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Writ of Certiorari—re Highway Construction.

NEW JERSEY, SS.:

THE STATE OF NEW JERSEY to the Board
of Commissioners of the City of Long
(L. S.) Branch, and the City of Long Branch, 10
County of Monmouth and State of New
Jersey, GREETING:

We being willing for certain reasons to be certified of an ordinance of the City of Long Branch entitled

“AN ORDINANCE providing for the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, and to acquire as much land or real estate, or right or interest therein, as may be necessary for the making of such improvement, either by purchase or by condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue, so laid out and constructed, and for the levying of assessments on the property especially benefited thereby”, 20

introduced December 17, 1929, and passed December 31, 1929, by the Commissioners of the City of Long Branch, do command you that you send under your seal to the Justices of our Supreme Court of Judicature at Trenton on the 8th day of February, 1930, as well the ordinance aforesaid as well as all proceedings touching or concerning the same, as fully and entirely as they remain before you, together with this our writ, that we may 30

Allocatur.

further cause to be done thereupon what of right we shall see fit to be done.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our said Court at Trenton, the 20th day of January, nineteen hundred and thirty.

10

FRED BLOODGOOD,
Clerk.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys.

Allocatur.

20

I allow the within writ. Let it be sealed.

January 20, 1930.

J. L. BODINE,
J. S. C.

30

40

Writ of Certiorari—re Bond Issue.

NEW JERSEY, SS.:

(L. S.) THE STATE OF NEW JERSEY to the Board
of Commissioners of the City of Long
Branch, and the City of Long Branch,
County of Monmouth and State of New
Jersey, GREETING: 10

We being willing for certain reasons to be certified of an ordinance of the City of Long Branch entitled "An ordinance authorizing the issue of \$2,000,000 Highway Bonds of 1930 of the City of Long Branch, New Jersey", introduced December 17, 1929, and passed December 31, 1929, by the Commissioners of the City of Long Branch, do command you that you send under your seal to the Justices of our Supreme Court of Judicature at Trenton on the 8th day of February, 1930, as well the ordinance aforesaid as well as all proceedings touching or concerning the same, as fully and entirely as they remain before you, together with this our writ, that we may further cause to be done thereupon what of right we shall see fit to be done. 20

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our said Court at Trenton, the 20th day of January, nineteen hundred and thirty. 30

FRED BLOODGOOD,
Clerk.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys.

Allocatur.

I allow the within writ. Let it be sealed.
January 20, 1930.

J. L. BODINE,
J. S. C.

10

Order to Take Depositions—Suit No. 1.

NEW JERSEY SUPREME COURT.

20

<p>WALTON SHERMAN and FRANK M. BAXTER, Prosecutors, <i>vs.</i> CITY OF LONG BRANCH, Defendant.</p>
--

On Certiorari:
Suit No. 1
(Highway
Construction).
Order.

A writ of certiorari having been allowed in the
above entitled cause, and good cause appearing:

IT IS on this 7th day of March, 1930,

30

ORDERED that affidavits on behalf of either party
may be taken for use on the argument of the
writ herein, before any Supreme Court Commis-
sioner or Examiner, upon four days' notice
either party to the other.

J. L. BODINE,
J. S. C.

40

Return to the Writ.

NEW JERSEY SUPREME COURT.

WALTON SHERMAN and FRANK M.
BAXTER,
Prosecutors,

vs.

CITY OF LONG BRANCH,
Defendant.

On Certiorari
Return to the
Writ.
Suit No. 1.

10

I, George L. Green, City Clerk of the City of
Long Branch, do herewith send to the Supreme
Court of the State of New Jersey the ordinance
of the City of Long Branch entitled:

20

“AN ORDINANCE providing for the laying
out, widening, straightening, improving and
constructing a new highway or avenue from
the Monmouth Beach line, southerly to the
intersection of West End Avenue with West
End Plaza, and to acquire as much land or
real estate, or right or interest therein, as
may be necessary for the making of such im-
provement, either by purchase or by condem-
nation in the manner prescribed by law; and
providing for the grading, curbing and pav-
ing of said highway or avenue, so laid out and
constructed, and for the levying of assess-
ments on the property especially benefited
thereby,”

30

and all proceedings taken by the Board of Com-
missioners of the City of Long Branch, in the
County of Monmouth, touching and concerning
the same, as by the writ of certiorari sealed the

40

Return to Writ.

20th day of January, 1930, before the Honorable William S. Gummere, Chief Justice of the Supreme Court, I am commanded to do.

10 I certify that I am City Clerk of the City of Long Branch, in the County of Monmouth, and that the following are true copies of all actions and proceedings taken by the Board of Commissioners of the City of Long Branch concerning the above entitled ordinance, and that they constitute the entire record of the proceedings in the above entitled action.

Signed this fifth day of February, 1930, and sealed with the seal of the City of Long Branch, in the County of Monmouth.

20

GEORGE L. GREEN.

(Seal)

Extract of a regular meeting of the Board of Commissioners of the City of Long Branch, held May 7, 1929:

30 "24. Mr. Charles F. Sexton, in the absence of the President, Honorable William A. Stevens, of the City Planning and Improvement, Inc., addressed the Board and requested, with other members of the organization, that the Board take official action looking forward to the opening and improving of a new Ocean Avenue, running west of the present Ocean Avenue from the northerly limits of the City of Long Branch to Brighton Avenue. This has been made possible by an Act of the Legislature of the State of New Jersey, entitled: 'A Supplement to an "Act regulating and providing for the government of cities," approved 40 April 8th, 1903,' which Act is known as Chapter 171 of the Laws of 1929, a certified copy of which

Return to Writ.

he filed with the Board. He also filed a certified copy of Chapter 154 of the Laws of 1929, which is also a Supplement to the 'Act regulating and providing for the government of cities,' approved April 8, 1903, in reference to the leasing of public parks and other public places. The laying out of Ocean Avenue is deemed by the City Planning and Improvement, Inc., of utmost importance for the improvement of this City. It is their opinion that this road should be laid out to a uniform width of not less than one hundred feet and in order that full information and details of the laying out of this road may be ascertained, what properties or portions of properties it may be necessary to acquire, the estimated value thereof, and of benefits to be conferred on properties peculiarly benefited thereby and to obtain information and facts in reference to laying out a plan, a survey be made.

Mr. J. H. Davis, Jr., also addressed the Board and advocated the improvement, stating that he considers this contemplated improvement would be the means of making vast improvements to the ocean front.

In addition to those who spoke on the improvement a large number of persons were present who favored it.

Commissioner Beatty moved that the certified copies of the Acts relating to the Road Bill and Leasing Bill be received and referred to the Board as a Committee of the whole for consideration. Carried. Roll call, Ayes—5.

Mayor Jones expressed his appreciation to Messrs. Sexton and Davis and others present for their interest in these projects."

Affidavits of Publication.

STATE OF NEW JERSEY, }
 MONMOUTH COUNTY, } ss.:

10 AMELIA M. GELLY, of the Long Branch Daily Record, a newspaper printed and published at Long Branch, in said County and State, who being duly sworn, deposeth and saith that the advertisement, of which the annexed is a true copy, has been published in the said newspaper one time on the 18th day of December, A. D. 1929.

AMELIA M. GELLY.

Sworn and subscribed to before me this }
 31st day of December, A. D. 1929. }

20 CLARICE S. PALMER,
 Notary Public of N. J.

STATE OF NEW JERSEY, }
 MONMOUTH COUNTY, } ss.:

30 BRYANT B. NEWCOMB, of the Long Branch Daily Record, a newspaper printed and published at Long Branch, in said County and State, who being duly sworn, deposeth and saith that the advertisement, of which the annexed is a true copy, has been published in the said newspaper one time successively, once in each week, commencing on the 3rd day of January, A. D. 1930.

BRYANT B. NEWCOMB.

Sworn and subscribed to before me this }
 3rd day of January, A. D. 1930. }

40 CLARICE S. PALMER,
 Notary Public of N. J.

Return to the Writ.

NEW JERSEY SUPREME COURT

WALTON SHERMAN and FRANK M.
BAXTER,

Prosecutors,

vs.

CITY OF LONG BRANCH,
Defendant.

On Certiorari
Return to the
Writ.
Suit No. 2

10

I, George L. Green, City Clerk of the City of
Long Branch, do herewith send to the Supreme
Court of the State of New Jersey the ordinance
of the City of Long Branch entitled:

20

“AN ORDINANCE authorizing the issue of \$2,-
000,000 Highway Bonds of 1930 of the City
of Long Branch, New Jersey,”

and all proceedings taken by the Board of Com-
missioners of the City of Long Branch, in the
County of Monmouth, touching and concerning the
same, as by the writ of certiorari sealed the 20th
day of January, 1930, before the Honorable Wil-
liam S. Gummere, Chief Justice of the Supreme
Court, I am commanded to do.

30

I certify that I am City Clerk of the City of
Long Branch, in the County of Monmouth, and
that the following are true copies of all actions
and proceedings taken by the Board of Commis-
sioners of the City of Long Branch concerning the
above entitled ordinance, and that they constitute

40

Return to Writ.

the entire record of the proceedings in the above entitled action.

Signed this fifth day of February, 1930, and sealed with the seal of the City of Long Branch, in the County of Monmouth.

10

GEORGE L. GREEN.

(Seal)

[Affidavits of publication identical with these of publication of the Highway ordinance attached and by consent not printed.]

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30

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Order to Take Depositions—Suit No. 2.

NEW JERSEY SUPREME COURT.

WALTON SHERMAN and FRANK M.

BAXTER,

Prosecutors,

vs.

CITY OF LONG BRANCH,

Defendant.

On Certiorari: 10
 Suit No. 2
 (Re Bond Issue).
 Order.

A writ of certiorari having been allowed in the above entitled cause, and good cause appearing:

IT IS on this 7th day of March, 1930, 20

ORDERED that affidavits on behalf of either party may be taken for use on the argument of the writ herein, before any Supreme Court Commissioner or Examiner, upon four days' notice either party to the other.

J. L. BODINE,
 J. S. C.

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Depositions.

NEW JERSEY SUPREME COURT.

10 WALTON SHERMAN and FRANK
 M. BAXTER,
 Prosecutors,
 vs.
 CITY OF LONG BRANCH,
 Defendant.

On Certiorari:
 Suit No. 1
 (Highway
 Construction).

20 WALTON SHERMAN and FRANK
 M. BAXTER,
 Prosecutors,
 vs.
 CITY OF LONG BRANCH,
 Defendant.

On Certiorari:
 Suit No. 2
 (Re Bond Issue).

30 DEPOSITIONS taken pursuant to notice, before
 the subscriber, Leo J. Warwick, Supreme Court
 Commissioner, on Thursday, the 27th day of
 March, 1930, at 10:30 o'clock in the forenoon, at
 the City Hall, Long Branch, N. J., in the presence
 of James D. Carpenter, Esq., of Messrs. McDer-
 mott, Enright & Carpenter, of counsel for the
 prosecutors, and William L. Edwards, Esq., city
 solicitor of Long Branch, of counsel for the de-
 fendant; it being stipulated that said depositions
 shall be taken stenographically and the signatures
 of witnesses waived, and that said depositions
 shall be taken to apply to both cases.

Francis M. Baxter, for Defendant—Direct.

FRANCIS M. BAXTER, a witness produced on the part of the defendant, being duly sworn according to law, testified as follows:

Direct examination by Mr. Edwards:

Q. You are one of the prosecutors in this case, are you not? A. Yes, sir. 10

Q. Will you tell us when you have paid any taxes to the City of Long Branch? A. When?

Q. Yes. A. I couldn't recall the date.

Q. About when? A. About when?

Q. I am speaking about yourself now and no one else. A. I think it was around the first of the year.

Q. For property that you own in the City of Long Branch? A. Yes. 20

Q. Where? A. 434 Broadway.

Q. Whose name is it in? A. My name and my wife.

Q. Your name and your wife's name? A. Yes, sir.

Q. Where is it, 434 Broadway, did you say? A. Yes.

Q. How far distant is that from the proposed boulevard in question, do you know? A. I don't know. What in feet or— 30

Q. Yes, in feet or fractions of a mile. A. Well, I should judge it is from three-quarters of a mile to a mile.

Q. How long have you been the owner of the property at 434 Broadway? A. About three years.

Q. Did you read the petition that was filed in this cause? A. Yes, sir.

Q. Where did you read it? A. Where? Read it in the paper. 40

Francis M. Baxter, for Defendant—Direct.

Q. What paper? A. The Record.

Q. You didn't read the petition then itself, did you?

Mr. Carpenter: I object to that as immaterial, whether he read it or not.

10 Q. Will you answer the question? A. I read it in the paper.

Q. You never read Mr. Sherman's affidavit either, did you? A. Mr. Sherman's?

Q. Yes. A. I don't think so.

Q. Aren't you sure you didn't?

Mr. Carpenter: Show him the petition so he can see to refresh his recollection. Probably that will recall it.

20 Q. You never read Walton Sherman's affidavit either, did you? (Paper shown witness.) A. I can't recall. The one that I signed is exactly like that; as near as I can remember it was one similar to that that I signed.

