

BOX
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**Franchise Tax and
Assessment Settlements**

1910

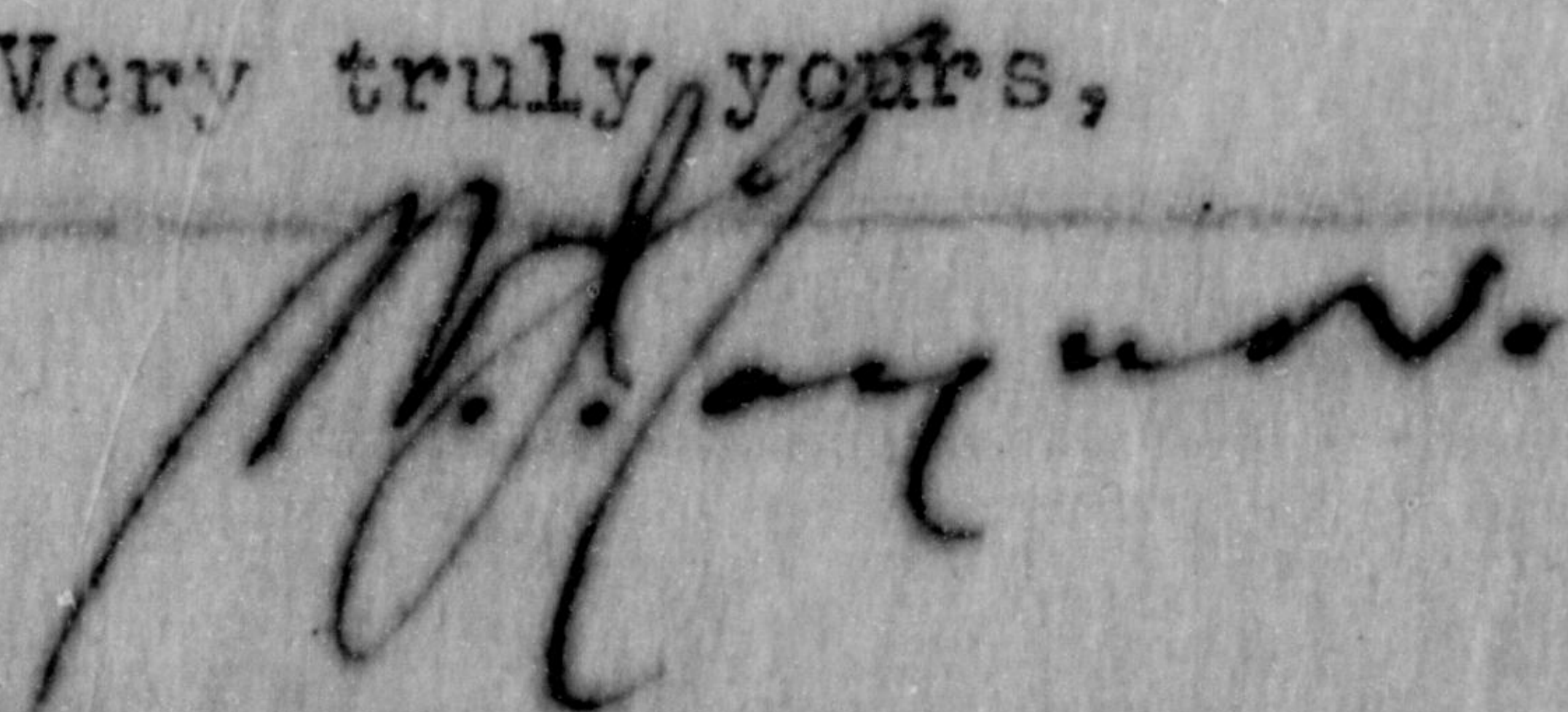
Feb. 3, 1910.m

My dear Mr. Watson:

Mr. Whitridge, receiver of the Third Avenue Railroad Company, has just had a conference with me with regard to the payment of the franchise taxes on that property. I am very desirous that you take that matter up and examine it in connection with his attorney, and decide how much is due and have it paid at once. I want to take this case as an example of what can be done in the way of doing things in a fair spirit with the corporations and persons dealing with the city.

If there be anything that you do not wish to take the responsibility about as you progress in the matter, I shall confer with you.

Very truly yours,



A. R. Watson, Esq.,

Corporation Counsel.

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From Corporation Counsel Watson, saying that he has received an offer from Joline, Larkin & Rathbone, attorneys for the Richmond Light & Railroad Company and the Staten Island Midland Railway Company, to pay the city \$50,000.00 cash and \$25,000.00 in notes of equal amounts payable in 3, 6, 9 and 12 months, in settlement of all claims by the city against these companies account of paving in and between the tracks of these companies. The City now has pending claims against these companies to the amount of \$284,035.18. In November of last year, the comptroller approved a settlement of the claims for \$50,000.00 but Mayor McClellan declined to approve the settlement.

The cases against the company are set for trial March 21st next; Mr. Watson states that he is advised that if these cases proceed to judgment, the Railway Companies will be obliged to apply for a receiver. In that event it is problematical how much the City will get for its claim. He submits the proposed settlement for your approval.

Mar 17/1910

Communication

FROM

THE CORPORATION COUNSEL

*Re. to Bills against
Richmond Light
& R.R. Co. and the
Staten Island and
N.Y. Co.*

DATED NEW YORK,

City of New York.
Law Department,
Office of the Corporation Counsel,
New York, March 17th 1910.

ARCHIBALD R. WATSON,
 Corporation Counsel.
 70-1B-V



Hon. William J. Gaynor,

M a y o r .

S i r :-

I have received from Messrs. Joline, Larkin & Rathbone, attorneys for the Richmond Light & Railroad Company and the Staten Island Midland Railway Company, an offer to pay The City of New York the sum of \$50,000. cash and \$25,000. in notes of equal amounts, payable in three, six, nine and twelve months respectively, in full settlement of all actions and claims by the City against the above named railroad companies, now pending, on account of the expense which has been incurred by the City in paving within and between the tracks of the said railroad companies and two feet outside thereof.

I beg to advise you that there are now pending in this department actions and claims against the said railroad companies for paving as follows:

THE CITY OF NEW YORK vs. RICHMOND LIGHT
 AND RAILROAD COMPANY.

Action No. 1,	\$ 31,988.39
Action No. 2,	56,318.21
Action No. 3,	92,628.34
Action No. 4,	48,139.94
Action No. 5,	57,355.90
Action No. 6,	2,468.33
Action No. 7,	9,847.41
	<u>\$278,946.52</u>
Claim not in action,	1,519.22

Total, \$ 280,465.74

Letter to Hon. William J. Gaynor, *Page* 2.

Brought forward, \$ 280,465.74

THE CITY OF NEW YORK vs.
STATEN ISLAND MIDLAND
RAILWAY COMPANY.

Action No. 1,

Total, 3,569.44
\$ 284,035.18

On the 5th day of November, 1909, Messrs. Joline, Larkin & Rathbone made an offer of settlement of these actions and claims to my predecessor, Francis K. Pendleton, Corporation Counsel, offering in full settlement thereof the sum of \$50,000. The matter was referred to the Comptroller, who, after an examination of the facts, approved the settlement. The matter was then referred to Mayor McClellan, who declined to approve the settlement, among other grounds, for the reason that he was about to retire from office and that the matter should be left for the new administration.

