

File No. 19953

Baltimore, November 24, 1911.

Hon. James H. Preston,  
Mayor of Baltimore.

Dear Mr. Preston:

10133-A

Referring to copy of proposed ordinance to repeal and re-ordain Sections 28, 29, 29A, B, C and D, of Article 48 of the City Code of 1893, the purpose being to place in the hands of the City Engineer the establishment and change of grades, which matter you told me to defer consideration of until after the election, I beg to report as follows:

This is a matter which cannot be changed by ordinance. By the Act of 1904, Chapter 34, which is codified in the City Code of 1906, pages 525 and 526, the power and duty of establishing grades is given to the City Surveyor, and, of course, it cannot be taken from him by ordinance.

Under the City Charter, Section 6, sub-paragraph 27, on page 83 of the Code of 1906, the City is given power to prescribe by ordinance the duties and compensation of the City Surveyor, but this provision of the charter is repealed or superceded by the Act of 1904 above mentioned.

It follows that any change desired to be made upon the question of establishing or changing grades must be done by an Act in the Legislature.

I add some thoughts for your consideration upon this subject.

The City Surveyor is an officer provided for in the Constitution, Article 7, Section 2, which provides that the qualified voters shall elect a surveyor in each county and in the City of Baltimore, respectively, but says nothing as to his duties or compensation, except the following:

"whose duties and compensation shall be the same as are now or may hereafter be prescribed by law".

While, therefore, the Legislature cannot abolish the office, it has power to fix the duties and compensation of the office, though, perhaps, this would not authorize the Legislature to strip the City Surveyor of all duty or compensation.

By Section 43 of the Charter, which is found on pages 122 and 123 of the Code of 1906, the City Surveyor is required to furnish a plat