

F. Murray Benson, Esq., City Solicitor (cont'd)

to the provisions of Chapter 354 of the Acts of 1931 will be far reaching in its effects and will involve considerable sums of money. If payments have voluntarily been made, under the authorities above mentioned, no refunds should be granted.

As the Act provides for an exemption "from the payment of any assessment for the opening, grading, macadamizing and paving of any road or street", I am of the opinion that the exemption extends to all assessments whether they be benefit assessments of the Commissioners for Opening Streets or whether they be Special Paving taxes levied pursuant to Chapter 688 of the Acts of 1912. Nor is the exemption, in my opinion, affected by Chapter 25 of the Acts of 1916 which authorized the City to borrow money in anticipation of the revenue to be derived from the Special Paving Tax, for what the Legislature has the right to say shall be assessed and taxed, it also has the right to say shall be exempted from assessment and taxation.

With respect to assessments under the provisions of Ordinance No. 739 of 1922, which involves paving on petition, and which is codified as Article 45, Sections 107 to 115, inclusive, Baltimore City Code (1927 Ed.), as amended by Ordinance No. 755, approved June 14, 1929, you stated in a recent opinion on the application of Mount St. Joseph's College for the abatement of an assessment for the grading and paving of an alley:

"It is my opinion that a property owner petitioning the City to pave an alley under the provisions of an Ordinance which contemplates contribution by the abutting property owner, would create a different situation and would result in a waiver of the exemption or estoppel of the claim for exemption after the filing of the petition and the completion of the record".

This would, no doubt, apply not only to alleys paved on petition by the owner, but also to streets, avenues and lanes as provided in said Ordinance.

Very truly yours,

(signed) MICHAEL J. HANKIN
Assistant City Solicitor

MJH/BB