

File No. 9764Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, April 13, 1909.

Hon. Edgar Allan Poe,
City Solicitor.

Dear Sir:-

7345 Mr. Bernard Carter called me up this morning to inquire about the opinion given in reference to the right of the City to pass an Ordinance forbidding the use of smoke in the Union tunnel. He inquired whether we had considered that the Police power must be exercised in subordination to the Fourteenth Amendment to the Constitution of the United States, which provides that everyone should be entitled to the equal protection of the law. I told him that we had done so, and that we did not consider the Ordinance, in the form in which it had been presented, as final, especially as, in his letter to the Chairman of the Committee, he had stated, independently of the legal question, that he thought he could demonstrate that it would be contrary to good policy to pass such an Ordinance. I told him that we thought that, after a hearing had been had, if it was determined to pass an Ordinance that we should be called upon to draft a proper one, and that then we should do so in conformity with the decisions.

7346 Mr. Carter's point being that, by limiting the operation of the Ordinance to the Union tunnel, the Railroads which were compelled to use that tunnel were deprived of the equal protection of the law, and that an Ordinance, to be operative, must apply equally to all tunnels similar in kind to the Union tunnel.

I am writing this to you so that a memorandum may be made, and preserved, to be used in the event of the Law Department being requested to draft a proper Ordinance.

Very truly yours,

(Signed) Sylvan Hayes Lauchheimer,
Deputy City Solicitor.