

**BOX**

**003**

**FOLDER**

**042**

**Law Department**

**1913, Sept.-Dec.**



ARCHIBALD R. WATSON  
Corporation Counsel

*City of New York*  
*Law Department*  
*Office of the Corporation Counsel*  
*Hall of Records*

ML

September 17, 1913.

*Washor*

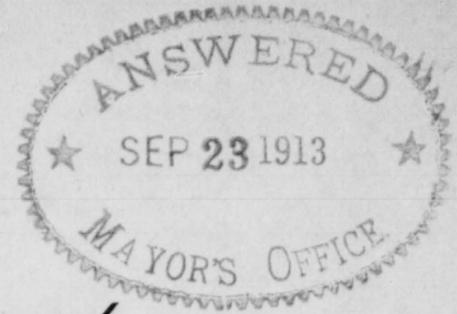
Hon. Robert Adamson,  
Secretary to the Mayor,  
City Hall, N. Y.

My dear Mr. Adamson:

In furtherance of my little talk with you yesterday, I hope that my professional relations with the Mayor were sufficient to obtain for me admission to Trinity Church on Monday. I would be greatly pleased if this admission could include my wife, who knew the Mayor very well.

Sincerely yours,

*Geo M Curtis*



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

115-ML

*New York,* September 19 1913

Hon. Ardolph L. Kline,  
M a y o r .

S i r :

By direction of the Corporation Counsel, I  
transmit herewith the quarterly report of this Department  
for the quarter ended June 30, 1913.

Yours respectfully,

Chief Clerk.

(Enclosure)

New York, September 23, 1913.

Hon. William A. Prendergast,  
C o m p t r o l l e r .

S i r :

I have received your communication under date of September 11, 1913, signed by Deputy and Acting Comptroller Mathewson, relative to the situation created by the recent resignation of the President of the Board of Aldermen, followed by the death of the Mayor. My opinion is requested upon various phases of this situation, and I have set out below the substance of the questions propounded in said communication from you, so far as is deemed necessary to an understanding of this opinion.

Preliminarily I may say that the statutory provision having principal bearing upon the subject is section 23 of the Greater New York Charter, which is as follows:

"Whenever there shall be a vacancy in the office of Mayor, or whenever, by reason of sickness or absence from the city, the mayor shall be prevented from attending to the duties of his office, the president of the board of aldermen shall act as mayor and possess all the rights and powers of mayor during such disability or absence. In case of a vacancy he shall so act until noon of the first day of January succeeding the election at which the mayor's successor shall be chosen. It shall not be lawful for the president of the board of aldermen, when acting as mayor in consequence of the sickness or absence from the city of the mayor, to exercise any powers of appointment to or removal from office, unless such sickness or absence of the mayor shall have continued thirty days; or to sign, approve

or disapprove any ordinance or resolution unless such sickness or absence shall have continued at least nine days. The board of aldermen shall elect a vice-chairman to preside over its meetings, who shall possess the powers and perform the duties of the president of the board of aldermen, when the president is sick, absent or under suspension, or while the president of the board of aldermen is acting as mayor, or when a vacancy occurs in said office, and who shall, during such time, be a member of every board of which the president of said board is a member by virtue of his office."

It will be noted that the last paragraph of this section expressly provides that during a vacancy or temporary absence in the office of the President of the Board of Aldermen, the Vice-Chairman of said Board shall possess all the powers and perform all the duties of that office. There is no express provision for the succession of the Vice-Chairman to the office of Mayor, but among the duties and powers of the President of the Board of Aldermen, expressly conferred upon him, are the powers and duties of the Mayor in the event of a vacancy or temporary absence in that office. The statute does not in terms distinguish between the consequences of a temporary absence and a vacancy in the office referred to, but this does not debar us from a construction of the statute which would result in such a distinction, if, upon reasonable grounds, a legislative intent favoring such a construction may be presumed.

Nor is it necessary, in the matter before us, that we should inquire further than sufficient for the proper application of the controlling provisions of law in the precise circumstances which have arisen, -

that is to say, the resignation of the incumbent of the office of President of the Board of Aldermen, creating not a temporary absence, but a vacancy in said office, followed by the death of the Mayor, creating again not a temporary absence, but a vacancy; and in further view of the pending mayoralty election to be held within the next two months, at which a mayor, a President of the Board of Aldermen and other municipal officers are to be chosen by the electorate of the whole City for the regular official terms prescribed by law.

Three theories have been suggested:

First: That in the circumstances described the Vice-Chairman of the Board of Aldermen would become Acting President and Acting Mayor, and perform, until the election and qualification of persons to fill such vacancies, the combined duties of the office of Mayor, the office of President of the Board of Aldermen and the office of Vice-Chairman of said Board.

Second: That as there is no express provision for the succession of the Vice-Chairman to the Mayoralty, there is now a vacancy in the office of Mayor to be filled by appointment of the Governor under the general provisions of the Public Officers Law (§42).

Third: That pursuant to §23 of the Charter, the Vice-Chairman of the Board of Aldermen, upon the happening of the contingencies stated, becomes the Mayor of the City, automatically vacating his office

as Vice-Chairman of the Board of Aldermen, to which is incidental the exercise of the powers, duties and functions of the President of the Board, involving, also, a vacancy in the office of Alderman in and for the district formerly represented by the Vice-Chairman of the Board.

Permit me to say that in my opinion the last proposition announces the preferable view, for the reasons which follow :

(a) From the conclusion that the Vice-Chairman of the Board of Aldermen only becomes Acting Mayor in the circumstances described, retaining also the functions and powers of the President of the Board of Aldermen, with membership in the various boards of which the President of the Board of Aldermen is a member by virtue of his office, it would follow that there would be vested in the same individual two distinct positions, to each of which a salary is attached by law, in conflict with §1549 of the Charter, which prohibits just these things.

Though it has been suggested that the offices of Mayor and President of the Board of Aldermen are not incompatible, such incompatibility, in a legal sense, clearly appears when the same person attempts to exercise permanently the functions of both officers. That is to say, the combination of the functions of the offices of Mayor and President of the Board of Aldermen in one individual would give him six votes in the Board of Estimate, or a majority of a quorum of

that Board (§225 of the Charter), and two votes in the Board of Commissioners of the Sinking Fund, or one-half of a quorum of that Board (§204 of the Charter), a consequence the mere statement of which described a result so preposterous as that its contemplation as a matter of legislative intention may be instantly dismissed from the mind.

(b) If we conclude that there is now a vacancy in the office of Mayor, it would follow that some of the most important and necessary functions of our City Government must be suspended for more than three months. It is familiar knowledge that for issuance of special revenue bonds under paragraph 8 of §188 of the Charter, the "concurrent vote of all the members of the Board of Estimate" is required, and that for other and equally important municipal functions the "unanimous vote" of the Board of Commissioners of the Sinking Fund, of which the Mayor is also a member, must be had (§§204, 205 et seq.). For other Charter sections requiring the unanimous vote of the Board of Commissioners of the Sinking Fund or Board of Estimate see §§221a and 246. These considerations serve to give added emphasis to the legal maxim that the law abhors a vacancy in office. Certainly no interpretation of a legislative act will be unnecessarily indulged which does violence to this maxim, or would result in the complete breaking down or serious interruption of the proper administration of the business of the City.

The notion that the Governor or Acting Governor might fill such a vacancy under the general provisions of §42 of the Public Officers Law, and that thus a vacancy might be avoided, does not commend itself to my judgment. Such a construction would be contrary, if not to the letter, at least to the spirit, of that provision of our Constitution designed to secure local self-government, as applied to the choice of local officers (See N.Y. Const. Art. X, §2; Lincoln's Const. Hist. of N.Y., Vol. 4 pp. 733 et seq.).

(c) By the foregoing process of elimination there remains as the only practical and satisfactory solution of the present problem the view that under §23 of the Charter the former Vice-President of the Board of Aldermen, upon the happening of the contingencies stated, became the Mayor of the City for the remainder of the present year, automatically vacating his office of Vice-Chairman, to which is incidental the exercise of the powers, duties and functions of the President of the Board. This involves, also, a vacancy in the office of alderman in and for the district formerly represented by the Vice-Chairman of the Board. It is not necessary now to consider what would happen if the mayoralty term exceeded the aldermanic term for which the Vice-Chairman of the Board had been elected as Alderman. That question is academic here.

This view will permit the Aldermen now to elect a new Vice-Chairman, who will exercise the powers and duties of the President of the Board of Aldermen. There

will then be no vacancy in the Board of Estimate, no vacancy in the Board of Sinking Fund Commissioners, and each may proceed to the performance of the functions devolved upon it by law, the membership in such boards being made complete by the election of a local officer by the proper local Board.

I may say in conclusion that the foregoing views are the same as those expressed by one of my predecessors in office, E. Delafield Smith, upon the construction of a statute in terms substantially identical with those employed in section 23 of the present Charter. The question arose as to the status of Samuel D. H. Vance, President of the Board of Aldermen, by reason of the death of Mayor Havemeyer. The opinion was dated December 3, 1874, addressed to the Honorable Board of Aldermen. It is short, to the point, and so pertinent here that I may be permitted to quote the same in full.

LAW DEPARTMENT  
OFFICE OF THE COUNSEL TO THE CORPORATION,  
New York, September 3, 1874.

To the Honorable the Board of Aldermen:

Gentlemen-- My opinion is requested whether the death of the late Mayor, and the imposition of the duties of his office upon the late President of the Board of Aldermen, create a vacancy in the seat in your Body, lately held by the Hon. Samuel B. H. Vance.

The act of April 30, 1873, known as the Amended Charter of that year provides that 'Whenever there shall be a vacancy in the office of Mayor,' 'the President of the Board of Aldermen shall act as Mayor, and possess all the rights and powers of Mayor.' (Laws of 1873, Chapter 335, section 21). It will be observed, that under the language of the law, the President of the Board is

not only to 'act as Mayor', but is to absolutely 'possess all the rights and powers of Mayor.' These words are as strong as any that could have been used. They clearly make the President of the Board of Aldermen the actual Mayor of the City when a vacancy has been created in the office. Mr. Vance is therefore, at this moment, under the laws of the State of New York, as truly the Mayor of the City as was Mr. Havemeyer during the last twenty-three months of his life, and as will be Mr. Wickham if alive on the first day of the ensuing year. The law operates to absolutely divest him of the office of Alderman, and to invest him with the office of Mayor, during the time which Mr. Havemeyer would have served if his life had been prolonged to the first day of January. He holds but one office, and that the Mayoralty of the City. He performs the duties of one office, and one only. By operation of existing statutes he is, for the time being, as perfectly transferred from the Board of Aldermen to the Chamber of the Mayoralty as though he had resigned the former position and been elected to the latter.