From report submitted by the counsel for the railroad companies, which I have verified by comparing the reports made to the State Board of Railroad Commissioners, it appears that the net income from operation of the Richmond Light & Railroad Company has never exceeded \$10,000. per annum, and for many years has been operated at a loss. The same statement can be made with respect to the Staten Island Midland Railway Company.

The Richmond Light and Railroad Company has outstanding first mortgage bonds amounting to \$2,200,000. and it is claimed that the company has a floating debt of approximately \$500,000. The Staten Island Midland Railway Company has outstanding first mortgage bonds amounting to \$1,000,000. and reports to the Railroad Commissioners would indicate there is a floating indebtedness of more than \$100,000.

Letter to Hon. William J. Gaynor,

Page -3-

The actions above referred to are all at issue and will appear on the Day Calendar, Trial Term Part IV, Supreme Court, New York County, for trial on March 21, 1910.

The liability to pave in and about the tracks of the defendant companies is imposed upon them not only by section 98 of the General Railroad Law, but by their charters. Statutory notice was served in each case upon the railroad companies, before the work was done, by the President of the Borough of Richmond, and the City should with reasonable certainty be able to recover judgments against the defendant companies for substantially the total amounts demanded in the complaints. I am advised, however, in the event of these actions proceeding to judgment, that the railroad companies will be compelled to apply for the appointment of a receiver, and in view of the outstanding indebtedness it is problematical how much, if anything, the City would realize upon its claims in a receivership proceeding.

In this connection, I shall be glad to submit to you, if desired, the pleadings and papers in the actions above referred to, the correspondence relating thereto and the annual statements of the railroad companies for the fiscal year ending June 30, 1909.

I beg to submit the proposed settlement for your approval, or such other disposition as you may deem proper.

Respectfully,

McLoud B. Woodman

Corporation Counsel.

From Corporation Counsel Watson, giving the terms of the proposed settlement of the City's special franchise claims for 1907, 1908 and 1909, against the Western Union Telegraph Company.

The Western Union alleges over-valuation, inequality and illegality and demands very large deductions. It claims to operate under Act of Congress of July 24, 1866, and not under any law or franchise of the State of New York, thus that its franchise in this State was obtained from the United States Government and is not taxable.

Under the Charter, however, the Company obtained the right to place its wires on the streets of the city.

Counsel for the Company accordingly proposes to settle with the City taking as the value of all special franchises possessed by the Company the difference between its tangible property in the streets and the assessments. They propose then to divide these amounts equally and assign one half as the value of the special franchises granted by the State and one half as the value of the franchises granted by the United States Government. To the value of the tangible property in the street they would add the value of the franchises granted by the State and then equalize the total at 89 per cent.

From the letter it is exceedingly difficult to tell just what concessions are being made in dollars to the Western Union Company.

R.A.

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Mar 23/10

Communication

FROM

THE CORPORATION COUNSEL

*Re. to City's Special
Franchise Claims
against Western
Union Telegraph
Company*

DATED NEW YORK,

*Law Department,
Office of the Corporation Counsel,
New York, March 22 1910.*

50-HFB.



Hon. William J. Gaynor,

Mayor of The City of New York.

Sir :

With reference to the negotiations looking to a settlement of the certiorari proceedings instituted by the Western Union Telegraph Company to review the assessments against its special franchise for the years 1907, 1908 and 1909, I beg to say:

A proposition for a settlement has been made, the acceptance of which I recommend, after a careful consideration of its terms. The assessments for the years referred to are in the following sums:

<u>Borough.</u>	<u>Assessment 1907.</u>	<u>Assessment 1908 - 1909.</u>
Manhattan	\$575,000.00	\$668,700.00
Brooklyn	60,000.00	93,000.00
Queens	4,500.00	18,900.00
Bronx	30,000.00	33,200.00
Richmond	<u>2,000.00</u>	<u>6,200.00</u>
	\$671,500.00	\$820,000.00

The grievances alleged in the petitions for the writs of certiorari are over-valuation, inequality and illegality, and very large reductions are demanded from the amounts of the assessments.

The claim of illegality is based upon the fact that

Letter to Hon. William J. Gaynor.*Page* 2

the Company insists that under its acceptance in 1867 of the Act of Congress of July 24, 1866, entitled "An Act to aid in the construction of telegraph lines and to secure to the government the use of the same for postal, military and other purposes", it has constructed and now maintains and operates all the lines of telegraph in the State of New York by virtue of that Act, and not by virtue of any law or franchise of the State of New York. It thus maintains that its franchise to be in the streets of the City of New York is obtained from the United States government, and this being a federal franchise it is not taxable.

Under its Charter, however, the Company secured the right to place its wires in the streets of the City.

The counsel for the Company have accordingly made a proposition of settlement under the terms of which they propose to take as the value of all special franchises possessed by the Company the difference between its tangible property in the streets and the assessments. They propose then to divide these amounts equally and assign one-half as the value of the special franchises granted by the State, and one-half as the value of the franchises granted by the United States government. To the value of the tangible property in the street they would add the value of the franchises granted by the State and then equalize the total at 89 per cent.

A full discussion of this question approved in an opinion to the Comptroller dated November 18, 1908, in which a compromise of the taxes of the years 1900 to 1906, inclusive, was arrived at upon the basis now proposed.

Under the proposed settlement the first thing to be determined is the value of the tangible property in the streets.

Letter to Hon. William J. Gaynor,

Page 3

For the year 1907 it is proposed to take the valuation put upon such property by the State Board of Tax Commissioners as shown in the following table. In the third column there is indicated the results obtained by adding to the value of the tangible property in the streets in each Borough one-half the difference between that sum and the amount of the assessments in the particular Borough. In the fourth column there is indicated the proposed final assessments in each Borough, the same being 89 per cent of the proposed full value.

Borough	Value tangible property in streets as fixed by State Board.	Full value of special franchises.	Full value equalized at 89 per cent.
Manhattan	\$259,874.00	\$417,437.00	\$371,519.00
Brooklyn	16,038.00	32,019.00	33,837.00
Queens	1,730.00	3,115.00	2,773.00
Bronx	13,520.00	21,760.00	19,367.00
Richmond	683.00	1,341.00	1,194.00

The assessments for 1908 and 1909 are the same in amount. In these years, however, a preliminary question arises over the difference in the valuations put upon tangible property in the street by the Company's experts and by the State Board of Tax Commissioners. This difference involves the extent of the depreciation of such property. The Company claims a much larger depreciation than the State Board will admit. The extent of the depreciation or, in other words, a depreciated value of the property is a matter of opinion on which experts and practical men will differ. As a basis of settlement therefore it is proposed to divide equally the

Letter to Hon. William J. Gaynor,

Page 4

difference between the value of the tangible property, as claimed by the Company, and the value of the same as claimed by the State Board, and add one-half that difference to the value as claimed by the Company. The results of these calculations are shown in the second column of the following table:

Borough.	Value of tangible property in streets.	Full value of special franchises.	Full value equalized at 89 per cent.
Manhattan	\$282,152.00	\$476,416.00	\$423,121.00
Brooklyn	39,098.00	56,049.00	58,784.00
Queens	3,606.00	11,253.00	10,016.00
Bronx	12,701.00	22,950.00	20,426.00
Richmond	1,185.00	3,692.00	3,286.00

With these amounts as a basis, the values of the special franchises are ascertained, as hereinbefore indicated, to wit, by dividing the difference between these sums and the amounts of the assessments. In the third column I have indicated the sums which will represent the full value of the special franchises under the proposed settlement, and in the fourth column the proposed final assessments which are 89 per cent of the full value.

