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Witnesses  
List of Take Depositions

George F. Brenning  
George F. Brenning

Michael A. Scaturchino—1  
James A. Van Kester—1

James V. Harrington—Cross  
James A. Tolson—Direct

NEW JERSEY SUPREME COURT.

JAMES M. HOUGHTON and)  
JOHN A. RESCH, )  
Prosecutors, )

vs.

On Certiorari.

MAYOR and ALDERMEN ) Notice of Appeal.  
OF JERSEY CITY and )  
THOMAS HARRINGTON )  
SONS' COMPANY, )  
Defendants. )

10

TAKE NOTICE that the above named prosecutors hereby appeal to the New Jersey Court of Errors and Appeals from the judgment ordered in the above action by the Honorable Francis J. Swayze, Justice of the Supreme Court, February sixth, nineteen hundred and seventeen, and entered herein, on the following grounds:

1. That said judgment should have been entered in favor of the prosecutors and against the defendants, in said action, because the specifications returned in said writ and upon which the bids were received and the resolution awarding the said contract to the defendant, Thomas Harrington Sons' Company, likewise set out in said return,

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(a) did not require competitive bids on the same definite basis,

(b) were purposely framed to deter rather than invite bona fide competition,

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(c) did not invite competition to a common standard of bidding,

(d) were framed in disregard of the direction and spirit of the act in such case made and provided,

(e) contained arbitrary, impracticable, uncertain and illegal provisions in violation of the statute in such case made and provided, and

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(f) were not framed with the sole consideration of ascertaining the lowest price at which a responsible bidder would agree to perform the required work.

2. Because the depositions considered on the return of said judgment showed solely that said specifications were purposely framed to favor the defendant, Thomas Harrington Sons' Company, and to insure to it the award of said contract.

10

3. Because said depositions showed solely that said specifications were framed and the award of said contract was made by fraudulent collusion between the Board of Commissioners of Jersey City and the defendant, Thomas Harrington Sons' Company.

20

4. Because said depositions showed solely that the contract was awarded to the defendant, Thomas Harrington Sons' Company, notwithstanding that the bid of said defendant did not conform to the requirements of the specifications. Dated, February 15, 1917.

Respectfully,

RICHARD DOHERTY,

Attorney of Prosecutors.

To JOHN BENTLEY, Esq., Corporation Attorney,  
Attorney of Mayor and Aldermen of Jersey  
City,

30

and

COLLINS & CORBIN, Esqs.,

Attorneys of Thomas Harrington Sons'  
Company.

Service of within notice this 16th day of February is hereby acknowledged.

JOHN BENTLEY,

Corporation Attorney of Jersey City.

COLLINS & CORBIN,

40 Attorney of Thomas Harrington Sons' Company.

NEW JERSEY, ss.

The State of New Jersey to the Mayor and  
Aldermen of Jersey City.

GREETING :

We being willing for certain reasons to be certified of a certain resolution adopted by the Board of Commissioners of Jersey City, passed January second, nineteen hundred and seventeen, awarding a contract for the collection and removal of ashes, garbage and kitchen refuse, and waste paper, from all the streets of Jersey City, New Jersey, for the period from January fifteenth, nineteen hundred and seventeen, to November thirtieth, nineteen hundred and twenty-one, on the proposal of Thomas Harrington Sons' Company, made upon the specifications heretofore adopted by said Board of Commissioners, and of the said specifications, proposal and contract entered into thereunder, do hereby command you that you send under the corporate seal of the said Mayor and Aldermen of Jersey City to our Justices of our Supreme Court of Judicature, at Trenton, on the twenty-ninth day of January, instant, the resolution, specifications, proposal and contract aforesaid, with all things touching and concerning the same, as fully and entirely as they remain before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton, this thirtieth day of January, nineteen hundred and seventeen.

RICHARD DOHERTY,  
Attorney.

WILLIAM C. GEBHARDT,  
Clerk.

## THE RETURN

I allow within writ this 13th day of January, 1917, without stay, but with leave to prosecutors to apply for stay if they have reasonable grounds for belief that defendants are unduly delaying the cause, application to be made on usual notice.

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

## RETURN.

10 To the Supreme Court of the State of New Jersey,  
Trenton, N. J.

In obedience to the command of the annexed Writ of Certiorari, I herewith certify and make return of the minutes of the Board of Commissioners of Jersey City, of their meeting held Tuesday, December 12th, 1916; of the submission and  
20 adoption of Specifications for the Collection and Removal of Ashes, Garbage and kitchen refuse, and waste paper from all the Streets of Jersey City, N. J., for the period therein stated; and also the said specifications, as well as the proof of publication soliciting proposals and copies of said publications; also copy of said proposals received  
30 at a regular meeting of said Board of Commissioners on January 2nd, 1917, as well as the resolution awarding the contract on said proposals, to Thomas Harrington's Sons Company, which was offered at the said meeting of the said Board on January 2nd, 1917, and also ordered filed in the City Clerk's Office for a period of two weeks for the purpose of public inspection; and also a copy of said resolution of award of said contract to said Thomas Harrington's Sons Company, passed at the regular meeting of the said Board on Tuesday, January 16th, 1917.  
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THE RETURN

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IN TESTIMONY WHEREOF, I have hereunto  
set my hand and  
the Corporate  
Seal of "THE  
MAYOR AND  
ALDERMEN  
OF JERSEY  
CITY," this  
eighteenth day  
of January, A.  
D., one thousand  
nine hundred  
and seventeen.

(Seal)

10

MICHAEL I. FAGEN,  
City Clerk.

Regular Meeting of the Board of Commissioners  
of Jersey City, held in the City Clerk's Office,  
City Hall, Tuesday, Dec. 12th, 1916, at 2 P. M.  
All Commissioners present.

20

OFFICERS' COMMUNICATIONS.

Hon. Board of Commissioners,  
City Hall.

Gentlemen :

I enclose herewith three copies of specifications  
for removal of ashes and garbage, which I have  
drawn in accordance with your directions. I  
would recommend that the specifications be read  
in full by the City Clerk to you before you act  
upon them. They should be adopted today in  
view of the fact that the present temporary con-  
tract expires on January 14th, 1917, and it will  
require all the available time to secure bids and  
award permanent contract,

30

In the reading of the specifications I would ad-  
vise that you keep in mind these points:

40

1. Section 1 of the specifications is drawn with the view of requiring the collection of ashes, garbage and kitchen refuse from all buildings in the City except steam ashes from factories and manufacturing establishments and commercial plants. There are a number of large office buildings in this City, from which, under the requirement of Section 1, ashes would have to be taken away by the contractor, such as the Commercial Trust Company, Lincoln Trust Company, Fuller Building, Union Trust Company, etc. If it is not the desire of your Board to include buildings of that character, then provision should be made for that.

2. The proposal, on Page 6, requires that bids be submitted in two forms, viz.: for the removal of ashes, etc., without separation; and for the removal, etc., with separation. I am not entirely familiar with the reason for securing a bid for the removal of ashes and garbage separated. I assume that it has relation to the disposal of the garbage by way of incineration. If that be the reason, to my mind the taking of bids for the removal of ashes and garbage separately should be discontinued. The City is not equipped to dispose of the garbage by incinerating it and the only result of requiring additional bid in that form is to befog the bidder and make the bidding more complicated. Of course, if there is some other reason for the taking of bids in two forms, that can be explained to you and you can then determine whether or not there is any real necessity for this practice.

3. Under Section 15 the contractor is given the right to use certain properties owned by the City as a dump. Whether or not you want to include any other City property, I do not know. Upon the assumption that the furnishing of dumps results in the lowering of the costs of the work,

I suggest, for your consideration, the use of the property which the City owns in the vicinity of Duffield Avenue and Howell Street. If my recollection serves me right, there is a vry large area in that vicinity which is meadowland and which can be used for that purpose. However, I would limit the use of that land for not more than one year because the City may conclude to put Hackensack Avenue through and if it does it will possibly require the discontinuance of that area as a dumping ground.

10

4. Mr. Frank Stevens, who is interested in fire prevention, has suggested to me that there ought to be incorporated in the specifications a provision requiring the use of such receptacles as are described in the ordinance adopted by the Board of Street and Water Commissioners in April, 1912, and calling upon the contractor to remove all such receptacles as do not conform with the ordinance. The language of the ordinance in question is as follows: "That hereafter all ashes or garbage deposited on the sidewalk shall be placed in a round or barrel shaped receptacle of iron in useable condition, not less than ten inches nor more than twenty-six inches high, and not less than nine inches nor more than eighteen inches in diameter." Whether or not you want to include such a provision, of course you must decide.

20

Yours very truly,

(Signed) JOHN MILTON.

30

December 12th, 1916.

RECEIVED, and the City Clerk directed to read the specifications section by section. The specifications were then considered section by section by the Board. Upon Section 2 being read, Commissioner Brensinger offered the following as an amendment thereto, so that Section 2 will read as follows:

40

10 “Section 2. The contractor shall conform in all respects with Chapter 253 of the laws of 1913, page 479, commonly known as the eight hour workday law, and shall not violate any of the provisions thereof and if under extraordinary circumstances it shall become necessary for the workmen employed by said contractor to work more than eight hours per calendar day, the said contractor shall keep a separate account of the number of hours in excess of eight hours which his said employees shall work, and shall hand such account to the Inspector for the removal of ashes and garbage on the day following such work and shall pay his said employees for such extra work within two weeks of the doing of such work and in default thereof, upon the certification by the said Inspector of the collection of ashes and garbage, the said Board of Commissioners shall deduct such extra compensation from the money due said contractor, and in addition thereto shall fine the said contractor the penalty set out in said statute, deducting the same from any moneys coming due to him. The said contractor may work his said employees eight hours during the hours between five A. M. and eight P. M. and shall cause no interference or annoyance to householders or other interests, traffic or pedestrians at any time.”

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The roll being called the amendment was adopted by the following vote:

Yeas : Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan.

Nays. None.

40 Upon Section 11 being read, the same was amended by inserting after the word “thereof”

the words "or assign this contract."

The roll being called the amendment was adopted by the following vote:

Yeas : Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan.

Nays : None.

Upon Section 15 being considered under subdivision on "Notice to Contractors," the specifications were ordered changed by having bids submitted without separation, and the section was ordered altered accordingly.

10

Upon a roll call the amendment was adopted by the following vote:

Yeas : Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan.

Nays : None.

Thereupon, on a roll call, the specifications were ordered adopted and filed and the City Clerk requested to advertise for proposals in accordance therewith.

Yeas : Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan.

20

Nays : None.

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BOARD OF COMMISSIONERS.  
JERSEY CITY, N. J.

SPECIFICATIONS  
FOR THE  
COLLECTION AND REMOVAL OF ASHES,  
GARBAGE and KITCHEN REFUSE, and  
WASTE PAPER, FROM ALL THE STREETS  
OF JERSEY CITY, N J., FOR THE PERIODS  
HEREINAFTER STATED.

10

SEALED BIDS OR PROPOSALS.

Sealed bids or proposals for the work named in these specifications will be received by the BOARD OF COMMISSIONERS in the City Clerk's Office in the City Hall, Jersey City, New Jersey, on the date advertised for receiving bids, at which time and place the said bids will be publicly opened and read.

20

The award of contract if awarded will be made to the lowest responsible bidder with adequate security as soon thereafter as practicable. The person or persons to whom said contract may be awarded will be required to attend at the office of the Corporation Attorney with the sureties offered by him or them and execute the contract in conformity with these specifications within five days from the date of service or notice to the effect that the contract has been awarded and the sureties accepted; in case of failure so to do he or they will be considered as having abandoned it and in default to the City.

30

BIDDERS shall have the option of submitting bids for the carrying out of the terms of the contract either for the period from January 15, 1917, to November 30, 1917, or for the carrying out of the terms of the contract for the period from January 15, 1917, to November 30, 1921. If a bidder

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desires he may submit bids for both periods.

THE BIDDERS must submit with their proposal surety in the sum of \$5,000 as a bond or sureties agreement for the execution of the contract. The said surety of \$5,000 will be in addition to the bond in the penal sum of \$50,000 which will be required for the faithful performance of the contract. The \$5,000 surety accompanying the proposal will be cancelled upon the execution and acceptance of the contract.

Whenever in these specifications the word "STREET" is used the term includes all public highways, avenues, streets, lanes, alleys and places within the limits of Jersey City.

10

Whenever in these specifications the word "CONTRACTOR" is used it signifies the person or persons to whom the contract is awarded, together with his employees and outfit for the uses and purposes hereof.

SECTION 1. During the term of the contract, the contractor shall call regularly twice during each week at all stores, dwellings, hotels, restaurants, fire houses, schools, hospitals, all municipal buildings, office buildings and all other buildings, and carefully collect and remove in a quiet and cleanly manner all the ashes, garbage and kitchen refuse that may be offered him or delivered to him or placed in vessels or receptacles at the curb in front of any of the hereinbefore enumerated buildings. The said vessels or receptacles shall be entirely emptied, if practicable, and shall be carefully handled, not banged. Only such receptacles as conform to the following provision of ordinance adopted by the Board of Street and Water Commissioners in April, 1912—  
"That hereafter all ashes or garbage deposited on the sidewalk shall be placed in a round or barrel shaped receptacle of iron in usable condition, not less than ten inches nor more than twenty-six

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inches high and not less than nine inches nor more than eighteen inches in diameter" shall be returned uninjured to the place where found without damage either to the receptacle, to the sidewalk, or premises, or grounds about or around the same.

SECTION 2. The contractor shall conform in all respects with Chapter 253 of the Laws of 1913, page 479 commonly known as the "Eight Hour Workday Law," and shall not violate any of the provisions thereof, and, if under extraordinary circumstances it shall become necessary for the workmen employed by the said contractor to work more than eight hours per calendar day, the said contractor shall keep a separate account of the number of hours in excess of eight hours which his said employees shall work and shall hand such account to the inspector for the removal of ashes and garbage on the day following such work and shall pay his said employees for such extra work within two weeks of the doing of such work and in default thereof, upon the certification by the said inspector of the collection of ashes and garbage, the said Board of Commissioners shall deduct such extra compensation from the moneys due said contractor, and in addition thereto shall fine the said contractor the penalty set out in said statute, deducting the same from any moneys coming due to him. The said contractor may work his said employees eight hours during the hours between five A. M. and eight P. M. and shall cause no interference or annoyance to householders or other interests, traffic or pedestrians at any time.

SECTION 3. Upon the award of the contract, the contractor shall file in the office of the Director of Streets and Public Improvements of the City a written designation of the routes to be followed

by him in making the collection and removal of ashes, garbage, kitchen refuse and waste paper. No departure therefrom shall be allowed.

SECTION 4. All sweepings and refuse from residences and places of business, other than dirt and waste paper and except as limited by Section 12 of these specifications, shall be classified as ashes and garbage and removed as such.

SECTION 5. The contractor will be required to remove all waste paper or paper boxes and rags which are found in receptacles or properly tied in bundles or deposited in bags furnished by the resident or owner of said property placed at the curb. 10

SECTION 6. All waste paper thus collected by the contractor will not be allowed to be dumped either upon private or public property from which they may be blown upon the public thoroughfares. Such paper shall be so carried from the point of collection to the dumping ground that it may not be blown from the vehicle. 20

SECTION 7. The vehicles used by the contractor under these specifications shall bear on each side in front and on the rear, distinctly discernible, the number of each vehicle, on a sign of iron (continuously attached to the vehicle) with a blue enamel background with white figures, six (6) inches high by five (5) inches broad, and the same shall be distinctly discernible under all conditions and at all times. The name of the CONTRACTOR shall also be placed on each vehicle and be distinctly discernible at all times. All the vehicles used under these specifications shall also be fitted at all times with suitable side pieces, and canvas covers properly and permanently secured to each vehicle, ready at all times to be used as a 30 40

cover over the top of the load, and sufficient in size to avoid scattering and littering the streets with ashes, garbage and kitchen refuse and waste paper, et al. All the employees of the contractor under this contract (superintendents, drivers, and helpers, et al.) shall at all times be courteous to citizens and others, and shall not use loud or profane language or be boisterous or noisy, and shall wear a metal badge, circular in shape, 2½ inches in diameter with a plain Roman numeral thereon not less than ¾ inch high, breadth in proportion, also with the initial of the contractor thereon: the said badge shall be worn continually and conspicuously by said employees while on duty.

SECTION 8. All ashes, garbage and kitchen refuse, and waste paper collected by the contractor under this contract shall be removed at once to such place or places as the contractor may have authority to use for a dumping ground.

SECTION 9. The contractor in collecting, removing and dumping all ashes, garbage and kitchen refuse, and waste paper, shall not violate the Health Laws, City Ordinances, or commit trespass and shall protect the public health.

SECTION 10. The contractor must furnish at his expense, competent labor, and all materials, suitable vehicles, etc., necessary for the faithful carrying out and completing the contract.

SECTION 11. The contractor shall not sublet the work or any portion thereof, or assign this contract, except with the consent of the BOARD OF COMMISSIONERS expressed by resolution of the Board.

SECTION 12. In the collection of ashes and garbage, it shall not include the removal of any

waste paper, rubbish or refuse belonging to or resulting from the construction, alteration, or repairs to any building or sidewalk, neither shall it include ashes or refuse which may be the result of the manufacture of any material; neither shall the collection be required to steam ashes from factories and manufacturing establishments or commercial plants.

SECTION 13. If the work to be done under these specifications and the contract to be entered into shall be abandoned, or if the contract to be entered into shall be assigned, except as herein specified, or if at any time the Inspector of the Collection of Ashes and Garbage shall be of opinion and shall so certify in writing to the BOARD OF COMMISSIONERS OF JERSEY CITY that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is wilfully violating any of the conditions or covenants of these specifications, or of said contract, or executing said contract in bad faith, said Board shall have the power to notify the contractor to discontinue all work or any part thereof under these specifications and thereupon the contractor shall cease to continue said work or such part thereof as the Board may designate and the said Board shall thereupon have power to complete the work and provide all materials and labor necessary therefor and charge the expense of the same to the contractor and the expense so charged will be deducted and paid by the City out of any moneys then due or such moneys as may at any time thereafter become due to the contractor under and by virtue of this agreement or any part thereof; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed by the contractor then the said contractor shall be entitled to receive the difference; and in case such sum shall exceed the

amount payable as aforesaid, then the contractor shall pay the amount of such excess to the City on notice from said Board of the excess so due.

SECTION 14. Said Board shall have authority of direction and regulation of, in or about dumping grounds and collection vehicles while in transit, and means and methods employed hereof as far as the requirements, terms and conditions of this contract apply.

- 10 SECTION 15. The contractor may and shall have the right, privilege and authority to enter upon and use the property owned by the Mayor and Aldermen of Jersey City situated at Droyer's Point and also at the foot of Yale Avenue, at the South Cove, and the property of the City in Blocks 602 and 603, on the Official Assessment Map of Jersey City, for the purpose and use of dumping or depositing thereon the ashes, garbage, sweepings, refuse and all other matter to be collected and disposed of under these specifications; provided, however, that the property last mentioned may be used for such purpose for only one
- 20 year from the date of the contract.

#### PAYMENTS.

1. Payments will be made semi-monthly upon the certification of the same by the Chief Engineer as certified to him by the City Inspector in charge of the collection and removal of ashes, garbage, kitchen refuse, and waste paper, that the work and requirements hereof have been carefully and completely performed under and in accordance with these specifications in sums not less than five hundred dollars (\$500) in cash.
- 30

#### BOND.

- 40 1. The contractor or contractors to whom the

contract shall be awarded, to give either a bond in legal form of a surety company authorized to do business by and operating in accordance with the laws of the State of New Jersey; or a certified check; or by the consent in writing of two (2) responsible real estate owners in Hudson County, that they will become surety in the sum of fifty thousand dollars (\$50,000) for the faithful performance of the contract, which two (2) responsible sureties must qualify under oath that they are each worth the penal sum of said bond, and which said bond shall be cancelled and certified check returned, (upon the completion of the work required to be done under these specifications and the contract to be awarded), provided, that when a bond other than a Surety Company bond is given, the form of the said bond shall be approved by the Corporation Counsel, and the sufficiency of the surety approved by the City Comptroller. 10

#### NOTICE TO CONTRACTORS. 20

#### PROPOSALS WILL BE SUBMITTED AS FOLLOWS, VIZ..

1. For the removal of Ashes, Garbage, and Kitchen Refuse, and Waste Paper without separation.

A. It is understood that the term "GARBAGE AND KITCHEN REFUSE" is intended to include matter which was purposed for food, which would include decayed or rejected vegetables or meats. Receptacles or packages which contain food, meats, or vegetables need not be accepted. 30

B. Proposals will not be received later than the time fixed in advertisement.

C. Bidders must state prices in writing as well as show them in figures.

D. Proposals must be made on blank forms obtained at the OFFICE OF THE CHIEF EN- 40



Sworn and subscribed before (Signed)  
 me this 18th day of January L. Maud Smith.  
 A. D., 1917.

Stella Redmond,  
 Notary Public, N. J.

#### NOTICE TO CONTRACTORS.

Sealed proposals will be received by the Board  
 of Commissioners of Jersey City

TUESDAY, JANUARY 2, 1917,  
 at 2 p. m., in the City Clerk's Office, City Hall, 10  
 Jersey City, N. J.,

FOR THE COLLECTION AND REMOVAL OF  
 ASHES, GARBAGE AND KITCHEN  
 REFUSE AND WASTE PAPER FROM  
 ALL THE STREETS OF JERSEY CITY,  
 N. J., FROM JANUARY 15, 1917, TO NO-  
 VEMBER 30, 1917, OR FROM JANUARY  
 15, 1917, TO NOVEMBER 30, 1921,

in accordance with specifications on file in the 20  
 office of the City Clerk.

Blank forms of bid, showing estimate of quan-  
 tities and agreement of securities must be ob-  
 tained at the Office of the Chief Engineer, City  
 Hall, Jersey City, N. J.

Proposals must be enclosed in sealed envelopes,  
 endorsed "Proposals for the Removal of Ashes,  
 etc.," directed to this Board and handed to the  
 City Clerk in open meeting when called for in 30  
 the order of business relating to sealed proposals.

The bonds required to be furnished on pro-  
 posals (and a possible subsequent contract) are  
 those of some surety company authorized to do  
 business in the State of New Jersey, or of two  
 responsible real estate owners of Hudson County,  
 or a certified check will be accepted in lieu of  
 bond.

The Board reserves the right to reject any or 40  
 all proposals if it is considered for the best inter-

ests of the City so to do.

By order of the Board of Commissioners of Jersey City.

Dated, City Clerk's Office,  
Jersey City, December 16, 1916.

MICHAEL I. FAGEN, City Clerk.

de18 20 23 27 30.

10 STATE OF NEW JERSEY, )  
 )ss.  
COUNTY OF HUDSON. )

Fred A. Seide, being duly sworn according to law, upon his oath, saith, that he is Asst. Manager of the "Hudson Observer," a public newspaper printed and published in the City of Hoboken, County of Hudson and State of New Jersey;

20 that a notice, of which the annexed is a true copy, was published in said newspaper on the 18th day of December, 1916, and continued therein for four insertions thereafter, to wit, on the 20th, 23rd, 27th and 30th days of December, 1916, making five publications in all.

Sworn and subscribed before (Signed)  
me this 18th day of January, Fred A. Seide.  
A. D., 1917.

30 William W. McQueen,  
Notary Public, N. J.

Regular meeting of the Board of Commissioners of Jersey City, held at the City Clerk's Office, City Hall, Jersey City, Tuesday, January 2nd, 1917, at 2 P. M.

All Commissioners present.

#### RECEPTION OF BIDS.

40 This time and place having been set for the

reception of bids for the collection and removal of ashes, garbage, etc., the following bids were received:

(FOLLOWING ARE COPIES OF THE FOUR BIDS RECEIVED.)

DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS.

BUREAU OF ENGINEERING.

PROPOSAL

10

For THE COLLECTION AND REMOVAL OF ASHES, GARBAGE, and KITCHEN REFUSE, and WASTE PAPER, FROM ALL THE STREETS OF JERSEY CITY, N. J., FOR THE PERIODS HEREINAFTER STATED.

NOTICE:—The prices must be written in the proposal and also stated in figures.

To the Board of Commissioners of Jersey City:

20

GENTLEMEN : ..... will contract to FOR THE COLLECTION AND REMOVAL OF ASHES, GARBAGE, etc. (according to specifications for the same in the office of DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS), for the following prices, viz.:

FOR THE PERIOD FROM JANUARY 15, 1917, TO NOVEMBER 30, 1917, (WITHOUT SEPARATION), FOR THE SUM OF

30

.....  
FOR THE PERIOD FROM JANUARY 15, 1917, TO NOVEMBER 30, 1921, (WITHOUT SEPARATION), FOR THE SUM OF

.....  
Five hundred and ninety thousand (\$590,000) dollars, payable as follows:

balance of year 1917 the sum of seventy thousand dollars, (\$70,000.00);  
year 1918 the sum of one hundred

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twenty-five thousand dollars	(\$125,000.00);
year 1919 the sum of one hundred	
thirty thousand dollars	(\$130,000.00);
year 1920 the sum of one hundred	
thirty thousand dollars	(\$130,000.00);
year 1921 the sum of one hundred	
thirty-five thousand dollars	(\$135,000.00).

Total.....	\$590,000.00
------------	--------------

Jersey City, Jan. 2, 1916.

10

(Signed)

(NAME) Thomas Harrington's Sons Co.  
(ADDRESS) By James J. Harrington,  
Pres.

(NAME).....  
(ADDRESS) 556 Montgomery St., J. C.

(SEAL)

ATTEST

M. H. Brockhurst,  
Secretary.

20

NOTICE—No unbalanced bids will be re-  
ceived or considered.

DEPARTMENT OF STREETS AND PUBLIC  
IMPROVEMENTS.

BUREAU OF ENGINEERING.

PROPOSAL.

For THE COLLECTION AND REMOVAL OF  
ASHES, GARBAGE, and KITCHEN  
REFUSE, and WASTE PAPER, FROM  
30 ALL THE STREETS OF JERSEY CITY,  
N. J., FOR THE PERIODS HEREIN-  
AFTER STATED.

NOTICE:—The prices must be writ-  
ten in the proposal and also stated  
in figures.

To the Board of Commissioners of Jersey City:

GENTLEMEN : We will contract to FOR THE  
COLLECTION AND REMOVAL OF ASHES,  
40 GARBAGE, etc. (according to specifications for

the same in the office of DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS), for the following prices, viz.:

FOR THE PERIOD FROM JANUARY 15, 1917, TO NOVEMBER 30, 1917 (WITHOUT SEPARATION), FOR THE SUM OF \$114,675.00—100.

One hundred and fourteen thousand six hundred and seventy-five dollars 00—100.

FOR THE PERIOD FROM JANUARY 15, 1917, TO NOVEMBER 30, 1921 (WITHOUT SEPARATION), FOR THE SUM OF \$639,000.00—100.

10

Six hundred and thirty-nine thousand dollars 00—100.

Jersey City, Jan. 2, 1917.

(Signed)

(NAME) The Browne Company,  
Richard Browne, Pres.

(ADDRESS) 449 Mercer Street,  
Jersey City, N. J.

20

NOTICE—No unbalanced bids will be received or considered.

DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS.

BUREAU OF ENGINEERING.

PROPOSAL.

For THE COLLECTION AND REMOVAL OF ASHES, GARBAGE, and KITCHEN REFUSE, and WASTE PAPER, FROM ALL THE STREETS OF JERSEY CITY, N. J., FOR THE PERIODS HEREINAFTER STATED.

30

NOTICE.—The prices must be written in the proposal and also stated in figures.

To the Board of Commissioners of Jersey City:

GENTLEMEN: We will contract to FOR THE COLLECTION AND REMOVAL OF ASHES,

40

GARBAGE, etc. (according to specifications for the same in the office of DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS), for the following prices, viz.:

FOR THE PERIOD FROM JANUARY 15, 1917, TO NOVEMBER 30, 1917, (WITHOUT SEPARATION), FOR THE SUM OF \$120,000.00.

