

Fort Worth, Texas.
December 28, 1926.

Special meeting of the Board of Directors of Tarrant County Water Control and Improvement District No. 1, held on December 28th, 1926. Presiding, A.L. Baker, President. Present, Directors L.C. Abbott, H.M. Hightower, W.H. Slay and W.E. Bideker, Secretary.

Moved by H.M. Hightower that the Secretary and President be instructed to close the Savings Account and transfer the District Funds to the Checking Account to be effective January 1st, 1927.

Seconded by L.C. Abbott; the motion was carried.

Moved by W.E. Bideker that due due accounts be approved and ordered paid. Those presented were as follows:

George C. Purl-To Salary to 12-27-26	- - -	\$100.00
Ireland Hampton-To salary to 12-27-26	- - -	100.00
W.E. Bideker-To salary to 12-27-26	- - -	100.00
W.E. Bideker- To expense Acc't to Waco	- - -	16.85
Geo. C. Purl- to Exp. Acc't	- - -	<u>49.08</u>
Total		\$365.93

Motion seconded by L.C. Abbott; Motion carried.

On request, Ireland Hampton related the facts concerning conference by Jno. J. Simmons, J.D. Jackson, W.E. Bideker, Geo. C. Purl and Ireland Hampton with a committee of Directors of the Houston Chamber of Commerce. The committee expressed sympathy with the entire plan, but felt that the new Board of Directors to be installed in January 1927 should be permitted to pass on the undertaking; They requested especially that there be prepared a brief concerning the duty and the right of the State to co-operate and contribute. They expressed doubt as to the ability of the Chamber to undertake the burden

of the organization of a regional Water Control & Improvement District.

Hampton then presented the manuscript brief prepared by him to comply with the request. The brief was approved by the Directors.

W.H. Slay moved that the brief be printed in neat form. The motion was seconded by L.C. Abbott: The motion was carried.

Upon further request, Bideker and Hampton reported as follows:

Brazos Valley Reclamation Association much approve plan for a series of regional Water Control and Improvement Districts for each of the major streams of Texas: They also approve that the State should recognize her constitutional and primary duty to protect her citizens and property against floods of remote or distant origin. They wish to see both plans in actual effect and pledge support.

Bideker and Hampton further reported result of a conference with John F. Wallace of Freestone County at Teague. Mr. Wallace doubted the ability to organize a regional district to be composed of parts of the counties of Freestone, Anderson, Houston, Madison and Trinity. He stated that he thought the constitutional and primary duty of the State to either provide protection, or, to contribute to protection, to the extent that the damage by flood was caused by flood waters leaving origin in areas beyond the borders of any particular local area on condition. That he had long thought the State should assess an ad valorem tax sufficiently high to permit the allo-

cation of a substantial sum annually to be used in controlling the major streams of the State. He further thought that the State was the only agency which could co-ordinate the works and plans for any stream to the end that there might be economical and adequate protection for each stream. That he considered unrelated planning area by area as most wasteful, costly and inadequate. That if the general financial condition of the State permitted, he would use his efforts to have the State undertake her long undischarged duty.

Mr. Purl reported that he felt sure the several Dallas County Levee districts, and as well the Districts in Kaufman, Ellis, Navarro and Henderson Counties would contribute to the cost of the Tarrant and Wise County flood retarding basins in proportion to the benefits to be received by each contributing area, provided lawful authority for the contributions could be found. It was stated by Mr. Purl that his work was finished, and that he would help Hampton arrange the printers layout for the Houston brief, and terminate his services as of January 7th, 1927. It was so ordered and the Secretary was directed to settle with Mr. Purl for the time of his service and his actual unpaid expense.

The opinion of Attorney Sidney Samuels as to the legality of administration by the present Board of Directors in case the January election is to be ommitted, was read and approved.

