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Rule to Show Cause.

(Filed June 8, 1917.)

10

New Jersey Supreme Court

EDWARD L. McCARTY,

Applicant,

vs.

THE BOULEVARD COMMISSIONERS OF HUDSON COUNTY, JOHN SWEENEY, Clerk of said Commission, THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, WALTER O'MARA, Clerk of said Board, and CLINTON CONTRACTING COMPANY, a corporation,

Defendants.

Certiorari. 20
On
On Rule to
Show Cause.

Application having been made by the above-named applicant for rule to show cause in above-named matter and upon reading and filing the affidavits presented to me, 30

It is on this 8th day of June, 1917, ORDERED that the Boulevard Commissioners of Hudson County, John Sweeney, Clerk of said Commission, The Board of Chosen Freeholders of the County of Hudson, Walter O'Mara, Clerk of the said Board, and Clinton Contracting Company, a corporation, show cause before such Justice of this 40

Return.

Court as may be sitting at the State House in
 the City of Trenton on Monday, the 18th day of
 June, 1917, at 2 o'clock in the afternoon, or as
 soon thereafter as counsel can be heard, why a
 writ of certiorari should not issue to review two
 resolutions of the Boulevard Commissioners of
 the County of Hudson awarding two contracts
 10 for the repaving of the Hudson Boulevard with
 bituminous concrete from Communipaw Avenue
 to the Newark and New York Branch of the Cen-
 tral Railroad of New Jersey, and from Communi-
 paw Avenue to Newark Avenue, Jersey City, and
 all proceedings touching on or concerning the
 same of the said Boulevard Commissioners of the
 County of Hudson and of the Hudson County
 Board of Chosen Freeholders taken under an act
 of the Legislature of New Jersey entitled "A
 20 further supplement to an act, 'An Act to authorize
 the Board of Chosen Freeholders of any of the
 several counties of the State to lay out, open,
 construct, improve and maintain a public road
 therein approved April 7, 1888,'" approved April
 2, 1908, the said proceedings beginning with the
 resolution of the said Board of Boulevard Com-
 missioners passed March 7, 1917, providing for
 the reconstruction of three sections of the said
 Boulevard as set forth therein; and

30 It is further ORDERED that the parties hereto
 have leave to take depositions for use at the argu-
 ment upon the return of this rule by giving two
 days' notice to the adverse parties.

F. J. SWAYZE,
 J. S. C.

Entered June 8, 1917.

On motion of

COLLINS & CORBIN,

Attorneys.

Writ of Certiorari.

(Suit No. 1, Filed July 23, 1917.)

NEW JERSEY, SS.:

THE STATE OF NEW JERSEY to THE
 BOULEVARD COMMISSIONERS OF HUD-
 SON COUNTY, JOHN SWEENEY, Clerk
 of said Commission, THE BOARD OF
 (L.S.) CHOSEN FREEHOLDERS OF THE 10
 COUNTY OF HUDSON, WALTER
 O'MARA, Clerk of said Board, and
 CLINTON CONTRACTING COMPANY, a
 corporation.

GREETING: We being willing for
 certain reasons to be certified of a certain resolu-
 tion awarding to the Clinton Contracting Com-
 pany a contract for the repaving of the Hudson
 County Boulevard with bituminous concrete be- 20
 tween Communipaw Avenue and the Newark and
 New York Branch of the Central Railroad of New
 Jersey, Jersey City, Hudson County, dated June 6,
 1917, and all matters and proceedings touching
 or concerning the same of the said Boulevard
 Commissioners of the County of Hudson and of
 the Hudson County Board of Chosen Freeholders,
 Do COMMAND YOU that the said resolution, to-
 gether with all matters and proceedings touching
 and concerning the same, to our Supreme Court 30
 of Judicature at Trenton on the 20th day of July,
 nineteen hundred and seventeen, you certify and
 send, together with this writ, that therein may be
 done what of right and according to the laws and
 the Constitution of this State ought to be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice
 of our Supreme Court, at Trenton, this 30th day
 of June, in the year of our Lord, one thousand
 nine hundred and seventeen.

WM. C. GEBHARDT, 40
 Clerk.

COLLINS & CORBIN,
 Attorneys.

Allocatur.

(Suit No. 1.)

NEW JERSEY SUPREME COURT.

EDWARD L. McCARTY,

*Prosecutor,**vs.*

10

THE BOULEVARD COMMISSIONERS OF HUDSON
 COUNTY, JOHN SWEENEY, Clerk of said Commis-
 sion, et al.,

Defendants.

WRIT OF CERTIORARI,
 Returnable July 20, 1917.

20

COLLINS & CORBIN,
 Attys. for Prosecutor, Suit No. 1,
 243 Washington Street,
 Jersey City, N. J.

I allow this writ. Let it be sealed.

FRANCIS J. SWAYZE,
 J. S. C.

Dated, June 30, 1917.

30

40

Writ of Certiorari.

(Suit No. 2, Filed July 23, 1917.)

NEW JERSEY, SS.:

THE STATE OF NEW JERSEY to THE
 BOULEVARD COMMISSIONERS OF HUD-
 SON COUNTY, JOHN SWEENEY, Clerk
 of said Commission, THE BOARD OF
 (L.S.) CHOSEN FREEHOLDERS OF THE 10
 COUNTY OF HUDSON, WALTER
 O'MARA, Clerk of said Board, and
 CLINTON CONTRACTING COMPANY, a
 corporation.

GREETING: We being willing for
 certain reasons to be certified of a certain resolu-
 tion awarding to the Clinton Contracting Com-
 pany a contract for the repaving of the Hudson
 County Boulevard with bituminous concrete be- 20
 tween Communipaw Avenue and Newark Avenue,
 Jersey City, Hudson County, dated June 6,
 1917, and all matters and proceedings touching
 or concerning the same of the said Boulevard
 Commissioners of the County of Hudson and of
 the Hudson County Board of Chosen Freeholders,
 Do COMMAND YOU that the said resolution, to-
 gether with all matters and proceedings touching
 and concerning the same, to our Supreme Court
 of Judicature at Trenton on the 20th day of July,
 nineteen hundred and seventeen, you certify and 30
 send, together with this writ, that therein may be
 done what of right and according to the laws and
 the Constitution of this State ought to be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice
 of our Supreme Court, at Trenton, this 30th day
 of June, in the year of our Lord, one thousand
 nine hundred and seventeen.

WM. C. GEBHARDT,
 Clerk. 40

COLLINS & CORBIN,
 Attorneys.

Allocatur.

(Suit No. 2.)

NEW JERSEY SUPREME COURT.

EDWARD L. McCARTY,

Prosecutor,

10

vs.

THE BOULEVARD COMMISSIONERS OF HUDSON
 COUNTY, JOHN SWEENEY, Clerk of said Commis-
 sion, et al.,

Defendants.

WRIT OF CERTIORARI,
 Returnable July 20, 1917.

20

COLLINS & CORBIN,
 Attys. for Prosecutor, Suit No. 2,
 243 Washington Street,
 Jersey City, N. J.

I allow this writ. Let it be sealed.

FRANCIS J. SWAYZE,
 J. S. C.

Dated, June 30, 1917.

30

40

Stipulation.**NEW JERSEY SUPREME COURT.**

EDWARD L. MCCARTHY, <i>Prosecutor,</i> <i>vs.</i> BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, JOHN SWEENEY, Clerk, et al., <i>Defendants.</i>	}	On Certiorari. Suit No. 1. Reimprovement of Boulevard between Com- munipaw Ave. and Newark & New York Branch of Cen- tral Railroad of New Jersey.	10
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NEW JERSEY SUPREME COURT.

EDWARD L. MCCARTHY, <i>Prosecutor,</i> <i>vs.</i> BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, JOHN SWEENEY, Clerk, et al., <i>Defendants.</i>	}	On Certiorari. Suit No. 2. Reimprovement of Boulevard between Com- munipaw Ave. and Newark Avenue.	20
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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties that one return be made to the two writs of certiorari granted in the above entitled actions, and that the said return is the return hereto attached. **30**

COLLINS & CORBIN,
Attorneys of Prosecutor.

J. EMIL WALSCHEID,
Attorney of Defendant, Clinton
Contracting Company.

JOHN J. MURPHY,
Attorney for Defendants, other
than Clinton Contracting Com-
pany. **40**

Return.

(Filed July 23, 1917.)

TO THE JUSTICES OF THE SUPREME COURT OF THE
STATE OF NEW JERSEY:

In obedience to the command of the within writs,
I, John C. Sweeney, Clerk of the Boulevard Com-
mission of the County of Hudson, to whom the
10 within writs of certiorari are directed, do hereby
certify and send to you, the Honorable Justices
of the Supreme Court, two certain resolutions
awarding two contracts for the repair of the Hud-
son Boulevard with bituminous concrete pavement
laid upon macadam stone foundation; the one
resolution providing for a contract for this work
between Communipaw Avenue and the Newark
and New York Branch of the Central Railroad of
New Jersey, in the City of New Jersey; and the
20 other providing for a contract for this work be-
tween Communipaw Avenue and Newark Avenue,
in the City of New Jersey, both resolutions having
been adopted by the Boulevard Commissioners of
the County of Hudson at a meeting held June 6,
1917, together with all matters and proceedings
touching and concerning the same as fully as they
remain before me, as by the schedule hereto an-
nexed appears.

In witness whereof I have hereunto set my
30 hand this 22nd day of July, in the year One
Thousand Nine Hundred and Seventeen.

JOHN C. SWEENEY,
Clerk of the Boulevard Commis-
sioners of the County of Hudson.

Return.

Minutes of Meeting of February 7th, 1917, found on page 19 of the Minutes for the year 1916-1917, resolution which reads as follows:

Resolved, that Robert Gaw, a competent engineer, be and he hereby is appointed and employed to make estimates of the costs of any work intended to be done by this Commission in the performance of its duty of improving and maintaining the Hudson Boulevard, and report said estimates to this Commission, and to do and perform such other things as are or may be required of an Engineer appointed or employed by this Commission in the performance of its duties of improving and maintaining the Hudson County Boulevard; and be it further

10

Resolved, that the compensation of said Robert Gaw as engineer aforesaid be one per cent. of the estimated cost of all work proposed to be executed by this Commission as aforesaid, for consultations with the Commission and preparing of statements of estimates required to be submitted by him; and an additional four per cent. of the total cost of any and all work done by this Commission for preparing plans, specifications and contracts, and taking over, during the execution of said work, the complete engineering supervision of any such work ordered to be done by this Commission; and be it further

20

Resolved, that all other resolutions heretofore adopted by this Commission appointing or employing any other engineer either for a term or without term, to make estimates on work to be performed or to do any other work for this Commission, be and the same are hereby rescinded.

30

Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

40

Return.

Minutes of a regular meeting held on March 7th, 1917, at page 25 of the Minutes of the Boulevard Commissioners for 1916-1917, which reads as follows:

BY COMMR. ASMUS:

10 Whereas, the present unpassable condition of certain sections of the Hudson County Boulevard has caused much adverse criticism from the taxpayers of the County;

And, Whereas, in the judgment of this Board it is deemed advisable that immediate steps be taken to place as much of the road in good condition as the County finances will permit;

And, Whereas, it is the judgment of this Board that a thorough survey be made, plans drawn and specifications prepared:

20 Therefore, be it Resolved, that the Engineer of this Board be and he is hereby ordered to prepare plans and specifications for the reconstruction of three (3) sections of the Boulevard as noted below; the specifications to be worded so that the fullest competition may be procured and to provide for "open specifications", so that every contractor in the State may be given an opportunity to submit a bid for the work to be performed. The roadway to be laid with what is known as Bituminous Concrete under a five-year guarantee; the sections to be as follows:

30 Hudson County Boulevard, between Hackensack Plank Road and Paterson Plank Road, in the Town of West Hoboken.

Hudson County Boulevard, between Newark Avenue and Communipaw Avenue in Jersey City (except the curb and gutter. This work is now in litigation because of the failure of the contractor performing this work under a previous administration to live up to the terms of his contract).

40 Hudson County Boulevard, between Communipaw Avenue and bridge over the Central Railroad of New Jersey tracks in Jersey City, N. J. (except curb and gutter. This work is now in litigation because of the failure of the contractor performing

Return.

this work under a previous administration to live up to the terms of his contract).

And be it Further Resolved, that these plans and specifications be submitted to this Board for consideration at the next regular meeting and that there then shall be a public meeting called, which shall be advertised in the newspapers of the County, so that citizens and contractors may have an opportunity of discussing the terms of the specifications and entering their protests and objections to any clause in the specifications that, in their judgment, might not be to the best interests of the County of Hudson. 10

And be it Further Resolved, that a copy of the plans and specifications be submitted to each member of the Commission for his information.

Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill. 20

Nays—None.

At the adjourned meeting of the Boulevard Commissioners of the County of Hudson, held on May 28th, 1917, a communication dated March 20, 1917, was received and read from Thomas J. Prior, viz.:

March 20, 1917.

BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, Court House, City:

Gentlemen: 30

As the representative of the City of Bayonne in the Board of Freeholders, I desire to voice my protest against your failure to provide for the repair or reconstruction of the Boulevard in any part of Bayonne, in the work you have planned. There is no section of the Boulevard in worse shape than from the 36th Street loop south to Bergen Point. It may be that there is some good reason why this important section was omitted from the repair work planned for the near future. If that be so, I will be obliged if you will advise me as to the reason for the omission. I have no 40

Return.

desire to be unnecessarily critical of any of the work you are trying to do, but as the only representative of the citizens of Bayonne have in the County government I feel that I would be remiss in my duty to them if I failed to direct your attention to your neglect of the section in question.

Very truly,

10

THOMAS J. PRIOR,
Chairman Road Committee,
Board of Freeholders.

Secretary Asmus said he would reply to this communication, which was ordered to be received and filed.

In re-submission of specifications, etc., by Engineer Robert Gaw, appearing in minutes of regular meeting of the Board held on April 4, 1917, p. 38:

20

"Engineer Robert Gaw submitted specifications for the reconstruction of the Hudson Boulevard, between Newark Avenue and Communipaw Ave., Jersey City, and between Hackensack Turnpike and Paterson Plank Road, West Hoboken, N. J.

"The above specifications were referred to the 'Committee of the Whole' for investigation."

Resolution rejecting plans and specifications prepared by Robert Gaw, and what minutes show regarding the same, appearing at page 39 of minutes of adjourned meeting of Board, held April 11,

30

1917:

The specifications presented April 4th for the reconstruction of the Hudson Boulevard between Newark Avenue and Communipaw Avenue, Jersey City, and between Hackensack Turnpike and Paterson Plank Road, West Hoboken, N. J., were discussed by the Commissioners. Commissioner Cahill claiming that on investigation by Messrs. Dow & Smith, that the specifications were closed and would not admit of the free bidding which was contemplated by the Commissioners, when Mr.

40

Return.

Gaw was appointed as the Engineer. In view of this, Commr. Cahill presented the following resolution:

"Whereas, on February 7th, 1917, this Commission by resolution appointed Robert Gaw an engineer to make estimates of the cost of any work intended to be done by this Commission, for the improvement and maintenance of the Hudson Boulevard, and report said estimates to this Commission and to do and perform such things as are or may be required of any engineer appointed and employed by this Commission in the improvement and maintenance of the Hudson Boulevard; and

"Whereas, the said Robert Gaw presented to this Commission plans and specifications for the improvement and maintenance of the Hudson Boulevard, and from an examination of the same it appears that the specifications are closed and unfair to bidders;

"Therefore be it Resolved, that the said plans and specifications prepared by the said Robert Gaw be and the same are hereby rejected; and

"Be it further Resolved, that the resolution adopted by this Board February 7, 1917, appointing the said Robert Gaw engineer to make estimates and prepare plans and specifications for the improvement and maintenance of the Boulevard be and the same is hereby rescinded."

Adopted by the following vote:

Ayes—Comms. Seglie and President Cahill.

Nay—Commr. Asmus.

Communication received from Engineer Gaw at same meeting, explaining his specifications, found upon page 39 of minutes, which reads as follows:

West Hoboken, N. J., April 11th, 1917.

To the Honorable Board of Boulevard Commissioners of Hudson County,
Court House, Jersey City, N. J.

Gentlemen:

Relative to specifications submitted to you by me for the improvement of the Hudson County Boulevard from Hackensack Plank Road to Pater-

Return.

son Plank Road in West Hoboken, and from Newark Avenue to Communipaw Avenue and thence to Central Railroad Bridge, Jersey City, I wish to say that said specifications were given to your members for their criticism, so that when they are finally adopted they will be as near perfect as possible. As to the criticisms that have arisen over the chemical test to be applied to composition of pavements the test in these specifications is the same as used by me in other specifications and on which there was open competition, and under which streets have been improved in this County, and are to-day in excellent condition. I refer particularly to Park Avenue in the Town of Guttenberg.

I am satisfied and Dr. Kleiberg of the Department of Public Works, Borough of Manhattan, agrees with me that Mexican Asphalt Petroleum could be distilled to conform to the requirements. W. E. C. Pailler, of the same department, shows the test of 13.50% to 18% for Mexican Asphalt.

I have personally seen tests in the Department of Public Works, Borough of Manhattan, showing a yield of 14.70% on tests of Mexican Asphalt.

I realize, however, that you gentlemen wish and the people of the County of Hudson expect the roadway to be quickly and properly improved.

Knowing this, I am anxious to avoid any possibility of delay or dispute and have therefore changed the test, so that the yield required will be between 9 and 18.

The specifications were never formally submitted or approved. No harm has been done, and with the change as stated, I hope to be able to proceed without further delay.

As stated above, the same test was used before and as no complaint was made and open bidding occurred, I thought there would be none in this case, and acted in perfect good faith in prescribing the test complained of. With the latitude increased, there can surely be no complaint now and your Board ought to secure real open competition.

Respectfully,

(Signed) ROBERT GAW.

Return.

Resolution passed by the Board at the same meeting, April 11th, 1917, appointing Thomas J. Wasser and employing him to make estimates of cost of work intended to be performed, found upon page 40 of Minutes:

Resolution by President Cahill:

Resolved, that Thomas J. Wasser, a competent engineer, be and he hereby is appointed to make estimates of the cost of any work intended to be done by this Commission in the performance of its duty of improving and maintaining the Hudson Boulevard, and report said estimates to this Commission, and to do and perform such other things as are or may be required of an engineer appointed or employed by this Commission in the performance of its duties of improving and maintaining the Hudson County Boulevard, and that the said Thomas J. Wasser serve without compensation; and be it further

Resolved, that all other resolutions heretofore adopted by this Commission appointing or employing any other engineer either for a term or without term to make estimates on work to be performed or to do any other work for this Commission, be and the same is hereby rescinded.

Adopted by the following vote:

Ayes—Commrs. Seglie and President Cahill.

Nays—Commr. Asmus.

Resolution in re certificate of election made by Hon. Francis J. Swayze, Justice of Supreme Court, filed in the office of the Clerk of the County of Hudson on February 13, 1917, as appears from the Minutes at page 41:

The following resolution was presented by Commissioner Asmus:

Whereas, it appears by certain certificate of election made by Hon. Francis J. Swayze, Justice of the Supreme Court of the State of New Jersey, filed in the office of the Clerk of the County of

Return.

Hudson February 13th, 1917, that Henry Ackerman was duly elected to the office of Boulevard Commissioner of Hudson County; and

Whereas, by reason of litigation instituted by Paul Seglie, also claiming said office, this Board has heretofore refused to recognize the right of said Henry Ackerman to same; and

10 Whereas it appears that said litigation has been terminated by judgment of the Supreme Court of the State of New Jersey, sustaining the validity of said certificate of election; and

Whereas, the said Henry Ackerman has heretofore taken the oath of office and duly filed the official bond required by law and is in all respects qualified to hold and exercise the office of Boulevard Commissioner of Hudson County; and

20 Whereas, the Supreme Court of the State of New Jersey, on April 7, 1917, issued a rule to Edward Cahill and Adolph F. Asmus, Boulevard Commissioners, and John C. Sweeney, Clerk of the Boulevard Commissioners of Hudson County, to show cause why the said Henry Ackerman should not be admitted and recognized as a Boulevard Commissioner of Hudson County; and

Whereas, in the judgment of the Boulevard Commissioners of Hudson County no good and sufficient cause can be shown therefor,

30 Resolved, that henceforth the said Henry Ackerman be admitted and recognized as a duly elected and lawful Boulevard Commissioner of Hudson County in the place and stead of the said Paul Seglie and that all officers, clerks and employees and other persons within the jurisdiction of the Boulevard Commissioners of Hudson County be hereby directed and governed accordingly.

The resolution was not seconded, but President Cahill moved that it be tabled. Commr. Asmus demanded the yeas and nays, which were as follows:

To table—Messrs. Seglie and President Cahill.

Not to table—Commr. Asmus.

40

Action taken at an adjourned meeting of the

Return.

Boulevard Commissioners, reld April 18th, 1917 (page 44 of minutes) :

In view of the fact that Engineer Wasser was instructed to prepare specifications for the improvement of three sections of roadway, which were to be offered at this meeting, on motion of Commr. Seglie the regular order of business was dispensed, and Board proceeded to the consideration of specifications presented by Engineer Wasser. 10

The Clerk was then directed to read the specifications covering the improvement of the Hudson Boulevard, between Communipaw Avenue and Newark Avenue, Jersey City, N. J., with all of the work incidental thereto.

When the reading was completed Commr. Cahill moved for the adoption of the specifications governing the improvement of the Hudson Boulevard between Communipaw Avenue and Newark Avenue, Jersey City, N. J., with all of the work incidental thereto. 20

They were adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

The Clerk was then directed to read the specifications covering the improvement of the Hudson Boulevard between the Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue, Jersey City, N. J., together with all of the work incidental thereto. 30

The Clerk was then directed to read the specifications covering the improvement of the Hudson Boulevard between the Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue, Jersey City, N. J., together with all of the work incidental thereto. 40

Return.

When the reading was completed, Commr. Cahill moved for the adoption of the specifications covering the improvement of the Hudson Boulevard between Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue, Jersey City, N. J., together with all work incidental thereto.

10 They were adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

BY COMMR. CAHILL:

Resolved, that pursuant to the authority vested in this Commission by law, that the plans and specifications for the reconstruction of the Hudson Boulevard, from Communipaw to Newark Avenue, Jersey City, as prepared by Thomas J. Wasser, County Engineer, be and the same are hereby approved of; and be it further

20

Resolved, that the Clerk of this Commission be and is hereby directed to advertise for bids for said work, in accordance with said plans and specifications, in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Review, the Bayonne Times and the Engineering News Record, said bids to be received at a meeting of this Commission to be held on Monday, May 7, 1917, at 2 o'clock. P. M.

30 Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

BY COMMR. CAHILL:

Resolved, that pursuant to the authority vested in this Commission by law, that the plans and specifications for the reconstruction of the Hudson Boulevard, from the bridge over the Central Railroad of New Jersey to Communipaw Avenue, in

40

Return.

Jersey City, as prepared by Thomas J. Wasser, the County Engineer, be and the same are hereby approved; and be it further

Resolved, that the Clerk of this Commission be and is hereby directed to advertise for bids for said work in accordance with said plans and specifications in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Times, the Bayonne Review and the Engineering News Record, said bids to be received at a meeting of this Commission to be held on Monday, May 7, 1917, at 2 o'clock P. M. 10

Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

BY COMMR. CAHILL:

Resolved that Messrs. Dow & Smith be and they are hereby appointed as Chemists to analyze and examine the materials for the reconstruction of the Hudson County Boulevard, and that they be paid for same according to the work done. 20

Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

Action taken at a special meeting of the Boulevard Commissioners held on April 23rd, 1917, as appears on page 47 of the Minutes: 30

As soon as the Board was called to order Commr. Cahill announced that he had called the meeting at the request of County Counsel James J. Murphy and Engineer Thomas J. Wasser, so that the specifications could be amended.

Commr. Cahill presented the following resolutions:

Resolved, that the resolution passed by this Commission on April 18th, 1917, approving the 40

Return.

plans and specifications for the reconstruction of the Hudson Boulevard, from Communipaw Avenue to Newark Avenue, Jersey City, as prepared by Thomas J. Wasser, the County Engineer, and directing the Clerk of this Commission to advertise for bids for said work to be received at a meeting of this Commission to be held on Monday, May 7th, 1917, at 2 o'clock P. M. be and the same is hereby rescinded.

10

Adopted by the following vote:

Ayes—Comms. Seglie, Asmus and President Cahill.

Nays—None.

BY COMMR. CAHILL:

Resolved, that the resolution passed by this Commission on April 18th, 1917, approving the plans and specifications for the reconstruction of the Hudson Boulevard, from the bridge over the Central Railroad of New Jersey to Communipaw Avenue, in Jersey City, as prepared by Thomas J. Wasser, the County Engineer, and directing the Clerk of this Commission to advertise for bids for said work to be received at a meeting of the Commission to be held on Monday, May 7th, 1917, at 2 o'clock P. M., be and the same is hereby rescinded.

20

Adopted by the following vote:

Ayes—Comms. Seglie, Asmus and President Cahill.

30

Nays—None.

BY COMMR. CAHILL:

Resolved, that pursuant to the authority vested in this Commission by law, the plans and specifications for the reconstruction of the Hudson Boulevard, from Communipaw to Newark Avenue, Jersey City, as prepared by Thomas J. Wasser, the County Engineer, be and the same are hereby approved and adopted; and be it further

40

Resolved, that the Clerk of this Commission be

Return.

and he is hereby directed to advertise for bids for said work in accordance with said plans and specifications in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Review, the Bayonne Times and the Engineering News Record; said bids to be received at a meeting of this Commission to be held Wednesday, May 9th, 1917, at 2 o'clock P. M.

Adopted by the following vote:

10

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

BY COMMR. CAHILL:

Resolved, that pursuant to the authority vested in this Commission by law, the plans and specifications for the reconstruction of the Hudson Boulevard, from the bridge over the Central Railroad of New Jersey to Communipaw Avenue, in Jersey City, as prepared by Thomas J. Wasser, the County Engineer, be and the same are hereby approved and adopted; and be it further

20

Resolved, that the Clerk of this Commission be and he is hereby directed to advertise for bids for said work, in accordance with said plans and specifications, in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Times, the Bayonne Review and the Engineering News Record, said bids to be received at a meeting of this Commission to be held on Wednesday, May 9th, 1917, at 2 o'clock P. M.

30

Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

The above resolutions refer to those sets of specifications which were amended April 23rd, 1917, by the addition of legal parts, &c.

40

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BY COMM. CAHILL:

Be it Resolved, that Allan W. Dow and Francis P. Smith, partners in profession as chemical engineers and consulting and paving engineers, be and they hereby are employed by the Hudson County Boulevard Commission as consulting engineers to supervise the construction of all bituminous, concrete or sheet asphalt pavements to be laid upon the Hudson County Boulevard, between Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue and Communipaw Avenue and Newark Avenue in Jersey City, and Paterson Plank Road and Hackensack Plank Road in West Hoboken and North Bergen, N. J., upon the terms and conditions set forth in their letter to the Hudson County Boulevard Commission, dated April 23rd, 1917, which letter and this resolution, taken together, shall be and become the contract between the Hudson County Boulevard Commission of the County of Hudson and said Messrs. Dow and Smith.

Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

Letter of Messrs. Dow & Smith which forms part of the contract herein referred to:

New York, April 23, 1917.

Hudson County Boulevard Commission,
Jersey City, N. J.

Gentlemen:

For the sum of $2\frac{1}{2}\phi$ per square yard we will act as consulting and inspecting engineers to your Commission on the paving of the Hudson County Boulevard, advising your engineer in all matters pertaining to the technology of the bituminous paving. We will see that your specifications are properly drawn so that you get free and open competition along with the highest grade of work.

When the paving commences we will inspect all the material used in the bituminous wearing sur-

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face of it, as well as the manufacture of the pavement itself as required in the specifications. We will furnish you with a trained inspector or inspectors, whose duties it will be to be at the plant or plants during the manufacture of the paving material. They will render daily reports to us on the form shown on our enclosed pamphlet and will send our laboratory samples of the asphalt cement and surface mixture representing each day's work. We will examine and analyze these samples and report to your engineer and our inspectors our findings on them with comments, making suggestions which may be necessary in order to improve the quality of the mixture or make it conform to the requirements of your specifications. Either Mr. Dow or Mr. Smith will from time to time visit the work and give it such supervision personally in addition to that given by our inspector as we deem necessary, or in cases of emergency, when needed by you or your Engineer. If you desire us to supply you with inspectors to supervise the work on the street we will be glad to do so for the sum of \$6.00 per day each for their time while working for you.

Yours very truly,

DOW & SMITH.
(Signed) A. W. Dow.

The following communication was received from Messrs. Dow & Smith:

New York, April 19th, 1917.

Hudson County Boulevard Commission,
Jersey City, N. J.

Gentlemen:

We have carefully examined the specifications which were presented to your Board and adopted on the 18th instant for the paving of those sections of the Hudson County Boulevard, and hereby certify that these specifications are carefully drawn and in such manner that they will allow free and open competition to all contractors handling what is recognized in the market to-day as good paving material. They will admit Aztec Asphalt; Montezuma Asphalt; Standard Oil Asphalt; Ber-

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mudez Asphalt; Trinidad Asphalt; Texaco Asphalt; California Asphalt, and others of similar character.

Yours truly,

DOW & SMITH.
(Signed) A. W. DOW.

10 *Action taken at a regular meeting of Board, held May 2nd, 1917 and communications received, as appears on page 52 of Minutes:*

Jersey City, N. J., May 2nd, 1917.

To the Hudson County Boulevard Commissioners,
Court House, Jersey City, N. J.

Gentlemen:

20 In accordance with your instructions, I have prepared plans and specifications for the reconstruction of the Hudson County Boulevard between Newark and New York Branch of the Central Railroad of New Jersey and between Communipaw Avenue and Newark Avenue, Jersey City, and between Paterson Plank and Hackensack Plank Road in West Hoboken and North Bergen. Bids for the above work will be received May 9, 1917.

The reconstruction will among other things include the removal of the present road surface gutters and part of the present curb, and the replacing of same with a different type of construction.

30 Is there any part of the present road surface, curb and gutters between the points above mentioned under guarantee? If so, when does guarantee expire? And what effect will change the construction have upon such guarantee? So much of the present gutters has failed, that it is necessary to change the type, however it would be well to look into the matter before any change is made.

Yours truly,

(Signed) T. J. WASSER,
Engineer.

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Jersey City, April 18th, 1917.

To the Boulevard Commissioners of the County
of Hudson.

Gentlemen :

In accordance with the resolution and instructions of the Commissioners, and conformable with Chapter 69, Laws of 1908, I have made a survey and examination of the Hudson Boulevard, between Communipaw Avenue to Newark Avenue, Jersey City, for the purpose of preparing preliminary estimate of the cost of laying a new bituminous concrete wearing surface on the Boulevard. I estimate that the amount of money required to do the work contemplated is one hundred and seventeen thousand (117,000) dollars, as per the following estimate :

10,000 lin. ft. blue stone curb	\$.90	\$ 9,000.00	
2,869 lin. ft. conduits (12 way)	2.75	7,889.75	
2,852 lin. ft. conduits (2 way)	1.10	3,137.20	10
4,633 sq. yds. granite gutters	3.25	15,057.25	20
750 sq. yds. granite intersections	3.25	2,437.50	
55,413 sq. yds. preparation of roadbed	.30	16,623.90	
3 catch basins	100.00	300.00	
1,800 lin. ft. concrete curb	.75	1,350.00	
47,447 sq. yds. bituminous concrete	1.10	52,191.70	
40 basin strainers	10.00	400.00	
1,852 cu. yds. earth and top soil	1.00	1,852.00	
560 lin. ft. headers (new)	.75	420.00	30
300 lin. ft. headers (reset)	.35	105.00	
200 cu. yds. concrete	6.00	11,200.00	
		<hr/>	
		\$111,964.30	
Add 5 per cent. for consulting engineering, supervision, inspection, contingencies		5,598.22	
		<hr/>	
		\$117,562.52	

(Signed) T. J. WASSER,
Engineer.

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Jersey City, April 18th, 1917.

To the Boulevard Commissioners of the County
of Hudson.

Gentlemen:

10 In accordance with the resolution and instructions of the Commissioners, and conformable with Chapter 69, Laws of 1908, I have made a survey and examination of the Hudson Boulevard, between Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue, Jersey City, for the purpose of preparing a preliminary estimate of the cost of laying a new bituminous concrete wearing surface on the roadway of said section of the Boulevard. I estimate that the amount of money required to do the work contemplated, is thirty-seven thousand (\$37,000.00) dollars, as per the following estimate:

	3,700 lin. ft. blue stone curb	\$.90	\$ 3,330.00
	824 lin. ft. conduits (12 way)	2.75	2,266.00
20	992 lin. ft. conduits (2 way)	1.10	1,091.20
	1,500 sq. yds. granite gutters	3.25	4,875.00
	18,493 sq. yds. preparation of roadbed	.25	4,623.25
	2 catch basins	100.00	200.00
	700 lin. ft. concrete curb	.75	525.00
	15,790 sq. yds. bituminous concrete	1.10	17,369.00
	17 basins strainers	10.00	170.00
	668 cu. yds. earth and top soil	1.00	668.00
	160 lin. ft. headers (new)	.75	120.00
	300 lin. ft. headers (reset)	.35	105.00
30	10 cu. yds. concrete	6.00	60.00
			<hr/>
			\$35,402.45
	Add 5 per cent. for consulting engineering, supervision, inspection and contingencies		1,770.12
			<hr/>
			\$37,172.57

(Signed) T. J. WASSER,
Engineer.

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On motion of Commr. Asmus the communications from the County Engineer were ordered received and filed.

Action taken at adjourned meeting of the Commissioners, held May 9th, 1917, as appears on page 57 of Minutes

The meeting was called for the purpose of receiving proposals for the repavement of certain sections of the Boulevard. 10

Just as the Clerk was about to read the advertisement calling for the proposals, Mr. Raymond (representing Barber Asphalt Paving Co.) asked permission to address the Board, which he was permitted to do, before the advertisements were read. He claimed that the specifications, by the manner in which they were drawn, shut his company out of competition, and in like manner, shut out other bidders. His claim was that as the specifications were drawn, they were practically closed and shut his company and others out of competition. 20

Mr. Smith (of Dow & Smith) was present and on his attention being drawn to the situation admitted the claim made by Mr. Raymond as being correct, that the specifications were practically closed.

He was unable to account for the error, which he said was his, but it was enough to prevent the acceptance of proposals (of which none were received) and they were accordingly amended, as follows: 30

BY COMMR. ASMUS:

Resolved, that the specifications for the repavement of the Hudson Boulevard, from Communipaw Avenue to Newark Avenue, Jersey City, N. J., together with all work incidental thereto, which was adopted at a meeting of the Commission held 40

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April 23, 1917, be amended on page 33 of said specifications by striking out Section "B", which reads as follows:

"Ninety-eight and one-half per cent. shall be soluble in carbon disulphide", and in its place the following:

"Ninety-eight and one-half per cent. of the bitumen shall be soluble in carbon tetrachloride."

- 10 Be it further Resolved, that the Clerk of this Commission be directed to advertise for bids for said work to be done in accordance with the said amended specifications in the Hudson Observer, Jersey Journal, Hudson Dispatch, Bayonne Review, Bayonne Times and Engineering News Record, said bids to be received at 2 o'clock P. M. May 25, 1917.

Adopted by the following vote:

- 20 Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

BY COMMR. ASMUS:

- 30 Resolved, that specifications for the repavement of the Hudson Boulevard between the Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue, Jersey City, N. J., together with all work incidental thereto, which was adopted at a meeting of this Commission, held April 23, 1917, be amended on page 32 of said specification by striking out Section "B", which reads as follows:

"Ninety-eight and one-half per cent. shall be soluble in carbon disulphide", and insert in its place the following:

"Ninety-eight and one-half per cent. of the bitumen shall be soluble in carbon tetrachloride."

- 40 Be it further Resolved, that the Clerk of this Commission be directed to advertise for bids for said work to be done in accordance with the said amended specifications, in the Hudson Observer, Jersey Journal, Hudson Dispatch, Bayonne Review, Bayonne Times and Engineering News

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Record, said bids to be received at 2 o'clock P. M. May 25th, 1917.

Adopted by the following vote:

Ayes—Commrs. Seglie, Asmus and President Cahill.

Nays—None.

Commr. Asmus complained that the work was appreciably delayed by the error in the specifications and that the cost of advertising would be increased between five and six hundred dollars. He did not think it was fair to saddle this cost on the Boulevard. 10

Communication received and action taken at adjourned meeting of Commissioners, held May 25th, 1917, as appears on page 61 of Minutes:

The following communication was received from Messrs. Dow & Smith: 20

New York, May 24th, 1917.

Hudson County Boulevard Commission,
Hudson County Court House,
Jersey City, N. J.

Dear Sirs:

Relative to the error in specifications for paving the Hudson County Boulevard, which was discovered at your meeting on the 9th instant and which necessitated the readvertising of the work, we have carefully looked into the matter and find that we furnished your Engineer with a copy of specifications taken from our file which contained the clause in error. 30

How this error ever happened to be in this set of specifications we are unable to explain as it is the only copy among many in our files which contains it. After your instructions we surely would not have intentionally written specifications which excluded any standard brand of asphalt, and, in fact, it has long been our practice to never draw up anything but open specifications. This can easily be verified by any number of cities, for whom we have drawn specifications. That we had 40

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no intention of drawing specifications that would exclude Bermudez and Trinidad asphalts is proven by the letter written you on April 19th, in which we said that the specifications which we had written would admit

- 10 Aztec asphalt,
 Montezuma asphalt
 Bermudez asphalt,
 Trinidad asphalt,
 Texaco asphalt,
 California asphalt,
 and others of similar character.

The writer must admit that he erred in not discovering this typographical error at the time of reviewing the final specifications, and this error necessitated the readvertising of this work. The firm of Dow and Smith feel it only just to suggest that the cost of the second advertising be deducted from the amount paid them for the inspection of this work.

- 20 Further in regard to this meeting, we wish to contradict a statement made by Mr. Raymond, agent of the Barber Asphalt Paving Co. where he says:

“Mr. Dow is guilty of wilful misrepresentations when he says that the 9 and 15 per cent. residual coke clause, as in the original rejected specifications, excluded all but Bermudez and Trinidad asphalts.”

- 30 No such statement as this was ever made by the writer, and if he had been present in the room at the time Mr. Raymond made it, it would surely have been denied. The statement which he did make to the Commissioners was that the clause calling for 9 to 15 per cent. residual coke practically closed the specifications to all asphalts excepting Bermudez and Trinidad Lake, which are exclusively controlled by the Barber Asphalt Paving Company.

- 40 At the time of making this statement to the Commissioner a letter was written to them through the Chairman, dated April 7th, reiterating this statement to the Commissioners and explaining to them that a few California, Texas

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and Mexican asphalts might be found that would comply with the requirements of this clause, but that such a large percentage of them would *dail* that no manufacturer would bid under such specifications. As a proof that this assertion is true, it is only necessary to consult the book written by Mr. Clifford Richardson, the Chemist of the Barber Asphalt Paving Company, who appeared at the meeting of the Hudson County Boulevard Commission on May 9th in company with Mr. Raymond. In this book many analyses of Trinidad, Bermudez, Texas and California Asphalts are given. Of these not the Bermudez or Trinidad shows a residual cake outside of the limits 9 to 15 per cent. and not one analysis of Texas or California asphalts shows a residual coke of less than 15 per cent. The Mexican asphalts, which came on the market after Mr. Richardson wrote his book but which have been in use sufficiently long to have proven their value for paving, all contain, with one or two rare exceptions, more than 15 per cent. of residual coke.

Yours very truly,

DOW & SMITH,
(Signed) A. W. DOW.

On motion of Commissioner Asmus communication was ordered received and filed.

Action taken at meeting of May 25, 1917 as appears on page 64 of Minutes:

On motion of Commissioner Seglie, sealed bids were received for the repairing of several sections of Boulevard, as per advertisement.

On motion of Commissioner Asmus, time limit for receiving bids was closed.

Three bids in all were received, including samples.

Clinton Contracting Co.,

W. T. S. Crichfield,

Union Paving Co.

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Names.	Bids received from May 25th, 1917.		
	Section 4. C. R. R. of N. J. to Com. Ave.	Section 5. Communi- paw Ave. to Newark Ave.	Section 7. Paterson Plank Road to Hackensack Plank Road.
	% bid.	% bid.	% bid.
W. T. S. Crichfield	100.00	98.	93.
Union Paving Co.		1.19	1.18
Clinton Contracting Co.	94.	94.	94.

10 On motion of Commissioner Asmus, bids were received and referred to Committee of the Whole, Engineer Wasser, County Counsel and Chemist.

Communication received and action taken at adjourned meeting of the Board held on May 28, 1917, as appears on page 66 of Minutes:

The following communications received from County Engineer Wasser.

May 28, 1917.

20 To the Boulevard Commissioners of the County of Hudson, Court House, Jersey City, N. J.

Gentlemen:

30 On April 18, 1917, I submitted to you an estimated cost of paving the Hudson Co. Boulevard, between the Newark and New York Branch of Central R. R. of N. J. and Communipaw Ave. Jersey City, which amounted to \$37,172.57. On May 25th bids were received for this work, the lowest bidder being the Clinton Contracting Co. whose bid was 94% of the Engineers estimated cost, thus making the actual amount of money required (for this section in accordance with the quantities estimated by the engineer) \$34,942.22.

Respy. submitted,

T. J. WASSER,
County Engineer.

May 28, 1917.

To the Boulevard Commissioners of the County of Hudson, Court House, Jersey City, N. J.

Gentlemen:

40 On April 18th, 1917, I submitted to you an

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estimated cost for repaving the Hudson County Boulevard between Communipaw Ave. and Newark Ave. Jersey City, which amounted to \$117,562.52. On May 25th bids were received for this work, the lowest bidder being the Clinton contracting Co. whose bid was 94% of the Engineers estimate of cost, thus making the actual amount of money required (for this section in accordance with the quantities estimated by the Engineer) \$110,508.77. 10

Respectfully submitted,

T. J. WASSER,
County Engineer.

On motion of Commissioner Seglie, above communications were ordered received and spread on the minutes.

The following communications received from Dow & Smith. 20

May 28, 1917.

Hudson County Boulevard Commissioners,
Hudson County Court House,
Jersey City, N. J.

Gentlemen:

Enclosed please find reports on the examination of the bidding samples submitted by W. T. S. Crichfield and Clinton Contracting Co. for work to be done on Sections 4, 5 and 7 of the Hudson County Boulevard. The samples submitted by the Union Paving Co. were not examined as their bid was high and only samples of asphalt cement was submitted, whereas the specifications required the submitting of refined asphalt and asphalt cement. The specifications require the filing of one pound samples of the refined asphalt, petroleum flux and asphalt cement that the contractor proposes to use, together with statements as to the source, character and proportion of materials composing them. W. T. S. Crichfield furnished a letter, in which he stated the source of refined asphalt, but did not state definitely the portion of the Republic of Mexico and 30 40

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flux was obtained from. The Clinton Contracting Co. furnished statements giving the source of the refined asphalt, petroleum flux and asphalt cement, also a statement of the brand name under which it was sold and an analysis of each sample presented.

- 10 All of the bidding samples presented by W. T. S. Crichfield and the Clinton Contracting Co. comply with the requirements of your specifications and are suitable for use in paving.

The asphalt cements submitted by W. T. S. Crichfield while complying with the requirements of the specifications are possibly harder than desirable in all or portions of the work to be constructed.

Very truly yours,

DOW & SMITH,
A. W. Dow.

- 20 On motion of Commissioner Cahill above communication was received and spread in full on the minutes.

BY COMMISSIONER CAHILL:

Resolved that the certified checks of all except the lowest bidders, for the repaving of the Hudson Boulevard, which bids were received at a meeting of this Commission on May 25th, be returned.

Adopted by the following vote:

- 30 Ayes: Commissioner Seglie and President Cahill.

Nays: None

Absent: Commissioner Asmus.

On motion of Commissioner Seglie a recess was taken until 2:30 p. m.

On reassembling at 2.30 p. m., President Cahill presented the following resolution:

- 40 Whereas under and by virtue of an Act of the Legislature of the State of N. J. entitled a further

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supplement to an act entitled a further supplement to an act entitled an act to authorize the Board of Chosen Freeholders of any of the several counties of this state, to lay out, open, construct, improve and maintain a public road therein, approved April 7th, 1888, it is provided, Whenever in any County of this State, where a road or roads shall have been constructed, improved and maintained under the provisions of the act to which this is a supplement or the acts supplementary thereto and amendatory thereof, it shall be necessary in the opinion of the body vested by the law with the care of such road or roads, as expressed by resolution duly passed at a regular meeting of said body, to reinforce reconstruct or rebuild any portion of the roadway, paving, the curbs or gutters, the drainage system, the lighting system, including the laying of conduits and placing cables therein or bridges, or all of them upon such road or roads, to meet the requirements incident to the increase of population, traffic and use, it shall be lawful for such body to reinforce reconstruct and rebuild such part of said road or roads hereinafter designated; and

Whereas, in the opinion of the Boulevard Commissioners of the County of Hudson, being the body vested by law with the care of the Hudson Boulevard and its branches, extending from a point in the City of Bayonne where said terminates at the Kill Von Kull in a general northerly direction to the Bergen County line, and from thence in a general easterly direction and southerly direction, into the City of Hoboken, it has become necessary to relay, reconstruct and rebuild portions of the roadway paving on the Boulevard; and

Whereas, this Commission at a regular meeting did appoint Thos. J. Wasser a competent engineer to prepare the estimated cost of said work; and

Whereas, said engineer did report to this Commission an estimate of such cost showing that said cost would be as follows, viz:

Section 4, which lies between the Newark and

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New York Branch of the C. R. R. of N. J. and Communipaw Ave. Jersey City, the sum of \$37,172.57.

