File No. 4926 Continued.

OPINION.

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matters referred to in Dr. Bosley's letter to you of the same date.

Dr. Bosley desires to know whether personal service is

necessary before the penalty prescribed by Ordinance No. 57, approved March 17, 1904, can be imposed upon parties neglecting to abate nuisances. The ordinance in question provides that the Health Commissioner is "directed to notify the owner or owners, occupier or occupiers" to abate nuisances, and the owner or owners, occupier or occupiers "who shall neglect and refuse to comply with the terms and conditions of said notice shall be guilty of a misdemeanor, and upon investigation shall be subject to a fine of not less than ten dollars and not more than one hundred dollars."

I am of opinion that under this ordinance the fine should not be imposed, except in cases where the notice to abate has been personally served upon the owner or occupier of the premises. In the first place, the ordinance does not provide that it shall be sufficient to leave the notice on the premises, but simply says that the owner or occupier shall be notified. I should be inclined to think that a provision of this kind without anything more, would contemplate a personal notice. However this may be, the thing for which the owner or occupier is to be fined is for a neglect to comply with the terms and conditions of the notice; and unless it can be shown that the notice has been served upon him personally, so that he has knowledge of the terms and conditions of the notice, it would be impossible to bring the case within the provisions of the ordinance which authorized the imposition of the fine.

I think, therefore, that personal service of the notice should be proved before the fine or penalty is imposed. Mr. Poe agrees with me in this conclusion.

Very truly yours,

(Signed) Albert C. Ritchie,

Assistant City Solicitor.

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