

J.P.C.
F.K.

Memorandum in regard to Mr. Butt's bill Senate reprint 1580, entitled "AN ACT providing for the removal of incumbrances and obstructions upon the streets, sidewalks and public grounds in the 23d and 24th Wards of the City of New York."

This bill transfers the jurisdiction of the removal of street incumbrances and obstructions in the 23d and 24th Wards from the Commissioner of Public Works to the Commissioner of Street Improvements of the 23d and 24th Wards.

The bill in its original form was Assembly P. No 448 and as it appeared to cause what was claimed to be an unnecessary additional expense of some \$10,000. it was opposed before the Cities Committee of the Assembly by certain New York members.

This office proposed an amendment which made the expenditure discretionary and put it under the control of the Board of Estimate and Apportionment, that is to say, the 3d paragraph of §1 of the bill was amended so as to read as follows:

"For the purpose of defraying the expenses
"necessary for the operation of this act from May
"1st, 1896 to December 31, 1896, the Comptroller
"of the City of New York is hereby authorized to r
"raise such sums of money as may be necessary
therefor upon the consent and approval of the Board
"of Estimate and Apportionment but not to exceed
"\$10,000. by the issue and sale of revenue bonds, etc."

The amendment consisting of the words "upon the consent and approval of the Board of Estimate and Apportionment."

This amendment was accepted by the introducer of the bill, Mr. Butts, and the bill in its amended form was reported favorably by the Assembly Cities Committee.

Some how or other, however, the bill was never re-printed in its amended form, and the attention of this office not being called to that fact, passed the Assembly in its original form.

In the Senate, again without the knowledge of this office, and according to Mr. Butt's statement without his knowledge, the following amendment was inserted in the bill in the last days of the Session, Page 2 line 2 "The said Commissioner shall have the power to "appoint one superintendent and four general inspectors "and foremen and to employ the necessary laborers and "carts"

This very radical change in the bill, the complete elimination of the discretionary power of the Board of Estimate and Apportionment, agreed to be inserted by Mr. Butts and Mr. Clarke, did not come to the attention of this office until the bill in this form had passed the Senate.

Mr. Clarke asserted that in its amended form the bill was utterly unsatisfactory to the City authorities in that it changed a discretionary measure into a mandatory one and absolutely provided for the appointment of

a bureau of a general superintendent with a number of subordinates which would insure an expenditure of the \$10,000. for the balance of this year; and made a strong fight to secure the defeat of the bill.

He felt that there had been a breach of good faith which he resented. It is the fact that if he had not proposed the amendment which he did propose in the Cities Committee and consented to the report of the bill, it never would have been reported from the Cities Committee of the Assembly. He felt that the change made behind his back in the Senate was improper and that the bill in its present form is a violation of all the principles of legislation for which this office has consistently stood for the last two years.

This office urges that the bill be not accepted by the City.

Francis M. Scott
Counsel to the Corporation

Mem n Butts 1580
Removal of Incumbrances
 $23^2 + 24$ w wails

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*Law Department,
Office of the Counsel to the Corporation.*

R-O'R.

New York.

April 17th 1895.

March
Hon. William L. Strong,

Mayor.

S i r :-

I beg to acknowledge the receipt of a communication from your office transmitting a resolution of the Board of Aldermen, No. 128, for my examination and report.

The ordinance in question is an amendment of Section 39 of Article V of Chapter 3 of the Revised Ordinances of 1880. The purpose of the amendment is to authorize citizens of the United States who are residents of the city, to keep baskets or small stands upon the curb stone of streets within two hundred feet of Washington Market in the city of New York. The exercise of the privilege thus proposed to be conferred is guarded by restrictions which it *will* be unnecessary to discuss.

I am of the opinion that the Common Council has no power to pass any ordinance authorizing any occupation of public streets outside of the stoop line which does not come within the legal definition of a street use. It has been repeatedly decided by the courts that such a use as that proposed by the ordinance in question, is not a legitimate street use and that no permission which any

local
legal authority may give, or any owner of premises in
front of which it is erected, may concede, will validate
it.

