

City of New York.
Law Department.
Office of the Counsel to the Corporation.

NO 2 TRYON ROW.

M

April

10
1895.

W
Hon. William L. Strong,

M a y o r.

S i r : -

I enclose herewith a copy of a General Review of the operations of the Law Department for the year ending December 31, 1894.

It was prepared by my predecessor, the Hon. William H. Clark, and was in the printer's hands upon my accession to office.

Respectfully yours,

Francis M. Stoddard
Counsel to the Corporation.

IN THE MATTER

-of-

Assembly Bill No. ,introduced by Mr.Wilds, providing
for an appropriation for the Lying-in Hospital,etc.

The Evening Post.

New York, Thursday, March 14, 1895.

A bill making an appropriation for the Lying-in Asylum comes before the mayor for a hearing this afternoon, the latest of a series of acts passed during the last thirty years compelling the city to appropriate moneys for charitable institutions wholly or partly under private control. In the particular bill now before the mayor an endeavor seems to have been made to conform to the provision of the new constitution that payments by cities to charitable institutions may be authorized, but shall not be required by the Legislature; but the attempt has not been successful, and the act is clearly in violation of the constitution. It is in the form of an amendment to a subdivision of section 194 of the consolidation act. The introductory clause of this act provides that "the Board of Estimate and Apportionment shall annually include in its final estimate the following sums, which shall annually be raised and appropriated." This clause has always been construed to be mandatory, and it is under this act that the Board of Estimate and Apportionment has appropriated \$1,478,723.00 for the support of charitable institutions during the present year. The Lying-in Asylum act permits the city authorities to provide an appropriation for the current year, but it will compel such appropriation in succeeding years, and is mandatory in the fuller sense of the term. The injustice of compelling the city to appropriate moneys for the support of institutions over which it exercises no supervision and has no control has long been apparent. The evil results of the system have been demonstrated by published statistics showing that many institutions have received moneys largely in excess of the actual cost of maintenance, and have, in fact, derived a large profit from the appropriations made by the city. In one instance an institution which, in 1893, received from the city \$93,291.00 per-capita allowance under this act, expended during the same year \$76,803.00, leaving a net profit to the institution of \$16,488.00. This is but one instance of the many which led the Constitutional Convention to adopt the provision prohibiting payments for inmates of charitable institutions, except those received and retained under rules of the State Board of Charities, and the same conditions should lead to an amendment of the consolidation act making it permissive for the Board of Estimate and Apportionment to appropriate such sums as are shown to be necessary for the actual expense of the inmates of the institutions.

The Evening Post.

New York, Wednesday, April 10, 1895.

Mr. Wilds has recalled from the Governor his bill authorizing an appropriation for the lying-in hospital, which the mayor has approved, and has had it amended so as to include several other institutions. In this form it has passed the Assembly a second time, and is now in the Senate. As we understand it, it must come before the mayor again for approval, for it would be clearly illegal to assume that his approval of it as applying to a single institution held good as applying to several institutions, for the amount of money appropriated would be greatly increased. As it stands, the bill is no less unconstitutional than it was in its original form, and it is much more objectionable. We called attention to it when it was before the mayor in March, saying that an unsuccessful attempt had been made in it to get around the new constitution's requirement that payments by cities to charitable institutions may be authorized but shall not be required by the Legislature, and objecting to it as belonging to that class of mandatory legislation against which the mayor has put himself on record. In its present form it presents an aggravated case of this legislative abuse, and the mayor is likely to conclude that he cannot consistently give it his approval.

April 10

11.

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

R. *New York,* April *17* 1895

W.L.S.

Hon. William L. Strong,

Mayor.

S i r :-

I beg to acknowledge the receipt of a letter dated the 10th of April, 1895, from Mr. Hedges, your secretary, asking for a legal opinion as to the classes of vehicles which the Mayor's Marshal is authorized to license.

The question is somewhat wider in its scope than the Commissioner of Street Cleaning probably intended and as he has been here and has informed one of my assistants upon the matter as to which he desired to be advised, I shall confine it entirely to the point, as to whether or not the Mayor may, first, refuse to license trucks which are intended to be used exclusively in the transportation of goods, wares and merchandise in connection with the private business of the owner of the truck; and second, whether, when trucks have been so licensed and so exclusively used the Mayor will be justified in revoking such licenses.

The provision of the ordinances relating to the licensing of carts, trucks, wagons and drays used or

employed for the transportation or conveyance of goods, wares and merchandise or other articles from place to place in the city of New York for hire, are to be found in Article 4 of Chapter 8 of the Revised Ordinances at page 133.