One hundred and twenty thousand dollars 00—100.

10

FOR THE PERIOD FROM JANUARY 15, 1917, TO NOVEMBER 30, 1917, (WITHOUT SEPARATION), FOR THE SUM OF \$699,000.00 00—100

Six hundred and ninety-nine thousand dollars 00—100.

Jersey City, Jan. 2nd, 1917.

(Signed)

(NAME) Montgomery & Conlon.

20

(ADDRESS) 392 Mercer Street,  
Jersey City.

(NAME).....

(ADDRESS).....

NOTICE—No unbalanced bids will be received or considered.

DEPARTMENT OF STREETS AND PUBLIC  
IMPROVEMENTS.  
PROPOSAL.

30 For THE COLLECTION AND REMOVAL OF ASHES, GARBAGE, and KITCHEN REFUSE, and WASTE PAPER, FROM ALL THE STREETS OF JERSEY CITY, N. J., FOR THE PERIODS HEREINAFTER STATED.

NOTICE:—The prices must be written in the proposal and also stated in figures.

To the Board of Commissioners of Jersey City:

40 GENTLEMEN: We will contract to FOR THE

COLLECTION AND REMOVAL OF ASHES, GARBAGE, etc. (according to specifications for the same in the office of DEPARTMENT OF STREETS AND PUBLIC IMPROVEMENTS), for the following prices, viz.:

FOR THE PERIOD FROM JANUARY 15, 1917, TO NOEMBER 30, 1917, (WITHOUT SEPARATION), FOR THE SUM OF \$97,700.00.

Ninety-seven thousand seven hundred, 00—100.

10

FOR THE PERIOD FROM JANUARY 15, 1917, TO NOVEMBER 30, 1917, (WITHOUT SEPARATION), FOR THE SUM OF \$634,000.00.

Six hundred thirty-four thousand, 00—100.

Jersey City, Jan. 2nd, 1917.

(Signed)

(NAME) Jersey City Meadow Company, Hugh McCloskey, Secy.

(ADDRESS) 27 Bergenline Avenue,  
Union Hill, N. J.

20

NOTICE—No unbalanced bids will be received or considered.

On motion the bids were opened and ordered placed on the table for further consideration at 4 P. M. today.

Upon re-assembling at 4 P. M., the roll being called, the following Commissioners answered to their names:

30

PRESENT: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan.

ABSENT. None.

The Board entered into a discussion of the advisability of awarding a one year or a five year contract for the collection and removal of ashes and garbage, etc., at the conclusion of which, Commissioner Brensinger offered the following resolution:

40

BY COMMISSIONER BRENSINGER:

RESOLVED, That the contract for the collection and removal of ashes, garbage, and kitchen refuse, and waste paper from all the streets of Jersey City, N. J., from January 15th, 1917, to November 30th, 1921, be and the same is hereby awarded to Thomas Harrington's Sons Company at the price named in their bid, viz.: \$590,000.00, they being the lowest responsible bidders for the  
 10 five year period, and it appearing to this Board that the terms of such bid are most advantageous to the City from an analysis of the one year and five year bids, the five year period bid being lower than five one year period bids under normal conditions making due allowance for normal increase of population.

FURTHER RESOLVED, That the Corporation Attorney be and he is hereby requested to prepare and have executed the necessary contract  
 20 for the doing of said work.

RECEIVED and ordered placed on file in the City Clerk's Office for a period of two weeks.

Regular meeting of the Board of Commissioners of Jersey City, held in the City Clerk's Office, City Hall, Jersey City, Tuesday, January 16th, 1917, at 2 P. M.

Present: Commissioners Brensinger, Byrne, Hague and Moore.

30 Absent: Mayor Fagan (excused).

“MISCELLANEOUS BUSINESS.”

BY COMMISSIONER BRENSINGER :

RESOLVED, That the contract for the collection and removal of ashes, garbage and kitchen refuse and waste paper from all the streets of Jersey City, N. J., from January 15, 1917, to November 30, 1921, be and the same is hereby award-  
 40

ed to Thomas Harrington's Sons Company at the price named in their bid, viz.: Five hundred and ninety thousand dollars, they being the lowest responsible bidders for the five year period, and it appearing to this Board that the terms of said bid are most advantageous to the City from an analysis of the one year and five year bids, the five year period bid being lower than five one year period bids under normal increase of population.

~~normal increase of population~~ *making due allowance for*  
 FURTHER RESOLVED, That the Corporation Attorney be and he is hereby authorized to 10  
 prepare and have executed the necessary contract  
 for the doing of said work.

Adopted.

Yeas: Commissioners Brensinger, Byrne,  
 Hague and Moore.

Nays: None.

20

30

40

## REASONS.

## NEW JERSEY SUPREME COURT.

	JAMES M. HOUGHTON and)	
	JOHN A. RESCH,	)
	Prosecutors, )	
	vs. )	Reasons.
	MAYOR AND ALDERMEN )	On Certiorari.
	OF JERSEY CITY AND )	
10	THOMAS HARRINGTON'S )	
	SONS' COMPANY, )	
	Defendants. )	

20 The prosecutors set down the following reasons why the resolution awarding the contract for the removal of ashes, garbage and kitchen refuse, etc., to the defendant, Thomas Harrington's Sons' Company, as stated in the return, should be set aside:

1. The specifications upon which bids were received and the contract awarded did not require competitive bids on the same definite basis.
  2. Said specifications were purposely so framed to deter rather than invite bona fide competition,
  3. Said specifications did not invite competition to a common standard of bidding.
  - 30 4. Said specifications were framed in disregard of the direction and spirit of the act in such case made and provided.
  5. Said specifications contained arbitrary, impracticable, uncertain and illegal provisions in violation of the statute in such case made and provided as follows:
    - (a) Section 2 required that the contractor should conform with Chapter 253, Laws of 1913, page 479, commonly known
- 40

as the "Eight Hour Workday Law," and provided that, upon the certification by the inspector of collection of ashes and garbage that the contractor defaulted in the payment, within two weeks, to his employees of their compensation, the Board of Commissioners should deduct such extra compensation from the money due said contractor, and in addition thereto fine the said contractor the penalty set out in said statute, deducting the same from any money coming due to him. Said statute provides that any contractor violating the provisions thereof shall for each offence be punished by a fine, not less than \$50.00 nor more than \$500.00, or by imprisonment not more than six months, or both fine and imprisonment, in the discretion of the Court. 10

(b) By Section 13 it was provided that, if at any time the inspector of the collection of ashes and garbage shall be of the opinion and shall so certify in writing to the Board of Commissioners of Jersey City that the said work or any part thereof is unnecessarily delayed, or that the said contractor is wilfully violating any of the conditions or covenants of said specifications, or of said contract, or executing said contract in bad faith, said Board should have the power to notify the contractor to discontinue all work or any part thereof under these specifications, and thereupon the contractor shall cease to continue said work, or such part thereof as the Board might designate, and the Board should thereupon have power to complete the work and charge the expense of the same to the contractor, deducting the cost thereof out of the money which may be due him, 20  
30  
40

and charging him for the cost in excess of the money so due.

10 (c) Section 15 of said specifications provided that the contractor should have the right, privilege and authority to enter upon and use for dumping purposes the property owned by the Mayor and Aldermen of Jersey City at Droyer's Point, and also at the foot of Yale Avenue, whereas the Mayor and Aldermen of Jersey City do not in fact own any property at the foot of Yale Avenue and the property owned by it at Droyer's Point is unavailable for the purpose by reason of being located to the west of the Morris Canal and there being no bridges, highways, or other means of travel rendering the same accessible for the purpose set out.

20 6. Said specifications were not so framed with the sole consideration of ascertaining the lowest price at which a responsible bidder would agree to perform the required work.

7. Said specifications were purposely framed to favor the defendant, Thomas Harrington's Sons' Company, and to insure to it the award of said contract.

30 8. Said specifications were framed and the award of said contract was made by fraudulent collusion between the Board of Commissioners of Jersey City and the defendant, Thomas Harrington's Sons' Company.

9. Said contract was awarded to the defendant, Thomas Harrington's Sons' Company, notwithstanding that the bid of said defendant did not conform with the requirements of the specifications.

RICHARD DOHERTY,  
Attorney of Prosecutors.

NEW JERSEY SUPREME COURT.

JAMES M. HOUGHTON and)  
JOHN A. RESCH, )  
Prosecutors, )  
vs. ) On Certiorari.  
MAYOR AND ALDERMEN ) Rule to Take  
OF JERSEY CITY and ) Depositions.  
THOMAS HARRINGTON'S )  
SONS' COMPANY, ) 10  
Defendants. )

Application having been made for leave to take depositions to be used on the argument of the above entitled matter, it is on this eighteenth day of January, nineteen hundred and seventeen,

ORDERED that the prosecutors and the defendants have leave to take depositions to be used at the hearing thereof. 20

On motion of RICHARD DOHERTY,  
Attorney of Prosecutors.

Let the above rule be entered in the minutes.

C. W. Parker, J. S. C.  
Actually entered, January 20, 1916. 30



- Q. Do you own real estate in Jersey City?  
A. Yes, sir.  
Q. Where?  
A. 170 Lexington Avenue.  
Q. You are one of the prosecutors in these proceedings?  
A. Yes.

CROSS-EXAMINATION by Mr. Bentley:

- Q. Is the property title in your name?  
A. No, sir, it is not; it is in my wife's name. 10  
Q. Jointly?  
A. Yes, sir.

MICHAEL I. FAGEN, a witness produced on behalf of the prosecutors, being duly sworn according to law, on his oath deposes as follows:

DIRECT EXAMINATION by Mr. Doherty:

- Q. Mr. Fagen, you are City Clerk of Jersey City, are you? 20  
A. Yes, sir.  
Q. How long have you held that office?  
A. June the 4th, 1913, fifteen minutes after one o'clock in the afternoon. I was out of office one year, five months, twelve hours and fifteen minutes.  
Q. Are we to understand that during the time you were out of office you were watching the clock constantly?  
A. Absolutely. 30  
Q. The writ in this proceeding was served on you, was it?  
A. Yes, sir.  
Q. And you returned it, did you?  
A. Yes, sir.  
Q. I show you a collection of papers. Will you look through them and see whether that's (indicating) the copy of the return?  
A. I wouldn't like to testify (interrupted). 40

Q. Have you anything here so you can compare it and say as to its accuracy?

A. With the date of the return?

Q. I want you to identify the return.

A. I can't identify the return.

Q. All right! Have you produced any documents in your official custody awarding the contract for the removal of ashes, garbage and kitchen refuse as referred to in that writ?

A. Yes, sir; every one of them.

10 Q. Have you in that book the minutes of the meeting held December 12th, 1916?

A. Yes, sir.

Q. Does anything in the minutes indicate that at that time the Corporation Attorney sent a communication to the Board relative to the preparation of making the specifications for the removal of ashes, garbage and kitchen refuse?

20 A. They do, yes, sir. Shall I read it? (reading) "From the Corporation Counsel, submitting specifications for the removal of ashes, garbage, and so forth, from the streets of Jersey City, the setting forth in his communication an explanation of the changes that he has made in these specifications in Sections 1 and 15, and explanatory remarks regarding the submission of two forms of bids.

30 Received, and City Clerk directed to read the specifications section by section. The specifications were then considered section by section by the Board. Upon Section 1 being read the same was ordered amended by inserting after the words "not banged" the following: "only such receptacles as conform to the following provisions of ordinance adopted by the Board of Street and Water Commissioners in April, 1912." "That hereafter all ashes and garbage by depositing on the sidewalk shall be placed in a round barrel-shaped receptacle of iron in usable condition, not  
0 less than ten inches nor more than twenty-six

inches high, and not less than nine inches and no more than eighteen inches in diameter shall be returned;" and by striking out the words "and returned" and after the words "not banged."

The roll being called, the amendment was adopted by the following vote:

Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan. (5).

Noes: None.

Upon Section 2 being read, Commissioner Brensinger offered the following as an amendment thereto, so that Section 2 will read as follows: 10

"The contractor shall conform in all respects with chapter 253 of the Law of 1913, page 479, commonly known as the Eight Hour Workday Law, and shall not violate any of the provisions thereof; and if under extraordinary circumstances it shall become necessary for the workmen employed by said contractor to work more than eight hours per calendar day, the said contractor shall keep a separate account of the number of hours in excess of eight hours which his said employees shall work and shall hand such account to the inspector for the removal of ashes and garbage on the day following such work, and shall pay his said employees for such extra work within two weeks of the doing of said work; and in default thereof, upon the certification by the said inspector of the collection of ashes and garbage the said Board of Commissioners shall deduct such extra compensation from the moneys due said contractor, and in addition thereto shall fine the said contractor the penalty set out in said statute, deducting the same from any moneys coming due to him. The said contractor may work his said employees eight hours during the hours between 5 A. M. and 8 P. M., and shall cause no interference or annoyance to householders or other interests, traffic or pedestrians at 20 30 40

any time.”

The roll being called, the amendment was adopted by the following vote:

Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan. (5).

Noes: None.

Upon Section 11 being read, the same was amended by inserting after the words “thereof” the words “or assign this contract.”

10 The roll being called, the amendment was adopted by the following vote:

Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan. (5.)

Noes: None.

20 Upon Section 15 being read, the same was ordered amended in line 5, after the words “South Cove” by striking out the words “in said city,” and in place thereof the following was inserted: “and the property of the City in Block 602 and 603 on the official assessment map of Jersey City for the purpose and use of dumping or depositing thereon the ashes, garbage, sweepings, refuse and all other matter to be collected and disposed of under these specifications;” and in line 8, after the word “specifications” the following was ordered inserted: “provided, however, that the property last mentioned may be used for such purpose for only one year from the date of contract.”

30 The roll being called, the amendment was adopted by the following vote:

Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan.

Noes: None.

Under subdivision “Notice to Contractors” the specifications were ordered changed by having bids submitted without separation, and the section was ordered altered accordingly by striking out number 2.

40 The roll being called, the amendment was

adopted by the following vote:

Yeas: Commissioners Brensinger, Byrne,  
Hague, Moore and Mayor Fagan. (5).

Noes: None.

Thereupon on roll call the specifications were ordered adopted and filed, and the City Clerk requested to advertise for proposals in accordance therewith.

Yeas: Commissioners Brensinger, Byrne,  
Hague, Moore and Mayor Fagan.

Noes: None.

10

That is all.

Q. The original draft of the specifications was received from Mr. Milton, was it?

A. At the meeting, yes.

Q. And with the exceptions of the amendments that you have called our attention to, that draft was adopted by the Board, was it?

A. No.

Q. Mr. Milton's draft of the specifications was adopted by the Board with the exception of those amendments that you have called attention to?

20

A. They were adopted with the amendments.

Q. On your return you made a true copy of the specifications as adopted, did you?

A. Well, I don't know; I would like to make this explanation without going on the record so you can examine it, if you want to.

Q. Would you recognize a copy of the specifications?

A. Yes, sir.

30

Q. Is that a copy? (showing paper)

A. That is one copy of the specifications; which one of the copies it is, I don't know; but I recognize it by the O. K., T. J. G.

Mr. Doherty: I offer the copy of the specifications.

Q. Have you the original specifications here? 40

A. Yes, sir.

Mr. Bentley: I object to the copy of the specifications.

Mr. Doherty: The offer is withdrawn.

Request being made of the witness to produce the original specifications, the witness produced them.

10

Q. You produce the original specifications with copies?

A. Yes, sir.

Q. Are the copies accurate copies of the original?

A. Absolutely.

20

The Commissioner: The Counsel for the complainant asks that the Counsel for the defendant will have one of the copies produced by witness marked in evidence in place of the original.

CROSS EXAMINATION BY MR. BENTLEY:

Q. Mr. Fagen, are these specifications in the exact shape in which they were finally passed?

30

A. Yes, sir. That one (indicating) was, if that was passed; it indicates a paper and says that paper is the original one submitted by Mr. Milton and read by me section by section, and amendments placed by me in them as they were taken up section by section by the Board. That is the one that you have in your hand.

Q. Have you got any transcribed copy of these same specifications?

A. Yes, sir.

40

BY MR. DOHERTY:

Q. Do you identify this paper that you produce as a true copy of the specifications as adopted?

A. Yes; as made by me and advertising given out.

Mr. Doherty: Now it is consented that the copy of the paper be placed in evidence instead of the original.

Q. Have you got the proposals as they were received? 10

A. All but Harrington's.

Q. Have you got the minutes showing what the proposals were?

A. Yes, sir.

Q. Will you read what you have?

A. (reading) The minutes of the Board of Commissioners of the meeting Tuesday, January the 2nd, 1917; on the head of Reception of Bids.

This time and place having been set for the reception of bids for the collection and removal of ashes and garbage, and so forth, the following two bids were received: 20

1—Jersey City Meadow Company, \$97,700 (one year); \$634,000 (five years), with freeholder surety bond.

2—Montgomery & Conlon, \$120,000 (one year); \$699,000 (five years), with freeholder surety bond.

3—The Brown Company, \$114,675 (one year); \$639,000 (five years), with certified check \$5,000. 30

4—Thomas Harrington Sons' Co., \$590,000 (five years), with surety company bond.

On motion the bids were opened and read and ordered placed on the table for further consideration 4 P. M. today.

Q. Will you read what action was taken on the bids?

A. (reading) The roll being called, the Com- 40

missioners answered to their names.

Present: Commissioners Brensinger, Byrne,  
Hague, Moore and Mayor Fagan: Five.

Absent. None.

The Board entered into discussion of the advisability of awarding a one year or a five year contract of the collection and removal of ashes and garbage, at the conclusion of which Commissioner Brensinger offered the following resolution:

10

BY COMMISSIONER BRENSINGER: RESOLVED, That the contract for the collection and removal of ashes, garbage and kitchen refuse and waste paper from all the streets of Jersey City, N. J., from January 15th, 1917, to November 30th, 1921, be and the same is hereby awarded to Thomas Harrington Sons' Company at the price named in their bid, viz.: \$590,000, they being the lowest responsible bidders for the five year period, and it appearing to this Board that the terms of such bid are most advantageous to the City from an analysis of the one year and five year bids; the five years being lower than the five one-year period bids under normal conditions, making due allowance for normal increase of population.

20

FURTHER RESOLVED, That the Corporation Attorney be and he is hereby requested to prepare and have executed the necessary contract for the doing of said work.

30

Received and ordered placed on file in the City Clerk's Office for a period of two weeks.

Q. Was that resolution eventually adopted?

A. Yes, sir.

Q. Just tell us when?

A. Tuesday, January 16, 1917, at a regular meeting of the Board of Commissioners.

40

Q. Now, is there anything in your minutes to show that at the time that resolution was introduced by Mr. Brensinger what the cost of five and

one year period bids would be?

A. In my minutes?

Q. Yes.

A. No, sir; there is not.

Q. Is there anything there to show what the normal increase of population for five years would be, ensuing from that date?

A. No, sir.

Q. Has the contract under that award been executed yet?

A. No; I think it has not been. I was informed by Miss Gilligan last night, when I went to get the contract in obedience to the writ, the contract was not yet executed. 10

Q. And in the bids that were received, did any bidder, except the Thomas Harrington Sons' Company, take the liberty of prescribing the manner in which the payments were to be made?

A. No, sir.

Q. There was no such privilege held out to any of the bidders according to the forms of proposals that were distributed by the Chief Engineer? 20

Mr. Bentley: I object on the ground it is incompetent. The advertisement of the proposals is the best evidence.

And upon the further ground that the witness has not been shown to be qualified to testify to that. 30

Q. Have you any other bids besides that of Thomas Harrington Sons' Company?

A. Yes; all of them.

Q. Will you look at them and tell us by their forms if they are alike and whether any invitation was held out to the bidder to prescribe the manner and amounts of payments in the five year bid? 40

MR. BENTLEY: I object on the ground that the documents are the best evidence.

A. No, sir; there is none.

Q. Now, I will ask you to produce the original bids.

A. I produce the bid of the Brown Company, Jersey City Meadow Company, Montgomery & Conlon.

10 Mr. Doherty: (to Mr. Bentley) Will you stipulate, Mr. Bentley, that these proposals show bids of these respective bidders in the same form as they appear in the minutes to have been read?

Mr. Bentley: No.

Mr. Doherty: I offer in evidence these three bids.

20 The Commissioner: The three proposals referred to are offered. First, Montgomery & Conlon for \$699,000. Attached thereto are two separate papers, marked Exhibit P 2.

There being no objection the proposals referred to are admitted in evidence.

30 The next proposal offered is Jersey City Meadow Company for \$634,000, marked Exhibit P 3.

No objection.

The third is a proposal signed by the Brown Company for \$639,000, marked Exhibit P 4.

No objection.

40 Mr. Doherty: I will now read Exhibit P 2: The Department of Streets and Public Improvements, Bureau of Engineer; Proposal:

For the Collection and Removal of Ashes, Garbage and Wreckage Refuse and Waste Paper from all the Streets of Jersey City, N. J., for a period thereafter stated; stamped in red ink. "Notice of prices must be written in the proposal and also stated in figures."

"The Board of Commissioners of Jersey City

"Gentlemen...

"We will contract for the collection and removal of ashes, garbage, etc., according to plans and specifications in the office of the Department of Streets and Public Improvements for the following prices, viz.: For the period from January 15, 1917, to November 30, 1917, without separation, for the sum of \$120,000, one hundred and twenty thousand dollars. For the period of January 15, 1917, to November 30, 1921, without separation, for the sum of \$699,000, six hundred and ninety-nine thousand dollars."

Jersey City, January 2, 1917.

"MONTGOMERY & CONLON."

"Address. 392 Mercer Street,  
Jersey City."

"Notice.—No unbalanced bids will be received or considered."

"Agreement of sureties on other side."

Exhibit P 3: In form the same as Exhibit P 2, down to the expression of the bid following: "for the period from January 15, 1917, to November 30, 1917, without separation, for the sum of \$97,700, ninety-seven thousand seven hundred dollars. From the period from January 15, 1917, to November 30, 1921, without separation, for the sum of \$634,000, six hundred and thir-

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ty-four thousand dollars.”

(Signed) “JERSEY CITY MEADOW  
COMPANY,”

“Hugh McClosky,”

“Secretary,”

“27 Bergenline Avenue,”

“Union Hill, New Jersey.”

Notice.—No unbalanced bids will be  
received or considered.”

“Dated, January 2, 1917.”

10

Exhibit P 4: Same in form down to the  
following expression of bid: “from the  
period from January 15, 1917, to November  
30, 1917, without separation, for the sum of  
\$114,675, one hundred and fourteen thou-  
sand six hundred and seventy-five dollars.  
For the period of January 15, 1917, to No-  
vember 30, 1921, without separation, for  
the sum of of \$639,000, six hundred and  
thirty-nine thousand dollars.”

20

“THE BROWN COMPANY.”

“No unbalanced bids will be received or  
considered.”

Q. At the time of the adoption of the specifica-  
tions on December 15th, who was then doing the  
work of removing the ashes, garbage and kitchen  
refuse of Jersey City?

A. Montgomery & Conlon.

30

Q. How long had they been engaged in doing  
that work?

A. From the ending of the contract, November  
30th to January 17th—I think it was the 15th or  
14th.

Q. And had they been engaged in that work  
then, November 30?

A. They had the contract for the year pre-  
vious.

Q. Do you know how long altogether they had  
been engaged in that work?

40

A. For a number of years; for two and a half years, about.

Q. And on separate yearly contracts?

A. Yes; separate yearly contracts.

Q. During your service as City Clerk was the work of removing the garbage ever performed under any other than the yearly contract?

A. No, sir.

Q. When did the last yearly contract, held by Montgomery & Conlon, expire?

A. Yearly contract? November 30th, 1916. 10

Q. And can you state of your own knowledge, or, by referring to the minutes, why the temporary contract from November 30th to January 15th was awarded?

A. For the reason that the bids that were received under previous specifications and proposals, or rather advertisements for proposals were rejected by the Board.

Q. Have you anything in your minutes on that transaction? 20

A. I don't think so. The book begins on December 5th, 1916.

Q. Would you be able to identify the specifications upon which bids were received on November 28th?

A. No, I would not.

Q. You have those specifications in your possession, have you not?

A. I have in the office; yes, on file. 30

Q. And you caused the advertisement to be inserted for the reception of bids on November 28th, did you?

A. Whenever the time was, yes.

Q. Do you recall that the original advertisement called for bids on November 21st?

A. I can't recall the dates; no.

Q. How many specifications were adopted for the removal of ashes and garbage since September, 1916, do you know? 40

A. Two, to the best of my recollection.

Q. And which two were those?

A. The present ones and the ones previous to those; three; and a short contract to Montgomery Conlon for about a month and a half.

Q. Have you any recollection of specifications being adopted upon which there were advertisements and bids received on October 20th?

A. Not at the present time I can't recall it.

10 Q. Is it not a fact that there were four advertisements inserted by you for bids for the removal of ashes and garbage as follows: one for bids received on October 20th; another for bids that were to be received on November 21st, the date of which was changed to November 28th; also for bids that were received on January 2nd?

A. I have only the recollection of the present bids, the short term bid and the bids that were received previous to that that were rejected by the Board. And the other, I am not positive; I  
20 wouldn't want to say. I would like to refer to the papers.

Q. I think that is all.

CROSS-EXAMINATION by Mr. Bentley:

NO CROSS-EXAMINATION.

30 JAMES M. HOUGHTON, a witness produced in his own behalf, being duly sworn according to law on his oath deposes and says:

DIRECT EXAMINATION by Mr. Doherty:

Q. Where do you live, Mr. Houghton?

A. 986 Summit Avenue, Jersey City.

Q. How long have you lived in Jersey City?

A. About twenty-five years.

Q. You are a citizen of the United States?

A. Yes, sir.

40 Q. Do you own any property in Jersey City?

- A. Yes, sir.  
Q. Where?  
A. 663 Summit Avenue.  
Q. How long have you owned it?  
A. Around ten years.  
Q. You are one of the prosecutors in this proceeding, are you not?  
A. Yes.

CROSS-EXAMINATION by Mr. Bentley:

- Q. Do you own the property in your own name? 10  
A. Yes, alone.  
Q. Do you object to the form of the specifications for the removal of ashes and garbage from Jersey City that had been adopted by the Commissioners?  
A. Yes, sir.  
Q. What objection have you?  
A. I do not think it was for the benefit of Jersey City, a five year contract. 20  
Q. What is your business?  
A. Undertaking.  
Q. You are also a member of (interrupted)  
A. The County Board of Elections, yes, sir.  
Q. Did you think a more advantageous price could be obtained for a removal of ashes and garbage one year at a time than five years?  
A. I did, yes.  
Q. Did you examine the bids that the various bidders had submitted for the removal of ashes and garbage after each had given in his envelope? 30  
A. No, sir.  
Q. Do you know how much the various bids were?  
A. I can't say now. I read the notice made in the newspapers.  
Q. Do you know how many bidders there were?  
A. At what time? 40

Q. This month?

A. There were three or four, I think.

Q. Do you know who they were?

A. Not all of them. I wouldn't say (interrupted)

Q. Well, what ones, do you know?

A. Well, knew Mr. Brown, of the Brown Contracting Company; and I knew Mr. Conlon, of the Montgomery & Conlon Contracting Company, personally.

10 Q. I don't mean that. Do you know the names of the various bidders? You told us two; do you know who the others were, too?

A. Thomas Harrington Sons' Contracting Company, as I read them in the paper; and there was that Meadow Land, or something—I can't just exactly recall it.

Q. Do you know whether the Harrington Sons' Company's bid was for the period from January 15th to November 30th, 1917?

20 A. Well, I wouldn't like to say that now. I couldn't offhandedly now. I remember reading it.

Q. Do you know what amount they bid for the period from January 15th, 1917, to November 30th, 1921?

Mr. Doherty: I object to that. That is no proof at all that they did bid for one year. As a matter of fact, they didn't.

