

February 5, 1937

Mr. Eugene H. Beer
City Register
City Hall
Baltimore, Maryland

Dear Mr. Beer:

By Article 46, Section 32, of the Baltimore City Code (1927 Edition), it is provided among other things that the City Collector shall give bond for the payment "on or before the 5th day of each and every month to the Register of the City . . . of all such sum or sums of money as he may have received since the previous payment"

You have asked me to advise you whether this provision is mandatory so as to require such payments to be made not later than the 5th day of each month, and, if so, whether the City Register is charged with any duty to compel payments to be made within said period.

This provision was first incorporated in the City Code of 1879. In recent years it has been found practically impossible to arrange these payments within the five-day period prescribed by the ordinance, and, accordingly, by departmental construction, the provision of the ordinance has been construed as directory and not mandatory.

Whether such construction, although based upon the practical necessities of the case, would be sustained if presented to the Courts is a question which cannot be answered affirmatively.

In my opinion, and in view of the practical exigencies of the case, the Courts would not find any default either on the part of the City Register or of the City Collector for failure to literally comply, or enforce compliance, with the five-day provision. This, however, is merely an opinion.

I advise that you take up the matter with the City Collector with a view to formulating a suitable and appropriate working arrangement, which can then be incorporated in an ordinance amending Section 32 of Article 46, and thereby substitute in the form of a new ordinance a provision which will leave no room for construction or doubt.

Very truly yours,

(signed) R. E. LEE MARSHALL,

City Solicitor

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