

File No. 11251 Continued.

OPINION.

on Wilkens avenue between the rails of the United Railways tracks.

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The facts appear to be that, Section 1 of Ordinance No. 447, approved February 21st, 1910 (copy herewith enclosed) provides that the City Engineer be and he is hereby authorized and directed to have all that part of Wilkens avenue from the west side of Fulton avenue to the old western City Limits regraded, where necessary, and repaved with sheet asphalt, asphalt block, bitulithic or vitrified brick, except between the rails of the Railway tracks, all of said work shall be done in accordance with the specifications to be prepared by the City Engineer, who shall advertise for proposals for doing the entire work.

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It will be seen that this Ordinance excludes the space between the rails, and as to such space therefore, there is no direction in this ordinance, as to the repaving. The City Engineer has included this space in his specifications and has there provided that such space be paved with cobble. The Chief Engineer of the United Railways takes exception to this cobble paving, and the City Engineer wishes advice as to his right in the premises.

I am informed by the City Engineer that the space referred to, is at present paved with cobble, and that the proposed new work will consist merely in relaying these cobbles, together with minor adjustments of grade, not exceeding twelve inches at any point.

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Mr. Fendall's action, however, is apparently contrary to Ordinance No. 165, approved February 24th, 1899, Article 33, Section 77, page 1120 of Pielert's Code, which Ordinance provides that no contract shall be made by the City for paving or repaving any street, avenue, lane or alley within the limits of the City, with what is known as cobble stone pavements, nor shall any such pavement be permitted to be laid on any street, avenue, lane or alley within the corporate limits of the City, by any individual or corporation.

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I am informed by the City Engineer that this Ordinance has never been construed to mean that the present cobble stone pavement cannot be repaired and regraded to a minor extent, and in his opinion the proposed relaying of cobbles between car tracks is no more than repairing the present pavement. The matter may be so considered, if we bear in mind that the Ordinance referred to provides for repaving