MINUTES OF A WEEKLY MEETING OF THE BOARD OF DIRECTORS OF TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE RECESSED FROM SEPTEMBER 22, 1930, AT 3 P. M. AND HELD IN THE DISTRICT OFFICE ON SEPTEMBER 23, 1930, AT 3 P. M.

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

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

At this meeting Director Bennett presided in his capacity as President; W. K. Stripling acted in his capacity as Secretary.

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

1. Minutes of prior meetings were read, approved and ordered of record as follows, viz:

Minutes of the meeting of September 8, 1930;
Minutes of the meeting of September 15, 1930;
Minutes of the meeting of September 16, 1930.

2. There was presented to the Board of Directors for consideration the official bond of L. P. Card, as Tax Collector for this District, for the penal sum $35,000.00, dated September 17, 1930, on which bond Maryland Casualty Company is the Surety. Upon said bond was endorsed the approval of the bond as to form by the Attorneys for this District. Thereupon there was consideration of this bond as to sufficiency. Director Stripling made a motion that the bond as tendered do be approved and accepted. Further, that the President for the District do be directed to endorse on said bond the approval thereof as to sufficiency. Further, that said bond do be attached to the Minutes of the meeting of September 16, 1930, as part of "Exhibit A," which is the formal contract between the District and L. P. Card. Further, that said L. P. Card do hereby be constituted and established as the lawful Collector of Taxes for this District for the year to begin October 1, 1930, and to end at mid-night on September 30, 1931, all of which shall be done as provided by the terms of Section 33 of Chapter 25 of the Acts of the 39th Legislature of Texas, Regular Session. This motion was seconded by Director Hogsett. Upon a vote being taken the motion was carried and it was so ordered.

3. There was presented a request by Hawley and Freese, Engineers, for the payment to them of the sum $5,000.00, to be credited upon Engineering Fees accrued to them under their contract with this District. To their written request was attached itemized statement showing their claim of the total accrued as of September 17, 1930. A copy of said request is attached to these Minutes as "Exhibit A" and is hereby made part hereof. There

was full consideration of this request, whereupon Director Stripling made a motion that the District do execute its voucher check, serial No. 2227, payable to Hawley and Freese, Engineers, and that the same, upon execution, do be delivered to them as payment on account. This motion was seconded by Director Hogsett. Upon a vote being taken the motion was carried and it was so ordered.

4. It was called to the attention of the Directors that in approving the Engineers' Estimate of the Progress of the Work No. 6, presented for allowance on August 4, 1930, the total amount of the Estimate had been paid, subject however, to the reservation of approval and later determination as to one item for $38.80 for repair of fences on the Rominger Ranch, and another item for $27.75 for repairing a Bridge on Hunt Creek. Further, that due to the fact that the General Audit was now in progress, it was desirable to have definite action concerning these two specified items. There was full consideration of this matter, whereupon Director Stripling made a motion that the two above items be disallowed and deducted from the next payment to be made to the Contractors. This motion was seconded by Director Hogsett. Upon a vote being taken the motion was carried and it was so ordered.

5. Thereupon there was presented to the Directors a letter from Mr. W. D. Young of Bridgeport, Texas, which had been written in answer to a letter from the District requesting him to pay the rentals on the Easly and the McDaniel Lands. This letter was to the effect that Mr. Young had at the instance and request of Mr. Frank Turner, who assumed to act for this Board, rendered various services in the matter of procuring the title to lands and in settling claims made by reason of the encroachment of water on certain other lands located up stream from the temporary dam at the Bridgeport reservoir site. Upon a discussion of this matter it appeared that no Director had any specific knowledge of any such agreement as between Mr. Young and Mr. Turner; further, that Mr. Turner had not been directed by any member of the Board to enter into such an agreement with Mr. Young: It was, however, the sense of the Directors that the services rendered by Mr. Young to the District had consumed much of his time, and that the value of his services beyond question exceeded the amount of the rentals which had been anticipated. It was the sense of the Directors that this matter should be referred to the Land Committee for adjustment with Mr. Young on that basis which their discretion might dictate.