The final figures are to be taken for both the years 1908 and 1909, as the assessments are the same in each year.

I submit the proposed settlement for your consideration and recommend its acceptance.

Respectfully,

McLubned Watson

Corporation Counsel.

March 22, 1910

Sir:

In reply to your favor of March 22nd in respect of the proposed compromise with the Western Union Telegraph Company of the assessments against its special franchises, I beg to say that I am willing to follow your judgment in the matter provided it be entirely clear to you that the company has any franchise whatever from the United States government in the streets of the City of New York. It does not seem to me that it has. What franchise can the United States government give in the highways of the state to a private corporation? It may be that the government could assume some right of passage over such highways, but how does it confer such right or privilege on any one else?

Very truly yours,

H. J. Hayes
Mayor

A. R. Watson, Esq.,

Corporation Counsel.

CORPORATION COUNSEL
CITY OF NEW YORK

March 23, 1910.

Hon. William J. Gaynor,
Mayor of The City of New York.

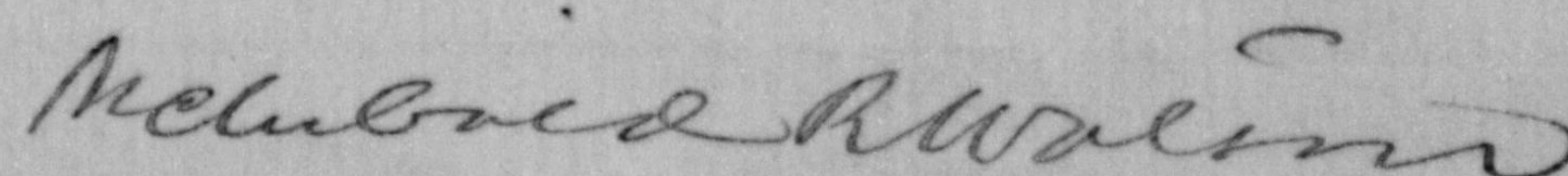
S i r:

I am in receipt of your favor of the 22nd instant with reference to the proposed compromise with the Western Union Telegraph Company of the certiorari proceedings brought to review the assessments upon the special franchises of that Company. The alleged federal franchise claimed by the Company is predicated upon the so-called Federal Telegraph Act passed in 1866 (R.S. §5263 et seq.). providing, among other things, that any telegraph company accepting the provisions of the Act should have the right to construct, maintain and operate lines over and along any of the military or post roads of the United States. By Act of Congress approved March 1st, 1834, all public roads and highways kept up and maintained as such are deemed to be post routes of the United States, and it is insisted, therefore, that the Company has a right to be in the streets and highways of New York City and State un-

Hon. William J. Gaynor, -2-

der and by virtue of the provisions of this federal statute. Of course the authority of the State to tax the tangible property of the Company in the streets and highways is another thing, and this cannot be doubted; but there does seem to be a sufficient question about the power of the State to tax the right of the Company to be in the streets to warrant some consideration of the matter as a basis for concession in the compromise of litigation. In the case of San Francisco v. Western Union Tel. Co. (31 Pac. Rep. 10), it was held by the Supreme Court of California that the Western Union Telegraph Company, by filing an acceptance under the act of Congress above referred to, which in return for the rights conferred imposed certain obligations upon such companies not necessary to be here referred to, had obtained a federal franchise which no state could tax. While this case is distinguishable in some respects from the issues which we would be able to present to the court, my opinion is, confirmed, also, by the views of the Attorney General and his special counsel, that the compromise proposed is reasonable, and may properly, if it meets with your approval, be accepted by the City.

Respectfully,



Corporation Counsel.

Mar 23/10

ack Mayors letter
of 22nd pt. to Western
Union Telegraph Co

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From Corporation Counsel Watson recommending a settlement of the City's claim for special franchise assessments against the New York & Richmond Gas Co. for the years 1906-1909, inclusive. Counsel for the company propose to settle this claim upon a basis of equalizing the assessment at 90%, a deduction of 10% from the assessment as fixed by the State Board. The Attorney General, counsel for the State Board of Tax Commissioners, approves this settlement and has signed orders carrying it into effect, submitting the same, however, for the approval of the Corporation Counsel, who recommends the acceptance of the proposed settlement and submits it to you for your consideration.

Mar 23/10

Communication

FROM

THE CORPORATION COUNSEL

Re. to Settlement
of City Claim for
Special Franchise
assessments, City
of Richmond
Gas Co 1906-1909

DATED NEW YORK,

ANSWERED
★ MAR 24 1910 ★
MAYOR'S OFFICE

Law Department
Office of the Corporation Counsel,

(50) AD

New York, March 23rd 1910.

Hon. William J. Gaynor,

M a y o r .

S i r : -

There are pending certiorari proceedings to review the special franchise assessments against the New York and Richmond Gas Company for the years 1906 to 1909 inclusive. The assessment for the year 1906 is in the sum of \$285,000.; for each of the years 1907 and 1908, \$300,000. and for 1909, \$325,000.

The grievances alleged in each year are over-valuation and inequality, and the Company in its petitions asked to have the assessment reduced to \$185,000. in the year 1906, and each of the assessments in the years 1907 to 1909 inclusive to \$200,000.

The proposition to settle these proceedings has been made by the counsel for the Company upon the basis of equalizing the assessments at 90%. This involves a deduction of 10% from the assessments as fixed by the State Board.

The State Board of Tax Commissioners have always stated that their assessments were made at full value, and have so returned to the Court in certiorari proceedings. In *People ex rel. Jamaica Water Supply Company* against State Board of Tax Commissioners, 196 N.Y., 39, the Court of Appeals held that the owners of special franchises had the

Letter to Hon. William J. Gaynor, *Page* 2

right to have the assessments of such franchises equalized with the assessments of other real estate on the same assessment roll, if such other real estate were assessed at a lower rate than were the special franchises.

