

Charles C. G. Evans, Esq., Deputy City Solicitor (cont'd)

which provided for the special paving tax in Baltimore City. In your letter to me of May 17, you speak of an opinion concerning this Statute and written by Mr. Fadum. As Mr. Fadum was an assistant to Mr. A. Walter Kraus, I assume that this opinion is the one by Mr. Kraus, dated September 9, 1929, and reported in 31 Opinions City Solicitor 9106. It was there held that under the Act of 1912, Chapter 688 (Charter, Sections 841FF to 841JJ), a public highway was not "repaved" unless, when it was originally paved, abutting owners had paid a paving tax or a paving assessment.

This opinion followed 24 Opinions City Solicitor 7248, which held that the resurfacing of a public highway constituted repair thereof and did not subject the owner to the special paving tax. In the latter opinion there is a quotation from a letter written by City Solicitor S. S. Field to Judge Oscar Leser on June 28, 1916. In that letter it had been ruled that to this sentence in the Charter, Section 841HH, "'paved' shall include repaved as to any public highway, not theretofore paved with improved paving" should be added the words within the purview of this Act. In other words, it was Mr. Field's opinion that highways could be repaved and abutting owners assessed therefore only where they had not been theretofore paved and the abutting owner subjected to the tax.

From the above, it seems clear that Mr. Cobb has no right to repave alleys under the ordinances he mentions and reassess owners of property abutting thereon. I would suggest that the only way to accomplish the result he desires is by an ordinance.

Very truly yours,

(signed) CHARLES R. POSEY, JR.

Assistant City Solicitor

CRP, Jr./L