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Notice and Grounds of Appeal.

(Filed April 18, 1927.)

NEW JERSEY SUPREME COURT,

CLIFTON JORDAN, Prosecutor-Appellant, v. BOROUGH OF DUMONT, in the COUNTY OF BERGEN, and I. B. MILLER, INC., Defendants-Appellees.	On Certiorari. Notice of Appeal. Grounds of Appeal.

Gentlemen:

PLEASE TAKE NOTICE that Clifton Jordan, the prosecutor-appellant in the above named cause, appeals to the Court of Errors and Appeals from the judgment entered in this cause, on the following grounds, viz:

1. The Supreme Court erred in dismissing the writ of certiorari.

2. The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor.

Yours very truly,

J. EMIL WALSCHEID,
Attorney for Prosecutor.

To

FREDERICK W. MATTOCKS, Esq.,
Attorney of Record for Defendant,
Borough of Dumont,
In the County of Bergen,
Washington Avenue, Dumont, N. J.

LELAND F. FERRY, Esq.,
Municipal Attorney for Defendant,
Borough of Dumont,
In the County of Bergen,
Citizens Bank Bldg., Englewood, N. J.

GEORGE E. CUTLEY, Esq.,
Attorney for Defendant,
I. B. Miller, Inc.,
536 Newark Avenue,
Jersey City, N. J.

Endorsement on Notice.

NEW JERSEY SUPREME COURT,

CLIFTON JORDAN, Prosecutor-Appellant,	On Certiorari.
v.	Notice of Appeal.
BOROUGH OF DUMONT, in the COUNTY OF BERGEN, and I. B. MILLER, INC., Defendants-Appellees.	Grounds of Appeal.

J. EMIL WALSCHEID,
Attorney for Prosecutor-Appellant,
Dispatch Building,
Union City, N. J.

Service of a copy of the within Notice of Appeal and Grounds of Appeal, is hereby acknowledged this 13th day of April, 1928.

/s/ Frederick W. Mattocks, 4/13/28, Attorney of Record for Defendant, Borough of Dumont, in the County of Bergen.

/s/ Leland F. Ferry, 4/13/28, Municipal Attorney for Defendant, Borough of Dumont, in the County of Bergen.

/s/ George E. Cutley, Attorney for Defendant, I. B. Miller, Inc.

Writ of Certiorari.

(Dated May 28, 1927.)

(L. S.) STATE OF NEW JERSEY, To the Borough of Dumont, County of Bergen, New Jersey, and I. B. Miller, Inc., a corporation. GREETING:

We being willing for certain reasons, to be certified of a certain resolution awarding a contract for the construction of an eight inch reinforced concrete pavement with integral curb on New Milford Avenue, in the Borough of Dumont to I. B. Miller, Inc., a corporation, and any contract executed in pursuance thereof DO command you that you certify and send under your seal to our Justices of our Supreme Court of Judicature, at Trenton, on the twenty-fifth day of June, 1927, the said resolution hereinbefore referred to or any contract entered into in pursuance thereof being the certain resolution passed and adopted at a meeting of the Borough Council of the Borough of Dumont, held on the twenty-fifth day of May, 1927, awarding a contract for the construction of an eight inch reinforced concrete pavement with integral curb on New Milford Avenue, in the said Borough, to I. B. Miller, Inc., a corporation, with all things touching and concerning the same and leading up to its adoption, as fully and completely as they remain before you, together with this our writ, that we may cause to be done thereupon what of right and justice and according to the laws of the State of New Jersey ought to be done.

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, this twenty-

eighth day of May, in the year of our Lord, One Thousand Nine Hundred and Twenty-seven.

EDWARD J. KELLEHER,
Clerk.

J. EMIL WALSCHEID,
Attorney for Prosecutor.

Endorsement on Writ.

NEW JERSEY SUPREME COURT.

CLIFTON JORDAN, Prosecutor, v. BOROUGH OF DUMONT, in the County of Bergen, and I. B. MILLER, INC., a corporation, Defendants.	Writ of Certiorari.

The writ is allowed.

Let it be sealed.

C. W. PARKER,
J. S. C.

May 28, 1927.

Return to Writ of Certiorari.

(Filed July 23rd, 1927.)

NEW JERSEY SUPREME COURT.

In the Matter of The Application of CLIFTON JORDAN for a writ of certiorari to review the action of the Borough of Dumont, in the County of Bergen, in awarding to I. B. MILLER, INC., a corporation, a contract for the construction of an 8″ reinforced concrete pavement with integral curb on New Milford Avenue, in the Borough of Dumont, Prosecutor, v. MAYOR AND COUNCIL OF THE BOROUGH OF DUMONT, Defendant.	On Certiorari Return.

The Mayor and Council of the Borough of Dumont in the County of Bergen doth herewith send to the Supreme Court in the State of New Jersey the proceedings respecting the passage of an ordinance entitled, "An ordinance to establish the grade of New Milford Avenue from Washington Avenue westerly to westerly Borough line in the Borough of Dumont, and to provide for the grading of said Street and for the installing of

water and gas mains therein, and for the appropriation of the cost thereof, which improvement is to be undertaken as a "local improvement"; the plans and specifications for the doing of the work described in said ordinance; the advertisement for proposals; the minutes of a meeting of the Mayor and Council relative to the receipt of proposals or bids for the doing of said work; the resolution of the Mayor and Council awarding and accepting the bid of I. B. Miller, Inc., a corporation; together with all things touching and concerning the passing, approving and enacting the said resolution as by the transcript under the seal of the Borough of Dumont, in the County of Bergen hereto annexed and more fully appears.

BOROUGH OF DUMONT,
By HENRY J. BERSCH,
Borough Clerk.

TRANSCRIPT of minutes of the regular monthly meeting of the Borough Council of the Borough of Dumont, held Wednesday, April 20th, 1927.

Mayor De Long presiding, with Councilmen Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk present.

Councilman Pfleger at this time asked to be excused from the rest of the meeting.

Mayor De Long granted his request, and Councilman Pfleger left the Council Chamber at this time.

The ordinance to establish the grade of, and to provide for the grading and for the installing of water and gas mains and for the curbing, improving and paving of New Milford Avenue was read

in full by the Clerk. This reading being completed, Mr. Wolcott offered the following resolution, which was moved for adoption by Mr. Blum and seconded by Mr. Mellen:

> "Be it resolved that an ordinance entitled, 'An ordinance to establish the grade of New Milford Avenue from Washington Avenue westerly to Westerly Borough Line in the Borough of Dumont,' and to provide for the grading of said street and for the installing of water and gas mains therein, and for the curbing, improving and paving of said street and for the appropriation of the cost thereof, which improvement is to be undertaken as a 'local improvement,' be introduced and pass first reading and that the Mayor and Council will consider the final passage of said ordinance at a regular meeting of the Mayor and Council to be held May 4th, 1927, at 8:15 P. M. (Daylight Saving Time), at the Council Chamber, Forum Building, Dumont, New Jersey and that notice of said hearing be published in the Interboro Review in its issues of April 22nd and 29th, 1927, and that notices be sent to all parties interested."

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis and Van Buskirk—Yes. Pfleger—Absent.

On motion of Mr. Wolcott, seconded by Mr. Mellen, the Clerk was directed to advertise these two ordinances and the necessary notices of hearing in the Interboro Review, as required by law. Motion carried.

Mr. Wolcott offered the following resolution which was moved for adoption by Mr. Mellen, and seconded by Mr. Blum:

"Be it resolved, that proposals for the grading and improving of New Milford Avenue from Washington Avenue to the Westerly Borough Line be requested and that the Borough Clerk advertise for bids therefore in the Interboro Review, in its issue of April 29th, 1927 and in the Engineering News in its issue of May 5th, 1927, also Bergen Evening Record in its issue of May 6th, 1927. Bids to be received May 18th, 1927."

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis and Van Buskirk—Yes. Pfleger—Absent.

The Mayor declared the vote carried and the resolution adopted.

TRANSCRIPT of minutes of the regular meeting of the Mayor and Council of the Borough of Dumont, held May 4th, 1927.

Mayor De Long presiding, with Councilmen Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk present.

The Notice as published in the Interboro Review, in its issues of April 22nd and 29th, 1927, for a public hearing on "An ordinance to establish the grade of New Milford Avenue from Washington Avenue westerly to Westerly Borough Line in the Borough of Dumont, and to provide for the grading of said street and for the installing of water and gas mains therein, and for the curbing, improving and paving of said street and for the appropriation of the cost thereof, which improvement is to be undertaken as a "local improvement", was read by the Borough Clerk from the printer's affidavit of publication. The Clerk having submitted an affidavit that a copy of the notice had

been mailed to each of the property owners, it was duly moved by Mr. Wolcott, seconded by Mr. Blum, that this affidavit, together with a copy of the notice be placed on file.

Moved by Mr. Wolcott, seconded by Mr. Blum that the hearing be now opened.

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk—Yes. Carried.

The Mayor inquired whether any of the citizens present wished to say anything in favor of or against the proposed ordinance.

No one desiring to be heard, a motion was made by Mr. Wolcott, seconded by Mr. Blum that the hearing be closed.

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk—Yes. Carried.

The second reading was then given "An ordinance to establish the grade of New Milford Avenue from Washington Avenue westerly to Westerly Borough Line in the Borough of Dumont," and to provide for the grading of said street and for the installing of water and gas mains therein, and for the curbing, improving and paving of said street and for the appropriation of the cost thereof, which improvement is to be undertaken as a "Local Improvement", being read in full at this time.

Moved by Mr. Wolcott, seconded by Mr. Blum that the New Milford Avenue Ordinance pass second reading.

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk—Yes.

The Mayor declared the vote carried and the ordinance passed second reading.

Moved by Mr. Blum, seconded by Mr. Luis that the New Milford Avenue Ordinance be given its third and final reading and to be read by title only.

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk—Yes. Carried.

The third and final reading was then given "An ordinance to establish the grade of New Milford Avenue from Washington Avenue westerly to the Westerly Borough Line in the Borough of Dumont," and to provide for the grading of said street and for the installing of water and gas mains therein, and for the curbing, improving and paving of said street and for the appropriation of the cost thereof, which improvement is to be undertaken as a "Local Improvement", being read by title only.

Moved by Mr. Wolcott, seconded by Mr. Blum that the New Milford Avenue Ordinance be adopted and approved.

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk—Yes.

The Mayor declared the vote carried and the ordinance unanimously adopted and approved.

Moved by Mr. Wolcott, seconded by Mr. Blum that the Ordinance for New Milford Avenue be published in the Interboro Review, in its issue of May 6th, 1927.

Roll call vote: Messrs. Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk—Yes. Carried.

TRANSCRIPT of minutes of the regular meeting of the Mayor and Council of the Borough of Dumont, held May 18th, 1927.

Mayor De Long presiding with Councilmen Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk present.

The Notice to Contractors, as published in the Interboro Review, in its issues of April 29th and May 6th, 1927, for sealed proposals for the grading and paving of New Milford Avenue from Washington Avenue to the Westerly Borough Line, with

8-in. reinforced concrete pavement 30 ft. wide with integral curbs, was then read in full by the Borough Clerk from the Printer's affidavit of publication.

Moved by Mr. Wolcott, seconded by Mr. Blum that the receipt of bids be now closed.

Roll call vote: Messrs. Wolcott, Mellen, Blum, Luis, Pfleger and Van Buskirk—Yes. Carried.

Moved by Mr. Blum, seconded by Mr. Mellen that bids for New Milford Avenue Improvement be now opened.

Roll call vote: Messrs. Wolcott, Mellen, Blum, Luis, Pfleger and Van Buskirk—Yes. Carried.

Bids for New Milford Avenue Improvement then opened from:

George M. Brewster & Son, Inc., Bogota, N. J.
Burns & Hall, Dumont, N. J.
Wm. J. Burns, Oradell, N. J.
I. B. Miller, Inc., 406 W. 38th St., N. Y. City, N. Y.
Harper Bros., Inc., Hackensack, N. J.
Jos. Kinzley Co., Hackensack, N. J.
Ufheil Const. Co., New Milford, N. J.

George M. Brewster & Son, Inc., Wm. J. Burns, Harper Bros., Inc., Jos. Kinzley Co. and Ufheil Const. Co. each applied to the Mayor and Council to withdraw their respective bids.

Motion made by Councilman Wolcott, seconded by Councilman Blum that the bids of said George M. Brewster & Son, Inc., Wm. J. Burns, Harper Bros., Inc., Jos. Kinzley Co. and Ufheil Const. Co. be withdrawn and the checks be returned to the respective parties.

All Councilmen voted by the motion.

Moved by Councilman Wolcott, seconded by Councilman Mellen that the bids be referred to the Borough Engineer for checking and report at the recess meeting of the Mayor and Council to be held May 25th, 1927.

Roll call vote: Councilmen Wolcott, Blum, Mellen, Luis Pfleger and Van Buskirk—Yes. Carried.

Moved by Councilman Wolcott, seconded by Councilman Mellen that a recess be taken to May 25th, 1927.

Roll call vote: Councilmen Wolcott, Blum, Mellen, Luis, Pfleger and Van Buskirk—Yes. Carried.

TRANSCRIPT of minutes of the recess meeting of the Mayor and Council of the Borough of Dumont, held May 25th, 1927.

Mayor De Long presiding with Councilmen Wolcott, Blum, Luis, Pfleger and Van Buskirk present, and Mellen absent.

The Clerk then read a copy of a letter sent to I. B. Miller, Inc., 406 West 38th St., N. Y. City, notifying the firm to appear before the Mayor and Council at the meeting to-night, to satisfy the Mayor and Council of their ability to perform the contract for the grading and paving of New Milford Avenue, for the performance of which it submitted a lump sum bid of $70,941.35 to the Mayor and Council of Dumont Borough on May 18th, 1927.

Mayor De Long then asked if this firm was represented.

A Mr. Henry McCormack of Newark, N. J., one of the Stockholders of the firm being present introduced a Mr. Mueller who is an engineer, and who will be in charge of the work if the firm of I. B. Miller, Inc., is awarded the contract.

Mr. Mueller related his experience and answered questions put to him regarding the work to be done on New Milford Avenue Improvement.

A Mr. Stucky representing the Liberty Surety Bond Insurance Co. also spoke as regards the financial status and backing of the firm of I. B. Miller, Inc.

The following resolution was offered by Mr. Luis, which was moved for adoption by Mr. Blum and seconded by Mr. Wolcott.

> "Resolved, that the bid of I. B. Miller, Inc., for grading and paving of New Milford Avenue from Washington Avenue westerly to the Westerly Borough Line, with 8-in. reinforced concrete pavement 30 ft. wide with integral curbs, as per their unit prices submitted and dated May 18th, 1927, pursuant to Ordinance No. 271 of the Borough of Dumont, N. J. adopted and approved May 4th, 1927, be accepted and that the Mayor and Clerk be authorized on behalf of the Borough of Dumont, to execute a contract with I. B. Miller, Inc., for the same."

Roll call vote: Councilmen Wolcott, Blum, Luis, Pfleger, and Van Buskirk—Yes. Mellen—Absent.

The Mayor declared the vote carried and the resolution unanimously adopted.

BOROUGH OF DUMONT

Notice of Public Hearing

NOTICE IS HEREBY GIVEN that an ordinance entitled, "An ordinance to establish the

grade of New Milford Avenue from Washington Avenue westerly to westerly Borough line, in the Borough of Dumont," and to provide for the grading of said street and for the installing of water and gas mains therein, and for the curbing, improving and paving of said street and for the appropriation of the cost thereof, which improvement is to be undertaken as a "local improvement", was introduced and passed first reading at a regular meeting of the Mayor and Council of the Borough of Dumont, held on April 20, 1927, and that it is the intention of the Mayor and Council to consider the same for final passage at a regular meeting to be held Wednesday, May 4th, 1927, at 8:15 o'clock P. M. (Daylight Saving Time), in the Council Chamber, Forum Building, Dumont, New Jersey. At this time and place objections to said ordinance may be presented by any person interested therein or whose property may be affected thereby.

This improvement is to be undertaken as a local improvement, and the benefits assessed and damages awarded in accordance with the statute in such case made and provided.

Dated, April 20, 1927.

HENRY J. BERSCH,
Borough Clerk.

The above entitled ordinance is as follows:

ORDINANCE NO. ....

AN ORDINANCE TO ESTABLISH THE GRADE OF NEW MILFORD AVENUE FROM WASHINGTON AVENUE WESTERLY TO WESTERLY BOROUGH LINE IN THE BOROUGH OF DUMONT, AND TO PROVIDE FOR THE

GRADING OF SAID STREET AND FOR THE INSTALLING OF WATER AND GAS MAINS THEREIN, AND FOR THE CURBING, IMPROVING, AND PAVING OF SAID STREET AND FOR THE APPROPRIATION OF THE COST THEREOF, WHICH IMPROVEMENT IS TO BE UNDERTAKEN AS A "LOCAL IMPROVEMENT."

BE IT ORDAINED by the Mayor and Council of the Borough of Dumont:

SECTION 1.—That the grade of New Milford Avenue from Washington Avenue westerly to westerly Borough line, be and the same is hereby established in accordance with the grades shown on map or profile thereof, entitled, "Map of Proposed Improvement of New Milford Avenue, Borough of Dumont, New Jersey, made by C. C. Freeborn, Jr., Borough Engineer", filed with the Borough Clerk.

SECTION 2.—That said New Milford Avenue shall be graded in accordance with the grades hereby established.

SECTION 3.—That there shall be laid and constructed in said New Milford Avenue from Washington Avenue westerly to westerly Borough line, the following:

(a) Water and gas mains where necessary.
(b) Water, gas and sewer connections.
(c) The necessary storm drains and catch basins.
(d) An 8-inch concrete pavement shall be laid from curb to curb.

All of the above shall be laid and constructed in accordance with the plans and specifications prepared therefor by C. C. Freeborn, Jr., Bor-

ough Engineer and on file in the Borough Clerk's Office.

SECTION 4.—That the aforesaid improvement shall be made as a "local improvement" and the damages sustained by and the benefits conferred upon the lands affected by said improvement shall be assessed in accordance with the provisions of the statute in such case made and provided.

SECTION 5.—That there is appropriated the sum of One hundred twenty-five thousand Dollars ($125,000.00) to pay the cost of the above described improvement, which said sum shall be raised by the issuance of temporary notes or temporary bonds to run with all renewals thereof for a period of not exceeding six years from the date of the completion of the improvement herein provided for and to bear interest at a rate not exceeding six per cent. per annum. All other matters with respect to the form, issuance and sale of such temporary bonds shall, unless provided for by resolution, be determined by the Mayor and the Borough Collector, who, together with the Borough Clerk, are hereby authorized to sign the same and affix the corporate seal thereto. In case temporary bonds are issued hereunder, the same may be either registered or coupon bonds, and if coupon bonds, the coupons attached thereto shall bear the facsimile signature of the Borough Collector.

SECTION 6.—That ordinance Number 256 of the Borough of Dumont be and the same is hereby repealed.

SECTION 7.—This ordinance shall take effect immediately.

State of New Jersey, }
County of Bergen, } ss.:

William R. Jones, of full age, being duly sworn, deposes and says: that he is Editor of Interboro Review and Twin-Boro News-Letter, a newspaper published in the Borough of Bergenfield, County of Bergen, State of New Jersey, and that a notice, of which an exact copy is annexed hereto, was published in the said newspaper for Two (2) weeks, the issues in which it appeared being dated as follows: April 22nd and April 29th, 1927.

WM. R. JONES.

Sworn and subscribed before me this
30th day of April, 1927.

MILTON O. JONES,
Notary Public. (Seal)

BOROUGH OF DUMONT.

Ordinance No. 271.

AN ORDINANCE TO ESTABLISH THE GRADE OF NEW MILFORD AVENUE FROM WASHINGTON AVENUE WESTERLY TO WESTERLY BOROUGH LINE IN THE BOROUGH OF DUMONT, AND TO PROVIDE FOR THE GRADING OF SAID STREET AND FOR THE INSTALLING OF WATER AND GAS MAINS THEREIN, AND FOR THE CURBING, IMPROVING AND PAVING OF SAID STREET AND FOR THE APPROPRIATION OF THE COST THEREOF, WHICH IMPROVEMENT IS TO BE UNDERTAKEN AS A "LOCAL IMPROVEMENT".

BE IT ORDAINED by the Mayor and Council of the Borough of Dumont:

SECTION 1.—That the grade of New Milford Avenue from Washington Avenue westerly to westerly Borough line, be and the same is hereby established in accordance with the grades shown on map or profile thereof, entitled, "Map of Proposed Improvement of New Milford Avenue, Borough of Dumont, New Jersey, made by C. C. Freeborn, Jr., Borough Engineer," filed with the Borough Clerk.

