

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

Mr. Howe states that the tree "has been reported by the police but the owner has refused to permit its removal. It has seemed best, under the circumstances, to submit this data to you for any action which may seem desirable."

From Mr. Howe's letter, I understand that he desires from you an opinion as to what action should be taken in the premises.

By virtue of Ordinance No. 154, approved August 17, 1912, which now appears as Sections 174 to 188 of Article 45 of the Baltimore City Code (1927), the Highways Engineer is directed "to regulate the planting, protection, removing, regulating and controlling of all trees growing, planted, and to be planted in the streets of Baltimore not under the jurisdiction of the Board of Park Commissioners, and to appoint a City Forester . . . to carry out the provisions of this sub-title;

Pursuant to this Ordinance, the City Forester is authorized, if the tree in question is a nuisance, is dangerous, or is an obstruction to travel, to remove the tree. There is no provision in the law authorizing the Mayor and City Council to collect from the property owner the cost of such removal.

The Court of Appeals has decided that unless a tree is a nuisance, or is dangerous, or is an obstruction to travel, a municipality and its officials have no power to remove the tree unless such removal be incidental to relaying or repaving the street, or other public work. Frostburg v. Wineland, 98 Md. 239; Easton v. Turner, 117 Md. 111.

The above cases indicate that the action by the municipal officials must be reasonable and free from arbitrary action. Under the circumstances disclosed by Mr. Howe's letter and the photographs, it is my opinion that it is reasonable for the City Forester to remove the tree in question. Before such a removal takes place, the City Forester should notify the owner that unless the owner removes the tree, or otherwise abates the dangerous condition, on or before a certain time - say within ten days - the City Forester will remove the tree pursuant to the authority vested in him by law.

The above opinion is in accord with the opinion of S. S. Field, City Solicitor, to R. Maxwell, City Forester, dated March 24, 1913 (Opinions Liber 19, folio