

MAINE STATE LEGISLATURE

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

Legislative Document**No. 425**

S. P. 184

In Senate, February 5, 1953.

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

CHESTER T. WINSLOW, Secretary.

Presented by Senator Dennett of York.

STATE OF MAINE

**IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-THREE**

AN ACT to Incorporate the Kittery Sewer District.

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

Sec. 1. Territorial limits; name; purposes. That part of the territory of the town of Kittery, in the county of York, which is bounded and described as follows: On the west by the Piscataqua river; on the south by the Piscataqua river; on the east by the Piscataqua river and Spruce Creek; and on the north by the interstate highway and highway No. 1, and the inhabitants within said territory, shall constitute a body politic and corporate, under the name of "Kittery Sewer District," for the purpose of providing a system of sewerage and drainage for public purposes and for the health, comfort and convenience of the inhabitants of said district.

Sec. 2. Authority to acquire and hold property; right of eminent domain conferred. For the purpose of providing a system of sewers and drainage for the comfort, convenience and health of the inhabitants of said district, the said district, by its trustees, is hereby authorized and empowered to acquire and hold real estate and personal estate necessary and convenient for the purposes aforesaid, and is hereby authorized to take and hold by purchase, lease or the exercise of the right of eminent domain, as hereinafter provided, or otherwise, any land or real estate or easement therein necessary for forming basins, reservoirs and outlets; for erection of buildings for

pumping works, and for laying pipes and maintaining same and for laying and maintaining conduits for carrying and collecting, discharging and disposing of sewerage matter and waters and for other objects necessary, convenient and proper for the purposes of this act. Provided, however, nothing herein contained shall be construed as authorizing said district to take by right of eminent domain any of the property or facilities of any other public service corporation or district used or acquired for future use by the owner thereof in the performance of a public duty, unless expressly authorized thereto herein or by subsequent act of the legislature.

Sec. 3. Procedure in exercise of right of eminent domain and crossing public utilities. The trustees of said district may exercise the right of eminent domain vested in said district for the purposes of this act after hearing, notice of the time and place of said hearing having been given by publication in 2 weekly papers published in the county of York, for 2 weeks previous to the time appointed for said hearing, and the clerk of said district shall keep a record of their proceedings, and their determination and decision, which shall set forth a description of the land or easement taken, and the owners, if known, and the amount of damages awarded therefor, and upon the signing of said record by said trustees, and the filing of the same in the registry of deeds for the county of York, said trustees may enter upon such land and take possession of the same, or an easement therein, as the case may be, for the purposes of this act. Any person aggrieved by the decision of said trustees, so far as it relates to the damages for land or easements therein so taken, shall have the same rights of appeal as are provided in the case of the laying out of town ways.

In case of any crossing of any public utility, unless consent is given by the company owning or operating such public utility as to place, manner, and conditions of the crossing within 30 days after such consent is requested by such district, the public utilities commission shall determine the place, manner and conditions of such crossing; and all work on the property of such public utilities shall be done under the supervision and to the satisfaction of such public utility, but at the expense of the district.

Sec. 4. Right to lay pipes and other particular rights enumerated. Said district may lay pipes and construct conduits in manner aforesaid in and through said district to and into any stream or water course within the town of Kittery, the discharge therefrom to be such point or points in any stream or watercourse as shall be most reasonable and convenient for said district, and convey through the same, sewerage, surface water and the natural flowage of existing water courses, and secure and maintain basins, reservoirs and outlets; may build and maintain pumping stations and build-

ings convenient for same; may construct and maintain flush tanks, manholes, lamp-holes, and such usual appliances for collecting, holding, distributing and disposing of sewerage matters; may provide water for such flush tanks and for flushing said system of sewers and for any other purposes for which said district may deem the same desirable, and install all pipes and necessary structures and appliances to this end; may establish through and by its trustees regulations for the use of sewers and fix and collect the prices to be paid for entering same, and also the annual rentals for the use thereof; and said district is hereby authorized for the purposes aforesaid, to lay down, in and through the streets, highways and land of said district, and take up, replace and repair all such conduits, pipes and fixtures as may be necessary or desirable for the objects of its incorporation; to carry and lay conduits and pipes under any water course, way, public or private, or railroad, in the manner prescribed by law, and to cross any drain or sewer, or, if necessary, to change its direction in such a manner as not to obstruct the use thereof, and to enter and dig up any such streets, road or way, for the purpose of laying pipes beneath the surface thereof, for playing manholes or other fixtures and for maintaining or repairing the same, and in general to do any other acts or things necessary, convenient and proper to be done for the purpose of this act. Provided, however, that said district shall not construct any system of drainage or sewerage, without first having submitted its plans to the public utilities commission and obtained its approval therefor, under power vested in said commission.

