 to cover the cost of additional police contemplated increases.

Q. And was that carried? A. Yes, sir.

Q. Do you, subsequent to that date, find in your minutes the record of any communication from the Treasurer of the Town, informing you that the transfer has been made? A. Yes sir, I have the communication right here.

30 Q. And on what page of the minutes do you find that? A. Page 86.

Q. Who at that time was the Treasurer of the Town? A. William J. Eypper.

Q. What is that communication? Will you kindly read it? A. The communication is as follows:

“Guttenberg, N. J., Dec. 8, 1913.

40 “Hon Mayor and Members of the Council of the Town of Guttenberg, N. J.

“Gentlemen:

In accordance with your resolution adopted

Emil Nothacker—Cross.

at a recent meeting of the Board, I have this day transferred from the License account, which shows a balance of over \$7,000, the sum of \$3,000 to the Police account, which will be more than sufficient to cover the additional police authorized by the ordinance recently adopted.

Yours truly,

WILLIAM J. EYPPER,
Town Treas'r." 10

Q. And at what meeting of the Board of Council was that received? A. A regular meeting of the Council held Monday, December 8, at the Town Hall.

CROSS EXAMINATION BY MR. DIXON:

Q. Do you keep a typewriting machine in your Council chamber? A. No sir, we have none. 20

Q. Do you do work on the typewriter yourself? A. No, sir.

Q. Referring to this resolution on page 78 that you have read, you will notice it is a typewritten sheet pasted on that blank page, isn't it? A. That is the way we keep our minutes.

Q. I didn't ask you that. That is what it is, isn't it? A. That has been pasted in there, yes. It is cut off in sheets.

MR. WALSCHEID: Oh, answer yes or no. 30

Q. It is, isn't it? A. Yes, sir.

Q. Who compared that? A. Why, I dictated that and the stenographer typewrites it, and I paste it in the Minute Book.

Q. You dictate it? A. Yes.

Q. Well, why wasn't it all written on one sheet of paper? A. Sometimes there is a short piece and I cut them off. If there is a piece left over for the other side I take it and put it in, and sometimes it is a different form. 40

Emil Nothacker—Cross.

Q. This piece of paper containing the resolution seems to have been cut nearly half way down and another piece of paper added to it? A. Well, don't that follow this?

Q. Well, does it? A. Yes, you can see that.

MR. WALSCHEID: Just answer the questions.

10 Q. Did you write that before the meeting or after the meeting? A. Why, after the meeting, of course.

Q. Do you mean to say that somebody got up and made that verbal motion to that effect? A. Well, it states so there, yes.

Q. Somebody made a verbal motion to that effect and you carried it in your mind? A. I don't carry it in my mind.

20 Q. What did you do, take it down? A. I take it on a blank piece of paper on my own minutes as they tell me and I have it typewritten.

Q. Then you would hand that to your stenographer and have her typewrite it? A. Yes.

Q. Why should she typewrite the first part of it on a piece of blank paper and the bottom part of it on another piece of blank paper? A. Say, for instance, here—suppose there is a piece off here (indicating).

30 Q. Why should she do that? A. I will explain that to you now: The same as if there is a piece that comes here and I have to put that piece on here to put it over on the other side, don't I?

Q. The very top of this sheet of paper on page 78 is not the original top of the sheet but the bottom of the sheet, isn't it? A. It is put on the top of that sheet to fill the other half on the other side. Don't you see if there is a piece left like this that
40 piece is left the same way. Now, here is a whole sheet again.

William J. Eypper—Direct.

Q. Did you write all those things out in your own handwriting? A. Yes.

Q. At that meeting? A. Some of them; some of them were given to me in typewritten form.

Q. And then you paste them in there? A. Then I paste them in there, yes.

Q. And you don't show who voted for it, do you? A. Yes, sir. It says "unanimously." It shows here at the first of the meeting who were present. 10

Q. You don't keep a record of the ayes and noes? A. I do now, yes sir, but I didn't at that time. I generally made is "unanimous" if there was a unanimous vote.

WILLIAM J. EYPPER sworn on behalf of the Respondents, testified as follows:

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DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Eypper, where do you reside? A. 108 25th Street, Guttenberg, N. J.