Upon the death of President Harrison in April, 1841, a question similar to this was considered by the eminent members of the cabinet which his successor, Mr. Tyler, appointed upon the accession of the latter. The inquiry arose whether the official designation of Mr. Tyler should be President or Acting President. The Constitution of the United States provides that -- 'In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President.' (Subdivision 6, section 1 of Article 2.) This clause does not, in express terms, declare that the Vice-President shall be President. It simply says that the 'powers and duties of the office shall devolve.' So here, the article of the charter which we are considering does not expressly declare that the President of the Board of Aldermen shall be Mayor. It simply says that he 'shall possess all the rights and powers of Mayor.' This language is at least equally strong and comprehensive with that employed in the Constitution. Mr. Webster suggested that Mr. Tyler was not simply acting President but President. This view was acquiesced in and acted upon by his colleagues in the Cabinet and by both houses of Congress, nor was it ever questioned in any branch of the judiciary.

Again: When President Taylor died, Mr. Fillmore was declared and recognized, not as Acting President, but as President of the United States. The opinion of such jurists as Webster, Crittenden, Beverdy Johnson, and others, with the precedent established in the case of Tyler were cited and acquiesced in by every branch of the Government of the United States. On the death of President Lincoln and the accession of Mr. Johnson, the precedent was again discussed and deliberately followed. In the impeachment a question was raised whether Andrew Johnson was to be proceeded against as Vice-President or President; and a committee, comprising jurists of eminence, reported that he must be cited as President. So the House of Representatives and the Senate determined.

A separate act of the Legislature of the State passed thirteen days after the adoption of the Charter, provided that any vacancy occurring in the Board of Aldermen by reason of death, resignation, or any other cause, should be filled by election by the Board in which such vacancy should arise by a vote of a majority of all the members elected to said Board. (Laws of 1873, chapter 857, section 1.)

In my judgment, there can be no question that Mr. Vance is the Mayor of the City, and not now a member of your Board; that his seat therein has become and is at present vacant; and that the Board clearly possesses the power and duty of filling such vacancy by vote of a majority of all the members elected.

I am, gentlemen,

Very respectfully,  
Your obedient servant,  
E. DELAFIELD SMITH,  
Counsel to the Corporation."

From the foregoing it follows that Hon. Ardolph L. Kline, former Vice-Chairman of the Board of Aldermen, became, upon the happening of the contingencies stated, Mayor of the City of New York, and entitled to receive the salary of said office as fixed by law.

Furthermore, I am of opinion, as is presumed to be the proper course by your Department in the premises, that a new designation by the present Mayor of clerks to sign warrants and bonds should be made.

Respectfully,

ARCHIBALD R. WATSON,

Corporation Counsel.

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

115 MDB

*New York,* September 26 1913

Hon. Ardolph L. Kline,

M a y o r . .

S i r :

By direction of the Corporation Counsel I transmit the following report of the changes in the payroll for the month of August, 1913:

Separations from service

Margaret Macdonald,	Stenographer & Typewriter . . . . . \$1,200. resigned August 1, 1913.
David W. Lynch,	Examiner . . . . . 1,200. died August 10, 1913.
Samuel M. Katz,	Stenographer & Typewriter . . . . . 1,050. transferred to Commissioner of Licenses' Office, August 5, 1913.

Promotions

Granville W. Byrne,	Stenographer & Typewriter \$1050. to \$1200.
Laura I. Becker	" " " 900. " 1050.
Helen R. Hayes,	" " " 750. " 900.

August 9, 1913.

Respectfully yours,

*J. J. Garner*

Chief Clerk.

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

115 MDB *New York,* September 26 1913

Hon. Ardolph L. Kline,  
 Mayor.

Sir:

By direction of the Corporation Counsel I transmit the following report of the changes in the payroll for the month of July, 1913:

Separations from service

Charlotte M. Lynch, Stenographer & Typewriter .....\$750.  
 transferred to Department of  
 Water Supply, Gas and Electric-  
 ity, July 21, 1913.

Promotions

John J. Mead	Law Clerk.....\$1,050. to \$1,200.
William J. Leonard	Clerk \$900. to Law Clerk .... 1,050.
Anthony Horn	Clerk ..... 750. to 900.
Samuel Lippman	Clerk ..... 600. " 750.

July 1, 1913.

Additions to force

Abraham H. Goodman, Process Server paid at rate of \$1.15  
 for each summons served, June 30,  
 1913.

Bureau of Street Openings

Promotions

John G. McCarthy, Junior Assistant ...\$1,500. to \$1,800.  
 July 1, 1913.

Additions to force

Charles J. Miville,	Title Examiner ..... 1,500.
Charles Bisberg	" " ..... 1,500.

July 1, 1913.

Respectfully yours,

*H. Garner*

Chief Clerk.

CORPORATION COUNSEL,  
CITY OF NEW YORK.

(10) B.

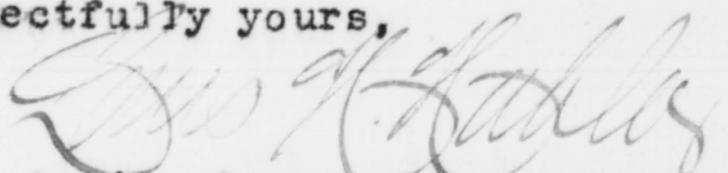
New York, October 7, 1913.

Hon. A. L. Kline,  
Mayor.

S i r:

I have the honor to inform you that in conformity with the request contained in your favor to the Corporation Counsel under date of October 4, 1913, I have informed the Comptroller that there is no objection to the proposed transfer to the Board of Education of the sum of \$13,760.78 from the appropriation to the Law Department for salaries of regular employees for 1913.

Respectfully yours,

  
Acting Corporation Counsel.

CORPORATION COUNSEL,  
CITY OF NEW YORK

10/17/13.

S i r :

I have received a communication from your Secretary under date of October 7, 1913, requesting that you be advised of the status of the claim of George Downey and transmitting a letter from George Downey to you relative to said claim.

George Downey began an action against The City of New York on April 10, 1899, to recover the sum of \$1584, alleged to be due him for the difference between the compensation paid to him as a blacksmith and the prevailing rate of wages which he contends should have been paid him, between May 10, 1894 and March 1, 1899, during which period he asserts that he was employed as a blacksmith on the New York and Brooklyn Bridge.

This claim has been investigated by the Finance Department, and upon such investigation, which included an examination of the plaintiff himself, was disallowed upon grounds which, in my opinion, will probably defeat any recovery in the claimant's action, namely, his failure to object to the compensation paid him during the period covered by his claim and his inability to prove a prevailing

rate of wages higher than that which was actually paid to him.

I am informed through the Finance Department that the claimant has been advised on several occasions by that Department that his claim had been disallowed on the grounds above mentioned.

I return herewith your correspondent's letter.

Respectfully yours,

*Delivered K. W. W. W.*

Corporation Counsel.

Hon. Ardolph L. Kline,

M a y o r.

CORPORATION COUNSEL,  
CITY OF NEW YORK.

October twenty-first,  
Nineteen thirteen.

S i r : -

I have received a communication from your Secretary under date of October 6, 1913, which reads as follows:

"James S. Clark, 475 Dean Street, Brooklyn, complains that the adjoining lot, known as 475-A Dean Street, is about three feet lower than his lot and that in consequence thereof the fence in the rear of his premises is about to fall over. The Mayor asks if this is not a case which, under the ordinances, entitles Mr. Clark to relief; and if so, will you take such steps as may be necessary to see that he gets it?"

Under the ordinances of The City of New York, the power to determine a dispute between adjoining land owners concerning a division fence in the Borough of Brooklyn, or what part or portion of such fences shall be made or repaired by each of the adjoining land owners, is vested in the alderman of the borough residing in the ward in which such partition fence is situated, or by the alderman residing in the adjacent ward in case there should not be a resident alderman within the boundaries of the ward in which such dispute arises. (Cosby's Code of Ordinances, page 306, section 31 et. seq.).

This provision furnishes no remedy, however, which the City authorities can enforce on behalf of the property owner. If your correspondent should invoke the action of the proper alderman any right he may have upon the determination of that officer would still be a matter of private controversy between him and the adjoining land owner, and his remedy would be one to be pursued in private litigation through the agency of private counsel. In such litigation the City would have no interest and no right to intervene.

The fact that the adjoining lot is lower than that of your correspondent does not alter the aspect of the case. Section 383 of the Charter provides that the president of the borough shall have cognizance and control of the filling of sunken lots, but the facts as now presented do not make it apparent that the lot adjoining that of your correspondent is in such condition as to call for the exercise of this jurisdiction of the borough president.

I have written your correspondent advising him of the conditions as above set forth, a copy of which letter is transmitted herewith.

Respectfully yours,

*Walter R. Mather*

Corporation Counsel.

Hon. Ardolph L. Kline,

Mayor.

28-HFB.

Mr. James S. Clark,  
475 Dean Street,  
Brooklyn, N. Y.

Dear Sir:

The Mayor has transmitted to this department for attention the matter of your letter to him relative to the condition of the partition fence between your lot and the adjoining lot known as 475-A Dean Street.

I regret to advise you that the matter is one in which this department is unable to render you any active assistance.

Under the ordinances of The City of New York, the power to determine a dispute between adjoining land owners concerning a division fence in the Borough of Brooklyn, or what part or portion of such fences shall be made or repaired by each of the adjoining land owners, is vested in the alderman of the borough residing in the ward in which such partition fence is situated, or by the alderman residing in the adjacent ward in case there should not be a resident alderman within the boundaries of the ward in which such dispute arises. (Cosby's Code of Ordinances, page 306, section 31 et seq.).

This provision furnishes no remedy, however, which the City authorities can enforce on behalf of the property owner. If you should invoke the action of the proper alderman, any right you may have upon the determination of that officer would still be a matter of private controversy between you and the adjoining land owner, to be enforced in private litigation through the agency of private counsel, and in such litigation the City would have no right to intervene.

The fact that the adjoining lot is lower than your lot does not alter the case. Section 383 of the Charter provides that the president of the borough shall have cognizance and control of the filling of sunken lots, but the facts here involved do not appear to come within the purview of that section.

Very truly yours,

Corporation Counsel.

