

File No. 13404

Baltimore, December 27, 1911.

Hon. S. S. Field,
City Solicitor.

Dear Sir:

10132 In reply to yours of December 26th, in reference to the right of the County Commissioners of Baltimore County to assign their right to tap the outfall sewer, I beg to advise you as follows:-

I have examined the Act of 1908, Chapter 98, in which is embodied the agreements heretofore made between the County Commissioners and the Mayor and City Council of Baltimore in reference to tapping the outfall sewer for the drainage from Highlandtown, Canton and Orangeville.

I have also examined some of the authorities submitted by Col. McIntosh in his communication dated December 22nd, and addressed to you.

I am unable to see in what way the authorities cited by Col. McIntosh are applicable to this particular question. Most of these cases referred to are causes arising out of the assignment of contracts, either to pay money, or to deliver goods, and concern such matters as the law recognizes as assignable. It is my opinion that under the law and the agreement made with the Baltimore County Commissioners in regard to tapping this outfall sewer, that the right given to the County Commissioners cannot be assigned by them to a third person or a private corporation.

As stated in the case of the Arkansas Smelting Company against the Belden Company, 127 U. S., page 387, the law is as follows:

"But every one has a right to select and determine with whom he will contract, and cannot have another person thrust upon him without his consent. In the familiar phrase of Lord Denman, 'You have the right to the benefit you anticipate from the character, credit and substance of the party with whom you contract.'"

and on page 388 the Court quotes from Pollock on contracts (4th ed.) 425:

"Rights arising out of contract cannot be transferred if they are coupled with liabilities, or if they involve a relation of personal confidence such that the party whose agreement conferred those rights must have intended them to be exercised only by him in whom he actually confided."

In this particular case I think it is clear that the Mayor and City Council delegated this power solely to the Baltimore County Government, and that there was no intention on the part of either party