30 Q. (Last question repeated).

A. No, I could not say positively; I can't remember it.

Q. Well, can you give us any of the figures in any of the bids for this work?

A. No; I wouldn't say offhandedly; I haven't any record to go by.

Q. Have you examined the specifications upon which the bids were received?

A. No, I have not.

40 Q. Have you ever read a copy of them?

A. I have not; no, sir. I read the account in the papers; and while there in a recount at the Court House spoke to Mr. Doherty, who was there, interested in one of the candidates, and I said to him that I thought it wasn't a fair proposition for the taxpayers of Jersey City to be tied up with a contract like that for five years on the verge of a set of Commissioners going out of office and to make a contract which would tie a new set of Commissioners coming in next year; and I didn't think it was for the benefit of the taxpayers of Jersey City. 10

Q. That was the recount between Mr. Ackerman and Mr. Seglie for Boulevard Commissioner?

A. Yes, sir. I asked if there could be anything done (interrupted).

Q. Just a moment, Mr. Houghton. Was that the only objection that you had?

A. What was that?

Q. The one you were just speaking of, the five-year term? 20

A. I didn't think it looked fair to me, I told him.

Q. Do you know any other objection to the granting of the contract?

A. In what way?

Q. Any way?

A. Well, as a taxpayer and as an interested citizen I did not think the contracts were to the interest of the taxpayers and the citizens. 30

Q. Well, I understand that. You said it was to be for the term of almost five years?

A. Yes.

Q. Now I ask you if there was any other reason that you didn't like the letting of this contract?

A. Well, I considered this: At the present time, as you know, and we all know, that it is hard to get laborers; it is hard to get any help, and within a year or two probably there will be a difference, a material difference in the hiring of 40

help and other things connected with these contracts, and for that reason I did not consider that it was for the best interests of Jersey City to tie up on a five-year contract.

Q. Well, that still gets us to the subject of the five years. I understand perfectly that you objected to it because it was to be let for the period of five years, or nearly. I asked if you had any other reason for objecting to the letting of the contract under these specifications?

10 A. What other reason could I have?

Q. You don't answer the question.

A. Well, you are asking a question that I don't see that I can answer.

Q. Why? Because you had no other objection than the one you stated, isn't that so?

A. I wouldn't say that. I may have had at the time but I don't recall it now.

Q. It was a mere unimportant objection, was it?

20 A. I wouldn't say that you would call it unimportant or important.

Q. You can't think of any other objection to the contract except that one, that it was for a period of five years?

A. Yes, sir.

Q. You can't think of any other?

A. That is the principal objection.

Q. Can you think of any other?

30 A. I can't think of any other just now.

Q. Did you balance against the decrease in wages that you hoped for the increase in population in Jersey City that would take place from year to year?

A. Yes, sir.

Q. And you didn't think one would offset the other?

A. I don't think so.

40 Q. Have you any knowledge of the prices that have been paid to contractors for removing ashes

and garbage from this city?

A. No, I don't think I have. The principal thing that aroused me (interrupted).

Q. Never mind. You haven't answered my question at all. You made no investigation of the prices that have been paid for this work in the past by the City, did you?

A. I didn't go to the City; not to the City Hall, no. As I say, I spoke to Mr. Doherty (interrupted).

Q. Did you make any investigation? 10

A. (continuing) and I asked him what could be done.

Q. What you said to Mr. Doherty is not evidence, Mr. Houghton. Did you make any investigation as to prices that have been paid in the past?

A. What I wanted to get at was, how I made it; you asked me; I want to tell you how I made it (interrupted).

Q. Answer me, yes or no. 20

A. Yes.

Q. Now, what investigation did you make?

A. Well, I spoke to Mr. Doherty regarding those figures and the conditions and we went over them; and in going over them I asked him what could be done, and he said: "Do you want to fight it?" "Well," I said, "If it don't cost too much I would;" and I made arrangements with Mr. Doherty right there to go ahead.

30

Q. When was that?

A. That was during this recount in the Court House.

Q. You can't give us the date?

A. I couldn't just exactly give the date; and Mr. Doherty went off that evening; and when we finished up he called me up on the 'phone in the office and we considered the matter together. That is what we did.

Q. I don't want to know what you did. What 40

did you learn from Mr. Doherty about the prices that had been paid in the past for the removal of ashes and garbage from Jersey City?

A. I just exactly don't remember that. It was a five-year contract.

Q. Did you observe anything from those figures that he gave that the removal constantly increased from year to year in the past?

A. There was probably an increase there; I don't exactly recall that.

10 Q. You seriously think, do you, that some time in the near future there is going to be a decrease of wages of men?

A. I figured there would be a decrease in everything after this is settled, which I hope will be very shortly.

Q. You don't pretend to have any knowledge of specifications, do you?

A. No, sir; only as the ordinary man.

20 Q. Did Mr. Doherty tell you during your conversation with him the law gave these Commissioners the right to let a contract five years?

A. He didn't say anything about that.

Q. Did you make it clear to him that that was your objection to the contract being awarded?

A. I certainly did.

Q. Have you ever certioraried any other contract by the City?

A. No, sir.

30 Q. That is all.

RE-DIRECT EXAMINATION by Mr. Doherty:

Q. Did Mr. Doherty call your attention to any tyrannical or arbitrary provisions in these original specifications that were calculated to deter honest competition?

40 Mr. Bentley: I object on the ground that it is viciously leading.

A. Yes, sir.

Q. Did he call your attention to the fact that any report of a violation of the Eight Hour Workday Law would give the Commissioners the right to mulct the contractor out of certain fines?

Mr. Bentley: I object on the ground that the question is leading, and the lawyer is testifying for his client.

A. That was gone over.

10

Q. And was your attention called to another section with reference Inspector of the collection of garbage verifying that in his opinion the contract was not executed in good faith, whereupon the Commissioners might cancel the contract either in whole or in part (interrupted).

Mr. Bentley: I object on the ground the question is leading.

20

A. Yes, you did.

Q. And it was upon that information and upon the additional instruction that you started this action?

Mr. Bentley: I object on the ground it is leading.

RE-CROSS-EXAMINATION by Mr. Bentley: 30

Q. Mr. Houghton, which, in your opinion as a citizen and a taxpayer, is worse: the loss of money or corruption of a governing body?

Mr. Doherty: The loss of money by whom: the Commissioners?

Q. (Last question repeated).

A. The loss of money by whom?

40

Mr. Bentley: Perhaps I had better re-frame the question.

Mr. Doherty: That's not a riddle you're putting, is it?

Q. Which do you think is worse for the citizens and taxpayers of Jersey City: corruption on the part of a governing body or a loss of the taxpayers' money by reason of honest but mismanaged activity on the part of the governing body?

Mr. Doherty: I object to that question upon the ground of not being based upon any proven state of facts in this case; and also this witness is not qualified either as an expert on corruptions or as having any particular knowledge of the consequences of municipal extravagance.

20 Q. (Last question repeated).

A. I can't answer that. That's a question in my mind. How do I know it was honest but mismanaged?

Q. You cannot answer?

A. I say, how can I answer it?

Q. You didn't recall the various things that Mr. Doherty told you about when I examined you before; just a moment before.

30 A. I told you that I couldn't just then recall everything that transpired.

Q. But you remembered very readily when Mr. Doherty refreshed your memory?

A. I certainly did.

Q. How long ago did you have this conversation?

A. It was probably two weeks.

Q. Do you consider the mulcting of the contractor by the municipality a very wrong thing?

40 A. I would like to know the definition of that

word.

Q. Mulet?

A. Yes.

Q. You seemed to understand it, didn't you, when Mr. Doherty used it a while ago?

A. I didn't catch it, if he did, exactly.

Q. Well, then, you answer Mr. Doherty's questions without knowing them all?

A. Because Mr. Doherty refreshed my memory as occurring in his office.

Q. The word "mulet" didn't stump you when he asked you, did it? 10

A. I didn't consider that particularly because I knew what he was talking about. I don't know what you are talking about exactly.

Q. If that was one of the reasons that your lawyer gave, the contract ought to be attacked, ought it?

A. That's not my question, Mr. Bentley.

Q. You are not here for asking questions!

A. You know I asked you for the explanation of that word; you haven't answered it. 20

Q. Did you care to answer?

A. I asked you for the definition of the word so I may know what I am saying.

Q. (The question is repeated as follows: "The word 'mulet' didn't stump you when he asked you, did it?")

A. I said no, because I understood what Mr. Doherty was talking about, because it brought fresh to my memory our conversation in his office. 30

Q. Now, what Mr. Doherty meant was this: That of two contractors who bid on these specifications, if one was friendly with the governing body and the other was not, that the governing body could fine the friendly contractor, if he got the contract, very lightly; and if the unfriendly contractor got the contract he might be fined very heavily. That is what he meant? 40

Mr. Doherty: I object to the question because Mr. Doherty repudiates the explanation of his meaning.

Q. You don't answer.

Mr. Doherty. He doesn't have to answer if he doesn't want to.

10 Q. If you don't answer I shall move to strike out all your testimony. (Question repeated as follows: "Now, what Mr. Doherty meant was this: that of two contractors who bid on these specifications, if one was friendly with the governing body and the other was not, that the governing body could fine the friendly contractor, if he got the contract, very lightly; and if the unfriendly contractor got the contract he might be fined very heavily. That is what he meant?")

20 A. I answer that that I consider that that was so.

Q. That is the conclusion that you drew from what he said, wasn't it?

A. Yes; it could be used in that way.

Q. Now do you mean to say that an enormity of that kind slipped your mind when you were under cross-examination a few minutes ago?

30 A. Well, I didn't think of that; no. But those are things that I have talked over with Mr. Doherty.

Q. Talked them over more than once, did you?

A. Yes; on the evening and at his office first; and one afternoon in the Court House I spoke to him about it and my reason; and my reason for speaking to him about it was that I told him that Mrs. Harrington had called at the Court House personally to see me, and she wanted to know (interrupted)

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JAMES M. HOUGHTON—Re-Cross

Mr. Bentley: I object to what she said.

A. (continuing) She wanted to know why I was fighting this case. What did Mr. Harrington ever do to me? and I said that I didn't know Mr. Harrington; I had no reason to fight Mr. Harrington particularly any more than that the contract was not proper; and on that occasion I spoke to Mr. Doherty about her being there, and we had quite a conversation—I don't suppose that's the answer.

10

Mr. Bentley: I ask that all of the conversation with Mrs. Harrington be stricken out.

The Commissioner: Yes.

Q. That is all.

GEORGE F. BRENSINGER, a witness produced on behalf of the prosecutors, being duly sworn according to law, on his oath deposes as follows:

20

DIRECT EXAMINATION by Mr. Doherty:

Q. You are one of the Commissioners of Jersey City, are you not?

A. Yes, sir.

Q. And you have been for about four years past?

30

A. Three years and a half.

Q. Are you acquainted with James Harrington, sometimes called J. Harrington?

A. Is that the head of the Thomas Harrington's Sons?

Mr. Bentley: I object on the ground it is irrelevant and it has no bearing on the 40

issue.

A. Yes; I met him at the first time that the garbage bids were in at the Board of Commissioners' meeting.

Q. When was the first time the garbage bids were in, Commissioner?

A. That is, this last preceding—I don't recall the date.

Q. Did you meet him before that?

10 A. No; never in my life.

Q. Did you ever meet his brother?

A. Is that the little dark haired fellow? Yes; I met a brother of Mr. Harrington's about the same time, or maybe a day or two later than the head of the firm.

Q. Had you met him before?

A. No, sir.

Q. What date are you referring to, January 2nd?

20 A. I don't recollect the date.

Q. Was it on the date the bid was awarded to the Harrington Company?

A. No; before that.

Q. Before that. Well, to the reception of what bids do you refer when you say you met him a few days after?

A. The first bids that went in for this year, the current year's garbage collection.

30 Q. Do you recall that the first bids were received on October 20th?

A. No; I can't recall the date.

Q. Do you deny that the first bids were received on October 20th; or, do you admit it?

A. I have stated that I do not recollect.

Q. And do you recall that you met Mr. Harrington at the City Hall a few days after that?

40 Mr. Bentley: I object unless he makes certain what he means. After what?

A. My memory as to dates is very imperfect. I am a very busy man. I might if figures as to (interrupted) I can get them from my office, Mr. Doherty, because I will not testify on that.

Q. You can't remember the date when you first met either of the Mr. Harringtons?

A. No, sir; I cannot.

Q. Do you know where either of them live?

A. Do I know where either of them live? I do know the one you have referred to as J. Harrington, if he is the head of the firm. I believe about the night of the Advertising Meeting in Jersey City, a meeting on advertising in Jersey City, I met Mr. Harrington, and **he told me that he lived on the top of the Hill, on the top of the Montgomery Hill**; and that's all the knowledge I have of his residence. 10

Q. You don't know where his home is?

A. That's what he told me where his home was. I have never been in his office; I don't know where his office is. 20

Q. Where was he when he told you?

A. In the City Hall.

Q. And did you ever go to his home after that?

A. I have just stated I have never been to his home; nor I don't know where his office is.

Q. Have you been to the home of either of them?

A. I don't know.

Q. You haven't been to the home of either one of them? 30

A. Mr. Commissioner, do I have to answer that? Answer it without indignation is argued by it?

Q. At the time of your conversation with Mr. Harrington at the City Hall, that you had, which was the Advertising Night, did he in that conversation refer to the prospect of the Harrington Sons' Company making a bid for the garbage?

A. I can't recollect. I can't recollect the con- 40

versation. I should say my best recollection is, no; but it is purely a recollection; I can't recollect the conversation with the multitude of people I deal with accurately because I deal with a mass of conversations a day.

Q. What were the specifications on that so-called Advertising Night, do you remember?

A. You misunderstand me. \$20,000 was appropriated by Jersey City for the purpose of advertising Jersey City; and I called a public meeting for the purpose of discussing the disposition of that money in the City Hall. That is the Advertising Meeting that I referred to. It has nothing to do with the specifications at all.

Q. And can you tell us what the conversation was between you and Mr. Harrington, preceding that information to you as to where he lived?

A. I cannot. It was something not connected with any work that he might be doing with the City, or intended to do, but I can't recall that; it was purely conversational.

Q. You can't recall anything that he said except to tell you where he lived; is that right?

A. No. The only reason that I recollect that he told me was that you asked me if I know where he lived, and I said, first, I don't know. Then there was some question that arose out of it of my going to his home. I never had any intention of going to his home, and I never had any desire or any reason to go there either in a public or private capacity.

Q. You were present at the meeting of the Commissioners on November 29th, were you not?

A. I don't know whether I was or not without consulting the record. I don't recollect the date.

Q. Were you present?

A. I have been present at almost all the public meetings since I have been in office. I have been absent once on the railroad tax business,

furthering my prosecution of the railroads which were largely underassessed.

Q. Can you remember with reference to the fact that it was at a meeting and the bids that were received for the removal of ashes and garbage were rejected by reason of Corporation Counsel Milton advising the Board that the specifications were faulty?

A. Yes; I recall that meeting.

Q. Do you recall Mr. Harrington being present there?

10

A. I would say that he was; I am not sure of that. I attached no importance to it in the prosecution of public business and, therefore, did not retain it in my recollection. I am a very busy man, as I said before. I have the details in my office; but my memory on details is very faulty.

Q. You have a retentive memory on other matters?

A. I can't answer such question. I do not.

Q. Do you recall the fact that Mr. Harrington addressed the Board on the question sustaining his bid?

20

A. I do remember that at one of the meetings he appeared by Mr. Brockhorst and Mr. Brockhorst addressed the Board. Whether Mr. Harrington addressed it or not, that I do not recollect.

Q. Would you remember that Mr. Harrington, speaking to the Board, said he would never have bid upon the garbage specifications only he had been advised to do so by some of the Commissioners; do you recall that?

30

A. I do not recollect it; no, sir.

Q. Do you remember what any of your own comments were at that time with respect to giving this garbage contract to the Harrington concern?

A. I voted against the rejection of the bids because I thought the Harrington bid at that time

40

was a very advantageous bid to the City; and that I was afraid that if other bids were solicited that we would receive a higher bid. That I was right was justified in the results.

Q. And you so voted, Mr. Brensinger, after or before the Corporation Counsel had advised the Board that the specifications were illegal?

A. After the Corporation Counsel advised the Board.

10 Q. Notwithstanding the illegality of the specifications you were still disposed to give the job to the Harrington concern?

A. I have not said so. I said I voted against rejecting these bids because I thought the bids were the most advantageous that have been given to the City. That I was right has been justified by the conclusions. I said nothing about having awarded that contract to the Harrington concern. I say in answer to that question that because the Harrington concern was the lowest bidder had absolutely nothing to do with the situation, but that the letting on the bid was to save money to the City if possible.

20 Q. Do you recall after the bids were rejected that you then made a motion to employ the Harrington concern to remove the garbage for a period of forty-five days, without advertising or without specifications, at the same charge, or at the same rate, as specified in their bid?

30 A. I do not recall it.

Q. You don't deny it?

A. I deny it to the extent that I don't think I did. The respect in which I deal with them is unimportant, and my memory is very defective. I can answer and get the replies on the record if I can refresh my memory. I am the financial head of a thirteen million dollar corporation and I have a big responsibility and matters of details to handle (interrupted).

0 Q. Oh, yes; we have heard about you. Do

you remember how many such specifications altogether were drawn for the removal of this garbage?

A. I don't remember. I have heard the City Clerk's testimony, and my recollection would be that he is inaccurate.

Q. How many specifications were there, do you remember?

A. Well, there was one set of specifications which was rejected; then there was another set of specifications on which the bids were received and the bids were rejected; there was another set of specifications; then there was another one; then there was one set for the temporary contract; and then there was one on which the two was bid. That is my recollection. The City Clerk's recollection is not the same. I would be happy to defer to his recollection in these matters. 10

Q. I call your attention to the one set of specifications, the second set on which bids were had on November 20th. 20

A. I cannot testify upon these specifications because I am not sure how many there were. Of course I have my recollection of them; by any such method of identifying them doesn't refresh them to my mind.

Q. Did you participate in the framing of any of the specifications?

A. To a slight extent.

Q. Which specifications did you participate in framing? 30

A. There was one set of specifications which was sent to Mr. Bentley with the request from him to **add to it a five-year period and also provide dumping grounds on City property.** That change was made to the specifications, drawn by the Chief Engineer, requested by Mr. Bentley. Later Mr. Milton—Now, wait a minute!

Q. We'll wait.

A. I think those specifications were adopted 40

by the Board.

Q. Which?

A. With Mr. Bentley's change.

Q. Are you sure?

A. No; I am giving you my best recollection about what I consider as unimportant as affecting me and my department. Then I think those specifications were advertised (interrupted).

Q. Which? The one that Mr. Van Keuren drew?

10 A. That Mr. Van Keuren drew with the change in them, at my request. Mr. Milton saw them, of course, as he would naturally, after they were advertised. I spoke to my (interrupted)

Q. Tell us what you know. Don't tell us what you think about this.

Mr. Bentley: Stick to what you know.

20 A. I'll stick to that. I want it entered on the record, Mr. Commissioner, that I was interrupted by the Counsel when I was trying to give my best recollection, without sarcastic remarks and not trying to talk about myself; or to Mr. Milton seeing them; and of course I confine myself to what I know!

Q. Is that your answer?

A. I don't recall my answer.

30 Q. You don't recall that the plans were drawn by the Chief Engineer?

A. Yes.

Q. What do you recall?

A. To the extent of advertising the provision of **adding dumping grounds and five years.**

Q. Do you recall that you recommended those changes to be made to the original specifications after the specifications had been adopted by the Commissioners?

A. No; that is not so.

40 Q. You say, that is not so?

A. No. But what was done was, I directed Mr. Bentley to give me a resolution with the form of the amendment that I might change them in order that they could be presented for adoption by the Board.

Q. And did you ever amend by resolution the specifications?

A. I don't recall.

Q. Isn't it a fact that the specifications were amended by Mr. Bentley without the Board ever approving the changes that you made; isn't that correct? 10

A. In that I may be a hostile witness if I am examined on this matter, although I do not feel that I am a hostile witness to these proceedings; for I am here to testify to anything I know.

Q. Was the resolution adopted?

A. Yes, sir.

Q. And you don't recall the meeting at which it was adopted?

A. No, sir. 20

Q. (Stenographer reads the previous question, to wit:) "Isn't it a fact that the specifications were amended by Mr. Bentley without the Board ever approving the changes that you made; isn't that correct?"

A. That is not so. I think I answered that at length.

Q. Do you know whether you recommended those specifications to be amended before or after you met Mr. Harrington? 30

A. **Oh, my! Some time before.**

Q. Before you met him?

A. Yes.

Q. When was this meeting held in the City Hall in which you met Mr. Harrington? Can you recall now?

A. **I don't know when I first met him. Mr. Harrington came to my office and told me that he had or was about to bid, depending upon the** 40

work that he may have upon the specifications, upon the garbage contract. I told him I was very glad and I was anxious to see competition thereon; **whether that first meeting with him was before or after the first bid I do not remember.**

Q. Commissioner Brensinger, what did you mean by testifying at the outset that you didn't remember any discussion of the matter with (interrupted).

A. I never said any such thing.

10 Q. It is a feature of the testimony.

A. I just told you that Mr. Harrington came to me and told me that either he had been or was to be a bidder, **dependent upon the time that he may have.** I don't just recall what the premises were; I don't just recall.

Q. Did Mr. Harrington say **that he would do it on a five-year contract but not on a one-year contract?**

A. **No, sir; I didn't discuss that.**

20 Q. Did Mr. Harrington, at the meeting on November 29th, inform the Commissioners that he would not bid on any other but a five-year contract?

A. **I don't recollect whether he said it or not.**

Q. One of the changes that you suggested in the specifications drawn by Mr. Van Keuren was the insertion of the option to bid on a five-year contract?

30 A. Yes, sir. I am the father of that idea and I am very proud of my child, too.

Q. You are also introducer of the amendment which calls for the strict observance of the Eight Hour Law?

A. Yes; I did that.

Q. Have you any responsibility in the matter of the insertion of Section 13 in the present specifications? I call your attention to that (showing paper).

40 A. I will say that if these are the specifica-

tions that are now up for certiorari—which, of course, I don't know; you handed me a paper—I would say that I had quite some responsibility in drawing; that is, not in drawing them but in their drafting, **because I consulted with Mr. Milton and with Mr. Bentley before their adoption by the Board.**

Q. Did you inspire Section 13 in these specifications?

A. I don't recollect. I don't think so. I think that is some of Mr. Milton's legal ideas. 10

Q. How many conversations altogether did you have with the Harrington gentlemen relating to their respective bid?

A. Oh, I have seen **them several times in my office.** How many times, I don't know.

Q. About how many times?

A. I don't know.

Q. Did you not tell us at the outset that you saw them only once at the City Hall? 20

A. I absolutely never made such a statement.

Q. **Can you recall the substance of any of the conversations that you had with them relative to their bidding?**

A. **No, sir.**

Q. Did the conversation which you had with them to any extent influence you in the suggestions that you made to Mr. Milton as to the drawing of those last specifications?

A. Absolutely not. The main things of my responsibility in those specifications are the Eight Hour Law, the dumping ground and the five-year contract; and I made that up upon what is needed; I had the conditions without talking to anybody; I picked them up; I thought it would lead to a reduction of the price that the City would have to pay. That I was right the conclusion shows. 30

Q. You can't tell us, Commissioner, how you can see that it would make a reduction of the 40

price to specify that in the event of failure of a man to pay for extra time within two weeks the City would have a right to deduct the amount from his contract, can you?

A. Only through all those things.

Q. How can you conceive that that would make a deduction of the price?

A. If I may answer, I want it borne in mind the conclusions to be drawn from my former answers to questions. I do not believe that the  
10 Eight Hour Law would have any effect on the price on the question. That is the answer to my mind.

Q. That is directly opposite to what you have testified to.

A. No, it isn't directly opposite; but you have drawn a conclusion from my answer that I did not mean for you to draw, I so suspect.

Q. Can you tell us what you think would be  
20 accomplished by the insertion of that section?

A. The Eight Hour Law, as a rule, the City by including it in the specifications would make the specifications fair, because there would be no question that the statute of the State of New Jersey could be enforced in Jersey City, as it never was by previous contractors.

Q. And you thought that the general law of the State of New Jersey would be ineffective unless you put that in the garbage contract?

A. I said no such thing.  
30

Q. Did you deem it necessary to do this because of the fact that there was such general law?

A. No such thing. What I said was, the Eight Hour Law was not being enforced in this City; and any bidder who knew it was not being enforced would calculate it wouldn't be enforced unless it were put in the specifications, and I wanted the law enforced.

Q. Why, then, was there inserted in that section  
40 the provisions that in the event of that act

being violated that the contractor would not only be amenable to the statutory fine but that he should also be mulcted by the City of the amount of extra compensation, and also fined by the City—in view of the statutory fines?

A. The section, as I recollect, merely repeats the word of the statute.

Q. What you mean by that is, to make the transgressing contractor amenable to those two punishments, is it?

A. No. I have testified entirely different from that. I have testified that the Eight Hour Law clause of the specifications was to increase the fairness of the competition. I have not testified that it was put in there for the purpose of mulcting a fine for the transgressing of contractors; and I will again repeat, if you want me to, that the reason I put it in—and it can be put up to me—was to increase fairness of competition among the bidders. 10

Q. In what way would that increase fairness? 20

A. I have already answered that question and refuse to answer it again.

Q. These specifications were read section by section when they were adopted, were they?

A. That is my recollection.

Q. Section 13 was adopted in that manner, was it?

A. Yes, sir.

Q. Section 13 provides that if the work is unnecessarily delayed, or if in the opinion of the Inspector of Garbage the work is unnecessarily delayed or in his opinion that he is executing the contract in bad faith, that the Board shall have the right to discontinue the contract either as to whole or part: Would you tell us what the standards of good faith and what the standards of speed were at the time when the specifications were adopted? 30

Mr. Bentley: I object on the ground 40

that the witness has not been shown qualified; that the language of the specifications is the best evidence and that it is a question of law to be determined from the language.

A. I cannot answer this question. I do not deem myself qualified as an expert.

Q. So you didn't know what you were voting for?

10 A. Oh, yes; I knew everything I was voting for. I have not said anything that would lead you to conclude that I didn't know what I was voting for. I never vote for anything that I do not know what I am voting for.

Q. Did you conceive that the presence of that section would promote fairness of competition?

A. I presume I did or I wouldn't have voted for it. I don't recollect my conclusions and reasoning and logic of that section because it is 20 long ago and that other things have occurred since and the mass of details took up my mind.

Q. Isn't it a fact that you voted to adopt those specifications giving the City the right to cancel the contract on the certification of the opinion of the Inspector of Garbage, that the contract was being executed in bad faith or unnecessarily delayed, without having any prescribed standards of expedition or of good faith; isn't it?

30

Mr. Bentley: I object on the ground that I do not understand it and it doesn't mean anything. If it doesn't mean anything, it is irrelevant.

A. I think I understand his question. If my answer doesn't appear to answer the Counsel, I wish the distinguished Counsel would correct me.

Q. Go ahead.

40 A. As I recollect it, that question was dis-

cussed between Mr. Milton and myself. Having in mind the old specifications on which the City had done said garbage business for years, we came to the conclusion that same officially should be changed, with the data of reporting transgression of the specifications to the Board of Commissioners. And acting thereupon—always subject, of course, to the authority of the governing body—analyzing what the custom had been before that, we found that the official who had been doing it and had actually done it the same way was the Inspector of Garbage, and we placed him in under the specifications as the person, or Mr. Milton did after consultation with me on this. Of course these are Mr. Milton's specifications, not mine; and we placed the inspector in there; and that was the reason. We discussed this question of standard and we came to the conclusion that that was the best way and the only way. 10

Q. Did you set up the Inspector as the standard? 20

A. Not the standard: continuing him.

Q. Continuing the Inspector of Garbage as the standard?

A. Continuing him; of course, reporting to the Board, subject to the Board having ascertained the facts and hearing both sides of the question.