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CORPORATION COUNSEL,  
CITY OF NEW YORK

October twenty-third  
Nineteen thirteen

Julian Beatty, Esq., Secretary,  
City Hall,  
New York City.

Dear Mr. Beatty:

I am in receipt of your letter of October 21st concerning the action of Ortolero v. Dougherty. This Department received a request from the Police Commissioner to appear for Deputy Commissioner Dougherty, and appearance was entered and a defence interposed in accordance with the rule of this Department to protect officers of the City from suits brought against them while in office, when the matter involves or is closely related to official action.

The Ortolero case was carefully looked into at the time the request was made by the Police Commissioner and the appearance entered for Deputy Commissioner Dougherty, and I am inclined to think that this Department would be remiss in the performance of its duty if it now withdrew its

support from Deputy Commissioner Dougherty and compelled him to employ personal counsel.

Very sincerely yours,

*McClibod Watson*

Corporation Counsel.

CORPORATION COUNSEL,  
CITY OF NEW YORK

October twenty-ninth  
Nineteen thirteen

Hon. Ardolph L. Kline,

Mayor of the City of New York.

My dear Mr. Mayor:

My attention has been called to a certain news item which stated that six named members of the legal staff of the City, who occupy positions in the Law Department of considerable importance and responsibility, were to appear at a political meeting for the purpose of making partisan speeches in favor of certain candidates for office in the pending municipal campaign. Though you have not suggested or requested a statement in the premises, I beg to say, in order that the matter may not be misunderstood, that I am advised that on the occasion referred to no one of the named Assistant Corporation Counsel participated in the meeting in the manner described.

While I have never sought to influence or control the members of the Law Department in their political proclivities, except in so far as a proper attention to their official duties might require, I feel that in an important municipal election the members of the Law Department, so far as practicable, should maintain a position free from partisan display. This is the more obvious for the reason that all of the very important legal questions affecting the election are referred to and passed upon primarily by this Department. It is not only essential that such matters should be de-

Hon. Ardolph L. Kline, -2-

cided free from bias or prejudice, but it is scarcely less important that there should be no suggestion or appearance of such a thing. In all of such matters the Law Department performs a quasi-judicial function.

Where a member of the City's legal staff is actually a candidate for elective office, by nomination of one or the other of the political parties, the same considerations, of course, do not apply; but among those not so situated, and especially the incumbents of the more important and responsible positions in the Department, there is a very general acquiescence in the views I have expressed.

R e s p e c t f u l l y,

*Melvin R. Watson*

Corporation Counsel.

CORPORATION COUNSEL,  
CITY OF NEW YORK

October 1913.

Dear Mr. Matthews:

The enclosed little bill was incurred by the Law Department in connection with the seating in Trinity Church for the Mayor's funeral. I suppose all these bills are being gotten together now, and for that reason I send you this small one.

Yours sincerely,

*McClivard Watson*

Mr. James Matthews,  
City Hall,  
New York City.

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# Communication

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FROM  
THE CORPORATION COUNSEL

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DATED NEW YORK,

*City of New York.*  
*Law Department,*  
*Office of the Corporation Counsel,*  
*New York,* NOVEMBER 6, 1913

115 MDB

Hon. Ardelph L. Kline,  
 M a y e r .

S i r :

By direction of the Corporation Counsel I transmit the following report of the changes in the payroll for the month of September, 1913:

Additions to force

Benjamin Weinstock, Stenographer & Typewriter .....\$1,050.  
 appointed September 8, 1913.

Separations from service

Harry Falk, Process Server paid at rate of \$1.15 for each summons served, transferred to Fire Department, September 19, 1913.

Promotions

John R. Salmon, Clerk \$4,000. to Asst. Chief Clerk \$4,500  
 Samuel K. Probasco Clerk .....\$3,600. to \$4,000  
 September 11, 1913.

Joseph Maas Clerk \$900. to Examiner \$1,200.  
 September 1, 1913.

Matthew Duffy, Clerk .....\$ 750. to \$ 900  
 Herbert Reinhardt, " ..... 600. " 750  
 September 1, 1913.

Charles H. Sussman, Clerk ..... 480. " 600  
 Fred J. Caposella " ..... 480. " 600  
 Michael Hertzoff " ..... 480. " 600  
 Robert L. Cadley " ..... 300. " 480  
 Martin V.B. Hayden " ..... 300. " 480  
 September 16, 1913.

*Letter to* **Hon. Ardolph L. Kline**

*Page* **2**

**Bureau of Street Openings**

**Separations from service**

**Catherine Brickley, Stenographer & Typewriter .....\$1,200.  
resigned September 1, 1913.**

**Respectfully yours,**

*J. H. Garner*

**Chief Clerk.**

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# Communication

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FROM  
THE CORPORATION COUNSEL

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DATED NEW YORK,

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

109-AMW

*New York,* NOVEMBER 10 1913

Hon. Ardolph L. Kline,

M a y o r .

S i r : -

I have received a communication, under date of October 6th, 1913, signed by Julian Beaty, Secretary, reading as follows:

"The Mayor directs me to transmit to you for such attention as the case warrants, letter from Miss Susie Lechleider, Ellisville, Illinois, who wishes to obtain some information as to a tract of land she claims was owned by her great grandfather in 1775."

I beg to say that I have sent to Miss Susie Lechleider mentioned in said communication a letter, a copy of which I transmit herewith.

Respectfully yours,

*A. D. Olenchuk*  
Acting Corporation Counsel.

(Enclosure)

109-LIB

NOVEMBER 10 1913

Miss Susie Lechleider,  
c/o Mrs. R. G. Fouts,  
Ellisville, Fulton Co., Ill.

Dear Madam:-

His Honor, The Mayor of The City of New York, has referred to me for attention your communication under date of September 29th, 1913, wherein you request information as to a ninety-nine year lease of land in this City, supposed to have been made sometime prior to the year 1800 by one Richard Montgomery, a Revolutionary soldier.

From an examination which I have caused to be made of divers historical records, it appears that a Richard Montgomery, born December 2d, 1736, at Swords, near Feltrem, Ireland, came to America in 1772, and in 1773 married Janet, daughter of Robert R. Livingston, and that he died without descendants at Quebec, December 31st, 1775, being at that time a general in the Continental Army. I am unable to find the record of any lease affecting property in this City made at any time by Richard Montgomery

or Isaac Montgomery, nor am I able to find the record of any property owned by Richard Montgomery in the City of New York except that of a farm at Kingsbridge, which by his will he devised to his sister, Sarah, Lady Ranelagh. At that time, however, said property was not within the then limits of the City of New York.

Respectfully yours,

CHARLES D. OLENDORF,

Acting Corporation Counsel,

Acting Corporation Counsel.

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

95-EFC

NOVEMBER 12 1913

Hon. Ardolph L. Kline,

M a y o r .

S i r : -

There are pending, in this office, certiorari proceedings to review the assessments made by the Department of Taxes and Assessments for the years 1905 to 1908 inclusive against property in the Borough of Brooklyn belonging to the Brooklyn Union Gas Company and its constituent companies, said assessments being entered upon the portions of the "Annual Record" known as "Real Estate of Corporations". These assessments are set forth in the list enclosed herewith. There are also entered upon the "Annual Record" of "Real Estate of Corporations", assessments for the year 1909 against property belonging to these companies, but as to which no certiorari proceedings have been instituted. It is proposed to settle the proceedings brought to review the assessments for the years 1905 to 1908 inclusive, mentioned above, and as part of such settlement to include the disposition of the said assessments for the year 1909, as herein set forth.

I am informed by a communication from the Department of Taxes and Assessments, dated August 4th, 1913, that the property covered by the assessments for the years 1906, 1907, 1908 and 1909, mentioned in the enclosed list, (with the exception of that covered by the assessments against

*Letter to* Hon. Ardolph L. Kline,

*Page* -2-

the Brooklyn Union Gas Company for Lot 123 for 1906 and 1907 respectively), consisted entirely of property in, under, above, on or through certain streets, highways or public places in the Borough of Brooklyn, none thereof being in, under, above, on or through private streets or private property. I am also informed by said communication that said assessments are duplicate assessments, the State Board of Tax Commissioners having assessed the same property for the same years respectively for special franchise tax. The assessments of said property for special franchise tax were made in the name of The Brooklyn Union Gas Company. It is proposed, therefore, that the assessments for the years 1906, 1907, 1908 and 1909 (with the exception of the said assessments of Lot 123 for 1906 and 1907) in the enclosed list be cancelled as duplicate assessments, as the special franchise taxes levied against The Brooklyn Union Gas Company for all of these years have been paid.

I am further informed by said communication from the Department of Taxes and Assessments that the assessments above mentioned for 1906 and 1907 against the Brooklyn Union Gas Company for Lot 123, namely of \$2,000. for 1906 and \$5,000. for 1907, were for a bridge over Nevins Street, Brooklyn, and that the same was not assessed by the State Board of Tax Commissioners for special franchise tax for those years. It is, therefore, proposed, as part of the settlement outlined herein, that the taxes levied upon these two assessments be paid.

*Letter to* Hon. Ardolph L. Kline, *Page* 3

I am also informed by a letter from the Department of Taxes and Assessments, dated October 2nd, 1913, that the assessment for 1905 against The Brooklyn Union Gas Company mentioned in the enclosed list was for the following items:

Services on private property amounting to	\$121,500.
Mains in private streets	<u>13,500.</u>
	\$135,000.

These services are pipes extending from the house line of the streets to the meters in the houses of customers. These assessments are invalid under the authority of People ex rel. New York Edison Company against Feitner, 99 App. Div. 274, affirmed in 181 N. Y. 549 and they are, therefore, to be canceled.

In regard to the item of \$13,500. in the assessment last mentioned, for mains in private streets, the Brooklyn Union Gas Company has submitted an affidavit, verified by its Vice-President, that there was included in the report to the State Board of Tax Commissioners, on which the special franchise assessment against that company for 1905 was made, the value of all its tangible property in private streets as well as in public streets and highways and there were indicated no separate values in private streets. I have received a letter from the Secretary of the State Board of Tax Commissioners, dated October 7th, 1913, stating that said report contained no reference to tangible property in private streets, and that if such property were included in said

*Letter to* Hon. Ardolph L. Kline,

*Page* -4-

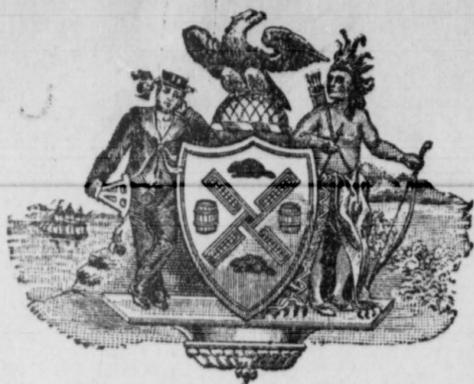
report it was included in the special franchise valuation. It is therefore proposed to cancel this portion of the assessment for "Real Estate of Corporations" for the year 1905 mentioned above, as a duplication of the assessments for that year against The Brooklyn Union Gas Company for special franchise tax, the latter tax having been paid.