Sec. 5. Revised statutes of 1944, chapter 84, §§ 133 to 155 made applicable; trustees and other officers to have same powers as municipal officers; other powers of trustees. In respect to the manner of constructing drains and sewers in said district, the assessment of abutting owners for the cost of the same and the collection of said assessments, the issuing of permits and in respect to all other matters covered by the sections herein referred to, the trustees of said district shall be governed by the provisions of sections 133 to 155, inclusive, of chapter 84 of the revised statutes of 1944 and all acts amendatory thereof, and the district is hereby granted the same power and authority in said premises as have the municipal officers of cities and towns in like cases, and the words "town clerk," in said sections, shall be construed to mean the clerk of said district, and the inhabitants of said district shall have the same rights and privileges, and be subject to the same regulations and restrictions, as are now granted to and imposed upon individuals under said sections. In the application of said sections 133 to 155, the trustees of the said district shall perform all the acts and duties and be subject to all responsibilities of municipal officers, as is provided by said sections.

Said trustees shall have the power to determine when and where in said district sewerage facilities are most needed, and how said sewers shall be built; where, when, and what repairs, renewals, and extensions are necessary, and how the same shall be built, and their decision in such matters, except as is otherwise provided in the sections above referred to, shall be final. It is provided, however, that the municipal officers of said town may make written recommendation to the trustees of said district regarding sewerage necessities in said district.

Sec. 6. Trustees authorized to employ engineers and laborers and to make contracts. In prosecuting the work contemplated by this act, said trustees may engage the services of engineers and laborers; may purchase all necessary material and supplies, and construct said drains and sewers under their own supervision, or they may, if they deem it advantageous, contract with some responsible person, firm or corporation for the construction of said drains and sewers, but said district shall in no case be released from liability, by reason of having contracted with any person, firm or corporation as provided above for the construction of any sewer, drain or other structure.

Sec. 7. Trustees not to be interested in contracts of said district. It is further provided that no person, while he is a trustee of said district, shall be interested, either directly or indirectly, in any contract or agreement for the construction of any sewer, drain or other structure, in said district, entered into by said district. This provision, however, shall not prevent said district from entering upon, or taking land, or any easement therein, of any officer of said district while he is such an officer, and awarding damages therefor, if, in the opinion of said trustees, such entering or taking is necessary for the purposes of said district.

Sec. 8. Excavations and repair work; property to be left in good condition; liability for damages; closing of streets. Whenever said district shall enter, dig up or excavate any street, way or highway, or other land within said district for the purpose of laying pipes or conduits, constructing manholes or catch-basins, or for the purpose of taking up, repairing, extending or maintaining any sewer, drain, manhole, catch-basin or other structure, or for any other purpose, said street, highway, way or other land shall, at the completion of the work of said district, be returned to the condition said street, way, highway or other land was in prior to the work of said district, or to a condition equally good, and said district shall be liable to any person, firm or corporation injured or damaged by any fault of said district or its servants or agents, or by reason of any defect in any way, street or highway occasioned by the construction of any of the works of said district, either

during such construction or after the same has been completed, or while the same shall be undergoing repairs or extensions are being made; and said district shall be liable to the town of Kittery for any and all costs, damages and expenses which said town may suffer, or be put to, by reason of the default, neglect, negligence, or carelessness of said district or any of its officers, servants or agents in creating, maintaining, repairing or extending said sewerage system.

Where the character of the work of said district is such as to endanger travel on any street or way, said town of Kittery shall direct the temporary closing of such streets or way, and of intersecting streets or ways, upon request of said district, and such streets or ways shall remain closed to public traffic until the work of said district is completed and the surfaces if said streets or ways are restored to a proper condition, as hereinbefore set forth.

