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LAW DEPARTMENT.

OPINION OF THE COUNSEL TO THE CORPORATION.

Telegraph companies incorporated under the laws of the State of New York are legally authorized to extend their wires in the usual manner through the streets of the city of New York.

The right of the Common Council of that city to regulate the erection of telegraph poles, and the duty of the Commissioner of Public Works to remove obstructions, do not empower those authorities to substantially abridge or materially interfere with the right of such companies to construct their lines in any street or avenue.

LAW DEPARTMENT,

OFFICE OF THE COUNSEL TO THE CORPORATION,
NEW YORK, October 25, 1873.

Hon. George M. Van Nort, Commissioner of Public Works.

SIR:—A communication from your department requests my opinion upon the legal right claimed by telegraph companies to extend their lines through the streets of the City of New York.

The place and progress of the telegraph in modern civilization have been so recent and rapid that those few persons who do not directly participate in its benefits may be pardoned for overlooking its usefulness and necessity, when, like all public improvements, it causes inconvenience to localities and to individuals. In populous communities its obstructions are of course the most felt; while it is precisely there that its works are the most needed. It is frequently objected that the prevailing system of carrying the wires upon poles should give way to some plan of subterranean communication. No such change has been found anywhere practicable, at least to any general extent; and in our American cities, which are all, even including New York, in a conspicuously unfinished state, it is difficult to see how wires could be so laid in the earth as not to be daily interfered with by excavations required in the erection and alteration of buildings. Interruptions to the continuity of the lines would also result, though to a less extent, if carried as some propose over the tops of buildings. It is known, however, that large sums have been expended by different companies in obtaining plans for some system less objectionable than the present in point both of convenience and sightliness. It would require the expenditure of millions of dollars to effect any general change. [Both public opinion and the interests of the companies themselves will undoubtedly require the outlay of the money, when practicable plans shall have been discovered and invented; but even when that time shall have arrived, it cannot be expected that reconstructions of such magnitude and changes so extensive can be the work of a day.]

Your inquiries relate particularly to a temporary change in the lines of the Western Union Telegraph Company north of the Grand Central Depot at Forty-second street, made necessary by the condition of Fourth avenue during the great work of sinking the tracks of the Central, Hudson River, Harlem and New Haven Railroad Companies, in order to carry the transverse streets across the tracks upon heavy masonry. The Western Union Telegraph Company are removing their wires from that locality over to the Third avenue at an estimated expense of at least \$20,000 to be fully borne by the company itself, simply to facilitate the work before mentioned, and without any advantage to itself. In that work the city and the railroad companies are jointly engaged, and in removing its wires the telegraph company assists gratuitously in carrying out the wishes of our citizens in a matter relating to their safety and convenience. This temporary removal of

the wires from the Fourth avenue reasonably requires that they should be placed in one of the nearest continuing thoroughfares. But the company is met with objections and obstructions from the Third Avenue City Railroad Company. This corporation is also itself a most useful servant of our people; but it could never have reached its present prosperity had not its projectors successfully contended with just such opposition as is now encountered by the Western Union Telegraph.

The lines of this company, as they pass through the Fourth avenue, not only bear messages to the different sections of the United States, but also constitute a part of the main trunk connections with the Atlantic Telegraph, which, through European and still remoter works, extends to almost every portion of the Eastern Hemisphere.

Commercial transactions have so adjusted themselves upon the assumption of the continual working of the telegraph, that any serious interruption of communication would be of incalculable injury to business interests. Such interruption would be scarcely less felt in social and domestic circles. Many even of those most irritated by the appearance of telegraph poles would experience a change of sentiment if objectors were so multiplied as to seriously obstruct the erection.

Verbally and informally, I have already given to representatives of both interests, the views of law, of comity and of public policy which are expressed in this opinion, and I am glad to know that they have tended to allay excitement, conflict, and threatened tumult manifested in that portion of the city by the adherents of opposing parties. With supposed personal or corporate interests I have nothing to do, except as they involve the rights of the public. These rights are guarded by constitutional and statutory law to which I will now refer.