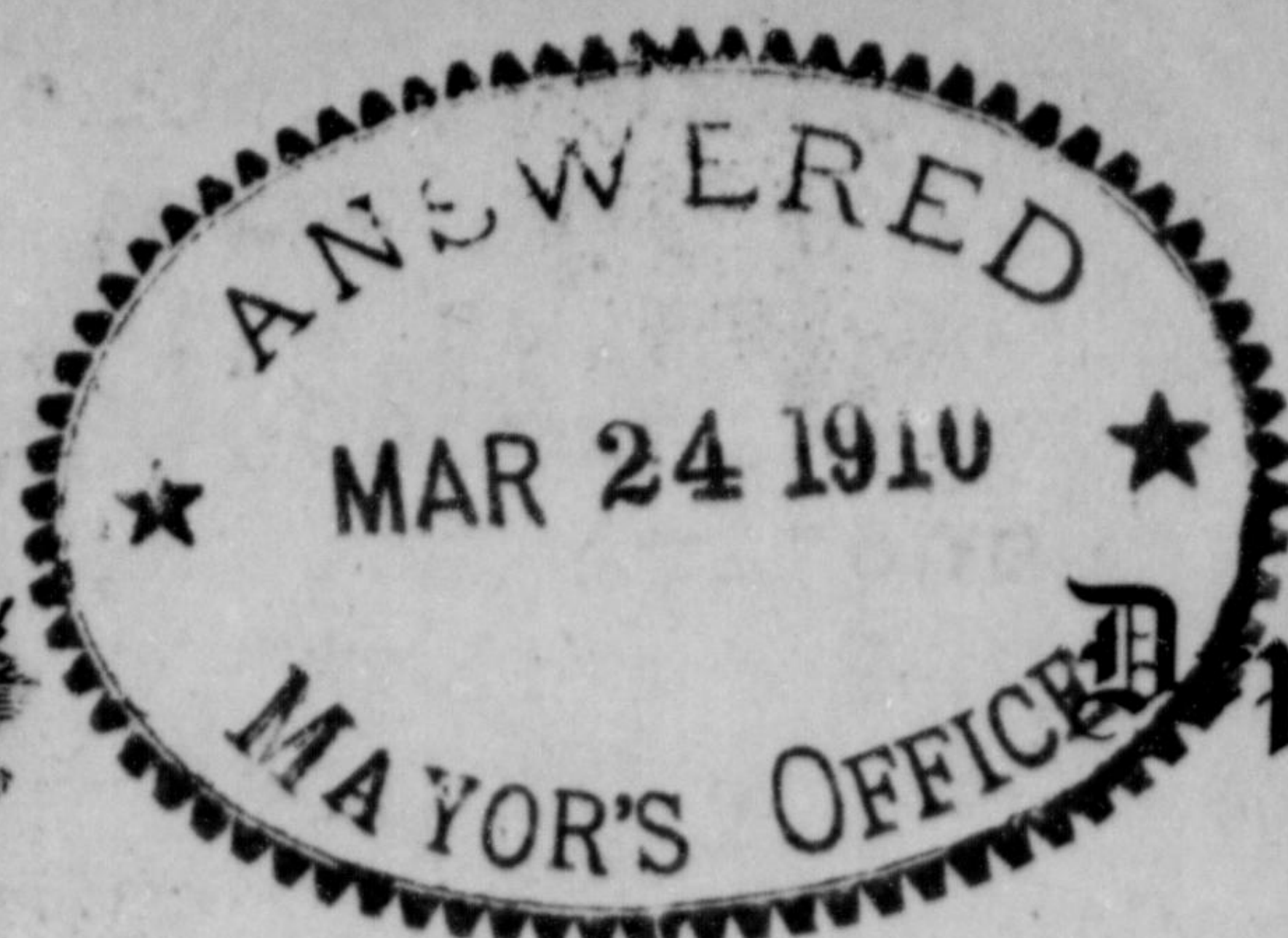
The State Board of Equalization decided that the ratio of assessed valuation to actual value of real estate in the County of Richmond for each of the years 1906 to 1908 inclusive, was 90% and for the year 1909, 88%.

The Attorney General, counsel for the State Board of Tax Commissioners approves this settlement and has signed orders carrying it into effect, submitting the same, however, for my approval. As the rate of equalization proposed is reasonably favorable to the City, I submit the same to you for your consideration, and recommend its acceptance.

Respectfully,

Richard B. Walters

Corporation Counsel.



Department of Finance
City of New York

William A. Prendergast, Comptroller

March 24, 1910.

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Super on Bond
Council

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Transportation, examine
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Honorable William J. Gaynor,
Mayor,
The City of New York.

S i r :

Since the receipt of your communication of March 2, 1910, forwarding to me the report of the Corporation Counsel which recommended a settlement of the claims of the city for franchise taxes due from the various lighting companies and the claims of the same companies against the city for gas and electricity furnished, I have caused a thorough analysis to be made of the basis of the proposed settlement.

As a result of this investigation and from consideration of the subject, and in pursuance of the requirements of Section 255 of the Charter, I beg to state that I hereby give my written approval to the various offers of judgment or, as the case may be, to the necessary consents to orders which may be required to carry out the settlement proposed by the Corporation Counsel upon the terms set forth in his communication, but subject to proper computation of amounts due under such terms and of interest.

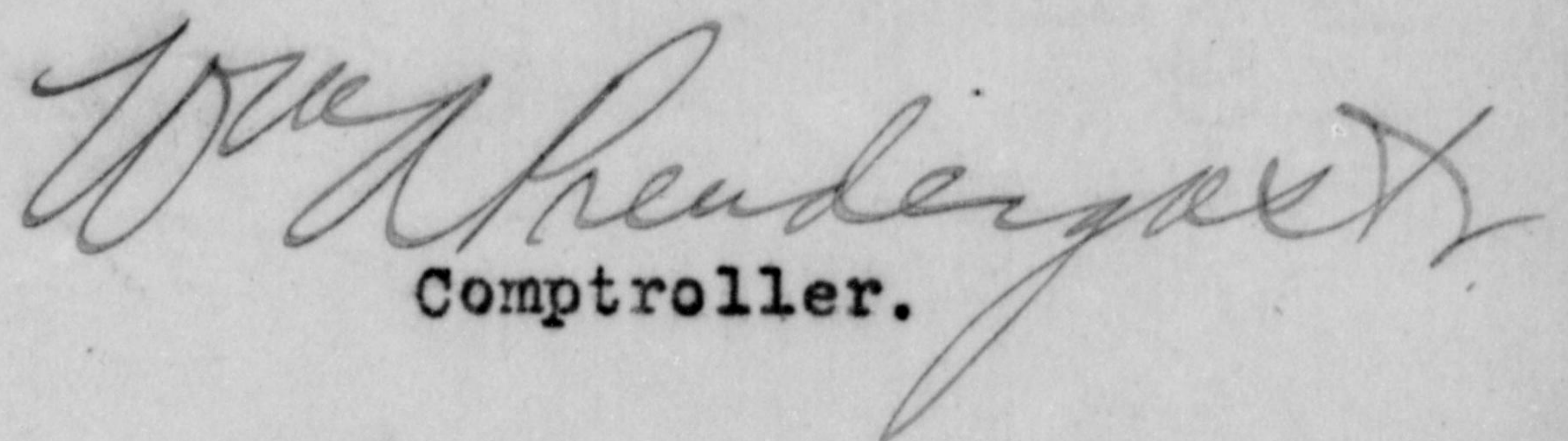
This consent is given subject to your giving your previous written approval as Mayor under the final clause of Section 255 of the Charter, the amounts involved exceeding \$10,000.