I beg to submit for your consideration the settlement herein proposed, with the recommendation that you approve the same. If you approve, will you kindly write to me, stating in effect that you approve the settlement of the pending certiorari proceedings to review the assessments for the years 1905 to 1908 inclusive, against the "Real Estate of Corporations" of The Brooklyn Union Gas Company and its constituent companies, as recommended in my letter of November 12th , 1913.

Respectfully yours,

*McLucaed R. Watson*

Corporation Counsel.



OFFICES OF COMMISSIONERS  
OF ESTIMATE AND ASSESSMENT

ARCHIBALD R. WATSON  
CORPORATION COUNCIL  
JOEL J. SQUIER  
ASSISTANT IN CHARGE

LAW DEPARTMENT

BUREAU OF STREET OPENINGS

90 & 92 WEST BROADWAY  
BOROUGH OF MANHATTAN

NEW YORK, November 12, 1913.

To Honorable Adolph L. Kline,  
Mayor of The City of New York.

My Dear Sir:

I wish to submit to you the following data in a request that you intercede for me with Corporation Counsel Archibald R. Watson to have my salary increased from \$1800.00 to \$2100.00 per annum, to which I feel that I am fully entitled:

I was first appointed to the City service December 26, 1899. Transferred to Law Department, Main office at \$900.00 October 1902.

Sent to Tenement House branch, October 1903.

Sent to Bureau of Street Openings January 1906, at \$1200.00.

Increased to \$1500.00 June 1907 as result of promotion examination December 24, 1906, for 5th Grade Clerk.

"A report was presented from the Chief Examiner, dated October 31, 1907, in reply to an inquiry of the President, stating that the papers sent for promotion of candidates for the 5th, 6th, 7th and 8th (old) grades of Clerks were identical, this note being added: 'Strictness in rating will be proportioned according to the grade for which the candidates compete'; and that it seemed to him, therefore, that the Commission would be quite regular in advancing those who obtained a place

upon the eligible lists one grade without further examination."

"On motion, it was.

"Resolved, That the eligible lists for promotion to the fifth and seventh (old) grades in the Clerical Service promulgated between April 1st and October 1, 1907, be and hereby are advanced one grade, thereby becoming lists for promotion to the new fourth and fifth grade." (Taken from City Record November 20, 1907).

Despite the establishment of my qualification for promotion to the new fourth grade, I was obliged to witness two computers, who had never taken a promotion examination, transferred and promoted over me by the Corporation Counsel Francis K. Pendleton on the plea that I was not eligible for \$1800.00. This action was taken in the spring of 1909.

I was compelled to take another examination to qualify for the (New) fourth grade January 31, 1910, and had to wait until February 1st, 1912 for promotion. The Assistant Corporation Counsel in charge of the Bureau of Street Openings informed me during the last week of October, 1913, that he had requested Corporation Counsel Archibald R. Watson to increase my salary to \$2100.00. Mr. Watson's excuse for not granting this request was that it was less than a year since he had last increased my salary, and that he had made it a rule not to grant two such advances in one year. Yet the records of the office will prove that on the 1st day of November of this year a second promotion had been accorded to another employe of the Law Department and other such instances may be further quoted.

I feel that an injustice has been done me since 1909,  
and sincerely hope you will rectify the same. I am

Very truly yours,

*Thomas P. White*

CORPORATION COUNSEL,  
CITY OF NEW YORK

November fourteenth  
Nineteen thirteen

Dear Mr. Adamson:

I am in receipt of your note to the effect that Mr. Mitchel expects to speak at the Southern Society dinner. I am glad to know that we may definitely count on Mr. Mitchel.

I also note what you say about Mr. J. Curry Watson. I shall be glad to bear him in mind should an available opportunity occur.

Yours sincerely,

*Melbaed Watson*

Robert Adamson, Esq.,  
City Hall,  
New York.



ARCHIBALD R. WATSON,  
Corporation Counsel.

HERMAN STIEFEL,  
Assistant Corporation Counsel  
in charge.

*City of New York.*  
*Law Department,*  
*Bureau for the Recovery of Penalties.*  
*No. 119 and 121 Nassau Street,*

November 25th, 1913.

William B. Crowell, Esq.,  
Assistant Corporation Counsel,  
Mayor's Office,  
City Hall,  
New York, N. Y.

Dear Sir:-

Referring to the enclosed letter of Mrs. Florence Hasse, complaining of the conduct of her husband, I desire to advise you that there is no way of proceeding against him under Section 685 of the Greater New York Charter. It appears from her letter that she was separated by a decree of a court of competent jurisdiction, and, therefore, she is not entitled to proceed under Section 685 of the Greater New York Charter for a willful abandonment. However, she may proceed against her husband for the support of the children in the Domestic Relations Court, and from the tone of her letter it seems that she has already applied and that some order has been made.

I have written Mrs. Hasse to call and see me for further explanation, and if there is anything that can be done in the matter I shall gladly do it.

Yours very truly,

Assistant Corporation Counsel.

(Enclosure)

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# Communication

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FROM

*THE CORPORATION COUNSEL*

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DATED NEW YORK,



*Law Department,  
Office of the Corporation Counsel,*

9-KM

*New York,*

NOV 29 1913

Hon. Ardolph L. Kline,  
M a y o r .

S i r :

There are pending certiorari proceedings instituted by the Edison Electric Illuminating Company of Brooklyn, to review the assessments for purposes of taxation made against the special franchises of that Company in the Borough of Brooklyn for the years 1910 and 1911 in the sum of \$11,340,000. and \$13,900,000. respectively.

After long negotiations with counsel for the relator, I have secured an offer to compromise these proceedings upon the basis of equalizing the assessments at the rates of 94-1/2% for 1910 and 95-1/2% for 1911.

Under the decision of the Court of Appeals in the proceeding of People ex rel. Jamaica Water Supply Company against State Board of Tax Commissioners, 196 N.Y. 53 , the company is entitled to have its assessments equalized at the prevailing ratio of assessment of other real estate, unless the State Board or the City is able to show a higher valuation than that fixed by the State Board. As the rates of equalization for the Borough of Brooklyn fixed by the State Board of Equalization for the years 1910 and 1911 were 89% and 91% respectively, it is seen that the rates of equalization that I have obtained are very much in favor of the City, meaning reductions from the amounts of the assessments of only 5-1/2% and 4-1/2% respectively.

*Letter to* Hon. A. L. Kline

*Page* 2.

If the rates fixed by the State Board of Equalization had been adopted, which was the proposition made by counsel for the relator, the reductions would have been 11% and 9% respectively.

I beg to submit the proposed compromise for your consideration under the provisions of Section 255 of the Greater New York Charter, with the recommendation that you approve the same.

If you approve will you be so good as to write me stating in substance that you approve the settlement of the pending certiorari proceedings instituted by the Edison Electric Illuminating Company of Brooklyn to review the assessments for taxation against the special franchises of that Company, as recommended in my letter of November 29, 1913.

Respectfully yours,

*Richard A. Watson*

Corporation Counsel.

CITY OF NEW YORK  
Office of the Mayor.

S i r :

I approve the settlement of the pending certiorari proceedings instituted by the Edison Electric Illuminating Company of Brooklyn to review the assessments for taxation against the special franchises of that company for the years 1910 and 1911, as recommended in your letter of November 29, 1913.

Very truly yours,

M a y o r .

Archibald R. Watson, Esq.,  
Corporation Counsel,  
Hall of Records,  
New York City.

OFFICE OF THE MAYOR,  
CITY OF NEW YORK.

New York, November , 1913.

Archibald R. Watson, Esq.,  
Corporation Counsel.

S i r : -

I approve the settlement of the pending certiorari proceedings to review the assessments for the years 1905 to 1908, inclusive, against the "Real Estate of Corporations" of The Brooklyn Union Gas Company and its constituent companies, as recommended in your letter of November 12 , 1913.

Very truly yours,

M a y o r .

Assessments for 1905.

The Brooklyn Union Gas Company.

Mains, pipes, connections, foundations,  
road-beds, sub and super structures, Sections 1,  
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18  
and 19, Wards 22, 26 and 30, Ward Map or Lot  
No. 123 \$135,000.

Assessments for 1906.

Williamsburgh Gas Light Company

Brooklyn Union Gas Company

Mains, pipes and appurtenances.

Sections 8, 9 and 10, Ward Map or Lot

No. 162

\$ 1,265,000

Citizens Gas Light Company (of Brooklyn)

suc. by Citizens Gas Company,

Brooklyn Union Gas Company.

Mains, pipes and appurtenances.

Sections 1 and 2 ward, map or lot

No. 129

\$ 250,000.

The Brooklyn Union Gas Company.

Mains, pipes, connections, foundations,  
roadbed, sub and super structures, bridge,  
sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13, 15, 16, 17, 18 and 19, Wards

(Continued) Assessments for 1906.

26 and 30, Ward, Map or lot No. 123, \$ 2,000.

Union Gas Light Company,  
Citizens Gas Light Company (New Lots  
Branch),  
Citizens Gas Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances,  
sections 12 and 13, Ward, map or lot  
No. 130, \$300,000.

Assessments for 1906 (Continued)

Brooklyn Gas Light Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances,  
Section 1, Ward Map or lot No. 125, \$500,000.

Equity Gas Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances,  
Sections 8, 9 and 10, Ward Map or  
lot No. 137, \$350,000.

Greenpoint Gas Light Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances,  
Section 9, Ward Map or lot No. 136, \$ 60,000.

Assessments for 1907.

Union Gas Light Company,  
Citizens Gas Light Company (New Lots Branch)  
Citizens Gas Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances, Sections  
12 and 13, Ward, map or lot No. 130, \$ 300,000.

Williamsburgh Gas Light Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances, Sections  
8, 9 and 10, Ward, map or lot No. 162, \$1,265,000.

Equity Gas Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances, Sections  
8, 9 and 10, Ward, map or lot No. 137, \$ 350,000.