SECTION 2.—That said New Milford Avenue shall be graded in accordance with the grades hereby established.

SECTION 3.—That there shall be laid and constructed in said New Milford Avenue from Washington Avenue westerly to westerly Borough line, the following:

(a) Water and gas mains where necessary.
(b) Water, gas and sewer connections.
(c) The necessary storm drains and catch basins.
(d) An 8-inch concrete pavement, shall be laid from curb to curb.

All of the above shall be laid and constructed in accordance with the plans and specifications prepared therefore by C. C. Freeborn, Jr., Borough Engineer and on file in the Borough Clerk's Office.

SECTION 4.—That the aforesaid improvement shall be made as a "local improvement" and the damages sustained by and the benefits conferred upon the lands affected by said improvement shall be assessed in accordance with the provisions of the statute in such case made and provided.

SECTION 5.—That there is appropriated the sum of One Hundred Twenty-five Thousand Dollars ($125,000.00) to pay the cost of the above described improvement, which said sum shall be raised by the issuance of temporary notes or temporary bonds to run with all removals thereof for a period of not exceeding six years from the date of the completion of the improvement herein provided for and to bear interest at a rate not exceeding six per cent. per annum. All other matters with respect to the form, issuance and sale of such temporary bonds shall, unless provided for by resolution, be determined by the Mayor and the Borough Collector, who, together with the Borough Clerk, are hereby authorized to sign the same and affix the corporate seal thereto. In case temporary bonds are issued hereunder, the same may be either registered or coupon bonds, and if coupon bonds, the coupons attached thereto shall bear the fac-simile signature of the Borough Collector.

SECTION 6.—That ordinance Number 256 of the Borough of Dumont be and the same is hereby repealed.

SECTION 7.—This ordinance shall take effect immediately.

Passed May 4, 1927.

Approved May 4, 1927.

STEPHEN W. DE LONG,
Mayor.

Attest:

HENRY J. BERSCH,
Borough Clerk.

This is to certify that the foregoing ordinance was finally passed and adopted at a regular meeting of the Mayor and Council of the Borough of Dumont, N. J., held on Wednesday, May 4th, 1927, and that the same was approved by the Mayor on Wednesday, May 4, 1927.

HENRY J. BERSCH,
Borough Clerk.

State of New Jersey, }
County of Bergen, } ss.:

William R. Jones of full age, being duly sworn, deposes and says: that he is Editor of INTERBORO REVIEW AND TWIN-BORO NEWS-LETTER, a newspaper published in the Borough of Bergenfield, County of Bergen, State of New Jersey, and that a notice, of which an exact copy is annexed hereto, was published in the said newspaper for One (1) week, the issues in which it appeared being dated as follows:

May 6th, 1927.

WM. R. JONES.

Sworn and subscribed before me this
7th day of May, 1927.

MILTON O. JONES,
Notary Public (Seal).

BOROUGH OF DUMONT.

NOTICE TO CONTRACTORS.

SEALED PROPOSALS will be received by the Road Committee of the Mayor and Council of the Bor-

ough of Dumont, N. J., up to 8:30 o'clock P. M. (Daylight Saving Time), on Wednesday, May 18, 1927, on which date they will be opened in public at a meeting to be held at the Forum Building, Madison Avenue, for the grading and paving of New Milford Avenue from Washington Avenue to the westerly Borough line, with 8-in. reinforced concrete pavement 30 ft. wide with integral curbs.

All work is to be done in accordance with plans and specifications prepared by C. C. Freeborn, Jr., Borough Engineer, and now on file at his office in the Kolberg Building, Madison Avenue, Dumont. Copies of plans and specifications may be secured by making a deposit of $10 which will be refunded provided the plans and specifications are returned within 48 hours after the contract is awarded.

Each proposal must be sealed and endorsed "Bid for New Milford Avenue Improvement", and must be accompanied by a deposit of 10% of amount of bid, either in cash or certified check as a guarantee, that if the contract is awarded to the bidder, he will, within ten days if required, sign a contract therefor, and furnish a bond as required by the Council for the satisfactory completion of the contract.

It is the intention to ward the contract to the lowest responsible bidder, but the right to reject any or all bids for any cause whatsoever is expressly reserved.

F. E. WOLCOTT,
Chairman, Road Committee.

HENRY J. BERSCH,
Borough Clerk.

State of New Jersey, }
County of Bergen, } ss.:

William R. Jones of full age, being duly sworn, deposes and says: that he is Editor of INTERBORO REVIEW AND TWIN-BORO NEWS-LETTER, a newspaper published in the Borough of Bergenfield, County of Bergen, State of New Jersey, and that a notice, of which an exact copy is annexed hereto, was published in the said newspaper for Two (2) weeks, the issues in which it appeared being dated as follows: April 29th and May 6th, 1927.

WM. R. JONES.

Sworn and subscribed before me this
14th day of June, 1927.

MILTON O. JONES,
Notary Public. (Seal)

DEFINITION OF TERMS.

1. DEFINITIONS. Whenever in these specifications and contract the following terms or pronouns in place of them, are used, the intent and meaning shall be interpreted as follows:

"ENGINEER." Whenever the word Engineer is used in reference to the work or any part thereof in these specifications or the contract, it shall be understood to apply and refer to the Engineer C. C. FREEBORN, JR., engaged by the Board, duly authorized to represent the said Board in the execution of the work covered by the specifications and contract. The term "Engineer" or the pronouns used in place thereof shall refer to the Engineer whose plans these specifications refer to

acting either directly or through assistants under him, limited to the particular duties entrusted to them.

"ROCK." Rock as a name for materials excavated shall refer to and include the solid ledge rock formation which can be removed properly only by means of explosives, barring, wedging or other recognized methods of quarrying solid rock. Loose rock or shale that can be excavated by machine or by hand, or loosened by pick or by ploughing and other materials except solid rock, will be classified as "Unclassified Excavation." Boulders measuring one quarter of a cubic yard or more shall be allowed for as rock.

"BIDDER." Any individual, firm or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

"CONTRACTOR." Party of the second part to the contract, acting directly or through his agents or employees.

"SURETY." The corporate body which is bound with and for the Contractor, who is primarily liable and which engages to be responsible for his payment of all debts pertaining to and for his acceptable performance of the work for which he has contracted.

"PROPOSAL." The approved prepared form on which the Bidder will or did submit his, their or its proposal for the work contemplated.

"PROPOSAL GUARANTY." The security designated in the proposal to be furnished by the Bidder as a guaranty of good faith to enter into a contract with the Board if the work is awarded to him.

"PLANS." All drawings, or reproductions of drawings, pertaining to the construction of the roadway and its appurtenances.

"SPECIFICATIONS." The directions, provisions and requirements contained herein, together with all written agreements made or to be made, pertaining to the method and manner of performing the work, or to the quantities and qualities of materials to be furnished under the contract.

"CONTRACT." The agreement covering the performance of the work and the furnishing of materials in the construction of the work. The Contract shall include the "Proposal," "Plans," "Specifications," "Contract Bond," and "Notice to Proceed," also any and all supplemental agreements which reasonably could be required to complete the construction of the work in a substantial and acceptable manner.

"CONTRACT BOND." The approved form of security furnished by the Contractor and his Surety as a guaranty of good faith on the part of the Contractor to execute the work in accordance with the terms of the Specifications and Contract.

"NOTICE TO PROCEED." A notice to the Contractor of the date on or before which he is to begin prosecution of the work contracted for.

"HIGHWAY." The whole right-of-way which is reserved for and secured by the Board for use in constructing the roadway and its appurtenances.

"MUNICIPALITY." The Borough of Dumont, Bergen County, New Jersey.

"BOARD." The Governing Body of the municipality that becomes a party to the Contract.

"ROADWAY." That portion of the highway included between the gutter or side ditch lines, reserved for the accomodation of the traveling public, and its appertaining structures and slopes, and all ditches, channels, waterways, etc., necessay to its correct drainage.

TERMS. In order to avoid cumbersome and con-

fusing repetition of expressions in these specifications, wherever it is provided that anything is, or is to be done, or to be done, if, or as, or when, or where "contemplated," "required," "directed," "specified," "authorized," "ordered," "given," "designated," "indicated," "considered necessary," "deemed necessary," "permitted," "suspended," "approved," acceptable," "unacceptable," "suitable," "unsuitable," "satisfactory" or "sufficient." it shall be taken to mean and intend "contemplate," "required," "directed," "specified," "authorized," "ordered," "given," "designated," "indicated," "considered necessary," "deemed necessary," "permitted," "suspended," "approved," "acceptable," "unacceptable," "suitable," "unsuitable," "satisfactory," "unsatisfactory" or "sufficient" by or to the Engineer with the approval of the Board.

It should be understood thoroughly by all concerned that all things contained herein, the "Instructions to Bidders," the "Award and Execution," the "Contract Bond," also the "Special Provisions," the "Proposal," the "Plans," the "Advertisement for Proposals," or "Notice to Contractor," and the "Notice to Proceed," as well as any papers attached to or bound with any of the above also any and all supplemental agreements made or to be made a part of the Specifications and Contract, and are to be considered one instrument. The intent is to make them explanatory one of the other. No papers attached to or bound with any of the above shall be detached therefrom as each one is a necessary part thereof.

The Sub-headings printed in these Specifications are intended for convenience of reference only and shall not be considered as having any bearing on the interpretation thereof.

INSTRUCTIONS TO BIDDERS.

INTERPRETATION OF APPROXIMATE ESTIMATE OF QUANTITIES. The bidder's attention is called to the fact that the estimate of quantities of work to be done and materials to be furnished under these specifications, as shown on the proposal form, is approximate and is given only as a basis of calculation upon which the award of the contract is to be made. The Board does not assume any responsibility that the quantities shall obtain strictly in the construction of the work, nor shall the Contractor plead misunderstanding or deception because of such estimate of quantities or the character of the work, location or other condition pertaining thereto. The Board reserves the right to increase or diminish any or all of the above-mentioned quantities of work or to omit any of them, as it may deem necessary.

FAMILIARITY WITH PROPOSED WORK. The Bidder is required to examine carefully the site of and the proposal, plans, specifications and contract form for the work contemplated, and it will be assumed that he has judged for and satisfied himself as to the conditions to be encountered as to the character, quality and quantities of work to be performed, and materials to be furnished, and as to the requirements of these specifications and contract.

FAMILIARITY WITH LAWS, ETC. The Bidder is assumed to have made himself familiar with all Federal and State laws and local bylaws, ordinances and regulations that, in any manner, affect those engaged or employed in the work, the materials or equipment used in or upon the work or the conduct of the work or ignorance thereof. If

the Bidder or contractor shall discover that any provision in the plans, specifications or contract is contrary to or inconsistent with any such law, by-law, ordinance or regulation, he shall forthwith report it to the Engineer in writing.

CONTENTS OF PROPOSAL FORMS. The Bidder will be furnished by the Board with proposal forms which will state the location and description of the roadway to be constructed and which will show the approximate estimate of the various quantities of work to be performed and materials to be furnished, the time in which the work must be completed, the amount of the "Proposal Guaranty" (which must accompany the Proposal), the form "Name and Certificate of Surety" and the date and time of the opening of proposals. It will also state any special provisions or requirements which vary from, or are not contained in, the standard specifications. All papers bound with, or attached to, the proposal forms are necessary parts thereof and must not be detached.

INSTRUCTIONS FOR FILLING IN PROPOSAL FORM. The Bidder must submit his proposal on the forms furnished by the Board. The blank spaces in the proposals must be filled in correctly, where indicated for each and every item for which a quantity is given, and the Bidder must state the price (written in ink, in words and numerals) for which he proposes to do each item of the work contemplated.

SIGNATURES ON PROPOSALS. The Bidder shall sign his proposal correctly. If the proposal is made by an individual, his name and post-office address must be shown; if made by a firm or partnership, the name and post-office address of each

member of the firm of partnership must be shown; if made by a corporation, the person signing the proposal must show the name of the State under the laws of which the corporation was chartered and the names, titles and business addresses of the President, Secretary and Treasurer.

IRREGULAR PROPOSALS. Proposals may be rejected if they show any omissions, alterations of form, additions not called for, conditional or alternate bids, or irregularities of any kind.

GUARANTY TO ACCOMPANY PROPOSAL. No proposal will be considered unless accompanied by a "Proposal Guaranty" of the character and amount indicated in the proposal form, made payable to the Board of the interested municipality.

Particular attention is directed to the "Name and Certificate of Surety Form" which is attached to the proposal form and which must be filled in, for corporate or individual surety as a bidder may elect. One or the other of these certificates must show the name, or names, of the proposed surety and it must show the signatures of the Bidder and of the Proposed Surety in the spaces provided for such signatures. If individual surety is permitted in public notice to bidders and is offered by a Bidder, it must be distinctly understood that the bid will be rejected if the surety offered is not sufficient to satisfy the Board.

DELIVERY OF PROPOSALS. Each proposal must be submitted in a special envelope furnished by the Board with the proposal form. The blank spaces on the envelope must be filled in correctly so as to indicate its contents clearly. If forwarded by mail, it shall be delivered at the office of the Board.

Proposals will be received at the hour stated in the "Advertisement for Proposals" or "Notice to Contractors" for the opening thereof.

WITHDRAWAL OF PROPOSALS. Bidders will be given permission to withdraw any proposal after it has been deposited with the Board, provided the Bidder makes his request in writing to the Board; at the time of the opening of proposals, when such proposal is reached, it will be returned to the Bidder unread.

OPENING OF PROPOSALS. Proposals will be opened publicly and read at the hour stated and on the date set in the "Advertisement for Proposals" or "Notice to Contractors" in the office of the Board. Bidders, or their authorized agents are invited to be present.

DISQUALIFICATION OF BIDDERS. More than one proposal from an individual, a firm or partnership, a corporation or an association under the same or different name will not be considered reasonable ground for believing that any Bidder is interested in more than one proposal for the work contemplated will cause the rejection of all proposals in which such Bidder is interested. Proposals in which the prices obviously are unbalanced will be rejected. No contract will be awarded except to a responsible bidder capable of performing the class of work contemplated; and, if so requested by the Board, the Bidder shall furnish a complete statement of his experience and of the amount of capital and equipment available for the proposed work.

MATERIALS. Before award of contract, the successful bidder, when requested shall furnish a statement giving the name, location and source of

supply of the various materials that will be used in the work.

AWARD AND EXECUTION OF CONTRACT.

RIGHT TO REJECT PROPOSALS. The Board reserves to itself the right to reject any or all proposals and to waive technicalities, as they may deem best for the interests of the municipality.

AWARD OF CONTRACT. All contracts will be awarded by the Board to the lowest responsible Bidder, within one month from the date of the opening of proposals.

RETURN OF PROPOSAL GUARANTY. All "Proposal Guaranties," except that of the successful Bidder will be returned within three (3) days following the award of the contract. When the award is deferred for a period of time longer than ten (10) days after the opening of the proposals, all guaranties except those of the two (2) lowest Bidders will be returned. Should no award be made within one month all proposals will be rejected and all guaranties returned.

CONTRACT BOND REQUIRED. The successful Bidder, at the time of the execution of contract, must deposit, with the Board, satisfactory security in a sum to one hundred (100) per centum of the amount of the contract award. The form of bond shall be that provided by the Board and the Surety shall be acceptable to the Board. The bond will not be released until final acceptance of the work after expiration of the maintenance period.

EXECUTION OF CONTRACT. The individual, firm or corporation to whom or to which the contract

has been awarded, shall sign the necessary agreements, entering into a contract with the Board, and return them to the office of the Clerk of the Board within ten (10) days. No award of Contract shall be binding upon the municipality until the contract has been fully executed and the Surety approved by the Board.

FAILURE TO EXECUTE CONTRACT. Failure to comply with any of the requirements of these specifications and contract, to enter security in a sum equal to one hundred (100) per centum of the amount of the award or to execute the contract within ten (10) days, as specified, shall be just cause for the annulment of the award, or of the contract if executed, and it is agreed by the Bidder, in the event of the annulment of the award or the contract, that the amount of the guaranty deposited with the proposal shall be forfeited to the use of the interested municipality, not as a penalty but as liquidated damages.

SUBLETTING OR ASSIGNING OF CONTRACT. The contractor shall not sublet, sell, transfer, assign or otherwise dispose of the contract or any portion thereof, or of the work provided for therein, or of his right, title or interest therein, to any person, firm or corporation without the written consent of the Board.

PATENT FEES, ROYALTIES AND LICENSES. If the Contractor is required or desires to use any design, device, material or process covered by letters patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner and a copy of this agreement shall be filed with the Board; if no such agreement is made and filed, the Contractor and the Surety shall in-

demnify and save harmless the municipality from any and all claims for infringement by reason of the use of any such patented design, device, material, process, trade-mark or copyright in connection with the work agreed to be performed under the contract, and shall indemnify the municipality for all costs, expenses and damages which it may be obliged to pay, by reason of any such infringement, at any time during the prosecution or after the completion of the work.

GENERAL PROVISIONS.

SCOPE OF WORK. The Contractor shall do all clearing and grubbing, make all excavations and embankments, do all shaping and surfacing, construct all drainage structures and other appertaining structures, as indicated in the proposal and on the plans, remove all obstructions from within the lines of the highway, and shall do such additional, extra and incidental work and furnish such additional materials as may be considered necessary to complete the work at the finished lines, grades and cross-sections in a substantial and acceptable manner. He shall furnish all implements, machinery, equipment, tools, material and labor necessary to the prosecution of the work. In short, the Contractor shall construct the work in strict accordance with the plans, specifications and contract.

PERMITS AND LICENSES. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

PLANS, ETC., TO BE FOLLOWED. The approved plans, profiles and cross-sections on file in the office

of the Engineer, will show the location, details and dimensions of the work contemplated, which shall be performed in strict accordance therewith and the specifications. Any deviation from the plans, specifications, etc., as may be required by the exigencies of construction, will be determined by the Engineer and authorized in writing.

INTERPRETATION OF PLANS, ETC. On all plans, drawings, etc., the figured dimensions shall govern in case of discrepancy between the scale and figures. The Contractor shall take no advantage of any error or omission in the plans or of any discrepancy between the plans and specifications, and the Engineer shall make such corrections and interpretations as may be necessary for the fulfillment of the intent of the plans and specifications as construed by him, and his decision shall be final.

SPECIAL WORK REQUIREMENTS. Should any construction or conditions which are not covered by the standard specifications be anticipated on any proposed work "Special Provisions" for such work will be stated on or attached to the proposal form and inserted or written at the end of these specifications and shall be considered a part of these specifications the same as though printed fully herein. Should any such special provisions or requirements conflict with these specifications, the "Special Provisions" shall govern.

ALTERATION OF PLANS OR OF CHARACTER OF WORK. The Engineer reserves the right with the approval of the Board, or its authorized committee, to make such alterations in the plans or in the character of the work as may be considered necessary or desirable from time to time to complete fully and perfectly the construction of the work,

provided such alterations do not change materially the original plans and specifications, and such alterations shall not be considered to waive any condition of the contract nor to invalidate any of the provisions thereof. Should such alterations in the plans result in an increase or decrease of the quantity of work to be performed, the Contractor shall accept payment in full at the contract unit prices for the actual quantities of work done; or should such alterations in the character of the work be productive of increased cost or result in decreased cost to the Contractor, a fair and equitable sum therefor, to be agreed upon in writing by the Contractor and the Board before such work is begun, shall be added to or deducted from the contract price, as the case may be. No allowance will be made for anticipated profits.

ADDITIONAL WORK. The Contractor shall perform such work, in additional quantities other than those designated in the approximate estimate, as may be deemed necessary to complete fully the work as planned and contemplated and shall receive for such additional work, payment in full at the unit prices shown in the contract and in the same manner as if such work had been included in the original estimate of quantities.

EXTRA WORK. It shall not be construed to constitute extra work if the Engineer shall order changes or an increase in plant to promote progress for it is to be considered as regular work done under the contract, as a complete and well designed construction plant, an effective organization and maintenance of the required rate of progress will be insisted upon. Similarly should the best interests of the municipality be served by executing

some part of this contract during the hours between 7 P. M. and 7 A. M. such arrangements shall not be understood to constitute a claim for extra work.

The Contractor shall do any work not herein or otherwise provided for, when and as ordered in writing by the Engineer or his agents specially authorized in writing, and shall when requested by the Engineer so to do, furnish itemized statements of the cost of the work ordered and give the Engineer access to accounts, bills and vouchers relating thereto. If the contractor claims compensation for extra work not ordered as aforesaid, or for any damages sustained, he shall within one week after the beginning of any such work or of the sustaining of any such damage, make a written statement of the nature of the work performed or damage sustained to the Engineer, and shall, on or before the fifteenth day of the month succeeding that in which any such extra work shall have been done or any such damage shall have been sustained, file with the Engineer an itemized statement of the details and amount of any such work or damage, and unless such statements shall be made as so required, his claim for compensation shall be forfeited and invalid, and he shall not be entitled to payment on account of any such work or damage.

