

File No. 9743 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, April 2nd, 1909.

Hon. Edgar Allan Poe,
City Solicitor.

Dear Sir:-

As requested by your favor of March 19th, I have considered Mr. Fendall's inquiry in his letter to you of March 18th, and I have also talked with Mr. Fendall personally about it.

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It appears that the City Engineer served notice on Frank H. Quast, No. 730 N. Gay street, to repair his sidewalk. Mr. Quast claims that the condition of his sidewalk is directly due to the electrical conduit which has been constructed under it. Mr. Fendall's inspector states that the line of settlement over the subway is clearly marked, and that in his opinion the sole cause of the settlement of the pavement is due to the fact that the work of refilling, ramming and paving over the conduit trench was not properly done.

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I take it as clear, that if the bad condition of the sidewalk is due to the fact that the city officials did not properly refill and repave its sidewalk over the conduit, which the Electrical Commission laid, that then the City would be responsible, and the cost of the repair work could not be put upon the property holder. If, therefore, Mr. Fendall's inspector is right in his opinion, I think it is clear that the City must bear the expense, and the only question would then be as to whether the expense must be borne by the City Engineer's Department or by the Electrical Commission. I know of no ordinance covering this point, and it will have to be worked out, therefore, on a practical basis. It seems to me entirely fair that if the settlement of the pavement is due to the laying of the conduit, and to the fact that the trench was not properly filled and paved, that then the Electrical Commission should bear the expense. I do not think that the fact that the conduit was laid over three years ago should make any difference, if it is clear that the fault is due to the Electrical Commission's work.

Very truly yours,

(Signed) Albert C. Ritchie,
Assistant City Solicitor.