Q. That was put in the specifications, about a hearing?

A. That is in the specifications; somewhere in the specifications that appeared; and if it's not in the specifications the Board couldn't distribute (interrupted). 30

Q. Show us where the specifications bear any such provision (interrupted).

A. I will not show it.

Q. (continuing) for that the hearing on the Inspector's Report that the Eight Hour Law is being violated?

A. I will not attempt to show it at all. 40

Q. When did you last converse with any of the Harrington men about this contract?

A. About this contract?

Q. Yes.

A. Oh, not for some time.

Q. Have you spoken to either of them since these proceedings were started?

10 A. Oh, yes; the day before the award was passed by the Commission Mr. Harrington came to my office and asked whether he was to start in; and I said, "Appear before the Board of Commissioners and make your statement." He appeared before the Board and I met him. The first time he started to work he came to my office and asked whether I had seen any of his wagons around, and he told me about his wagons; and he asked me if I ever heard any complaints to send them to him, as he was desirous of rendering the best service to us and to Jersey City.

Q. At that time had he signed the contract?

20 A. I don't know anything about the signing of the contract.

Q. You don't know whether the contract was signed at the time he started to do this work, or not, do you?

A. No; I guess I don' know only from what I hear. You are asking me to answer from my own knowledge. I don't know anything about it. After the contract is signed it is put in file in 30 one of my subordinate offices. If it has been put in there, I don't know. I wasn't served with a duces tecum.

Q. Did you find out whether the contract was signed before the work was started?

A. That's a matter which is one of the details entrusted to one of my subordinates. If the contract is not signed within a reasonable time the report will be made to me.

40 Q. You don't know yet whether the contract is signed?

A. I don't know of my own knowledge; I have heard it was. I can find out whether it was filed in the department, but I wasn't served with a duces tecum subpoena.

CROSS-EXAMINATION by Mr. Bentley:

Q. Did it ever come to your knowledge that the writ in this proceeding was granted without a stay?

A. Yes; I believe the Corporation Attorney of Jersey City advised me to that effect. I think I called him up on the telephone and told him that I understood the writ had been granted without a stay, and I asked him if there was a stay, and I was informed there was none. 10

Q. You are a member of the Bar, are you not?

A. Yes, sir; I am an attorney and counsellor at law.

Q. You are familiar with the Eight Hour Law?

A. Oh, yes; I am very familiar with it. I have read it several times. 20

Q. Do you know, as a member of a municipal body, it is a misdemeanor to procure work to be done in contravention to the terms of that Act?

A. Yes, sir.

Q. Are you familiar with the Fourteenth Amendment of the United States Constitution?

A. The Fourteenth Amendment? Yes; I know that there is a Fourteenth Amendment. 30

Q. Are you familiar with the provision of that Amendment that provides that nobody shall be deprived of his property without due process of law?

A. Yes, sir; I am very familiar with that.

Q. Can you give us the approximate date of the meeting that was held the one night that you referred to as the Advertising Night?

A. No, sir; I cannot even tell it from my memory that far back, because I take these memoranda 40

out after the day has passed.

Q. Well, was it during this current month or prior?

A. Why, I think it was this month; it wasn't so very long ago.

Q. I understood you to say that your judgment was justified in trying to hold the bids that were submitted last November; is that right?

A. Yes, sir.

Q. Well, how has that been justified?

10 A. The low bidder at this time is \$51,000 higher than it was at that time; higher than the bids that I voted against a motion to reject; and the passage of that motion cost the City \$51,000.

Q. You, of course, in your department are concerned with money primarily?

A. Yes, sir. All that I think about or care about refers to expenditure of money, for these other fellows to spend. I have to raise the money for them to spend.

20 Q. Have you any social intimacy with Mr. Harrington?

A. Absolutely none except that I have met him several times recently on the street.

Q. Social intimacy?

A. No. Do you mean to go to his house, call on him or go anywheres with him? No; absolutely not.

Q. Do you go with him?

30 A. No, sir.

Q. Did you ever have any trouble with the other bidders that bid on this work?

A. No, sir; none whatsoever.

Q. Did any other contractors make inducements for handling this work?

A. No, sir. I think I am friendly with all of them; I like them all. I have always admired the rates that Montgomery & Conlon have made. I wish them all the success in the world, provided  
40 that success is not interfering with the saving of

money for Jersey City.

Q. Are you friendly in a social way with any of Mr. Harrington's family?

A. No; not that I know.

Q. Or business associates?

A. Nothing that I know of, except Mr. Brockhorst, his attorney, is a member of the Bar; I went to school with him; that's all the business association I have. I don't think I have seen Mr. Brockhorst for two years before the meeting at which Mr. Brockhorst appeared for Harrington & Company. I went to High School with him, and so did you. My only desires in this matter were to save money for the City and to have a fair, open specification, as I favor open specifications for all public contracts as a matter of principle. 10

Q. You say that you worked with Mr. Milton in the preparing of these specifications: Did you ever take his advice as to the legality of them and the various sections in the specifications? 20

A. I had his advice absolutely. Mr. Milton came in with a draft of the specifications, and we revised them, and went over with him as to the legal and moral aspect and also the question of policy to be pursued. His advice on matters of policy the Commissioners always listen to. Sometimes they do not follow them. In some cases he guided me; in other cases he did not. By the way. He was opposed to the eight hour specification being put in. 30

Mr. Doherty: I object to this irrelevant matter going in.

BY MR. DOHERTY, RE-DIRECT-EXAMINATION.

Q. Were any of the other Commissioners present at your conferences with Mr. Milton? 40

A. No, sir.

Q. There were just the two of you?

A. Why, certain; who else! I don't call for all the Commissioners every time (interrupted).

Q. Never mind! You have answered the question, and I object to that.

A. I don't call for the rest of the Commissioners every time I seek Mr. Milton's advice.

Q. Did you ever meet Mr. Harrington outside of Jersey City?

10 A. No, sir.

Q. You are sure of that, are you?

A. Positively. Absolutely.

Q. Did you ever meet him on any occasion with other Commissioners present as part of some gathering?

A. Yes; I have met him at the Board of Commissioners' meeting when other Commissioners were present.

Q. That is the only time?

20 A. Absolutely. I never had any occasion to meet him otherwise.

Q. It was your suggestion that Mr. Milton undertook the preparation of these specifications, was it?

A. I didn't say that; I wouldn't say that; I don't think so. I think Mr. Milton during (interrupted).

30 Q. Can't you recall that from time immemorial it has been the function of the Chief Engineer to draw these specifications as well as all other like specifications for public improvements; and that the course of you and Mr. Milton in preparing these specifications was a departure from the ordinary custom and practice?

A. I am only thirty-one years old; I cannot testify as to time immemorial.

Q. Was it from the time you have been in the service of the City?

40 A. The Chief Engineer?

Q. During your experience as a Commissioner was it not the rule for him to draw all specifications?

A. In the past, do you mean?

Q. Yes.

A. That is all before the resolution.

Q. When was the resolution passed directing the taking that power out of the Engineer's hands?

A. I didn't testify that the power was taken out of the Engineer's hands. 10

Q. Can you recall when you passed the resolution taking the power out of the Engineer's hands?

A. No. Record of specifications drawn by a subordinate must be submitted. Our experience as to specifications has been such that we thought it was advisable to do this. Chief Van Keuren, Engineer, is a very able officer and has had a wealth of experience and I do not know of any officer to whom I would lend weight to his judgment more than to his. 20

Q. Do you recall that that change of practice was authorized after the first garbage specifications were drawn?

A. Do you mean for the first garbage specification for this year?

Q. Yes.

A. No. I think it was afterwards.

Q. Afterwards? Do you know whether (interrupted). 30

A. (witness continuing) Whether it was Mr. Milton who drew those last ones, or revised, I don't know.

Q. Isn't it a fact that the only specifications that were ever drafted by Mr. Milton for the garbage contract are those specifications that have been certiorated in these proceedings; were they the first, do you know, that Mr. Milton drew?

A. I said that they were revised from all the specifications that had been in force in the City for 40

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MICHAEL A. SCATUORCHIO—Direct

some years. There is another instance of the drafting of some specifications in which Mr. Milton and I assisted in the drafting. The others were the pipeline specifications, which I participated in at the request of Commissioner Byrne, if that has any relevancy in this case.

Q. Those are the only ones? A. I can't remember details. Those two are important because large sums of money were involved.

10 Q. That is all.

BY MR. BENTLEY.

Q. Just a moment, please. When you said that the only time that you had met Mr. Harrington and there wasn't any Commissioner present, wasn't Commissioner Byrne at that meeting? A. Oh, yes. Yes; he was present. But he wasn't present at my meeting because I met Mr. Harrington when I walked downstairs.

20 Q. Oh, I see. That is all.

MICHAEL A. SCATUORCHIO, a witness produced on behalf of the prosecutors, being duly sworn according to law on his oath deposed as follows:

DIRECT EXAMINATION by Mr. Doherty:

30 Q. Where do you live, Mr. Scatuorchio? A. 337 Railroad Avenue.

Q. What is your business? A. Bottle business.

Q. Were you present at a meeting of the Commissioners of Jersey City held at the City Hall on November 29th last? A. Yes, sir.

Q. Were you present at a meeting that was held the day before? A. Yes.

40 Q. Do you remember at the first meeting—that is, the first meeting in point of time—bids were received on garbage specifications? A. Yes, sir.

Q. And do you know what was done with those bids? A. I think, if I remember right, the bids were thrown out.

Q. Were you present at the next meeting? A. At the special meeting the following day?

Q. The following day? A. Yes, sir.

Q. Well, at that meeting did you hear any of the Commissioners express any views favorable to any of the bidders?

Mr. Bentley: I object on the ground that whatever may have been said by any Commissioner is not binding upon them, the Mayor and Aldermen of Jersey City. That the defendant cannot be bound by the statement of any Commissioner. That anything that was said at that meeting is irrelevant because it has not any probative value in establishing the matters embraced by this certiorari proceeding.

10

20

A. Yes, sir.

Q. What Commissioner was it that delivered views? A. Well, I heard Commissioner Brensinger.

Q. What did Commissioner Brensinger say?

Mr. Bentley: I object on the same grounds as I have stated on the other objection.

30

Q. What did Commissioner Brensinger say?  
A. Mr. Commissioner Brensinger said that if there was anything he could do to secure the contract for the Harrington firm that he was ready to do so; and he moved, after Corporation Counsel said the specifications were defective, to give the contract to the Harrington firm on their bid, pending the advertising of a new contract.

40

Mr. Bentley: I ask that the answer be stricken out upon the ground that it is not stated what Commissioner Brensinger said.

Q. Now, did you hear any other Commissioner express any opinion favorable or unfavorable to the bidders? A. I heard Mr. Hague.

10 Q. What did Mr. Hague say? A. Mr. Hague said that if there was anything he could do to give the contract to the Harrington boys he was ready to do so, but that the only thing that stopped was that the Corporation Counsel said that the specifications were defective and wouldn't stand in court, and that he didn't like to see the Harrington boys start the job and lose money and then have to give it up.

20 Q. Did any other Commissioner pass remarks on the same subject? A. I remember, as far as I can remember, that Mr. Fagan had something to say on that line.

Q. What did Mr. Fagan say? A. Mayor Fagan said that he thought that Mr. Milton's opinion was based on legal technicalities, on which judges and lawyers differ. He also said that he was anxious to see the Harrington concern awarded this contract, and that if anybody was dissatisfied to start proceedings and have the matter thrashed out in court. That is as near as I can remember.

30 Q. Do you recall any other Commissioner saying anything? A. No, I don't think I can.

Q. That is all.

CROSS-EXAMINATION by Mr. Bentley:

Q. Did Commissioner Hague refer to the bidders as "the Harrington boys," or is that your own language? A. No, he referred to them as I said before, as "the Harrington boys."

40 Q. How many people were there at that meet-

MICHAEL A. SCATUORCHIO—Cross

ing? A. I don't understand. What do you mean, "how many people?" Do you mean all?

Q. Yes. A. Well, all the Commissioners were there and a few other spectators; I couldn't say how many.

Q. How many would you say? A. Well, I would say there might have been fifteen or twenty, perhaps.

Q. Where was this meeting held? A. Why, I think it was in the City Clerk's office, if I am not mistaken, or Michael I. Fagen's office, downstairs. 10

Q. Have you any idea how large a room that is, I mean in feet, length and breadth? A. Well, I would say about twenty feet long by about, I would say, about eighteen feet wide, as near as I could come at it or as near as I can think of.

Q. The spectators, the audience, had almost completely filled that room, didn't they? A. No, I wouldn't say so.

Q. Well, they lined the walls on either side, didn't they? A. No, I wouldn't say that either. 20 They were sitting, some on the side and others were standing in the rear of the room.

Q. The room was pretty nearly filled up by people, wasn't it? A. I don't know what you mean by "filled up."

Q. There was not comfortable room for many more people? A. I wouldn't say that.

Q. What would you say? A. I would say that there was more room. 30

Q. Of course, there was more room. How many people do you think could have gotten in there that wouldn't have crowded it and rendered it uncomfortable? A. I couldn't say just now.

Q. Would you say there were thirty or forty people? A. No, I wouldn't say that. Not to my knowledge.

Q. When you say "fifteen" you don't confine it to just that, do you? You don't mean to say that you were just accurate when you say "fifteen" 40

people?" A. As near as I can recall there was fifteen or twenty.

Q. Now, was there anyone there representing the Jersey City Meadows Company? A. That I don't know. I didn't know who they are.

Q. Do you know whether there was any one there representing the Brown Company? A. Representing the Brown Company? I think there was.

10 Q. Do you know if there was any one there representing Montgomery & Conlon? A. Well, now, I can't recollect, but I think there was.

Q. Do you know if there was any one representing Harrington Sons' Company? A. Yes, I guess there was; two.

Q. Who? A. Why, if I remember it right, I think—yes, I think J. Harrington was there and Joe.

Q. Your business is what? A. Bottles.

20 Q. What do you mean by that? Manufacturing? A. No, wholesale dealer.

Q. Wholesale dealer in bottles? A. Yes, sir.

Q. Is your time utterly taken up throughout the day? A. Yes, sir.

Q. You don't go around to these meetings of the Commissioners very frequently, do you? A. Well, I was around that time.

Q. Around that time, but not before that nor since that time? A. Not to my knowledge, no.

30 Q. What determined you to attend the meetings at that time, Mr. Scatuorchio? A. I went there as a disinterested citizen to see how the proceedings went on.

Q. Just happened to go, is that all? A. Yes.

Q. And you had no particular purpose other than the general purpose of seeing how the governing body conducted its affairs, is that it? A. Yes, sir.

40 Q. How many of the Commissioners were present on the afternoon to which you have testified

when Commissioners Brensinger, Byrne and Hague made these remarks? A. There was five of them.

Q. And who called the meeting to order? A. Who called the meeting to order?

Q. Yes. A. I think Mayor Fagan.

Q. What did he say when he called the meeting to order? A. I can't just recollect everything that went on.

Q. Well, of course; I guess you can't. Well, can you tell us the next thing that went on: was there anything done or said after the meeting was called to order by Mayor Fagan? A. I don't just recollect offhand. 10

Q. Do you remember how the subject of the ashes and garbage removal contract was brought to the attention of the Board? A. I don't understand the question. In what way?

Q. Well, how was it taken up; who started it? A. Who started what? 20

Q. The discussion on the contract for the removal of ashes and garbage? A. I don't recollect.

Q. How do you come to be here today to testify? A. I received a subpoena.

Q. Do you know what served that on you? A. Mr. Masters, one of the constables.

Q. Have you that subpoena with you? A. Yes.

Q. And do you know how any parties or lawyers in this matter got your name? A. I don't know. I suppose I was seen down there on that day. 30

Q. Now, has anybody discussed this case with you before testifying here today? A. No, sir.

Q. Nobody has asked you as to what you would say? A. No, sir.

Q. Mr. Doherty hasn't called upon you or asked you anything as to what your memory was on this matter? A. No, sir; I have not seen Mr. Doherty. 40

Q. How long have you known Mr. Doherty? A. Well, I guess I have known him six years.

Q. To speak to in a friendly sort of way. A. The same as I would to anybody else.

Q. Well, some would be in a social way or some other way? A. I had business dealings.

Q. Were those friendly? A. Business dealings, I don't mean friendly.

10 Q. And did you transact your business together without any ill-feeling upon the part of either one of you? A. Yes.

Q. And he never called you up on the 'phone, or wrote a word, or asked you to come here and testify? A. No, sir.

Q. Or to what you would testify? A. No, sir.

Q. You didn't know what he was going to ask you before you came? A. No, sir, I didn't know.

20 Q. Did you ask him this morning what he was going to ask you about. A. I didn't speak to Mr. Doherty.

Q. Are you quite sure in your own mind that you quoted Mr. Hague accurately and correctly as referring to those bidders as "the Harrington boys;" are you sure of that? A. I am sure of that because I was sitting right behind Mr. Hague at the time that he said it.

Q. Didn't that seem queer to you? A. Well, I had no reason to take it as queer.

30 Q. It would seem queer for him to do it, wouldn't it? A. I thought it was simply a familiar term.

Q. I suppose every one in the room could hear him? A. Yes.

Q. Did Mayor Fagan give his reason for wanting to award the contract to the Harringtons? A. I don't just remember everything that transpired at that meeting.

40 Q. Did Commissioner Brensinger give his reasons as to why he wanted it awarded to the Harrington concern? A. I don't recall.

Q. Did Commissioner Hague give any reasons as to why he wanted it awarded to the Harrington Company? A. I don't recollect any more than I told you in this testimony.

Q. You haven't any interest in any of these other bidders, have you? A. I don't quite understand your question. What do you mean?

Q. Are any of these other bidders any personal friends of yours? A. No; I wouldn't say any personal friends; no.

Q. Are you under any obligation of friendship or business to them? A. No, sir. 10

Q. Of any of them? A. No, sir.

Q. At what time of the day did this meeting in the City Hall in the City Clerk's office take place?

A. Well, do you mean the first meeting?

Q. I mean the meeting at which these three Commissioners made the remarks that you have told us about? A. As near as I can recollect, I think it was on the morning of the 29th of November. 20

Q. And what other business, if any, was taken up by them besides this ashes and garbage contract? A. Why, I don't think there was any other, as far as I can recollect.

Q. Did Commissioner Byrne have anything to say at that meeting? A. Why, I can recall he wouldn't give them a chance to say much, the way it looked to me.

Q. Well, did he say anything? A. I don't just remember; I can't recollect. 30

Q. Did Commissioner Moore say anything at that meeting? A. Mr. Moore had very little to say. I don't just recollect anything that he said.

Q. Do you remember anything that he talked about? A. No, sir.

Q. Do you remember whether he did talk or not, Commissioner Moore? A. As far as I can recollect, Commissioner Moore had very little to say, and I don't just remember what he did say. 40

Q. Do you recollect whether he had anything to say? A. No, sir.

Q. Then you don't know whether he had anything to say or not? A. Well, I couldn't tell you what he said; but he said something; he spoke.

Q. I am not asking you that; I am asking you whether he said anything or not? A. Yes, he did say something.

10 Q. And what he said you can't remember? A. Not his exact words, no, not now.

Q. The meeting that we have been discussing took place the day before Thanksgiving? A. Yes.

Q. Was there anybody with you; I mean, did anybody accompany you there? A. I went there alone.

20 Q. You went there alone. Did you stay throughout the entire meeting? A. Yes, sir.

Q. Now, did the Commissioners finally vote on any resolution that morning? A. They voted to throw the contract out as being defective, according to the Corporation Counsel's advice.

Q. To throw out the bids? A. Yes, sir.

Q. You say you were present also at the meeting held on the 28th, the day before that? A. Yes.

30 Q. What other meetings of the Commissioners have you attended? A. Why, I was at a meeting in October, I don't remember the exact date in October.

Q. Of what year? A. 1916.

Q. What other meetings have you attended, if any? A. Well, I have been to other meetings down there, but I don't remember the dates.

40 Q. You don't remember the dates. How many of them would you say? A. I couldn't specify the exact number.

Q. Well, two or three or any more than that?  
A. Do you want me to give you the exact number?  
I can't tell offhand.

Q. Well, would you say that you attended three  
besides the (interrupted). A. I have been to  
more than three.

Q. Well, you have mentioned three; would you  
say you have been to six in all? A. I couldn't.

Q. Have you been to as many as twenty-five? 10  
A. I wouldn't say that.

Q. You wouldn't say that you haven't been to  
twenty-five? A. I am not going to specify how  
many because I couldn't say how many.

Q. You wouldn't say that you haven't been to  
twenty-five? A. I can't specify any number.

Q. What did you hear discussed when you at-  
tended meetings in October, 1916? A. In Octo-  
ber? I don't recollect.

Q. You don't recollect anything that was dis- 20  
cussed? A. Why, there was bids up.

Q. Bids? A. Yes.

Q. And was there any discussion on any of  
those bids? A. No, sir, that I can remember.

Q. What were those bids for? A. It was for  
the removal of ashes and garbage.

Q. You say there was no discussion of the bids  
at that time? A. I can't recollect of any just now.

Q. Was that the regular meeting of the Board? 30  
A. Yes; I think it was.

Q. Held on a Tuesday afternoon? A. Yes.

Q. How long do you suppose they were in ses-  
sion at that meeting? A. I didn't stay through-  
out the whole meeting.

Q. How long did you stay? A. I can't recall  
it just now.

Q. Did you stay after the bids had been re- 40  
ceived for the removal of ashes and garbage. A.

Yes.

Q. What did you hear discussed at that meeting with regard to those bids or anything else?

A. Well, I heard the number of bids that were read over.

Q. Did you hear anything else discussed. A. I can't recollect anything else.

RE-DIRECT EXAMINATION by Mr. Doherty:

10 Q. At that October meeting you put in a bid yourself at that meeting? A. Yes.

Q. In that way you became interested in the transactions of the City for the work? A. Yes.

Q. That is why you were at this meeting? A. Yes.

Q. You saw me at the meeting on November 29th, didn't you? A. Yes.

20 Q. Did we then have any discussion about what occurred and what was said? A. Did who have a discussion?

Q. You and I, if you remember? A. I don't remember any, Counsellor.

Q. That is all.

RE-CROSS EXAMINATION by Mr. Bentley:

Q. How old are you, Mr. Scatourchio? A. Twenty-five.

30 Q. How long have you been in the bottle business? A. Why, my father has been in the business, I guess, since 1888.

Q. Are you in business with him? A. I am actively.

Q. How long have you been in business with him or working for him? A. I was brought up in the business.

Q. And all of the time you have worked for him? A. I don't understand you?

0 Q. Have you been working for or with your

father ever since you have been working at all?

A. Yes.

Q. Have you had any experience in the contracting line? A. No.

Q. Do you own any horses? A. Yes.

Q. How many? A. Eight.

Q. How many wagons—do you have any wagons? A. Yes.

Q. How many? A. About five trucks.

Q. How much of a bid did you make when you submitted your bid in October? A. Do you want to know what bid I put in, do you mean? 10

Q. Yes. A. Am I to answer that, Mr. Commissioner? I don't know—

Q. Go ahead! A. As near as I can remember, \$143,000.

Q. You are sure? A. Yes; I am positive; a hundred and forty-three and some odd thousand dollars.

Q. Did you submit a bond with that bid? A. Yes. 20

Q. Who was on the bond? A. My father and my uncle.

Q. What did that bond provide for, do you know? A. Why, my bond was to cover me on the contract.

Q. Yes; and it provided, didn't it, that the City could hold you to the extent of five thousand dollars if the contract was awarded to you and you didn't perform it? A. I think it was ten thousand. 30

Q. Ten thousand? Have you had any experience in analyzing and bidding on specifications before this? A. No; I wouldn't say I had any experience.

Q. Did you secure any assistance in estimating your bid of \$143,000? A. No, sir.

Q. Did it all yourself? A. Yes, sir.

Q. How did you arrive at the sum of \$143,000?

.Mr. Bentley: I object to it; it is irrelevant. 40

A. Why, I haven't been in the garbage business for three years.

Q. Where? A. In Jersey City.

Q. Doing what? A. Trimming the dumps; I had men trimming dumps.

Q. What does that mean, "trimming the dumps?" A. Picking out all the different articles that were of value.

Q. How did you get the right to do that? A. I had a contract with the contractor.

10 Q. Montgomery & Conlon? A. Yes.

Q. Now, did they give you any information as to how much you could remove ashes and garbage for? A. Yes.

Q. How? A. I was as familiar with the job as any of those fellows; I just knew how many trucks it took to remove it for the City, and I figured on it.

Q. And you didn't take advice or assistance of anybody in estimating your bid? A. No, sir.

20 Q. And had no experience in the collection and removal of ashes and garbage, did you? A. Well, in the time that I had been free I have had experience because I have seen the way the work was done.

Q. But you have never done it yourself? A. No; I couldn't say I have done it myself.

30 Q. Had you made any arrangements for financial backing to carry out the contract if it were awarded to you? A. That was to be discussed later.

Q. You mean that you were going to take that up later on? A. Yes.

Q. And you had no promise or agreement up to that time to help you? A. No.

Q. That is all.

40 CHARLES A. VAN KEUREN, a witness produced on behalf of the prosecutors, being duly sworn according to law on his oath deposes as follows:

DIRECT EXAMINATION by Mr. Doherty:

Q. Mr. Van Keuren, you are Chief Engineer of the Department of Streets and Public Improvements, are you not? A. Yes.

Q: How long have you held that office? A. I have been in the department thirty-four years; Chief Engineer twenty years.

Q. In your official activities what has been your experience in the drafting of specifications for the removal of ashes and garbage for Jersey City? 10

A. Oh, I have drawn them ever since they had a contract for the removal of ashes and garbage.

Q. Over what period of years were you engaged in drawing them, the specifications, do you know?

A. I have got to say that I can't recollect.

Q. Several years, was it? A. Yes; over ten, I would say that.

Q. Did you draw any specifications for the renewal of the contract for the present year? A. 20  
One for 1917, yes.

Q. Would you be able to recognize a copy of the specifications? A. I would over my signature on the back if I see it.

Q. Could you recognize it (showing paper)?  
A. It has the same cover, but I don't know the contents; I can't tell what the contents of it is. I have one, a true copy; the City Clerk has a copy.

Q. How many sets did you draw contemplating the renewal of the last contract? A. Why, we 30  
draw as many—well, six.

Q. I don't mean how many copies, I mean sets of specifications, how many did you draw? A. I drew the original set, which was rejected, with instructions to include a five-year clause. Those are the only two within my recollection.

Q. You drew two sets, did you? A. One for one year and the second set for five years. Do you want to speak about the emergency? That was simply an agreement, that emergency. That 40

I didn't draw. It was an agreement made from the second set of specifications as drawn.

Q. Did you distribute the proposals of these various specifications that were adopted? A. I believe we did; we gave them out; we handed them out after the advertisement required.

Q. Did you also hand out the specifications? A. Those specifications, if there was an extra copy, we tried to supply if we could help any bidder; if they would ask for one, why, we handed them to them.

Q. You can't recognize the specifications that I showed you for the removal of ashes and garbage, November, 1916, to November, 1917, as specifications that were distributed from your office. A. No.

Q. Nor can you recognize another set of specifications for the removal of ashes and garbage? A. November, 1916. For what year?

Q. At the first call for bids, on October 20th? A. Yes, I know, but for what period?

Q. For one year? A. Well, that is the first specification.

Q. Here is the first specification (showing paper). A. I do not remember of any second specification for a term of one year—oh, yes, for the alternate, the second, for one year or five years.

Q. Was the alternate a correction; was it amended, the second specification? A. Well, the amended, the second specification, was the amended first specification.