The matters referred to are the franchise taxes due from the Consolidated Gas Company for the years 1901 to 1909, inclusive; from the New Amsterdam Gas Company for the years 1901 to 1909, inclusive; the Central Union Gas Company for the years 1901 to 1909, inclusive; the Northern Union Gas Company for the years 1901 to 1909, inclusive; the Standard Gas Light Company for the years 1902 to 1909, inclusive; the New York Edison Company for the years 1903 to 1909, inclusive; the Consolidated Telegraph and Electrical Subway Company for the years 1903 to 1909, inclusive; the United Electric Light and Power Company for the years 1903 to 1909, inclusive; the Brush Electric

Illuminating Company of New York for the years 1903 to 1909, inclusive; and the amount due from the city for gas and electricity furnished by the Consolidated Gas Company of New York, from December 1, 1902, to date; by the Central Union Gas Company from January 1, 1903, to date; by the Northern Union Gas Company for the same period; by the New Amsterdam Gas Company and the Standard Gas Light Company for the same period; by the New York Edison Company, the Brush Electric Illuminating Company, the United Electric Light and Power Company and Westchester Lighting Company from January 1, 1903, up to the time of the beginning of the regular payment of the bills of such companies.

This approval is conditioned upon the companies in question paying in full all moneys due to the city for personal taxes.

Respectfully yours,


Comptroller.

Mar 24/10

ack Mayor's Letter of
2nd re to Franchise
Tax - due the City
from Lighting Co

March 24, 1910.

Sir:

I am in receipt of your letter of March 4th informing me of the approval by you of a settlement proposed by the Corporation Counsel, the Commissioner of Water Supply, Gas and Electricity, and the Attorney General of the State of the claims of the city against the lighting companies of the city for franchise taxes on the one hand and of the said companies against the city for bills for lighting on the other, and also including the claims of the city for arrears of personal taxes against the said companies and informing me that before such settlement may be carried out that it is necessary for the Mayor to give his formal approval. That approval I hereby give. In doing so I desire further to express the thanks of the Mayor for the work done by you in bringing about such settlement on a basis so favorable to the city. It was a controversy of long standing, and I am glad to see it settled.

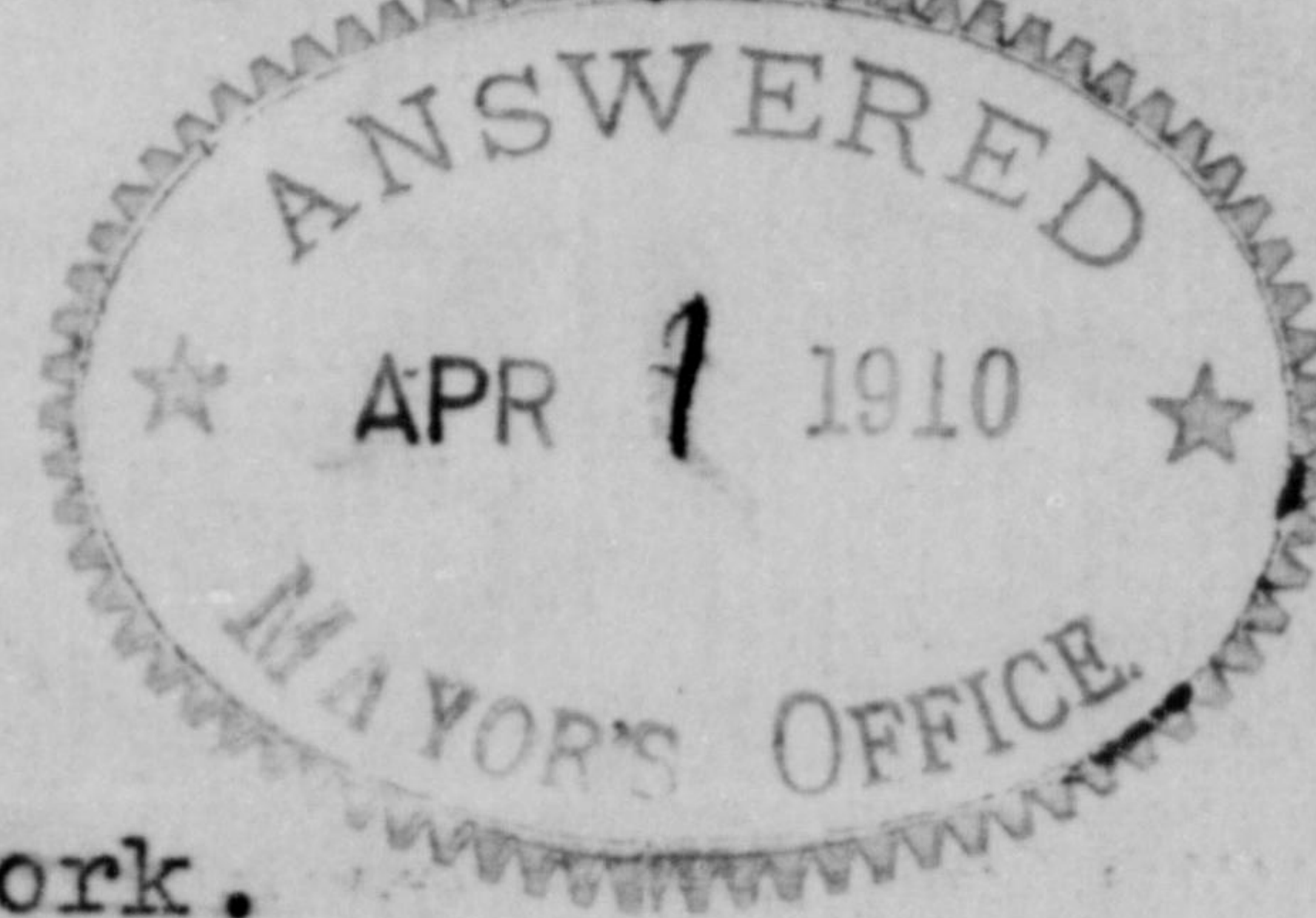
Very truly yours,

Hon. W. A. Prendergast,
Comptroller.

W. L. Gaynor.
Mayor.

CORPORATION COUNSEL
CITY OF NEW YORK

April 1, 1910.



Hon. William J. Gaynor,
Mayor of The City of New York.

S i r:

As you have been advised, the Comptroller has approved the terms and conditions of the proposed settlement recommended by me of the litigation involving the amounts due the City by the Gas and Electric Companies of the Boroughs of Manhattan and the Bronx for special franchise taxes, and of the amounts due the Companies by the City for gas and electricity furnished by them. This was the proposition submitted by me to you under date of March 1st, 1910.

If you will be kind enough to state your approval of this settlement in writing, as required by section 255 of the Charter, I will have the necessary orders entered disposing of these proceedings.

It will only be necessary for you to say
"I hereby approve of the settlement with the gas and electric companies recommended by you in your letter

Hon. William J. Gaynor, -2-

to me under date of March 1st, 1910."

Respectfully,

Reuben B. Walter

Corporation Counsel.