Q. You had no reason to read Walton Sherman's affidavit? A. I read mine.

Q. But you didn't read Walton Sherman's, did you? A. No, I don't think so.

30 Q. Who drew this affidavit for you? A. Carpenter & Enright.

Q. How do you know? A. Well, the man that I signed it for.

Q. Where did you sign it? A. I signed it in Judge Potter's office.

Q. Were you sent for to sign it or did you go there and state the contents that you wanted inserted?

Mr. Carpenter: Objected to as immaterial.

Francis M. Baxter, for Defendant—Direct.

Mr. Edwards: I think it is quite material under the Court's decision.

A. Well, we told them about what we wanted to do and they drew it up for us.

Q. You told who what you wanted to do? A. The lawyers. 10

Q. What lawyers?

Mr. Carpenter: Objected to as immaterial. What difference does it make?

Q. Who engaged Carpenter & Enright, as you call them? A. Mr. Sherman and I.

Q. You and Mr. Sherman? A. Yes.

Q. Where did you engage them?

Mr. Carpenter: Objected to. What difference does it make in the world? 20

Mr. Edwards: A whole lot.

Q. Where did you engage them? A. Where did we engage them?

Q. Yes. A. Engaged them from the Jersey City office.

Q. You went there to Jersey City and engaged them? A. No, I didn't go.

Q. Who did go? A. Who went? 30

Q. Yes. A. I don't know who went there, but we got engaged with them and we signed it.

Q. As a matter of fact didn't someone else engage them and you merely act, to use the street parlance, as a dummy in this case?

Mr. Carpenter: Objected to.

A. A dummy?

Q. Yes, sir. A. No sir; I am not any dummy.

Q. I didn't say you were, but didn't you act as such upon that occasion? A. No, sir. 40

Francis M. Baxter, for Defendant—Direct.

Q. Well, you never paid them? A. Who didn't pay them?

Q. You didn't, did you? A. You don't know whether we did or not.

10 Q. Well, I am asking you whether you did or not. A. How do you know that they have presented a bill yet?

Q. Do you expect to pay them? A. Yes, certainly.

Q. Where do you expect to get the money from to pay them? A. Where do we expect to get the money from?

Q. Yes. A. I have always been in the habit of paying my debts.

Q. I am not asking what your habits were.

20 Mr. Carpenter: Objected to.

The Commissioner: Mr. Edwards, I don't see the materiality of this. I don't know whether the commissioner as such has any right to interfere, but it is his duty to get the testimony and see that the proper testimony is put in shape for the Supreme Court.

Mr. Edwards: I will take the responsibility for the testimony being right.

30 Mr. Carpenter: I will direct the witness not to answer any such impertinent question.

Q. As a matter of fact didn't you act for Mr. Woolley and Mr. Wimpfheimer and others? A. I don't know Mr. Woolley or Mr. Wimpfheimer either.

Q. For whom did you act? A. Acted for myself.

40 Q. Just as a real good citizen; is that the idea?
A. Yes, sir.

Francis M. Baxter, for Defendant—Direct.

Q. And you expect to pay the lawyers out of your own pockets, without contribution from anyone else; is that right? Why do you hesitate?

Mr. Carpenter: I object to that as immaterial. What difference does it make whether a lawyer may not have sent them a bill? 10

Q. Will you answer?

Mr. Carpenter: I direct him not to answer.

Q. You refuse to answer, do you? A. No, but he said under the direction of counsel.

Q. Well, he has not said you are not on the witness stand. Do you refuse to answer? 20

Mr. Carpenter: I suggest the witness reply to counsel that under the direction of counsel he will not answer that question.

Q. Why don't you answer the question, Mr. Baxter? You are not afraid, are you? A. I am advised not to answer it.

Q. What? A. My counsel tells me not to answer it.

Q. And of course you want to adhere to what your counsel says; is that right? A. Yes. 30

Q. Is Mr. Carpenter your counsel? A. He is representing me, yes.

Q. How do you know? A. What would I bring him here for if he isn't?

Q. Did you bring him here? A. Yes.

Q. When? A. He was brought here this morning.

Q. Who brought him here? A. We brought him here. 40

Francis M. Baxter, for Defendant—Direct.

Q. Who do you mean by we? A. Mr. Sherman and I.

Q. You said you didn't read Mr. Sherman's affidavit here, didn't you? A. I said I didn't think I read it, but I read mine.

10 Q. Well, you know now whether you read Sherman's affidavit or not, don't you? A. Read the affidavit when I signed it.

Q. What affidavit? A. Mine.

Q. But you didn't read Sherman's affidavit? A. I don't think so.

Q. Is your memory poor? A. Fairly good.

Q. This affidavit that you took was on the 17th of January, wasn't it? A. I don't recall the date. I don't remember.

20 Q. You didn't read the petition, that you are sure of, aren't you?

Mr. Carpenter: Show him his affidavit. That will refresh his recollection.

Mr. Edwards: I will show him in due time.

Q. You are sure that you didn't read the affidavit? A. Mr. Sherman's?

Q. Yes, Mr. Sherman's affidavit? A. I don't think I did.

30 Q. And you are sure that you didn't read the petition that was filed in this cause, aren't you? A. I read the petition.

Q. Where did you read it? A. In Mr. Potter's office.

Q. Didn't you say a moment ago that you read it in the Long Branch Daily Record? A. Yes, but they had this petition the day that I signed it and the affidavit.

40 Q. Whose affidavit? A. The affidavit that you had there.

Francis M. Baxter, for Defendant—Direct.

Q. Whose affidavit? A. Well, I assume it was the same affidavit.

Q. Well, this is the same affidavit? A. I couldn't tell you word for word.

Q. You said a moment ago that you thought you didn't read Sherman's affidavit; and that is true? A. I don't think I did. I don't think I read his. 10

Q. I ask you again, is your recollection good or bad or indifferent? A. I said that I didn't think I read Mr. Sherman's

Q. By that you mean that you didn't read Mr. Sherman's? A. I don't think so.

Q. Then why do you say in your affidavit that "I have read the foregoing petition and the affidavit of Mr. Sherman annexed thereto"? You are mistaken, aren't you? A. I don't recall whether both of those were together when I signed it or not. That is my signature there. All that was done when I was sent for to sign the affidavit. 20

Q. He read the affidavit? A. He read it over.

Q. It was prepared at the time you signed it? A. No, it was not prepared then.

Q. Did you give the information to Mr. Potter, the contents of that paper? A. Mr. Potter?

Q. Yes. A. No.

Q. To whom did you give it? A. To these gentlemen. 30

Q. Who do you mean by these gentlemen? A. Carpenter and McDermott.

Q. When did you give it to them? A. I don't remember just when.

Q. What information did you give to them?

Mr. Carpenter: Objected to as incompetent, irrelevant and immaterial, and I instruct the witness not to answer it.

Francis M. Baxter, for Defendant—Direct.

Q. What information did you give to Messrs. McDermott and Enright or Mr. Carpenter here concerning the statements in your affidavit?

Mr. Carpenter: I object and direct the witness not to answer.

10

Q. Do you refuse to answer? Why do you hesitate? A. I refuse to answer it on advice of counsel.

20

Q. Well, after having read the affidavit you stated that Long Branch is the only city in the state which adopted an act relating to, regulating and providing for the government of cities (chapter 168, P. L. 1903). You didn't know whether that was so or not at the time that you made that affidavit?

Mr. Carpenter: The affidavit says it is true to the best of his knowledge, information and belief.

Q. You didn't know that at the time, did you, at the time you took your affidavit, did you? A. Know what, Mr. Edwards?

30

Q. That Long Branch is the only city in the state that adopted an act relating to, regulating and providing for the government of cities, being the act of 1903. A. I understood this act was passed.

Q. I am not asking you for your understanding. I say you didn't know it? A. I didn't know it, no.

Q. You didn't know it at the time you took your affidavit, did you? A. No, to get right down to it, I didn't know it.

Q. Where did you get your knowledge from? A. Well, after we consulted the people.

40

Q. What people?

Francis M. Baxter, for Defendant—Direct.

Mr. Carpenter: If he was advised so by counsel he can say so.

Q. You had no knowledge at the time, did you?

A. What, about this act?

Q. Yes. A. No legal knowledge, no.

Q. Or any knowledge of it? A. I read it. 10

Q. Where did you read it? A. Well, I read it in newspapers, where you generally get the information; no legal advice on it.

Q. Long Branch Record? A. I think it was that I read it in.

Q. That is a newspaper? A. I think so.

Q. You stated that the net bonded indebtedness of the City of Long Branch in December, 1929, was \$2,939,000. You didn't know what it was, did you? A. I only knew the same as any other citizen knows. You see the reports of the indebtedness filed in the papers. 20

Q. When did you see such reports? A. Well, I couldn't tell you when I saw it.

Q. How many years ago? A. How many years ago?

Q. Yes. A. It has been last year, I think it was out in the paper.

Q. That the net bonded indebtedness of the City of Long Branch was \$2,939,000? A. I don't remember whether those are the exact figures or not. 30

Q. Well, did you remember it at the time that you took your affidavit? A. Not at that time. The exact figures?

Q. Yes. A. Well, I don't know at that time, no.

Q. In other words, you were quite indifferent as to what was in the petition at the time that you signed, or affidavit, isn't that so? A. No, I read the affidavit. 40

Francis M. Baxter, for Defendant—Direct.

Q. Isn't it so that someone simply said, "Mr. Baxter, here is this affidavit; you sign it; it is all right"?

10 Mr. Carpenter: I object to that as totally immaterial, all these questions on the petition and the affidavit annexed to the petition, because the only purpose of those is to get the writ of certiorari; the writ being issued, all that is over the dam, and all we are at now is to try this case on the evidence that is taken for the purpose of supporting the writ, not for the purpose of getting a writ, because it is already gotten.

20 Q. I will ask you this question, Mr. Baxter: you may answer it under advice of counsel or leave it alone, I don't care which. Will you swear now that you saw in any paper an official statement that the net bonded indebtedness of Long Branch was at any time within the last three years thirteen per cent? A. Thirteen per cent?

Q. Yes. A. No, I don't recall that.

30 Q. Then why did you say that you believe or to your best knowledge and belief that the net bonded indebtedness of Long Branch was thirteen per cent?

Mr. Carpenter: Again I object to that on the same grounds, that the petition and affidavit went for getting the writ of certiorari and not to proving this fact before the court on certiorari.

40 Mr. Edwards: I hope counsel does not mean by that to infer that any statement may be made irrespective of the truth or falsity of it for the purpose of procuring a writ of certiorari.

F. M. Baxter, for Defendant—Cross—Re-direct.

Mr. Carpenter: Not at all, but you had a right to answer this if you wanted to before the Supreme Court in denying the writ. It is absolutely immaterial now, the writ having issued, he having said that he cannot tell what the indebtedness was.

10

Q. Will you answer the question?

Mr. Carpenter: To save time I will instruct him not to answer it.

(Question repeated.)

A. I will refuse to answer on the advice of counsel.

Mr. Edwards: That is all.

20

Cross-examination by Mr. Carpenter:

Q. Mr. Baxter, do you own any other property in Long Branch excepting that which you have testified to at 434 Broadway? A. Well, I own a small piece of property jointly with two sisters.

Q. Where is that located? A. It is in the rear of 434 Broadway.

Q. Those are the only two parcels you own? A. Yes, sir.

Q. That is all.

30

Re-direct examination by Mr. Edwards:

Q. Where is the other parcel? A. In the rear of 434.

Q. How many streets and blocks intervene between the proposed new boulevard and the premises that you say you own at 434 Broadway? A. How many?

Q. Yes. Name them, will you? A. You mean on the back streets or Broadway?

40

Walton Sherman, for Defendant—Direct.

Q. Right up Broadway. A. Down Broadway?

Q. Yes. A. Well, the first street here is Seventh Avenue, Slocum Place, Fifth Avenue, Fourth Avenue, Third Avenue, Second Avenue.

Q. Rockwell Avenue? A. Well, I thought you meant on the south side.

10 Q. Oh, no, Broadway. A. On each side?

Q. Yes, either side. A. Well, there is Dudley Street is the first one, then Seventh Avenue, South Seventh Avenue, Seventh Avenue, Lippincott Avenue, Slocum Place, Sixth Avenue, Fifth Avenue, Fourth Avenue, Rockwell and Third.

Q. Liberty Street? A. Liberty, Second Avenue and that is Mill Street down there and First Avenue.

20 Mr. Edwards: That is all.

WALTON SHERMAN, a witness produced on the part of the defendant, being duly sworn according to law, testified as follows:

Direct examination by Mr. Edwards:

Q. Mr. Sherman, you signed this paper that was presented?

30 Mr. Carpenter: Just show him a copy so as to refresh his recollection.

Q. On the 17th of January, 1930, showing witness a copy of affidavit. A. Yes, sir.

Q. Where? A. In Judge Potter's office.

Q. Did Judge Potter send for you to sign it? A. Yes, when it was ready.

Q. When had you seen Judge Potter or anyone else prior to signing that paper?

40 Mr. Carpenter: Objected to as incompetent, irrelevant and immaterial. That is

Walton Sherman, for Defendant—Direct.

the petition and affidavit used for applying for the writ of certiorari and it has no other purpose, and the writ having issued, testimony regarding it is just cumbering the record and I direct the witness not to answer it.