Q. Are you not in error as to the first set? Were not bids called for and they were thrown out because they were in excess of the year's appropriation, and were there not other sets made out which were amended? A. Well, of course the City's Clerk's records would show. Of that, of course, I would not be positive.

Q. We can save hours by your testimony. A. I would rather you would search the records.

CROSS-EXAMINATION by Mr. Bentley:

Q. Chief, you have frequently had the Corporation Counsel co-labor with you with the specifications and contract? A. We always refer the specifications to the Corporation Counsel and the Corporation Counsel for their approval. If there is anything that they object to, why, we receive a notification from them.

Q. And frequently during your career, before finally completing the specifications, you have taken them up to the Corporation Counsel, haven't you? A. If there was any point or other, and certainly upon any law point, I would consult them, sure. 10

Q. Take, for example, pipe line specifications last year, you consulted with the Corporation Counsel on that, didn't you? A. I consulted as far as they thought objection was made on the close bid. There was a term in there that stated that the man furnishing a bid must show facilities for the manufacture of the pipe. That was my clause in the specifications, and they interpreted it as being close, and therefore objected, as they had a right. Then I took the advice of the Corporation Counsel and his opinion what it should read. 20

Q. That is all.

The further taking of depositions was adjourned to Thursday morning, January 25th, 1917, at 10 o'clock. 30

## NEW JERSEY SUPREME COURT.

	JAMES M. HOUGHTON and	)	
	JOHN A. RESCH,	)	
	Prosecutors,	)	
	vs.	)	On Certiorari.
	MAYOR AND ALDERMEN	)	Rule to Take
	OF JERSEY CITY and	)	Depositions.
	THOMAS HARRINGTON	)	
	SONS' COMPANY,	)	
10	Defendants.	)	

The taking of depositions in the above cause is this twenty-fifth day of January, 1917, continued, at 10 o'clock in the morning, at the same place, pursuant to adjournment of January 24th, 1917, in the presence of Richard Doherty, Esq., attorney for the prosecutors, and John Bentley, Esq., attorney for the defendants, Mayor and Aldermen of Jersey City and Corporation Attorney for Jersey City, and Gilbert Collins, Esq., for the defendants, Harrington Sons' Company.

Mr. Gilbert Collins comes to appear for the two witnesses, James Harrington and Joseph Harrington, who have been subpoenaed to attend here, and to produce an affidavit of a doctor that Ms. Harrington is ill and unable to come.

The witnesses who are here are not concerned with this proceeding. But in behalf of Messrs. Thomas Harrington Sons' Company, Mr. Collins desires to protest against the taking of testimony, which he is informed was taken yesterday, on the ground that no copy of the writ was ever served on Thomas Harrington Sons' Company, nor any notice served upon them for the taking of the testimony, and that Mr. Collins protests against that testimony; and also protests against any testimony taken today on the ground that no lawful depositions can be taken until the reasons are filed so that it can be ascertained what the issues

are.

Mr. Collins: I will add that I will not make any point of the non-service of the writ upon Thomas Harrington Sons' Company except as to the testimony that was taken yesterday; nor any point of any failure to give notice of testimony to be taken today; but I insist that a copy of the writ must be served before there can be jurisdiction.

10

I will state further, that I will not make any point for Thomas Harrington Sons' Company as to that testimony that was taken yesterday except the point that no deposition can be taken at all without reasons have been filed; provided I have opportunity to cross-examine these witnesses that were sworn yesterday.

Mr. Doherty: The reasons were filed, Judge.

20

Mr. Collins: Mr. Doherty having stated that the reasons have been filed, I ask to see a copy of them.

The Commissioner: I called attention to the notice, Judge. I asked for the production of that notice yesterday. The notice was produced before me and it was acknowledged by the City, by Mr. Bentley; and upon the notice was an affidavit of the leaving of the copy; otherwise I would not have gone on.

30

At the taking of the testimony yesterday a stipulation was entered into, dispensing with the signatures to the depositions being taken; and I ask Judge Collins, now representing Messrs. Harrington Sons' Com-

40

pany, one of the defendants, if he will consent to such stipulation.

10 Mr. Collins: He says he will do so if he has an opportunity to cross-examine the witnesses. And I will add that there was no purpose to avoid attending yesterday but the Messrs. Harrington Sons' Company misunderstood the day of the notice and thought it was today, and that is the reason they did not appear, although we insist upon our legal right that we could not be compelled to appear until service of the writ had been made, a regular service of the notice. And as to leaving of the notice at Mr. Brockhorst's office, I state that Mr. Brockhorst has not entered any appearance in this case and is not authorized to serve notice upon the one or the other.

20 The Commissioner: In your opportunity to cross-examine, you want the first testimony written out so you can examine it; then if you indicate that you want to cross-examine on the testimony that they shall give you the opportunity?

Mr. Collins: That's it.

30 MICHAEL I. FAGEN, a witness on behalf of the prosecutors, re-sworn according to law and on his oath deposes as follows:

DIRECT EXAMINATION by Mr. Bentley:

Q. Can you now produce the specifications that were adopted previous to the adoption of the specifications at the meeting December 15th? A. Yes, sir.

Q. How many are there? A. There are four.

40 Q. When was the first adopted?

Mr. Collins: Objected to as irrelevant.

A. September 19th, 1916, the first was adopted. The second was adopted October 31st, 1916. The third was adopted November 9th, 1916. The temporary contract, November 29th, 1916. The present, and last one, December 12th, 1916.

Q. Will you produce the first specifications?

A. The first specifications?

Q. Yes. A. (Witness produces a paper).

Q. Now, can you tell us what official action was taken subsequent to the adoption of these specifications? 10

Mr. Bentley: I object on the ground it is irrelevant in this inquiry.

Q. What was done on any of the previous specifications? A. On September the 23rd there was official notice advertised in the "Jersey Journal" and the "Hudson Observer" for five times for the reception of bids pursuant to the resolution adopting the specifications October 10th, 1916, wherein there were two bids received. The bids were rejected on October 17th, 1916. 20

Q. Have you the minutes of that meeting here?

A. Yes, sir. "The meeting September 19th, 1916, at which all the members of the Board were present." "Regular Meeting." I find in the Minutes the following: "Resolved, by Commissioner Byrnes:" 30

Mr. Collins: Objected to as irrelevant.

A. (continuing) "Resolved, That upon the recommendation of the Director of the Department of Streets and Public Improvements, the specifications filed on this day by the Chief Engineer for the collection and removal of garbage and kitchen refuse from the streets of Jersey City, now dating from December 1st, 1916, to November 40

30th, 1917, inclusive, be and the same are hereby adopted and ordered filed; and the City Clerk be and he is hereby authorized and directed to advertise for proposals in accordance therewith."

"The roll being called, the resolution was adopted by the following vote:"

"Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan."

Noes. None."

Q. What next action do the minutes disclose?

10

Mr. Collins: Objected to as irrelevant.

A. Bids were received on October 10th, 1916, under the head of "Reception of Bids." These minutes are of October 10th. Regular meeting at which all Commissioners were present. The following appears:

20

"This time and place having been set for the reception of bids, the City Clerk called for the proposals for the collection and removal of ashes and garbage and kitchen refuse from all the streets of Jersey City from December 1st, 1916, to November 30th, 1917, inclusive; and the repairs to Thirteenth Street Viaduct of Jersey City."

"The following bids were handed in for the collection and removal of ashes, garbage and kitchen refuse from the streets of Jersey City from December 1st, 1916, to November 30th, 1917:"

30

"1.—Montomery & Conlon.....\$121,675.50  
Without separation..... 121,675.50  
With separation; with freeholder surety bond."

"2.—Michael A. Scatuorchio.....\$136,769.00  
Without separation..... 143,678.00  
With separation; with freeholder surety bond."

40

"On motion of Commissioner Byrne the reception of bids was ordered closed and the bids were ordered opened and read, and referred to the Di-

rector of the Department of Streets and Public Improvements for his investigation and recommendation.”

Under October 17th: Regular meeting; The minutes show the following resolution:

“By Commissioner Brensinger: WHEREAS, The bids received at the last regular meeting of the Commission for the contract for the removal of ashes and garbage during the fiscal years 1916-1917 were far in excess of the appropriation allowed for such contract in the budget for 1916-1917. And 10

“WHEREAS, The cause the for excessive bids seems to be in the fact that contractors are handicapped in being unable to secure suitable space for the disposal of such ashes and garbage; therefore

“RESOLVED that said bids received for the last meeting of the Commission be and he same are rejected. 20

“FURTHER RESOLVED that the Director of the Department of Streets and Public Improvements is hereby instructed to provide for the drawing of new specifications for the removal of ashes and garbage for the fiscal year 1916-1917, the said specifications to include provisions permitting bidders to consider in their bids for the contract of removal of ashes and garbage for the fiscal year 1916-1917, with the City's permission to utilize the City's property at South Cove and Droyer's Point as dumping grounds for ashes and garbage disposal during the fiscal year 1916-1917.” 30

“The roll being called the resolution was adopted by the following vote:”

“Yeas: Commissioners Brensinger, Hague, Moore and Mayor Fagan (4).”

Noes: None.”

At the meeting Commissioners Byrne and Hague (interrupted). 40

Mr. Doherty. I would like to have it appear at the meeting for the contract, when the meeting was called, Commissioners Byrne and Hague were absent and had been excused, and later appeared, before the action by the Commissioners just read by the Clerk.

10 A. The different public appearances at which every man was at the meetings the minutes show as follows:

“At this time Commissioner Hague appeared and took his seat among the Commissioners.”

Q. I would like to ask whether before the adoption of the last resolution there was any data or communication or other means of information before the Commissioners relative to the fact that contractors were handicapped by a dearth of dumping grounds?

20

Mr. Collins: Objected to as irrelevant.

A. There is nothing in the minutes to show any such fact.

Q. Is there anything in the minutes to show the report of Commissioner Byrne?

Mr. Collins: Objected to as irrelevant.

30

A. I am looking—excuse me—to see if there are any original documents on the question before me. There are no papers to show such a report.

Q. Is there anything in the minutes showing previous to the adoption of that last resolution Commissioner Byrne reported the result of his investigation of the bids which had already been received and his recommendation on such bids?

40

Mr. Collins: Same objection as irrele-

are.

vant.

A. Nothing.

Q. Now will you proceed to the next transaction?

Mr. Collins: Objected to as irrelevant.

A. On October 31st, 1916, specifications were filed at that regular meeting, at which all the Commissioners were present, wherein I find the following resolution in the minutes whereof: 10

“By Commissioner Byrne. RESOLVED, That the revised specifications for the collection and removal of ashes and garbage for fiscal year beginning December 1st, 1916, transmitted this day to the Director of Streets and Public Improvements and drawn in accordance with resolutions embodied in resolution adopted October 17th, 1916, be and they are hereby adopted and ordered filed, and the City Clerk directed to advertise for proposals in conformity therewith.” 20

“Commissioner Brensinger then offered the annexed specifications, and the following resolution as a substitute specification; and

“RESOLVED, That they be submitted to Commissioner Byrne.”

“By Commissioner Brensinger: RESOLVED, That the specifications presented this day by the Director of Revenue and Finance for the collection and removal of ashes and garbage for the fiscal year beginning December 1st, 1916, be and they are hereby adopted and ordered filed; and the City Clerk requested to advertise for proposals in accordance therewith.” 30

“On the roll being called the resolution was adopted by the following vote:”

“Yeas: Commissioners Brensinger, Hague, Moore and Mayor Fagan.”

“Noes: Commissioner Byrne.” 40

Q. Have you those amended specifications here?

A. Yes, sir. There are three copies of them. This is the original called for in the amended specifications (indicating). These are the amended specifications.

Q. For the identification of those specifications will you give their total in the record?

Mr. Collins. Objected to as irrelevant.

10 A. (reading) "Specification for the collection and removal of ashes, garbage and kitchen refuse and waste paper from the streets of Jersey City, now changed, from December 1st, 1916, to November 30th, 1917, inclusive." These are marked in lead pencil in my handwriting for my own purpose of identifying them as substitute specifications received and ordered filed and advertised October 31st, 1916, "M. I. F., C. Clk. (1)." "No. 20 3-111-4—1. Neg.—I Byrne."

Mr. Collins: Objected to as irrelevant.

A. (continuing) Specifications in duplicate, which I have in my hand, were the specifications submitted accompanying the resolution, if I may note, reading from the minutes of the Board of that meeting, were submitted by Commissioner Byrne.

30 BY MR. COLLINS:

Q. What day? A. Under the same date, October 31st, 1916.

Q. They are the copies of the other specifications referred to? A. No; these are the copies of that other one, that were to be used for advertising purpose.

40 Q. What do you mean? A. These are copies of Commissioner Brensinger's specifications. This

is (indicating) Commissioner Byrne's specifications. These are the ones I read first.

Q. What action was taken then on Commissioner Brensinger's draft?

Mr. Collins: Objected to as irrelevant.

A. I have already testified they were adopted.

Q. Is there anything in the minutes to show whether these specifications were advertised and bids received? A. Not in the minutes. In my original papers it shows that they were advertised on November 30th, 1916, in the "Jersey Journal" and the "Hudson Observer" for five times. 10

Q. For what date did the advertisement call for bids?

Mr. Collins: Objected to as irrelevant.

A. They were advertised November 3rd, 6th, 8th, 11th and 15th. 20

Q. The bids were on what date to be received?

A. On November the 21st, 1916, at two o'clock in the afternoon; proof of publication and the original papers.

Q. Now, on November 21st were bids received?

Mr. Collins: Objected to as irrelevant.

A. No, sir; they were not. Under the date of meeting, November 9th, 1916, at which all the members of the Board were present, I find the following: 30

"Resolution by Commissioner Brensinger: WHEREAS, Heretofore on the 31st day of October, 1916, there were adopted by this Board specifications for the removal of ashes and garbage, and the City Clerk directed to advertise for the receipt of bids after the advertising of the work required by said specifications, which bids were 40

to be publicly submitted on the 21st day of November, 1916; and

10 “WHEREAS, In a communication addressed by the Corporation Counsel to the Director of Revenue and Finance, and by him transmitted to the Board for their information, it appears that such specifications do not present a given standard or basis of competition; and in the opinion of this Board the resolution adopting such specification should be rescinded and advertisements for bids thereon cancelled;”

“WHEREAS, said Director now presents to this Board a set of substitute specifications. Therefore, be it

20 “RESOLVED, That the resolution heretofore referred to and passed by this Board on the 31st day of October, 1916, be and the same hereby is rescinded; and the City Clerk is directed to discontinue advertisements calling for bids on the same; and

“FURTHER RESOLVED, That the specifications now presented by the Director of Revenue and Finance be and the same hereby are accepted and adopted and ordered filed; and the City Clerk be and hereby is directed to advertise for bids in conformity therewith. Bids are received on the 28th day of November, 1916, at 2 P. M.”

30 “Roll Call.—The roll being called, the resolution was adopted by the following vote:”

“Yeas: Commissioners Brensinger, Hague, Moore and Mayor Fagan. (4).”

“Noes: Commissioner Byrne. (1).”

Q. Have you those specifications here? A. I have the original specifications as called for by the resolution previously read. These are they (indicating).

Q. Will you read the title of them?

40

Mr. Collins: Objected to as irrelevant.

A. "Specifications for the collection and removal of ashes, garbage and kitchen refuse and waste paper from all the streets of Jersey City, now changed for the periods hereinafter stated." On the top, in my handwriting, for the purpose of identification by me, the copy I have now is marked with lead pencil number (1); in ink, in my handwriting, "Official specifications, Ashes, etc., in seven typed pages. Received and filed November 9th, 1916, M. I. F." Over on the side, in my handwriting, is the words, "Page 1: M. I. F.;" and on the bottom of same page, in my handwriting, the words, "Page 1; M. I. F.;" and each succeeding page is so initialed and numbered for identification. 10

Mr. Collins: The Prosecutors' desires are that the specifications show that they provided only for bids for one year; whereas, the specifications on which the contract was awarded provided that alternate of one year and five years. Is that right, Harrington? 20

Mr. Harrington: Yes, sir.

The Commissioner: It is consented by all Counsel that such is a fact.

Q. Is this Mr. Milton's communication? A. 30  
(Witness hands it to Counsel).

Mr. Doherty: I offer this in evidence.

No objection.

The Commissioner: Communication dated November 9th, 1916, addressed, Honorable George F. Brensinger, City Hall, Jersey City, N. J.," reading as follows: 40

“Dear Commissioner:

“November 9th, 1916:

Honorable George F. Brensinger, City Hall,  
Jersey City, N. J.

“My dear Commissioner: You will recall that you asked me to examine the specifications for the removal of garbage and ashes, adopted by the Board a week or so ago. I have done so, and submit herewith my view.

10

“In my judgment the specifications which were adopted should be cancelled for the reason that there appears to be such conflict between a portion of the first section and the seventh section as they are drawn as to cause confusion in the minds of bidders. To illustrate: Section 1 requires that contractor remove ashes from stores. Section 7 on page 4 states that the contractor will not be required to remove such material from the stores unless in the discretion of the Commissioner it is deemed necessary. One contractor could assume that he would be required to remove and another assume that he will not be so required.

20

“To my mind there is not presented a common standard or basis for a competition within the meaning of the decision. This provision was identical with the old specifications used in former years and appears to have been inadvertently copied into the present act.

30

“Inasmuch as the specifications have to be changed I have taken the liberty of re-writing them. I have changed the first section by striking out ‘stores,’ and make two sections out of it.

40

“I have required that the vessels or receptacles to be placed at the curb.

“I have re-drafted various sections and sub-divisions so as to make them run consecutively.

“In sub-division D, on page 2, you will find the provision as to the placing of receptacles at the curb. Section 7, on page 4 (old specifications), after the word ‘stores’ I have included industrial and commercial plants, etc.—that being the present practice, as I understand it.

“On page 5, under the caption ‘Payments’ I have stricken out the provision that the Director’s payments may be held up on complaint of a citizen. This seems to me to place a contractor entirely at the mercy of some disgruntled person. So long as the contractor complies with the condition precedent to payment that it be faithfully performed, the rights of each citizen are served. If there is honest dispute, the parties can apply to the proper forum to be settled. 10 20

“And I have also changed, upon the last page of the specifications, the method of bidding. As the specifications now stand the bidder must submit two bids: one for one year and the other for five years. To my mind that will not attract competition for the reason that bidders who may be interested in getting the work, provided they can secure a long enough contract to justify any investment in a plant, may feel they could afford to take the work for one year. Under this form of bid the City could accept the one year bid and hold the contractor to it and force upon him a serious loss, disposing of his plant at the end of a year. I have changed it so as to make it optional whether the contractor shall submit a one or five year bid. I have struck 30 40

out at the bottom of page 6 the provision that the proposal submitted must be within the limits of the appropriation. That necessarily follows as a matter of law.

“Very truly,  
“JOHN MILTON.”

At the top of the letter is:

- 10 “Law Department, Jersey City, N. J.  
“John Milton, Corporation Counsel.  
“John Bentley, Corporation Attorney.  
“Thomas J. Brohan, Assistant Corporation Attorney.  
“Frank J. Reardon.”

Q. What is the next disclosure of the minutes, Mr. Fagen, in respect to the specifications to which you have referred?

Mr. Collins: Objected to as irrelevant.

- 20 A. “Regular meeting of the Board of Commissioners, November 28th, 1916; all the Commissioners being present.” Under the head of “Reception of Bids.” “Among other bids being received were bids for ashes under the caption of

“ASHES AND GARBAGE.”

ASHES AND GARBAGE.

	For One Year.		Five Years.	
	With Separation	Without Name:	With Separation	Without
30	Montgomery & Conlon—			
	\$134,679	\$134,659	\$749,000	749,000
	Nathias Thiel—			
	135,000	143,000	754,000	789,000
	H. B. Christensen—			
			599,500	None
	The Brown Company—			
	105,000	110,000	650,000	705,000
	Thomas Harrington & Company—			
40	112,000	112,000	549,000	549,000

Thomas Harrington & Company—

First Year.

	No. 3	\$89,000	No. 4	\$89,000
Second Year.....		\$100,000		\$100,000
Third Year.....		110,000		110,000
Fourth Year.....		120,000		120,000
Fifth Year.....		130,000		130,000

“On motion of Commissioner Brensinger the bids were received, opened and read and placed on file.

“Mr. Harrington stated that if the contract was awarded to him he would carry the same out in a manner it is now being carried out and in the way it has been carried out in the past.” Thomas Harrington Sons’ Co. is the original. I have it in my hands now. 10

Q. And the designation of “Thomas Harrington & Co.” (interrupted). A. Is a clerical error.

Q. Tell us what the outcome of it was.

Mr. Collins: Objected to as irrelevant. 20

Q. What action was taken on those bids, Mr. Fagen? A. No action; only opened, read and placed on file.

Mr. Collins: Objected to as irrelevant.

A. (continuing) On November 29th, at the regular adjourned meeting, at which all of the members of the Board were present, at 10 o’clock in the morning, I find the (interrupted). 30

Mr. Collins: Objected to as irrelevant.

Q. Was there any action taken at that meeting? A. The meeting of November 29th, the last resolution was as follows:

“RESOLVED, That the Corporation Counsel be and he hereby is requested to furnish this 40

Board with his opinion as to whether or not the specifications for the removal of ashes and garbage, upon which bids have been received, provide for the removal of ashes and garbage from all the public buildings and institutions in the City; whether or not they provide for the removal of ashes and garbage from office buildings; whether or not they provide for the removal of ashes and garbage set upon the curb; and

10     “FURTHER RESOLVED, That when this Board adjourns it does adjourn to meet tomorrow, Wednesday, November 29th, 1916, at 10 o'clock A. M., in the City Clerk's office for the purpose of considering the bids received today for the removal of ashes and garbage.”

“The roll being called the resolution was adopted by the following vote.

“Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan. (5).

20     “Noes: None.

“On motion of Commissioner Byrne the Board of Commissioners adjourned to meet at 10 o'clock A. M. Wednesday, November 29th, 1916, in the City Clerk's office.”

30     Q. What was the action on that you have last read? A. The Board met at a regular adjourned meeting at 10 o'clock, November 29th, in the City Clerk's office, at which there were present all of the members of the Board; and the minutes continue to read as follows:

Mr. Collins: Objected to as irrelevant.

40     A. (continuing) “This time and place having been set for the consideration of the bids received for the collection and removal of ashes and garbage from the streets of Jersey City, and these specifications on which the same were submitted the Board entered into a discussion with the Corporation Counsel on the merits of the specifica-

tions.

“Corporation Counsel stated that the specifications, in his opinion, would need to be gone over very carefully and revised and re-written so that the present uncertainty as to the meaning of several sections would be removed.

“Counsellor Brockhorst, representing Mr. Harrington the low bidder for the work under the five-year provision, urged the granting of contract to his client under the specifications. Counsellor Doherty represented the low bidder on the one-year period, urging the granting of contract to his client for the one-year period and objected to any award being made to Mr. Harrington.

10

“By Commissioner Brensinger: WHEREAS, Bids were received by this Board for the collection and removal of ashes and garbage on November 28th, 1916, and Thomas Harrington Sons' Company were the lowest responsible bidders for the five-year period; and despite the care heretofore taken in the preparation of these specifications, the Corporation Counsel advises the Board that the specifications equally with the specifications heretofore bid on in former years, was faulty and defective; and

20

“WHEREAS, It appears from a comparison of the bids received on November 28th, 1916, with the bids received on October 10th, 1916, that a five-year period increases competition and is more advantageous to the City. Therefore, be it

30

“RESOLVED, That the bids received November 28th, 1916, for the removal of ashes and garbage, and the specifications filed and adopted by the Board of Commissioners on November 9th, 1916, be and the same are hereby rejected.

“The roll being called the resolution was adopted by the following vote:

“Yeas: Commissioners Brensinger, Byrne, Hague and Moore.

“Noes: Mayor Fagan.

40

“Not voting: Commissioner Brensinger.

“Mr. Brensinger stated: ‘On this resolution Mr. Milton has advised me that the specifications are defective and that it is my duty as Commissioner of Jersey City to vote to reject these bids. I feel that possibly that is my duty; **but there is an element of unfairness to the lowest bidder** in this matter and that is the reason I have moved the amendment and the reason for asking the opportunity for permission note to vote.’ ”

10 Q. Is there anything further there? What is the next resolution?

BY MR. COLLINS.

Q. Michael, who was the low bidder that time: the Harrington Sons' Company? A. Yes. I also find the following resolution:

20 “By Commissioner Brensinger: RESOLVED, That the City Clerk be and he is authorized and requested to return certified checks deposited for the bids for the removal of ashes and garbage.

“The roll being called the resolution was adopted by the following vote:

“Yeas: Commissioners Brensinger, Hague, Byrne, Moore and Mayor Fagan. (5).

“Noes: None.

30 “By Commissioner Brensinger: RESOLVED, That all specifications submitted to this Board be first approved by the Corporation Counsel and the Director of the department from which they originate; and further

“RESOLVED, That the copy of all specifications be presented to the Commissioner for his approval before being presented to the Board.

“The roll being called the resolution was adopted by the following vote:

“Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan. (5).

40 “Noes: None.

“By Commissioner Brensinger. RESOLVED, That the Chief Engineer be and he is hereby authorized and directed to secure estimates for the collection and removal of ashes and garbage from the streets of Jersey City for a period of six weeks from December 1st, 1916, for the continuation of the present contract, without bond; said estimates to be delivered at 5 o'clock P. M. today to the City Clerk in open meeting of the bidders.

“The roll being called the resolution was adopted by the following vote: 10

“Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan. (5).

“Noes: None.

“Thereupon upon motion of Commissioner Moore the Board took a recess until 5 P. M., in the City Hall, Jersey City.

“Upon reassembling at 5 o'clock P. M. in the City Clerk's office, City Hall, Jersey City, the following Commissioners answered to their names: 20

“Present: Commissioners Brensinger, Byrne, Moore and Mayor Fagan. (4).

“Absent: Commissioner Hague.

“Commissioner Brensinger stated that before receiving bids an amendment to the specifications on which the bidders were about to bid should be made, and offered the following:

“By Commissioner Brensinger: RESOLVED, That the specifications be amended as follows. 30

“Section 16.—It is hereby agreed by the party of the first part that the party of the second part may and shall have the right, privilege and authority to enter upon and use the property owned by the Mayor and Aldermen of Jersey City situated at Droyer's Point and also at the foot of Yale Avenue and at the South Cove and the ends of all unimproved streets leading into the Meadows on West Side in said City for the purpose and use of dumping or depositing thereon the ashes and 40

garbage sweepings, refuse and all other matter to be collected and disposed of as contemplated in this contract and the specifications hereunto annexed; and the said party of the second part agrees that upon his failure to meet any requirement or requirements of this contract that the said party of the first part shall be empowered to take over said contract and collect and dispose of such ashes, garbage, waste, refuse and other matter herein provided for.

10 “The roll being called the resolution was adopted by the following vote:

“Yeas: Commissioners Brensinger, Moore and Mayor Fagan. (3).

“Noes: Commissioner Byrne. (1).

“At this time Commissioner Hague appeared and took his seat among the Commissioners.

20 “Counsellor Brockhorst requested information as to the meaning of some of the provisions contained in the temporary specifications, and Chief Engineer and the Board explained the same.

“Mayor Fagan announced that any bidder who desired to change his bid because of the foregoing would be given time to do so. One bidder took advantage of the offer.

30 “Bids were called for for the removal of ashes and garbage from the streets of Jersey City for the period of six weeks in accordance with the resolution passed at the meeting held this morning, and the following submitted bids:

“ (1)—Montgomery & Conlon.....	\$19,000
“ (2)—The Brown Company.....	\$19,999
“ (3)—The Thomas Harrington Sons' Co.....	\$45,000

40 “By Mr. Brensinger: WHEREAS, Under the present contract between Jersey City and Montgomery & Conlon for the removal of ashes and garbage the obligation of the contractors to continue with the work expires on the 30th day of November, 1916.

