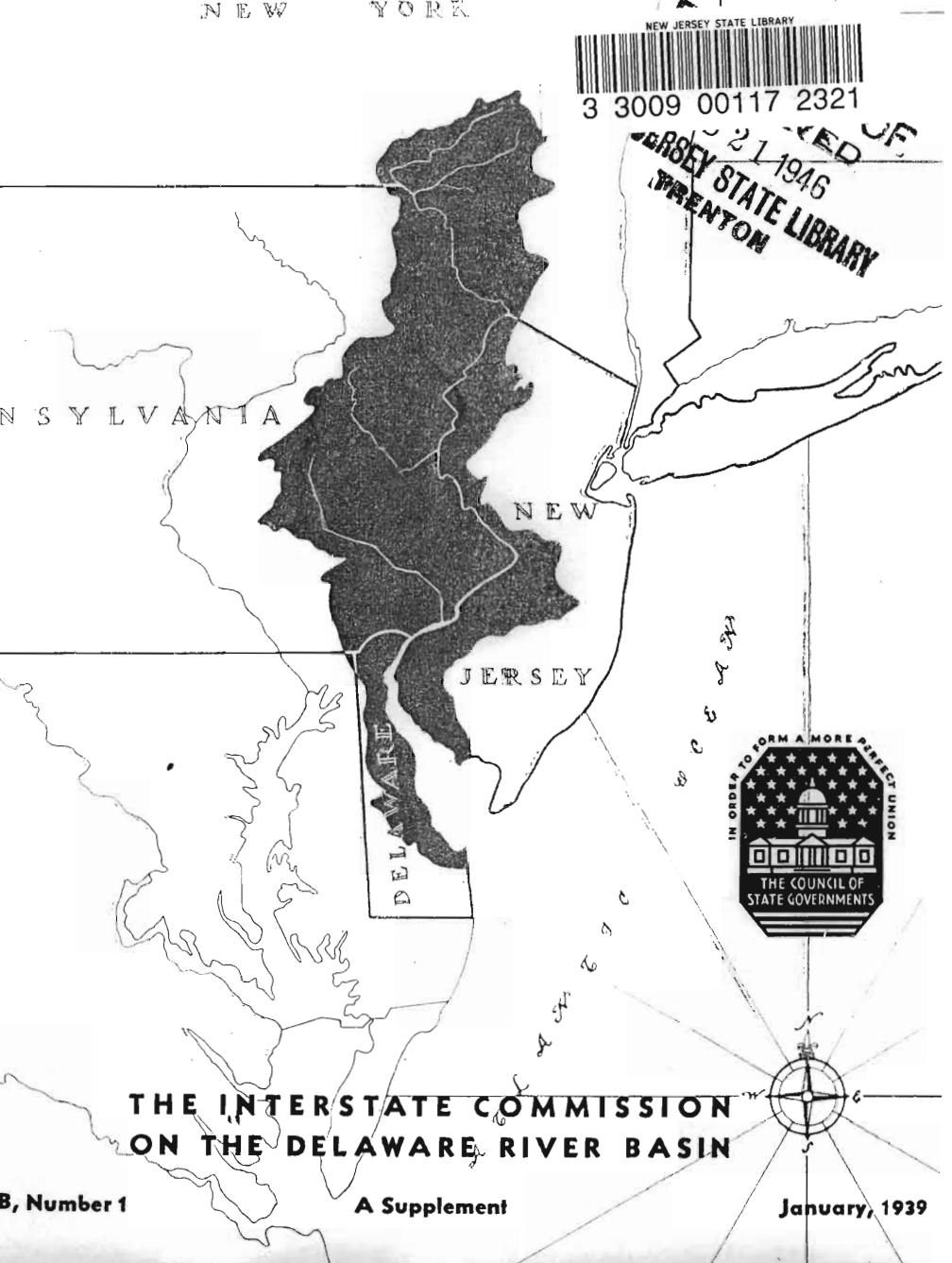
THE DELAWARE RIVER BASIN MUNICIPAL AUTHORITIES

Interstate commission on the
Delaware River basin
1939

THE DELAWARE RIVER BASIN

MUNICIPAL AUTHORITIES

A legal-economic brief in support of the Pennsylvania Municipal Authorities Act and including the Supreme Court decision upholding the validity of that Act.



IN ORDER TO FORM A MORE PERFECT UNION
THE COUNCIL OF STATE GOVERNMENTS

THE INTERSTATE COMMISSION ON THE DELAWARE RIVER BASIN

B, Number 1 A Supplement January, 1939

THE INTERSTATE COMMISSION ON THE DELAWARE RIVER BASIN

BROAD STREET STATION BUILDING
PHILADELPHIA, PENNSYLVANIA

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IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT

JANUARY TERM, 1938.

IN EQUITY—ORIGINAL JURISDICTION

IRA JEWELL WILLIAMS

Complainant

vs.