Q. And do you hold any official position in the Town of Guttenberg? A. Yes, I am Town Treasurer.

Q. And how long have you been Town Treasurer? A. Since the early part of 1908.

Q. And have you charge of the books of account? A. I have. 30

Q. Do you also collect the moneys received for liquor licenses in the Town? A. I do.

Q. Do you know how many liquor licenses were granted by the Town of Guttenberg during the year 1913? A. Close to 50; I think it was 48.

Q. And do you know how much a liquor license cost in 1913? A. \$150 each.

Q. And in your books of account do you keep a separate fund for the moneys received from liquor licenses? A. Yes. 40

William J. Eypper—Direct.

Q. And what do you call that fund? A. Saloon license.

Q. In November, 1913, was there a balance in that fund? A. Yes.

Q. On November 17, 1913, what was the balance in that fund? A. In excess of \$7,000.

10 Q. And did you receive a communication from the Town of Guttenberg subsequent to the 17th day of November, 1913, requesting you to make a transfer of moneys out of that fund? A. Yes.

Q. What was that request which you received? A. It was a resolution directing me to transfer \$3,000 from the Saloon License Fund to the Police Fund.

Q. And did you make that transfer? A. I did.

Q. And did you communicate the fact of such transfer to the Board of Council? A. I did.

20 Q. By letter? A. Yes.

Q. And in this the letter (counsel indicating to the witness the letter read by the preceding witness, which is found on page 86 of the minutes of the Board of Council of the Town of Guttenberg)? A. That is the letter.

Q. Mr. Eypper, can you tell us what the appropriation for police purposes for the year 1914, that is the appropriation levied in 1913, was? A. Yes, 30 sir.

Q. How much was it? A. \$2900.

Q. Can you also tell us what balance you had on hand of January 1st, 1914, available for police purposes? A. Yes sir, \$7,796.47.

Q. Does that include the appropriation just mentioned in the preceding question? A. It does.

40 MR. DIXON: It is understood that this is all taken under objection as to its materiality.

MR. WALSCHEID: Why yes, I suppose your objection goes to the legality of it.

William J. Eypper—Direct.

Q. Where did you get your information from as to the amount appropriated for the year 1914 and to be levied in the year 1913 for police purposes?

A. Why, from the budget for the year; I also got it from the tax rolls of the Town; also from the tax collector's books.

Q. And do you know the budget which was levied in the year 1913 for the Town of Guttenberg? A. Yes. 10

Q. I show you an ordinance (showing witness the ordinance hereinbefore introduced in evidence as Schedule A) and ask you whether you recognize that as the budget of the Town of Guttenberg to be levied in the year 1913? A. I do.

Q. And have you received moneys from the collector of taxes, collected by him for and on account of the budget just shown you? A. I have.

Q. Can you state how much you have received on account of that budget? A. Not exactly. 20

Q. Can you tell us what the annual appropriations for police purposes, according to the budgets of preceding years, have been? A. No, I can't give you the exact amounts; I can only give them to you approximately.

Q. You can't give us the amounts? A. No.

Q. Can you tell us what the amount of outstanding taxes in arrears as of January 1st, 1913, amount to? A. Yes, \$83,177.74, and there was interest amounting approximately of \$4202, making a total of \$87,380.38. 30

Q. Can you tell what your collections have amounted to since January, 1913? A. Since the first of January on account of taxes there has been collected \$45,366, and this shows that there is a balance of delinquent taxes still to be collected of \$42,014.28.

Q. That does not include the budget of 1913? A. No, it does not. 40

William J. Eypper—Cross.

Q. And by the "budget of 1913" I mean the moneys to be levied in 1913. How much does that amount to? A. \$67,915.42.

Q. Making a total of how much? A. \$109,929.70.

Q. Now, can you tell us what has been collected during the year, on account of the delinquent taxes? A. There has been collected \$27,440.86.

10 Q. This budget of 1914, collectible in 1913, became due and payable as of December 20, 1913? A. Correct.

Q. That is also in arrears? A. Yes.

Q. That is, the uncollected portion of it? A. Yes.

Q. Are there any other sources of revenue to the Town? A. Yes.

20 Q. What are they? A. There is the addition of interest on those taxes from January 1st, 1913, which would amount to approximately \$2400; there is interest due on \$62,000 worth of unpaid assessments, amounting to \$6,000, and there is a franchise tax, \$1500 of which is unpaid.