6. Thereupon there were presented to the Directors for consideration, approval, allowance and issuance, voucher checks of the District for obligation now payable as follows, viz:

NO.	NAME	COVERING	AMOUNT
2224	Mrs. Allie Sanders, Guardian	Land Purchase	$ 221.28
2225	R. A. Stuart	Land Purchase	7132.81
2226	L. P. Card, Tax Collector	R. A. Stuart Taxes	165.63

There was full consideration of the supporting data presented with the checks, whereupon Directors Stripling made a motion that the said voucher checks, as here listed, and the claims upon which the same were based, do be approved, that said voucher checks do be executed, and delivered to the respective persons entitled to receive the same. This motion was seconded by Director Hogsett. Upon a vote being taken the motion was carried and it is so ordered.

7. There was submitted to the Directors for approval a form-letter to be written to all owners of lands desired by the District, wherein it was proposed to make to each owner a firm tender of a specific sum per acre for the land, or easement upon land, necessary to be acquired, and further to give notice that in case the tender as made was not accepted the District would be forced to proceed with condemnation of these lands. There was full discussion of this proposal, whereupon Director Stripling made a motion that the form of latter as submitted do be approved; that individual letters be mailed to the respective owners by registered mail at the earliest practical date, and that the time of notice given be fifteen (15) days, to expire after the mailing of each letter and before the institution of condemnation proceedings against any owner so notified. Further, that at the present time the mailing of these letters be confined to lands affected by construction of the Bridgeport Reservoir. This motion was seconded by Director Bewley. Upon a vote being taken the motion was carried and it was so ordered.

8. There was presented to the Directors by Director Stripling the proposal of F. F. Conner (of Vineyard, Route #2, Box #8) to purchase all improvements on the lands purchased by this District from Jacob Lyda and Chas. Lyda, but not to include the outside fences, nor the division fences between said lands. This proposal was to pay $100.00 for all such improvements, with the understanding, however, that no part of the improvements would be removed from said lands until the expiration of the present lease contracts. Director Stripling made a motion that this proposal be approved and executed as above stated. Further that Mr. Conner be so advised. This motion was seconded by Director Hickman. Upon a vote being taken the motion was carried and it was so ordered.

9. Director Bewley made a statement that in his opinion it was desirable for the District to request of the responsible officers of the Contracting Corporations that they meet with the Directors of this District and its Engineers at least once each month for the purpose of discussing the progress of the work, and any and all other matters incident thereto. There was full discussion of this proposal. It was the sense of the Directors that the suggestion as stated should be carried out. Further, that Mr. Marvin Nichols should request the Contractors to attend the first of such conferences on Tuesday, September 30, 1930, or upon the earliest day thereafter on which it might be practical for the Contractors to attend such a meeting. It was so ordered.

10. There was presented to the Directors the Advisory Opinion rendered by the Attorney General of Texas, on September 19, 1930, concerning various claims heretofore asserted as against this District. The opinion was ordered received, and filed. It appears attached to these Minutes as "Exhibit B," and is hereby made part hereof.

There was no further business presented, and the meeting was declared adjourned.

W. K. Dingley
As Secretary

APPROVED:

M. M. Bennett
As President

JOHN B. HAWLEY
S. W. FREESE
M. C. NICHOLS
H. R. F. HELLAND
A. H WOOLVERTON
H. A. HUNTER

"E X H IBB I T A"
9/23/30.

HAWLEY, FREESE AND NICHOLS
CONSULTING ENGINEERS
417 CAPPS BUILDING
FORT WORTH, TEXAS

WATER SUPPLY
WATER PURIFICATION
SEWERAGE
SEWAGE DISPOSAL
IRRIGATION
FLOOD CONTROL

Sept. 17, 1930

Honorable the Board of Commissioners,
Tarrant County Water Control & Imp. Dist. No. 1,

Gentlemen:

Attached hereto please find Estimate No. 12 for $9,310.75 in favor of ourselves.

Please authorize $5,000.00 payment, on account, to us.