For all such extra work the contractor shall receive the reasonable cost of said work, plus ten (10%) of such cost.

The decision of the Engineer shall be final upon all questions of the amount and value of extra work, and he shall include in such value the cost to the contractor of all materials used, of all labor, common and skilled, of foremen and teams, and the fair rental of all machinery used upon extra work, for the period of such use, which was based

upon the work before or which shall be required by, or used upon the work after the extra work is done. If said extra work requires the use of machinery not upon the work or to be used upon the work, then the cost of transportation of such machinery to and from the work shall be added to the fair rental. He shall include in the value of extra work, the cost to the Contractor of Employers' Liability Insurance or Workmen's Compensation Insurance and also public liability insurance, together covering bodily injuries to his employees and the public resulting from the extra work. The Engineer shall not include in the value of extra work any cost of rental of small tools, buildings or any portion of the time of the contractor or his superintendent, or any allowance for use of capital, these items being considered as being covered by the ten (10%) per cent. added to the reasonable cost.

UNAUTHORIZED WORK. Work done without lines and grades being given, work done beyond the lines and grades shown on the plans or as given, except as herein provided, or any extra work done without written authority will be considered as unauthorized and at the expense of the Contractor and will not be measured or paid for by the Board. Work so done, may be ordered removed and replaced at the Contractor's expense.

PROSECUTION OF THE WORK. The Contractor shall begin the work on such date as the Engineer shall notify him to proceed. Commencement of work by the Contractor shall be deemed taken as a waiver of this notice on his part. The place where the work is to be started will be stated in the "Notice to Proceed" or will be designated on the

ground. The work will be prosecuted from as many different points, in such part or parts and at such times as may be directed, and shall be conducted in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time set forth in the contract. Should the prosecution of work for any reason be discontinued by the Contractor, with the consent of the Engineer, he shall notify the Engineer at least twenty-four (24) hours before again resuming operations.

CLAIMS FOR DELAY. If for any reason the work herein required to be performed shall have been extended beyond the time set forth herein, except in such instances where such delay is required and directed by the Board, there shall be deducted from the contract price the wages paid by the municipality to any inspectors necessarily employed in such work by the municipality for any number of days in excess of the time stated in the specifications to be allowed for the completion of the contract.

CHARACTER OF WORKMEN AND EQUIPMENT. The Contractor shall employ such superintendents, foremen and workmen as are careful and competent, and the Engineer may demand the dismissal of any person employed by the Contractor in, about or upon the work who shall misconduct himself or be incompetent or negligent in the due and proper performance of his duties, or neglects or refuses to comply with the directions given and such person shall be discharged and not be employed again thereon without the written consent of the Engineer. Should the Contractor continue to employ or again employ such person or persons, the Board

may withhold all payments, which are or may become due, or the Engineer may suspend the work, until such orders are complied with. The contractor shall furnish such equipment as is considered necessary for the prosecution of the work in an acceptable manner and at a satisfactory rate of progress. Equipment used on any portion of the work shall be such that no injury to the roadway, adjacent property or other highways will result from its use.

COOPERATION OF CONTRACTOR REQUIRED. The Contractor will be supplied by the Engineer with two copies of the plans and of the specifications and he shall have available on the work at all times, during the prosecution of the work, one copy each of said plans and specifications. He shall give the work his constant attention to facilitate the progress thereof and shall cooperate with the Board in every way possible. He shall have at all times a competent and reliable English-speaking representative on the work, authorized to receive orders and to act for him.

LAWS TO BE OBSERVED. The contractor at all times shall observe and comply with all Federal and State laws and local by-laws, ordinances and regulations in any manner affecting the conduct of the work, and all such orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the municipality and all of its officers, agents and servants against any claim or liability arising from or based on the violation of any such law, by-law, ordinance, regulation, order or decree, whether by himself or his employees.

SANITARY PROVISIONS. The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the State Department of Health or of other bodies or tribunals having jurisdiction therewith. He shall commit no public nuisance.

PUBLIC CONVENIENCE AND SAFETY. The Contractor shall conduct the work so as to ensure the least obstruction to traffic practicable and shall provide for the convenience of the general public and the residents along and adjacent to the highway in an adequate and satisfactory manner. Materials stored upon the highway shall be placed so as to cause as little obstruction to the traveling public as is considered necessary. The Contractor shall provide and maintain in passable condition such temporary highways and bridges as may be necessary to accommodate the traffic diverted from the roadway in which construction is being performed, and shall provide and maintain in a safe condition temporary approaches to and crossings of intersecting highways. On highways occupied by the railway tracks, temporary platforms for the entrance and exit of passengers to and from the railway cars shall be provided and maintained in an approved manner by the Contractor. Fire hydrants on or adjacent to the highway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within five (5) feet of any such hydrant. Footways, gutters, sewer inlets and portions of highways adjoining the roadway under construction may not be obstructed more than is absolutely necessary.

The necessary conveniences, properly secluded from public observation, shall be constructed and

maintained by the Contractor at his own expense, whenever needed to the satisfaction of the Engineer and Sanitary Authorities.

NOTICE TO UTILITY COMPANIES—PROTECTION OF EXISTING PIPES AND CONDUITS. The Contractor shall give notice in writing, at least twenty-four hours before breaking ground for the purpose of constructing the work mentioned in these specifications, to such and all public utility companies or corporations, as have or may have during the progress of the work, any pipes or conduits which may be affected by such excavations, as may become necessary.

The Contractor shall sustain in their place without injury all the mains, service pipes and conduits which may be affected in any manner by the work done under these specifications. The contractor must make provisions to prevent the interruption of the supply of gas, water and telephone connections to the houses along the streets through which the work is being performed.

Any damage or injury which may result to mains, pipes or conduits through or by reason of any negligence, carelessness or want of skill, upon the part of the Contractor or his agents or servants, shall be sustained and paid for by the Contractor and such amount shall be charged against the Contractor and may be deducted from any sum or sums due or to become due or payable to the contractor. The contractor shall cause no hindrance to or interference with the agent of any public utility companies or corporations in protecting or replacing their mains, pipes or conduits.

BARRICADES, DANGER, WARNING AND DETOUR SIGNS. The Contractor shall erect and maintain at

closures and intersections all necessary barricades, suitable and sufficient red lights, danger signals, warning signs, and detour signs; provide a sufficient number of watchmen and take all necessary precautions for the protection of the work and safety of the public. All barricades and obstructions shall be illuminated at night and all lights shall be kept burning from sunset until sunrise. Detour signs, barricades, lights, signals, etc., must be furnished in place by the Contractor as directed.

USE OF EXPLOSIVES. When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe the utmost care, so as not to endanger life or property, and whenever directed the number and size of the charges shall be reduced. All explosives shall be stored in a secure manner and all such storage places shall be marked clearly, "DANGEROUS-EXPLOSIVES", and shall be in care of competent watchmen at all times.

BLASTING. In all cases of blasting a prepared blast shall be carefully covered with heavy timbers, securely chained together and placed so that the area affected by explosion is positively confined. In addition to the timbers mats must be used when there is danger to life and property.

PRESERVATION AND RESTORATION OF PROPERTY, TREES, MONUMENTS, ETC. The Contractor shall not enter upon private property for any purpose without obtaining permission and he shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the work and shall use every precaution necessary to prevent damage or injury thereto. He shall use suitable precautions to prevent damage

to pipes, conduits and other underground structures, and shall protect carefully from disturbance or damage all land, monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. The Contractor shall not wilfully or maliciously injure or destroy trees or shrubs and he shall not remove or cut them without proper authority. He shall be responsible for all damage or injury to property of any character, during the prosecution of the work, of executing said work satisfactorily, from his non-execution of said work or from defective work or materials and said responsibility shall not be released until the roadway shall have been completed and accepted. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof on the part of the Contractor, he shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring, as may be directed, or he shall make good such damage or injury in an acceptable manner. In case of the failure on the part of the Contractor to restore such property, or make good such damage or injury, the Engineer may, upon forty-eight (48) hours notice, proceed to repair, rebuild or otherwise restore such property as may be deemed necessary and the cost thereof will be deducted from any moneys due or which may become due the Contractor under his contract.

RESPONSIBILITY FOR DAMAGE CLAIMS, ETC. The Contractor shall indemnify and save harmless the

Board and all of its officers, agents and employees from all suits, action or claims of any character, name and description brought for, or on account of any injuries or damages received or sustained by any person, persons or property by or from said Contractor or by or in consequence of any neglect in safeguarding the work, or through the use of unacceptable materials in constructing the work, or by or on account of any act or omission, neglect or misconduct of the said Contractor, or by or on account of any claims or amounts recovered for any infringement of patent, trade-mark or copyright, or from any claims arising or recovered under the "Workmen's Compensation Law", or any other law, by-law, ordinance, order or decree, and so much of the money due the said Contractor under and by virtue of his contract, as shall be considered necessary by the Board, may be retained for the use of the Board, if, in case no money is due, his Surety shall be held until such suit or suits, action or actions, claim or claims, for injuries or damages, as aforesaid, shall have been settled and suitable evidence to that effect furnished to the Board.

CONTRACTOR'S RESPONSIBILITY FOR THE WORK. Until expiration of the maintenance period, described below, and final acceptance of the work by the Board upon the expiration of said maintenance period, the work shall be under the charge of the Contractor, and he shall take every necessary precaution against injury or damage to the work or to any part thereof by the action of the elements or from any other cause whatsoever, whether arising from the execution or from the non-execution of the work. The Contractor shall keep the work in repair and free from obstruction and shall make

good any settlement or other defect in the work from whatever cause resulting, during a period of one year from the date of its completion and acceptance by the Board and, in addition thereto, for as much longer as for any period or periods during said year it shall have been not in proper condition. If, during the maintenance period, the work or any part thereof, shall in the judgment of the Engineer, require repairing, he shall duly notify the Contractor, in writing, to make such repairs as he requires. If the Contractor shall refuse or neglect to make the required repairs within a period of ten (10) days subsequent to the date of the service of the notice aforesaid, the Engineer shall then proceed to have the work done and the Board shall recover the cost thereof by deducting the same from any moneys due the Contractor, or the said cost shall be charged against the contract bond and be so collected. The Engineer must certify, in writing, that the required work of maintenance has been done before payment of the retained five per centum (5%) of the total cost of the work may be made to the Contractor.

OPENING OF SECTION OF WORK TO USE. Whenever, in the opinion of the Engineer, any work, or portion thereof, is in acceptable condition for use, it shall be opened to use, as may be directed, and such opening shall not be held to be in any way an acceptance of the work, or any part of it, or as a waiver of any of the provisions of these specifications and contract. Necessary repairs or renewals made on any section of the work, due to its being opened to use under instructions from the Engineer, to defective materials or work, to natural causes, to ordinary wear, and tear or otherwise, pending completion and acceptance of the

work, shall be performed at the expense of the Contractor.

RESTORATION OF SURFACE OPENED BY PERMIT. Any individual, firm or corporation wishing to make an opening in the highway, or make underground connections to a sewer or any service main or conduit, must secure a permit from and will be required to deposit security with the Board, in a suitable amount, to cover the cost of making the necessary repairs and the Contractor shall not allow any person or persons to make an opening unless a duly authorized permit of the Board is presented. Until the expiration of the maintenance period and acceptance of the work performed under these specifications and contract, the Contractor shall make all necessary repairs, within the time indicated in writing by the Engineer, and in an acceptable manner, at any point or points in the roadway where any opening or openings had been made by authority of the Board. Such repair work will be paid for by the Board as "Extra Work", as indicated in these specifications, and said work shall be subject to the same conditions as the original work performed. Should the Contractor refuse or neglect to make the said repairs at such point or points within the time specified, then the Board shall have authority to cause such repairs to be made in which case the Contractor shall not be relieved in any way from responsibility for the work performed by him.

QUALITY OF MATERIALS. The source of supply of each of the materials shall be approved by the Engineer before the delivery is started. Representative preliminary samples of the character and quality herein described shall be submitted by the

Contractor when indicated or directed, for examination or test; and approval of the quality of such samples shall be received by the Contractor from the Engineer prior to obtaining materials from the respective sources of supply. Only materials conforming to the requirements of these specifications shall be used in the work. All materials proposed to be used may be inspected at any time during the progress of their preparation and use. All materials shall be approved before being incorporated in the work. Representative samples of all materials requiring laboratory tests shall be taken and such materials shall be used only after written approval has been received by the Engineer's representative in charge of the work, and only so long as the quality of said materials remains equal to the requirements. If after trial it is found that partially developed quarries, ledges, banks or other sources of supply which have been approved upon samples or otherwise, do not furnish a uniform product, or if, for any reason, the product from any source, at any time before commencing or during the prosecution of the work, proves unacceptable, the Contractor shall furnish approved material from other sources.

STORAGE OF MATERIALS. Materials shall be stored so as to ensure the preservation of their quality and fitness for the work. When considered necessary they shall be placed on wooden platforms, or other hard, clean surfaces, and not on the ground, and shall be placed under cover when directed. Stored materials shall be located so as to facilitate prompt inspection. Lawns, grass plots, or other private property shall not be used for storage purposes without written permission of the owner or lessee.

USE OF MATERIALS FOUND ON THE WORK. The Contractor with the approval of the Engineer, may use in the construction of the work, any stone, gravel or sand found within the lines of the work. The Contractor shall not excavate or remove any material from within the highway location, which is not within the excavation as indicated by the slope and grade lines, without being authorized in writing.

DISPOSAL OF STRUCTURES FOUND ON THE WORK. All structures, except drainage pipes and guard railing, found on the work, which are not to remain in place or which have not been designated for use in the construction, shall become the property of the Contractor and shall be disposed of by him unless specified otherwise in the "Special Provisions", and except in the case of surplus material from the excavation after the work has been properly graded that may in the opinion of the Board be suitable for any special use in connection with the work, or any other work, the Board may deem advisable, shall be reserved for such purposes, as may be required by them, in which case the Contractor shall receive written notice from the Engineer, and will not be compelled to remove such materials (as designated in said written notice) from the work but shall afford the Board every convenience to remove the same.

RAILROAD CROSSING. The work at railroad crossings shall be carried on in such a manner as to prevent accident or interference with the running of cars. Ample previous notice of an intention to begin work at such crossing shall be given to the superintendent of the railroad in such manner as he may deem necessary to prevent accident or other interruption of travel.

The railroad shall have the right to do any work it shall deem necessary to protect its tracks and trains and the cost thereof including watchmen's wages shall be charged to and paid by the Contractor.

LINE, GRADE AND MEASUREMENT STAKES. The Engineer will furnish and place stakes offset from the line of the contemplated work, and will furnish the Contractor with a grade sheet showing the horizontal and vertical measurements from said stakes to the work as planned. The Contractor shall furnish, free of charge, all additional stakes, all templets and other materials necessary for marking and maintaining points and lines given, and shall furnish the inspector such assistance as he may require in giving points and lines necessary to the prosecution of the work. The Contractor shall be held responsible for the preservation of all stakes and marks and if in the opinion of the Engineer, any of the survey stakes or marks have been carelessly or wilfully destroyed or disturbed by the Contractor, the cost to the Engineer of replacing them shall be charged against him and shall be deducted from the payment for the work. Finished work in all cases shall conform with the lines and the grades given and as shown on the approved plans.

AUTHORITY AND DUTIES OF INSPECTOR. Nothing in these specifications relating to the duties of the Engineer shall be taken or construed in any manner to conflict with the duties of the Inspector. The Inspector's failure to condemn material or work will not commit the Board to acceptance thereof. The Inspector will thoroughly familiarize himself with the plans, specifications and contract, and the requirements and terms therein and when-

ever in doubt as to the exact meaning of the specifications or orders he shall immediately apply to the Engineer for instructions.

He shall keep a daily report on the blanks approved by the Engineer.

The Inspector shall carefully check all forms, alignments and grades and references established by the Engineer before any actual work is begun. He shall in all cases, call the attention of the Engineer and Contractor to any violation or departure from the specifications. He shall see that all materials on the work are those specified and meet the requirements in every detail as set forth in the specifications. He shall not authorize any extra work or give any orders to the Contractor's laborers. He shall not leave the work during working hours. In case of unavoidable absence, he shall immediately telephone the Engineer so that another inspector can be sent on the work. The Inspector must have no financial interest in the work, and he will be held strictly responsible for the workmanship on the contract and to the strict fulfillment of the plans and specifications and if required by the Engineer or the Board, he shall sign a statement certifying the fulfillment of the terms of the contract. Any deviation from the above requirements will be deemed sufficient cause for dismissal.

ENGINEER TO BE REFEREE. To prevent misunderstanding and litigation, the Contractor and the Board agree that the Engineer shall be the Referee between them and he shall decide any and all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the manner of performance and as to the rate of progress of said work. He shall

decide all questions which may arise as to the interpretation of the plan and of these specifications, and all questions as to the acceptable fulfillment of the contract on the part of the Contractor; he shall determine the amount and quality of the work performed and of the materials furnished, which are to be paid for under the contract. Any such decision and his estimate shall be final and conclusive and such estimate, in case any question shall arise, shall be a condition precedent to the right of the Contractor to receive any money due under the contract. Any doubt as to the meaning of, or any obscurity as to the wording of, the plan, specifications and contract will be explained by him, and all directions and explanations requisite or necessary to complete, explain or make definite any of the provisions of the plan, specifications and the contract and to give them due effect, will be given by him, all of which shall be binding upon both parties to the contract.

INSPECTION OF MATERIALS AND WORK. The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the specifications and contract. On the Engineer's request, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed and examined prove acceptable, the uncovering or removing and the replacing of the covering and reconstructing the parts removed shall be paid for as "Extra Work", but should the work so exposed and examined prove

unacceptable, the uncovering or removing and replacing of the covering or reconstructing the parts removed shall be at the Contractor's expense. Any work done or materials used without supervision or inspection may be ordered removed and replaced at the Contractor's expense.

DEFECTIVE MATERIAL AND WORK. All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials whether in place or not, shall be rejected and shall be removed immediately from the work, unless otherwise permitted. No material which has been rejected, the defects of which have been corrected or removed, shall be used until approval has been given. All work which has been rejected or condemned shall be remedied or, if necessary, removed and replaced in an acceptable manner by the Contractor at his own expense.

FINAL CLEANING UP OF WORK. Upon the completion of the work and before acceptance may be secured, the Contractor shall clean and remove from the highway, footways, lawns and adjacent property, all surplus and discarded materials, rubbish and temporary structures, restore in an acceptable manner all property, both public or private, which has been damaged during the prosecution of the work, and shall leave the work in a neat and presentable condition, throughout the entire length of the roadway under contract.

TEMPORARY SUSPENSION OF WORK. The Engineer shall have the authority to suspend the work wholly or in part, for such period or periods as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the suitable prosecution of the work, or for

such time as is necessarily due to the failure on the part of the Contractor to carry out orders given, or perform any or all provisions of the contract. If it should become necessary to stop work for such an indefinite period, the Contractor shall store all materials in such manner that they will not obstruct or impede the traveling public unnecessarily nor become damaged in any way, and he shall take every precaution to prevent damage or deterioration of the work performed, provided suitable drainage of the roadway by opening ditches, shoulder drains, etc., and erect temporary structures where necessary. The contractor may not suspend the work without written authority. During any suspension of work due to any cause whatsoever, when deemed necessary by the Engineer, the entire work under contract or any section thereof, shall be thrown open to use, and the Contractor shall place any such section in satisfactory condition for use without additional compensation. The Contractor shall be responsible for the satisfactory maintenance of any such section of work thrown open to use prior to its final acceptance.

COMPUTATION OF CONTRACT TIME FOR COMPLETION OF THE WORK. The Contractor shall perform fully, entirely and in an acceptable manner the work contracted for within the time stated in the proposal. In adjusting the time for the completion of the work, the length of time expressed in days or parts of days during which the prosecution of the work has been delayed or suspended in consequence of any act or omission of the Board, and not by any fault of the Contractor, shall be allowed the Contractor and excluded from the computation in making said adjustment, all of which shall be determined by the Engineer, who shall

certify thereto in writing and whose determination and certifications shall be binding and conclusive upon both parties to the contract. Sundays and legal holidays during which no work has been performed shall be excluded from said computation. If the satisfactory execution and completion of the contract shall require work or material in greater amounts or quantities than those set forth in the contract, then the contract time shall be increased in the same proportions as the additional work bears to the original work contracted for. No allowance shall be made for delay or suspension of the prosecution of the work due to fault of the Contractor.

ANNULMENT OF CONTRACT. If the Contractor fails to begin the work under contract within the time specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall neglect or refuse to remove materials or perform anew such work as shall be rejected as defective and unsuitable or shall discontinue the prosecution of the work, the Board may, upon written certificate from the Engineer and after two days' written notice to the Contractor from the Board of the fact of such delay, neglect or default on the part of the Contractor, have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Contractor, to appropriate or use, any or all materials and equipment on the ground and may be suitable and acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the Board's opinion

shall be required for the completion of said contract in an acceptable manner. Should the Board so elect to take the prosecution of the work out of the hands of the said Contractor, all right, title and interest in and to the equipment and material owned by the Contractor and used in the execution of the contract, shall be vested in the Board, and on the completion of the said contract the Board may dispose of the same in the manner that to it may be deemed to the best interest of the parties concerned. All costs and charges incurred by the Board, together with the costs of completing the work under contract, shall be deducted from the moneys due or which may become due said contractor. In case the expense so incurred by the Board shall be less than the sum which would have been payable under the contract, if it had been completed by said Contractor, the said Contractor shall be entitled to receive the difference, and in case such expense shall exceed the sum which would have been payable under the contract, then the Contractor and the Surety shall be liable and shall pay to the Board the amount of said excess.

LIENS. In case any lien, stop notice or claim for work, labor or materials, done, performed or delivered and used in the prosecution of the work herein provided for, shall be filed with the Board, then in that case the Board may retain from any moneys due to the Contractor, a sum equal to the amount of such claims or notice, until such time as the Contractor shall furnish a receipt or release therefrom or thereof.

MEASUREMENT OF QUANTITIES. All work completed under the contract shall be measured by the Engineer according to United States Standard

Measures. The area of surfacing to be paid for shall be only the actual area covered by the entire surfacing or paving material within the lines designated or given, except that no deduction will be made for fixtures in the roadway or street with an area of nine (9) square feet or less. The surface area of the heads of railway rails will not be included in the areas which are to be paid for.

SCOPE OF PAYMENTS. The Contractor shall receive and accept the compensation as herein provided, in full payment for the furnishing of all materials, labor, tools and equipment and for performing and maintaining all work contemplated and embraced under the contract, also for all loss or damage arising out of the nature of the work, or from the action of the elements, or from any unforseen difficulties or obstructions which may arise or be encountered during the prosecution of the work, until its final acceptance by the Board after duration of the maintenance period, and for all risks of every description connected with prosecution and maintenance of the work, also for all expenses incured by, or in consequence of the suspension or discontinuance of the said prosecution of the work as herein specified, and for any infringement of patent, trade-mark, copyright and for completing the work and the whole thereof, in an acceptable manner according to the plans and specifications. The payment of any current or final estimate, or of any retained percentage shall in no way or degree prejudice or affect the obligation of the contractor at his own cost and expense, to repair, correct, renew or replace any defects and imperfections, in the construction of, in the strength of or quality of materials used in or about the construction of the work under contract and its appurtenances as well

as all damage due or attributable to such defects, which defects, imperfections, or damages shall be discovered on or before the final inspection and acceptance of the work after the maintenance period, and of which defects, imperfections, or damages the Engineer shall be the judge, and the said contractor shall be liable to the Board for failure to do so.

PROCESS PAYMENTS. The Engineer will make current estimates in writing, on or about the first of each month or from time to time as the work progresses, of the materials in place and the amount due for the work performed and in accordance with the contract during the preceding month or period and the value thereof figured at the unit prices contracted. From the total of the amounts so ascertained will be deducted an amount equivalent to twenty (20) per centum of the whole, to be retained by the Board until after the completion of the entire contract in an acceptable manner, and the balance, or a sum equivalent to eighty (80) per centum of the whole, shall be certified by the Engineer to the Board for payment, except when such balance amounts to less than Three hundred Dollars ($300.00). In cases where the eighty (80) per centum of the amount earned during any one month or period shall be less than three hundred dollars ($300.00) no payment will be made, except on final estimate, under the eighty (80) per centum of the total amount earned since the last preceding payment is at least Three hundred Dollars ($300.00).

ACCEPTANCE AND FINAL PAYMENT. When the work has been completed the Engineer will make an inspection of the work and, in the event that

repairs and renewals are necessary that cannot be made promptly due to no fault of the Contractor, an estimate may be made from which will be retained five (5) per centum of the estimate and a sum sufficient to cover the cost of said repairs or renewals; or, promptly after the Engineer's inspection if no repairs or renewals are required, the Engineer shall certify to the Board in writing, as to the completion of the work and shall further certify as to the entire amount and value of each class of work performed and the total amount unpaid to the Contractor. The Board, upon receipt of such certificate for payment of the amount unpaid and due, which shall be to the total of the ninety-five (95%) per centum of the entire cost of the work less previous payments and any other proper deductions as herein provided, and shall notify the Contractor and his Surety of its acceptance of the work completed under the contract, subject to the requirements of maintenance for a full period when called for in the proposal. The action of the Board and of the Engineer, by which the Contractor is to be bound and the construction work concluded according to the terms of the contract, shall be evidenced by the aforesaid certificate and payment all prior certificates or estimates, upon which payments have been made, being merely partial estimates and subject to correction in the final construction estimate as aforesaid. Upon the completion of the maintenance period when heretofore described, and upon receipt by the Board of a certificate of the Engineer setting forth that the maintenance work has been satisfactorily done, the retained balance of five per centum (5%) of the total cost of the work which was retained from the final construction payment, shall be paid by the Board to the Contractor, less any proper deductions as herein provided.

No Waiver or Legal Rights. The Board or the Engineer shall not be precluded or estopped by any measurement, estimate or certificate, made or given by them, or by any agent or employee of the Engineer, under any provision or provisions of the contract, at any time, either before or after the completion and acceptance of the work and payment thereof pursuant to any measurement, estimate or certificate from showing the true and correct amount and character of the work performed, and materials furnished by the Contractor, or from showing, at any time, that any such measurement, estimate or certificate is untrue or incorrectly made in any particular, or that the work, or materials, or any part thereof do not conform in fact to specifications and contract, and the Board shall have the right to reject the whole or any part of the aforesaid work or materials, should the said measurements, estimate, certificate or payment be found, or be known to be inconsistent with the terms of the Contract, or otherwise improperly given, and the Board shall not be precluded or estopped, notwithstanding any such measurement, estimate, certificate and payment in accordance therewith, from demanding and recovering from the Contractor and his Surety such damages as it may sustain by reason of his failure to comply with the terms of the specifications and contract. Neither the acceptance of the Board, the Engineer or any agent or employee of the Board, nor any certificate by the Board for payment of money, nor any payment for, nor acceptance of the whole or any part of the work by the Board or Engineer, nor any extension of time, nor any possession taken by the Board or its employees shall operate to waive any portion of the contract or of any power herein reserved by the Board, or any right to dam-

ages herein provided, nor shall any waiver of any breach of the contract be held to waive any other or subsequent breach.

VITRIFIED SEWERS AND DRAINS.

BRIDGING OF TRENCHES. All trenches shall be bridged at street crossings and entrances in such manner as the Engineer may direct, in order that the traffic of intersecting streets may not be stopped, and that entrances may be maintained to houses, stores, factories, stables and other places and grounds along the work.

PIPES. Unless otherwise particularly mentioned in these specifications or Proposal, all pipes shall be vitrified tile of the best grade, first quality salt glazed tile of the hub and spigot type. The glazing shall extend uniformly over both the exterior and interior surfaces. It shall be uniformly and thoroughly burned, free from blisters, cracks and other defects that will injure it for the purpose intended. The dry tile must give a clear, metallic ring when tapped. It shall be furnished in lengths of not less than thirty-six inches in length. No culls, second grade, used or second hand, injured or defective pipe shall be used, or other grades or sizes substituted for those specified.

No straight pipe shall be more than three-eighths of an inch out of straight. The true circular form of the pipe shall be tested to the following requirements; eight, ten, twelve inch pipes to be not more than one-quarter of an inch; fifteen inch pipes to be not more than three-eighths of an inch; eighteen inch pipes to be not more than one-half inch out of round respectively.

The thickness of the pipe shall be respectively

not less than as follows: for eight inch pipes, three quarters; for ten inch pipes, seven-eighths; for twelve inch pipes, one inch; for fifteen inch pipes, one and one-quarter inches; for eighteen inch pipes, one and one-half inches, and for twenty-four inch pipes, two inches.

The ends of the pipes shall be carefully protected from damage by blasting and shall be covered by a removable stopper that will prevent earth and other material from entering the pipes during the construction.

PIPE LAYING. The pipe shall be laid true to line and grade and every precaution shall be taken as required by the Engineer, to obtain a straight and smooth line of tubes. The end of the pipes must join closely all the way around, and they shall be laid so that there shall be no shoulder or uneveness along the bottom half of the sewer. All pipes shall be matched before being lowered into the trench, and such of them as may not be found to fit satisfactorily shall not be used.

The joints shall be calked with oakum and such other material as may be called for in these specifications.

Excavation in rock shall be completed twenty-five feet in advance of pipe laying unless otherwise permitted by the Engineer. No pipe sewer shall be laid in any trench until the trench has been inspected and found to be of proper width and depth and to have a proper bottom. No pipe shall be laid except in the presence of an inspector.

Every third pipe shall be filled around to prevent movement of joints and there shall be no walking over a line except as may be necessary in filling and tamping around the pipes.

JOINTS FOR SEWERS. The joints for sewers shall be of jute and jointite or its equivalent and laid

according to these specifications, and in the manner prescribed therein. The jointite or its equivalent shall be heated over a fire reasonably close to the joint where the material is to be used.

CONCRETE PAVEMENTS.

RESETTING MANHOLE HEADS, GAS AND WATER GATES. All manhole heads, water gates, gas gates or any appurtenances to the gas or water system or the sewerage system, shall be raised or lowered as each particular case may require, so that they may be, after resetting, to the proper grade.

DRIVEWAYS. Driveways shall be constructed of concrete six (6) inches deep. Concrete shall be as specified for concrete pavement with the exception that there need be no wire mesh reinforcements and the top inch of the concrete shall be float finished giving a smooth surface.

Driveways will be twelve (12) feet wide at the curb turned with a radius of three (3) feet and shall be ten (10) feet in width at a point three (3) feet inside the curb line.

The sub-grade of the driveways shall be well rammed and shall consist of 4 inches of steamed cinders. The driveways shall be blocked into strips 6 inches wide across the whole sloping driveway and the sidewalk and the strips cut into blocks twelve (12) inches along by cutting not more than one-half (½) inch into the wearing surface of the concrete and beveling or sloping outward, and perfectly rounded with proper tools to prevent chipping.

The driveways shall be paid for per square foot as bid.

FOUNDATION (SUB-BASE).

GENERAL. The box or trench to receive the paving will not be cut or formed until the whole graded width which has been properly compacted as directed by the Engineer, and must have the required stability and be at the specified grade for foundation as shown on the plans. The bottom of the box will then be below and parallel to the intended surface of the roadway; the surface thereof shall not be disturbed by any unnecessary carting or hauling upon it, but if the surface is distributed the same shall be reformed and rerolled before the spreading of foundation material. No base or surface material shall then be dumped or deposited on a sub-foundation that has not the required stability, is not at the proper grade or does not have the specified crown.

The sub-foundation or intersecting roads and of driveways leading to dwellings located along the road if indicated on the plans, shall be properly graded and sub-foundation rolled as above specified herein.

Where the character of the soil forming the sub-base is such as to endanger the solidity of the foundation, the engineer may order a layer of trap rock six (6) inches thick to be used. It shall be rolled until firm and compact. The upper surface of this layer shall form the top of the sub-grade and must be at the elevation shown in the cross-sections.

When not called for in proposal this work will be known as Extra Work and will be paid for in place, including excavation and rolling, and orders for this work must be given as provided.

The sub-base having been formed and compacted as specified herein must be inspected and approved by the Engineer or Inspector before any foundation

material is spread thereon. There will be then set against the shoulders of the box and securely fastened in a vertical position, side-forms of the same width as the finished depth of the pavement at edges and of sufficient thickness so as to make them firm and rigid. The upper edges of these forms must be straight and at the same elevation as the finished surface of the pavement at the edges. When forms of any special design are specified they must be used.

Templates cut to form of the cross-sections and resting on the upper edges of the side-forms will be used to determine the depth of the box and of all courses of pavements and the proper form of cross-sections. When the pavement is finished or when directed by the Engineer the forms will be drawn and the holes filled with crushed stone which will be compacted as the Engineer may direct.

Roling shall be done with a road roller weighing approximately 10 tons. All hollows and depressions which develope during the rolling shall be filled with material acceptable to the Engineers. The shoulders shall also be rolled in the same manner.

The sub-grade shall be sprinkled when required, immediately before placing concrete.

SPECIFICATIONS.

1. CEMENT. The cement shall be of American manufacture and shall meet the requirements of the Standard Specifications and Tests for Portland Cement, adopted by the American Society for Testing Materials, September 1, 1916, and all subsequent amendments and additions thereto adopted by said Society.

2. AGGREGATES. Before delivery on the job the contractor shall submit to the Engineer a fifty (50)

pound sample of each of the fine and coarse aggregates proposed for use. The samples shall be tested and if found to pass the requirements of these specifications similar material may be considered as acceptable for the work.

Aggregates containing dirt, dust, frost or lumps of frozen material shall not be used.

FINE AGGREGATES. Sands shall consist of grains or particles of quartz or other hard and durable rocks, the surface of which are not coated with any injurious foreign material. The grains shall be moderately sharp, free from soft decomposed or partly decomposed sand grains, lumps of clay, or ferruginous cemented sands. Fine aggregate, when dry shall pass a screen having four (4) meshes per linear inch; not more than twenty-five (25) percent. shall pass a sieve having fifty (50) per linear inch, and not more than five (5) percent. shall pass a sieve having one hundred (100) meshes per linear inch.

Concrete sands must not contain more than four (4) per cent. of material removed by the elutriation test and must produce a Portland Cement mortar which will have at the end of seven (7) and twenty-eight (28) days a crushing and tensile strength equal to or greater than that of a mortar prepared in the same manner, of the same proportions and consistency, using the same cement and Standard Ottawa sand.

COARSE AGGREGATES. Coarse aggregates shall consist of clean, hard, tough, durable, crushed rock or gravel well graded in size and free from dust, dirt, vegetable or other deleterious matter, and shall contain no soft particles. The size of coarse aggregate shall be such as to pass a two (2) inch

round opening and shall range from one and one-half (1½) inches down to one-quarter (¼) inch. Not more than five (5) percent. shall pass a screen having four (4) meshes per linear inch, and no intermediate sizes shall be removed.

3. MIXED AGGREGATE. Bank run gravel or artificially prepared mixtures of fine and coarse aggregate shall not be used (except after tests and written permission by the Engineer).

4. WATER. All water used in concrete shall be clean and free from oil, acids, alkalies or sea salts, vegetable matter or ingredients that are injurious to concrete.

5. EXPANSION JOINTS. Transverse and longitudinal expansion joints shall be either of the poured or pre-moulded type as designated on the plans or in Instructions to Bidders. Expansion joints shall also be formed around all objects that project through the pavement, such as manholes, catch-basins, etc., also between curbs and pavements. The joint filler shall be full length and full depth of the pavement in all cases. The form used to cast a poured joint must be so designed and used that the concrete will not be injured by its removal, and the opening will have the specified dimensions, be perpendicular to the pavement surfaces and axis and must be approved by the Engineer. It shall be so set that the top edge is at the same elevation as the surface of the concrete and firmly held in place by iron rods or pins driven into the sub-grade.

Pre-moulded joint fillers shall be cast in sheets, the thickness of which shall be the same as the joint width specified. But in no case shall the pre-moulded joint filler be cast in sheets less than one-

half (½) inch or more then three-quarter (¾) inch thick. If no special width is specified the joints shall be cast in sheets from one-half (½) to five-eighths (⅝) inch. All pre-moulded joint fillers to be used in transverse expansion joints in a concrete pavement shall be cast in lengths of not more than one-half (½) of the width of the pavement.

Transverse expansion joints shall be constructed at the points designated on plans or in instructions to Bidders. When not thus indicated, they shall be constructed at intervals of not less than thirty (30) feet, nor more than sixty (60) feet, except in case of breakdown or delay due to unforeseen conditions. A longitudinal expansion joint not less than one-half (½) inch in thickness shall be constructed between the curbs and the pavements where a separate curb is used.

SUB-GRADE.

6. Construction. The sub-grade shall be brought to a firm density by rolling the entire area with a self-propelled roller. All portions of the surface of the sub-grade which are inaccessible to the roller shall be thoroughly screeled with a hand screed weighing not less than fifty (50) pounds.

Note: Special care being taken that no sub-grade material shall project above the bottom edges of the forms at any point.

All soft, spongy or yielding spots and all vegetables or other perishable matter shall be entirely removed and the space refilled with suitable material as directed by the Engineer.

When the concrete pavement is to be constructed over an old roadbed composed of gravel or macadam, the old roadbed shall be entirely loosened by

scarifying and the material spread uniformly over the full width of the new roadbed and rolled.

No concrete shall be deposited until the grade has been checked at all points by means of an improved sub-grade tester and accepted by the Engineer or inspector.

FORMS.

7. MATERIALS. Forms shall be of steel and free from warp, and of sufficient consistency to resist springing out of shape. If wooden forms are permitted they shall be of not less than two (2) inch stock.

8. SETTING. The forms shall be well staked, firmly supported at all points and otherwise held rigidly to the established line and grade. Where the curb is to be constructed integrally with the pavement, the upper edge of the side forms shall conform to the top of the curb.

All forms shall be straight, free from warp, clean and oiled before using.

PAVEMENT SECTION.

9. WIDTH, THICKNESS OF CONCRETE AND CROWN. The concrete pavement shall be thirty (30) feet wide from face to face of curbs, and eight (8) inches in depth. Depth shall be uniform at all points and the finished surface shall conform to the lines as shown on the plans attached hereto. The pavement may be constructed in longitudinal units of not less than thirty-five (35) feet or more than fifteen (15) feet.

MEASURING MATERIALS AND MIXING CONCRETE.

10. MEASURING MATERIALS. The method of measuring materials for the concrete, including water,

shall be one which will accurately insure separate and uniform proportions of each of the materials at all times. A sack of Portland cement (94 pounds net) shall be considered one cubic foot.

11. HANDLING MATERIALS. Equipment for loading and measuring fine and coarse aggregate shall be approved by the Engineer and must be such as to insure at all times uniform and accurate proportions of known volume. Aggregates shall not be placed upon the prepared sub-grade.

12. MIXING. The materials shall be mixed in a power, batch mixer, having a capacity of not less than two (2) bags of cement per batch for concrete of the composition herein specified.

Cement must be brought on the job in bags and there mixed with the other aggregate.

No size of batch will be permitted which will require fractional bags of cement.

Mixing must be continued after all materials are in the drum for at least one and one-quarter (1¼) minutes before any part of the batch is discharged. Any batch mixed less than one and one-quarter (1¼) minutes shall not be allowed in the pavement.

The drum shall revolve not slower than twelve (12) or faster than twenty-five (25) revolutions per minute.

The drum shall be completely emptied before receiving materials for the succeeding batch.

Not more than six (6) gallons of water per sack of cement shall be used. Retempering of mortar or concrete which has partly hardened, that is, remixing with or without additional material or water, shall not be permitted.

PROPORTIONS FOR ONE COURSE CONCRETE PAVEMENT.

13. PROPORTION. The concrete shall be mixed in the proportions of one sack of Portland cement to not more than two (2) cubic feet of fine aggregate and not more than three (3) cubic feet of coarse aggregate. In no case shall the volume of the fine aggregate be less than one half (½) of the volume of the coarse aggregate.

A cubic yard of 1-2-3 concrete in place, including integral curbs when used, shall contain not less than one and seventy-four (1.74) hundredths barrels of cement.

One square yard of six (6) inch 1-2-3 concrete in place shall contain not less than .291 barrels.

One square yard of eight (8) inch 1-2-3 concrete in place shall contain not less than .386 barrels.

The Engineer shall compare the calculated amount of cement required according to these specifications and plans attached hereto with the amounts actually used in each section of concrete between successive transverse joints as determined by actual count of the number of sacks of cement used in each section. If the amount of cement used and any three (3) adjacent sections (between transverse joints) is less by more than two (2) percent., or if the amount of cement used in any one section is less by more than five (5) percent. of the amount hereinbefore required, the contractor shall remove all such sections and replace the same with new materials according to the specifications, and at his own expense.

14. CONSISTENCY. The quantity of water used to prepare the concrete shall be such that a mixture having the required workability and slump will result without excess water appearing on the sur-

face during or after the finishing operations. If surplus water does appear on the surface of the concrete in pools or small spots after belting and before brooming, the quantity of water being used per batch shall be reduced so that no evidence of surplus water or laitance appears on the unbroomed surface.

When the required consistency has been secured the slump shall be determined and all subsequent concrete prepared shall not have any greater slump. The slump shall be determined with a truncated cone, twelve (12) inches high; eight (8) inches in diameter at the base and four (4) inches in diameter at the top.

Concrete that is sloppy or that will flow on the sub-grade will not be permitted and the contractor shall remove it at once.

REINFORCING.

15. Reinforcing Material. The concrete shall be reinforced at all points designated on plans. The type and grade of reinforcing material to be used, number of lines thereof and position of each shall also be as shown on plans.

When the concrete is to be reinforced with sheet fabric or bars made into mats, said reinforcing metal shall not extend nearer than two (2) inches nor farther than six (6) inches from the edges of the pavement and all transverse and longitudinal joints.

Note: Sheet fabric shall be installed with the main members parallel to the center line of the pavement. The fabric must be kept clean and the sheet straight and true to form until installed. To install sheet fabric, a layer of concrete shall be placed upon the sub-grade to such a depth that when struck off, its surface will be at the elevation

specified for the reinforcing metal to be installed. Adjacent width of sheet fabric must be lapped not less, than two (2) inches when the direction of the lap is perpendicular to the main members and lapped not less than one (1) foot when the direction of the lap is parallel to said main members.

NOTE: Bars, other than circumferential, shall be installed with the main members parallel to the center line of the pavement. These bars shall be assembled in mats as shown on detail plans. They must be firmly fastened together at all intersecting points and adjacent ends shall be lapped not less than twelve (12) inches.

To install these mats, a layer of concrete shall be placed upon the sub-grade to such a depth that when struck off, its surface will be at the elevation specified for the reinforcing metal to be installed, or suitable chairs shall be furnished to firmly support such mats at the point required, such chairs to be securely fastened to the mats to prevent slipping or overturning.

The reinforcing for the concrete pavement shall be manufactured from steel which shall develop an ultimate tensile strength of not less than seventy thousand (70,000) pounds per square inch, and shall bend one hundred and eighty (180) degrees around one (1) inch diameter and straighten without fracture. The material shall be furnished on the work in flat sheets or mats of a length equal to four (4) inches less than the width of the pavement unless otherwise permitted, so constructed that they will retain their original shape during the necessary handling. These sheets or mats shall meet the following requirements.

Reinforcement shall weigh not less than 100 lbs. per one hundred (100) square feet. The material may be either welded wire or fabricated bars.

PLACING CONCRETE.

16. PLACING CONCRETE. Immediately before placing the concrete, the sub-grade shall be brought to an even surface and true grade, and must be moist. The final sub-grade shall in no case, vary more than one-half (½) inch from the specified contour, the average depth shall not be less than the depth required by the plans and no area greater than four (4) square feet shall be less than the depth called for on the plans.

When unsupported reinforcement is used, the concrete shall be deposited and struck off in two separate layers. It shall be deposited in place immediately after being prepared.

The concrete for the bottom layer shall be so deposited and distributed over the sub-grade that the entire surface of the sub-grade between forms is completely covered with a layer of concrete of such thickness that, after being struck off and screeded to the required density, its entire surface will be at the elevation required for the reinforcing material to be installed. The bottom layer of concrete must be screeded so that it has a uniform, even, dense surface, free from all evidence of porosity and at the required grade at all points. After being thus prepared, it must not be walked upon except to place the reinforcing metal. When properly prepared, the reinforcement shall be placed and then covered with a top layer immediately. Any portions of the bottom layer of concrete which have developed initial set or which have been placed more than thirty (30) minutes without being covered with the top layer, shall be removed and replaced with newly mixed concrete.

The operation between transverse expansion joints shall be continual without the use of intermediate transverse forms or bulkheads. In case

of an unavoidable interruption, a transverse joint shall be placed as herein specified at the point of stopping work, provided that the section on which work is being suspended shall be not less than six (6) feet in length.

When concrete is to be placed adjacent to railroad tracks or around such structures as catch basins, manhole tops or other objects that project through the pavement, no concrete shall be placed within eighteen (18) inches of said tracks or said structures until they have been properly set to the required grade and alignment.

The concrete adjacent to the side forms and at joints and all corners shall be well spaded to avoid porous concrete. No concrete shall be placed except in the presence of an inspector.

17. FINISHING. The concrete after being properly spread, shall be consolidated and given the required surface finish by hand operated templates, strike-boards, heavy planers, etc., as herein specified. Power driven finishing machines of approved design are permitted.

The concrete shall be tested at frequent intervals in the manner specified to insure that the surface is free from bumps and depressions. Special attention must be given to the concrete adjacent to joints to insure that the edges thereof are not above the grade specified. All depressions or projections thus discovered shall be corrected before any initial set has developed in the concrete.

The finishing of the joints shall be done from a bridge, which will not come in contact with, or rest on, the concrete at any point. The concrete adjacent to the sideforms or transverse or longitudinal joints shall be dense in character, thoroughly consolidated by screeding and spading until the voids in the large aggregate have been completely

filled, so that when the forms are removed, the abutting concrete will have a smooth even surface.

The finished surface of the concrete shall be free from depressions or projections that are more than one-quarter (¼) inch above or below the general surface of the pavement as determined by a straight edge laid parallel to the axis of the pavement and a template laid transversely. The straight edge used shall be not less than ten (10) feet long and equipped with a handle of sufficient length that it can easily be applied to the pavement at any point.

NOTE: HAND FINISHING. After being properly placed, the concrete shall be brought to the required grade and given the necessary finish in the following manner:

1. It shall be struck off with an angle or "T" iron which has the required curvature and is not less than four (4) inches wide and two (2) feet longer than the width of the pavement. This striking iron shall be moved forward with a combined longitudinal and transverse motion and so manipulated that neither end will be raised off the side-forms. A slight excess of the material must be kept in front of the cutting edge at all times. The concrete must be struck off sufficiently above the grade specified so that its surface will not be compressed below the grade of the forms during screeding.

2. The screeder used for this purpose may be a piece of channel iron or iron-faced planks, which must be equipped with the necessary handles and cut to the same curvature specified for the crown of the road.

SECOND SCREEDING: 1. Any excess material on the surface of the pavement shall then be removed with a planer or heavy screeder. The planer or heavy screeder is passed over the surface of the concrete with a combined longitudinal and transverse motion advancing each strike about one-half (½) the width of the planer or heavy screeder. It must be held firmly on the forms and operated at a slow, even speed. If any depressions are thus discovered, they shall be filled and the planing or screeding repeated until the proper surface is secured. All the excess material collecting in front of the planer or screeder shall be removed in such a manner that no depressions will be formed. The planer or heavy screeder shall be constructed from a ten (10) inch channel iron, weighing not less than twenty (20) pounds to the foot (or a timber weighing an equal amount), have the required crown, the planer or heavy screeder to be two (2) feet longer than the width of the pavement and be equipped with handles that will easily permit of its proper manipulation.

2. After the concrete has been thus planed or screeded off, it shall be given a final finish by two or more applications of a soft, flexible canvas or rubber belt or wooden belt, not less than six (6) inches wide and not less than one (1) foot longer than the width of the pavement. This belt shall also be applied in a transverse and longitudinal motion, advancing each stroke about one-half (½) the width of the belt.

The concrete adjacent to the expansion joints shall be first struck off with a split-screed or notched straight edge not less than six (6) feet long and shall be finally finished with a wood-float divided through the center and which will permit of finishing on both sides of the joint filler at the

same time, bringing both sides to the same elevation or grade.

3. The wood-float shall not be less than twelve (12) inches in width and twenty-four (24) inches in length.

4. The edges of the concrete at the forms and all joints shall be tooled with an edger having a radius of one-quarter (¼) inch.

5. The surface of the concrete shall be roughened by brooming. To accomplish this, a broom shall be gently pulled over the surface of the concrete from one edge to the other. The brooming must be perpendicular to the center line of the pavement and so executed that the corrugations thus produced will be of uniform character in depth and width and the resulting surface free from objectionable depressions or projections that might be formed by the improper handling of the broom.

NOTE: MACHINE FINISHING. The finished surface of the pavement shall be frequently tested by means of a ten (10) foot straight edge and shall not vary more than one-quarter (¼) inch in ten (10) feet from the specified contour.

INTEGRAL CURB.

18. CONSTRUCTION. An integral curb shall be constructed, when shown on the attached drawings, to the established grade and in a continuous line on each side of the street fifteen (15) feet from and parallel with the center line thereof, except at all intersections of streets, alleys and driveways where it shall be returned to the street line. At these intersections it shall be rounded to such a radius as the Engineer may direct.

The concrete for integral curb shall be of the same materials and proportions as that required for the pavement.

After striking off the pavement, the concrete for that portion of the integral curb above the gutter line shall be immediately deposited.

The top and inside surface in integral curb shall be given a smooth finish and completed with the pavement to the point of stopping each day's work.

PROTECTION.

19. CURING AND PROTECTING. After the surface of the concrete has been given its final finish, it shall be protected by covering it immediately with strips of canvas or burlap laid perpendicular to the center line of the pavement. The edges of each strip shall overlap the adjacent strip at least one (1) inch. The different strips shall be at least two (2) feet longer than the width of the pavement. When properly placed, this covering shall be sprinkled at once with sufficient water to saturate it and then kept wet for twenty-four (24) hours or until removed. As soon as the concrete has hardened sufficiently to prevent pitting or becoming easily defaced, the strips of canvas or burlap shall be removed and the concrete covered immediately with a layer of hay, straw, ponding or other approved material. This covering shall be spread in a layer not less than six (6) inches thick and must be so applied as to completely cover the concrete. After being properly spread, it shall be wet at once, and kept wet, for at least ten (10) days except that during freezing weather the covering need not be sprinkled. The pavement must be kept closed to traffic for at least ten (10) days and in cold weather for an additional time, to be determined by the Engineer.

NOTE: Concrete shall not be mixed or laid when the atmospheric temperature in the shade or the temperature of the aggregate is at or below 32 degrees Fahrenheit. When written permission is secured from the Engineer to construct pavement when the temperature drops below 32 degrees Fahrenheit, at night, the concrete must be protected from freezing.

WORKMEN.

20. The workmen, employed by the Contractor must have had sufficient experience in the preparation of concrete mixtures and the construction of pavements therefrom to be able to operate the equipment in such a manner that the concrete produced will have the required composition, consistency, strength, and density. The men operating the loading plant, concrete mixers, etc., also spreading and finishing the pavement must show by the work completed that they have had the necessary experience and are making the proper effort to execute the work in the manner required by these specifications; otherwise, their services will have to be dispensed with by the Contractor. Contractor shall give his constant personal attention to the work while it is in progress or he shall place it in charge of a competent superintendent who shall have authority to act for the Contractor and who shall be acceptable to the Engineer.

EQUIPMENT & TOOLS.

The Contractor to whom this contract is awarded must place on the site of the work before concreting is started, for the purpose of inspection and approval by the Engineer, the following equipment and tools:

One (1) self-propelled roller weighing not less than five (5) tons.

One (1) concrete paving mixer having a capacity of not less than two (2) bags of cement per batch for concrete of the proportions herein specified.

One (1) soft, flexible canvas or rubber belt or board not less than six (6) inches wide, and not less than one (1) foot longer than the specified width of the pavement.

One (1) split screed not less than six (6) feet long for striking off transverse joints.

One (1) straight edge not less than ten (10) feet in length.

One (1) approved sub-grade tester.

One (1) steelshod strike-board or template.

One (1) planer of steel or wood construction to be not less than ten (10) inches wide and weigh not less than twenty (20) pounds to the foot.

Two (2) wood hand floats divided through the center, same to be not less than twelve (12) inches in width and twenty-four (24) inches in length.

One (1) edging tool having a radius of one-quarter (¼) inch.

Two (2) bridges of sufficient length to span the entire width of pavement and of sufficient strength to bear a man's weight without any part thereof coming in contact with, or resting on, the concrete at any point. There shall also be available for immediate use, a sufficient amount of covering such as hay or straw to cover each day's work for a period of not less than ten (10) days.

Samples of all materials specified herein, such as sand, stone reinforcing metal and joint filler shall be submitted to the Engineer for approval before any use is made of such materials.

ENGINEER'S ESTIMATE OF QUANTITIES
AND CONTRACTOR'S PRICES

Approx. Quantities	Items and Unit Prices Paid	Unit Pr. Dollar Cts.	Amts. Dollar Cts.
5500 Cu. Yds.	at Excavation ..... per	1.30	7,150.00
18035 Sq. Yds.	8" Concrete pavement double line reinforcement with integral curb ..... per Sq. Yd.	3.15	56,810.25
14	at Catch basins ..... per	90.00	1,260.00
48	at Corner Butts ..... per	50.00	2,400.00
2	at Catch basin heads and grates to be installed in culvert ..... per	45.00	90.00
650'	at 12" V. C. Pipe stone packed installed per lin. ft.	1.10	715.00
654'	at 12" V C. Pipe cement joints installed per lin. ft.	.90	588.60
450'	at 8" V. C. Pipe cement joints installed per lin. ft.	.70	315.00
100'	at 8" V. C. Pipe stone packed installed per lin. ft.	.90	90.00
25	at Resetting manhole heads ..... per	5.00	125.00
240'	at 8" C. I. Pipe installed ..... per lin. ft.	2.00	480.00
100'	at 6" V. C. Pipe stone packed ..... per lin. ft.	.75	75.00
500 Cu. Yds.	at Cinders spread & rolled ..... per	.25	125.00
4	at Manholes ..... per	100.00	400.00
10 Cu. Yds.	at Concrete ..... per Cu. Yd.	25.00	250.00
50'	at 15" V. C. Pipe ..... per lin. ft.	1.35	67.50
	Total amount		$70,941.35

I. B. MILLER, INC.,
By Louis Miller, Pres.

Sign here and if a firm makes the estimate each member must sign.

ENGINEER'S ESTIMATE OF QUANTITIES
AND CONTRACTOR'S PRICES

Approx. Quantities	Items and Unit Prices Paid	Unit Pr. Dollar Cts.	Amts. Dollar Cts.
5500 Cu. Yds.	at Excavation ..... per cu. yd.	1.00	5,500.00
10835 Sq. Yds.	8 in. Concrete pavement double line reinforced with integral curb	3.15	56,810.25
14	Catch basins ..... each	125.00	1,750.00
48	Corner Butts ..... each	40.00	1,920.00
2	Catch basins heads and grates to be installed on curbs ..... each	50.00	100.00
650′	12″ V. C. Pipe stone packed installed ..... lin. ft.	2.25	1,462.50
654′	12″ V. C. Pipe cement joints installed ..... lin. ft.	2.00	1,308.00
450′	8″ V. C. Pipe cement joints installed ..... lin. ft.	1.90	855.00
25	Resetting manhole heads ..... each	10.00	250.00
100′	8″ V. C. Pipe stone packed installed ..... lin. ft.	1.90	190.00
240′	8″ C. I. Pipe installed ..... lin. ft.	2.00	480.00
100	6″ V. C. Pipe stone packed	.10	10.00
500 Cu. Yds.	Cinders spread & rolled ..... cu. yds.	.01	5.00
4	Manholes ..... each	50.00	200.00
10 Cu. Yds.	Concrete ..... cu. yd.	1.00	10.00
50 Lin. Ft.	15″ V. C. Pipe cement joints ..... lin. ft.	3.00	150.00
			$71,000.75

BURNS & HALL,
William C. Hall,
J. P. Burns.

Stipulation Amending Return.

(Filed July 30th, 1927.)

NEW JERSEY SUPREME COURT.

CLIFTON JORDAN, Prosecutor, v. BOROUGH OF DUMONT, in the County of Bergen, and I. B. MILLER, INC., a corporation, Defendants.	On Certiorari. Stipulation Amending Return to Writ.

The attention of counsel for the defendant Borough having been called to the fact that the return to the writ in this case, as made, neglects to set forth the proposals submitted for the work to be done;

It is hereby stipulated that said return be and the same is hereby amended by adding thereto the proposal of I. B. Miller, Inc., for the performance of said work, which reads as follows:

"PROPOSAL

Date, May 18th, 1927.

To the Board (the Mayor and Council) of Dumont, N. J., Bergen County, New Jersey.

The undersigned hereby declares that they carefully examined the plans and specifications for the contraction of 8 in. Reinforced

concrete pavement with Integral Curb on New Milford Ave., in the Borough of Dumont, for which bids were advertised to be received on May 18th, 1927, and further declares that they have carefully examined the 'Notice to Contractors', 'Instructions to Bidders', plans and specifications, site of the proposed work, 'Engineer's Estimate of Quantities' and that they will provide all necessary machinery, tools, plants, material, labor and other means of construction and do all the work called for by said specifications and shown on said plans, in full compliance with and in the manner prescribed therein and thereon, for the unit prices hereunder given.

They do further declare that they will commence the work within the time specified in the specifications and will complete the same fully in every respect on or before the expiration of ninety (90) working days after the commencement of the same, according to the terms of the specifications.

They tender the following bondsman Certificate of Surety from Liberty Surety Bond Insurance Co. of Trenton, N. J., or Surety Company approved by the Board, as surety for the full amount of the bid.

This bid is accompanied by a certified check as proposal guaranty, which check is drawn in a National Bank or Trust Company of the State of New Jersey for Eight thousand five hundred dollars ($8,500.00) for a like amount in cash.

I. B. MILLER, INC.,
By LOUIS MILLER,
Pres."

It is further stipulated that seven (7) other proposals were received for this work and that all of said proposals were upon forms supplied by the municipality and were in form identical to the proposal hereinbefore set out, each bidder in the proposal fixing the number of working days within which he intended to complete the work to be done.

In lieu of making the plans for the work a part of the return it is further stipulated that neither the plans for said work nor the specifications, which are made a part of the return, indicate that the work to be done requires the use of any 8″ vitrified clay pipe, cement joints, 8″ cast iron pipe, 6″ vitrified clay pipe, steam packed, or 15″ vitrified clay pipe, and that the items just mentioned do not appear in any of the requirements either of the plans or of the specifications aforesaid, and appear only in the engineer's estimate of quantities and contractors' prices now a part of the return.

It is further stipulated that this stipulation may be forthwith filed and may be considered as an amendment to the return heretofore made in this cause and as facts agreed upon in lieu of depositions taken pursuant to rule.

Dated, this 25th day of July, A. D. 1927.

J. EMIL WALSCHEID,
Attorney for Prosecutor.

FREDK. W. MATTOCKS,
Attorney for Defendant, Borough of Dumont, in the County of Bergen.

Reasons.

(Filed July 23, 1927.)

NEW JERSEY SUPREME COURT.

CLIFTON JORDAN, Prosecutor, v. BOROUGH OF DUMONT, in the County of Bergen, and I. B. MILLER, INC., a corporation, Defendants.	On Certiorari. Reasons.

The prosecutor hereby writes down the following reasons for vacating the proceedings of the Borough of Dumont, in the County of Bergen, in adopting the resolution awarding a contract to the defendant, I. B. Miller, Inc., for the improvement of New Milford Avenue, in the Borough of Dumont, in the County of Bergen, which proceedings have been brought into this court under the writ of certiorari allowed in the above entitled cause:

1. The specifications for the work to be done do not fix the date before which the same shall be completed, or the number of working days to be allowed for the completion thereof.

2. The specifications for the work to be done set up a false and illusory standard for the comparison of bids, in that these specifications call for proposals upon items not required to be done in the performance of said work.

J. EMIL WALSCHEID,
Attorney for Prosecutor.

Proof of Service of Writ.

(Filed September 12, 1926.)

NEW JERSEY SUPREME COURT.

CLIFTON JORDAN, Prosecutor, v. BOROUGH OF DUMONT, in the County of Bergen, and I. B. MILLER, INC., a corporation, Defendants.	Affidavit.

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

Henry Vogler, of full age, being first duly sworn according to law, upon his oath deposes and says:

I am employed in the office of J. Emil Walscheid, the counsel for the prosecutor in the above entitled cause.

On May 31st, 1927, the Writ of Certiorari allowed in the above entitled matter was served on H. J. Bersch, Clerk of the Borough of Dumont, as will appear from the affidavit of Maurice L. Wenzelberg hereto attached.

On June 1st, 1927, Mr. Miller, connected with I. B. Miller, Inc., one of the defendants, called at the office of J. Emil Walscheid for the purpose of retaining him in the action above referred to, and was advised that Mr. Walscheid could not represent him because of the fact that he represented the prosecutor. At that time he was advised that a Writ of Certiorari had been issued, and on

June 2nd, 1927, I mailed to I. B. Miller, Inc., the defendant referred to, at its New York office, #406 West 38th Street, New York City, a letter enclosing a copy of the Writ allowed and served on the Borough of Dumont. The letter referred to was mailed in an envelope properly addressed with postage thereon prepaid, which envelope contained the name and address of J. Emil Walscheid, the attorney for the prosecutor, in the upper lefthand corner, so as to assure a return of said letter in the event that the same was not delivered to the addresses. The envelope in question was not returned to me.

Sometime after the mailing of said letter Mr. Miller called at the office for the purpose of taking up with me the matter of the settlement of the suit in question, and after having spoken to him I was advised by him that one George Cutley appeared for him as attorney.

On September 9th, 1927, I called Mr. Cutley in reference to the suit in question and was advised by him that my letter under date of June 2nd, 1927, addressed to I. B. Miller, Inc., enclosing the writ referred to, was turned over to him by a representative of the defendant I. B. Miller, Inc.

This affidavit is made for the purpose of proving service of the writ referred to on the defendant I. B. Miller, Inc., in the above entitled cause.

HENRY VOGLER.

Sworn and subscribed to before me
this 12th day of September, A. D. 1927.

LIONEL
~~DANIEL~~ ISAACS,
Master in Chancery
of New Jersey.

NEW JERSEY SUPREME COURT.

CLIFTON JORDAN,
Prosecutor,

v.

BOROUGH OF DUMONT, in the County of Bergen, and I. B. MILLER, INC., a corporation,
Defendants.

Affidavit.

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

Maurice L. Wenzelberg, of full age, being first duly sworn according to law, upon his oath deposes and says:

On May 31st, 1927, I served the Writ of Certiorari in the above entitled matter on H. J. Bersch, Clerk of the Borough of Dumont, personally.

MAURICE L. WENZELBERG.

Sworn and subscribed to before me this 1st day of June, A. D. 1927.

HENRY VOGLER,
Master in Chancery
of N. J.

Rule for Judgment.

(Filed April 5, 1928.)

NEW JERSEY SUPREME COURT,

CLIFTON JORDAN, Prosecutor, v. BOROUGH OF DUMONT, in the COUNTY OF BERGEN, and I. B. MILLER, INC., Defendants.	On Certiorari. Rule for Judgment.

The court having inspected the proceedings returned with the certiorari in this cause, the reasons assigned for reversal of said proceedings and having heard the argument of counsel thereon, and considered the same, DO ORDER that the said writ of Certiorari be and the same hereby is dismissed, with costs.

Entered, April 5, 1928.

On Motion of
FRED W. MATTOCKS,
Attorney for Defendant,
Borough of Dumont,
In the County of Bergen.

Opinion of Supreme Court.

(Filed March 17, 1928.)

NEW JERSEY SUPREME COURT.

No. 219, October Term, 1927.

Clifton Jordan, Prosecutor, v. Borough of Dumont, County of Bergen, and I. B. Miller, Inc., Defendants.	On certiorari.

Before—Justices Trenchard, Kalisch and Katzenbach.

For the Prosecutor:

J. Emil Walscheid.

For the Defendant, Borough of Dumont:

Fred W. Mattocks.

Per curiam: A writ of certiorari was sued out of the Supreme Court, to bring up for review a certain resolution awarding a contract for the construction of an eight inch reinforced concrete pavement with integral curb and other improvements on New Milford Avenue, in the Borough of Dumont, to I. B. Miller, Inc., a corporation. The matter is now here for review.

Section four of the ordinance under which the proposed improvement is to be made, provides:

"That the aforesaid improvement shall be made as a 'local improvement' and the damages sustained by and the benefits conferred upon the lands affected by said improvement shall be assessed in accordance with the provisions of the statute in such case made and provided."

For the Borough it is contended that the prosecutor has no interest in the improvement and has no legal right to prosecute the writ in this case.

For the prosecutor it is contended that the court will indulge in a presumption on a final hearing of a writ of certiorari, that the prosecutor is a taxpayer owning property on the line of the improvement and is affected by the proposed improvement without any proof to that effect, and relies upon the cases of Lantry v. Sage, 69 N. J. L. 560; Rehill v. East Newark and Jersey City, 73 Id. 220; O'Brien v. Public Utility Board, 92 Id. 44; affirmed Id. 587, as supporting his contention.

In the cited cases it appears, however, there was testimony taken and no objection seems to have been made to the legal status of the prosecutors until the cases came on for a hearing. In the present case there is nothing in the printed record to show that there was any testimony taken and from aught that appears therein the writ was granted in an *ex parte* proceeding, and no hearing was had on the matter before the case came before us for determination. We think, therefore, the case *sub judice,* falls within the declaration made by Beasley, C. J., in West Jersey Traction Company v. Camden, 58 N. J. L. page 362, who speaking for the Court of Errors and Appeals, at pages 364, 365, said: "When a judge is called upon in a proceeding *ex parte* to allow a certiorari, he must be reasonably assured of two things, first, that there is some illegality to be complained of and second,

that the party seeking the remedy is entitled to it, but the *allocatur* no more adjudges the one fact than the other. By force of our rule of court such assurance as required to be made by an affidavit, but such oath has no semblance of juridical testimony. The rules of testimony do not apply to it and it is used against the party who has no knowledge of its existence. Such a basis as this is incapable of supporting anything in the nature of a judicial decision; all that it lays the ground for is that the judicial officer resting his opinion upon it may say that there is presented to him a matter that it is proper to put in the course of legal inquiry. The allowance of the writ can have no greater force than that; it can have no effect upon the trial of the issue between the litigants, for when the litigation reaches that stage the prosecutor must, if required, expressly or impliedly prove his legal *status* as the actor in the suit. That this must be so is evident when we remember that it is the legal right of a person in the possession of any valuable thing, to be exempt from all litigation, with respect to it except such as may be waged by someone having an interest in it, and such an immunity is a valuable legal right which cannot in anywise be impaired by an *ex parte* decision founded on an *ex parte* affidavit.

There being no proof before us that the prosecutor is a taxpayer in the Borough of Dumont, and no proof that the prosecutor would be assessed for any part of the improvement or that the prosecutor is the owner of any land to be affected by said improvement, either in damages sustained or benefits conferred, he is without any legal status to prosecute the writ.

The writ is dismissed, with costs.

New Jersey Court of Errors and Appeals

CLIFTON JORDAN, Prosecutor-Appellant, v. BOROUGH OF DUMONT, IN THE COUNTY OF BERGEN, and I. B. MILLER, INC., a corporation, Defendants-Appellees.	On Certiorari. On Appeal from Supreme Court.

BRIEF FOR PROSECUTOR-APPELLANT.

Statement.

This is an appeal to review the action of the Supreme Court in dismissing a writ of certiorari.

The case was submitted to the Supreme Court on briefs.

The writ was dismissed *solely* because at the *final* argument of the cause, or rather because in the brief filed for the defendant borough upon *final* argument of the cause before the Supreme Court, objection was made that prosecutor has no interest in the improvement and has no legal right to prosecute the writ in this case (p. 89, l. 7), the Supreme Court saying:

> "There is no proof *before us,* that the prosecutor is a taxpayer in the Borough of Du-

> mont, and *no proof* that the prosecutor would be assessed for any part of the improvement or that the prosecutor is the owner of any land to be affected by said improvement, either in damages sustained or benefits conferred, he is without any legal status to prosecute the writ (p. 90, l. 32).

The Borough of Dumont, in the County of Bergen, undertook to improve New Milford Avenue, as a local improvement (p. 4, l. 3) pursuant to the provisions of Chapter 152 of the Laws of 1917 (Home Rule Act). To that end the borough adopted plans and specifications for the doing of the work described in the ordinance adopted therefor (p. 4, l. 4), and thereafter, at a meeting of the Borough Council, held on the 18th day of May, 1927, received bids for this work (p. 9, l. 20), and adopted a resolution awarding a contract for the performance of the same to I. B. Miller, Inc., one of the defendants herein (p. 11, l. 14).

Clifton Jordan, a taxpayer, owning property on the line of the improvement, thereupon applied upon ex-parte affidavits filed in the office of the Clerk of the Supreme Court on June 4th, 1927, for a writ of certiorari to review the action of the Borough Council of the Borough of Dumont in thus making an award to I. B. Miller, Inc.

The writ was allowed by Mr. Justice Parker on May 28th, 1927 (p. 1, l. 1).

In the Supreme Court prosecutor objected to this award on the grounds that (1) the specifications for the work to be done do not fix the date before which the same shall be completed, or the number of working days to be allowed for the completion thereof; and that (2) the specifications for the work to be done set up a false and illusory

standard for the comparison of bids, in that these specifications call for proposals on items not required to be done in the performance of said work.

After the allowance and service of the writ upon the borough and upon I. B. Miller, Inc., the borough made return to the writ (p. 3, l. 1), which was filed July 23rd, 1927 (p. 3, l. 1).

The return was thereafter amended by agreement to include certain record data deemed necessary for a proper presentation of the case (p. 80, l. 1); *and the stipulation making this amendment to the return was signed by the* attorney for the borough (p. 82, l. 35).

After the case was deemed ready for argument the State of the Case was printed, *at considerable expense to* the prosecutor, and the cause was noticed for argument at the October Term, 1927 (p. 88, l. 4).

The writ was allowed on May 28, 1927 (p. 2, I. 31). The October Term 1927 opened on October 4th, 1927.

For a period of four months the defendants, therefore, allowed the supersedeas of the writ to prevent them from making the contemplated improvement without moving to vacate the writ, and during that time actively assisted in preparing the case for final hearing before the Supreme Court.

The record in this case does *not* disclose that any motion was made in this case in the Supreme Court to vacate the allocatur or to dismiss the writ because of lack of interest in the prosecutor in the subject matter of the litigation; on the contrary, the record shows that the defendant borough *aided* the prosecutor *in bringing the cause to a speedy final hearing* in the Supreme Court by stipulating an amendment to the return made by the borough to the writ and by stipulating facts (pp. 80-82)

which otherwise could only have been presented to the Supreme Court by means of depositions taken pursuant to rule allowed for that purpose.

Argument.

POINT I.

The Supreme Court erred in dismissing the writ because there was no proof before it that the prosecutor is a taxpayer in the Borough of Dumont, and because there was no proof before it that prosecutor would be assessed for any part of the improvement, and because there was no proof before it that prosecutor is the owner of any land to be affected by the improvement, either in damages sustained or benefits conferred.

The Supreme Court in deciding the case at bar followed the opinion of Mr. Chief Justice Beasley in West Jersey Traction Company v. Camden, 58 N. J. L. 362, decided by the Court of Errors & Appeals upon *two* opinions, *both* leading to the same result, but *each* taking a different view *of the facts in the case;* one opinion being by Mr. Chief Justice Beasley, the other being by Mr. Justice Garrison.

There is nothing in the reported case to indicate which of the two opinions the Court of Errors and Appeals adopted in reaching its conclusion on the facts of that case, but it is submitted,—as I hope to demonstrate,—that the Supreme Court erred in the instant case, in finding that the conclusions of Mr. Chief Justice Beasley in West Jersey Traction Company v. Camden, supra, should control.

The rules of the Supreme Court provide:

> "168. No certiorari shall be allowed by the court or a justice, except upon affidavit or other proof, *establishing* the facts upon which the application is founded.
>
> 170. All writs of certiorari * * * etc. The Justice who has allowed a writ of certiorari * * * may order a vacation of the allocatur."

In order to obtain the writ from Mr. Justice Parker, who allowed it, prosecutor, under Supreme Court Rule 168, was therefore forced *to establish* by affidavit or other proof, to the satisfaction of the Justice, the fact that he had the necessary standing to prosecute. The writ could not, and would not, be allowed without such proof. Such proof was made in this case by affidavit which shows the prosecutor to be a taxpayer owning real estate facing on the line of the improvement. The affidavit in question was filed with the Clerk of the Supreme Court on June 4th, 1927.

It is the contention of the appellant that under the rules of the Supreme Court and under a long line of decisions in the Supreme Court and in the Court of Errors and Appeals, the allowance of the writ *raises a presumption* that the writ was properly allowed; and that the prosecutor *had the necessary standing to prosecute the writ,* and that this presumption must prevail unless and until it be made to appear by *affirmative* evidence in the cause that the prosecutor *lacks* the necessary interest in the litigation to act as a prosecutor.

> Rutgers College Athletic Ass'n. v. New Brunswick, 55 N. J. L. 279 (Sup. Ct.);
> Avon v. Neptune City, 57 N. J. L. 362 (Sup. Ct.);

Avon v. Neptune City, 57 N. J. L. 701 (E. & A.);
West Jersey Traction Co. v. Shivers, 58 N. J. L. 124 (Sup. Ct.);
Biddle v. Riverton, 58 N. J. L. 289 (Sup. Ct.);
State, Smally, Pros. v. Board of Education, 63 N. J. L. 201 (Sup. Ct.);
Dickinson v. Jersey City, 68 N. J. L. 99 (Sup. Ct.);
Lantry v. Sage, 69 N. J. L. 560 (Sup. Ct.);
Central R. R. Co. v. Elizabeth, 70 N. J. L. 578 (Sup. Ct.);
Rehill v. East Newark and Jersey City, 73 N. J. L. 220 (Sup. Ct.);
Levy v. Elizabeth, 81 N. J. L. 643 (E. & A.);
Doremus v. Freeholders of Passaic, 89 N. J. L. 197 (E. & A.).

The following excerpts taken from the opinions in the foregoing cases show the growth and development of this rule of practice:

Rutgers College Athletic Ass'n. v. *New Brunswick,* 55 N. J. L. 279, at 280, 281, (Sup. Ct.) per Magie, J. (1893):

> "Writs of certiorari, except those directed to courts for the trial of small causes, can now be allowed *only* on proof of the facts on which application for the writ is made. Sup. Ct. Rules, Sect. 57. The allowance of the writ is an adjudication that the prosecutor is entitled to seek relief by the use of such a writ, and such adjudication will not be reversed unless it clearly appears to be erroneous.
>
> Prosecutor was incorporated under the 'Act to incorporate boat clubs and other associa-

tions for the promotion of athletic exercises.' Rev. p. 1268. Considering the powers conferred by that act, it is obvious that prosecutor may be so affected by the ordinance brought up by this writ as to be entitled to contest its validity.

The objection to prosecutor's standing is *not presented by way of motion to vacate the allocatur or to dismiss the writ, but upon the hearing of the cause.* The affidavits on which the writ was issued are not before us on hearing. Affidavits were taken by prosecutor under a rule. Defendant's counsel objected to taking those affidavits, and, on the argument, insisted that such affidavits could not be considered, because the writ was not issued for any purpose within the provisions of the act authorizing this court upon review by certiorari to determine disputed questions of fact. Rev. Sup. p. 84.

But it was not necessary for prosecutor to take affidavits to establish its right to the writ of certiorari; that must be presumed from the allocatur.

If, however, the affidavits taken under the rule be admitted, upon consideration it is obvious that they do *not* show that prosecutor did *not,* at the time the writ issued, have a standing to thus question the validity of the ordinance.

If the affidavits be rejected, *the presumption that the writ was properly allowed must prevail."*

Avon v. *Neptune City,* 57 N. J. L. 362 at 365 (Sup. Ct.) per Magie, J., (1894) :

"It is further objected that prosecutor has shown no standing to attack this proceeding. It has been held in this court that, under existing rules, the allowance of a certiorari is an adjudication that the prosecutor therein has a right to the writ, which will maintain his standing in court *until it is attacked by evidence.* Athletic Association v. New Brunswick, 26 Vroom 279."

Avon v. *Neptune City,* 57 N. J. L. 701 at 702, (Error & App.) per Dixon, J. (Preceding Case on Appeal aff'd.) (1894):

"With regard to the objection that the prosecutor of the writ of certiorari *was not shown to have owned any lands along the line of the proposed railway* or within the borough of Neptune City, and therefore its right to complain of the municipal action does not appear, we think that, after the allowance of the writ, *such right should be assumed in the absence of proof to the contrary.* The affidavits on which the certiorari was allowed are not before us, nor does the record indicate that *any motion was made in the Supreme Court to vacate the allocatur or dismiss the writ, which is usually the proper mode of questioning the standing of the prosecutor.* On final hearing, his right to prosecute is not primarily involved, *unless* the return to the writ or the proofs taken under it *affirmatively* show his lack of legal interest in the controversy."

West Jersey Traction Co. v. *Shivers,* 58 N. J. L. 124, at 125 (Sup. Ct.) per Garrison, J. (1895):

"The question of the interest of the prosecutor in the subject-matter brought up by this

writ, is not before us in this return. Avon v. Neptune City, 28 Vroom 701. *No facts are given on this question.*"

Biddle v. *Riverton,* 58 N. J. L. 289, at 291 (Sup. Ct.) per Magie, J. (1895):

> "It is thereupon contended, first, that prosecutors have no standing to sue out this writ, but it is now settled that, after the allowance of a certiorari, the right of prosecutors to the writ will be assumed in the absence of proof to the contrary. Avon v. Neptune City, 28 Vroom 362; S. S. Id. 701."

State, Smalley, Prosecutor v. *Board of Education,* 63 N. J. L. 201 (Sup. Ct.) per Collins, J. (1899):

> "The defendants challenge the interests of the prosecutor in the premises and have served notice requiring him to prove his interests. The differing opinions read in the cases of Avon v. Neptune City, 28 Vroom 701, and West Jersey Traction Co. v. Camden, 29 id. 362, have left involved in doubt the question of the duty of the prosecutor of a certiorari to prove on final hearing his interest in the controversy he incites, but I understand it to be settled that *whenever it does in fact appear* that a prosecutor has *no* such interest the writ should be dismissed as to him. Tallon v. Hoboken, 31 id. 212. The defendants in this case pray a dismissal on this ground, and we feel constrained to that judgment."

In this case Mr. Justice Collins points to the evident difference of opinion created by Mr. Chief

Justice Beasley in West Jersey Traction Co. v. Camden, and then follows Avon v. Neptune City.

Dickinson v. *Jersey City,* 68 N. J. L. 99, at 102 (Sup. Ct.) per Fort, J. (1902):

> "Some point was made in the case that the prosecutor *had not proven* that he was a citizen or taxpayer in Jersey City and hence not entitled to prosecute this writ. It not appearing in the record that that fact was challenged *at the hearing or upon the proofs,* it is not necessary for the prosecutor to prove it. Avon v. Neptune City, 28 Vroom 701; West Jersey Traction Co. v. Camden, 29 id. 362; Smalley v. Board of Education, 34 id. 201."

It will be noted that in this case West Jersey Traction Co. v. Camden is cited *in support of the rule* contended for by appellant in this case.

Lantry v. *Sage,* 69 N. J. L. 560, at 561 (Sup. Ct.) per Dixon, J. (1903):

> "But defendant questions the right of the prosecutor to review the matter *because his interest,* it is claimed, *is not shown.* His interest, we think, is at this stage of the proceeding (upon final hearing before Supreme Court) to be assumed, since no contrary suggestion was made before final hearing. Such was the deliberate judgment of the Court of Errors in Avon v. Neptune City, 28 Vroom 701. Although, in the opinion delivered by Chief Justice Beasley in West Jersey Traction Company v. Camden, 29 id. 362, there is expressed some disapproval of that rule, the expression is merely *obiter,* for not only was the proof there lacking necessary to show the

> illegality of the action under review, but the status of the prosecutor *was expressly challenged* by the defendant while the evidence in the case was being produced. *We regard the rule laid down in Avon* v. *Neptune City as being still in force.*"

In this case Mr. Justice Dixon who wrote the opinion in Avon v. Neptune City in the Court of Errors, explains and disposes of the opinion of Mr. Chief Justice Beasley in West Jersey Traction Co. v. Camden as not controlling.

Central R. R. Co. v. *Elizabeth,* 70 N. J. L. 578, at 580 (Sup. Ct.) per Garrison, J. (1904):

> "The standing of the prosecutor to litigate the validity of this ordinance, although argued on behalf of the defendants, has *not* been raised by any motion looking either to the improvidence of the allowance of the writ or its vacation, or the dismissal of the writ itself. The prosecutor therefore 'has not expressly or impliedly been required to maintain the status that, under our practice, is accorded upon final hearing by the allowance of the writ of certiorari.' Avon v. Neptune City, 28 Vroom 701; West Jersey Traction Co. v. Camden, 29 id. 362."

In this case Mr. Justice Garrison, using the language of Mr. Chief Justice Beasley in West Jersey Traction Co. v. Camden (58 N. J. L. 362 at p. 365), cites this case as supporting the rule contended for by appellant in this case.

