

and stated as follows, "the word 'actual' is a word of limitation, as distinguished from all costs of conducting the business." Depreciation, taxes, insurance, office expenses should not be included where the phrase "actual cost" is used.

Another case where "actual costs" was in effect was Mailander v. Cont. State Bank, 11 SW 2d 615 (Tex.). In that case a contractor entered into a contract to take down and reset certain bank fixtures for "actual cost" plus 20%. The contractor was held not entitled to charge any part of the ordinary expenses of operating his factory (overhead). "Actual cost" was considered to be the sum actually paid for the necessary labor and materials in doing a particular job. Again the Court considered the word "actual" as a word of limitation.

A contrary case was the case of Fillmore v. Johnson 109 N. E. 153 (Mass. 1915) where the Massachusetts Court dealt with the question of the "actual cost" of manufacturing toilet tissue. In this case the defendant had agreed to buy toilet tissue from the plaintiff at a price based on the market price of tissue in jumbo rolls plus five (5%) percent plus the actual cost of finishing into toilet tissue rolls and packaging. The Court held that in determining the actual cost, the items making up actual cost are substantially the same as the items to be deducted from gross profits to make up net profits, i.e. heat, light, rent, office expenses, depreciation, etc.

In addition I have discussed and made certain inquiries concerning the manner in which the City presently deals with the State Roads Commission and/or vice versa in the construction of roads and streets. It was pointed out to me by Victor Walter, that the agreements entered into between the above parties normally provide for payment of the construction cost plus a ten percent (10%) overhead. This ten percent (10%) overhead includes engineering inspections and administration.

In conclusion it is my opinion that the better view is that the word "actual" is a word of limitation, limiting the expenses which may be charged to the City in this case to those directly expended on the job. This opinion is supported by both the weight of authority and the fact that present contracts with the State Roads Commission do include a fixed sum for administra-