

FILE NO. 71820

July 10, 1939

To the President and Members of the City Council  
City Hall  
Baltimore, Maryland

Gentlemen;

You have requested my opinion with reference to the validity of pending Ordinance No. 62 and pending Ordinance No. 63, both of which are attached. The former waives the provisions of Ordinance No. 318, approved January 16, 1937, which prohibits the erection of a gasoline filling station within three hundred feet of a church insofar as said Ordinance No. 318 applies to the premises of Michael Bauer at the northeast corner of Harford Road and Glendale Avenue. The latter grants permission to Michael Bauer to construct a gasoline filling station on the northeast corner of Harford Road and Glendale Avenue.

Ordinance No. 318, approved January 16, 1937, gave exclusive jurisdiction over filling stations to the Board of Zoning Appeals, and specifically prohibited the erection of any filling station within three hundred feet of a church.

Both of the proposed ordinances operate as the grant of a special privilege in contravention of the provisions of Ordinance No. 318. It is questionable whether or not any such ordinance could be said to be reasonable and non-discriminatory. I am inclined to believe that a court would hold both of these ordinances invalid on the ground that they were unreasonable and discriminatory. While there is no decision of our Court of Appeals directly in point, I am of the opinion that both ordinances are invalid.

Very truly yours,

(signed) CHARLES C. G. EVANS

City Solicitor

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