10

Q. Do you refuse to answer upon those grounds? A. As directed; yes, sir.

Q. Who gave the information for the affidavit that you presented here? A. Who gave the information?

Q. Yes.

Mr. Carpenter: If you don't know where we got it; if you do, say so.

A. I think it was gotten from Milton Bennett's office, Commissioner Milton Bennett's office.

20

Q. And all you did was sign an affidavit? A. No, I read it over.

Q. Oh, you read it over? A. Yes.

Q. It was prepared by someone else and you read it over? A. Yes.

Q. It was to your liking and you read it over? A. No, I didn't until after I read it.

Q. Did you engage Messrs. McDermott and Enright to look after this matter for you? A. Yes, sir.

30

Q. At the behest of whom? A. Is it all right to go ahead and tell him?

Q. Yes. A. First I called up Judge Potter, it was his recommendation.

Q. It was at your own behest then that these proceedings were taken; is that right? A. Yes, sir.

Q. You never consulted Frank Baxter about it? A. Yes.

40

Walton Sherman, for Defendant—Direct.

Q. Oh, did you? Before or after you had consulted Judge Potter? A. After.

Q. Were you afraid to go along alone?

Mr. Carpenter: Objected to.

10 A. No, I am not generally afraid of anything.

Q. You didn't know the bonded indebtedness of the City of Long Branch at the time you signed this affidavit, did you? A. Why, I thought I did.

Q. Why did you think so? A. What I read in the papers.

Q. That was the only information that you had?

A. The City statement; yes, sir.

Q. The City statement? A. What comes out in the paper. I was under the impression that
20 was what it was.

Q. Do you mean to say that you saw anywhere any official statement of any official of the City of Long Branch that the net bonded indebtedness of Long Branch was thirteen per cent.? A. I may be wrong. I think that is what it figures right out to.

Q. It doesn't figure out to that. Will you figure it out for us, Mr. Sherman? A. Well, I may be able to.

30 Q. You wouldn't be surprised, would you, if you were to be officially informed that for the last three years it has never exceeded 6.9?

Mr. Carpenter: I object. That is again immaterial. What difference does it make whether he is surprised or shocked?

Q. You merely took that as a flier, so to speak, for the purpose of getting this writ; isn't that so?

A. No, I don't think it was a flier.

40 Q. Well, you merely took it without due inquiry, didn't you?

Walton Sherman, for Defendant—Direct.

Mr. Carpenter: Of course he may have relied on counsel. You can't tell about that.

Q. You don't know, Mr. Sherman, to be perfectly frank, you don't know as a matter of fact what the bonded indebtedness of the City of Long Branch was, do you? A. Yes, I knew about as we go along. 10

Q. What was it? A. I couldn't tell you right off-hand now.

Q. What was it on the 17th of January, at the time you took the affidavit?

By Mr. Carpenter:

Q. Do you want to look at your affidavit to see? A. Yes. 20

By Mr. Edwards:

Q. I will let you look at it.

(Paper handed witness.)

A. The gross debt of the City in 1928 was \$3,674,-447.

Q. Where did you get that information from?

A. Where did I get that information from? 30

Q. Yes, where did you get that information from? A. I got it by counsel from the city hall.

Q. Then you took someone else's word for it; isn't that right? A. Yes, sir.

Q. You don't know of your own knowledge? A. Well, when you read a thing you know it of your own knowledge then. Anything you read you are taking somebody else's word. That is the way I interpret it; I may be wrong.

Q. Suppose I show you this. Do you know whether it is true or false? I show you a piece 40

Walton Sherman, for Defendant—Cross.

of paper. Do you know whether that is true or false that is on that paper that I am showing you? A. No, I don't know whether that is true or false.

10 Q. Of course you don't know; and you didn't know any more when you read the affidavit that was shown to you by counsel, did you? A. Yes, it coincided with what I had in my mind about it.

Q. What did you have in your mind? A. Just what you are referring to.

Q. That the bonded indebtedness of the City of Long Branch was thirteen per cent? I am speaking of the net bonded indebtedness. You know what that means, don't you? A. Yes.

20 Q. You know that it was not thirteen per cent, Mr. Sherman, don't you? A. No, sir.

Q. You don't know that it was, do you? A. I couldn't swear to it; no, sir.

Mr. Edwards: That is all.

Cross-examination by Mr. Carpenter:

Q. Mr. Sherman, whereabouts is your property located? A. At 40 Dunbar Avenue.

30 Q. How far is that from this proposed right of way? A. About 1,000 to 1,500 feet, I would say.

Q. And do you own any other property in town? A. No, sir.

Q. Are you connected with any company or corporation which is a large owner of property? A. Sherman & Sons, Incorporated; yes.

Q. What is your business? A. Treasurer.

Q. And do they own any property closer to this highway than you? A. No, none closer.

40 Q. How long have you been a resident of Long Branch? A. Thirty-eight years.

George L. Green, for Prosecutors—Direct.

Mr. Carpenter: That is all.

Mr. Edwards: That is all your life?

A. All my life.

Mr. Edwards: That is all.

10

GEORGE L. GREEN, a witness produced on the part of the prosecutors, being duly sworn according to law, testified as follows:

Direct examination by Mr. Carpenter:

Q. Mr. Green, you are city clerk of the City of Long Branch? A. Yes.

Q. How long have you had that position? A. Since April 18th last. 20

Q. April 18, 1929? A. Yes, sir.

Q. Long Branch is a city, is it not? A. Yes, sir.

Q. Do you know under what act it was incorporated or what act it adopted?

Mr. Edwards: We will agree that it was under the act of 1903.

Mr. Carpenter: Counsel states that Long Branch adopted the provisions by referendum of the act of 1903, entitled "an Act relating to, regulating and providing for the government of cities," in chapter 168, P. L. 1903. 30

Q. Now, Mr. Green, I wish you would tell us if it is not a fact that Long Branch adopted the Walsh Act, entitled "an Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within the state," approved April 25, 1911, and being 40

George L. Green, for Prosecutors—Direct.

known as Chapter 221 of the Laws of 1911, adopted at an election of the legal voters of the City of Long Branch held March 12, 1912.

10 Mr. Edwards: Counsel admits that the City agrees to that being a correct statement.

Mr. Carpenter: The vote for the adoption was 1,184, and against adoption was 533. Is that correct?

Mr. Edwards: I don't know, but whatever it was, yes, we will agree to that. The City has since been working under what is known as the Commission Government Act, or the so-called Walsh Act, ever since the adoption of the Walsh Act in 1912.

20 Q. And you have commissioners of the City of Long Branch, as provided by the Walsh Act? A. Yes.

Q. Does Long Branch act under the Walsh Act or does it act under the Act of 1903, which you referred to a minute ago, or both?

30 Mr. Edwards: That is objected to upon the ground that it is a purely legal question, that this gentleman is in no position to answer, he being no lawyer. I can state what our courts have from time to time held, referring to the decisions of *Ross v. Long Branch* and *Flock v. Woolley* and many other cases, especially a decision by Justice Katzenback and by Justice Gum-
mere.

40 Q. Now, Mr. Green, do you know whether Long Branch has continued to act under the act of 1903 since the adoption of the Walsh Act of 1912?

George L. Green, for Prosecutors—Direct.

Either yes or no will be your answer. Do you know whether they have acted? A. No.

Q. You don't know? A. No.

Q. You are familiar, are you not, with these two ordinances that are being attacked in this proceeding? A. Yes, sir.

Q. Was any resolution passed by the board of commissioners authorizing the bonds which were provided in the two million dollars ordinance? A. My book would show it. When was it passed?

Q. I call your attention to a certificate of yours dated January 15, 1930, and ask if that record refreshes your recollection as to whether there was any resolution providing for the issuance of those bonds? A. It states right here that there was not any resolution passed.

Q. There was no resolution passed authorizing the issuance of bonds? A. No.

Mr. Edwards: Read it.

A. "Nor was it the result of any resolution passed by said board."

Mr. Edwards: What is that that you are being shown?

A. A certified copy of the ordinance, "An ordinance authorizing the issuance of \$2,000,000 Highway Bonds of 1930 of the City of Long Branch."

Q. Is this a certificate made by you of a true copy of the contents of the ordinances and so forth? This was made up by you, wasn't it?

(Paper shown witness.)

A. Yes, sir.

Q. And is that a true and correct copy of what appears in the minutes of the city commissioners of Long Branch? A. Yes, sir.

George L. Green, for Prosecutors—Direct.

Q. And your certificates that are attached thereto, are they correct and true? A. Yes, sir.

10 Mr. Carpenter: Why not offer that, Mr. Edwards, in lieu of verbal testimony on the same subject? I offer in evidence and counsel agrees to receive in evidence a certified copy of the proceedings regarding these two ordinances, also the certificates of the clerk, without further proof of the matters therein contained, excepting that in this batch of papers is a copy of a letter addressed to the board of commissioners of Long Branch signed by Mr. Slocum, treasurer of the Long Branch Trust Company, and Mr. Sherman, president of the Long Branch Banking Company, and Mr. Bouse, formerly city comptroller of Long Branch, which counsel agree shall be taken from the exhibit and it is physically torn out; otherwise everything else is stipulated. That stipulation also includes the certificates of the clerk without further proof of what is contained in it.

20

(Copy of papers marked Exhibit P-1 and entered in evidence as follows):

30

40

Exhibit P-1.

GENERAL CERTIFICATE OF THE CLERK.

I, George L. Green, Clerk of the City of Long Branch, New Jersey, HEREBY CERTIFY:

1. The names and dates of election or appointment and dates of commencement and end of the terms of office of the City Officials are:

<i>Name & Office</i>	<i>Date of Election or Appointment</i>	<i>Date of Com- mencement of Term</i>	<i>Date of End of Term</i>	
<i>Mayor:</i> J. William Jones, 176 Rockwell Ave., Long Branch, N. J.	elected May 8, 1928	May 15, 1928	3rd Tuesday in May, 1932	10
<i>Board of Commissioners:</i> Milton A. Bennett, 35 Washington St., Long Branch, N. J.	“ “ 8, 1928	“ 15, 1928	3rd Tuesday in May, 1932	20
Charles E. Brown, 620 Campbell Ave., Long Branch, N. J.	“ “ 8, 1928	“ 15, 1928	3rd Tuesday in May, 1932	
Thomas Beatty, 206 Westwood Ave., Long Branch, N. J.	“ “ 8, 1928	“ 15, 1928	3rd Tuesday in May, 1932	
C. Fred Carr, 57 Washington St., Long Branch, N. J.	“ “ 8, 1928	“ 15, 1928	3rd Tuesday in May, 1932	
<i>City Treasurer:</i> Milton A. Bennett, Director of Revenue and Finance				30
<i>City Clerk:</i> George L. Green	appointed April 9, 1929	April 9, 1929	3rd Tuesday in May, 1930	
<i>City Solicitor:</i> William L. Edwards	“ May 15, 1928	May 15, 1928	3rd Tuesday in May, 1930	

All the foregoing officers filed their Oaths of Office and such of them as were required to give bonds and undertakings have filed such bonds or undertakings in my office, in form and amount approved by the Board of Commissioners, and

Exhibit P-1.

have otherwise duly qualified, and are the acting officers.

10 2. The regular meeting of the Board of Commissioners of the City of Long Branch are held on Tuesday of each week at 3 o'clock p. m., in the City Council Chambers, City Hall, Long Branch, N. J.

20 3. The provisions of Chapter 221 of the Laws of 1911, entitled: "an Act Relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within the State," approved April 25, 1911 (being the Walsh Act) was adopted at election of the legal voters of the City of Long Branch held on March 12, 1912, by the following vote:

For the adoption, 1184 votes
Against the adoption, 533 "

4. The corporate name of the City of Long Branch is "City of Long Branch" and the said name has not been changed by any election or shortened by any resolution.

30 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this fifteenth day of January, 1930.

GEO. L. GREEN,
City Clerk.

40 I, George L. Green, City Clerk of the City of Long Branch, hereby certify that the annexed extract from the minutes of a meeting of the Board of Commissioners of the City of Long Branch held on December 17, 1929, has been compared by me with the original and is a true copy thereof

Exhibit P-1.

and of the whole of said original so far as the same relates to the subject matter therein referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D., 1930.

GEO. L. GREEN,
City Clerk.

10

“12. The ordinance entitled: ‘An Ordinance providing for the laying out, widening, straightening, improving, and constructing a new highway or avenue from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, and to acquire as much land or real estate, or right or interest therein as may be necessary for the making of such improvement, either by purchase or by condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue, so laid out and constructed, and for the levying of assessments on the property especially benefited thereby,’ was introduced by Commissioner Bennett, given a first reading, passed, laid over until December 31, 1929, and ordered published in its entirety. Roll call, Ayes—4. Nay—1, Carr.