As stated, the lines of the Western Union Telegraph Company are in progress of temporary removal from the Fourth to the Third avenue. In view of difficulties raised along the line of the latter thoroughfare, the practical question is presented, What lawful powers the company possesses to establish its structures in the public streets of this city.

The Constitution of the United States clothes Congress with the express power of regulating commerce with foreign nations, and among the several States. (Article 1, Section 8, Sub-division 4.)

In 1866, Congress passed a statute entitled "An act to aid in the construction of telegraph lines and to secure to the government the use of the same, for postal, military, and other purposes." That act gave to any telegraph company then organized, or thereafter to be organized under the laws of any State in the Union, the right to construct, maintain, and operate lines of telegraph through and over any portion of the public domain, over and along any of the military or post roads which had been or might thereafter be declared such by act of Congress, and over, under or across the navigable streams or waters of the United States; provided only that navigation should not be obstructed nor ordinary travel be interfered with. Materials for such construction may, under that act, be taken from the public lands. Dispatches for the government are to have priority of transmission. The United States may purchase the telegraph lines. (United States Statutes at large, Volume 14, Chapter 230, page 221.)

As early as the year 1848 the Legislature of this State enacted a statute for the incorporation and regulation of telegraph companies. By section 5 any telegraphic association is authorized to construct lines of telegraph along and upon any of the public roads and highways, by the erection of the necessary fixtures, including posts for sustaining the wires; provided such construction does not incommode the public use of such roads or highways. By section 6, if any person upon whose lands such posts should be placed consider himself aggrieved or damaged, he may apply to a county court to appoint five disinterested persons as commissioners to make a just and equitable appraisal of the damage, and the amount thereof shall be paid by the company. Section 7 enacts that any person who shall intentionally injure, molest or

destroy any telegraphic line or post shall be guilty of a misdemeanor, and be punished by a fine not exceeding \$500, or imprisonment in the county jail not exceeding one year, or both, at the discretion of the court. The provisions of law, of which the substance is given above, will be found in chapter 265, of the laws of 1848, page 392.

In 1853 that act was amended. By section 2 of the amendatory act any telegraphic association is authorized to erect and construct from time to time the necessary fixtures for lines of telegraph upon, over and under any of the public roads, streets and highways, and also to erect and construct such fixtures upon, through and over any private lands, subject in the last instance to the right of the owner to full compensation to be agreed upon, or in the event of a failure to agree, a court to appoint a disinterested commission to appraise and fix a sum in gross as the compensation which the proprietor is to receive from the company. This amendatory act forms chapter 471 of the Laws of 1853, page 931. It must be observed that these acts contain no condition clothing local authorities with any power, direction or supervision in the matter. Nor is there any restriction in the application of the two statutes to all parts of the State. It is clear, therefore, that the answer to your first inquiry must affirm the right of telegraph companies, incorporated under the laws of this state, to erect poles in the City and County of New York.

Your second question is whether these companies must first obtain the consent of the Common Council before they can legally erect poles in this city. My answer must be in the negative. The right conferred upon them is absolute and unconditional. The statutes upon this subject proceed upon the broad ground that the telegraph is an institution necessary to the public good and the convenience of the people at large. To permit the Common Council of a city to prohibit the construction of the fixtures necessary to traverse its streets with a telegraph, would be to clothe a local authority with power to obstruct a great and general public necessity by its own mere will for reasons of mistaken local advantage, or even from mere caprice.

It is true that among the powers granted to the Common Council of New York, by what is known as the Charter of 1873, is the right to regulate the use of the streets and sidewalks for signs and sign posts, awnings and awning posts, horse troughs, telegraph posts and other purposes. (Sub-division 9, of section 17, chapter 335, of the Laws of 1873.)