CROSS EXAMINATION BY MR. DIXON:

Q. How long have you been Treasurer of the Town? A. Mr. Dixon, I was appointed soon after 30 the first of January, 1908—not the 1st, but within two or three weeks of that time.

Q. To the present time? A. Yes, I am still Treasurer; I have been re-appointed.

Q. You are a brother of Mayor Eypper? A. Yes, sir.

Q. You have always kept him well posted upon the financial condition of the Town, so far as you knew? A. Yes.

40 Q. Do you know Louis Foreman, the Vice President of the Trust Company of New Jersey? A. Yes.

William J. Eypper—Direct.

Q. Is that the only bank in which the funds of Town are kept? A. Yes.

Q. I read to you from a letter dated January 5, 1914, signed by Mr. Foreman, directed to Daniel Herrmann, Mayor, in which, among other things, he says: "We also beg to advise you that we have received from the Town of Guttenberg a demand note for \$15,000, in accordance with a resolution passed by the Board of thirteen, authorizing them to borrow from us the above amount"; do you know anything about that note? 10

MR. WALSCHEID: I object to that as immaterial and irrelevant.

A. Yes.

Q. Do you know that such a note was signed by Mayor Eypper? A. I do.

Q. Do you know Frederic Rider, county collector? A. I do. 20

Q. I read you from a letter signed by Mr. Rider, dated February 15, 1914, directed to the Hon. Daniel Herrmann, Mayor. He says: "As yet, Guttenberg has failed to pay any portion of its county taxes amounting to \$17,611.78." Has the Town that fund in hand with which to pay those taxes? A. Yes.

Q. Where is it? A. In the bank.

Q. Which bank? A. Part of it is in the First National Bank of Guttenberg in the collector's account and the balance is in the People's, now called The Trust Company of New Jersey. 30

Q. How much have you, all together, in those banks? A. Why, approximately—I can tell you in a moment. (Witness does some figuring.) There is \$22,375 in those two banks now, and off-hand I can't say how much I have in the First National Bank of Hoboken. I have a separate 40

William J. Eypper—Cross.

fund down there to pay off some bonds which are payable there, I think between five hundred and a thousand dollars down there.

10 Q. Did you have such an amount sufficient to pay those taxes in December 31, 1913? A. I did not. At no time during my incumbency as Treasurer were the taxes sufficiently collected to pay the county; taxes at that time had not come in to the collector until a considerably later time than that and the County Treasurer has never heretofore received the county taxes from the town of Guttenberg earlier than April or May, and there have been times when he has not received it for a year thereafter.

Q. Who is the collector of your taxes in the Town of Guttenberg? A. James J. Cauldfield.

20 Q. How long has he been collector? A. I couldn't say. He has been collector about five or six years, I should say.

Q. How do you enforce the collection of these taxes? A. Well, that is the collector's duty.

Q. Well, isn't it the duty of the councilman to direct their collection? A. I don't know.

Q. You don't know that? A. No.

30 Q. Is there any way that the citizens know how much their taxes taxes are delinquent how much money is being spent in the Town each year? A. Yes.

Q. How is that known to them? A. No later than last summer when the firm of which Mr. Chase is a member made an examination of the books to verify the amounts that were due the Town by different tax-payers, we sent a notice to each individual tax-payer in town a memorandum showing just exactly what taxes and assessments they owed on their property.

40 Q. What I mean is, do you as Treasurer make

William J. Eypper—Direct.

any report to the Board as to the financial condition of the town? A. There is a report made annually.

Q. Annual report? A. Yes.

Q. Does the Mayor advertise that?

MR. WALSCHEID: Oh, I object to that. How does he know?

MR. DIXON: He knows about the financial condition. 10

A. I know there is a report made every year, Mr. Dixon.

Q. Is the report published? A. Printed in the same form in which you see that copy of Townsend & Dix report.

Q. And that has been done every year? A. Yes. This last report of Townsend & Dix acted as the report for last year, that is, it took the place of the one usually issued on the first of the year. The books weren't in my possession in time to make the necessary report last year and they compiled the report of which you have seen a copy here. 20

Q. But other than that you have always made a report which has been published each year? A. Yes.

Q. This last year, 1913, you didn't make such a report? A. No, Townsend & Dix made it. Mr. Dixon, I want to state that when you referred to last year I didn't understand that you meant for the year 1913. Is that what you did mean? 30

Q. Yes. A. For the year 1913 I have not yet compiled a report.

Q. But you did compile one for the year 1912? A. Yes.

Q. Which was published in 1913? A. No, the one prior to 1913 was compiled by Townsend & 40

William J. Eypper—Cross.

