

MAINE STATE LEGISLATURE

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N I N E T Y - F I R S T L E G I S L A T U R E

Legislative Document

No. 255

H. P. 464

House of Representatives, February 3, 1943.

Referred to Committee on Public Utilities. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Boyker of Bethel.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-THREE

AN ACT to Incorporate the Bethel Water District.

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

Sec. 1. Bethel Water District. Subject to the other provisions of this act, the territory and people constituting the town of Bethel, in the county of Oxford, shall constitute a public municipal corporation under the name of the "Bethel Water District" for the purpose of supplying the inhabitants of said town with pure water for domestic, sanitary, and municipal purposes.

Sec. 2. May use water for certain places. The said district, for the purpose of its incorporation, is hereby authorized to take, hold, divert, use and distribute water from Chapman brook in said Bethel, and such other sources as from time to time said district may determine to be necessary or desirable to better carry out the purposes of this act.

Sec. 3. May hold certain land for certain purposes. The said district, for the purposes of its incorporation, is hereby authorized to take and hold, as for public uses, by purchase or otherwise, any land or interest therein or water rights necessary for erecting and maintaining dams, flowage, power for pumping its water supply through its mains, reservoirs, preserving the purity of the water and water shed, laying and maintaining aque-

ducts and other structures, for taking, distributing, discharging and disposing of water and for rights of way or roadways to its sources of supply, dams, power stations, reservoirs, mains, aqueducts, structures and lands.

Sec. 4. May maintain pipes and aqueducts. The said district is hereby authorized to lay in and through the streets, roads, ways and highways of the town of Bethel and across private lands, and to maintain, repair, replace and extend all such pipes, aqueducts and fixtures as may be necessary and convenient for its corporate purposes, and whenever said district shall lay any pipe or aqueducts in any street, road, way or highway or across any private land it shall cause the same to be done with as little obstruction as practicable to the public travel and without unnecessary inconvenience to the owner of such private land, and shall at its own expense without unnecessary delay cause the earth and pavement removed by it to be replaced in proper condition.

Sec. 5. Filing of locations of lands taken by eminent domain. In exercising any right of eminent domain conferred upon it by law, from time to time, or any rights of eminent domain through or under the franchise of any water company by it acquired, the said district shall file in the office of the county commissioners of Oxford county and record in the registry of deeds in said county plans of the location of all lands or interests therein or water rights, to be taken, with an appropriate description and the names of the owners thereof, if known. If for any reason the district fails to acquire the property authorized to be taken, and which is described in such location, or the location recorded is defective or uncertain, it may, at any time, correct and perfect such location and file a new description thereof, and in such case the district is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking and the district shall not be liable for any acts which would have been justified if the original taking had been lawful. No entry shall be made on any private lands, except to make surveys, until the expiration of 10 days from such filing, whereon possession may be had of all said lands or interests therein or water rights so taken, but title thereto shall not vest in said district until payment therefor.

Sec. 6. Provisions for damages on taking of land. If any person, sustaining damages by any taking as aforesaid, shall not agree with said district upon the sum to be paid therefor, either party, upon petition to the county commissioners of Oxford county, may have said damages assessed by them; the procedure and all subsequent proceedings and right of ap-

peal thereon shall be had under the same restrictions, conditions and limitations as are or may be by law prescribed in the case of damages by the laying out of highways.

Sec. 7. Provisions if railroad is crossed by the district. In case of any crossing of a railroad, unless consent is given by the company owning or operating such railroad as to place, manner and conditions of the crossing, within 30 days after such consent is requested by said district, the public utilities commission shall determine the place, manner, and conditions of such crossing; and all work within the limits of such railroad location shall be done under the supervision and to the satisfaction of such railroad company, but at the expense of the district.

Sec. 8. Board of trustees. All the affairs of said district shall be managed by a board of trustees composed of 3 members to be appointed by the selectmen of the town of Bethel, and who shall be sworn to the faithful performance of their duties, the initial appointment to be made within 30 days after the acceptance of this act by the inhabitants of the town of Bethel as hereinafter provided, but no person shall at the same time hold the office of selectman of the town of Bethel and member of the board of trustees of said district. The compensation of such trustees for the year ending April 1 following such town meeting shall be determined by vote of the town at each annual meeting, such compensation to be paid by the Bethel Water District. As soon as convenient after the members of said board shall have been appointed, they shall hold a meeting in the town of Bethel and organize by the election of a president and a clerk, and shall adopt a corporate seal and choose a treasurer. The term of office of said trustees shall be for 3 years to terminate on the 1st day of April save that at such 1st meeting they shall designate by agreement, or upon failure to agree, by lot, the member whose term shall expire on the 1st day of April of each of the 3 years next succeeding. Vacancy occurring in said Board shall be filled by the selectmen of the town of Bethel for the unexpired term. When any trustee ceases to be a resident of the said town of Bethel, he thereby vacates the office of trustee. The said board of trustees may ordain and establish such by-laws, not inconsistent with law or regulations of the public utilities commission, as they deem necessary for their own convenience and the proper management of the affairs of the district, wherein they may make provision for all other needful officers and agents, and prescribe the tenure of all officers and agents that they may be authorized to choose, and fix the compensation of such agents and officers other than their own salaries. It shall be within the discretion of the board to choose all their officers and agents except their president from

without their own membership. The treasurer shall give bond to the district in such penal sum and with such sureties as may be prescribed and approved by the trustees.