20

30

Commissioner Carr stated that in his opinion he does not consider the improvement in question will stimulate business sufficient to take the burden of it from the taxpayers. The Board has a number of improved streets under way at the present time and anticipate constructing others. It will be necessary within a short time for the City to comply with the wishes of the State Board of Health in connection with changes to the municipal sewer system which will entail a large outlay

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Exhibit P-1.

of money. For these reasons he does not feel that he can vote for an expenditure of \$2,000,000.00 at this time.”

10 I, George L. Green, City Clerk of the City of Long Branch, hereby certify that the annexed extract from the minutes of a meeting of the Board of Commissioners of the City of Long Branch held on December 17, 1929, has been compared by me with the original and is a true copy thereof and of the whole of said original so far as the same relates to the subject matter therein referred to.

20 IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D. 1930.

GEO. L. GREEN,
City Clerk.

(Seal)

30 “13. The ordinance entitled: ‘An Ordinance authorizing the issuance of \$2,000,000 Highway Bonds of 1930 of the City of Long Branch, New Jersey,’ was introduced by Commissioner Bennett, given a first reading, passed, laid over until December 31, 1929, and ordered published in its entirety. Roll call, Ayes—4. Nay—1, Carr.”

40 I, George L. Green, City Clerk of the City of Long Branch, hereby certify that the annexed extract from the minutes of a meeting of the Board of Commissioners of the City of Long Branch held on December 31, 1929, has been compared by me with the original and is a true copy thereof

Exhibit P-1.

and of the whole of said original so far as the same relates to the subject matter therein referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D. 1930.

(Seal)

GEO. L. GREEN,
City Clerk.

10

“14. The ordinance entitled: ‘An Ordinance providing for the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, and to acquire as much land or real estate, or right or interest therein, as may be necessary for the making of such improvement, either by purchase or by condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue, so laid out and constructed; and for the levying of assessments on the property especially benefited thereby’, which was laid over from the meeting of December 17, 1929, was taken up on its second reading, read and proof of publication submitted.

20

An opportunity was extended to anyone present desiring to be heard on the ordinance.

30

A communication from Edward R. Slocum, Treasurer of the Long Branch Trust Company, Harry B. Sherman, President of the Long Branch Banking Company and W. Stanley Bouse, former City Comptroller of the City of Long Branch was read. In their judgment the expenditure of Two Million Dollars will not bring the desired results from an improvement standpoint, will burden the taxpayers and result in an increased tax

40

Exhibit P-1.

burden which in turn will depreciate property values generally. The financial condition of the City as to its present indebtedness and the additional, if this project goes through, was enumerated.

10 Mrs. Michael A. Viracola, Dr. M. A. Aaronson, Mr. Adolph Schulz, Mr. Thomas P. McKenna, Rev. William R. Blackman, Messrs. Michael A. Viracola, John H. Davis, Jr., T. Raymond Bazley, Harold Flanigan, Harry Truax, George Lyons, representing the Lions Club, and Mr. I. Gruber addressed the Board, favoring the improvement.

Mrs. C. Gaskin, Messrs. Edmund Slocum, Thomas B. Barharm and Samuel Gorcey addressed the Board, objecting to the improvement.

20 Commissioners Beatty and Brown and Mayor Jones expressed themselves as favoring the improvement, as did Commissioner Bennett who submitted a statement showing the assessed valuation of the properties to be taken and the effect of the additional expenditure as to the increase of taxation.

On the call of the roll the ordinance was passed on its second reading by the following vote: Ayes—4. Nay—1, Carr.

30 Given a third reading, passed and ordered published in its entirety. Roll call, Ayes—4. Nay—1, Carr.”

I, George L. Green, City Clerk of the City of Long Branch, hereby certify that the annexed extract from the minutes of a meeting of the Board of Commissioners of the City of Long Branch held on December 31, 1929, has been compared by me with the original and is a true copy thereof
40 and of the whole of said original so far as the

Exhibit P-1.

same relates to the subject matter therein referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D. 1930.

(Seal)

GEO. L. GREEN, 10
City Clerk.

“15. The ordinance entitled: ‘An Ordinance authorizing the issuance of \$2,000,000. Highway Bonds of 1930 of the City of Long Branch, New Jersey,’ which was laid over from the meeting of December 17, 1929, was taken up on its second reading, read and proof of publication submitted.

An opportunity was extended to anyone present desiring to be heard on the ordinance and no one responded. 20

On the call of the roll the ordinance was passed on its second reading by the following vote: Ayes—4. Nay—1, Carr.

Given a third reading, passed and ordered published in its entirety. Roll call, Ayes—4. Nay—1, Carr.”

I, George L. Green, City Clerk of the City of Long Branch, do hereby certify that the ordinance hereto attached is an exact copy of the ordinance passed at a regular meeting of the Board of Commissioners of the City of Long Branch held on December 31, 1929, and is part of the records of such meeting as remain on file in the office of the City Clerk. 30

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D. 1930.

(Seal)

GEO. L. GREEN, 40
City Clerk.

*Exhibit P-1.***Copy of Highway Ordinance.**

10 AN ORDINANCE providing for the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, and to acquire as much land or real estate, or right or interest therein, as may be necessary for the making of such improvement, either by purchase or by condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue, so laid out and constructed, and for the levying of assessments on the property especially benefited thereby.

20 The Board of Commissioners of the City of Long Branch do ordain:

1. That a new highway or avenue shall be laid out and constructed from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, in the City of Long Branch, of the width of one hundred feet, the center line whereof being particularly described as follows:

30 BEGINNING at a point in the north line of West End Avenue where the same would be intersected by the centre line of West End Plaza, as now laid out and open to public use, if produced in a northerly direction to the north line of West End Avenue; thence (1) north eighteen degrees and forty-five minutes east two thousand eight hundred and twenty-one and eighteen one-hundredths feet to the middle of North Bath Avenue; thence (2) north seventeen degrees and twenty-nine minutes east one thousand nine hundred and sixty-three and twenty one hundredths feet to the middle of
40 Morris Avenue; thence (3) north ten degrees and

Exhibit P-1.

fifty-three minutes east two thousand two hundred and ninety-nine and eighty-one one hundredths feet to the middle of South Broadway; thence (4) north fifteen degrees and eight minutes east two thousand one hundred and seventy-one and thirty-one one hundredths feet to the middle of the intersection of Sea View Avenue and New Ocean Avenue; thence (5) along the middle of New Ocean Avenue north fourteen degrees and nine minutes east seven hundred and sixteen and fifty-five one hundredths feet; thence (6) north seventeen degrees and seventeen minutes east one thousand eight hundred and ten and forty-three one hundredths feet to the middle of Avenel Boulevard; thence (7) north seventeen degrees and thirty-two minutes east nine hundred and seventy-eight and eighty one hundredths feet to the middle of Atlantic Avenue; thence (8) north twenty-two degrees and sixteen minutes east five hundred and eighty-nine and fifty one hundredths feet to the middle of the intersection of Riverdale Avenue and Ocean Avenue at the Monmouth Beach line and there to end. Being the centre line of a boulevard one hundred feet in width, fifty feet each side thereof.

2. The boundaries of the said highway are hereby established as shown on a map or plan entitled: "Map showing location of Proposed Boulevard. Long Branch, Monmouth County, New Jersey," dated October, 1929, which map or plan has been filed in the office of the City Clerk before the introduction of this ordinance, and is hereby approved. A copy of this ordinance, together with a reproduction of the said map certified by the City Clerk shall be filed with the Clerk of the County after the passage of this ordinance.

Exhibit P-1.

10 3. Said highway shall be improved by grading as shown on said map or plan, and by paving with eight inch (8") reinforced concrete from curb to curb in compliance with the plans, drawings and specifications prepared therefor by the City Engineer, and duly approved by the Board of Commissioners, and by the construction of concrete curbs on each side of said paved portion, the face of the curb to be thirty-seven and one-half feet from the center line of said highway. The lines of the said curbs are hereby established and defined as the curb lines of said highway.

20 4. The City of Long Branch shall acquire by gift, purchase or condemnation, in the manner provided by law, any and all lands and real estate within the boundaries of said above described road not now owned by the City of Long Branch, the said lands and real estate being shown by the map or plan hereinabove referred to.

5. That the estimated cost of the improvements provided for in this ordinance is Two Million Dollars, and the sum of Two Million Dollars is hereby appropriated by the City of Long Branch to carry out the cost of the said improvements.

30 6. The cost of said improvements, including the cost of acquiring land and easements in any land, shall be paid by special assessment to be levied on property specially benefited as near as may be in proportion to the peculiar benefit, advantage or increase in value which the respective lands, or parcels of land, or real estate shall be deemed to receive by reason of said improvement; and in no case shall any assessment or any parcel of land exceed in amount such peculiar benefit, advantage or increase in value; and if benefits so
40 assessed shall not equal the entire cost the balance shall be paid by the City.

Exhibit P-1.

7. The owner of any lands or real estate upon which any assessment for said improvements shall have been made may pay such assessment in ten equal yearly installments, with legal interest, on the unpaid balance of the assessment. The first of said installments shall be due and payable thirty days after the confirmation of the assessments, and each subsequent annual installment and interest accrued on all unpaid installments shall be payable in each successive year thereafter at the time the first installment of taxes of said year shall be payable, provided that any person assessed shall have the privilege of paying the whole of any assessment, or any balance of installments, with accrued interest thereon at one time; in case any such installment shall remain unpaid for thirty days from and after the time it shall become due and payable the whole assessment, or balance thereof shall become and be immediately due and payable, and shall draw interest at the rate imposed on the arrearages of taxes in the City, and shall be collected in the same manner as provided by law for other past due assessments; such assessments shall remain a lien upon the land described therein until the same, with all installments and accrued interest thereon, shall be paid and satisfied. Notwithstanding anything herein to the contrary, the City shall have the right to waive default as may be permitted by law.

8. The owner or owners of land or real estate along the line of said improvements shall make all necessary connections in said highway or avenue with public utilities therein located within thirty days after the passing and approval of this ordinance, and in default thereof, the City may make said connections and the cost thereof shall be in-

Exhibit P-1.

cluded in the assessment upon the lands benefited for all lands not already so adequately connected.

9. All other matter in relation to said proposed improvements shall be determined by subsequent resolutions of the Board of Commissioners.

10 This ordinance shall take effect ten days from the date of its publication after final passage as provided by law.

Introduced December 17, 1929.

Passed December 31, 1929.

MILTON A. BENNET,
J. WILLIAM JONES,
CHARLES E. BROWN,
THOMAS BEATTY,
Commissioners.

20

Attest:

GEO. L. GREEN,
City Clerk.

I, George L. Green, City Clerk of the City of Long Branch, do hereby certify that the ordinance hereto attached is an exact copy of the ordinance passed at a regular meeting of the Board of Commissioners of the City of Long Branch held on
30 December 31, 1929, and is part of the records of such meeting as remain on file in the office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D., 1930.

(Seal)

GEO. L. GREEN,
City Clerk.

40

*Exhibit P-1.***Copy of Bond Ordinance.**

AN ORDINANCE authorizing the issuance of \$2,000,000 Highway Bonds of 1930 of the City of Long Branch, New Jersey.

The Board of Commissioners of the City of Long Branch do ordain:

Section 1. For the purpose of permanently financing a new highway in the City from the Monmouth Beach line southerly to the intersection of West End Avenue with West End Plaza, of the width of one hundred feet, the City shall issue \$2,000,000 bonds to be known as Highway Bonds of 1930.

Section 2. \$1,000,000 of said bonds to be known as Series A shall be issued for the estimated share of the cost of said improvement to be borne by the City at large, and not assessed on property specially benefited. Said series of bonds shall mature in the following annual installments:

\$25,000 on January 1 in each of the years 1936 to 1945, both inclusive, and \$30,000 on January 1 in each of the years 1946 to 1970, both inclusive.

Section 3. \$1,000,000 of said bonds to be known as Series B shall be issued for the estimated share of the cost of said improvement to be assessed on property specially benefited. Said series of bonds shall mature in the following annual installments:

\$100,000 on January 1 in each of the years 1936 to 1946, both inclusive.

Section 4. All of said bonds shall be dated January 1, 1930; shall be of the denomination of \$1,000 each and shall be in such form and shall be issued from time to time as may be provided by resolution; each issue shall bear interest at the

Exhibit P-1.

rate of four and one-half per centum ($4\frac{1}{2}\%$), four and three-quarters per centum ($4\frac{3}{4}\%$), five per centum (5%), five and one-quarter per centum ($5\frac{1}{4}\%$) or five and one-half per centum ($5\frac{1}{2}\%$) per annum, as shall be determined by resolution, payable semi-annually on the first days of January and July in each year.

Section 5. The proceeds of sale of said bonds shall be applied to the permanent financing of the highway referred to in Section 1 hereof. The said purpose is a capital expenditure and not current expenses and the amount of money necessary to be raised for the said purposes is \$2,000,000, including interest during the period of construction and six months thereafter, which interest is hereby determined to be part of the cost of construction.

Section 6. It is hereby determined and declared that the probable period of the usefulness of the said improvement for which said bonds are to be issued is forty years.

Section 7 (a). The bonds hereby authorized shall be general obligations of the City, payable by unlimited *ad valorem* tax on all the taxable property in the City, and the City hereby covenants punctually to pay the principal and interest of said bonds as the same shall become due and payable, and to levy such tax in each year in amount sufficient, together with other funds in hand and applicable, to pay such interest and principal.

