

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 IN FORT WORTH, TEXAS, ON THE
9TH DAY OF JANUARY, 1933, AT 3 P. M.

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

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

At this time and place the following proceedings were had and done, viz:

1.

Attached to these Minutes as "Exhibit A," is a certain letter written in behalf of the McKenzie Construction Company and the Uvalde Construction Company, District Contractors, dated December 30, 1932; also, a letter from the same parties dated January 6, 1933. These letters were presented by President Bennett. After discussion of the matters referred to in these letters it was the sense of the Directors that they should be referred to the Attorneys for the District for analysis, and for formulation of a proposed answer to be made to these letters: It was so ordered.

2.

Attached to these Minutes as "Exhibit B" is a letter of date January 9, 1933, addressed to the Board of Directors, in regard to a letter to be written to Mr. Harold W. Newman, Jr., of Counsel for the Reconstruction Finance Corporation, concerning certain objections to the form of the Note and other conditions now proposed by the Corporation to control the loan sought by this District. Upon the reading of said letter, Director Hogsett made a motion

that the letter as written do be approved, and mailed as of this day. Adoption of this motion was seconded by Director Hickman. Upon a vote being taken the motion was carried and it was so ordered.

3.

There was brought to the attention of the Directors necessity to take positive action on the numerous claims filed by the owners of land and other property, in the valley of the West Fork of the Trinity River near the towns of Paradise and Boyd, in Wise County, Texas, based on alleged damage by reason of floods, which occurred in the month of May, June and July, 1932.

Thereupon Mr. M. C. Nichols of the Engineers for the District, made report concerning the physical facts which produced the flood, and made recommendation that the claims should be denied, by reason of the physical conditions.

Thereupon the Attorneys for the District rendered their oral opinion that upon the physical facts stated by the Engineers the District, under the law, was not liable to make compensation for any of the claimed injuries.

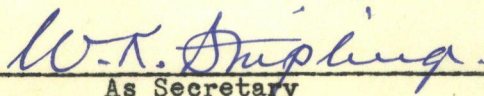
It was the sense of the Directors that each and all of the stated claims should be denied and that all of the claimants promptly be so advised: It was so ordered.

4.

No further business was presented and the meeting was adjourned.

APPROVED:


As President


As Secretary

"E X H I B I T A"

1/9/33.

(SEE ORIGINALS IN FILE ALONG WITH SOME ADDITIONAL)

San Antonio, Texas,

February 4, 1933.

Mr. W. R. Bennett, President,
Board of Directors,
Tarrant County Water Control &
Improvement District #1,
Fort Worth, Texas.

Dear Mr. Bennett:

I received your letter of January 16, with which you enclosed a copy of a communication written by Messrs. Hampton and Samuels, purporting to answer our letter addressed to you of January 6. Upon receipt of this communication we referred it to our attorney, Mr. R. J. Boyle, and enclose a copy of his reply.

As set out in Mr. Boyle's letter, it appears to us that the communication furnished by Messrs. Samuels and Hampton more closely approaches a thesis on moral duty than a legal opinion based upon the laws of this state, and the circumstances and matters in question. At any rate, the fact that the Board has full legal authority to dispose of its bonds at 90 and accrued interest, and pay a reasonable commission for the sale of same under a fiscal agency contract, has not been disputed. Consequently, we still contend, as set out in our letter of January 6, that in the absence of a competent legal opinion to the effect that it would involve an illegal act on the part of the Board, it is the moral duty of the Board, based on the principles of right action, or the Golden Rule, to sell its bonds at the best legal price it can obtain, and discharge the obligation it has in good faith assumed under a solemn written agreement.

Yours very truly,

McKenzie Construction Company,

By (Signed) A. J. McKenzie
A. J. McKenzie.

AJMC:K

CC - Uvalde Const. Co.,
Dallas, Texas.

BOYLE, WHEELER, GRESHAM & TERRELL

San Antonio, Texas.

February 3, 1933.

Mr. A. J. McKenzie
Pres., McKenzie Construction Co.
San Antonio, Texas.

Dear Mr. McKenzie:

I am returning copy of letter from Messrs. Samuels & Hampton, attorneys for the Tarrant County Water Control and Improvement District No. One, of January 13, 1933, addressed to Mr. W. R. Bennett, President of the District Board of Directors, which you sent me on January 17. My delay in replying thereto has been due to absence from the city.

I do not understand that the letter written by these eminent lawyers disputes the legal proposition that the Board of Directors of the District has the legal authority to sell the bonds at the minimum price of ninety fixed by the statute and pay a reasonable commission to a broker who would bring about a sale of the bonds at such price. I understand their letter to be a discussion of the ethics of a public trust, about which there is bound to be a difference of opinion between us since their discussion of ethics does not take into account the obligation of the District to the contractor who bid on the work in good faith with the understanding that he would be paid the full amount of his contract price for performance of the contract; neither does the opinion take into consideration the fact that the Board had ample opportunity before the depression came upon the country, and even after the contract was awarded, to sell all of the bonds of this issue at a price considerably above ninety and accrued interest.

