

File No. 5358 Continued.

OPINION.

to the United States Company any difference in price which the City may have to pay over and above the contract price, said difference to be deducted from any money due the contractor by the City, or if there is no money due, then such difference may be collected from the contractor, or its surety, by an action at law. This remedy is expressly given by the contract.

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2. Or without abrogating the contract the Water Department may purchase the supplies needed in the open market or elsewhere, and charge the cost thereof to the United States Company.

Mr. Quick states, however, that he is unable to purchase in the market the kind of pipe covered by the contract, and that the only kind of pipe he can purchase is a kind which costs thirteen dollars per ton more than the kind of pipe covered by the contract. This pipe, however, is of a finer quality, and it is not necessary to use as much of it, as is the case with the kind of pipe covered by the contract, so that the cost per foot of both pipes, that is the cost when laid on the street, is the same.

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Mr. Quick has already purchased some of this more costly pipe, because it has been absolutely necessary for him to procure pipe for extensions, and this is the only kind he has been able to get. Under these circumstances, Mr. Quick wants to know, whether he has the right to charge the United States Company with the whole cost of the pipe so purchased.

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I think that Mr. Quick has this right, although the cost per ton of the pipe purchased is more than the cost per ton of the pipe contracted for. Ordinarily, of course, the City would not be required to charge to the United States Company a more costly kind of pipe than the kind that the Company contracted to deliver. But in view of the fact that the cost per foot is the same for both pipes, it follows that the higher grade pipe is not really any more costly, so that the United States Company cannot be injured by its purchase. For this reason, and for the reason also, that the City's need for pipe is imperative, I think that the whole cost of the pipe purchased can be charged against the Company.

Yours very truly,

(Signed) Albert C. Ritchie,  
Assistant City Solicitor.