

Baltimore, October 11, 1927.

Mr. Milton J. Ruark,
Sewerage Engineer,
City Hall Annex No. 1,
Baltimore, Maryland.

Dear Mr. Ruark:-

Replying to your letter of October 6th, I wish to state that the ruling of the Law Department to the effect that the City has a right to use a natural water course for a storm drain, has never been questioned, and this ruling is sustained by most legal writers, particularly the Treatise of the Law of Municipal Corporations by McQuillan, Section 1437. See also the case of KRANZ versus MAYOR AND CITY COUNCIL OF BALTIMORE, 64 MD. 495.

The power given by the Legislature to the Mayor and City Council in establishing a system for the construction of sewers and drains, is broad, and under it the City may use any natural stream running through the City for its purpose, but it would have no right to create a nuisance; and it cannot discharge the sewage in any channel which is draining into the Chesapeake Bay or its tributaries, but it can do so for its surface and storm water drainage.

While the City is not bound to provide drains to carry off surface water, it has, however, the power to do so, and it may discharge the surface water into any stream flowing within its limits. In doing so, however, it must not unreasonably increase the flow so as to overflow the banks. See - WESTERN MARYLAND RAILWAY COMPANY versus MARTIN, 110 MD. 554.

However, the City would not be liable even if the increase in the flow came directly from the subsequent growth of the city. The City is not bound to construct a sewer in any given place, but it is only bound to exercise reasonable care and skill in the construction and maintenance of the same, and when the City connects a sewer with a natural water course, it is not on that account obliged to keep the channel open to its mouth.