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54.

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF  
TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE  
HELD IN THE DISTRICT OFFICE ON JANUARY 19, <sup>1931</sup> AT 3 O'CLOCK  
P. M.

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The call of the roll disclosed the presence of all directors as follows, viz:

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 meeting the following proceedings were had and taken:

1.

Minutes of the Meeting of January 12, 1931, were read, approved and ordered of record.

2.

Thereupon there was presented to the Directors for approval an additional and supplemental bond heretofore required to be given by L. P. Card, as Tax Collector for this District. Said bond is for the sum \$65,000.00, and has been in effect since January 15, 1931, which is the date of the execution of said bond. After consideration of this matter Director Bewley made a motion that the bond as executed do be approved and confirmed as of the date of its execution; further, that the same do be attached to these Minutes as "Exhibit A," and made part hereof. This motion was seconded by Director Hogsett. Upon a vote being taken the motion was carried and it was so ordered.

3.

There was called to the attention of the Directors the fact that the District had not been able to procure from Mr. Dick Boaz an abstract of the

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title to 3.4 acres of land out of the W. B. Reed land, which 3.4 acres were under contract for sale to the District by Mr. P. R. Weatherford: Further, that the contract of Mr. Weatherford stipulated that he would not furnish abstract. It was the sense of the Directors that further effort should be made to procure loan of the abstract from Mr. Boaz, but that if this failed the District, at its own cost and expense, should procure an abstract to this title.

4.

Thereupon the Attorneys for the District presented to the Directors their written opinion dated January 19, 1931, relating to the basis for the compensation to be paid the District's Engineers under the contract between the Engineers and the District. Said opinion is attached to these Minutes as "Exhibit B," and is hereby made part hereof. It was the sense of the Directors that the Committee on Engineering should have a specific written understanding with the Engineers to establish a basis for compensation to them for services in surveying lands in excess of the lands embraced within the water lines of the District's reservoirs; further, to seek an understanding to the end that the Engineers were not to receive compensation on such amounts of money as the District should be compelled to pay out as resulting damages, and as distinguished <sup>from</sup> sums paid out for physical properties actually to be taken by the District. It was so ordered.

5.

REPORT OF LAND COMMITTEE:

(1) Director Stripling presented claim filed by Wise County against Trinityfarms Construction Company, Inc. and this District, based on the destruction of a bridge over Hunt's Creek in Wise County, Texas. This claim was for the total sum \$3283.64. This matter had full consideration.

It was the sense of the Board that this District should deny responsibility and so advise the Commissioners' Court of Wise County, Texas: It was so ordered.

(2) There was presented to the Directors a letter of James G. Harrell, Attorney at Breckenridge, Texas, representing Chas. R. Compton, Lessee of the land under contract for purchase from Mrs. G. V. Laird, et al. This letter is dated January 14, 1931, and presents claim for six (6) cows of the stated value \$40.00 each. The claim was based on the statement that the bottom land in the lease had been rendered more boggy than it would have been in the state of nature, due to the construction of the temporary dam at the Bridgeport Reservoir: Further, that due to the dangerous condition of the low lands Mr. Compton had been forced to abandon the premises as a pasture: That his lease did not expire until May 1, 1931; that the pasture was costing him \$100.00 per month and that he desires reimbursement of lease money up to the time the lease would expire. There was full advice from the District's Engineers which was to the effect that the retardation of water by the District's works could not possibly have affected the saturation of low lands on the Laird lease. It was the sense of the Directors that the claim should be denied and Mr. Harrell so advised. It was so ordered.

(3) - - - - LEASES - - - -

(a) There were presented to the Board by Director Strippling proposals to lease certain lands owned by the District for the period to begin as soon as leases may be executed and to terminate on December 31, 1931, and to cover such parts of tracts as are situated at an elevation higher than the proposed constant water storage line, as established by the District's Engineers, which proposals were as follows:

"EXHIBIT A"  
1/19/31.

