

File No. 48845 Continued

may be made to the principle of law herein stated subject to further advice from me if needed.

You state that a nuisance exists in the highway caused by drainage, and you desire to have the highway paved. So far as paving the thoroughfare on petition of 70% of owners of property abutting thereon is concerned, that is controlled by Ordinance No. 739, approved July 19, 1922. That ordinance makes no discrimination between public and private streets. The indispensable condition, however, for paving the street pursuant to that ordinance is that 70% of the abutting owners must petition the Paving Commission for that purpose. Assuming, however, that 70% of the owners do not petition the Paving Commission, and assuming also that the street, though dedicated, has not been accepted as a public thoroughfare, it may, nevertheless, be repaired and maintained as a private street by the Highways Engineer pursuant to Ordinance #751, approved July 29, 1922. Repair and maintenance under that ordinance, however, would not necessarily make the street public. The object of that ordinance is declared by Section 1; to wit, For the purpose of making private streets and roads safe for public travel and prevent nuisances dangerous to the public health arising thereon. Under this ordinance the expense of repairing and maintaining the street is solely that of the city.

Section 485 et seq., Article 4, Public Local Laws, provides that whenever any nuisance dangerous to the health of the city shall exist in any street, lane or alley of the city not more than 20 feet in width, either public or private, the same may be paved and the cost thereof charged to the abutting owners. I do not know how wide this street is, but that may be verified by you upon consultation with Major Shirley. These sections must be strictly followed, assuming that the street is not more than 20 feet wide.

My investigation does not disclose any other statutes or ordinances on the subject other than those herein referred to. This opinion, with the quotation of the ordinances, should form a safe guide of procedure.

Very truly yours,

(Signed) CHARLES C. WALLACE
City Solicitor

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