I therefore advise you that the ordinance in
question is not within the power of the Common Council to
enact. >

I am,

Yours respectfully,

Francis M. Scott

Counsel to the Corporation.

Opinion.

— FROM —

COUNSEL TO THE CORPORATION.

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Wednesday
January 6 1897

at 10:30

Top of Box
to
Newman

DATED NEW YORK,

CITY OF NEW YORK.
OFFICE OF THE MAYOR.

Assembly Bill No 139 — 507.

I agreed to this amendment

It is only fair that the people, whose
property we take, should be fully
compensated for the expense we
put them to in proving title and
value

Francis M. Root

CITY OF NEW YORK.
OFFICE OF THE MAYOR.

Assembly Bill Nos 138-353

This Amendment I agreed to
for the same reasons stated with
reference to Ass. Bill Nos 139-507.

Memorandum in relation to Mr. Meyer's bill "An Act to create a division of notification in the Department of Finance in the City of New York."

This bill in the form in which it comes to your Honor is in such form that it ought to be disapproved. ~~And~~ amended bill prepared in the Comptroller's office was forwarded by me to the Committee as a substitute , but the amended bill was not reported. The Comptroller wrote me that the bill in its present form was in such shape that he could not approve it.

John S. vector Clarke

File

Memorandum in regard to Senator Page's bill
P. No. 477, "An act in relation to the salaries of at-
tendants of the Supreme Court and of the Court of General
Sessions.

This act provides that the salaries of the at-
tendants in the Supreme Court and the Appellate Division
thereof and of the Court of General Sessions for this City
and County shall be fixed at \$1200. per annum each, payable
monthly.

The several attendants of these various Courts
are, under existing provisions of law, paid as follows;

In the Supreme Court, 11 attendants at \$1200
each;

85 attendants at \$1,000 each;

In the Court of General Sessions; 11 attend-
ants at \$1200 each

43 attendants at \$1,000. each.

So that the effect of this bill, if it should be-
come a law, would be to increase the salary of 128 at-
tendants \$200 a year each, making a total additional ex-
pense to the City of \$25,600.

The duties of the Court attendant, while use-
ful and necessary, are neither onerous nor do they require
a very high order of intelligence. For the work per-
formed they are well paid and ought not to complain.

The passage of the bill was vigorously opposed by this office upon the following grounds.

First, that it was mandatory. This office took the position that as matter of principle the Legislature should not, against the protests of the City authorities, pass any legislation mandatory in form either creating new offices or increasing the salary of existing officers.

Second, that there was no good reason for the increase of the salary of these already well paid and easily worked officials.

Third, that the presiding justice of the Appellate Division, the Honorable C. H. VanBrunt, in answer to a letter of inquiry from this office wrote, under date of February 21st as follows:

"Your favor of the 20th inst. in respect of
"increase of salaries of attendants duly received.
"I think the movement ill advised and neither
"necessary, or desirable."

Your Honor is therefore respectfully urged to return this bill without your approval.

Mem. re Sumatra Papia
Bill 477

Increasing salaries
Court-Attendants.

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 Memorandum in regard to Senate Bill :
 No. 876, introduced by Mr. Guy, en - :
 titled "AN ACT to amend Chapter 544 of :
 the Laws of 1894, entitled "AN ACT to :
 provide for the construction of a :
 bridge over the Mott Haven Canal at :
 138th Street in the City of New York." :
 :
 ----- X

The act which this act amends, passed in 1894, sufficiently provides for the erection and construction of a bridge over the Mott Haven Canal at 138th Street.

Section 2 of Chapter 544 of the Laws of 1894, after providing the method for the payment for the bridge in the precise language employed in the bill now under consideration down to the words "prescribed by the said Comptroller", being the final words in this act of the second paragraph in the Act of 1894, proceeded as follows: "But nothing in this act shall be construed to affect the "right of the said Commissioner of Street Improvements "to establish a public street upon and along the line of "said canal, from East 138th Street to East 144th Street "in said city, of a width not less than sixty feet, and "his authority to do so, in lieu of constructing said "bridge, is hereby established and determined, should he "deem this course best for the public interests."

