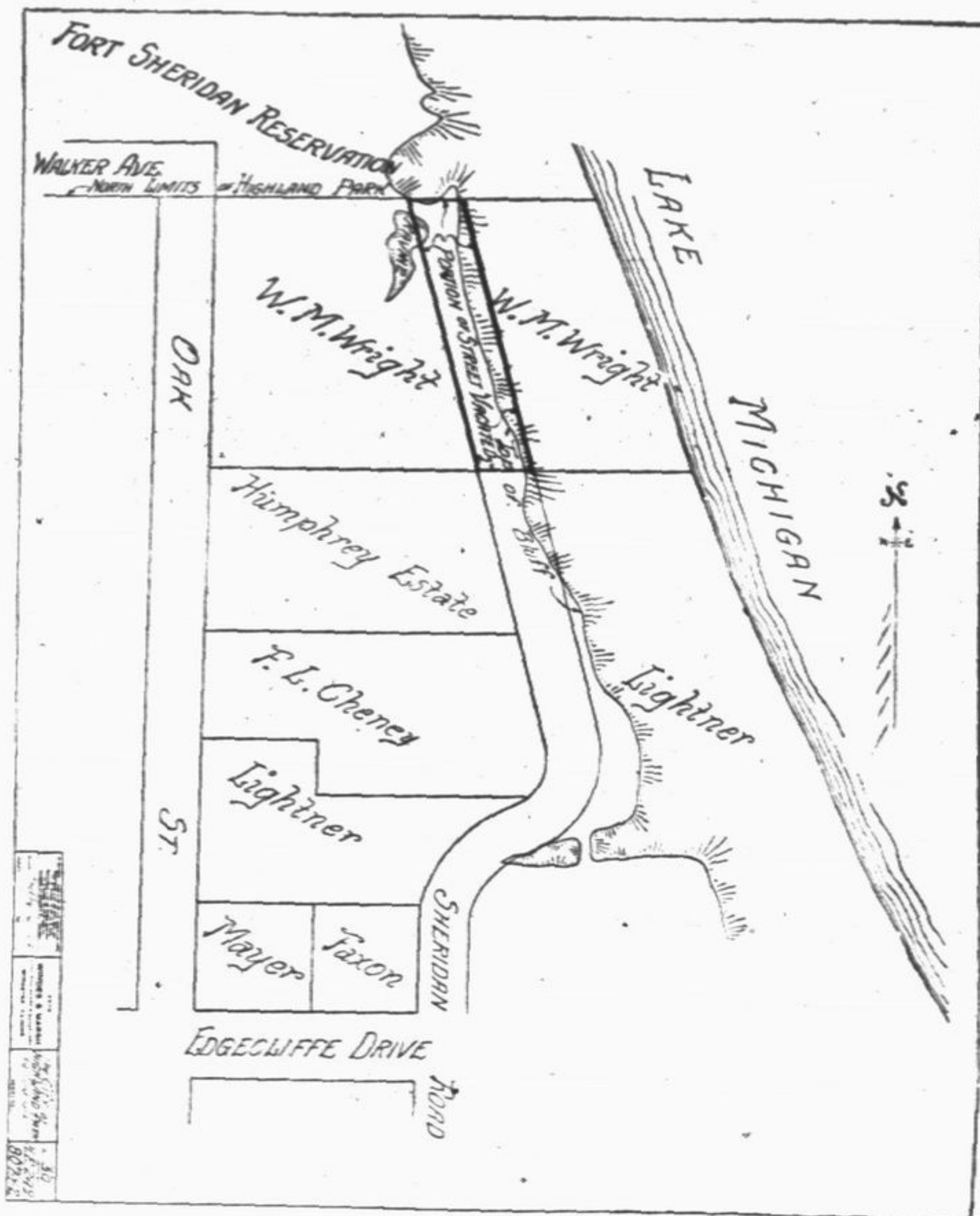


THAT SHERIDAN ROAD VACATION



The plat herewith shows the condition of Sheridan Road at the north city limits when it was vacated by the Council in 1922. Prior to 1915 it connected with a road on the reservation. In that year the Federal authorities closed this road at Oak Street. The face of the bluff had broken down until almost one-half of the road was gone. The north end was entirely cut off from access to Fort Sheridan. This portion of the road had ceased to be usable, and was closed to travel. The cost of restoration would be prohibitive. Such being the situation, the Council ordered its vacation as indicated. No other portion has been vacated though the north two hundred feet is closed to travel on account of its dangerous condition.

It has been claimed that Commissioner Cheney was benefitted by this vacation. An examination of the plat is a complete answer to all reports of that character.

Opinion of David R. Clarke of the Firm of Fyffe & Clarke, Attorneys at Law on the question of the Employment and Authorization of a City Manager For Highland Park

FYFFE & CLARKE

ATTORNEYS AT LAW
111 West Monroe Street
CHICAGO

March 15, 1927

Dr. Robert R. Bosworth,
25 East Washington Street,
Chicago, Illinois.