The persons so licensed are termed in the Ordinances "Public Truckmen" and they rest under a duty to the public to transport for hire, either at an agreed price, or in the absence of agreement, for amounts specified in the Ordinances, goods, wares or merchandise belonging to others who may require their services.

I do not therefore think that the Mayor's Marshal should license carts owned by private individuals who intend to use them in connection with their own private business for the transportation of their own property, nor do I think that that official should hesitate to recommend to the Mayor the revocation of licenses granted and outstanding to persons who make use of their vehicles so licensed only in connection with their own business.

It is contemplated by the Ordinances, see Section 29 of the Article referred to, that the Mayor should have a general power of revocation and in the exercise of this power the Mayor, may, I think, annul licenses which

have been granted to persons who do not use their trucks
or carts for the purpose of public carriage.

I remain,

Yours respectfully,

Francis M. Scott

Counsel to the Corporation.

Opinion.

— FROM —

COUNSEL TO THE CORPORATION.

12

DATED NEW YORK,

April 17

13

City of New York
Law Department
Office of the Counsel to the Corporation

NO 2 TRYON ROW.

April 19, 1895.

Jacob Mittnacht, Esq.,

23 Spring street, New York.

Dear Sir:

Replying to your letter of April 18, I have to say that the hearing before the Mayor on Senate Bill 855, an act to authorize the Board of Revision and Correction, etc. to determine and award damages for the changing of the original grade of One Hundred and Forty-third street will be had at the Mayor's office on Wednesday, April 24, at 12 M.

Yours very truly,

James S. Victor

Assistant to the Counsel to the Corporation.

*Law Department,
Office of the Counsel to the Corporation.
O'R-
New York, April 27 1895.*

ms

Hon. William L. Strong,
Mayor.

S i r :-

I beg to acknowledge the receipt of a communication of the 19th instant, from your confidential clerk, Mr. Burrows, transmitting by your direction, resolutions of the Board of Aldermen Nos. 175 and 176.

I assume that my opinion is requested as to the power of the Board to adopt them.

Ordinance No. 175 restricts a hack stand at the northeast corner of 125th street existing in pursuance of authority heretofore granted.

This ordinance it is within the power of the Board to grant.

Ordinance No. 176 amends section 292 of Article 31 of Chapter 8 of the Revised Ordinances of 1880, in such manner as to secure greater safe guards in blasting in the city of New York.

This ordinance is also within the power of the Common Council to enact.

I am,

Yours respectfully,

Frederic M. Keith
Counsel to the Corporation.

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

New York, April 22 1895

M.D.

W.L.S.

Hon. William L. Strong,

Mayor.

S i r :-

I beg to acknowledge the receipt of an enclosure from your office dated the 15th instant, addressed to yourself by John R. Groo, Sergeant in command of the Tenth Precinct of Police. He desires to be advised as to the date of expiration of what I take to be a three months concert license which was granted on the 26th of February, 1895, under a provision of the Consolidation Act, subsequently amended, which authorizes the Mayor to license such performances upon compliance with the prescribed statutory conditions..

Sergeant Groo states that his attention has been called by a rival concern to the fact that the Gaiety Museum at 138 Bowery, holds a license such as that above described, and that he, the Sergeant is in doubt as to whether it expires on May 26th or May 1st.

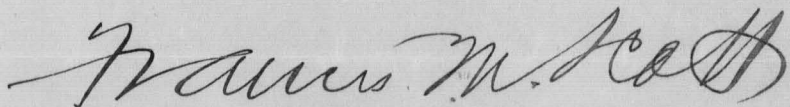
Section 1999 of the Consolidation Act as amended by chapter 249 of the Laws of 1885, section 3, states that "the Mayor of the city of New York is hereby authorized and empowered to grant such licenses (i.e. con-

"cert licenses among others) to continue in force until
"the 1st day of May next ensuing the grant thereof."

In view of this provision of the statute and
in accordance with opinions rendered by my predecessors
in this department, I advise you that the date of expi-
ration of the license for the Gaiety Museum, if it was
a three months license granted on the 26th of February,
1895, is the 1st of May, 1895, and not the 26th of that
month.

I remain,

Yours respectfully,

A handwritten signature in cursive script, reading "Francis M. Keefe". The signature is written in dark ink and is positioned above the typed name.

Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

Laity Hapman
License Ex-
piration

16

DATED NEW YORK,

April 22

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

B.-M.

New York, April 26, 1895.

Hon. William L. Strong,

Mayor.

S i r:-

I have examined the bill now pending before you for your action, entitled "An Act to amend subdivision 4, of Section 86 of chapter 410 of the laws of 1882."