(b). Special assessments to be levied on property specially benefited by the said improvement as collected shall be immediately placed in an account to be known as "Local Improvement Assessment Account" and to the extent that such

Exhibit P-1.

moneys are in hand and available for the payment of said bonds of Series B, the amount to be raised by tax for the payment of said bonds of Series B shall be reduced.

Section 8. In anticipation of the issuance of the bonds authorized by this ordinance the City shall if and when authorized by resolution issue temporary improvement notes or bonds in an amount not exceeding \$2,000,000, bearing interest at not exceeding six per centum (6%) per annum, which shall state that they are issued for the purpose of highway improvements. 10

Section 9. This ordinance shall take effect at the expiration of ten (10) days from the date of its publication after final passage as provided by law. 20

Introduced December 17, 1929.

Passed December 31, 1929.

MILTON A. BENNETT,
J. WILLIAM JONES,
CHARLES E. BROWN,
THOMAS BEATTY,
Commissioners.

Attest:

GEO. L. GREEN, 30
City Clerk.

I, GEORGE L. GREEN, City Clerk of the City of Long Branch, do hereby certify that the communication hereto attached is an exact copy of the one submitted at a regular meeting of the Board of Commissioners of the City of Long Branch, held on December 31, 1929, and is part of the records of such meeting as remain on file in the office of the City Clerk. 40

Exhibit P-1.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D., 1930.

GEO. L. GREEN,
City Clerk.

(Seal)

10

I, George L. Green, City Clerk of the City of Long Branch, do hereby certify that there has been no Special Election held in the City of Long Branch relative to the ordinance pertaining to the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, and to acquire such land or real estate, or right or interest therein, as may be necessary for the making of such improvement, either by purchase or by condemnation in the manner prescribed by law, and providing for the grading, curbing and paving of said highway or avenue, so laid out and constructed, and for the levying of assessments on the property especially benefited thereby, which was passed at a regular meeting of the Board of Commissioners of the said City of Long Branch held on December 31, 1929.

20

30

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D., 1930.

GEO. L. GREEN,
City Clerk.

(SEAL)

I, George L. Green, City Clerk of the City of Long Branch, do hereby certify that the ordinance entitled: "An Ordinance authorizing the issuance of \$2,000,000 Highway Bonds of 1930 of the City of Long Branch, New Jersey," was passed at a

40

Exhibit P-1.

regular meeting of the Board of Commissioners of the City of Long Branch on December 31, 1929, and was duly published according to law and that no Special Election was held in the City of Long Branch relative to said ordinance, nor was it the result of any resolution passed by said Board.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D., 1930.

(SEAL)

GEO. L. GREEN,
City Clerk.

I, George L. Green, City Clerk of the City of Long Branch, do hereby certify that no copy of an ordinance entitled: "An Ordinance providing for the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, and to acquire as much land or real estate, or right or interest therein, as may be necessary for the making of such improvement, either by purchase or by condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue, so laid out and constructed, and for the levying of assessments on the property especially benefited thereby," was sent to any party as prescribed by and required under Article 10, Section 1 of an Act *re* municipalities as amended by Chapter 287 of the Laws of 1929, pages 674 and 675.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this fifteenth day of January, A. D., 1930.

(SEAL)

GEO. L. GREEN,
City Clerk.

George L. Green, for Prosecutors—Direct.

Q. Mr. Green, you don't keep the record of the bonded indebtedness of the City, do you? A. No, sir; I don't.

Q. That is kept by the comptroller? A. Yes, sir.

10 Q. Has any work been done under the provisions of either of these ordinances?

Mr. Edwards: If you know.

Q. If you know. A. Working on making a survey map.

Q. And when was that survey map made, Mr. Green? A. I can tell you the time it was filed; prior to that time, of course. (Refers to book.) That was December 10th.

20 Q. It was filed December 10, 1929? A. By the city engineer.

Q. Made by the city engineer? A. Yes, sir.

Q. And has any work of construction been started, construction of the road? A. No, sir; not under the construction of the road.

Q. Any contract let for the construction of the road? A. Not as I know of.

Q. And no condemnation proceedings been started? A. Not as I know of.

30 Q. Where is the record of the map? This is a report of the city officers on page 206 and it embraces his record 3 here, submitting the map showing the location of the proposed new boulevard paralleling Ocean Avenue; is that right? A. Yes, sir.

Q. How far from Ocean Avenue does this road run generally? Generally what is the distance from Ocean Avenue? A. About one block.

Q. About one block west of Ocean Avenue? A. About one block west of Ocean Avenue.

40 Q. Running north and south through the city?

George L. Green, for Prosecutors—Direct.

A. Yes, I would say approximately one block. It varies.

Q. And the route of that new highway runs right through a section of the city which now has buildings on it; is that right? A. Part of it; yes, sir.

Q. Well, what part of it runs through a built-up section, right through where buildings are now? 10

A. I would have to see the map to tell you.

Q. Can you give us any idea? A. Yes, across Broadway.

Q. About how many blocks? A. It is less than a block.

Q. Do you know how many buildings there are in the right of way that have to be torn down? If you don't, say so. A. No, sir; I couldn't say for sure. 20

Q. There is no highway at all where this new highway runs, is there? A. No, sir.

Q. It is not an improvement of any existing highway but it is the construction of an entirely new highway; is that it? A. No, sir; it is no improvement of any existing highway.

Q. Have you got the engineer's estimate of the cost of this road? A. No, sir; I have not.

Q. Was one filed? A. I don't recall any.

Q. Well, how did the City get the figures that were put in the ordinance of the approximate cost of \$2,000,000? A. From the statement the city engineer made. 30

Q. Where is that statement? A. There was an ordinance introduced by Commissioner Dunham.

Q. But what I am getting at is where did the figures of \$2,000,000 come from? A. From the city engineer.

Q. How did they get before the commissioners, in a report or did he just tell them verbally? A. Well, just verbally. 40

George L. Green, for Prosecutors—Cross.

Q. There is nothing on file that indicates whether that cost would be \$2,000,000 or \$3,000,000 or one? A. Not as I know of.

Q. For all you know it might be \$5,000,000, as far as anything official appears on the records?

10 A. Nothing appears on the records that I know of.

Q. Was there any notice of any kind sent to the citizens of Long Branch concerning the intention to pass this ordinance to construct this highway? A. No, sir; not as I know of.

Q. No election was held as to whether or not to approve the highway and issue bonds? A. No, sir.

Q. No special election or general election, no referendum of any kind? A. No, sir.

20 Mr. Carpenter: That is all.

Cross-examination by Mr. Edwards:

Q. You say that there isn't anything official appearing upon the records to show that it would be two million or five million; are you sure of that?

30 Mr. Carpenter: We do concede, of course, that the \$2,000,000 figure is contained in the ordinance. What I was inquiring was where he got that figure.

Q. You also said that the proposed boulevard was a block away from Ocean Avenue? A. I said approximately a block.

40 Q. As a matter of fact isn't it true that the proposed boulevard begins at Ocean Avenue, that is, the West End section of it, and ends at Ocean Avenue in the North End section of the city? A. Yes.

George L. Green, for Prosecutors—Cross.

Q. Isn't it true that that proposed boulevard or avenue does traverse other avenues at the present moment? A. Yes.

Q. Wilson Avenue, for example? A. Yes.

Q. New Ocean Avenue, for example? A. Yes.

Q. And other streets or avenues? A. That is right. 10

Q. It is true, too, is it not, that the ordinances in question were duly advertised in the Long Branch Record and your record contains affidavits of the proper advertising of the ordinances? A. It was advertised; yes, sir.

Q. Your record so shows, does it not? A. Yes, sir.

Q. And you so certified in the return that you made to these two writs; correct? A. Yes, sir. 20

Mr. Edwards: That is all.

The further taking of depositions was adjourned till April 10, 1930, at 10.30 A. M., at the same place.

The hearing of depositions in the above stated cause was resumed, pursuant to the several adjournments, on Monday, April 14, 1930, at 10.30 A. M., at the City Hall, Long Branch, before LEO J. WARWICK, Esq., Supreme Court Commissioner. 30

HOWARD GILMORE, Esq., of Messrs. McDERMOTT, ENRIGHT & CARPENTER, appeared for the prosecutors, and WILLIAM L. EDWARDS, Esq., City Solicitor of Long Branch, for the defendants.

Milton A. Bennett, for Prosecutors—Direct.

MILTON A. BENNETT, a witness produced on the part of the prosecutors, being duly sworn according to law, testified as follows:

Direct examination by Mr. Gilmore:

10 Q. Mr. Bennett, where do you live? A. Long Branch.

Q. And you are one of the commissioners of Long Branch and also the director of revenue and finance of Long Branch? A. I am.

Q. When did you become such director? A. In May, 1928.

20 Q. And as such director of revenue and finance you make up, compute and file the annual debt statement and supplemental debt statements under the provisions of an act entitled "An Act to authorize and regulate the issuance of bonds and other obligations and the incurring of indebtedness by county, city, borough, village, town, township or any municipality governed by an improvement commission or any municipality governed by a board of commissioners," which was approved March 22, 1916, and the various supplements thereof and amendments thereto? A. I do.

30 Q. Mr. Bennett, I show you Exhibit P-1, which was offered in evidence March 27, 1930, which refers to two ordinances of the City of Long Branch, both of which were introduced December 17, 1929, and finally passed December 31, 1929; one being "An ordinance providing for the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line, southerly to the intersection of West End Avenue with West End Plaza, and to acquire as much land or real estate, or right or interest
40 therein as may be necessary for the making of

Milton A. Bennett, for Prosecutors—Direct.

such improvements, either by purchase or by condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue, so laid out and constructed, and for the levying of assessments on the property especially benefited thereby," and which ordinance I shall hereafter refer to as the highway construction ordinance, for convenience; and the other ordinance being entitled, "An ordinance authorizing the issuance of \$2,000,000 highway bonds of 1930 of the City of Long Branch, New Jersey," which I shall hereafter refer to for convenience as the bond ordinance. Do you recall the introduction of those two ordinances? A. I do. 10

Q. And they were introduced on March 17, 1929, both of them? A. That is right. 20

Q. And they were finally passed December 31, 1929, both of them? A. That is right.

Q. At the time of the introduction of those ordinances had you prepared a supplement to the debt statement of the City of Long Branch showing the net debt of the city at that time, as provided by the 1916 bond act, or the Pierson Act? A. I prepared a statement but I did not file it with the bond, as it was not required.

Q. Have you that statement with you? A. I will see. Yes, I have it here. 30

Q. Is that made up by reason of the provisions of the bond act or so known Pierson Act? A. Yes, it is.

Q. What does that show under item A, subdivision 1, as the net debt of the municipality as stated under subdivision C of the annual debt statement last filed, namely, the 1928 annual debt statement? A. \$1,124,681.71.

Q. What does item A, subdivision 2, entitled "The amount by which said net debt has been increased," state? A. \$57,790.32. 40

Milton A. Bennett, for Prosecutors—Direct.

Q. Making the net debt of the City of Long Branch at the time that statement was made under item A, subdivision 3, what amount? A. \$1,182,472.03.

10 Q. Did you then set off under subdivision B the amount and purposes of the several items and the bonds or notes about to be authorized, together with the deductions which might be made on account of each such item, under the so-called bond ordinance which I spoke of a few moments ago? A. I wrote in the purpose to be the issuing of the boulevard bonds and the amount \$2,000,000.

20 Q. By referring to this statement can you tell me the three assessed valuations of taxable real property, including the improvements, of Long Branch, and the average thereunder for the years 1927, 1928 and 1929? A. I can.

Q. What was that for the year 1927? A. \$17,750,739.

Q. For the year 1928? A. \$18,017,150.

Q. And for the year 1929? A. \$19,011,850.

Q. Making a total average assessed valuation for those three years of what? A. \$18,259,913.

30 Q. Can you tell me what the assessed valuations were, similarly computed, for the City of Long Branch, for the year 1926, by referring to any of your records here? A. I have no records here that would show that. Yes, I have too. I have it right here.

Q. What was that? A. \$17,206,124.

Q. Can you tell me from your records what the average of the assessed valuations for the years 1926, 1927 and 1928 was? A. Yes.

Q. What was that? A. \$17,658,004.

40 Q. In computing the supplemental debt statement at the time of the passage of these two ordinances did you compute items F, G, H, I and J,

Milton A. Bennett, for Prosecutors—Direct.

as referred to in section 12, subdivision 2, of chapter 174, laws of 1929, which is an amendment to the original bond act? A. I don't know what those are by letter.

Q. I will ask you questions with reference to each of them then. Did you compute the total amount of all bonds and notes required to be stated as part of gross indebtedness issued and authorized since December thirty-first, one thousand nine hundred and sixteen (whether paid or outstanding, except bonds and notes issued in anticipation of the receipt of tax revenues, and except bonds or notes issued to refund or fund indebtedness contracted before December thirty-first, one thousand nine hundred and sixteen), and the bonds or notes to be authorized? A. What section is that? 10
20

Q. That is subdivision 2 of section 12 of the bond act. A. Yes, I believe I did. I think what you are trying to get at there is that section which provides whether the improvement authorized exceeds seven per cent., certain other things done.

