

File No. 46845 Continued

Baltimore, November 24th, 1926

Charles C. Wallace, Esq.
 City Solicitor
 Baltimore, Maryland

Dear Mr. Wallace:

14226

The accompanying letter of the 18th instant from Mr. Goob, Mechanical-Electrical Engineer of the Bureau of Mechanical-Electrical Service, raises the question of the right of the American District Telegraph Company of Baltimore to place and maintain its wires in the municipal conduit, upon payment of the rentals per duct foot per annum prescribed by various ordinances of the City, without obtaining a franchise to use said conduit, as above indicated, pursuant to Sections 8, 9, 10, 11 and 37 of the Baltimore City Charter.

This question was passed upon in 1904 by the Court of Appeals of Maryland in Purnell vs. McLane, 38 Md. 589. It is there decided that the right to use the public streets of the City for the purpose of transmitting electricity by means of wires laid therein is a franchise that can only be obtained in accordance with the provisions of the Charter hereinbefore referred to, or by grant from the State. I quote a few extracts from that opinion:

"The precise point raised by the appeal is thus stated in the appellant's brief: 'Can the commission rent conduit space only to such applicants as have by ordinance or legislative act some special authority to use the city streets?' * *

"The power given to the Mayor and City Council by sec. 6 of the New Charter to regulate the use of the city streets for electric light or other wires, under the rule of construction above stated, is no more than the power to prescribe reasonable rules and regulations, under which those having a franchise may exercise it, and Ordinance 107 (approved August 25, 1898) is no more than the enactment of such reasonable rules and regulations, and when these are read, as they must be in connection with secs. 8, 10, 11 and 37 of the Charter, it seems to us there is no room left for argument. * * *

"It is obvious that the compensation which is required for the use of the streets by these provisions, (Sections 8, 10, 11 and 37 of the Charter) and the rentals for space