I find that that act is a re-enactment of An Act passed in 1888, known as chapter 37 of the laws of 1888.

The Act of 1888 was superseded and substantially repealed by the Street Cleaning Act of 1892, which amended section 780 of the Consolidation Act so as to authorize the Mayor to grant a permit authorizing a temporary occupation of a portion of the street during the night time, etc. by a licensed truck, or other licensed vehicle owned by a resident of the city of New York, which permits, however, were to be issued for only one year, and were not to be renewable.

This last Act, the Street Cleaning Act, was further amended by chapter 697 of the laws of 1894, so as to invest the Commissioner of Street Cleaning with the power to grant a permit, instead of the Mayor.

The changes that will be made in the law relative to the occupancy of streets by vehicles, if the act now under your consideration should become a law, would be as follows:-

1. The permission would be granted by the Board of Aldermen by resolution, *to be approved by the Mayor*

2. There is no limit of time mentioned in the act during which the permit is to remain operative, nor is there any specific provision made for its revocation either by the Board of Aldermen or by the Mayor, so that if such a permit were granted, unless the Board of Aldermen were careful to reserve, in the resolution granting it, the right to rescind it, it might be held that it was a continuous privilege subject only to objection on the part of the property owner opposite whose house it stands.

3. The vehicles to whom permits are to be issued are not limited to public or licensed trucks or vehicles.

4. The vehicles to whom permits are to be granted are not limited to those owned by residents of the city of New York, but extended to those habitually driven by residents of the city; so that it would be quite possible, under this act, for a truck owner living in Brooklyn or in New Jersey to stable his trucks in the streets of this city, provided only he should employ as a driver a resident of this city.

5. The act does not contain any specific provision, as does the Street Cleaning Act, that the person to whom a permit is issued will keep the streets under his vehicle clean, although that might be included in the general power given to the Mayor to prescribe rules and conditions.

Yours very truly,

Francis M. Keith

Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

Truck
Licenses.

14

DATED NEW YORK,

April 26 1900

5.D.

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

O'R-
New York. April 29 1895.

Hon. William L. Strong,

Mayor.

S i r :-

I am in receipt of a communication from your Confidential Clerk, under date of April 26th, 1895, transmitting, by your direction, for my examination and report Resolution No. 188 of the Board of Aldermen.

The resolution amends subdivision six of section eighty-nine of Article eight of chapter eight of the Revised Ordinances of 1880, as amended March 13, 1894, and provides that when amended the subdivision in question shall read as follows:

"6. Line balls, for one or two passengers, .
"two dollars for the first mile or part thereof, and
"one dollar for each additional mile or part thereof,
"each additional passenger fifty cents."

While it is undoubtedly within the power of the Board of Aldermen to enact the resolution in question, the effect of it will be to enable a third person, by reason of the fact that the words "a mile" are stricken out after the word "cents", to ride an indefinite number of miles for fifty cents.

Respectfully yours,

Francis M. Stapp

Counsel to the Corporation.

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

B

New York, May 4, 1895.

B. L. Burrows, Esq.,

Chief Clerk.

S i r :

I have received the communication referring to me the resolution of the Board of Aldermen No. 253, for examination and report.

The resolution provides for an amendment to section 183 of article 13, chapter 8 of the Revised Ordinances of 1880.

The amendment proposed is within the jurisdiction of the Board of Aldermen, and I am unable to perceive any legal objection to the enactment thereof.

I remain

Yours respectfully,

Francis M. Keith

Counsel to the Corporation.

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

R. *New York.* May 14th 1895

Hon. William L. Strong,
Mayor of the City of New York.

S i r :-

I return herewith resolutions of the Board of Aldermen, numbers 281 and 294, referred to me by letter from your office, dated 11th instant, and beg leave to report as follows:

1st. As to No. 281, the proposed ordinance relates to bay windows.

The ordinance upon this subject in the compilation of 1866, is known as section 34 of Article 4 in Chapter 6.

This ordinance was amended October 9, 1883, vide volume 51, proceedings of the Board of Aldermen, page 422.

The proposed ordinance is evidently intended to amend the ordinance adopted in 1883; it however, refers to "section 161 of the City Ordinances" as the ordinance to be amended.

The reference is an evident error, and the correction should be made in that respect.

When the proposed ordinance shall be so corrected it will be unobjectionable in form, relating to the

✓
subject matter of which the Common Council has heretofore assumed jurisdiction, it should be approved if the amendment is deemed expedient.

2nd. In relation to No. 294, the proposed ordinance seems to be intended to prescribe the mode by which certain creditors of the city shall be paid by funds disbursed through the clerk of the Common Council.