Knowing Mr. Samuels and Mr. Hampton as well as I do, I am sure that they overlooked these phases of the situation in their discussion of the ethics of a public trust. Undoubtedly, the Board of Directors acted in good faith in declining to sell the bonds at the high market in the belief that the market would advance and that the interest of the District would be best served by awaiting such advance. Unfortunately, the panic came upon the country and destroyed the market for the bonds. Under these circumstances it seems to me the highest ethical consideration would require the Board to do everything in its power to provide the funds to pay in full the contractors who performed the work in good faith rather than inflict a loss on the contractors because of a mistake in judgment by the Board of Directors of the District.

I am sure that these gentlemen will agree with me that, under the authority of Davis versus City of San Antonio, 160 S. W. 1161, the Board of Directors have the legal authority to make the sale in accordance with the bid received by the Board in December, 1932, and that having such authority they should make the sale on the basis of this bid rather than inflict a loss on a contractor who has performed his contract with the accruing benefits to the District. If the question is to be decided on the moral obligations involved, the proposition is indisputable that the first moral obligation imposed on the board of directors is to comply with their contract, unless you should interpose the doctrine of "benefits forgot," which I do not understand has any place in an ethical discussion.

Yours truly,

RJB:SM

(Signed) R. J. Boyle

1/12 1933
Fort Worth, Texas,

January 16, 1933.

Mr. A. J. McKenzie
McKenzie Construction Co
Smith-Young Tower
San Antonio, Texas

Dear Mr. McKenzie:

Acknowledging your letter of the 6th which I gave to our attorneys, Messrs. Hampton and Samuels; Attached herewith is copy of their communication to me regarding same.

The general impression seems to be that the municipal market is improving, and I certainly trust that it will improve within a short time to a sufficient degree to allow us to get all of these matters finally concluded.

Yours very truly,

WRB:hm

Fort Worth, Texas.,
January 13, 1933.

Mr. W. R. Bennett, President Board of Directors,
Tarrant County Water Control & Improvement Dis-
trict Number One,
Fort Worth, Texas.

Dear Mr. Bennett:

We have before us letter of January 6, 1933, dated at San Antonio, Texas, addressed to you by McKenzie Construction Co., in which several questions are raised concerning the duty of the District to sell sufficient amount of its bonds to pay the balance now owing to the contractors.

There is, as a matter of course, a wide disparity between an expedient contract of sale and one that is illegal. In making sale of its bonds, sound public policy would require not only a sale legal and valid in its nature, but one that would not offend intelligent public opinion. This is but another way of declaring that this Board, in performing its functions as a public body, accountable to the tax-payers, should have as much regard for the spirit as for the letter of the law. Keeping merely within the technical letter of the law is not always a sign of discretion nor is it a full response to the ethics of a public trust.

It is true that the statute permits a sale of bonds at a minimum of ninety cents on the dollar and such a sale would be technically legal; but, on the other hand, would such a sale represent the exercise of a high sense of discretion when by waiting for a time for a rise in the market, the bonds could be sold to a better advantage?

In this connection it is proper to say that no court would undertake to substitute its discretion for yours, particularly where yours was honestly exercised, you having in mind the best interests of the District. The fact that you are permitted to sell the bonds at the minimum rate does not argue that you are obliged to do so, or that you are under any moral coercion to take this course. In truth, it is intended under the statute as a last resort which should be sparingly invoked and then only to avert something in the nature of an emergency.

The District is one of limited power in the construction and completion of the enterprise which it set out to accomplish. In no other way was it authorized to discharge the obligation of the contract than by the issuance and sale of its bonds. In the sale of its bonds it lay under the duty to sell them, if possible, at par, and avert the sacrifice of selling an obligation of 100 cents at less than its face value, and paying interest on the full amount nominated in the bonds.

When the District offers its bonds to the contractor, in exchange for work and material, at ninety cents on the dollar, it has treated the contractor with consideration and justice, and has measured its treatment by a criterion alike fair and legal.

Let us assume that the District may elect to sell the bonds at 90 and pay a brokerage thereon of say 3%. Is it not then, in effect, selling the bonds at less than 90 and is not the impression on the public mind practically the same as if the District had sold the bonds at 87 without a brokerage fee?

When you are advised, as in the case of the McKenzie letter, that the bonds cannot be sold on the market for more than 86 or 87, a bid for 90 with a commission of three per cent is obviously intended as a device to bridge the different between the amount of the bid and the market value. An indirection of that kind would be transparent to any court and would involve an evasion of the statute.

It should also be remembered that a commission for sale of bonds would have to be fair and reasonable and the Board itself, would be held to know the state of the market. It could not bury its head in the sand like an ostrich, and claim that it did not perceive the trend of the market price.

The law regards the substance and not the form of the transaction, and since we live in the world we should not be allowed to plead ignorance of its conditions.

Very truly,

(Signed) Sidney L. Samuels

(Signed) Ireland Hampton

Attorneys.

San Antonio, Texas,
January 6, 1933

Mr. W. R. Bennett, Chairman,
Board of Directors,
Tarrant County Water Control &
Improvement District No. 1,
Fort Worth, Texas.

