

To the Honorable President and Members of the Board of Estimates (cont'd)

circumstances, the blundering bidder may be relieved in equity of his obligation created at law by his bid and deposit, and this is true even though the bid was submitted to a public body under a statute declaring the bid to be irrevocable and providing for the forfeiture of the deposit."

Further, it is the opinion of this office that in order to warrant a return of the certified check in the case you would have to declare Leo J. McCourt and Company not a responsible bidder. In such case, you could return the deposit and award the bid to the next lowest bidder who is responsible. We feel that the check of Leo J. McCourt and Company, under the present status of the matter, is forfeited and not returnable, and does not come within the DeLuca Davis decision entitling it to cancellation of its bid and the return of the deposit.

We trust this answers your inquiry, but if not, please write us further.

Very truly yours,

/s/ THOMAS N. BIDDISON

TB/keb

City Solicitor

File No. 97079

February 1, 1957

Mr. Philip Wagner
Executive Secretary
Employees Retirement System
City Hall

RE: Edward Kleinsmith (Deceased)

Dear Mr. Wagner:

This is in response to your inquiry with regard to the payment of the accidental death benefit which may be due as a result of the death in the performance of duty of Edward Kleinsmith on January 10, 1957. The facts establish that the deceased member had neither a wife nor children and, although he had named his father as beneficiary, the father is now deceased. He has surviving him his mother, who was dependent upon