

File No. 7937 Continued.

OPINION.

of time to its contractors, such extension would not be based upon any consideration, but would be a mere gratuity.

6088

This view, however, is reached entirely aside from the express terms of the contract upon this point. In the case of a contract and specifications such as the Sewerage Commission requires, an extension of time could not possibly discharge the surety, because the specifications, themselves, in Sections 27 and 28, expressly provide for an extension, and the surety could not claim that an extension of time constitutes a change, or variation, in the contract, when such extension is allowed by, and authorized in the contract itself, and when the surety, therefore, has agreed to it.

In *Wehr vs. Saint Matthews Congregation*, 47 Md. 177, it is held that, if by the terms of the original contract, additions to, or alterations in, the work are provided for, or are left to the judgment and discretion of the contracting party, either without limit, or within certain limits, then the variation is allowed by the contract, itself, and the surety cannot complain of a variation, which he has agreed to by the original contract.

Since an extension of time can, in my judgment, be granted under Sections 27 and 28 of the specifications, without the consent of the Surety Company, it follows, in my opinion, that there is no obligation upon the Commission to notify the Surety Company when such extension is granted.

Very truly yours,

(Signed) Albert C. Ritchie,

Assistant City Solicitor.

File No. 7937.

LAW DEPARTMENT.

Baltimore, May 1, 1908.

Gen. Peter Leary, Jr.,  
Chairman, Sewerage Commission.

Dear Sir:-

I reply to your letter of the 24th ult., relative to extensions of time to the contractor under certain contracts by enclosing herewith a copy of a letter to myself dated the 28th ult., from Mr. Ritchie, Assistant City Solicitor. I approve the con-

6089