

purpose of establishing a municipal trackage system. The President street track is not to be removed and is not to be acquired by the City and therefore the only condition provided by Section 1 for the cessation of the franchise does not exist.

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2. The B. & O. cannot, in my judgment, be compelled to permit the City to use its Canton avenue track. The franchise was granted upon a valuable consideration and constitutes a contract between the City and the Company whereby the right to operate and maintain the track was conferred upon the Company. The only right reserved to the City is the right to "full municipal superintendence, regulation and control." This does not, in my judgment, include the right to compel the Company to permit the City to use the track for the City's own purposes without the Company's consent. Inasmuch as no right of joint user by the City and the Company is reserved in the ordinance, no such right exists.

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3. There is nothing in the ordinance which prevents the City from constructing its own track on Canton avenue. The object of the proposed City track is to enable the Sewerage Commission to obtain its machinery, supplies, &c. delivered directly at the Pumping Station and this would certainly seem to be a proper reason for the construction of a track by the City in East Falls avenue and Canton avenue, both of which streets are public.

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4. In my judgment, however, if a City track is to be constructed in East Falls Avenue or Canton Avenue, or both, the authority to do this should be conferred by Ordinance. I do not understand that the construction of the track is a necessary incident of the work. It is desirable, of course, that the track should be constructed in order to facilitate delivery of the machinery and materials as quickly and as economically as possible. At the same time, I do not think that the track can properly be called a necessary incident to the work and therefore, the right to construct it is not, in my judgment, included within any of the implied powers of the Sewerage Commission under the Sewerage Act. The construction of the track on a public street will result in putting such street to an unusual use, and while I have no doubt of the propriety of such use under the circumstances, still I do not think that the Sewerage Commission, as such, has the right to construct a track which