

File No. 26039

Baltimore, December 9, 1919.

Hon. Roland R. Marchant,
City Solicitor.

Dear Sir:

I am returning herewith the attached papers in the matter of the claim of the Baltimore Asphalt Block and Tile Company against the Mayor and City Council of Baltimore.

This claim is, in my judgment, covered by the principles enunciated by the Court of Appeals in the case of the National Building Supply Company vs. The Mayor and City Council of Baltimore, 100 Md. 188. In that case the Company entered into a contract with the City to furnish "all the cement which might be required for general purposes for the year 1902." It was also stated in the contract that the "approximate estimate of quantities required was five thousand barrels". And a further statement that the "approximate quantities are only given as a guide to the bidder but in no way to bind or limit the City as to the amount which is to be ordered."

After the delivery of five thousand barrels, the Company refused to accept any further orders or make any further deliveries, the price of cement having risen in the meantime. However, an additional one thousand four hundred and eighty-three barrels were delivered at the contract price under an agreement between the Company and the City, which was to be without prejudice to the rights of the parties under the contract. The Company then sued the City for the difference between the contract price and the market price. The Court sustained the position of the City in the matter deciding that a proper construction of the contract imposed upon the Company the obligation to furnish all the cement which would be required for general purposes during the year 1902.

The contract with the Baltimore Asphalt Block and Tile Company provides that the Company shall furnish "all the asphalt blocks which may be required for general purposes during the year

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