# Maryland Casualty Company

BALTIMORE

THE STATE OF TEXAS  
COUNTY OF TARRANT

KNOW ALL MEN BY THESE PRESENTS:

THAT, I, L. P. Card, as principal and Maryland Casualty Company, a corporation chartered under the laws of the State of Maryland and authorized to transact a surety business in the State of Texas, as Surety, are held and firmly bound unto Tarrant County Water Control and Improvement District, Number One, Fort Worth, Texas, in the penal sum of Sixty-Five Thousand Dollars, (\$65,000.00), for the payment of which we hereby bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

The conditions of the above obligation is such that whereas the above bounded L. P. Card, Tax Collector of Tarrant County, Texas, has entered into an agreement to collect taxes for the Tarrant County Water Control and Improvement District Number One, for the period beginning October 1st, A.D. 1930, and ending September 30th, A.D. 1931.

NOW, THEREFORE, if the said L. P. Card shall faithfully perform his duties as Tax Collector for said Tarrant County Water Control and Improvement District Number One, and pay over to the designated depository of said district all funds or other things of value coming into his hands as such officer for the full term of such agreement, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, in the event of loss hereunder, that the surety shall only be liable for such proportion of the total loss sustained as the bond shall bear to the total amount of the bonds filed protecting such funds.

WITNESS our hands at Fort Worth, Texas, this 15 day of January, A.D. 1931.

L. P. Card  
Principal

MARYLAND CASUALTY COMPANY,  
By Melvin J. Miller  
Attorney-in-Fact Surety.

# Power of Attorney from Maryland Casualty Company

To DuBose, Rutledge and Miller, Fort Worth, Texas

## Know all Men by these Presents:

THAT the MARYLAND CASUALTY COMPANY, a corporation created by and existing under the laws of the State of Maryland, of the City of Baltimore, Maryland, and authorized by its Charter to transact a general surety business, and qualified to act as surety on bonds to the United States of America, and authorized to act as surety in the State of Texas, in pursuance of the authority set forth in Section 5, Article 4, of the By-Laws of said Company, which said Section has not been amended nor rescinded, and of which Section of said By-Laws the following is a true, full and complete copy:

"The President, or any of the Vice-Presidents, shall have power by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint any Attorney-in-Fact or to authorize any person or persons to execute on behalf of the Company, any bonds, recognizances, stipulations, undertakings, deeds, releases of mortgages, contracts, agreements and policies, and to affix the seal of the Company thereto,"

does hereby nominate, constitute and appoint Leonard H. DuBose or Edward B. Rutledge or Melvin J. Miller or Clifton G. Whyburn

at Fort Worth State of Texas

its true and lawful Attorney -in-Fact, to individually make, sign, acknowledge and to affix the Corporate Seal of the Company, as Surety, to a public official bond in the penalty of Sixty Five Thousand Dollars (\$65,000.00)

in favor of Tarrant County Water Control and Improvement District No.1, Fort Worth, Texas

to be executed by L. P. Card, Fort Worth, Texas as principal ,

conditioned. for the faithful performance of his duties as Tax Collector of Tarrant County, Texas.

hereby approving, ratifying and confirming all that its said Attorney -in-Fact may do or lawfully cause to be done in the premises by virtue of these presents.

IN WITNESS WHEREOF, the MARYLAND CASUALTY COMPANY has caused these presents to be signed by its Vice- President, and its Assistant- Secretary, and its Corporate Seal to be hereunto affixed this 9th day of January 1931, at the City of Baltimore, Maryland.

MARYLAND CASUALTY COMPANY

ATTEST:

[Signature]  
Assistant - Secretary.

By

[Signature]  
Vice- President.

(OVER)

(OVER)

STATE OF MARYLAND }  
CITY OF BALTIMORE } ss:

On this 9th day of January, A. D., 1931, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came R. F. Proctor, Vice-President, and W. T. Harper, Assistant Secretary of the MARYLAND CASUALTY COMPANY, to me personally known to be the individuals and officers described in, and who executed the preceding instrument, and they each acknowledged the execution of the same and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the Seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