Dix. The one for the calendar year 1913 I am working on now.

Q. But in 1912 you did publish a report for 1911? A. Right.

Q. And does that report show the moneys collected from licenses and taxes, and from all other sources? A. It is a complete copy of all my books, containing itemized receipts and itemized expenditures.

Q. And do they show the amounts appropriated for Police Funds? A. The appropriations, I believe, are shown on the first pages of the report, although I am not certain of that.

Q. Do they show the amount disbursed from the Police Fund? A. Oh, yes.

Q. And those are, therefore, accessible for all the years excepting 1912? A. Mr. Dixon, you say except 1912. I have told you before that that is accessible, too, in the shape of a report from Townsend & Dix.

Q. (By Mr. Walscheid) And that runs to April 3, 1913? A. Yes, the report of Townsend & Dix.

Q. So that there is no report from May 1st to December 31, 1913? A. No report yet, but it is in process of collation now.

Q. That would include all of 1913? A. Yes, that will close up 1913.

Q. It will include from January 1st to December 31st? A. No, it will include from the time Townsend & Dix's report covers. They cover from April 30 and my report will be from May 1st to December 31st.

BY MR. WALSCHEID:

Q. Townsend & Dix opened a new set of books for you as of April 30, 1913? A. Right.

Q. Mr. Eypper, has the county collector demanded of you the taxes for the year under the

Emil Nothacker—Direct, Cross.

budget of 1913? A. Yes sir, he has asked me to send them as soon as I conveniently could.

Q. When did he do that? A. I can't say, Mr. Walscheid.

EMIL NOTACKER recalled on behalf of the respondents, testified as follows:

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DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Nothacker, referring again to the ordinance which has been read into this case as Schedule A, you certified a copy of this ordinance, did you not, to the Assessor of the Town of Guttenberg?

A. Yes, sir.

Q. Immediately upon the passage of the ordinance? A. Immediately upon the passage of the ordinance.

20

Q. And since you have been in office as Clerk how has the tax budget each year been made up?

A. The same way, by ordinance.

Q. In each year you would certify that to the assessor? A. Yes, that's correct.

CROSS-EXAMINATION BY MR. DIXON:

Q. You have been Clerk since when? A. January 1st, 1908.

30

Q. You don't mean to say that since 1908 the people of Guttenberg haven't voted on the appropriation? A. Not in 1908.

Q. Since 1908 haven't they voted on their appropriations? A. Not all the time, no.

Q. Well, during any of the time? A. Some of the time.

Q. Let me refresh your memory: Look at this paper, which is the county ballot; was that ballot

40

Emil Nothacker—Cross.

one of a series of ballots that were used at the election held in 1910? A. This was certified to by the County Clerk.

Q. Look at it; isn't that a genuine ballot certified by the Clerk and voted on? A. Yes.

Q. Ballots similar to that, containing the name Woodrow Wilson as Governor? A. Yes.

10 Q. And with the town appropriation? A. Yes.

Q. What appropriations were voted on? A. That is drawn up in the form of ordinance by the Mayor.

Q. What appropriations were voted on? A. Do you want me to read it?

Q. Yes. A. Appropriation for the redemption of school bonds.

20 Q. How much? A. \$2,000. Interest on school bonds \$2600; purchase of two lots for school purposes \$2,010; Public School purposes, \$5,980; Town purposes, \$5,900; interest on Town bonds, \$11,050; redemption of one fire house bond, \$1,000; interest on fire house bonds, \$650; interest on improvement certificates \$7,500. Total, \$38,690.

Q. And that was the budget that was adopted that year, wasn't it? A. No, sir.

Q. Was that defeated?

30 MR. WALSCHEID: I object; he doesn't know.

Q. Well, do you know? A. I don't know.

Q. What election was that? A. According to this, it states on the back of the ticket, November 8, 1910.

Charles A. Eypper—Direct.