Sec. 9. Abutting owners have right to enter. Said district at all times, after it shall commence receiving pay for the facilities supplied by it, shall be bound to permit the owners of all premises abutting upon its lines of pipes and conduits to enter the same with all proper sewerage upon conformity to the rules and regulations of said Kittery Sewer District and payment of the prices and rentals established therefor.

Sec. 10. Sanitary provisions and penalty for violation. Any person who shall place or leave any offensive or injurious matter or material on or in the conduits, catch-basins or receptacles of said district contrary to its regulations, or shall wilfully injure any conduit, pipe, reservoir, flush tank, catch-basin, manhole, lamp-hole, outlet, engine, pump or other property held, owned or used by said district for the purposes of this act, shall be liable to pay twice the amount of the damages to said district to be recovered in any proper action; and such person, on conviction of either of said acts of wilful injury aforesaid, shall be punished by a fine not exceeding \$200 and by imprisonment not exceeding 1 year.

Sec. 11. Trustees; election of; tenure of office; vacancies; 1st meeting and organization of board; annual report. All the affairs of said district shall be managed by a board of 3 trustees, residents therein, who shall be elected by written ballot by plurality vote of the persons therein legally qualified to vote in town meetings. They shall hold office for the term of 3 years and until their respective successors are chosen and qualified; except, however, as hereinafter provided. Vacancies shall be filled for the unexpired term as hereinafter in this section provided.

All nominations of candidates so to be voted for shall be made by nomination papers signed in the aggregate for each candidate by no less than 15

qualified voters of said district. Each voter signing a nomination paper shall make his signature in person, and add to it his place of residence, and each voter may subscribe to as many nomination papers as there are trustees to be elected in said district, and no more. Such nomination papers shall, before being filed, be submitted to the town clerk of said town of Kittery, who shall forthwith certify thereon what number of the signatures are names of qualified voters in said district. One of the signers to each such separate paper shall swear to the truth thereof, and the certificate of such oath shall be annexed to, or made upon, the nomination papers. Such nomination papers shall be filed with said town clerk at least 7 days, exclusive of Sundays, previous to the day of such election. With such nomination papers shall also be filed, in writing, the consent of the person or persons nominated.

All nomination papers filed, which are in apparent conformity with the foregoing provisions, shall be deemed to be valid; and if not in apparent conformity, they may be seasonably amended, under oath.

The ballot in said district for the election of trustees shall contain the names of all candidates so nominated in said district, printed in 1 column, under the heading "For Trustees of the Kittery Sewer District," and at the 1st election above such heading shall be printed: "Vote for 1 for 1 year, 1 for 2 years and 1 for 3 years," which shall be changed to conform to the necessities of each election thereafter, depending upon the number of trustees to be elected. As many blank spaces shall be left after the names of the candidates as there are trustees to be elected, in which the voter may insert the name of any person for whom he desires to vote. In preparing his ballot, the voter shall mark a cross or check mark against and to the right of such names on said ballots as he desires to vote for, not to exceed the number of trustees so to be elected in said district. The result of such election shall be declared by the municipal officers of the town of Kittery, and due certificate thereof filed with the town clerk.

The first board of trustees shall be elected at the meeting called for the acceptance of this act, 1 to serve until the 1st annual meeting of the district, 1 until the 2nd and 1 until the 3rd such meeting. Thereafterward, 1 member shall be chosen at each annual meeting to serve for the term of 3 years. If a vacancy occurs in said board more than 3 months before the date of the next succeeding annual meeting, a special meeting shall be called to fill the vacancy, and all vacancies existing at the date of an annual meeting shall then be filled.

As soon as convenient after said 1st election, the trustees shall hold a meeting at some convenient place in the district to be called by any member

thereof in writing designating the time and place and delivered in hand to the other 2 members not less than 2 full days before the meeting; provided, however, that they may meet by agreement without such notice. They shall then organize by the election of a chairman and clerk from their own number, adopt a corporate seal and by-laws, and perform any other acts within the powers delegated to them by law. When necessary they may choose a treasurer and other needful officers and agents who shall serve at their pleasure. The treasurer shall furnish bond in such sum and with sureties as they may approve. Members of the board shall be eligible to any office under the board, but shall not receive any compensation therefor, except as trustees, unless authorized by vote of the district. The compensation of the trustees shall be \$50 each per year unless otherwise provided by vote of the district.

