

File No. 25627

Baltimore, December 15, 1919.

Peter E. Tome, Esq.,
Comptroller,

Dear Mr. Tome:

13471 With reference to the payment by you of salary to Levi A. Thompson appointed Superintendent of Public Buildings on November 18th, 1919, to fill the vacancy caused by the death of William F. O'Connor, and also the payment of salary to those clerks or subordinates in the office of the Superintendent of Public Buildings, which have been or may be appointed by Mr. Thompson during his tenure.

That Mr. Thompson was validly appointed is not now the subject matter of any pending litigation, and there is certainly no cloud upon his title to the office. His appointment was made in the same manner as that of James M. Marine in 1903. Marine's appointment was passed upon and approved by the Court of Appeals in *McClellan vs. Marine*, 98th Md.

Your inquiry however, directly concerns your legal duty with reference to the recognition of Thompson and those persons appointed by him, and yours and the City's liability for salaries paid to these persons in event in some proceedings it should be subsequently determined that Thompson's appointment was not valid.

Thompson at least is a de facto officer, that is, he is an officer who holds office under color of right arising out of an appointment and commission. He has taken oath and filed bond as required by law. This being his status, even though we assume for the sake of argument that his original appointment was not properly made we find numerous authorities to sustain the propositions,

1st. That his acts as a de facto officer are valid and therefore his appointees are duly appointed.

2nd. That neither the City nor the City's disbursing officers are liable for payment of salary to a de facto officer in this event that it should subsequently be determined that his commission to office was wrongfully issued.

In *Mechem on Public Officers*, Section 328, it is said: