

File No. 26208 Continued.

covenant for disposal by the contractor and in the covenant for delivery on the part of the City. The City is obligated to deliver all the garbage and dead animals it produces, no more and no less. This must, of necessity, be the interpretation because garbage production is limited, and, in the event of a shortage, cannot be purchased in the open market. In considering this contract, garbage and dead animals cannot be treated in the same light as ordinary merchandise or commodities which can be purchased in the open market. The table set forth in the specifications proper showing production of garbage and dead animals in the City, is for the guidance of the contractor, but is not a guarantee on the part of the City that the amount of garbage therein shown will be produced in the future. In fact, the clause itself only purports to be an approximate estimate which is not to be binding upon the City. In the light of these facts, it is clear that that part of Section 26 of the contract proper providing for delivery of an approximate total quantity of 400 tons during the summer months and 360 tons during the winter months, is simply an estimate of the amount that might be produced, but if the production is not that great the City does not bind itself to furnish any more than the total production, whether that be ten tons per week or 1000 tons per week.

Having decided that the City, under this contract, obligated itself to deliver all the garbage it produces to the contractor, we are next confronted with the question "when is this production to be delivered?" The contract is not clear upon this point. It is, however, plain from Paragraph 1 of Section 26 of the contract proper, that it is the intent of the parties that the garbage be delivered to the contractor in as fresh a condition as possible, and then paragraphs 2 and 3 of the same Section provide that the City will undertake, as far as possible, to make daily deliveries "at least four scows per week from May 15th to October 15th", and "at least three scows per week from October 15th to May 15th." It is clear that the phrase "as far as possible" applies to the daily deliveries, and that the expressions "at least four scows per week" and "at least three scows per week" are alternative propositions for the daily deliveries. In other words, under this Section, if read alone, the City