BERNARD SAMUEL, ROBERT T. McCRACKEN, EVAN RANDOLPH, WALTER M. SCHWARTZ, Sr., and WILLIAM STEELE, 3d, constituting the Board of The Philadelphia Authority; THE PHILADELPHIA AUTHORITY; S. DAVIS WILSON, Mayor, and MARTIN J. McLAUGHLIN, Director of Public Works of the City of Philadelphia; and the CITY OF PHILADELPHIA,

Defendants.

BRIEF: AMICUS CURIAE

THE INTERSTATE COMMISSION
ON THE DELAWARE RIVER BASIN

FOREWORD

Statement of Question Involved

The Pennsylvania Municipal Authorities Act of 1935, being the Act of June 28, 1935, P.L. 463, as amended by the Act of May 20, 1937, P.L. 739, authorizes municipalities, either singly or jointly, to acquire, construct, improve, maintain, and operate public works projects of a self-liquidating nature, and to borrow money and issue bonds therefor.

Pursuant to the terms of this act, the City of Philadelphia and two groups of municipalities in Delaware County, Pennsylvania, formed municipal authorities and agreed to prosecute comprehensive programs for the completion of sewage disposal systems and treatment works.

Two court cases brought on original jurisdiction to the Pennsylvania State Supreme Court tested the validity of the state statutes, of the Philadelphia Authority, and of the Central Delaware County Authority.

The interest of the Interstate Commission on the Delaware River Basin in these cases is outlined in the legal-economic brief printed herein and submitted to the court by the Commission as *amicus curiae.*

The Court's opinion, pages 12-22, in effect removes the state constitutional limitation on municipal indebtedness when applied to self-liquidating public works. This barrier in the past, prevented the financing of urgently required sewage treatment and disposal systems in the Philadelphia metropolitan area. The court's decision is thought to be of wide general interest as a citable precedent.

TO THE HONORABLE, THE JUDGES OF SAID COURT

I
The Interstate Commission On The Delaware River Basin

In 1936, the Joint Legislative Commissions on Interstate Co-operation of the states of Pennsylvania, New Jersey and New York, created the Interstate Commission on the Delaware River Basin as an integral part of the governmental machinery of the co-operating states. This Commission, composed of public officials, staffed by public employees, and financed by public funds, is engaged in the formulation and execution of a co-ordinated, unified plan looking toward the wise use, development and control of the natural resources of the Delaware River Basin as a whole.

The Interstate Commission on the Delaware River Basin, known briefly as Incodel, is composed of four members from each state: one a member of the State Senate; one a member of the State General Assembly; one an administrative official of the state government; and one a member or the Director of the State Planning Board. It maintains offices in Philadelphia.

With its first objective, the prevention and abatement of water pollution in the Delaware River Basin, the Commission has created an Advisory Committee on the Quality of Water in the Delaware River, composed of the Chief Engineers of the Health Departments of the four co-operating states. These engineers have been meeting on an average of two days each month, pooling their knowledge and the resources of their departments in a unified, concerted attack on this pollution problem.

II
The Pollution of the Delaware River

The Delaware River, in the vicinity of Philadelphia and Camden, is one of the most gravely polluted water areas in the entire country. This condition results from untreated domestic sewage and industrial wastes poured into the river from this congested metropolitan area. Here the river is choked with a burden of waste products far beyond its ability to absorb and purify. This condition is unnecessary and uneconomic.

Five million people live within the twelve thousand square mile basin of this river and depend on it as their major source of water supply.

Philadelphia is the worst offender. Thirty years ago the city was ordered, by the State Department of Health, to institute and maintain a comprehensive sewage treatment and disposal system. Philadelphia agreed to carry on a progressive program of construction and made the necessary engineering studies. For a few years it lived up to its contract. Today it is many years and $26,000,000 behind its schedule.

Another material source of pollution arises from the Delaware County municipalities, and here two groups of municipalities have taken advantage, as has Philadelphia, of the Municipal Authorities Act, and have agreed to prosecute comprehensive programs for the completion of sewage treatment works.

The Interstate Commission on the Delaware River Basin has a direct concern in these programs. They are part and parcel of a general plan, participated in and agreed upon by four states, the public authorities of which appreciate the urgent necessity of devising and prosecuting feasible plans to purify the waters of this important artery of commerce.

The Commission appears in this case to give this court the broad picture of water pollution control in the Delaware River Basin, and the plans formulated to improve conditions.

The causes and effects of water pollution are regional in their scope. No single community, no single state, can adopt the means of public control necessary to maintain the waters of this river in a reasonably clean and sanitary condition.

Only by pooling the resources of states, municipalities and industry can this pollution be diminished and the full use of this essential natural resource be regained. It is an interstate problem on an interstate stream.

The withdrawal of water from this river for domestic and industrial use is constantly increasing in amount. Under consideration at this time are public water supply projects for present and future use involving a total demand of more than two billion gallons daily from the basin of the Delaware River. At the same time, the quantity of domestic and industrial wastes dumped into this river is constantly increasing. Conditions are becoming progressively worse. The ability to extract potable water from this river in its lower reaches is becoming increasingly more difficult, and if existing excessive pollution is not halted in the near future the problem may become too complex and costly to handle.