Respectfully,

HAWLEY and FREESE

BY S. W. Freese

30

JOHN B. HAWLEY
S. W. FREESE
M. C. NICHOLS
H. R. F. HELLAND
A. H WOOLVERTON
H. A. HUNTER

WATER SUPPLY
WATER PURIFICATION
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HAWLEY, FREESE AND NICHOLS
CONSULTING ENGINEERS
417 CAPPS BUILDING
FORT WORTH, TEXAS

Sept. 17, 1930

TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE

In Account With

HAWLEY and FREESE

Estimated Cost			
Contracts	$3,750,000.00		
Lands	1,200,000.00		
Levees	250,000.00		
	5,200,000.00	@ 2½%	$130,000.00 ✓
Railroads and Roads	400,000.00	@ 1 %	4,000.00 ✓
	5,600,000.00		
Contractors' Estimates 1 to 7 inc.	604,132.03 ✓		
Land Purchases Made	1,061,405.59 ✓		
	1,665,537.62	@ 2 %	33,310.75 ✓
Total Engineering to Date			167,310.75 ✓
Amount Paid to Date			158,000.00 ✓
Balance			$ 9,310.75 ✓

"E X H I B I T B"
9/23/30.

WATER CONTROL & IMPROVEMENT DISTRICTS -- MUNICIPAL CORPORATIONS -- TAXATION -- LIABILITY -- CONSERVATION & RECLAMATION DISTRICTS -- HIGHWAY CONSTRUCTION.

1. Tarrant County Water Control & Improvement District No.1 is a municipal corporation owning and holding property for public purposes and is not subject to taxation.

2. Where sufficient territory remains in the municipality encroached upon from which to pay its outstanding bonded indebtedness without exceeding its constitutional limitation, the new municipality cannot be taxed to pay any part of such indebtedness.

3. Tarrant County Water Control & Improvement District No. 1 would, as to the railroad, pipe lines, telephone lines and electric power lines, actually be taking such property as its dams and reservoirs would cause to be inundated by water. As to such property, the District must make compensation in such sum as would represent the present cost to reproduce the given property inundated (but no more; the reproduced property to be comparable in character and condition to the property actually inundated.) If the District has reasonably exercised the determination to take any given property, as being needed to conserve or promote the public welfare, then the taking represents the lawful exercise of the police power of the State, and there will not be involved any duty to make compensation for consequential, or resulting, expenditures to be made by the respective owners in order to preserve the operation of their facilities and to cause the same to be accommodated to the changed physical conditions.

4. Said Water Control District would not be liable to contribute to the sinking fund of counties, road and other district obligations unless and until it is shown that said Water Control District has so encroached upon the taxable values of such districts as to leave insufficient values within such district for the payment of its indebtedness without exceeding its constitutional limitation.

5. Title to the roads in the several counties and districts is vested in the State of Texas, and said Water Control District could not be compelled to compensate such counties or districts for such roads or parts thereof.

6. Said Water Control District is not authorized to contribute to the construction of highways except and unless the same are a part of the project for which said District is created.

OFFICES OF THE ATTORNEY GENERAL OF TEXAS.

Austin, Texas, September 19, 1930.

Board of Directors,
Tarrant County Water Control & Improvement District No. 1,
Capps Building,
Fort Worth, Texas.

Gentlemen:

The Attorney General, Honorable Robert Lee Bobbitt, received your communication wherein you make a statement of the physical factors involved in carrying out the project of Tarrant County Water Control & Improvement District No. 1, especially with reference to the effect of the plans of the District on the financial status and existing properties of certain other governmental agencies and quasi-public corporation. Accompanying this presentation is a statement of the present claims made against the district by such other corporate creatures. As we construe your communication, you have presented these matters not only for the district, but as well for and under concurrent desire of the County Commissioners' Courts of Tarrant and Wise Counties, Texas, and the school authorities in each of said counties.

Briefly, you state Tarrant County Water Control & Improvement District No. 1 is a body politic, a governmental agency, operating pursuant to Section 59, Article XVI, State Constitution, and its enabling act, Chapter 25, General Laws, 39th Legislature, as amended by the Acts of the 40th and 41st Legislatures; that the water district embraces all of the City of Fort Worth, and 48,000 acres of land outside of the city; that the water district proposes to exercise all the powers conferred by Section 59, Article XVI, of the Constitution, except one, - that of conserving and developing forests; that the water district is now operating pursuant to Section 59, Article XVI, of the State Constitution, and the enabling acts of the Legislature of Texas. You make a detailed statement of the creation and organization of the water district, and the proposals of the water district, not necessary to here relate, from all of which is shown that the water district is a municipality as established pursuant to Sections (a), (b), (c) and (d) of Section 18, Chapter 280, Acts of the 41st Legislature, and other pertinent acts of the Legislature.

