Baltimore March 13. 1858

To the Hon Thomas Swann
Mayor of the city of Baltimore
Dear Sir

You desire to know what power the Mayor and City Council of Baltimore possess over the legacy bequeathed to it by the late John McDonough. In answering this question I shall assume that the legacy has come to the possession of the city upon a title decided to be valid. See 15 Howard's Reps 412. 413. As to the application of any portion of the money received, or to be received, by the corporation, to the purpose of establishing a school form, according to the scheme set forth in the will of Mr McDonough, or indeed upon any other plan, it seems altogether out of the question, and is in no respect binding upon the city; it does not fall within the powers or objects of our acts of incorporation. But the establishment of free schools for the education of the poor, at the same time that it would gratify the terms of the will, and effectuate the object, of all others, the most sacred in the eyes of the testator, should be also within the limits of the powers granted by the charter (see acts of 1842 ch 86) and promotive of its policy. Such being the case, it appears clear, that the corporation upon accepting the beneficient legacy left by Mr McDonough is legally bound to employ it in such way as will most effectually accomplish his object, and that it cannot be diverted to any other of the ordinary purposes of the municipality. With regard however to the particular and complicated machinery devised by the testator, as instrumental in carrying out his scheme for the general education of the poor, it is to be observed, that the corporate authorities are not obliged to adopt it, they may employ such agencies and modes of action as in their wisdom may seem better adapted to attain the same end. That the legacy must be used as directed by Mr McDonough apart from any legal reasoning, is evident from a consideration of the decision of the Supreme Court 15 Howard, p 367. Mr Justice Campbell in delivering the opinion of that court upon the construction of Mr McDonoughs will says (p 403) "We must look to the arrangements he has made in the instrument, the objects they are fitted to accomplish, and the agencies (if any) to be employed, and endeavour to frame these into a consistent and harmonious plan, accordant with his leading and controlling intention. In reference to his controlling purpose there can be no mistake." He says "that the first, principal and chief object in his view, is the education of the poor of the two cities". And again (p 414) the judge proceeds to remark: "We are of the opinion that the uses for which the testator has devised his estate

to the city of Baltimore, are approved alike in the legislation of Louisiana and Maryland, and that the execution of them may be enforced in their courts.

Very Respectfully Your obed't Servant
G. L. Dulaney, City Counseller

Mr Clark moved that a message be sent to the Second Branch proposing, with their concurrence, to refer the above communication to a joint select committee, which was determined in the affirmative.

The President appointed Messrs Clark, Taylor and Dryden the committee on the part of this Branch.

Mr Beale moved that a message be sent to the Second Branch requesting the reconsideration and return of the resolution relative to discharging the joint standing committee on claims, from the further consideration of the petition of the judges of election, which was determined in the affirmative.

Mr Cunningham offered the following resolution which was adopted.

Resolved by the First Branch of the City Council, That the door keeper be directed to purchase a copy of the new map of Baltimore County for the use of this Branch, provided the cost of the same does not exceed five dollars.

Mr Hawey called up the resolution relative to directing the City Commissioner to have a walk on the south side of Cross Street market space paved with brick to the width of five feet, and also three crossings of a similar width, and that one hundred and eighty dollars, or so much thereof as may be necessary, be appropriated to defray the expense of the same, to be provided out of the levy for 1858, which was read and adopted.

Mr Hamilton offered the following resolution which was read.

Resolved by the Mayor and City Council of Baltimore, that the City Commissioner be and he is hereby authorized and directed to have flag stones placed across Cathedral street, where it intersects ~~west~~ Biddle street, also across Saratoga street where it intersects State street, and that he place stepping stones across Madison street where it intersects Eden street on the east; also across Madison street, where it intersects Spring street.

On motion of Mr Hamilton, the resolution was referred to the joint standing committee on highways.

Mr Duttchant moved that a message be sent to the Second Branch proposing with their concurrence, the repeal of revised ordinances No 23, entitled "An ordinance to regulate the navigation of the harbor