Section 5, which lies between Communipaw Ave. and Newark Ave. Jersey City, the sum of \$117,562.52; and

10 Section 6, which lies between the Paterson Plank Road and the Hackensack Plank Road in West Hoboken and North Bergen, N. J. the sum of \$104,172.81; and

Whereas, under said act this Commission is bound to submit a full statement of the work necessary and proposed to be executed with the estimated cost of such work prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law with the control of the finances of the County, being the Board of Chosen Freeholders of the County of Hudson, to the end that such financial arrangements as shall be necessary to provide the funds
20 necessary to pay for the work as proposed; Now Therefore, pursuant to the statute aforesaid, be it resolved,

(1) That the President and Secretary of this Commission forward a copy of this resolution, together with a statement of the work necessary and proposed to be executed at this time, with estimated cost of such work, as prepared by said engineer, and certify the same to the Board of Chosen Freeholders of the County of Hudson, to the end that said Board, may, pursuant to the statute, make such financial arrangements as shall
30 be necessary to pay for the work proposed.

(2) That requisition is hereby made and submitted to the Board of Chosen Freeholders of the Co. of Hudson for the sum of \$154,735.09 for the doing of the work and the furnishing of the material for Sections 4 and 5 aforesaid, as set out in said estimate of the Engineer, which money is not in any manner to be expended for the ordinary maintenance, repairs and lighting of the road.

40 (3) That in the opinion of the Boulevard Commissioners of the County of Hudson, being the

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body vested by law with the care of the Hudson Boulevard and Branches, it has become necessary to reinforce, relay, reconstruct and rebuild said portion of the roadway paving on said Boulevard.

Adopted by the following vote:

Ayes: Commissioner Seglie and President Cahill.

Nays: None.

10

Absent: Commissioner Asmus.

On motion of Commissioner Seglie, copy of above resolution, together with the following certification of resolution and requisition, was forwarded Board of Chosen Freeholders:

We hereby certify that the foregoing resolution was adopted by the votes of a majority of the Boulevard Commissioners of the County of Hudson at a regular meeting of the Commission held at their offices in the Court House, Jersey City, N. J. on May 28, 1917.

20

(Signed) EDWARD CAHILL, President.
Secretary.

To the Honorable Director
and Members of the Board of Chosen Freeholders,
of the County of Hudson.

Gentlemen:

In accordance with the engineers estimate for the reconstruction of those portions of the Boulevard between the Newark and New York Branch of the C. R. R. of N. J. and Communipaw Ave. in Jersey City and Communipaw Ave. and Newark Ave. in Jersey City, N. J. requisition is hereby made in writing on your honorable body for the sum of one hundred and fifty-four thousand seven hundred fifty-five dollars and nine cents (\$154,755.09) with which to do the proposed work.

30

Respectfully,

EDWARD CAHILL, President.
Secretary.

40

Return.

The following appears in the Minutes of May 31, 1917, at page 71:

Communication from W. T. S. Crichfield was received and read.

May 31st, 1917.

Hudson County Boulevard Commissioners,
Court House, Jersey City, N. J.

10 Gentlemen:

On May 25th, at 2 p. m. your Board received bids under public advertisement, based upon specifications which in part provide as follows:

20 "Samples." One pound of refined asphalt, petroleum flux and asphalt cement that the contractor proposes to use in his work, together with a statement as to the source, character and proportion of the minerals composing them must be handed in with his bid, and no contract shall be awarded to any bidder whose samples do not comply in every respect with those specifications. No asphalt other than that specified in his bid shall be used by any contractor except with the written consent of the Engineer and provided that it complies in all respects with the requirements of these specifications.

30 In accordance with the above provision I submitted a bid for Sections 4, 5, and 7, stating in the proposal, as required under your specifications, that "This proposal is based on the use of Mexican asphalt in the construction of bituminous concrete pavement proposed to be laid by me. W. T. S. Crichfield." On Sections 4 and 5 you recorded a bid from the Clinton Contracting Company, and an examination of the proposals submitted by them discloses the fact that said company did not in their proposal designate and name the asphalt proposed to be used by them in construction of bituminous concrete surface.

40 This is in direct violation of the requirements of the specifications, and I therefore desire to protest to your Board against the award of Sections 4 and 5 to the Clinton Contracting Co. on the grounds that their bid is informal and

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not in compliance with the requirements of the specifications.

Very truly yours,

W. T. S. CRICHFIELD.

On motion of Commissioner Seglie same was received and filed.

County Counsel James Murphy advised the Board that in view of the fact that the County Supervisor had not approved of the resolution passed by the Board of Freeholders making an appropriation for the repair of the Boulevard contracts for proposed work could not be awarded. 10

On motion of Commissioner Seglie the matter of awarding contracts for repair of Boulevard was laid over until next regular meeting on Wednesday, June 6, 1917 at 2 P. M. 20

Action taken at regular meeting of the Boulevard Commissioners held on June 6th, 1917, as appears on page 73 of minutes:

The following resolution was presented by President Cahill:

Resolved, that the contract for the repairs of the Hudson Boulevard with bituminous concrete pavement laid on macadam stone foundation, between Communipaw Ave. and the Newark and New York Branch of the Central R. R. of N. J. Jersey City, Hudson County, N. J. be and the same is awarded to the Clinton Contracting Co. for the price and figure submitted by them for said work to their proposal, to wit, the sum of thirty seven thousand one hundred and seventy two dollars and fifty seven cents, they being the lowest responsible bidders; be it 30

Further Resolved, that the County Attorney be directed to prepare the necessary contract for the performance of the work.

Adopted by the following vote: 40

Ayes: Commissioner Seglie and President Cahill.

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Nays: Commissioner Asmus.

The following resolution was presented by Commissioner Cahill:

Resolved, that the contract for the repair of the Hudson Boulevard with bituminous concrete pavement laid on macadam or stone foundation, between Communipaw Ave. and Newark Ave. Jersey City, N. J. be and the same is hereby
 10 awarded to the Clinton Contracting Co. for the price and figure submitted by them for said work in their proposal, to wit, the sum of one hundred and ten thousand and five hundred and eight dollars and seventy cents, they being the lowest responsible bidders; be it further

Resolved, that the County Attorney be directed to prepare the necessary contract for the performance of said work.

Adopted by the following vote:

20 Ayes—Commissioner Seglie and President Cahill.

Nays—Commissioner Asmus.

Commissioner Asmus stated that he wished to make himself clear on the matter of above contracts, in view of certain newspaper articles which stated that he was in league with certain contractors or contractor. His only interest was the taxpayers interest. If the bituminous pavement was extended to the curb and the granite
 30 gutters omitted there would be a saving of \$21,000. Then again, he believed that the section of the road between the Paterson Plank Road and the Hackensack Plank Road should be given some consideration.

In reply to this statement Commissioner Seglie stated that these objections should have been made when specifications were introduced and not at this late day.

NOTICE TO CONTRACTORS
HUDSON BOULEVARD.

Sealed proposals or bids will be received by the Boulevard Commissioners of the County of Hudson, N. J., at their office in the Court House, Jersey City, N. J., on Friday, May 25th, 1917 at 2 p. m., for the following proposed work:

Section 5.

10

For repaving with Bituminous Concrete Pavement, laid on Macadam or Stone foundation, the roadway of Hudson Boulevard, between Communipaw Avenue and Newark Avenue, Jersey City, N. J., together with all work incidental thereto.

All bidders are requested to examine the plans, specifications, form of contract, and requirements of Surety, guarantee, filing of samples of materials, etc., before bidding.

20

Plans, specifications and form of contract may be seen at the office of the Boulevard Commissioners.

Bids must be made on the form of proposal furnished by the Commission.

All bids for the above named work will be publicly received, opened and read at the place and time stated above, and the award of contract will be made as soon thereafter as practicable.

30

The Boulevard Commissioners reserve the right to reject any or all bids, if deemed for the best interest of the County so to do.

By order of the Boulevard
Commissioners of the
County of Hudson, N. J.

J. C. SWEENEY,
Clerk.

40

THE BOULEVARD COMMISSIONERS OF
HUDSON, N. J.

CONTRACT AND SPECIFICATION

FOR REPAVING WITH BITUMINOUS CONCRETE PAVEMENT, LAID ON MACADAM OR STONE FOUNDATION, THE ROADWAY OF HUDSON BOULEVARD BETWEEN COMMUNIPAW AVENUE AND NEWARK AVENUE, JERSEY CITY, N. J. TOGETHER WITH ALL
10 WORK INCIDENTAL THERETO.

NOTICE TO CONTRACTORS

The work to be done consist of repaving with bituminous concrete pavement, laid on macadam or stone foundation the roadway of Hudson Boulevard between Communipaw Avenue and Newark Avenue, Jersey City, N. J., together with all work incidental thereto.

20 Sealed bids or proposals for the above work will be received by the Boulevard Commissioners of the County of Hudson, N. J., at a meeting to be held at their Office in the Court House, Jersey city, N. J., at which time and place the bids or proposals will be publicly opened and read, and an award of contract will be made as soon thereafter as practicable.

30 Each bid or proposal shall be accompanied by a proposition in writing of a surety company authorized to do business in the State of New Jersey, guaranteeing that if the contract be awarded to the bidder, it will, on its being so awarded, to become bound as surety for such bidder and execute with such bidder, on the bid for the work awarded to such bidder, bond to the Board of Chosen Freeholders of the County of Hudson in the form hereto annexed and in full amount of said bid for its faithful perform-

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ance and to indemnify and to save harmless the County in the premises; and that if the bidder shall omit or refuse to execute and perform the same, it will, without further requirements, pay to the Boulevard Commissioners of Hudson County, N. J. the difference, if any, between the sum to which said bidder would be entitled on its completion by him and that which the said Boulevard Commissioners may be obliged to pay to any person to whom the contract may be awarded at any subsequent letting. 10

As an evidence of good faith all bidders are required to submit with their bid or proposal cash or a certified check for \$10,000.00 made payable to the order of the County Collector of Hudson County which cash or check shall be forfeited and held as liquidated damages should the bidder fail or refuse to enter into a contract within 20 days after an award has been made to him or them at the prices named in his or their proposal.

The certified check and proposition of surety company shall be placed together in one sealed envelope and the proposal or bid in a separate sealed envelope and together handed to the Boulevard Commissioners at the time when bids or proposals are advertised to be received as herein specified. 30

Bidders must make their bids or proposals on the blank form prepared by the Boulevard Commissioners. Bidders must satisfy themselves by personal inspection of the site of the proposed work and its present condition and nature and by such other means as they may prefer, as to the sufficiency of the Engineers plans and estimates, and shall not, at any time after the submission of their bid dispute or complain of such plans or specifications and directions explaining or 40

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interpreting them nor assert that there is any misunderstanding in regard to their location, extent, nature or amount of work to be done.

PROPOSAL.

10 IN THE MATTER OF REPAVING WITH BITUMINOUS CONCRETE PAVEMENT, LAID ON MACADAM OR STONE FOUNDATION, THE ROADWAY OF HUDSON BOULEVARD, BETWEEN COMMUNIPAW AVENUE AND NEWARK AVENUE, JERSEY CITY, N. J., TOGETHER WITH ALL WORK INCIDENTAL THERETO.

To the Boulevard Commissioners
of the County of Hudson, N. J.
Gentlemen:

20 The undersigned having examined the notice for proposals, form of contract, plans, specifications and bond on file in the offices of the Clerk of said Commission, as well as the advertisement for bids, will contract to do all the work and furnish all the materials mentioned in said plans and specifications for the entire work of the above improvement per cent. (%) of the unit of price set opposite the various items, as follows:

	10000 Lin. Ft. Blue Stone Curb	200 Cu. Yds Concrete
30	2869 Lin. Ft. Conduits (12 Way)	.90 Per Lin. Ft.
	2852 Lin. Ft. Conduits (2 Way)	2.75 Per Lin. Ft.
	4633 Sq. Yds. Granite Gutters,	1.10 Per Lin. Ft.
	750 Sq. Yds. Granite Intersections	3.25 Sq. Yd.
		3.25 Sq. Yd.
		.30 Sq. Yd.
	55413 Sq. Yds. Preparation of Roadbed	100.00 Each
		.75 Per Lin. Ft.
40	3 Catch Basins	1.10 Sq. Yd.
	1800 Lin. Ft. Concrete Curb	10.00 Each

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47447 Sq. Yds. Bituminous Con-crete	1.00 Cu. Yd. .75 Lin. Ft.
40 Basin Strainers	.35 Lin. Ft.
1825 Cu. Yd. Earth & Top Soil	6.00 Cu. Yd.
560 Lin. Ft. Headers (New)	
300 Lin. Ft. Headers (Reset)	

And agree To execute said contract and bond, with the surety signing the annexed proposition of sureties, in strict accordance with the notice of proposals preceding said contract, and complete all the work herein bid for within the time allowed by said contract, and also agree to furnish a maintenance bond as required by said contract and specifications. 10

Accompanying this bid in a separate sealed envelope is cash certified check in the sum of \$10,000.00 and the proposition of a surety company upon the terms and conditions set out in the notice of proposals aforesaid. 20

Dated , 1917.

Name
 Residence
 Name
 Residence
 Name
 Residence

PROPOSITION OF SURETIES. 30

For and in consideration of the accompanying proposal of and the receipt and consideration of the same by the Boulevard Commission of the County of Hudson, New Jersey, and of the other proposals for said work and materials, we, the undersigned, do here agree that the said shall within ten days from the date of award to him or them, attend at the office of the Clerk of the Boulevard Commission of the County of 40

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Hudson, and execute and deliver a contract according to the form of contract prepared for the work mentioned in the annexed proposal and now on file with the Clerk of said Boulevard Commission and that we will and do hereby become sureties in the sum equivalent to full amount of the bid to the Board of Chosen Freeholders of Hudson County, for the faithful and satisfactory performance of said contract, and do hereby agree that after the award of said contract and within ten days from the date of such award, that we will attend with said

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at the office of the Clerk of the Boulevard Commission of the County of Hudson and execute a bond to the Board of Chosen Freeholders of the County of Hudson, in the State of New Jersey, in the sum aforesaid, according to the form on file with said Clerk.

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We also hereby agree as aforesaid, that if the contract for said work be awarded by said Board to said _____ on

proposal, and if said

shall omit or refuse to execute said contract and bond or we should refuse to execute said bond, in manner aforesaid, we will pay to said Board of Chosen Freeholders of the County of Hudson, New Jersey, any difference between the sum which the said

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would be entitled to on the completion of said work and such amounts as the said Boulevard Commission might subsequently be obliged to pay in the preparation for and the performance of such work.

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INFORMATION FOR BIDDERS.

Bidders in bidding will state what percentage of the unit of price they will do all the work for and furnish all the material required to be done and furnished on this section according to plans and specifications on file at the Office of this Board. The work to be done under each item as specified in the Engineers estimate of cost is as follows:

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Preparing Road-Bed.

The work included under this item shall include the furnishing of all labor, teams and machinery required to remove the surface of the present roadway including gutters and haul it away from the work and dispose of it as the contractor sees fit. Under no consideration can any of the material removed be used as an aggregate for concrete unless the stone removed is totally free from bituminous material, scarifying and rolling of roadway and re-adjusting manhole heads, water or other service heads to suit the crown and elevation of the new bituminous concrete surface and every other kind of work necessary to prepare the roadway for the bituminous surface, except the application of binder, which shall be included in the item of bituminous concrete.

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Bituminous Concrete.

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The work included under this item shall include the furnishing of all labor and material including manufacturing plant for making, hauling and laying the bituminous concrete, rolling, and surface finish and shall also include the binder consisting of $\frac{3}{4}$ inch stone and stone screenings required to nearly fill the voids of the $1\frac{1}{2}$ inch stone surface of the foundation, all sprinkling of foundation after binder has been

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applied, painting of adjacent stone and surface with asphalt cement, and every other operation required for laying the bituminous concrete.

Conduits.

10 The work included under this item shall include the furnishing of all labor and material required for excavating and back-filling of trench, laying the ducts including the concrete forms necessary to produce the lines of conduit as shown on plan. Except rock excavation which is hereafter specified.

Granite Gutters.

20 The work included under this item shall include the furnishing of all labor and material required for preparing the present foundation, furnishing and laying sand cushion, granite surface with bituminous joints, all complete.

Stone Curb.

The work included under this item shall include the furnishing of all labor and material required for excavating trench, furnishing and laying concrete foundation, furnishing and setting curb, back-filling and any other work required to complete the curb.

Basin Strainers.

30 This item shall include the furnishing and setting in place to grade required the cast iron basin strainers including concrete and forms if necessary to make a neat finish.

Basins.

40 This item includes the furnishing of all labor and material required for excavating back-filling, brick masonry, cast iron head trap and vitrified pipe connection to sewer, and making connections to sewer and any or all work incidental to building the basins.

*Return.**Concrete Curb.*

This item includes the furnishing of all labor and material required for removal of present sections of curb where directed by the Engineer and replacing same with new concrete curb including nosing and all work incidental thereto to produce a true line between the present curb and new sections of curb built.

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Earth and Top Soil.

This item includes the furnishing of all labor and material required for excavating between backs of curbs of islands to the required depth and filling the space with earth and top soil and rolled to a neat crown as specified.

Elevation of Roadway.

The intention of the plans and specifications are to produce a finished surface of the Boulevard where improved, the elevation of which will be as follows, on a longitudinal line three feet on either side of the center line and parallel there to the new elevation of the finished surface will be about 7 to 10 inches below the present surface at the same point, the elevation of the surface along the line of curbs will remain the same as at present which is six (6) inches below the top of curb. The roadway to be crowned between the lines mentioned as shown by typical section on plans.

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Permits.

The contractor will be required at his own expense to secure all permits that are required by the Municipalities through which the work extends.

Laws.

Attention of contractors is especially called to Chapter 253 of the State Laws—1913—Entitled—

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"An act Constituting eight hours a days work for all laborers or workmen and mechanics employed by contractors or sub-contractors doing work or furnishing material for the State of New Jersey, or any County, City Township or other municipality thereof, and providing penalties for violation of the provision of this Act."

10 *Reset Headers.*

The work included under this item shall include the furnishing of all labor and material required to remove present header, redress, rejoin and reset on a concrete mortar bed, if it is found rest on a concrete foundation. If not on a concrete foundation, the header is to be reset on a concrete foundation the same as for new headers.

Granite Intersection.

- 20 The work included under this item shall include the furnishing of all labor and material required for furnishing and laying sand cushion and granite surface with bituminous joints, but not include concrete foundation.

Concrete.

- 30 Concrete whenever specified other than for concrete curb, the item shall include the furnishing of all labor and material required to mix in place the concrete as required by the specifications or as directed by the Engineer.

Realignment of Curb.

Any or all work required to place the existing curb to a true line shall be done and shall be part of the work required to be done under preparation of road-bed, but does not include curb that has been replaced.

Testing.

- 40 The Boulevard Commissioners may appoint a person or persons qualified to make any or all

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tests necessary to determine the quality and character of material being used in the manufacture of the bituminous concrete. He or they or their representatives shall have access to any part of the plant at all times for the purpose of selecting samples for making tests. He or they shall send their report to the commissioners, a duplicate copy of each report to be sent to the Engineer. **10**

The Engineer shall select samples of the finished pavement, the contractor shall cut out a sample 12 inches square as directed by the Engineer. Sample shall be taken representing each days work, a variation in thickness of more than 10% from the thickness specified shall not be permitted. As soon as the sample is taken the contractor will replace the sample with new material and roll to a uniform surface. **20**

Payments.

The moneys wherewith to pay the contract price hereof will be raised in the manner provided by Law. Payments will be made once a month, but not oftener than once a month, in sums of not less than \$5000. based on the Engineer's estimate of work done, 80% of which will be paid to the contractor and 20% retained until the completion of the work, then 15% will be paid upon the acceptance of the entire work by the Board and Engineer and 5% retained for a period of one year. **30**

Templates.

In order to insure the pavement being finished to the line, grade, and crown specified the contractor will be required to furnish and use templates as directed by the Engineer during the construction of both base and surface. **40**

*Return.**Time of Completion.*

The contractor will be required to complete all the work called for under this agreement in ninety working days after being notified by the Engineer to commence work, provided, however, that the Board of Boulevard Commissioners shall have the right at its discretion, to extend the time for said completion of the work.

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Board and Engineer.

Whenever the word "Board" appears in these specifications, it means "Board of Boulevard Commissioners". Whenever the word "County" appears, it means County of Hudson. Whenever the word "engineer" appears, it means Thomas J. Wasser, County Engineer, Hudson County, N. J.

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Should any difference between the contracting parties as to the meaning or intent of these specifications, the Engineer's decision on these matters shall be final.

The Engineer together with the Boulevard Commissioners will judge as to the quality of the work done and material furnished.

For the convenience of bidders the following is given as the Engineer's estimate of quantities to be used, with the unit of price fixed for each of the several items on this section.

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10000 Lin. Ft. Blue Stone Curb	200 Cu. Yds. Con- crete
2869 Lin. Ft. Conduits (12 Way)	
2852 Lin. Ft. Conduits (2 Way)	.90c. Per Lin. Ft.
4633 Sq. Yds. Granite Gutters,	2.75 Per Lin. Ft.
750 Sq. Yds. Granite Intersec- tions.	1.10 Per. Lin. Ft. 3.25 Sq. Yd.
55413 Sq. Yds. Preparation of Roadbed	3.25 Sq. Yd. .30 Sq. Yd.
3 Catch Basins	100.00 Each
40 1800 Lin. Ft. Concrete Curb	.75 Per Lin. Ft.

47447 Sq. Yds. Bituminous Concrete	1.10 Sq. Yd. 10.00 Each
40 Basin Strainers	1.00 Cu. Yd.
1852 Cu. Yds. Earth & Top Soil	.75 Lin. Ft.
560 Lin. Ft. Headers (New)	.35 Lin. Ft.
300 Lin. Ft. Headers (Reset)	6.00 Cu. Yd.

Additional work beyond that described and bid for under these items named and estimated on may be required and ordered by the Boulevard Commissioners for the purpose of more fully completing the contract. Such increase however in total shall not exceed ten (10%) per cent. of the entire work.

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SPECIFICATIONS
FOR
LABOR AND MATERIALS

Cement.

All cement must be best quality American Portland Cement, which will meet the requirements of the Standard Specifications adopted by the American Society for testing material, and of a brand approved by the Engineer. All cement furnished by the contractor will be subject to inspection and test before it is used and if found of improper quality must be immediately removed from the work.

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Testing Cement.

After the cement is brought upon the work, the contractor will be required to furnish the Engineer full facilities for examining and testing the same. When cement is accepted, if not immediately used it must be protected from the weather and kept dry, and in no case will it be allowed to be placed upon the ground without blocking under the barrels or boards under the bags. Both cement and sand are to be used in all cases,

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measured in the proportions required, and not more than one barrel of cement will be mixed at one time in one box.

Concrete.

Unless otherwise ordered all concrete shall be composed of one part by measure of dry compressed American Portland Cement to three parts
 10 of clean sharp sand and five parts of broken stone. The cement and sand shall be well and thoroughly mixed together in a clean box before the addition of any water, and the mortar and stone shall be thoroughly mixed by hand or suitable machinery in such order or manner as the County Engineer shall approve, subject to modification on his order, when in his opinion this is necessary to obtain the best results. Before mixing the mortar and stone
 20 the latter must be thoroughly drenched with water, so that every surface is wet, and all surplus water must then be drained away.

The mortar used in mixing the concrete must be of such consistency that when thoroughly mixed with the stone and rammed in layers as specified a thin film of water shall be forced through the surface of the concrete without causing quaking of the mass. The concrete must be put in a place immediately after mixing in horizontal layers of such thickness not exceeding six
 30 inches as may be directed by the Engineer, and thoroughly rammed. The contractor must furnish suitable platforms which shall meet with the approval of the Engineer on which to mix the concrete.

Curb re Alignment.

The contractor will carefully reset or line up all existing old curb and wedge same in position
 40 with suitable stones which will keep it in

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place. Curb that has been displaced by frost or otherwise must be reset. All voids back of the same formed by so doing will be filled up with clean "Hook" cinder. After the curb has been properly lined up all joints will be hammer dressed so as to make them even on top and side face and give the work a finished and workmanlike appearance.

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Headers and New Curb.

The contractor will place headers and new curb at all places shown on the plans or designed by the Engineer. New curb, for replacing broken curb, is to be axed to match curb reset as above specified.

The plans show headers at all intersecting streets and trolley track crossings. Most of these headers are in place and if upon examination by the Engineer, the present headers are found to be satisfactory, they will be allowed to remain—otherwise, they will have to be removed, redressed and reset.

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New headers to be of hard durable blue stone 5 inches wide, 12 inches deep, top edge to be pitched true and ends jointed so that the joints will not exceed $\frac{3}{8}$ of an inch when set in place.

Concrete Curbs.

When the curbs ordered by the Engineer are concrete, they shall be constructed to match the present curbs on the Boulevard as to depth, width and shape. They shall be composed of one part of Portland Cement, three parts sand and five parts three-quarter inch broken stone by volume.

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The curbs shall rest upon a foundation bed of broken stone not less than six inches thick. The backfill shall be hook cinders. The foundation must be firmly compacted by tamping before any concrete is placed thereon. The back-

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fill shall not be made until the curbs are at least three days old and must be added in layers and each layer firmly rammed into place.

10 The concrete shall be placed in the forms in layers of four to five inches in thickness. Each layer shall be spaded, rammed or tamped until the openings in the forms are completely filled, the concrete is thoroughly consolidated and surplus mortar covers the surface thereof. While the top of the curbing is yet soft, it shall be finished smoothly and evenly with a wooden float. The concrete shall be kept moist until the surface finish has been applied thereto.

20 Forms shall be removed as soon as the concrete has taken an initial set. Immediately after removing the forms, the entire exposed surface of the curbing shall be finished to a smooth, even, dense surface with a wooden float. If any holes or defects develop, they shall be filled at once with a mortar composed of one part cement and two parts sand and the surface then finished as above specified. In no case will an application of a thin layer of plaster be permitted after the forms have been removed. The face of the curbing from the top to eight inches below shall be flushed with clean water applied from a soft hair brush and then smoothed to a finished surface with a wooden float. All curbs must be covered or otherwise protected until at least ten days old. Injured, marred or defaced curbing must be repaired or replaced as ordered by the Engineer. They must be constructed at least seven days before the adjacent roadway foundation.

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40 The forms used shall be made from steel not less than one-eighth of an inch in thickness and be so constructed that they can be easily and firmly held in the required position or elevation by steel

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pins or lock nuts. These pins must not be so placed as to interfere with the free movement of the templates. All forms must be straight, free from warp and wind, and of sufficient strength to resist springing out of shape or alignment. They must be clean when used and oiled if ordered.

The upper edge of the face of the curbing shall be re-inforced and protected by a galvanized steel bar, having a rounded head with a radius of approximately one and five-eighths ($1\frac{5}{8}$ ") inches and a dove-tailed projection which will extend into the concrete for approximately two (2) inches. The bar shall be supported at intervals of two and one-half ($2\frac{1}{2}$) feet with suitable frogs, which shall extend through the entire width of the curbing.

Blue Stone Curb.

The curb stone shall be of blue stone, equal in quality to the best North River Blue-Stone, not less than 16 inches in depth and 5 inches thick and no stone to be less than three and one half feet in length, to be out of wind and patent hammer dressed, smooth on top and 9 inches down on the face, without any holes or imperfection and shall have a uniform thickness of 5 inches; the top to be cut to a true line with a bevel of three-quarters of an inch. The curb ends are to be neatly squared on top to the full width of 5 inches and on the face from the top to 12 inches down, the joints are to be close throughout the full thickness of the stone from the top to 12 inches down at right angles to the line.

The curb is to be set with a batter of 2 inches in its height, to be set on a concrete foundation 6 inches thick and sixteen inches in width, the

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portion in front of the curb shall be connected with the foundation of the pavement. The concrete shall be carried up on the back of the curb 6 inches in thickness to within 4 inches of the top of the curb. No curb spalled off will be allowed. The inner line of the curb must be pitched off to a true line.

- 10 The 5" x 16" curb after dressing shall not measure less than 15 inches in depth nor less than five inches in thickness.

All curbstone for new corners must be cut to a radius of six feet. Unless otherwise directed, and have true and radial joints; they shall be of the same quality as the straight curb, and set in like manner. No special allowance shall be made for curved curb or for special radius.

- 20 Bluestone curb headers measuring, when dressed not less than 5" x 12" x 3½ feet shall be set flush with the pavement at all intersecting streets where they do not now exist, and where ordered by the County Engineer, for the protection of the pavement. This header curb is to be dressed with the top at right angles to the face and is to be set in concrete, using one cubic foot of concrete for each lineal foot of curb.

Earth and Top Soil.

- 30 The space between the backs of the curbs of the island located in the centre of the Boulevard to be filled in with earth and top soil to a depth of 18 inches below the top of the curb and have a 6 inch crown at the centre above the elevation of the curbs. The earth consisting of clean, loamy material is to be placed first and brought to an elevation of 8 inches below the top of the curbs. The top soil consisting of a mould acceptable to the Engineer to be deposited on
- 40 top of the earth previously placed and to extend

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to the top of curbs at side and be neatly crowned with a 6 inch crown at centre of the island after same has been rolled with a light roller. The measurement of earth and top soil will be after it has been put in place.

Preparing Road-Bed.

The present surface of the roadway including gutters to be removed, the material forming the present gutter to be so removed away from the curb as not to leave any projections on the face of the curb which extends into the roadway greater than one inch for the full depth of the material removed. The roadway material shall be excavated to a depth sufficient, that after the roadway has been re-shaped and rolled to the satisfaction of the Engineer the surface will present a uniform crown 2 inches below and parallel to the finished surface of the roadway, the highest point of the crown except at intersections will be along the face of the curb of the island to be located in the centre of the Boulevard as shown on plan.

At intersections or where there are no islands the crown at the centre of the Boulevard will be slightly higher to insure surface water draining toward each gutter after the surface pavement has been laid. All manhole heads, water, gas, or any other heads encountered in the line of the work will have to be re-adjusted to the new crown of the roadway. The gutters along each sidewalk will be 6 inches below the top of the present curb. All intersection to have a uniform crown to match the established crown of the intersecting streets adjacent to line of this improvement. After the excess material has been removed the road-bed shall then be scarified to a depth of four (4) inches and reshaped and rolled with a self-propelled three (3) wheel

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roller weighing not less than ten (10) tons until the stone does not sink or creep ahead of the roller. Three quarter ($\frac{3}{4}$) stone and stone screenings shall be spread over the surface by shovelling from carts or piles along the roadway. The object being to very nearly fill the voids of the crushed stone already in place on the surface of the foundation.

After this the surface shall be sprinkled and the rolling continued until the stone is firmly bonded, and does not rock under the roller while being rolled. The preparation of the roadway to include the foundation for the gutter, where the present gutter foundation is other than concrete. All trenches dug in roadway for conduits or for any other purpose to be back-filled, tamped or puddled in such a manner as to prevent any settlement whatever of the finished roadway.

After the foundation has been rolled to the proper crown and is ready for the surface pavement, no carting whatever shall be permitted to pass over it. Delivery of bituminous concrete must be from the completed end of the work. The work as it progresses must be fully protected from traffic by substantial barricades and watchmen. Signs indicating detours must be placed at convenient places for the benefit of the travelling public. Flooding water tank of roller and cleaning fires of roller will not be permitted on finished foundation, and all foreign material must be removed from surface of foundation before bituminous concrete surface can be laid. All excavate material not required to complete the work to be the property of the contractor and to be removed away from the work.

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*Return.**Catch Basins.*

Cast iron inlet basins having 18 by 24 in. grate box with inlet for 12-inch pipe, 24-in. curb box 6 inches wide and 8 inches deep to conform in shape with that shown on plan. The inlet basins to be made of tough grey iron, the grating to be capable of sustaining a five (5) ton wheel load. The front of the curb box above the opening to have the name "Boulevard" cast in same in two-inch raised letters; the metal around the letters being depressed. The basins to be finished in a smooth, workmanlike manner, free from scabs, sand or blowholes. 10

The foundation of the basin connecting with the discharge pipe to be of brick, as shown on plan, equipped with trap and built to the satisfaction of the County Engineer. After they have been inspected and accepted they are to be coated with asphalt paint and located as directed by the Engineer. 20

Basin Strainers.

Cast iron basin strainers to conform in size and shape with that shown on plan. The strainers to be made of tough grey iron, capable of sustaining a 5-ton wheel load. The strainers to be finished in a smooth, workmanlike manner, free from scabs, sand or blowholes. After they have been inspected and accepted they are to be coated with asphalt paint and placed in position at the stone head catch basins as directed by the Engineer. 30

Concrete.

Concrete other than used for concrete curb shall be composed by volume one part cement, three parts sand and five parts broken stone and shall be mixed as specified in these specifications. 40

*Return.**Fibre Conduits.*

Fibre conduits manufactured by the Orangeburg Fibre Conduit Company, Johns-Manville Company, or equal, and suitable for carrying high voltage Park Cable and of a size, number and spacing as shown on plan are to be placed along centre of Boulevard between islands and at the terminals of the improvement to extend beyond back of curb of either sidewalk as determined by the Engineer and where bridge abutments are encountered the conduits must extend through the abutment to the face of same. The conduits are to be encased in concrete, dimensions of which are shown on plan, the concrete to be composed by volume, one part cement, three parts clean sharp sand and five parts broken stone.

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The ends of the concrete casing must extend twelve inches beyond the back of curb and the ducts must extend six inches beyond the concrete casing. The ends of the ducts to be stopped with a suitable wooden plug, which completely fills the end of the duct.

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Each island located in centre of Boulevard to be cross-connected with both sidewalks at two points on each side with fibre ducts of a size, number and spacing as shown on plan and extending beyond back of curb as specified for centre line ducts.

Note.

In excavating trench for conduits, should rock be encountered within the line of trench which would interfere with the laying of the conduits at the depth shown on plans, the rock shall be stripped of all earth and loose stone and carefully measured by the Engineer and the contractor will be required to remove the rock when

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notified in writing by the Engineer, stating the exact distance from which the rock is to be removed, and the contractor will be paid for the removal of same at the rate of one (\$1) dollar per lineal foot of trench for the distance from which the rock has been removed, stones and boulders will not be considered as rock under these specifications.

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Granite Block Intersections.

Montgomery Street and Newark Avenue intersections to be paved with granite block with bituminous mortar joints. The granite blocks and bituminous mortar to be of a kind and quality as specified for gutters and to be paved on a sand cushion of an average thickness of one inch and six inch concrete foundation, composed by volume, one part cement, three parts clean sand and five parts stone.

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NEW GRANITE BLOCK GUTTERS.

The paving block shall be of medium grained granite showing an even distribution of constituent materials, of uniform quality structure and texture, without seams, scales or disintegrations, free from an excess of mica or feldspar, and equal in every respect to the samples submitted by the bidder or the quarry company for this specific contract.

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Tests.

The granite shall have a toughness or not less than nine (9) and a "French Co-efficient of Wear" or not less than eleven (11).

The test shall be made by the methods described in Bulletin No. 44, U. S. Department of Agriculture, Office of Public Roads.

The average of three (3) tests shall be used for determining toughness and the average of

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six (6) tests for determining the "French Co-efficient of Wear."

Certificates and Samples.

Contractors shall file with the Engineer at or before the time of bidding, a certificate showing the name and location of the quarry from which it is proposed to obtain the blocks, also a certified copy of a report from the United States Department of Agriculture, showing the toughness and "French Co-efficient of Wear," of the granite which it is proposed to use.

On or before the date of the letting, six (6) specification blocks, made from the granite it is proposed to use, shall be filed with the Engineer.

The blocks shall be of the following dimensions:

Not less than eight (8) nor more than twelve (12) inches long on top; not less than three and one-half ($3\frac{1}{2}$) nor more than four and one-half ($4\frac{1}{2}$) inches wide on top; not less than four and three-quarters ($4\frac{3}{4}$) nor more than five and one-quarter ($5\frac{1}{4}$) inches deep.

The blocks shall be so dressed that the faces will be approximately rectangular in shape, and the ends and sides sufficiently smooth to permit the blocks to be laid with joints not exceeding one-half ($\frac{1}{2}$) inch in width at the top, and for one (1) inch downward therefrom, and not exceeding one (1) inch in width at any other part of the joint. The top surface of the block shall be so cut that there will be no depressions measuring more than three-eighths ($\frac{3}{8}$) of an inch from a straight edge laid in any direction on the top and parallel to the general surface thereof.

Care shall be exercised in handling the blocks

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so that the edges and corners shall not be chipped or broken, as blocks otherwise acceptable may be rejected on account of spalling.

The blocks shall be sorted and laid in courses of uniform width, except in special cases, as may be ordered.

Laying the Blocks.

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The pavement is to be laid 2½ feet wide along the curb on the present Telford macadam or concrete foundation.

Cushion Course.

On the base shall be spread a layer averaging one inch in depth of clean, coarse, dry sand, free from all gravel exceeding one-quarter ($\frac{1}{4}$) inch in size. Upon this sand bed the blocks shall be laid in straight lines in courses at right angles to the line of the curb, except in special cases when they shall be laid at such angle as may be directed by the Engineer. The blocks shall be laid as closely as possible, each block touching the adjoining one on sides and ends, and in courses of uniform width. All joints shall be broken with a lap of at least three (3) inches. The blocks shall not be laid more than twenty five (25) feet in advance of the ramming.

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Ramming.

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After the blocks are laid, they shall be rammed to a solid bearing, the joints shall be adjusted, all unsatisfactory blocks shall be taken out with tongs and all low blocks shall be raised by adding to the bed. The whole pavement shall then be rammed to an even and true surface. Pinch bars shall not be used except by special permission of the Engineer and no sand shall be placed in the joints except when mixed with the bituminous filler specified hereafter.

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*Return.**Joint Filler.*

The joint filler used shall be bituminous paving mortar which shall be mixed in the following manner:

10 The bituminous paving mortar shall be a mixture of paving cement, described hereafter, and hot dry sand graded as hereinafter specified in the proportions of one part sand, to two parts paving cement by volume, or as much sand up to that proportion as the paving cement will carry. It shall be thoroughly and constantly mixed by stirring or otherwise until placed in the pavement.

Such measures, scales or weighing devices must be supplied by the contractor that any desired consistency of bituminous paving mortar can be easily secured and maintained.

20 The bituminous paving mortar shall be flushed (not poured) into the joints of the pavement until they are completely filled immediately after the mixing and while it is still at a temperature of not less than two hundred and fifty degrees Fahrenheit.

30 The contractor shall use such appliances as will meet the approval of the Engineer for grading, heating, measuring, and mixing the bituminous paving mortar, and flushing the same into the joints.

Composition of Paving Cement.

The paving cement shall be coal tar paving cement which shall be a straight run residue obtained from the distillation of coal tar and shall comply with the following requirements:

(A) Melting point shall be not lower than one hundred and ten (110) degrees Fahrenheit, nor higher than one hundred and twenty five (125) 40 degrees Fahrenheit.

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(B) Free carbon shall not be less than twenty per cent. nor more than thirty-five per cent.

(C) Specific gravity at seventy-seven (77) degrees Fahrenheit shall not be less than 1.22 nor more than 1.30.

(D) Specific gravity of the distillate to 670° F. shall not be less than 1.06 at 140° F. compared with water at the same temperature. 10

The kettles in which the coal tar paving cement is heated on the street shall be equipped with approved thermometers and the paving cement shall be heated to a temperature of not less than two hundred and fifty (250°) degrees Fahrenheit nor more than three-hundred (300°) degrees Fahrenheit and shall be mixed with the sand when between those temperatures.

Grading of Sand. 20

The sand used in the bituminous paving mortar shall meet the following requirements as to grading:

100% shall pass a ton mesh screen;

Not over 25% shall retain on a 40-mesh screen;

Not over 25% shall be retained on a 40-mesh

The sand shall be heated to a temperature of 350° F. before mixing. 30

No traffic of any description shall be permitted on the pavement until the joints have been completely filled with the bituminous paving mortar as specified, and it has had time to harden.

GENERAL DESCRIPTION.

Upon the foundation prepared and laid as heretofore specified shall be laid the pavement proper. This shall consist of 2 inch bituminous concrete pavement made and laid as specified below. 40

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MATERIALS.

The materials used in the bituminous concrete pavement must comply with the requirements of these specifications and be suitable for use upon this section of the Boulevard to be paved. They shall be mixed in definite proportions by weight, depending upon their character and the traffic upon the Boulevard and such materials and proportions must be satisfactory to the Engineer.

10

Methods of Testing.

All tests herein specified must be conducted according to official methods on file in the office of the Engineer. All penetrations at 77 degrees Fahrenheit are expressed in hundredths of a centimeter and are to be taken (except where otherwise specified) with a number two needle acting for five seconds without appreciable friction under a total weight of one hundred (100) grams.

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Refined Asphalt.

The refined asphalt admitted under these specifications shall be prepared from a natural mineral bitumen, either solid or liquid, or from combinations thereof, by such methods of refining as will produce a product complying with the requirements hereinafter given.

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The preparation and refining of all asphalts admitted under these specifications shall be subject to such inspection at the paving plants and refineries as the Engineer may direct. Every refined asphalt admitted under these specifications, if required by the Engineer, shall be equal in quality to the recognized standard for its particular kind or type of asphalt. If desired the contractor may use an asphalt cement prepared at the refinery. To be acceptable, this

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asphalt cement must comply with the foregoing general requirements for refined asphalt, as well as requirements a, b, c, d and e for asphalt cement.

Asphalt obtained by the refining of natural liquid bitumens shall not be reduced in the refining process to a penetration at 77 degrees F. of less than 30.

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All refined asphalts admitted under these specifications must comply with the following requirements:

a. All shipments of refined asphalt of any one kind shall have the batch number plainly marked on each package or container and shall be uniform in consistency and composition and shall not vary from maximum to minimum more than fifteen (15) points in penetration at 77° F.

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b. Ninety-eight and one-half (98½) per cent. of the bitumen shall be soluble in carbon tetrachloride.

c. When made into an asphalt cement by the use of such materials and methods as are described in these specifications, they must produce an asphalt cement complying with all the requirements elsewhere set forth herein for asphalt cement.

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Fluxes.

These shall be the residues obtained by the distillation of paraffine, asphaltic or semi-asphaltic petroleums.

They shall be of such character that they will combine with the asphalt to be used to form an acceptable and approved asphalt cement complying with the requirements of these specifications. All residuums must pass the following general tests:

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a. They must have a penetration greater than three hundred and fifty (350) with a number 2 needle at 77 degrees F. under fifty (50) grams weight for one second.

b. They shall have a specific gravity at 77 degrees F. between 0.92 and 1.04.

10 c. When twenty grams of the flux are heated for five (5) hours at 325 degrees F. in a tin box two and one-quarter ($2\frac{1}{4}$) inches in diameter and three-quarters ($\frac{3}{4}$) of an inch deep after the manner officially prescribed, the loss shall not exceed five (5) per cent. by weight and the residue left after such heating shall flow at 77° F.

d. They shall not flash below 350 degrees F. when tested in a closed oil tester.

20 e. They shall be soluble in carbon tetrachloride to the extent of not less than ninety-nine (99) per cent.

Wearing Surface Mineral Aggregate.

The mineral aggregate for the wearing surface shall be composed of a mixture of fine crushed stone and stone screenings with sand, the mixture, however, to comply with the mesh composition as given below.

30 The fine stone or stone screenings must be freshly crushed trap rock or hard granite free from all soft or weathered particles. It shall all pass a $\frac{1}{2}$ inch screen. No stone or screenings will be allowed that contain clay or dust adhering to the grains.

40 The sand shall be hard, clean grained and moderately sharp and shall be of such a mesh composition that when combined with the stone and screenings it will produce a mineral aggregate complying with the mesh composition given below.

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The mineral aggregate to be used in the wearing surface shall be within the limits of the following mesh composition:

Passing 200 mesh	0 to 10%
“ 40 “ and retained on 200 mesh screen	18 “ 30%
“ 10 “ “ “ “ 40 “ “	25 “ 55%
“ 4 “ “ “ “ 10 “ “	8 “ 22%
“ 2 “ “ “ “ 4 “ “	0 “ 10%

Filler.

