

# THE CITY RECORD.

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## LAW DEPARTMENT.

### OPINIONS OF THE COUNSEL TO THE CORPORATION.

The authority of the Fire Department to purchase implements convenient to the extinguishment of fires, is amply secured by law, and extends to the purchase of rights secured by the patent laws of the United States.

The provisions of the Charter requiring contracts for supplies to be awarded to the lowest bidder, upon opportunity for competition, do not apply to the acquisition of the right to manufacture under an invention, unique and distinctive in its character, covered by letters patent.

The 115th section of the Charter providing that except for repairs no patented pavement shall be laid, and no patented article shall be advertised for, contracted for or purchased, except upon competition, cannot be construed to deprive the Fire Department of authority to purchase, without advertising for proposals, the right to use a patented and unique invention.

Provisions of law, however useful, which relate to the mere mode of proceeding to reach an end, must be regarded as sufficiently flexible to give way when a most important object is to be achieved, going to the very purpose of the maintenance of a municipal department.

LAW DEPARTMENT, OFFICE OF THE COUNSEL TO THE CORPORATION, NEW YORK, April 28, 1874.

Hon. Andrew H. Green, Comptroller:

SIR:—You transmit for my examination a bill of Mary Bella Scott Uda, dated February 11th, 1874, for \$25,000, which the Fire Department has agreed to pay, for an assignment and license, under United States Patent No. 142,349, of the right to manufacture and use for municipal purposes an improved fire escape and "aerial ladder." Accompanying the bill is the letter patent granted by the United States, a certificate of the Commissioner of Patents relating thereto, the assignment of the inventor, and a power of attorney from Michelo Uda to the claimant. You request my opinion upon the following propositions:

First.—Is the purchase by the Commissioners of the Fire Department of a right under letters patent, and the expenditure of the amount in question, authorized by law?

Second.—If yea, should not the validity of the patent be assured or in some manner established before consummating the purchase by the payment of the money?

Under the authority conferred upon the present Fire Department by section 79 of the act called the charter of 1873, sufficient authority is in my judgment conferred to purchase the patent in question, if in the opinion of that department such purchase would be for the benefit of the city, and provided the appropriation to that department be not thereby exceeded. (Laws of 1873, chap. 335, § 79.) The act of 1865, creating the Metropolitan Fire Department, gave the Board of Fire Commissioners full power to provide for the City of New York supplies, houses, tools, implements and apparatus of every kind to be used in the extinguishment of fires. (Laws of 1865, chap. 249, § 6.) The amended charter of 1870 empowered the Fire Commissioners to exercise all the powers theretofore conferred by law upon the Metropolitan Fire Department, and also to provide supplies, houses, tools, implements and apparatus, together with fire telegraphs, and to buy, sell, construct, repair and care for the same, and take such action in the premises as might be reasonable, necessary and proper. (Laws of 1870, chap. 137, § 84.) The 79th section of the charter of 1873, already referred to, provides that the Board of Fire Commissioners shall possess all the powers conferred by chapter 249 of the laws of 1865, and by any act of the Legislature amendatory thereof, not inconsistent with the provisions of the charter. There can be no doubt that the Commissioners

have authority to purchase the right to use the "aerial ladder," and for that purpose to acquire by assignment the rights which the patent confers.

The 91st section of the charter, prescribing forms for the observance of the departments in making contracts, has no application here. In the nature of the case the provisions of that section cannot be applied. The principle of those provisions is that contracts for the purchase of supplies and for the performance of work must be awarded to the lowest bidder after opportunity for competition. This requirement is useful and salutary; but it cannot be interpreted to annul the authority so amply conferred by law upon the Fire Department to acquire whatever implements may be necessary to the prompt and most efficient performance of their duties. This useful invention stands by itself, protected by a patent, and cannot be made serviceable, except by the purchase of the rights secured by the Government of the United States. (See the case of the Harlem Gaslight Company vs. The Mayor, etc., 33 N. Y. Reports, 309.) In the case of Nickel vs. The Mayor, etc., not reported, the Court of Common Pleas, at a General Term, held that the Common Council had the right in 1860 to buy the patent of a fire escape for the then Fire Department. This was under the charter of 1857 and before the creation of a Metropolitan Fire Department. Since the organization of the Fire Department, the Commissioners have had the same power to purchase apparatus as was previously possessed by the Common Council. It is clear that if there be any fund to the credit of the Department the claim should be paid.

