

MAINE STATE LEGISLATURE

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NEW DRAFT

EIGHTIETH LEGISLATURE

HOUSE

NO. 434

House of Representatives, March 30, 1921.

Reported by Mr. Wing from Committee on Judiciary and ordered printed under joint rules.

CLYDE R. CHAPMAN, Clerk.

STATE OF MAINE

**IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND TWENTY-ONE**

AN ACT to Incorporate the Kennebunk, Kennebunkport and
Wells Water District.

Be it enacted by the People of the State of Maine, as follows:

Section 1. The territory and people constituting the towns
2 of Kennebunk, Kennebunkport and Wells, except that por-
3 tion of the town of Wells situated one mile and more north-
4 erly and westerly of the state highway through said town,
5 shall constitute a body politic and corporate under the name
6 of the Kennebunk, Kennebunkport and Wells Water Dis-
7 trict, for the purpose of supplying the inhabitants of said
8 district and said municipalities, and also the portions of
9 the town of York and the city of Biddeford now being

10 served by the York County Water Company, with pure wa-
11 ter for domestic and municipal purposes.

Sect. 2. Said district is hereby authorized, for the pur-
2 poses aforesaid, to take and hold sufficient water of any
3 surface or underground brooks, streams, springs, or ponds
4 in said district and may take and hold by purchase or other-
5 wise any land or real estate necessary for erecting dams,
6 power, reservoirs, stand-pipes, or for preserving the purity
7 of the water or watershed and for laying and maintaining
8 aqueducts for taking, discharging and disposing of water.

The provisions of sections twenty-three to twenty-six, in-
2 clusive, of chapter sixty-one of the revised statutes shall
3 apply to all land taken under this section.

Sect. 3. Said district shall be liable for all damages sus-
2 tained by persons or corporations in their property by the
3 taking of any land whatsoever, or water, or by flowage,
4 or by excavating through any land for the purpose of lay-
5 ing pipes, building dams, or constructing reservoirs, or
6 stand-pipes. If any person sustaining damage as aforesaid
7 and said corporate district shall not mutually agree upon
8 the sum to be paid therefor, such person or corporation
9 shall cause his or her or its damages to be ascertained in
10 the same manner and under the same conditions, restrictions
11 and limitations as are or may be prescribed in the case of
12 damages by the laying out of highways.

Sect. 4. Said district is hereby authorized to lay in and
2 through the streets, roads and ways in said district and in
3 the portions of the town of York and the city of Biddeford

4 above described, and across private lands therein, and to
5 maintain, repair and replace all such pipes, aqueducts and
6 fixtures as may be necessary and convenient for its cor-
7 porate purposes, and whenever said district shall lay any
8 pipe or aqueduct in any street, road or highway, it shall
9 cause the same to be done with as little obstruction as prac-
10 ticable to the public travel, and shall, at its own expense,
11 without unnecessary delay, cause the earth and pavement
12 removed by it to be replaced in proper condition.

Sect. 5. All the affairs of the said water district shall be
2 managed by a board of trustees composed of three mem-
3 bers, one chosen by the municipality of Kennebunk, one by
4 the municipality of Kennebunkport and the other by the
5 inhabitants of the municipality of Wells residing within
6 the limits of said district. The trustees chosen by the mu-
7 nicipalities of Kennebunk and Kennebunkport shall be
8 elected by ballot at their annual town meetings, respectively,
9 as town officers are elected and the trustee chosen by the
10 inhabitants of the district within the town of Wells shall
11 be elected at a meeting of said inhabitants called and held
12 in the manner provided in section fourteen of this act.

The first board of trustees shall be elected at the meeting
2 of each of said towns of Kennebunk and Kennebunkport
3 and the meeting of the inhabitants of the district in the
4 town of Wells, when this charter is accepted, which meet-
5 ing may be a special meeting called for said purpose. As
6 soon as convenient after said trustees have been chosen,

7 they shall hold a meeting at the office of the selectmen in
8 the town of Kennebunk and organize by the election of a
9 president and clerk, adopt a corporate seal, and when nec-
10 essary may choose a treasurer and all other needful offi-
11 cers and agents for the proper conduct and management
12 of the affairs of said district. At said first meeting they
13 shall determine by lot the term of office of each trustee
14 so that one shall serve for one year, one for two years and
15 one for three years; and when the term of office of a trus-
16 tee expires, the town or body which elected said trustee
17 shall elect a successor to serve the full term of three years;
18 and in case any other vacancy arises it shall be filled in like
19 manner for the unexpired term. They may also ordain and
20 establish such by-laws, not inconsistent with the laws of
21 the state, as are necessary for their own convenience and
22 the proper management of the affairs of said district. The
23 terms of office of said trustees shall begin on the first Mon-
24 day in April, but this provision shall not prevent the first
25 board of trustees from becoming such at once upon their
26 election at the meetings in which this charter is accepted.
27 The trustees shall make and publish an annual report and
28 include therein the report of the treasurer. Each trustee
29 shall receive in full compensation for his services an allow-
30 ance of two hundred dollars per annum.