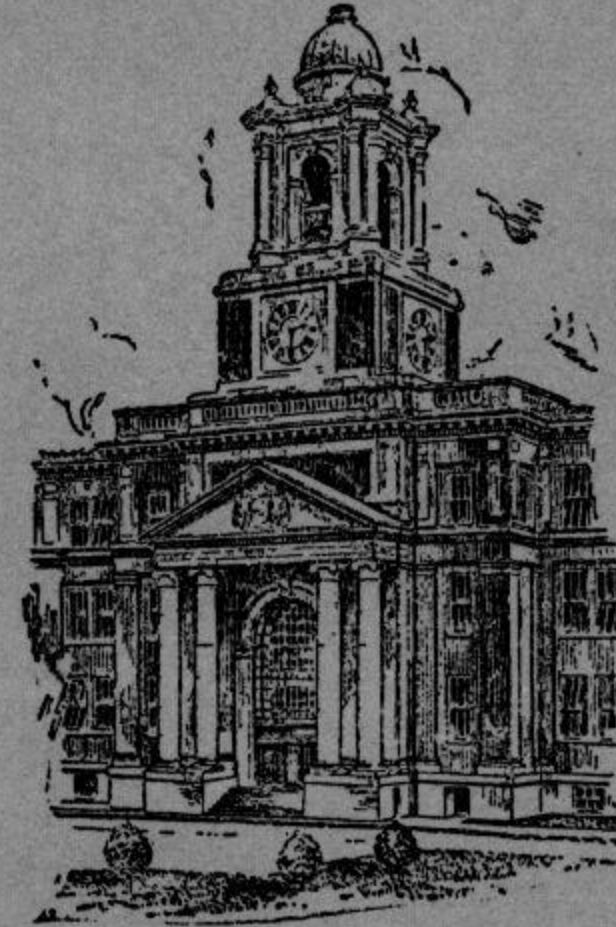
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.

*Charles Bausel*  
Notary Public.

My commission expires May 4, 1931

of Baltimore, Maryland, Texas  
conditioned for the faithful performance of his duties as Notary Public  
to be executed by R. F. Proctor, Vice-President, and W. T. Harper, Assistant Secretary  
of the Company, as surety on a bond in the penalty of \$100,000.00  
his true and lawful attorney-in-fact to execute, acknowledge and to affix the Corporate  
Seal of the Company, as surety on a bond in the penalty of \$100,000.00  
Section of said By-Laws the following is a true, full and complete copy:  
Article 4 of the By-Laws of said Company, which said Section has not been amended nor rescinded, and of which  
surety business, and qualified to act as surety on bonds to the United States of America, and authorized to act as  
of the State of Maryland, of the City of Baltimore, Maryland, and authorized by its Charter to transact a general  
THAT the MARYLAND CASUALTY COMPANY, a corporation created by and existing under the laws  
Know all Men by these Presents:  
To  
Power of Attorney from Maryland Casualty Company

BOND OF  
**Maryland Casualty Company**  
BALTIMORE



ON BEHALF OF

L. P. CARD, Tax Collector  
IN FAVOR OF

Tarrant County Water Control &  
Improvement District Number one

Amount \$ 65,000.00

Dated January 15th 19 31

POLICIES THAT PROTECT	<b>DuBOSE, RUTLEDGE &amp; MILLER</b>	SERVICE THAT SATISFIES
PHONE 2-4389		15TH FLOOR, FORT WORTH NATIONAL BANK BLDG.

TARRANT COUNTY WATER CONTROL AND  
IMPROVEMENT DISTRICT NUMBER ONE

BOARD OF DIRECTORS

W. R. BENNETT, PRES.  
E. E. BEWLEY, VICE-PRES.  
W. K. STRIPLING, SEC'Y  
JOE B. HOGSETT  
C. A. HICKMAN

OFFICE 418 CAPPS BUILDING

PHONE 3-2848

ED. B. CHEATHAM, OFFICE

FORT WORTH, TEXAS.

SIDNEY L. SAMUELS { ATTORNEYS  
IRELAND HAMPTON {

HAWLEY AND FREESE  
ENGINEERS

January 19th, 1931

TO THE BOARD OF DIRECTORS OF  
TARRANT COUNTY WATER CONTROL AND IMPROVEMENT  
DISTRICT NO. 1,  
Fort Worth, Texas.

Gentlemen:

The question has been submitted to us as your counsel as to whether the payments to be made from time to time to Messrs. Hawley & Freese, the engineers in charge of the work, should suffer reductions, awaiting final completion of the work as in the case of the contractors to whom the work of construction was awarded.