It is obvious that public control of water pollution in the Delaware River Basin cannot operate effectively unless there is a well understood, aggressive and positive interstate plan of action.

The proceedings in these cases involve the power of the municipalities concerned, to do their part in carrying out the interstate plans formulated to lessen the present pollution and to increase the uses of the waters of this river. The halting of these proposed improvements would place the four-state program in serious jeopardy.

III

The Policy of the Law

The use of the river as a common sewer is not a natural or reasonable use of a gift which nature has supplied to sustain human and animal life and to make possible the operation of great industry in this modern chemical age. The inexpensive disposal of sewage and industrial waste by pouring it into a natural water course places an undue expense upon municipalities and industry seeking to recover water suitable for use, and constitutes a menace to the health of communities. These uses constantly clash and a reasonable solution is to attack the problem at its source. A sanitary method of disposing of water, after use, is essential to protect the quality of the source of water supply.

It is the duty of government to preserve the life-giving streams of water in a reasonably pure state. Courts have universally recognized this duty and have upheld the arm of government in seeking the eradication of nuisance, and health-menacing conditions.

The public policy of the law of Pennsylvania, as in the other states joining in this effort, is to rid these waters of harmful pollution.

For more than thirty years, Pennsylvania has empowered its Department of Health to require municipalities to erect sewage treatment works and to halt the dumping of raw sewage into water courses. (1905, May 22, P. L. 260). It was under this law that Philadelphia contracted with the state to develop a comprehensive plan of sewage treatment and disposal works.

This law of 1905 has been merged into the 1937 Pure Streams Law and extended to the treatment of industrial wastes. (1937, June 22, P. L. 1987).

The law declares the discharge of sewage and industrial wastes into the waters of the Commonwealth to be an unreasonable use and against public policy because it is injurious to animal and aquatic life and to the uses of water for domestic and industrial consumption.

The same legislature also passed a series of companion laws authorizing various classes of municipalities, engaged in the construction of sewage disposal projects, to issue non-debt revenue bonds, which are to be secured by a pledge, in whole or in part, of annual sewer rentals. In issuing these bonds the credit and the property of the municipality is not pledged. Such lien as is given the bondholder exists only as respects the sewer rental, a new revenue outside the taxing power. (Cities, first class, 1937, May 28, P. L. 947; Cities, third class, 1937, May 7, P. L. 578; Boroughs, 1937, May 7, P. L. 582; Townships, first class, 1937, May 7, P. L. 574; Townships, second class, 1937, May 7, P. L. 571).

At the same time broad powers were conferred upon every municipality engaged, singly or jointly with other municipalities, in the construction of sewage treatment works, or in the acquisition of such works, or having a contract with a public authority, as in the cases pending before this court, for the furnishing of sewage treatment services, to impose an annual rental or charge for the use of sewer systems, sufficient to pay for maintenance, the amortization of debt and non-debt bonds issued, the interest thereon, and to maintain a margin of safety of 10%. (1935, July 18, P. L. 1286, as amended 1937, May 14, P. L. 630).

So also the Pennsylvania Pure Streams Law, to which reference has been made, confers upon municipalities, power to issue and sell non-debt revenue bonds and secure the same by the pledge of sewer rentals (1937, June 27, P. L. 1987, secs. 211-213).

The policy, inaugurated more than thirty years ago, finally culminated in the enactment of this comprehensive program of legislation, spurred no doubt by the decisions of this court upholding the creation of new instrumentalities of government, known as public authorities, empowered to construct self-liquidating public works for the use of municipalities or for rent by the state or municipalities on a service basis. It is part of the legislative program the co-operating states are pledged to enact.

It is true that such works must in the end be paid for, but this is being done through a sewer rental without encumbering the tax revenues, or by a recurring annual charge for a service supplied, neither of which would seem to trench the debt limitation sections of the constitution.

IV

Financial Difficulties And Their Solution

The failure in the past to prosecute a vigorous campaign of stream purification has been due almost entirely to financial conditions and circumstances. The state could not reasonably issue orders against municipalities involving an expenditure beyond the borrowing power under existing constitutional limitations. The ability of municipalities to finance sewage treatment plants had to be considered.

No one has disputed the wisdom or even the necessity of purifying our streams but the state has hesitated to act in a drastic manner. On the other hand no one has ever hesitated to purify water used for domestic purposes, no matter how great the cost. In most municipalities, water has been furnished by private industry, and the state has required these interests and municipalities to furnish pure water. The cost was paid by individuals and industry in the form of water rates outside the taxing power.

In the case of sewage the problem has been generally deemed a municipal one, the expense to be paid through general taxation. Only in isolated instances did private industry engage in furnishing a sewage disposal service paid for through rentals.

The result is that we have delayed attacking this evil at its source by keeping out of our streams the wastes which caused pollution.

The difficulties of financing sewage treatment works in Pennsylvania were apparently solved as the result of the decision of this court in the Allegheny County Authority Act (Tranter v. Allegheny County, 316 Pa. 65), which upheld the right of the legislature to empower municipalities to create municipal authorities to construct self-liquidating public works. Added to this was the pump-priming aid offered by the Federal Government in the form of direct grants and loans in order to relieve unemployment.