This shall be thoroughly dry limestone dust or Portland cement the whole of which shall pass a 30 mesh per linear inch screen and at least 66 per cent. of which shall pass a 200 mesh per linear inch screen. The surface mixture shall contain from 6 to 20 per cent. of this filler, depending upon the kind of sand and asphalt used and the traffic conditions upon the section of the Boulevard to be paved.

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Samples.

One (1) pound samples of the refined asphalt, petroleum flux and asphalt cement that the contractor proposes to use in his work, together with a statement as to the source, character and proportions of the materials composing them must be handed in with his bid and no contract shall be awarded to any bidder whose samples do not comply in every respect with these specifications. No asphalt other than that specified in his bid shall be used by any contractor except with the written consent of the Engineer and provided that it complies in all respects with the requirements of these specifications.

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In addition to the samples submitted with the bid, other samples taken from and actually representative of the refined asphalt, petroleum flux, sand, crushed stone and filler to be used upon the street shall be submitted to the Engineer before the use of such materials in the work is permitted. Except at his option, no work shall be commenced

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within three weeks from the date when such samples were submitted and in no case shall they be used until they have been examined and approved by him. Whenever during the course of the work new deliveries of paving materials are received by the contractor, samples of these shall at once be submitted to the Engineer and their use in the work will not be permitted until they have been examined and approved by him.

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ASPHALT CEMENT:

Preparation.

The asphalt cement shall be composed of refined asphalt, or asphalt and flux where flux is required, of the character elsewhere herein specified and must be of a suitable degree of penetration.

20 The asphalt cement may be either manufactured at the refinery or at the paving plant.

The proper proportions of the refined asphalt or asphalts and flux shall be melted together at a temperature between 275 and 400 degrees F. and thoroughly agitated by suitable appliances until they are completely blended into a homogeneous asphalt cement. Thereafter the asphalt cement must not be heated to a temperature exceeding 350 degrees F. If the asphalt cement contains material that will separate by subsidence while it is in a molten condition, it must be thoroughly agitated before drawing from storage and while in use in the supply kettles. Excessive agitation with steam or air which will injure the cement must not be used.

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The refined asphalt or asphalts and flux comprising the asphalt cement shall, when required, be weighed separately in the presence of the authorized inspector or agents of the Engineer.

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*Return.**Requirements.*

The asphalt cement shall comply with the following requirements:

- a. It shall be thoroughly homogenous.
 - b. It shall have a penetration at 77 degrees F. of from 30 to 55 for heavy traffic streets and 55 to 65 for light traffic streets depending upon the sand and asphalt used and the local climatic conditions. **10**
 - c. It shall not flash below 350 degrees F. when tested in a closed oil tester.
 - d. When twenty (20) grams of the asphalt cement are heated for five (5) hours at 325 degrees F. in a tin box two and one quarter ($2\frac{1}{4}$) inches in diameter and three-quarters ($\frac{3}{4}$) of an inch deep, after the manner officially prescribed the loss shall not exceed five (5) per cent by weight and the penetration at 77 degrees F. of the residue left after such heating must not be less than one-half the penetration at 77 degrees F. of the original sample before heating. **20**
 - e. Either the asphalt cement or its pure bitumen when made into a briquette (Dow mold) shall, at 50 penetration (77 degrees F.) have a ductility of not less than 30 centimeters at 77 degrees F., the two ends of the briquette to be pulled apart at the uniform rate of 5 centimeters per minute. **30**
- When the asphalt cement as used has a penetration other than 50 at 77 degrees F., an increased ductility of 2 centimeters will be required for every five points in penetration above 50 penetration and a corresponding allowance will be made below 50 penetration.

WEARING SURFACE:*Preparation.*

The wearing surface shall be prepared by mixing together the stone, sand, filler and asphalt

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cement as above specified in such proportions as to produce a paving mixture having a composition within the following limits:

Bitumen	7 to 11%
Passing 200 mesh screen	5 to 12%
“ 80 “ “ and retained on 200 mesh	10 “ 20%
“ 40 “ “ “ “ “ 80 “	8 “ 25%
“ 10 “ “ “ “ “ 40 “	25 “ 55%
“ 4 “ “ “ “ “ 10 “	8 “ 22%
“ 2 “ “ “ “ “ 4 “	0 “ 10%

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The aggregate shall be carefully dried and heated in the dryers of the revolving type to a temperature of between 300° F. and 375° F.

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After heating and drying it shall be conveyed to a revolving screen provided with an 8 mesh sieve by means of which the aggregate shall be separated into two sizes and conveyed into separate bins. Definite proportions of the coarse and fine aggregate shall be weighed out in making the mixture. The asphaltic cement shall be melted in tanks arranged so that the heat can be properly and easily controlled and regulated. It shall at no time be heated above 350° F. and when used to mix with the mineral aggregate shall have a temperature of between 275 and 325° F., depending upon the asphaltic cement used. The hot aggregate with the necessary amount of filler and hot asphaltic cement shall then be mixed in a

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properly designed twin shaft pugmill mixer with revolving blades until each particle of the mineral aggregate is thoroughly coated with asphaltic cement but no batch will be accepted that has been mixed less than one minute. The weights of all materials entering into the composition of the wearing surface shall be verified in the presence of the inspectors as often as may be required and the Engineer or his representatives shall have access to all parts of the plant at any time. The

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plant must have a capacity of not less than 600 sq. yds. of 2 inch pavement per day of 8 hours.

*Return.**Laying.*

The surface mixture prepared in the manner above described shall be brought to the work in wagons covered with canvas or other suitable material and upon reaching the street shall have a temperature between 250 degrees F. and 350 degrees F. The temperature of the surface mixture within these limits shall be regulated according to the temperature of the atmosphere and the working of the mixture and character of the materials employed. On reaching the street it shall at once be dumped on a spot outside of the space on which it is to be spread. It shall then be deposited roughly in place by means of hot shovels, after which it shall be uniformly spread by means of hot iron rakes in such a manner that after having reached its final compression by rolling the finished pavement shall conform to the established grade. The thickness of the finished surface mixture shall average two (2) inches. Not more than ten (10) per cent variation from the average thickness specified will be permitted in any one spot. Before the surface mixture is placed, all contract surfaces of curbs, manholes, etc., must be well painted with hot asphalt cement. After raking, the surface mixture shall at once be compressed by rolling or tamping, after which a small amount of cement shall be swept over it and it shall then be thoroughly compressed by a steam roller weighing not less than two hundred (200) pounds to the inch width of tread, the rolling being carried on continuously at the rate of not more than two hundred (200) square yards per hour per roller, until a compression is obtained which is satisfactory to the Engineer. Such portions of the completed pavement as are defective in finish, compression or composition, or that do not comply in all respects

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with the requirements of these specifications, shall be taken up, removed and replaced with suitable material, properly made and laid in accordance with these specifications at the expense of the contractor. Whenever so ordered by the Engineer, a space of twelve (12) inches next to the curb shall be coated with hot asphalt cement, which shall
10 be ironed into the pavement with hot smoothing irons.

No wearing surface shall be laid when in the opinion of the Engineer the weather conditions are unsuitable or unless the binder on which it is to be placed is dry. Excessive use of water on the steam roller when compressing the pavement will not be permitted. The finished pavement must be well protected from all traffic by suitable
20 barricades until it is in proper condition for use.

Guarantee.

In addition to the maintenance herein specified, the Contractor will be required to furnish to the Board of Chosen Freeholders of Hudson County, a Surety Bond, guaranteeing to keep the surface pavement in first class condition satisfactory to the Boulevard Commissioners as required by these specifications for a period of five (5) years from the date of completion and accept-
30 -ance. Said bond shall be in a sum equivalent to the full amount of the contract price of the surface pavement and shall be approved as to form by the Board of Chosen Freeholders. Acceptance of the complete road after one year maintenance will not be given until such bond is properly filed.

Condition at Expiration of Guarantee.

In addition to the proper maintenance of the
40 pavement during the period of guarantee, the

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Contractor shall, at his own expense, just before the expiration of the guarantee period, make such repairs as may be necessary to produce a pavement which shall:

a. Have a contour substantially conforming to that of the pavement as first laid and free from depressions of any kind exceeding one-half of an inch in depth as measured between any two points three feet apart on a line conforming substantially to the original contour of the street. **10**

b. Be free from cracks or depressions showing disintegration of the surface mixture.

c. Contain no disintegrated surface mixture.

d. Not have been reduced in thickness more than three-eighths of an inch in any part.

e. Have a foundation free from such cracks or defects as will cause disintegration or settling of the pavement or impair its usefulness as a roadway. **20**

Repairing.

Repairs, except as provided for as below, shall in all cases be made by cutting out defective binder and wearing surface down to the foundation and replacing them by new and freshly prepared binder and wearing surface made and laid in strict accordance with these specifications. **30**

Whenever any defects are caused by the failure of the foundation, the pavement, including such foundation, shall be taken up and relaid with freshly prepared material made and laid in strict accordance with these specifications.

In all cases the surface of the finished repair shall be at the grade of the adjoining pavement and in accordance with the contour of the street. **40**

The surface heater method of repairing may

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stantial and workmanlike manner, and in strict accordance with every part and particular of the specifications which are annexed hereto and the plans therein mentioned, (which said specifications and plans are made a part of this contract) reconstruct and rebuild that part of the roadway of the Hudson Boulevard, between Communipaw Avenue and Newark Avenue, Jersey City, N. J., in the manner and under the conditions in the said specifications and this contract hereinafter set forth; and shall and will, at own proper cost and expense, furnish all the labor and materials necessary and proper for that purpose. 10

2. That the work shall at all time be performed in the best manner, and all materials furnished or used shall be of the kind specified in the specifications and satisfactory to the Engineer designated by the party of the first part; that a sufficient number of men, tools and appliances shall at all times be employed by the contractor to enable him to complete the work herein agreed to be done within the time herein provided; that the whole work is at all times to be done to the satisfaction of the said Engineer and the said party of the first part; that any materials furnished or used for the work, which are not of the kind or quality specified in this contract shall, immediately upon order of the said Engineer be removed and replaced by the party of the second part with materials satisfactory to the Engineer; and any work which shall be performed in a manner not satisfactory to the Engineer, shall immediately upon order by him, be corrected by the contractor in a manner satisfactory to the Engineer; that if the said contractor shall neglect or refuse to remove and replace any materials, or correct any work condemned by 20 30 40

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the Engineer, as aforesaid, then the party of the first part may remove, or cause the said materials to be removed and satisfactorily replaced, and the said work to be corrected, by contract or otherwise as they may deem expedient, and charge the expense thereof to the contractor; and the expense so charged shall be deducted and
10 paid by the party of the first part out of such moneys as are then, or which may thereafter become due to the party of the second part under this agreement.

3. That the contractor shall commence the work herein agreed to be performed on such date and at such place or places as the Engineer, may designate, and proceed therewith so as to complete the same in accordance with this
20 agreement and the said plans and specifications, on or before the expiration of ninety (90) working days from the date that he or it shall be directed to begin work as aforesaid; and in the event of the contractor failing to complete the said work in the manner herein provided within the time fixed for completion, as aforesaid, (un-
less the time be extended by resolution of the Boulevard Commissioners of the County of Hudson) he shall pay to the party of the first part
30 the sum of Twenty-five (\$25.) Dollars for each and every day the said work shall remain so uncompleted after the time fixed for completion, the said sum being hereby stipulated and agreed to be the true and liquidated damages which the County of Hudson will sustain by reason of such delay in completion, and not a penalty; and the said party of the first part is hereby authorized and empowered to retain the aggregate amount of money which shall become due
40 to them as aforesaid by reason of any and all delays, out of any money due or to grow due to the Contractors.

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4. That the Contractor shall not assign or transfer this Contract or his right, title and interest therein without the written consent of the Boulevard Commissioners of the County of Hudson, but will keep the same under control; and in the event of the contractor assigning or transferring this contract, or his right, title and interest therein to any other person, persons, corporation or corporations, this contract may, at the option of the party of the first part, be revoked and annulled, and the party of the first part and the County of Hudson shall thereupon be relieved and discharged from any and all liability and obligations growing or arising out of the same, and no right under this contract, or to any moneys to become due thereunder shall be asserted against the party of the first part or the County of Hudson, or any officer or officers thereof by reason of any so-called assignment or other instrument, purporting to be in the nature of an assignment of this contract, or any part thereof, unless such assignment or instrument shall be authorized by the written consent of the party of the first part.

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5. That the contractor shall, during the performance of the said work, place proper guards upon and around the same for the prevention of accidents, and at night, during said period, will put up and keep suitable and sufficient lights, and will indemnify and save harmless the party of the first part and the County of Hudson, and all officers thereof from all suits and actions of every name, nature and description, which may be brought against them, or any of them, and all costs and damages to which they, or any of them, may be put by reason or on account of any injuries or damages sustained by any person or persons, to his or their persons, or prop-

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erty, by or from the said party of the second part, servants or agents, in the construction of the said work, or by or on account of any negligence or carelessness in the performance of the work, or in the guarding or lighting of the same, or of any improper materials used in its construction, or by or on account of any act or
 10 omission of the party of the second part, or servants, or agents; and that the party of the first part may retain the whole, or so much of the moneys due or to become due to the contractor, under and by virtue of this agreement, as may be considered necessary by the party of the first part to indemnify them and the County of Hudson against any such suits or claims, until the same shall have been settled, satisfied or
 20 dismissed, and the evidence to that effect furnished to the party of the first part.

6. That the Contractor shall be responsible for any infringement of patents by the use of patented articles in the construction and completion of the said work, or any process connected with the work, or of any materials used therein, and shall and will save harmless and indemnify the party of the first part and the County of Hudson from all suits and actions, of every name, nature and description, which may be brought against
 30 them, or either of them, by reason of any such infringement of patent and all costs and damages to which they, or any of them, may be put by reason or on account of any such infringement; and the party of the first part may retain the whole, or so much of the moneys due or to become due to the contractor, under and by virtue of this agreement, as may be considered necessary by the party of the first part to indemnify them or the County of Hudson against any such suits
 40 or claims, until the same shall have been settled,

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satisfied or dismissed, and the evidence to that effect furnished to the party of the first part.

7. That if the work under this agreement shall be abandoned or if at any time the Engineer shall be of the opinion, and shall so certify in writing to the Boulevard Commissioners of Hudson County, that the said work or any part thereof is unnecessarily delayed or that the contractor is wilfully violating any of the conditions or covenants of this agreement, or is executing the same in bad faith, the said Boulevard Commissioners shall, at their option, have the power to notify the aforesaid contractor to discontinue all work or any part thereof under this contract, and thereupon the said contractor shall discontinue said work or such part thereof as he may be notified to discontinue; and the said party of the first part shall thereupon have power, by contract or otherwise, to complete the work herein described, or such part thereof, and to use such materials as they may find upon the line of the work, or to procure other materials for the completion of same, and to charge the expense of said completion to the Contractor, and the expense so charged shall be deducted and paid by the parties of the first part out of any money which may be due or grow due to the contractor under and by virtue of the agreement or any part thereof; and in case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the contractor, such difference shall be retained by the party of the first part for the purpose of defraying the expense of making, from time to time, the repairs agreed to be done by the contractor pursuant to the provisions of Paragraph 11 of this contract; and no part thereof shall become due and payable to the contractor

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until the expiration of the time mentioned in said paragraph, and then only such as may remain if any, after having deducted the cost of said repairs; but in case such expense shall exceed the last mentioned sum the contractor shall pay the amount of such excess to the party of the first part on written notice from the Boulevard Commissioners of Hudson County or the Engineer, of the excess so due.

8. That the contractor shall receive and accept the following prices as full compensation for furnishing all the materials and labor and for constructing and completing the whole of said work in the manner in said specifications and on said plans set forth and shown, and for all loss and damages arising out of the nature of the work itself or from the action of the elements or from any unforeseen obstruction or difficulties which may be encountered in the prosecution of the work, and for well and truly completing all the provisions of this contract on part to be performed the following sums of money, viz.

and the contractors shall not be entitled to have, received, sue for, or recover any moneys for any other work done by him, unless such work shall have been ordered by the Engineer in writing, or by a resolution of the Boulevard Commissioners of the County of Hudson, and the price which the contractor is to receive for the same specified in such certificate or resolution; it being the intention of this agreement that the sums above agreed to be paid to the contractor shall be full compensation for all work necessary and proper to be done and materials to be furnished under and by virtue of this contract and the said specifications and plans, except in cases where the Engineer of the Commission

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shall determine that any work is not included in this contract, and shall so certify in writing in manner aforesaid.

9. That the moneys which are to become due to the contractor, as set forth in the preceding paragraph, shall be paid from time to time, as the work progresses, once in each month, and not oftener, and in sums not less than Five Thousand Dollars, in the following manner, viz: The said Engineer shall each month make an estimate of the amount of work done under this contract since the commencement of the work or since the last preceding estimate was made, and the value thereof according to the terms of this contract, and upon each estimate being made, eighty per cent. of such estimated value shall be paid to the contractor; and whenever, in the opinion of the Engineer, the Contractor shall have completely performed the contract on part, the said Engineer shall so certify in writing to the party of the first part, and shall also make a final certificate setting forth the total estimate of work done under this contract and the value thereof according to the terms of this contract and any sums which the contractor may be entitled to as extra work under the provisions thereof, which said certificate shall be conclusive as to the quantity of work done and materials furnished by the contractor; and thereupon the party of the first part shall, on or before the expiration of one month thereafter, (provided the contractor shall have well and truly performed all the provisions of this contract on part to be performed) pay to the contractor the whole amount of money accruing to according to said final certificate, after deducting all moneys theretofore paid under any of the provisions of this contract, except a sum equal

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to five per cent. of the total value of work done by the contractor, according to the said final certificate of the Engineer, and excepting further such sums as the party of the first part may be entitled to deduct or hold, under and by virtue of any of the terms of this contract, or any law of the State of New Jersey; and the said

10 sum of five per cent. shall be paid at the expiration of one year from the date of the Engineer's said final certificate, provided that the Engineer shall certify that all of the terms of the contract have been complied with and that all defects in the work, if any, have been corrected, and provided further that any and all liens, claims, demands or suits which may have been

20 filed, made or instituted against the party of the first part or the Board of Chosen Freeholders of the County of Hudson, arising or growing out of this contract or the work done hereunder, shall have been finally disposed of, and the said party of the first part and the Board of Chosen Freeholders of the County of Hudson, released and discharged from any and all liabilities thereon; and the said party of the first part shall not be found or concluded by any of the certificates or estimates of the Engineer other than the final certificate or estimate, it being understood that

30 the former are merely estimates and are subject to correction in the final certificate of estimate.

10. The County shall not, nor shall any department or officer thereof, be precluded or estopped by any return or certificate made or given by the Commissioners or Engineer, from at any time showing the true and correct amount and character of the work done and materials furnished by the contractor, or from showing at any time

40 that such return or certificate is untrue and incorrect or improperly made in any particular,

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or that the work and materials, or any part thereof do not in any fact conform to the specifications; and the County shall not be precluded or estopped, notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from the contractors such damages as it may sustain by reason of his failure to comply with the specifications. 10

11. That the contractor shall keep and maintain the bituminous concrete pavement to be laid as aforesaid, in good repair and condition to the satisfaction of the parties of the first part or their successors, as required by said specifications, for a period of five years from the date of the completion and acceptance thereof as evidenced by the said final certificate of the Engineer, and shall make any and all repairs which may become necessary within the said period of five years, whenever required so to do by the party of the first part or their successors, and shall commence making the same within forty-eight hours after the receipt of notice from the Boulevard Commissioners of Hudson County or their successors, so to do and to complete the same as soon thereafter as possible; and should the contractor fail to commence to make such repairs within said forty-eight hours, or fail to complete the same expeditiously in manner aforesaid, the party of the first part shall have the right to purchase such materials as shall be necessary, with which to make such repairs and to charge the same, together with the costs of the necessary labor, to the contractor and the sureties on the bond to be given by him as hereinafter set forth; and the contractor shall also permanently replace during said period of five years, any part or parts of the said Bituminous Concrete Pave- 20 30 40

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ment, where the same shall be removed for street openings or otherwise, when ordered to do so by the parties of the first part or their successors, at and for the same price per square yard which agreed above to lay or construct the said pavement.

- 10 12. That the said contractor, in order to guarantee the faithful performance on part of the provisions of Paragraph No. 11 of this contract, shall, before any payment is made for the work done hereunder, execute and deliver to the Board of Chosen Freeholders of the County of Hudson, a maintenance bond, to be approved as to form by the County Counsel, with a surety company authorized to do business in the State of New Jersey, as surety thereon, in a sum not
- 20 less than the total amount to be paid for the pavement laid under this contract, based on the Engineer's estimates of quantities as set forth in said specifications, at the price the contractor has agreed to do said work as above set forth, conditioned for the faithful performance by the contractor of said provisions of Paragraph No. 11 of this agreement.

13. That this agreement shall bind the heirs, executors, administrators, successors in office, and assigns of the respective parties hereto.

- 30 IN WITNESS WHEREOF, the party of the first part has caused these presents to be signed by the President and Secretary of the Boulevard Commission of Hudson County, and attested by the Clerk of said Commission, and the party of the second part, the day and year first above mentioned.

Signed, sealed and delivered }
 in the presence of }

Return.

Attest:

Secretary.

President, Boulevard Commission.

Attest:

Clerk.

10

Secretary.

President, Boulevard Commission.

BOND OF SURETY.

KNOW ALL MEN BY THESE PRESENTS, That we

of

as principal, and

20

as surety, are held and firmly bound unto the BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, STATE OF NEW JERSEY, in the sum of _____, lawful money of the United States of America, to be paid to the said BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, its successors or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

30

SEALED with our seals, dated this _____ day of _____, one thousand nine hundred and seventeen.

WHEREAS, the above bounden _____ has entered into a contract in writing, under _____ hand and seal, bearing even date with these presents, with the BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, to fur-

40

Return.

nish all the labor and materials and to do and perform all the work mentioned in the contract hereto annexed as part hereof, being a contract for repaving with bituminous concrete pavement, laid on macadam or stone foundation, the roadway of the Hudson Boulevard, between Communipaw Avenue and Newark Avenue, Jersey City, N. J., together with all work incidental thereto.

10

Now, THEREFORE, the conditions of the above obligations are such that if the said above bounden shall well and

20

truly in all things and in good, sufficient and workmanlike manner perform said contract according to the true intent and meaning thereof, and in each and every respect comply with the conditions and covenants therein contained, and shall at all times hereafter indemnify, keep and save harmless the said the BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON and the BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, perfectly and entirely indemnified of, from and against any and all manner of actions, suits, liabilities, charges, liens, costs and payments for and by reason of the premises or by reason of any debt or obligation contracted for any such work or materials furnished under or by virtue of said contract, and keep all county property and the property of the

30

said the BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON clear and free of and from all liens and liabilities by reason of the doing of any of the said work or finding of materials therefor as aforesaid, by the said

or any other person or party by his authority, direction or request, if authorized as aforesaid, then the above obligation to be void, otherwise, to be, and remain in full force and virtue.

40

Signed, sealed and delivered }
in the presence of }

Return.

MAINTENANCE BOND.

KNOW ALL MEN BY THESE PRESENTS,
That we

as principal, and

as surety, are held and firmly bound unto the
BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY
OF HUDSON, NEW JERSEY, in the sum of **10**

Dollars, lawful money of
the United States of America, to be paid to the
said BOARD OF CHOSEN FREEHOLDERS OF THE
COUNTY OF HUDSON, its successors and assigns;
for which payment, well and truly to be made, we
bind ourselves, our and each of our

jointly and severally,
firmly by these presents. **20**

SEALED with our seals and dated this
day of _____, Nineteen Hundred
and Seventeen.

WHEREAS, the above bounden
_____ has entered into a contract in
writing under _____ hand and seal bearing date
the _____ day of _____,
Nineteen Hundred and Seventeen, with the BOULE-
VARD COMMISSIONERS OF THE COUNTY OF HUDSON,
NEW JERSEY, for repaving with bituminous con- **30**
crete pavement, laid on macadam or stone founda-
tion, the roadway of the Hudson Boulevard, be-
tween Communipaw Avenue and Newark Avenue,
Jersey City, N. J., together with all work inci-
dental thereto; and, among other things, has
agreed to keep and maintain the bituminous con-
crete pavement to be constructed by

_____ pursuant to said con-
tract, in good repair and condition, to the satis-
faction of the said BOULEVARD COMMISSIONERS OF **40**
THE COUNTY OF HUDSON or their successors as re-
quired by said specifications for a period of five

Return.

years from the date of completion and acceptance of the said pavement by the said Boulevard Commissioners of the County of Hudson, and during said period of time make any and all repairs which may become necessary, whenever required so to do by the said Boulevard Commissioners of the County of Hudson, or their successors, and to
 10 commence making such repairs within forty-eight hours after receipt of notice from the said Boulevard Commissioners of Hudson County, or their successors, so to do, and to complete the same as soon as possible thereafter.

Now, THEREFORE, the condition of this obligation is such that if the above bounden

shall well and truly
 keep and maintain the said bituminous concrete pavement to be constructed by
 20 pursuant to the said contract, in good repair and condition, to the satisfaction of the BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, or their successors, as required by said specifications, for a period of five years from the date of the completion and acceptance of the said pavement by the said BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, and shall make, during said period of time, such repairs thereto as may become necessary, whenever required so to do by the said
 30 BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, or their successors, and commence making said repairs within forty-eight hours after a receipt of a notice from the said BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, or their successors, so to do, and complete the same as soon thereafter as possible, in accordance with the true intent and meaning of the said provisions of the said contract, then this obligation is to be void,
 40 otherwise to be and remain in full force and virtue.

Signed, sealed and delivered }
 in the presence of }

Rule for Affidavits.

(Filed July 2, 1917.)

NEW JERSEY SUPREME COURT.

<p>EDWARD L. McCARTY, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE BOULEVARD COMMISSIONERS OF HUDSON COUNTY, JOHN SWEENEY, Clerk of said Commission, et al., <i>Defendants.</i></p>	<p>On Certiorari. Suit No. 1. Reimprovement of Boulevard between Com- munipaw Ave. and Newark & New York Branch of the Central Rail- road of New Jersey.</p>	<p>10</p>
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On application in behalf of the prosecutor, it is ORDERED that both parties have leave to take affidavits to be used on the hearing of the writ in the above stated cause. **20**

Let this rule be entered.

FRANCIS J. SWAYZE,
J. S. C.

Entered July 2, 1917.

On motion of
COLLINS & CORBIN,
Attorneys of Prosecutor.

30

40

Rule for Affidavits.

(Filed July 2, 1917.)

NEW JERSEY SUPREME COURT.

EDWARD L. McCARTY,

Prosecutor,

10

*vs.*THE BOULEVARD COMMISSIONERS OF
HUDSON COUNTY, JOHN SWEENEY,
Clerk of said Commission, et al.,*Defendants.*On Certiorari.
Suit No. 2.
Reimprovement
of Boulevard
between Com-
munipaw Ave.
and Newark
Avenue.

20

On application in behalf of the prosecutor, it is
ORDERED that both parties have leave to take affida-
vits to be used on the hearing of the writ in the
above stated cause.

Let this rule be entered.

FRANCIS J. SWAYZE,
J. S. C.

Entered July 2, 1917.

On motion of
COLLINS & CORBIN,
Attorneys of Prosecutor.

30

40

Stipulation.

(Filed Aug. 6, 1917.)

NEW JERSEY SUPREME COURT.

<p>EDWARD L. McCARTY, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE BOULEVARD COMMISSIONERS OF HUDSON COUNTY, JOHN SWEENEY, Clerk, et al., <i>Defendants.</i></p>	}	<p>On Certiorari. Suit No. 1. Reimprovement of Boulevard between Com- munipaw Ave. and Newark & New York Branch of the Central Rail- road of New Jersey.</p>
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IT IS HEREBY STIPULATED AND AGREED by and between counsel of the respective parties to the above-entitled action that the testimony and exhibits taken on the rule to show cause in this matter before David A. Newton, a Supreme Court Commissioner, may be used on the argument of the writ of certiorari granted herein as though said testimony and exhibits were taken on the rule herein allowing the taking of depositions, to be read on the argument of the writ of certiorari; AND IT IS FURTHER STIPULATED AND AGREED that either party may take further testimony, if desired, upon two days' notice.

20

COLLINS & CORBIN,
Attorneys of Prosecutor. 30

J. EMIL WALSCHEID,
Attorney for Clinton Contracting Co.

JOHN J. MURPHY,
Attorney of Defendants other than
Clinton Contracting Co.

40

Stipulation.

(Filed Aug. 6, 1917.)

NEW JERSEY SUPREME COURT.

EDWARD L. McCARTY,

*Prosecutor,**vs.*

10

THE BOULEVARD COMMISSIONERS OF
HUDSON COUNTY, JOHN SWEENEY,
Clerk, et al.,*Defendants.*On Certiorari.
Suit No. 2.
Reimprovement
of Boulevard
between Com-
munipaw Ave.
and Newark
Avenue.

20

IT IS HEREBY STIPULATED AND AGREED by and between counsel of the respective parties to the above-entitled action that the testimony and exhibits taken on the rule to show cause in this matter before David A. Newton, a Supreme Court Examiner, may be used on the argument of the writ of certiorari granted herein as though said testimony and exhibits were taken on the rule herein allowing the taking of depositions, to be read on the argument of the writ of certiorari; AND IT IS FURTHER STIPULATED AND AGREED that either party may take further testimony, if desired, upon two days' notice.

30

COLLINS & CORBIN,
Attorneys of Prosecutor.
J. EMIL WALSCHEID,
Attorney for Clinton Contracting Co.
JOHN J. MURPHY,
Attorney of Defendants other than
Clinton Contracting Co.

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Depositions.

NEW JERSEY SUPREME COURT.

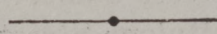
<p style="text-align: center;">EDWARD L. McCARTY, <i>Applicant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THE BOULEVARD COMMISSIONERS OF HUDSON COUNTY, JOHN SWEENEY, Clerk of said Commission, et al., <i>Defendants.</i></p>	}	<p>On Certi- orari. 10</p> <p>On Rule to Show Cause. 10</p>
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Depositions taken before me, David A. Newton, a Supreme Court Examiner, at my office, 243 Washington Street, Jersey City, New Jersey, this thirteenth day of June, 1917, at ten o'clock in the forenoon, pursuant to notice hereto annexed, and in the presence of: **20**

EDWARD A. MARKLEY, Esq. (of Collins & Corbin),
Attorney for the Applicant;

JAMES J. MURPHY, Esq., Attorney for The Boulevard Commissioners of Hudson County, John Sweeney, Clerk of said Commission, the Board of Chosen Freeholders of the County of Hudson, and Walter O'Mara, Clerk of said Board;
J. EMIL WALSCHEID, Esq., Attorney for The Clinton Contracting Company. **30**

It is stipulated that the depositions be taken stenographically and the signatures of witnesses waived.



40

Edward L. McCarty—Direct, Cross.

EDWARD L. McCARTY, sworn.

DIRECT EXAMINATION BY MR. MARKLEY:

Q. Mr. McCarty, are you a property owner in Hudson County? A. Yes, sir.

Q. Where? A. 905 Malone Street, West Hoboken.

10 Q. Have you the deed to your property up there?
A. Yes, sir.

Q. Will you produce it, please? A. (Witness produces deed called for.)

Q. Is that the deed? A. Yes, sir.

MR. MARKLEY: I offer in evidence the deed for the property owned by the witness.

Without objection the deed was admitted and marked Exhibit P-1 in evidence.

20 Q. Do you reside on this property? A. Yes, sir.

Q. What kind of house is it? A. A two family house.

Q. You live up there yourself? A. Yes, sir.

Q. And you have a tenant living in the other part of the house? A. Upstairs.

Q. And you live downstairs? A. Yes, sir; downstairs.

Q. The tenant pays rent to you? A. Yes, sir.

30 Q. And you are the prosecutor in this suit?
A. Yes, sir.

CROSS EXAMINATION BY MR. WALSCHEID:

Q. What is the street number of this place, Mr. McCarty? A. 905 Malone Street.

Q. West Hoboken? A. Yes, sir.

40 Q. And the title of that property is just as it appears in this deed Exhibit P-1? In other words, you have not done anything to that title since you have acquired it? A. Haven't done anything—what do you mean?

Edward L. McCarty—Cross.

Q. Why, you haven't dealt with that property in any way, shape or form, since you have acquired title to it? A. No; I am still owner of it.

Q. What is your business? A. I am in the iron and steel business at the present time.

Q. What do you do in that line? A. I am a bookkeeper.

Q. Where are you employed? A. 343 to 347 West 26th Street, New York City. **10**

Q. With whom are you employed? A. Hoopes & Shipman.

Q. And what particular line of the steel industry are you connected with; what do you do; what does your firm do? A. Galvanized and black sheets.

Q. You are the prosecutor in this suit, are you? A. Yes, sir.

Q. Have you ever read the specifications? A. Well— **20**

Q. Yes, or no? A. I have never read the specifications, only through the papers a little.

Q. When did you make up your mind to become the prosecutor in this suit? A. After the awarding of the contract.

Q. When was the contract awarded? A. The contract was awarded on the 6th of this month.

Q. How did you know it was awarded at that time? A. Well, I have seen it in the papers later on. **30**

Q. You saw it in the papers later on; what was awarded? A. Two sections of Jersey City.

Q. Is that all that you saw in the papers? A. That is all that was awarded?

Q. Yes; and to whom was that awarded, by the papers? A. To the Clinton Contracting Company.

Q. Why did you thereupon decide to become a prosecutor in the suit? A. For the simple reason that these two sections have been repaired two or **40**

Edward L. McCarty—Cross.

three times, to my knowledge, and North Hudson, from Plank Road to Plank Road has never been touched.

Q. Then, your objection to this proceeding, or, rather, to these two contracts, is that you think the North Hudson section ought to be done? A. I really do; yes, sir.

10 Q. Is that the only objection which you have? A. No; I have other objections.

Q. What other objections have you? A. I have an objection in this light: That I don't believe in a parkway in the middle of this road.

Q. How do you know that there is to be a parkway in the middle of this road? A. Because I have read it to that effect.

Q. Where did you read it? A. In one of the papers.

20 Q. What paper? A. Let me see—I think it was the "Observer."

Q. When? A. Well, I can't exactly say just when; shortly before the contract was awarded.

Q. Will you say that the "Hudson Observer" published an article saying that there were parkways in the Hudson Boulevard? A. I believe it was the "Observer."

30 Q. Now, who came to visit you about becoming a prosecutor in this case? A. Nobody came to visit me. I was rung up on the telephone and had a telephone conversation.

Q. Who rang you up? A. Mr. Markley rang me up.

Q. Did you know Mr. Markley before that? A. I never knew him before that.

Q. What did Mr. Markley say to you? A. Mr. Markley asked for Mr. McCarty; I didn't go to the 'phone first-off.

40 Q. Yes; whom else did you talk to in connection with becoming the prosecutor in this writ? A. Nobody else.

Edward L. McCarty—Cross.

Q. Nobody else but Mr. Markley? A. But Mr. Markley.

Q. And Mr. Markley requested you to become the prosecutor? A. No, sir; he did not ask.

Q. What did he ask? A. Mr. Markley said, "Is this Mr. McCarty?" I said, "Yes"; he said, "This is Mr. Markley"; I says, "Who?" and he says, "This is Mr. Markley." I says, "What Mr. Markley is this?" He says, "This is Mr. Markley of Collins & Corbin's office." 10

Q. Yes. A. I says, "Yes"; he says, "Are you interested," he says, "in any manner, shape or form," he says, "in this Boulevard letting?" I says, "As a property owner," I says, "I am."

Q. Go ahead. A. And he says to me, "Well," he says, "what do you intend to do on it?" I says, "I intend to take some action on it." "The people in the neighborhood," I says to myself, and I really believe— 20

Q. Not what you said to yourself; what you said to him. A. I said, "The people around that neighborhood, to my estimation, feel put out about it."

Q. Go on; what did he say then? A. So he says to me, "All right, Mr. McCarty, if that is the fact I will come over to see you." I says, "I will be pleased to have you come over."

Q. And did he come to see you? A. He came to see me. 30

Q. Where? A. In 26th Street.

Q. Was he alone? A. Alone; yes, sir.

Q. You had not known him up to that time? A. No, sir; I never met him.

Q. What did he say to you then? Wait a minute; before asking you what he said to you on 26th Street, what else did he say to you in the conversation over the telephone? A. That is all he said.

Q. Then he came to see you in 26th Street, did he? A. Yes, sir. 40

Edward L. McCarty—Cross.

Q. What did he want there? A. He says to me, "Mr. McCarty," he says, "I have some papers here," he says, and he says, "Do you wish to sign them or not?"

Q. Yes; and he had some papers with him? A. An affidavit.

10 Q. He had an affidavit with him; and he asked you whether you wanted to sign it? A. He asked me did I have my mind made up to sign, and I says, "Yes, I certainly had."

Q. And then you signed it? A. I signed it; yes, sir.

Q. You hadn't asked him to draw that affidavit, of course? A. I told him to prepare.

Q. When? A. When I was talking to him over the telephone.

20 Q. You told him to prepare what? A. The papers?

Q. What papers? A. So that I could start suit.

Q. What did he say to you about who was going to pay the expenses of this suit? A. He asked me, he says, "You know, Mr. McCarty, this will cost you some money," he says, "Do you want to employ me?" I says, "Yes, I want to go right ahead; I will pay the expenses myself."

Q. Did you agree upon the expense? A. Not in amount; no, sir.

30 Q. Who did you then employ? A. Mr. Markley; I mentioned Collins & Corbin first-off, but Mr. Markley took the case and I said, "All right, you take care of this case."

Q. You are sure you did not know Mr. Markley before he called you up on the telephone? A. I never knew him.

Q. Have you a 'phone at home? A. No, sir; I have not.

40 Q. Where did he call you up? A. Well, now, I couldn't say.

Edward L. McCarty—Cross.

Q. In New York, at your place of business? A. He called me up at my place of business.

Q. On the firm 'phone? A. On the firm 'phone; yes, sir.

Q. You don't know how he obtained that firm 'phone, do you? A. No, I couldn't say.

Q. Did you talk to anybody over the telephone besides Mr. Markley about this matter? A. No, **10** sir; I did not.

Q. Are you sure? A. Sure.

Q. Nobody else rang you up about this matter on the telephone? A. No, sir.

Q. Will the moneys which you are to pay out, if you do pay out any, be refunded to you in any way? A. No, sir; I have no arrangement whatsoever in that respect.

Q. With anybody? A. No, sir.

Q. Are you personally acquainted with anybody **20** connected with the Uvalde Asphalt Paving Company? A. No, sir; I am not.

Q. Are you acquainted with Mr. William T. S. Crichfield? A. No, sir.

Q. You are not? A. No, sir.

Q. You don't know Mr. Crichfield? A. No, sir; I don't know Mr. Crichfield.

Q. You were a member of the West Hoboken Board of Council, weren't you? A. Yes, sir.

Q. For how many years? A. From January 1, **30** 1906, to January 1, 1910.

Q. Isn't it a fact that Mr. Crichfield laid pavements in West Hoboken while you were a Councilman? A. While I was a Councilman?

Q. Yes. A. No, sir.

Q. Didn't he lay any pavements there during that time? A. Not that I know of.

Q. Did you ever work for William T. S. Crichfield? A. No, sir; I never did.

Q. Did no work for him at all? A. No, sir. **40**

Q. Did you ever work for the Uvalde Asphalt

Edward L. McCarty—Cross.

Paving Company? A. No, sir; I never did.

Q. Did you ever work for the Uvalde interests?

A. No, sir.

Q. Do you know who they are? A. No, sir; I don't know who they are.

Q. You don't know? A. No, sir; I know the Uvalde Asphalt Company.

10 Q. Did you ever work for them? A. No, sir.

Q. Did you ever do any bookkeeping work for them? A. No, sir; I never did.

Q. You are sure about that? A. I am sure, Mr. Walscheid.

Q. You are also sure that you do not know Mr. Crichfield? A. I am positive of it, that I don't know Mr. Crichfield.

Q. What do you mean by not knowing him? Would you know him if you met him on the street?

20 A. I would not know him if I met Crichfield on the street.

Q. So far as you know you never talked to the gentleman? A. No, sir; I did not; I never talked to him.

Q. Do you know Mr. Keller? A. No; I don't know him.

Q. Do you know anybody connected with the Uvalde Asphalt Paving Company? A. Nobody connected with the Uvalde Asphalt Company.

30 Q. Do you know anybody employed by the Uvalde Asphalt Paving Company?

MR. MARKLEY: I object to that as immaterial.

A. I don't know.

Q. What do you mean by "I don't know"? A. I don't know anybody employed by the Uvalde Asphalt Company as a workman, or—

Q. Or in any capacity? A. I do not.

Offering of Exhibits.

MR. MARKLEY: I offer the contract for Section 4 of the Boulevard, that is, the Boulevard from the Newark and New York Branch of the Central Railroad of New Jersey, to Communipaw Avenue, in Jersey City, in evidence.

Without objection the contract was admitted and marked Exhibit P-2 in evidence.

MR. MARKLEY: I now offer in evidence the contract for Section 5, which is that section of the Boulevard between Communipaw Avenue and Newark Avenue, in Jersey City. 10

Without objection the contract was admitted and marked Exhibit P-3 in evidence.

MR. MARKLEY: I offer in evidence the plans for Section 4 of the Boulevard, which is that section from the Newark and New York Branch of the Central Railroad of New Jersey to Communipaw Avenue, in Jersey City, consisting of two sheets. 20

Without objection the plans were admitted and marked Exhibit P-4 in evidence.

MR. MARKLEY: I offer in evidence the plans for Section 5 of the Boulevard, being that section between Communipaw Avenue and Newark Avenue, in Jersey City.

Without objection the plans were admitted and marked Exhibit P-5 in evidence.

It is stipulated and agreed by counsel that the facts set out in the affidavit of John H. Young, dated June 8, 1917, are true, and that the affidavit may be used in lieu of proof of publication on file in the office of the Boulevard Commissioners for the advertisements published for the letting of the two improvements in question, that is, to show the dates upon which the notices to contractors for those two improvements were published, and that the form of notice to contractors attached to Ex- 30
40

Offering of Exhibits.

Exhibits P-2 and P-3, respectively, are correct copies of the notices attached to John H. Young's affidavit and referred to therein.

A copy of said affidavit is as follows:

10 State of New Jersey, }
County of Hudson, } ss.:

20 JOHN H. YOUNG, of full age, being duly sworn according to law, on his oath says: I am a clerk in the employ of Messrs. Collins & Corbin, Attorneys at Law of the State of New Jersey; that on June 6th I examined the issues of a newspaper known as the Engineering News Record, a weekly newspaper, for the following dates, to wit, May 3, May 10, May 17, May 24 and May 31, 1917, for the notice to contractors, copy of which is hereto attached and made a part hereof, and found that said notice to contractors was only published in the said Engineering News Record on one day, to wit, May 17, 1917, at page 64, Vol. 78, No. 7.

30 On June 4, 1917, I went to the office of the Clerk to the Boulevard Commissioners of the County of Hudson at the Court House in Jersey City and while there examined a proof of publication of the attached notice to contractors, made by the bookkeeper of the Bayonne Times, a newspaper published in Bayonne, showing the dates upon which said notice to contractors was published in said newspaper; said proof of publication showed that said notice to contractors was published in said newspaper May 11, 14, 16, 19, 22 and May 24, 1917.

40 On June 7, 1917, I examined the files of the following newspapers, viz., Jersey Journal, Bayonne Review, Hudson Dispatch, Hudson

John J. O'Connor—Direct.

Observer and Bayonne Times, and found that the notices to contractors for sections 4 and 5 of the Hudson County Boulevard to be improved, copy of said notices to contractors being hereto attached and made a part hereof, were published in the Jersey Journal, Bayonne Review and Hudson Dispatch on May 11, 14, 16, 19, 22 and 24, 1917, and no other days and in the Bayonne Times on May 11, 14, 16, 19, 21 and 24 and no other days. 10

I also examined the minutes of the said Board of Boulevard Commissioners showing what transpired at the meetings of May 28 and June 6, 1917. Said minutes show that the attached resolution, dated May 28, 1917, was passed at the said meeting of said date and that at the meeting held on June 6, 1917, the contracts for sections 4 and 5 of the Boulevard were awarded to the Clinton Contracting Company, as shown by copies of resolution passed at said meeting hereto attached, dated June 6, 1917. 20

JOHN H. YOUNG.

Sworn to and subscribed at

Jersey City, this 8th day
of June, 1917, before me,

DAVID A. NEWTON,
Master in Chancery
of New Jersey. 30

JOHN J. O'CONNOR, SWORN.

DIRECT EXAMINATION BY MR. MARKLEY:

Q. Mr. O'Connor, are you employed by the Boulevard Commissioners of Hudson County? A. Yes, sir. 40

Q. In what capacity? A. Bookkeeper and clerk.

Q. Are you in charge of the Minutes of that Board? A. At this present time.

John J. O'Connor—Direct.

