

File No. 9211 Continued.

OPINION.

the Sewerage Commission in connection with the construction of sewers by that Commission".

I have carefully considered Mr. Carter's opinion and am unable to agree with the conclusions reached by him therein. His opinion is based upon the assumption that your jurisdiction over such streets, or parts of streets in which work is being done by the Sewerage Commission, is suspended until said work is finished and the street restored to its former condition, and that during said period, said streets or parts of streets, are under the jurisdiction and control of the Sewerage Commission. No such interpretation has ever been put upon the Sewerage Act up to this time. I understand that it has been the invariable custom for the Contractor of the Sewerage Commission, before he proceeds to open the street, to obtain a permit from you and that moreover, the repaving of the streets so torn up is done either by your Department or under its supervision and the expense charged to the Sewerage Commission. It has also been the invariable practice, whenever any City Department, such as the Water Department, or the Subway Department, desires to open up a street, to secure a permit from you authorizing the work to be done. By virtue of the City Charter, you are given control and supervision of the streets, highways, lanes and alleys of the City, both as to their construction, paving and curbing. The power thus conferred upon you cannot be taken from you except under authority of the Legislature and unless the Sewerage Act does, of necessity, deprive you of this authority, in whole or in part, it is still vested in you.

Section 8 of the Sewerage Act relied on by Mr. Carter, makes it abundantly clear that it was never intended that the powers of the City Engineer should be, in any way, curtailed by said Act because it provides that even as to existing sewers, the duties and powers of the City Engineer should continue as at present. When the same Section, further on, speaks of the Sewerage Commission turning over, from time to time, to the proper City Officials, such completed portions of its work as it may see fit, it manifestly had reference only, to the completed portions of the Sewerage System, but not to any portions of the street beds. This is made perfectly clear by the last part of said Section where it is provided that "the