Thereupon, there was presented to the Board a written opinion, delivered by Mr. Sidney L. Samuels on December 27th, concerning the absolute necessity for the District to

elect Directors on the second Tuesday in January 1926. This written opinion confirmed an oral opinion theretofore delivered by Mr. Samuels to the Board. From this opinion it appears that the present Directors will legally hold over until their successors have actually been qualified. The Board reviewed their former informal discussions of this matter, and were of the opinion that their former conclusions were for the best interest of the District, and that the present Board should hold over for the following reasons, viz:

1st. This, being an ad valorem District, would result in the City of Fort Worth bearing a very heavy part of any burden created; to carry out the plan of the District to include flood control and irrigation would result in a total cost of approximately \$12,000,000.00; the Directors, therefore, were of the opinion that unless the State of Texas would contribute to the flood control element it was not feasible at this time to create the total burden;

2nd. That the Legislature would soon meet and would be asked to contribute in behalf of the State; that if this effort was unsuccessful it would be necessary either to abandon the project as a whole or to seek an amendment to the laws which would permit the temporary abandonment of irrigation, but at the same time enable the District to hold water filings rights in excess of the quantity which may reasonably be demanded to serve the City of Fort Worth.

3rd. That unless aid could be had, or the law amended, it would not be practical to reform the engineering

plans of the District in such manner as would justify the burden to be created.

4th. That the effort for State aid would be determined within 90 days; that the cost to hold such an election would be approximately \$2,000.00.

5th. That if it should become necessary to abandon the project within the succeeding six or seven months there could be no justification for the fruitless expenditure of the District funds for the holding of the election for Directors in January.

6th. Further, because Section 37, Chapter 25 of the Acts of the 39th Legislature was defective in that the provisions thereof cannot be complied with.

Thereupon, it was moved by W.H. Slay that the Directors do not call an election for Directors in January 1927, and that the opinion by Mr. Samuels do be made part of the minutes of this meeting. Motion was seconded by Mr. Hightower and was carried.

The opinion of Sidney Samuels as to the legality of administration by the present Board of Directors in case the January election is to be omitted is as follows:

SIDNEY L. SAMUELS

P. WALTER BROWN

SAMUELS & BROWN
ATTORNEYS & COUNSELORS AT LAW
FORT WORTH, TEXAS

December 27, 1926

Mr. A. L. Baker
Chairman
Tarrant County Water Control and Improvement District No. 1
Fort Worth, Texas

Dear Mr. Baker:

The question has been asked whether a Director may exercise the functions of his office as a member of your Board even though the time fixed in the law had expired, his successor not yet having been selected or qualified to take the place of the present incumbent.

Section 37 of Senate Bill No. 169, passed on February 26, 1925, and which became effective ninety days after the adjournment of the Session of the Legislature at which said measure was enacted, reads as follows:

"Sec. 37. There shall be held a general election in said water control and improvement districts on the second Tuesday in January, 1926, at which time there shall be elected five directors for each district. The three of said directors receiving the highest number of voters shall serve for a term of two years, and the two of said directors receiving the lowest number of votes shall serve for a term of one year. Thereafter elections shall be held on said day of each year, and on the even numbered years three directors shall be elected and on the odd numbered years two directors shall be elected. With the exception of the terms of office of said directors first elected for one year, the term of office shall be for two years, and in the event of a vacancy in office the successor appointed or elected to fill such vacancy shall be so appointed or elected for the unexpired term of the director. he succeeds."

If the language of this provision were taken literally, it would appear as if the officer so selected would automatically cease to exercise the functions of his office at the expiration of the period for which he was selected, whether that period was one or two years. No provision is made in the language of the statute hereinabove quoted which in turn would permit the Director whose term of office had expired to continue to exercise the powers of the office, even though no successor had been elected or had qualified.

#2--Tarrant County W C & I District #1.

If this were all, the conclusion would be speedily reached that such officer would not be permitted to hold office or to participate in the deliberations of the Board after the period of time prescribed for his tenure had expired. However, all such questions as this must be determined in their relation to the State Constitution, inasmuch as the Constitution itself provides for the contingency which might otherwise exist, of an interval of time between the lapse of the term and the beginning of the time when the new officer would function.

If it were true that when the term of his office itself expired by limitation that the office became vacant because no successor had been selected or qualified, then, indeed, very many public offices would be rendered vacant and the public service not only abandoned but many public affairs left undone and the people left to their own devices.

Section 17 of Article 16 of the Texas Constitution provides as follows:

"All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified."