This general provision of Law contains no implication that a telegraph corporation of this state must obtain the consent of the Common Council to exercise the right legally conferred of erecting poles in the city; nor can the Common Council lawfully act upon the supposition that the power of regulation can be so used as in any way to obstruct or abridge the comprehensive right to place telegraph poles through the public streets. The power of regulation is a power to direct that the erection of the poles shall be done in an orderly manner, with no unreasonable interference with the ordinary uses of the streets, and with no gross and exceptional disfigurement. But as the law itself does not restrict the companies to the use of any particular street but permits them to carry their fixtures through any of the streets of the city, without exception, the Common Council, under the right of regulation, cannot deprive the companies of the full measure of power which the legislature, for public reasons, has seen fit to confer upon them. Their permission comes from the law-making power of the State, and it need not be sustained nor can it be limited by the action of local authorities.

Your third inquiry is, Can the Commissioner of Public Works authorize the erection of telegraph poles in the City of New York? As such erection is already permitted by law, the right to exercise it is not left to the discretion of either the executive or legislative departments of our local government. The powers of the Department of Public Works are broad, and they expressly include the keeping of the streets clear of obstructions. This reasonably implies such power of regulating the use of the streets by a telegraph company as we have already consid-

ered as also in general terms conferred upon the Common Council; but it does not impose upon the companies the necessity of obtaining from any department of the city government a permission to use the streets in accordance with the powers conferred by the legislature. When, however, a telegraph company is about to erect its poles in a street or avenue, the Commissioner may properly issue a permit as evidence in the hands of the company's superintendent that the necessary obstructions are lawful, and your Department should so far regulate and oversee the work as to secure public and private interests against unnecessary interference.

As a general rule, there ought in reason to be no conflict between the local authorities of cities and the directors of great public works and improvements. The growth and prosperity of towns, the profitable use of their capital and the interests of their population, including regular employment to labor, must always be promoted by the utmost facilities of traffic, transit and communication. This obvious truth is always acted upon by young communities, but is often forgotten when cities have long grown and prospered. Under proper safeguards, railroads cannot come too near nor penetrate too far. To maintain its commercial pre-eminence, New York must encourage and foster those public enterprises which bring it near to the remotest quarters of the country and the world. In the words of Sir Walter Raleigh, "all those things that cause the greatness of a city are also fit to conserve the same."

I am, sir,

Very respectfully yours,

E. DELAFIELD SMITH,

Counsel to the Corporation.

HEALTH DEPARTMENT.

HEALTH DEPARTMENT,
NEW YORK, Oct. 28, 1873.
No. 301 Mott street.

The Board of Health met this day.

Orders.

338 orders for the abatement of nuisances were made.

Suits for Penalties.

The Attorney was directed to commence suits for non-compliance with the orders of the Board in 48 cases, and for violations of the Sanitary Code in 7 cases.

Reports Received.

From the Sanitary Superintendent:
Weekly report on operations of the Sanitary Bureau.
Weekly report on Slaughter Houses.
Weekly report on Contagious Diseases.
Weekly report on 38th street, North River District.
Weekly report on the condition of the streets.
On vacation of cellars in the Seventh ward.
On complaint against the offal contractor.
On applications for relief.
On case of Bridget Tomay.
On applications for permits.
On street pavements, &c.
On public school, Nos. 789 and 791 Third avenue.

From the Register of Records:

Weekly letter on mortality.
Weekly mortuary report.

Communications from City Departments.

From the Police Department:
On arrests for violations of the Sanitary Code.
Weekly report of the captain of the Sanitary Company of Police.
From the Department of Public Works:
In respect to the use of bulkhead foot of East 42d street, for the reception of butchers' refuse, &c.
Maps of sewerage districts.
From the Comptroller:
Weekly statement.
In respect to the contract for the removal of offal, dead animals, &c.

Reports Referred to Other Departments for the Necessary Action.

To the Department of Public Works:
On street pavement in front of No. 198 10th avenue.
On street pavement in Manhattan street.
On street pavement in front of No. 154 west 48th street.
On street pavement in 1st avenue, between 58th street and 59th street.
On street pavement in Avenue A, between 11th and 14th streets.
On street pavement in East 11th street, between 1st avenue and Avenue A.
On street pavement in Ludlow street, between East Houston and Stanton streets.
On street pavement in East 12th street, between Avenues A and B.
On street pavement in 2d street, between Avenues B and C.

