

File No. 46845

Baltimore, December 1, 1926

Mr. Charles F. Goob
Mechanical-Electrical Engineer
City Hall
Baltimore, Maryland

Dear Sir:

14228

Acknowledgment is made of your letter of November 26th, apropos of my opinion to you bearing the same date in which I express the opinion that it is necessary for the American District Telegraph Company to secure an ordinance from the Mayor and City Council of Baltimore in order to occupy duct space in the municipal conduit system.

Neither Assistant City Solicitor Davis, in making his report to me on the subject, nor I, in adopting that report and expressing my own opinion on the subject, were aware of the communication dated September 3, 1925, written to you by Mr. John F. Oyeman, to which you refer. Consequently, I have it before me now for the first time.

Mr. Oyeman advised you that in view of Section 11 of Ordinance #107, approved August 25, 1898, it was not necessary for the Terminal Freezing and Heating Company to secure a franchise ordinance before it laid its wires in the municipal conduit system. I cannot find that that opinion, if it be an opinion, was ever concurred in by the then City Solicitor, Mr. Perlman, or approved by him, and from the papers in the case it does not appear that it was ever asked for by any department of the municipal government, but seems to have originated because of conferences between counsel for the Company and Mr. Oyeman. Now that it is called to my attention, I decline to accept it as a binding authority and you will disregard it.

I am brought to this conclusion for the reason that the whole subject matter has been settled by the Court of Appeals of Maryland in the case of Furnell vs. McLane, 98 Md., 589. In that case the contention was made that Section 11 of Ordinance #107, approved August 25, 1898, authorized the Electrical Commission to rent duct space without a franchise first being had and obtained. Hon. Wm. Cabell Bruce was then City Solicitor, and that distinguished lawyer contended that a