

File No. 9689 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, March 9th, 1909.

Hon. Edgar Allan Poe,
City Solicitor.

Dear Sir:-

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As requested by your favor of March 8th I have considered the inquiry from Mr. Hendrick in his letter to you of March 5th. It seems that the Bethlehem Steel Company was the contractor for the Pumping Station Building and that by reason of delays, not due to the fault of the contractor, the Company was not able to begin operations as soon as it was entitled to begin under the contract and therefore was not able to complete the work as soon as agreed. The contractor is now making certain claims against the City for damages due to this delay. Section 28 of the specifications provides as follows:-

"If from any cause the Commission shall not have the foundations and station building in such condition as will permit of beginning erection at the time above specified or at such later date as the contractor may be ready to begin erection, and as a result thereof the contractor shall be prevented from completing the plant ready for service at the date specified, then the contractor shall be entitled to an extension of the time for completing the plant ready for service equal to the number of days by which the beginning of erection is actually delayed by such failure to have the foundations and station building ready, and the City shall pay to the contractor the actual cost (including a reasonable rental for space occupied) of storing and protecting at the place of manufacture, pending shipment, any and all parts of the plant the shipment of which is delayed by said failure to have foundations and station building ready; and the said extension of time and payment of cost of storage and protection of parts shall fully compensate the contractor for any and all damages he may suffer or expense he may incur by and on account of such delay and detention. Any extension of time and any cost of the storing and protecting of parts of the plant to which the contractor may be entitled under this clause shall be ascertained and certified by the Engineer, and his decision shall be final and without appeal."

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The claims of the contractor are quite clearly set out in its letter to Mr. Hendrick of February 9th, 1909. What Mr. Hendrick's position is with regard to these claims is also clearly set out in his letter of March 5th, 1909. Considering these two letters in the light of the above section of the specifications, I think that the position taken by Mr. Hendrick is, in all respects, legal and proper. In any event, Section 28 makes the allowance to the contractor for the cost of the storing and protecting of the parts of the plant to which the