It took a great financial depression, where government was looking for jobs for the unemployed, to enable us to develop the technique which made it possible, in a state like Pennsylvania, to finance the erection of costly treatment works without trenching the section of the Constitution limiting the debt of local government.

We take it that the principle of issuing non-debt revenue bonds, through a public authority, to finance the construction of self-liquidating public works has been soundly established by the decision of this court in the Tranter case; and that the present cases are concerned only with minor details to ascertain whether these conform in all respects to the principles laid down by this court in its prior decision.

So also it is submitted, the treatment and disposal of sewage is as much a service as is the furnishing of water or light for domestic or industrial uses. True, our approach in the past may have been different as we have already shown, but we are not justified in saying that municipalities have power to enter into service contracts for water, running over a period of years, but not into like service contracts to cleanse and dispose of the same water after its use and pollution. One is just as essentially a service as the other.

The analogy here is simpler and more direct than in the case of the rental of buildings by the Commonwealth from an authority which it created. Yet this court has held that contracts and leases for buildings to meet recurrent needs, the obligation of which is to be met from current revenues, and which extend beyond the tax levying period, are not considered debts within the debt limitation sections of the Constitution. (Kelley, v. Earle, 325 Pa. 337).

Thus whether the treatment works involved in these cases are to be financed as self-liquidating projects through sewer rentals outside the taxing power, or through rentals paid by the municipality from its tax revenues for a recurring service which its citizens receive, or through a combination of both, it would seem that fundamentally the principle has been established that no section of the Constitution is offended by such a procedure.

V

Conclusion

However, it is not our purpose to make this court a technical legal argument in these cases. We are here to point out the comprehensive plan of stream purification which is endangered

by these cases and the interest which the five million citizens of four states have in the result.

This interest is not merely aesthetic, it is economic. The water use problems of the Delaware Basin, in order of importance, are the provision of additional water supplies for Philadelphia, New York City, and other communities; the abatement and prevention of pollution, particularly in the lower Delaware and Schuylkill Rivers; the control of soil erosion; the development of hydroelectric power; and the control of floods. Residential, industrial, agricultural, and recreational interests are concerned with these uses.

The Interstate Commission on the Delaware River Basin is seeking to balance these interests and resources, so as to guide the development of the basin in harmony with the general welfare of the whole people. It is concerned with improving conditions along one of our great rivers where a dense population is being supported by an ever increasing industrial development.

Through its efforts a Reciprocal Agreement for the Correction and Control of Pollution in the Waters of the Interstate Delaware River has been formally ratified by the four states which sets forth basic standards of cleanliness or purity for the main stream and for its tributaries at their points of confluence. This agreement will enable the proper state authorities to enforce the necessary regulations for every specific locality, for every type of industry. The terms of this agreement are directly involved in these proceedings. To halt these municipalities seriously jeopardizes the interstate plan.

The problem is no longer merely a matter of keeping the flow in streams sufficiently pure to sustain fish life, but of serving interests much more important—domestic and industrial users of water. In the end our people will gain by attacking this problem at its source.

We have too long neglected caring for the wastes which arise as the result of a dense population and a great industrial development. Now that ways and means of overcoming the financial difficulties have been found there should no longer be delay in prosecuting these public works which mean so much to the future prosperity of the people inhabiting the Delaware River Basin.

Respectfully submitted.

Senator Robert C. Hendrickson, *Vice Chairman*
The Interstate Commission on
the Delaware River Basin.

IN THE

Supreme Court of Pennsylvania

EASTERN DISTRICT

No. 441 JANUARY TERM, 1938.

IRA JEWELL WILLIAMS, Complainant, v. BERNARD SAMUEL, ROBERT T. McCRACKEN, EVAN RANDOLPH, WALTER M. SCHWARTZ, Sr., and WILLIAM STEELE, 3d, constituting the Board of The Philadelphia Authority; THE PHILADELPHIA AUTHORITY; S. DAVIS WILSON, Mayor, and MARTIN J. McLAUGHLIN, Director of Public Works of the City of Philadelphia; and the CITY OF PHILADELPHIA, Defendants.

ORIGINAL JURISDICTION

OPINION OF THE COURT

(Justice Maxey)

Plaintiff is a taxpayer of the City of Philadelphia and the owner of two of its bonds. Defendants are (1) the members of the Philadelphia Authority (hereinafter referred to as the Authority), a corporation organized under the "Municipality Authorities Act" of June 28, 1935, P. L. 463, as amended, and (2) the Mayor and the Director of Public Works of the City of Philadelphia.

This action was brought by the plaintiff to enjoin defendants from carrying out a plan whereby the City of Philadelphia will transfer to the Authority its sewer and water properties and then lease them back from the Authority at rentals sufficient to pay off, over a period of time, the principal and interest of any bonds which may be issued by the Authority to raise funds with which to improve the properties.

