

File No. 11184 Continued.

OPINION.

LAW DEPARTMENT.

Baltimore, April 15, 1910.

Commissioners for Opening Streets,
Baltimore.

Gentlemen:

Following up our conversation of Monday, relative to the allowance to Elder of interest on the entire seven thousand dollars, or any part thereof, retained by you under his contract for paving Charles Street Avenue, from North avenue to Merryman's lane, I beg to advise you as follows:

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Under Section 30 of the Specifications, set forth on page 14, it is provided that monthly payments will be made on eighty per cent of the amount of work done, and that on the completion and acceptance of the work by the Chief Engineer all sums then remaining unpaid will be paid to the contractor.

As I understand the situation, the paving on Charles street avenue, by Elder, has never been finally accepted by your Board, due to the fact that serious defects developed at certain points of the work, and these defects have never been rectified by the contractor. The contractor, consequently, has never been in a situation to legally demand the payment due him of this twenty per cent retained percentage, and, therefore, is not legally entitled to any interest on this money when the time comes to make final payment.

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I am under the impression that a part of Charles street avenue was finally accepted, and, of course, if this be so, the retained percentage should be calculated only upon the value of the work in connection with that part of the street that has never been accepted finally. If, therefore, the seven thousand dollars, the actual amount retained by your Board, is in excess of the amount that should have been retained, by applying the principle that has just been mentioned, Elder would be entitled to interest on this excess.

I return the contract and specifications as requested.

Truly yours,

(Signed) Edgar Allan Poe,
City Solicitor.