The undertaking as shown by you includes the proposal to store water to supply the City of Fort Worth and to irrigate lands in Tarrant and Wise Counties and to supply water to industries located outside of but adjacent to Fort Worth; to hold abnormal waters and to slowly release the same in such manner as to prevent or minimize destruction by water in the Trinity Valley below the water district's works.

You make the following statement:

"The results to grow out of this undertaking, in so far as will be material to consideration of the questions propounded herewith are: (1) There are four independent school districts which include areas of land acquired, or to be acquired, by the district, which school districts, now have outstanding certain bonds. The areas to be owned by the water district will be withdrawn from the taxing power of the school districts. The lands of the water district located in each school district, when compared to the total area of the respective school districts, are found to constitute, 13% of the total area, in the least affected school district, and reaching 31% in the case of the school district most affected.

"(2) There are two affected independent road districts located in Wise County, Texas, each of which have bond issues outstanding. We are advised that the area of each of these embrace approximately 144,000 acres of rural land, and as well embrace a number of towns and villages. The land to be owned by the water district will constitute approximately 3% of one road district, and in the case of the other, will constitute approximately 7% of the road district's area. These factors are taken from oral representations, but are believed to be approximately accurate. The lands to be owned by the water district are admitted not to be subject to normal taxing power of the road districts.

"(3) There are various community roads in both Tarrant and Wise Counties, which have been constructed by using either the proceeds of county-wide bond issues, or by using funds derived from county-wide tax levies. It is believed that the roads to be affected have predominantly been constructed by the direct use of income from the annual levy of county-wide ad valorem taxes.

"(a) Various of the roads constructed by the respective counties will be constantly submerged by water to be stored by the water district for beneficial use; additional portions of each of these affected roads will for short periods, but infrequently, be under water produced by controlling abnormal floods. So far as known, no existing road serving through travel will be affected; these affected roads are local in character, and of cheap construction. Each of the affected counties is now seeking compensation for the roads to be actually submerged (or taken) and are as well seeking from the water district contributions to the county in order to cover the cost of improved roads placed to permit travel around and parallel with the reservoirs; in certain other instances the counties are seeking to include the cost to construct expensive causeways and bridges across the water to be stored in order to preserve directness of travel peculiar to the respective local communities. Further, in certain instances the county is claiming the right to be compensated for such portions of the roads to be cut in two by submergence as may remain between water's edge and the nearest cardinal roads; these remainders may be defined to be 'stub' roads to run from the nearest cardinal road to the water's edge. It will thus be seen that these stub roads will continue to serve the abutting lands, but that these residing on said lands will be forced to cover an altered direction, and distance, to reach a point lying in a course across the water to be stored.

"(b) In the case of claims by counties, based on the effect of the water district's works on county roads which were constructed either from the proceeds of bonds supported by a county-wide tax, or out of income from a county-wide ad valorem tax, it should be noted that the value of the lands owned by the water district will be a very small per centage of the total taxable values of a given county. In the case of Tarrant, the difference to be reflected in the county's tax levy would be expressed in the fourth or fifth decimal of a mill. This raises the question if the claim so circumstanced would not fall within the rule 'de minimus non curat lex', while a similar claim asserted by a school district having limited area and small value might be held to constitute a matter so substantial as to require recognition by the courts.

"(c) The question of the liability of the water district to compensate land owners for possible damage to lands abutting the severed roads, is not here involved.

"(4) At a point on the Bridgeport-Graham Branch of the Chicago, Rock Island & Texas Railway Company in Wise County, Texas, the water district will construct a levee crossing the right-of-way at right angles and at an elevation approximately 20 feet higher than the present road bed. Also immediately West of this level stored water will submerge the existing track for the distance of 2.75 miles, and at times of abnormal flood the temporary maximum coverage will be an additional 1.25 miles.