Sect. 6. Said district is hereby authorized and empowered
2 to acquire by purchase or by the exercise of the right of
3 eminent domain, which right is hereby expressly delegated

4 to said district for said purpose, the entire plant, property
5 and franchises, rights and privileges now held by the York
6 County Water Company, including all lands, buildings, res-
7 idences for employeecs, pipes, stand-pipes, reservoirs, ma-
8 chinery, fixtures, hydrants, automobile, tools, apparatus and
9 appliances, owned by said York County Water Company
10 and used or usable in supplying water, and any other real
11 estate in said district, for the purposes herein set forth.

Sect. 7. In case said trustees fail to agree with said York
2 County Water Company upon the terms of purchase of
3 the above mentioned property, within three months after
4 the acceptance of this charter by the inhabitants of said
5 district as hereinafter set forth, said district, through its
6 trustees aforesaid, is hereby authorized to take said plant,
7 property, and franchises, as for public use by petition there-
8 for in the manner hereinafter provided. And said water
9 district, through its trustees, is hereby authorized at any
10 time after three months from the date of the acceptance
11 of this charter, as aforesaid, and not later than March first,
12 nineteen hundred and twenty-two, to file a petition in the
13 clerk's office of the supreme judicial court for the county
14 of York, in term time or in vacation, addressed to any jus-
15 tice of said court, who, after due notice to said York County
16 Water Company and its mortgagees, shall, after hearing
17 and within thirty days after the filing of said petition, ap-
18 point three distinterested appraisers, none of whom shall
19 be residents of the towns constituting said district, for the
20 purpose of fixing the valuation of said plant, property and

21 franchises. Said petition after being filed shall not be with-
22 drawn or dismissed except with the consent of said com-
23 pany. At the hearing aforesaid, such justice, upon motion
24 of the petitioner, may order the production and filing in
25 court, for the inspection of the petitioner, of all books and
26 papers pertinent to the issue and necessary for a full un-
27 derstanding of the matter to be heard by said appraisers,
28 the terms and conditions of so producing and filing such
29 books and papers to be determined by the justice in his
30 order therefor and to be enforced from time to time as any
31 justice of the supreme judicial court, in term time or in
32 vacation, upon motion of either party, may deem reason-
33 able and proper in the premises. At such hearing, such jus-
34 tice upon motion of the petitioner, may fixe a time at which
35 the said water company shall file in the clerk's office of the
36 supreme judicial court for the county of York, for the in-
37 spection of the petitioner, the following: First, schedules
38 showing the names, residences and water service of all cus-
39 tomers on the first day of January in the year nineteen
40 hundred and twenty-two, with the rate charged therefor;
41 second, copies of all contracts in force on said first day of
42 January; third, an itemized statement of the gross income
43 earned during its last complete fiscal year and up to said
44 January first, and all operating expenses and fixed charges,
45 paid or incurred during such period and properly charge-
46 able thereto; fourth, a memorandum of all real estate, water
47 rights, or interests therein, owned or controlled on said first
48 day of January, with such brief description thereof as will

49 reasonably identify the same; fifth, brief descriptions, spec-
50 ifications and plans of all reservoirs, mains, pipes, service
51 pipes, hydrants, gates, gate boxes, shut-off boxes, fixtures
52 and machinery and all the physical elements in such water
53 system, giving in detail quantities, sizes, lengths, and specify-
54 ing the streets, roads or ways where situated; sixth, an
55 itemized list of all tools, apparatus, appliances and supplies
56 used or usable in supplying water on said first day of Jan-
57 uary. Such orders may be enforced from time to time by
58 any justice of said supreme judicial court, in term time
59 or in vacation, upon motion of either party, as such jus-
60 tice may deem reasonable and proper in the premises. At
61 such hearing the justice then sitting may, upon motion of
62 the petitioner, make all such decrees as he deems reason-
63 able and proper to enable the petitioner, through its serv-
64 ants and employees, to ascertain the true condition of the
65 mains and pipes of the said water company, externally or
66 internally, in the presence of the officers or agents of said
67 water company, the entire expense thereof to be borne by
68 said water district.* The said appraisers shall have the pow-
69 er of compelling attendance of witnesses and the production
70 of all books, accounts and papers pertinent to the issue and
71 necessary for a full understanding by them of the matter
72 in question and may administer oaths; and any witness or
73 person in charge of such books, accounts and papers refus-
74 ing to attend or to produce the same shall be subject to
75 the same penalties and proceedings, so far as applicable, as
76 witnesses summoned to attend the supreme judicial court.