The trustees shall be sworn to the faithful performance of their duties as such, which shall include the duties of any member as clerk or clerk pro tem. They shall make and publish an annual report including a report of the treasurer.

Sec. 12. Annual meeting 2nd Monday in March; qualification of voters of district. The annual meeting of the district shall be held in the district on the 2nd Monday of March in each year at such hour and place as may be designated by resolution of the board of trustees as provided in the by-laws. Notice thereof, signed by the chairman or clerk of the board, shall be conspicuously posted in 2 public places within the district, not less than 7 days before the meeting. Special meetings may be called by the board in like manner at any time, and notice of special meetings shall state the business to be transacted thereat. Eleven persons qualified to vote in such meetings shall constitute a quorum. If for any reason an annual meeting is not held on the above date, a meeting in lieu thereof may be called in like manner to be held within 3 months from said date.

All persons resident in said district and qualified to vote for governor under the laws of this state shall be entitled to vote in any meeting of the district, including the meeting for acceptance of this charter.

Sec. 13. Trustees granted certain powers of selectmen. After the meeting for acceptance of this charter, the trustees shall have the same powers and perform the same duties as otherwise are exercised and performed by the selectmen of towns in correcting and preparing lists of the persons qualified to vote in said district, and for that purpose they shall be in session at the office of the said sewer district between the hours of 10 o'clock in the forenoon and 12 o'clock noon of the secular day next before the date of

every meeting; and 2 hours next before the opening of the meeting; and notice thereof shall be given in the call for the meeting. All meetings of the district shall be presided over by a moderator chosen in the same manner and with the same authority as moderators of town meetings.

Sec. 14. District and town authorized to make contracts. Said district through its trustees is authorized to contract with persons and corporations including the town of Kittery, and said town of Kittery is authorized to contract with it for the collection, discharge and disposition of sewage or other waste matter.

Sec. 15. Authorized to acquire sewerage systems owned by the town of Kittery or by any other corporation, individual or group of individuals; right of eminent domain conferred. Said sewer 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 district for said purpose, the entire plant and property of the sewage systems owned by the town of Kittery or by any other corporation, individual or group of individuals; and the town of Kittery is hereby authorized and empowered to sell its said sewage plant and system to said district; provided the voters in said town shall at a town meeting legally called, notified and held, legally vote to do so.

Sec. 16. Property tax exempt. The property, rights and franchises of said district shall be forever exempt from taxation.

Sec. 17. Authority to borrow money. For accomplishing the purposes of this act and for such other expenses as may be necessary for the carrying out of said purposes, said district, through its trustees, without district vote is authorized to issue its notes and bonds in one series or in separate series from time to time and to make subsequent renewals of the same in whole or in part to an amount not exceeding the sum of \$250,000. Said notes and bonds shall be a legal obligation of said district, shall be a legal investment for savings banks in the state of Maine, and shall be exempt from all present taxes. Each bond or note shall have inscribed on its face the words "Kittery Sewer District Bond" or "Kittery Sewer District Note" as the case may be, and shall bear interest at such rates as the trustees shall determine. If said bonds be issued from time to time, each authorized issue shall constitute a separate loan. Each loan shall be payable in annual amounts of principal, beginning not more than 1 year from its date and made to run for such period as said trustees shall determine.

All bonds or notes issued by said district shall bear the district seal, and shall be signed by the treasurer and countersigned by the chairman of the

board of trustees of said district, and if coupon bonds be issued, each coupon shall bear the facsimile signature of the treasurer.

All bonds issued by said district may be issued with or without provisions for calling the same for payment before maturity, and in case of such call provisions, with or without providing for the payment of a premium of not exceeding 5% of the principal upon such call. Said notes and bonds shall be legal obligations of said district which is hereby declared to be a quasi-municipal corporation within the meaning of sections 132 and 133 of chapter 49 of the revised statutes of 1944. The said notes and bonds shall be legal investments for savings banks.