Sec. 9. Acquisition of property of Bethel Water Company authorized.

The said Bethel Water District is hereby authorized and empowered to acquire by purchase, by the exercise of the right of eminent domain or otherwise, which right is hereby expressly delegated to said district for said purpose, the entire plants, properties, franchises, rights and privileges of the "Bethel Water Company", except their cash assets, including all stocks in other companies, lands, waters, water rights, dams, structures, reservoirs, pipes, machinery, fixtures, hydrants, tolls and all apparatus and appliances owned by said "Bethel Water Company", whether or not their aggregate value exceeds the value limit named in the charter of said company, and whether the record title thereto is or is not in said "Bethel Water Company". The said "Bethel Water Company" is hereby authorized to sell and transfer its franchises and properties to said water district. All said franchises and properties shall be taken subject to all valid debenture bonds, mortgages, liens and encumbrances thereon, all of which debenture bonds, mortgages, and liens and encumbrances shall be assumed and paid by said Bethel Water District.

Sec. 10. Procedure in case of disagreement as to price to be paid to Bethel Water Company.

If the said trustees fail to agree with said Bethel Water Company upon terms of purchase, the said water district through its trustees is hereby authorized, at any time prior to January 1st, 1948, to take all the plants, properties and franchises of said Bethel Water Company, subject, however, to all valid mortgages, liens and encumbrances thereon, as for public uses, by a petition therefor in the manner hereinafter provided, wherein said Bethel Water Company and its mortgagees shall be the parties defendant; such petition shall be filed in the office of the clerk of the superior court for the county of Oxford in term time or vacation, addressed to any justice thereof, who, after notice to said Bethel Water Company and its mortgagees, shall, after hearing and within 60 days after the filing of said petition or within such further time as said justice shall determine necessary or advisable, appoint 3 disinterested appraisers hereinafter called "board of appraisers" for the purpose of fixing the valuations respectively of the plant, property and franchises of said Bethel Water Company. Said petition shall not be dismissed after filing, but may and shall be amended in any manner required to enable the court to make all necessary decrees thereon. Such justice of the superior court upon motion of the petitioner, if the same are not voluntarily produced, may

order under proper terms the production for inspection by the petitioner, of all books and papers pertinent to the issues to be heard by said appraisers. The said appraisers shall have the power of compelling attendance of witnesses and the production of books and papers pertinent to the issue and may administer oaths; and any witnesses or person in charge of such books or papers refusing to attend or to produce the same shall be subject to the same penalties and proceedings, so far as applicable, as witnesses summoned to attend the superior court. Depositions may be taken as in civil actions. The report of a stenographer, appointed by the appraisers, certified by said appraisers as correct, shall be filed with the award to be made by said appraisers and shall be legal evidence of all proceedings so reported. The appraisers so appointed, shall, after due notice and hearing, fix the respective valuations of the plants, properties and franchises of said Bethel Water Company at what they are fairly and equitably worth, so that said Bethel Water Company shall receive just compensation for the same. The 1st day of January preceding the date of such appraisal shall be the date as of which the valuations aforesaid shall be fixed, from which date interest on said award at the rate of 6% per annum shall run and all net rents and profits accruing thereafter shall belong to said Bethel Water District. The report of said appraisers or of a majority of them, shall be filed in the office of the clerk of said superior court within 6 months after their appointment, unless the time is extended by the court for cause. After said report is filed, such single justice, so appointing said appraisers, or in case of his inability to act, then any justice designated for the purpose, by the chief justice, may after notice and hearing, confirm or reject the same or recommit, if justice so requires, and in case of such rejection or recommitment such justice may order new hearing and new report thereon. The award of the appraisers shall be conclusive as to valuations. Upon the confirmation of their report, the court so sitting, in term time or vacation, shall thereupon, after hearing, make decree upon the whole matter, including provisions for the transfer of the properties and franchises, fix the time within which said trustees may accept said award and acquire said property or forfeit all rights of acquisition of such property as herein provided, jurisdiction over which is hereby conferred with the same power to enforce said decree as in equity cases. All the costs and expenses arising under such petition and appraisal shall be paid and borne as may be decreed by the court. The findings of such justice as to such costs and expenses and their apportionment shall be final. In all other matters the justice making such decree, shall, upon request of any of the parties, make separate findings of law and fact. All such findings of fact shall be final, but any party aggrieved may take exceptions to any rulings of law so