Q. Who is the regular clerk? A. John C. Swee-
ney.

Q. I believe he is ill? A. He is ill now.

Q. And you are taking care of the Minutes for
him and have been for some time? A. For the last
two weeks.

Q. Have you the Minute Book of the Board of
10 Boulevard Commissioners of Hudson County for
1916-1917 here? A. I have.

Q. Will you turn to the Minutes of the meeting
of February 7, 1917, and tell us whether there is
any resolution there in regard to appointing Rob-
ert Gaw as engineer? A. Yes, sir; there is.

MR. MARKLEY: I offer in evidence the reso-
lution appointing Robert Gaw as engineer, etc.,
which is found on page 19 of the Minutes for
the year 1916-1917, which reads as follows:
20

“Resolved that Robert Gaw, a competent
engineer, be and he hereby is appointed and
employed to make estimates of the costs of
any work intended to be done by this Commis-
sion in the performance of its duty of im-
proving and maintaining the Hudson Boule-
vard, and report said estimates to this Com-
mission, and to do and perform such other
things as are or may be required of an engi-
neer appointed or employed by this Commis-
30 sion in the performance of its duties of im-
proving and maintaining the Hudson County
Boulevard; and be it further

“Resolved, that the compensation of said
Robert Gaw as engineer aforesaid be one per
cent of the estimated cost of all work pro-
posed to be executed by this Commission as
aforesaid, for consultations with the Commis-
sion and preparing of statements of estimates
required to be submitted by him; and an addi-
40 tional four per cent of the total cost of any

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and all work done by this Commission for preparing plans, specifications and contracts, and taking over, during the execution of said work, the complete engineering supervision of any such work ordered to be done by this Commission; and be it further

“Resolved that all other resolutions heretofore adopted by this Commission appointing or employing any other engineer either for a term or without term, to make estimates on work to be performed or to do any other work for this Commission, be and the same are hereby rescinded. 10

“Adopted by the following vote:

“Ayes: Commrs. Seglie, Asmus and President Cahill.

“Nays none.”

20
Q. What was the next step taken by the Commissioners in regard to the proposed improvement of the Boulevard, and when was it taken, so far as your Minutes show? A. The next step is found in the Minutes of a regular meeting held on March 7, 1917, at page 25 of the Minutes of the Boulevard Commissioners for 1916-1917, a resolution introduced by Commissioner Asmus.

MR. MARKLEY: I offer that resolution in evidence. It reads as follows: 30

“By Commr. Asmus:

“Whereas, the present unpassable condition of certain sections of the Hudson County Boulevard has caused much adverse criticism from the taxpayers of the County;

“And, Whereas, in the judgment of this Board it is deemed advisable that immediate steps be taken to place as much of the road in good condition as the County finances will permit; 40

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“And, Whereas, it is the judgment of this Board that a thorough survey be made, plans drawn and specifications prepared;

10 “Therefore Be It Resolved, that the Engineer of this Board be and he is hereby ordered to prepare plans and specifications for the reconstruction of three (3) Sections of the Boulevard as noted below; the specifications to be worded so that the fullest competition may be procured and to provide for “open specifications,” so that every contractor in the State may be given an opportunity to submit a bid for the work to be performed. The roadway to be laid with what is known as Bituminous Concrete under a five year guarantee; the sections to be as follows:

20 “Hudson County Boulevard, between Hackensack Plank Road and Paterson Plank Road, in the town of West Hoboken.

“Hudson County Boulevard, between Newark Avenue and Communipaw Avenue in Jersey City (except the curb and gutter. This work is now in litigation because of the failure of the Contractor performing this work under a previous administration to live up to the terms of his contract).

30 “Hudson County Boulevard, between Communipaw Avenue and bridge over the Central Railroad of New Jersey tracks in Jersey City, N. J. (except curb and gutter. This work is now in litigation because of the failure of the Contractor performing this work under a previous administration, to live up to the terms of his contract).

40 “And Be It Further Resolved, that these plans and specifications be submitted to this Board for consideration at the next regular meeting and that there then shall be a public

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meeting called, which shall be advertised in the newspapers of the County, so that citizens and contractors may have an opportunity of discussing the terms of the specifications and entering their protests and objections to any clause in the specifications that, in their judgment, might not be to the best interests of the County of Hudson.

10

“And Be It Further Resolved, that a copy of the plans and specifications be submitted to each member of the Commission for his information.

“Adopted by the following vote:

“Ayes: Commrs. Seglie, Asmus and President Cahill.

“Nays none.”

Q. What is the next thing in the Minutes about the improvement in question? A. At the adjourned meeting of the Boulevard Commissioners of the County of Hudson, held on May 28, 1917, a communication dated March 20, 1917, was received and read from Thomas J. Prior.

20

MR. MARKLEY: I offer the communication and the minute of the action of the Board, as found on page 32 of the Minutes, in evidence. The communication and action referred to reads as follows:

30

“March 20, 1917.

“Boulevard Commissioners of
the County of Hudson,
Court House, City.

“Gentlemen: As the representative of the City of Bayonne in the Board of Freeholders, I desire to voice my protest against your failure to provide for the repair or reconstruction of the Boulevard in any part of Bayonne, in the work you have planned. There is no

40

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10 section of the Boulevard in worse shape than from the 36th Street loop south to Bergen Point. It may be that there is some good reason why this important section was omitted from the repair work planned for the near future. If that be so, I will be obliged if you will advise me as to the reason for the omission. I have no desire to be unnecessarily critical of any of the work you are trying to do, but as the only representative the citizens of Bayonne have in the County government I feel that I would be remiss in my duty to them if I failed to direct your attention to your neglect of the section in question.

Very truly,

20 THOMAS J. PRIOR,
Chairman Road Committee, Board of Freeholders.

* "Secretary Asmus said he would reply to this communication, which was ordered to be received and filed."

Q. What was the next step as shown by your Minutes? A. At a regular meeting of the Board, held on April 4, 1917, Engineer Robert Gaw submitted the specifications which are referred to in the Minutes.

30 MR. MARKLEY: I offer in evidence what the Minutes show in regard to the submission of specifications, etc., by Engineer Robert Gaw, appearing in the Minutes at page 38, which is as follows:

40 "Engineer Robert Gaw submitted specifications for the reconstruction of the Hudson Boulevard, between Newark Avenue and Communipaw Ave., Jersey City, and between Hackensack Turnpike and Paterson Plank Road, West Hoboken, N. J.

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“The above specifications were referred to the ‘Committee of the Whole,’ for investigation.”

Q. What was the next step, as shown by your Minutes? A. At an adjourned meeting of the Board, held on April 11, 1917, a resolution was passed rejecting the plans and specifications prepared by Robert Gaw. 10

MR. MARKLEY: I offer in evidence what the Minutes show on April 11, 1917, with regard to the specifications of Robert Gaw, and the resolution rejecting them, appearing in the Minutes at page 39, which is as follows:

“The specifications presented April 4th for the reconstruction of the Hudson Boulevard between Newark Ave. and Communipaw Ave., Jersey City, and between Hackensack Turnpike and Paterson Plank Road, West Hoboken, N. J., were discussed by the Commissioners. Commissioner Cahill claiming that on investigation by Messrs. Dow & Smith, that the specifications were closed and would not admit of the free bidding which was contemplated by the Commissioners, when Mr. Gaw was appointed as the Engineer. In view of this, Commr. Cahill presented the following resolution: 20 30

“Whereas, on February 7th, 1917, this Commission by resolution appointed Robert Gaw an engineer to make estimates of the cost of any work intended to be done by this Commission, for the improvement and maintenance of the Hudson Boulevard, and report said estimates to this Commission and to do and perform such things as are or may be required of any engineer appointed and employed by this commission in the improvement and maintenance of the Hudson Boulevard; and 40

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“Whereas, the said Robert Gaw presented to this Commission plans and specifications for the improvement and maintenance of the Hudson Boulevard, and from an examination of the same it appears that the specifications are closed and unfair to bidders;

10 “Therefore, be it resolved that the said plans and specifications prepared by the said Robert Gaw, be and the same are hereby rejected; and

“Be it further resolved that the resolution adopted by this Board February 7, 1917, appointing the said Robert Gaw engineer to make estimates and prepare plans and specifications for the improvement and maintenance of the Boulevard be and the same is hereby rescinded.

20 “Adopted by the following vote:

“Ayes Commrs. Seglie and President Cahill.

“Nay Commr. Asmus.”

Q. What next appears from the Minutes? A. Also, at that same meeting, a communication was received from Engineer Gaw, dated April 11, 1917, explaining his specifications.

30 MR. MARKLEY: I offer in evidence the letter as spread in the Minutes of the meeting of April 11, 1917, from Engineer Gaw, appearing at page 39 of the Minutes, which is as follows:

“West Hoboken, N. J., April 11th, 1917.

“To the Honorable Board of Boulevard Commissioners of Hudson County,
Court House, Jersey City, N. J.

“Gentlemen:

40 “Relative to specifications submitted to you by me for the improvement of the Hudson County Boulevard from Hackensack Plank Road to Paterson Plank Road in West Hoboken, and from Newark Avenue to Communipaw Avenue and thence to Central Railroad Bridge,

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Jersey City, I wish to say that said specifications were given to your members for their criticism, so that when they are finally adopted they will be as near perfect as possible. As to the criticisms that have arisen over the chemical test to be applied to composition of pavements the test in these specifications is the same as used by me in other specifications and on which there was open competition, and under which streets have been improved in this County, and are today in excellent condition. I refer particularly to Park Avenue in the Town of Guttenberg. **10**

"I am satisfied and Dr. Kleiberg of the Department of Public Works, Borough of Manhattan, agrees with me that Mexican Asphalt petroleum could be distilled to conform to the requirements. W. E. C. Pailer, of the same department, shows the test of 13.50% to 18% for Mexican Asphalt.

"I have personally seen tests in the Department of Public Works, Borough of Manhattan, showing a yield of 14.70% on tests of Mexican Asphalt. **20**

"I realize, however, that you gentlemen wish and the people of the County of Hudson expect the roadway to be quickly and properly improved.

"Knowing this, I am anxious to avoid any possibility of delay or dispute and have therefore changed the test, so that the yield required will be between 9 and 18.

"The specifications were never formally submitted or approved. No harm has been done, and with the change as stated, I hope to be able to proceed without further delay. **30**

"As stated above, the same test was used before and as no complaint was made and open bidding occurred, I thought there would be none in this case, and acted in perfect good faith in prescribing the test complained of. With the latitude increased, there can surely be no complaint now and your Board ought to secure real open competition. **40**

Respectfully,

"(Signed) ROBERT GAW."

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Q. What was the next step, as shown by your Minutes? A. Also at that same meeting, of April 11th, 1917, a resolution was passed by the Board appointing Thomas J. Wasser and employing him to make estimates of the cost of the work intended to be performed.

10 MR. MARKLEY: I offer in evidence this resolution, appearing in the Minutes of the Board of the meeting of April 11, 1917, at page 40, which is as follows:

“Resolution by President Cahill.

20 “Resolved, that Thomas J. Wasser, a competent engineer, be and he hereby is appointed to make estimates of the cost of any work intended to be done by this Commission in the performance of its duty of improving and maintaining the Hudson Boulevard, and report said estimates to this Commission, and to do and perform such other things as are or may be required of an engineer appointed or employed by this Commission in the performance of its duties of improving and maintaining the Hudson County Boulevard, and that the said Thomas J. Wasser serve without compensation; and be it further

30 “Resolved that all other resolutions heretofore adopted by this Commission appointing or employing any other engineer either for a term or without term to make estimates on work to be performed or to do any other work for this Commission, be and the same is hereby rescinded.

“Adopted by the following vote:

“Ayes Commrs. Seglie and President Cahill.

“Nays Commr. Asmus.”

40 Q. Do the Minutes of the meeting of April 11, 1917, show anything with reference to a certificate

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of election made by Honorable Francis J. Swayze, Justice of the Supreme Court of the State of New Jersey, filed in the office of the Clerk of the County of Hudson on February 13, 1917, that Henry Ackerman was duly elected to the office of Boulevard Commissioner? A. They do show a resolution, offered by Commissioner Asmus, and the action taken by the Commissioners thereon. **10**

MR. MARKLEY: I offer in evidence what the Minutes show with regard to the resolution and the action taken thereon.

MR. WALSCHEID: I object to that on the ground that it is immaterial, irrelevant and incompetent to the proceedings now being brought to the attention of the Court.

MR. MARKLEY: The resolution and the action taken, as appears from the Minutes at page 41, is as follows: **20**

"The following resolution was presented by Commissioner Asmus.

"Whereas, it appears by certain certificate of election made by the Hon. Francis J. Swayze, Justice of the Supreme Court of the State of New Jersey, filed in the office of the Clerk of the County of Hudson Febry. 13th, 1917, that Henry Ackerman was duly elected to the office of Boulevard Commissioner of Hudson County; and **30**

"Whereas, by reason of litigation instituted by Paul Seglie also claiming said office this Board has heretofore refused to recognize the right of said Henry Ackerman to same; and

"Whereas, it appears that said litigation has been terminated by judgment of the Supreme Court of the State of New Jersey, sustaining the validity of said certificate of election; and

"Whereas, the said Henry Ackerman has heretofore taken the oath of office and duly **40**

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filed the official bond required by law and is in all respects qualified to hold and exercise the office of Boulevard Commissioner of Hudson County; and

10 “Whereas, the Supreme Court of the State of New Jersey, on April 7, 1917, issued a rule to Edward Cahill and Adolph E. Asmus, Boulevard Commissioners, and John C. Sweeney, Clerk of the Boulevard Commissioners of Hudson County, to show cause why the said Henry Ackerman should not be admitted and recognized as a Boulevard Commissioner of Hudson County; and

“Whereas, in the judgment of the Boulevard Commissioners of Hudson County no good and sufficient cause can be shown therefor,

20 “Resolved, that henceforth the said Henry Ackerman be admitted and recognized as a duly elected and lawful Boulevard Commissioner of Hudson County in the place and stead of the said Paul Seglie, and that all officers, clerks and employees and other persons within the jurisdiction of the Boulevard Commissioners of Hudson County be hereby directed and governed accordingly.

30 “The resolution was not seconded, but President Cahill moved that it be tabled. Commr. Asmus demanded the yeas and nays, which were as follows:

“To table Mess. Seglie and President Cahill.

“Not to table Commissioner Asmus.”

Q. What was the next step taken by the Board, as shown by the Minutes? A. At an adjourned meeting of the Boulevard Commissioners, held April 18, 1917, the following action was taken, as appears at page 44 of the Minutes:

40 “In view of the fact that Engineer Wasser

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was instructed to prepare specifications for the improvement of three sections of Roadway, which were to be offered at this meeting, on motion of Commr. Seglie the regular order of business was dispensed, and Board proceeded to the consideration of specifications presented by Engineer Wasser.

"The first was consideration of Roadway paving between Paterson Plank Road and Hackensack Plank Road, in West Hoboken and North Bergen. The Clerk was directed to read these specifications, which he did, and on the completion of the reading Commr. Cahill moved that the specifications covering the improvement of the Boulevard between Paterson Plank Road and Hackensack Plank Road in West Hoboken and North Bergen, be adopted. (1) 10

"They were adopted by the following vote:

"Ayes Commrs. Seglie, Asmus and President Cahill. 20

"Nays none.

"The Clerk was then directed to read the specifications covering the improvement of the Hudson Boulevard, between Communipaw Ave. and Newark Avenue, Jersey City, N. J., with all of the work incidental thereto.

"When the reading was completed Commr. Cahill moved for the adoption of the specifications covering the improvement of the Hudson Boulevard between Communipaw Ave. and Newark Ave., Jersey City, N. J., with all of the work incidental thereto. (2) 30

"They were adopted by the following vote:

"Ayes Commrs. Seglie, Asmus and President Cahill.

"Nays none.

"The Clerk was then directed to read the 40

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specifications covering the improvement of the Hudson Boulevard between the Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue, Jersey City, N. J., together with all of the work incidental thereto.

10 "When the reading was completed, Commr. Cahill moved for the adoption of the specifications covering the improvement of the Hudson Boulevard between Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Ave., Jersey City, N. J., together with all work incidental thereto. (3)

"They were adopted by the following vote.

"Ayes Commrs. Seglie, Asmus and President Cahill.

"Nays none.

20 "By Commr. Cahill.

"(1) Resolved, That pursuant to the authority vested in this Commission by law, that the plans and specifications for the reconstruction of the Hudson Boulevard from Paterson Plank Road to the Hackensack Plank Road in the Towns of West Hoboken and North Bergen as proposed by Thomas J. Wasser, the County Engineer, be and the same are hereby approved of; and be it further

30 "Resolved, That the Clerk of this Commission be and is hereby directed to advertise for bids for said work, in accordance with said plans and specifications, in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Review, the Bayonne Times and the Engineering News Record, said bids to be received at a meeting of this Commission to be held on Monday, May 7, 1917, at 2 o'clock

40 p. m.

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“Adopted by the following vote.

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“By Commr. Cahill.

“Resolved, that pursuant to the authority vested in this Commission by law, that the plans and specifications for the reconstruction of the Hudson Boulevard, from Communipaw to Newark Avenue, Jersey City, as prepared by Thomas J. Wasser, the County Engineer, be and the same are hereby approved of; and be it further 10

“Resolved, that the Clerk of this Commission be and is hereby directed to advertise for bids for said work, in accordance with said plans and specifications, in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Review, the Bayonne Times and the Engineering News Record, said bids to be received at a meeting of this Commission to be held on Monday, May 7, 1917, at 2 o'clock p. m. 20

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none. 30

“By Commr. Cahill.

“Resolved, That pursuant to the authority vested in this Commission by law, that the plans and specifications for the reconstruction of the Hudson Boulevard, from the bridge over the Central R. R. of N. J. to Communipaw Ave. in Jersey City as prepared by Thos. J. Wasser, the County Engineer, be and the same are hereby approved; and be it further

“Resolved, that the Clerk of this Commission 40

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10 be and is hereby directed to advertise for bids for said work in accordance with said plans and specifications in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Times, the Bayonne Review and the Engineering News Record, said bids to be received at a meeting of this Commission to be held on Monday, May 7, 1917, at 2 o'clock p. m.

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“By Commr. Cahill.

20 “Resolved, that Mess. Dow & Smith be and they are hereby appointed as Chemists to analyze and examine the materials for the reconstruction of the Hudson County Boulevard, and that they be paid for same according to the work done.

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.”

30 Q. What was the next step taken, as appears by the Minutes? A. At a special meeting of the Boulevard Commissioners, held on April 23, 1917, the following action was taken, as appears on page 47 of the Minutes:

“As soon as the Board was called to order Commr. Cahill announced that he had called the meeting at the request of County Counsel James J. Murphy and Engineer Thomas J. Wasser, so that the specifications could be amended.

“Commr. Cahill presented the following resolutions:

40 “Resolved, That the resolution passed by this Commission on April 18th, 1917, approving the

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plans and specifications for the reconstruction of the Hudson Boulevard, from Paterson Plank Road to the Hackensack Plank Road in the Towns of West Hoboken and North Bergen, as prepared by Thomas J. Wasser, the County Engineer, and directing the Clerk of this Commission to advertise for bids for said work to be received at a meeting of the Commission to be held on Monday, May 7th, 1917, at 2 o'clock p. m., be and the same is hereby rescinded. 10

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“Resolved, That the resolution passed by this Commission on April 18th, 1917, approving the plans and specifications for the reconstruction of the Hudson Boulevard, from Communipaw Ave. to Newark Avenue, Jersey City, as prepared by Thomas J. Wasser, the County Engineer, and directing the Clerk of this Commission to advertise for bids for said work to be received at a meeting of this Commission to be held on Monday, May 7th, 1917, at 2 o'clock p. m., be and the same is hereby rescinded. 20

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“By Commissioner Cahill.

“Resolved, That the resolution passed by this Commission on April 18th, 1917, approving the plans and specifications for the reconstruction of the Hudson Boulevard, from the bridge over the Central R. R. of N. J. to Communipaw Avenue, in Jersey City, as prepared by Thomas J. Wasser, the County Engineer, and directing the Clerk of this Commission to advertise for bids for said work to be received at a meeting of the Commission to be held on Monday, May 7th, 1917, at 2 o'clock p. m., be and the same is hereby rescinded. 30

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill. 40

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“Nays none.

“By COMMR. CAHILL:

10

“Resolved, That pursuant to the authority vested in this Commission by law, the plans and specifications for the reconstruction of the Hudson Boulevard, from Paterson Plank Road to the Hackensack Plank Road, in the Towns of West Hoboken and North Bergen, as prepared by Thos. J. Wasser, the County Engineer, be and the same are hereby approved and adopted; and be it further

20

“Resolved, That the Clerk of this Commission be and he is hereby directed to advertise for bids for said work in accordance with said plans and specifications in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Review, the Bayonne Times and the Engineering News Record, and said bids to be received at a meeting of this Commission to be held on Wednesday, May 9th, 1917, at 2 o'clock p. m.

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“By COMMR. CAHILL:

30

“Resolved, That pursuant to the authority vested in this Commission by law, the plans and specifications for the reconstruction of the Hudson Boulevard, from Communipaw to Newark Avenue, Jersey City, as prepared by Thomas J. Wasser, the County Engineer, be and the same are hereby approved and adopted; and be it further

40

“Resolved, That the Clerk of this Commission be and he is hereby directed to advertise for bids for said work in accordance with said plans and specifications in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Review, the Bayonne Times, and the Engineering News Record; said bids to be received at a meeting of this Commission to be held Wednesday, May 9th, 1917, at 2 o'clock p. m.

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“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“By COMMR. CAHILL:

“Resolved, That pursuant to the authority vested in this Commission by law, the plans and specifications for the reconstruction of the Hudson Boulevard, from the bridge over the Central R. R. of N. J. to Communipaw Avenue, in Jersey City, as prepared by Thomas J. Wasser, the County Engineer, be and the same are hereby approved and adopted; and be it further 10

“Resolved, That the Clerk of this Commission be and he is hereby directed to advertise for bids for said work, in accordance with said plans and specifications in the Hudson Observer, the Jersey Journal, the Hudson Dispatch, the Bayonne Times, the Bayonne Review and the Engineering News Record, said bids to be received at a meeting of this Commission to be held on Wednesday, May 9th, 1917, at 2 o'clock p. m. 20

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“The above resolutions refer to those sets of specifications which were amended April 23rd, 1917, by the addition of legal parts, &c.

“By COMMR. CAHILL: 30

“Be it Resolved, That Allan W. Dow and Francis P. Smith, partners in profession as chemical engineers and consulting and paving engineers, be and they hereby are employed by the Hudson County Boulevard Commission as consulting engineers to supervise the construction of all bituminous, concrete or sheet asphalt pavements to be laid upon the Hudson County Boulevard, between Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Ave. and Communipaw Ave. and Newark Ave. in Jersey City, 40

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and Paterson Plank Road and Hackensack Plank Road in West Hoboken and North Bergen, N. J., upon the terms and conditions set forth in their letter to the Hudson County Boulevard Commission, dated April 23rd, 1917, which letter and this resolution taken together, shall be and become the contract between the
 10 Hudson County Boulevard Commission of the County of Hudson and said Messrs. Dow and Smith.

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“Letter of Messrs. Dow & Smith which forms part of the contract herein referred to.

“New York, April 23, 1917.

“Hudson County Boulevard Commission,

“Jersey City, N. J.

20

“Gentlemen:

For the sum of 2½c. per square yard we will act as consulting and inspecting engineers to your Commission on the paving of the Hudson County Boulevard, advising your engineer in all matters pertaining to the technology of the bituminous paving. We will see that your specifications are properly drawn so that you get free and open competition along with the highest grade of work.

30

“When the paving commences we will inspect all the material used in the bituminous wearing surface of it, as well as the manufacture of the pavement itself as required in the specifications. We will furnish you with a trained inspector or inspectors, whose duties it will be to be at the plant or plants during the manufacture of the paving material. They will render daily reports to us on the form shown on our enclosed pamphlet and will send our laboratory samples of the asphalt cement and surface mixture representing each day's work. We will examine and analyze these samples and report to your engineer and our
 40 inspectors our findings on them with comments,

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making suggestions which may be necessary in order to improve the quality of the mixture or make it conform to the requirements of your specifications. Either Mr. Dow or Mr. Smith will from time to time visit the work and give it such supervision personally in addition to that given by our inspector as we deem necessary, or in cases of emergency, when needed by you or your Engineer.

10

"If you desire us to supply you with inspectors to supervise the work on the street we will be glad to do so for the sum of \$6.00 per day each for their time while working for you.

Yours very truly,
Dow & SMITH,
(Signed) A. W. Dow."

The following communication was received from Messrs. Dow & Smith:

"New York, April 19th, 1917.

20

"Hudson County Boulevard Commission,
"Jersey City, N. J.

"Gentlemen:

"We have carefully examined the specifications which were presented to your Board and adopted on the 18th instant for the paving of these sections of the Hudson County Boulevard, and hereby certify that these specifications are carefully drawn and in such manner that they will allow free and open competition to all contractors handling what is recognized in the market today as good paving material. They will admit Aztec Asphalt; Montezuma Asphalt; Standard Oil Asphalt; Bermudez Asphalt; Trinidad Asphalt; Toxaco asphalt; California asphalt, and others of similar character.

30

Yours truly,
Dow & SMITH,
(Signed) A. W. Dow."

Q. What was the next step taken, as shown by your Minutes? A. At a regular meeting held on

40

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May 2, 1917, the following communications were received and the following action taken, as appears in the Minutes at page 52:

“Jersey City, N. J., May 2nd, 1917.

“To the Hudson County

“Boulevard Commissioners,

10

“Court House, Jersey City, N. J.

“Gentlemen:

“In accordance with your instructions, I have prepared plans and specifications for the reconstruction of the Hudson County Boulevard between Newark and New York Branch of the Central Railroad of New Jersey and between Communipaw Avenue and Newark Avenue, Jersey City, and between Paterson Plank Road and Hackensack Plank Road in West Hoboken and North Bergen. Bids for the above work will be received May 9, 1917.

20

“The reconstruction will among other things include the removal of the present road surface gutters and part of the present curb, and the replacing of same with a different type of construction.

“Is there any part of the present road surface, curb and gutters between the points above mentioned under guarantee? If so when does guarantee expire? And what effect will change of construction have upon such guarantee? So much of the present gutters has failed, that it is necessary to change the type, however it would be well to look into the matter before any change is made.

30

Yours truly,
(Signed) T. J. WASSER,
Engineer.”

“Jersey City, April 18th, 1917.

“To the Boulevard Commissioners

“of the County of Hudson.

40

“Gentlemen:

“In accordance with the Resolutions and in-

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structions of the Commissioners, and conformable with Chapter 69, Laws of 1908, I have made a survey and examination of the Hudson Boulevard, between Paterson Plank Road and Hackensack Plank Road, West Hoboken and North Bergen, N. J., for the purpose of preparing a preliminary estimate of the cost of laying a new bituminous concrete wearing surface on the roadway of said section of the Boulevard. I estimate that the amount of money required to do the work contemplated is one hundred and four thousand (\$104,000) dollars, as per the following estimate:

9600 lin. ft. blue stone curb @ 90c.	\$8640.00
2472 lin. ft. Conduits (12 way) 2.75	6798.00
2976 lin. ft. Conduit (2 way) 1.11	3273.60
4000 sq. yds. Granite Gutters 3.25	13000.00
1174 sq. yds. Granite Intersections 3.25	3815.50
51987 sq. yds. Preparation of roadbed .20	10397.40
3 Catchbasins 100.00	300.00
44787 sq. yds. Bituminous concrete 1.10	49265.70
31 basin strainers 10.00	310.00
1777 cu. yds. earth and top soil 1.00	1777.00
440 lin. ft. headers (new) .75	330.00
300 lin. ft. headers (reset) .35	105.00
200 cu. yds. Concrete 6.00	1200.00

\$99212.20

Add 5 per cent for consulting engineering supervision, inspection and contingencies, 4960.61

\$104172.81

(Signed) T. J. WASSER,
Engineer."

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30

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John J. O'Connor—Direct.

“Jersey City, April 18th, 1917.

“To the Boulevard Commissioners
“of the County of Hudson.

“Gentlemen:

“In accordance with the resolution and instructions of the Commissioners, and conformable with Chapter 69, Laws of 1908, I have made a survey and examination of the Hudson Boulevard, between Newark and New York Branch of the Central R. R. of New Jersey and Communipaw Avenue, Jersey City, for the purpose of preparing a preliminary estimate of the cost of laying a new bituminous concrete wearing surface on the roadway of said section of the Boulevard. I estimate that the amount of money required to do the work contemplated, is thirty-seven thousand (\$37,000.00) dollars, as per the following estimate:

3700 lin. ft. blue stone curb	90c.	\$3330.00	
824 “ “ conduits (12 way)	2.75	2266.00	20
992 “ “ conduits (2 way)	1.10	1091.20	
1500 sq. yds. granite gutters	3.25	4875.00	
18493 “ “ preparation of road bed	.25	4623.25	
2 catch basins	100.00	200.00	
700 lin. ft. concrete curb	.75	525.00	
15790 sq. yds. bituminous con- crete	1.10	17369.00	
17 basin strainers	10.00	170.00	
668 cu. yds. earth and top soil	1.00	668.00	
160 lin. ft. headers (new)	.75	120.00	
300 lin. ft. headers (re-set)	.35	105.00	30
10 cu. yds. concrete	6.00	60.00	
		<hr/>	
		\$35402.45	

Add 5 per cent. for consulting
engineering supervision, in-
spection and contingencies

1770.12

\$37172.57

(Signed) T. J. WASSER,
Engineer.”

John J. O'Connor—Direct.

“On motion of Commr. Asmus the communications from the County Engineer were ordered received and filed.”

Q. What was the next step taken by your Board, as shown by the Minutes? A. At an adjourned meeting of the Commissioners, held May 9, 1917, the following action was taken, as appears on page 57 of the Minutes:

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“The meeting was called for the purpose of receiving proposals for the repavement of certain sections of the Boulevard.

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“Just as the Clerk was about to read the advertisement calling for the proposals, Mr. Raymond (representing Barber Asphalt Paving Co.) asked permission to address the Board, which he was permitted to do, before the advertisements were read. He claimed that the specifications, by the manner in which they were drawn, shut his company out of competition, and in like manner, shut out other bidders. His claim was that as the specifications were drawn, they were practically closed and shut his Company and others out from competition.

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“Mr. Smith (of Dow & Smith) was present and on his attention being drawn to the situation admitted the claim made by Mr. Raymond as being correct, that the specifications were practically closed. He was unable to account for the error, which he said was his, but it was enough to prevent the acceptance of proposals (of which none were received), and they were accordingly amended, as follows:

“By Commr. Asmus:

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“Resolved, That the specifications for the repaving of the Hudson Boulevard from Paterson Plank Road to Hackensack Plank Road, West Hoboken and North Bergen, N. J., together with all work incidental thereto, which was adopted at a meeting of this Commission held April 23, 1917, be amended on page 33 of said specifications by striking out Section B,

John J. O'Connor—Direct.

which reads as follows:

“‘Ninety-eight and one-half per cent. shall be soluble in carbon disulphide,’ and insert in its place the following:

“‘Ninety-eight and one-half per cent. of the bitumen shall be soluble in carbon tetrachloride.’

“Be it further Resolved, that the Clerk of this Commission be directed to advertise for bids for said work to be done in accordance with the said amended specifications in the Hudson Observer, Jersey Journal, Hudson Dispatch, Bayonne Review, Bayonne Times and Engineering News Record, said bids to be received at 2 o'clock p. m., May 25th, 1917. 10

“Adopted by the following vote:

“Ayes Commrs. Seglie, Asmus and President Cahill.

“Nays none.

“By Commr. Asmus:

“Resolved, That the specifications for the repavement of the Hudson Boulevard, from Communipaw Avenue to Newark Avenue, Jersey City, N. J., together with all work incidental thereto, which was adopted at a meeting of the Commission held April 23, 1917, be amended on page 33 of said specifications by striking out Section ‘B,’ which reads as follows: 20

“‘Ninety-eight and one-half per cent. shall be soluble in carbon disulphide,’ and insert in its place the following:

“‘Ninety-eight and one-half per cent. of the bitumen shall be soluble in carbon tetrachloride.’ 30

“Be it further Resolved, that the Clerk of this Commission be directed to advertise for bids for said work to be done in accordance with the said amended specifications in the Hudson Observer, Jersey Journal, Hudson Dispatch, Bayonne Review, Bayonne Times and Engineering News Record, said bids to be received at 2 o'clock p. m., May 25, 1917.

“Adopted by the following vote: 40

John J. O'Connor—Direct.

"Ayes Commrs. Seglie, Asmus and President Cahill.

"Nays none.

"By Commr. Asmus:

10 "Resolved, That specifications for the repavement of the Hudson Boulevard between the Newark and New York Branch of the Central Railroad of New Jersey and Communipaw Avenue, Jersey City, N. J., together with all work incidental thereto, which was adopted at a meeting of this Commission, held April 23, 1917, be amended on page 32 of said specifications by striking out Section B, which reads as follows:

"'Ninety-eight and one-half per cent. shall be soluble in carbon disulphide,'

"and insert in its place the following:

20 "'Ninety-eight and one-half per cent. of the bitumen shall be soluble in carbon tetrachloride.'

"Be it further Resolved, that the Clerk of this Commission be directed to advertise for bids for said work to be done in accordance with the said amended specifications, in the Hudson Observer, Jersey Journal, Hudson Dispatch, Bayonne Review, Bayonne Times and Engineering News Record; said bids to be received at 2 o'clock p. m., May 25th, 1917.

"Adopted by following vote:

"Ayes Commrs. Seglie, Asmus and President Cahill.

30 "Nays none.

"Commr. Asmus complained that the work was appreciably delayed by the error in the specifications and that the cost of advertising would be increased between five and six hundred dollars. He did not think it was fair to saddle this cost on the Boulevard."

40 Q. What was the next action taken by the Board, as shown by the Minutes? A. At an adjourned meeting of the Commissioners, held May 25, 1917, the following communications were received and the following action taken, as appears on page 61 of the Minutes:

John J. O'Connor—Direct.

"The following communication was received from Mess. Dow & Smith:

"New York, May 24th, 1917.

"Hudson County Boulevard Commission,

"Hudson County Court House,

"Jersey City, N. J.

"Dear Sirs:

"Relative to the error in specifications for paving the Hudson County Boulevard, which was discovered at your meeting on the 9th instant and which necessitated the readvertising of the work, we have carefully looked into the matter and find that we furnished your Engineer with a copy of specifications taken from our file which contained the clause in error. 10

"How this error ever happened to be in this set of specifications we are unable to explain as it is the only copy among many in our files which contains it. After your instructions we surely would not have intentionally written specifications which excluded any standard brand of asphalt, and, in fact, it has long been our practice to never draw up anything but open specifications. This can easily be verified by any number of cities, for whom we have drawn specifications. That we had no intention of drawing specifications that would exclude Bermudez and Trinidad asphalts is proven by the letter written you on April 19th, in which we said that the specifications which we had written would admit 20

Aztec asphalt 30

Montezuma asphalt

Bermudez asphalt

Trinidad asphalt

Texaco asphalt

California asphalt

and others of similar character.

"The writer must admit that he erred in not discovering this typographical error at the time of reviewing the final specifications, and his error necessitated the readvertising of this work, the firm of Dow & Smith feel it only just to suggest that the cost of the second 40

John J. O'Connor—Direct.

advertising be deducted from the amount paid them for the inspection of this work.

"Further in regard to this meeting, we wish to contradict a statement made by Mr. Raymond, Agent of the Barber Asphalt Paving Co., where he says:

"Mr. Dow is guilty of wilful misrepresentation when he says that the 9 and 15 per cent. residual coke clause, as in the original rejected specifications, excluded all but Bermudez and Trinidad asphalts."

"No such statement as this was ever made by the writer and if he had been present in the room at the time Mr. Raymond made it, it would surely have been denied. The statement which he did make to the Commissioners was that the clause calling for 9 to 15 per cent. residual coke practically closed the specifications to all asphalts excepting Bermudez and Trinidad Lake, which are exclusively controlled by the Barber Asphalt Paving Company.

"At the time of making this statement to the Commissioners a letter was written to them through the Chairman, dated April 7th, reiterating this statement to the Commissioners and explaining to them that a few California, Texas and Mexican asphalts might be found that would comply with the requirements of this clause, but that such a large percentage of them would fail that no manufacturer would bid under such specifications. As a proof that this assertion is true, it is only necessary to consult the book written by Mr. Clifford Richardson, the Chemist of the Barber Asphalt Paving Company, who appeared at the meeting of the Hudson County Boulevard Commission on May 9th in company with Mr. Raymond. In this book many analyses of Trinidad, Bermudez, Texas and California asphalts are given. Of these not one Bermudez or Trinidad shows a residual coke outside of the limits 9 to 15 per cent. and not one analysis of Texas or California asphalts shows a residual coke of less than 15 per cent. The Mexican asphalts, which came on the market after Mr. Richard-

John J. O'Connor—Direct.

son wrote his book, but which have been in use sufficiently long to have proven their value for paving, all contain, with one or two rare exceptions, more than 15 per cent. of residual coke.

Yours very truly,

Dow & SMITH,
(Signed) A. W. Dow."

"On motion of Commr. Asmus communication was ordered received and filed."

Q. Was any other action taken at the meeting of May 25, 1917, as appears by your Minutes? A. Yes, the following action was taken, as appears in the Minutes at page 64:

"On motion of Commissioner Seglie sealed bids were received for the repairing of several sections of Boulevard, as per advertisement.

"On motion of Commissioner Asmus, time limit for receiving bids was closed.

"Three bids in all were received, including samples.

"Clinton Contracting Co.

"W. T. S. Crichfield.

"Union Paving Co.

Names	"Bids received May 25th, 1917.		
	Section 4	Section 5	Section 7.
	C. R. R. of N. J. to Com. Ave.	Communipaw Ave. to Newark Ave.	Paterson Plank Road to Hack- ensack Plank Road.
	per cent bid.	per cent bid.	per cent bid.
"W. T. S. Crichfield	100.00	98	93
"Union Paving Co.	1.19	1.18
"Clinton Con- tracting Co.	94	94	94

"On motion of Commissioner Asmus bids were received and referred to Committee of the Whole, Engineer Wasser, County Counsel and Chemist."

John J. O'Connor—Direct.

Q. What was the next action taken, as shown by the Minutes? A. At an adjourned meeting of the Board, held on May 28, 1917, the following communication was received and the following action taken, as appears on page 66 of the Minutes:

“The following communications received from County Engineer Wasser:

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“May 28th, 1917.

“To the Boulevard Commissioners

“of the County of Hudson,

“Court House, Jersey City, N. J.

“Gentlemen:

“On April 18th, 1917, I submitted to you an estimated cost of repaving the Hudson County Boulevard, between Paterson Plank Road, and Hackensack Road, West Hoboken and North Bergen, N. J., which amounted to \$104,172.81. On May 25th, bids were received for this work, the lowest bidder being W. T. S. Crichfield, whose bid was 93% of the Engineer's cost, thus making the actual amount of money required (for this section in accordance with the quantities estimated by the Engineer) \$96,880.71.

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Respectfully submitted,

“T. J. WASSER,

“County Engineer.”

“May 28th, 1917.

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“To the Boulevard Commissioners

“of the County of Hudson,

“Court House, Jersey City, N. J.

“Gentlemen:

“On April 18th, 1917, I submitted to you an estimated cost of repaving the Hudson Co. Boulevard, between the Newark and New York Branch of Central R. R. of N. J. and Communipaw Ave., Jersey City, which amounted to \$37,172.57. On May 25th bids were received for this work, the lowest bidder being the Clinton Contracting Co., whose bid was 94% of the Engineer's estimated cost, thus making the

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John J. O'Connor—Direct.

actual amount of money required (for this section in accordance with the quantities estimated by the Engineer) \$34,942.22.

“Respy. submitted.

“T. J. WASSER,
“County Engineer.”

“May 28th, 1917.

“To the Boulevard Commissioners
“of the County of Hudson,
“Court House, Jersey City, N. J.

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“Gentlemen:

“On April 18th, 1917, I submitted to you an estimated cost for repaving the Hudson County Boulevard between Communipaw Ave. and Newark Ave., Jersey City, which amounted to \$117,562.52. On May 25th bids were received for this work, the lowest bidder being the Clinton Contracting Co., whose bid was 94% of the Engineer’s estimate of cost, thus making the actual amount of money required (for this section in accordance with the quantities estimated by the Engineer) \$110,508.77.

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“Respectfully submitted

“T. J. WASSER,
“County Engineer.

“On motion of Commissioner Seglie, above communications were ordered received and spread on the minutes.

“The following communication received from Dow & Smith:

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“May 28, 1917.

“Hudson County Boulevard Commissioners,
“Hudson County Court House,
Jersey City, N. J.

“Gentlemen:

“Enclosed please find reports on the examination of the bidding samples submitted by W. T. S. Crichfield and Clinton Contracting Co. for work to be done on Sections 4, 5 and 7 of the Hudson County Boulevard. The samples submitted by the Union Paving Co.

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John J. O'Connor—Direct.

were not examined as their bid was high and only samples of asphalt cement was submitted, whereas the specifications required the submitting of refined asphalt and asphalt cement. The specifications require the filing of one pound samples of the refined asphalt, petroleum flux and asphalt cement that the contractor proposes to use, together with statements as to the source, character and proportion of materials composing them. W. T. S. Crichfield furnished a letter, in which he stated the source of refined asphalt, but did not state definitely the portion of the Republic of Mexico the flux was obtained from. The Clinton Contracting Co. furnished statements giving the source of the refined asphalt, petroleum flux and asphalt cement, also a statement of the brand name under which it was sold and an analysis of each sample presented.

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"All of the bidding samples presented by W. T. S. Crichfield and the Clinton contracting Co. comply with the requirements of your specifications and are suitable for use in paving.

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"The asphalt cements submitted by W. T. S. Crichfield while complying with the requirements of the specifications, are possibly harder than desirable in all or portions of the work to be constructed.

"Very truly yours,

"Dow & Smith,
"A. W. Dow."

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"On motion of Commissioner Cahill above communication was received and spread in full on the minutes.

"By Commissioner Cahill.

"Resolved that the certified checks of all except the lowest bidders, for the repaving of the Hudson Boulevard, which bids were received at a meeting of this Commission on May 25th, be returned.

"Adopted by the following vote:

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"Ayes: Commr. Seglie and President Cahill.

"Nays none.

John J. O'Connor—Direct.

“Absent Commissioner Asmus.

“On motion of Commissioner Seglie a recess was taken until 2:30 p. m.

“On reassembling at 2:30 p. m. President Cahill presented the following resolution:

“Whereas under and by virtue of an Act of the Legislature of the State of N. J. entitled a further supplement to an act entitled an act to authorize the Board of Chosen Freeholders of any of the several counties of this state, to lay out, open, construct, improve and maintain a public road therein, approved April 7th, 1888, it is provided, Whenever in any County of the State, where a road or roads shall have been constructed, improved and maintained under the provisions of the act to which this is a supplement, or the acts supplementary thereto and amendatory thereof, it shall become necessary in the opinion of the body vested by the law with the care of such road or roads, as expressed by resolution duly passed at a regular meeting of said body, to reinforce reconstruct or rebuild any portion of the roadway, paving, the curbs or gutters, the drainage system, the lighting system, including the laying of conduits and placing cables therein or bridges, or all of them upon such road or roads, to meet the requirements incident to the increase of population, traffic and use, it shall be lawful for such body to reinforce reconstruct and rebuild such part of said road or roads hereafter designated; and

“Whereas in the opinion of the Boulevard Commissioners of the County of Hudson, being the body vested by law with the care of the Hudson Boulevard and its branches, extending from a point in the City of Bayone where said terminates at the Kill von Kull in a general northerly direction to the Bergen County line, and from thence in a general easterly direction and southerly direction, into the City of Hoboken, it has become necessary to relay, reconstruct and rebuild por-

John J. O'Connor - Director.

tions of the roadway paving on the Boulevard;
and

"Whereas, this Commission at a regular meeting did appoint Thos. J. Wasser a competent engineer to prepare the estimated cost of said work: and

10 "Whereas, said engineer did report to this Commission an estimate of such cost showing that said cost would be as follows, viz:

"Section 4, which lies between the Newark and New York Branch of the C. R. R. of N J. and Communipaw Ave. Jersey City, the sum of \$37,172.57.

"Section 5, which lies between Communipaw Ave. and Newark Ave. Jersey City the sum of \$117,562.52; and

"Section 7, which lies between the Paterson Plank Road and the Hackensack Plank Road in west Hoboken and North Bergen, N. J. the sum of \$104,172.81; and

20 "Whereas, under said act this commission is bound to submit a full statement of the work necessary and proposed to be executed with the estimated cost of such work prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law with the control of the finances of the County, being the Board of Chosen Freeholders of the County of Hudson, to the end that such financial arrangements as shall be necessary to provide the funds necessary to pay for the work as proposed;

30 "Now therefore, pursuant to the statute aforesaid, be it resolved,

40 "(1) That the President and Secretary of this Commission forward a copy of this resolution, together with a statement of the work necessary and proposed to be executed at this time, with estimated cost of such work, as prepared by said engineer, and certify the same to the Board of chosen Freeholders of the County of Hudson, to the end that said Board may, pursuant to the statute, make such financial arrangements as shall be necessary to pay for the work proposed.

John J. O'Connor--Direct.

"(2) That requisition is hereby made and submitted to the Board of Chosen Freeholders of the Co. of Hudson for the sum of \$154,735.09 for the doing of the work and the furnishing of the material for Sections 4 and 5 aforesaid, as set out in said estimate of the engineer, which money is not in any manner to be expended for the ordinary maintenance repairs and lighting of the road.

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"(3) That in the opinion of the Boulevard Commissioners of the County of Hudson, being the body vested by law with the care of the Hudson Boulevard and Branches, it has become necessary to reinforce, relay, reconstruct and rebuild said portions of the roadway paving on said Boulevard.

"Adopted by the following vote:

"Ayes Commissioner Seglie and President Cahill.

"Nays none.

"Absent Commissioner Asmus.

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"On motion of Commissioner Seglie, copy of above resolution, together with the following certification of resolution and requisition, was forwarded, Board of Chosen Freeholders:

"We hereby certify that the foregoing resolution was adopted by the votes of a majority of the Boulevard Commissioners of the County of Hudson at a regular meeting of the Commission held at their offices in the Court House, Jersey City, N. J. on May 28, 1917.

(signed) "EDWARD CAHILL, President,
"_____ Secretary.

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"To the Honorable Director and Members of the Board of Chosen Freeholders, of the County of Hudson.

"Gentlemen:

"In accordance with the Engineers estimate for the reconstruction of those portions of the Boulevard between the Newark and New York Branch of the C. R. R. of N. J. and Communipaw Ave. in Jersey City and Communipaw Ave. and Newark Ave. in Jersey City, N. J., requisition is hereby made

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John J. O'Connor—Direct.

in writing on your honorable body for the sum of one hundred and fifty four thousand seven hundred and fifty five dollars and nine cents (\$154,755.09) with which to do the proposed work.

“Respectfully,

“EDWARD CAHILL, President,
“_____ Secretary.’

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Q. What was the next action taken, as appears from your Minutes? A. At an adjourned meeting of the Commissioners, held on May 31, 1917, the following appears in the Minutes, at page 71:

“Communication from W. T. S. Crichfield was received and read.

“May 31st, 1917.

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“Hudson County Boulevard Commissioners,
“Court House, Jersey City, N. J.

“Gentlemen:

“On May 25th, at 2 p. m. your Board received bids under public advertisement, based upon specifications which in part provide as follows:

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“‘Samples.’ One pound sample of refined asphalt, petroleum flux and asphalt cement that the contractor proposes to use in his work, together with a statement as to the source, character and proportion of the minerals composing them must be handed in with his bid, and no contract shall be awarded to any bidder whose samples do not comply in every respect with these specifications. No asphalt other than that specified in his bid shall be used by any contractor except with the written consent of the Engineer and provided that it complies in all respects with the requirements of these specifications.

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“In accordance with the above provision I submitted a bid for Sections 4, 5 and 7, stating in the proposal, as required under your specifications, that ‘This proposal is based on the use of Mexican asphalt in the construc-

John J. O'Connor—Direct.

tion of bituminous concrete pavement proposed to be laid by me. W. T. S. Crichfield.'

On Sections 4 and 5 you recorded a bid from the Clinton Contracting Company, and an examination of the proposals submitted by them discloses the fact that the said company did not designate and name the asphalt proposed to be used by them in construction of bituminous concrete surface.

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"This is in direct violation of the requirements of the specifications, and I therefore desire to protest to your Board against the award of Sections 4 and 5 to the Clinton Contracting Co. on the grounds that their bid is informal and not in compliance with the requirements of the specifications.

"Very truly yours,

"W. T. S. Crichfield,

"On motion of Commissioner Seglie same was received and filed.

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"County Counsel James Murphy advised the Board that in view of the fact that the County Supervisor had not approved of the resolution passed by the Board of Freeholders making an appropriation for the repair of the Boulevard contracts for proposed work could not be awarded.

"On motion of Commissioner Seglie the matter of awarding contracts for repair of Boulevard was laid over until next regular meeting on Wednesday, June 6, 1917 at 2 p. m."

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Q. What was the next action taken, as shown by your Minutes? A. At a regular meeting of the Boulevard Commissioners held on June 6th, 1917, the following action was taken, as appears in the Minutes at page 73:

"The following resolution was presented by President Cahill.

"Resolved, that the contract for the repair of the Hudson Boulevard with bituminous concrete pavement laid on macadam stone

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John J. O'Connor—Direct.

foundation, between Communipaw Ave. and the Newark and New York Branch of the Central R. R. of N. J. Jersey City, Hudson County, N. J. be and the same is awarded to the Clinton Contracting Co. for the price and figure submitted by them for said work to their proposal, to wit, the sum of thirty seven thousand one hundred and seventy two dollars and fifty seven cents, they being the lowest responsible bidders; be it

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“Further Resolved, that the County Attorney be directed to prepare the necessary contract for the performance of the work.

“Adopted by the following vote:

“Ayes Commissioner Seglie and President Cahill.

“Nays, Commissioner Asmus.

“The following resolution was presented by Commissioner Cahill:

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“Resolved, that the contract for the repair of the Hudson Boulevard with bituminous concrete pavement laid on macadam or stone foundation, between Communipaw Ave. and Newark Ave. Jersey City, N. J., be and the same is hereby awarded to the Clinton Contracting Co. for the price and figure submitted by them for said work in their proposal, to wit, the sum of one hundred and ten thousand five hundred and eight dollars and seventy cents, they being the lowest responsible bidders; be it further

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“Resolved, that the County Attorney be directed to prepare the necessary contract for the performance of said work.

“Adopted by the following vote:

“Ayes Commissioner Seglie and President Cahill.

“Nays Commissioner Asmus.

“Commissioner Asmus stated that he wished to make himself clear on the matter of above contracts, in view of certain newspaper articles which stated that he was in league with certain contractors or contractor. His only interest was the taxpayers interest. If the bituminous pavement was extended to

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John J. O'Connor—Direct.

the curb and the granite gutters omitted there would be a saving of \$21,000. Then again he believed that the section of the road between the Paterson Plank Road and the Hackensack Plank Road should be given some consideration.

"In reply to this statement Commissioner Seglie stated that those objections should have been made when specifications were introduced and not at this late day." 10

Q. When was the last meeting of the Commission held? A. On June 6th, 1917; that was the last meeting of the Board.

Q. You know of no other action that was taken? A. No.

MR. MARKLEY: I offer in evidence the petition for recount in the matter of the application of Henry Ackerman, for recount of votes cast at election on November 7, 1916 for office of Boulevard Commissioners of Hudson County, sworn to and filed on November 17, 1916; also the order for the recount granted by Hon. Francis J. Swayze, Justice of the Supreme Court on December 1, 1916 in the same matter; also conclusions of Mr. Justice Swayze after said recount; also the revocation of certificate of election of Paul Seglie as Boulevard Commissioner of Hudson County, and certificate of election to said office of Henry Ackerman, in the same matter. 20 30

MR. WALSCHEID: I object to the offer on the ground that it is immaterial, incompetent and irrelevant to any issues which may be presented to the Court upon this application for a writ or writs of certiorari.

It is hereby stipulated that the resolution passed by the Boulevard Commissioners on May 28, 1917 submitting a full statement of 40

John J. O'Connor—Direct.

10 the work necessary and proposed to be executed, with the estimated cost of such work, prepared by the Engineer, and with requisition for the amount of said cost, which resolution is found upon pages 68 and 69 of the Minutes of the Boulevard Commissioners, was presented to the Board of Chosen Freeholders of the County of Hudson at a regular meeting held May 28, 1917 and at that time that body passed the following resolution:

20 "Resolved that the sum of one hundred fifty four thousand seven hundred thirty-five dollars and nine cents be and the same is hereby appropriated for repaving the Hudson Boulevard from the Newark and New York Branch of the Central Railroad of New Jersey to Communipaw Avenue, Jersey City, New Jersey; and from Communipaw Avenue to Newark Avenue, Jersey City, said sum to be raised by the sale of bonds to be hereafter issued in the manner provided by law."

It is further stipulated, that under Chapter 69 of the Laws of 1908, at this time, the County is authorized to issue bonds for a sum not to exceed \$190,000. for the purposes authorized by said Act.

30 Hearing adjourned to Friday, June 15, 1917 at ten o'clock a. m.

Depositions taken on behalf of the Boulevard Commissioners of Hudson County, before me, David A. Newton, a Supreme Court Examiner, at my office, 243 Washington Street, Jersey City, New Jersey this fifteenth day of June, 1917, at ten o'clock in the forenoon, in the presence of counsel for the respective parties.

40 Subject to objection by the applicant as

John J. O'Connor—Direct.

to materiality and relevancy of the facts hereinafter set forth, it is stipulated between the parties that on the 27th day of March, 1911, an agreement was entered into between the Boulevard Commissioners of the County of Hudson and William Baker as contractor for the reconstruction, rebuilding and reinforcing the roadway pavement, curbs, gutters and drainage system of that portion of the Hudson Boulevard known in this case as Sections 4 and 5; that said roadway reconstruction consisted in the laying of a macadam pavement, and that said curb and gutter reconstruction consisted in the construction of a concrete curb and gutter; that no guarantee of the roadway pavement was called for by said contract, but a guarantee of the curb and gutters was provided for therein; that the curb and gutter guarantee as found in said contract is as follows:

“Guarantee of Five years.

“37. And also guarantee that the curb and gutter shall be and continue in good condition during and at the end of five years and after its completion.

“Said guarantee to consist of a suitable bond in legal form, to be executed by a surety company authorized and operating in accordance with the Laws of the State of New Jersey, and the contractor, and the Board of Chosen Freeholders and the Boulevard Commissioners of the County of Hudson, in the sum of ten thousand dollars.”

That the said curb and gutters were completed on the 1st day of October, 1911; that the contractor gave the bond called for in the section of the contract hereinbefore set out; that prior to the 1st day of October, 1916, the Boulevard Commissioners of the

Thomas J. Wasser—Direct.

County of Hudson and the Freeholders thereof considered the condition of said bond broken, and instructed the County Attorney to institute suit upon said bond; that suit upon said bond was instituted on the 2d day of February, 1917; that said suit has been at issue in time to be noticed for the April Term, 1917, of the Hudson Circuit, and was noticed for trial at the April Term, 1917 of this court, and is now awaiting trial at said term; that by the answer interposed by the defendants they deny all liability for the condition of said curb as of the 1st day of October, 1916, claiming full performance of their contract, and alleging that said defective condition is due to causes brought about or permitted to exist by the Boulevard Commissioners of the County of Hudson.

MR. MARKLEY: I object to the relevancy and materiality of the facts stipulated above.

THOMAS J. WASSER, sworn.

DIRECT EXAMINATION BY MR. MURPHY:

Q. You are the County Engineer, Mr. Wasser?

A. Yes, sir.

30 Q. And prepared the plans and specifications for this improvement on the Boulevard? A. Yes, sir.

Q. Will you explain to us what you mean by these islands in the plans and specifications?

A. The parkway islands, as designed for the Boulevard, Sections 4 and 5, shown on the plans and specifications, are for the purpose of protecting the travelling public, in dividing the vehicular traffic right and left on the Boulevard, and to provide a safety position for pedestrians crossing

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the Boulevard, and also to provide a suitable place for a modern lighting system for the Boulevard in the way of places where lamps could be erected in the center. The present lighting system, where the overhead wires are along the curb line, pass between the trees, and I have noticed that on stormy nights you can see where the swaying of the trees have chafed the wires to such an extent that there is considerable sparking, that has an effect on the trees' growth. 10

MR. MARKLEY: I object to that answer and ask to strike it out on the ground that the purpose of the Engineer putting them there is immaterial, irrelevant and incompetent.

Q. I suppose the plans show the size of those supposed islands? A. Yes, sir. 20

Q. What do they consist of, as provided by the plans and specifications?

MR. MARKLEY: I object to that; the plans and specifications are the best evidence.

A. The placing of curb at or near the center of the roadway of the Boulevard and filling in back of the curbs.

Q. Does that make any material difference in the cost; in other words, would that be any more expensive than it would have been to improve the Boulevard the same all the way across? 30

MR. MARKLEY: I object to that as immaterial and irrelevant.

A. It would be a slight increase in cost, in placing the curbs instead of paving the entire Boulevard in that space.

Q. And how many lamps are calculated to be placed in these islands? A. The islands are 40

Thomas J. Wasser—Cross.

practically the length of a city block which would require at least two, and probably three lamps, depending on the power of the lamps used.

Q. Now, do you mean three lamps on one post, or one lamp on three posts? A. I mean three points within the island at which lamp posts would be erected.

19 Q. Then, as I understand it, these so-called islands are simply nothing more or less than putting curbs in the center of the road, for the double purpose of protection to the public in crossing, and for the purpose of putting the lights there and making a modern lighting plant, and to protect the lamps when placed in that position?

MR. MARKLEY: I object to that as leading.

20 A. That is all it is.

CROSS EXAMINATION BY MR. WALSCHEID:

Q. At the present time, Mr. Wasser, on these sections 4 and 5, there are trees on both sides of this highway, aren't there? A. Yes, sir.

Q. Planted there by the Boulevard Commission? A. I don't know, but they are planted there.

Q. Well, they are planted there according to a scheme to edge the Boulevard sidewalks with trees? A. Yes, sir.

Q. Well, the trees have been planted for and on behalf of the County?

MR. MARKLEY: If you know.

A. Yes.

Q. And as part of the Boulevard scheme? A. Yes, sir.

Q. And at the present time there is also a lighting system on this Boulevard which is maintained for and on behalf of the County? A. Yes, sir.

Thomas J. Wasser—Cross.

Q. And that lighting system at the present time consists of poles set in the edge of the curb? A. Back of the curb.

Q. On both sides of the highway? A. Yes, sir.

Q. With electric wires strung overhead from pole to pole? A. Yes, sir.

Q. At regular intervals electric lamps are suspended from those poles? A. Yes, sir. 10

Q. And these wires pass through these trees, do they not? A. Yes, sir.

Q. You say that the wires chafe the wires. A. The insulation has been chafed by the movement of the boughs of the trees.

Q. Well, the result of that is that it not only injures the trees but it also injures the wire, doesn't it; or don't you know? A. No, it doesn't injure the wire.

Q. As an Engineer, would you say that it produces a dangerous situation? A. Yes, it produces a dangerous situation. 20

Q. These are high power wires, aren't they?

MR. MARKLEY: I object to that as incompetent.

A. I don't know.

Q. Are they arc lights? A. They are arc lights.

Q. Now, under your present plan for the reconstruction, you intend to remove these poles from the side of the roadway, do you not? 30

MR. MARKLEY: I object to that as immaterial and irrelevant.

A. No.

Q. And substitute the conduits? A. No; we are providing conduits; but under the present contract it does not include the removal of the poles; it is to provide conduits under the surface of the roadway so that they can be placed in the center of the road. 40

Thomas J. Wasser—Cross.

Q. The present plans and specifications provide for conduits running from the side of the roadway to these so-called parkway islands? A. Longitudinally along the center of the roadway.

Q. Conduits along the center of the roadway? A. Yes, sir.

Q. Under the islands? A. To the islands.

10 Q. So that your scheme involves the reconstruction of your lighting system by the establishment of conduits and the lighting of the roadway from the conduits and from lamp posts erected within the islands? A. That is to provide for future contracts of such character.

Q. And is that a modern way of lighting highways?

20 MR. MARKLEY: I object to that as immaterial, irrelevant and incompetent.

A. That is a modern way of lighting highways

Q. Upon what is that statement based? A. From observations of other boulevards.

Q. In this State and out of the State? A. Yes, in the State and out of the State.

Q. Are you acquainted with Broad Street, Newark? A. I am.

Q. Has Broad Street, Newark, islands? A. They have safety islands, yes.

30 Q. And in those safety islands in Broad Street, Newark, are there electric lighting posts which are served from conduits underneath the islands? A. There are; it is for warning lights.

Q. You know there are such lights there? A. Yes.

Q. There are also lights on the roadway in Broad Street, Newark? A. Yes, sir.

Q. Are you acquainted with Fifth Avenue, New York? A. I am.

40 Q. Have you noticed such islands in Fifth

Thomas J. Wasser—Cross.

Avenue, New York? A. Yes, at 42d Street and Fifth Avenue.

Q. Do you know of any other places, offhand, where you have noticed safety islands of this kind in roads? A. Well, upper Broadway has a division of traffic by safety islands.

Q. Upper Broadway, New York? A. New York. 10

Q. That is in New York City? A. Yes; and Park Avenue, Newark, has safety islands.

Q. How long have you been County Engineer, Mr. Wasser? A. Since 1913.

Q. You drew these plans and specifications? A. Yes, sir.

Q. Did you take into consideration the question in relation to the curb and gutter this contract with Mr. Baker which was made in March, 1911, when you drew them? A. I took into consideration the condition of the curb and gutter as it existed along those sections of the Boulevard, in order that I might restore that which would become dilapidated. 20

Q. And in relation to that work, what did you do so far as the good portion of that curb and gutter is concerned, in your specifications? A. In my specifications I provided for concrete curb to replace only that which is broken or dilapidated, and also provided for the removal of the remains of the present concrete gutter and substitute it with other material. 30

Q. What is the present condition of the concrete gutter; is that to remain there, or is it to be removed? A. No, sir; it is not to remain there.

Q. And that applies to the whole length of this improvement, does it?

MR. MARKLEY: I object to that as immaterial, incompetent and irrelevant. 40

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A. Yes, sir.

Q. So far as the curb is concerned, all that is fit is to remain, is it? A. Some of that that has the indications of being fit to remain.

Q. And that you allow to remain? A. Yes, sir.

Q. And the rest you remove? A. Yes, sir.

Q. Now, do your call for a separate price upon
10 curb and gutter? A. I call for prices of curb and then a separate price for gutter of a different material.

Q. So that you can tell, if you should be called as a witness in this suit just exactly what the condition of the curb and gutter was when this reimprovement started? A. Yes, sir.

Q. Can you also tell what the condition of it was on the 1st day of October, 1916? A. In a
20 general way I can.

Q. In a general way? A. Yes.

Q. Mr. Dunham had charge of it at that time? A. At that time I had no special reason why I should take note of that condition.

Q. Mr. Dunham at that time was the Engineer of the Boulevard Commission? A. Yes, sir.

Q. Can you at this time, if you are called to testify in the suit between the County and the contractor and the surety, which has been referred to in this case, testify to the cost of reconstructing the gutters with concrete as of the 1st
30 day of October, 1916, that being the date when the guarantee expired? A. I would have to be governed by the prices bid on the curb in these present contracts.

Q. No, no; what I mean is this: If you were called as an expert engineer, being acquainted with the curb and gutter and the quantity which is bad and the quantity which is good, do you
40 know the value of the material and of labor as of the 1st day of October, 1916? A. I do.

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Q. Would you be in a position to go into court and testify to the value of reconstruction as of that date, all of that curb and gutter, so as to place it in first class condition as of that date?

A. Yes, sir.

Q. Would you have any difficulty to do that?

A. None whatever.

10

CROSS EXAMINATION BY MR. MARKLEY:

Q. What would be the cost of the kind of curb, per lineal foot, to be used in the Baker contract of October 1st, 1916? A. That means that I would have to calculate it.

Q. Well, calculate it. A. I haven't got the dimensions of it.

Q. So you don't know now? A. In order to testify to this I would want to know the exact dimensions of it; I know the value of the labor and the amount of material required, and it would simply be a matter of getting the dimensions.

20

Q. I am asking you what it would cost to lay one lineal foot of curb on the Boulevard, on either one of these sections, the curb being such as was required in the William Baker contract, on October 1st, 1916. A. Why, I still say I would have to know the dimensions of the curb.

30

Q. I am giving you the dimensions; one lineal foot. A. I know; but the width and length, and the mixture.

Q. I say as provided by the Baker contract. A. Well, I am not familiar with the Baker contract; I never had anything to do with the Baker contract.

Q. So you don't know anything about it at all at the present time? A. I know the prices of what concrete in place is worth; if you give me the dimensions I will tell you.

40

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Q. You don't know the dimensions of the concrete required by the William Baker contract? A. Not now, no.

Q. Well, what was the cost of labor, to lay the curb required in the William Baker contract, as of October 1st 1916? A. \$2.50 a day.

Q. \$2.50 a day? A. For labor.

10 Q. That is on October 1st, 1916? A. Well, I won't make it any one date more than any 1916 prices for labor.

Q. Don't you know that the price of labor has been continually going up? A. I do; and I know the price of labor last year was \$2.50 a day.

Q. For the whole year? A. Different locations would require different prices.

Q. Well, on the Boulevard. A. There was no work done on the Boulevard; but in Jersey City
20 labor was \$2.50 a day.

Q. On October 1st, 1916? A. I won't hold it on one day; I will say in the fall of 1916.

Q. How about in the beginning of 1916? A. It was probably varying between two and two and a quarter.

Q. Now, these safety islands that you referred to, the islands in the present case, they are not referred to on your plans as safety islands, are they? A. No, I believe they speak of parkway
30 islands.

Q. They speak of parkway islands? A. Yes, sir.

Q. Your specifications provide for top soil, don't they? A. Yes, sir.

Q. You are going to put gardens in those parkways, aren't you? A. That was part of a future contract, if they wish to put them in; that was the intention.

40 Q. They are not what is ordinarily known as safety islands, are they? A. Well, it is according

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to the location; they would be if it was a vehicle stop there, these would not be safety islands, but for the passage of people across the Boulevard, it gives a zone by which no traffic can travel between.

Q. They are not for use as safety zones? A. To stand in front of, yes.

Q. But not to stand on them? A. No. 10

Q. Now, the safety islands that you referred to in Broad Street, Newark, that is an island that is constructed of hard material, upon which people stand to wait for trolley cars? A. Yes, sir.

Q. There is no similarity between the two, is there? A. No.

Q. Aren't you mistaken about a safety island being at 42d Street and Fifth Avenue, New York? A. No, sir; it is on the north side of 42d Street with a lamp post erected in it. 20

Q. But that is one of these safety islands such as they have on Broad Street, Newark? A. No, that is to divide traffic.

Q. And it is used by people to stand on, is it not; people stand there waiting to get on the vehicles? A. I don't believe it is; it is not large enough for that.

Q. What material is it made of? A. It is concrete and stone. 30

Q. All stone? A. Yes.

Q. Your safety islands that you propose on the Boulevard in your specifications, they are made of top soil? A. Yes.

Q. And not of concrete? A. Yes.

Q. No concrete is on top of these islands? A. No.

Q. They are to be how wide? A. Six feet.

Q. Three feet on each side of the center line of the Boulevard? A. Yes. 40

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Q. How far are they to extend in each block?

A. They extended the full length of the block within ten feet of the building line of each cross street.

Q. Within ten feet of the building line of each intersecting street? A. Yes, sir.

10 Q. How wide is the Boulevard, from curb to curb? A. Sixty feet.

Q. This makes it only 54 feet now for vehicular traffic; is that right? A. Yes, sir.

Q. Are you familiar with the traffic on the Boulevard? A. Yes.

Q. You pass over it quite frequently, I suppose? A. Yes, sir.

Q. In the course of the performance of your duties as County Engineer? A. Yes, sir.

20 Q. What would you say in regard to the increase of traffic? A. In what period of time.

Q. For the last three years. A. Well, I would have to look up the records, because the State has had some traffic census taken for a period of three years, to furnish that.

Q. I am asking you to speak from your own knowledge, being on this Boulevard frequently.

30 MR. WALSCHEID: I object to that as immaterial and irrelevant, and not cross examination.

A. The way that I would answer the question is simply that it is double the traffic of three years ago.

Q. It has been increasing for the last ten years hasn't it? A. Oh, yes.

Q. Right straight along? A. Yes, sir.

Q. It is part of the Lincoln Highway? A. It is part of the Lincoln Highway.

40 Q. Don't you think, in your opinion, that this Boulevard, which is part of the Lincoln Highway

Thomas J. Wasser—Cross.

one of the highways of the State—the great highway of the State, isn't it? A. Yes, sir.

Q. Should be as wide as possible for vehicular traffic? A. No; I think that the division of traffic such as designed in this contract will improve conditions for vehicles.

Q. Don't you think it is advisable to have a highway as wide as possible—as wide as you possibly can get it? A. I do not; I advised that it would be designed as to regulate traffic, regardless of width. **10**

Q. Don't you think six feet is a rather wide safety island? A. I do not.

Q. As distinguished from a parkway island? A. I do not.

Q. Isn't the primary idea that these parkway islands are to sort of increase the beauty of the Boulevard, rather than to help traffic in any way? A. No, sir. The reason of the parkway island is to form a division, by which traffic can be regulated and offer a zone in which pedestrians crossing the Boulevard can be protected from traffic. **20**

Q. But you say they cannot stand on these islands; they are supposed to stand beside them?

A. They stand in front of them.

Q. But not on them? A. No. **30**

BY MR. WALSCHEID:

Q. And by "in front" you mean on that feet foot space? A. At each end of them.

BY MR. MARKLEY:

Q. But not on those islands? A. Not on the islands.

Q. The part that is six feet wide and a block long. A. No, on this ten feet. **40**

Q. They are not supposed to stand on these

Thomas J. Wasser—Cross.

islands? A. You can't stand on the island, no.

Q. So that you take up an entire block six feet wide in the center of the highway that is to be used for no other purpose than to put grass in is that the idea? A. No; to regulate traffic.

Q. Now, you did not mean to tell us in your direct examination that this contract provides
10 for a lighting system, did you? A. No, I did not say that it did.

Q. You know of no contract now in existence providing for a lighting system of the Boulevard do you? A. Not that I know of; no sir.

Q. Do you know of any objection to putting these electric wires underground? A. Under-
ground?

Q. On either side of the Boulevard, of the roadway? A. No; I don't know of any objections.

Q. This Boulevard, as previously constructed
20 did not provide for these islands, did it? A. As constructed now there are no islands.

Q. As constructed at the present time they do not provide for islands? A. No, it does not provide for them.

Q. And you have to put curb around these islands, don't you according to these specifications? A. The place inside of the curbs is referred to in the specifications as the island.

Q. What is that curb to be made of? A. Blue
30 stone.

Q. And then, what does the contractor, under the present contract and specifications, have to put in that islands? A. Top soil.

Q. And what else? A. Earth.

Q. And grading? A. To place it in to bring it to the required grade.

Q. You do not put bluestone at the side of the
40 highway, do you? A. Well, that is a matter of matching the present curb.

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Q. What did you estimate for the side of the highway, the curb; did you estimate bluestone curb or did you estimate on concrete curb? A. Concrete curb.

Q. So that under your specifications you are to put concrete curbing on the side, on each side of the Boulevard roadway? A. Yes, sir.

Q. So that your estimate of bluestone, lineal feet of bluestone curbing, was made so as to cover merely the curbing that is to go around these islands? A. Not to go around the island; the curb creates the island. 10

Q. Well, put it that way; the curb creates the islands? A. Yes, sir.

Q. Taking the specifications, for instance, for Section 4, wherein you give as your estimated quantity 3700 lineal feet of bluestone curb, that bluestone curb was meant to create the islands in Section 4; is that right? A. Yes, sir. 20

Q. And when you come to Section 5, it provides for 10,000 lineal feet of bluestone curb, and that is supposed to create the islands in Section 5? A. Yes, sir.

Q. And when you provide in your estimated quantities for Section 4 for 668 cubic yards of earth and top soil, that earth and top soil was meant for these islands, was it? A. Yes, sir.

Q. What else goes in to make up the islands? A. I know of nothing else; nothing that I recall. 30

Q. When you provide in Section 5 for 1852 cubic yards of earth and top soil, that estimate was based on the earth and top soil needed for the islands in Section 5? A. Yes, sir.

Q. And you do not remember anything else that goes into the islands in Section 5? A. No, sir.

Q. Now, when, in your estimated quantities, you estimated 700 lineal feet of concrete curbing for Section 4, where is that concrete curbing to go? A. At intervals, wherever the present concrete is 40

Thomas J. Wasser—Cross.

in such condition as to require it to be restored, to be replaced.

Q. What kind of curbing is there at the present time? A. Concrete curb.

Q. Why did you designate concrete curbing for the side of the road and bluestone for the center?

A. Because, as only part of the curbing on the sides is to be replaced, it is a matter of matching the present existing concrete or putting in bluestone, and I decided on the concrete.

Q. When you provided in the estimated quantities for Section 4 for 1500 square yards of granite gutter, where was that to go? A. In front of the curbs, on either side of the roadway.

Q. You are putting granite gutters in, yet you put in concrete curbing; is that right? A. Yes, sir.

20 Q. And likewise, in your estimated quantities for Section 5 you estimate 4633 square yards of granite gutters, that is, for gutters next to the curb? A. On the side of the roadway.

Q. Yet you provide there also for concrete curbing, 1800 lineal feet? A. Yes, sir.

Q. Why didn't you provide for the same kind of curbing as you did gutters? A. So as to match the present existing curb that would not be replaced.

30 Q. Is there a present granite curb there? A. No, there is a concrete curb.

Q. How about the gutters at the present time?

A. Well, they are all dilapidated.

Q. Isn't there any gutter there at all? A. Gutters are the spaces; unless you put something in front of that word gutters it does not mean anything.

Q. What are the present gutters made of? A. It originally was concrete.

40 Q. At the present time? A. Yes, what is left of it.

Thomas J. Wasser—Cross.

Q. I mean under the William Baker contract it was granite, wasn't it? A. No, it was concrete.

Q. And you are putting granite in there now?

A. Yes, sir.

Q. Why don't you match those, too? A. Because I am removing all the gutter and there is nothing to match.

Q. You are removing all the gutters; is that right? A. Yes, sir. **10**

Q. Throughout the entire line of the improvement? A. Yes, sir.

Q. For Sections 4 and 5? A. Yes, sir.

Q. You say there is a slight increase in cost of the reconstruction of the Boulevard, by reason of these parkway islands over what it would have cost if it had been all paved; is that right? A. Yes, sir.

Q. What proportion is the increase; what percentage? A. Under the present design, of placing the curbs and top soil in the center of the Boulevard it is equal to \$2.13 per lineal foot, by the Engineer's estimate; and if that was replaced by bituminous concrete it would be 73 cents per lineal foot, for the same space. **20**

Q. Or a difference of how much? A. \$1.40 per lineal foot.

Q. Now then, does that include your estimate of \$2.13, does that include the cost of the curb? **30**

A. That includes the cost of curb, which is \$1.80.

Q. And the earth and top soil? A. At 33 cents, yes.

Q. So that the slight increase that you referred to in the cost is \$1.40 per lineal foot? A. Per lineal foot.

Q. Can you tell us how many lineal feet there are of parkway? A. There is 1850 lineal feet of parkway islands in Section 4; there is 5000 lineal feet of parkway islands on Section 5. **40**

Thomas J. Wasser—Cross

Q. Now you were going to make some explanation about this increase; just let us have that now?

A. In the design of the repaving of the Boulevard, having the parkway islands it is only necessary to lay conduits between the ends of the islands, as it is contemplated to use parkway cable for any purposes for lighting; if the islands were not used
10 it was necessary to run the conduits the entire length of each section, of Sections 4 and 5, and the cost would increase \$13,750 on Section 5 and \$4087 on Section 4, or a total increase of \$17,837, based on the Engineer's estimate.

Q. I do not quite understand that; let me ask you a couple of questions: What do you mean by 12 way conduits? A. That is 12 ways; that has 12 ducts, as shown on the plan.

Q. What do you mean by two way conduits?
20 A. That has two ways, it is crossways, to reach the curb at each block.

Q. The 12 way conduits are the conduits that run through the center of the street? A. Yes, sir.

Q. And the two way run to the curb? A. Yes, sir.

Q. (By Mr. Walscheid.) The main electric light supply then is to run through the center of the street; is that the idea? A. Yes, sir.

Q. (By Mr. Markley.) These conduits are to be used for what purposes? A. For the placing of cables.
30

Q. For the placing of cables? A. Yes.

Q. They are to be used for lighting purposes; is that it? A. Yes, sir.

Q. Now, then, this contract and specification did not provide for any lighting system in the center of the roadway, did it? A. No; it is nothing more than foresight, to prevent the pavement
40 having to be disturbed on future occasions and taken up.

Thomas J. Wasser—Cross.

Q. But there is no contract that you know of now in existence for the construction of such lighting system, is there? A. Not that I know of.

Q. Now, how did you estimate your \$13,750? How did you reach that figure as the increased cost of Section 5? A. The total length of the parkway islands is 5000 feet on Section 5; five times \$2.75 per lineal foot gives \$13,750. **10**

Q. Then, what you mean to tell us is, that you do not need any conduits for the length of the parkway islands? A. No, sir.

BY MR. MARKLEY:

Q. Within the islands? A. Within the islands you do not require them.

BY MR. WALSCHEID:

Q. Why not? A. Because the cable can lay right in the earth; you can bury them right in the soil. **20**

Q. Why can't the cables lay right in the soil in the other part? A. Because there is no possible way of getting at them if occasion may require; you would have them on the ground with the pavement over them.

Q. (By Mr. Walscheid.) You can't lift them, in other words? A. You can't lift them; you would have to disturb the pavement to lift them. **30**

Q. (By Mr. Markley.) Don't you have to disturb the pavement when there are conduits around them? A. No; you can lift this earth and top soil, which can simply be removed, and the cables are there, and the conduits pass under the pavements between the islands.

Q. These conduits, what are they made of? A. They are provided for fibre laid in concrete, wood fibre laid in concrete.

Q. Do I understand you to say that you lay your electric wires, or whatever they may be, in **40**

Thomas J. Wasser—Cross.

those conduits? A. Well, the conduit is provided for cables or wires.

Q. And you put your cables or wires in them?

A. Yes, pull them right through.

BY MR. WALSCHEID:

Q. There are 12 holes in those conduits? A.
10 Yes, sir; separating them.

BY MR. MARKLEY:

Q. Assuming you have your wires in those conduits and your conduits are under your pavement, and you have to get at these conduits, or the wires in the conduits, how do you do that? A. Why, dig down in the parkway islands, pick up your wire and pull it through.

Q. You think that is a practical electric system for parkways? A. Yes, sir.
20

Q. Do you mean to leave these wires unprotected to lay in these parkways? A. I provided that the conduits in this contract should be capable of carrying high tension parkway cables and that has a protection by which it can lay simply in the ground without any other protection than the insulation of the cable; the insulation is such that it can lay in the ground.

Q. Well, what is to prevent you then from doing without these conduits throughout the entire length of the Boulevard; why do you need them under the concrete? A. Well, it is just to provide a modern system of lighting.
30

Q. If you can do without them under the parkway islands, why can't you do without them under the concrete? A. Because, in case there is any necessity of reaching a cable, you have to disturb the surface of the pavement.

Q. Well, if you want to reach the cable under the pavement when you construct it as you intend to, wouldn't you have to disturb the concrete any-
40

Thomas J. Wasser—Cross.

way? A. No; you can dig down in the parkway and reach the cable and then pull it through the conduit.

Q. But suppose it would not come toward you?

A. Then there would be no occasion to locate it, because nothing had happened to it.

Q. But suppose it broke, or something else? A. Then you could pull it towards you. **10**

Q. You think it could be pulled towards you? A. Yes.

Q. Suppose some other disturbance should happen or occur in the cable, what would you do then; how would you reach it? A. There is any number of ways that you could; you could cut the cable and pull one end through and splice a new cable in there, if necessary, and after that you could put the cable back.

Q. How would you get your cable back in the conduit? A. If, for any reason, it was necessary to cut the cable to remove it from the conduit, before removing it it would be necessary to attach either a line or other cable to it, where cut, outside of the line of the conduit, and in the parkland; then draw it through the conduit at the opposite side of the parkway island; and after the repair was made or replacement, as required, the cable could be pulled back again by the same method by which it was pulled out. **20**

Q. In other words, it would involve the opening of two of these island parkways? A. Yes; the island parkways in this particular case answers the same conditions as two manholes in any other street. **30**

Q. Are there manholes in the Boulevard now? A. There are some manholes.

Q. And they answer that purpose now? A. Not for wires; "other manholes" may mean sewer manholes. **40**

Thomas J. Wasser—Cross.

Q. Then they don't serve the same purposes?
A. As manholes; but not as electric conduits do.

Q. So that this proposed scheme of yours would involve the tearing up and opening of these two parkway islands in order to make such repairs; is that right? A. Yes, if it was required.

10 Q. Are there conduits under the Boulevard now? A. For what purpose?

Q. For electric purposes; lighting purposes; and cables, and such? A. I don't know.

Q. You don't know that? A. There is none for the lighting of the Boulevard.

Q. How do you light the Boulevard; how is it lighted? A. By overhead wires on poles back of the curb lines.

Q. You spoke about Park Avenue, Newark, didn't you? A. Yes, sir.

20 Q. You say that there is a lighting system in the center of that highway, in Park Avenue, Newark? A. I won't say on Park Avenue, no.

Q. Isn't it a fact that there isn't any? A. I don't recall that; the only thing I referred to in Park Avenue was that they had parkway islands in the center.

Q. You don't know whether they have a lighting system in the center or not? A. I do not; I don't recall.

30 Q. They might not have? A. They might not have.

Q. Returning a minute again to 42d Street, New York, to this alleged parkway, it is near the public library? A. It is right across the street from it.

Q. On the north side of the street? A. Yes, sir.

Q. When were you up there last? A. Within a month.

40 Q. In regard to the curb once more, just one question—in regard to the curb and gutters, I

Thomas J. Wasser—Cross.

understand you are going to replace them in toto?

A. Yes, sir.

Q. About what proportion of the curb are you going to replace; what proportion of the whole?

A. We are going to replace about 25 per cent. on Section 4; and it is near enough to say between 20 and 25 per cent. on Section 5.

Q. How many lineal feet do you say there are of parkways? A. In each section? **10**

Q. In the two sections, the aggregate, total?

A. There is 5000 feet in Section 5 and 1850 feet in Section 4, making a total of 6850 feet.

Q. Lineal feet, is that, of parkway? A. Lineal feet of parkway on both sections.

BY MR. WALSCHEID:

Q. When you speak of the cost per lineal foot, you mean of the cost per lineal foot of parkway, do you, a cross section one foot long, of parkway? **20**

A. Yes, sir.

Q. In giving us that excess cost of \$1.40 per lineal foot, how much of that \$1.40 of excess is in the curb? A. Oh—

Q. Comparing the cost of laying the bituminous concrete per square yard within the island with the cost of laying the top soil per square yard within the island, to the depth respectively required for bituminous concrete and top soil, which is the cheaper? A. Top soil. **30**

Q. So that whatever increase in cost there is in the construction of these so-called parkway islands arises out of the fact that you are placing the bluestone curb there? A. Yes, sir.

Q. And not out of the fact that you are filling in the center with top soil; is that right? A. That is right.

Q. Now, you are removing all the gutter on these two sections, because none of the gutter is fit to remain? A. That is right. **40**

Thomas J. Wasser—Cross.

Q. You are removing only a portion of the curb because that portion which you allow to remain is fit to remain? A. To all appearances it is fit to remain.

Q. So far as your judgment as an engineer goes?
A. Yes.

10 Q. And you are using the same kind of curb on these sections for new work simply to match it up with the curb you are allowing to remain?
A. Yes, sir.

Q. Now, this lighting system that you are preparing for is to consist of 12 way cables— A. 12 way ducts.

Q. Running longitudinally through the center line of the Boulevard, through these two sections, is that right? A. Only between the ends of the parkway islands.

20 Q. You are talking about the ducts; I don't mean the ducts now, I mean the lighting system; you are laying 12 cables through the length of that line? A. I can't say that; I am not laying any cables.

Q. I say you are preparing for the installation of a lighting system, to be run longitudinally through the two sections, which will be able to carry 12 cables? A. Yes, sir.

30 Q. But you are not installing the cables? A. No, sir.

Q. So that, for the purpose of carrying those cables at some future date, across the portion of these two sections where there are no parkways, but where there is bituminous concrete, you are installing 12 cable ducts? A. 12 way ducts.

Q. And these 12 way ducts are all in one box, is that what you call it? A. All encased in concrete in one form.

40 Q. And from the sides of these parkway islands then you are running ducts for two cables? A. Two way ducts, as far as the curbs.

Thomas J. Wasser—Cross.

Q. And this lighting system that you are thus preparing for can be maintained from the present lighting plant owned by the County, can it not?

A. Yes, sir.

Q. Now, I understand you to say that if you did not put in these parkway islands to prepare for your lighting system throughout the whole length of these two sections, by placing ducts under the center line of the Boulevard throughout the whole length thereof, that that would cost you \$17,837? A. In addition. 10

Q. In addition to what it has cost you now, on the Engineer's estimate? A. Yes, for the conduits.

Q. For the conduits or ducts alone? A. Yes, sir. I might add, in addition to that, it would cost more because we would have to have manholes constructed. 20

Q. You would need manholes at various points along the line so as to be able to get at the cables which are placed in those ducts? A. Yes, sir.

Q. And the necessity for those manholes disappears by the construction of these parkway islands? A. Yes, sir.

BY MR. MARKLEY:

Q. These ducts, the 12 way ducts or conduits, of course, will be laid before the pavement is laid? A. Yes, sir. 30

Q. Of course, you don't know whether the County or the Freeholders are going to provide for a lighting system and have cables, etc., for these ducts or not before that pavement is laid, do you? A. No, sir.

Q. How are you going to get your cables into your ducts in the highway after your pavement is laid under these contracts and specifications, without destroying the pavement? A. Through the cross ducts. 40

Thomas J. Wasser—Cross.

Q. After your ducts are laid, your pavement is laid, and your parkway is made? A. Yes.

Q. Now, how are you going to get your lighting system into these ducts? A. By putting them through with a sectional rod.

Q. How are you going to get a sectional rod to the duct? A. From the sidewalk, from the ends
10 of the cross ducts.

Q. From the ends of the cross ducts? A. Or at the termination or the ends of these—the contract provides that where these ducts terminate at the abutment of bridges the same shall be carried through to the face of the abutment, which leaves an open space.

Q. So then your idea is that you could shove a cable through the ducts at the sidewalk for the entire length of this Boulevard, through the proper
20 hole of this duct containing 12 ways; is that right? A. The distance is only, not over 80 or 90 feet from one parkway island to the other.

Q. Yes. A. And you could very easily push a cable through that distance.

Q. Each of these ducts, as you say, has 12 compartments? A. Yes, what we call a 12 way duct.

Q. For 12 cables? A. 12 holes, yes.

Q. Then, your idea is that after this, if the contract is given for an electric lighting system—
30 A. For any other use, when they are used.

Q. If these ducts are used after the pavements under the specifications are laid— A. Yes.

Q. Your idea is that you can run your cables through these 12 compartments, or ducts, by shoving them through the two way ducts that lead to the sidewalk; is that right? A. No.

Q. What do you mean? A. Well, it is not what I mean, it is what you said; I say that if you want to; the pavement has to be finished before we used
40 these ducts; the contract has to be finished and

Thomas J. Wasser—Cross.

the ducts laid and everything complete before they go into service, so that necessitates digging and excavating in the parkway islands and shoving the cables through from one parkway island to the other, and then drawing it through the 12 holes.

BY MR. WALSCHEID :

Q. Is that a difficult matter? A. No, sir; it is the regular course of construction. 10

Q. Done by electric light companies, telephone companies and conduit companies every day? A. Yes, sir.

BY MR. MARKLEY :

Q. These ducts, how long are they, the different ducts, under the plans and specifications? A. From one island to the next island.

Q. From one island to the other? A. Yes, sir; they extend into the islands. 20

Depositions on the part of the Clinton Contracting Company, one of the defendants herein, taken before me, David A. Newton, a Supreme Court Examiner, at my office, 243 Washington Street, Jersey City, New Jersey, this fourteenth day of June, 1917, at ten o'clock in the forenoon, in the presence of counsel for the respective parties.

30

40

Edward A. Markley—Direct.

EDWARD A. MARKLEY, ESQ., SWORN.

DIRECT EXAMINATION BY MR. WALSCHEID :

Q. Mr. Markley, you are an attorney and counsellor-at-law of this State? A. I am.

Q. And are connected with the office of Collins & Corbin? A. Yes, sir.

10 Q. When did you first become acquainted with Mr. McCarty, the applicant in this case? A. On June 8th.

Q. Is that the day on which he signed the affidavit? A. Yes.

Q. Where did you then meet him? A. At his office in New York.

Q. On the day before did you call him up? A. No.

20 Q. Prior to meeting him on June 8th had you had any talk with him? A. Yes, over the telephone.

Q. Did you call him up? A. Yes.

Q. At whose request or suggestion did you call him up? A. At Mr. William T. S. Crichfield's suggestion.

30 Q. What did Mr. William T. S. Crichfield say to you at that time? A. He said that he understood that Mr. McCarty, who was a former councilman up in one of the Hudson County Townships, I forget which one, was interested in the improvement of the Boulevard, and he understood that Mr. McCarty was about to institute a proceeding to attack the awards to the Clinton Contracting Company; he said it might be a good thing to call Mr. McCarty up and find out what he intended to do. If I may go on and state this, I had previously been to the Court House—

40 Q. Yes; you had previously been to the Court House. A. I had previously been to the Court House on several occasions looking over the specifications—

Edward A. Markley—Cross.

Q. For whom were you doing that? A. For William T. S. Crichfield, or rather, for the firm I am working for.

Q. Do you, in this matter, represent William T. S. Crichfield? A. In the present proceeding, no.

Q. Is this present proceeding a firm proceeding? A. Yes.

Q. Was it instituted through you? A. Through me, yes. **10**

Q. Wasn't it instituted at the request of Mr. Crichfield? A. No.

Q. This William T. S. Crichfield is connected with the Uvalde Asphalt Paving Company, is he not? A. I don't know whether he is or not, at the present time.

Q. Well, he is the William T. S. Crichfield who was connected with the Uvalde Asphalt Paving Company? A. At one time I believe he was superintendent of that company. **20**

Q. How recently was he superintendent? A. Why, the last time I know anything about was at the time we took the testimony in the case of Max Miller, when you offered the contract in evidence.

Q. The case of Miller against Hoboken? A. Yes, when you offered the contracts of employment in evidence.

Q. And he is the same William T. S. Crichfield who bid upon this work? A. On the Boulevard work? **30**

Q. Yes. A. On Section 7.

Q. He also bid upon Sections 4 and 5, the work now being certioraried? A. Yes, that is right.

CROSS EXAMINATION BY MR. MARKLEY:

Mr. Crichfield was a bidder on Sections 4 and 5, upon which the rule to show cause was allowed to review the proceedings in this case; and he also was a bidder, the low bidder on Section 7, be- **40**

Edward A. Markley—Re-Direct.

tween the two plank roads. As such low bidder on that section he requested me, or some member of the firm, who probably directed me, to examine the contract and specifications for Section 7, and for the other sections, to ascertain whether they were regular and in accordance with the controlling statutes; and in accordance with that re-

10 request, made by Mr. Crichfield either to me or some member of the firm, I did go to the Court House on one occasion, and perhaps on two occasions, to the office of the Boulevard Commissioners, and did examine the specifications, the contracts, plans and notice to contractors for all three sections, and had copies made by clerks for me.

RE-DIRECT EXAMINATION BY MR. WALSCHEID :

20 Q. Then you reported back to Mr. Crichfield what you found and whether that would justify an application for writs of certiorari, didn't you? A. No.

Q. What did you report back, as to what you found? A. Why, I reported what I found to either Judge Collins or Mr. Hobart, I don't remember whom.

Q. Did you pass any opinion upon what you found? A. I discussed with them the proceedings.

30 Q. And then they decided that what you had found was reviewable by writ of certiorari, didn't they? A. They did, yes.

Q. And after they had thus come to that conclusion, Mr. Crichfield told you to call up Mr. McCarty? A. Yes, I had the conversation with him that I have already given.

40 Q. Yes, it was after that, after Judge Collins, Mr. Hobart or whoever took part in that conference, had decided that the questions were reviewable by certiorari, you had that conversation with

Edward L. McCarty—Direct.

Mr. Crichfield, and Crichfield instructed you to call up Mr. McCarty? A. It was after that.

Q. That is right, isn't it? A. That is right.

Q. Do you remember the case of Edward L. McCarty and Reinhart Miller, Prosecutors, against the Town of West Hoboken, in the County of Hudson, and the Clinton Contracting Company, from this office? A. When was that? 10

Q. In January, 1915; or didn't you have anything to do with that? A. I don't remember that at all; I don't think I had anything to do with it.

EDWARD L. McCARTY, recalled.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. McCarty, this house and lot which you own, is that situated on Malone Street, do you say? A. Malone Street. 20

Q. And that is a street in West Hoboken, is it? A. Yes, sir.

Q. An improved street? A. Yes, sir.

Q. An asphalt pavement on it? A. No, paving blocks.

Q. A two-family house, you say? A. Yes, sir.

Q. What is the value of that house? A. What value; well, you mean to say what I value it at the present time? 30

Q. What is the present worth of the land and building which you own? A. Well, about \$6500.

Q. Is there any mortgage on it? A. Yes, sir; I have.

Q. How much? A. I got a \$2500 mortgage.

Q. How near is it to the Hudson Boulevard in West Hoboken? A. Well, it is about 75, or 80, say 100 feet off Kerrigan Avenue.

Q. And Kerrigan Avenue is one street to the east of the Hudson Boulevard, or two streets? A. One street. 40

Edward L. McCarty—Direct.

Q. Then it is to the east of Kerrigan Avenue, is it? Your property is on Malone Street, to the east of Kerrigan Avenue? A. No, I am west of Kerrigan Avenue.

Q. The Hudson Boulevard in West Hoboken runs practically north and south? A. Yes, sir.

10 Q. The first street to the east of the Hudson Boulevard in West Hoboken is Kerrigan Avenue? A. Yes, sir.

Q. And that is distant about 200 feet from the Hudson Boulevard? A. About that, yes.

Q. So that houses face each way? A. Yes, sir.

Q. You are on Malone Street? A. Yes, sir.

Q. Between Kerrigan Avenue and what other street? A. And the Boulevard; I am west of Kerrigan Avenue.

20 Q. You are west of Kerrigan Avenue; how far west of Kerrigan Avenue? A. About 100 feet.

Q. So that you are about 100 feet away from the Hudson Boulevard? A. No, from Kerrigan Avenue.

Q. Also from the Hudson Boulevard, if Kerrigan Avenue is 200 feet from the Hudson Boulevard. A. No, Kerrigan Avenue is more.

Q. Approximately how far is it then? A. I should say about, I don't know exactly the size of that street, the length of it—

30 Q. It is very immaterial, the exact distance; about 300 feet? A. Yes, about 300.

Q. Then you are about 200 feet from the Boulevard? A. Yes.

Q. And that is the only property which you own in Hudson County? A. That is the only property.

Q. You are sure that you never met Mr. Crichfield? A. I am positive I never met him.

40 Q. And never talked with him? A. No, sir; I did not.

Edward L. McCarty—Direct.

Q. You were also the prosecutor in January, 1915, in the case in the Supreme Court of Edward L. McCarty and Reinhart Miller against the Town of West Hoboken in the County of Hudson and the Clinton Contracting Company? A. Yes, sir.

Q. To review upon certiorari the award of a contract to that company? A. Yes, sir.

Q. For the paving with bituminous concrete— **10**
A. Yes.

Q. Of a street known as Palisade Avenue in the Town of West Hoboken, weren't you? A. Yes, sir.

Q. In that case you were represented by the firm of Collins & Corbin? A. Yes, sir.

Q. Did they represent you in that matter? A. Mr. Hobart—

Q. Represented you? A. Yes, sir.

Q. Did you ever pay this firm anything for those services? A. Mr. Hobart brought the— **20**

Q. You paid him? A. Yes, sir.

Q. What did you pay him? A. He charged me—it was Mr. Corbin first off that I came well acquainted with this firm—

Q. Just answer my question; what did you pay for the services of the firm of Collins & Corbin, or to Mr. Hobart, in that case? A. What did I pay to the firm of Collins & Corbin?

Q. Or to Mr. Hobart.

MR. MARKLEY: I object to that as immaterial and instruct the witness not to answer. **30**

Q. You did not pay him anything, did you? A. Mr. Hobart represented—

MR. MARKLEY: I think that is immaterial and I direct you not to answer.

Q. What are you going to do; are you going to answer the question, or decline to answer? A. I decline to answer on advice of counsel. **40**

Edward L. McCarty—Cross.

Q. On what grounds do you decline to answer?

A. On the advice of counsel.

Q. Do you think it might tend to incriminate you? A. No, not at all.

Q. Why then do you refuse to answer?

MR. MARKLEY: I object to that.

10 A. Why should I employ counsel if I don't go by his advice?

Q. If the answer to this question is material would you answer, or are you trying to hide the truth, Mr. McCarty? A. No, sir; I am not.

Q. Then why don't you answer the question?

MR. MARKLEY: He has answered that, I submit.

Q. You still refuse to answer the question? A.
20 On the advice of counsel.

CROSS EXAMINATION BY MR. MARKLEY:

Q. Do you know any other members of the firm?

A. What firm?

Q. Of this firm. A. Mr. Corbin.

Q. And Mr. Hobart? A. Mr. Hobart; yes.

Q. And Judge Collins? A. I don't know Judge Collins to speak to.

Q. Have you any other litigation which this
30 office handled for you? A. Yes, we had litigation in the Eagle Rock Quarry Company; that is the reason I came to this firm; Mr. Corbin, I am very well acquainted with him; and Mr. Walscheid happened to be the attorney on the opposite side against the Eagle Rock Quarry Company.

Q. Were you connected with the Eagle Rock Company? A. Yes, sir.

Q. In what capacity? A. Bookkeeper.

Q. And what other capacity? A. I was a stock-
40 holder.

Colloquy.

Q. You were a stockholder? A. I am a stockholder at the present time.

Q. Did you hold any position in the office? A. Yes, sir; I was treasurer of the company at the time.

MR. MARKLEY: Exhibit P-1 is a deed from August Costa and wife to Edward L. McCarty, dated July 8, 1908, recorded in the office of the Register of the County of Hudson on July 10, 1908, in Book 1013 of Deeds for said County, at page 277, &c.

10

Subject to objection by counsel for the defendants as to materiality and relevancy of the following facts, it is hereby stipulated:

That on November 17, 1916, a petition for recount of the votes cast at the November election, 1916, for the office of Boulevard Commissioner of Hudson County was presented to the Honorable Francis J. Swayze, one of the Justices of the Supreme Court of the State of New Jersey;

20

That on December 1, 1916, said Justice Francis J. Swayze granted an order for the recounting of said votes cast at said election;

That thereafter there was a recounting of the votes of the said election by the Hudson County Board of Elections and due notice of said recount was given to all the parties, as by the order for recount was directed;

30

That after said Hudson County Board of Elections duly and publicly made said recount as required, under the direction of the said Honorable Francis J. Swayze it appeared upon said recount that an error sufficient to change the result of said election was made in the count and declaration of the votes of said election for the office of Boulevard Commissioner of Hudson County, and it appear-

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Colloquy.

ing that a certificate of election had been heretofore issued to Paul Seglie as said Boulevard Commissioner, and whereas by said recount it was manifest that Henry Ackerman received a majority of the votes cast for the said Paul Seglie and said Henry Ackerman, for said office, and that the said Henry Ackerman was duly elected thereto, the said Honorable Francis J. Swayze, on February 13, 1917, as said Justice of the Supreme Court of New Jersey, revoked the certificate of election issued to said Paul Seglie, and issued in its place a certificate of election in favor of the said Henry Ackerman, said certificate to supersede the certificate of election issued to the said Paul Seglie, and entitling the said Henry Ackerman to the same rights and privileges as if the same had been originally issued to him by the Canvassing Board;

That thereafter said certificate of election was presented to the said Boulevard Commissioners of the County of Hudson at a meeting of said Board held at the Court House on April 11, 1917, as appears on page 30 of this record, and a resolution was offered by Boulevard Commissioner Asmus to seat the said Henry Ackerman, which resolution was not passed and said Henry Ackerman was not given his seat in the Boulevard Commission.

Subject to objection by counsel for the applicant as to materiality and relevancy, it is stipulated that on February 13, 1917, a writ of certiorari was allowed by Honorable Francis J. Swayze, a Justice of the Supreme Court of New Jersey, to Paul Seglie, to review the revocation of his said certificate of election and the granting of a new certificate by said Justice on February 13, 1917.

Colloquy.

That thereafter said Prosecutor filed his reasons, testimony was taken, the matter was noticed for argument and duly argued at the March Term, 1917, and decided by the Supreme Court at the same term, and the writ was dismissed with costs to the defendants. From said opinion of the Supreme Court an appeal has been taken to the Court of Errors and appeals, which said appeal is now pending and undetermined; **10**

That after said certificate of election was presented to the Boulevard Commissioners at a meeting of said Boulevard Commissioners, the said Commissioners refused to give the said Henry Ackerman a seat in said Board of Boulevard Commissioners, as required by said certificate of election; said Henry Ackerman instituted mandamus proceedings to secure his seat in the said Board of Boulevard Commissioners, said proceedings were argued in due course, and an opinion was handed down by the said Supreme Court at the June Term, 1917, denying a writ of mandamus to the said Henry Ackerman. **20**

TO THE NEW JERSEY SUPREME COURT:

I do certify that the foregoing depositions were taken before me, in my immediate presence and hearing, by a stenographer selected by me and sworn, and that they fairly and accurately state the testimony so taken. **30**

DAVID A. NEWTON,
Supreme Court Examiner.

Reasons.

Suit No. 1, Filed July 27, 1917.)

NEW JERSEY SUPREME COURT.

EDWARD L. McCARTY,

*Prosecutor,**vs.*THE BOULEVARD COMMISSIONERS OF
HUDSON COUNTY, JOHN SWEENEY,
Clerk, et al.,*Defendants.*

On Certiorari.
Suit No. 1.
Reimprovement
of Boulevard
between Com-
munipaw Ave.
and Newark &
New York
Branch of the
Central Rail-
road of New
Jersey.

The prosecutor presents the following reasons for setting aside the proceedings for the reconstruction of the Hudson Boulevard between Communipaw Avenue and Newark & New York Branch of Central Railroad of New Jersey brought before this honorable court by the writ of certiorari in the above entitled cause:

1. The Boulevard Commissioners of the County of Hudson, did not, by resolution, authorize the reconstruction of the curb and gutter of the Boulevard as required by Section 1 of Chapter 69 of the Laws of 1908 (P. L. 1908, p. 107), the statute under which the improvement was sought to be made, but on the contrary expressly excepted and excluded the curb and gutter from the resolution providing for a reconstruction of the said section of the Boulevard.

2. The proceedings brought up for review do not show that in the opinion of the body vested by law with the care of such a road as the Boulevard as expressed by resolution duly passed at a regular meeting of said body, it was necessary to reinforce, relay, reconstruct or rebuild the curb and gutter of the said Boulevard.

Reasons.

3. It was illegal for the Boulevard Commissioners of the County of Hudson to have specifications prepared for the reconstruction of the curb and gutter of that section of the Boulevard without first expressing their opinion by resolution duly passed at a regular meeting of said body that it was necessary to so reconstruct said curb and gutter.

10

4. It was illegal for the Boulevard Commissioners of the County of Hudson to advertise for proposals for the reconstruction of the curb and gutter of that section of the Boulevard without first expressing their opinion by resolution duly passed at a regular meeting of said body that it was necessary to so reconstruct said curb and gutter.

5. The Boulevard Commissioners of the County of Hudson have no right to reconstruct the Boulevard with a center parkway.

20

6. The specifications for the reconstruction of the Boulevard illegally, and without lawful authority, provide for the creation of so-called parkway islands in the center of the Boulevard.

7. The Boulevard Commissioners of the County of Hudson did not, before advertising for proposals for a contract for the reconstruction of the Boulevard, from time to time submit a full statement of the work necessary and proposed to be executed at that time, with the estimated cost of such work, prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law, with the control of the finances of said County.

30

8. The Boulevard Commissioners of the County of Hudson did not at any time before advertising for proposals for a contract for the reconstruction of the Boulevard submit a full statement of the work necessary and proposed to be executed, with

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Reasons.

the estimated cost of such work, prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law with the control of the finances of said County.

10 9. The Boulevard Commissioners of the County of Hudson did not publicly advertise for bids for the reconstruction of the Boulevard for two weeks in at least two daily or weekly newspapers of the County of Hudson.

10. It was illegal for the Boulevard Commissioners of the County of Hudson to award a contract for the reconstruction of the Boulevard, or any portion thereof, without first advertising for bids therefor for two weeks in at least two daily or weekly newspapers of the County of Hudson.

20 11. Paul Seglie, one of the alleged Boulevard Commissioners, who cast the deciding vote for the said improvement, was not legally a member of said Board, and therefore the alleged resolution of award is void.

12. The Boulevard Commissioners of the County of Hudson did not, by resolution, authorize the reinforcing, relaying, reconstructing or rebuilding of the Boulevard in the proceedings under review, as required by law.

30 13. The proceedings brought up for review do not show that in the opinion of the body vested by law with the care of the Boulevard as expressed by resolution duly passed at a regular meeting of said body, it was necessary to reinforce, relay, reconstruct or rebuild said road or any portion thereof.

14. The proceedings for the reimprovement and reconstruction of the Boulevard are in other respects erroneous and illegal.

40 COLLINS & CORBIN,
Attorneys for Prosecutor.

Reasons.

(Suit No. 2, Filed July 27, 1917.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">EDWARD L. McCARTY, <i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">THE BOULEVARD COMMISSIONERS OF HUDSON COUNTY, JOHN SWEENEY, Clerk, et al., <i>Defendants.</i></p>	}	<p>On Certiorari. Suit No. 2. Reimprovement of Boulevard between Com- munipaw Ave. and Newark Avenue.</p>	<p>10</p>
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The prosecutor presents the following reasons for setting aside the proceedings for the reconstruction of the Hudson Boulevard between Communipaw Avenue and Newark Avenue brought before this honorable court by the writ of certiorari in the above entitled cause: 20

1. The Boulevard Commissioners of the County of Hudson, did not, by resolution, authorize the reconstruction of the curb and gutter of the Boulevard as required by Section 1 of Chapter 69 of the Laws of 1908 (P. L. 1908, p. 107), the statute under which the improvement was sought to be made, but on the contrary expressly excepted and excluded the curb and gutter from the resolution providing for a reconstruction of the said section of the Boulevard. 30

2. The proceedings brought up for review do not show that in the opinion of the body vested by law with the care of such a road as the Boulevard as expressed by resolution duly passed at a regular meeting of said body, it was necessary to reinforce, relay, reconstruct or rebuild the curb and gutter of the said Boulevard. 40

Reasons.

3. It was illegal for the Boulevard Commissioners of the County of Hudson to have specifications prepared for the reconstruction of the curb and gutter of that section of the Boulevard without first expressing their opinion by resolution duly passed at a regular meeting of said body that it was necessary to so reconstruct said curb and gutter.

4. It was illegal for the Boulevard Commissioners of the County of Hudson to advertise for proposals for the reconstruction of the curb and gutter of that section of the Boulevard without first expressing their opinion by resolution duly passed at a regular meeting of said body that it was necessary to so reconstruct said curb and gutter.

5. The Boulevard Commissioners of the County of Hudson have no right to reconstruct the Boulevard with a center parkway.

6. The specifications for the reconstruction of the Boulevard illegally, and without lawful authority, provide for the creation of so-called parkway islands in the center of the Boulevard.

7. The Boulevard Commissioners of the County of Hudson did not, before advertising for proposals for a contract for the reconstruction of the Boulevard, from time to time submit a full statement of the work necessary and proposed to be executed at that time, with the estimated cost of such work, prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law, with the control of the finances of said County.

8. The Boulevard Commissioners of the County of Hudson did not at any time before advertising for proposals for a contract for the reconstruction of the Boulevard submit a full statement of the work necessary and proposed to be executed, with

Reasons.

the estimated cost of such work, prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law with the control of the finances of said County.

9. The Boulevard Commissioners of the County of Hudson did not publicly advertise for bids for the reconstruction of the Boulevard for two weeks in at least two daily or weekly newspapers of the County of Hudson. 10

10. It was illegal for the Boulevard Commissioners of the County of Hudson to award a contract for the reconstruction of the Boulevard, or any portion thereof, without first advertising for bids therefor for two weeks in at least two daily or weekly newspapers of the County of Hudson.

11. Paul Seglie, one of the alleged Boulevard Commissioners, who cast the deciding vote for the said improvement, was not legally a member of said Board, and therefore the alleged resolution of award is void. 20

12. The Boulevard Commissioners of the County of Hudson did not, by resolution, authorize the reinforcing, relaying, reconstructing or rebuilding of the Boulevard in the proceedings under review, as required by law.

13. The proceedings brought up for review do not show that in the opinion of the body vested by law with the care of the Boulevard as expressed by resolution duly passed at a regular meeting of said body, it was necessary to reinforce, relay, reconstruct or rebuild said road or any portion thereof. 30

14. The proceedings for the reimprovement and reconstruction of the Boulevard are in other respects erroneous and illegal.

COLLINS & CORBIN,
Attorneys for Prosecutor. 40

Opinion.**NEW JERSEY SUPREME COURT.**

NOVEMBER TERM, 1917.

EDWARD L. McCARTY, <i>Prosecutor,</i> <i>vs.</i> BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, et als., <i>Defendants.</i>	}	On Certiorari.	10
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Argued November 7, 1917. Decided January 25th, 1918.

Before Justices Garrison, Bergen and Black.

Messrs. Collins & Corbin, Attorneys of Prosecutor.

Mr. J. Emil Walscheid and James J. Murphy, Attorneys for Defendants. **20**

A power in the statute, P. L. 1908, p. 107, Sec. 1; 4 C. S., 4531, par. 279, authorizing the Boulevard Commissioners of Hudson County "to reinforce, relay, reconstruct or rebuild any portion of the roadway paving, the curb and gutters", &c., of the Hudson Boulevard, is sufficient for the board to provide for "parkway islands".

Under the above statute, P. L. 1908, p. 108, **30** Sec. 2, if the Boulevard Commissioners submit to the Board of Chosen Freeholders of the County, being the board vested by law with the control of the finances of the County, a full statement of the work necessary and proposed to be executed at that time, with the estimated cost of such work, and a requisition for the amount of such cost, after the bids for the work are received but before

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the contract is let and the prosecution of the work is commenced, it is sufficient.

10 The action of the Hudson Boulevard Commissioners for work necessary to be done in the interest of the taxpayers, will not be set aside, upon certiorari, upon a doubtful construction of a statute, in reference to advertisement (P. L. 1912, p. 593), where the statute has been substantially
 10 complied with, at the suit of a prosecutor, who has suffered no special injuries of which he can be heard to complain.

Under the above statute, P. L. 1908, p. 107, Sec. 1, the fact that "the curb and gutters" therein provided for, are not expressly mentioned in the original resolution, that it is necessary in the opinion of the body vested by law with the care of the road to make repairs, is not fatal, when the cost of such
 20 "curb and gutters" is provided for in the advertisement for bids, and in the resolution stating the work necessary and proper to be executed, which is sent to the Board of Freeholders of the County, before the award is made.

The opinion of the Court was delivered by
 BLACK, J.:

30 The prosecutor in this case seeks to review the legality of two resolutions of the Boulevard Commissioners of the County of Hudson, awarding two contracts, for the repair and reconstruction of two sections of the Hudson Boulevard in Jersey City, with a bituminous concrete pavement, laid upon a macadam stone foundation.

The dates of the resolutions are June 6, 1917; the amounts of the awards are thirty-seven thousand (\$37,000) dollars and one hundred and ten thousand and five hundred and eight dollars and seventy cents (\$110,508.70), respectively, made to
 40 the lowest bidder in each case. The work under the first award is between Communipaw Avenue

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and the Newark & New York Branch of the Central R. R. of N. J.; the second award is between Communipaw Avenue and Newark Avenue, Jersey City. The two writs are considered together, as one, the points involved being identical. The power for making the awards is sought in P. L. 1908, p. 107, Chap. 69, Sec. 1; 4 C. S. 4531, par. 279, which empowers or authorizes the Commissioners, "to reinforce, relay, reconstruct, or rebuild any portion of the roadway paving, the curb and gutters, the drainage system, the lighting plant, including the laying of conduits and placing cables therein &c. to meet the requirements incident to increase in population, traffic and use" &c. The original act providing for the construction of a Boulevard is found in P. L. 1888, p. 405, Section 10; 4 C. S. 4508 par. 203, which provides "that said Board shall establish and determine the width of the carriageway and sidewalks of said road, provided that both carriageway and sidewalk shall not exceed one hundred feet in width, and shall construct said road" &c. The two supplements P. L. 1893 p. 454 and P. L. 1896 p. 93 have no application to this controversy.

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The objects attained by the "islands" are (1) the separation of traffic in two streams; (2) the establishment of zones of safety for pedestrians; (3) convenience of access to conduits and economy in averting future tearing up of the road, and (4) the accomplishment of each of the foregoing objects in a way to beautify the city.

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The plans and specifications for the work to be done brought up by the record provide for "parkway islands" in the centre of the Boulevard. The "islands" are to be six feet wide, three feet on each side of the centre line of the Boulevard, thus leaving fifty-four feet for vehicular traffic. The

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Opinion.

“islands” are to extend throughout the entire length of both improvements, except that, where the Boulevard is intersected by other highways or streets, the islands terminate ten feet back of the property line of each intersecting highway or street. According to the estimate of the County Engineer, it would cost nine thousand five hundred and ninety dollars (\$9,590) more, for the construction of the “islands” than for the concrete paving. The estimated cost of the conduits is eleven thousand (\$11,000) dollars. Part of the Hudson Boulevard is now part of what is known as the “Lincoln Highway”.

The first ground of attack made by the prosecutor is, that the Boulevard Commissioners have no power to reconstruct the Hudson Boulevard with a centre parkway or islands. The argument is, the act means just what it says, a reconstruction of a pavement already laid, it does not authorize an entirely new design of two carriageways with parkway islands between, such as is contemplated in the present case. The original act contemplates but one carriageway with sidewalks on either side. P. L. 1888 p. 405; 4 C. S. 4508 par. 203. The case of *Godfrey v. Freeholders of Atlantic County*, 101 Atl., 57, is not helpful, the proceedings in that case were based upon the acts P. L. 1912 p. 809 and P. L. 1914 p. 203. We think there is ample power or authority in the act, under which these proceedings are based for the Commissioners to do, what is contemplated to be done under the plans and specifications; reinforce means to enforce over again, relay to lay again, reconstruct to construct again, rebuild to build again or anew, to make extensive repairs or alterations; 7 Words and Phrases p. 6007. These powers are all to be read in the light of the legislative cri-

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terion, that they were "to meet the requirements incident to increase of population, traffic and use". We have no doubt that the proposed reconstruction is within these broad powers. We have no concern with the wisdom of the proposed plan; that is an administrative and not a judicial function. We search the statute simply to ascertain whether the legislature has granted to the Boulevard Commissioners the power to adopt the proposed plans and specifications in the record. We think the Board is vested with such power. The resolutions cannot be set aside on the first ground, viz: lack of power. 10

The second ground of attack is, that the Boulevard Commissioners did not comply with section 2 of the above act P. L. 1908, p. 108; 4 C. S. 4531 par. 279, which provides, that before advertising for proposals for contracts they *shall* from time to time submit a full statement of the work necessary and proposed to be executed at that time, with the estimated cost of such work, and a requisition for the amount of such cost, to the body vested by law with the control of the finances of said County, i. e. the Board of Chosen Freeholders. The facts on this point, in brief, are that on May 25, 1917, bids were finally received for the work here under consideration, the bids were then referred to a committee, on May 28, 1917, a resolution was passed, the evident purpose of which was to comply with section two, *supra*. It is argued that this section is mandatory, for it provides that its requirements *shall* be performed before advertising for proposals—an answer to this, is said, to be found in P. L. 1916 p. 525 and P. L. 1917 p. 803, known as the Pierson Bond Act, which supersedes the provisions of Section two, *supra*; that the provisions of section two, *supra* at best are not mandatory but directory merely. 20
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It is not necessary to pursue this point further, in the view, which we take, because we think, we are bound, by what this Court said, in the case of *Mueller v. Boulevard Commissioners*, affirmed in the Court of Errors and Appeals, 87 N. J. L. 702, there is no objection to the Commissioners taking the necessary steps before the freeholders had sold the bonds. What is forbidden is the prosecution of the work. The mere receipt of bids does not bind the Commissioners of the County, that in principle is applicable to the point under discussion. We think the resolutions cannot be set aside on this ground.

The third ground of attack is, the provisions of P. L. 1912 p. 593, Chap. 342, were not complied with, that statute provides "such advertisement shall be published for two weeks in at least two daily or weekly newspapers of the County". The first advertisement appeared, on May 11th and the last on May 24th. This it is argued, is not a publication for two weeks, but only thirteen days, because there was only a period of thirteen days between the first and last publication. This conclusion is reached by subtracting eleven from twenty-four, the date of the last publication. Citing as authority *Pisar v. State*, 56 Neb. 455; in that case, however, the notice required by the statute was "at least two weeks"; in the statute under discussion, the publication is required to be for two weeks; the cases cited by the prosecutor from our Court of Chancery in support of his position are not in point. They are cases construing the notice required to be published in the statute for the sale of lands, except one, those statutes require a notice of "at least two months" or "at least four weeks" &c., the other is the corpora-

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tion act referring to dividends paid on preferred stock, "for the period of at least one year". We have been unable to find any case in which this statute has been construed. On May 9, 1917, the resolution directing the advertisement for bids was passed, the bids to be received at 2 o'clock P. M. May 25; to be published in the Hudson Observer, Jersey Journal, Hudson Despatch, Bayonne Review, Bayonne Times and Engineering News; on May 25, 1917, sealed bids were received, as per advertisement.

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The resolutions of award were adopted on June 6, 1917. By the defendant, it is argued, the date from which the publication must be figured is May 25, deducting two weeks or fourteen days from May 25, leaves May 11; this is the date of the first publication in all of the papers enumerated, except one, the advertisements were made in all the above papers, on May 11th, 14th, 16th, 19th, 22nd and 24th, except, one which was one insertion only, on the 17th; so, it is contended, the correct way to compute the period required by the statute, *for two weeks*, is to include the dates of the first and the last publication, this it is said is a period for two weeks for which it was published, the publication covered exactly two weeks of time, for two weeks means during two weeks, during the space of time of two weeks, in the space of time of two weeks or through the space of time of two weeks.

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In view of the fact, however, that there has at least been a substantial compliance with the requirements of the statute, that it is not shown or even pretended, that any bidder was prevented from bidding on this account, that the awards were made to the lowest bidder, for what

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seems to be a necessary and desirable public improvement, and that insertions in a weekly paper was contemplated by the statute. We are unwilling to set aside these resolutions, on a doubtful construction of a statute, where no injury to the public is claimed or asserted. What was said by this Court, with slight verbal changes, in the case of *Atlantic Gas &c. Co. v. Atlantic City*, 73 N. J. L. 360, is pertinent and conclusive on this point, under discussion; as a taxpayer the prosecutor has a different standing, viz. as the representative in theory of the taxpaying interest of the County; but the bids that the prosecutor is attacking are the lowest, hence the interest of the taxpayers would not apparently be advanced by the success of such attack. *Certiorari* is a discretionary writ, hence a prosecutor who in theory represents the taxpayers of the County should not be permitted to work an injury to them in point of fact. Proceedings to review municipal action under such prerogative writ, are not personal actions in which the prosecutor may upon sharp grounds insist upon a personal right. Rather is the prosecutor to be regarded, if not as *amicus curiae*, as a friend of the public. The court and the prosecutor who hold this attitude towards the public are in contemplation of law inspired by a common purpose, to the accomplishment of which, there must come a time, when the court should determine the public rights, represented in the prosecutor, upon grounds, that substantially affect them, and not upon sharp questions and verbal criticisms, which under the guise of protecting the public, from a figmentary injury, inflict upon it one, that is both actual and serious. We think the resolutions should not be set aside on this ground.

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The fourth ground of attack is, that, in the resolution passed by the Boulevard Commissioners on March 7, 1917, the curb and gutters were excepted, whereas the statute P. L. 1908 p. 107, Sec. 1; 4 C. S. 4531 par. 279, requires the curb and gutters, to be included in the resolution, the answer to this is, the plans and specifications ordered to be prepared, by the then Engineer Robert Law, were on the eleventh of April, 1917, rejected and the Engineer dismissed, because he had not complied with the order given to him by the board, at the same meeting on the eleventh of April, 1917, a new Engineer Thomas J. Wasser was appointed; all other resolutions heretofore adopted by the board on this improvement were rescinded; on April 18th the plans and specifications prepared by the new engineer, Thomas J. Wasser, were read and adopted, on April 23rd, they were amended and then approved and adopted, on May 2nd the attention of the board was directed to the curb and gutters, and a letter from the Engineer that the reconstruction will include the curb and gutters, and the cost of the same stated in detail, on May 9th, the specifications approved April 23rd were again amended and approved, on the 25th sealed bids were received, on May 28th a resolution in the exact words of the statute, reciting the curb and gutters stating, the lowest bidder, which is the estimated cost of such work was passed by the Boulevard Commissioners, and a copy forwarded to the Board of Chosen Freeholders of Hudson County. This statement of facts we think show, that the board substantially complied with the statute in reference to the curb and gutters, viz: that it had become necessary in the opinion of the body vested by law with the care of such road to improve the same, including

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the curb and gutters—inferentially they were included and at least once expressly included in the words of the statute in the resolution of May 28th.

It was said in the case of *Delaware River Trans. Co. v. City of Trenton*, 85 N. J. L. 483; affirmed 86 ib. 680. Manifestly, the making of the recommendation implies an opinion of suitability and
10 convenience, so, here, the adoption of the plans and specifications implied a necessity in the opinion of the Commissioners. It is expressed in the resolution of May 28th in the exact words of the statute, passed at a regular meeting of said body, so, it seems to us, that in this case, it is immaterial when the resolution was passed, including the curb and gutters, so long as it was passed, before the awards were made. We think the resolutions cannot be set aside on this ground. This disposes of
20 all the points argued by the prosecutor.

The municipal action brought up by this writ is affirmed with costs.

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Rule for Judgment.

(Entered January 29, 1918.)

NEW JERSEY SUPREME COURT.

EDWARD L. McCARTY, <i>Prosecutor,</i> <i>vs.</i> BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, et als., <i>Defendants.</i>	}	On Certiorari Suit No. 1 re Improvement of Boulevard between Com- munitipaw Ave. and Newark & N. Y. Branch of C. R. R. of N. J.	10
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The court having inspected the proceedings re-
 turned with the certiorari in this cause, the rea-
 sons assigned for reversal, and heard the argu-
 ment of counsel thereon and considered the same,
 do order that the said proceedings be in all things
 affirmed with costs. **20**

Entered January 29th, 1918,

On motion of

J. EMIL WALSCHEID,
 Attorney of Clinton Contracting Co.,
 Defendant.

JAMES J. MURPHY,
 Attorney of Boulevard Commissioners
 of Hudson County, Defendants.

A true copy, **30**
 WM. C. GEBHARDT,
 Clerk.

Rule for Judgment.

(Entered January 29, 1918.)

NEW JERSEY SUPREME COURT.

10	EDWARD L. McCARTY,	}	On Certiorari Suit No. 2 re Improvement of Boulevard between Com- munipaw Ave. and Newark Avenue
	<i>Prosecutor,</i>		
	<i>vs.</i>		
20	BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, et als.,	}	
	<i>Defendants.</i>		

The court having inspected the proceedings returned with the certiorari in this cause, the reasons assigned for reversal, and heard the argument of counsel thereon and considered the same, do order that the said proceedings be in all things affirmed with costs.

Entered January 29th, 1918,

On motion of

J. EMIL WALSCHEID,

Attorney of Clinton Contracting Co.,
Defendant.

JAMES J. MURPHY,

Attorney of Boulevard Commissioners
of Hudson County, Defendants.

30 A true copy,

WM. C. GEBHARDT,

Clerk.

Notice and Grounds of Appeal.

(Filed February 6, 1918.)

NEW JERSEY SUPREME COURT.

EDWARD L. McCARTY, <i>Prosecutor,</i> <i>vs.</i> BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, et als., <i>Defendants.</i>	}	On Certiorari 10 No. 1.
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To JAMES J. MURPHY, ESQ.,
 Attorney of the Boulevard Commissioners of
 the County of Hudson, and
 J. EMIL WALSCHEID, ESQ.,
 Attorney of the Clinton Contracting Com- **20**
 pany,
 Attorneys of Defendants:

TAKE NOTICE that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above stated cause, on the following grounds:

1. The Supreme Court affirmed the resolution brought up for review in above stated cause, whereas for some or one of the reasons assigned by the prosecutor in said court the said resolution should have been reversed, set aside and for nothing hold- **30**
 en.

COLLINS & CORBIN.
 Attorneys for Prosecutor.

Notice and Grounds of Appeal.

(Filed February 6, 1918.)

NEW JERSEY SUPREME COURT.

10	EDWARD L. McCARTY,	}	On Certiorari No. 2.
	<i>Prosecutor,</i>		
	<i>vs.</i>		
20	BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, et als.,		
	<i>Defendants.</i>		

To JAMES J. MURPHY, ESQ.,
Attorney of the Boulevard Commissioners of
the County of Hudson, and
J. EMIL WALSCHEID, ESQ.,
Attorney of the Clinton Contracting Com-
pany,
Attorneys of Defendants:

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en.

COLLINS & CORBIN.
Attorneys for Prosecutor.

New Jersey Court of Errors and Appeals.

EDWARD L. McCARTY, <i>Prosecutor-Appellant,</i>	} On Certiorari Two Cases On Appeal to Supreme Court.	10
vs.		
THE BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON, et. al., <i>Defendants-Respondents.</i>		

BRIEF FOR DEFENDANT-RESPONDENT CLINTON CONTRACTING CO. 20

Statement of the Case.

Two writs of certiorari involving two contracts for the re-improvement of two sections of the Hudson Boulevard in the county of Hudson were argued together and resulted in the dismissal of the writs for the reasons stated in the opinion which is found upon page 193 of the Printed Case.

The reasons advanced by the prosecutor in the Supreme Court are relied upon by the appellant in this court. The awards of contract are attacked upon four grounds and the argument advanced in support of the same will be answered in this brief in the order in which the appellant presents his points. 30

POINT I.

The creation of so-called Park islands in the center of the roadway of the Boulevard is lawful.

10 The plans and specifications provide for the construction along the center line of the roadway of what in said plans and specifications are called "park islands." These islands are to be six feet wide, three feet on each side of the center line of the Boulevard and are to terminate at all street intersections ten feet within or back of the house lines of the cross streets extended across the Boulevard.

20 They are to be formed after removing the present top surface of the Boulevard and before laying the bituminous concrete pavement, by binding the edge of the long narrow oval space which is to constitute the body of the islands, with blue stone curb set as such curb is usually set. Before the roadway pavement is laid, *these islands are to be connected by means of fibre conduits, encased in concrete, sufficiently large to carry twelve high voltage park cables laid along the centre line of the Boulevard.* The ends of these concrete casings must extend into the islands and *twelve inches beyond the back of the curb limiting* 30 *the same; the ends of the conduits in turn must extend six inches beyond the casings and must be stopped up with a suitable wooden plug which completely fills the end of the duct or conduit. On the outside of the island curb, and over the concrete casings carrying the conduits, the bituminous pavement is to be laid, while the space within the islands curb is to be filled with earth and top soil at a grade rising from the top surface of the curb* 40 *on the sides of the islands, to a line in the center*

line of the Boulevard six inches above the top level of this curb. *In addition each island is to be cross-connected, under the concrete pavement with both sidewalks at two points on each side with fibre ducts extending back of the curb as specified for the center line ducts (page 62).*

These park islands were planned (1) to separate the heavy traffic upon the Boulevard into two streams, (2) to create zones of safety for pedestrians in the space lying within the curb lines extended of the intersecting streets, and the side-lines extended of the park islands, and (3) to make possible a large saving in the cost of installing a proposed lighting system for the Boulevard, the wires of which will be underground and the lamps of which will be mostly in the center of the road (pages 150-151) ^{these} lamps will be placed in each island (page 152, folios 1-10).

The Boulevard Commission now has an electric lighting plant which lights the Boulevard by means of wires strung upon poles planted immediately on the inside of the curb on the side of the street. The Boulevard is also set with trees immediately within these curb lines, and the wires of this lighting system passing through these trees injures them, short-circuits the system, and in wet weather produces dangerous conditions on the Boulevard, page 153, folio 20, in that high power electricity is allowed to escape to the earth over the wet surface of the trees (page 151).

It is proposed to remedy these conditions by conveying the electricity to the lamps by means of so-called park cables, which will be buried in the soil of these islands without being enclosed in conduits or concrete casings and without any other protection. These cables are to be buried along the center line of the Boulevard in the soil of the

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islands and are to be passed through the connecting fibre conduits before mentioned. The conduits encased in concrete being installed to permit of free access to the cables to be contained therein *without digging up the new roadway pavement* after it has been laid.

10 The filling of the park islands with earth and top soil is cheaper than laying the bituminous concrete pavement in the space occupied by them, but the setting of the island curb makes the improvement for each lineal foot of park island six feet wide about \$1.40 more costly than to lay the space with bituminous concrete pavement. There are 6800 lineal feet of park islands in the two sections to be improved; which makes an increase of \$9520.00 in the cost of the total improvement to be

20 made. If the islands are omitted, however, and the underground lighting system is installed, the cables therefor will have to be laid in conduits and concrete casings *throughout the whole length of the proposed improvements* and numerous man-holes connecting with these conduits not necessary under the present plan will have to be placed in the center line of the bituminous concrete roadway. Without calculating the cost of these manhole connections, but confining the calculation to the cost of additional conduit and concrete casement construction, the increase in the cost of reconstructing the lighting system by laying conduits and concrete casings throughout the length of the two improvements would be \$17,837.00 over the cost under present plans. A net saving under present plans of \$8317.00.

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It is the contention of this defendant that the commissioners have ample power under the circumstances to construct these islands.

40 Section 1, Chapter 69, Laws of 1908, page 107; 4 C. S. page 4531, par. 279 empowers the Board of

Commissioners "to re-inforce, *relay, reconstruct or rebuild any portion of (1) the roadway paving (2) the curb and gutters, (3) the drainage system, (4) the lighting plant,—including the laying of conduits and placing cables therein, or (5) bridges, or (6) all of them, upon such road or roads to meet the requirements incident to increase of population, traffic and use.*

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The act by its very language therefor permits the *reconstruction or rebuilding of any portion of the roadway pavement, and of any portion of the lighting plant, including the laying of conduits and placing of cables therein.*

To reconstruct is to construct again, to rebuild to *remodel, to form again or anew.*

To rebuild is to build again, as something which has been demolished, to *construct anew* as to rebuild a house, a wall, a wharf or a city.

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To remodel, is to *make or fashion anew to change the form of.*

The prosecutor in his brief says that this language of the act means "a reconstruction of a pavement already laid" and does not authorize "an entirely new design" of two carriage ways with parking between.

Surely the words to "reconstruct" and to "rebuild" are broad enough in meaning to permit of "an entirely new design," such new design being nothing more than a remodelling or refashioning of the roadway paving. Merely to permit under this language reconstruction of the pavement already laid without change of design, would limit the powers of the board to the taking up of the paving *now laid* and to *re-laying* the same. Such a construction would absolutely prevent the making of this improvement for it would prevent the substitution of bituminous concrete for the macadam now upon the roadway. In fact it would

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mean that the very material taken from the roadway would have to be replaced. And that more than a mere re-laying was contemplated by the grant of power to reconstruct and rebuild may be inferred from the fact *that the power to re-lay is expressly conferred* in the same sentence which grants the power to reconstruct and rebuild.

10 Again the prosecutor says that the act of 1908 is a supplement to the original providing for the construction of the boulevard and that the original act clearly contemplates but one carriage way, with sidewalks on either side, and while he does not say so, he desires the court to hold that the original act and this supplement must be reconciled and construed together and that such construction will make the islands illegal, because they create two carriage ways.

20 As a matter of fact the building of these islands will *not* create *two* carriage ways,—there will still be but *one* carriage way *containing islands*.

The grant of power is not however limited by the original act to the building of one carriage way with sidewalks on either side. The grant is found in the *object* of the act which is stated in the title to be “to *lay out, open, construct, improve and maintain a public road*. (4 C. S., 4503) and in Section 1 of the act which repeats this grant of power in the language of the title or the act.

30 Again Section 10 of the original act does not as prosecutor contends “contemplate but one carriage way with sidewalks on either side,” the Section provides:

“That said board shall establish and determine the width of the carriage way and sidewalks of said road provided that *both* carriage way *and* side walk shall not exceed one hundred feet in width.”

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This merely means that the board shall establish the width of the whole road which should not exceed one hundred feet, or that the board shall say how much *space* shall be devoted to sidewalks and how much *space* to vehicle traffic, and that the whole road, sidewalk and *carriage way* shall not exceed a space one hundred feet in width. It was not intended by this language to deal with so minute a detail as to whether the carriage way should be divided into two sections. 10

And that no such arbitrary limitation was intended to be placed upon the power of the Board appears from the very broad discretionary powers to *change and improve* the carriage way which is found in the latter part of *this very section*. It is there provided that:

“Said board shall have power *at any and all times* to improve * * * said road, or *any part thereof*, and said board in constructing said road *and in making such improvements* as aforesaid, may use therefore *any* material which said board is authorized to use *for any purpose whatever*. * * * (4 C. S., 4508, par. 203). 20

We therefore contend that the very section which prosecutor desires read in conjunction with the act of 1908, expressly grants the right to establish these islands as improvements in the road, and that the judgment of the board *that they shall be built*, is, in itself, evidence that they consider them improvements, and that their judgment *that they are improvements* is not reviewable, unless it be for fraud, or perhaps a palpable abuse of their discretion. 30

But looking no further than Section 1 of Chapter 69 of the Laws of 1908 to find authority for 40

these islands we say that they are justified.

