

File No. 11251 Continued.

OPINION.

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the entire width of the street, with the exception of the space between the car tracks, such space being especially excepted. There appears to be no authority by ordinance for paving such space at all. It would, therefore, seem that Mr. Fendall's action in including such space in his specifications, would be beyond the authority conferred upon him by the Ordinance. Possibly the authority for such action may be found in his general power and duty to make repairs to all streets where needed. If the paving between the car tracks can be considered as repairs, such paving may be done with cobble. If on the other hand it is not repairs, it would seem to me to be contrary to the terms of the Ordinance above quoted.

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I am not advised of any ordinance which repeals the Ordinance referred to, though the City Engineer intimated that several ordinances have been passed, providing for paving with cobbles, certain specified streets which by implication might be taken to repeal this Ordinance.

I have not been able to find, however, any ordinance which in any sense at all appears to repeal the one in question. If such repeal can be found, I will be very glad to investigate it. Apparently no such ordinance, however, is known to this Department.

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I, therefore, beg to advise you that in my opinion it is by no means sure that Mr. Fendall's proposed action is not contrary to Ordinance No. 165 above cited. As long as this Ordinance remains unrepealed, I do not see how this Department may disregard its terms, and am inclined to the opinion that the proposed paving is not in reality the repair of an old pavement, but is rather the repaving of a street with cobble.

Very truly yours,

(Signed) W. H. DeC. Wright,

Assistant City Solicitor.