

FILE NO. 74535

June 16, 1942

George Hofferbert, Esq.
Acting President
Commissioners for Opening Streets
City Hall

Dear Mr. Hofferbert:

Your letter of May 14, addressed to Mr. P. Murray Benson, City Solicitor, relative to the condemnation of property owned by St. Peter's Cemetery, Incorporated, has been referred to me for attention.

This Cemetery was incorporated under a special act of the Legislature, Chapter 176, of the Acts of 1860, Section 3 of which provides as follows:

"No lanes, alleys, streets, roads, canals or public thoroughfares of any sort shall be opened through the property of said corporation used or appropriated for the purpose of burial; and provided, that nothing herein contained shall authorize said corporation to obstruct any public road now actually opened and used as such."

Mr. McColgan is, therefore, not entirely correct in his statement, as reported by you, that the Charter prohibited the condemnation of any of its property. You will note the provision only prohibits the opening of any thoroughfare through the property of the Corporation "used or appropriated for the purpose of burial". It will, therefore, be necessary for you to ascertain whether or not that portion of the cemetery desired to be taken by the City is used or appropriated for the purpose of burial. If it is, it cannot be condemned for this purpose. If it is not, in my opinion, the City may condemn and open a thoroughfare through that portion of the property of the Cemetery Company. I believe this answers your question as to this particular Corporation.

You have also asked generally, whether or not you have the power to condemn cemetery property for street purposes. Generally speaking, it is my opinion that the City has the authority to condemn and open a public thoroughfare through a cemetery except under the following conditions: