

or for part cash and a mortgage to run from the purchaser to the Commonwealth. When the terms and conditions of such sale shall have been agreed upon and approved, the Department of Justice is hereby authorized and directed to execute and deliver a deed or other appropriate document conveying or transferring the property. Any such conveyance or transfer shall be free and clear of all liens and encumbrances in favor of the Commonwealth, except the lien of a purchase money mortgage, if any, contemporaneously executed and delivered to the Commonwealth.

Department of
Justice to execute
deed.

Liens and
encumbrances.

Section 4. It shall be unlawful for any State officer or employe, or any member of the family of such officer or employe, to purchase, directly or indirectly, any property acquired by the Commonwealth at a judicial sale under the provisions of this act.

Purchase by
State officer or
employe
prohibited.

Section 5. This act shall become effective on the first day of June, one thousand nine hundred and thirty-one.

Effective date.

APPROVED—The 29th day of May, A. D. 1931.

GIFFORD PINCHOT

No. 128

AN ACT

Providing for the creation and incorporation as municipal corporations, and for the management and operation, of water supply districts to furnish and supply water to the public residing therein and to public and private corporations and the Commonwealth, and its agencies, through the construction of water-works and facilities, and/or the acquisition of the property, water-works, rights, and franchises of public and private corporations, copartnerships, associations, and individuals furnishing and supplying water to the public in said districts; prescribing the powers and duties of such districts, and the officers thereof; conferring jurisdiction on courts of common pleas in connection therewith; and imposing certain costs and charges preliminarily on counties.

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ARTICLE I

PRELIMINARY PROVISIONS

Section 1. Definitions.—Be it enacted, &c., That—

The word “districts,” as used in this act, shall be construed to mean water supply districts created and incorporated as municipal corporations in the Commonwealth of Pennsylvania, and managed and operated in accordance with the provisions of this act and any amendments and supplements thereto.

The word “municipality,” if, and when, used in this act, may be construed to mean and include a county, city, borough, incorporated town, poor district, school district or township now existing or hereafter created.

The word “board,” as used in this act, shall be construed to mean the board of directors, constituted and appointed under this act, to govern and manage the affairs of any water district created in accordance with this act.

The word “company,” as used in this act, shall be construed to mean any person, co-partnership, association, and/or corporation engaged in a public utility business for the storage and/or supply of water to the public.

The word “court,” as used in this act, shall be construed to include the court of common pleas of the county wherein reside the greater number of consumers

and other patrons to be supplied with water by the district proposed to be created and incorporated in accordance with the provisions of this act.

The words "owner" or "owners" shall be construed to mean and include any individual or individuals, association or associations, co-partnership or co-partnerships, corporation or corporations, or municipality or municipalities, who own, in whole or in part, any property or works in use or usable for the purpose of furnishing and supplying water to the public in the Commonwealth of Pennsylvania, and the acquisition of which is desired by a water supply district.

The words "property and works," as used in this act, shall be construed to mean and include a plant or plants, property, franchises, real estate, contracts, leases, personal property, rights, privileges, easements, water rights, water sheds, water courses, reservoirs, dams, conduits, pipes, channels and all and every other matter or thing used for the storage and/or supply of water to the public.

Section 2. Short Title.—This act shall be known, and may be cited, as "The Water Supply District Law."

Section 3. Constitutional Construction.—The provisions of this act are severable and, if any provisions hereof are held to be unconstitutional, the decision so holding shall not be construed to affect or impair the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

ARTICLE II

CREATION AND INCORPORATION OF WATER SUPPLY DISTRICTS

(a) Procedure to Create Districts

Section 20. Jurisdiction of Courts.—That the several courts of common pleas within this Commonwealth shall have power in manner provided by law to create and incorporate as municipal corporations what shall be known as "Water Supply Districts," without regard to the population thereof, provided that the petition or petitions hereinafter described for the creation or incorporation of any water supply district shall be presented to the court of common pleas of the county or that part thereof embraced in proposed district in which are located at the time of filing said petition or petitions the greater number of the consumers then being supplied with water service in said contemplated or proposed water supply district.

Each of said courts, as hereinbefore defined, of any county of the Commonwealth shall have power and jurisdiction to create and incorporate a district or districts which may be co-extensive in territory with the

county of such court or include only part of such county or a part of such county and a part or parts of one or more other counties which can, in the opinion of the court, reasonably and conveniently be created a district. The territory of such a district need not be contiguous if it is so situate that, in the opinion of the court, it can reasonably be included in the territory comprising a proposed district. Upon the creation of any such district, the said court shall have jurisdiction co-extensive with the boundaries and limits of said district of all matters and affairs properly coming before said court concerning said district.

Section 21. Petition for the Creation of a District; Bond of Petitioners.—A petition to create such a district, to be signed, either (a) by at least five hundred (500) owners of real estate in the district proposed to be created, or (b) by owners of real estate equal in assessed value to at least one-half of the assessed value of real estate as shown by the last preceding revised assessment for county purposes in the district proposed to be created, may be filed as hereinafter provided.

Such petition shall set forth:

- (a) The name of the proposed district;
- (b) A general description of the territory to be included in the proposed district. The description need not be given by metes and bounds, but shall be deemed sufficient if described by the corporate names of the municipalities or parts thereof to be included;
- (c) A statement of the reasons for the creation of such district;
- (d) A prayer of the petitioners for the creation of the district.

Several petitions may be prepared and filed for the creation of the same district which may be considered together for such proceeding as one petition. Additional petitions may be filed, prior to the time fixed for the hearing of any such original petition, which may be considered as though filed with, and a part of, the petition first placed on file.

Each petition shall be sworn to by at least one of the petitioners circulating the same, averring that to the best of his knowledge the signatures on such petition are bona fide and that the signers are owners of real estate within said contemplated or proposed district. Said petitions shall be filed with the prothonotary of said court or judge thereof in chambers.

At the time of the filing of the original petition or petitions in said proceeding, a bond shall be furnished by one or more of said petitioners, with sufficient security, in an amount to be fixed by said court, or any judge thereof in chambers, conditioned for the payment of all court costs and expenses in connection with said matter in the event of a dismissal by said court, or on

appeal of said petition or petitions, which bond when approved by the court, or judge thereof, as aforesaid, shall be filed in the office of prothonotary of said court.

Section 22. Ascertainment of Validity of Petitions.—In determining whether sufficient owners of real estate, either in number or value, as provided by section twenty-one of this act, have signed any such petition or petitions, the court shall be governed by the names of owners of real estate as they appear on the last adjusted county assessment tax records, available at the time such petitions were filed. When any petition or several petitions together are insufficiently signed by genuine signatures, as required by this act, the same may be dismissed by the court without prejudice to the filing of a petition or petitions for a proceeding *de novo*.

No petition or petitions containing the requisite number of genuine signatures shall be dismissed by the court on account of defects, but the court may, at any time, permit any such petition or petitions to be amended in form and substance to conform to the facts and the requirements of this act.

Section 23. Notice of Filing Petition and Hearing.—The court or any judge thereof in chambers, upon application of counsel for the petitioners, shall fix a place and time for a hearing on any such petition or petitions, which time of hearing shall be fixed not less than thirty days from said presentation, and said hearing may be before said court or any law judge thereof. Notice of such hearing shall be given by the petitioners once a week for three consecutive weeks in at least two newspapers of general circulation published in the county of the court having jurisdiction, and in the legal journal, if any, designated by rule of said court for the publication of legal notices, of the filing of the petition, and of the time and place fixed for hearing thereon.

Section 24. Objections to Creation and Incorporation of Districts.—Objections to the creation of any district so petitioned for, giving the reasons therefor, may be made by any owner of real estate or any party in interest, in writing, filed with the prothonotary of such court, at least ten days before the day set by the court for hearing.

Section 25. Hearings, Decrees, Appeals, and Bond.—When any such petition or petitions comes to a hearing, the matter shall be advanced by the court, or law judge thereof, before whom said hearing is being had, without unnecessary delay. Upon the conclusion of the hearing, if there shall appear to the court, after considering all the evidence, that the objections to the petition or petitions, if any, are not well founded, in fact or law, and that the purposes of

this act will be subserved and the general welfare and best interests of the public within the contemplated district, as regards a proper and adequate water service at reasonable rates to the consumers of said water, will be promoted by granting the prayer of the petitioners, the court shall decree the creation and incorporation of a water supply district, fixing its corporate name and the boundaries thereof, and decree such district to be a municipal corporation under the constitution and laws of this Commonwealth.

When a district is so created or incorporated the costs of the proceeding shall be paid by the county in which said petition has been filed, which county shall be fully reimbursed said costs, with legal interest thereon, by the district as soon as sufficient funds thereof become available.

If the court shall be of the opinion that the objections to the petition or petitions are well founded in fact or law, and/or that the purposes of this act will not be subserved or that the general welfare and best interest of the public within the contemplated water supply district as regards a proper and adequate water service at reasonable rates to the consumers of said water, will not be promoted by granting the prayer of the petition, it shall dismiss the petition without prejudice to the filing of future petitions. Upon the dismissal of any such petition, the costs of the proceedings shall be paid by the petitioners.

From any decree of the court, creating or incorporating a district or dismissing a petition, any petitioner or any party in interest may appeal to the Superior or Supreme Court as provided by law, but not later than thirty days after such decree is entered, upon filing in the office of the prothonotary a bond in an amount to be fixed by the court, conditioned for the payment of all costs accruing on such appeal. If no such appeal is taken within said thirty days, the decree of the court shall be final.

Section 26. Recording Decree; Evidence.—Within thirty days after a district has been created or incorporated by final decree of the court below or upon appeal, the prothonotary of the court shall transmit a copy of the decree, duly certified to the Secretary of the Commonwealth who shall lay the same before the Governor. The Governor shall thereupon cause letters patent to issue, declaring such district to be a municipal corporation of the Commonwealth. The decree and letters patent shall be recorded in the office of the Secretary of the Commonwealth, and copies thereof certified by the Secretary of the Commonwealth, shall be recorded in the office of the recorder of deeds of each county in which any of the territory of such district may be situate, who shall record the same in his office.

Copies of such decrees and letters patent after such recording shall, when duly certified by the recorder of deeds or the Secretary of the Commonwealth, under their respective hands and seals, be received in evidence in all courts and elsewhere.

The costs of recording said decrees and letters patent shall be paid by the county in which said incorporation petition or petitions have been filed, which county shall be fully reimbursed therefor, with legal interest thereon, by the district as soon as sufficient funds become therefor available.

(b) Officers of Districts

Section 35. Board of Directors; Oath, Bond, Compensation.—Within ten days after the certified copies of the decree of court and letters patent are recorded with the recorder of deeds as aforesaid, the court shall appoint three persons, who shall be qualified electors and resident freeholders within the district, as a board of directors to manage the affairs of the district. The first appointments shall be for the following terms: One for two years, one for four years, and one for six years, from the date of their respective appointments. Thereafter all appointments by the court to membership of the board, where terms expire, shall be for terms of six years. Vacancies in the membership of the board shall be filled by the court for the unexpired term.

The court shall fix the compensation of the members of the board, which shall not exceed six thousand dollars (\$6,000.00) per annum, payable from the funds of the district.

Each member of the board, before entering upon the duties of his office, shall take and subscribe an oath before an officer authorized to administer oaths, that he will honestly, faithfully and impartially perform the duties of his office, and that he will not be pecuniarily interested, directly or indirectly, in any contract concerning the business or affairs of the district. Each member of the board shall also give bond to the Commonwealth for the use of the district in the penal sum of twenty-five thousand dollars (\$25,000) with corporate surety, conditioned for the faithful and honest discharge of his duties. The premium on such bonds shall be paid from the funds of the district. The oath and bond shall be filed with the prothonotary of the court.

Section 36. Organization of Board; Quorum, Seal, Records.—The board, shall upon its appointment, and annually thereafter, organize by the election of one of its members as chairman and one as vice-chairman, and by electing a secretary who may or may not be a member of the board, and a treasurer who may not be a member of the board. The secretary and treasurer shall take and subscribe the same oath of office as the di-

rectors, which also shall be filed with the prothonotary of the court; the directors shall constitute a quorum to do business, and the concurrence of two directors shall be required to exercise any power or perform any duty required by this act.

The board shall keep a record of all its proceedings, minutes of meetings, certificates, contracts, and all corporate acts, which shall be public records open to inspection during business hours. The seal of the district shall be impressed on all contracts and official documents of the district.

Section 37. Duties of Chairman and Vice-Chairman.—The principal duties of the chairman of the board of directors, other than his duties as a director, shall be—

- I. To preside at all meetings of the board;
- II. To sign all resolutions adopted by the board; and
- III. To sign all warrants for the payment of moneys, and to sign, execute and acknowledge, as the case may require, all contracts, deeds, leases, or other instruments authorized by the board to be executed by or on behalf of the district or required by this act to be approved by the court.

In the absence of the chairman, or in the case of his inability to act, the vice-chairman shall perform the duties of the chairman.

Section 38. Duties of Secretary.—The principal duties of the secretary shall be—

I. To give bond to the Commonwealth for the use of the district in an amount to be fixed by the board conditioned for the faithful performance of the duties of his office and the payment over and accounting of all moneys belonging to the district. Such bond shall be filed with the prothonotary of the court.

II. To act as secretary of the board; and keep a correct and proper record of all the business and proceedings thereof.

III. To record and sign all minutes of meetings of the board, including all resolutions adopted by the board;

IV. To safely and systematically keep all records and files of the district, and, at the expiration of his term, turn the same over to his successor.

V. To draw and countersign all orders and warrants for the payment of money by the treasurer, to be signed by the chairman or vice-chairman.

VI. To safely keep the corporate seal of the district and to affix the same to all deeds, leases, conveyances or other instruments required to be sealed and executed by or on behalf of the district, and to all certificates made by him as secretary.

VII. To sign, execute and acknowledge, with the chairman, all contracts, deeds, leases and other instruments required by law or authorized by the board to be executed by or on behalf of the district; and to perform such other duties as may be imposed on him by law or by vote or resolution adopted by the board.

Section 39. Duties of Treasurer.—The principal duties of the treasurer shall be—

I. To give bond to the Commonwealth for the use of the district in an amount to be fixed by the board, conditioned for the faithful discharge of the duties of his office, to keep a just account of all receipts and expenditures, and to pay over the whole amount of the funds belonging to the district to his successor in office;

II. To demand, receive, keep and account for all moneys and credits of the district;

III. To pay to persons, entitled thereto, the amounts called for in orders or warrants drawn upon him by the secretary of the district, signed by the chairman or vice-chairman, and countersigned by the secretary, and to keep receipts, vouchers, and other suitable evidences of payment thereof;

IV. To keep accurate account of all moneys received and disbursed by him, and to render accounts, statements, and inventories of moneys and credits received or disbursed or on hand; and

V. Generally to perform such duties pertaining to his office, as the board of directors may require.

(c) Audits

Section 45. Appointment of Auditor; General Duties.—On or before the first Monday of January in each and every year, the court shall appoint a certified public accountant or firm of certified public accountants to audit, adjust and settle the accounts of the officers and tax collectors of the district.

The auditor shall prepare a statement thereof which shall contain an account of the last fiscal year, which shall be the calendar year, and shall show a complete statement of the financial condition of the district, giving the actual indebtedness, including any amount secured by lien only, the amount of the funded debt, the amount of the floating debt, the valuation of the taxable property in the district, the assets of the district with their character, and the date of the maturity of the respective forms of debt.

Section 46. Surcharges.—The amount of any balance or shortage, or of any expenditure of a kind or made in a manner prohibited or not authorized by law, which caused a financial loss to the district, shall be a surcharge against any officer or tax collector against whom such balance or shortage appears, or who by vote, act or neglect has permitted or approved such expenditures.

Section 47. Orders and Vouchers to be Marked "Audited."—All orders and vouchers, which have been paid, shall, on their presentation to the auditor, be cancelled by writing the word "audited" on the face thereof.

Section 48. Auditor to Advertise and File Statement in Court.—The auditor shall complete such audit, adjustment, and settlement, as soon as possible, and shall, within ten days thereafter, publish a summary statement of the receipts and expenditures of the several officers for the preceding year, and once in at least two newspapers circulating generally in the district. The auditor shall also, within such period of ten days, file a copy of the statement with the secretary of the district, and also with the prothonotary of the court, which shall be at all times subject to public inspection. A copy of such statement shall also be filed with the Secretary of Internal Affairs.

Section 49. Appeals from Audit.—It shall be lawful for the district, or any taxpayer thereof, on its behalf, or any officer whose account is settled or audited, to appeal from the settlement or audit to the court within thirty days after the statement has been filed.

Section 50. Taxpayers Appealing to Enter Bond.—No appeal by a taxpayer or officer shall be allowed unless the appellant shall enter into bond in the sum of five hundred dollars, with sufficient surety, to prosecute the same with effect and to pay all costs accruing thereon, in case, if the appellant be a taxpayer, he shall fail to obtain a final decision more favorable to the district than that awarded by the auditor, or, in case the appellant be an officer, he shall fail to obtain a final decision more favorable to the officer than that awarded by the auditor.

Section 51. Taxpayers May Intervene in Appeals.—Whenever an appeal has been taken from the report of the auditor by the district, or by any person charged in such report with any sum of money, any taxpayer of the district may intervene in such appeal, and either prosecute the same on its behalf, or defend it against the appeal of the person so charged. No taxpayer shall intervene unless he shall file in the court a bond with one or more sufficient sureties, conditioned to indemnify the district against all costs accruing by reason of such intervention.

Section 52. Procedure on Appeals.—Any person interested may order the appeal upon the argument list, and evidence may be taken before any person authorized to administer oaths upon rule for that purpose served upon the opposite party. In any proceeding upon an appeal from a report of the auditor of any district, the accounts of the officer or officers in question may be investigated de novo, and the burden shall be

upon each officer, whose accounts are involved in the appeal, of establishing by evidence from original sources, his right to credits claimed by him, but the opposing party in such appeal may use any facts, figures, or findings of the report of audit as prima facie evidence against any officer.

When more than one appeal from a report of such auditor shall have been taken, whether by the district or an officer or officers thereof, or by a taxpayer, or any or all of them, the court shall, upon petition of any party interested, direct the several appeals to be disposed of in a single proceeding.

Section 53. Framed Issues.—Whenever any matter of fact is in dispute, the court is authorized to frame an issue for the trial thereof.

Section 54. Findings of Fact and Law; Judgment.—After hearing, the court shall file its findings of fact and law and enter judgment in accordance therewith, and the judgment so entered may be enforced by any appropriate proceedings by the party prevailing.

Section 55. Exceptions and Appeals.—Any person interested may except to the ruling of the court, and may appeal therefrom to the Superior or Supreme Court as in other cases.

Section 56. Balances Due to be Entered as Judgments.—Any balance in any report of the auditor against any officer of the district shall constitute a surcharge against such officer, as fully as if expressly stated in said report to be a surcharge, and the amount of any balance, and of any express surcharge, shall be entered by the prothonotary as a judgment against such officer and in favor of the district. The prothonotary shall enter the amount of every balance or surcharge, contained in any such report, as a judgment. Any taxpayer of the district may enforce the collection thereof, for the benefit of the district, by action or execution, upon filing in the court a bond, with one or more sureties, conditioned to indemnify the district from all costs which may accrue in the proceedings undertaken by such taxpayer, subject, however, to all rights of appeal from the report of the auditor granted by this act.

Section 57. Attorney to Auditor.—The district auditor may employ an attorney in case any disagreement with an official or board of officials whose accounts he is required to audit. Such attorney shall not be employed until reasonable effort has been made to reach an agreement, and only after notice of such contemplated employment has been given to such official or board.

The compensation of such attorney shall be fixed by the auditor, and shall not exceed the sum of twenty dollars per day nor one hundred dollars in any case in dispute, except whenever an appeal is taken, in

which case the court shall fix an additional compensation.

The compensation of such attorney shall be paid by the district by warrant drawn by the auditor upon the treasurer.

Section 58. Compensation of Auditor.—The auditor shall receive such compensation as the court shall fix.

Section 59. Auditor May Compel Attendance of Witnesses.—The auditor shall have power to issue subpoenas to obtain the attendance of the officers whose accounts they are required to adjust, their executors and administrators, and of any persons whom he may wish to examine as witnesses, and to compel their attendance by attachment, in like manner and to the same extent as any court of common pleas of this State may or can do in cases depending before them; also to compel in like manner the production of all books, vouchers, and papers relative to such accounts. Such subpoena may be served by any person, and such attachment shall be served and executed by the sheriff of the county of the court or any constable.

Section 60. Auditor May Administer Oaths; Penalty.—The auditor shall have power to administer oaths and affirmations to all persons brought or appearing before him, whether accountants, witnesses, or otherwise; and all persons guilty of swearing or affirming falsely on such examination shall be liable to the pains and penalties of perjury.

Section 61. Persons Refusing to Testify to be Committed.—If any person, appearing before such auditor for examination, shall refuse to take such oath or affirmation, or, after having been sworn or affirmed, shall refuse to make answer to such questions as shall be put to him by the auditor touching the accounts or the official conduct of such public officers or any of them, such person so refusing may be committed by the auditor to the county jail, by warrant, under his hand and seal, directed to the sheriff or any constable of the county of the court, setting forth particularly the cause of such commitment, until he shall submit to be sworn or affirmed or to make answers to such questions or be otherwise legally discharged.

Section 62. Pay of Witnesses.—Witnesses, other than officers of the district, attending before the auditor, and persons or officers serving subpoenas, attachments, or warrants, shall be paid, out of the district treasury upon orders signed by the auditor and drawn on the district treasury, the same fees as are payable for rendering similar services in civil proceedings before a justice of the peace.

ARTICLE III

POWERS OF WATER SUPPLY DISTRICTS

Section 70. General Powers.—A water supply district may—

- I. Have succession perpetually by its corporate name;
- II. Sue and be sued and complain and defend in the courts of the Commonwealth. All actions by or against the district shall be brought in the court having jurisdiction over the district.
- III. Adopt and use a common seal and alter the same at pleasure.

Section 71. Specific Powers.—The powers of a water supply district shall be vested in its board of directors. The board shall have power, by resolution or otherwise when a resolution is not herein required—

I. By-Laws; Meetings. To adopt by-laws to govern the proceedings of the directors and the affairs of the district; to fix the time for regular meetings and to hold adjourned meetings, and, upon three days' written notice to each member of the board, to hold a special meeting.

II. Contracts and Other Acts. To make and execute such contracts and to do such other acts as shall be deemed necessary and proper in the exercise of the powers and privileges granted by this act, and in the performance of the duties charged upon them, and to exercise such other and different powers as shall be conferred by law.

III. Appointment of Officers and Employees. To appoint and employ a secretary, treasurer, general manager, attorney and such assistant attorneys, superintendents, experts, operators, workmen, assistants, stenographers, clerks, engineers, surveyors, laborers and employes as may be deemed necessary and proper to protect, maintain, improve, and operate the property and works and affairs of the district; to fix their compensation; to prescribe the amount and form of bond required of them and to approve the same.

IV. Business Office. To maintain a principal business office, which shall be conveniently located within the territorial limits of the district.

V. Taxation. If and when necessary to levy an annual tax, not exceeding three mills on each dollar of the assessed valuation, on all property within the district, taxable for county purposes and on the valuation used for county tax purposes. The board of directors shall have power to prepare duplicates of such taxes by municipal districts, and provide for the collection of such taxes by issuing warrants to the respective collectors of taxes of each incorporated town, city, borough, and township within the district. The compensation for the collection of such taxes shall be fixed by the