“WHEREAS, Bids have been received upon two occasions for the removal of such ashes and garbage from and after the 1st day of December, 1916, which bids have been rejected; and

“WHEREAS, Another contract exists for the doing of such work, and in the opinion of this Board an emergency is presented within the meaning of the statute; and

“WHEREAS, Bids have been received for the removal of such ashes and garbage for the period of six weeks from December 1st, 1916, from three bidders as follows: 10

- “(1)—Thomas Harrington Sons’ Company.....\$45,000
- “(2)—The Brown Company.....\$19,999
- “(3)—Montgomery & Conlon.....\$19,000

“Therefore, RESOLVED, That this Board enter into a temporary contract for the removal of such ashes and garbage from the 1st day of December, 1916, until the 14th day of January, 1917; and

“FURTHER RESOLVED, That the contract be awarded to Montgomery & Conlon at the price named in their bid, viz.: \$19,000. 20

“RESOLVED, That the Corporation Attorney be and he is authorized and requested to prepare and have executed the necessary contract.

“The roll being called the resolution was adopted by the following vote:

“Yeas: Commissioners Brensinger, Byrne, Hague, Moore and Mayor Fagan. (5). 30

“Noes: None.

“On motion of Commissioner Byrne the Board adjourned.”

Q. Is there anything there to show what the appropriation was for; was it for the removal of ashes and garbage for the fiscal year from December, 1916, to November 30th, 1917? A. “At a regular meeting of the Board of Commissioners, held in the City Hall in the City Clerk’s office August 15th, 1916, at 2 o’clock P. M., at which 40

all the members of the Board were present.” Under the head of “Miscellaneous Business” is the ‘Budget Resolution,’ fixing the amount necessary to be raised by taxation in Jersey City for all purposes for the fiscal year beginning December 1st, 1916, and ending November 30th, 1917, included the following items. In that resolution under the caption of ‘Health and Sanitation of the Department of Streets and Public Improvements’ I find ‘for removal of ashes and garbage  
10 (contract) \$90,000.’

The Commissioner: Now, will Counsel admit that in none of these specifications advertised was there given any indication of the limit of the appropriation? Will you stipulate that there was no indication given to any bidder by the advertisements that we have heard referred to, or the specification of any limit of the appropriation?  
20

Q. Did any of the specifications or did any of the advertisements indicate that the appropriation was for collecting ashes? A. No, sir.

Mr. Collins: Objected to as irrelevant.

Q. By the award of the temporary contract to  
30 Montgomery & Conlon for \$19,000 the appropriation was diminished that amount—the \$90,000 appropriation? A. Yes, sir.

Q. And at the time of the reception of the final bids the amount of the appropriation then available for that purpose was \$71,000? A. Out of the amount subtracted from the total of \$90,000, that would be left.

CROSS-EXAMINATION by Mr. Bentley:

40 Q. It is a fact, Fagen, is it not, it is permissible

to make a supplementary appropriation and transferring over unexpended balances to that balance for that appropriation? A. Yes, sir; it is.

Q. Did you bring the specifications that were offered in evidence yesterday, the original proposal?

Mr. Bentley: I don't know about that. The original papers are the only thing that we have.

10

Mr. Doherty: No, it wasn't the original; it was a copy that you substituted for the original specifications.

BY THE COMMISSIONER:

Q. Now, there was a proposal and that was the original paper? A. Yes, sir.

BY MR. COLLINS:

20

Q. The return shows the thing of which this (indicating) is a copy? A. Yes, sir.

Mr. Collins: We don't need anything.

The Commissioner: If the return shows the same thing.

The Witness: These (indicating) would be extra copies.

30

The Commissioner. Of course any papers that you leave with me I will attach to the evidence.

The Witness: You have read these (indicating) into the records, but you haven't read one.

40

Mr. Doherty: That is the Harrington?

The Witness: Yes.

Q. That is all.

JAMES J. HARRINGTON, a witness produced on behalf of the prosecutors, being duly sworn according to law on his oath deposes and says:  
DIRECT EXAMINATION by Mr. Doherty:

10 Q. What is your business, Mr. Harrington? A. Contractor.

Q. And you are in business for yourself or are you associated with others? A. Associated with my brother.

Q. And under what name do you and your brothers do business? A. Thomas Harrington Sons' Company, a corporation.

Q. Are you an officer of the company? A. Yes; president.

20 Q. And who are the other officers? A. Joseph G., I believe, is vice-president; Mrs. Brockhorst is secretary and treasurer.

Q. Mrs. Brockhorst is your sister, is she? A. Yes, sir.

Q. And is she also the wife of Harry B. Brockhorst, member of the Bar of New Jersey? A. Yes, sir.

30 Q. You were present, were you not, at the meeting of the Board of Commissioners of Jersey City on November 29th, 1916; you were present at that meeting? A. Yes, sir.

Q. Mr. Brockhorst was also present was he, at that meeting? A. Yes.

Q. He was present, acting as attorney for the Thomas Harrington Sons' Company, was he? A. Yes.

40 Q. Have you any knowledge or information of the fact that at the time when the present writ was applied for Mr. Brockhorst was in court representing the Thomas Harrington Sons' Com-

pany? A. I heard that he was there.

Q. When did you hear it? A. I believe after the argument up at court.

Q. From Mr. Brockhorst himself? A. I can't recall whether it was from my brother or from Mr. Brockhorst; but I heard it later from Mr. Brockhorst.

Q. Does Mr. Brockhorst generally act as legal adviser for the Thomas Harrington Sons' Company? A. Always, if the job is not too big.

Q. When did you first receive information that testimony was to be taken in these proceedings? A. I can't say that I received any information at all.

Q. You didn't see any copy of a notice of the taking of testimony before Commissioner Roe yesterday? A. My brother told me yesterday that there was something doing down here today. By the way, I have not been enjoying good health.

Q. It was your brother Joseph?

10

20

BY MR. COLLINS:

Q. You thought it was today instead of yesterday? A. Yes, sir.

BY MR. DOHERTY:

Q. Did you have anything to do with the preparation of the bid of Thomas Harrington Sons' Company on November 28th or bid submitted January 2nd? A. I had practically all the preparation of the bid

Q. Did you prepare these (indicating) bids, did you? A. I did; then they were again O. K.'d by my brother.

Q. Your bid submitted on November 28th took the liberty of prescribing the amounts in which the payments should be made annually under the five-year contract, did it? A. Yes.

30

40

Q. You had seen the specifications? A. Yes.

Q. And will you say whether or not the specifications that you saw invited any bid in that form? A. Well, we are having to bid in different places, on many kinds of work, and try to get as much information as we can before we bid; and we try to make our bid in such a way that it will be advantageous to us.

10 Q. So are we to understand that your bid on that occasion of November 28th was so framed as the result of information that you received outside of the specifications? A. Oh, no! My own knowledge.

Q. Well, will you just explain what you meant when you tried to get as much information as possible; did you seek any information beyond the course of the specifications? A. For twenty years I have been seeking on that contract, hoping some time we would be low and not too low.

20 Q. But did you bid entirely upon the information as to the terms that should enter in the contract made upon the specifications or did you have outside information? A. I had the fruit of my many years' experience as a contractor.

Q. Did you have any information as to the amount of the appropriation? A. That is one of the things that a contractor should always inquire into if he wants to figure intelligently.

30 Q. Why? A. Well, if there ain't enough of the job or the estimate ain't large enough, there's no occasion for him to waste his time figuring.

40 Q. From what source do you learn what the appropriation was for the fiscal year, December 1st, 1916, to November 30th, 1917? A. From a article in the "Jersey Journal" that was sent to me in Kingston; a cut of an argument between Commissioner Byrne and Commissioner Brensinger had some time in August, when Commissioner Byrne in a heat of passion left the Commission, as the paper stated, telling Commis-

sion Brensinger that he was not needed there at the meeting, and Commissioner Brensinger agreeing with him, Mr. Brensinger saying to him that he may go home, that he could get along without him; and it was the nicest point I have heard. I was a sick man up in Kingston, and it was the nicest piece of reading! To think that Commissioner Byrne thought that the appropriation should be \$125,000; and the other man was good enough to say, "It shall be ninety, Henry!" And also when Commissioner Byrne wished to get a dozen new horses, Commissioner Brensinger (interrupted). 10

Q. I asked you very seriously, how you got your information as to the amount of the appropriation. Did that newspaper state the truth of the appropriation? A. That newspaper story first started me to think (interrupted).

Q. Mr. Harrington, did the newspaper indicate what the appropriation was? A. Yes, sir. 20

Q. What was it? A. \$90,000.

Q. You accepted that as authentic, did you. A. Well, I accepted that.

Q. From whom? A. I couldn't just say.

Q. In preparing the first bid you bid on a one-year contract and the five-year contract? A. Let us actually bid further (interrupted) (continuing). It is very important for this reason: I generally read the "Journal" (interrupted). 30

Mr. Collins: When the (interrupted).

A. (continuing) One minute, Judge! When I saw the fifty per cent. on the Scatuorchio and the Conlon bid, one year, I begin to think that the job was worth looking after. So when it came up the last time I inquired from Commissioner Brensinger what the appropriation was, and he told me \$90,000.

Q. Where did you make the inquiry? A. In 40

his office.

Q. Had you had any previous communication with Commissioner Brensinger relative to the prospect of you bidding on this job? A. No.

Q. And what was the date when you made this inquiry? A. Well, now, I couldn't just recall the date; but it was just a short time—just after they rejected the high bid; that is, that fifty per cent. raise bid, you know; jumping contract from \$88,000 to \$121,000.

10 Q. When you submitted your first bid you bid on each, one year and five-year? A. Yes.

Q. And your bid on the one-year term was \$120,000? A. No; \$112,000, I believe; I wouldn't be sure. The facts are there; I don't keep them in my head.

Q. That was an advance of almost \$35,000 on the previous cost of the work, wasn't it? A. Yes.

20 Q. Did your conversation with Commissioner Brensinger relative to the prospect of you bidding on this job get beyond a mere talk as to the amount of the appropriation, or was it extended? A. Now, what we find it today, or what we (interrupted.)

Q. No; relative to the contract. A. Oh! Commissioner Brensinger seems to be anxious, naturally, to get competition.

Q. Did he express that to you? A. Yes.

30 Q. And invited you to bid? A. Yes.

Q. Did you tell Commissioner Brensinger that you would not bid except on the five-year job? A. I did.

Q. Were there any specifications pending at that time do you remember? A. Was there any specifications spending at that time? Not that I know of.

40 Q. And specifications were afterwards framed to include the option of five years? A. Well, they may have been working before that. The

Board had decided before that to draft other specifications, I believe.

Q. What was the date of your conversation?

A. Oh, a short time; about the time they rejected the first bids a short time.

Q. How short? A. Well, let's see! The meeting is generally on Tuesday; I believe the meetings are generally on Tuesday; on Saturday or Monday following, I believe.

Q. You had a talk with him? A. I believe so.

10

Q. Don't you know the bids were received October 7th, and that the following Monday would be October 16th? Is that the date? A. No, No! They held over for two weeks. Commissioner got busy and he went to Trenton, and the other Commissioners decided that the job was too high.

Q. Did you ever have any communications over the telephone with Commissioner Brensinger whether you would bid or not? A. Never met Commissioner Brensinger in my life until I went in the meeting on the job.

20

Q. Didn't you go in response to a call over the telephone? A. No; he didn't send an invitation.

Q. Did you receive any invitation from anybody over the telephone for you to call? A. No.

Q. Now, in your five-year bid you itemize the annual payments so that the first payment would come within the amount of the appropriation; is that true? A. Yes; and consider it a clever piece of business of estimation, the first finding out what the appropriation is; find out the amount of the appropriation.

30

Q. You conceived that would be of some advantage to you? A. I hoped so. I had for a number of years been to a disadvantage. I hoped when the Commission gave any contract this time it would be of advantage to us.

Q. Now, when you bid on the final specifica- 40

tions you knew that the appropriation had been diminished \$19,000 which had been paid to Montgomery & Conlon on the temporary contract, didn't you? A. Yes.

Q. So you itemized so as to show a one-year bid within the appropriation? A. Yes; we left the poor City a thousand dollars instead of taking the whole appropriation. We had more money than the City, so we left a thousand so that no Counsel could say it was a case of Harrington  
10 Sons' Company was bidding beyond the appropriation. We bid it over again, and the fourth time of effort I hoped that we might be favored and get the job.

Q. The specifications on which you bid first, Mr. Harrington, provided that the garbage should not be removed from stores, factories and public buildings unless (interrupted)

20 Mr. Collins: Objected to.

Q. Was that the provision? A. The first specifications, as we looked at them, looked to be so well fixed for the favored contractor that we could take a very big change under them which would (interrupted)

Q. Well, now, just answer the question. Did those specifications contain the provision that the ashes and garbage was to be removed from  
30 stores, commercial, manufacturing and industry buildings only when so required by the Director of Public Buildings?

Mr. Collins. Objected to.

A. I believe they did.

Q. And you bid in contemplation of the work being only to that extent? A. That it didn't call for dwellings; it didn't call for stores?

40 Q. Yes; that it called for dwellings. A. I

bid on just what they say, whatever it was. In fact, we have always considered that any contractor ought to be able, if he wasn't blind, to find all the ash-barrels in the City; and skilled like that in cleaning up the ashes of the City, if they all cleaned up I don't see what we want specifications for; and if we pay a man and if he is too dumb to pick up an ash-barrel, we don't need him in the service.

Q. Did you discuss with any of the Commissioners the provisions that were to be inserted in the specifications before the specifications were adopted? A. Not that I can recall. 10

Q. Well, now, will you deny or admit it? (Stenographer repeats last question): "Did you discuss with any of the Commissioners the provisions that were to be inserted in the specifications before the specifications were adopted?"

A. I may have talked or made some suggestions. I will say I did make some suggestions. 20

Q. To whom? A. To Commissioner Brensinger, who was interested in getting a low bid for the contract.

Q. Did you make any suggestion in favor of a provision in the specifications relative to the enforcement, or whatsoever it is called, of the Eight Hour Workday Law? A. We felt (interrupted)

Q. Just answer that yes or no. 30

The Commissioner: Answer yes or no.

BY MR. COLLINS:

Q. Did you make any suggestions on that subject to anybody? A. Yes.

BY MR. DOHERTY:

Q. To Commissioner Brensinger? A. Yes, sir.

Q. And there is such provision appearing in 40

the specifications? A. Yes.

Q. And did you make any suggestions to him relative to vesting in the Inspector of the Collection of Garbage the right to terminate the contract if the Inspector believed that the contract was being carried out in bad faith? A. No.

Q. That is all.

CROSS-EXAMINATION BY MR. BENTLEY:

10 Q. I would like to know what the suggestion was that you made to Commissioner Brensinger in regard to the eight-hour day clause to the specifications? A. We know that the Eight Hour Law is on the statute books. Knowing that we, starting on this contract, and that Jersey City is about as strong a union town with reference to drivers, and so forth, we may say than New York or Hoboken or any other place that we know of, we anticipated that if we got the job that we  
20 would have to work eight hours; and we also thought it would be fair if anybody else got it they would have to do the same. I recommended the eight-hour-day; that is, I felt that we would have to get to it, anyhow. It is an adjudication. We only work eight hours in New York where we are working, and to work our men ten hours we knew we would only have trouble.

30 Q. When did you discuss that with him? A. Sometime after the rejection of those second specifications.

Q. You have spoken in your direct examination, of hoping to have an advantage under Commission Government. Do you mean an advantage that would not be enjoyed by other competing contractors? A. No; a fair, square competition.

BY MR. DOHERTY:

Q. Did you make any suggestion to Commissioner Brensinger as to the framing of the specifications in respect to the consequences that would follow the violation of the Eight Hour Law? A. No.

Q. Do you want us to understand that, that you did ask him to put that reference to the Eight Hour Law in the specifications? A. We were figuring we would be up against the eight hour proposition because that seems to be a bone of contention; down in bayonne they have a lot of trouble. 10

BY MR. COLLINS:

Q. You wanted it all to be on the same footing? A. Yes, sir.

BY MR. DOHERTY: 20

Q. You did believe that the inclusion of the reference to the Eight Hour Law would be of advantage to you; that it wouldn't be of any advantage to you with that specification left out?

Mr. Bentley: I object.

A. I wouldn't say "advantage." You wouldn't be able to get the advantage in this town. 30

Q. Why, wouldn't you leave it out if you didn't contemplate advantage to yourself? A. Because we only work eight hours in New York and we think that is enough for a man to work. We want a good man to work diligently and work eight hours; and I say I think it is enough for a man to work.

Q. You believed that the law heretofore had been unenforced? A. I believed? I know. 40

Q. And you want it understood that you wanted in this contract that provision for holding out for any violation of the Eight Hour Law?

A. Well, in the past nobody has seemed to notice it.

Q. And you understood that was one of the possibilities of the future, also? A. Well, I couldn't understand that; you can't look into the futures.

10 Q. Did you discuss that with Commissioner Brensinger at all, the possibilities of this law being violated or overlooked? A. I can't say that I did.

Q. Now, do you remember? A. I don't remember.

Q. You don't remember whether you did or not. That is all.

20 Mr. Doherty: We close the Prosecutor's case.

Mr. Collins: I do not think I shall need any testimony. Mr. Bentley has some other engagement and he wants it held over until Monday. I may personally not be able to be present on Monday as I have a case in Washington coming on.

30 Now, as to whether I have any testimony further will depend upon what we took yesterday.

Mr. Bentley: I would like to ask you, Sir, to set this down for Monday. Monday being day, I suppose at two o'clock would be better, if that doesn't conflict with Mr. Doherty's engagements.

40 Thereupon the further taking of depositions is adjourned to Monday, January 29th, 1917, at 2.00

o'clock P. M.

SUPREME COURT OF NEW JERSEY.

I, Charles L. Roe, Supreme Court Commissioner, do hereby certify that the foregoing depositions were taken before me pursuant to the notice hereto annexed by Herschel J. Huddle, a stenographer selected by me, and by me duly sworn to faithfully and truly take stenographically and produce in typewriting the testimony so given; and that the said depositions were taken in my immediate presence and hearing by the said stenographer, sworn as above stated; that by stipulation made between the parties the signatures of the respective witnesses thereto were dispensed with; and I further believe that said depositions accurately state the said evidence. 10

SUPREME COURT COMMISSIONER. 20

The further taking of depositions is continued this 29th day of January, 1917, pursuant to adjournment of January 25th, 1917. The testimony taken this day is on behalf of the defendant, the Mayor and Aldermen of Jersey City, in the presence of Richard Doherty, Esq., attorney for the prosecutors, and John Bentley, Esq., attorney for the defendant, the Mayor and Aldermen of Jersey City, and Corporation Attorney for Jersey City. Mr. Gilbert Collins is absent. James J. Harrington is present in person. 30

THOMAS J. GOLDEN, a witness produced on behalf of the defendant, the Mayor and Aldermen of Jersey City, being duly sworn according to law, on his oath deposes as follows:

## DIRECT EXAMINATION by Mr. Bentley:

Q. What position do you hold in the government of Jersey City? A. I am a stenographer in the City Clerk's office.

Q. Do you ordinarily attend the meetings of the Commissioners? A. I attend most every meeting.

10 Q. Were you present at a meeting held on the 29th of November last? A. Well, I was at every one of the meetings relative to the ashes contract.

Q. Were you at the meeting of the Commissioners when the bids that had been submitted for the period of December 1st, 1916, to November 30th, 1917, were rejected? A. I was.

20 Q. Can you recall approximately how many people were present at that meeting? A. Well, I know Mr. Brockhorst, Mr. Doherty, the full Board of Commissioners, I think, and several other people, Mr. Harrington and all the bidders.

Q. Did you overhear any conversation between Mr. Brockhorst, who, by the way, represented Mr. Harrington's concern, didn't he? A. Yes, sir.

Q. Did you hear any conversation between him and any of the Commissioners? A. Why, he addressed the entire Board, and urged them to grant the contract to his client.

30 Q. Did he say anything as to whether or not he considered the Harrington Sons' Company capable and competent? A. He did say that his client should receive the contract from the fact that his client was the biggest property owner and it was a responsible concern and one that could perform that contract.

40 Q. Now, did he put that in the form of a question? A. And in the course of his argument he asked the Board if the Commissioners had any objection to the Harrington Sons' Company receiving the contract, saying that they were cap-

able of performing the contract, and so on, if it was awarded.

Q. Did any of the Commissioners respond? A. Commissioner Hague responded by saying that he would like to see them get it because of the work of the Harringtons when he was in the Steet and Water Board. Those are the words; in fact, those are the words I recall, that he would like to see them get it.

Q. Did he say anything other than that they could perform the contract if it were awarded? 10  
A. Well, he said they were the lowest bidders, and he would like to see the lowest bidders get the contract.

Q. Did you hear Commissioner Brensinger say anything? A. Commissioner Brensinger and Mayor Fagan said about the same as Commissione Hague as to the Street and Water Board.

Q. Did they state anything about being willing to receive the contract if awarded to the Harrington Company? A. Well, the Mayor said that the Harringtons were responsible people and he saw no objection to awarding the contract to them. Commissioner Brensinger said that he knew what they done; I could give it through all, but the talk was on the specifications at the time. 20

Q. I don't mean that. I mean did any or all of the Commissioners express any fundamental reason why they were in favor of awarding the contract? A. Except that the Harringtons were the low bidders; the discussion at the time was as to whether they would award for one year or five-year contract. 30

Q. Can you give us the language that was used by any of the Commissioners in that record? A. I can't give you the exact language used by anybody except Commissioner Hague, and what he said was, that when he was in the Street 40

and Water Board the Harringtons performed their contract all right and he would like to see them get it again to the lower bidder, and whether they would award the one year or five year contract. The Harringtons were not the low bidders for one year; they were the low bidders for five years.

CROSS-EXAMINATION by Mr. Doherty:

10 Q. The Corporation Counsel was there, wasn't he? A. Yes, I think Mr. Milton was there; yes, I know he was there.

Q. Don't you know the first bids before the Commissioners there was the rendition of the opinion by Mr. Milton that the specifications were defective? A. Yes; he did say they were defective, in his opinion.

20 Q. And the expressions of good will and admiration of the Harrington concern were made after Mr. Milton gave his opinion? A. I couldn't say; but I think it was; I couldn't say positively when it was; I know both things were done at the same time.

Q. Your recollection is not very accurate; it is just a general recollection? A. Yes.

30 Q. State what Commissioner Hague said? A. I stated what Commissioner Hague said, and what Commissioner Brensinger said and what Mayor Fagen said.

Q. The three of them expressed the wish that the Harrington people would be awarded the contract for the collection of the garbage? A. For the five-year period; that is, if it was awarded for five years.

RE-DIRECT EXAMINATION by Mr. Bentley:

40 Q. Let me refresh your recollection. Didn't Commissioner Hague, in his remarks, refer

to the opinion that had been rendered by the Corporation Counsel? A. Well, they all referred to it in some way, but I don't just understand in what way you mean.

Q. What did Commissioner Hague say about it? A. Well, I wouldn't want to say just what he did say about that case; I don't remember exactly.

Q. Well, did he express a feeling that he wasn't bound by the Corporation Counsel's opinion? A. No; he didn't think he was bound by the Corporation Counsel's opinion; that they were the Commissioners and they decided what was legal without receiving the Corporation Counsel's opinion. He said it—I don't know whether he said it or whether it was by one of the other Commissioners. I know it was said, but by whom, I don't remember. 10

Q. What reason was expressed by the three Commissioners you have named as controlling them in the desire to award the contract to the Harrington Company? A. Well, the five-year period they seemed to think was advantageous. 20

Q. Why? A. Because of the lower prices they were giving.

Q. That is all.

Mr. Bentley: I move that the examination of witnesses, the taking of depositions, be adjourned until tomorrow (Tuesday), January 30th, 1917, at two o'clock in the afternoon, at the same place. 30

The Commissioner: The defendant has not closed, and wants to continue taking the depositions on his part.

Mr. Doherty: (To Mr. Bentley) You have already acknowledged on behalf of the City 40

that you have closed.

10 Mr. Bentley: Yes; but I would ask for further adjournment. I will go on. It was Judge Collins announced last Thursday that he might not be able to be present on account of his presence in court; that he wished an opportunity to cross-examine witnesses and to produce witnesses, if he thought it necessary, after the opportunity to examine the evidence that was taken on the 24th inst. before the defendant, The Harrington Company had been served with a copy of the writ.

20 Mr. Doherty: Mr. James J. Harrington, an officer of the defendant, Thomas Harrington Sons' Company, announces that he understood it to be request of Mr. Collins that after he had an opportunity to examine the testimony, and if necessary to cross-examine and to produce witnesses, may require a further adjournment for the taking of testimony.

30 Richard Doherty stated, that since the announcement by the Corporation Attorney that the testimony was closed, made at the present session, he was served with a notice of the argument of the present proceedings on Mr. Bentley, returnable February 3rd; and after Mr. Harrington's statement he announces that such service of argument was made only in contemplation of the testimony being closed, and that is further testimony was taken that he would reserve the right to serve another notice.

40 Mr. Bentley: I do not assent to what Mr. Doherty says.

The Commissioner: In behalf of Judge Collins, representing the defendant, Harrington Sons' Company adjournment will be made for the further taking of testimony to tomorrow afternoon, January 30th, 1917, at 2 o'clock.

## SUPREME COURT OF NEW JERSEY.

I, Charles L. Roe, Supreme Court Commissioner, do hereby certify that the foregoing depositions were taken before me pursuant to the notice here- 10  
to annexed by Herschel J. Huddle, a stenographer selected by me, and by me duly sworn to faithfully and truly take stenographically and produce in typewriting the testimony so given; and that the said depositions were taken in my immediate presence and hearing by the said stenographer, sworn as above stated; that by stipulation made between the parties the signatures of the respective witnesses thereto were dispensed with; and I 20  
further believe that said depositions accurately state the said evidence.

NEW JERSEY SUPREME COURT.

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## SUPREME COURT COMMISSIONER.

JAMES M. HOUGHTON )  
 and JOHN A. RESCH, )  
 Prosecutors, )

vs.

THE MAYOR and ALDER- )  
 MEN of JERSEY CITY and )  
 THOMAS HARRINGTON'S )  
 SONS' COMPANY, )  
 Defendants. )

ON CERTIORARI.  
 RULE FOR  
 JUDGMENT

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A writ of certiorari having been allowed in the above entitled matter on the 20th day of January, 1917, and a rule thereunder having been entered for the taking of depositions by all of the parties hereto, and the argument of the said writ coming on to be heard before the Hon. Francis J. Swayze, one of the Justices of the above entitled Court, pursuant to the Act of the Legislature in such case made and provided, in the presence of Richard Doherty, Esq., of Counsel with the Prosecutors and in the presence of Gilbert Collins, Esq., of Counsel with the Defendant, Thomas Harrington Sons' Company and in the presence of John Bentley, Esq., of Counsel with the Defendant, The Mayor and Aldermen of Jersey City, and having considered the depositions taken under the rule aforesaid and having heard the argument of counsel and considered the same, it is thereupon

ORDERED that the writ of certiorari hereinbefore allowed herein be dismissed, with costs.

On motion of

JOHN BENTLEY,  
 Defendant's Attorney.

Dated, February 6th, 1917.

Let the above rule be entered.

40

F. J. SWAYZE,  
 Justice of the Supreme Court.

NEW JERSEY SUPREME COURT.

JAMES M. HOUGHTON :  
and JOHN A. RESCH,  
Prosecutors, :

vs. : ON CERTIORARI

MAYOR AND ALDERMEN of : OPINION.  
JERSEY CITY and THOMAS  
HARRINGTON'S SONS' COM- :  
PANY, :  
Defendants. :

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SWAYZE, J.: I cannot understand how, if all that is said about the specifications is true, these prosecutors were in any way injured by them. Therefore there will be a judgment in this case dismissing the writ.