CHARLES A. EYPPER sworn on behalf of the respondents, testified as follows:

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Eypper, where do you reside? A. In Guttenberg.

Q. And your address there? A. 16 Twenty-sixth street, Guttenberg, N. J. 10

Q. You were an official of the Town of Guttenberg up to January 1st, 1914? A. Yes, sir.

Q. And for how long a period of time? A. Since January 1st, 1908.

Q. And what position did you hold from that time down to January 1st, 1914? A. As Mayor of the Town.

Q. And as Mayor of the town are you also Chairman of this Board of Council? A. Yes. 20

Q. And as such, of course you attend and preside over the meetings of the Council? A. Yes, sir.

Q. Since you have been in office what has been the method employed in the Town of Guttenberg in raising, by taxation, the moneys necessary for State, School, County and Town purposes?

MR. DIXON: That is objected to as immaterial. 30

A. The adoption of an ordinance or resolution by the Council Board, which in turn was transmitted to the County Board of Taxation and also the local assessor.

Q. And was that done each year while you were in office? A. I am pretty positive it was.

Q. And have you the appropriations for the years that you were in office thus made? A. Yes, sir. (The witness produces the budgets for the years 1908 to 1913 inclusive). 40

Charles A. Eypper—Direct.

Q. Now for the year 1908 what was the total budget thus called for by ordinance of the Town of Guttenberg? A. \$41,638.80.

Q. And in that budget was there an appropriation for Police Fund? A. Yes sir, the sum of \$2100.

10 Q. You have heard the testimony of Mr. Chase, in which he testified to the amount of that Police Fund; did that vary from the amount as shown in your budget? A. The budget is \$2100; the amount testified to by Mr. Chase is \$2091.71.

Q. And how do you account for that difference? A. The difference is accounted for in this way: The County Board makes certain reductions—

20 Q. In tax valuations? A. In tax valuations, and the reduction is spread upon the different accounts pro rata, or, in other words, it is deducted from the amount of the budget. The figures that Mr. Chase gave were not the figures of the budget but the amount that would be collected after the reductions in valuations were made by the County Board.

Q. Now, what was the total budget thus prepared by the Board of Council for the year 1909? A. \$39,412.88.

30 Q. And what was the item in that budget for police purposes? A. \$2100.

Q. And Mr. Chase's figures after making reductions in tax values amounted to what? A. \$2,091.71.

40 Q. For the year 1910 what was the total budget as prepared by the Board of Council? A. As prepared by the Board of Council the total budget was \$60,133.07. The County Board afterwards added \$290.54, being the Town of Guttenberg's share for the newly established District Court in Union Hill. That made the total amount of the budget \$60,423.61.

Charles A. Eypper—Direct.

Q. Now, is there an item in that budget for police? A. Yes, there is; the amount is \$2100.

Q. And Mr. Chase's figures on this police budget, after making the reduction in tax valuations, amounted to what? A. \$2,049.78.

Q. Now, what is the amount of the budget for the year 1911? A. \$53,783.80.

Q. And that also was prepared and adopted by the Board of Council? A. Yes, sir. 10

Q. And does that budget contain an item for police? A. Yes sir, it does, and the amount is \$2200.

Q. And Mr. Chase's figures, after making allowances for tax reductions, amounted to what? A. \$1,043.92.

Q. What are the figures for the year 1912? A. The total budget was \$66,644.88.

Q. And does that budget contain a provision for police? A. Yes, sir. 20

Q. How much does that amount to? A. \$2700.

Q. And Mr. Chase's figures, after allowing for decreased tax valuation was what? A. \$2674.87.

Q. Have you the figures for 1913? A. Yes, sir.

Q. The figures for the year 1913 are the figures shown in the tax ordinance marked Schedule A, are they not? A. Yes, the same thing. You see the County and State is not included there. 30

Q. Now, will you go back to the budget for the year 1910 and give us in detail all of the items contained in that budget. A. State school, \$7,770.58; public school, \$7,990; County tax, \$13,672.49; Town roads, fire, poor, \$3800; interest on improvement certificates, \$7500; police, \$2100; redemption of school bonds, \$2,000; interest on school bonds, \$2600; interest on Town bonds, \$11,050; redemption of fire house bonds \$1,000; interest on fire house bonds, \$650; District Court, \$290.54. 40

Charles A. Eyyper—Direct.