Section 123 of the Consolidation Act prescribes that the Finance Department shall prescribe the forms of keeping and rendering all city accounts, and the manner in which all salaries shall be drawn and the mode by which all creditors, officers and employees of the corporation shall be paid.

It seems to me therefore that the ordinance in question contravenes the provisions cited, and if adopted will not be valid and binding upon the Finance Department, and will be inoperative unless voluntarily acted upon by the Comptroller.

I remain,

Yours respectfully,

Francis M. Keady

Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

19

DATED NEW YORK,

May 14

*Law Department,
Office of the Counsel to the Corporation.
New York.* May 16, 1895

Hon. William L. Strong,
Mayor.

S i r :

I have examined Assembly Bill No. 2446, relating to the exemptions from jury service, which is now awaiting your action, and I have also, as suggested by you, consulted the Justices of the Supreme Court in relation thereto.

The Presiding Justice authorizes me to say that they are radically and unanimously opposed to this bill, since, in their opinion, its sole effect would be to largely reduce the number of available intelligent jurors, as to the lack of which there is now great cause for complaint.

You will perceive that the first section of the bill proposes to add to the persons exempt from jury service any person who voted at the last preceding election, and who, upon being notified that his name has been placed upon the jury list, is able to point out to the Commissioner of Jurors that some other person qualified to vote, and also qualified to act as a trial juror, did not vote at said election, and has not, since such election, attended as a trial juror, or served, or been excused.

You are well aware, as we all are, of the great anxiety of many persons in active business to escape jury service, and if this proposed bill should become a law

there would be nothing to prevent an active lawyer from finding some one person, resident of the city of New York, qualified to vote, who had failed to vote at the last preceding election, and who had not served as a juror, or attended at court for that purpose, and using this one non-voting person as the one to be mentioned to the Commissioner of Jurors. In this way you might get an indefinite number of persons excused from jury service.

It would thus be quite possible that the failure of a single qualified voter to have voted might be made the reason for exempting a hundred or several hundred persons from jury service.

The second section of the act also seems to me to be impracticable. It provides that the Commissioner, in preparing his list of trial jurors, shall first take from the names of residents who did not vote at the last preceding election, and until the list of all such persons liable to serve as trial jurors is exhausted he shall not include in his list of trial jurors the name of any person registered as having voted at the said then last preceding election.

This provision, as you will see, is mandatory upon the Commissioner of Jurors. He must include in his list all persons who failed to vote, and until that list is exhausted he can lawfully put no one else on the list. If he should, despite his best efforts, omit a single resident qualified to vote who had failed to vote, it would be illegal for him to put on the list anyone who had voted.

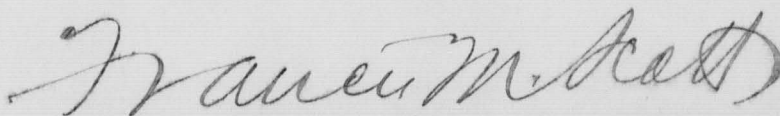
I believe that it would be impossible for the Commissioner of Jurors to carry this provision out, and at

the same time if he fail to do so, it is quite possible, particularly in criminal cases, that whole panels of jurors might be declared to be illegal.

Undoubtedly the end which the framers of this act had in mind was a good one, but the method of carrying it out as attempted by this act would be most disastrous in its consequences.

As Counsel to the Corporation, and thus interested in behalf of the City, in seeing the jury box filled with intelligent jurors, I urge upon your Honor that you refuse to accept this bill.

Yours very truly,

A handwritten signature in cursive script, reading "Francis M. Keith". The signature is fluid and elegant, with a large, stylized initial 'F'.

Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

Arrial Juroors
&
Deceptions
— X —

20

DATED NEW YORK,

May 16

*Law Department,
Office of the Counsel to the Corporation.
New York.* May 22, 1895.

M.D.

Hon. Levi P. Morton,

Governor.

S i r :

You have now lying before you, awaiting your action, the bill passed by the legislature entitled "An act to amend chapter 299 of the Laws of 1890," known as Assembly Bill No. 2093.

The object of this bill is to enable the City to pay prizes to the successful architects who furnished the plans for the building of a municipal building under the provisions of chapter 299 of the Laws of 1890.

When that act was repealed, the section authorizing the distribution of prizes was included in the repeal; and hence no authority now exists for carrying out the contractual obligation entered into by the City that it would pay certain prizes.

In the mean time some of the competing architects have commenced actions against the City to recover for the alleged value of their labor in the matter, irrespective of the question whether they were successful competitors or not.