BUREAU OF VITAL STATISTICS.

CONDENSED STATEMENT OF MORTALITY.

REPORTED MORTALITY (week ending October 25th,) AND THE ACTUAL MORTALITY (each day in the week, ending at noon, October 18th, 1873,) WITH AN ENUMERATION OF THE CHIEF CAUSES OF DEATH.

Table with multiple columns: Actual number of Deaths each day (Oct 12-18), CAUSES OF DEATH (Total Deaths from all Causes, Total Zymotic Diseases, etc.), and various statistical columns.

On basin and culvert northeast corner Madison avenue and 28th street. On street crossing east side 7th avenue, corner 52d street. On public drain under Kingsbridge road, at 175th street. On catch basin southeast corner 56th street and 6th avenue.

To the Board of Education: On condition of public school, Nos. 789 and 791 3d avenue. To the Police Department: On the condition of the streets.

Communications Received. In respect to suits against city railroad companies. In respect to cotton shipped from Memphis, Tenn., to this city. Bills Audited. Francis Swift, removing night soil for week ending Oct. 24, 1873. \$634 62

Permits Granted. To keep cows at west side 7th avenue, between 55th and 56th streets. To keep cows at Inwood, corner Kingsbridge road. To keep six chickens at 161 Rivington street.

Permits Denied. To occupy basement at No. 13 Oak street. To render fresh lard at No. 1 Leonard street.

Resolutions. That the pay rolls of this Department for the month of October, 1873, when approved by the chairman of the Finance Committee, shall be duly certified by the President and Secretary, and forwarded to the Comptroller for payment.

Resolved, That the use of the same be granted to Frank Swift for this purpose until further orders of the Board. That, in compliance with the request made to this Board in behalf of the city railroad companies, an opportunity be afforded to them to present their views in regard to sections 164 and 181 of the Sanitary Code, requiring the removal of cushions from the seats of cars, and the enclosure of the front platforms thereof, and that the Secretary be directed to notify such companies that a meeting of this Board will be held at this office for such purpose on Wednesday, November 5, 1873, at one o'clock P. M.

Resolved, That the use of the same be granted to Frank Swift for this purpose until further orders of the Board.

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The following is a record of the work performed in the Sanitary Bureau for the week ending October 25, 1873:

The total number of inspections made by the Sanitary and Assistant Sanitary Inspectors was 2,586, as follows, viz.: 6 public buildings, 934 tenement houses, 207 private dwellings, 339 other dwellings, 39 manufactories and workshops, 56 stores and warehouses, 122 stables, 1 swill yard, 11 slaughter houses, 2 head cleaning establishments, 5 fat rendering establishments, 4 public sewers and drains, 1 smoke house, 44 sunken and vacant lots, 77 yards, courts and areas, 120 cellars and basements, 61 waste pipes and drains, 110 privies and water closets, 19 streets, gutters and side-walks, 4 dangerous stairways, 6 cisterns and cesspools, 38 other nuisances, and 6 visits of the Sanitary Inspectors to cases of contagious diseases.

The number of reports thereon received from the Sanitary and Assistant Sanitary Inspectors was 747.

During the past week 64 complaints have been received from citizens, and referred to the Sanitary and Assistant Sanitary Inspectors for investigation and report.

The Disinfecting Corps have visited 82 premises where contagious diseases were found, and have disinfected and fumigated 80 houses, 80 privies, sinks, together with clothing, bedding, &c.

One case of small-pox was removed to the small-pox hospital, one case of yellow fever to the Morgue by the Ambulance corps. 99 permits have been granted to consignees of vessels for the discharge of cargoes, on vouchers from the Health Officer of the Port.

