

File No. 11210Continued.

OPINION.

8860

losses which the City might sustain because of work done in connection with the contract. The bond and the provisions of the specifications before referred to, when taken together, makes it plain that, if the work in the alleys is done under the contract, the contractor has no right to ask the City to pay him for any damage which he may have to bear because of pipes in the alleys. The question to be considered, therefore, is whether the change can be made in accordance with the specifications.

8861

I do not think that Section 5, on page 4 of the specifications, standing by itself, warrants the change, but when read in connection with Section 6, which provides for the change of alignment whenever any conditions are met that render such change desirable or necessary, authority may be found to exist; though this is not entirely clear, as Section 6 seems to contemplate physical conditions which make a change desirable or necessary. In the present case no physical conditions have been encountered, but the change is made in deference to the wishes of the people as expressed in a recent Act of the Legislature. It is, therefore, far from certain that any authority is found in the specifications themselves to warrant this change. In order to remove all doubt, it would be desirable to have the change assented to both by the contractor and by the bonding Company.

8862

If, of course, this change is not warranted by the specifications, then the contractor cannot be compelled to perform this extra work except upon the terms which he makes, and in that event the City will, of course, be liable for the damage to the pipes, etc., in the alleys.

In the opening paragraph of his letter, the Chief Engineer of the Sewerage Commission states that the new Sewerage Enabling Act does not become operative until after its ratification by the people. As far as the provision for the loan is concerned this is, of course, free from doubt, but whether the same statement can be made as to the remainder of the Act is not so clear. An effective argument can be made on each side and in the last analysis the matter remains doubtful. I am of the opinion, however, that the better view is that the entire Act was intended to be conditioned upon its ratification by the people, and that, until this ratification has been made, the several provisions