The Investment

The properties involved are the water supply system and the sewer system of the City; the former was built and improved over a period of years at a cost in excess of $80,000,000, and the latter, at a cost of over $90,000,000. A large portion of the funds invested in these properties was raised by the sale of bonds; in the case of the water system the amount so raised was $44,985,000 and in the case of the sewer system the amount was $40,409,838. A large part of the cost of the sewer system was also raised by assessments against adjacent property owners. The City at present does not make any charge for the use of the sewer system. However, it does make a charge for water supply. For the years 1930 to 1937, inclusive, the average annual gross revenue from the water supply system was $6,715,124.91, the average annual operating expenses were $2,506,332.70, the average annual earnings in excess of operating expenses were $4,208,792.21. The average payment of interest and Sinking Fund charges on the water debt was $1,538,934, leaving an average annual net revenue of $2,669,858.21. For 1937 the net revenue was approximately $3,500,000.

The authorized and outstanding indebtedness of the City of Philadelphia, after all deductions allowable by law, has reached the debt limit fixed for the City by the State Constitution. The City's borrowing power is therefore at this time exhausted.

Organization

The Authority was incorporated on September 20, 1938, and has made application to the Federal Emergency Administration of Public Works for grants under the provisions

of the United States statute of June 16, 1933, C. 90 (National Industrial Recovery Act) 48 Stat. 200 et seq.; U. S. C. A. 40, sec. 401, et seq., the amendments, supplements and extensions thereof, for thirteen different projects, for the purpose of improving and extending both the water supply and sewer systems. The contemplated improvements and extensions will cost approximately $60,000,000; $20,000,000 of which is to be spent on the water system and $40,000,000 on the sewer system. The grants applied for are for 45% of the total amount, i. e., $27,000,000. The balance of $33,000,000 is to be supplied by the Authority and to be secured by it by a loan evidenced by the bonds of the Authority.

At the Authority's request, the City adopted resolutions on October 20, 1938, declaring its purpose to execute a contract with the Authority, under the terms of which the City will transfer to the Authority the water supply system and the sewer system, for the improvements and extensions of these systems by the Authority and for the lease of these systems by the Authority to the City for thirty years, on an annual rental basis sufficient to pay, over a twenty-nine-year period, the interest charges and to pay off the principal of the Authority's bonds in full, plus 10% to be paid into a reserve fund to be maintained at one-fifteenth of the total amount of bonds outstanding, plus an amount sufficient to pay the Authority's expenses. The City is to retain possession of the systems, to maintain and operate the same, to receive all revenues derived from consumers or users of such facilities and to pay the aforesaid rental and all operating and maintenance costs.

Property Conveyance

Plaintiff complains that the proposed contract contains "no provision for the conveyance back of the property or of the extensions and improvements, to the City." Defendants say: "At the end of the lease period, title and ownership of the property will be in the Authority unless, by operation of law or by the exercise of the City of rights under the law, some other result is effected." Section 14 of the "Municipality Authorities Act" of 1935, supra, as amended by the Act of May 20, 1937, P. L. 739, provides: "When any Authority shall have finally paid and discharged all bonds which, together with the interest due thereon, shall have been secured by a pledge of any of the revenues or receipts of a project, it may (subject to any agreements

concerning the operation or disposition of such project) convey such project to the municipality." This section also provides that when the Authority shall have paid all its debts "it may convey all its property to the municipality and terminate its existence," and that when the Authority files a certificate of termination, if the certificate is approved by the municipality creating the Authority, the same shall be recorded in the office of the recorder of deeds of the county and "thereupon the property of the Authority shall pass to the municipality . . . and the Authority shall cease to exist." Amended section 18 of the Act provides: "If a project shall have been established under this act by a board appointed by a municipality or municipalities, which project is of a character which the municipality or municipalities have power to establish, maintain, or operate, and such municipality or municipalities desire to acquire the same, it or they may by appropriate resolution or ordinance, adopted by the proper Authorities, signify its or their desire to do so, and thereupon the Authorities shall convey by appropriate instrument said project to such municipality, or municipalities, upon the assumption by the latter of all the obligations incurred by the Authorities with respect to that project." This section makes it clear that the City of Philadelphia may secure the re-conveyance to itself of the projects now under review upon its desire so to do, followed by appropriate action and the assumption of the projects' obligations.

Sewer Rental

It is also clear that this proposed project is a self-liquidating one, for the rental to be paid by the City to the Authority, under the proposed contract of lease, will approximate $1,950,000 a year and will be sufficient to enable the Authority to meet its administration costs and all charges on the debt incurred by it. The City intends to impose a charge on the users of its sewer facilities. The proposed agreement between the Authority and the City provides, inter alia, as follows: "The City shall charge and collect water rentals from the consumers of water and may also charge and collect sewer rentals or charges from the users of the sewers. The total of the rentals . . . for water and for sewers . . . will be sufficient to pay the operating and maintenance costs of the water supply works and system and the sewers . . . [each year] and 133 1/3 per cent of the rental payable under the terms of the lease in that year."