(Continued) Assessments for 1907

Citizens Gas Light Company of Brooklyn,  
suc. by Citizens Gas Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances,  
sections 1 and 2, Ward, map or lot No. 129, \$250,000.

Greenpoint Gas Light Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances, Section  
9, Ward, map or lot No. 136, \$ 60,000.

Brooklyn Gas Light Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances, Section  
1, Ward, map or lot No. 125, \$500,000.

Assessments for 1907 (Continued)

The Brooklyn Union Gas Company.

Mains, pipes, connections, foundations,  
road-bed, sub and super structures, bridge,  
sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13, 15, 16, 17, 18, 19, 20 and 21,  
Ward 26, Ward, map or lot No. 123, \$ 5,000.

Assessments for 1908.

Williamsburgh Gas Light Company.

Brooklyn Union Gas Company.

Mains, pipes and appurtenances, sections

8, 9 and 10, Ward, map or lot No. 162, \$1,265,000.

Brooklyn Gas Light Company,

Brooklyn Union Gas Company.

Mains, pipes and appurtenances, section

1, Ward, map or lot No. 125, \$ 500,000.

Greenpoint Gas Light Company,

Brooklyn Union Gas Company.

Mains, pipes and appurtenances, Section

9, known as Ward, map or lot No. 136, \$ 60,000.

(Continued) Assessments for 1908.

Citizens Gas Light Company of Brooklyn, suc.  
by Citizens Gas Company.

Brooklyn Union Gas Company.

Mains, pipes and appurtenances, Sections  
1 and 2, Ward, map or lot No. 129, \$ 250,000.

Union Gas Light Company,  
Citizens Gas Light Company (New Lots Branch)  
Citizens Gas Company,  
Brooklyn Union Gas Company,

Mains, pipes and appurtenances, Sections  
12 and 13, Ward, map or lot No. 130, \$300,000.

Equity Gas Company,  
Brooklyn Union Gas Company.

Mains, pipes and appurtenances, sections  
8, 9 and 10, Ward, map or Lot No. 137, \$350,000.

ASSESSMENTS FOR 1909.

Williamsburgh Gas Light Company,  
Brooklyn Union Gas Company,  
Mains, pipes and appurtenances,  
sections 8, 9 and 10, Ward, Map  
or Lot No. 162, . . . . . \$1,265,000.

Brooklyn Gas Light Company,  
Brooklyn Union Gas Company,  
Mains, pipes and appurtenances,  
Section 1, Ward, Map or Lot  
No. 125, . . . . . \$ 500,000.

Greenpoint Gas Light Company,  
Brooklyn Union Gas Company,  
Mains, pipes and appurtenances,  
Section 9, Ward, Map or Lot  
No. 136, . . . . . \$ 60,000.

Citizens Gas Light Company of Brooklyn  
suc. by Citizens Gas Company,  
Brooklyn Union Gas Company,  
Mains, pipes and appurtenances,  
Sections 1 and 2, Ward, Map or Lot  
No. 129, . . . . . \$ 250,000.

Union Gas Light Company,  
Citizens Gas Light Company (New Lots Branch),  
Citizens Gas Company,  
Brooklyn Union Gas Company,  
Mains, pipes and appurtenances,  
Sections 12 and 13, Ward, Map or  
Lot No. 130, . . . . . \$ 300,000.

Equity Gas Company,  
Mains, pipes and appurtenances,  
Sections 8,9 and 10, Ward, map or  
Lot No. 137, . . . . . \$ 350,000.

CORPORATION COUNSEL,  
CITY OF NEW YORK

December eighth  
Nineteen thirteen

Dear Mr. Adamson:

Professor Minor of the University of Virginia, who is to address the Southern Society Wednesday night, is to be my guest at luncheon at 1 o'clock Wednesday at the Lawyers' Club. I am this morning asking a few friends to have luncheon with us, and I hope you can be of the number.

Yours sincerely,

*McClivaud Martin*

Robert Adamson, Esq.,

City Hall,

New York.

*accept*

CORPORATION COUNSEL,  
CITY OF NEW YORK

December eighth  
Nineteen thirteen

Dear Mr. Mayor:

Professor Minor, of the University of Virginia, who is to be one of the speakers at the Southern Society dinner on Wednesday night, is to be my guest at luncheon on Wednesday. I am asking a few friends to meet us at the Lawyers' Club at one o'clock, and I greatly hope that you can be with us. The luncheon will of course be wholly informal, and those of us who have to eat and run will feel quite free to do so.

Yours sincerely,

*Melbaed K. Walton*

Hon. Ardolph L. Kline,

M a y o r.

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

115 MDB

*New York,* DECEMBER 16 1913.

Hon. Ardolph L. Kline,  
 Mayor.

S i r :

By direction of the Corporation Counsel I transmit the following report of the changes in the payroll for the month of October, 1913:

Additions to force

Patrick F. Cotter,	Assistant .....	\$3,000.
	appointed October 17, 1913.	
Edward W. Engel,	Process Server paid at rate of	
	\$1.15 for each summons served,	
	appointed October 23, 1913.	
Mildred Bienenfeld,	Stenographer & Typewriter .....	750.
	transferred from Tenement House	
	Department, October 1, 1913.	
Rose K. Klauser,	Stenographer & Typewriter ...	750.
	transferred from Health De-	
	partment, October 1, 1913.	

Separations from service

Joseph J. Leibner,	Process Server paid at rate of	
	\$1.15 for each summons served,	
	resigned October 14, 1913.	
Elizabeth M. Williams,	Stenographer & Typewriter ....	900.
	transferred to Borough Presi-	
	dent's Office, Manhattan,	
	October 22, 1913.	

Promotions

John P. O'Brien	Assistant .....	\$6,500. to	\$7,500.
Edward S. Malone,	" .....	6,000. "	6,500.
Frank B. Pierce	" .....	5,500. "	6,000.
	October 1, 1913.		

Respectfully yours,

*J. J. Turner*  
 Chief Clerk.

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

*File*

*New York, December, 16, 1913.*

10-MB.

Hon. William A. Prendergast,  
Comptroller.

S i r :

I have received your letter dated December 10, 1913, which reads as follows:

"I transmit herewith estimate No. 12 under the contract between the Public Service Commission of the First District and Arthur McMullen & Hoff Co. assignee of Arthur McMullen and Olaf Huff, for the construction of that portion of the Lexington Avenue Subway known as Section 14, Route 5, together with contract No. 34,476 upon which the estimate is based.

"I also transmit herewith a copy of notice of taxpayer's suit filed in this office by Stephen M. Hoyer alleging that certain modifications of the contract have been made by the Public Service Commission which are a violation of that contract, together with report made by the engineer of this department dated December 6, 1913, relative to the notice of claim filed by Stephen M. Hoyer and the charges embraced therein.

"You will also find attached to the papers communication of the Chief Engineer of the Public Service Commission dated November 25, 1913, in explanation of the basis of payments so far certified on this contract.

"I would thank you to examine the papers submitted and advise me if any of the contract modifications referred to in the notice of taxpayer's suit are illegal, and if so whether thereby I am estopped from payment of the estimates on this contract in their present form."

*Letter to* Hon. William A. Prendergast *Page -2-*

The notice of taxpayer's suit referred to in your communication contains general allegations of fraud, favoritism, etc., and illegality in the letting of the contract which, if true, furnish a foundation for an application for an injunction restraining the City from making further payments on the contract in question, which the parties in interest have not yet seen fit to bring.

I will confine myself to the consideration of the question "If any of the contract modifications referred to in the notice of taxpayer's suit are illegal, and if so, whether thereby I am estopped from payments of the estimates on this contract in their present form."

The notice abounds in statements of generalities and conclusions, but under paragraph "Second" thereof there are certain specifications or charges, which are as follows:

"Second: The fraud, collusion and waste of the interests of the City of New York, in the carrying out of said contract in which you and your engineer in collusion with said contractors, have allowed the said contractors to disregard the provisions of said contract, plans and specifications as follows:

(a) In the building of said tunnel, by failing to comply with the contracts, plans and specifications, and the building of said tunnel in accordance with the printed public notice, plans and specifications given out to bidders for the construction of said tunnel previous to the receipt of bids therefor.

(b) Allowing the river tunnel to be built on a soft muddy bottom in violation of the contract which required 'whatever method is pursued must give the tunnel a firm foundation without danger of settlement', and in violation of the plans which shows the tunnel built on a pile foundation.

*Letter to* Hon. William A. Prendergast. *Page* -3-

(c) Allowing the tunnel to be built so that portions of the steel which compose the structure is in direct contact with the surrounding sewage contaminated salt water which will rapidly corrode it.

(d) Allowing said contractors to dump on the muddy bottom of the excavated trench, concrete while it is freshly mixed and containing sufficient water to cause it to flow out of the mixture and carry out with it a large portion of the cement into the sewage contaminated salt water of the Harlem River, in violation of the specifications in said contract which requires that the bottom of the trench on which the concrete is placed, be cleaned of all mud and foreign substance, and that the 'concrete shall not be flooded with water before being thoroughly set'.

(e) The allowing of said concrete while freshly mixed to become mixed with salt water when the contract forbids the use of salt water in the mixing of said concrete.

(f) Allowing the concrete forms to be in the work and become part of the structure in violation of the specifications which provide they 'shall be removed' and to the detriment of the tunnel when completed.

(g) Allowing the metal shells to be made in violation of the plans to the detriment of the work.

(h) Failure to provide specifications in respect to the construction of the tunnel as it is being built."

These charges must be substantiated by proof, and, so far as the Comptroller's investigation has proceeded, they are untrue.

Charge (a) if true, is met by the terms of the contract incorporated therein pursuant to authority of the statutes comprising the Rapid Transit Act. Sections 36 and 38 thereof provide for the contracts and their modifications as follows:

*Letter to* Hon. William A. Prendergast. *Page* -4-

"Sec. 36. Advertising for proposals. The said public service commission before awarding any contract or contracts shall advertise for proposals for such contracts by a notice to be printed once a week for two successive weeks in no less than two of the daily newspapers published in said city, and in such newspapers published elsewhere than in said city as said commission shall determine. Such notice shall set forth and state the points within said city between which said road or roads is or are to run, the general method of construction, the route or routes to be followed, the term of years for which it is proposed to make such contracts, and such other details and specifications as said commission shall deem to be proper. Said notice shall also state the time and place at which said proposals will be opened, and the said commission shall attend at the time and place so specified and shall publicly open all proposals that shall have been received, but the said commission shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals in the manner hereinbefore provided, or may accept any of such proposals as will in the judgment of such commission, best promote the public interest, and award a contract accordingly. All such contracts must before execution be approved as to form by the corporation counsel, or other chief legal adviser of said city."