It will be observed that this provision of the Constitution is not limited to officers of the State of Texas, but by its explicit terms applies to officers within the State of Texas, and therefore there cannot be any question as to the character of officer to whom the provision of the Constitution was intended to apply. It has been construed to apply to officers of a city, and was so held in the case of Jones vs. City of Jefferson, 66 Tex. 579.

In the case of Walker vs. Hopping, 226 S. W. 146, the court held as follows:

"But it seems to be the general rule adopted by the American courts and applied to various classes of officers--state, municipal, corporation, etc.-- that, even in the absence of any express provision of the governing law, such officers hold over until their successors are chosen and qualify. R. C. L. vol. 22, p. 555; Dillon on Municipal Corporations (5th Ed.) pars. 411, 412; Robb v. Carter, 65 Md. 321, 4 Atl. 282; Fletcher's Cyclopedia of Corporations, par.740."

In the case of Keen vs. Featherston, 69 S. W. 983 (on which writ of error was refused), it appears that Featherston had been duly elected and had qualified as Surveyor of Stonewall County. His

#3--T C W C & I District #1--

term of office expired in the month of December, 1900. On January 14, 1900, he tendered his unconditional resignation in writing to the Commissioners' Court of Stonewall County, and thereafter, on January 20, 1900, made application to the State to purchase Section 170, Block D, H & T C Railway Company public free school lands in Stonewall County. His application for purchase was refused by the Land Commissioner because no county surveyor was permitted under the law to be concerned in the purchase of any interest in the public lands of the State. The contention was made on behalf of Featherston that he had resigned such office at the time he made the application, but it appeared that at the time of the application his successor to the office of County Surveyor of Stonewall County had not been chosen. The court in deciding the case held, after referring to the provision of the Constitution hereinabove quoted, that this requirement of the Constitution was mandatory and that an officer within the State of Texas is required to perform the duties of his office until his successor shall have been chosen and qualified, and that this is the contract between the officer and the State when the officer assumes the office, and that the functions of government must not cease until a successor to the office has been duly chosen and has qualified. The court quotes with approval the language in the case of McGhee vs. Dickey, 27 S. W. 404, wherein it was held that

"The public necessity for continuity of official tenure is not left to the caprice of the officeholder. The contract for public service imposes mutual obligation upon the officer and the public, which cannot be arbitrarily dispensed with by either party."

The court in the case of McGhee vs. Dickey, supra, cites the following authorities in support of its position:

Mechem, Pub. Off, sec, 414; 19 Am. & Eng. Enc. Law, 562r; Edwards v. U. S., 103 U. S. 471, 26 L. Ed. 314; Thompson v. U. S. 103 U. S. 480, 26 L. Ed. 521; Badger v. U. S. 93 U. S. 599, 23 L. Ed. 991; Hoke v. Henderson, 15 N. C. 1, 25 Am. Dec. 677; State v. Clayton, 27 Kan. 442, 41 Am. Rep. 418; Jones v. City of Jefferson, 66 Tex. 576, 1 S. W. 903.

The court held that Featherston was still the county surveyor, his resignation to the contrary notwithstanding, and that he would be precluded from acquiring any interest in the public lands of the state while invested with the attributes of his office of county surveyor.

#4--T C W C & I District #1

In the case of Cowan et al vs. Capps et al, 278 S. W. 283, the court was considering the question of the tenure of a school trustee, and held to the following rule in determining the question of official tenure:

"The duty to hold over as trustees until their successors have been duly and legally elected and qualified, imposed upon appellants by the Constitution, renders them, during such incumbency, not merely de facto trustees, but they must be held to be de jure officers, since no successors have been legally elected. The policy of the law is to prevent vacancies in office, thereby suspending the functions of government. 29 Cyc. 1399, 22 R. C. L. 598, sec. 320; Keen v. Featherston, supra; El Paso & S. W. Ry. v. Ankenbauer (Tex. Civ. App.) 175 S. W. 1090; Jones v. City of Jefferson, 66 Tex. 576, 1 S. W. 903."

