

File No. 6573 Continued.

Bond and Contract.

4831

4. Bond in double the amount of the Contract price will be required of the Contractor to whom the award is made, to guarantee the faithful performance of the work, to indemnify and save harmless the Mayor and City Council of Baltimore City against any suit or suits, loss, damage or expense, by reason of any default or negligence, want of skill, or care on the part of the Contractor, his agents or employees, or any sub-contractor in or about the performance and execution of said work, and to guarantee the City against any claim due to using any form of material or method of manufacture or machinery which is patented or claimed to be patented, and to insure the maintenance of the pavement in good condition for two (2) years after its completion, and acceptance by the City Engineer.  
 (Secs. 14 and 15 of Article 4, entitled "City of Baltimore" of the Code of Public Local Laws of Maryland, as the same now exists and Art. 1, Sec. 59, City Code 1893).

File No. 6573.

OPINION.

LAW DEPARTMENT.

Baltimore, July 29, 1907.

Hon. W. Cabell Bruce,  
City Solicitor.

Dear Sir:-

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I herewith report as follows, upon the inquiry contained in the letter of the City Engineer, under date of July 19th, relative to the proper interpretation of the guaranty given in connection with the paving of Clifton avenue and 10th street. Mr. Fendall states that the topping of the streets paved with Macadem has been washed off by an unusual rain storm and wants to know whether the repairs, thus rendered necessary, should be made by the contractor under his guaranty, or by the City. The language of the guaranty is as follows:

"To insure the maintenance of the pavement in good condition for two years after its completion and acceptance by the City Engineer."

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In my opinion the contractor is bound to make the repairs. The guaranty contains no reservations or exceptions and the only questions to be inquired into are, First, - Is the pavement in good condition? Second, - Have two years expired? Two years have not expired and the pavement is not in good condition. The liability of the guarantor therefore attaches.

The principle, relating to impossibility of performance in connection with contracts, should be applied to the pending case and no provision having been made for exemption from liability growing