"Sec. 38. Modification of contracts. The Public Service Commission for and on behalf of the said city in which such road or roads may be constructed, may, from time to time, with the consent in writing of the bondsmen or sureties of the person, firm or corporation which has contracted with said commission or its predecessors to construct, equip, maintain or operate any road or roads, agree with the said contracting persons, firm or corporations upon changes in and modifications of said contract, or of the plans and specifications upon which said road or roads is or are to be constructed, but no change or modifications in the plans and specifications consented to and authorized pursuant to section five of this act shall be made without the further consent and authorization provided for in said section."

Section 26, subdivision 2, provides in part as follows:

"As soon as such consents, where necessary, shall have been obtained for any rapid transit railroad or railroads and the detailed plans and specifications have been prepared as provided in section six of this act, the said commission for and in behalf of said city, may enter into a contract or contracts with any person or persons, firm or firms, or

*Letter to* Hon. William A. Prendergast *Page* -5-

or corporation or corporations, which in the opinion of said commission shall be best qualified to fulfill and carry out said contract or contracts for the construction of such road or roads. \* \* \* \*  
Such contract for construction shall contain such terms and conditions, not inconsistent with the aforesaid plans and specifications, as said commission shall determine to be best for the public interests."

Section 6 provides in part as follows:

"Sec. 6. When the consents of the local authorities and the property owners, or, in lieu thereof, the authorization of the said appellate division of the supreme court upon the report of commissioners, shall have been obtained, the public service commission shall at once proceed to prepare plans and specifications for the construction of such rapid transit railroad or railroads, in accordance with the general plan of construction, etc. \* \* \* "

The contract contains the following clauses:

"Article XIV. The Commission shall have the right during the progress of the work, to amplify the plans, to add explanatory specifications, and to furnish additional specifications and drawings."

"Article XV. The Commission further reserves the right to change the location and to alter, in any way it may deem necessary for the public interests, the drawings aforesaid, in part or altogether at any time during the progress of the work, without constituting grounds for any claim by the contractor for payment or allowance for damages or extra service other than is provided for items of the different classes of construction shown in the schedule, or where not susceptible of classification, then as otherwise provided herein."

In the case of Admiralty Realty Co. v. Gaynor, 147 App. Div., 719-723, the Court said:

" \* \* \* \* One of the objections is that, after the advertisement for bids and before the letting of the contracts to the defendant Bradley Contracting Company, the Public Service Commission decided that it would thereafter alter the plans by slightly modifying the size of the conduit. Hence, as it is claimed, the committee let a different contract from that for which it had invited bids. Both the act under which the Commission proceeded and the contract which it offered to bidders contemplated and

*Letter to* Hon. William A. Prendergast *Page* -6-

provided for possible modification of the plans and specifications, and the modifications upon which the Commission have now determined are clearly such as might lawfully have been determined upon and made after execution. In point of fact that contracts have been executed exactly as submitted to bidders, and the contemplated changes in the plans are yet to be made. Whether or not these changes are of such a character as would probably induce a change in the unit prices bidden by contractors, was a matter for the Commission to determine. As to the greater number of the sections of the Lexington Avenue route, it has been concluded that the projected changes may make a difference and has determined to readvertise. As to the four contracts now under consideration, it has concluded that the changes would make no difference. It is not our duty to review the exercise of its discretion in this regard."

As to charge (b), the report of your Engineer Frazee states:

"As to the alleged founding of this tunnel on a mud bottom and the omission of piles called for, in violation of the specifications, the Public Service Commission Engineers state the bottom to be sand and gravel. Under the contract, were unsafe bottom found, they have the option of ordering piles to be driven. These would be paid for additionally, at the bid price beyond the contract price of \$1,500. per foot of tunnel. Two sections have been already sunk on this sandy bottom, and rock excavation work is now in progress for the succeeding section. Each section is about 220 feet long, and contains four tracks."

As to charges (c), (d) and (f), it is stated:

"No essential part of the steel of this tunnel will be in contact with salt water, when completed. As previously noted the tunnel consists of four steel tubes, separate by steel diaphragms, these extending out far enough on each side to give support and hold in position the side sheathing which makes a great box of the structure without bottom or top. It is sunk in position, concreting is carried on through long tubes, called tremies, the lower ends of which are kept immersed in the concrete mass depositing. The procedure has been to dredge deeper than required, and to fill up this hole under space

*Letter to* Hon. William A. Prendergast *Page* -7-

to the bottom of the diaphragm with concrete as a foundation. This serves to seal the bottom of the box. Thereafter, the pockets made by the diaphragms and the sheeting, are consecutively filled completely covering and encasing the steel tubes. The report before noted, of June 13th, 1913, covered the method of procedure at length. The concrete is neither mixed in salt water, nor with it, as stated.

"When the tubes have been encased in concrete the water is pumped out, and they are interiorally lined with fifteen inches of concrete. The whole steel structure, as I see it, serves merely as a construction form and the contention that these forms should be removed as land subways is absurd. The exposure to salt water of the ends of the diaphragms is an essential detail."

As to charges (g) and (h), they are fully covered in this report and are shown to be variations in details of the work in unsubstantial respects which are clearly authorized by the statutes and the contract.

I see no objection to the payment of the estimates on this contract in their present form and advise that payments be made accordingly.

Respectfully yours,

Louis H. Hahlo,

Acting Corporation Counsel.

Enclosures.

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# Communication

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FROM

*THE CORPORATION COUNSEL*

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DATED NEW YORK,

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

40-L-H *New York,* DECEMBER 19 1913

Hon. Ardolph L. Kline,  
Mayor.

S i r:

In reply to your request for my opinion in refer-  
ence to "An Ordinance to transfer certain members of the  
Board of Water Supply Police Force to the Police Force of  
The City of New York", I have the honor to submit the fol-  
lowing:

The Ordinance provides that:

"Sec. 1. The members of the police force  
of the Board of Water Supply of The City of New York  
now holding the position of inspectors in the said  
police force of the Board of Water Supply of The City  
of New York, upon the termination of their service on  
such force by reason of the completion of the work  
for which they were appointed by said Board of Water  
Supply, shall be severally eligible for transfer to  
the Police Department of The City of New York as  
captains of said police force at the same salary now  
received by said inspectors as inspectors of the police  
force of the Board of Water Supply of The City of  
New York, upon the written request in each case of  
the Board of Water Supply, accompanied by the consent,  
also in writing, of the person to be transferred, and  
the further consent of the Police Commissioner of  
The City of New York. The time served as a member of  
said police force of the Board of Water Supply shall  
be included and counted as service in the Police De-  
partment of The City of New York, in determining pro-  
motion, retirement, and pension as hereinafter pro-  
vided; provided, however, that no person becoming a  
member of the Police Department of The City of New  
York in the manner herein provided shall be entitled  
to participate in the benefits of the relief or pen-  
sion fund of the Police Department, unless he shall  
pay into such fund the total sum that he would have  
been required to pay, in order to participate therein,

Letter to Hon. Ardolph L. Kline

Page 2.

had he been a member of such force from the time he entered the service of such Board of Water Supply.

Sec. 2. No person, however, not a member of the police force of the Board of Water Supply of The City of New York at the time this ordinance has taken effect shall be eligible for transfer to the position of captain in the Police Department of The City of New York, in accordance with the provisions of Sec. 1 of this ordinance.

Sec. 3. This ordinance shall take effect immediately."

The effect of the proposed ordinance would be to make members of the police force of the Board of Water Supply holding the position of inspectors eligible for transfer to the Police Department of The City of New York on the fulfilment of certain conditions mentioned in the ordinance and without regard to the requirements of the Civil Service Law and Rules made pursuant thereto relating to the subject.

I am of the opinion that the proposed ordinance is invalid.

Subdivision 9 of Article V of the Constitution of the State of New York provides that

"Appointments and promotions in the civil service of the State, and of all the several divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable shall be competitive \*\*\*\*\*. Laws shall be made to provide for the enforcement of this section."

In obedience to the command of the Constitution an act known as The Civil Service Law(Chapter 7 of the Consolidated Laws) was passed. Section 11 of that act

provides that

"The Mayor of each city in this State shall appoint and employ suitable persons to prescribe, amend and enforce rules for the classification of the offices, places and employments in the classified service of such city, and for appointments and promotions therein and examinations therefor; \* \* \* \* . Such persons shall be Municipal Civil Service Commissioners and shall constitute the Municipal Civil Service Commission of such city."

Section 6 of the same act provides that

"The rules prescribed by the state and Municipal Commissions, pursuant to the provisions of this chapter shall have the force and effect of law."

Section 14 of the act contains the following provisions:

"No person shall be transferred to, or assigned to perform the duties of, any position subject to competitive examination, unless he shall have previously passed an open competitive examination equivalent to that required for such position, or unless he shall have served with fidelity for at least three years in a similar position."

and in section 16 it is provided:

"Nor shall a person be promoted or transferred to a position for original entrance to which there is required by this chapter or the rules an examination involving essential tests or qualifications different from or higher than those required for original entrance to the position held by such person, unless he shall have passed the examination or obtained a higher place upon the eligible list for such higher position."

In order to carry out the provisions of the statute the Municipal Civil Service Commission appointed by the Mayor has established a classification of the various offices and positions in the City service and certain

rules governing, among other things, the transfer of incumbents from certain classes of positions to other classes of positions. In the official classification members of the police force of the Board of Water Supply, including inspectors, are placed in the Competitive Class, Part I - Ungraded positions, while members of the police force of the City of New York are found in Part VII of the same class - the Police Service. The Municipal Civil Service Commission has also passed a rule relating to the subject of transfer to carry out the provisions of Section 16 of the Civil Service Law, the pertinent part of which is as follows:

"1. A person who has been permanently appointed to a position in the Competitive Class may be transferred without examination to a similar position in such class, or to a position within the same grade thereof, if it be in a graded service, in any other department, office or institution; provided, that for original entrance to the position proposed to be filled by transfer there is not required by these rules, in the judgment of the commission, an examination involving tests or qualifications essentially different from or higher than those required in an examination for original entrance to the position from which transfer is sought; and provided further, that if such person enter the service without competitive examination he shall have served with fidelity for at least three years in the position held by him, or in a similar position.