Rehill v. *East Newark and Jersey City,* 73 N. J. L. 220, at 221 (Sup. Ct.) per Pitney, J. (1906):

"Before considering the merits, we must dispose of *a motion made by respondents for a dismissal of the writs,* which is based upon the ground that the prosecutors have no such interest in the subject-matter as will warrant the court in setting aside the contract upon their application. The prosecutors Rehill and wife are or claim to be taxpayers of Jersey City. The water companies are assignees of an unexpired contract made in the year 1895 by the township of Kearny with the East Jersey Water Company for the supply of water to the township, East Newark being at that time a part of Kearny. *That such is in truth the status of the prosecutors was not seasonably disputed by the respondents, and must be taken to be true as matter of fact.* Avon v. Neptune City, 28 Vroom 701; Biddle v. Riverton, 29 id. 289, 291; Dickinson v. Jersey City, 39 id. 99, 102; Lantry v. Sage, 40 id. 560."

Levy v. *Elizabeth,* 81 N. J. L. 643, at 645 (Er. & App.) per Parker, J. (1911):

"The rule appears to be settled that after the allowance of a writ of certiorari, the status of a prosecutor *will be presumed in the absence of proof to the contrary.* Avon v. Neptune City, 28 Vroom 701. 'On final hearing,' said Mr. Justice Dixon, speaking for this court in that case, 'his *right* to prosecute is not *primarily* involved, unless the return to the writ or the proofs taken under it *affirmatively show his lack* of interest in the controversy.' Avon v. Neptune City is the authority relied on in the later Supreme Court cases of Biddle v. Riverton, 29 id. 289; Dickinson v. Jersey

> City, 39 id. 99, 102; Lantry v. Sage, 40 id. 560, and Rehill v. East Newark, 44 id. 220, in dealing with this question. We find nothing in the case at bar to show that the status of the prosecutor was challenged *before,* or indeed at the final argument in the court below. It is challenged here for the first time; *and as the Supreme Court would have been bound under the ruling in Avon* v. *Neptune City, as well as its own decisions, to refuse to consider it, there is still better reason for such refusal at this stage."*

Levy v. Elizabeth, just cited, is a re-affirmance by the Court of Errors and Appeals of the rule first affirmed by the Court of Errors and Appeals in Avon v. Neptune City, supra.

Levy v. Elizabeth was decided by the Court of Errors in 1911,—long after Chief Justice Beasley wrote the opinion in West Jersey Traction Co. v. Camden, which is made the basis of the opinion in the instant case.

Doremus v. *Freeholders of Passaic,* 89 N. J. L. 197, 199 (Er. & App.), per Gummere, C. J. (1916):

> "The appellants claimed the right to prosecute the writ, first, as the owners of the lands contracted for, and second, as members of a class of persons directly affected by the erection and maintenance of an armory in the city of Passaic.
>
> If they are not entitled to prosecute the writ under either the one right or the other, then, although their standing as relators was not challenged in the Supreme Court, yet if their lack of legal interest in the controversy, which the proceedings present, *affirmatively appears,*

this court should not only refuse to consider the meritorious questions involved, but should direct a dismissal of the proceedings, although that course had not been followed by the court out of which the writ issued. Avon v. Neptune City, 57 N. J. L. 701; West Jersey Traction Co. v. Camden, 58 Id. 362."

In this case again, the Court of Errors and Appeals affirms the proposition that only where it affirmatively appears in the proceeding, subsequent to the allowance of the writ, that the prosecutor has *no* legal interest in the subject-matter of the controversy, will the writ be dismissed.

From rule 168 of the Supreme Court, and the reasoning of the foregoing cases, it is thus apparent that the writ cannot or should not be allowed *unless* the prosecutor by affidavit, or other proof, *establishes to the satisfaction of the justice,* that there is some illegality to be complained of, *some debatable question of law* to be argued, and that the party seeking is entitled to the remedy, either in his own personal right or because he is one of a class of the body public which will be affected by the illegality.

The determination of these questions in any given application for a writ necessarily involves judicial judgment, and the allowance of a writ must necessarily carry with it an adjudication that the applicant has at least made out a prima facie case entitling him to be heard before the court upon the merits of the subject-matter to be investigated; in other words, it raises a presumption that there *is* some illegality requiring investigation by the court, and further, that the prosecutor has the necessary standing, interest or qualification to entitle him to present the matter. This presumption is, of course,

rebuttable. The presumption that there *is* illegality, that there *is* a debatable legal question, is a presumption of law; that presumption can only be sustained or rebutted upon final hearing or argument of the cause. The presumption that prosecutor has the necessary standing, interest or qualification is a presumption of fact and that presumption can be rebutted only by fact. Any *facts* tending to rebut this presumption must necessarily be given in evidence, *before* the court will undertake to decide the question of illegality brought up by the writ, for the court will not decide purely academic questions. Such facts, under established practice in certiorari, are usually adduced by means of depositions taken pursuant to rule and *before* argument on final hearing. In this way the standing of a prosecutor can be directly put in issue and prosecutor, being challenged, will have a chance to establish his right to prosecute *as a fact in the cause,* or, if he fails in his proof, may have his writ dismissed upon motion.

To allow defendant to assail prosecutor's standing *on the final hearing, without having adduced evidence to support the objection,* will necessarily work a hardship on prosecutor. The ex-parte affidavit or other proof used to obtain the writ is not before the court, nor will he be allowed to produce evidence before the court in support of his standing or qualification, on the final hearing. He has, because of the numerous decisions hereinbefore cited, *relied upon the presumption arising out of the allowance of the writ* and if defendant can attack his standing on final hearing, without evidence to support the contention, then prosecutor has been led into a trap, since he has had no notice of the attack and has had no opportunity to establish his standing, even though he may be fully qualified to prosecute the writ.

But a defendant having evidence to show that prosecutor has no standing, need not wait until depositions are taken pursuant to rule under the writ. He may immediately move to vacate the allocatur under Supreme Court Rule 170, may, if required adduce his evidence on depositions taken for the purpose of the argument of this motion and may thus immediately force prosecutor to establish his right to prosecute or suffer a vacation of the writ.

Whether the attack upon prosecutor's standing takes the form of a motion to dismiss the writ, or a motion to vacate the allocatur, in each instance prosecutor *is put upon notice,* in each instance *his standing is challenged* and he is given an opportunity to meet the challenge by proof of his right to prosecute. No such right can be accorded prosecutor if defendant, on final hearing or argument, can, by mere objection successfully question prosecutor's standing on the ground that the record *does not affirmatively show* prosecutor's right to proceed with the suit.

In the instant case the Supreme Court says that there is no *proof* before the court that the prosecutor is a taxpayer in the Borough of Dumont, or that he would be assessed for any part of the improvement, or that he is the owner of any land to be affected by the improvement either in damages sustained or benefits conferred, and that he is *therefore* without any legal status to prosecute the writ (p. 90, l. 30).

This finding of fact by the Supreme Court is fully substantiated by the record, but in my opinion brings this case squarely within the rule formulated by the opinions in the list of cases hereinbefore cited. The gist of all of the opinions in these cases is that the allowance of the writ creates a presumption of standing in the prosecutor which can only

be challenged by a direct attack upon his qualification to act.

In the instant case the Supreme Court bases its conclusion that the prosecutor is without any legal status to prosecute the writ because there is no *proof before the court of his right to do so,* upon the opinion of Mr. Chief Justice Beasley, in West Jersey Traction Co. v. Camden, 58 N. J. L. 362, and it quotes from that opinion the following (see pp. 364, 365):

> "When a judge is called upon in a proceeding *ex parte* to allow a certiorari, he must be reasonably assured of two things, first, that there is some illegality to be complained of, and second, that the party seeking the remedy is entitled to it; but the *allocatur* no more *adjudges* the one *fact* than the other. By force of our rule of court such assurance is required to be made by an affidavit, but such oath has no semblance of juridical testimony. The rules of evidence are not applied to it and it is used against a party who has no knowledge of its existence. Such a basis as this is incapable of supporting anything in the nature of a *judicial decision*; all that it lays a ground for is that the judicial officer, resting his opinion upon it, may say that there is presented to him a matter that it is proper to put in the course of legal inquiry. The allowance of the writ can have no greater force than that; it can have no effect on the *trial* of the issue between the litigants, for when the litigation reaches *that* stage the prosecutor must, *if required,* expressly or impliedly, prove his legal status as the actor in the suit."

In West Jersey Traction Co. v. Camden, supra, the cause had reached the stage of *the trial* of the issues of fact between the litigants, for West Jersey Traction Co. had obtained a rule to take testimony under the writ (p. 363) and during the course of the taking of these depositions, as Mr. Chief Justice Beasley says, "the record shows that the right of the plaintiff to prosecute the injury was challenged" (p. 365). This being so, West Jersey Traction Co. v. Camden, supra, presented just such a situation as would entitle the defendant, upon a successful challenge of prosecutor's right, to an adjudication of that right for, as was said by Mr. Chief Justice Beasley in that case, "plaintiff therein was by that challenge put upon notice that it must make strict proof of its status".

Again, in West Jersey Traction Co. v. Camden, the prosecutor was not suing as one of a class of the body public which would be injured by the illegality complained of. It was suing for an invasion of what it considered its private right. This private right was at the same time the qualification of prosecutor to have its writ, and the very crux of the meritorious question mooted in the cause. The establishment of this private right was one of the *issues of fact* in the cause and reached beyond the mere question of the standing or right of the prosecutor to prosecute his writ. The prosecutor in West Jersey Traction Co. v. Camden was bound to establish this private right in order to succeed upon the merits, and, when it failed in this respect, its case necessarily went by the boards both on the merits and upon its standing as a prosecutor. If in West Jersey Traction Co. v. Camden the prosecutor had been a taxpaying citizen, and if the citizen had attempted to reverse the proceedings of the City of Camden then under review on the ground that the

action of the City was illegal because it had awarded the franchise in dispute without giving the West Jersey Traction Co. an opportunity to be heard, the final result of the litigation would have been the same; but in the hypothetical case just stated, the standing of the prosecutor to prosecute, assuming always that he had the right to complain, because of his taxpaying qualification, would not have been affected by proof that the West Jersey Traction Co. did not have the right to be heard upon the grant of the franchise involved in that suit.

As I read the opinion of Mr. Chief Justice Beasley in West Jersey Traction Co. v. Camden, much apparent confusion would have been avoided if this distinction had been kept in mind and the result would have been a dimissal of the writ upon the merits. The discussion of the rule laid down in the Court of Errors in Avon v. Neptune City, supra, by the Chief Justice in the West Jersey case, was in my mind, therefore, unnecessary and obiter.

Applying, however, the language quoted by the Supreme Court from West Jersey Traction Co. v. Camden to the instant case, it is my contention that the Supreme Court misapplied the same, for, in the instant case the standing of the prosecutor *was not challenged prior to final hearing of the cause.* In the instant case, therefore, prosecutor was not called upon or required to prove his legal status as an actor in the suit, and the language quoted by the Supreme Court from West Jersey Traction Co. v. Camden, is inappropriate *and does not fit the facts in the case at bar.*

West Jersey Traction Co. v. Camden has been cited, as heretofore indicated, in the list of cases excerpted in support of the proposition that there is a presumption in favor of a prosecutor arising out of the allowance of a writ which protects his

standing as a prosecutor until that standing is affirmatively challenged by the defendant, and also, in support of the rule that such challenge to be effective must be made by the presentation of evidence before final hearing or argument of the cause upon the legal questions involved therein. Thus understood, West Jersey Traction Co. v. Camden will not support the opinion of the Supreme Court in the instant case.

If, however, the opinion of Chief Justice Beasley in West Jersey Traction Co. v. Camden, supra, is to be understood to mean that a prosecutor must, as part of the record to be presented to the Supreme Court, *affirmatively prove and establish that he has such an interest in the subject-matter of the suit as will give him a standing to prosecute,* then it is my contention that this opinion no longer represents the law of this State,—if it ever did,—and that it has been overruled or ignored by the long line of cases hereinbefore cited.

The cases of Smalley v. Board of Education, 63 N. J. L. 201 and Lantry v. Sage, 69 N. J. L. 560, although in the Supreme Court, both indicate that the trend of thought of the justices who sat in those cases was against the notion contained in the opinion of Mr. Chief Justice Beasley,—if such notion is therein contained,—that prosecutor must affirmatively prove in the record to be submitted to the Supreme Court that he has such an interest in the cause as will give him a standing to prosecute.

In Smalley v. Board of Education, supra, Mr. Justice Collins says that he understands it to be settled that only whenever it does *in fact* appear on final hearing that a prosecutor has no such interest as will entitle him to prosecute, that the writ will be dismissed.

And in Lantry v. Sage, supra, Mr. Justice Dixon, speaking for the Supreme Court, says that the expression of disapproval contained in Mr. Chief Justice Beasley's opinion in West Jersey Traction Co. v. Camden, supra, of the rule laid down in the Court of Errors and Appeals in the case of Avon v. Neptune City, is merely obiter and theretofore of course not binding, for, as Mr. Justice Dixon in Lantry v. Sage says: "Not only was the proof there *lacking* necessary to show the *illegality* of the action under review, *but the status of the prosecutor was expressly challenged by the defendant while the evidence in the case was being produced.*" Mr. Justice Dixon, while showing the expression of opinion by Mr. Chief Justice Beasley to be merely obiter, at the same time reconciles the decision with Avon v. Neptune City, supra, and the many cases which followed, by showing that the status of the prosecutor in West Jersey Traction Co. v. Camden, supra, *was* expressly challenged by the defendant while the evidence in the case was being produced; and that the presumption in favor of prosecutor's standing, which arose out of the allowance of the writ, was in that case *actually challenged and destroyed* at the trial of the issues of fact, i. e., at the taking of depositions pursuant to rule.

For the foregoing reasons it is submitted that the Supreme Court erred in dismissing the writ because the prosecutor lacked legal standing to prosecute.

POINT II.

The specifications for the work to be done do not fix the date before which the same shall be completed, or the number of working days to be allowed for the completion thereof.

The specifications for the work provide that:

> "The bidder must admit his proposal upon the forms furnished by the Board" (p. 25, l. 27).

The specifications for the work also provide that:

> "The contractor shall perform fully, entirely and in an acceptable manner the work contracted for *within the time stated in the proposal*" (p. 150, l. 29).

I. B. Miller, Inc., to whom the contract was awarded, in its proposal stated:

> "They do further declare that they will commence the work within the time specified in the specifications and will complete the same fully in every respect on or before the expiration of ninety (90) working days after the commencement of the same, according to the terms of the specifications" (p. 81, l. 20).

Seven other proposals were received for this work (p. 9, l. 20). *All* of said proposals were upon forms supplied by the municipality and were in form identical to the proposal of I. B. Miller, Inc., set out in the Return (p. 81 of Book), and *each* bidder, in the proposal thus submitted by him, *fixed the number of working days within which he intended to complete the work to be done* (p. 82, ll. 1-10).

Section 5, Article 11 of the Home Rule Act (Chapter 152, Laws of 1917),—being the Article dealing with "CONTRACTS," among other things, provides:

> "All specifications for the work of any improvement shall fix the date before which the same shall be completed or the number of working days to be allowed for the completion thereof."

It is submitted that this statutory provision is a declaration of public policy and is a *limitation* upon the power of the Board to adopt specifications, and that the adoption of specifications in violation of the foregoing statutory provision must necessarily result in the avoidance of any contract awarded thereon if attacked upon certiorari within the proper time.

Hokke v. *Passaic,* 3 Misc. 245, 248.

The Borough of Dumont, in the specifications brought up for review in this case, ran counter to the statutory provision, in that it *deliberately* allowed the bidders to submit proposals as to the number of working days within which they would complete the work—thus placing in *competition* the number of working days, contrary to the provisions of the statute and contrary to the cases dealing with this subject.

In Armitage v. Newark, 86 N. J. L. 5, page 9, Mr. Justice Garrison, in dealing with an identical situation, says:

> "There is another flaw in these proceedings that ought not to be passed over *merely because no demonstrable harm has come of it in*

> *the present case.* I refer to the requirement of the advertisement that each bidder must specify the number of days he will require to finish the work. According to all our cases, if this element of time is to enter into the competitive scheme, it should be the same for all, *not* left for each bidder to fix for himself and thereby estimate his bid upon a basis different from that of any other bidder. The general vice of this course is that no common standard for the competition is set up, and as was said by the Court of Errors and Appeals in Browning v. Bergen, 79 N. J. L. 494, 'where no common standard is set up no competition is proposed.' "

To the same effect is Hoeman v. Camden, in the Supreme Court (3 Misc. 301), in which last mentioned case an award of contract was set aside because the bidders were privileged to set their own time within which they were to complete the work.

The case of Armitage v. Newark, supra, was cited with approval in the Court of Errors, upon the very language above quoted, in Tice v. Long Branch, 98 N. J. L. 214.

The respondent borough in its argument in the Supreme Court did not deny the facts stated in this point, but contended that the number of working days in which the several contractors would do the work is not stated in the State of the Case except as it is stated in the proposal of I. B. Miller, Inc. (p. 81).

The State of the Case does show that besides I. B. Miller, Inc., seven other proposals were received for this work (p. 9, l. 20, where the names and addresses of all of the bidders, being eight in number, are set forth). It also appears that all of the proposals of these eight bidders were upon

forms supplied by the municipality, and that these forms were identical in form to the proposal of I. B. Miller, Inc., set out upon page 81 of the Book, and that each bidder in the proposal thus submitted by him *fixed the number of working days* within which he intended to complete the work to be done (p. 82, ll. 1-10).

The mere fact that the State of the Case does not show the actual number of days fixed by each of these bidders seems to be immaterial and beside the issue. The illegality of the proceeding does not arise out of the number of days fixed by the several bidders, but arises out of the failure of the municipality to comply with the mandate of the law and the public policy thereby fixed and established, namely, that the municipality should furnish a proper standard, not only for the actual comparison of the bids, but also as a *basis* upon which bidders may calculate their proposals.

The objection in this case is that the municipality failed to furnish this common standard in so far as the time element was concerned and that therefore bidders could not submit legal proposals based upon the standard required by law.

The defendant Borough, further answering this point in the Supreme Court, said:

> "As a matter of fact Burns & Hall (the next lowest bidder), also proposed to do the work in ninety working days (the number of working days offered by I. B. Miller, Inc., the low bidder). There was, therefore, no difference in the number of working days in which the work would be commenced and completed by either I. B. Miller, Inc., or Burns & Hall."

There is no evidence in the State of the Case as to the number of working days within which Burns

& Hall agreed to perform this work, any more than there is any evidence in the State of the Case showing the time within which the other six bidders agreed to perform their contract, but the court can readily assume that these eight bidders did not all agree upon ninety working days.

Again, however, assuming that the court will, in determining this point—as is evidently desired by the defendant borough—consider only the fact that the two lowest bidders offered to do the work in ninety working days, the answer again is that this objection goes to a violation of the positive laws of the State, as laid down in the Home Rule Act; and the fact, if it be a fact, that both I. B. Miller, Inc., and Burns & Hall bid to do the work in ninety working days, so that the element of time did not enter into the competitive scheme *as between these two bidders,* can in no way affect the merits of the question here raised.

In *Armitage* v. *Newark,* 86 N. J. L. 5, page 9, Mr. Justice Garrison considered the matter of time as an element of competition of sufficient importance to render an opinion upon the topic, which was directly dispositive of that case, even though as he said: *"no demonstrable harm has come of it in the present case."*

The opinion in *Armitage* v. *Newark,* supra, was written by Mr. Justice Garrison at the June Term, 1914. At that time there was no statutory provision regulating the matter of time as an element of competition in municipal lettings; yet the Supreme Court then thought the matter of sufficient importance to deal with it as it did in the opinion of Mr. Justice Garrison.

In 1917 the legislature passed the Home Rule Act and it then considered the matter of sufficient importance to embody in the law the provision

that "all specifications for the work of any improvement shall fix the date before which the same shall be completed, or the number of working days to be allowed for the completion thereof," (Laws of 1917, page 348, Section 5). Undoubtedly this was done because the legislature at that time desired to perpetuate in permanent form the rule which was first enunciated by Mr. Justice Garrison, in *Armitage* v. *Newark,* supra, and because the legislature then desired to establish as the policy of this State that it should be illegal for any municipality to receive bids upon specifications which *did not* fix the date before which the work therein provided for should be completed, or the number of days to be allowed for the completion thereof.

It is therefore submitted that the award of contract should be vacated because the specifications for the work to be done do not fix the date before which the same shall be completed, or the number of working days to be allowed for the completion thereof.

POINT III.

The specifications for the work to be done set up a false and illusory standard for the comparison of bids, in that these specifications call for proposals on items not required to be done in the performance of said work.

Bidders for this work were required to bid upon certain estimated quantities of work to be done and materials to be furnished in the performance of the contract. These estimated quantities are set forth upon page 78 and also upon page 79 of the printed book—upon page 78 as part of the bid of

I. B. Miller, Inc., the lowest bidder for the work in question, one of the defendants in this proceeding, and upon page 79 as part of the proposal of Burns & Hall, the next lowest bidder for said work.

