

File No. Continued

shall be necessary or made in such cases as are named in this proviso."

Concluding, "I express the opinion that the granting of minor privileges referred to in the Charter, and such a one covered directly or indirectly by the present ordinance authorizing the grantee to lay a pipe line across the sidewalk, is vested exclusively in the Board of Estimates, and that the City Council has no jurisdiction in the premises.

The authority of the City Council is limited to franchises or rights covering such cases not included in the proviso of Section 37 and authorized to be granted by the Board of Estimates.

I return the ordinance herewith.

Very truly yours,

(Signed)

CHARLES C. WALLACE

City Solicitor

w/H
Encl.

P. S. Since writing the above, I have been informed that the Council, realizing that the provision of the Ordinance reading, -- "the said tank to be connected with the present curb fill" amounts to the grant of a minor privilege and, therefore, void, may request you to return the ordinance so that the objectionable feature may be removed. Because of that, I consider it necessary to add this postscript. Whether the ordinance is valid, even with the objectionable features removed, is a subject on which I now express no opinion. Comparing the ordinance with the provisions of Ordinance #534, approved December 24, 1925, as amended by Ordinance #644, approved May 3, 1926, it occurs to me that the applicant is only given that which the Board of Estimates is empowered to give under those ordinances. Whether the Council can pass an ordinance granting a permit on a subject already delegated to another department, and which forms no exception to the general grant, is a subject I do not now pass on.