Upon the repeal of the act all the proceedings under it terminated; and although the jury chosen to select the successful plans have made their report, the envelopes containing the names of the successful competitors

have not been opened, and we do not know who they are.

If you will approve this bill we shall be able to go on and pay the prizes to the proper persons, and at the same time defeat the large claims against the City made by many unsuccessful competitors.

I take the liberty to urge some haste upon you in this matter because one of the actions is set down for trial on next Monday, and it will be extremely desirable that we shall be able then to show that the bill has become a law.

The Mayor has already accepted the bill in behalf of the City, and, so far as I know, there is no objection to it on the part of anybody.

Yours very truly,

Francis M. Scott,

Counsel to the Corporation.

May 22

21

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

B-O'R.

New York,

May

1895.

Hon. William L. Strong,

Mayor.

S i r :-

When I spoke to you to-day about the bill relating to city advertising I supposed that it was simply the result of an attempt by some member of the Legislature to work an economy in the city's printing without appreciating the reasons which led to the amendment of 1894.

As you will recollect I explained to you that the amendment of 1894 which had been left out of the bill now before you, was intended as an act of justice to property owners whose property we were about to take for public purposes, its effect being to give them better opportunities to learn that proceedings were contemplated than they would be likely to get from an advertisement in the City Record alone.

I am now informed, upon a reliable authority, that the purpose and effect of the act in question is to right an injustice which was apparently done by the former Board of City Record upon the very eve of its reorganization by you.

If this be true, and I have no reason to doubt it, I have no desire to be considered as opposing the bill, and may say to you that no public interest will be affected by its approval, and that I have no doubt that the omitted clause can readily be inserted again by the next Legislature.

I beg, therefore, that you will consider me as taking no position in reference to the bill, either in opposition or in favor of it, and that anything I may have said to you as having a tendency to lead to your disapproval of the bill having been stated under a partial misapprehension as to the facts, will be considered as withdrawn.

Yours very truly,

Francis M. Scott
Counsel to the Corporation.

May 95

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

B

June 8, 1895.

M.L.S.

Hon. William L. Strong,
Mayor.

S i r :

I beg to acknowledge the receipt of a letter from Mr. Burrows, your confidential clerk, dated the 6th instant, with reference to a theatrical license for the Casino .

In the letter it is stated that those who were in possession of the Casino prior to the first of May failed to avail themselves of the opportunity afforded by the construction placed upon the statutes in an opinion rendered by me heretofore, in pursuance of which they might, by paying a sum of \$150 in addition to \$500 paid by them on the 18th of February under a mistake of law as to the date of the expiration of their license, have received a license which would have expired on the first of May, 1896.

The Casino, it is stated, is closed; but a new firm, that of Canary & Lederer, are now in possession and, proposing to open it, have applied for a license for the place for three months.

It is also stated that Aronson, the former occupant, claims that he has an equity interest amounting to \$350 in the license, by virtue of the facts hereinbefore recited, and that no other license can be issued for the place until his has been withdrawn or assigned.

Mr. Aronson's payment in February was probably made under a mistake as to the law applicable to amusement licenses in this city. It does not give him an equitable interest in any license after the first of May, and I am of the opinion that you are at liberty, if you deem it advisable, to issue to Messrs. Canary & Lederer a three months theatrical license upon payment of not less than ~~minimum~~ the amount required by statute for licenses of that description.

I am

Yours respectfully,

Francis M. Scott
Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

Caprio Ricca

22

DATED NEW YORK,

June 8.

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

B

New York, June 11th 1895

Hon. William L. Strong,
Mayor.

S i r :

I have the honor to reply to your communication of June 7, referring to me, for an opinion, a resolution of the Board of Aldermen passed June 4, and sent to you for your approval, as follows:

RESOLVED, That Hester street, from Orchard to Suffolk streets, the square formed by the junction of Forsyth and Bayard streets and Ridge street, from Delancey to Stanton streets, be declared to be markets during the hours of six A.M. to eleven A. M. and on Thursdays, during the hours of 4 P.M. to 10 P.M., and that licensed venders be and they are hereby permitted to sell their wares on said thoroughfares, provided, that they shall keep the streets hereby declared for market purposes free from dirt and refuse, and immediately after market hours restore said streets to a clean condition."

By subdivision 1 of section 86 of the Consolidation Act the Common Council is authorized "to regulate traffic and sales in the streets, highways, roads and public places" This power, however, is controlled by subdivision 4 of the same section, to wit:

"To prevent encroachments upon and obstructions
"to the streets, highways, roads and public places,
"not including parks, and to authorize and require
"the commissioner of public works to remove the same;

"but they shall have no power to authorize the placing or continuing of any encroachment or obstruction upon any street or sidewalk, except the temporary occupation thereof during the erection or repair of a building on a lot opposite the same."