In the case of El Paso & S. W. Railway Company, et al, vs. Ankenbauer, 175 S. W. 1091, the court considered the resignation of a district judge who had tendered his resignation to the governor to take effect on the night of September 30th, at twelve o'clock. The question arose whether he would be empowered to hold his court, notwithstanding such resignation, pending the selection of his successor. The court held to the following doctrine:

"The Constitution and statutes of this state provide that all officers shall continue to perform the duties of their offices until their successors shall be duly qualified. Constitution of Texas, Art. 16, Sec. 17; Revised Civil Statutes, Art. 1672. The courts in this state have uniformly held these provisions to be mandatory; "they shall continue to perform the duties." The purpose is that there should be no vacancy in the office and that the functions of government must not cease. Keene v. Featherstone, 29 Tex. Civ. App. 563, 69 S. W. 983. Justice Stephens, in McGhee v. Dickey, 4 Tex. Civ. App. 104, 23 S. W. 404, said:

"The public necessity for continuity of official tenure is not left to the caprice of the officeholder. The contract for public service imposes a mutual obligation upon the officer and the public, which cannot be arbitrarily dispensed with by either party."

"In the case of Jones v. City of Jefferson, 66 Tex. 576, 1 S. W. 903, the Supreme Court of this state, in discussing article 16, sec. 17, of the Constitution of this state, quoted above, said:

#5--T C W C & I District #1

"It is held by the Supreme Court of the United States, following the decision of the Supreme Court of Illinois in the same case, that under the statute of that state, which, like that of Texas, declares that all officers shall hold over until their successors are elected and qualified, an officer, whose resignation has been tendered to the proper authority, and accepted, continues in office and is not released from its duties and responsibilities until his successor is appointed or chosen, and qualified. Badger v. U. S., 93 U. S. 599 (23 L. Ed. 991)."

"While the interpretation of similar provisions in Constitutions and Statutes of other states has frequently been the subject of judicial investigation, and has given occasion to disagreement of opinion in those jurisdictions, we are of the opinion that the above authorities settle the question in this state as to the construction to be placed upon the constitution quoted. If Judge M. Nagle, the regular judge, continued in office and had the power and authority, and it was his duty to hold his term of court until his successor in office had been appointed and qualified, the special judge duly elected by the practicing lawyers had the power and authority, and it was his duty, to hold the term of court during the continued absence and unwillingness of the regular judge to be present and act and until the completion of any business begun before such special judge. "

In 29 Cyc., page 1399, the following doctrine is announced:

"An officer elected for a specific term and until his successor is elected and qualified may hold over for an indefinite period, if no successor is elected and qualified."

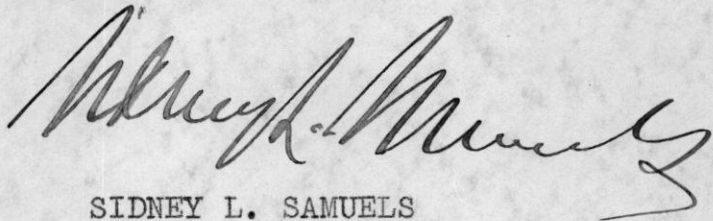
The quotation from the foregoing authorities should be sufficient to explain and illustrate the rule that an officer holding over is not disqualified to act in his official capacity, provided that meanwhile no successor has been selected and has qualified. It may be that a sufficient number of voters could assemble or that any qualified elector interested in the subject could go into the proper tribunal and invoke a writ of mandamus to compel the Board to order an election for the purpose of selecting a successor to the one whose term of office had expired, but until this were done and until such successor had been elected and had qualified, the hold-over incumbent would be empowered and required to exercise all the functions and to perform all the duties that

#6--T C W C & I District #1

fell to the office under the law originally responsible for his selection.

In view of the foregoing authorities, and their application to this particular matter, it is my judgment that the failure to call an election to elect a successor to the officer whose term had expired under the law would not disqualify such hold-over from exercising the duties of the office and continuing to act in his capacity as a member of the Board.

Respectfully submitted



SIDNEY L. SAMUELS

Counsel

SLS:OB

After informal discussion it was decided to hold a dinner meeting at the Fort Worth Club on January 4th, for the purpose of enlisting the aid of our Legislative Representatives, and the Levee interests of Dallas and other counties, in the effort to secure co-operation and contributions.

On motion meeting adjourned subject to call of the President.

ATTEST:

M. E. [Signature]
Secretary.

A. L. [Signature]
President.