

Mr. J. Neil McCardell, City Comptroller (cont'd)

I take this to mean that you desire to know whether the City can legally, by ordinance, authorize the execution of a lease, for office purposes for twenty-five years, of a building not yet constructed nor begun to be constructed.

I have been unable to locate any clear legal precedent which I consider directly in point and I, therefore, conclude that the proposition is one that I cannot definitely assure you is legal. To say the least, it is a novel and unusual kind of rental agreement, especially so in view of the statement in the letter of October 20, 1950, from Mr. Benson, Attorney for the Baltimore Contractors, Inc., that "if and when such a lease of commitment is obtained, our client possibly may exhibit the same to a lending institution to obtain temporary or permanent financing for the project." This might be construed as an attempt to use the credit of the City in aid of a corporation, contrary to the provisions of Article 11, Section 7, of the Constitution of Maryland.

I do not doubt that the City may, by ordinance, authorize a lease of property for office purposes to relieve a pressing necessity, but the proposed project is quite a different proposition. The courts look with disfavor upon contracts by municipalities involving the payment of moneys which extend over a long period of time. In the absence of any other objection to them, they will not be upheld without a clear showing of a reasonable necessity for their execution. McBean v. Fresno, 112 Cal. 159, cited in McQuillin on Municipal Corporations, 3rd Edition, Volume 11, page 413:

"In the absence of express statutory permission, municipalities even in their proprietary functions, may contract only for a reasonable time."

Haskin v. Orlando, 51 Fed. Rep. 2nd, 902.

I am not sufficiently factually advised as to the reasonable necessity for such a contract. I suggest that a reasonable necessity be clearly established before there is further consideration of this proposal.

Very truly yours,

/s/ THOMAS H. BIDDISON

City Solicitor

TMB/rre