

File No. 9221 Continued.

OPINION.

to pay the actual cost for material and labor used in connecting each new lamp by the Contractor; this payment to cover the cost of laying the service pipes and making the connection from the gas mains to the lamps to the point of burning.

11. The Contractor will be required to make such changes of locations of street lamps and alterations in the service pipes or connections supplying with gas the gas lamps now in service, and which may hereafter be placed in service, as may be ordered by the Superintendent of Lamps and Lighting, and the actual cost only of making all such changes or alterations will be paid to the said Contractor by the City. The Contractor will be required to place and connect the meters for all new or additional Meter lamps."

If the posts which are to be removed have been erected since the 16th day of May, 1908, the date of the contract, I think the City should pay all the costs attending the removal of the posts and the connections therewith. Under Section 10 of the specifications, which are a part of the contract, the City agrees to pay all the costs of material and labor and thereby, is worked a sale, and the service pipes become the property of the City and any cost in connection therewith made necessary in order to conform to the requirements of the Sewerage Commission, should be borne by the City.

If the posts and service pipes were constructed before May 16th 1908, then the question is not free from doubt, the City contending that prior to that time a lump sum was paid to the Gas Company for its labor and it did not acquire title to the service pipes. Certain letters written by agents of the Company and certain actions of the Company indicate that this is correct, the Company, however, denies this and states that it can show that the sum paid by the City includes the cost of the material and the labor done and that thereby a sale was made and the service pipes became the property of the City. Inasmuch as the City has assumed the position hitherto that the Company owns all service pipes constructed prior to May 16th 1908, it seems to me that this attitude should not now be changed until the Courts decide to the contrary; the posts being the property of the City, any cost attached to the posts, as such, should be borne by the City.

Truly yours,

(Signed) Sylvan Hayes Lauchheimer,
Deputy City Solicitor