

OK
S.H.

MINUTES OF A CALLED MEETING OF THE BOARD OF DIRECTORS OF
TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE
HELD IN THE DISTRICT OFFICE ON DECEMBER 16, 1930
BETWEEN THE HOURS OF 12 NOON AND 2:30 P.M.

The call of the roll disclosed the presence of all of the Directors as follows:

W. R. Bennett
E. E. Bewley
W. K. Stripling
C. A. Hickman
Joe B. Hogsett

W. R. Bennett presided in his capacity as President; W. K. Stripling acted in his capacity as Secretary.

At this time and place S. L. Samuels and Ireland Hampton, Attorneys for the District were also present; and the following proceedings were had and done, viz:

1.

President Bennett stated that the present meeting had been called for the purpose of continuing consideration of the same subject matter as is referred to in the Minutes of the Called Meeting of December 12, 1930. He thereupon called upon the Attorneys for the District to report to the Board the result of their negotiations held since the Meeting of December 12, with the Attorneys for both Wise and Tarrant Counties.

Thereupon the Attorneys produced a letter written by the Engineers for the District and dated this day, in which the Engineers make a presentation of the physical factors concerning the effect of the construction of the District's lakes on roads in both Wise and Tarrant Counties. The Attorneys also presented their written opinion dated this day, which opinion uses the letter of the Engineers as a basis for the opinion. Said letter of the Engin-

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eers and said opinion of the Attorneys are attached to these Minutes, in folio, as "Exhibit A," and as part hereof.

The Attorneys reported that they had made diligent effort to procure from Wise County a proposal for a settlement for a sum of money less than \$45,000.00. That they had not succeeded in getting any encouragement whatever for being able to get an accord for any less sum; that on the other hand they were convinced that the Commissioners of Wise County would prefer to proceed instantly to litigation rather than to effect a settlement for any reduced sum.

That they had made diligent effort to come to an understanding with Tarrant County, concerning road matters and that they had been unable to make any progress due to the illness of the Attorney for Tarrant County. That they would continue this effort, but were of the opinion that a settlement of the Wise County matter might be jeopardized if there proved to be delay in coming to an accord with Tarrant County.

2.

There was full discussion of all these matters, whereupon Director Stripling made a motion that the Attorneys for this District do be authorized and directed to tender to Wise County the sum of \$45,000.00, as consideration for a complete accord and satisfaction of all matters now in dispute, or which hereafter might be in dispute, between Wise County and this District, concerning the effect of the Construction, maintenance and operation of this District's two lakes on roads, and the road system, in Wise County. Further, that the agreement should not include any claims which have arisen, or which may arise, concerning matters of taxation, nor should the agreement be held to estop Wise County from making further claims concerning road matters, if it should, in experience, prove that the maximum flood lines produced by this District's

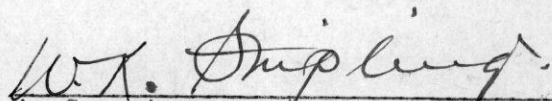
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Engineers, were not at elevations above sea level as high as the water lines which may actually be produced by this District's works. Further, that this District's Voucher Check No. 2331, payable to the County Treasurer of Wise County, Texas, for the sum \$45,000.00, do be issued and delivered to the Attorneys for this District.

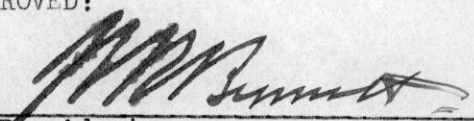
Further, that said Attorneys do be instructed to proceed to Wise County, for a meeting with the Commissioners' Court of said County; that if, as and when the Commissioners of that County do deliver to the Attorneys for this District satisfactory and lawful written evidence of a complete and binding accord and satisfaction of all matters hereinabove referred to, that said Attorneys be authorized and directed to deliver to the County Treasurer of Wise County the voucher check hereinabove authorized.

This motion was seconded by Director Bewley. Upon a vote being taken Directors W. R. Bennett, E. E. Bewley, W. K. Stripling, C. A. Hickman, and Joe B. Hogsett voted for the motion and no Director voted against the motion. The motion was carried and it was so ordered.

No further business was presented and the meeting was adjourned.


As Secretary

APPROVED:


As President

"E X H I B I T A"
12/16/30

December 15, 1930

To the Board of Directors of
Tarrant County Water Control and
Improvement District Number One,
418 Capps Bldg.,
Fort Worth, Texas.

RE: Considered Settlement - District -
Tarrant and Wise Counties, relating to
Roads.