The only purpose and effect of the bill now under consideration was to wipe out the paragraph just above quoted, and to take away from the Commissioner of

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Street Improvements of the 23rd and 24th Wards the discretion given him by the former statute, to close said canal and to make a street thereof.

The Mott Haven Canal has been condemned a number of times by the health authorities as a dangerous menace to public health.

The absolute closing of the canal beyond 138th street has been strenuously advocated in the past, and, as will be seen from the quotation from the Act of 1894 given above, it proceeded so far as to induce the Legislature to give a discretionary power in that direction to the Commissioner of Street Improvements of the 23rd and 24th Wards. The only effect of this bill is to take away that discretionary power.

James M. Roth
Commuter to the Corporation

B.-A.M.

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Memorandum in regard to Senate Bill :
No. 1249, introduced by Mr. Guy, en- :
titled "AN ACT to amend Chapter 102 :
of the Laws of 1893, being an act :
entitled "AN ACT to lay out, estab- :
lish and regulate a public driveway :
in the City of New York". :
-----X:

This bill was drawn in our office, and author-
izes the Department of Public Parks to take the lands
lying between 155th Street and the south side of the High
Bridge Park, and the westerly side of the present speedway
and the line of the Croton Aqueduct, for the purpose of an
ornamental and decorative parkway, and ~~is~~ supplemental to
Mr. Miller 's bill, which makes a similar addition to the
driveway north of the Washington Bridge Park.

This bill was drawn at the request of the De-
partment of Public Parks and upon consultation with at-
torneys representing the property interests affected.

Frederic M. Kauff
Counsel to the Corporation.

Memorandum in regard to
Senate Bill No. 1249, intro-
duced by Mr. Guy, entitled
"AN ACT to amend Chapter 102
of the Laws of 1893, being
an act entitled "AN ACT to
lay out, establish and regu-
late a public driveway in
the City of New York."

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 Memorandum in relation to Assembly :
 Bill 1351, introduced by Mr . Halpin. :
 An Act to amend Section 690 of the :
 Consolidation Act as amended by Chap- :
 ter 262 of the Laws of 1887 and Chap- :
 ter 365 of the Laws of 1892, relative :
 to park police and their appointments :
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This is a mandatory act regrading the officers
 of the park police, and increasing their salary.

As the law at present stands "the Park Commis-
 sioners may, in their discretion, by and with the consent
 of the Board of Estimate and Apportionment of the city of
 New York, increase the pay or compensation of any or all
 of the aforesaid ranks and grades to the amount at pres-
 ent allowed or that may hereafter be prescribed or allowed
 to members of similar grades in the police force in the
 city of New York."

This bill makes the increased pay mandatory.
 It was in view of the provisions of this bill that the
 Mayor wrote his letter to Mr. O'Grady, Chairman of the
 Cities Committee of the Assembly upon the general subject
 of mandatory legislation.

The bill was laid aside for some time thereafter
 and was finally quietly passed through the house, few mem-
 bers being aware of its provisions and of the opposition
 of the Mayor expressed by said letter.

It is suggested that action upon the bill be delayed as long as possible under the time limited by the Constitution, and that it be disapproved for the reasons already given in His Honor's letter alluded to above.

Francis M. Kaff

Counsel to the Corporation.

Assembly Bill No. 1351.

Memorandum relative to Assembly Bill 1351, introduced by Mr. Halpin. An Act to amend Sec. 690 of the Consolidation Act as amended by Chap. 262 of the Laws of 1887 and Chap. 365, Laws of 1892, relative to park police and their appointment .

File

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Memorandum in regard to Assembly Bill No. 2723, introduced by Mr. Wray, entitled "An act regulating and defining the powers of corporations engaged in supplying gas for heat light or power purposes in cities of the first class, and authorizing such cities to make contracts therefor so as to secure reductions in the prices thereof.