Q. Yes, and did you do these certain other things in computing this? A. I did not.

Q. Then you didn't compute the total amount of all bonds and notes required to be stated as part of gross indebtedness issued and authorized since December thirty-first, one thousand nine hundred and sixteen (whether paid or outstanding, except bonds and notes issued in anticipation of the receipt of tax revenues, and except bonds or notes issued to refund or fund indebtedness contracted before December thirty-first, one thousand nine hundred and sixteen), and the bonds or notes to be authorized? A. I didn't do those things you mention there. 30
40

Milton A. Bennett, for Prosecutors—Direct.

Q. At the time of making that statement? A. At the time of making that statement, because the net debt did not exceed seven per cent.

Mr. Gilmore: I ask that that be stricken out as not responsive.

10

A. I am trying to save your time from going through each one of those items.

Q. The question is just whether you did compute what I last asked you at the time you made up that statement.

Mr. Edwards: I think he has answered it and stated the reason why.

20

Q. I understood you to say that you did not; is that correct? A. I did not.

Q. Did you at that time compute the total deductions (as provided to be made in the financial statement which may be made on account of the bonds and notes, stated in subdivision F), referring to the question I just asked you a moment ago? A. I did not, under that section.

30

Q. Did you compute the difference between the amounts stated in subdivisions F and G? G is the last question I asked you; F was the question before. A. I did not, for the reason already stated.

Q. Did you compute, under subdivision I, the average valuation of taxable real property (including improvements) of the municipality for the years one thousand nine hundred and fourteen, one thousand nine hundred and fifteen and one thousand nine hundred and sixteen? A. I did not, for the same reason.

40

Q. Did you compute, under subdivision J, the percentage that the net increased debt stated in subdivision H bears to the average assessed

Exhibit P-2.

valuation, stated in subdivision I? A. If that is part of those same sections there the answer is the same.

Q. Did you compute the percentage, under subdivision J, that the net increased debt stated in subdivision H bears to the average assessed valuation, stated in subdivision I? A. My answer to that is that I did not, for the reasons already stated. 10

Q. I show you what purports to be a copy of the annual debt statement of the City of Long Branch for the year 1928, certified by commissioner of municipal accounts Walter R. Darby as being a true copy, and ask you if that is a true copy. You have checked that yourself? A. I have checked it and find that it is a true copy. 20

Mr. Gilmore: I offer that in evidence.

(Paper marked Exhibit P-2.)

Debt Statement 1928.

COPY OF EXHIBIT P-2.

ANNUAL DEBT STATEMENT.

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } ss.: 30

MILTON A. BENNETT, being duly sworn deposes and says:

Deponent is the chief financial officer of the City of Long Branch, County of Monmouth, hereinafter called "the municipality". The Annual Debt Statement annexed hereto and hereby made a part hereof is a true statement of the debt condition of the municipality as of December 31, 1928. The amounts of such items as are indefinite or unascertainable are estimated. 40

Exhibit P-2.

The municipality of Long Branch, County of Monmouth, has no indebtedness of any kind.

Subscribed and sworn to before me }
 this 29 day of June, 1929. }

10 MILTON A. BENNETT,
 Office—City Hall,
 Address—Long Branch, N. J.

MAUDE F. FINN,
 Notary Public of New Jersey.

C. THE NET DEBT.

20 The net debt of the municipality as determined by deducting the deductions as stated in subdivision B from the gross debt stated in subdivision A is as follows:

Gross debt	\$3,674,447.53
Deductions	2,549,765.82
Net debt.....	<u>\$1,124,681.71</u>

D. AVERAGE ASSESSED VALUATION.

30 The three next preceding assessed valuations of the taxable real property (including improvements) of the municipality and the average thereof are as follows:

1926 Assessed valuation of such real property	\$17,206,124.00
1927 Assessed valuation of such real property	\$17,750,739.00
1928 Assessed valuation of such real property	\$18,017,150.00
40 Average of such assessed val- uations	\$17,658,004.00

Exhibit P-2.

E. PERCENTAGE OF NET DEBT OF AVERAGE ASSESSED VALUATION.

The percentage that the net debt as computed under subdivision C hereof bears to the average of the assessed valuations computed under subdivision D hereof is as follows:

10

Six and thirty-seven one hundredths per cent. (6 37/100%).

A. GROSS INDEBTEDNESS.

The gross indebtedness of the municipality, inclusive of notes or bonds authorized but not issued and obligations of the municipality held uncanceled in any sinking funds, exclusive of indebtedness incurred for current expenses of the current fiscal year and inclusive of notes or bonds or certificates of the municipality issued for school purposes other than for the current expenses of schools, but *not including the indebtedness of any school district constituting a separate corporation*, is as follows:

20

(a) Bonded Debt. (Including bonds, authorized but not issued.)

1. Bonds payable or to be payable in whole or part out of special assessments on property specially benefited..... \$

30

2. Bonds issued, and authorized but not issued, for the following purposes so far as separately authorized or issued for such purposes:

Docks \$
 Water supply \$
 Electric light or power..... \$
 Gas \$
 Markets \$

40

Exhibit P-2.

1. Evidence of indebtedness issued, and authorized but not issued, for school purposes. (Applies only to School Districts operating under the provisions of Article VI of the School Laws).....	\$ 15,000.00	
Ocean Front 74,630.73. Other 584,104.20.		10
2. Other evidences of indebtedness issued, and authorized but not issued....	\$ 658,734.93	
N. B.—Include under this head (2) all tax revenue notes or bonds and all obligations or authorizations of the municipality which have not been included under some other head.		
TOTAL GROSS INDEBTEDNESS.....	\$3,674,447.53	20
Analysis of "Other evidences of indebtedness issued, and authorized but not issued" under (b) 2.		
Total indebtedness authorized	\$658,734.93	
Total amount of such authorizations issued	\$597,358.51	
Indebtedness authorized <i>but not issued</i> \$	61,376.42	
Temporary ("other") evidences of indebtedness issued.		30
Ocean Front Improvement Notes	\$ 10,895.00	
Other Improvement Notes....	97,450.20	
Ocean Front Emergency Notes	30,235.73	
Other Emergency Notes.....	30,172.26	
Assessment Notes	17,584.40	
.....	\$ 186,337.59	40

Exhibit P-2.

	Amount of all Tax Revenue-Title-Notes or Bonds	\$ 268,000.00
	Amount owing Local Schools (Local School Levy)	\$ 133,843.00
	Appropriation Reserves and Unpaid State or County Tax.....	\$ 9,177.92
10	TOTAL—Should be in agreement with (b) 2 above	\$ 658,734.93

B. DEDUCTIONS.

The deductions are as follows:

20	(a) The amount of special assessments levied and uncollected, applicable to the payment of any part of the gross indebted- ness not deducted under some other item hereof	\$ 18,366.30
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	(b) The amount, as estimated by resolu- tion of the governing body, of special as- sessments to be levied for any local im- provement, which will be applicable to any part of the gross indebtedness not de- ducted under some other item hereof.....	\$ 48,000.00
--	---	--------------

30	(c) Indebtedness incurred and author- ized but not incurred, for the purposes be- low stated (but not for the support or maintenance thereof) separately stated in so far as separately issued for such pur- poses, the payment of the principal and interest of which indebtedness was ade- quately provided for from revenue from rentals or services rendered after de- ducting operating expenses during the previous fiscal year, namely:	
----	--	--

Exhibit P-2.

1. Docks	\$	
2. Electric light or power.....	\$	
3. Gas	\$	
4. Markets	\$	
5.	\$	
6.	\$	
Total.....	\$	10
Less Sinking Funds Ap- plicable	\$	
Net Total	\$	
3% of the average assessed valuation as stated in sub- division D hereof.....	\$	
Deductions under this item (c). (Insert smaller of above two amounts).....	\$	20
(d) Indebtedness incurred and author- ized but not incurred, for the supply of water	\$	
(e) The net indebtedness incurred and authorized but not incurred, for school purposes as stated in A (a) 4, and A (b) 1.....	\$1,079,212.60	
6% of the average assessed valuation as stated in subdivision D hereof.....	\$1,059,480.24	30
Deductions under this item (e). (Insert smaller of above two amounts).....	\$1,059,480.24	
(f) Funds in hand and sinking funds or such parts thereof as are held for the pay- ment of any part of the gross indebtedness other than that which is included in these deductions or otherwise deducted. Under this item is included the proceeds on hand of any bonds or notes held to pay any part		40

Exhibit P-2.

of the gross indebtedness and the estimated proceeds of bonds or notes which have been authorized if such estimated proceeds will be held for that purpose:

	Total sinking fund.....	\$539,430.89	
10	Less school sinking fund	\$132,287.40	
	Less Ocean Front sinking fund....	\$357,603.17	\$489,890.57
	Net deduction for sinking fund.....		\$ 49,540.32
	Deduction for funds in hand.....		\$ 80,659.75
	(h) Amount of unpaid taxes not more than three years in arrears.....		\$ 385,088.48
20	(i) Indebtedness incurred, or authorized, for the construction or reconstruction of dikes, bulkheads, jetties, or other devices erected along the ocean or inlet fronts and intended to prevent the encroachment of the sea, including the improvements to restore property damaged by the sea or for the construction of board walks, pavilions, piers, bathing houses, or other devices along the ocean front and the acquisition of lands in connection therewith		\$ 908,630.73
30	(j) Amounts owing by the State, by other municipalities or by other persons or corporations on account of that part of an improvement (not an assessment improvement) for which indebtedness has been incurred or authorized and not deducted under some other item.....		\$2,549,765.82
40	Total Deductions.....		\$

Exhibit P-3.

Q. I now show you what purports to be a certified copy of the annual debt statement of Long Branch for the year 1929, certified by Walter R. Darby, Commissioner of Municipal Accounts, to be a true copy, and ask you if you have checked over with the original on file in the Clerk's office and whether it is a true copy? A. I have checked it and it is a true copy. 10

Mr. Gilmore: I offer the annual debt statement for the year 1929.

(Paper marked Exhibit P-3.)

Debt Statement 1929.

COPY OF EXHIBIT P-3.

ANNUAL DEBT STATEMENT. 20

STATE OF NEW JERSEY, }
COUNTY OF MONMOUTH, } ss.:

MILTON A. BENNETT, being duly sworn deposes and says:

Deponent is the chief financial officer of the City of Long Branch, County of Monmouth, hereinafter called "the municipality". The Annual Debt Statement annexed hereto and hereby made a part hereof is a true statement of the debt condition of the municipality as of December 31, 19.... The amounts of such items as are indefinite or unascertainable are estimated. 30

The municipality of.....
County of..... has no indebtedness of any kind.

MILTON A. BENNETT
Office—Director of Revenue & Finance
Address—Long Branch, N. J.

Subscribed and sworn to before me }
this 20th day of Mar., 1930. } 40
MAUDE F. FINN
Notary Public of New Jersey.

Exhibit P-3.

C. THE NET DEBT.

The net debt of the municipality as determined by deducting the deductions as stated in subdivision B from the gross debt stated in subdivision A is as follows:

	Gross debt	\$5,873,955.38
10	Deductions	\$4,678,543.09
	Net debt	\$1,195,412.29

D. AVERAGE ASSESSED VALUATION.

The three next preceding assessed valuations of the taxable real property (including improvements) of the municipality and the average thereof are as follows:

	1927 Assessed valuation of such real property	\$17,750,739.
	1928 " " " " " "	\$18,017,150.
20	1929 " " " " " "	\$19,011,850.
	Average of such assessed valuations	\$18,259,913.

E. PERCENTAGE OF NET DEBT OF AVERAGE ASSESSED VALUATION.

The percentage that the net debt as computed under subdivision C hereof bears to the average of the assessed valuations computed under subdivision D hereof is as follows: Six and fifty-four one hundredths per cent. (.0654%).

30

A. GROSS INDEBTEDNESS.

The gross indebtedness of the municipality, inclusive of notes or bonds authorized but not issued and obligations of the municipality held uncanceled in any sinking funds, exclusive of indebtedness incurred for current expenses of the current fiscal year and inclusive of notes or bonds or certificates of the municipality issued for school purposes other than for the current expenses of schools, but *not including the indebtedness of any school district constituting a separate corporation*, is as follows:

40

Exhibit P-3.

(a) Bonded Debt. (Including bonds, authorized but not issued.)

1. Bonds payable or to be payable in whole or part out of special assessments on property specially benefitted..... \$

10

2. Bonds issued, and authorized but not issued, for the following purposes so far as separately authorized or issued for such purposes:

Docks \$
 Water supply \$
 Electric light or power..... \$
 Gas \$
 Markets \$

20

3. Bonds issued, and authorized but not issued, for other purposes from the carrying out of which the municipality derives revenue from rental or service. (State purposes separately.)

..... \$
 \$

4. Bonds issued, and authorized but not issued, for school purposes after deducting sinking funds and funds in hand applicable thereto.

