

File No. 9764 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, March 29, 1909.

Hon. Edgar Allan Poe,
City Solicitor.

Dear Sir:

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I have considered the question raised by the Ordinance to repeal Section 16 of Article 41 of the Baltimore City Code of 1893, introduced into the First Branch of the City Council by Mr. Frank, and I am of the opinion that the Mayor and City Council of Baltimore has the power to pass such an ordinance.

I have read the letters of the solicitors for the Northern Central Railway Company and the Philadelphia, Baltimore & Washington Railroad Company, and do not find anything in them which causes an alteration of this opinion.

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I find that there is no express grant to propel by steam in the Charter of any of these Railway Companies, or in that of the Union Railway Company itself. The grant is to "use all machines, wagons, vehicles or carriages of any description whatsoever, which they may deem necessary or proper for the purposes of transportation." This language includes the right to use steam, but does not expressly grant it, but even though there had been a specific grant of the right to use steam, this right, under the authorities, would be subordinate to the Police power and would have to yield whenever the Police power was properly exercised under the City Charter. The Mayor and City Council of Baltimore has the same Police power, within the city of Baltimore, as the State of Maryland has.

Pielert's Code, pages 64-65.
See also Daily Record, March 29, 1909, page 311.

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I have considered a number of Ordinances similar in principle to that introduced into the First Branch of the City Council and they have all been upheld as a valid exercise of power, except one applicable to the City of St. Louis; but its terms were so sweeping and different from what is sought to be accomplished by the present ordinance that I cannot even consider the Missouri case as authority against the passage