

MAINE STATE LEGISLATURE

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SEVENTY-THIRD LEGISLATURE

SENATE.

No. 80

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND SEVEN.

AN ACT to incorporate the Kittery Water District within the limits of the town of Kittery for the purpose of supplying the inhabitants of said district, likewise the remaining portion of said town, with pure water for domestic and municipal purposes.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

Section 1. The following described territory, and the
2 people within the same, namely: so much of the town of
3 Kittery in the county of York, beginning: At a point on
4 Chauncey's Creek directly south of the base of Tenney's
5 Hill, so called, and extending northerly to the tracks of the
6 York Harbor & Beach Railroad; thence westerly by said

7 railroad tracks to the west bank of Spruce Creek; thence
8 northerly by said Spruce Creek to the Post Road; thence
9 westerly by the Post Road to James' Corner; thence north-
10 westerly by the Spinney Road to Spinney's Creek; thence
11 southerly and easterly by Spinney's Creek, the Piscataqua
12 River, Pepperell Cove and Chauncey's Creek to the point
13 of beginning, shall constitute a body politic and corporate
14 under the name of the Kittery Water District, for the pur-
15 pose of supplying the inhabitants of said district, and like-
16 wise of the remaining portion of the town of Kittery, with
17 pure water for domestic and municipal purposes.

Sect. 2. Said corporation is hereby authorized for the
2 purposes aforesaid, to take water from any spring, pond or
3 streams in said towns or adjoining towns, provided, that no
4 water, except as hereinafter provided, be taken from springs
5 or ponds now used for similar purposes without consent of
6 the owner, to erect and maintain pumping stations, with all
7 necessary appliances required thereto, to erect and maintain
8 reservoirs and stand pipes, and lay down and maintain pipes
9 and aqueducts necessary for the proper accumulating, con-
10 ducting, discharging, distributing and disbursing water, and
11 forming proper reservoirs therefor, and said corporation may
12 take and hold by purchase or otherwise any lands, or real
13 estate necessary therefor, and may excavate through any
14 lands when necessary for the purposes of this corporation.

Sect. 3. Said water district shall be liable for all damages
2 that shall be sustained by any person or corporation in their

3 property by the taking of any land whatsoever, or water, or
4 by flowage, or by excavating through any land for the pur-
5 pose of laying pipes, building dams or constructing reser-
6 voirs. If any person sustaining damage as aforesaid and
7 said corporation shall not mutually agree upon the sum to be
8 paid therefor, such person may cause his damages to be
9 ascertained in the same manner and under the same condi-
10 tions, restrictions and limitations as are or may be prescribed
11 in the case of damages by the laying out of highways.

Sect. 4. Said water district is hereby authorized to lay in
2 and through the streets and highways thereof and of the
3 remaining portion of said town of Kittery and adjoining
4 towns, and to take up, repair and replace all such pipes,
5 aqueducts and fixtures as may be necessary for the objects
6 above set forth, and whenever said district shall lay any pipes
7 or aqueducts in any street or highway it shall cause the same
8 to be done with as little obstruction as possible to the public
9 travel, and shall at its own expense without unnecessary
10 delay cause the pavement and earth removed by it to be
11 replaced in proper condition.

Sect. 5. All the affairs of said water district shall be man-
2 aged by a board of trustees composed of three members, to
3 be chosen by ballot by the legal voters within said water
4 district, the first election to be at the meeting of the legal
5 voters of the said corporation to be called to accept this act,
6 one to serve until the annual meeting to be held in nineteen
7 hundred and eight, one to serve until the annual meeting to

8 be held in nineteen hundred and nine, and one to serve until
9 the annual meeting in nineteen hundred and ten. Whenever
10 the term of office of a trustee shall expire the legal voters of
11 the said water district shall elect a successor to serve for a
12 full term of three years, and if any other vacancy occur it
13 may be filled in like manner for the unexpired term. The
14 annual election of officers shall be in the month of March.
15 As soon as convenient after the board of trustees has been
16 chosen, the said trustees shall hold a meeting at the office of
17 the selectmen in the town of Kittery, and organize by the
18 election of a chairman and clerk, adopt a corporate seal, and
19 when necessary, may choose a treasurer and all other needful
20 officers and agents for the proper management of the affairs
21 of said water district. Said trustees may procure an office
22 and incur such expenses as may be necessary. Each mem-
23 ber shall receive in full compensation for his services an
24 allowance of fifty dollars per year, or such other less sum as
25 the said water district at any legal meeting may prescribe.

The said water district, at any legal meeting thereof, called
27 for the purpose, may adopt such by-laws and provisions, not
28 inconsistent with the laws and constitution of this state and
29 the United States, as they may deem expedient and necessary
30 for the better government and regulation of the municipal
31 affairs within said water district, in which case, such by-laws
32 and provisions so adopted, shall extend to said water district
33 as fully, to all intents and purposes, as the other provisions
34 of this act, subject only to alterations or additions by a two-

35 thirds vote, at a legal meeting of the water district called
36 for the purpose.