2. A person may be transferred from an exempt or non-competitive position to a competitive position, or from a position in the Competitive Class to a position in a different group of such class, only when the person transferred has qualified in an open competitive examination and is eligible for certification and appointment from the appropriate eligible list for the position to which transfer is proposed. Such transfer shall remove from the eligible list the name of the person transferred; but no such transfer shall be allowed when there is in existence an appropriate list of persons eligible for promotion to the position proposed to be filled by transfer.

\* \* \* \* \*

*Letter to* Hon. Ardolph L. Kline

*Page* 5.

4. Upon the written request of an appointing officer, stating the facts with reference to a proposed transfer, accompanied by the consent, also in writing, of the person to be transferred and of the appointing officer from whose jurisdiction the transfer is to be made, the Commission may, if such transfer be in accordance with law and the provisions of these rules, issue its certificate to that effect; but no such transfer shall be made or recognized until after the issuance of such certificate."

It has been held by the Court of Appeals that a transfer, made otherwise than in conformity with the provisions of a similar rule of the State Civil Service Commission, could not be recognized.

Peo. ex rel. Kelly vs. Milliken,  
140 App.Div., 762; affd. without  
opinion 201 N.Y., 545.

The principle decided in this case particularly germane to the question under consideration is that the Legislature, by means of the Civil Service Law, has recognized that the transfer of an employee of the City from one position to another in its service may be permitted, if accomplished in accordance with the rules established by the Civil Service Commission. In the case of The City of New York, its Civil Service Commission has established the rule, hereinbefore quoted, under which transfers may be permitted.

Both in Section 14 of the Civil Service Law and in the rule relating to transfers there is a sentence upon which might be based an argument (to my mind unsound, however,) that if a person had served three years in the police force of the Board of Water Supply he would be

*Letter to* Hon. Ardolph L. Kline

*Page* 6.

eligible to transfer to the police force of the City of New York without compliance with other conditions imposed by the Civil Service Law and Rules.

I refer to the provision of the law which states, in substance, that no person shall be transferred from one position to another without having passed an open competitive examination, "or unless he shall have served with fidelity for at least three years in a similar position."

The phrase "similar position" appearing in the above quotation, as defined by a learned commentator, signifies a position, entrance to which requires an examination similar to the one required for entrance to the position from which transfer is sought. As obviously the Civil Service Commission is the body vested with the power to say what are similar examinations, no other official body or board has cognizance of the subject.

So far I have only considered the Civil Service Law and the powers granted thereunder. It remains to be seen whether any subsequent legislation has altered the scheme in respect to transfer provided for in such law.

In 1913 the Legislature passed Chapter 247 of the Laws of that year amending Chapter 21 of the Consolidated Laws - An Act in Relation to Cities. This Chapter became a law and is popularly known as the Home Rule Bill. It added a number of sections to Chapter 21 of the Consolidated Laws, certain of which it may profit to quote.

Section 19 provides that

"Every city is granted power to regulate, manage and control its property and local affairs and is granted all the rights, privileges and jurisdiction necessary and proper for carrying such power into execution. No enumeration of powers in this or any other law shall operate to restrict the meaning of this general grant of power, or to exclude other powers comprehended within this general grant."

Section 20 provides, among other things:

"Subject to the constitution and general laws of this State, every city is empowered: \* \* \* \* \*

17. To determine and regulate the number, mode of selection, terms of employment, qualifications, powers and duties and compensation of all employees of the city and the relations of all officers and employees of the city to each other, to the city and to the inhabitants.

18. To create a municipal civil service; to make rules for the classification of the offices and employments in the city's service, for appointments, promotions and examinations and for the registration and selection of laborers.\* \* \* \* \*

22. To regulate by ordinance any matter within the powers of the city, and to provide for the enforcement of ordinances by local proceedings, to compel compliance therewith, and by penalties, forfeitures and imprisonment to punish violations thereof.

23. To exercise all powers necessary and proper for carrying into execution the powers granted to the city."

Section 22 of the Act provides that

"The powers granted by this article shall be in addition to and not in substitution for, all the powers, rights, privileges and functions existing in any city pursuant to any other provision of law."

*Letter to* Hon. Ardolph L. Kline

*Page* 8.

In Section 23 of the Home Rule Bill we find the following:

"1. The powers granted by this act are to be exercised by the officer, officers or official body vested with such powers by any other provision of law or ordinance \* \* \* and in the manner and subject to the conditions prescribed by law or ordinance \* \* \*, but no provision of any special or local law shall operate to defeat or limit in extent the grant of powers contained in this act; and any provision of any special or local law which in any city operates, in terms or in effect, to prevent the exercise or limit the extent of any power granted by this article, shall be superseded. \* \* \*"

The Civil Service Law, under which the Municipal Civil Service Commission was established, is a general law, and under such law that Commission has regulated the subject of transfer. It seems quite evident, therefore, that such general law is not affected by anything contained in the provisions of the Home Rule Bill above quoted, so far as the subjects dealt with in the Civil Service Law have been acted upon by the Municipal Civil Service Commission.

The Home Rule Bill has been subject to interpretation by various Special Terms of the Supreme Court, namely; by Mr. Justice Greenbaum in the case of

Hammitt vs. Gaynor, et al,  
(Law Journal, Sept. 25, 1913)

and by Mr. Justice Pooley in

Gibbs vs. Luger,  
81 Misc., 611.

*Letter to* Hon. Ardolph L. Klein, *Page* 9.

There is nothing in the first mentioned case in conflict with the views I have heretofore expressed, while the language of Mr. Justice Pooley, in the opinion in the Gibbs case, strongly supports the position here taken.

So far nothing has been said in respect to the constitutionality of such a piece of legislation as the ordinance in question other than to quote Section 9 of Article V in the early part of this letter.

It is evident from a consideration of the ordinance that the Board of Aldermen has sought to authorize the Board of Water Supply and Police Commissioner, in conjunction, to make appointments to the position of Captain in the Police Department, without competitive examination. The Constitution seems only to authorize such procedure where competitive examination is not practicable. As the position of Police Captain is constantly being filled by appointments from lists prepared by the Civil Service Commission, as the result of competitive examinations, it would seem that the question of impracticability of holding competitive examinations for the position is not an open one.

It is evident from a perusal of the decisions that any exception to the requirements of competitive examinations, as a condition precedent for entrance into a position will be jealously guarded and only recognized under certain conditions. These conditions are that in

Letter to Hon. Ardolph L. Kline, Page 10.

making transfers the rules established by the Civil Service Commission, as to appointment and promotion, must not be invaded.

Hale vs. Worstell,  
185 N.Y. 247;

People ex rel. Kelly vs. Milliken,  
supra.

In the light of the opinion of Mr. Justice Chase, speaking for the Court of Appeals in the Hale case, I incline strongly to the view that if the ordinance were presented for judicial consideration the Court would declare it unconstitutional. I refer particularly to the following excerpt from the opinion of the learned Justice, found at pages 252 and 253 of the report:

"Any exception, however, to the constitutional direction that appointments and promotions must be made according to merit and fitness to be ascertained by competitive examination must be based upon the impracticability of the selection being based upon the result of such competitive examination. Apart from the fact that statutes may be made and rules may be adopted to make a practicable and workable system of appointments and promotions, the plain, general direction of the Constitution requiring that such appointments and promotions be made after a competitive examination must be obeyed. The constitutional provision must be given a fair and liberal construction and the power reserved to the legislature and to civil service commissions to make laws and rules must be exercised with a view of carrying out the purpose and intent of the Constitution. Any statute or rule contrary to the express language of the Constitution or to its true spirit and intent, is void and cannot be enforced, and in every case it is for the courts to determine whether a statute or rule is a valid exercise of the power to determine what employees or class of employees it is not practical to select from lists prepared after an examination or a competitive examination.

The Constitution is not only the supreme law, but the guide in the determination of every question arising in connection with the civil service appointments."

*Letter to* Hon. Ardolph L. Kline

*Page* 11.

The word 'transfer' is not used in the Constitution. A promotion is an advancement to a higher position, an elevation, a preferment. If the practical working of the civil service requires a transfer of one engaged therein, such transfer can only be made when it does not in fact constitute a promotion. Promotions under the name of transfers are evasions and illegal and contrary to the express terms of the Constitution."

There are other considerations which confirm me in my opinion that the proposed ordinance is invalid, but which I will not discuss as I feel that I should not burden your Honor by a fuller exposition of the law pertaining to the question.

Respectfully yours,

*Louis H. Gahlo*

Acting Corporation Counsel.

(Enclosure)

CITY OF NEW YORK  
OFFICE OF THE MAYOR

December 23, 1913.

To the Honorable

The Board of Aldermen:

Gentlemen:

I return herewith disapproved proposed  
Ordinance No. 4964, entitled:

"ORDINANCE to transfer certain members  
of the Board of Water Supply Police to the  
Police Force."

I have received an opinion from the Corporation Counsel holding that this proposed ordinance is invalid. This opinion you will find attached hereto. As the views expressed are conclusive on this proposition, I am constrained to return the proposed ordinance without approval.

Respectfully,

M a y o r.

Encs.

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# Communication

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FROM  
*THE CORPORATION COUNSEL*

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DATED NEW YORK,

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

115 MDB

*New York,*

DECEMBER 29 1913

Hon. Ardolph L. Kline,  
 Mayor.

S i r :

By direction of the Corporation Counsel I transmit the following report of the changes in the payroll for the month of November, 1913:

Additions to force

Mary M. Hayes, Stenographer & Typewriter .....\$750.  
 transferred from Tenement House  
 Department, November 10, 1913.

Separations from service

Charles K. McCormick, Clerk ..... 300.  
 transferred to Department of  
 Water Supply, Gas and Electricity  
 November 24, 1913.

Anna E. Lamb, Stenographer & Typewriter ...\$1,200.  
 resigned October 12, 1913.

Promotions

Richard H. Mitchell, Assistant .....\$5,000. to \$5500  
 George P. Nicholson " ..... 4,500. " 5000  
 George H. Cowie, " ..... 4,000. " 4500  
 November 1, 1913.

Frank Pasta, Clerk ..... 300. " 480  
 November 1, 1913.

May K. McDermott, Stenographer & Typewriter 750." 900  
 November 1, 1913.