30

Issued and authorized but not issued.....	\$1,167,500.00	
Sinking funds and funds in hand applicable thereto	\$ 158,391.94	\$1,009,108.06

N. B.—Above item (4) is not to be used in Article VII, School Districts.

5. Bonds issued, and authorized but not issued, not included above. (State purposes separately.)

40

Exhibit P-3.

	Term Bonds—General Improvements	\$ 120,000.00
	Serial Bonds—General Improvements	\$ 925,500.00
	Term Bonds—Ocean Front Improve- ments	\$ 569,000.00
	Serial Bonds—Ocean Front Improve- ments	\$ 254,000.00
10	Proposed New Boulevard Bonds (Au- thorized	\$2,000,000.00
	(b) Evidences of indebtedness other than bonds, including temporary notes or bonds issued under section thirteen of Chapter 252, P. L. 1916, as amended.	
	1. Evidence of indebtedness issued, and authorized but not issued, for school purposes. (Applies only to School Dis- tricts operating under the provisions of Article VI of the School Laws.).....	
20		\$ 30,000.00
	Ocean Front	\$ 129,060.73
	Other	\$ 837,286.59
	2. Other evidences of indebtedness is- sued, and authorized but not issued.....	
		\$ 966,347.32
	N. B.—Include under this head (2) all tax revenue notes or bonds and all obligations or authorizations of the municipality which have not been in- cluded under some other head.	
30	Total Gross Indebtedness.....	\$5,873,955.38
	Analysis of "Other evidences of indebted- ness issued, and authorized but not is- sued" under (b) 2.	
	Total indebtedness author- ized	\$ 966,347.32
40	Total amount of such au- thorizations issued	\$ 863,225.25

Exhibit P-3.

Indebtedness authorized <i>but not issued</i>	\$ 103,122.07	
Temporary (“other”) evidences of indebtedness issued.		
Ocean Front Emergency		
Notes	\$ 20,910.73	
Other Emergency Notes	29,730.59	10
Ocean Front Improvement Notes	67,134.06	
Other Improvement Notes	214,500.72	
Assessment Notes	24,282.82	
.....	\$ 356,558.92	
Amount of all Tax Revenue—Title—Notes or Bonds	\$ 328,000.00	
Amount owing Local Schools (Local School Levy)	\$ 152,711.91	20
Appropriation Reserves and Unpaid State or County Tax	\$ 25,954.42	
Total—Should be in agreement with (b) 2 above	\$ 966,347.32	

B. DEDUCTIONS.

The deductions are as follows:

(a) The amount of special assessments levied and uncollected, applicable to the payment of any part of the gross indebtedness not deducted under some other item hereof	\$ 23,357.39	30
(b) The amount, as estimated by resolution of the governing body, of special assessments to be levied for any improvement, which will be applicable to any part of the gross indebtedness not deducted under some other item hereof.....	\$ 31,000.00	40

Exhibit P-3.

(c) Indebtedness incurred and authorized but not incurred, for the purposes below stated (but not for the support or maintenance thereof) separately stated in so far as separately issued for such purposes, the payment of the principal and interest of which indebtedness was adequately provided for from revenue from rentals or services rendered after deducting operating expenses during the previous fiscal year, namely:

	1. Docks	\$
	2. Electric light or power	\$
	3. Gas	\$
20	4. Markets	\$
	5.	\$
	6.	\$
	Total	\$
	Less Sinking Funds Ap- plicable	\$
	Net Total	\$
	3% of the average as- sessed valuation as stated in subdivision D hereof	\$
30		
	Deductions under this item (c). (In- sert smaller of above two amounts)	\$
	(d) Indebtedness incurred and author- ized but not incurred, for the supply of water	\$
	(e) The net indebtedness incurred and authorized but not incurred, for school purposes as stated in A (a) 4, and A	
40	(b) 1	\$1,039,108.06

Exhibit P-3.

6% of the average assessed valuation as stated in subdivision D hereof.....	\$1,095,594.78	
Deductions under this item (e). (Insert smaller of above two amounts).....	\$1,039,108.06	
(f) Funds in hand and sinking funds or such parts thereof as are held for the payment of any part of the gross indebtedness other than that which is included in these deductions or otherwise deducted. Under this item is included the proceeds on hand of any bonds or notes held to pay any part of the gross indebtedness and the estimated proceeds of bonds or notes which have been authorized if such estimated proceeds will be held for that purpose:		10
Proposed New Boulevard.....	\$2,000,000.00	20
Total sinking fund.....	\$ 589,599.81	
Less school		
sinking fund \$ 158,391.94		
Ocean Front.. 360,535.90	\$ 518,927.84	
Net deduction for sinking fund.....	\$ 70,671.97	
Deduction for funds in hand.....	\$ 106,332.06	
(h) Amount of unpaid taxes not more than three years in arrears.....	\$ 456,012.88	30
(i) Indebtedness incurred, or authorized, for the construction or reconstruction of dikes, bulkheads, jetties, or other devices erected along the ocean or inlet fronts and intended to prevent the encroachment of the sea including the improvements to restore property damaged by the sea or for the construction of board walks, pavilions, piers, bathing houses, or other devices along the ocean front and the acquisition of lands in connection therewith.....	\$ 952,060.73	40

Exhibit P-3.

(j) Amounts owing by the State, by other municipalities or by other persons or corporations on account of that part of an improvement (not an assessment improvement) for which indebtedness has been incurred or authorized and not deducted

10	under some other item.....	\$
	Total Deductions.....	\$4,678,543.09

Q. Can you tell from your records what the total gross debt of the City of Long Branch was on December 17, 1929? A. I can't tell that off-hand, no.

Q. Can't you tell it by referring to your annual debt statement for the year 1928? A. I can't tell it accurately from that.

20 Q. Can you tell me what bonds were outstanding on December 17, 1929? A. You mean the total amount or itemized list of bonds.

Q. An itemized list of the bonds outstanding at that time, just by the issue and amount.

Mr. Edwards: I think I ought to make an objection to that, on the ground that the gross debt should be exclusive of the things set forth in the statute referred to.

30 Mr. Gilmore: I think we ought to have the entire gross debt.

Mr. Edwards: I object to that on the ground that the statute provides, as I understand it, that the gross indebtedness of a municipality is exclusive of certain other indebtedness therein set forth in that statute; and if that is what they want that is one thing; if you want anything other than that I submit it is irrelevant and improper.

40 A. I have here an annual audit for the year 1928, and by deducting the bonds retired in 1929 I can arrive at that.

Milton A. Bennett, for Prosecutors—Direct.

Q. Will you give me that figure? A. Do you want these itemized, each separate issue of bonds?

Q. Yes. How many issues are there? A. About twenty-five.

Q. Yes, you had better itemize them. A. Starting first with term bonds:

June 1, 1905, Beach and park.....	\$150,000.	10
June 1, 1906, Beach and park.....	250,000.	
November 1, 1907, Beach and park....	100,000.	
May 1, 1913, Paving.....	120,000.	
March 1, 1913, Beach improvement....	14,000.	
March 1, 1914, Beach improvement....	25,000.	
February 1, 1915, Beach improvement	30,000.	
July 1, 1915, School refunding.....	95,500.	
June 1, 1903, School refunding.....	18,000.	
June 1, 1898, School refunding.....	45,000.	20
November 1, 1911, School refunding..	110,000.	

That completes the term bonds.

Q. And what is the aggregate of the term bonds? A. The total of this is \$957,500. Now the serial bonds will come a little slower, because I will have to deduct as I go along the 29's that have been retired.

Issue of July 1, 1922, General improvement....	\$102,000.	
Issue of Jan. 1, 1923, Ocean front.....	115,000.	30
Issue of June 1, 1923, General improvement....	66,000.	
Issue of Aug. 1, 1924, Sewer and lighting.....	125,000.	
Issue of Aug. 1, 1924, Water front.....	63,000.	
Issue of Aug. 1, 1924, School.....	184,000.	
Issue of May 1, 1925, Street and sewer.....	438,000.	
Issue of May 1, 1925, School.....	102,000.	
Issue of May 1, 1926, Road improvement.....	465,000.	
Issue of May 1, 1926, School.....	522,000.	
Issue of July 1, 1927, Ornamental lighting.....	50,000.	
Issue of Mar. 1, 1928, School.....	91,000.	40
Issue of Mar. 1, 1928, Ocean front.....	76,000.	
Issue of Mar. 1, 1928, General improvement....	98,000.	

That completes the serial.

Milton A. Bennett, for Prosecutors—Direct.

Q. Can you give us the total of them? A. I will have to total that, because I am computing as I go along. \$2,078,500 is what I get, but I want to check that back to make sure that is correct.

10 Q. Are there any other bonds outstanding as of that date? A. No.

Q. Any notes, other than notes for current expenses?

Mr. Edwards: I object to that upon the same ground, namely, that unless you except therefrom under section 2 those things therein excepted.

A. Yes, there were notes outstanding.

20 Q. Will you please tell us what the notes were?

A. I have nothing here from which I can give that to you.

Mr. Edwards: That is objected to upon the same ground.

A. I may say, however, that the annual debt statement which is as of the end of December, which is only two weeks later, will give you approximately the same amount, which you already have in evidence.

30 Q. What was the amount on December 31, 1929, of notes outstanding?

Mr. Edwards: The same objection.

A. The total amount of notes, exclusive of tax revenue notes, was \$356,558.92.

Q. And how much were the tax revenue notes?

A. The tax revenue notes were \$328,000.

40 Q. What other notes were there outstanding on December 31, 1929?

Milton A. Bennett, for Prosecutors—Direct.

Mr. Edwards: Objected to upon the same ground.

A. No others.

Q. Was there any change in the amount of notes outstanding between December 17, 1929, and December 31, 1929? A. Yes. 10

Q. What was that change? A. I can't tell you without going into the records, and I haven't that before me here. I will say the total amount would be approximately the same, but there was a change in those two weeks.

Q. Was the total amount of bonds outstanding the same on December 17, 1929, as it was on December 31, 1929? A. Yes.

Q. What was the total gross indebtedness on December 31, 1929? 20

Mr. Edwards: I object to that unless you exclude from the question those things excluded in the statute referred to.

Mr. Gilmore: I am just asking what the gross indebtedness was. You have to get gross indebtedness in order to arrive at the net.

A. The gross debt, including the proposed boulevard bonds, was \$5,873,955.38. 30

Q. And what was the gross debt on December 17, 1929? A. I can't answer that.

Mr. Edwards: The same objection.

Q. You can answer that after you have checked up on the notes; is that correct? A. Yes, I can't answer it accurately at this time. I would say again it was approximately the same.

Q. Approximately the same, less the two million? A. They were authorized on the 17th. 40

Q. Well, before the bonds were authorized,

Milton A. Bennett, for Prosecutors—Cross.

then? A. Approximately the same, less the two million, yes.

Q. In computing the gross debt as of December 31, 1929, does that include bonds and notes to be paid in whole or in part out of special assessments? A. It includes those notes to the extent
10 of \$24,282.82.

Mr. Edwards: I submit that is not answering the question.

A. I didn't catch the words "bonds" there in the question. It also includes one million of proposed boulevard bonds to be met by assessments.

Q. Are there any notes or bonds outstanding on December 17, 1929, which are to be paid out of special assessments but not included in the
20 gross indebtedness? A. No.

Mr. Gilmore: If the Court please, counsel has agreed to stipulate on the record that so far as Mr. Edwards knows or has been able to learn, Long Branch is the only city in the state that adopted the provisions of the act of 1903, entitled "An act relating to, regulating and providing for the government of cities," chapter 168, P. L. 1903.

30 Mr. Edwards: We both stipulate that.

Mr. Gilmore: We both stipulate it, yes. That is all.

Cross-examination by Mr. Edwards:

Q. What is the total amount of your beach front bonds, Mr. Bennett? A. Reading from the 1929 annual debt statement the total of term and serial bonds issued for ocean front improvements is \$823,000.

40 Q. As of December 31, 1929? A. That is right.

Milton A. Bennett, for Prosecutors—Re-direct.

Q. Now you know, do you not, that the school district in this district constitutes a separate corporation? A. Yes.

Q. Will you tell us what the total school refund and other bonds aggregate as of December 31, 1929? A. Reading again from the 1929 annual debt statement, A 4, gives me the school bonds as \$1,167,500. 10

Q. So that those two items alone aggregate a total, as I have it, of \$1,990,500? A. Correct.

Q. You know the properties of the relators, where they are situate, do you not? A. Yes, I do.

Q. And are those properties, with respect to the proposed improvement in question, likely to be especially benefited thereby or damaged?

Mr. Gilmore: Objected to as not proper cross-examination unless counsel makes him his own witness. 20

Mr. Edwards: I will make him my own witness for that purpose.

A. They are not.

Q. Why, in your judgment? A. They are located at too great a distance from the proposed improvement.

Q. Exhibits P-2 and P-3, which were shown to you, were in all respects correct, were they not? 30

A. So far as I know.

Mr. Edwards: I think that is all.

Re-direct examination by Mr. Gilmore:

Q. School bonds of this district are obligations of the City of Long Branch, aren't they?

Mr. Edwards: Objected to as a conclusion of law. 40

Certificate.