April 1910

Ac. to Settlement of
Money due the City
from Gas & Electric
Co, Manhattan & Bronx

Apr 11/1910

Communication

FROM

THE CORPORATION COUNSEL

*Re-Proposed
Compromise of
Special Franchise
Tax Litigation
between the 3rd
and R.R. Co. and
the City of N.Y.*

DATED NEW YORK,

*Law Department,
Office of the Corporation Counsel,*

50-F-AD

New York, April 9 1910

Hon. William J. Gaynor,

Mayor.

Sir:-

After extended negotiations, I have to submit to you the following proposed compromise of the special franchise tax litigation between the Third Avenue Railroad Company, its subsidiary companies and The City of New York.

The full value of the special franchises in each case has been arrived at by the application of the so-called net earnings rule, as laid down by the Court of Appeals in the proceeding of People ex rel. Jamaica Water Supply Company vs. the State Board of Tax Commissioners, 196 N.Y. 39, 197 N.Y. 33, to the facts in each case. The full values of the special franchises are then equalized in the years 1901 and 1902 at 67 per cent and in subsequent years at 89 per cent so as to make the assessments conform with the ratio of assessment on other real estate.

THIRD AVENUE RAILROAD COMPANY.

BOROUGH OF MANHATTAN.

Year	Assessment fixed by State Board.	Full value of special franchise.	Equalized Assessment.
1902	\$ 10,086,000.	\$ 7,274,589.	\$ 4,873,975.
1903	10,310,000.	7,274,589.	6,474,384.
1904	10,300,000.	7,274,589.	6,474,384.
1905	10,300,000.	6,274,589.	5,584,384.
1906	10,500,000.	6,274,589.	5,584,384.
1907	11,320,000.	6,274,589.	5,584,384.
1908	7,920,000.	6,274,589.	5,584,384.
1909	7,920,000.	6,274,589.	5,584,384.

Letter to Hon. William J. Gaynor, *Page* 2

A settlement of the taxes for the year 1901 is not made for the reason that a proceeding is now on appeal before the Court of Appeals, and the matter is left open for the decision of that court. It is important that this appeal be prosecuted by the State and the City, for the Appellate Division, Third Department has rendered an opinion, which appears to be in conflict with the decisions of the Court of Appeals in the Jamaica Water Supply Company case. A substantial amount, however, has been paid by the Company on account of the taxes for 1901.

UNION RAILWAY COMPANY,

BOROUGH OF THE BRONX.

Year	Assessment fixed by State Board.	Full value of special franchise.	Equalized Assessment.
1901	\$ 1,776,830.	\$ 2,417,861.	\$ 1,619,967.
1902	2,676,850.	2,532,628.	1,696,861.
1903	2,683,500.	2,417,861.	2,151,896.
1904	2,875,000.	2,417,861.	2,151,896.
1905	3,670,000.	2,417,861.	2,151,896.
1906	3,760,000.	3,632,994.	3,233,365.
1907	4,780,000.	4,212,111.	3,748,779.
1908	4,206,000.	4,176,277.	3,716,886.
1909	4,206,000.	2,417,861.	2,151,896.

In the years 1901, 1903 to 1905 inclusive, and 1909, there were no net earnings left to capitalize as the value of the intangible special franchise after making allowances from net earnings called for under the decision of the Court of Appeals in the Jamaica Water Supply Company case, and in these years the value of the tangible property in the streets is taken as the basis of the full value of the special franchises.

Letter to Hon. William J. Gaynor,

Page 3

**FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS
AVENUE RAILWAY COMPANY,**

BOROUGH OF MANHATTAN.

Year	Assessment fixed by State Board.	Full value of special franchise.	Equalized Assessment.
1901	\$ 2,420,150.	\$ 1,582,925.	\$ 1,060,560.
1902	2,905,000.	2,679,751.	1,795,433.
1903	3,020,000.	5,058,301.	4,501,888.
1904	2,950,000.	4,811,333.	4,282,086.
1905	2,950,000.	4,718,967.	4,199,881.
1906	2,900,000.	2,584,508.	2,300,212.
1907	4,780,000.	3,874,362.	3,448,182.
1908	4,206,000.	4,046,974.	3,601,807.
1909	4,206,000.	3,532,241.	3,143,695.

In the year 1901, there were no net earnings left to capitalize as the value of the intangible franchises after making the proper allowances from gross revenue, and in that year the value of the tangible property in the streets is the amount fixed as the full value of the special franchises for that year. In the cases of the years 1903, 1904 and 1905, it is seen that the application of net earnings rule to the facts produces a larger equalized assessment in each year than the assessment fixed by the State Board of Tax Commissioners in those years, therefore, the assessments fixed by the State Board are not to be reduced, but the full taxes and interest thereon are to be paid.

DRY DOCK, EAST BROADWAY AND BATTERY RAILROAD COMPANY,

BOROUGH OF MANHATTAN.

Year	Assessment fixed by State Board.	Full value of special franchise.	Equalized Assessment.
1901	\$ 1,375,405.	\$ 1,378,333.	\$ 923,483.
1902	1,577,700.	1,536,066.	1,029,164.
1903	1,525,000.	564,000.	501,960.
1904	1,475,000.	616,200.	548,418.
1905	1,500,000.	564,000.	501,960.
1906	1,300,000.	564,000.	501,960.
1907	2,165,000.	628,033.	558,949.
1908	1,905,000.	1,398,014.	1,244,232.
1909	1,400,000.	802,216.	713,972.

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In the case of this company, there are no final net earnings left to capitalize as the value of the intangible franchises in the years 1903, 1905 and 1906, and the full value of the special franchises is accordingly fixed in those years at the value of the tangible property in the streets.

In the year 1907, the amount to which the company asked to have the assessment reduced to in its petition for the writ of certiorari was \$823,561., which is larger than the value as worked out under the net earnings rule. The assessment, therefore, is to be reduced only to the amount claimed in the petition.

KINGSBRIDGE RAILWAY COMPANY,
BOROUGH OF MANHATTAN.

Year	Assessment fixed by State Board.	Full value of special franchise.	Equalized Assessment.
1902	\$ 101,000.	\$ 330,000.	\$ 221,000.
1903	525,000.	330,000.	293,700.
1904	580,000.	330,000.	293,700.
1905	650,000.	330,000.	293,700.
1906	650,000.	330,000.	293,700.
1907	862,000.	330,000.	293,700.
1908	759,000.	Did not certiorari	
1909	759,000.	330,000.	293,700.

In the year 1902, what would be the equalized assessment on the basis of the net earnings rule is larger than the amount of the assessment, and accordingly the assessment is not to be reduced under the proposed compromise. In the years 1903, 1904, 1906 and 1907, the company in its petitions for the writs of certiorari asked to have the assessments reduced to sums which are larger than the equalized assessments indicated in the fourth column. In those years, therefore, the assessments are to be reduced only to the amounts claimed in the petition, which are as follows:

1903 - - - \$ 351,750.
1904 - - - 464,000.
1906 - - - 448,441.
1907 - - - 427,524.

In the year 1908, the company did not certiorari and the assessment will not be reduced by any sum.