Sec. 18. Sinking fund provided for; issue of refunding bonds authorized. In case any of said bonds are made to run for a period of years, a sinking fund shall be established by the trustees of said district for the purpose of redeeming said term bonds when they become due, and not less than 3% of the aggregate principal of the outstanding sinking fund bonds issued on account of or in behalf of said sewerage district, as aforesaid, shall be turned into said sinking fund each year, to provide for the final extinguishment of said district funded debt.

The money set aside for the sinking fund shall be devoted to the retirement of said notes and bonds, and shall be used for no other purpose, and shall be invested in such securities as savings banks are allowed to hold.

All sums of money received or recovered by said trustees by reason of any assessment upon the person or property of individuals in said district shall be added to said sinking fund, or used for the payment of notes or temporary loans.

Whenever any bonds of said district become due, or can be purchased by said trustees on favorable terms, said trustees shall, if sufficient funds have accumulated in said sinking fund, redeem or purchase said bonds, and cancel them. In no case shall bonds so canceled or redeemed be reissued.

In case the amount in said sinking fund shall not be sufficient to pay the total amount of the bonds falling due at any one time authority to issue new bonds sufficient to redeem so many of said bonds as cannot be redeemed from the sinking fund is hereby granted to said district.

Sec. 19. Rates; application of revenue; sinking fund; incidental powers granted. All individuals, firms and corporations, whether private, public or municipal, shall pay to the treasurer of said district the rates and assessments established by said trustees to pay for the cost of the sewer system and for the service used by them; and said rates shall not be discriminatory

within the territory supplied by the district. 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 sewerage system.
- II. To provide for the payment of the interest on the indebtedness created or assumed by the district.
- III. To pay for such extensions and renewals as may become necessary.
- IV. To provide each year a sum equal to not less than 3% of the entire indebtedness created or assumed by the district, which sum shall be turned into the sinking fund to provide for the extinguishment of said indebtedness. 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 1% of the amount of the bonds so issued shall mature and be retired each year.
- V. If any surplus remains at the end of the year, it may be turned into the sinking fund.

All incidental powers, rights and privileges necessary to the accomplishment of the main object herein set forth are granted to said district.

Sec. 20. Saving clause. Nothing herein contained is intended to repeal, or shall be construed as repealing, the whole or any part of any existing statute, and all rights and duties herein mentioned shall be exercised and performed in accordance with all the applicable provisions of chapter 40 of the revised statutes of 1944, and all acts amendatory thereof or additional thereto.

Sec. 21. Local referendum provided for; procedure of election; form of question; certificate to secretary of state. This act shall take effect 90 days after adjournment of the legislature, only for the purpose of permitting its submission to the legal voters within said district, voting by ballot at an election to be specially called and held for the purpose within 60 days of the effective date of this act. The board of selectmen of the town of Kittery shall call said election to be held upon a date to be specified in writing by them. Said board of selectmen shall make and provide a separate check list for such of the voters within said district as are then legal voters therein, and all warrants issued to said district shall be varied accordingly to show that only such voters therein are entitled to vote thereon. Such election shall be called, advertised and conducted according to the law relating to municipal elections; providing, however, that the selectmen shall not be re-

quired to prepare nor the town clerk to post a new check list of voters, and for this purpose said board shall be in session the 2 secular days next preceding such election, the 1st day thereof to be devoted to the registration of voters and the last day to enable the board to verify the corrections of said list and to complete and close up the records of said sessions. The town clerk shall reduce the subject matter of this act to the following question: "Shall the Act to Incorporate the Kittery Sewer District be accepted?" and the voters shall incideate by depositing a ballot in the ballot box with the word "Yes" or "No" on the same, their opinion of the same. The result shall be declared in open meeting and due certificate thereof filed by the town clerk with the secretary of state.

This act shall take effect for all the purposes thereof immediately upon its acceptance by a majority vote of the legal voters voting at said election; provided that the total number of votes cast for and against the acceptance of this act at said election equals or exceeds 20% of the total number of the qualified voters within said district.

If the majority of the votes cast shall be in the affirmative, said voters shall then proceed by written ballot to elect a board of trustees of said district as provided in section 11 of this act. Twenty per cent of the qualified voters of said district shall constitute a quorum for the purposes of this election, but a less number may adjourn from time to time not exceeding 7 days at one time.