Q. Now, that is the appropriation which was adopted by the Board of Council of the Town of Guttenberg in the summer of the year 1910? A. Yes, sir.

Q. And in the summer of the year 1910 was certified to the County Board of Taxation and the Assessors of the Town of Guttenberg? A. Yes, sir.

10

Q. And that is the appropriation which was collected by the taxes which became a lien in December, 1910? A. Yes, sir.

Q. Now, will you give us the appropriation for the year next following, being the year 1911. A. State school, \$7,711.02; public school, \$4,525; County tax, \$15,397.78; Town, \$4800; police, \$2200; interest on improvement certificates \$2,000; redemption of school bonds, \$2,000; interest on school bonds, \$2500; interest on Town bonds, \$11,050; redemption of fire house bonds, \$1,000; interest on fire house bonds, \$600.

20

Q. And that is the budget as adopted by the Board of Council of the Town of Guttenberg in the summer of the year 1911? A. Yes.

Q. Certified to the County Board of Taxation and the Assessor of the Town of Guttenberg in the summer of 1911? A. Yes.

30

Q. And due in December 20, 1911? A. Yes.

Q. (By Mr. Dixon) Did you say in that budget there is no redemption of school bonds? A. Town bonds, I said.

Q. Is there any redemption of school bonds? A. Yes, \$2,000; that comes every year.

Q. (By Mr. Walscheid) Now since you have been in office have the qualified voters of the Town of Guttenberg ever certified to the Town of Guttenberg, the Board of Council thereof, or to you as Mayor of the Town, any appropriations which they

40

Charles A. Eypper—Cross.

the qualified voters of the Town may have voted?

A. No, sir, there has never been anything presented to the Council Board.

Q. Or has there been any certification of any kind come from any source during your term of office, showing that any moneys whatsoever were voted by any persons in the Town of Guttenberg for town or other purposes? A. I am pretty sure there has not. 10

Q. What do you mean by you are pretty sure? A. I mean there has not.

CROSS EXAMINATION BY MR. DIXON:

Q. Well, during your term of office appropriations have been voted upon by the voters of Guttenberg, haven't they? A. I have no recollection of it.

Q. I am showing you a ballot that looks to be a genuine ballot (handing witness paper). A. I recognize it. 20

Q. Certified by the Clerk of the County. A. It was never ordered by the Council Board, though.

Q. You see it there, don't you? A. Yes, I am surprised to see it.

Q. You remember that election, don't you, when Mr. Woodrow Wilson was elected Governor? A. Yes. 30

Q. Look over the list of candidates and see if you remember any of them. That was the winning ticket, wasn't it? A. I think it was.

MR. DIXON: I offer the ballot for identification. (The same is marked Exhibit P-6 for identification).

Paul Schnyder—Direct.

PAUL SCHNYDER recalled on behalf of the prosecutors, testified as follows:

DIRECT EXAMINATION BY MR. DIXON:

Q. Mr. Schnyder, do you remember the election held in the Town of Guttenberg in 1910, when Woodrow Wilson was elected Governor? A. Yes.

10 Q. Did you vote at that election? A. Yes, sir.

Q. I show you a ballot marked P-6 for identification and ask you if that is a ballot similar to the ballots voted at that election?

MR. WALSCHEID: Oh, we will admit that that is an official ballot?

A. Well, yes, my name is on there.

Q. You ran on that ballot for election? A. I did.

20 Q. And you voted for the appropriation? A. Yes, I voted for the appropriation, and I believe years before that they had tickets similar to that with the appropriations on the bottom.

Q. This ballot has been in your possession since that election? A. Been in my possession since that election, yes sir.

Ballot offered in evidence and marked P-6.

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Exhibit P-6—Part of Ballot.

For Justices of the Peace

WILLIAM BRAMLEY

CHARLES E. KNIGHT

FOR

AGAINST

APPROPRIATIONS

Redemption of School Bonds	\$ 2,000.00	
Interest on School Bonds	2,600.00	
Purchase of two lots for School Purposes	2,010.00	10
Public School Purposes	5,980.00	
Town Purposes	5,900.00	
Interest on Town Bonds	11,050.00	
Redemption 1 Fire House Bond	1,000.00	
Interest on Fire House Bonds	650.00	
Interest on Improvement Certificates...	7,500.00	

 Total\$38,690.00

Official Ballot

for

TOWN OF GUTTENBERG,
Hudson County, N. J.