"(a) There is a practical route of re-location around the reservoir of the water district which will involve constructing 10.65 miles of new line. The owner road has chosen a new location to require the construction of 16.85 miles of new line. The present line was constructed for light branch line traffic and was of cheap type, which has not since been altered. The owner road now proposes to construct a line of high type and high cost. The owner roadhas presented a claim for a sum sufficient to cover the cost of 16.85 miles of road to cost approximately $900,000. We are advised that the owner road, in case re-location is on the 10.65 miles route, will present claim to cover precompensation for the increased cost to maintain and operate the mileage to be added. In this connection, it should be noted that re-location on the 16.85 miles route, when compared to the existing line, will shorten the haul on through traffic."

You propound the following inquiries:

"1. Can the water district be required to contribute to such sinking funds?

"(a) If so, who, or what governmental agency can enforce the liability, and/or give a binding acquittance in case the water district may elect to make a lump sum precompensation of the liability, if any?

"2. If the water district elects not to make precompensation of such liability, if any, but rather elects to make annual contribution as required,then what shall be the basis to determine the measure of such contributions; especially

"(a) Shall the ratio to control contributions be determined for all years by comparing the present taxable value of the lands owned by the water district to the present taxable value of the remainder of the property now subject to the taxing power of the respective school districts? or

"(b) Shall the ratio to control contributions each year be determined by comparing the present vlaue of the lands owned by the water district (such lands being then under water and not

capable of being stimulated in value) to the taxable values each year to be established by the respective districts?

"(3) In case it is determined that the water district is under legal obligation to make annual contributions to the interest and sinking fund of each affected district, then, can the water district be relieved of further obligation by paying over to the school districts the approximate amount of the contribution; or, must the water district make direct payment to the respective fiscal agents representing the holders of the bonds?

"(a) In the prosecution of the public work in which the district is engaged, where it becomes necessary to appropriate an area which includes certain roads and highways in Tarrant and Wise Counties (outside the corporate limits of any town or city), does the district become liable to the county government or road district in which said highways are located (as distinguished from abutting private owners), to make compensation for roads actually submerged, or taken?

"(b) If so, would the directors of the district have authority to appropriate moneys from its treasury for such purpose?

"(c) Where, as in the case under consideration, the public work in which the water district is engaged is a public duty, in response to Article 16, Section 59, of the State Constitution and the statutes pursuant thereto, and the submergence of said roadways is a necessity in the prosecution of the enterprise, the abutting private owners having been duly compensated for injury or damage to their possessions, would liability exist to another governmental entity, such as a county or road district, or would not such entity be obliged to yield and become subservient to the police power of the State which delegated to the water district the requirement and obligation to perform the public task?

"(d) Then again: If compensation were required, what form would this compensation take? Contribution to the bond issue under which such roads were built? Or a restoration of taxes? And if so, for what years, and to what extent-- taking into consideration the evolution of taxable values? And then again: Would the benefits of heightening values to the lands in the vicinity of the water districts be a factor to reckon with in determining compensation?

"(e) In the event it should be determined that the water district is under obligation to make some formof compensation for the roads or highways so taken or appropriated, and where it appears that such roads were built from the proceeds of bond issues yet outstanding and unpaid, to whom should such compensation be paid or awarded -- the governmental entity or the fiscal agent representing the bond holders? And if to the governmental entity, then would the water district be required to see to the application of such payment?

"(f) If it should develop that the taxable value of the territory so appropriated, as compared with the total taxable area yet remaining in the road district or in the county, would be negligible, then would the principle of de minimus non curat lex apply?

Replying, it is not debatable; in view of the statements by you relative to the laws and the provision of the Constitution under which this district is operating, and in view of the decisions of the courts of the State that it is a municipal corporation established for the purposes specified in the constitutional provisions and the statutes under which it functions.

If the District is a municipality and is the owner of property acquired for public purposes, then the property so acquired for public purposes is not subject to taxation. This is clearly true. See Sections 1 and 2, Article 8, Constitution, Section 9, Article XI, Constitution; Article 7150 R. C. S. 1925; Bexar-Medina-Atascosa Counties Water Improvement District Vs. State, 21 S. W. (2) 747; State of Texas Vs. City of Dallas, Court of Civil Appeals, 28 S. W. (2) 937.