MR. COLLINS: Should not the judgment be for the defendants and against the prosecutors?

SWAYZE, J.: No, the correct practice is to dismiss the writ. I have had that rule very strongly impressed on me in conference.

30

THE PROSECUTOR

JAMES M. HOUNSLOW  
and JOHN A. FROST,  
Prosecutors;

vs.  
THE DEFENDANTS

MAYOR AND ALDERMEN of  
CITY OF CHICAGO,  
HARRIS and OSCAR  
DANN,  
Defendants.

10

STATE, J.: I cannot understand  
how it all that is said about the ar-  
rests of these defendants, these  
years have been injured by them, the  
one thing will be a judgment in this  
case regarding the writ.

THE COURT: Should not the writ  
be for the defendants and against  
the prosecutors?

STATE, J.: No, the correct way  
is to dissolve the writ. I have had  
the very strongly expressed on the  
conference.

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NEW JERSEY COURT OF ERRORS AND  
APPEALS

JAMES M. HOUGHTON )  
and JOHN A. RESCH, )  
Appellants-Prosecutors below, ) ON APPEAL  
vs. ) FROM SUPREME  
MAYOR AND ALDERMEN ) COURT ON  
of Jersey City, ) CERTIORARI.  
THOMAS HARRINGTON )  
SONS' COMPANY, )  
Appellees-Defendants below. )

BRIEF FOR APPELLANTS.

This appeal is from the judgment of the Supreme Court dismissing the writ of certiorari. The argument was had at Chambers before Justice Swayze. The writ was allowed to review the award of the contract to the defedant, Thomas Harrington Sons' Company, for the collection and removal of ashes, garbage and kitchen refuse from all the streets of Jersey City from January 15, 1917, to November 30, 1921, on a bid of \$590,000.00, and appellees question the legality of the specifications, form of bid and resolution awarding the contract. No formal contract between the City and the successful contractor has been executed. The appellees (prosecutors below) are residents and taxpayers of Jersey City.

1.

SECTIONS 2 and 13 OF THE SPECIFICATIONS VIOLATED THE LETTER AND SPIRIT OF THE STATUTE.

(a) SECTION 2.

The regulating act is Chapter 51, P. L. 1902, p.

200 (Compiled Statutes, p. 762). It authorizes a contract for a term not exceeding five years, imposes the duty to raise annually, during its continuance, the sum needed to defray the cost for the next ensuing year; provides that contract may be entered into only after bids therefor have been advertised and then only with the lowest bidder who shall give satisfactory security for the faithful performance of the work.

The intent and purpose of this act were to enable municipalities to enter into a valid, binding, continuing contract on the formal ascertainment of the lowest price at which a responsible bidder would do the work, through competitive bidding, freely and bona fide invited, on the same definite basis and to a common standard, upon specifications framed with the sole consideration of ascertaining the lowest price to secure the faithful performance of the contract thus made.

VAN REIPEN VS. JERSEY CITY, 58 N. J. L. 262.

BROWNING VS. BERGEN, 79 N. J. L. 494, Reversing 78 N. J. L. 289.

JOHNSON VS. ATLANTIC CITY, 82 N. J. L. 204.

JOHNSON VS. ATLANTIC CITY, 85 N. J. L. 145, citing 28 CYC 659.

ARMITAGE VS. NEWARK, 86 N. J. L. 5.

It is not disputed that municipalities have a broad and salutary discretion in the choice of the terms of such a contract, but such discretion is subject to the limitation that the terms must be reasonably calculated to effectuate the statu-

tory objects, and must not be arbitrary or violative of the spirit of the act,, must be of mutual obligation and must be definite as to subject matter and duration.

Arbitrary restrictions not provided for by the statute cannot be imposed.

DALY VS. O'BRIEN, 112 N. Y. Suppl.  
304.

The specifications, in like manner, must conform to the object of the statute, invite and not deter competition, furnish a definite basis and a common standard of competition, and be framed in good faith solely to ascertain the lowest bid.

Section 2 of the specifications contained arbitrary, uncertain and unreasonable provisions, in no sense necessary to effectuate the purpose of the act, but clearly tending and intended to deter competition, as follows:

SECTION 2. The contractor shall conform in all respects with Chapter 253 of the Laws of 1913, page 479 commonly known as the "Eight Hour Workday Law," and shall not violate any of the provisions thereof, and, if under extraordinary circumstances it shall become necessary for the workmen employed by said contractor to work more than eight hours per calendar day, the said contractor shall keep a separate account of the number of hours in excess of eight hours which his said employes shall work and shall hand such account to the inspector for the removal of ashes and garbage on the day following such work and shall pay his said employes for such extra work within two weeks of the doing of such work and in default

thereof, upon the certification by the said inspector of the collection of ashes and garbage, the said Board of Commissioners shall deduct such extra compensation from the moneys due said contractor, and in addition thereto shall fine the said contractor the penalty set out in said statute, deducting the same from any moneys coming due to him. The said contractor may work his said employes eight hours during the hours between five A. M. and eight P. M. and shall cause no interference or annoyance to householders or other interests, traffic or pedestrians at any time.

P. 12, 1. 8.

The Eight Hour Workday Law is a general penal statute, which fixed eight hours as the work day on municipal contracts, and provided that workmen may be employed for a longer period where necessary to protect property or life, if paid overtime, and further providing for the prevailing rate of per diem wages. Violators shall for each offense be fined not less than \$50.00 or more than \$500.00, or be imprisoned not more than six months, or both.

While the act prohibits work in excess of eight hours except when necessary "for protection of property or human life," the specifications countenance such overtime "under extraordinary circumstances," so that it cannot be argued that they even aimed to carry out the statute, or call the bidders' attention to its existence. The active enforcement of the general criminal law by a municipality does not fall within the contemplated objects of the specified Garbage Act, referred to above, and under this act such an undertaking was ultra vires and arbitrary; but beyond this the specifications,

instead of designing its enforcement, gave countenance to its violation "under extraordinary circumstances." The effect was to becloud bidders with doubts as to whether the Workday Law was to be enforced or winked at.

The Eight Hour Law provides merely that the overtime, when lawfully earned, be "paid." The specifications require that the contractor "shall pay his said employes for such extra work within two weeks." This exaction transcends the statute, has no conceivable relation to the object of obtaining a low bid from a responsible bidder, but on the contrary renders the performance of the contract additionally burdensome, so as either to affright the bidder or force up his bid for his protection against possible loss.

The Eight Hour Law provides a discretionary punishment for its violation **in fact**. The specifications provided that on the mere certification by the inspector that the contractor defaults in paying overtime, within two weeks, without notice to him, or inquiry into the fact, or even into the Inspector's source of information, the Commissioners shall "deduct such extra compensation." It is not provided that the Commissioners shall pay the men—they simply deduct. It is further specified that the Commissioners shall, in addition thereto, fine the said contractor the amount set out in the statute; this fine, as stated, is for each offense not less than \$50.00 or more than \$500.00. A reading of the Eight Hour Law might justify the view that a separate violation is committed in respect of each laborer or workman not paid for overtime. The court may infer that the work of removing garbage from all the streets of Jersey City twice a week requires the employment of a great many laborers. It is hard to believe that competition was invited by the threat to fine the contractor

either \$50.00 or \$500.00 for each time each laborer was kept waiting two weeks for extra compensation, according to the Inspector's certificate; but not quite so difficult as to understand how the "Garbage Act" conferred upon the Commissioners the character of a tribunal for the grotesque enforcement of a statewide criminal statute.

The same section requires the contractor to keep separate account of the number of hours in excess of eight which his employees shall work and hand same to inspector on the day following such employment. This requirement would seem to serve no purpose except to permit a favored contractor to conclude the question of his amenability to "deduction of extra compensation" by his own admission, while an unwelcome contractor would be mulcted according to the certification by the Inspector, and the facts therein asserted.

This section of the specifications was introduced as an amendment to the original draft, the amendment having been proposed by Commissioner Brensinger.

P. 7, 1. 25-30; P. 66, 1. 35; P. 67, 1. 30.

In his deposition he was unable to give any intelligent reason for its insertion, testifying and contradicting (1) that it would lead to a reduction of price, (P. 67, 1. 37); (2) that it would not have any effect on the price, (P. 68, 1. 10); (3) that it would make the specifications fair, (P. 68, 1. 20); (4) that its insertion was necessary to enforce the Eight Hour Law, (P. 68, 1. 35); (5) that it was not the purpose to mulct any transgressing contractor in fines, (P. 69, 1. 15); (6) that the section repeats the words of the statute, (P. 69, 1. 5); (7) that it would increase fairness in competition, but

refusing to state how, (P. 69, 1. 20).

The section was inserted at the suggestion of the President of the Company which was subsequently awarded the contract, (P. 125, 1. 35; P. 126, 1. 24). This witness also discusses "low bids" (P. 125, 1. 22) and "fair square competition." (P. 126, 1. 35).

Before the specifications were framed a majority of the Commissioners openly declared their favoritism for the firm which was afterwards successful.

Pp. 79-80.

The text of the section, its opportunities for indulgence or oppression, its extraneousness from the objects of the enabling statute, its inspiration by a favored and subsequently successful bidder, the inability of the official who foisted it to give any plausible account of its purpose and its menacing aspect to a bidder not on the "inside," abundantly prove that it was the result of fraud, bad faith and collusion.

(b) SECTION 13.

Section 13 provides that "if at any time the Inspector of the collection of ashes and garbage shall be of the opinion and shall so certify in writing to the Board of Commissioners of Jersey City that the said work, or any part thereof, is unnecessarily delayed, or that the contractor is \* \* \* executing said contract in bad faith, the Board shall have power to notify the contractor to discontinue all work or any part thereof under these specifications and thereupon the contractor shall cease to continue said work or such part thereof as the Board may designate and the said Board shall thereupon have power to complete the work and provide

all materials and labor necessary therefor and charge the expense of the same to the contractor and the expense so charged shall be deducted and paid by the City out of the moneys then due to the contractor under and by virtue of this agreement or any part thereof; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed by the contractor then the said contractor shall be entitled to receive the difference; and in case such sum shall exceed the amount payable as aforesaid, then the contractor shall pay the amount of such excess to the City on notice from said Board of the excess so due."

P. 15, 1. 9.

The extent of the work to be done under the contract was accurately specified in Section 1. "The contractor shall call regularly twice during each week at all stores, etc., and carefully collect and remove in a quiet and cleanly manner all ashes, etc." (P. 11, 1. 20). The contractor could not be required to do more, and would be in default if he did less; the execution of the work to the extent, at the times and in the manner thus required, would constitute a faithful performance of the contract.

The Garbage Act of 1902 (*supra*) requires absolutely satisfactory security for faithful performance; the specifications required \$50,000.00 security for faithful performance.

P. 16, 1. 40.

In this situation the specifications and official action proposed, independent of Section 13, were in full compliance with the regulating act, and the City perhaps exhausted its rights in re-

gard of compelling faithful performance when it required the contractor to give bonds or security. The present specifications go further, they require security according to the act for faithful performance of the work in fact, and then invite the assent of the bidder to a discontinuance by the City of the whole or any part of the work and the substitution of a new contractual relation, if at any time the Inspector "shall be of the opinion and shall so certify that the work or any part thereof is unnecessarily delayed, or the contractor is executing the contract in bad faith."

Here again are variant standards confronting and deterring the bidder,—first the substantial requirements of Section 1, and second the necessity of satisfying the Inspector's ideals concerning rate of progress and good faith and lofty motive in the collection and removal of garbage.

Section 1 provides an express standard of progress and performance, while Section 13 nullified such standards and substituted the caprice of the Inspector, a city employe. (P. 69, l. 70-71).

Commissioner Breninger, who also inspired this section, testified that it was his design to provide for an ascertainment of the facts and a hearing of both sides of the question, but such provision is absent from the specifications (P. 71, l. 22).

Section 13, read in connection with Section 1, had the effect of perplexing bidders to know whether the contract was to be rescindable for unfaithful performance *in fact* or merely in the opinion of the Inspector; whether the work was to be done in fair compliance with the express requirements, or to the inspector's satisfaction; whether the contract was terminable for non-fulfilment, or upon the condition subsequent of the

Inspector making a certain certificate.

But the section is still more chicane. It does not merely reserve to the City the right of absolute rescission for actual or fancied or questionable unfaithfulness of execution; if inspector certified his opinion that the work was unnecessarily delayed or executed in bad faith, in whole **or any part thereof**, the Board may direct a cessation of such work or **such part thereof as the Board may designate**. The uncertainty thus engendered was as to whether the contract to be awarded was to be, and to continue, **entire**, or subject to future separability, at the option of the city; whether the contractor's obligation to faithful performance related to the work in toto, or whether each street, each store, each dwelling, each hotel, etc., referred to in Section 1 was to be the subject of a separate undertaking, of separate criticism, and of separate rescission.

It is to be noted that the section does not refer in language to termination, rescission, revocation or cancellation, but refers only to **cessation** of the work by contractor and the subsequent performance of it by the City at his expense.

The Garbage Act authorizes (1) a contract or contracts for a definite term, (2) possessing the attribute of continuance and (3) to be faithfully performed.

The preliminary statement of the specifications (P. 10, l. 25) and the language of the advertisement (P. 19, l. 12) invited the making of a contract in conformity with the statute. Section 13 contemplated an arrangement of only unilateral obligation, amounting to nothing more than employment from day to day, to do the work specified or such part thereof as the contractor might be permitted to perform.

Proposed municipal contracts for an indefinite term, whether such indefiniteness results from

the language of the proposal, the omissions therefrom, or the arbitrary reservation of a right to rescind are a non-compliance with the statute.

BOARD OF FINANCE VS. JERSEY CITY, 57 N. J. L. 452.

The Garbage Act of 1902 repealed all previous charter provisions on the subject and was exclusively regulative.

HARRINGTON VS. JERSEY CITY, 78 N. J. L. 610.

Public contracts must conform to the statutory requirements as to duration.

DAVIS VS. HARRISON, 46 N. J. L. 79.

The deterrent effect of this specification as well as the bona fides of the whole transaction will be realized when the possibilities of the situation are contemplated.

For several years (P. 45, 1. 1) a contracting firm, Montgomery & Conlon, did the work on annual contracts with complete efficiency (P. 109, 1. 10), and on specifications containing no such provisions as Section 2 and 13; the specifications were always drawn by the Chief Engineer of the Department of Streets. (P. 91, 1. 10); on specifications thus prepared, bids were received October 10, 1916, and rejected, because in excess of the appropriation, \$90,000.00 (P. 98-99; P. 116, 1. 10). On October 17th, the Director of Streets and Public improvements, under whom the engineer worked (P. 91, 1. 1-10), was instructed to provide new specifications with provision for free dumping grounds (P. 99, 1. 5-40), which he offered for adoption October 31st. (P. 101, 1. 8). In the meantime, Commissioner Bren-

singer had formed the acquaintance of James J. Harrington, president of the defendant company (P. 56, 1. 2-10; P. 65, 1. 35; P. 123, 1. 1-10), the time of the meeting is fixed by Mr. Harrington as October 21 or October 23rd. (P. 99, 1. 4; P. 123, 1. 1-10). Harrington told Mr. Brensinger that he would not bid on the next specifications unless the work was given out for five years instead of one (P. 122, 1. 33; P. 65, 1. 35); he also suggested the insertion of the Eight Hour Provision (P. 125, 1. 20-40); the Commissioner was anxious and invited Harrington to bid (P. 122, 1. 20-30); and supplied him with information as to the appropriation (P. 121, 1. 31-39), not generally disseminated among the other bidders (P. 116, 1. 22). Harrington and Brensinger thereafter had several conferences on the subject of Harrington bidding, at Brensinger's office (P. 67, 1. 15) and on the street (P. 74, 1. 20-24).

This was the situation on October 31st when the Commissioner of Streets and Public Improvements presented the revised specifications drawn, as customary, by the Chief Engineer. On Brensinger's motion they were rejected and specifications which he, as Director of Revenue and Finance, presented, were substituted and adopted.

P. 101, 1. 25; P. 65, 1. 1-5.

These specification contained a provision for a one year and five year periods, acquiescing in Harrington's desire, and they also appear as the first evidence of an intent on the part of a majority of the Commission to affright or reassure bidders by specifications, hard or easy, according to the viewpoint. The specifications, however, did not appear to be sufficiently favorable to the Harrington firm, because they re-

quired it to bid on both the five year and one year period, (P. 107, 1. 22-40) while it did not want to bid on the shorter period.

P. 122, 1. 30.

Accordingly, the corporation counsel, who collaborated with Mr. Brensinger in the preparation of the specifications (P. 63, 1. 30-40; P. 65, 1. 1-5; P. 75, 1. 18-40; Pp. 76-77) after this work was taken out of the hands of the usual functionaries (P. 77), sent to Brensinger what appears to be an invited personal communication, dated November 9th, impugning the specifications because they might or might not require the removal of ashes from stores and stating that he had taken the liberty of revising them. On his own initiative he changed the provision relating to the one year and five year periods, so as to enable a bidder to offer a five year bid only. He assigned as a reason that a bidder without a plant might incur a serious loss, if, having acquired one, he was compelled to dispose of it after one year. (P. 106-107).

The reading of this communication shows that even at this early stage the welfare of the City was eclipsed by official favoritism for the Harrington firm, and that the rejection of the specifications for supposed uncertainty was a mere pretext for the adoption of later specifications more pointedly complying with the terms dictated to Brensinger by Harrington. With the lever of this advice, Brensinger proposed and secured the rescission of the specifications and presented and had adopted the revised set prepared by Mr. Milton, and bids were invited for November 28, 1916. (P. 103, 1. 35).

The bad faith of this transaction is manifest when it is noted that these specifications, which were ostensibly adopted to obviate a doubt in

the former specifications as to contractor's duty to remove ashes "from stores, were themselves rejected because they failed to define the contractor's duty as to removing ashes and garbage from public buildings and institutions, from office buildings and even from the curbs (P. 109, 1. 35-40; Pp. 110-111). When bids were received the Harrington firm was the lowest for the five year period, taking the liberty of apportioning its bid so as to specify the amount of the annual payments during the continuance of the contract, fixing the payment for the first year \$1,000.00 less than the appropriation, as communicated to Harrington by Brensinger (Pp. 108-109). The bids were rejected on the advice of Mr. Milton (P. 111). It was at this meeting that a majority of the commissioners vied in expressing their partiality for the Harrington firm (P. 78, 1. 30-40; Pp. 79-80), two of them, Brensinger and Fagan, clamoring to award the contract to the Harringtons, notwithstanding the warning of the Corporation Counsel's opinion, and Brensinger, (himself a lawyer, P. 73, 1. 15), bemoaning that it was "unfair" to the Harringtons not to award them the contract on these slippery and illegal specifications, and refusing to vote on the rejection of the bid (P. 112, 1. 1-10). On another occasion he gave a wholly different explanation of his course by stating that he considered the Harrington bid very advantageous to the city, and feared that if other bids were called for they might be higher (P. 61, 1. 39-40; P. 62, 1. 1-10).

A temporary contract was made the same day (Pp. 113-115) and, on Mr. Brensinger's initiative, a course of procedure was adopted whereby a single director who originates specifications, as he had done in the present instance, might prevent the consideration of the same by the Board of Commissioners until he and the

Corporation Counsel had both first approved them. (P. 112, 1. 28-40).

After these events and in this posture of affairs, Brensinger and Mr. Milton prepared the specifications set out in the return (P. 75, 1. 20-30). Section 13 was apparently their joint device, although Mr. Milton would not assume accountability for the Eight Hour provisions of Section 2 (P. 75, 1. 29), and these were offered as an amendment by Mr. Brensinger when the specifications were adopted. (P. 7, 1. 35-40).

The foregoing details are recounted not only to show favoritism and the participation of the favorite in framing of the specifications, but to illuminate the contention that the duplicitious import of Sections 2 and 13, not only apprises the bidder of ordinary sagaciousness of the fact that a favorite is in contemplation, but also warns such unfavored bidder to keep away from the work for self preservation. The arbitrary right of the City under Section 13, to avail itself of the Inspector's mere opinion to discontinue the contract and hold the contractor to the balance, and make him responsible for the cost of carrying it out, is pregnant with possibilities for oppression and business ruination which few could think of hazarding. A contractor, having investor in a plant, might be charged with bad faith on such a pretense as that he failed to employ careful and courteous laborers; thereupon, without hearing, the city might prevent the performance of the contract wholly, and charge him with the cost of carrying out the contract for the remainder of the term, the city providing the materials and labor, or it might prevent performance as to such part as the Board may designate, contractor, in that event, being chargeable with the cost in excess of the amount due to himself.

A bidder confronted with these possibilities

could not know with any degree of certitude whether he was bidding on a job for garbage removal, or undertaking to finance the city in the employment of the assortment of political devotees who would be "put to work," just as soon as the Inspector of Garbage filed his advisory opinion.

The deprivation without hearing or investigation does not appear to be an element requiring argument to show its deterrent aspect.

In *MORIARTY VS. ORANGE*, 98 Atl. 465, the absolute termination of a contract for unsatisfactory performance by the contractor was justified because he had already been found guilty of two violations of the contract. Justice Swayze laid stress upon the facts that the validity of the contract was not questioned, that there was no suggestion of fraud, and that if the provision for termination had been a device to prevent competitive bidding, the court could have set the contract aside as fraudulent. The plaintiff was estopped to deny the validity of the contract, wherefore the holding in the case has no control over the present one, while the dicta are significant.

In *CAMDEN VS. WARD*, 67, N. J. L. 558, and in *MILLER VS. ATLANTIC CITY*, 74 N. J. L. 345, it was held that a contractor was bound by the provisions of his contract, and would not be heard to complain that they transgress the formal requirement of law.

## II.

### THE BID DID NOT CONFORM TO THE SPECIFICATIONS, BUT PROPOSED NEW CONDITIONS.

The specifications announced that a contract

would be executed in conformity therewith (P. 10, 1. 12); that bid should be submitted for carrying out the terms of the contract either for the short or long period, or, if desired, for both (P. 10, 1. 35-40); bidders must state prices in writing and figures (P. 17, 1. 35). Payments to be made semi-monthly on certificates by Chief Engineer and City Inspector in sums not less than \$500.00 (P. 16, 1. 28-35).

The specifications are silent on the subjects of appropriations, annual payments, and the basis of computation upon which the semi-monthly payments would be made.

Proposals must be made on blank forms obtained at the office of the Engineer (P. 17, 1. 39).

Proposals not conforming with all the requirements will be deemed informal and rejected. (P. 18, 1. 4-7).

The proposal blanks were in form that call for a simple, unqualified price for either period bid on (P. 21, 1. 25). Each bidder except the Harrington Company regarded a bid in such form as requisite, the Harrington Company alone proposing additional terms, amendatory of, or at the least, amplifying the specifications. Thereby, its bid, which should have the legal character of an acceptance, was in truth a counter-proposition, and was so treated in the resolution awarding the contract, which averred that the Harrington bid is not only the lowest, but that it appeared that the terms of such bid "are most advantageous to the city from an analysis of the one year and five year bids, the five year period bid being lower than five one year period bids under normal conditions making due allowance for normal increase of population."

P. 26, 1. 1-15.

It will be observed that this resolution not only assents to the price, but to the terms, and the only terms in the bid beyond the price were the proposals for annual payments.

On the question of the good faith of this transaction it may be said that the reason assigned for considering the Harrington bid most advantageous, i. e., its superior benefit as contrasted with five one year period bids, is false. There were no five one year period bids at all submitted, and, if the resolution means anything, it meant that the Board indulged in prophecy as to the normal increase of population during the ensuing five years, and then assumed the fact that bidders in the future would be controlled exclusively by the consideration of population in preparing their bid.

In HARRINGTON VS. JERSEY CITY (supra) it was held that under the Garbage Act the bidders right cannot be tested by the advantageousness of the terms offered.

That the other bidders regarded the specifications and blanks as requiring a flat proposal is evidence that such was a fair interpretation of terms. If, on the other hand the specifications permitted the bidders to propose what annual payments should be made, it would in the same way permit other stipulations such as amount of same, monthly payments, basis of computation, etc., in which case the specifications were intrinsically uncertain and insufficient.

In JOHNSON VS. ATLANTIC CITY, 85 N. J. L. 145, Justice Minturn said that "nothing should be left to the bidders to determine and submit but the price at which they will undertake to perform the required work."

The Harrington bid proposed additional terms, which were either accepted by the resolution, or were not. If they were accepted, then the specifications were, pro tanto amended, to the disadvantage of the other bidders; if they were not accepted, then the resolution was illegal because the Harrington bid was not made in view of, and assent to, the specifications.

On the adoption of the resolution awarding the contract, there was no clear agreement concluded in respect of the manner of payment. The work to be performed by the bidder might be payable under the quantitative plan suggested by the specifications (P. 16, l. 28-39), the semi-monthly average plan which the same section also suggests, or the specified annual plan, interpolated into the Harrington bid. In the absence of the city's express assent to the Harrington plan of annual apportionment, it is altogether conceivable that the bidder might claim that it was not controlling and demand payment for the first year on a basis of averaging the entire period.

### III.

APPELLANTS, BEING RESIDENTS AND TAXPAYERS, WERE NOT REQUIRED TO SHOW THAT THE OFFICIAL ACTION WAS, AS TO THEM, SPECIFICALLY INJURIOUS.

Both prosecutors were residents and taxpayers (P. 46, l. 30-40; P. 47, l. 1-8; P. 32, l. 35-40; P. 33, l. 1-7.

The Garbage Act of 1902, (*supra*) required that the cost under the proposed contract be raised annually by taxation. The appropriation for the entire year was \$90,000.00 (P. 116, l. 10); of which \$19,000.00 had already been squandered on a costly temporary contract covering a period

of only six weeks, and made necessary by the defects of previous specifications. (Pp. 114-115). .

The writ was issued January 13th two days before the work was to start (P. 3).

It is enough that a taxpayer may be affected by an illegal ordinance, to entitle him to a hearing before any attempt is made to enforce it.

DANFORTH VS. PATTERSON, 34 N. J. L. 163.

Certiorari lies where prosecutor is one of a class to be most directly affected in the enjoyment of public rights, and public convenience will be subserved by the remedy desired.

FERRY VS. WILLIAM, 41 N. J. L. 332.

Where action tends to burden his taxing district with a debt.

MIDDLETON VS. ROBBINS, 54 N. J. L. 566.

Where he pays poll tax only, and action reviewed incurs a debt.

STROUD VS. CONSUMERS WATER CO. 56 N. J. L. 422.

Where issue of bonds is undertaken.

BIDDLE VS. RIVERTON, 58 N. J. L. 289.

In which case it was further held that after allowance of certiorari, the right of the prosecutor to the writ will be assumed in the absence of proof to the contrary, citing

AVON VS. NEPTUNE CITY, 27 Vr.  
362.

In the present proceeding the defendants below did not question the prosecutor's right.

Even a non-taxpayer need not show special injury except where action is wholly ultra vires, and results in a public nuisance or tortious act, for which there is redress by another appropriate remedy.

OLIVER VS. JERSEY CITY, 63 N. J.  
L. 96. ... ..

Taxpayers may be admitted to prosecute certiorari to review scheme which will result in an unlawful expenditure of public funds.

REHILL VS. EAST NEWARK, 73 N.  
J. L. 220.

To summarize, it is contended

1. The specifications did not present a definite basis or a common standard.
2. They were framed to deter competition and this purposely, and by a collusion in which the successful bidder through its representative participated.
3. They were not framed in fulfilment of the direction and spirit of the act and solely to ascertain the lowest bid at which a responsible party would do the work, but framed to insure the award to the Harrington Company.
4. The Harrington bid did not accept the specifications, and the resolution did not accept the super-added terms of the Harrington bid.
5. The contract was not awarded to the lowest responsible bidder, bidding under the specifications.

6. Prosecutors have sufficient interest.  
The proceedings certified under the writ should  
be set aside with costs.

Respectfully submitted,

RICHARD DOHERTY,

Attorney of and of Counsel with Appellants.