This section empowers the commissioners "to * * * reconstruct or rebuild *any portion* of the roadway paving * * * *to meet the requirements incident to increase of population traffic and use.*

10 The statute does not place any limitation upon *methods* to be employed by the Commissioners in reconstructing or rebuilding any portion of the roadway pavement *to meet the requirements incident to increase of population, traffic and uses.*

To reconstruct is to remodel, refashion, rebuild, make over anew.

The court will take judicial notice of the fact that the population of Hudson County and of Jersey City wherein the two sections to be improved lie, has greatly increased since 1908 the year of the passage of this act.

20 The uncontradicted testimony of County Engineer Wasser is that traffic and the use of the road has greatly increased in the two sections during the last three years, and that such traffic and use is now very much greater than it was ten years ago.

The road is one of the main traffic arteries of the state. It is part of the Lincoln Highway. Traffic upon it has increased 100% within the last three years (page 160, fols. 25-35).

30 Again, the law of the state is that:

"A vehicle shall keep to the right in travelling, and when the improved portion of the road is of sufficient width the vehicle shall keep to the *right of the center of such road*, except when passing a vehicle ahead."

Part 2, Sec. 2, par. 2 Chapter 156 Laws of 1915, page 286.

"A vehicle overtaking another shall pass on the left side of the overtaken vehicle, and the vehicle overtaken shall bear to the right, and the vehicle overtaking the vehicle ahead and in passing to the left shall not, *unless compelled by the width of the road*, pass to the left side of such road, but shall as far as possible keep to the right when passing the vehicle overtaken." 10

Part II, Sec. 2, par. 4, Chapter 156 Laws of 1915, page 286.

"A vehicle turning into another road to the right shall turn the corner as near to the right hand boundary of the road as possible."

Part II, Sec. 2, par. 5, Chapter 156 Laws of 1915, page 286. 20

"A vehicle turning into another road to the left shall, before turning, pass, when possible, to the right of and beyond the center of the intersection of the two roads."

Part II, Sec. 2, par. 6, Chapter 156 Laws of 1915, page 286.

The County Engineer, Thomas J. Wasser, swears the park islands were planned *to separate the heavy traffic upon the Boulevard into two streams, the one moving in one, the other in the opposite direction, and to create zones of safety for pedestrians in the spaces at the ends of the islands.* The commissioners adopted these plans. By the construction of these islands pedestrians will be offered spaces in crossing this wide street *where they can safely await the opportunity to cross.* The law which orders vehicles to keep to the right of 30 40

- the center line of a street will be automatically enforced by the creation of these islands, and their presence will *insure* against collision between vehicles moving in opposite directions which in crowded traffic otherwise might collide by crossing the center line of the road in passing vehicles ahead, or by driving to the left of that center line.
- 10 The plan therefor, fairly produces one of the results contemplated by the statute, by insuring both drivers of vehicles and pedestrians *greater safety in the use of the Boulevard* under the changed conditions incident to increase of population, traffic and use. And if this is so the plan to construct these islands falls within the language of the act of 1908; at least the honest adoption of that plan then rests in the discretion of the commissioners and cannot be attacked upon certiorari. In fact,
- 20 by the very language of the act under such circumstances the opinion of the commissioners as to the necessity for this reconstruction is made the standard by which their plan to reconstruct must be tested.

- The commissioners, in the exercise of their judgment, may therefor reconstruct and rebuild the sections or portion of the road involved by laying upon a portion of the same a bituminous concrete pavement, and by laying upon another portion of
- 30 the same an earth top, such as the body of the park islands. And if they have that right they certainly have the right to define and fix the boundary between the two methods of reconstruction adopted by them by means of curb set around the park islands.

- And if this reconstruction work is within the discretion vested in the commissioners by the Act of 1908, neither the fact that the cost of these islands is greatly in excess of what it would cost
- 40 to repair the paving of this six-foot strip through-

out the whole improvement with bituminous concrete—a fact which we do not admit if the improvement is viewed as a whole—or the fact that six feet is taken away from the space in the roadway over which vehicles may travel, or the fact that we all disagree with their judgment that the building of these islands is made necessary by the requirements incident to increase of population, traffic and use, can prevail either in this or any other case against the honest exercise of their judgment. 10

Again Section 1 of Chapter 69 of the Laws of 1908 provides that the commissioners may “reinforce, relay, reconstruct or rebuild any portion of * * * the lighting plant, including the laying of conduits and placing cables therein to meet the requirements incident to increase of population, traffic and use.”

The plans of the engineer call for these conduits preparatory to the laying of a cable line or lines along the center of the Boulevard for the purpose of lighting the road therefrom; and Mr. Wasser shows that these islands filled with soil are *essential to the cheap and efficient laying and maintenance of these cables*; that the permanent bituminous concrete pavement, which is to be laid under a five-year guarantee and maintenance bond, when laid, need thereafter *never be disturbed* either to lay the cables or to repair them, that the laying and repairing of these cables can be controlled and done from these island spaces much more cheaply and efficiently than if the whole width of the roadway throughout the two sections were laid with the bituminous concrete pavement, in which event the pavement would have to be taken up to lay or to repair the cables, and that their construction is justified as incident to the proper laying and maintenance of the conduits and cables permitted by the act. 20 30 40

For these reasons also do we contend that the establishment of these islands rests in the sound discretion of the board.

10 The prosecutor objects to these conduits and concrete casings because there is nothing in the specification under review providing for a new lighting system and also because there is no proceeding looking toward any change of the present lighting system from the side to the center of the road.

20 The absence of a new lighting system will not affect the validity of these proceedings, the old system may be transferred from the side to the center of the road and the building of "the concrete casings and the conduits is the first" proceeding looking toward such a change, or looking toward the installation of a new system. And the cost of transferring the old system or installing the new in the center of the road could properly be met by taxation (l. 1888; page 407, section 15).

There is, however, still further authority for the discretion, exercised by this board in planning these islands. It may be justified under the supplement to the original act passed in 1893 (l. 1893, page 454). Section 1 of this supplement grants power to the Board of Freeholders, since transferred to the Commissioners (l. 1898, page 173, Section 2) to

30 "further provide for the *improvement* and the *further improvement* of such roads and to improve and further improve the same as follows: by paving or covering the whole or *such portion* of the road way as they may by said resolution or resolutions, designate with *suitable* road material, but no stone block pavement shall be used * * *, by providing a proper plant for the

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lighting of said road or roads as directed by the act to which this is a supplement or any of said act supplementary thereto, *and to do all work necessary to make and provide good, well-regulated public road or roads of the character before described, serviceable in all weather and seasons.*"

It must be conceded that the original act as amended with its supplements must be read together *as one act*.

Nor will the fact that the proceedings for the making of these proceedings were not intended to be initiated or prosecuted under this supplement prevent the application of the same, if it in fact governs, controls or regulates the situation.

Dickinson vs. Freeholders, 71 N. J. L., 589. 20

This supplement provides no restrictive procedure in making the improvements, excepting that the portions of the roadway to be improved shall be designated in the resolution or resolutions adopted by the commissioners, which has been done. The commissioners may lay such portions of the roadway as they have selected with the road material selected and may install this lighting plant, consisting of conduits, cables and lighting fixtures, and may do all work in connection therewith to make and provide a good, well regulated public road. Truly this is a wide discretion, and since it is conceded that all of the work contemplated is well within the appropriation (page 148, fol. 20), why does not the whole question of *the details* of this improvement, including the island construction, rest absolutely with the board in the absence of fraud or palpable

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abuse of discretion on their part?

It is for these reasons that we maintain that the contemplated construction of island parkways is well within the power of the commissioners.

POINT II.

10 **The failure of the Boulevard Commission to submit a statement of the work necessary and proposed to be executed with the estimated cost of such work and a requisition for the amount of such cost to the Board of Boulevard Commissioners before advertising proposals for the work, does not effect the legality of the proceedings.**

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Section 2 of Chapter 69 of the Laws of 1908, page 107, provides :

30 “2. *Before advertising for proposals for any contract for work authorized by this act, the body vested by law with the care of such road or roads shall, from time to time, submit a full statement of the work necessary and proposed to be executed at that time, with the estimated cost of such work, prepared by a competent engineer, and a requisition for the amount of such cost, to the body vested by law with the control of the finances of said county. On receipt of said statement, estimate and requisition the said body having control of the finances of said county shall make such financial arrangements as shall be necessary to provide the funds necessary to pay for the work so proposed, and until such financial arrange-*

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ments are made no further steps shall be taken in the prosecution of said proposed work."

Section 3, of Chapter 69, of the Laws of 1908, page 107, then provides:

"3. The moneys necessary for defraying the cost charges and expenses of the work herein authorized *shall be raised* and obtained, and the bonds issued therefore in the manner and by the method provided in said act, to which this is a supplement, including provision for annual interest payments and payments into a sinking fund, and shall be paid out by the county collector on the order of the body vested by law with the control of said road or roads." 10
20

In the case at bar the full statement of the work with the estimated cost of such work called for by this act, was presented to, and received by the Boulevard Commissioners on April 18, 1917; but requisition for the amount of the cost of such work was not made by the Boulevard Commissioners to the Board of Freeholders until May 28th, 1917 (page 34, fol. 42 et seq.), after the receipt by the Boulevard Commissioners of the bids for the work. 30

The literal requirement of Section 2 of the statute was, therefore, not pursued.

We contend that this failure literally to comply with the direction of this statute cannot avail the prosecutor, because

(a) The provisions of this statute to which he appeals have been superseded by later legislation. 40

(b) The provisions of this statute to which he appeals are not mandatory but directory merely.

a. The provisions of the statute to which he appeals are no longer applicable to the situation but have been superseded by later legislation.

10 The sole object of Sections 2 and 3 of Chapter 69 of the Laws of 1908 is to regulate and authorize the issuance of bonds to defray the cost of the improvement, and section 2 in its concluding paragraph provides that on receipt of the statement, estimate and requisition, the Board of Freeholders shall make such financial arrangements as shall be necessary to provide the funds necessary to pay for the work so proposed and *until such financial*
 20 *arrangements are made no further steps shall be taken in the prosecution of the said proposed work.*

Prior to 1916 these two sections regulated the issuance of bonds for the performance of work to be done under this act. At present, however, this whole matter is regulated by Chapter 252 of the Laws of 1916, page 525 (Pierson Bond Act) as amended by Chapter 240 of the Laws of 1917, page 803, etc.

30 The title of the act just cited is "An act to authorize and regulate the issuance of bonds and other obligations, and the incurring of indebtedness by county, city, borough, village, town, township, or any municipality governed by any improvement Commission."

It lays down a complete and exclusive procedure for the issuance of county bonds. It is a revision and therefor even without express repealer repeals all preceding legislation dealing with the same subject.

40 For this reason also, even *without repealer* the

adoption of the Pierson Act would impliedly repeal the provisions of Sections 2 and 3 aforesaid.

The Pierson Act, as amended, however, provides in Section 1, Chapter 240, Laws 1917, that.

“Any county * * * shall have power * * * to borrow money and issue its negotiable bonds to pay for *any* improvement * * * .

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(a) Which it is * * * *authorized by law to make* * * * or

(b) For *any other purposes* which it is authorized or required by law *to undertake*, or

(c) For which it is *authorized or required by law to make an appropriation.*”

The Boulevard Commission is, of course, merely an executive agency of the county.

The proposed improvement to cost \$154,755.09 (144, fols. 1-10) being within the limit of appropriation fixed by Section 4 of Chapter 69, Laws of 1908, i. e., \$190,000, as appears by stipulation (148, fols. 20-30) the county is “authorized by law to make” the same, is, “authorized by law to undertake” the same, and is also “authorized by law to make an appropriation” for the same.

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The improvements covered by the Act of 1908 and by the two resolutions of award brought up by these writs are therefore within *all* of the subdivisions, A, B and C of the foregoing quotation, and the power to issue bonds for this improvement must be found *solely* in the so-called Pierson Law.

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And that the Pierson Law *shall* furnish the *exclusive* procedure for the issuance of these bonds is also *expressly* provided by Section 15 of the amended act (Ch. 240, L. 1917, page 819, Sect. 15), which provides:

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“This act shall take effect immediately and shall supersede the provisions of all other laws relating to the subject matter hereof (i. e., the regulation of the issuance of bonds, etc.) and except as otherwise expressly stated herein, the limitations and conditions contained in other laws shall not apply to the notes and bonds issued hereunder.”

Again sub. H, Section 14, Chapter 240 L. 1917, page 819 provides :

“The power to issue notes or bonds under this act shall not be dependent on nor affected by the *validity or regularity of any proceedings relating to the authorization of the improvement*, or the acquisition of property, or the purpose for which such notes or bonds are to be issued.”

And sub. J, Section 14, Chap. 240 L. 1917, page 819 provides :

“No municipality shall enter into any contract whatsoever, the cost of which is to be financed by the issuance of bonds or notes under this act, unless prior thereto there shall have been regularly adopted by the governing body of such municipality, an ordinance or resolution, as the case may be, authorizing an appropriation sufficient to meet the cost of carrying out the provisions of such contract.”

The prosecutor in his brief says of this point made by defendant, that :

1. “The Boulevard Commissioners did not have and have not under the Pierson Act any power to borrow money.”

We have shown that section one of the Pierson Act *expressly* grants such power and that sub. H, Section 14 of the amended act provides that such bonds may be issued *independent* even of the *validity or regularity of any proceedings* relating to the *authorization* of the improvement.

He also says that:

2. "The Pierson Act does not in any way affect the modus operandi of the Boulevard Commissioners." 10

We have shown that section 15 of the act provides that the Pierson Act shall supersede the provisions of the act of 1908 *relating to the regulation of the issuance of bonds* and that the limitations and conditions of that act *shall not* apply to the bonds issued under the Pierson Act.

And he also says that: 20

3. "Section 2 of the Act of 1908 in no way conflicts with the Pierson Act and therefore it is neither expressly nor impliedly repealed by that Act."

We have shown that Section 15 of the amended Pierson Act is an express repealer and a comparison of section 2 of the Act of 1908 with sub. J, Section 14 of the amended Pierson Act will disclose that there is a conflict between their provisions. 30

We therefore submit that the insurance of these bonds is not dependent upon any limitations or conditions precedent, fixed or established by Section 2 or 3 of the Laws of 1908, hereinbefore quoted, and that these sections are no longer in force.

The act of 1908 consists of three branches: first, the branch conferring jurisdiction to make the improvement and regulating the procedure therefor. 40

This is covered by section 1 of the act. Secondly, the branch conferring jurisdiction to issue and regulating the issuance of bonds to cover the cost of the improvement. This is found in Sections 2 and 3 of the act. Thirdly, a limitation upon the cost of the improvement to be made under the act. This is found in Sections 4 and 5 of the act. The Pierson Act takes the place of Sections 2 and 3, and the orderly procedure as it exists since the enactment of the Pierson Act of 1917 consists in the preparation of plans and specifications for the work, the advertisement for bids or proposals, the receipts of bids or proposals, the communication to the Freeholders of the amount found necessary to do the work under these bids or proposals, the adoption by the Freeholders of a resolution in conformity with subdivision J, Section 14 of Chapter 240, Laws of 1917, page 819, the execution of the contract, and performance of the work while the Freeholders at their leisure sell the bonds required to cover the cost of the work pursuant to the provisions of the Pierson Act.

(b) *The provisions of the statute to which he appeals are not mandatory but directory merely.*

The right to determine upon the necessity for the improvement rests *solely* with the Boulevard Commissioners under Section 1 of the act.

The Board of Chosen Freeholders under Section 2 of the act after the Boulevard Commissioners have determined the necessity *must* make the "financial arrangements necessary to provide the funds necessary to pay for the work *proposed*". The language of the act is that they *shall* do so and this is a mandate because public interests and rights are involved.

Seiple vs. Elizabeth, 27 N. J. L., 407;
Fagen vs. Hoboken, 85 N. J. L., 297.

The sole object of procedure imposed upon the Boulevard Commissioners by Section 2 is to apprise the Board of Freeholders of the facts necessary to enable it intelligently to make "such financial arrangements as shall be necessary to provide the funds necessary to pay for the work so proposed."

In order to accomplish that purpose it is immaterial whether the advertisement for proposals *precedes* the submission of the statement and estimate or not. So long as no actual contract is awarded the rights of nobody ^{are} ~~is~~ affected and no public interests are involved in the order of procedure.

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This, in effect, was the conclusion reached by Mr. Justice Swayze in the case of Mueller vs. Boulevard Commissioners, affirmed by the Court of Errors in July, 1915, 87 N. J. L., 702.

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In that case the commissioners received bids before the financial arrangements were made and the prosecutor Mueller made the point that the resolution of award had been *prematurely* adopted because the Boulevard Commissioners had violated the *express mandate* of the legislature that until financial arrangements are made no further steps shall be taken in the prosecution of the *proposed* work.

Counsel for the prosecutor at the time argued that the act laid down a course of procedure to be pursued in the order prescribed by statute. He maintained that the act provided for the following order of procedure, namely:

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"1. For an opinion expressed by resolution adopted at a regular meeting that because of the requirements incident to increase of population, traffic and use, certain reconstruction has become necessary.

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"2. The submission to the body vested by law with the control of the finances of the county of a full statement of the work necessary and proposed to be executed with the estimated cost thereof prepared by some competent engineer and a requisition for the amount of such cost.

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"3. The making of such financial arrangements as shall be necessary to provide the funds to pay for the work proposed by the board having control of the finances of the county.

"4. And until such financial arrangements (as shall be necessary to provide the funds to pay for the work proposed) are made, no further steps shall be taken in the prosecution of said proposed work."

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Mr. Justice Swayne in dealing with this objection said:

"I see no objection to the Commissioners taking the necessary *preliminary steps* before the freeholders have sold the bonds. What is forbidden is the prosecution of the work. *The mere receipt of bids does not bind the commissioners or the county.*"

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It is therefore immaterial to *the result to be accomplished* that the proposal or bid is in hand when the actual statement and requisition are filed with the Board of Freeholders; in fact, if anything, it is of advantage to all parties concerned and conducive to economy to have the actual bid or proposal in hand when the statement and requisition go forward to the Board of Freeholders. If presented after bids received, the estimate of the cost of the work, which up to that time rested in

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calculation and guess, has the firm support of an actual offer to the work at an actual price or figure and an estimate presented after bid, precludes all possibility of unnecessary expense arising out of the making of financial arrangements and the procurement of money prior to receipt of bid and award of contract.

Under the circumstances the order in which the steps complained of are to be taken is—since both orders of procedure lead to the same result—as immaterial as would be the distinction between the taking of either one of two roads of equal length leading to the same place or as would be the selection between two similar vehicles traveling over these roads to the same place. 10

The distinction between mandatory and directory provisions of a statute have been long recognized in this State. 20

In the case of *Philips vs. Sheldon vs. City of Hudson*, 31 N. J. L., page 143 at page 148, the Supreme Court is dealing upon demurrer with a claim that a neglect to advertise within a time specified by statute entitled the plaintiff to return of money, and with a claim that the requirement was merely directory based upon the case of *Stevenson vs. Lawrence*, 2 Am. L. R., 407, said:

“It was there held by the Court of Common Pleas of Philadelphia, perhaps correctly, although by a divided court, that the clause of the Pennsylvania Act respecting contested elections directing the court to hear and determine the case at the next term did not prevent the court from proceeding to determine it after the expiration of that term. This was so held upon the principle established by the cases of *Fex vs. Sparrow*, 2 Strange, 1123 and *Rex vs. Loxdale*, 1 Burr., 445; that where acts 30 40

are directed by a statute to be done at a certain day by public officers or courts, which acts relate to rights of the public or suitors, the acts may be done afterwards because the persons entitled to the benefit of those acts are not to lose that benefit, because of the inability or neglect of the officers of the court. But if the act is to be done by the party to be benefited, this principle does not apply. He must take care to do it within the time prescribed."

In the case of *Caddis vs. Howell*, 31 N. J. L., 313, involving the failure of a commissioner to give a notice required by statute, Mr. Chief Justice Beesley says:

"The plea thus presented for consideration proceeds upon the ground that the failure of the Commissioner to give the notice in question invalidated, *ab initio*, the proceeding before him; that such is not the effect of the omission to order this notice, I think is clear. The statute in this respect is merely directory so that the neglect of the officer to comply strictly with the provisions will not avoid the procedure. The direction is analogous to the provision in the attachment act requiring the clerk of the court to advertise the proceeding in a prescribed mode, and it has always been considered that the advertisement of the clerk in this particular would not touch the validity of the suit. *Corey vs. Lewis*, 2 South, 846. 'There is a well-known distinction' says Lord Mansfield, 'between circumstances which are of the essence of a thing required to be done by an act of Parliament and clauses merely directory. The precise time in many cases is

not of the essence.' *Rex vs. Laxdale*, 1 Burr., 447.

It is a general principle attested by many authorities and it is plain this provision of the clause under consideration falls within its compass."

In the later case of *Proprietors of Morris Aqueduct vs. Jones*, 36 N. J. L., 207, Mr. Justice Beesley again deals with the question of directory provisions of a statute and on page 208 says:

"Upon the argument before the court an effort was made on two grounds to avoid the effect of this clear statutory expression. The first position taken was the legislative direction with respect to the time for which notice of the appeal is to be given, is not mandatory but merely directory. There have been a number of decisions which have, under special circumstances, held that neither the exact time nor the exact mode prescribed by statutes for the doing of acts directed to be done is necessarily essential to the validity of the transaction. Upon looking into the cases referred to and on an examination of others standing in the same line, I find that they all rest upon the common principle that *the legislative will is to be ascertained not from the meaning of the text, and the statute alone, but from such words interpreted in view of the general object of the particular act.* The adjudications are the results, not of acts of interpretation, which is a mere finding of the true sense of the special form of words used, but of acts of construction which Dr. Lieber in his *Hermeutics* has properly defined as 'the drawing of conclusions respecting subjects that lie beyond the direct expression of the text—con-

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clusions which are in the spirit, though not
 within the letter of the text.' Lieber on Poli-
 tical Hermeneutics, Chap. 1. In the class of
 cases now under consideration the absolute
 meaning of the terms implied have been for
 the most part clear; but in their application
 to the subject matter *or in view of the para-*
 10 *mount object of the lawmaker*, they have been
 deprived of some of their usual force and re-
 stricted in their operation. Such results have
 obtained because it has appeared to the courts,
 looking at the statutory language and its ef-
 fect, that it was manifest *that it could not*
have been the design of those who enacted the
 law to give the words the very power which
 they inherently possess. When an act is au-
 20 thORIZED or directed to be done by a written
 law and *the time and modes* of doing such act
 are declared, it must, of necessity, *oftentimes,*
be a question, in each particular instance,
whether the time or mode so declared was so
material in the eyes of the lawmaker, that he
has made either an indispensable part of the
affair. This idea is expressed by Lord Mans-
 field in the case of *Rex vs. Loxdale*, 1 Burr.,
 447, in which he says: "There is a known dis-
 30 tinction between circumstances which are of
 the essence of a thing required to be done by
 an act of Parliament, and clauses merely di-
 rectory.' What has been made a matter of
 the essence of the thing, can be ascertained
 only by judicial construction. In some cases
 it is palpably clear, *that time or mode is not*
essential. Thus this court properly maintained
 in *Morrell vs. Buckley*, Spencer, 668, that the
 provision requiring the clerk on issuing a writ
 of attachment, to enter in a book to be kept
 40 for that purpose, the names of the parties and

the time of issuing and sealing the writ, was merely directory. The ground of that judgment is, that although the duty imposed on the clerk is expressed in clear terms, it could not have been the design to make the legality of the proceedings depend on the obedience of the officer to this mandate. The inconvenience and unjust consequences of such a circumstance would have been so great as to forbid the Court from concluding that such a purpose was intended, in the absence of express terms, or something equivalent compelling to such a conclusion. This is an illustration of the plain text, being controlled by the plain spirit of the law." 10

And the rule as justly recognized has also been stated as follows: 20

"When a particular provision of a statute relates to some *immaterial* matter as to which compliance with the statute is a *matter of convenience* rather than substance, or when the directions of a statute are given merely with a view to the *proper, orderly and prompt* conduct of business, the provision may generally be regarded as directory." 30

36 Cyc, 1158 and notes 7, 8 and 9.

Many other tests showing that the provision in question is merely directory can be gathered from the cases.

Applying the most approved tests established by the authorities we shall see that the provision is well founded. In the first place, the provision contains *mere matter of direction* and there are 40

no *negative* words imparting that the act must be done in the manner laid out. This was the test fixed in *Pearse vs. Morrice*, 2 Ad. & El., 96.

Rex vs. St. Gregory, 2 Atl. & El., 99;
 Rex vs. Hipwell, 8 Barn. & C., 466;
 Stayton vs. Hulings, 7 Ind., 144, and in
 Bladen vs. Philadelphia, 60 Pa., 464.

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In *People vs. Cook*, 14 Barb. 290, 8 N. Y., 67, the rule was laid down that statutes directing the *mode* of proceeding by *public officials* are directory and are not regarded as essential to the validity of the proceedings themselves, unless it be expressly stated in the statute that it shall effect the validity.

In *Veazie vs. China*, 50 Me., 518, it is said:

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“Where words are affirmative and relate to the *manner* in which power or jurisdiction vested in a *public officer or body* is to be exercised, and not to the *limits* of the power or jurisdiction, they may and often have been construed to be directory.”

30

In *Thamas Manufacturing Co. vs. Lathrop*, 7 Conn., 550 and in *Colt vs. Eaves*, 12 Conn., 243, both cases relating to the *time* specified in statutes for the performance of required acts it was held that as there was nothing to indicate that the exact time specified in the statutes was essential it should be considered merely as directory.

So also, a clause in a statute is directory when the provisions contain mere matter of direction and no more; but not when they are followed by words of positive prohibition.

Cussicks Appeal, 136 Pa., 459.

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Statutes fixing the time for the doing of an act are considered as only directory where the time is not fixed for the purpose of giving a party a hearing or for some other important purpose.

Fay vs. Wood, 65 Mich., 390.

In all of the cases where statutory provisions have been held to be directory only, substantial compliance and not strict technical compliance is all that is necessary. Substantial compliance has been had in this case. 10

We therefore submit that the provision of section 2 of the act of 1908, that the "full statement of the work" be submitted to the Board of Freeholders by the Boulevard Commissioners before advertising for proposals is directory merely and does not affect the validity of the proceedings. 20

POINT III.

The Boulevard Commissioners did advertise for the work as required by law.

It was the duty of the Boulevard Commission, before awarding or letting a contract for the work, to publicly advertise for bids therefor for two weeks in at least two daily or weekly newspapers of the county. 30

L. 1912, page 593.

The undisputed facts are that at a meeting held *May 9th*, 1917, it was decided to *receive bids on May 25th*, 1917, and thereafter a proper notice calling upon contractors to *present bids* for the work *on May 25th*, 1917, was published in: 40

The Bayonne Times, a newspaper published at Bayonne, Hudson County, on May 11th, 14th, 16th, 19th, 22nd and 24th, 1917;

Bayonne Review, a newspaper published at Bayonne, Hudson County, on May 11th, 14th, 16th, 19th, 22nd and 24th, 1917;

10 The Hudson Dispatch, a newspaper published at Town of Union, Hudson County, on May 11th, 14th, 16th, 19th, 22nd and 24th, 1917;

Hudson Observer, a newspaper published at Hoboken, in the County of Hudson, on May 11th, 14th, 16th, 19th, 22nd and 24th, 1917;

Jersey Journal, a newspaper published at Jersey City, in the County of Hudson, on May 11th, 14th, 16th, 19th, 22nd and 24th, 1917;

The Engineer's News Record, on one day, to wit: on May 17th, 1917.

20 *The resolutions of award were not adopted until June 6, 1917 (pages 39 and 40).*

Objection is made that this publication did not start early enough and therefore does not constitute a publication for two weeks.

The solution of the question advanced involves a construction of Chapter 342, Laws of 1912, page 593.

The pertinent language of this section is:

30 "Whenever * * * it shall be lawful
* * * for a public body * * * to let con-
tracts * * * the action of * * * such
public body entering into such * * * con-
tract * * * shall be invalid, unless such
public body shall *first* publicly advertise for
bids therefor and shall award said contract
* * * to the lowest responsible bidder.
Such advertisement shall be published for two
40 weeks in at least two daily or weekly news-

papers of the county wherein such work is to be done."

The public body *before* awarding contract must therefore advertise for bids for the doing of the work *for* two weeks *before* awarding contract and must then award to *lowest responsible bidder*. This is the same as saying that the body must advertise for two weeks *before receiving bids*. Bids were received on May 25th, 1917. The date from which publication must be figured is therefore May 25th. Deducting two weeks or 14 days from May 25th we have May 11th. Publication therefore must have started not later than May 11th, to comply with the statute, and this is the date of the first publication in all of the papers enumerated excepting one. 10

And one publication a week whether in daily or weekly newspapers are selected is sufficient "the intention of the legislature, as expressed in the act being" that a weekly publication *for two weeks* must be made either in a paper published weekly or one published daily, the object being to put two classes of newspapers in the same position regarding these publications. 20

Supreme Court
 McGregor vs. Perth Amboy, in opinion
 filed June 27, 1915.

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The prosecutor arrives at his conclusion that the publication is not sufficient and does not cover a full period of two weeks by subtracting eleven from twenty-four the date of last publication. He leaves out one date upon which there was publication in making his calculation. In this way he arrives at a period of publication covering thirteen days and not two weeks. In this we contend he is plainly in error. The correct way to compute 40

this period of publication, we contend, is to include the dates of the first and last publications, that is the period *for* or *during* which it was published and in this way we arrive at the result that the publication *covered* exactly two weeks of time. Upon any proper construction therefor, the advertisement was published *for* two weeks as required by law.

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The act provides that the advertisement may be published in at least two daily or weekly papers. Publication in two weekly papers alone, therefore, would satisfy the statute. If publications were confined to weekly papers during a two weeks' period, *at best but two publications could be had in each paper*. The act, however, also says that the publication shall be "for two weeks."

20

The word "for" as here used means "indicating the space of time *through* which an action or state *extends*"; hence, *during*, *in* or *through* the space of time.—Webster's Unabridged Dictionary.

The words "for two weeks" as used in this act, therefore, means that the advertisement shall be published *during* two weeks or shall be published *during* the space of time of two weeks, or shall be published *in* the space of time of two weeks, or shall be published *through* the space of time of two weeks.

30

The full two weeks are embraced *in* the space of time covered by May 11th to 24th, *both inclusive*.

Construing the language "for two weeks" within the definition of the word "for," and construing it in conjunction with the minimum requirement for publication in at least two weekly papers, publication of this notice in two *weekly* papers on May 11th, 1917, calling for bids on May 25th, 1917, fully complies with all of the requirements of the

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act, and that a like publication on May 11th, 1917, in two *daily* papers also covers all that can be demanded under the act from the Boulevard Commission, for such advertisement will be published *during* the two weeks, *in* the space of two *weeks*, and *through the space of time of the two weeks*. What is contemplated by the language of the act is that two weeks' notice should be given to contractors, and such notice, we contend, is given by publication upon May 11th alone. 10

The construction here contended for has judicial support in a case which seems exactly in point.

Under a Kentucky statute, a city charter provision providing that the mayor of the city shall advertise the letting of contracts for street improvements in some newspaper *for at least ten days*, was held to be fully satisfied by the insertion of the notice in one newspaper for one time *ten days* before the letting. 20

Woodward vs. Collett, 48 S. W. Rep., 164; 20 Ky. L. Rep., 1066; Note 2, 28 Cyc., page 660.

But even though there be doubt as to the correctness of the construction contended for by us, yet we say that the applicant ought not to prevail upon this point because there has at least been substantial compliance with the requirement of the act. 30

The object of advertising for bids is plainly to invite full competition. An examination of the list of newspapers which carried the advertisement and the number of publications in each, plainly shows that the proposed letting received *the fullest of publicity*.

Dillon on Municipal Corporations, 5th Edition, Section 809. says: 40

*When - from
27th. J. L. 1915*

10 "The purpose of a statute requiring the letting of bids to the lowest bidder is to invite competition, and to that end, publicity with intention to let the contract is of the essence of the proceeding. Hence, any statutory provisions requiring advertisement or specifying its nature, are usually to be regarded as mandatory and a failure substantially to comply with their requirements is sufficient to avoid the contract. When the statute does not prescribe the time or the method of advertisement, these matters are left to the discretion of the City Counsel or Board entrusted with the duty of making the contract."

20 The foregoing section is quoted by us to show that Judge Dillon considers a *substantial* compliance with statutory requirements as a satisfaction of those requirements. And such *substantial* compliance we say exists in this case.

POINT IV.

30 **The Board of Boulevard Commissioners did, by resolution passed as required by law, express the necessity for the repair of the curb and gutters of the sections of the Boulevard affected by these proceedings and did not exclude the curb and gutters from the proposed reconstruction.**

40 The settlement of the question presented by this point requires first the settlement of the facts in the case and then a construction of Section 1 of the Act of 1908.

The prosecutor contends that a resolution found at pages 10-11 of the state of the case is a resolution "authorizing the improvement" and he criticises this resolution because it expressly excepts the curb and gutters of the two sections of the boulevard affected by these proceedings and because this resolution does except these curbs and gutters he draws the conclusion that the boulevard commissioners "did not, as required by Section 1 of the Act of 1908, believe it necessary in their opinion, as expressed by resolutions duly passed at a regular meeting to reinforce, relay, reconstruct or rebuild any portion of the curb and gutter."

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The resolution in question does *not authorize any improvements*. It orders the preparation of plans and specifications for the reconstruction of three sections of the road as follows:

20

"Therefore, Be It Resolved, That the engineer of this board be and he is hereby ordered to prepare plans and specifications for the reconstruction of three sections of the boulevard as noted below. * * * The roadway to be laid with what is known as bituminous concrete, under a five-year guarantee, the sections to be as follows:

30

Section 1—Omitted.

* * * * *

Section 2.

Hudson Boulevard between Newark Avenue and Communipaw Avenue in Jersey City (excepting the curb and gutter. This work is

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now in litigation because of the failure of the contractor performing this work under previous administration to live up to the terms of his contract).

* * * * *

10

Section 3.

Hudson Boulevard between Communipaw Avenue and bridge over the Central Railroad of New Jersey tracks in Jersey City, N. J. (except curb and gutter. This work is now in litigation because of the failure of the contractor performing this work under a previous administration to live up to the terms of his contract)."

20

This resolution then provides that these plans and specifications be reported back to the board for consideration as follows:

30

"And be it Further Resolved, That these plans and specifications be submitted to this board for consideration at the next regular meeting and that there then shall be a public meeting called which shall be advertised in the newspapers of the county so that citizens and contractors may have an opportunity to discuss the terms of the specifications and enter their protests and objections to any clause in the specifications that in their judgment might not be to the best interests of the County of Hudson."

40

A mere casual reading of this resolution will convince one that it is nothing more than a resolution of instruction to the then engineer of the

board giving him instructions for the preparation of plans and specifications.

The facts to be considered are the following:

When this resolution was adopted Robert Gaw C. E. was "the engineer of this board" (page 9, fols. 1-35).

And at a meeting of the board held April 4, 1917: 10

"Engineer Robert Gaw submitted specifications for the re-construction of the Hudson Boulevard, between Newark Avenue and Communipaw Avenue, Jersey City, and between Hackensack Turnpike and Paterson Plank Road, West Hoboken, N. J." (page 112, fol. 30). 20

These specifications covered two of the three sections referred to in the resolution of instructions. They were referred to the "Committee of the whole" *for investigation* (page 113, fol. 1), and thereafter were rejected while Gaw was dismissed as follows:

"Therefore be it resolved, that the said plans and specifications prepared by the said Robert Gaw be and the same are hereby rejected and 30

Be it further resolved, that the resolution adopted by this board February 7, 1917, appointing the said Robert Gaw engineer, to make estimates and prepare plans and specifications for the improvement and maintenance of the Boulevard be and the same is hereby rescinded" (page 113, fol. 30; page 114, fol. 20).

40

By the dismissal of Engineer Gaw, the resolution addressed to him and adopted March 7, 1917, instructing him to draw plans and specifications for three sections died.

10 These specifications were rejected at an adjourned meeting of the Board held on April 11th, 1917, because they were closed and unfair to bidders and the engineer in question was dismissed from the service of the commission, because he had not complied with the orders given to him by the board in the resolution of March 7th, 1917 (pages 113-114).

Immediately thereafter and at the same meeting a resolution was thereupon adopted by said commission appointing Thomas J. Wasser, the County Engineer, in place of Robert Gaw, dismissed. This resolution read as follows:

20 "Resolved that Thomas J. Wasser, a competent engineer, be and he hereby is appointed to *make estimates* of the costs of any work intended to be done by this commission in the performance of its duty of improving and maintaining the Hudson Boulevard, and report said estimates to this commission, and to do and perform such other things as are or may be required of an engineer appointed or employed by this commission in the performance of its duty of improving and maintaining the Hudson County Boulevard, and that the said Thomas J. Wasser serve without compensation; And be it further

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Resolved, that all other resolutions heretofore adopted by this commission appointing or employing any other engineer, either for a term, or without term, to make estimates on work, to be performed *or to do any other work for this commission*, be and the same is hereby rescinded" (page 116, fols. 10-38).

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Not only did the resolution of instructions thus passed for Engineer Gaw die, when he was dismissed, but it was also *expressly rescinded* by the resolution appointing Thomas J. Wasser the engineer (page 116, fol. 30).

Engineer Wasser was in turn *instructed to prepare plans and specifications* for the three sections of the Boulevard which were *read and adopted* at a meeting held April 18th, 1917, together with all work incidental thereto (pages 119-120). 10

At a meeting held April 23rd, 1917, these specifications were again taken up for amendment, the resolutions approving the same were rescinded, and thereafter *they were again approved and adopted* (page 122, fol. 30; page 125, fol. 30).

At a meeting held on May 2nd, 1917, the attention of the board was *specifically directed* to the *curb and gutters* in a letter, which reads as follows: 20

Jersey City, N. J., May 2nd, 1917.

To the Hudson County,

Boulevard Commissioners,

Court House, Jersey City, N. J.

Gentlemen:

In accordance with your instructions I have prepared plans and specifications for the reconstruction of the Hudson County Boulevard between Newark and New York Branch of the Central Railroad of New Jersey, and between Communipaw Avenue and Newark Avenue, Jersey City, and between Paterson Plank Road and Hackensack Plank Road in West Hoboken and North Bergen. Bids for the above work will be received May 9th, 1917. 30

The reconstruction will among other things include the removal of the present road surface gutters and part of the present curb and the replacing of same with a different type of construction. 40

Is there any part of the present road surface, curb and gutters between the points above mentioned under guarantee? If so when does guarantee expire? And what effect will change of construction have upon such guarantee? So much of the present gutters has failed, that it is necessary to change the type, however it would be well to
 10 look into the matter before any change is made.

Yours truly,

(Signed) T. J. WASSER,
 Engineer.

(P. 128, fols. 10-35)

This letter was received by the board together with three detailed estimates of the cost of the work *including and showing the curb and gutter construction and the cost of the same in detail* (pp. 128-131).
 20

At a meeting of the board *and after the commission knew that the work would include curb and gutters and also knew the estimated cost of the same these plans and specifications were again considered and amended to meet a defect which was then discovered* (pp. 132-134, fol. 35). While
 30 the provisions regarding curb and gutter were allowed to remain in the same.

The curbs and gutters which in the resolution of instruction to Engineer Gaw passed March 7, 1917, had been excepted because of litigation pending had been constructed under a guarantee which expired October 1st, 1916, and upon which suit had been instituted February 2d, 1917. This suit was at issue and noticed for trial at the April Term, 1917 (pp. 149-150) and the necessity for preserving
 40 the curb and gutters had then disappeared.

On May 25th, 1917, bids for the construction work on the three sections for which plans and specifications had been drawn and approved (p. 137, fols. 10-40).

At a meeting held May 28, 1917, two formal resolutions expressing the opinion of the board that the contemplated reconstruction of the *two* sections was necessary to meet the requirements incident to the increase of population traffic and use were adopted (pp. 141-143). 10

At a meeting held June 6, 1917, the two resolutions awarding contracts for the work, now before the court for review were adopted (p. 145, fol. 30-146 to fol. 30).

Upon the foregoing facts we contend that the Boulevard Commission has fully complied with section 1 of the act of 1908.

The pertinent language of section 1 of the act of 1908 is: 20

“Whenever * * * it shall become necessary in the opinion of the body vested by law with the care of such road * * *, as expressed by resolution duly passed at a regular meeting of said body to re-inforce, relay, reconstruct or rebuild *any* portion of the roadway passing, the curb and gutters, the drainage system, the lighting plant including the laying of conduits and placing cables therein, or bridges, or all of them upon such roads or roads to meet the requirements incident to increase of population traffic and use, *it shall be lawful* * * * to so re-inforce, reconstruct and rebuild such parts of said road or roads herein before designated.” 30

It will immediately be noted that the *actual* doing of the work is the thing which is permitted by 40

this section of the act *and not merely the receipt of bids* and the *actual doing of the work* is permitted *after an opinion has been expressed by the board that the work is necessary*. A resolution adopted *at any time* before the award of contract is made will therefor absolutely comply with the requirements of this section and such a resolution
 10 was adopted on May 28th, 1917, eight days before the award of contracts.

Again the opinion of the existence of the necessity need not under the language of the Section be *stated or set out* in summary words in the resolution; it is sufficient if the necessity is "expressed by resolution." The necessity may be *directly or inferentially* expressed by resolution. In other words the *necessity* for the repairs, so far as *the opinion of the board* is concerned may be *inferen-*
 20 *tially expressed* by the mere adoption of resolutions approving of *detailed plans and specification* for the works and even by the adoption of the resolutions awarding the contracts, *for it will be assumed that the work is being planned because in the opinion of the parties planning it, it is necessary*, and it will be assumed that these public officials *will not violate their duty by awarding contracts for work which in their opinion is not necessary*.

30 Such a determination of necessity is necessarily involved in the *adoption* of any and all of the resolutions just referred to, which otherwise would have no basis for their adoption.

Del. River Trans. Co. vs. Trenton, 85 N.
 J. L., 479 affd., 86 N. J. L., 680.

So also even though it be considered that the resolution of March 7th, 1917, which prosecutor
 40 seems to accept as a proper expression of opinion

of the necessity for the work contemplated has not been rescinded, yet the action of the Commission in receiving the specification for the work in question from Engineer Wasser and examining and reading the same in detail, and thereafter three times adopting the same as the act of the Commission *without calling upon the engineer to amend the same by excepting the curb and gutter work upon the two sections*, shows plainly that the Commissioners between March 7th, 1917, and the date of final adoption of these specifications *had changed their mind* as to the desirability of pursuing the course prescribed in relation to these curbs and gutters by the resolution of March 7th, 1917; and the various resolutions adopting the specifications of Engineer Wasser can therefore be treated as an implied repeal of the resolution of March 7th, 1917, *in so far as that resolution relates to curb and gutters on the two sections in question.*

And that the Commissioners did not consider the fact that these gutters should be retained pending litigation upon the surety bond of any importance, further appears from the action of the Commission in finally awarding the contract. At that time Commissioner Asums again brought up the subject of the curbs and gutters on these sections, and refused to vote for the award of contracts to Clinton Contracting Company not on the ground that curb and gutters, ³⁰ that the county might save \$21,000 more if the gutters were laid with bituminous concrete instead of with granite, as called for by the specifications (page 146, fol. 30).

Should he be excluded from the work

We therefore submit that the fourth point made by prosecutor is not well taken.

In the case of Delaware River Transportation Company vs. Trenton, the statute involved required prescribed determination which did not affirm-

tively appear in the resolution of the Harbor Commission of Trenton recommending to the Common Council an appropriation for the purchase of certain wharf property. Mr. Justice Parker speaking in the Supreme Court said:

10 “Again, it is urged that the recommenda-
 tion does not comply with the statute as to its
 contents. Section 7 says that when the board
 shall deem it advisable to acquire land, &c.,
 ‘suitable or convenient in the opinion of said
 board for use or improvement in any manner
 authorized by this act * * *’ said board
 may recommend, &c. This recommendation
 said that in accordance with the provisions of
 an act (giving its title in full) the undersigned
 members of the board ‘under and by virtue of
 20 the provisions of said act, do hereby recom-
 mend that it is advisable in the opinion of
 said board to acquire the lands, &c., designat-
 ing them, ‘for use and improvement under
 said act.’ It is claimed that the recommenda-
 tion falls for want of a recital that the land
 in question is suitable or convenient in the
 opinion of said board, &c. *But manifestly, as
 we think, the making of the recommendation
 implies an opinion of suitability and con-
 30 venience.’*”

Del. River Trans. Co. vs. Trenton, 85 N. J.
 L., 479 affd., 86 N. J. L., 680.

CONCLUSION.

The resolutions of award brought up by these writs involve important public improvements of the County of Hudson—improvements which are necessary and must at some time, and should immediately be made.

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The prosecutor seems to have no real interest in the litigation.