The subdivision first above alluded to is the only provision of law which I have been able to find which would give color for the enactment of the resolution referred to.

But it has been held in many adjudicated cases that the power conferred by said subdivision 1 is so affected and controlled by subdivision 4 as not to authorize the Board to pass an ordinance of the nature of the one referred to me.

In *Cohen vs. The Mayor*, 113 N.Y., 532, the Court of Appeals used this language:

"The primary use of a highway is for the purpose of permitting the passing and repassing of the public, and it is entitled to the unobstructed and uninterrupted use of the entire width of the highway for that purpose under temporary exceptions as to deposits for building purposes, and to load and unload wagons and receive and take away property for or in the interest of the owner of the adjoining premises, which it is not now necessary to more specifically enumerate. * * * Familiar as the law is on this subject, it is too frequently disregarded or lost sight of. Permits are granted by common councils of cities, or by other bodies in which the power to grant them for some purpose is reposed, and they are granted for purposes in regard to which the body or board assuming to represent the city has no power whatever, and the permit confers no right upon the party who obtains it. * * * The legislature has expressly enacted that the city shall have no power to authorize the placing or continuing of any encroachments or obstructions upon any street or sidewalk except the temporary occupation thereof during the erection or repair of a building on a lot opposite the highway."

In *The People ex rel. O'Reilly vs. The Mayor*, 59 How. Pr. Rep., in an opinion by Judge Daniels, the facts

were that a license had been granted under a resolution adopted by the Board of Aldermen, which declared that licensed vendors should be permitted to occupy Forty-second street west of Eighth avenue, and within three hundred and twenty-five feet of that avenue, Saturday nights from six to twelve o'clock, but not to interfere with public travel on the streets. The Court said:

"The effect of the resolution, as well as its terms, was to permit an occupancy of this street during the hours mentioned upon every recurring Saturday night. It was not simply to pass along the street or to use it as streets ordinarily are used for the convenience of the public in supplying the wants of those who reside upon them, but it was for the time mentioned an exclusive appropriation of so much of the street as should be found necessary for the occupancy mentioned in the resolution. * *

"The charter of the city then in force authorized the Common Council to regulate traffic and sales in the streets, highways, roads and public places of the city, but it evidently was not intended that such authority should be exercised in the manner in which it has been, by means of this resolution; for a succeeding subdivision of the same section in which this provision is contained declared that the Common Council should have no power to authorize the placing or continuing of any obstruction upon any street or sidewalk except the temporary occupation thereof during the erection or repair of a building on a lot opposite the same.

"These two provisions require, as they relate to the same subject, to be construed together; and the latter so far restrains and limits the former as to withhold, by means of its terms, such power as was attempted to be

exercised through this resolution.

" Under the latter subdivision no obstruction of
 " any street or sidewalk, of the description of that permit-
 " ted by the resolution, can be authorized by the Common
 " Council.

" To permit the street to be occupied and obstruct
 " ed in this way was clearly unlawful. It not only pre-
 " vented its use and enjoyment for the ordinary purposes for
 " which it is maintained, but also deprived the owners and
 " residents upon it of the complete and beneficial use and
 " enjoyment of their own property. And the Court granted
 " a writ of mandamus to the Superintendent of Incumbrances
 " and the Commissioner of Public Works, requiring them to
 " remove the obstructions from the street.

This case has been cited and approved many times since the decision was rendered in 1880, and it is the express law of the land.

Similar conclusions have been reached by the courts in a number of cases, among which are *Ely v. Campbell*, 59 How. Pr., 333; *Peo. ex rel. Mullin v. Newton*, 20 Abb. N. C., 387; *Peo. ex rel. Bentley v. The Mayor*, 18 Abb. N. C., 123; and by the General Term of the Superior Court in *Lavery v. Hannagen*, 52 N.Y. Sup. Ct. Rep., 463, where the Court says:

"The paramount duty of the city authorities, except as they are expressly otherwise directed, or in cases of necessity otherwise empowered, is to keep the streets of the city, inclusive of the sidewalks, open and unobstructed for the benefit of the people of the entire state. As a general rule the public are entitled not only to a free passage along the streets, but to a free passage over each and every portion of every street. These propositions have been laid down and reiterated so often that it would be a waste of time to collect all the authorities

"that could be cited in their support. The cases of
 "Peo. ex rel. O'Reilly v. The Mayor, 59 How. Pr., 277
 "and Ely v. Campbell, 59 Ib., 333, are quite suffi-
 "cient for the purpose."