The estimated quantities of work to be done and materials to be furnished under these specifications are shown upon the proposal form (p. 24, l. 10) and are approximate only, and are given *only as a basis for calculation upon which the award of contract is to be made* (p. 24, l. 10).

The estimated quantities, as shown upon page 78 of the printed book, being the bid of I. B. Miller, Inc., the defendant herein and the lowest bidder for the work,—contain the following items:

Approx. Quantities	Items and Unit Prices Paid	Unit Pr. Dollars Cts.	Amts. Dollars Cts.
450′	8″V. C. Pipe cement joints installed per lin. ft.	.70	315.00
100′	8″ V. C. Pipe stone packed installed per lin. ft.	.90	90.00
100′	6″ V. C. Pipe stone packed per lin. ft...	.75	75.00
50′	15″ V. C. Pipe per lin. ft.	1.35	67.50
	Total		$547.50

From this it appears that the lowest bidder bid for the installation of these four items the sum of $547.50.

A similar bid is, of course, made by Burns & Hall, as an examination of page 79 of the Book will disclose, *and was necessarily made by the other bidders mentioned at the top of page 82 of the*

Book, where it is stipulated that seven of the proposals, besides that of I. B. Miller, Inc., were received for the work in hand.

The specifications for this work are returned by the municipality and constitute part of the Book and from an examination of these specifications it will appear *that in no portion of the work is pipe of the sizes thus bid for and laid in the manner indicated, required in the performance of this contract.*

The plans for the work are not, however, returned by the municipality and in lieu of the return of such plans, it is stipulated that "neither the plans for said work nor the specifications, which are made a part of the return, indicate that the work to be done *requires the use* of any 8″ vitrified clay pipe, cement joints, 8″ cast iron pipe, 6″ vitrified clay pipe, stone packed, or 15″ vitrified clay pipe, and that the items just mentioned *do not appear in any of the requirements either* of the plans or of the specifications aforesaid, and appear *only* in the engineer's estimate of quantities and contractors' prices now a part of the return." (p. 82 ll. 10-20).

Specifications for public work should be precise and definite upon all the essential elements that enter into the competitive scheme. Where no common standard is set up, no competition is proposed.

Tice v. Long Branch, 98 N. J. L. 214.

The bid of I. B. Miller, Inc., defendant herein and the lowest bidder, totals the sum of $70,941.35 (p. 78); the bid of the next lowest bidder, Burns & Hall, totals the sum of $71,000.75 (p. 79). The bid of I. B. Miller, Inc., was therefore low by the very slight sum of $39.40.

A comparision of these two bids in relation to the *fictitious* items, hereinbefore referred to, will disclose that I. B. Miller, Inc., bid upon the four fictitious items the sum of $547.50 (p. 78), while Burns & Hall bid for the like work the sum of $1,205.00 (p. 79).

It is therefore apparent that if the fictitious items had not been included in the letting or if they were not considered in tabulation of bids, that the bid of I. B. Miller, Inc., would not be the low bid.

The four fictitious items, therefore, constitute an important element of the standard upon which bids for this work were received; in fact, these four items *decided* the letting in favor of I. B. Miller, Inc.

In Armitage v. Newark, supra, Mr. Justice Garrison in dealing with the question of submitting to competition the element of the time within which a contract is to be performed, said that if the inclusion of any item not a standard set up for the receipt of bids may *possibly* affect the result, the matter "ought not to be passed over merely because no demonstrable harm has come of it in the present case." Armitage v. Newark, 86 N. J. L. 5, page 9)

In the present case there is, to my mind, demonstration that the inclusion of the four fictitious items in the so-called "bidding sheet," upon which the contract was awarded, has done serious harm to the municipality and has defeated the purpose of the standard which requires that the contract shall be awarded to the lowest responsible bidder *for the work to be done.*

With the example of this case before the Court it certainly can readily be seen that if a municipality is allowed to make part of a standard to be set up by it for the comparision of bids to be re-

ceived for work to be performed, *items of work which are never intended to be performed and for which there is no place in the specifications,* the result must necessarily be that prospective bidders may be lead astray to the advantage of some one bidder who *knows* that no such work, as is represented by such items, is contemplated or will be done and who consequently will *underbid* his competitors upon the *fictitious* items and thus gain an award of contract which he would not earn in a fair and honest competition.

To permit a practise of this kind to prevail can only lead to dire results in opening the door to fraud in the reception of bids. It must be assumed that every bidder bidding upon "Unit Prices,"— the method for the receipt of bids employed in this case,— must expect to *use* and *employ all* of the units bid upon, in *some* portion of the work and every bidder has a right to assume that he would not be requested to furnish his proposal upon the units involved unless this was so.

To invite proposals upon items not required will permit *favored* bidders to calculate their bids upon information not contained in the specifications and will enable municipal engineers and favored contractors to agree as to just what items go into the work submitted to competition.

I respectfully submit that it is just as wrong to call for proposals for work which is *not* to be done, as it is to allow contractors in submitting their proposals to fix their own time for performance. In the latter case there is no common standard set up for competition because each bidder is allowed to calculate his bid for himself, upon a basis different from that of any other bidder; while in the case in which *false* items are injected into the standard, the injection of such *false* items

destroys the *real* standard and sets up a *false* standard for the comparision of bids, in other words, sets up a standard *for an improvement which is not to be made at all.*

There being no common standard for the work *actually* to be done by which the competition for the work *actually* to be done could be tested, it is submitted that, because these specifications call for proposals upon items *not* required to be done in the performance of said work, the award of contract should be set aside.

POINT IV.

Prosecutor-appellant did cause the writ to be legally served upon I. B. Miller, Inc., a necessary defendant in this cause.

It should be noted that the defendant-appellee, I. B. Miller, Inc., does not object to the form of the service of the writ upon it, and that it has, through its attorney, Mr. George E. Cutley, acknowledged service of papers in this cause; the objection to the service of the writ comes from the defendant borough.

The defendant borough argued before the Supreme Court that prosecutor-appellant did not cause the writ of certiorari in this case to be legally served upon I. B. Miller, Inc., the contractor to whom the borough awarded the contract for the improvement described in these proceedings.

From the return made by the municipality to the writ in this case it appears that the address of I. B. Miller, Inc. is #406 West 38th Street, New York City, New York (p. 9, l. 25). Service of the writ was made upon I. B. Miller, Inc., at its New York Office, #406 West 38th Street, on June 2nd,

1927, by means of a letter enclosing a copy of the writ allowed in this case. This letter was mailed in an envelope addressed to I. B. Miller, Inc., at the address above given, which envelope contained the name and address of J. Emil Walscheid, the attorney of the prosecutor, in the upper left hand corner so as to assure a return of said letter in the event that the same was not delivered to the addressee (p. 85, ll. 1-15); and thereafter this letter, enclosing the writ, was delivered to Mr. George E. Cutley, an attorney of this State, by Mr. Miller, and Mr. Cutley thereafter acknowledged receipt of the letter and of the writ (p. 85, ll. 23-28); and thereafter Mr. Cutley acknowledged service of all papers in this suit as the attorney for defendant-appellee, I. B. Miller, Inc., both in the Supreme Court and upon the appeal to the Court of Errors.

The service of the writ upon the defendant-appellee, I. B. Miller, Inc., is good.

State v. Dwyer, 41 N. J. L. 93, page 95;
Freeholders of Mercer v. P. R. R. Co., 41 N. J. L. 250, 253;
Kempson v. Kempson, 61 N. J. E. 303, 311.

Conclusion.

It is respectfully submitted that the judgment of the Supreme Court should be reversed and that a judgment should be entered vacating the proceedings brought up for review.

May Term, 1928.

Respectfully submitted,

J. EMIL WALSCHEID,
Of Counsel with Prosecutor-Appellant.

Press of Fremont Payne, 80 Washington Street, New York City
[47589]

New Jersey Court of Errors and Appeals

CLIFTON JORDAN,
Prosecutor-Appellant,

v.

BOROUGH OF DUMONT, in the County of Bergen, and I. B. MILLER, INC., a corporation,
Defendants-Appellees.

On Certiorari.
On Appeal from Supreme Court.

BRIEF OF THE DEFENDANT, BOROUGH OF DUMONT.

This is an appeal from a judgment of the Supreme Court dismissing the writ of certiorari obtained in the case, because the prosecutor showed no legal status to prosecute the writ.

The writ was originally allowed to review a resolution awarding a contract for the construction of a roadway and curb and drainage improvements on New Milford Avenue in the Borough of Dumont to I. B. Miller, Inc., a corporation.

The proceedings were originally started as a local improvement under the Home Rule Act by the adoption of an ordinance to establish the grade of New Milford Avenue, to grade the said avenue, install gas and water mains therein, and for the curbing, improving and paving of the street (Case, p. 12).

Section 4 of the ordinance makes a local improvement, with an assessment for benefit upon the lands affected by the improvement. Section 5 appropriates the sum of one hundred and twenty-five thousand dollars ($125,000.00) to pay the cost of the improvement, the cost to be raised by temporary improvement notes or bonds.

After said ordinance was passed bids for the construction of the road were duly advertised for and a number of bids received and the contract was awarded to I. B. Miller, Inc., of New York City, the lowest bidder, for seventy thousand, nine hundred forty-one dollars and thirty-five cents ($70,941.35). Seven bids were filed. After the bids were opened four bids were withdrawn and checks returned, undoubtedly, because they were high bids, leaving only Burns & Hall, of Dumont, and I. B. Miller, Inc., remaining (Case, p. 9). Copies of their bids will be found on pages 78 and 79 of the case.

There is a standard set of specifications for the construction, found on pages from 20 to 79 of the case. They are general in form and call for no details as to quantities, labor or materials, except to require bidding on the estimates and quantities in the manner indicated. The specifications call for the usual provisions for additional or extra work (Case, p. 32). The specifications call for the award of the contract to the lowest responsible bidder (Case, p. 28). The specifications call for the full performance of the contract in an acceptable manner within the time stated in the proposal (Case, p. 50).

No evidence was taken in the case, the prosecutor relying entirely upon the return and a stipulation amending the return; and there is nothing of record to show who Clifton Jordan, the prosecutor is, or what interest, if any, he has in the case.

POINT I.

The prosecutor has no legal status to maintain his writ.

The Supreme Court, in its opinion (Case, p. 88) followed the doctrine laid down in the case of

West Jersey Traction Company v. *Camden,* 58 N. J. L., page 362, in dismissing the writ, rather than that of *Avon* v. *Neptune City,* 57 N. J. L. 362.

In the *Traction Company* case the Court says, 58 N. J. L. 365:

> "It is true that, in some cases, as our reports exhibit, the Court will infer that the status of the plaintiff in certiorari exists from the fact that, in the given case, the proof of it is a mere form, as, for example, when a public tax is questioned, as is alleged, by a citizen and taxpayer. Under such circumstances it may be reasonably presumed, in the absence of any call for evidence on the subject, that the qualifications of the Prosecutor of the writ were assumed and admitted by the parties *sub silentio.*
>
> "Nor should this subject be left without the further remark that if the rule just discussed had existed in the form and to the extent claimed, it would not have availed on the present occasion. The reason of this is that the fact necessary to be proved to show the Prosecutor's status is likewise necessary to show its right on the legal merits of this case."

A study of the cases indicates a sharp division in this matter. A taxpayer's action generally lies when he is affected as a part of the community in the payment of taxes arising out of an expenditure of money which gets into the tax levy or affecting the general rights in the community.

There is another class of cases which are special in nature and where only special property rights are invaded. These are the local municipal improvement cases, arising out of improvements affecting lands assessed.

The Supreme Court below followed the quoted *Traction Company* case, as follows:

> "We think, therefore, the case *sub judice,* falls within the declaration made by BEASLEY, C. J., in West Jersey Traction Company *v.*

Camden, 58 N. J. L. page 362, who speaking for the Court of Errors and Appeals, at pages 364, 365, said: 'When a judge is called upon in a proceeding *ex parte* to allow a certiorari, he must be reasonably assured of two things, first, that there is some illegality to be complained of and second, that the party seeking the remedy is entitled to it, but the allocatur no more adjudges the one fact than the other. By force of our rule of court such assurance as required to be made by an affidavit, but such oath has no semblance of juridical testimony. The rules of testimony do not apply to it and it is used against the party who has no knowledge of its existence. Such a basis as this is incapable of supporting anything in the nature of a judicial decision; all that it lays the ground for is that the judicial officer resting his opinion upon it may say that there is presented to him a matter that it is proper to put in the course of legal inquiry. The allowance of the writ can have no greater force than that; it can have no effect upon the trial of the issue between the litigants, for when the litigation reaches that stage the prosecutor must, if required, expressly or impliedly prove his legal status as the actor in the suit. That this must be so is evident when we remember that it is the legal right of a person in the possession of any valuable thing, to be exempt from all litigation, with respect to it except such as may be waged by someone having an interest in it, and such an immunity is a valuable legal right which cannot in anywise be impaired by an *ex parte* decision founded on an *ex parte* affidavit.'

"There being no proof before us that the prosecutor is a taxpayer in the Borough of Dumont, and no proof that the prosecutor would be assessed for any part of the improvement or that the prosecutor is the owner of any land to be affected by said improvement, either in damages sustained or benefits conferred, he is without any legal status to prosecute the writ."

Two elements are, therefore, necessary for the prosecutor to prove his case; first, that there is error in the proceedings awarding the contract; and, second, that the error affects him injuriously, which brings the status into the case as a fact to be proved affirmatively, and, in its absence, setting aside the proceedings would be of no avail, because, as far as the record stands, there is no apparent injury to anybody. *Tallon* v. *Hoboken,* 59 N. J. L. 388.

Reading through the lines, it can be seen that the unsuccessful bidder is the only person injured, because there is no evidence of a single complaint of any property owner affected by the improvement, although the extent of the same can be measured by the contract price of seventy thousand dollars ($70,000.00).

There is no evidence that any general taxpayer's money will be expended in the slightest degree in the improvement as a local improvement, and, as it stands, assessable in its entirety against the property affected.

The Borough did not indicate in the ordinance (Article 22, Section 7, Home Rule Act), as it had the authority to, that any part of the cost would be assumed by general taxation. There is no complaint about the manner or method of the advertisement for bids. As a matter of fact, the proceedings brought in seven bidders and the lowest bid was accepted, to the manifest advantage of the property owners. There is no allegation of fraud or any other irregularities except a technical objection possibly through the omission of a time limit in the specifications.

This is clearly a case, therefore, of special injury, arising out of these municipal proceedings. The cases cited by the appellant are not in point and do not affect the class of cases where special injury must be apparent. There is not a single

case cited by the prosecutor involving a public improvement assessable to property affected. *Rutgers College Association* v. *New Brunswick,* 55 N. J. L. 279, involves the prohibition of shows; *Avon* v. *Neptune City,* 57 N. J. L. 362, is a resolution to lay railroad tracks; *West Jersey Traction Company* v. *Shivers,* 58 N. J. L. 124, affects a permit to lay a railroad; *Biddle* v. *Riverton,* 58 N. J. L. 289, is to erect a lighting system; *Smally* v. *Board of Education,* 63 N. J. L. 201, affects the removal of a schoolhouse; *Dickinson* v. *Jersey City,* 68 N. J. L. 99, is for the construction of a fire house; *Lantry* v. *Sage,* 69 N. J. L. 560, is a tax certificate approval; *Central Railroad Company* v. *Elizabeth,* 70 N. J. L. 578, is a railroad ordinance; *Rehill* v. *East Newark,* 73 N. J. L. 220, is a water contract; *Levy* v. *Elizabeth,* 81 N. J. L. 643, is a permit to establish fountains; and *Doremus* v. *Freeholders,* 89 N. J. L. 197, is an armory site case.

These cases involved either general rights or general expenditures covered by general taxation and are not in the slightest degree special in their nature as the public improvement assessment cases.

As far as the record goes, everybody is satisfied except one Clifton Jordan. Who he is, what he is or how he is affected is a mystery as far as the case is concerned.

In *John Meyer, Prosecutor* v. *City of Perth Amboy, et als.,* 4 Misc. Rep. 465, the Court said:

> "One may not review by certiorari proceedings of municipal officers where not shown to have suffered a special injury. From an examination of the depositions it is observed that the prosecutor has given no testimony as to how he will suffer any special injury, or any other injury for that matter, nor has any testimony been given by anyone

tending to show that the prosecutor will suffer any special injury peculiar to himself. The mere fact, if it be a fact, that the Common Council, in the passage of the ordinance and the acts of the Mayor and clerk under color thereof, have exceeded their power, gives no right of action to the prosecutor until he sustains some special injury. Montgomery *v.* Trenton, 36 N. J. L. 79; Oliver *v.* Jersey City, 63 *id.* 96; Seaman *v.* Perth Amboy, 116 Atl. Rep. 22."

See also, *Tallon* v. *Hoboken,* 59 N. J. L. 383; and *Public Service Railway* v. *Hackensack,* 136 Atlantic 190.

POINT II.

The writ of certiorari is a discretionary writ. Proceedings to review municipal actions are not personal actions on which a prosecutor may, on sharp grounds, insist on reversal where injury is not apparent.

Objections to the proceedings are highly technical. There appears to be no complaint upon the part of any of the bidders that there was any unfair competition. Complaint is made about some of the details in the engineer's estimate of quantities and contractors' prices, and four items are picked out for comparison with the next low bid of Burns & Hall and stipulations referring to these particular items indicate that these details are neither in the specifications nor on the plans. It will be noticed that the specifications in the book are standard forms of specifications and as usual contain neither details nor quantities for construction, and none of the other items indicated in the engineer's estimate of quantities or prices can be found in the specifications, and undoubtedly, were not on the plans because the plans will not show either the number of yards of excavation or con-

crete pavement, neither will they show any of the other details contained in the estimate of quantities and prices, nor is it customary to show these quantities on the plans. A form of specifications, plans, proposals and estimates was sufficient to bring in seven bids figured out in detail and comparable, item for item, and calculated in total amounts.

The work calls for a drainage system in the street and these pipe lines are a proper requirement for such systems. The detail complained of is small as compared with the total amount of the work. The specifications (Case, p. 24) are as follows:

> "The bidders' attention is called to the fact that the estimate of quantities of the work to be done and materials to be furnished under these specifications as shown on the proposal form is approximate and is given only as a basis of calculation upon which the award of the contract is to be made. The Board does not assume any responsibility that the quantities shall obtain strictly in the construction of the work, nor shall the Contractor plead misunderstanding or deception because of such estimate of quantities or the character of the work, location or other condition pertaining thereto. The Board reserves the right to increase or diminish any or all of the above-mentioned quantities of work or to omit any of them, as it may deem necessary."

All bids came in on this basis; that these were approximate estimates and it is submitted that a one per cent. variation as to accuracy in an estimate is within the bounds of reason.

The question of time limit raised by the prosecutor likewise was not raised by any of the bidders as to forming a basis of improper competition. Even if it is admitted that the letter of the law was not followed by the Borough in the spe-

cifications fixing a time limit for the work, nevertheless, the proposal, which accompanied the specifications, called for a time limit to be fixed, which taken together would fill the spirit of the act because the date of completion would be inserted in the contract and all parties protected. There is no complaint that this contractor was favored by the time limit clause. In the first place, the ninety days proposed was a reasonable time for the execution of the work of the size called for in the improvement and there is nothing in the record to indicate that any of the bidders proposed a shorter time. As a matter of fact, after the bids were opened and the withdrawal of all the bids except the Miller bid and the Burns & Hall bid, and the return of the checks immediately indicated that the other bidders were satisfied with the competition, and there is no apparent injury to anyone and there is no complaint that the contractor was favored by this provision. Prosecutor Jordan demands reversal on this technical objection without indicating any injury of any persons whatsoever. These irregularities, if such they may be termed, standing by themselves in an improvement of this magnitude should not be permitted to set aside a contract that is manifestly to the advantage of the Borough and the people affected to accept.

The two items complained about are of small moment compared with the general requirements of law concerning the awarded contracts for public improvement, and the bid attacked is the lowest bid of all the seven that came in. In *McCarty* v. *Boulevard Commissioners,* 91 N. J. L., pages 142 and 143, the Court says:

> "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 in 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."

Again in the case of *The Atlantic Gas and Water Company* v. *Atlantic City, et al.,* 73 N. J. L., pages 361 and 362, the Court says:

"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."

It is respectfully submitted that the judgment of the Supreme Court shall be affirmed, with costs.

Respectfully submitted,

LELAND F. FERRY,
Attorney for the Borough of Dumont.

WILLIAM M. SEUFERT,
Of Counsel.

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