

City of Cambridge
Nov. 5. 1878

To the Committee
on Roads and Bridges.

Gentlemen:

I have received from the
Clerk of Committee notice that at a recent
meeting of ~~your~~ Committee it was
"Voted to refer the question of the City's authority
"to lay out a narrow street or way from
"Concord Avenue to land of Wm. White et al.
"on line of Fitchburg R.R. (Branch) to the
"city solicitor"

It is a little difficult for me judging
solely from the vote itself to see what is the
precise question intended to be submitted
to me. Strictly speaking the city as such
has no power whatever to lay out, alter,

or discontinue any street.

By the city charter that power is given solely to the City Council and in exercising it the Council act not as the agents of the city but as public officers. The city as such cannot control the Council in the exercise of this power nor ~~are they~~ is it responsible for acts done by the Council thus acting.

Whenever the City Council upon the proper steps taken think the public convenience and necessity require a certain street it is their duty to adjudicate and to lay out the street, and to lay it out of such length and width as the public convenience and necessity require and not otherwise. And no ordinance which seeks to control the judgment of the Council in this matter by arbitrary limits of the width of streets to be laid out is of any force or effect for that purpose. The City Council may exercise its own judgment in each particular

case. If they think the public convenience and necessity require a street in the locality spoken of in the vote, they have the power to lay it out, and while there is no way of getting behind their decision on this point yet they might not to come to such a decision carelessly or negligently. But with proper regard to the rights of the public on the one hand and of the property holders whose land is to be taken on the other.

If they decide to lay out the road then they may lay it out of such length and ~~with~~ width as they choose notwithstanding any ordinance to the contrary.

~~In so far as~~ the first two sections of Ch. 25 of the City Ordinances are inoperative to affect the power of the City Council to lay out streets although they may serve as a declaration of a policy and in that way may work in some degree to secure uniformity.

I have not supposed that it is intended

to lay out the street over the location of the
railroad, but to prevent any misapprehension
I simply state that the City Council could
not lay out a street on land taken by a
railroad under the railroad law.

I remain

Yours respectfully

J. W. Hammond

Opinion
City Solicitor in relation to
Laying out New St. in W. & S.
Nov. 5, 1873

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