The resolution under consideration, if approved by the Mayor, would appropriate certain of the public streets and highways during certain hours of the day, and transform them into public markets without warrant of common or statutory law.

In my opinion the proposed ordinance would be illegal, and the Board of Aldermen are without power to enact the same. I therefore respectfully recommend the disapproval of the same by your Honor.

In the same letter was included, with a request for an opinion thereon by me, the following resolution:

"Lights on passenger vehicles. Any person
 "using or permitting to be used, a cab, coach, light
 "wagon, or any other vehicle used or intended to be
 "used for the carrying of passengers, whether the
 "same shall be actually carrying passengers other
 "than the driver or not, shall be required to carry
 "on such vehicle, after sundown and before sunrise, a
 "light or lights of sufficient illuminating power and
 "so placed as to be visible at a distance of two hun-
 "dred feet in front of said vehicles. Any violation
 "of this ordinance shall be punishable as a misde-
 "meanor."

By subdivision 2 of section 86 of the Consolidation Act the Common Council is given power "to regulate the use of the streets, highways, roads and public places by foot passengers, animals, vehicles, cars and locomotives."

Under that grant of power the Common Council, in my opinion, is authorized to pass the proposed ordinance, and I know of no reason why the Mayor should not approve

the same.

I return herewith the enclosures forwarded in
your letter of the 7th.

Yours very truly,

Francis M. Scott
Counsel to the Corporation.

Opinion.

— FROM —

COUNSEL TO THE CORPORATION.

*Am re placing
Public works
in Westport
Chal.*

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DATED NEW YORK,

June 11

T.C.
M.F.

CHAPTER 750.

AN ACT to amend chapter two hundred and ninety-nine of the laws of eighteen hundred and ninety, and acts amendatory thereof, entitled "An act to amend chapter three hundred and twenty-three of the laws of eighteen hundred and eighty-eight, entitled 'An act to provide for the erection of a building for certain purposes relating to the public interests in the city of New York'" authorizing the distribution of prizes.

Accepted by the City. Became a law May 24, 1895, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section six of chapter two hundred and ninety-nine of the laws of eighteen hundred and ninety, and acts amendatory thereof, entitled "An act to amend chapter three hundred and twenty-three of the laws of eighteen hundred and eighty-eight, entitled 'An act to provide for the erection of a building for certain purposes relating to the public interests in the city of New York,'" is hereby amended so as to read as follows:

§6. The said board of commissioners shall advertise for the submission to them of plans and specifications for said building. Such advertisements shall be inserted once in each week for three successive weeks in the "City Record," and in not less than two other newspapers printed in the city of New York, and the said board of commissioners may in its discretion offer reasonable prizes for such plans and specifications not exceeding six in number, as shall, in the judgment of said board of commissioners, as hereinafter provided, be the best plans and specifications so submitted to it. Said board of commissioners is hereby authorized to nominate and appoint three competent architects, not taking part in the competition, who shall constitute a board of consulting architects, to aid it in the preparation of such advertisements and notices herein authorized or that may by it be deemed necessary, and the selection of six plans and specifications aforesaid and otherwise to assist it in the discharge of its duties. Upon the submission to said board of commissioners of plans and specifications in pursuance of such advertisements and notices, it shall be the duty of said board of commissioners to submit to the said board of consulting architects all of the plans and specifications for examination, and said board of consulting architects shall select from the number so submitted, and no others, six plans or specifications which to it seem the best, and report them to the said

board of commissioners. That a premium of seven thousand dollars shall thereupon be awarded to the author of such one of the plans and specifications so selected adjudged by the said board of commissioners or its successors to be the best, and five equal premiums of two thousand dollars each be awarded to the authors of the remaining five of the said six designs so selected . The names of the said six authors must thereupon be spread upon the minutes of the proceedings of said board of commissioners, and a certificate of such award be given to each of said authors under the hand of the secretary of said board of commissioners. The board of estimate and apportionment of said city of New York shall in its discretion, upon presentation to it of any one or more of said certificates, appropriate such sum or sums as may be represented by the certificate or certificates of award so presented to it at any time, and it shall be the duty of the comptroller of said city after such apportionments have been made, to audit and pay the same upon presentation and surrender of said certificates by the owners thereof; which payment shall be made in like manner as payments are now made by the comptroller of said city of claims against and demands upon said city. If, after the making of said awards and the delivery of the certificates thereof, the said board of commissioners shall deem it necessary or advisable, it may readvertise for the submission to it of other or further plans and specifications for said building to be erected on the site as located in section two of this act, and offer reasonable prizes for such other or further plans and specifications not exceeding six in number as shall, in the judgment of said board of commissioners be the best plans and specifications submitted to it, and said prizes, be paid, in manner hereinbefore provided. When the said board of commissioners shall have selected and approved a plan or plans and the specifications for said building, and shall decide to proceed with the work or any part thereof, it may direct that said work shall be executed. The said board of commissioners shall publicly advertise for proposals for the erection, in whole or in part, of such building, and for the doing of all work and the supply of all materials necessary for the completion and furnishing of the same for use and occupation. The forms of all contracts for which proposals are so invited shall first be approved by said board of commissioners before advertisement thereof, and the work of erecting, completing, and furnishing for occupancy of said building may be distributed into as many different contracts as in the opinion of said board of commissioners will best