Sect. 6. Said water district is hereby authorized and
2 empowered to acquire by purchase or by the exercise of the
3 right of eminent domain, which right is hereby expressly
4 delegated to said water district for said purpose, the entire
5 plant, property and franchises, rights and privileges now held
6 by the Agamenticus Water Company within said district
7 and the remaining portion of said town of Kittery and
8 York, including all lands, waters, water rights, dams, reser-
9 voirs, pipes, machinery, fixtures, hydrants, tools and all
10 apparatus and appliances owned by said company and used
11 or usable in supplying water in said water district and town
12 of Kittery and any other real estate in said water district.

Sect. 7. In case said trustees fail to agree with said Aga-
2 menticus Water Company upon the terms of purchase of the
3 above mentioned property on or before June first, nineteen
4 hundred and seven, said water district through its trustees
5 is hereby authorized to take said plant, property and fran-
6 chises as for public uses by petition therefor in the manner
7 hereinafter provided. And said water district through its
8 trustees is hereby authorized on or before June first, nineteen
9 hundred and seven, to file a petition in the clerk's office of
10 the supreme judicial court for the county of York, in term
11 time or in vacation, addressed to any justice of said court,
12 who after notice to said Agamenticus Water Company and
13 its mortgagees, shall after hearing and within thirty days

14 after the filing of said petition appoint three disinterested
15 appraisers, one of whom shall be learned in the law, for the
16 purpose of fixing the valuation of said plant, property and
17 franchises. The said appraisers shall have the power of
18 compelling attendance of witnesses and the production of
19 books and papers pertinent to the issue, and may administer
20 oaths; and any witness, or person in charge of such books
21 or papers, refusing to attend, or to produce the same, shall
22 be subject to the same penalties and proceedings as far as
23 applicable as witnesses summoned to attend the supreme
24 judicial court. The appraisers so appointed shall after due
25 notice and hearing fix the valuation of said plant, property
26 and franchises at what they fairly and equitably worth,
27 so that the said Agamenticus Water Company shall receive
28 just compensation for all the same.

The first day of July, nineteen hundred and seven shall be
30 the date as of which the valuation aforesaid shall be fixed,
31 from which day, interest on said award shall run, and all net
32 rents and profits accruing thereafter shall belong to said
33 water district. The report of said appraisers or of a major-
34 ity of them, shall be filed in said clerk's office, in term time
35 or vacation within five months after their appointment, and
36 such single justice or in case of his inability to act then, any
37 justice designated for the purpose by the chief justice, may,
38 after notice and hearing, confirm or reject the same, or
39 recommit it if justice so requires. The award of the apprais-
40 ers shall be conclusive as to valuations. Upon the confirma-

41 tion of said report the court so sitting shall thereupon, after
42 hearing, make final decree upon the entire matter, including
43 the application of the purchase money, discharge of incum-
44 brances and transfer of the property, jurisdiction over which
45 is hereby conferred, with the same power to enforce said
46 decree as in equity cases. Upon request of either party the
47 justice so making such final decree shall make separate find-
48 ings of law and fact. All such findings of fact shall be final,
49 but either party aggrieved may take exceptions to any rulings
50 of law so made, the same to be accompanied only by such
51 parts of the case as are necessary to a clear understanding
52 of the questions raised thereby. Such exceptions shall be
53 claimed on the docket within ten days after such final decree
54 is signed, entered and filed, and notice thereof has been
55 given by the clerk to the parties or their counsel, and said
56 exceptions so claimed shall be made up, allowed and filed
57 within said time unless further time is granted by the court
58 or by agreement of parties. They shall be entered at the next
59 term of the law court to be held after the filing of said
60 decree, and there heard, unless otherwise agreed, or the law
61 court shall for good cause order a further time for hearing
62 thereon. Upon such hearing the law court may confirm,
63 reverse or modify the decree of the court below, or remand
64 the cause for further proceedings as it seems proper. Dur-
65 ing the pendency of such exceptions the cause shall remain
66 on the docket of the court below marked law and decree shall
67 be entered thereon by a single justice in term time or in