While the opinion of the Court of Civil Appeals in the case of the State of Texas Vs. City of Dallas, supra, does not so disclose, most of the questions submitted by you, were likewise raised in that case as will be shown from an inspection of the records and briefs on file in that case. The case involved the question as to outstanding bonds of school districts, road district and county road bonds in territory which has been submerged by the City of Dallas for public purposes; the storage of water; the question of impairment of contract was also raised in that case. Apparently, the Court was of the opinion that it was unnecessary to decide any question except the question as to whether the property so purchased and condemned was subject to taxation, and that the decision of that question carried with it the decision of the other questions so raised. See the opinion and brief for appellant in that case.

The first question which will be considered is whether the Tarrant County Water Control & Improvement District No. 1 can be required to contribute to the sinking funds for the payment of the indebtedness of other governmental agencies, such agencies and such

indebtedness having been created prior to the time of the creation of the water district; or, whether the water district should be required to assume, or pay any part of such indebtedness, even though such water district has taken for public purposes a portion of the taxable property of such other agencies of the government. This is a difficult question.

In the case of Blessing Vs. The City of Galveston, 42 Texas 641, the Court says: "No principle of law is more clearly or firmly settled than that public or municipal corporations, establishhed for public purposes, such as the administration of local or civil government, are not in the nature of contracts between the State and the corporation, and that their charters may be annulled and revoked at the will and pleasure of the Legislature, as it deems the public good may require. 'It is' said Justice Nelson, ' an unsound and even absurd proposition that political power conferred by the Legislature can become a vested right as against the government in any individual or body of men' ***** The State may withdraw these local powers of government at pleasure, and may, through its Legislature, or other appointed channels, govern the local territory as it governs the State at Large. It may enlarge or contract its powers or destroy its existence."

In the case of Tisdale Vs. Eldorado I. S. D., 3 S. W. (2) 420, the Supreme Court, among other things, said:

> Whether in fact any creditor has a contract whose impairment may be a result of diminution of territory of the district is questionable, for whatever agreement may have been made included notice of the existence and nature of the legislative powers mentioned. But if the concession be made***** that some such contract may exist, the fact remains that (for aught that appears) a sufficient tax can be raised (within constitutional limits) from property within the diminished territory to satisfy its requirements. If that be the condition in point of fact, it is difficult to perceive ground for objection by the contractor. Those taxpayers whose property is within the narrowed boundaries, and whose supposed complaint the district assumes to present, are thus situated; (a) When they voted in 1909, and again in 1925, they had knowledge of the powers of the Legislature; (b) they voted (rather the requisite majority of all taxpayers voted) to authorize such a tax as would be necessary to pay interest on the bonds and to retire them in order, provided only that the measure of the tax should not exceed 25 cents

on each $100 of value in respect to the 1909 bonds (Section 3, Article 7, before the 1909 amendment) and cents on each $100 of valuation in respect to the 1925 bonds.

"If not directly shown, it is fairly inferable that the tax thus authorized is now and will continue to be ample, as applied to property within the newly defined district, to retire the bonds and pay the interest thereon as it accrues. In this connection we note that no rate was named in the order for the 1925 election, nor provision made that the rate should not exceed that previously named as maximum in the law **********

"We do not mean to hold that bondholders (or other taxpayers) do not have or may not in the future acquire practically justiciable rights against the exclusion from the district of the properties of defendants in error. We have commented upon their possibilities merely by way of negativing present showing of palpable unconstitutionality in the 1925 Act and of right in the plaintiffs in error to attack the statute on those grounds."

