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BLM 1/17/20

Mr. Bernard L. Crosier, Chief Engineer (cont'd)

While the City has full, complete, and exclusive power over streets and highways, our Court of Appeals has declared that it holds the same in trust for the benefit, use and convenience of the general public, and primarily as a means of communication for the whole public. From this it follows that the streets of the City can not be arbitrarily appropriated to a use which permanently destroys their function and character as a means of communication for the public.

While it is true that the City may permit the use of public streets for other than highway purposes for a limited time and subject to the limitations and conditions contained in the Charter, such use is not regarded as inconsistent with the continued existence of such street as a public highway.

On the other hand, the construction of a permanent building in the bed of a street necessarily amounts to a complete destruction of the street as a public highway and an appropriation of it to another purpose. In effect, the exercise by the City of such power amounts to a closing of that portion of the street which is included within the permanent structure.

Undoubtedly, the City has the right to close streets, but such power is a legislative and not an executive power, and must be exercised in manner and form as prescribed by the Charter.

I advise, therefore, that the City has no authority to extend the enclosing walls of Bel Air Market to the limits of the yellow lines shown on the attached plat unless and until the streets affected by these structures shall be closed in the usual form and manner.

This opinion is limited to the precise question submitted to me, namely, whether it is within the power of the City to construct Bel Air Market in the manner outlined on the attached plat and, particularly, to the limits shown by the yellow lines on said plat.

Very truly yours,

(signed) R. E. LEE MARSHALL

City Solicitor

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