Dear Mr. Bennett:

We have your letter of December 31st with reference to payment of balance due McKenzie Construction Company and Uvalde Construction Company for work on the Eagle Mountain Dam. We note from this letter that is is the opinion of the Water Board that the bid for the bonds at 90 and accrued interest under a brokerage fee of 3% which they received from Frazier Moss is in the nature of a discount and therefore illegal.

We must respectfully submit that this is a legal question and unless or until the Board has had it's views confirmed by the opinion of competent attorneys, we cannot accept the position indicated in your letter as final. We have been advised by our attorneys that our courts have already approved by definitive decisions transactions of similar character and in the face of these decisions we do not believe your attorneys would advise you that it would be illegal to accept the bid which has been filed with the Board for purchase of these bonds. It is our understanding, moreover, that the proposal was submitted on the condition that the sale of the bonds would be approved as to legality by your attorneys and by Chapman & Cutler of Chicago.

There is no secret that the present market value of these bonds is 87 to 88. We should like to inquire whether or not if the Board had received a bid involving the payment of a fiscal agency fee which would net the Board, including cost of the brokerage, 90 or above for it's bonds, it would not have been, in it's opinion, a legal and acceptable bid? We think there is no question as to what the answer to this question would be. Bonds have been sold in literally hundreds, probably thousands, of cases in the State of Texas under this form of contract. We see no different legal or moral principles involved when the proposal contemplates the payment of 90 and accrued interest for the bonds with a fee to the broker.

We think, therefore, that before you definitely refuse to accept the best bid that you have received for these bonds and pay us from the proceeds therefrom the amounts due us for work done, you should furnish us with competent legal opinion that to do so would involve an illegal act on the part of the Board.

Yours very truly,
McKENZIE CONSTRUCTION COMPANY.

(Signed) A. J. McKenzie

President.

Fort Worth, Texas,
December 31, 1932.

Mr. A. J. McKenzie
% McKenzie Construction Co
Smith-Young Tower
San Antonio, Texas

Dear Mr. McKenzie:

Acknowledging your letter of the 30th:

It is the opinion of the Water Board that we have not received a legal bid for our bonds. In our opinion an offer to buy our bonds at 90 and accrued interest less a 30 dollar per bond discount as a fiscal agent fee is nothing more or less than discounting the bonds. You, yourself, in your letter of the 23rd stated that the bonds are not worth over 87 or 88.

I read your letter of the 23rd to the Board yesterday and it was the unanimous opinion of the Board that the only reply we could make to you was that we honestly and conscientiously believe that we have received a bid that we cannot lawfully accept.

Regretting very much that this unfortunate state of affairs exists, I am

Yours very truly,

WRB:hm

San Antonio, Texas,

December 30, 1932

Mr. W. R. Bennett,
c/o Acme Brick Company,
Fort Worth, Texas.

Dear Mr. Bennett:

I have your letter of December 28. I very much regret that we are unable to understand why the Water Board is not in position to sell its bonds at 90 and accrued interest and pay a brokerage fee for producing a purchaser. We have consulted with the best legal minds in this State and they all advise us that the Board has a perfect legal right to sell its bonds at statutory par and pay a fiscal agent's commission for selling same. Furthermore, this procedure has been upheld by the Courts in this State in other cases. Our attorneys inform us that the bid you have for these bonds is legal in every respect and, consequently, we cannot understand why you do not accept it and pay us in cash, according to the contract.

Some suggestion has been made that you do not have the funds available at the present time to pay the fiscal agency commission. However, we understand that you should have it in February, and certainly by July, 1933. If this is the only excuse you have for not accepting the proposal you have, we suggest you offer the Bond Agent a note for his fiscal agent's commission, payable in February or July, when funds for this purpose become available.

As I have explained to you before, I appreciate fully the advisability of bringing this matter to a close, but frankly, I do not think the Board has shown the proper attitude, under the circumstances, toward the contractors in construing the legal limit on the sale of your bonds. We would be perfectly willing to submit the proposed sale to the Grand Jury, or anyone else who might be interested in the matter. It seems to me that under the circumstances it is the plain duty of the Board to accept the very best legal bid it receives in order to comply with its written obligations.

I sincerely hope that the Board will reconsider this matter and accept the bid it already has and pay the contractors in cash, as the contract provides.

Yours very truly,

(Signed) A. J. McKenzie

A. J. McKenzie

AJMc:K

Fort Worth, Texas,
December 28, 1932.

Mr. A. J. McKenzie
% McKenzie Construction Co
Smith-Young Tower Building
San Antonio, Texas.

Dear Mr. McKenzie:

Acknowledging your letter of the 23rd:

I sincerely regret that the Water Board is not in position to sell its bonds at the legal limit and know that Messrs. Hickman, Bewley, Hogsett and Stripling feel the same way about this matter. Nothing would please us more than to be able to sell our bonds at the minimum price, as we construe the limit, and pay you in cash, but unfortunately we have failed so far to accomplish such a sale.

As things look now I do not see any possible way of making a settlement with your company and the Uvalde Construction Company except with bonds and the cash that we are to receive from the R. F. C.

Regretting this unfortunate state of affairs, I am

Sincerely,

WRB:hm