77 Depositions may be taken as in civil actions. The apprais-
78 ers so appointed shall, after notice and hearing, fix the val-
79 uation of said plant, property and franchises at what they
80 are fairly and equitably worth, so that said water company
81 shall receive just compensation for all the same. The first
82 day of January, nineteen hundred and twenty-two, shall be
83 the date as of which the valuation aforesaid shall be fixed,
84 from which date interest on said award shall run, and all
85 rents and profits accruing thereafter shall belong to said
86 water district. The report of said appraisers, or a majority
87 of them, shall be filed in said clerk's office, in term time
88 or in vacation, as soon as may be after their appointment,
89 and such single justice, or, in case of his inability to act,
90 any justice of said court appointed by the chief justice,
91 may, after notice and hearing, confirm or reject the same,
92 or recommit it if justice so requires. Before a commission
93 is issued to said appraisers either party may ask for in-
94 structions to said appraisers, and all questions of law arising
95 upon said requests for instructions, or upon any other mat-
96 ters in issue, may be reported to the law court for deter-
97 mination before the appraisers proceed to fix the valuation
98 of the property, plant and franchises of said company. Upon
99 the confirmation of said report the court so sitting shall
100 thereupon, after hearing, make final decree upon the en-
101 tire matter, including the application of the purchase
102 money and transfer of property, jurisdiction over which
103 is hereby conferred, and with the power to enforce said
104 decree as in equity cases. All findings of fact by said

105 court shall be final, but any party aggrieved may take ex-
106 ceptions as to any ruling of law so made, the same to be
107 accompanied by so much of the case as may be necessary
108 to a clear understanding of the questions raised thereby.
109 Such exceptions shall be claimed on the docket within ten
110 days after such final decree is signed, entered and filed
111 and notice thereof has been given to the parties or their
112 counsel, and said exceptions so claimed shall be made up,
113 allowed and filed within said time unless further time is
114 granted by the court, or by agreement of the parties. They
115 shall be entered at the next term of the law court to be
116 held after the filing and entry of said decree and there
117 heard unless otherwise agreed; or the law court for good
118 cause shall order further time for hearing thereon. Be-
119 fore said plant, property and franchises are transferred
120 in accordance with such final decree and before payment
121 therefor, as hereinbefore provided, such justice shall, upon
122 motion of either party, after notice and hearing, take ac-
123 count of all receipts and expenditures properly had or
124 incurred by the York County Water Company, belong-
125 ing to this period, from and after said first day of Jan-
126 uary, and all net rents and profits accruing thereafter,
127 and shall order the net balance to be added to, or deducted
128 from, the amount to be paid under such final decree, as
129 the case may be. All findings of law and fact by such jus-
130 tice at such hearing shall be final. On payment or tender
131 by said district of the amount so determined and the per-
132 formance of all the other terms and conditions so imposed

133 by said court, the entire plant, property and franchises
134 shall become vested in said water district. All of said
135 plant, property and franchises shall be taken and shall
136 vest in said district, subject to all bonds, mortgages, liens
137 and incumbrances thereon, all which bonds, mortgages,
138 liens and incumbrances shall be assumed and paid by said
139 district. The compensation to be paid to said York County
140 Water Company for said plant, property and franchises
141 shall be the difference between the valuation thereof as
142 fixed and determined by said appraisers and the aggre-
143 gate amount of such bonds, mortgages, liens and incum-
144 brances which are assumed by said district.

The appraisers may in their discretion allow an additional
2 amount to include any sum which shall represent the un-
3 amortized discount value of the outstanding bonds, if the
4 same shall be found to be a proper element in determining
5 the value of the property, and they shall be so directed by
6 the court.