Dear Sir:—

You have asked whether the Mayor and Commissioners of the City of Highland Park can lawfully employ and authorize a person to manage the City's affairs.

The management of the affairs of a city necessarily involves the exercise of discretionary powers and authority. The Mayor and Commissioners of Highland Park cannot lawfully delegate discretionary powers and authority to any person. In consequence they cannot lawfully employ and empower any person to manage the City's affairs.

The only means by which an Illinois city can employ and authorize a person to manage its affairs is by the adoption of the managerial form of government under the Act of 1921 relating to that form of government. The Mayor and Commissioners of the City of Highland Park have no power to adopt the provisions of that Act for the City of Highland Park. They can only be adopted by a majority of votes cast at a special election called for that purpose pursuant to a petition of one tenth of the voters. This will be true even if the pending amendment to that Act — increasing the size of cities which may adopt the provisions of the Act — is passed by the General Assembly.

There is no way under the provisions of the Commission Form of Government Act of 1910 (under which the City of Highland Park is now organized and operating) by which the Mayor and Commissioners of the City of Highland Park can lawfully employ and authorize any person to manage the affairs of the City.

The City of Highland Park has only such powers as are delegated to it in this Act by the General Assembly of Illinois. All the powers delegated by the Act to the City of Highland Park are specifically vested in the Council which is composed of the Mayor and the four Commissioners. Section 23 of that Act specifically provides that the Council "shall have and possess, and the council and its members shall exercise all the executive and legislative powers and duties" now possessed and exercised by the mayor, city council and other city boards and officials of cities organized under the Cities and Villages Act. In the same section it is provided that "the executive and administrative powers, authority and duties" shall be distributed among five departments. In Section 24 of the Act it is provided that the mayor "shall be commissioner of public affairs and as such be superintendent of that department," and that the council shall designate "one commissioner to be commissioner of accounts and finances . . . , one to be commissioner of streets and public improvements . . . , one to be commissioner of public health and safety . . . , one to be commissioner of public property."

Thus the powers and duties of the City of Highland Park are expressly vested in and imposed upon the Mayor and Commissioners, and it is specifically provided that they "shall exercise" all those powers, and it is provided how the powers and duties shall be

divided between the Mayor and the Commissioners, each of them being required to be the commissioner of one of the five departments of the city government.

The powers and duties so specifically vested in and imposed upon these officers with the requirements that they shall exercise them cannot lawfully be delegated to any other person.

It has been suggested that under Section 25 of the Act the Mayor and Commissioners can appoint and authorize some person to manage the City's affairs. This provision is not materially different from that contained in Section 2 of Article VI of the Cities and Villages Act — the act under which most cities in Illinois, including Chicago, are organized. Section 25 of the Commission form of Government Act gives no more authority to the Mayor and Commissioners of the City of Highland Park to employ and authorize a man to manage the City's affairs than Section 2 of Article VI of the Cities and Villages Act gives the Mayor and Council of the City of Chicago, or the Mayor and Council of any other city in Illinois, the power to employ and authorize a man to take over the management of their city affairs. There is no authority given the Mayor and Commissioners of the City of Highland Park by Section 25, or by any other provision of the Commission Form of Government Act, to delegate their powers and be relieved of their duties which are vested in them and imposed upon them by the Commission Form of Government Act.

The Supreme Court of Illinois held in *City of Sullivan v. Cloe*, 277 Ill. 56, at pages 59 and 60, as follows:

"Municipal corporations, such as cities and villages, are the creatures of the legislature, and can exercise such powers, and only such powers, as are expressly conferred upon them by the law of their creation, or such powers as are necessary to carry into effect the powers thus expressly granted to them. . . . Where power is conferred upon a particular body or set of public officials and the mode of its exercise is specified it cannot be exercised by another body or other officials or in any manner different from that pointed out by the statute covering it. . . . Where the power is expressly delegated to the city council the power must be exercised by it as such body and cannot be exercised by any other body, nor can such power be delegated to others by it. . . ."

The lawful authority of any person employed by the Mayor and Commissioners of the City of Highland Park must be restricted to ministerial acts which have been defined as acts "which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done." It has been held that a duty is ministerial "only when the discharge of the same requires neither the exercise of official discretion nor judgment."

It is not conceivable that one so restricted could manage the affairs of a city or that he could function as a "city manager."

The Mayor and the Commissioners of the City of Highland Park are required by law to exercise the powers conferred upon the City and to assume the duties and responsibilities of their respective offices. They cannot lawfully delegate this authority to another person and they cannot lawfully avoid the duties and responsibilities which they assumed in becoming such officials of the City.

Yours very truly,

DAVID R. CLARKE.

Coalition Ticket Publicity Committee