It is understood that the City *will* impose an adequate charge for sewerage service. This charge, together with the charge for water, will make the project self-liquidating. Since it is self-liquidating, it will add nothing to the City's indebtedness.

Plaintiff in his bill avers, inter alia, the following: The City is without current revenues or funds available for such rental, and it has had deficits during each of the past five years that now total approximately $38,493,000; that its estimated revenues will not be sufficient to meet its estimated expenses for the fiscal year 1939; and that if the proposed contract is entered into the obligation to pay the rental reserved thereunder would result in an increase of the indebtedness of the City. "The improvements and additions to the water and sewer systems are to be made over a period of time in the future, and, since the City now owns and operates the systems without cost to it, except for the actual operating costs, it will not presently receive any benefit from the contract . . . and it will not for a considerable period in the future, and may never, receive benefits commensurate with the annual consideration it will be compelled to pay." Plaintiff further avers that the "Municipality Authorities Act," supra, and the proposed contract are unconstitutional and quotes several sections of the Pennsylvania Constitution which he alleges they violate; that in conveying both the water and sewer systems the City is doing so in its proprietary or private capacity, rather than in its governmental capacity; "that the legislature is not empowered to authorize a municipality to convey, without consideration or with a nominal consideration, to an Authority, property owned by it in its proprietary capacity, as distinguished from property owned by it in its governmental capacity"; that the "Municipality Authorities Act" does not "authorize the conveyance of the water supply system to the Authority"; that the City in conveying these systems is parting with a valuable asset, the water system being a producer of revenue and the sewer system a potential income producer, and that their conveyance would therefore be in derogation of the rights of the taxpayers and the holders of City bonds and would diminish the security for these bonds; that the conveyance of the sewer system would also be in derogation of the rights of abutting land owners and users of the sewers who were assessed part of the cost

of construction thereof; and that the conveyance, without consideration or for a nominal consideration, is in violation of the Act of May 16, 1929, P. L. 1773, as amended by the Act of May 28, 1937, P. L. 1010, requiring that where the City sells a capital asset, the funds received from such sale shall be deposited in the sinking funds for the redemption of any bonds that were sold and the proceeds of which were used to pay for said property, and which remain unpaid at the time of the sale of said property.

Plaintiff's Prayer

Plaintiff therefore prays that an injunction be issued enjoining defendants from (1) "carrying into effect the provisions of the Municipality Authorities Act," supra, (2) "entering into the proposed contract . . . for the transfer of the property . . . or obligating the City to pay any rental . . . for the use of the property," (3) "making, constructing and erecting any public works or improvements whatsoever," and (4) "executing and delivering any bonds or other evidences of indebtedness, and any trust indenture or other instrument purporting to secure any such bonds or evidences of indebtedness," and that the Municipality Authorities Act, supra, as amended, be declared unconstitutional.

In passing upon the constitutionality of acts of assembly this court neither commends nor questions the wisdom of the acts it judges. Its concern is with legislative power and not with legislative policy. In determining whether a measure is one which the legislature had the power to enact into law, this court starts with the presumption in favor of its validity. This rule this court has steadily adhered to since the foundation of the Commonwealth. If it is clear that the statute challenged breaches the Constitution of nation or state, it is our duty to say so. But when it is not clear that the statute challenged conflicts with the Constitution, it is our duty to uphold it.

Court Rulings

The challenge that the Authorities Act contravenes Article I, section 17 of the Constitution of Pennsylvania in that it makes an irrevocable grant of special privileges, we overrule. The pledge in the Act, to "not limit or alter the rights hereby vested in the Authority until all bonds at any time issued, together with the interest thereon, are fully met and discharged," is not an irrevocable one, for it ends

when the obligations assumed by the Authority are fully discharged. See *Kelley v. Earle*, 320 Pa. 449, 182 A. 501.

The challenge that the Act contravenes Article II, section 1 of our State Constitution, in that it creates a delegation of legislative power, we overrule. Powers similar to those granted under this Act were granted in the Second Class County Authorities Act and they were held not to be in contravention of the above section of the Constitution. See *Tranter v. Allegheny County Authority*, 316 Pa. 65, 173 A. 289; *Kelley v. Earle*, 325 Pa. 337 (2nd case), 190 A. 140; and *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209.

The challenge that the Act contravenes Article III, section 7 of our State Constitution in that it is a local or special law regulating the affairs of a city, creating a corporation and granting powers and privileges in a case where such powers have been provided for by general law, we overrule. This same challenge was made in the Second Class County Authorities Act and the General State Authorities Act and in each case this court found the challenges not well taken. See cases cited in the preceding paragraph.

The challenge that the Act contravenes Article III, section 20 of our State Constitution in that it "delegates to a special commission, private corporation or association, power to make, supervise or interfere with any municipal improvement, money, property or effects," we overrule. The same challenge was made in the cases just cited and was not sustained. The decisions there are controlling here. In the *Tranter* case (supra) this court declared: "It cannot be said that the creation of a public corporation as a state agency to take over public highways for the limited purpose of improving them, paying for the improvement out of revenues collected for their use, and then returning them to the local political subdivisions to which they had formerly been entrusted by the state, is a special commission, in any sense in which those words were used in the constitution, either in substance or spirit."