To make the matter perfectly clear, it is proper to state that quite apart from the terms of the specific contract with the contractors, under the terms of Sec. 120, Chap. 125, Page 121, of the Acts of the Regular Session of the 39th Legislature (which convened January 13, 1925, and adjourned March 19, 1925) the payments to the contractors as the work of construction progresses shall not exceed eighty-five (85) per cent of the amount due at such time as shown by the report of the engineer. No such limitation is imposed on the contract with the engineers, but such contract is one of agreement between the parties and is to be governed and construed according to the text and terms thereof.

The "estimates" on which payments are made to the contractors represent the means by which the contractor finances his task as the work progresses toward completion. These "estimates" are subject to revision and merely reflect the approximate amount of work and material which have entered into the body of the work.

The following cases are in point upon the meaning that should be attributed to the word "estimate":

" The word "estimates", as used in Laws 1870, Chapter 39, Sec. 9, requiring the superintendent of a hospital to furnish the board of building commissioners monthly estimate of materials put in the building did not mean correct and accurate statements; the word "estimates" precluding accuracy.



"Monthly estimates are understood to be mere approximations: SHIPMAN VS. STATE, 43 Wis. 381; Words & Phrases, First Series, p. 2492.

" A contract providing that payments are to be made on monthly estimates means that the proportionate payments of his compensation are to be made on monthly estimates of each month's progressive work, that is, the estimated cost of each month's work, and hence the contract is sufficiently definite to determine the time of payment: DAVIS VS. N.Y. STEAM CO.; 54 N.Y. Supp. 78.

" Where defendant, in writing, agreed to pay for lumber to be furnished for building a certain sum 'on basis of your estimate' the word 'estimate' taken in its ordinary meaning excludes the idea of exact detailed schedule of material not be to increased or diminished as the building progressed, but, on the contrary was an approximate calculation of the lumber required: MILLS-CARLTON COMPANY VS. HUBERTY, 95 N.E. 383."

In Vol. 21, page 1049, CORPUS JURIS, the word "estimate" as a noun is thus defined: "A valuing of rating by the mind without actually measuring, weighing or the like;" then again it is defined as a valuation based on opinion or roughly made from imperfect or incomplete data; an approximate calculation, not a precise result obtained by actual measuring and weighing; a rough or approximate calculation; an approximate judgment or opinion as to weight, magnitude, cost and the like; a calculation not professedly exact; an appraisement; an approximation; an estimation. Various cases are cited in foot notes to the text, all of which tend to bear out the meaning of the term as one which is not intended to convey the idea of correctness or completion but as something which has been approximate, awaiting further details for a complete reckoning or ascertainment.

In the contract with the engineers, a contract that was not made by the present Board but by its predecessors, concerning the professional services of Messrs. Hawley & Freese, the sum total of compensation was fixed as four and one-half (4-1/2%) per cent of the cost to the District of the works contemplated to be built and constructed, payable as follows:

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(a) One (1) per cent of the estimated costs upon completion and delivery of plans and specifications for the works, less any payments previously made during the progress of the service and the drafting of plans and specifications.

(b) One and one-half (1-1/2%) per cent of the estimated costs of the works upon award of contract or not to exceed sixty (60) days after approval of plans by the State Board of Water Engineers.

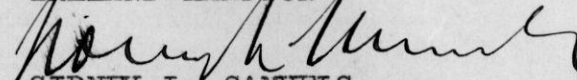
(c) Two (2%) per cent based upon monthly estimates and final estimates to the contractors during the construction period and upon final inspection of work and upon land purchases as such purchases are made.

It will be perceived from the foregoing statement that nothing was said and no provision made for deduction of fifteen (15) per cent as in the case of the contractors. However, the contract must necessarily be construed so that no more should be paid to the engineers in the way of percentage upon the estimates than they would be entitled to receive upon the final completion of the work by the contractors. In other words, if upon the completion and acceptance of the work it should appear that the contractors had been overpaid in the allowances made upon previous estimates, then, as a matter of course the compensation of the engineers upon that phase of the work must suffer a corresponding proportionate reduction.

Under the circumstances, taking the contract with the engineers as it stands, there would be no legal warrant for the same deduction or "holding back" as in the case of the payment on estimates to the contractors. In the one case, the law requires deduction because the amount of work is merely approximate, while in the other, the contract requires a flat payment.

Very truly yours,

Ireland Hampton  
IRELAND HAMPTON

  
SIDNEY L. SAMUELS.