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This bill permits the municipal officers authorized by law to contract in behalf of any city of the first class for the lighting of its streets with any corporation or corporations then supplying gas therein for the supply of gas to such city during a period not exceeding fifteen years.

Such contracts to be let at public letting, and to provide expressly for prices lower than now prescribed by law and for progressing reduction in price each year during the continued performance of the contract.

47 And it is further provided that every corporation so contracting to furnish gas to the municipality shall be required to supply gas to the inhabitants of such city at prices lower than those now charged, and progressively lower for each year of the term for which the corporation holds a contract to supply the municipality with gas.

In brief, the bill requires as a condition of the granting of a contract to any corporation to light the streets with gas, ^{that} said corporation shall furnish gas to private parties at prices lower than those now charged, and that such charges shall progressively decrease during the period of the municipal contract.

Francis M. Kett
Comd. 6th Co. 1st Regt.

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Memorandum in regard to Assembly Bill
No. 1603, introduced by Mr. Foley, en-
titled "An Act for the relief of Mary
T. Bates."
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Chapter 572 of the Laws of 1886 provides as follows:

"Section 1. No action against the mayor, alder-
men and commonalty of any city of this state having
fifty thousand inhabitants or over, for damages for
personal injuries alleged to have been sustained by
reason of the negligence of said mayor, aldermen and
commonalty, or of any department, board, officer,
agent or employee of said corporation, shall be main-
tained unless the same shall be commenced within one
year after the cause of action therefor shall have
accrued nor unless notice of the intention to com-
mence such action, and of the time and place at which
the injuries were received shall have been filed with
the Counsel to the Corporation or other proper law
officer thereof within six months after such cause
of action shall have accrued."

Mary T. Bates commenced an action against the City on
the 25th of August, 1891, by the service of a summons and
complaint on the Counsel to the Corporation. The action was
brought by Mrs. Bates as administratrix of John J. Bates, de-
ceased, and is based upon the following state of facts.

On the 1st of December, 1890, plaintiff's intestate
John J. Bates, then an officer of the Police Department of
the Tenth Precinct Police Station, New York City, while either
ascending or descending the stairs at the station house, fell
over the baluster on the side of the stairs to the floor be-
low, sustaining a fracture of the skull, resulting in death.
The action alleges negligence in the City.

Issue was joined in the case September 8, 1891,
and on the 21st of that month court notices of trial
were served for the October Circuit following. The case has

been reached on the Saturday calendar a number of times, and the City has always been ready, but plaintiff has succeeded in having the case moved off. Their unwillingness to try the case undoubtedly arises from the fact that the notice required by section 1 of Chapter 572 of the Laws of 1886 "of the intention to commence such action and of the time and place at which the injuries were received" require to be served within six months after the cause of action accrued, was not in this case ever served upon the Counsel to the Corporation.

This statutory provision is most important to the proper defence of the innumerable actions brought against municipalities to recover damages for injuries alleged to have resulted from the negligence of the city authorities. Unless prompt notice of the place and time of the injury is served, it is almost impossible for the Counsel to the Corporation to obtain evidence of the facts in defence of the action.

The bill under consideration, while in terms it simply relieves Mrs. Bates from the operation and effect of this statute, if it became a law would, in our judgment, become a dangerous very embarrassing precedent.

out
We are informed that its process through the legislature has been carefully watched by the negligence bar, and if it becomes a law, many like bills will in the future be introduced, and if passed, it will not be long before a general act, repealing the wise and salutary provisions of the act of 1886, will be urged upon the legislature.

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The City is so helpless at the best, in actions of this kind, that it would seem to be very unwise to break down

any of the defenses erected by statutory enactment.

The passage of the bill has been opposed by this office in Albany, and the Mayor is respectfully urged to withhold his approval of the same.

Francis M. Root

Counsel to the Corporation.

May 17th at 1³⁰

Assembly Bill No. 1603

Memorandum in regard to As-
sembly Bill No. 1603, intro-
duced by Mr. Foley, entitled
"An act for the relief of
Mary T. Bates."