In the case of Hunter Vs. City of Pittsburg, 52 L. Ed. 151, the U. S. Supreme Court, among other things, said:

"There were two claims of rights under the Constitution of the United States which were clearly made in the court below and as clearly denied. They appear in the second and fourth assignments of error. Briefly, stated, the assertion in the second assignment of error is that the act of the assembly impairs the obligation of a contract existing between the City of Allegheny and the plaintiffs in error, that the latter are to be taxed only for the governmental purposes of that city, and that the legislative attempt to subject them to the taxes of the enlarged city violates Article 1, Paragraph 9, Section 10, of the Constitution of the United States. This assignment does not rest upon the theory that the charter of the city is a contract with the State, aproposition frequently denied by this and other courts. It rests upon the novel proposition that there is a contract between the citizens and taxpayers of a municipal corporation and the corporation itself, that the citizens and taxpayers shall be taxed only for the uses of that corporation, and shall not be taxed for the uses of any like corporation with which it may be consolidated. It is not said that the City of Allegheny expressly made any such extraordinary contract, but only that the contract arises out of the relation of the parties to each other. It is difficult to deal with a proposition of this kind except by saying that it is not true. No authority or reason in support of it has been offered us, and it is utterly inconsistent with the nature of municipal corporations, the purposes for which they are created, and the relation they bear to those who dwell and own property within their limits. This assignment of error is overruled.

"Briefly stated, the assertion in the fourth assignment of error is that the act of assembly deprives the plaintiffs in error of their property without due process of law, by subjecting it to the burden of the additional taxation which would result from the consolidation. ********** It is important, and, as we have said, not so devoid of merit as to be denied consideration, although its solution by principles long settled and constantly acted upon is not difficult. This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors. (Citing a long list of authorities). It would be unnecessary and unprofitable to analyze these decisions or quote from the opinions rendered. We think the following principles have been established

by them and have become settled doctrines of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, of exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure, may modity or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the State constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract, or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State, and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

In the case of Laramie County Vs. Albany County, 92 U. S. 307, the Supreme Court of the United States, among other things said:

"Such corporations are the mere creatures of the legislative will; and, inasmuch as all their powers are derived from that source, it follows that those powers may be enlarged, modified or diminished at any time, without their consent, or even without notice. They are but subdivisions of the State, deriving even their existence from the Legislature. Their officers are nothing more than local agents of the State; and their powers may be revoked or enlarged and their acts may be set aside or confirmed at the pleasure of the paramount authority, so long as private rights are not thereby violated. Russel Vs. Reed, 27 Pa. 170. There must in the nature of things, be reserved, by necessary implication, in the creation of such corporations, a power to modity them in such manner as to meet the public exigencies. Alterations of the kind are often required by public convenience and necessity; and we have the authority of that learned judge for saying that it has been the constant usage, in all that section of the Union, to enlarge or curtail the power of towns, divide their territory, and make new towns whenever the convenience of the public requires that such a change should be made. Cases, doubtless, arise where injustice is done by annexing part of one municipal corporation to another, or by the division of such a corporation and the creation of a new one, or by the consolidation of two or more such corporations into one of larger size.

Examples illustrative of these suggestions may easily be imagined." See Kies Vs. Lowery, 199 U. S. 233; 50 L. Ed. 167; Embree Vs. City Road District, 240 U. S. 242; Houck Vs. Little River Dr. Dist., 239 U. S. 262-264; TRIMMIER VS. CARLTON, 296 S. W., 1080; Galveston Vs. Municipal Wharf Co., 63 Texas 14.

The above authorities show conclusively that the obligations and bonds were authorized to be issued by the tax-paying voters with the full notice and knowledge of the power of the Legislature to exempt property from taxation within the constitutional limitation, and, further, they were charged with notice of the constitutional provision that property, owned or thereafter acquired by municipal corporations, is not subject to taxation under Article 8, Section 1, of the Constitution, and Article XI, Section 9, thereof. It is possible the facts will show that the remaining property valuations in such districts, and counties, will be virtually as large as before the water district was created. The rule seems to be that where there is sufficient territory left in the municipality encroached upon to pay the outstanding indebtedness without exceeding the constitutional limitation, then the new municipality, or the one so taking the property, cannot be charged with any of the indebtedness. It may be otherwise if there is insufficient property left in the old district or counties, to care for the indebtedness outstanding without violating the constitutional provisions as to the amount of tax that can be levied.