Gentlemen:

Pursuing the consultations held with you in regard to the above matters, we have briefed the various questions relating to your right to pay money to Tarrant County and Wise County, as consideration for the accord and satisfaction of the several claims made by the stated Counties against your District, and based on the fact that your reservoirs will submerge certain roads within the named Counties, and that by reason of the construction of the reservoirs, these Counties have been required to expend considerable sums of money in providing roads which are claimed by them to be necessary by reason of the changed physical conditions to grow out of the construction of your reservoirs. We have also considered whether or not the Commissioners' Court of these Counties can enter into contracts for accord and satisfaction, which contracts would be binding on the Counties, both under present and future administrations. We have based our considerations of the questions presented on a statement by your Engineers wherein they have set forth the physical conditions to be considered. From our investigation of the authorities we now advise you as follows:

1.

Under the conditions stated by the Engineers, you, as the administrative officers of this District, would have the power in law to pay money in order to insure that existing roads, which are at present under maintenance by the stated Counties, are preserved as roads requiring maintenance by the Counties, and not to be abandoned as roads requiring maintenance. Our conclusion grows out of the fact that in the absence of an agreement, the Commissioners' Court, in their discretion could permit the portions of said roads, which would remain as stub roads, to relapse to the condition of neighborhood roads not requiring maintenance by the County. Your right to act in this matter would grow out of three facts which are:

(a) The District will own much marginal land, which would impair the market value in case the stub roads are permitted to relapse in the class "neighborhood roads:" ^(b) The same consideration is to be applied to marginal lands owned by others, which would in the future, no doubt, subject the District to numerous claims for damage and probably would result in much litigation of a doubtful character.

(b) These stub roads, if properly maintained by the Counties, will afford facilities useful to the District in policing its water and marginal lands with reference to sanitation and preserving the purity of the water to be stored.

All of these considerations are proper to be taken into account as basis for your authority.

As distinguished from the foregoing consideration, and as an additional basis of lawful authority for you to consider paying money for an accord and satisfaction, it is to be borne in mind that these several Counties do not in principle admit that the consideration stated in paragraph 1, will control. They contend that while the District may not be, as a matter of law, required to pay for the roads actually taken, that the District is in fact liable to the Counties for such sum of money as is required for the Counties to produce roads not now existing, which roads will be absolutely required, in order to afford facilities for travel, formerly served by existing roads and which will be destroyed or rendered impractical by reason of the construction of your Lakes. This contention on their part has been denied by your District. While this is true, it nevertheless remains a fact that the contention made, if not adjusted by voluntary accord, is one which will result in protracted litigation. We can not be assured that litigation of this character would result in discharging this District from Liability; There is therefore presented a case in which the consideration for the payment of money might properly be based wholly upon the avoidance of litigation as to which the result might be uncertain, both in the principle to control recovery and the amount of a possible recovery. This brings us to the principle to be considered in a judicial review of a contractual accord and satisfaction, and especially with reference to the proper consideration for such an accord.

The Court will not inquire into the adequacy, or inadequacy, of the consideration. A forbearance to sue is a sufficient consideration; if there in fact existed a colorable controversy concerning a money demand not liquidated or certain in character.

It is enough that there was a doubtful question, and a compromise deliberately made upon a valuable consideration, and the actual rights of the parties, whatever they may be, cannot affect the question. The extinguishment of the rights of one party in the premises by force of the compromise is in such cases the benefit to the other party, which has the effect of a consideration. Even where there is no compromise concerning the amount to be paid, if there is a compromise on the question whether anything was payable, and for the purpose to avoid litigation, and either party elects to make payment, such voluntary payment, or the voluntary acceptance of payment, is usually conclusive, and cannot later be attacked. We therefore conclude that it was within your lawful power to make payment based on the one consideration of preventing litigation not certain as to result.

3.

We now come to consideration of the powers of the Commissioners' Courts of these two Counties to enter into contracts for accords which will be binding not only on the present Court, but binding on future Courts, or upon the County as such. In our examination of the authorities we have reached conclusions which will be stated as follows:

A county is an auxiliary of the State and represents the State in a manner peculiar to a County, and not to apply to other governmental agencies, such as cities. The only provided means whereby a County may function in matters of business administration is through the duly constituted Commissioners' Court. This provision is in lieu of a plan which would require the Legislature of the State to function in each given case, which is manifestly impractical. For this reason Commissioners' Courts have uniformly been held to possess very wide powers in determining policies and managing the business of the State. Counties in matters relating to property rights and

pecuniary obligations, or assets, have the attributes and distinctive legal rights of "private corporations." They have such implied powers as are necessary for the practical accomplishment of the objects for which they were intended. When grants of rights, or powers, are conferred by the Legislature on Counties, they are held absolutely, and to be exercised independently, until withdrawn or modified by the Legislature, subject only to any conditions which were annexed to the prior Legislative grant. From an examination of our constitution and statutes it is found that the control of roads (other than designated State Highways), is vested absolutely in the Commissioners' Courts of the several Counties of the State. There is no doubt as to what body could have the sole power to dispose of matters such as are now presented to you for consideration.

