

Mr. Thomas G. Young, City Collector (cont'd)

come under the exemptions provided by law. In the face of the judicial determination in so many cases that where the surrounding circumstances indicated that the words "roads and streets" were used as general terms to include all public highways, it seems to me that it would be rather captious for me now to hold that the failure to add the word "alleys" to the language of the Act of 1931 excluded assessments for paving or the macadamizing of alleys. The Maryland cases seem to attach importance to the public nature of the alley which is to be termed a road or highway and we are put upon the inquiry by the Rosenthal Case, supra, as to whether or not the alley was acquired by the City by dedication or condemnation. Our examination indicates that the alley is a public alley, having been dedicated by deed from W. Hampton Linthicum and wife to Mt. St. Joseph College, by deed which is recorded in Liber S.C.L. No. 4957, folio 385; and hence under the Maryland law would be included under the term "street".

There is just this one other thing to consider, that is, the manner in which the public alley came to be paved. It is my opinion that a property owner petitioning the City to pave an alley under the provisions of an ordinance which contemplates contribution by the abutting property owner, would create a different situation and would result in a waiver of the exemption or estoppel of the claim for exemption after the filing of the petition and the completion of the work. The paving or repaving in this instance was done under Ordinance No. 421, approved June 2, 1926, which ordinance does not require that 60% of the abutting property owners request paving but leaves it to the discretion of the Highways Engineer to determine that the paving is a necessity. The property owner in the present case, not having requested the paving, has not abandoned its exemption.

For the above reasons, it is my opinion that the Xavarian Brothers of Mt. St. Joseph are exempt from the payment of the alley paving assessment in question under the language of Article 81, Section 7 (28) of the Maryland Code (Fleak, 1939), and that hence the assessment was made and the bill rendered erroneously.

Very truly yours,

(signed) F. MURRAY BENSON

City Solicitor

FMB/RBS