In view of the above, it is unnecessary to answer each question propounded separately. The above authorities likewise settle the question as to the status of the water district relative to road districts and counties having outstanding indebtedness. The same rules ennunciated in the above decisions would apply, and unless so much of the taxable values are taken as will not leave sufficient taxing power, without exceeding the constitutional limitation, then the district is not responsible to such other governmental agency for its outstanding obligations, or any part thereof. It will be observed there is nothing stated relative to the bond holders making any claim in the premises. In a proper case the holders of the district and county obligations would have a cause of action against the water district.

The next question to be considered is what is the liability of the District to the railroad company, the pipe line companies, the telephone companies, and the power line company. The principles which will govern one case will, in a large measure, govern each of these cases, and, for this reason, the comment to be made will refer to "the railroad" as representing all the stated cases.

If the determination of the District to erect works which will cause the railroad to be inundated, be found to be reasonably exercised, as an act needed to conserve or promote the public welfare, then the taking may not be denied, subject only to these conditions of law:

(a) As to the railroad actually to be inundated there will be a "taking" which must be compensated, and the measure of compensation will be such a sum of money as will, at the time of the taking, represent the cost to reproduce a railroad comparable in character and condition to the railroad to be inundated.

(b) If, because of such inundation, the railroad (it having first been compensated for the line or measure of the road to be inundated), in order to preserve the continuity of its line, and in order to cause the same to be accommodated to the changed physical conditions, is required to construct its road around the water, or to bridge the water, at a cost exceeding the sum it has been tendered, or paid as compensation for that portion of the railroad to be inundated, then, such excess of cost may not be demanded of the District as a constitutional element of "compensation". This excess of cost must be borne by the railroad as the discharge of its duty to conform to reasonable police regulations by the State. Included in the resultant increase of expenditure, as to which the Constitution does not contemplate compensation, in a pertinent case, will be found costs incident to maintaining and operating a railroad over an increased distance.

not being the owners. If it should be held that the water district is required to compensate for property taken for a public purpose from the State, it would produce the anomalous situation of the State, through an arm of its government, the water district compensating itself. The force of this is made more apparent when it is considered that the district itself can take no title as against the State. San Felipe de Austin Vs. Texas, 111 Texas 111. Again, it is true, that the water district, under the provisions of Section 59-a, Article XVI, Constitution, would have no authority to expend its funds for the purpose of the construction of highways, except as a part of the project or undertaking for whihh the water district was created. It, therefore, would not have the power to contribute to such construction by another governmental agency.

What has been said answers the questions propounded, although they are not answered separately and directly in each case.

Respectfully submitted,

Heber Henry
Assistant Attorney General.

This opinion has been considered and approved in conference, and is now ordered recorded.

Arthur Lee Bobbitt
Attorney General of Texas.

The question presented with reference to leasing small portions of the property until the improvements can be constructed would have no effect so long as the property is purchased or condemned for public purposes, and so used. The leasing of the same would be but trivial.

It is believed from what has been said above that Tarrant County Water Control and Improvement District No. 1 cannot be required to pay anything for the sinking funds of the various counties and districts, nor toward the payment of the outstanding obligations of such counties and districts created prior to the creation of the water district, unless and until it is shown that the taxable values of such districts and counties h ve been so encroached upon as not to leave sufficient taxable values within the boundaries of such counties and districts to pay their obligations without transcending the constitutional limitations as to taxes which can be levied.

There is one other question which should be discussed. The question, in effect, is asked whether the water district will become liable to the county government or road district in which highways are located, and if the water district must make compensation for roads actually submerged or taken, where, in the prosecution of its work for public purposes, it becomes necessary to appropriate an area which includes certain roads and highways in Tarrant and Wise Counties. In answering this question, it is necessary to inquire where the title to roads and road easements affected by this district's works is now reposed. The decision of the Supreme Court of Texas, in the case of Robbins V. Limestone County, 268 S. W. 915-921, and in the case of City of Victoria Vs. Victoria County, 100 Texas 438, clearly establish that the several counties and road districts have no title to roads or easements upon which the roads are placed. Such title, under the above decisions, is vested in the State of Texas. The fact that the water district acquires such area and roads would not be a taking from the counties or districts for which they should be compensated; they