The challenge that the exemption of the bonds and property of the Authority from taxation, contravenes Sections 1, 2, and 3 of Article IX of our State Constitution, is overruled on the authority of the second *Kelley v. Earle* case, 325 Pa. 356, 190 A. 140, in which it was held that the legis-

lature may exempt from taxation the bonds of governmental instrumentalities. See also *Dornan v. Philadelphia Housing Authority* (supra).

The challenge that the Act contravenes Article IX, section 7 of our State Constitution in that the proposed contract makes the City a "stockholder" in the Authority and results in "a loan of the City's credit" to the Authority, is overruled. The same challenge under a similar state of facts was made in the *Tranter* case (supra) and was found by this court to be without merit.

The challenge that the Act and the contracts proposed to be entered into pursuant to it violate Article IX, section 8 of our State Constitution which prescribes the debt limits and the methods of incurring debt by a municipality and the challenge that Article IX, section 10 of our State Constitution requiring the imposition of an annual tax sufficient to pay the debt charges at the time of incurring the debt is also violated, are both overruled. Section 4 of the Municipality Authorities Act contains the following provision: ". . . the Authority shall have no power at any time or in any manner to pledge the credit or taxing power of the Commonwealth of Pennsylvania or any political subdivisions; nor shall any of its obligations be deemed to be obligations of the Commonwealth of Pennsylvania or of any of its political subdivisions, nor shall the Commonwealth of Pennsylvania, or any political subdivision thereof, be liable for the payment of principal of or interest on such obligations." This language is the same as that used in section 4 of the General State Authorities Act and substantially similar language is used in section 501 of the Second Class County Authorities Act. As these acts were upheld in the *Tranter* case (supra) and the second *Kelley v. Earle* case (supra), the decisions in these cases are decisive of the question posed in this paragraph.

Other Contentions

It is contended by the plaintiff that the execution of the contract of lease for a term of thirty years and the agreement to pay the stipulated rent will result in an increase of the indebtedness of the City, which indebtedness has already reached the constitutional limit. The answer to that is, as we have already pointed out, that the rental to be paid by the City to the Authority as water and sewer rentals

will be sufficient to meet the Authority's administration costs and all the charges of the debt incurred, and therefore there will be no increase in the City's indebtedness.

Plaintiff further contends that "if the Authorities Act could be construed to authorize the transfer to the Authority of existing water works, it violates sections 1 and 9 of Article I of the State Constitution and section 1 of the Fourteenth Amendment of the Federal Constitution. Section 1 of the former contains a statement of the inherent rights of man as to the acquisition of property, etc. Section 9 is a prohibition against deprivation of a man's "life, liberty or property, unless by the judgment of his peers or the law of the land." Section 1 of the 14th Amendment of the Federal Constitution is the well-known "due process" clause. The argument of plaintiff is that the water supply system is owned by the City in its proprietary capacity and that supplying water is not a governmental function, that "the State has no special power over the property held by the City in its proprietary capacity" and that therefore any attempted alienation of this property by the municipal authorities is a taking of the people's property without due process of law. Defendants concede that the City's ownership of the water works is proprietary. In *Shirk v. Lancaster City*, 313 Pa. 158, 169 A. 557, this court held that the "property employed by a municipality in furnishing water to its inhabitants is not used for governmental purposes, and in its ownership and operation the municipality acts in its proprietary character." The Act of March 11, 1789, 2 Sm. L. 463, provides expressly that the City may "grant, bargain, sell, alien and convey, mortgage, pledge, charge and encumber or demise and dispose of" at its will and pleasure all types of property there enumerated. This court declared in *Baily v. Phila.*, 184 Pa. 594, 39 A. 494: ". . . the right of alienation is given in express words in the charter of 1789, all the powers granted in which were preserved by the consolidation act (Act of February 2, 1854, sec. 6, P. L. 25) and which appears to be still in force: *Com. v. Walton*, 182 Pa. 373 [38 A. 790]. And the right is not taken away by the act of 1885 [the Bullitt Bill] which, as already said, merely regulates the mode of exercise of executive, and incidentally of legislative, functions without changing the rights which appertain to those functions." The state can authorize its creature, the City, to transfer its sewer sys-

tem to the Authority created by the state. This Authority was created for the improvement of property which ministers to the public welfare. It exercises its functions through a Board selected by the legislative body of the city. Sections 14 and 18 of the Authorities Act limit the title of the Authority in the property to be conveyed to it and section 6 of the Act protects the property conveyed to the Authority, against sale, assignment, mortgage or other disposition by any receiver who may be appointed after default in the payment of principal or interest on any of the Authority bonds and who may, pursuant to order of court, take possession of the facilities of the Authority, or any part or parts thereof, the revenues or receipts from which are or may be applicable to the payment of the bonds so in default, and operate and maintain the same and collect and receive all rentals and other revenues thereafter arising therefrom in the same manner as the Authority or the board might do.