He is a taxpayer owning a house and lot on an improved street in West Hoboken about one hundred feet east of the Hudson Boulevard *and perhaps two miles from the nearest point of the proposed improvements attacked by these proceedings* (page 179, fols. 20-30). The property is worth about \$6,500 and there is a mortgage upon it for \$2,500 (page 179, fols. 30-40). *He has no other interest as a taxpayer.*

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Mr. William T. S. Crichfield was an unsuccessful bidder for the work covered by the resolutions of award brought up for review. The competition between him and the successful bidder—the Clinton Contracting Company—*was very close* (page 137, fols. 30-40).

After he had lost the work covered by these resolutions of award he requested Edward A. Markley, one of his counsel in this proceeding, “to examine the contract and specifications for Section 7 and for the other sections (the sections involved in this suit) to ascertain whether they were regular and in accordance with the controlling statutes (page 178, fols. 1-15). Mr. Markley in accordance with that request of Mr. Crichfield, went to the Court House and examined the specifications, the contracts, the plans, and notice to contractors, for all three sections of the work and had copies made by

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clerks for him (page 178, fols. 10-20). He reported his findings to his associates in this case, Judge Collins and Mr. Hobart and they decided that what he had found was reviewable by writ of certiorari (page 178, fols. 20-40). After that he had a conversation with Mr. Crichfield and Mr. Crichfield instructed him to call up Mr. McCarthy, the prosecutor in this case (page 178, fol. 40; page 179, fols. 1-10). Mr. Markley up to that time did not know Mr. McCarthy and met him for the first time on June 8th, when he presented to him the ^{allegations} ~~facts~~ in these two cases upon which the rule to show cause was obtained (page 178, fols. 10-20). Prior to meeting him on June 8th, he called him on the telephone at the suggestion of Mr. Crichfield, the unsuccessful bidder, who told him that he, Crichfield, understood that McCarthy was a former councilman up in one of the Hudson County townships and was interested in the improvement and was about to institute a proceeding to attack the awards to Clinton Contracting Company. He, Crichfield, said it might be a good thing to call up McCarthy and find out what he intended to do (page 176, fols. 30-40).

McCarthy, without any real interest in this controversy, *is the dummy prosecutor of this writ for William T. S. Crichfield.* He is fighting this award for Mr. Crichfield because Mr. Crichfield *lost in the competition and desires another chance.*

In the case of Atlantic Gas & Water Company vs. Atlantic City, 73 N. J. L., 360, the Atlantic Gas & Water Company was an unsuccessful bidder and was also a taxpayer of Atlantic City. After the resolution of award to its competitor had been passed by the Board of Council, it (Atlantic Gas & Water Company) obtained a writ of certiorari to review the proceeding upon points of procedure.

The case is identical with this one, excepting

that in this case Mr. Crichfield is acting through a dummy.

The Court in disposing of this case said:

“If we assume, as counsel for the prosecutor urges that we should, that this act has been adopted by Atlantic City and that Section 14 by which City Council is authorized to make ordinances *inter alia* ‘to provide for the lighting of all streets, parks and public places,’ is operative, then our conclusion is that it is not a ground of complaint by this prosecutor that the ordinance was not passed before the proposals upon which it unsuccessfully bid were published. *The standing of the prosecutor as an unsuccessful bidder rests upon his right to have its bid accepted.* Certiorari is a remedial writ. If the present contention of the prosecutor is true then all that it has lost is an illegal award. For this the present proceeding affords him no remedy.

As a taxpayer the prosecutor has a different standing; viz., as *the representative* in theory of the *taxpaying interest* of the city, but the bid that the prosecutor is attacking was lower than its own bid, hence the interest of the taxpayers would not apparently be advanced by the success of such attack. Certiorari is a discretionary writ, hence a prosecutor who only in theory represents the taxpayers of a city should not be permitted to work an injury to them in point of fact which might readily happen if the real cause of such prosecutor’s intervention were its private interest or a personal grievance.”

Having in mind the very doubtful standing of the prosecutor, and the fact that he is undoubtedly

but a dummy prosecutor, let us examine the nature of the claims which he makes.

10 He does not deny the *right* or *power* of the county to make the improvements, nor does he claim that they *should not be made*. He comes into court objecting merely to *procedure*, to *delay the work* by upsetting, if possible, the present awards, and thus
 20 *obtaining a second chance for his concealed principal, William T. S. Crichfield, to bid upon the work*. He urges nothing but technical objections. He does not claim or show that he as a taxpayer *will suffer or that the County will suffer any financial loss through the performance of the contracts as awarded*. He undoubtedly has the right to act as a prosecutor and to bring the proceedings in question because he has the necessary property qualifications. But in addition to having these qualifications,
 20 he *must also show that the public is injured by the proceedings which he attacks and if he does not do this he should not be allowed to prevail*.

30 Conceding for the sake of argument the proceedings to be irregular and defective, the prosecutor has not shown that any substantial injury, or *any injury whatsoever* has accrued either to him or to the taxpayers of the County of Hudson through irregularities or through the making of the awards brought up for review.

The rule regulating issuance of writs of certiorari is that the writ is not a writ of right, but issues only on special cause shown to the court. This special cause must consist of some palpable abuse of discretion, some violation of legal principles, or neglect of prescribed formalities.

Van Reypen vs. Jersey City, 58 N. J. L.,
 262, page 268.

But, even though there are errors, the errors complained of must be manifest, *and substantial* injury must have been sustained, for the Court will not award the writ where the errors complained of are merely informal or technical, or where, although there is error in fact, substantial justice has been done and no appreciable injury resulted to the complaining party.

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6 Cyc., 749.

In New Jersey, the rule last stated, has been strikingly enforced in the case of *Vanderbeck vs. Blauvelt*, 34 N. J. L., 261. In that case there was manifest error in the laying out of a public road, but the Court held that the prosecutor should not be allowed to defeat by means of certiorari, the laying out of public roads, when it was neither shown that any substantial wrong had been done nor that there ever was any real ground of objection which could have been interposed to the application. All of the objections in that cause were stated to exist and if some other prosecutor really injured had brought the proceedings he would have prevailed.

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And at the June Term, 1917, of the Court of Errors, that court filed a per curiam affirming a judgment of the Supreme Court upon a memorandum filed by Mr. Justice Swayze in which he enforced the rule laid down in *Vanderbeck vs. Blauvelt*, supra, and dismissed a writ of certiorari to review the award of a garbage contract made by the City of Jersey City, although it was conceded by him in so doing that there were irregularities and technical objections to the award. The only ground for dismissing this writ was the fact that the prosecutor, although a taxpayer, had suffered no real injury and that the errors com-

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plained of did not cause any injury to the public.

James M. Houghton vs. Jersey City, et al., per curiam in Court of Errors, June Term, 1917, memorandum by Justice Swayze, dated February 6th, 1917. No opinions filed.

10 We therefore contend that this prosecutor has not shown that he or the county at large has in any way suffered or can in any way suffer by or through the alleged errors, defects and informalities in the proceedings, and that therefore his writ should be dismissed. We further contend that the depositions taken also show that the prosecutor is not prosecuting these writs to protect the interests of the public, but is doing so as the representative of William T. S. Crichfield, the unsuccessful bidder, that he should be treated as an unsuccessful bidder, and that since, as an unsuccessful bidder attacking
20 a low bid, his interest runs counter to the interest of the public, his writs of certiorari should be dismissed.

November Term, 1917.

Respectfully submitted,

J. EMIL WALSCHEID,
Of Counsel with the defendant
Clinton Contracting Company.

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~~JAMES J. MURPHY,~~
~~Of Counsel with the Boulevard~~
~~Commissioners of the County of Hudson.~~

40 24777-

New Jersey Court of Errors and Appeals.

EDWARD L. McCARTY, <i>Prosecutor-Appellant,</i> <i>v.</i> THE BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON et al., <i>Defendants-Respondents.</i>	On Appeal from Supreme Court. On Certiorari Suit No. 1 Re improve- ment of Boule- vard between Communi- paw Ave. and Newark & N. Y. Branch of C. R. R. of N. J.	10
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EDWARD L. McCARTY, <i>Prosecutor-Appellant,</i> <i>v.</i> THE BOULEVARD COMMISSIONERS OF THE COUNTY OF HUDSON et al., <i>Defendants-Respondents.</i>	On Certiorari Suit No. 2 Re improve- ment of Boule- vard between Communi- paw Ave. and Newark Ave.	20
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BRIEF FOR PROSECUTOR-APPELLANT.

Statement of the Case.

These two appeals involve the same questions. **30**
There were two writs of certiorari and judgments thereon, because there were awards of two contracts for different sections of the Boulevard. By consent, there was but one return to the two writs. The causes were argued together below, and the appeals will be so argued here.

The prosecutor as a taxpayer attacked the two awards of contracts on grounds stated in the

"Reasons" printed at pp. 186 and 189 of the case. Summarized, these reasons (or such of them as were pressed in the Supreme Court) present the contentions of invalidity involved in the case, namely:

10 1. That the authorizing statute (P. L. 1908, p. 107) providing for reconstruction of the roadway paving, curbs and gutters (and other adjuncts not embraced in the pending improvement) of the Boulevard did not permit of the construction of unpaved centre parkway islands the entire length of the improvements, except at street intersections, with conduits laid therein for a possible change in the lighting system from the curb lines to the center line of the road, although no such change had been decided on or even projected.

20 2. That the Boulevard Commissioners did not, as required by said statute, before advertising for proposals for the contracts, submit to the Board of Chosen Freeholders a statement of the work required and proposed to be prosecuted at that time, with estimated cost of such work prepared by a competent engineer, and a requisition for the amount of such cost.

3. That notices to contractors for proposals were not published for the time required by law.

30 4. That there was no previous determination, made requisite by said statute, for the reconstruction of curbs included in the contracts awarded.

The Supreme Court nevertheless affirmed the awards of the contracts; hence the present appeals.

Specification of the Grounds of Appeal in each Case.

The Supreme Court affirmed the resolution brought up for review in the above stated causes, whereas for some or one of the reasons assigned by the prosecutor in said court the said resolution should have been reversed set aside and for nothing holden.

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Brief of the Argument.

We can add nothing to the brief presented to the Supreme Court, and as extra copies were printed when the causes were in that Court we append the same hereto as our argument in this Court.

We respectfully submit that the objections above stated were not convincingly answered in the opinion filed in the Supreme Court as the justification of its judgments of affirmance.

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As to the first objection, the arguments of the prosecutor's brief are not met, but are simply ignored. The opinion concedes that the original statute contemplated but one carriageway with sidewalks on either side (Case, p. 196, l. 24), and this carriageway, or roadway as it is called in the supplement, was originally paved from curb to curb with a macadam pavement. The supplement (Com. Stat., p. 4531, pl. 279 *et seq.*), which is the only foundation of authority for the proposed contracts, authorized the Commissioners, whenever in their opinion it should be necessary, to "reinforce, relay, reconstruct, or rebuild any portion of the roadway paving, the curb and gutters, the drainage system, the lighting plant, including the laying of conduits and placing cables therein, or bridges, or all of them upon such road or roads, to meet the requirements

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incident to increase of population, traffic and use." We are concerned now only with the "roadway paving." The learned Justice who spoke for the Supreme Court, after reciting that according to the estimate of the county engineer, it would cost \$9500 more for the construction of the parkway islands than for concrete paving over the space to be occupied thereby, and that the cost of the conduits down the center of the road, which

10 were embraced in the contracts awarded merely because in the judgment of the engineer there might in the future be a change of the lighting system from the curb to the center of the roadway would be \$11,000, proceeded to consider the prosecutor's contention that the Act means just what it says, namely, a reconstruction of a pavement already laid and does not authorize an entirely new design of two carriageways with parkway islands between, and, he should have added,

20 such conduits, and disposed of the objection in this summary fashion (Case, pp. 196, 197) :

"We think there is ample power or authority in the act, under which these proceedings are based, for the Commissioners to do what is contemplated to be done under the plans and specifications; reinforce means to enforce over again, relay to lay again, reconstruct to construct again, rebuild to build again or anew, to make extensive repairs or alterations; 7 Words and Phrases, p. 6007. These

30 powers are all to be read in the light of the legislative criterion, that they were 'to meet the requirements incident to increase of population, traffic and use.' We have no doubt that the proposed reconstruction is within these broad powers. We have no concern with the wisdom of the proposed plan; that is an administrative and not a judicial function. We search the statute simply to ascertain whether the legislature has granted to the Boulevard Commissioners the power

40 to adopt the proposed plans and specifica-

tions in the record. We think the Board is vested with such power. The resolutions cannot be set aside on the first ground, viz: lack of power."

This is mere *ipse dixit*. Accepting the learned Justice's definition, when we consider that the expression "to reinforce, relay, reconstruct or rebuild" is being applied to *roadway paving*, we cannot yield to the opinion that any word in the expression authorizes the construction of curbed, unpaved parkway islands, and underground conduits. The case is very different from islands of safety, at long intervals, like those in Broad street, Newark, laid under a general power of street improvement. Here there is an express statutory limitation, which has palpably been disregarded. **10**

As to the second objection, the learned Justice relies on the decision in this Court in *Mueller v. Boulevard Commissioners*, 87 N. J. L., 702; but in that case the point now raised was not involved. The Boulevard Commissioners had complied with the statute "before advertising for bids" by submitting to the Freeholders "a full statement of the work necessary and proposed to be executed" with an estimated cost prepared by a competent engineer and a requisition for an appropriation; and the appropriation had been made. The point of objection was that they advertised for bids before the funds were actually in hand. This Court held that they might do that; the prohibition of the statute in that regard being that "until such financial arrangements are made, no further steps shall be taken in the prosecution of said proposed work" (P. L. 1908, p. 107, sec. 2). This is the same statute involved in the present case; but the Mueller case related to a different phase of it. **20**
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As to the third objection, the learned Justice **40**

thinks that the prosecutor's interpretation of the general statute requiring two weeks advertisement for bids for public work may be doubtful, and refuses to determine the question because the prosecutor as a taxpayer representing the public has suffered no injury (Case, p. 200). The doctrine is untenable, and if the opinion of the Supreme Court is allowed to stand it will afford a very dangerous precedent. It was the plain duty of
 10 the court below and is the duty of this court to interpret the statute, and if we are right in our contention as to its meaning, to set aside the awards. It cannot possibly be known that the public have suffered no harm. Contractors may have refrained from bidding because advised that there had been a deficient advertisement.

As to the fourth objection, the learned Justice thinks that the adoption of the plans and specifications implied a necessity, in the opinion of the
 20 Commissioners, that the conduits and gutters should be reconstructed (Case, p. 202). He loses sight of the fact that in the only resolution for the improvement (Case, p. 10) the reconstruction of curbs and gutters was expressly *excluded*, for the reason that in the opinion of the Commissioners the contractor who had defectively laid them was bound to relay them at his own expense. We fail to see how, when the Commis-
 30 sioners expressly declared their deliberate judgment that the curbs and gutters should *not* be reconstructed, the approval by the Commissioners of the plans and specifications, including such reconstruction, is tantamount to a determination that their reconstruction at the expense of the county is a necessity within the purview of the statute. The case of *Delaware River etc. Co. v. Trenton*, 85 N. J. L., 483, cited, as authority, is not at all apposite.

With these comments on the opinion filed in the court below, we are content to rest appellant's case upon the argument submitted to that court and appended hereto. We submit that the judgments should be reversed, and judgments be directed setting aside the resolutions brought up by the writs of certiorari.

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Of Counsel.

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New Jersey Supreme Court

EDWARD L. MCCARTHY,
Prosecutor,
vs.
BOULEVARD COMMISSIONERS OF THE
COUNTY OF HUDSON, JOHN
SWEENEY, Clerk, et al.,
Defendants.

On Certiorari.
Sult No. 1.
Reimprovement
of Boulevard
between Com-
munipaw Ave.
and Newark
& New York
Branch of Cen-
tral Railroad of
New Jersey.

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EDWARD L. MCCARTHY,
Prosecutor,
vs.
BOULEVARD COMMISSIONERS OF THE
COUNTY OF HUDSON, JOHN
SWEENEY, Clerk, et al.,
Defendants.

On Certiorari.
Sult No. 2.
Reimprovement
of Boulevard
between Com-
munipaw Ave.
and Newark
Avenue.

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BRIEF OF COLLINS & CORBIN IN BEHALF OF THE PROSECUTOR.

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Statement of the Case.

On June 8, 1917, application was made to Mr. Justice Swayze for a rule to show cause why a certorari should not issue to review two resolutions of the Boulevard Commissioners of Hudson County, awarding contracts for the repair of the paving of the Hudson Boulevard with bituminous concrete, one of said resolutions awarding a con-

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tract for the repair of said paving from Communipaw Avenue to Newark Avenue, Jersey City, and the other resolution awarding a contract for the repair of said paving from Communipaw Avenue to the Newark and New York Branch of the Central Railroad of New Jersey, and also to review all proceedings touching or concerning said resolutions of the said Boulevard Commissioners or of the Hudson County Board of Chosen Freeholders (pp. 1-2). The rule to show cause was duly allowed, returnable on June 18, 1917, and on that date it was argued before Mr. Justice Swayze, who reserved decision until June 30, 1917, when he allowed two writs. Because the return in each case would be identical, counsel for the respective parties agreed that only one return need be made to the two writs. It was also stipulated that the testimony used on the rule to show cause should be used on the argument of the writs with the same force and effect as if it had been taken thereunder (pp. 7 and 95). There is, therefore, only one printed State of Case, and since the points involved in each case are identical, we shall only file one brief. The only reason for the granting of the two writs was that it was feared that the proceedings leading to the two resolutions of award might be different, but it so happens that they are not. Therefore, the two writs may be considered together as one. The prosecutor attacks the proceedings on several grounds, which we shall now proceed to present (pp. 186, 189).

I.

The Boulevard Commissioners of the County of Hudson have no power to reconstruct the Boulevard with a center parkway.

The enabling statute, Chap. 69 of the Laws of 1908 (P. L., 1908, p. 107; 4 Comp. Stat., p. 4531, pl. 279 et seq.), authorizes the body vested by law with the care of the Boulevard whenever it shall be necessary in the opinion of that body, by resolution duly passed at a regular meeting, to "reinforce, relay, reconstruct or rebuild any portion of the *roadway paving, the curb and gutters, the drainage system, the lighting plant, including the laying of conduits and placing cables therein or bridges, or all of them upon such road or roads, to meet the requirements incident to increase of population, traffic and use.*"

This Act means just what it says, a reconstruction of a pavement already laid, and does not authorize an entirely new design of two carriage ways with parking between such as is contemplated in the present case. This Act of 1908 is a supplement to an Act entitled "An Act to Authorize the Board of Chosen Freeholders of any of the several counties of this State to lay out, open, construct, improve and maintain a public road thereon," approved April 7, 1888 (Chap. 274, P. L., 1888, p. 397; 4 Comp. Stat., p. 4503, pl. 194). The original Act clearly contemplates but one carriage way with sidewalks on either side. Section 10 of the Act of 1888 provides the way in which the road is to be reconstructed. It provides:

"That said board shall establish and determine the width of the carriage-way and sidewalks of said road, provided that both carriage-way and sidewalk shall not exceed one hundred feet in width, and shall construct

said road by grading the same in such way and manner according to such grade as the said board shall fix and determine, by excavating and removing earth, rocks, trees, stumps, buildings and all obstructions, and the disposal of such portion thereof as not needed in the construction and improving of said road to the best advantage; by filling any low parts or otherwise in preparing the premises for said road, and building all bridges needed on such road; by building all sewers, culverts and receiving basins, and providing all necessary sewerage and outlets of the same, or by making connection with or using any public sewers or outlets that may exist that they may deem necessary within or without the lines of said road; provided, that such road may be constructed upon the grades established by any municipal authority (if any have been established) as near as conveniently may be or can be done, so as to insure an easy, and as near as can be, even grade throughout the entire road; and in case any grade shall be changed, compensation shall be made to the person injured (if any there shall be), by such alteration of grade, such injury to be ascertained in the same manner hereinbefore provided in the case of land taken; said board shall have power at any and all times to improve and repair said road or any part thereof, and to provide for properly lighting said road or any part thereof; and said board, in constructing said road and in making such improvements as aforesaid, may use therefor any material which said board is authorized to use for any purpose whatever, and any material which can be used for any of said purposes that may be found within the lines of said road, or may have been placed there by or under any municipal authority whatsoever. (P. L., 1888, p. 405.)”

It will be noted that the statute under which the Boulevard paving was constructed limits the width of the carriage-way and sidewalks to not more than 100 feet. As a matter of fact the

Boulevard is only 60 feet wide from curb to curb (p. 160, l. 10). The plans and specifications under review provide for what are called "parkway islands" (p. 158, ll. 30-40). The plans show these islands in detail and were offered in evidence (p. 105). The islands are to be six feet wide, three feet on each side of the centre line of the Boulevard, and they are to extend throughout the entire length of both improvements except that where the Boulevard is intersected by other highways the islands terminate ten feet back of the property line of each intersecting street (p. 158, l. 25, to p. 160, l. 10). The construction of the island parkways would leave only 54 feet width for vehicular traffic. The ordinary automobile is six feet in width. This is just the width of the proposed parkways. The island parkways *are not* to be used for pedestrian traffic (p. 159, l. 10). They are therefore not to be used for any kind of traffic. In other words, 6,850 lineal feet of this very important highway is to be used for no kind of traffic (p. 165, ll. 35-40). Their only purpose is, as testified to by the county engineer, to provide "safety zones." However, they cannot be used to stand on (p. 159, l. 10). They are not to be constructed of any hard substance as cement or stone so that they could be regarded as real safety zones, but they are to be constructed of soft material. Under the specifications, the contractor has to provide earth, top soil and curb for the islands, and there will be a certain amount of excavation, and filling; and they are to be finished off by rolling the top to "a neat crown" (p. 49, ll. 10-20; p. 158, l. 35). Of course, no pedestrian would be allowed to stand on the islands. They are therefore not real safety zones.

Sometime in the future it is hoped that the Boulevard Commissioners will be given enough money to award a contract for gardens or flower beds for these parkways. That was the county

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engineer's intention when he provided for the parkways in the plans and specifications (p. 158, ll. 35-40). He had no right to thus speculate on the future. Also in the future the county engineer hopes that the Boulevard Commissioners may purchase and install a new lighting system for the Boulevard and then these island parkways may be utilized to a certain extent for that purpose. However, there is nothing in the specifications under review providing for a new lighting system and this is merely conjecture (p. 162, ll. 10-20). At present the Boulevard is lighted by a lighting system which is not in the centre of the highway, but on each side thereof, and no proceedings looking toward any change have been taken (p. 166, l. 35, to p. 167, l. 10).

The cost of these islands greatly exceeds what it would cost to repair the paving of this six foot width throughout the improvement with bituminous concrete. According to the estimate of the county engineer it would cost \$9,590 more for the islands than for the concrete paving (p. 165, ll. 30-40). Also another added cost is that for conduits which were provided for in the specifications for some possible future lighting system. These conduits were estimated to cost over \$11,000 (p. 25, ll. 15-20). It seems inconceivable that conduits costing that amount should be provided for when the probability was that there would be no change in the lighting system, and the possibility was, to say the least, remote, for as shown in Point II, the Boulevard Commissioners had great difficulty in securing enough money to repair the existing paving, and did not in fact secure enough money to make all needed repairs (p. 166, l. 35, to p. 167, l. 5). In other words, the proceedings under review contemplate the expenditure of about \$20,000 for absolutely no useful purpose, but, on the contrary, the traveling public are to be denied by that expenditure the use of six feet

of width of a very important highway. The testimony shows that vehicular traffic on the Boulevard has been increasing for the past ten years and within the last three years it has increased 100 per cent. (p. 160, ll. 25-35). The Boulevard is now part of what is known as the "Lincoln Highway," which is regarded as the great highway of the State (p. 160, l. 35, to p. 161, l. 5). This highway from curb to curb is to be reduced in width to 54 feet. This should not be permitted unless the statute under which the repair of the paving is to be made very clearly gives the power. 10

No power is given by the Act of 1888, *supra*, to the Board to provide for a center parkway in the highway. The highway as constructed does not contain a center parkway (p. 162, ll. 20-30), and as the only power to reconstruct is that given by the Act of 1908, it is clear that the Board is limited to the reconstruction of the existing pavement and not to the construction of an entirely new and different design of pavement. The Act of 1908 expressly says to "reinforce, relay, reconstruct or rebuild any portion of the roadway paving." 20

There are two supplements to the Act of 1888 to be considered, namely, the supplements of 1893 and 1896. The supplement of 1893 (P. L. 1893, p. 454; 4 Comp. Stat., 4518, pl. 230) provides for the further improvement of roads already improved by resolution duly passed, "by paving or covering the whole or such portion of the roadway of such roads as they may by said resolution or resolutions designate, with suitable road material, but no stone block pavement shall be used, excepting in paving gutters or waterways; or at the intersection of streets devoted to heavy traffic; by setting curbstone and paving the gutters and waterways along and within said roads or any part thereof; by planting trees along said roads or any parts thereof; by providing a proper plant 30 40

or plants for the lighting of said road or roads as directed * * * .”

This act does not apply, first, because the present proceedings were not taken by virtue of the power conferred thereby, and second, because if this supplement did apply the planting of trees therein referred to clearly means along the sides of the road. The expression “or any part thereof” means any section thereof; *not any longitudinal part thereof in the center of the roadway.*

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If we compare this language of the statute with the language of the specifications and the plans in the present case wherein they provide for island parkways as hereinbefore presented, it will clearly appear that the statute does not authorize what is proposed. From such a comparison it can therefore readily be seen that the improvement contemplated is by no means within the authority of the supplement of 1893 (even though it be assumed that that supplement is applicable), for the supplement only provides for the “planting of trees along said roads, or any parts thereof.”

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The very fact that the supplement of 1893 *expressly* provides for trees along the sides of the Boulevard shows that such power is not given impliedly in the original act. *A fortiori* the failure to expressly provide for island parkways shows that the legislature never intended to give that power.

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The Supplement of 1896 (P. L. 1896, p. 93; 4 Comp. Stat., 4519, pl. 233) only applies to what is known as the “Loop” and not to the sections that are now proposed to be improved. It therefore follows that no authority having been given to the Boulevard Commissioners to provide for these island parkways, they have exceeded their authority and for this reason the proceedings are illegal.

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II.

The Boulevard Commissioners did not, before advertising for proposals for any contract for said work, from time to time submit a full statement of the work required and proposed to be executed at that time with the estimated cost of such work, prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law with the control of the finances of the County of Hudson.

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This is required by Section 2 of the Act of 1908, the enabling statute (P. L. 1908, p. 107), which provides as follows:

“Before advertising for proposals for any contract for work authorized by this act, the body vested by law, with the care of such road or roads, shall, from time to time, submit a full statement of the work necessary and proposed to be executed at that time, with the estimated cost of such work, prepared by a competent engineer, and a requisition for the amount of such cost to the body vested by law, with the control of the finances of said county.”

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On March 7, 1917, a resolution was passed by the Boulevard Commissioners wherein they stated that in their judgment it was deemed advisable that immediate steps be taken to place as much of the Boulevard Road in as good a condition as the County finances would permit, and it was resolved that the engineer for the Boulevard Commissioners be directed to prepare plans and specifications “for the reconstruction of three sections of the Boulevard” as noted therein, said plans and specifications to be submitted to the Board for its consideration at the next regular meeting (pp. 10, 11).

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On March 20, 1917, a protest was filed because of the failure to provide for the repair or reconstruction of a section of the Boulevard paving in Bayonne, which was very much in need of such repair (p. 11, l. 30, to p. 12, l. 10). On April 4, 1917, the engineer for the Boulevard Commissioners submitted specifications as directed, and on April 11, 1917, they were rejected because the Boulevard Commissioners from their examination

10 of said specifications believed that they were "closed specifications and unfair to bidders", and it was resolved by the Boulevard Commissioners that the resolution adopted February 7, 1917, appointing the said engineer to make estimates and prepare plans and specifications be rescinded (p. 12, l. 30, to p. 13, l. 30). On April 11, 1917, another engineer was appointed to make estimates of the cost of the work proposed (p. 15, l. 125). On April 18, 1917, plans and specifications were

20 submitted by this engineer and resolutions were passed approving the plans and specifications in question and the clerk to the Boulevard Commissioners was directed to advertise for bids for the three sections (including the two under review), to be received on May 7, 1917. These specifications were found to be illegal and on April 23, 1917, the resolutions approving the plans and specifications prepared by the second engineer were rescinded (p. 19, l. 30, to p. 20, l. 30). Also

30 at this meeting on April 23, 1917, a new set of plans and specifications, presumably, were approved and adopted and the clerk was directed to advertise for bids for May 9, (p. 20, l. 30, et seq.) The minutes of April 23, 1917, have the following explanation of this action of the Board (p. 21, ll. 35 to 40) :

"The above resolutions refer to those sets of specifications which were amended April 23, 1917, by the addition of legal parts, &c."

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Also on April 23, 1917, a third engineer was

employed by the Boulevard Commissioners for the proposed work (p. 22, ll. 1 to 20). On May 9, 1917, just as the bids were about to be opened, it was found that the specifications, the preparation of which was supervised by this engineer, were still "closed specifications", and they were again amended and the clerk was directed to advertise for bids to be received on May 25, 1917 (p. 27, l. 10, to p. 28, l. 40). On May 25, 1917, bids were finally received for the repairing of the Boulevard paving on all three sections (p. 31, l. 30, to p. 32, l. 10). The bids were referred to the committee of the whole. After the receipt of bids on May 25, that is, on May 28, 1917, the Boulevard Commissioners passed a resolution, the evident purpose of which was to comply with Section 2 of the Statute, supra (p. 34, l. 40, et seq.). The Boulevard Commissioners in this resolution set forth a statement of the work necessary and proposed under said three sections, with the estimated cost of such work prepared by an engineer, and a requisition on the Board of Chosen Freeholders of the County for the amount of money necessary to do the work on the two sections under review. It, therefore, appears beyond dispute that Section 2 was not complied with, for Section 2 provides that *before advertising for proposals for any contract* for work authorized by the act, the body vested by law with the care of such road shall from time to time submit a full statement, &c. In the case at bar proposals were advertised for as early as April 18, 1917, and the Boulevard Commissioners never attempted to comply with Section 2 of the Statute until May 28, 1917. The bids that were accepted were actually received on May 25, 1917.

Section 2 of the Act of 1908 is mandatory for it provides that its requirements *shall* be performed before advertising for proposals. In the present case proposals were advertised for

over a month before any action was taken as required by Section 2. The reason for strict compliance with Section 2 is obvious. A public body before going to the expense of hundreds of dollars for advertising for bids, preparing specifications and receiving bids, should know whether or not there are available funds to meet the cost. In the present case the Boulevard Commissioners actually prepared specifications and advertised

10 for proposals for work aggregating over \$240,000 when, under the law, they could only have \$190,000. Under the Act of 1908 the total cost of all work authorized in any one year shall not exceed a sum equal to two-tenths of one per cent of the total assessed value of the ratables of the county, assessed for county purposes. The record in this case shows that two-tenths of one per cent of Hudson County for the year in question does not exceed \$190,000 (p. 148 ll. 20-30),

20 while the estimated cost as estimated by the engineer for the Boulevard Commissioners of the reconstruction of the three sections of the Boulevard for which proposals were received and specifications drawn, was \$258,907.90 (p. 129 et seq). The aggregate bids of the three lowest bidders for the three sections was \$242,331.70 (pp. 138-139). In other words, the very mischief that section 2 of the act was to prevent exists in this case simply because section 2 was not com-

30 plied with.

Counsel for the defendants argue that this clearly illegal proceeding wherein the Boulevard Commissioners failed to comply with the provisions of Section 2 of the enabling statute and in fact took no action that might even be regarded as an attempt to comply therewith until a month and a half after the time when such action should have been taken and a period

40 of three days after the final receipt of bids was not illegal because

(a) the provisions of section 2 of the statute are not mandatory;

(b) the provisions of section 2 are no longer applicable but are superseded by subsequent legislation.

(a)

The law is settled that provisions of section 2 of the statute in question are mandatory. Section 2 says "*before advertising for proposals* for any contract for work authorized by this act, the body vested by law with the care of such road or roads, *shall*, from time to time, submit a full statement of the work necessary, and proposed to be executed with the estimated cost of such work prepared by a competent engineer and a requisition for the amount of such cost to the body vested by law with the control of the finances of said county." It will be noted that the statute does not say that the Board *may*, or that it shall at any time as it may see fit, or deem advisable do the things therein prescribed, but that it *shall* at the time therein specified. and at certain times therein specified do the things therein prescribed. In other words, the provisions of section 2 are mandatory and the following cases settle the law that such a mandate of the legislature is not directory or optional with the person or body acting under such a statute, especially where public interests and rights are concerned.

Seiple v. Elizabeth, 27 N. J. L., 407;
State, Grant Pros., v. Newark, 28 N. J. L., 491;

Jones v. Proprietors of the Morris Aqueduct, 36 N. J. L., 206;

Buck v. Danzanbacker, 37 N. J. L., 359, 361;

Haythorn v. Van Keuren & Son, 79 N. J. L., 101, 105;

In Re Van Noort, 85 Atl., (N. J. S.) 813, 814.

In *Jones v. Proprietors of the Morris Aqueduct*, 36 N. J. L., 202, supra, this court, speaking through Beasley, C. J. held (Headnote):

10 “When the words of a statute, directing the mode or time of doing an act, are clear, the provision cannot be deemed merely directory, unless the literal interpretation will lead to a result so absurd or highly inconvenient as to demonstrate that such could not have been the legislative intent.

20 “A statute giving an appeal from the award of commissioners to the first or second term of the Circuit Court after such award, required a notice of such appeal to be given ‘two weeks prior to such term’—held, that this provision must be strictly complied with.”

In *Haythorn v. Van Keuren & Son*, 79 N. J. L., 101, 105, supra, this court speaking through Trenchard said:

“We think, also, that the language of the section in question is mandatory, and in the absence of a seasonable demand for a jury the judge has no discretion. He must try the case without a jury.

30 “The presumption is that the word ‘shall’ in a statute is used in an imperative and not in a directory sense. If a different interpretation is sought, it must rest upon something in the character of the legislation or in the context which will justify a different meaning. 25 Am. & Eng. Encycl. L. (2d ed.) 633.

“There is nothing in the language of the section to indicate that the word ‘shall’ was used in a permissive sense, * * * *”

40 In the matter of *in re Van Noort*, 85 Atl., 813, 814, this court speaking through Minturn, J.

“It is insisted that the limitation of 10

days contained in this statute, within which a candidate may present a petition for a recount, is merely directory, and that the court may exercise the power to direct a recount of the whole county at any time. I cannot so view this act. It cannot be that the Legislature contemplated the existence of an unsettled condition of public affairs in the county without limitation as to time, as such a construction as that contended for would necessarily involve. 'Interest respublica ut sit finis litiun!' And this maxim has a peculiar application to the settlement of public affairs. *Hill v. Smith*, 12 M. & W. 631. The period of 10 days after the election was the limit imposed within which time candidates, who had reason to believe the declared result was wrong as to them, might apply for a recount; and after that period the clear inference is that they were to be foreclosed of that privilege. This limitation, therefore, is manifestly mandatory in the public interest. If, therefore, the petition be presented after the expiration of the 10 days, it confers no jurisdiction upon the Justice, since the whole scheme of review is entirely statutory, and is based upon a petition presented within time.

"Affirmative words make the statute imperative, if they are absolute, explicit, and peremptory, and show that no discretion is intended to be given.' Potter's *Dwarris on Statutes*, 228. 'If an affirmative statute introductory of a new law directs a thing to be done in a certain manner, that thing cannot, even although there are no negative words, be done in any other manner.' *Cook v. Kelly*, 12 Abb. Prac. (N. Y.) 35; *Com'rs v. Gains*, 3 Brev. (S. C.) 396; *Norwegian Street*, 81 Pa. 349."

In the case at bar, the language of section 2 is absolute, explicit and peremptory and shows clearly that no discretion is intended to be given to the Boulevard Commissioners.

We therefore submit that the provisions of section 2 are mandatory.

(b)

- Counsel for the defendants rely on Chapter 252 of the laws 1916, p. 525 (Pierson Bond Act) as the subsequent legislation which makes the provisions of section 2 inoperative. This act has been amended by Chapter 240 of the laws 1917, p. 803. The Pierson Act in no way affects the provisions of the enabling statute under which
- 10** the Boulevard Commissioners were operating. The Boulevard Commissioners did not have, and have not under the Pierson Act any power to borrow money. That power is given to the County, both under the Pierson Act and under the Act of 1908. The Pierson Act does not in any way affect the modus operandi of the Boulevard Commissioners. When the Boulevard Commissioners have complied with section 2 of the Act of 1908, and after they have submitted to the Board of Chosen
- 20** Freeholders a full statement of the work necessary, together with the estimated cost thereof, as provided in section 2, then it may be that the Pierson Act would apply to any subsequent action by the Board of Freeholders; that question is not involved. It is clear that the Pierson Bond Act in no way applies to the Boulevard Commissioners so as to wipe out section 2, and yet leave the other sections of the act of 1908, so that the Boulevard Commissioners can still
- 30** operate thereunder as they have in the proceedings under review. Section 2 of the Act of 1908 in no way conflicts with the Pierson Act, and therefore it is neither expressly nor impliedly repealed by that Act.

III.

The Notices to Contractors for Proposals are Defective because they were not Published for a period of Two Weeks.

Chapter 342 of the Laws of 1912 is controlling (P. L. 1912, p. 593). The statute provides: "Such advertisement shall be published for two weeks in at least two daily or weekly newspapers of the county wherein such work is to be done." In the present case the first advertisement appeared on May 11th and the last on May 24th (p. 106 l. 10 et seq). We say there was not a publication for two weeks but only thirteen days because there was only a period of thirteen days between the first and last publications. Even assuming that when the statute says that the advertisements shall be published for two weeks it means not a publication for two weeks but that the first publication shall be fourteen days before the date of receiving bids, still this does not comply with the statute *for the bids were received on the fourteenth day.*

We contend that the bids could not be received until at least two weeks notice had been given. *Action can only be taken after the expiration of two weeks,* and consequently action on the fourteenth day after the first publication of notice was premature.

In *Pisar vs. State*, 56 Neb. 455; 76 N. W. 869, a case directly in point, it was held that an application for a license to sell liquor could not be acted upon until at least two weeks notice had been given in the manner specified by statute; that action could only be taken after the expiration of two weeks, and consequently action on the fourteenth day after the first publication of notice was premature. The statute

in that case provided: "No action shall be taken upon such application until at least two weeks notice of the filing of the same has been given by publication." Notice was first published in a weekly newspaper on April 28, 1908; the license was granted May 12th—the fourteenth day after the first publication. Other cases in point are:

- 10 *Parsons vs. Lanning*, 27 N. J. Eq. 70;
 Tappan vs Dayton, 51 N. J. Eq. 260;
 Hodge vs. U. S. Steel Corporation, 64 N. J. Eq. 90 at p. 102;
 Trenton Trust Co. vs. Fitzgibbon Co., 81 N. J. Eq. 1.

20 Under the statute of 1912 the contract is "invalid" unless bids are advertised for as required by said statute. In view of this mandate of the legislature the Boulevard Commissioners have no power to waive or to modify the provision requiring advertisement for full two weeks or fourteen days and the failure thus to advertise, we submit renders the contract void.

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IV.

The Boulevard Commissioners of the County of Hudson did not by the Resolution Authorizing the Reconstruction of the Boulevard provide for the Reconstruction of Curb and Gutters, but on the contrary expressly excepted and excluded the Curb and Gutters in the Proposed Reconstruction. 10

Under the enabling statute, Chapter 69 of the laws of 1908 in Section 1, it is provided:

“Whenever, in any county of this State, where a road or roads shall have been structured improved and maintained under the provisions of the act to which this is a supplement, or the acts supplementary thereto and amendatory thereof, it shall become necessary, in the opinion of the body vested by law with the care of such road or roads, as expressed by resolution duly passed at a regular meeting of said body, to reinforce, relay, reconstruct, or rebuild any portion of the roadway paving, the curb and gutters, the drainage system, the lighting plant, including the laying of conduits and placing cables therein, or bridges, or all of them upon such road or roads, to meet the requirements incident to increase of population, traffic and use, it shall be lawful for such body to so reinforce, reconstruct and rebuild such parts of said road or roads hereinbefore designated; provided, that all work exceeding in cost one thousand (\$1,000.) dollars shall be done by contract, after advertisement in the public press, in the same manner as prescribed for work authorized under the act to which this is a supplement.” 20
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In the resolution authorizing the improvement (pp. 10-11) the curb and gutters are expressly excepted (see page 21, line 10, et seq). This 40

resolution which was passed at the meeting on March 7, 1917 provides, "The roadway to be laid with what is known as bituminous concrete under a five year guaranty; the sections to be as follows: Hudson County Boulevard between Hackensack Plank Road and Paterson Plank Road in the Town of West Hoboken; Hudson County Boulevard between Newark Avenue and Communipaw Avenue (*except the curb and gutters. This work is now in litigation because of the failure of the contractor performing this work under a previous administration to live up to the terms of his contract*). Hudson County Boulevard between Communipaw Avenue and Bridge over the Central Railroad of New Jersey tracks in Jersey City, N. J. (*except curb and gutters. This work is now in litigation because of the failure of the contractor performing this work under a previous administration to live up to the terms of his contract*)." It is, clear, therefore, that the Boulevard Commissioners excepted and excluded the curb and gutters on the two sections of the Boulevard, the proceedings for the improvement of which are now under consideration. The Boulevard Commissioners, therefore, did not as required by section 1 of the Act of 1908, believe it necessary, in their opinion as expressed by resolution duly passed at a regular meeting to "reinforce, relay, reconstruct, or rebuild any portion of the curb and gutters." It, is of course, mandatory that such resolution with respect to the curb and gutters should be passed before any proceedings can be legally taken under the Act of 1908.

Under the specifications, the engineer has provided for an entirely new gutter for both sections of the Boulevard intended to be improved. He so testified (p. 165 ll. 10-15).

For section 4 he estimated that there would be

700 lineal feet of concrete curb and 1500 square yards of granite gutters (p. 163 l. 40 to p. 164 l. 20).

For section 5 he estimated that there would be 4,633 square yards of gutters and 800 lineal feet of concrete curb (p. 164 ll. 20-30). Estimated cost of the curb was 75c per lineal foot (p. 129). For the gutters \$3.25 per square yard (Idem). It can, therefore, be readily seen that this item is a very large one, exceeding \$19,000.

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The engineer testified that not only was all of the gutters to be reconstructed and relaid, but that about 25% of the curb was to be reconstructed and relaid. We submit that by thus providing in the specification, plans and contract for entirely new gutters, and 25% of the curb, the County Engineer exceeded the authority conferred upon him because under the resolution authorizing the work he had no power to provide for either curb or gutters.

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The Boulevard Commissioners having failed to provide for curb and gutters as required by the statute giving them the power to reconstruct the existing "roadway paving" the proceedings providing for such curb and gutters as above are void.

Counsel for the defendants may argue that the resolution of opinion of March 7th authorizing the improvement in accordance with Section 1 of the Statute, was rescinded by the resolution of April 11, 1917 wherein the Boulevard Commissioners resolved,

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"That all other resolutions hertofore adopted by this Commission appointing or employing any other engineer either for a term or without term, to make estimates on work to be performed, or to do any other work for this Commission, be and the same is hereby rescinded."

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(p. 15, ll. 20-25).

This contention was made on the rule. However, if this argument is sound then there is absolutely no resolution of opinion and Section 1 was therefore never complied with in the proceedings under review. If the resolution of March 7, 1917 was rescinded by the resolution of April 11, 1917, then the Boulevard Commissioners in the proceedings under review did not express by resolution duly passed at a regular meeting its
 10 opinion that it was necessary to repair the roadway paving on the Boulevard. Counsel for the defendants, however, blandly suggest that the resolution of May 28, 1917 (p. 34 l. 40 et seq.) may be regarded as a compliance with Section 1, *supra*. Such a contention is *reductio ad absurdum* for the resolution of May 28th was adopted after all of the proceedings looking toward the repair of the roadway paving had been taken and after
 20 bids had been received for the work, and when the only remaining thing to do was to award the contract. In other words, they had proceeded to make repairs and had actually taken all the proceedings necessary to do so, including the receipt of bids, before any opinion of any kind was expressed that such action was necessary.

We do not think that the Boulevard Commissioners intended to rescind the resolution of opinion of March 7th by the resolution of April
 30 18th, and we therefore do not present that argument. It is clear that the resolution of March 7th does not include the curb and gutters, but on the contrary, expressly excepts the curb and gutters, and therefore the specifications are illegal in that they provide for something that was not authorized, the cost of which was over \$19,000, which work was to be performed by a contractor under a previous contract providing
 40 for same.

The fact that the specifications which were

from time to time approved and then disapproved, might or might not contain provisions for curb and gutters, does not in any way effect this question, for the question here presented is simply whether the curb and gutters were authorized as provided for in Section 1 of the Act of 1908. It is clear that they were not, and therefore, the proceedings under review are illegal and should be set aside.

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Conclusion.

We respectfully submit that the proceedings under review should be set aside with costs to the prosecutor.

November Term, 1917.

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