68 vacation, in accordance with the certificate and opinion of
69 the law court. Before said plant, property and franchises
70 are transferred in accordance with such final decree, and
71 before the payment therefor, the court sitting in said county
72 of York, by a single justice thereof as hereinbefore provided,
73 shall, upon motion of either party, after notice and hearing,
74 take account of all receipts and expenditures properly had or
75 incurred by the Agamenticus Water Company belonging to
76 the period from and after July first, nineteen hundred and
77 seven, and all the net rents and profits accruing thereafter,
78 and shall order the net balance due to either party to be
79 added or deducted from the amount to be paid under said
80 final decree, as the case may be. All findings of law or fact
81 by such single justice at such hearing shall be final. On
82 payment or tender by said water district of the amount so
83 fixed and the performance of all other terms and conditions
84 so imposed by the court, said entire plant, property and fran-
85 chises shall become vested in said water district and be free
86 from all liens, mortgages, and incumbrances theretofore
87 created by the Agamenticus Water Company. After the
88 filing of said petition it shall not be discontinued or with-
89 drawn by said water district, and the said Agamenticus
90 Water Company may thereafterwards on its part cause said
91 valuation to be made as herein provided, and shall be entitled
92 to appropriate process to compel said water district to per-
93 form the terms of the final decree, and to pay for said plant,
94 property and franchises in accordance therewith.

Sect. 8. All contracts now existing between the Agamenticus Water Company and any persons or corporations or the United States government for supplying water within said water district and the remaining portion of said town of Kittery and adjoining towns, shall be assumed and carried out by said Kittery Water District.

Sect. 9. For accomplishing the purposes of this act said water district, through its trustees, is authorized to issue its bonds to an amount sufficient to procure funds to pay the expenses incurred in the acquisition of the property of said Agamenticus Water Company, and the purchase thereof, and to secure a new source of supply, or the improvement of the present supply, and to make such extensions of the present system as the interests of the said water district shall demand. Said bonds shall be a legal obligation of said water district, which is hereby declared to be a quasi municipal corporation within the meaning of Section ninety-six, Chapter forty-seven of the Revised Statutes, and all the provisions of said section shall be applicable thereto. The said bonds shall be a legal investment for savings banks.

Sect. 10. All individuals, firms and corporations, whether private, public, national or municipal, shall pay to the treasurer of said water district the rates established by said board of trustees for the water used by them, and said rates shall be uniform within the territory supplied by the water district. Said rates shall be so established as to provide revenue for the following purposes:

8 1. To pay the current running expenses for maintaining
9 the water system and to provide for such extensions and
10 renewals as may become necessary.

11 2. To provide for payment of interest on the indebted-
12 ness of the district.

13 3. To provide each year a sum equal to not less than one
14 nor more than five per cent. of the entire indebtedness of
15 the district, which sum shall be turned into a sinking fund
16 to provide for the final extinguishment of the funded debt.
17 The money set aside for the sinking fund shall be devoted to
18 the retirement of the obligations of the district, or invested
19 in such securities as savings banks are allowed to hold.

Sect. 11. All the incidental powers, rights and privileges
2 necessary to the accomplishment of the main objects herein
3 set forth are granted to the corporation hereby created.

Sect. 12. This act shall take effect when accepted by a
2 majority vote of the legal voters within said water district,
3 voting at a meeting to be specially called and held for the
4 purpose on or before the first day of May, nineteen hundred
5 and seven, and the selectmen of the town of Kittery are
6 hereby authorized to call said meeting, and to make and pro-
7 vide a separate check list for such of the voters within said
8 water district as are then legal voters of said town, and all
9 warrants issued to said town shall be varied accordingly to
10 show that only such voters therein are entitled to vote
11 thereon. Such special meeting shall be called, advertised, and
12 conducted according to the law relating to municipal election,

13 provided, however, that the board of selectmen shall not be
14 required to prepare or the town clerk to post a new list of
15 voters, and for this purpose said board shall be in session the
16 three secular days next preceding such election, the first two
17 days thereof to be devoted to registration of voters and the
18 last day to enable the board to verify the corrections of said
19 lists and to complete and close up its records of said sessions.
20 The town clerk shall reduce the subject matter of this act to
21 the following question: "Shall the act to incorporate the Kit-
22 tery Water District be accepted?" and the voters shall indi-
23 cate by a cross placed against the words yes and no their
24 opinion of the same. The result shall be declared by the
25 selectmen of Kittery, and due certificate thereof filed by
26 the town clerk with the secretary of state. This act shall
27 take effect when approved by the governor, so far as neces-
28 sary to empower the calling and holding of such meeting.

Sect. 13. Sections two, three and four of this act shall be
2 inoperative, null and void, unless the said water district
3 shall first acquire by purchase, or by the exercise of the
4 right of eminent domain as this act provides, the plant,
5 property and franchises, rights, and privileges now held by
6 the Agamenticus Water Company within said district and
7 the remaining portion of the towns of Kittery and York.

Sect. 14. All costs and expenses arising under the pro-
2 visions of this act shall be paid and borne as directed by the
3 court in the final decree provided by section seven.

Sect. 15. This act shall take effect when approved.

STATE OF MAINE.

IN SENATE, February 8, 1907.

Presented by Mr. SIMPSON, of York and on motion by same Senator
laid on table for printing, pending reference to Committee on Judiciary.

F. G. FARRINGTON, *Secretary*.