118 permits have been granted to scavengers to empty, clean and disinfect privy sinks. The following number of contagious diseases were reported for the week ending Oct. 25, 1873: Typhus fever, 3; typhoid fever, 7; scarlet fever, 43; measles, 6; diphtheria, 44 and small-pox 2.

The amount of meat and fish condemned by the officers as unfit for human food during the week ending Oct. 25, 1873, was: sheep, 9 carcasses; hog, 1 carcass; 704 lbs beef; 214 lbs of veal, (cut,) 1606 lbs of mutton; 57 lbs of pork; 1283 lbs of poultry; 54 lbs of game; 7575 lbs of fish and 160 gallons of scollops.

361 loads of night soil were removed by night scavengers from the privy vaults of the city.

BUREAU OF VITAL STATISTICS.

During the week ending October 25, 1873, there were issued from this Bureau 514 burial permits for city deaths—62 for bodies in transit, and 50 for the interment of still-born infants. There were recorded 514 deaths, 186 marriages, 454 births, 50 still-births, 62 applications for transit permits, and 48 returns from coroners. There were 21 searches of the registers of births, marriages and deaths, and 5 transcripts of marriage record, and 21 of death were referred to coroners.

By order of the Board. EMMONS CLARK, Secretary.

HEALTH DEPARTMENT, OF THE CITY OF NEW YORK, BUREAU OF VITAL STATISTICS, October 28, 1873.

To the Secretary of the Board of Health:

SIR:—In the week ending on Saturday, the 25th inst., there were 514 deaths reported in this city. In the preceding week 543 were reported, 524 actually occurring in that week. There was a decrease of 14 in the deaths by diphtheria and the diarrhoeal diseases last week. The increase in the number of deaths in public institutions (82) corresponds with the increase of inmates in those charities at this season. There were 208 deaths in tenement houses and only 224 in other classes of dwellings.

The death-rate was equivalent to 26.72 per 1000 inhabitants yearly, population estimated at

1,000,000. Boston, in the same week, reported 120 deaths, and Baltimore 129; and in the week ending on the 18th of October, Philadelphia reported 265 deaths; Richmond, Va., 31, Pittsburgh, Pa., 53; Cleveland, 29. The 21 chief cities of Great Britain, in the week ending Oct. 11, had an average death-rate equal to 21 per 1000 inhabitants, yearly.

In London the rate was equal to 19 per 1000; in Liverpool, 22; Manchester, 24; Glasgow, 23; Edinburgh, 16; Dublin, 17, and Portsmouth only 14 per 1000, annual rate. Paris, in the same week reported its death rate as 21 per 1000, with 43 deaths by cholera against 88 in the previous week. Berlin reported its rate as 29 per 1000, with 25 fatal cases of cholera, against 82 the previous week; Vienna reported 26 per 1000 as its rate, with its deaths from cholera reduced from 219 to 28 in the successive weeks.

The abatement of cholera in Europe, as well as the circumstances attending its prevalence this year, will justly increase public confidence in the preventive sanitary measures adopted in the cities and towns most endangered by it.

No epidemic cause of death is reported in our American cities, except yellow fever. The number of places infected by the fatal poison that causes that fever has rapidly increased in north eastern Texas in such manner as to prove that the want of sanitary care in towns and of rational sanitary regulations is a calamity. The only victim of that pestilence that has reached New York, while sick with it, died in the ambulance of the Board of Health on the 22d inst.

Respectfully submitted. ELISHA HARRIS, M. D., Registrar of Records.

LEGISLATIVE DEPARTMENT

SPECIAL SESSION.

BOARD OF ALDERMEN.

No. 15 CITY HALL, TUESDAY, October 28, 1873, 3 1/2 o'clock P. M.

The Board met in their chamber, No. 15, City Hall, pursuant to the following call:

NEW YORK, Oct. 27, 1873. Jos. C. Pinckney, Esq., Clerk Common Council: SIR—You are hereby directed to notify the members of the Board of Aldermen to meet in special session in the chambers of the Board, in the City Hall, on Tuesday, the 28th instant, at 3 1/2 o'clock, for the transaction of such public business as may come before the Board.