Generally speaking, with reference to the powers of the County Boards (Commissioners' Courts), we find that they in their capacity as officers of the County, and pursuant to the general purposes for which Counties are created, have power to receive and hold property, to incur debts and liabilities within lawful limits, to make contracts, and generally to manage all business affairs of the County. This leaves only one further question to be considered. Municipal Corporations (here meaning to include Counties), as an incident of the power to sue and be sued, in the absence of expressed statutory prohibition, have the right to compromise disputed claims and this rule applies to quasi municipal corporations, as for example a County, your District, or a School District, for a Fire District.

C O N C L U S I O N

It therefore would seem that in the matter under consid-

eration you are to be controlled largely by the same consideration as would control the acts of directors of an industrial corporation, and, or, the use of such care and caution as would be exercised by a reasonably prudent man in the conduct of his own business. This last statement grows out of the fact that we have been unable to find any express or implied limitation on the powers of County Commissioners to act in a binding manner in a case such as now is presented to you. The absence of express limitation further supports our conclusion that the present acts of the Commissioners of these two Counties in the matters now presented to you would probably be conclusive and would operate to afford adequate defense against any future effort to seek a judicial review of their acts, and, or, your acts as officers of this District.

D. L. Mumby
Ireland Hampton

December 15, 1930 .

To the Board of Directors of
Tarrant County Water Control and
Improvement District Number One,
418 Capps Bldg.,
Fort Worth, Texas.

RE: Read Matters This District -
Tarrant County and Wise County.

Gentlemen:

We write this letter in order to give you and your Attorneys our analysis of the physical facts which will grow out of the Construction and maintenance of your two Reservoirs, and insofar as this will affect existing roads in Tarrant and Wise Counties.

1.

The effect of constructing the Eagle Mountain Lake in Tarrant County will be to sever and partly submerge four existing roads, which will result in leaving eight stub roads, which will reach the margin of your stored water. This omits consideration of the ten mile bridge road, for the reason that your District will be constructing and turning over for public use a road traversing the top of your earth works and to make contact with existing public roads both East and West of your dam. This particular road was by us deemed to be necessary in order to serve the District in maintaining and operating the dam with its appurtenances after completion.

2.

Again relating to eight stub roads which will remain in Tarrant County: It is important that these stub roads be perpetuated and maintained by the Court, in order to afford means of ingress and egress to marginal lands owned by the District, and as well marginal lands owned by others. It is obvious that the abandonment of these roads would diminish the market value of the lands owned by the District, and would also diminish the market value of marginal land owned by others, which latter fact might result to subject the District to claims and much litigation in the future.

3.

The Northern end of Eagle Mountain Lake, in Wise County, will cause to be severed and partly submerged five existing roads, which will result to leave ten stub roads, which reach lands forming a margin to your Lake, some owned by you and some owned by others, and as to which we would find the same relative condition as has just been related with reference to stub roads in Tarrant County.

4.

In the case of the Bridgeport Lake, in Wise County: We find that your reservoir will sever and cause to be partly submerged four existing roads which traverse the area of your proposed storage basin. This will operate to leave eight stub roads, which will reach lands forming the margin to your Lake, much of which will belong to you and the rest to belong to others. We therefore find that the conditions were comparable to the conditions which were related with reference to the Tarrant County roads.

5.

5.

Upon analysis of the foregoing, we find that there are eighteen affected stub roads to be allocated to Wise County, and eight stub roads to be allocated to Tarrant County. We have not considered it necessary to distinguish between the character and value of those stub roads to exist in Tarrant County as compared to those to exist in Wise County, for the reason that all of these roads will present practical facilities for reaching lake margins. One other reason is that we have been advised that any settlement to be made is not to involve consideration of compensation for roads being taken, or compensation for new roads in the general area of these Lakes which are proposed to be built by the respective named Counties.

6.

In the foregoing we have considered that it is not to be contemplated that the marginal lands referred to can in any event be utterly deprived of the means of ingress and egress; but, it also is to be considered that the Commissioners' Courts of the two Counties could in their discretion abandon the affected roads as roads to be maintained by the County, and permit them to deteriorate to the class of neighborhood roads as to which there would be no maintenance.

Yours truly,

HAWLEY and FREESE,

Martin C. Nichols
John B. Hawley