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In the above, the amount fixed as the full value of the assessment in each year is the same, the reason for that being that the company had no final net earnings above proper allowances under the Jamaica Water Supply Company rule, and the value of the tangible property is accordingly indicated as the full value of the special franchises.

SOUTHERN BOULEVARD RAILROAD COMPANY,

BOROUGH OF THE BRONX.

Year	Assessment fixed by State Board.	Full value of special franchise.	Equalized Assessment.
1901	\$ 157,545.	\$ 222,440.	\$ 149,034.
1902	195,000.	222,440.	149,034.
1903	215,000.	222,440.	197,971.
1904	225,000.	222,440.	197,971.
1905	235,000.	222,440.	197,971.
1906	200,000.	222,440.	197,971.
1907	223,000.	222,440.	197,971.
1908	196,000.	Did not certiorari.	
1909	196,000.	222,440.	197,971.

This company had no net earnings over and above the proper allowances in the application of the net earnings rule, and accordingly, the value of the tangible property in the streets is taken as the basis of the full value of the special franchises, except in the year 1908, when the company did not certiorari its assessment; accordingly, the assessment is not to be reduced in that year. In the year 1909, the equalized value of the tangible property in the streets is greater than the amount of the assessment, so that the assessment will be confirmed for that year.

Letter to Hon. William J. Gaynor, *Page* 6

BRONX TRACTION COMPANY,

BOROUGH OF THE BRONX.

Year	Assessment fixed by State Board.	Full value of special franchise.	Equalized Assessment.
1905	\$ 150,000.	\$ 301,200.	\$ 268,068.
1906	150,000.	301,200.	268,068.
1907	200,000.	301,200.	268,068.
1908	176,000.	Did not certiorari.	
1909	176,000.	301,200.	268,068.

In the case of the above company, the figures in the third column are the value of the tangible property in the streets, there having been no final net earnings in each of the years in question. It will be seen that except as to the year 1908, these values when equalized at 89 per cent are greater than the amounts of the original assessments, so that these original assessments are not to be reduced. In the year 1908, the assessment is not to be reduced, for the reason that the company did not certiorari.

The companies are entitled to deductions from the amounts of the special franchise taxes for certain payments in the nature of taxes, which they have made in most of the years in question. After making the proper deductions, which are on record in the office of the Collector of Assessments and Arrears, and which will be adjusted by that official if the settlement is approved, the taxes and interest accruing to the City under the foregoing compromise will amount to approximately \$1,665,000. Of this amount there has been paid on account \$1,000,000.

Counsel for the companies is anxious to have these taxes disposed of as interest is accruing on them rapidly.

Letter to Hon. William J. Gaynor,

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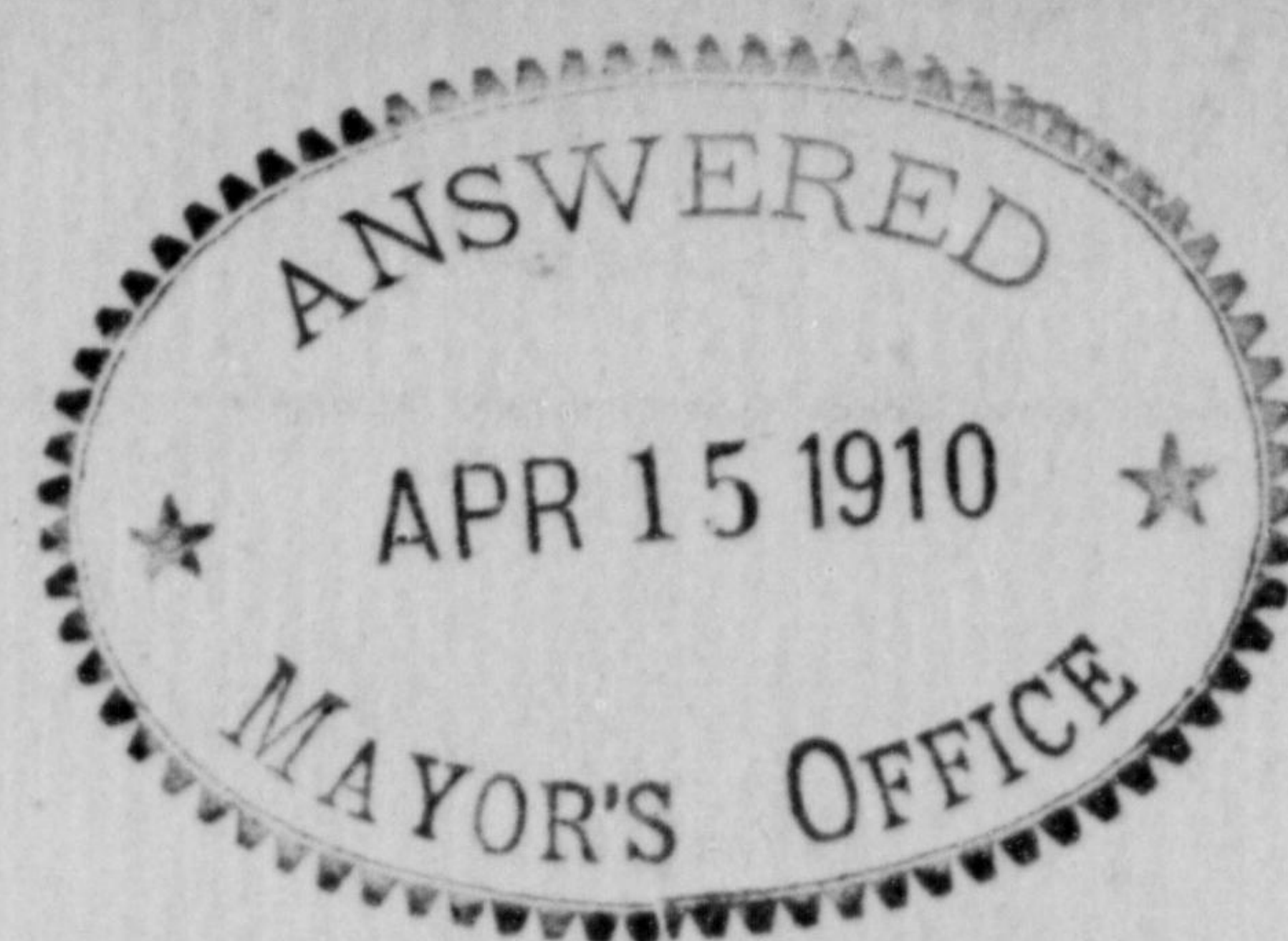
I submit the matter for your consideration and recommend the acceptance of the compromise proposed. The Attorney General will consent if you approve.

Respectfully yours,

McLure & Kivulima

Corporation Counsel.

CORPORATION COUNSEL
CITY OF NEW YORK



April 15, 1910.

Re Western Union Settlement.

Hon. William J. Gaynor,

Mayor of The City of New York.

S i r :

Subject to your approval, what we propose to do in the above entitled matter, involving the special franchise tax assessments for 1907, 1908 and 1909, is briefly as follows:

Take, for example, \$600,000 as the assessment for a single year, of which one-half was taken by the State Board to be the value of the tangible property, leaving one-half, or \$300,000 to be the value of the franchise to be in the streets. We divide this \$300,000 in half, as a matter of compromise, in view of the Company's claim that it has a right to be in the streets under the so-called telegraph act of July 24, 1866, leaving the assessment \$450,000 subject to equalization.