Jos. A. Monheimer, Richard Flanagan, Patrick Lysaght, John J. Morris, Oswald Ottendorfer, O. P. C. Billings, J. Van Schaick, Geo. Koch, John Reilly, S. V. R. Cooper, Peter Kehr.

AFTER RECESS, 4:20 P. M.

Present—Hon. S. B. H. Vance, President, in the chair. O. P. C. Billings, Patrick Lysaght, S. V. R. Cooper, Robert McCafferty, Henry Clausen, J. A. Monheimer, John Falconer, John J. Morris, Richard Flanagan, Oswald Ottendorfer, Peter Kehr, John Reilly, George Koch, Jenkins Van Schaick. Alderman Monheimer called up

G. O. 227 1/2.

being a resolution as follows: Resolved, That the Mayor, Aldermen, and Commonalty of the City of New York hereby consent to and authorize the loan of the sum of two million five hundred thousand dollars to the Industrial Exhibition Company out of the funds of the city, to be raised in the manner and upon the terms specified in and by Chapter 784 of the Laws of 1873, and that the Comptroller be and he is hereby authorized and empowered to issue and deliver the bonds therein specified, and to pay over to said company the amount of said loan, pursuant to the provisions of said law, on receiving the security for the repayment thereof which is therein directed to be given.

Which was adopted by the following vote: Affirmative—Aldermen Billings, Cooper, Clausen, Flanagan, Kehr, Koch, Lysaght, McCafferty, Monheimer, Reilly, Ottendorfer, Van Schaick—12. Negative—The President, Aldermen Falconer, Morris—3.

Alderman Ottendorfer asked to be excused from voting, which request was denied. Alderman Kehr moved that the Board do now adjourn.

Which was lost by the following vote: Affirmative—Alderman Clausen, Kehr, Koch, Morris—4. Negative—The President, Aldermen Billings, Cooper, Falconer, Flanagan, Lysaght, McCafferty, Monheimer, Ottendorfer, Reilly and Van Schaick—11.

JOS. C. PINCKNEY, Clerk.

DEPARTMENT OF DOCKS.

DEPARTMENT OF DOCKS, 346 and 348 Broadway. At meetings of the Board governing this Department, held from September 30th to October 22d, 1873, inclusive. All the Commissioners present, except that on the 7th and 8th instants, Commissioner Gardner was absent. The following action was had:

Organizations, Appointments, &c. John R. Richardson, appointed Collection Clerk and assigned to Collection District No. 1, East river, vice James B. Cisco, resigned; salary, \$2,500 per annum. W. W. Maclay appointed Assistant Engineer to fill vacancy; salary, \$2,500 per annum.

Applications for Leases, &c. From J. R. Sparks, Agent, White Star Line steamers, to lease new Pier 44 and 45, North river; granted, for 10 years, if terms and rent of \$54,000 per annum are agreed to.

Applications for Permits, &c. From James Culver, to place Derrick on Pier 3, East river, to be used in loading and discharging canal boats; granted. From Richardson and Denny, to insert 6-inch drain pipe in bulkhead, between Pier 8 and 9, North river; granted. From Chas. M. Terry, to insert 6-inch drain pipe in bulkhead, between Piers 23 and 24, East river; granted.

From Lorillard & Co., to replace shed on Pier 33, East river, removed during repairs; granted. Permit to Jas. Culver to place Derrick on Pier 3, East river, granted 2d inst., revoked.

Repairs, Rebuilding, &c., Ordered. Supt. Turner directed to rebuild Pier 57, East river, and the owner of the north easterly half, requested to file written agreement to pay one-half the expense and cost thereof.

Supt. Turner directed to make necessary repairs to surface of Pier at 117th street, East river.

Supt. Turner directed to confer with owner of bulkhead, between Piers 8 and 9 North river, that necessary repairs may be made thereto, without delay.

Supt. Turner directed to build a pier on piles, at foot of 3d street, East river, to extend out to the exterior Pier line, and to be the width of the street.