Plaintiff's Bonds

At the argument plaintiff's counsel stressed the fact that a large part of the city's bonded indebtedness was incurred by the sale of bonds whose proceeds were invested in a water supply system and a sewer system. Plaintiff says in his paper book: "It is true that there is no specific lien provided for in the bonds sold to plaintiff on either the properties or revenues. There is, however, a specific representation that a portion of the proceeds are to be used in the construction and improvement of the two systems involved. It was on this basis plaintiff, or his predecessor in title, loaned his money. The proposed transfer of the properties and pledge of the revenues to the Authority deprive plaintiff of a very substantial asset which he had a right to assume would be retained for the protection of his investment. For this additional reason, we submit that the proposed plan is invalid."

Plaintiff also calls attention to the Act of May 16, 1929, P. L. 1773, as amended by the Act of May 28, 1937, P. L. 1010 (53 P. S. 1992) which provides that when a municipality has been duly authorized, pursuant to the Act of April 20, 1874, P. L. 65, and the amendments thereto, "to increase its indebtedness to an amount exceeding 2% of the last preceding assessed valuation of the taxable property therein, with the assent of the electors thereof, and the corporate authorities, having acquired by fee simple any property by use of said funds, and the corporate authorities shall deem

it for public interest to abandon the use of said property for the purpose as purchased, either in whole or in part, and, by either ordinance or resolution, shall so provide, then the said corporate authorities shall be and are hereby authorized to dispose of said property so acquired; and the funds so received from said properties shall be deposited in the funds of said public corporation, for the redemption of any bonds that were sold and used to pay for said property, remaining unpaid at the time of the sale of said property, or of any outstanding bonds issued and used to refund bonds so sold and used."

Plaintiff's Protection

It is obvious that, as plaintiff concedes, "there is no specific lien provided for in the bonds sold to plaintiff on either the properties or revenues," plaintiff is in no position, either as a bondholder or as a taxpayer, to challenge the city's proposed action in respect to its water and sewer systems. A holder of bonds such as those held by the plaintiff has as his security the city's credit and solvency and these rest on the valuation of the properties which are subject to taxation in the city and on the power the law gives a bondholder to compel the city to levy and collect taxes to discharge the city's contractual obligations as expressed in its bonds. Article IX, section 8 of the Constitution requires any municipality incurring any indebtedness to provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years. The city ordinances have complied with these requirements. The revenues to be derived from the city's water system and to be derived from the sewer system (for the City Solicitor states in his brief: "Sewer charges will be imposed at rates and in amounts in excess of the requirements for the rental from the City to the Authority on that property"), will not be diverted to any private or improper use but will be used to defray the cost of constructing and maintaining at a high degree of efficiency improved water and sewer systems, which systems are most vital to the health and well-being of the 2,000,000 inhabitants of Philadelphia. The expenditures to be made are not for municipal luxuries but for municipal necessities. The State Sanitary Water Board has heretofore made formal demand on the City of Philadelphia to provide for a complete system of sewage treatment and disposal and has ordered it to desist from discharging any

untreated sewage into the Delaware and Schuylkill Rivers and has threatened to take legal action to force the accomplishment of these ends under the provisions of the Act of June 22, 1937, P. L. 1937. In the brief filed in this court by the Interstate Commission on the Delaware River Basin, appears this statement: "We have too long neglected caring for the wastes which arise as the result of a dense population and a great industrial development. Now that ways and means of overcoming the financial difficulties have been found, there should no longer be delay in prosecuting these public works which mean so much to the future prosperity of the people inhabiting the Delaware River Basin." Through the City Authority, the taxpayers, instead of being compelled to pay 100% of the financial burden, are relieved of 45% of it through a contribution of $27,000,000 from the Federal treasury. The assumption of a 55% burden gives rise to a 100% benefit. A city without an adequate water system and an efficient sanitary sewer system suffers in prestige and places the lives and health of its citizens in jeopardy. All of a city's inhabitants are its taxpayers, directly or indirectly. Whatever benefits the former, benefits the latter. If taxpayers are benefited, bondholders should rejoice rather than complain.

Summary Opinion

The laws and the municipal actions pursuant to them, all of which bring these self-liquidating projects into being do not trench upon any provision of either the State or the Federal Constitution. All challenges made to their validity are overruled. We are unanimously of the opinion that the Municipality Authorities Act of June 28, 1935, P. L. 463, as amended by the Act of May 20, 1937, P. L. 739, as it relates to the Philadelphia Authority of the City of Philadelphia and providing, as it does, for self-liquidating projects, is constitutional.

The City Solicitor having stated in open Court that a rental charge would be made for sewers sufficient to make the project self-liquidating, and also to avoid requiring any contribution out of the general tax levy, the judgment of this court is rendered on the express condition that such rental shall be established and collected, and further that such rental, together with all water receipts, shall be used by the City in its budget in estimating its current revenue.

The bill is dismissed, the respective parties to pay their own costs.

THE INTERSTATE COMMISSION ON THE DELAWARE RIVER BASIN

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