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Memorandum relative to an Act to amend chapter 189 of the Laws of 1893, entitled "An act to provide for the sanitary protection of the sources of the water supply of the City of New York!"
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Assembly Bill No. 2118.

This act was prepared by the Counsel to the Corporation.

The purpose of the amendment is to supply certain words which were omitted in the original act as to the payment of the expenses of the proceedings taken thereunder, the omission of which has greatly embarrassed the Counsel to the Corporation in defending the interests of the City.

The bill is thoroughly approved, and the Mayor is requested to signify his acceptance of the same as promptly as possible, as a number of claims are awaiting its enactment as a law.

Francis M. Scott
Counsel to the Corporation

Assembly Bill No. 2118.

Memorandum relative to an
Act to amend chapter 189 of
the Laws of 1893, entitled
"An Act to provide for the
sanitary protection of the
sources of the water supply
of the city of New York."

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 Memorandum relative to Assembly Bill :
 2445, entitled "An act to amend chapter: :
 413 of the Laws of 1892, entitled "An : :
 act to provide for the construction of : Assembly Bill 2445
 a drawbridge over the Harlem river in :
 the city of New York, and for the re- :
 moval of the present bridge at Third :
 avenue in said city." :
 :
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This bill, as originally drawn, was unobjectionable, its purpose and intention being to vest the title in the land necessary for the approaches to the bridge on June 1, in order that the contractor might be able to go ahead and complete his work, and thus facilitate the time for the completion of this important improvement.

In the course of its passage through the legislature, ~~however~~, the bill has been amended ~~out of recognition~~, and is now ~~extremely~~ objectionable in several particulars.

~~In the first place~~ it provides that the Commissioners must make separate reports of the land to be included within the single approach to the bridge, or within any one block along the line of the approach.

This feature ~~is extremely objectionable~~, as it requires the trial of the questions involved by piecemeal ~~will~~ very greatly delay the proceeding, and embarrass the Counsel to the Corporation in his defence of the interests of the City.

Many acts have been adopted in the past, authorizing the Commissioners, in their discretion, to make separate reports, and such bills have been unobjectionable, and often have achieved worthy purposes; but to compel, as the present bill does, a separate report as to each block, and to forbid

the Commissioners going ahead and taking any testimony as to any other block, is ~~most~~ objectionable and dangerous.

The second ~~objectionable provision~~ is that interest upon the awards shall run, at the rate of six per cent, from the time of the appointment of the Commissioners of Appraisal. These Commissioners were appointed in February, 1894, and up to the present time, so far as a very large proportion of the property is concerned, enjoyment thereof has not been affected by any proceeding thus far taken. ~~For instance, the Twenty-third Ward Bank has gone on with its business without interruption or interference, and evidence has been put in before the Commissioners, showing that the leases under which the property is now held are still in existence, and the rents continue to be paid thereon.~~ Hence the enjoyment of the property not having been affected by the proceedings, the payment of interest from the date of the appointment of the Commissioners is a mere bonus or gratuity to the property owners and is entirely unjustifiable.

out
It is well known that this bill has been put into its present shape at the instance of a lawyer who has a large contingent interest in the awards obtained by his clients, and while it would be extremely desirable that title to the property should be acquired at once, yet the objectionable features of the bill, in my opinion, far outweigh any advantage that could be gained by its passage.

If those who are solicitous that the work of constructing the bridge should proceed speedily had taken the pains they might have taken to prevent the mutilation of the bill, my appearance in opposition would not have been needed.

Francis M. Scott

Counsel to the Corporation.

Assembly Bill 2445.

Memorandum relative to Assembly Bill 2445, entitled "An Act to amend chapter 413 of the Laws of 1892, entitled "An act to provide for the construction of a drawbridge over the Harlem river in the city of New York", and for the removal of the present bridge at Third avenue in said city."