Letter to Hon. Ardolph L. Kline

Page 2

Bureau of Street Openings

Promotions

Walter C. Sheppard,	Assistant	.....	\$4,500.	to	\$5,000.
Edward A. Reilly	Clerk	.....	2,100.	"	2,400
John A. Kane	"	.....	1,800.	"	2,100
Luis G. Segura	"	.....	1,500.	"	1,800
Charles F. Giblin	"	.....	900.	"	1,050
Edward F. Fagan	"	.....	750.	"	900
Alexander J. McConnell	"	.....	480.	"	600
Israel Silverman	"	.....	480.	"	600
Isaac Goodman	"	.....	300.	"	480
Florence Lewengood,	Stenographer & Type-				
	writer	.....	750.	"	1,050
George Grote	Topographical Draughts-				
	man	.....	1,950.	"	2,100
					November 1, 1913.
Francis X. Leonard	Clerk	.....	600.	"	750
Joseph C. Finn	"	.....	480.	"	600
Jacob Vexler	"	.....	300.	"	480
					November 17, 1913.
Robert J. Boyle,	Stenographer & Typewriter		\$1050.	to	
	Law Clerk	.....			\$1,200
Thomas W.A. Crowe	Clerk @ \$1,200.	to Law Clerk	.....		1,200
					November 17, 1913.
Benjamin Reich	Topographical Draughtsman		\$1,650.	to	\$1800
James H. Wall,	Computer of Assessments		1,950.	"	2100
					November 17, 1913.
Thomas W. Thompson,	Messenger	.....	1,050.	"	1200
					November 20, 1913.

Respectfully yours,

*J. H. Gerner*

Chief Clerk.

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# Communication

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FROM

*THE CORPORATION COUNSEL*

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DATED NEW YORK,

W. Curvell

City of New York.  
 Law Department,  
 Office of the Corporation Counsel,  
 New York, DECEMBER 30 1912

File

7-V

Hon. Ardolph L. Kline,  
 Mayor.

S i r :-

I beg to acknowledge the receipt of your communication of December 10th, addressed to the Corporation Counsel, requesting a report to you on certain recommendations as to proposed changes in the law, in the form of four bills contained in the report of "The Mayor's Committee on Pavements" which accompanied your letter.

These bills are entitled as follows:

"A"

"A N A C T  
 TO AMEND THE GREATER NEW  
 YORK CHARTER, IN RELATION  
 TO PERMITS FOR THE REMOVAL  
 OF PAVEMENTS AND THE RELAY-  
 ING OF THE SAME."

"B"

"A N A C T  
 TO AMEND THE GREATER NEW  
 YORK CHARTER, IN RELATION  
 TO THE INSPECTION AND RE-  
 PAIRING OF PAVEMENTS."

*Letter to* Hon. Ardolph L. Kline, *Page* 2-

"C"

"A N A C T  
TO AMEND THE GREATER NEW YORK  
CHARTER, BY CREATING A PAVING  
BOARD AND DEFINING ITS POWERS  
AND DUTIES."

"D"

"A N A C T  
TO AMEND THE RAILROAD LAW IN  
RELATION TO KEEPING STREETS  
IN REPAIR."

On March 28, 1913, there were introduced in the upper branch of the Legislature by Senator Foley three bills identical with "A", "B" and "C", being, respectively, Introductory Nos. 1556, 1554 and 1555, and Printed Nos. 1920, 1918 and 1919. A hearing was had before the Committee on Cities of the Senate at which this legislation was opposed on behalf of Borough Presidents McAneny, Pounds, Miller and Cromwell. Borough President Connolly took no position in favor of or in opposition to these bills. Mr. McAneny desired an opportunity of presenting detailed objections if the report and passage of these bills were probable, but the occasion for such a course did not arise.

For the purposes of this reply, it might be stated that the main objections presented were : that this legislation was unnecessary; that its enforcement would impose an additional burden on the taxpayers of the City; and that it

*Letter to* Hon. Ardolph L. Kline, *Page* 3-

dealt with details of administration which did not require the force of legislative enactment in order to put them into execution.

BILL "A"

This measure concerns a matter of administrative policy as to whether or not other departments, before doing necessary work in the streets, and in some cases work of an emergency character, should first secure a permit from a borough president. In addition to this, several of the borough presidents do not think it wise to shift to them from the permittee the responsibility of backfilling trenches and temporarily relaying pavements. It might be well, therefore, before approval or disapproval is given on this bill, that the views of the borough presidents and of the heads of departments affected by its terms, be obtained.

BILL "B"

This proposal makes it the duty of the president of each borough to appoint district inspectors, each of whom shall be a civil engineer, and whose duty it shall be to make daily a written report of the streets examined by him, the work in progress thereon, involving any removal of the pavement or the disturbance of the surface, any

*Letter to* Hon. Ardolph L. Kline, *Page* 4

conditions found to render it defective, dangerous or inconvenient for traffic, whether the work is being conducted in accordance with the terms of the permits, etc.

The borough presidents now have the power to appoint as many such inspectors as may be provided for by the budget-making authorities of the City, and it was maintained that the duties of the inspectors, as set forth in this bill, should be covered by office rules and regulations rather than be set down mandatorily in the statute law of the State. This bill, therefore, has to do with the question of administration and not one of law. Such matters of detail are violative of the principle of "Home Rule" and divest the borough presidents of that discretion, authority and control over their subordinates commensurate with their responsibilities.

BILL "C"

This provides for a Paving Board, to consist of the Chief Engineer of the Board of Estimate and Apportionment and the Chief Engineer of Highways of each of the several boroughs. The duties of such Paving Board, among others, are to prescribe standard forms of contracts and specifications to be used by the City for the construction and repair

*Letter to* Hon. Ardolph L. Kline *Page* 5.

of streets and pavements, and to determine the types of pavement to be laid in the several boroughs, which, when approved by the Board of Estimate and Apportionment, shall be binding upon the borough presidents and all of the city departments, boards, bodies and officers having authority to lay and repair pavements.

As a matter of fact, based solely on co-operation and without any binding legal force, these functions have been performed for some time past by an informal body composed of the consulting engineers of the different boroughs who have been attending meetings of the Board of Estimate and Apportionment, and have been holding weekly meetings at which the Chief Engineer of the Board of Estimate and Apportionment and the Chief Engineer of the Department of Finance have been present. This Board of Consulting Engineers has been for many months preparing standard forms of contracts and specifications for public improvements, including paving. It could as well attend to the fixation of prices, tests, analyses of materials and the determination of the kinds of pavements to be used. Much has been done by this informal body to unify, simplify and standardize certain classes of city work.

Letter to Hon. Ardolph L. Kline, Page 6-

BILL "D"

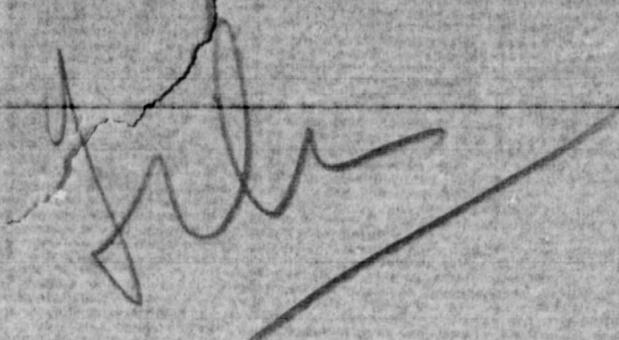
In April, 1914, Mr. McAneny transmitted to this department for introduction and passage a bill amending Section 178 of the Railroad Law reducing from thirty to ten days the amount of notice which must be given by the borough authorities whenever the obligation of keeping a pavement in repair is devolved upon a street railroad corporation, and adding to the word "use" the word "maintain" so as to cover the condition of certain streets in which there were tracks owned by corporations on which cars were not actively operated. It passed the Assembly amended by requiring twenty instead of ten days' notice and had reached the order of final passage in the Senate when the Legislature adjourned..

In 1912 the bill was again introduced at the request of Mr. McAneny who believed that its enactment, even in the amended form, would be of assistance to the borough presidents in securing better control over the repair of streets. It passed the Legislature, was approved by Governor Dix on April 15th, and became Chapter 368 of the Laws of 1912.

Respectfully yours,

*Louis K. Hahlo.*

Acting Corporation Counsel.



December 31, 1913.

Hon. Ardolph L. Kline,

Mayor.

Sir :-

I am in receipt of your favor of December 16th, requesting suggestions tending to increased efficiency and reduced cost of administration in the Law Department. I beg to say that in the pressure of the closing days of my official term, I have not been able to formulate an adequate written reply to your inquiry. There is one thing, however, to which I would at the moment give special emphasis. It is the importance of continuing and prosecuting to an early completion the work of the preparation of a complete digest and index of the opinions of this Department, and the City's briefs in its printed volumes of cases on appeal. The work, as you may know, was for years in the personal charge of Mr. Theodore Connely, but had fallen sadly in arrears at the time of his death. It is a really great undertaking, and can only be done properly by a man of first-rate ability and of especial equipment and training. This important task, I may say, is now being admirably conducted, and I venture to suggest that it should be the especial concern of my successor to see that it is continued as it has been begun. A report on file under date of November 26th last showed in detail the then status of the work, and the carefully conceived plans for its comple-

Hon. Ardolph L. Kline, -2-

tion. No other one thing is more obviously desirable and necessary than this.

I shall be glad at any time, in the course of a conference with either Mayor Mitchel or my official successor, to make any further suggestions, or render any other assistance in my power, in the directions of which you speak.

R e s p e c t f u l l y,

ARCHIBALD R. WATSON

Corporation Counsel.

*Cronwell*

*City of New York.*  
*Law Department,*  
*Office of the Corporation Counsel,*  
*New York,* \_\_\_\_\_

1913

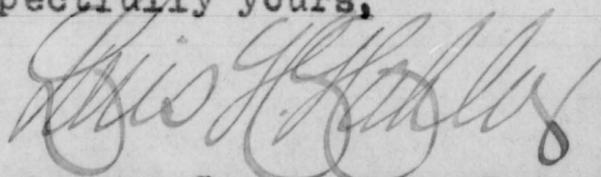
Hon. William J. Gaynor,  
M a y o r .

S i r :-

I enclose herewith a proposed offer of judgment in the action of the T. A. Gillespie Company against The City of New York, which offer of judgment has been approved by the Comptroller at the sum of \$28,715.51.

The facts in regard to this settlement are fully set forth in the enclosed report of Joseph L. Hance, Auditor of Accounts and the offer is transmitted for your approval under Section 255 of the Greater New York Charter.

Respectfully yours,



Acting Corporation Counsel.

Enclosures: 2

*Offer of judgment approved and sent to Corporation Counsel July 2<sup>nd</sup> 1913 W.B. Cronwell.*