NEW JERSEY  
Court of Errors and Appeals

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*On Certiorari.  
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**Brief for Respondent Thomas Harrington  
Sons' Company.**

The writ of certiorari in this case was allowed by Mr. Justice Parker without stay (case, p. 4). At the time of the award of contract to Thomas Harrington Sons' Company for a term beginning January 15, 1917, and ending November 30, 1921—close of a fiscal year—there was in effect a temporary contract with Montgomery & Conlon (the old contractors) expiring on the date first named (p. 44). The writ to review the Harrington award was applied for on January 13, 1917, by persons having no other interests than general taxpayers; and Justice Parker, perceiving that the public interest required that there should be no stay, provided accordingly in the writ allowed on the day last named. In the brief for the appellants it is

gratuitously stated that the formal contract has not yet been executed. The only foundation for that statement deducible from the record is that in the return to the writ, bearing date January 18, 1917 (p. 5) no executed contract appears. The fact is that the contract has been executed by the Mayor under the city seal, attested by the City Clerk, and by the contractor—which is all that the city charter requires. Jersey City is under the Commission Government Act, and the custom has been for contracts made by the Commissioners to be executed by the head of the department concerned. The contract in question has not yet been signed by Commissioner Byrne, the Director of Streets and Public Improvements, for reasons best known to himself, although he voted for the award (p. 27); but the work embraced in the contract is being performed by the contractor.

The cause was brought to a hearing under Section 5 of the Certiorari Act before Justice Swayze, sitting alone for the Supreme Court. He promptly dismissed the writ, after an oral statement of his reasons, which statement has not been reported.

It goes without saying that under these circumstances there will be no reversal unless the public interest requires it. There were four bidders, including the former contractors (p. 39). None of them complains, and inasmuch as the bid on which the contract was awarded is very much below the next lowest bid, it is hard to see how taxpayers have been injuriously affected by the award of the contract.

It is argued that certain provisions in the specifications tended to discourage competition, but there was in fact no actual discouragement and no proof

was adduced that any bidder, or any one who did not bid, would have offered a lower price for the contract had the specifications not contained the provisions referred to. If those provisions are of doubtful validity, the argument *ab inconvenienti* ought to prevail. *Broom's Legal Maxims*, 8th ed., p. \*184. To set aside the present contract after it has been several months in operation with the attendant difficulty as to compensating for the work already done, and to leave the city without provision for imperative sanitary necessities while new specifications are being prepared and bids called for, on the mere chance that a more favorable contract may thereby result, would be the height of unwisdom. The temporary contract for six weeks made, after bidding, without advertisement, under circumstances hereinafter to be stated, cost the city \$19,000 for the time named. That on a one-year basis would be \$164,666 for the year; and on a five-year basis, \$823,330. A comparison with the bidding on which the present work was awarded will show how unfortunate for the city another temporary contract would be. The public interest clearly demands that the present contract should not be disturbed, and as no private interest has been injuriously affected, sound legal discretion will naturally lead to sustaining the dismissal of a writ that was only allowed with misgiving.

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Although the statute cited authorized contracts for terms not exceeding five years, the practice in Jersey City had been to make yearly contracts for the removal of ashes, garbage, etc. This had been going on for upwards of ten years (p. 91). Montgomery & Conlon had had the contract for two and a half years. They must have taken over the contract for the fiscal year ending November 30, 1914, by assignment.

As the time of the expiration of the contract ending with the fiscal year, on November 30, 1916, approached, the City Engineer prepared specifications and the Commissioners advertised for bids for the next fiscal year. Two bids only were received (p. 98), the lower being that of Montgomery & Conlon; but as the low bid was greatly in excess of the appropriation for the year, the bids were rejected (p. 99). Commissioner Brensinger, Director of Revenue and Finance, who had been instrumental in having the appropriation fixed at \$90,000 when Commissioner Byrne wanted \$125,000 (p. 121) interested himself in bringing about the possibility of more favorable terms for the city in the matter of removal of ashes and garbage. He secured the adoption of specifications that gave bidders an option when bidding on a one-year contract to make a bid for a five-year contract (p. 66). Specifications to that effect were adopted October 31, 1916, Commissioner Byrne dissenting. When the bids came in on November 28, 1916, Thomas Harrington Sons' Company were \$22,659 lower than Montgomery &

Conlon on the one-year basis and \$200,000 lower than that firm on the five-year basis. The Harrington Company was \$2,000 higher than the Browne Company on the one-year basis and \$156,000 lower than the Browne Company on the five-year basis. In the Harrington bid on the five-year basis they offered to keep within the appropriation for the first year (pp. 108, 9). The Harrington bid was very favorable indeed to the city; but the award of contract thereunder was prevented by the discovery of a fatal defect in the specifications which crept in through some one's carelessness. This had been pointed out in a communication from the Corporation Counsel, dated November 9, 1916 (pp. 106, 7), to Commissioner Brensinger who had asked him to look over the specifications. Of course, this communication could not stay the proceedings that were in course, and the bids were opened with the result above stated. The Board then referred the matter to the Corporation Counsel, who was present at its meeting, and he advised that the specifications would have to be rewritten and new bids called for. All the bids were thereupon, on November 29th, rejected, Mayor Fagan alone voting in the negative (p. 111). An attempt was made in the depositions to show favoritism toward Thomas Harrington Sons' Company; but all that really occurred was that some of the Commissioners expressed regret that the contract could not be awarded on the Harrington bid which, as above stated, was very favorable to the city (see the testimony of Golden, the Board's stenographer, case, p. 129, *et seq.*). Mayor Fagan thought such an award would be legal and voted accordingly, but the other Commissioners yielded to the advice of the Corporation Counsel on a matter of law. That the specifications were defective appears to be incontrovertible. The testimony of Mr. Brensinger and Mr. James

J. Harrington, called as witnesses for the prosecutors, shows merely that Brensinger was anxious to get the best result possible for the city, and that Harrington was unwilling to bid unless there was at least an option given to bid for a term of five years. After the fiasco on November 29, 1916, James J. Harrington told Commissioner Brensinger that he would not bid again except on a five-year job (p. 122, l. 30), and he also told him that there ought to be something inserted in the specifications that would compel contractors to conform to the Eight-Hour Workday Law (p. 125), which theretofore had not been enforced in Jersey City (p. 127, l. 40).

The Corporation Counsel after he examined the specifications on which the bidding had been ordered on October 31, 1916, had prepared a new set of specifications removing the defect above referred to and making certain other changes. He thought that bidders ought not to be required to submit bids both on a one-year and a five-year basis. He said (p. 107):

"I have also changed, upon the last page of the specifications, the method of bidding. As the specifications now stand the bidder must submit two bids: one for one year and the other for five years. To my mind that will not attract competition for the reason that bidders who may be interested in getting the work, provided they can secure a long enough contract to justify any investment in a plant, may feel they could [not] afford to take the work for one year. Under this form of bid the city could accept the one year bid and hold the contractor to it and force upon him a serious loss, dis-

posing of his plant at the end of a year. I have changed it so as to make it optional whether the contractor shall submit a one or five year bid."

The specifications prepared by the Corporation Counsel were submitted to the Board on December 12, 1916. A provision with regard to the Eight-Hour Workday Law (P. L., 1913, p. 479), was added and the specifications as a whole were adopted by a unanimous vote of the Board (pp. 5 to 9), and advertisement for proposals in accordance therewith proceeded in due course, with the result of the bidding and award of contract now under review. In the meantime, as the fiscal year was expiring November 30, 1916, something had to be done. On the same day, November 29, 1916, that the bids had been rejected, bids were called for instanter for the removal of ashes and garbage for a period of six weeks. This was done under the "exigency" law (Suppl. to Jersey City Charter, P. L., 1873, p. 392, sec. 53; Comp. Stat., 1015, pl., 1540), and a temporary contract was made with Montgomery & Conlon for the sum of \$19,000 (pp. 114, 115). All bidders on the permanent contract, of course, knew this and Thomas Harrington Sons' Company protected itself and the city by providing in its bid that for the residue of the current fiscal year it would be content with \$70,000, thus enabling the city to keep within the appropriation for that year.

The contract being awarded to Thomas Harrington Sons' Company, two taxpayers, were induced to attack it. Who induced them to do so does not appear, but the principal one, James M. Houghton, decided to make the attack after conversing with Richard Doherty, Esq. (p. 49 *et seq.*), who had ap-

peared before the Board on November 29, 1916, objecting against an award to Thomas Harrington Sons' Company (p. 111). Who, outside of the record, Mr. Doherty represents is conjectural. It will be he noticed that in his brief he is very complimentary to Montgomery & Conlon. Perhaps they are the *dii ex machina*.

The case as above stated argues itself favorably to the defendants, but to cover the whole ground I will take up the points made by appellants' counsel in his brief in the order hereof.

## I.

### **Section 2 and 13 of the specifications do not violate the letter or spirit of the statute.**

The specifications are not objectionable in the respects stated in the brief for appellants:

- (a) The provision of Section 2 of the specifications as to the "Eight-Hour Workday Law (P. L., 1913, p. 479), is not open to the challenge made against it. Inasmuch as the law had not previously been enforced in Jersey City (p. 127, l. 40) it was perfectly proper for the Commissioners to warn all bidders that it would be enforced and to make its enforcement a part of the contract. If the provisions to that end are criticisable, no harm could possibly have resulted to bidders therefrom. All that a contractor had to do was to live up to the law and he would be in no danger. The argument of counsel seems to be that there was not sufficient protection afforded

in case of disobedience. The clause in the specifications, like the statute, provides for emergencies, although the exact phraseology is not used. The statute permits working overtime on necessity "for the protection of property or human life," while the provision in the specifications is necessary "under extraordinary circumstances" (p. 8, l. 6); but inasmuch as everyone is presumed to know the law, and particularly as the statute is cited in terms in the same clause of the specifications, the extraordinary circumstances contemplated must be those mentioned in the statute. Prompt removal of garbage in hot weather is necessary for the protection of human life, and if for any reason it should become necessary in order to clean up a day's work that the contractor's men should overrun the eight hours, they would be within the protection of the statute as well as the specifications. Furthermore, there is no penalty imposed on the contractor if he in fact shall pay his workmen for overtime. The provision is that he "shall keep a separate account of the number of hours in excess of eight hours which his said employees shall work, and shall hand such account to the inspector for the removal of ashes and garbage on the day following such work, and shall pay his said employees for such extra work within two weeks of the doing of such work" (p. 8, ls. 10-16). If the contractor lives up to this requirement, and surely he ought to do no less, he will be perfectly safe. Counsel for

appellants seems to think that the inspector is to pass upon the necessity of the extra work, but this is not so. The contractor does that, and hands his account to the inspector, and it is only in case of default in the payment of his employees "for *such* extra work" the deduction provided for in the specifications is to be made. The provision in the specifications the Board of Commissioners shall fine the contractor the statutory penalty may be treated as surplusage. No bidder could possibly be deceived by that clause, for he could read the statute for himself, and on doing so would know that the fine must be imposed by the Court and not by the Commissioners. In any view, the provision would have no enforceability unless a contractor should fail to pay his workmen for the hours stated in his account rendered to the inspector.

- (b). The provision of Section 13 of the specifications (p. 15) empowering the Commissioners to notify the contractor to discontinue all or part of the work on certificate of the Inspector that the work is unnecessarily delayed, etc., is not open to criticism. It is not claimed that this provision was new. Mr. Van Keuren, the City Engineer, seems to have drawn the specifications in accordance with the tenor of those of former years (p. 91, l. 32 *et seq.*). The only changes made were with respect to the provisions for permitting five-year bids and with respect to enforcing the Eight-Hour Workday

Law. No trouble has ever been experienced by reason of this clause as to inspector's certificate. It is a reasonable and proper clause and one that is absolutely essential. It differs in no manner from the ordinary provision of building contracts that vest in the architect similar powers. The case is directly within the decision of the Supreme Court in *Moriarty v. Board of Commissioners of Orange*, 98 Atl., 465.

No bidder was deterred from bidding by reason of either of these provisions. All were put on an equal footing. There were four competitors—an unusually large number in contracts of this character requiring extensive plant—and no bidder complains. Neither does anyone come forward to testify that he would have bid had the specifications been different.

Mr. Doherty tried very hard to get the prosecutor Houghton, to testify that he was influenced in his attack on the contract by objection to one or both of these provisions; but in this he failed (pp. 52-57). Houghton's only objection—and this he repeated over and over again—was that he did not approve of five-year contracts (pp. 49-52).

## II.

### **The bid did conform to the specifications and proposed no new conditions.**

The contention to the contrary is that Thomas Harrington Sons' Company specified in its bid the amount it will be content to receive for each fiscal year. The aggregate constituted the bid for the

entire period. This division into fiscal years was helpful to the city, as the amount was increased year by year, which was natural, in view of the probable increase of population of the city. We fail to see how a taxpayer is concerned with this feature of the case. The aggregate of the Harrington bid was \$590,000. The other bids range from \$634,000 to \$699,000, the bid of Montgomery & Conlon (p. 39). Had the difference between the Harrington bid and that of the next lowest bidder been trifling, it might be arguable that Thomas Harrington Sons' Company had gained some advantage by the division it made of its aggregate bid over a possible division into proportionate parts for the different fiscal years; but with such a large difference no bidder could complain, and, in fact, none does complain. Taxpayers surely are not injured by the award of the contract on the Harrington bid.

### III.

**It appeared affirmatively that the contract awarded was not injurious to the prosecutors as taxpayers.**

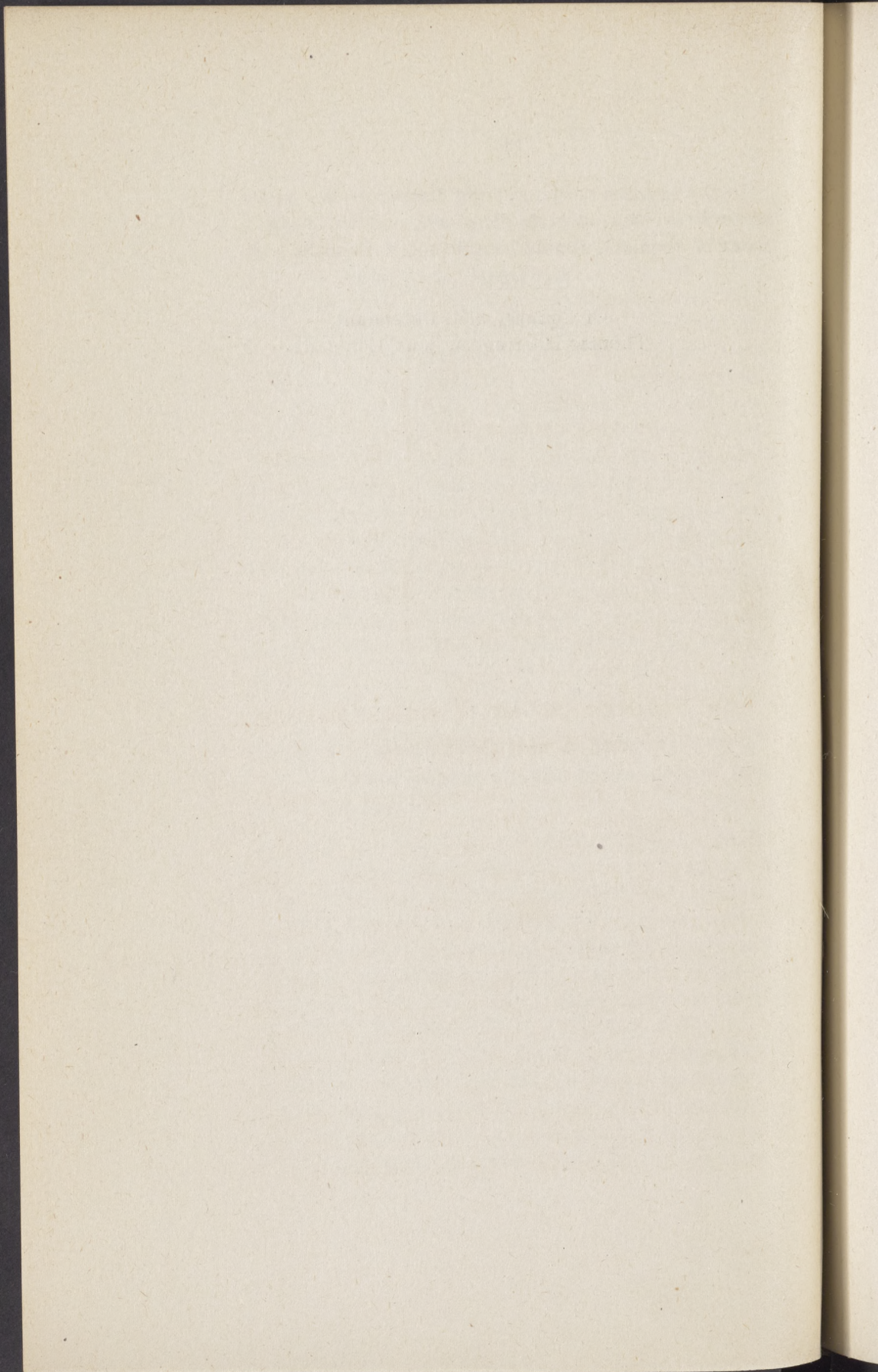
While it is true that the prosecutors of a *certiorari* to review municipal action are not required to show their interest unless challenged, nevertheless, if their interest does affirmatively appear, and it further appears that such interest is not injuriously affected, the municipal action attacked will not be disturbed. The true rule on this subject is stated in *Levy v. Elizabeth*, 81 N. J. L., 643, 645.

The counsel for the prosecutors undertook to show their interest, and proved that it was that of general taxpayers, and this is conceded in the brief. None of the cases cited on this point by their counsel has any applicability to a case like the present.

In the exercise of sound legal discretion, the writ of *certiorari* was properly dismissed, and the judgment of dismissal should be affirmed with costs.

GILBERT COLLINS,

Of Counsel with Defendant,  
Thomas Harrington Sons' Company.



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Conlon on the one-year basis and \$200,000 lower than that firm on the five-year basis. The Harrington Company was \$2,000 higher than the Browne Company on the one-year basis and \$156,000 lower than the Browne Company on the five-year basis. In the Harrington bid on the five-year basis they offered to keep within the appropriation for the first year (pp. 108, 9). The Harrington bid was very favorable indeed to the city; but the award of contract thereunder was prevented by the discovery of a fatal defect in the specifications which crept in through some one's carelessness. This had been pointed out in a communication from the Corporation Counsel, dated November 9, 1916 (pp. 106, 7), to Commissioner Brensinger who had asked him to look over the specifications. Of course, this communication could not stay the proceedings that were in course, and the bids were opened with the result above stated. The Board then referred the matter to the Corporation Counsel, who was present at its meeting, and he advised that the specifications would have to be rewritten and new bids called for. All the bids were thereupon, on November 29th, rejected, Mayor Fagan alone voting in the negative (p. 111). An attempt was made in the depositions to show favoritism toward Thomas Harrington Sons' Company; but all that really occurred was that some of the Commissioners expressed regret that the contract could not be awarded on the Harrington bid which, as above stated, was very favorable to the city (see the testimony of Golden, the Board's stenographer, case, p. 129, *et seq.*). Mayor Fagan thought such an award would be legal and voted accordingly, but the other Commissioners yielded to the advice of the Corporation Counsel on a matter of law. That the specifications were defective appears to be incontrovertible. The testimony of Mr. Brensinger and Mr. James

J. Harrington, called as witnesses for the prosecutors, shows merely that Brensinger was anxious to get the best result possible for the city, and that Harrington was unwilling to bid unless there was at least an option given to bid for a term of five years. After the fiasco on November 29, 1916, James J. Harrington told Commissioner Brensinger that he would not bid again except on a five-year job (p. 122, l. 30), and he also told him that there ought to be something inserted in the specifications that would compel contractors to conform to the Eight-Hour Workday Law (p. 125), which theretofore had not been enforced in Jersey City (p. 127, l. 40).

The Corporation Counsel after he examined the specifications on which the bidding had been ordered on October 31, 1916, had prepared a new set of specifications removing the defect above referred to and making certain other changes. He thought that bidders ought not to be required to submit bids both on a one-year and a five-year basis. He said (p. 107):

“I have also changed, upon the last page of the specifications, the method of bidding. As the specifications now stand the bidder must submit two bids: one for one year and the other for five years. To my mind that will not attract competition for the reason that bidders who may be interested in getting the work, provided they can secure a long enough contract to justify any investment in a plant, may feel they could [not] afford to take the work for one year. Under this form of bid the city could accept the one year bid and hold the contractor to it and force upon him a serious loss, dis-

posing of his plant at the end of a year. I have changed it so as to make it optional whether the contractor shall submit a one or five year bid."

The specifications prepared by the Corporation Counsel were submitted to the Board on December 12, 1916. A provision with regard to the Eight-Hour Workday Law (P. L., 1913, p. 479), was added and the specifications as a whole were adopted by a unanimous vote of the Board (pp. 5 to 9), and advertisement for proposals in accordance therewith proceeded in due course, with the result of the bidding and award of contract now under review. In the meantime, as the fiscal year was expiring November 30, 1916, something had to be done. On the same day, November 29, 1916, that the bids had been rejected, bids were called for instanter for the removal of ashes and garbage for a period of six weeks. This was done under the "exigency" law (Suppl. to Jersey City Charter, P. L. 1873, p. 392, sec. 53; Comp. Stat., 1015, pl., 1540), and a temporary contract was made with Montgomery & Conlon for the sum of \$19,000 (pp. 114, 115). All bidders on the permanent contract, of course, knew this and Thomas Harrington Sons' Company protected itself and the city by providing in its bid that for the residue of the current fiscal year it would be content with \$70,000, thus enabling the city to keep within the appropriation for that year.

The contract being awarded to Thomas Harrington Sons' Company, two taxpayers, were induced to attack it. Who induced them to do so does not appear, but the principal one, James M. Houghton, decided to make the attack after conversing with Richard Doherty, Esq. (p. 49 *et seq.*), who had ap-

peared before the Board on November 29, 1916, objecting against an award to Thomas Harrington Sons' Company (p. 111). Who, outside of the record, Mr. Doherty represents is conjectural. It will be he noticed that in his brief he is very complimentary to Montgomery & Conlon. Perhaps they are the *divi ex machina*.

The case as above stated argues itself favorably to the defendants, but to cover the whole ground I will take up the points made by appellants' counsel in his brief in the order hereof.

## I.

### **Section 2 and 13 of the specifications do not violate the letter or spirit of the statute.**

The specifications are not objectionable in the respects stated in the brief for appellants:

- (a) The provision of Section 2 of the specifications as to the "Eight-Hour Workday Law (P. L., 1913, p. 479), is not open to the challenge made against it. Inasmuch as the law had not previously been enforced in Jersey City (p. 127, l. 40) it was perfectly proper for the Commissioners to warn all bidders that it would be enforced and to make its enforcement a part of the contract. If the provisions to that end are criticisable, no harm could possibly have resulted to bidders therefrom. All that a contractor had to do was to live up to the law and he would be in no danger. The argument of counsel seems to be that there was not sufficient protection afforded

in case of disobedience. The clause in the specifications, like the statute, provides for emergencies, although the exact phraseology is not used. The statute permits working overtime on necessity "for the protection of property or human life," while the provision in the specifications is necessary "under extraordinary circumstances" (p. 8, l. 6); but inasmuch as everyone is presumed to know the law, and particularly as the statute is cited in terms in the same clause of the specifications, the extraordinary circumstances contemplated must be those mentioned in the statute. Prompt removal of garbage in hot weather is necessary for the protection of human life, and if for any reason it should become necessary in order to clean up a day's work that the contractor's men should overrun the eight hours, they would be within the protection of the statute as well as the specifications. Furthermore, there is no penalty imposed on the contractor if he in fact shall pay his workmen for overtime. The provision is that he "shall keep a separate account of the number of hours in excess of eight hours which his said employees shall work, and shall hand such account to the inspector for the removal of ashes and garbage on the day following such work, and shall pay his said employees for such extra work within two weeks of the doing of such work" (p. 8, ls. 10-16). If the contractor lives up to this requirement, and surely he ought to do no less, he will be perfectly safe. Counsel for

appellants seems to think that the inspector is to pass upon the necessity of the extra work, but this is not so. The contractor does that, and hands his account to the inspector, and it is only in case of default in the payment of his employees "for *such* extra work" the deduction provided for in the specifications is to be made. The provision in the specifications the Board of Commissioners shall fine the contractor the statutory penalty may be treated as surplusage. No bidder could possibly be deceived by that clause, for he could read the statute for himself, and on doing so would know that the fine must be imposed by the Court and not by the Commissioners. In any view, the provision would have no enforceability unless a contractor should fail to pay his workmen for the hours stated in his account rendered to the inspector.

- (b). The provision of Section 13 of the specifications (p. 15) empowering the Commissioners to notify the contractor to discontinue all or part of the work on certificate of the Inspector that the work is unnecessarily delayed, etc., is not open to criticism. It is not claimed that this provision was new. Mr. Van Keuren, the City Engineer, seems to have drawn the specifications in accordance with the tenor of those of former years (p. 91, l. 32 *et seq.*). The only changes made were with respect to the provisions for permitting five-year bids and with respect to enforcing the Eight-Hour Workday

Law. No trouble has ever been experienced by reason of this clause as to inspector's certificate. It is a reasonable and proper clause and one that is absolutely essential. It differs in no manner from the ordinary provision of building contracts that vest in the architect similar powers. The case is directly within the decision of the Supreme Court in *Moriarty v. Board of Commissioners of Orange*, 98 Atl., 465.

No bidder was deterred from bidding by reason of either of these provisions. All were put on an equal footing. There were four competitors—an unusually large number in contracts of this character requiring extensive plant—and no bidder complains. Neither does anyone come forward to testify that he would have bid had the specifications been different.

Mr. Doherty tried very hard to get the prosecutor Houghton, to testify that he was influenced in his attack on the contract by objection to one or both of these provisions; but in this he failed (pp. 52-57). Houghton's only objection—and this he repeated over and over again—was that he did not approve of five-year contracts (pp. 49-52).

## II.

**The bid did conform to the specifications and proposed no new conditions.**

The contention to the contrary is that Thomas Harrington Sons' Company specified in its bid the amount it will be content to receive for each fiscal year. The aggregate constituted the bid for the

entire period. This division into fiscal years was helpful to the city, as the amount was increased year by year, which was natural, in view of the probable increase of population of the city. We fail to see how a taxpayer is concerned with this feature of the case. The aggregate of the Harrington bid was \$590,000. The other bids range from \$634,000 to \$699,000, the bid of Montgomery & Conlon (p. 39). Had the difference between the Harrington bid and that of the next lowest bidder been trifling, it might be arguable that Thomas Harrington Sons' Company had gained some advantage by the division it made of its aggregate bid over a possible division into proportionate parts for the different fiscal years; but with such a large difference no bidder could complain, and, in fact, none does complain. Taxpayers surely are not injured by the award of the contract on the Harrington bid.

### III.

**It appeared affirmatively that the contract awarded was not injurious to the prosecutors as taxpayers.**

While it is true that the prosecutors of a *certiorari* to review municipal action are not required to show their interest unless challenged, nevertheless, if their interest does affirmatively appear, and it further appears that such interest is not injuriously affected, the municipal action attacked will not be disturbed. The true rule on this subject is stated in *Levy v. Elizabeth*, 81 N. J. L., 643, 645.

The counsel for the prosecutors undertook to show their interest, and proved that it was that of general taxpayers, and this is conceded in the brief. None of the cases cited on this point by their counsel has any applicability to a case like the present.

In the exercise of sound legal discretion, the writ of *certiorari* was properly dismissed, and the judgment of dismissal should be affirmed with costs.

GILBERT COLLINS,

Of Counsel with Defendant,  
Thomas Harrington Sons' Company.

