File No.11,698 Continued. OPINION.

enclosing correspondence concerning the controversy between Mr. Tippett and the City, as to paving the sidewalk in front of his Tenth street lot, I have the following to report:

9358 I do not think that the City would be safe in going to Court on the notice sent by the City Engineer to Mr. Tippett.

In the first place, under Sections 20, 21, and 22, of Article 35 of the City Code, which authorize the City Engineer to pave, repave, or repair any footway in front of a lot fronting on any paved street of the City, there is no stipulation as to the width of such footway, but it is left to the discretion of the City Engineer. In the notice sent to Mr. Tippett, the City Engineer does not stipulate what width he thinks sufficient for this sidewalk and, therefore, if Mr. Tippett is building a three-foot sidewalk he might be within the law.

9359 Moreover, the situation, as I understand it, is that the City has built a three-foot board sidewalk in front of Mr. Tippett's lot, which is evidently the sidewalk he is replacing, and it does not seem to me that the replacing of a board sidewalk by a brick sidewalk could be covered by the term "repaved", as used in the notice.

If Mr. Fendall is proceeding under Section 28 of Article 35, which provides for a fine in case an abutting property owner fails to pave, repave or repair his footway after notice from the City Engineer, then the City's position is a little stronger, as this Section is referred to on the back of the notice, and it is provided, in this Section, that a pavement constructed under it shall be no less than four feet wide.

9360 Even so, however, there still remains the objection to the use of the word "repaved", and I should think that if this is going to be a test case, it would be best to have the whole matter very clear in the beginning.

Your correspondence is returned herewith.

Yours very truly,

(Signed) Charles A. Marshall.