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 Memorandum in relation to Asembly
 Bill 2453, introduced by Mr. Mil-
 ler. AN ACT to amend chapter 749
 of the Laws of 1894, entitled "An
 Act to provide for the acquisition
 of lands for public use between the
 10th avenue and other streets and
 the Harlem River in the City of
 New York adjoining and in addition
 to the lands authorized to be ac-
 quired by Chapter 249 of the Laws
 of 1890, and Chapter 102 of the Laws
 of 1893.
 - - - - -X:

This is an act to amend the act of last year
 by which the lands lying north of the Fort Washington Park
 and between the Tenth avenue, Fort George Road and the
 Harlem River were authorized to be taken for park purpos-
 es.

To the eastward of Tenth avenue is a high, level
 plateau, valuable for building purposes. Below that it
 descends, very steep grade, to the river.

The property owners of the upland were anxious
 that their land be not taken, and on consultation with the
 Park Department they agreed that there was no necessity
 for it, and that the price to be paid therefor by the city
 would be very much larger than any necessity for a further
 park in that part of the town warranted, and requested
 this office to agree to the lines laid down by the bill
 under discussion.

This bill in effect restores the upland to
 private ownership and takes the lands descending abruptly

to the river, permitting a picturesque and artistic margin to the new speedway.

The Park Department have informed this office that this bill is entirely satisfactory to them. We therefore suggest that it be approved.

Francis M. Hall

Counsel to the Corporation.

Assembly Bill 2453

Memorandum relative to Assembly Bill 2453, introduced by Mr. Miller. An Act to amend Chap. 749, Laws of 1894, entitled "An Act to provide for the acquisition of lands for public use between the 10th avenue and other streets and the Harlem river in the city of New York, adjoining and in addition to the lands authorized to be acquired by Chap. 249, Laws of 1890, and Chap. 102, Laws of 1893.

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B

3. PM

May 24

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Memorandum in regard to Mr. Bell's bill No. 2769, An act to provide for discontinuing and closing streets, avenues, roads, highways, alleys, lanes and thoroughfares in cities of more than one million two hundred and fifty thousand inhabitants.

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In the Twenty-third and Twenty-fourth Wards of the city of New York there is a very considerable number of old roads, highways, alleys, lanes and thoroughfares, the lines of which do not coincide with the general scheme of mapping and laying out that district in city streets and blocks.

Under the provisions of the Constitution there is, under existing laws, no way by which such highways and thoroughfares may be lawfully discontinued and closed, the result of which is that the city plan superimposed upon the existing plan results in a chaotic condition as to real estate titles and controlling lines of streets and boundaries.

The purpose of this act is to meet this very serious difficulty, and to provide a scheme by which the old highways thoroughfares, etc. whose lines do not coincide with the new streets to be laid out, may be lawfully discontinued and closed, and the vexed questions as to title, etc. may be authoritatively determined.

This bill provides the necessary machinery in the way of filing maps, appointment of commissioners, condemnation proceedings, etc. It received, during its passage through the legislature, the most careful consideration of this office, and was amended until it may be practically said to be a city bill.

The necessity for some such legislation is urgent.
Rights of all parties are carefully guarded by the bill, and
your Honor is urged to give your approval to the same.

John S. Victor Blake
Assistant to the Counsel to the Corporation.

Memorandum in reference to Brooklyn Water Grants.

The City's original right to hold and sell real estate was vested in it under its various charters, viz: By the Dongan Charter, section 6 and section 12, and the Montgomery Charter, section 1, under which it became a body corporate, with the right to hold and dispose of lands, etc.

By various ordinances, this authority to sell these water lots was delegated by the City to the Sinking Fund Commissioners, and subject to their approval, the Comptroller was authorized to issue such water grants. See revised Ordinances of 1866, chapter 9 "Of the Sinking Fund" page 212, sections 29 to 35, Revised Ordinances of 1880, Article 6 "The Sinking Fund" page 40, sections 79 to 85.