The 115th section of the Charter, after providing that no street which has been once paved at the expense of the owners of adjoining property, shall be repaved at their cost, unless petitioned for by a majority of the owners on the line, goes on to enact, that except for repairs no patented pavement shall be laid, and no patented article shall be advertised for, contracted for, or purchased, except under such circumstances that there can be a fair opportunity for competition, the conditions to secure which shall be prescribed by the Board of Estimate and Apportionment.

The case we are considering is not the purchase of a patented article, but simply the acquisition of a right to manufacture as many of certain patented articles as the Fire Commissioners may deem necessary. We must, if possible, construe the various unrevoked provisions of law, whether appearing in the charter or otherwise, in such a way as to give effect to all of them and carry out the plain intention of the Legislature that the great object for which a certain department is established or continued may be carried out. If there were several patented articles, all designed to serve the same purpose, it would be within the power of the Department to invite competition; but invoking the light to be derived from the facts here, an examination of the papers before me and proper inquiry unite in demonstrating that this patent is for an article quite distinct from any apparatus yet invented to reach the tops of high buildings. The right and duty of the Fire Department to supply themselves with an apparatus like this cannot be questioned. It is reiterated by repeated statutes. This contrivance cannot be made available except by the purchase of the patent.

Provisions of law, however useful, which relate to the mere mode of proceeding to reach an end, must be regarded as sufficiently flexible to give way when a most important object is to be achieved, going to the very purpose of the maintenance of a municipal department.

With regard to your second question, the assignment of this patent was drawn in this office, and I then took occasion to examine the papers. I have also recently been furnished with an abstract of the title of the patent, and with other documents which I have read. There is no question as to the validity of the patent.

I enclose herewith, in two parcels, the abstract and documents last referred to, which should be carefully preserved; or if delivered to the claimant, copies should be deposited with the Comptroller.

I am, Sir, very respectfully yours,  
E. DELAFIELD SMITH,  
Counsel to the Corporation.

A proposal for a contract must be rejected if not substantially made according to the laws and ordinances relating to the making of contracts.

If the irregularity be not of substance, but only of form, it is within the discretion of a Department to accept or reject it as such Department may deem proper.

Where the lowest bidder is rejected for the irregularity of his proposals, the next lowest bidder whose proposals comply with the ordinance is entitled to receive the contract.

A Department is not justifiable in incurring the expense and delay of new advertisements when the list of bidders contains any one who has in substance and form, complied with existing regulations in relation to the making of contracts.

LAW DEPARTMENT, OFFICE OF THE COUNSEL TO THE CORPORATION, NEW YORK, 21st April, 1874.

Hon. William Laimbeer, President of the Department of Charities and Correction,

SIR:—Your letter of the 4th instant requests my opinion with regard to three proposed contracts.

First. The Eagle Condensed Milk Company propose to enter into a contract with your Department to furnish certain supplies. It appears that the sureties named for acceptance, when the contract shall have been entered into, have not qualified by taking an oath in the form prescribed by the ordinances of the city. In relation to this objection it is my judgment that the requirement of the ordinances in this particular being directory, and intended for the protection of the city, it is competent for the Department to waive the irregularity and enter into the contract if they deem advisable. There is no doubt that the irregularity is one forming ample ground, in the discretion of the Department, to reject the proposal altogether. This you may do if you think fit; but, if you deem that the interests of the city will not suffer, you may, as above intimated, waive the irregularity and the contractor cannot, certainly, complain.

Secondly. The communication from the National Condensed Milk Company, offering to furnish similar supplies, cannot be regarded as a proposal in either the form or the substance of the requirements of the laws or of the ordinances. It must, therefore, be rejected altogether, and you have no discretion to accept it.

The rule which in my judgment must govern you in the awarding of contracts is as follows: If a proposal is, in substance and form, clearly irregular, then you are bound to reject it. If the irregularity is only a matter of form, and not of substance, being the disobedience of directory provision, intended to place the city in a position of self-protection, then you may for such irregularity in form reject the bid altogether, or you may waive the irregularity and enter into the proposed contract. When, for irregularity in both substance and form, or either, you reject the lowest bid, then the next lowest is entitled to consideration. If irregular in both substance and form, you are bound to award the contract to such next lowest bidder. If irregular only in form, and not in substance, then you may either waive the irregularity and enter into the contract, or you may reject it for the formal irregularity. Where there are two or more bids and you feel authorized to reject the first, the next lowest is entitled, if regular, and, if not, then the next lowest. It would be unjustifiable to go to the expense and delay of re-advertising where there are several bidders, merely because the lowest bidder is rejected.