In the case of San Francisco v. Western Union Telegraph Co., 31 Pac. Rep. 10, it was held that the Western Union Telegraph Company, under the provisions of the Telegraph Act, acquired a federal franchise which no state could tax, by reason of the provisions of said

Hon. William J. Gaynor, -2-

telegraph act, which, when accepted by the Company, obligated it to give priority to telegrams between the departments of the United States Government and its officers and agents over all other business, said messages to be sent at rates fixed annually by the Postmaster General, and giving the United States Government the further right to purchase, at an appraised value, all lines and property of said Telegraph Company for military, postal or other purposes, at any time after five years. These provisions, it was held, constituted the Western Union Telegraph Company a governmental agent; hence the conclusion reached.

In 1908 the City settled with the Western Union Telegraph Company for the years 1900-1906, inclusive, upon the same basis as now proposed.

The amount in taxes which is conceded to the Company upon the theory stated for the three years in question is under \$10,000. The Company, on the other hand, concedes an equal amount to us, upon the theory that the State has a right to tax its franchise to be in the streets. I assume that neither side would be prejudiced on a trial by this.

Hon. William J. Gaynor, -3-

While I think the federal franchise question should be tried out in the courts, I considered it perhaps preferable to settle the existing litigation, including the tax for the three years, on the terms proposed, and then litigate, as a test case, the 1910 assessment. If the foregoing meets with your approval, I shall be glad to have a word to that effect (approving the settlement proposed in my communication of March 22nd). If it does not, I will on Monday next have the cases set down for trial.

Respectfully,

Melville B. Montrose

Corporation Counsel.

Apr 15/1910

Re-to Western
Union Settlement

Apr 20/1910

Communication

FROM
THE CORPORATION COUNSEL

*Assessments Viz
Spec Franchises
Viz Empire Subway Co
NY Telephone Co
NY & N Tel Co*

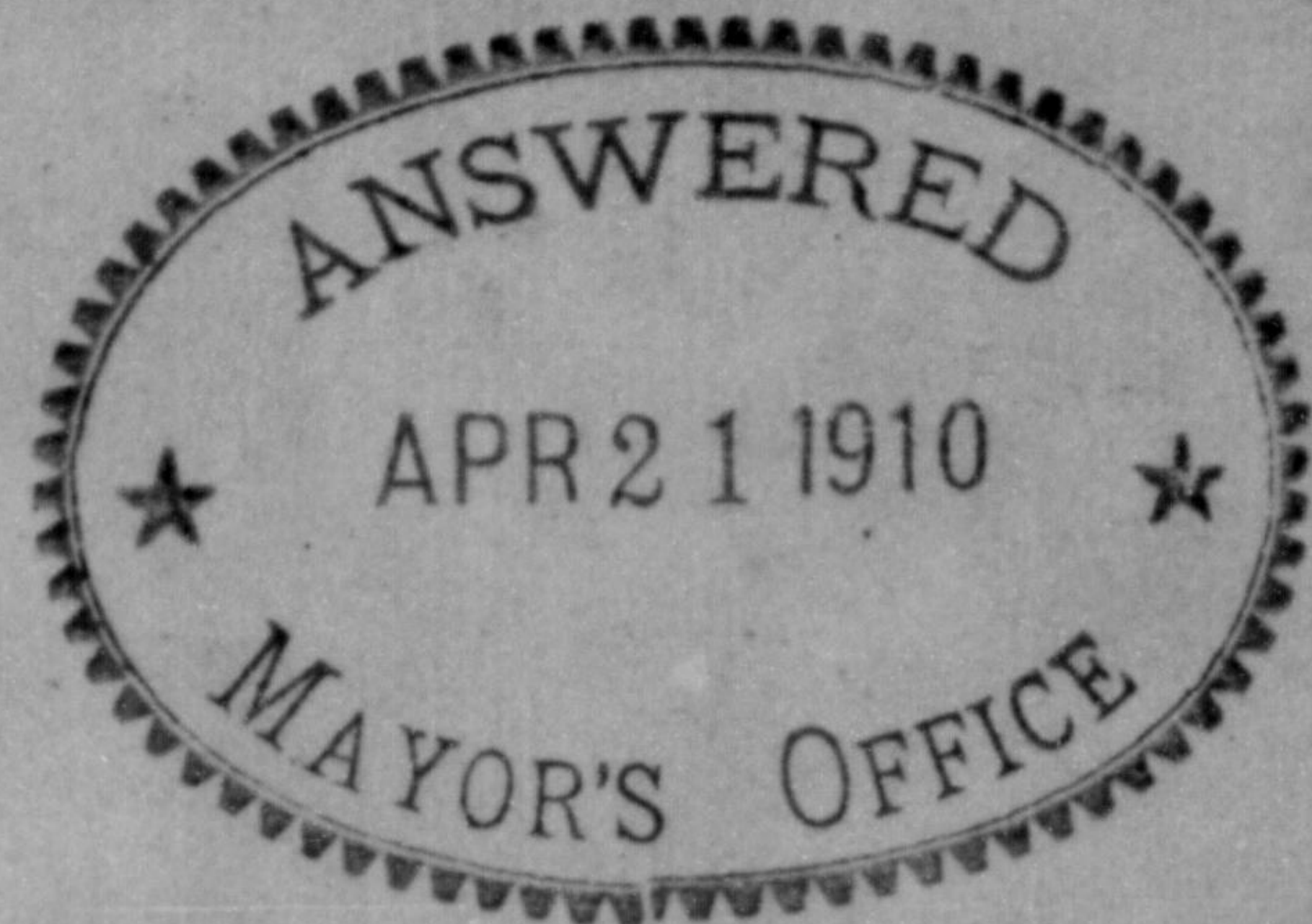
DATED NEW YORK,

*Law Department,
Office of the Corporation Counsel,*

50 - MN/GEC.

New York, April 20 1910

Hon. William J. Gaynor,
Mayor.



Sir :

There are pending certiorari proceedings to review the assessments against the special franchises of the following companies in the amounts indicated:

1908	Empire City Subway Company, Limited,	\$8,750,000.
1909	" " " " " "	8,900,000.
1908	New York Telephone Company	28,400,000.
1909	" " " " " "	29,480,000.
1908	New York & New Jersey Telephone Company	9,500,000.
1909	" " " " " "	9,564,000.

Counsel for these companies has offered to compromise the proceedings by equalizing the assessments at 89%. These assessments are presumptively made at full value by the State Board of Tax Commissioners.

Inasmuch as the Court of Appeals in the proceeding of People ex rel Jamaica Water Supply Company vs. The State Board of Tax Commissioners, 196 N. Y. 39, has decided that assessments of special franchises should be equalized with the assessments of other real estate, I would

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recommend the settlement.

The Attorney General has consented to the settlement, and I beg to submit the matter for your consideration.

Respectfully yours,

McDonald R. Walter

Corporation Counsel