November 8th, 1910.

JOHN F. CROSBY,
County Clerk.

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Schedule Referred to by Mr. Chase.

February 11th, 1914.

EMIL WALSCHEID, ESQ.,
Town Attorney,
Guttenberg, N. J.

Dear Sir:—

In accordance with your request we submit here-
with a statement of the "Police" Account from
10 date January 1, 1908, to January 1, 1914, showing
the character of both the Debits and Credits to
the account for each calendar year. (See Schedul
the account for each calendar year. (See
Schedule).

The question raised by Mr. Dixon regarding
transfers to "Police Fund" is answered also by
this schedule, as it shows transfers from "Saloon
License" to "Police" of \$1,658.00 of Feb. 1, 1908,
and of \$3,000.00 on Dec. 8, 1913.

20 Referring to the request of Mr. Dixon that we
furnish a statement of how much of the credit bal-
ance of the Police Fund is represented by Arrears
of Taxes, we beg to say that of the Balance at
December 31, 1912, to credit "Police Fund" as
shown by our Report, viz:—\$4,398.16—there was
of Taxes in Arrears \$3,505.97

That during 1913 there was paid
of these Arrears 2,070.14

30 Leaving a balance of \$1,435.83 still in
arrears at January 1, 1914, on account of Taxes
levied for years prior to 1913.

The Taxes levied for the Tax Year of 1913
apportioned to "Police Fund" were \$2,900.00
Of which to date of Jan. 20, 1914, there
had been paid 1,212.24
Leaving the amount of arrears on 1913 _____
Taxes for Account "Police Fund" at \$1,687.76
40 The addition of this amount to the arrears shown

Schedule Referred to by Mr. Chase.

above gives \$3,123.59 as the total of the "Police Fund" balance unpaid at January 20, 1914.

The figures for 1913 Receipts and Disbursements used herein are taken from the books of the Town but have not been audited by us.

There were no credits to this Fund from Sale of Bonds.

Yours faithfully,

TOWNSEND & DIX.

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TOWN OF GUTTENBERG, N. J.

SCHEDULE OF "POLICE FUND" FROM JANUARY 1ST, 1908, TO JANUARY 1ST, 1914.

	Expenses: Salaries, &c.	Tax Levies (Net).	Other Receipts. Fines, &c.	Debits.	Credits.
1908 Balance from "Mager" Ledger Jan. 1				\$ 201.91	\$ 1,658.00
" " Transfer from "Saloon License" Feb. 1					2,494.01
1909	\$ 1,501.88	\$ 2,091.71	\$ 402.30	1,501.88	2,451.82
1910	1,914.00	2,086.82	365.00	1,914.00	2,270.78
1911	1,969.14	2,049.78	221.00	1,969.14	2,385.92
1912	1,725.83	2,043.92	342.00	1,725.83	
1912	2,579.16	2,672.05	357.50	2,579.16	
Balance at December 31, 1912				4,398.16	3,029.55
				<u>\$14,290.08</u>	<u>\$14,290.08</u>
74 1913 Balance Jany. 1, 1913, brought down					\$ 4,398.16
1913 Transfer from "Saloon License" Dec. 31st	\$ 2,780.29	\$ 2,900.00	\$ 278.60	\$ 2,780.29	3,178.60
Balance at Dec. 31st, 1913				7,796.47	3,000.00
	<u>\$12,470.30</u>	<u>\$13,844.28</u>	<u>\$1,966.40</u>	<u>\$10,576.76</u>	<u>\$10,576.76</u>
January 1, 1913. Balance to credit "Police Fund"					\$ 7,796.47

RECAPITULATION.

Receipts.		
Tax Levies (Net) 6 years		\$13,844.28
Other Receipts—Fines, &c., 6 years		1,966.40
Transfers from "Saloon License" 6 years		4,658.00
		<u>\$20,468.68</u>
Expenses	6 years	\$12,470.30
Debit Balance at Jan. 1, 1908		201.91
		<u>12,672.21</u>
		<u>\$ 7,796.47</u>