I return the papers.

Very respectfully yours,  
E. DELAFIELD SMITH,  
Counsel to the Corporation.

## EXECUTIVE DEPARTMENT.

Report for the week ending April 25, 1874:

Licenses granted and amounts received for licenses and fines by First Marshal:

Licenses granted.....	209
Amount received.....	\$354 50
Permits issued for street stands, signs, show cases, deliveries, &c., and amount received for same:	
Permits issued.....	2
Amount received.....	\$6

W. F. HAVEMEYER,  
Mayor.

## THE CITY RECORD.

OFFICE OF PUBLICATION, No. 2 City Hall, North-west corner (basement).  
Copies for sale. Price three cents.

AB'M DISBECKER,  
Supervisor.

## HEALTH DEPARTMENT.

HEALTH DEPARTMENT,  
NEW YORK, 1874, No. 301 Mott street. }  
The Board of Health met this day.

Orders.

291 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 134 cases.

Reports Received.

From the Sanitary Superintendent:  
Weekly report on operations of the Sanitary Bureau.  
Weekly report on contagious diseases.  
Weekly report on slaughter houses.  
Weekly report on operations at offal dock.  
Special report on violations of the code.  
Report on applications for permits.  
Report on street pavements, &c.  
Report on application of Assistant Inspector Hamilton to deliver lectures.  
From the Attorney:  
Report upon the case of Dr. Uhling and Chas. Finch.  
From the Register of Records:  
Weekly mortuary report.  
Weekly letters, &c.

Communications from City Departments.

From the Police Department:  
Weekly report of the Sanitary Company of Police.  
Reports of arrests for violations of the Sanitary Code.  
From the Comptroller:  
Weekly statement.

Bills Audited.

Francis Swift, for removing night soil for week ending.....	\$634 62
Francis Swift.....	288 46
H. Endermann.....	23 85
C. Golderman.....	100 88
Wm. Wood & Co.....	25 24

Permits Granted.

To render fresh lard at No. 556 9th ave.  
To keep 9 cows at No. 143 E 122d street.  
To keep 6 cows at westside of Ave. A, 1st house S. of 75th street.  
To keep 6 chickens at No. 329 East Houston street.  
To keep 2 chickens at No. 361 3d street.

Permits Denied.

To render fresh lard at 416 W. 39th street.  
To smoke hams, &c., at 416 W. 39th street.  
To keep 20 chickens at 59 Bayard street.  
To keep 5 chickens at 266 W. 28th street.

Communications Received.

From Health Officer, Philadelphia:  
In regard to increase of small-pox in New York City.  
From Dr. M. J. Fleming:  
Application for appointment on Vaccinating Corps.  
From Adolph Plaetner:  
Application for appointment as clerk.  
From American Social Science Association of Mass.:  
In regard to Conference of Boards of Health in this city.  
From School Trustees of 19th ward:  
In respect to nuisance in 79th street, near 3d ave.

Reports Referred to Other Departments for the Necessary Action.

To the Department of Public Works.  
On street pavements, &c., as follows:  
Street pavement in front of 196 South street.  
" " at N. E. cor. Vesey and West streets.  
" " at Peck Slip.  
" " at Oliver street, bet. Chatham and Madison streets.  
Street pavement at cor. Minetta and Bleecker streets.  
Street pavement at Cherry street.  
" " in front of No. 304 W. 38th street.

Vacant lot at S. S. 62d street E. of Madison ave.  
Sewer in front of No. 524 W. 35th street.

Resolutions.

That the pay rolls of this Department for the month of April, 1874, 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.  
That the Sanitary Superintendent be directed to cause an inspection of all tenement houses, together with the yards, areas, cellars and closets thereof, and report for orders of the Board all violations of the Sanitary Ordinances.

That the Sanitary Superintendent be directed to report at the next meeting of the Board the condition of the grounds on which manure has been deposited during the winter.

That the Attorney be directed to commence suit against Dr. H. Knapp for violation of the Sanitary Code.