The water grants and quit claims of Brooklyn land under water, etc., were made by the City, ranging in date from 28th May, 1761, to March 1, 1873. Some were grants in fee with a specified consideration, others provided for the payment of annual quit rents. The aggregate sum of money received as considerations for the grants in fee was about \$40,000. As to those providing for the payment of annual quit rents, they were from time to time commuted by the payment of a bulk sum in lieu of payment of rents. This was done by capitalizing such rents on a basis of five or six per cent. The aggregate sum received in lieu of said rents and for commutation of same, was about \$20,000., and all of said grants have been commuted. Thus the City received in all the sum of about \$60,000. for its interest in Brooklyn water lots.

There remains several parcels of this land under water, now made land, which the City has not granted to private parties, and therefore can still claim ownership of. These various grants by the City and the parcels remaining ungranted, are shown on maps prepared by this Department.

In the City's lease of ferry franchise and wharf property etc., to the Union Ferry Company, on file in the Comptroller's office, dated December 7, 1893, there is included among the wharf property the bulkheads, slips, etc., at foot of Fulton Street, Brooklyn, Main Street, Atlantic Avenue and Hamilton Avenue, Brooklyn, used for ferry purposes.

Of these 59 grants made by the City, it appears that the last three recorded in Book A of quit claims, pages 64, 65, and 66, are merely quit claims for nominal consideration of one dollar, and are not within the lines of the water grant to the City under the Cornbery charter and therefore the City of New York had no title or interest in said premises.

Of the remaining 56 grants, 27 do not mention specifically the granting of any wharfage rights connected with the premises granted. And it also appears that 13 of said 56 grants are not signed or executed by the City.

The total area of land under water granted to the City under the Cornbery charter, as above mentioned, and between high and low water mark is

8,839,040 square feet or 202.91 acres

Of this the aggregate area of all the parcels granted by the City, including street areas within the lines of same is

7,609,344 square feet or 174.68 acres

Leaving ungranted and still apparently belonging to the City

1,229,696 square feet or 28.23 acres

Deducting from this the area of the streets falling within the lines of said ungranted parcels

349,408 square feet or 8.02 acres

Leaves as apparently belonging to the City and from which it derives no revenue

880,288 square feet or 20.21 acres

being about 10 per cent of the original grant to the City.

May 7

Kind, page 212, sections 29 to 35. Revised Ordinances of 1880, Article 6
Water Grants. See revised Ordinances of 1880, Chapter 9 of the sinking
subject to their approval, the Comptroller was authorized to issue such
lots and delegated by the City to the sinking and Commissioners, and
lands, etc.

which it became a body corporate, with the right to hold and dispose of
section 6 and section 12, and the Montgomery Chapter, section 1, under
vested in it under its various charters, viz: By the Dungen Chapter,

The City's original right to hold and sell real estate was

Memorandum in reference to Brooklyn Water Grants.

33

Memorandum in relation to Mr. Meyer's bill entitled "An Act in relation to Ninth Avenue in the City of New York."

I suggested to the Legislature that it occurred to me that for the Legislature to pick out a particular street between certain cross streets and to prescribe that the City authorities should repave said streets with a particular kind of pavement seemed to me a quite unnecessary piece of interference in local administration.

The Commissioner of Public Works informed me that while the pavement on Ninth Avenue was not in good shape yet that it ought not to be laid at the expense of the City prior to the change of motive power of the railroad which occupies a portion of it.

I opposed this bill at Albany because it seemed to me to be a particularly offensive instance of the violation of the doctrine of home rule.

We have the power under existing law to repave any street with any kind of pavement which seems desirable and advisable to the local authorities. For the Legislature to pick out one street and prescribe the kind of pavement is absolutely indefensible in principle.

John W. Aldrich

B

May 23 at 12

File

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Memorandum in regard to Assembly Bill
No. introduced by Mr. Niles,
entitled "An act to transfer the
Bureau of the Public Administrator
from the Law Department and make the
same an independent bureau, and pro-
viding for the appointment of such
Administrator by the Surrogates of
the county of New York."

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The office of Public Administrator is at present
a Bureau in the office of the Counsel to the Corporation.
That is to say, the Counsel to the Corporation has the ap-
pointment of, and a technical supervision over, and lia-
bility for the Public Administrator. As matter of fact
the Bureau is situated in a separate and distinct building
and the connection is little more than technical.

