

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SEVENTY-THIRD LEGISLATURE

SENATE.

No. 244

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 said 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 standpipes, 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
12 may take and hold by purchase or otherwise any lands, or
13 real estate necessary therefor, and may excavate through
14 any lands when necessary for the purposes of this corpo-
15 ration.

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
7 pipes or aqueducts in any street or highway, it shall cause
8 the same to be done with as little obstruction as possible to
9 the public travel, and shall at its own expense without unnec-
10 essary delay cause the pavement and earth removed by it to
11 be 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 full
12 term of three years, and if any other vacancy occur it may be
13 filled in like manner for the unexpired term. The annual
14 election of officers shall be in the month of March. As soon
15 as convenient after the board of trustees has been chosen,
16 the said trustees shall hold a meeting at the office of the
17 selectmen in the town of Kittery, and organize by the elec-
18 tion 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
25 as 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 neces-
30 sary for the better government and regulation of the munic-
31 ipal affairs within said water district, in which case, such
32 by-laws and provisions so adopted, shall extend to said water
33 district as fully, to all intents and purposes, as the other
34 provisions of this act, subject only to alterations or additions
35 by a two-thirds vote, at a legal meeting of the water district
36 called for the purpose.

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

Sect. 7. In case said trustees fail to agree with said Agamenticus Water Company upon the terms of purchase of the above mentioned property on or before June first, nineteen hundred and seven, said water district through its trustees is hereby authorized to take said plant, property and franchises as for public uses by petition therefor in the manner hereinafter provided. And said water district through its trustees is hereby authorized on or before June first, nineteen hundred and seven, to file a petition in the clerk's office of the supreme judicial court for the county of York, in term time or in vacation, addressed to any justice of said court, who after notice to said Agamenticus Water Company and its mortgagees, shall after hearing and within thirty days after the filing of said petition appoint three disinterested appraisers, one of whom shall be learned

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

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

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

71 opinion of the law court. Before said plant, property and
72 franchises are transferred in accordance with such final
73 decree, and before the payment therefor, the court sitting
74 in said county of York, by a single justice thereof as herein-
75 before provided, shall, upon motion of either party, after
76 notice and hearing, take account of all receipts and expendi-
77 tures properly had or incurred by the Agamenticus Water
78 Company belonging to the period from and after July first,
79 nineteen hundred and seven, and all the net rents and profits
80 accruing thereafter, and shall order the net balance due to
81 either party to be added or deducted from the amount to be
82 paid under said final decree, as the case may be. All findings
83 of law or fact by such single justice at such hearing shall be
84 final. On payment or tender by said water district of the
85 amount so fixed and the performance of all other terms and
86 conditions so imposed by the court, said entire plant, property
87 and franchises shall become vested in said water district and
88 be free from all liens, mortgages,, and incumbrances thereto-
89 fore created by the Agamenticus Water Company. After the
90 filing of said petition it shall not be discontinued or with-
91 drawn by said water district, and the said Agamenticus
92 Water Company may thereafterwards on its part cause said
93 valuation to be made as herein provided, and shall be entitled
94 to appropriate process to compel said water district to per-
95 form the terms of the final decree, and to pay for said plant,
96 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 :

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.

2. To provide for payment of interest on the indebtedness
12 of the district.

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 the
15 district, which sum shall be turned into a sinking fund to pro-
16 vide for the final extinguishment of the funded debt. The
17 money set aside for the sinking fund shall be devoted to the
18 retirement of the obligations of the district, or invested in
19 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,
12 and conducted according to the law relating to municipal
13 election, provided, however, that the board of selectmen shall

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

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

Sect. 14. All costs and expenses arising under the provi-
2 sions 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, March 12, 1907.

Reported by Mr. DEASY from Committee on Judiciary, and laid on table to be printed under joint rules.

F. G. FARRINGTON, *Secretary*.