

File No. 5726 Continued.

OPI. 11.

LAW DEPARTMENT.

Baltimore, January 9, 1907.

Hon. W. Cabell Bruce,
City Solicitor,
City.

Dear Sir:-

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I have considered the contents of the letter of the City Engineer of January 7 in reference to the provisions of Ordinance Number 13, approved October 23, 1905, which is now found codified in Article 35, Sections 85 to 88 of the Baltimore City Code of 1906.

An examination of these sections of the Code discloses, that it was the manifest intention to make it possible to rid the City of nuisances which were dangerous to public health. It was not designed, however, to vest in the City Engineer an arbitrary power to proceed without notifying the parties affected, or without giving them an opportunity to be heard, so that they may show that no nuisance really exists, or what the amount of assessment should be.

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Considering the ordinance as a whole, it seems plain that the object was to afford a speedy means of removing nuisances, and at the same time to give the parties interested an opportunity to prevent themselves from being subjected to an injustice. It seems, therefore, that the only condition precedent to the paving is the ten days' notice published in two daily newspapers, and the hearing provided for by Section 86 of Article 35, and that whenever that has been performed in accordance with Section 86, the City Engineer is at liberty to proceed to pave, the property owners having all the rights allowed in ordinary paving cases, to defend themselves against an attempted collection of the assessment. This seems to be the purpose, because by Section 87 it is provided, that should it be determined that no nuisance existed, or that it was caused by the City; then the property holder shall be relieved from the payment and the expenses of paving or repaving shall be borne by the City.

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It seems to me therefore, that although the language of Section 86 states, that all proceedings for, or in connection with the paving or repaving of the said street, lane or alley, and for and in connection with the assessment, payment and collection of the cost thereof shall be those set forth in Sections 94, 95, 96, 97, 98, 99, 100 of Article 35, this language must be qualified by the preceding language of the