promote the public interests. Such advertisements shall be inserted in the "City Record", and in at least three of the public newspapers of the city of New York, to be selected by the said board of commissioners and shall be continued therein for at least ten consecutive days. All bids or proposals received in response to said advertisements shall be publicly opened at a meeting of the said board of commissioners, and it shall award each contract for which bids and proposals have been so advertised as aforesaid, to the lowest bidder therefor, or it may reject all of such bids and readvertise for bids and proposals, and may reject all bids and readvertise as often as it may deem it to be for the best interests of the city so to do. The terms of all such contracts shall be settled by the counsel to the corporation as an act of preliminary specification to the bid or proposal. Said contract or contracts, when awarded, shall be executed by the commissioner of public works of said city under the direction of the aforesaid board of commissioners in behalf of the mayor, aldermen and commonalty of the city of New York. The said board of commissioners are hereby authorized and empowered, by the concurrent action of all members thereof, and with the consent in writing of the contractor and his sureties, to alter the plans of said building, and the terms and specifications of any contract entered into by authority of this act; provided that such alteration shall in no case involve or require an increased expense greater than five per centum of the whole expenditure provided for in said contract.

§2. Section nine of said chapter two hundred and ninety-nine of said laws of eighteen hundred and ninety, is hereby amended so as to read as follows:

§9. For all expenditures to be incurred under the authority of this act, including the damages awarded upon the acquisition of land and estates therein, and the extinguishment of interests therein, but exclusive of the prizes hereinbefore provided for in section six, the said board of commissioners is hereby authorized to require the comptroller to issue bonds or stocks of the mayor, aldermen and commonalty of the city of New York, from time to time, and to be payable from taxation, and redeemable in not less than ten nor more than twenty years from the date of issue, in such amounts as may be necessary to carry out the purposes of this act, and the mayor, and comptroller are hereby authorized and directed to sign said bonds, and it shall be the duty of the clerk of the common council of said city to countersign the same and affix thereto the seal of the city. Said bonds shall bear interest at a rate not exceeding four per centum per annum and shall not be disposed of for less than the par value thereof; and of the proceeds of said bonds

there shall be paid from time to time upon the requisition of said board of commissioners, the amount by them, from time to time, certified to be due for any of the purposes in this act provided.

§3. This act shall take effect immediately.

STATE OF NEW YORK ,)
 : ss:
Office of the Secretary of State,)

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

GIVEN under my hand and the Seal of office of
the Secretary of State, at the city of Albany, this 24th
day of May, in the year one thousand eight hundred and
ninety-five.

Andrew Davidson,

Deputy Secretary of State.

L.S.

An Act to amend chapter 299 of the laws of eighteen hundred and ninety, and acts amendatory thereof, entitled "An act to amend chapter 323 of the laws of 1888, entitled 'An act to provide for the erection of a building for certain purposes relating to the public interests in the city of New York'" authorizing the distribution of prizes.

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

R.

New York, June 21, 1895

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Hon. William L. Strong,

Mayor.

S i r :-

I beg to acknowledge the receipt of a letter transmitting resolution of the Board of Aldermen No. 602 for examination and report by this office. The resolution in question refers to what purports to be an existing ordinance, which is as follows:

"Stands for the sale of newspapers, periodicals, fruits and other small wares and merchandise, are permitted within the stoop-lines, with the consent of the owner or occupant of the ground floor of the building in front of which such stands may be placed, but in no case to extend beyond four feet from the house-line, nor more than six feet in length; and provided that no covered stand or booth shall be permitted under this ordinance except for the sole purpose of the public sale of newspapers, periodicals, cigars and tobacco."

This ordinance is in contravention of the Consolidation Act and I advise you that its repeal is proper

I have the honor to remain,

Yours respectfully,

Frederic M. Scott

Counsel to the Corporation.