

File No. 11125. Continued.

OPINION.

not considered that the repair work which the Railways Company is required to do, when it tears up the street for any purpose, requires the attention of a City Inspector. Accordingly, a blanket permit has been issued by the City to the Railways Company, permitting it to do repair work on such streets, without any requirement as to inspection by the City.

8812

In the case, however, of streets paved with improved pavement, the City Engineer does consider that the presence of a City Inspector is necessary in order to see that the repair and re-paving work, which the Railways Company does to the improved pavement, is properly done. Accordingly, the blanket permit above mentioned contains the following provision:

"This permit does not give the right to open any street which is paved with improved paving, except in the case of old belgian block paving, where the same is laid on a sand foundation; and it is hereby understood and agreed that a special permit shall be obtained, in each and every case, before opening any improved pavement, except in the case of old belgian block, as already provided."

8813

Therefore, the blanket permit expressly provides that a special permit shall be obtained in the case of improved pavements, and Art. 35, Sec. 106, prohibits the Railways Company from tearing up any streets without a permit, and Section 10, which, in terms applies to cases of this kind, authorizes the City Engineer to require a deposit to cover the cost of an inspector, when the City Engineer deems inspection necessary.

8814

Under these circumstances, it seems to me entirely clear -

(1) That the Railways Company has no right to tear up any improved City streets for any purpose, except after receiving a special permit so to do; and (2) in view of the fact that the judgment of the City Engineer is that a City Inspector is necessary in such cases, it, therefore, becomes the duty of the Railways Company to make a deposit to cover the cost of such inspection.

Very truly yours,

(Signed) Albert C. Ritchie,

Assistant City Solicitor.