Sect. 8. No authority to furnish and supply water within
2 the city of Biddeford and town of York is conferred upon
3 said district by this act except to the extent of the legal
4 rights therein now held and enjoyed by said York County
5 Water Company.

Sect. 9. All valid contracts now existing between said
2 company and any persons or corporations for supplying
3 water shall be assumed and carried out by said Kennebunk,
4 Kennebunkport and Wells Water District.

Sect. 10. For accomplishing the purposes of this act said
2 water district is hereby authorized and empowered, through
3 its trustees, to issue its bonds to an amount sufficient to
4 procure funds to pay the expenses incurred in the acquisi-
5 tion of said plant, property and franchises of said company
6 as aforesaid, for further extensions, additions and improve-
7 ments of said plant and to refund any bonds or other in-
8 debtedness assumed by said district under this act. Said
9 bonds shall be a legal obligation of said water district, which
10 is hereby declared to be a quasi-municipal corporation with-
11 in the meaning of section one hundred and five of chapter
12 fifty-one of the revised statutes of nineteen hundred and
13 sixteen and all the provisions of said section and acts
14 amendatory thereof shall be applicable thereto. The bonds
15 shall be a legal investment for savings banks. The trustees
16 may also borrow on the notes of the district such sums
17 as may be necessary to meet the current expenses of the
18 district in anticipation of the collection of water rates.

Sect. 11. All individuals, firms and corporations, whether
2 public, private or municipal, shall pay to the treasurer of
3 said district the rates established by said board of trustees
4 for the water used by them, and said rates shall be uniform
5 within the district. Said rates shall be so established as
6 to provide revenue for the following purposes:

I. To pay the current running expenses for maintaining
2 the water system and provide for such extensions and re-
3 newals as may become necessary.

II. To provide for payment of interest on the indebtedness of the district.

III. To provide each year a sum equal to not less than one or more than four per cent. of the entire indebtedness of the district, which sum shall be turned into a sinking-fund to provide for the final extinguishment of the funded debt. The money set aside for the sinking-fund shall be devoted to the retirement of the obligations of the district, or invested in such securities as savings banks are allowed to hold. Provided, however, that the trustees may, in their discretion and in lieu of the establishment of a sinking fund, issue the bonds of the district so that not less than one per centum of the amount of the bonds so issued shall mature and be retired each year.

Sect. 12. The property of said district shall be exempt from taxation.

Sect. 13. All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to the corporation hereby created.

Sect. 14. This act shall take effect when approved by a majority vote by ballot of the inhabitants of each of the towns of Kennebunk and Kennebunkport at special meetings called for the purpose and held not later than the first day of December, nineteen hundred and twenty-one, and also by a majority vote by ballot of the inhabitants of said district in said town of Wells qualified to vote in town affairs at a meeting of said inhabitants to be called and held in the manner hereinafter provided not later than said first

10 day of December. The clerk of the town of Wells, upon
11 the written application of ten or more inhabitants of said
12 district, within said town, shall issue his warrant which
13 shall be directed to any constable of said town, directing
14 him to notify and warn the inhabitants of said district within
15 said town, qualified as aforesaid, to assemble at the town
16 hall in said town, or at some other suitable and convenient
17 place, at such reasonable time as he may direct to choose
18 a moderator to preside at said meeting; to vote upon the
19 acceptance of this act; to elect a trustee of said district,
20 and to transact such other business as may properly come
21 before said meeting. Such warrant shall be posted and re-
22 turn made thereon, in the manner provided for warrants
23 for town meetings. In case said clerk shall refuse or un-
24 reasonably neglect to call such meeting, it may be called
25 by any justice of the peace in said district upon similar
26 petition. The clerk of the town of Wells shall be clerk
27 ex-officio of all meetings of the inhabitants of said district
28 in said town and shall make and preserve a record of all
29 such meetings as the records of said town are made and
30 preserved. This act shall take effect ninety days after the
31 final adjournment of the legislature so far as necessary to
32 empower the calling and holding of all of said meetings.
33 The approval of this act in the manner provided by this
34 section shall constitute an acceptance by said water dis-
35 trict of the methods of appraisal prescribed by section seven
36 hereof and shall bind said water district and said water com-
37 pany thereto.

Sect. 15. Sections two, three, four and eight of this act
2 shall be inoperative, null and void, unless said water dis-
3 trict shall first acquire by purchase, or by the exercise of
4 the right of eminent domain, as in this act provided, the
5 plant, property and franchises, rights and privileges now
6 held by the York County Water Company.

Sect. 16. 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.