made, the same to be accompanied only by such parts of the case as are necessary to a clear understanding of the questions raised thereby. Unless the time is extended by the court such exceptions shall be claimed on the docket within 10 days after such final decree is signed, entered and filed, and notice thereof has been given by the clerk to the parties or their counsel, and said exceptions so claimed shall be made up, allowed and filed within said time unless further time is granted by the court or by agreement of the parties. They shall be entered at the next term of the law court to be held after the filing of such exceptions and there heard unless otherwise agreed, or the law court shall for good cause order a further time for hearing thereon. Upon such hearing the law court may confirm, reverse or modify the decree of the court below, or remand the cause for further proceedings as it deems proper. During the pendency of such exceptions the cause shall remain on the docket of the court below marked "law" and decree shall be entered thereon by a single justice, in term time or in vacation, in accordance with the certificate and opinion of the law court. Before the aforesaid plants, properties and franchises, or any of them, are transferred in accordance with such decree, and before the payment therefor, the court sitting in said county of Oxford, or a single justice thereof, as hereinbefore provided, shall, upon motion of any party, after notice and hearing, take account of all receipts and expenditures properly had and incurred by said Bethel Water Company during the period from and after January 1st preceding the date of said appraisal, and all net rents and profits accruing thereafter, and shall order the net balance due to any party to be added to or deducted from the amount to be paid under said final decree as the case may be. All findings of fact by such single justice at such hearings shall be final. On payment or tender by said Bethel Water District of the amounts so fixed and the performance of all other terms and conditions so imposed by the court, the entire plants, properties and franchises respectively of said Bethel Water Company, shall become vested in Bethel Water District, subject to all valid liens, mortgages and encumbrances theretofore created by said Bethel Water Company. If a vacancy occurs at any time in said board of appraisers, from any cause, any justice of the superior court, may, in term time or in vacation, after notice and hearing, appoint a new appraiser or appraisers, and make all such orders for hearing said cause by the appraisers, anew or for any extension of time for making their award, or otherwise, as the circumstances of the case may require.

Sec. 11. Prior contracts to be assumed. All valid contracts of said Bethel Water Company existing at the time of the filing of such petition

shall, subject to the other provisions of this act, be assumed by said Bethel Water District.

Sec. 12. Power to issue notes and bonds. For accomplishing the purpose of this act, said Bethel Water District, through its trustees, is authorized to borrow money temporarily and to issue therefor the interest-bearing negotiable notes of the district, and for the purposes of refunding the indebtedness so created, of paying any necessary expenses and liabilities, incurred under the provisions of this act, including the expenses incurred in the creation of the district, in acquiring the properties and franchises of the Bethel Water Company, of assuming and paying the mortgages, liens and encumbrances thereon, of securing sources of supply, taking water and land, paying damages, laying pipes, constructing, maintaining and operating a water plant, and making renewals, extensions, additions and improvements to the same, the said Bethel Water District, through its trustees, may subject to the general provisions of law applicable thereto, from time to time issue bonds of the district, in such amount or amounts as in the judgment of the trustees may be necessary. Said notes and bonds shall be legal obligations of said Bethel Water District, which is hereby declared to be a quasi municipal corporation within the meaning of section 116 of chapter 56 of the revised statutes of 1930, and all the provisions of said section shall be applicable thereto. The said notes and bonds shall be legal investments for savings banks.

Sec. 13. Rates. All individuals, firms, and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates established by said board of trustees and approved by the public utilities commission. The said rates shall be so established as to provide revenue for the following purposes:

I. To pay the current expenses for operating and maintaining the water system.

II. To provide for the payment of the interest on the indebtedness created or assumed by the district.

III. To provide each year a sum equal to not less than 2% of the entire indebtedness created or assumed by the district, which sum shall be turned into a sinking fund and there kept to provide for the extinguishment of such indebtedness. 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.

IV. Any surplus remaining at the end of the year may be carried as a

special reserve fund, added to the sinking fund, or paid to the town of Bethel as the trustees may determine.

Sec. 14. Incidental powers granted. All incidental powers, rights, and privileges necessary to the accomplishment of the main object herein set forth are granted to the public municipal corporation hereby created.

Sec. 15. Exemption from taxation. The property of said district shall be exempt from all taxation.

Sec. 16. Duration of act. If said Bethel Water District shall, within 6 years from the effective date of this act, fail to acquire the plant, properties, franchises, rights, and privileges owned by the Bethel Water Company either by purchase, the exercise of right of eminent domain or otherwise, this act shall become null and void.

Sec. 17. Effective date of act; referendum. This act shall take effect 90 days after the adjournment of the legislature for the purpose of permitting its submission to the legal voters of the said town of Bethel at a special election to be called and held at such time as the selectmen of the town of Bethel shall determine, but not later than the 1st day of April, 1944. Such special election shall be called, warned, and conducted according to the law relating to municipal elections. The ballot to be used at said election shall bear the question, "Shall the act 'to Incorporate the Bethel Water District' be accepted?" and the voters shall indicate their preference by placing a cross against the word "Yes" or "No" following the question. The vote shall be counted and the result declared by the selectmen in open town meeting, and certificate of the result shall be filed with the secretary of state by the town clerk within 7 days after said election.

This act shall take effect for all the purposes of this act immediately upon the acceptance of this act by a majority of the legal voters voting at said election.