In the city of Brooklyn the Public Administrator
is appointed by the Surrogate, and the Bureau is an inde-
pendent one; and this system seems more scientific and
logical than that obtaining in this city and county.

This bill in effect makes the Public Administra-
tor an independent officer, and lodges his appointment in
the Surrogates of the county.

The transfer from the office of the Counsel to
the Corporation was proposed by me, and while there have
been changes in the plan, yet it meets my approval, and I
suggest your Honor's approval of the bill.

Francis M. Stoddard
Counsel to the Corporation.

45-

Memorandum with relation to the bill entitled
"An Act to enable the Board of Fire Commissioners to re-
hear and determine the charges against James P. Reilly, &c."

This bill was reported out of Committee without
affording an opportunity to be heard in either house o
although I had ready to submit to the Committee a communi-
cation from the Fire Department as follows:

"The facts in the case as shown by the records
are as follows: James P. Reilly was appointed a member
of the uniformed force July 24, 1882; on the 19th of
August 1886, he was tried on charges of 'neglect of duty'
'engaged in an altercation' and for 'defacing the company
journal'. He was represented by counsel and the evidence
appears to fully justify the then Board of Fire Commission-
ers in dismissing him immediately from the service of the
Department.

In the opinion of this Board of Fire Commission-
ers this bill should not be passed."

John S. Victor Clarke

This act gives the Comptroller no greater authority over this class of claims than he is given over all other claims against the City, by the provisions of ~~Chapter~~ section one hundred and twenty three of the Consolidation act.

As to the Certificates required from the former auditing body of the town or village this law only enacts an old rule adopted by all the boards of audit in towns and villages throughout the State. The board of auditors always require the certificate of the person employing the claimant to the effect that he was employed and that he in fact actually furnished the material or rendered the services for which claim is made. The certificates required by this act do not require any more than this.

The objection made to the board of audit, or a majority thereof, certifying to the correctness of the bill on the ground that the members of such boards were legislated out of office and therefore can not perform any official duty is not good. It is within the legislative power to impose a public duty upon a citizen, especially when such public duty is the necessary consequence of the former official act of such citizen. Take for instance, a Justice of the Peace who has rendered a judgment and whose term of office has expired before the service of a notice of appeal, and who, under the law, is required to make a return on appeal. The Code of Civil Procedure contains the following provision :-Section 5054. Where the justice has gone out of office, he must, nevertheless, make a return in the same manner and his return has the same effect, as if he remained in office! The books are full of cases where such return has been compelled by mandamus. These men, the majority of whom are also Justices of the Peace, are required to certify as citizens that

the work performed or the material furnished the town or village during their term of public office was in fact ordered by them or by competent authority. Can these men refuse to give this evidence in the shape of a certificate any more than the Mayor of the City of New York, after the expiration of his term of office, could refuse to testify in a Court to any official act on the ground that his term of office had expired? The absurdity of the proposition is apparent.

Again, the objection that these persons being out of office can not be charged with perjury if they falsely certify to a bill, is equally unfounded.

The Penal Code expressly provides in sections 165 and 166 in relation to audit that the act of any private person aiding in the audit or allowance of a false claim against any municipality is a crime.

There is no prohibition in this act against the claimant who may feel aggrieved by the decision of the Comptroller instituting a suit for the collection of the claim. The act in this particular follows the general auditing acts throughout the state. It is well established that the presentation of a claim to the auditing body is a condition precedent to the bringing of an action for the collection of the amount from the municipality. The action of the Comptroller may well be a final audit, but it is not declared to be a final determination exclusive of the jurisdiction of a Court .

The undersigned desires to say that he drew this bill as it was originally presented in the Assembly by Mr. Carlisle. His action in the matter has been that of a citizen merely, having the desire that his neighbors, many of whom are in need of the

money justly due them, might have a speedy and simple method
by which to obtain it.

I trust that the Mayor will approve of this measure

Truly Yours

Samuel H. Hinch

Dr Hunt's
opinion

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Presented by
Ambrose Lee