Q. Aren't they signed by the commissioners?
Don't you sign the school bonds?

10 Mr. Edwards: One moment. Moreover, the act particularly excludes school bonds as a distinct obligation of the school district or school corporation and not the city.

Q. But they are obligations of the City of Long Branch, aren't they? A. They are.

Q. And they are payable out of taxes of the City of Long Branch? A. They are.

Mr. Gilmore: I guess that is all.

BOTH SIDES REST.

20 I hereby certify that the foregoing is a true and correct transcript of depositions taken before me in the above stated causes, pursuant to notice, on Thursday, the 27th day of March, 1930, at 10.30 o'clock in the forenoon, at the City Hall, Long Branch, N. J., in the presence of James D. Carpenter, Esquire, of Messrs. McDermott, Enright & Carpenter, of counsel for the prosecutors, and William L. Edwards, Esquire, City Solicitor of Long Branch, of counsel for the defendant; and
30 a continuation of the same on Monday, the 14th day of April, 1930, at 10.30 o'clock in the forenoon, at the same place, in the presence of Howard Gilmore, Esquire, of Messrs. McDermott, Enright & Carpenter, of counsel for the prosecutors, and William L. Edwards, Esquire, City Solicitor, of Long Branch, of counsel for the defendant; it being stipulated that said depositions be taken stenographically and the signatures of witnesses waived, and that said depositions be taken to apply to
40 both cases.

LEO J. WARWICK,
Supreme Court Commissioner.

Stipulation.

NEW JERSEY SUPREME COURT,

 WALTON SHERMAN and FRANK M.

BAXTER,

Prosecutors,

vs.

CITY OF LONG BRANCH,

Defendant.

 On Certiorari: 10
 Suit No. 1
 Highway
 Construction.

 WALTON SHERMAN and FRANK M.

BAXTER,

Prosecutors,

vs.

CITY OF LONG BRANCH,

Defendant.

 On Certiorari:
 Suit No. 2
 Bond Issue. 20
 Stipulation.

It is hereby stipulated by and between McDermott, Enright & Carpenter, attorneys for prosecutors, and William L. Edwards, City Attorney of Long Branch, attorney for defendant, that the two above entitled causes shall be printed in one record and submitted as one case to the Court and briefed and argued as one case. 30

Dated: April 24, 1930.

 McDERMOTT, ENRIGHT & CARPENTER,
 Attorneys for Prosecutors.

 Attorney for Defendant.

Reasons—Suit No. 1.

to be adopted by the City of Long Branch, is violative of Article IV Section VII, paragraph 11 of the State Constitution, in that it is a private, local or special law relating to the laying out and opening of a road or highway; and regulates the internal affairs of the City of Long Branch.

(2) In that said Chapter 171 of the Laws of 1929 is violative of Article IV, Section VII, paragraph 4 of the State Constitution, in that said statute does not embrace one object and that object is not expressed in the title.

(3) In that said Chapter 171 of the Laws of 1929 is violative of Article IV, Section VII, paragraph 4 of the State Constitution, in that said law while purporting to be a general law is in fact special and local in character applying only to the City of Long Branch.

(4) Because said ordinance violates Section 73 of an Act of the Legislature of the State of New Jersey entitled, "An Act relating to, regulating and providing for the government of cities" (P. L. 1903, p. 292, as amended by P. L. 1907, p. 257), and Section 74 of said Act as amended by P. L. 1905, p. 407 (Comp. Stat., Vol. 1, pp. 1192-1193), in that election of the voters of the City of Long Branch was not held for the purpose of adopting said ordinance for the purpose of issuing bonds and obligations for the purpose described in said ordinance.

(5) Because in said ordinance it was provided, paragraph 5, that the estimated cost of the improvements provided for in said ordinance was \$2,000,000, and the sum of \$2,000,000 was appropriated by the City of Long Branch to carry out the cost of said improvements, whereas the cost

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Reasons—Suit No. 1.

10 of said improvements would increase the debt of the City of Long Branch in excess of fifteen per centum (15%) of the value of property therein as rated for taxation, as shown by last duplicates of assessments for taxes made therein prior to the adoption of said ordinance, and the City of Long Branch was therefore without power to adopt the said ordinance.

20 (6) Because in said ordinance it was provided, paragraph 5, that the estimated cost of the improvements provided for in said ordinance was \$2,000,000 and the sum of \$2,000,000 was appropriated by the City of Long Branch to carry out the cost of said improvements, whereas the \$2,000,000 cost of said improvements would and does increase the debt of the City of Long Branch beyond the statutory limit of indebtedness permitted either under the Pierson Act or any other valid act of the Legislature of the State of New Jersey.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Prosecutors.

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Reasons—Suit No. 2.

NEW JERSEY SUPREME COURT

WALTON SHERMAN and FRANK M.
BAXTER,
Prosecutors,

vs.

CITY OF LONG BRANCH,
Defendant.

On Certiorari:
Suit No. 2
Bond Issue.
Reasons.

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Walton Sherman and Frank M. Baxter, prosecutors in the above entitled proceeding, rely upon the following reasons in their applications to have set aside and for nothing holden the ordinance of the City of Long Branch entitled, "An Ordinance authorizing the issuance of Two Million Dollars of highway bonds of 1930 of the City of Long Branch, New Jersey," and all proceedings taken by the Commissioners of the City of Long Branch in connection with the passage of said ordinance:

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(1) Because Chapter 171 of the Laws of 1929, the Act under which said ordinance was attempted to be adopted by the City of Long Branch, is violative of Article IV, Section VII, paragraph 11 of the State Constitution, in that it is a private, local or special law relating to the laying out and opening of a road or highway; and regulates the internal affairs of the City of Long Branch.

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(2) In that said Chapter 171 of the Laws of 1929 is violative of Article IV, Section VII, paragraph 4 of the State Constitution, in that said statute does not embrace one object and that object is not expressed in the title.

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Reasons—Suit No. 2.

(3) In that said Chapter 171 of the Laws of 1929 is violative of Article IV, Section VII, paragraph 4 of the State Constitution, in that said law while purporting to be a general law is in fact special and local in character applying only to the City of Long Branch.

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(4) Because said ordinance violates Section 73 of an Act of the Legislature of the State of New Jersey entitled, "An Act relating to, regulating and providing for the government of cities" (P. L. 1903, p. 292, as amended by P. L. 1907, p. 257), in that the said bonds provided by said ordinance run for a period exceeding thirty years, at rates of interest exceeding four and one-half per centum, and the question of the approval and authorization of such issue was not submitted to the legal voters of the City at any election.

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(5) Because the bonds provided by said ordinance exceed the limit of the bonding power in the City of Long Branch as established by the Act of 1903 aforesaid, as amended by P. L. 1907, p. 257.

(6) Because the City of Long Branch, having adopted the provisions of an act of the Legislature entitled, "An Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State," approved April 25, 1911 (being the Walsh Act, Chapter 221 of the Laws of 1911), attempted to act partly under the provisions of the Act of 1903 aforesaid where said act was beneficial, and partly under the Walsh Act where the latter was beneficial to said Commissioners, whereas the proceedings of the said City after the adoption of the Walsh Act were required to be taken in pursuance thereof.

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Reasons—Suit No. 2.

(7) Because the ordinance aforesaid increased the net bonded indebtedness of the City to a sum in excess of fifteen per centum (15%) of the assessed valuation of all property within said City, without the same having been first submitted at a special election to the voters of the City, and without having received the approval of a majority of the voters actually voting at such election in violation of Section 20 of the Commission Government Act (Comp. Stat., 1924 Supp., p. 2469, &c.). 10

(8) Because by Section 3 of said ordinance it is arbitrarily provided that \$1,000,000 of said bonds, to be known as Series B, shall be issued for the estimated share of the cost of said improvement to be assessed on property specifically benefited, which is an arbitrary, unauthorized and unlawful apportionment of the amount of said bonds to be paid by general taxation and by assessment for special benefits. 20

(9) Because no copy of the said ordinance, together with notice of the introduction thereof and the time and place when and where such ordinance would be considered for final passage, was mailed to every person whose lands may be affected by such ordinance or any assessment which may be made in pursuance thereof, as provided by Chapter 287 of the Laws of 1929. 30

(10) Because the net debt of Long Branch prior to the adoption and passage of said ordinance, was in excess of the amount allowed by an Act entitled, "An Act to authorize and regulate the issuance of bonds and other obligations, and the incurring of indebtedness by county, city, borough, village, town, township or any municipality governed by an improvement commission, known 40

Reasons—Suit No. 2.

as the Pierson Act," being Chapter 252 of the Laws of 1916, and the acts amendatory thereof and supplemental thereto, and after the passage of said ordinance was far in excess of the debt limit specified in said act, if the said ordinance is valid.

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(11) Because Chapter 171 of the Laws of 1929, under which the said ordinance was attempted to be passed, is contrary to the Constitution of the United States in that under it persons residing in Long Branch are deprived of the equal protection of the laws, if the Commissioners of Long Branch in manner and form aforesaid may bond the City to any amount under said act, whereas persons residing in any other city, town, or municipality of the State would be entitled to the protection of the Pierson Act and the debt limits therein fixed and established.

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McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Prosecutors.

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Stipulation.

IT IS HEREBY STIPULATED between the attorneys for the prosecutors and defendant that the total ratables of the City of Long Branch for the year 1929, as shown by the tax duplicates, aggregated \$21,143,300. Of this sum total of assessments on personal property was \$2,131,450, the remainder being on real estate and improvements, including second class railroad property.

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This stipulation shall be added to the printed record in this case.

Dated: May 6, 1930.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Prosecutors.

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WM. L. EDWARDS,
Attorney for Defendant.

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Opinion.

(Filed Jan. 14, 1931.)

NEW JERSEY SUPREME COURT.

Nos. 254 and 255.

10

May Term, 1930.

WALTON SHERMAN and FRANK M. BAXTER, Prosecutors, <i>vs.</i> CITY OF LONG BRANCH, Respondent.	}	On Certiorari.
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Before

Justices PARKER, CAMPBELL and BODINE.

For Prosecutors, JAMES D. CARPENTER, JR.

For Respondent, WILLIAM L. EDWARDS.

Per Curiam:

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These two writs bring up for review two ordinances of the City of Long Branch: the first (case 254) is known as the highway construction ordinance; and the second case (case 255) as the bond issue ordinance. The title of the first is "An ordinance providing for the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line southerly to the intersection of West End Avenue with West End Plaza and to acquire as

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Opinion.

may be necessary for the making of such improvement, either by purchase or condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue so laid out and constructed and for the levying of assessments on the property especially benefited thereby", and, besides providing for the things expressed in its title, appropriates the sum of two million dollars to meet the cost of the improvement. The title of the second is, "An ordinance authorizing the issue of two million dollars highway bonds of the City of Long Branch, N. J." They are what are known as companion ordinances.

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At the outset we will dispose of two contentions of the respondent looking to a dismissal of the writs.

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The first is that the prosecutors have no special personal or property interest that will be affected nor will they suffer any special injury beyond that which will be in common with the general public.

It is conceded that prosecutors are tax payers of the City and it would seem to be certain that some part of the cost of the proposed improvement will fall upon the City at large and eventually be paid from funds raised by general taxation. In fact the bonding ordinance provides that one-half of the proceeds from the issue is to be devoted to that purpose.

30

Respondents rely upon and cite *Tallon vs. Hoboken*, 60 N. J. L. 212; *Ford vs. Bayonne*, 87 *Id.* 298; and *Union Towel Supply Co. vs. Jersey City*, 99 *Id.* 54, but we conclude that the applicable rule is to be found in *Danforth vs. Paterson*, 34 N. J. L. 163; *City Publishing Co. vs. Jersey City*, 54 *Id.* 437, and *Jordan vs. Dumont*, 6 N. J. Adv. Rep.

40

Opinion.

1889, which disposes of the contention adversely to the respondents.

10 The second point urged in this direction is that the prosecutors are in laches because the highway construction ordinance was introduced December 17, 1929, finally passed December 31, 1929, and thereafter published on January 3, 1930, as required by the Walsh Act (P. L. 1911, p. 462) as superseded by Section 24, Article 37 of the Home Rule Act. This provides that an ordinance of this character shall become operative ten days after publication after final passage unless within that period protests by taxpayers representing ten per centum of the assessed valuation shall have been filed, in which event such ordinance shall remain inoperative until a proposition for the ratification thereof shall have been adopted by a majority of the qualified voters voting at an election called for that purpose.

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30 The respondent insists that inasmuch as no action was taken in this manner, the prosecutors are precluded from having the present writs of review. We find this to be not so. The situation is not analogous to that in *Hoboken vs. Morris*, 16 N. J. L. 526; *Traphagen vs. Hoboken*, 39 *Id.* 236, or *Hendey vs. Ackerman*, 103 *Id.* 305. The statutory provision relied upon simply presents a method of determining, by a vote of the qualified electors, whether they approve or disapprove of the public policy and judgment of the governing body as expressed by such municipal act and does not reach to a review of such an ordinance and the attending proceedings with an object to set them aside because of lack of authority in or legal errors committed by the municipal body.

40 Certiorari is the proper means to bring about and accomplish such a review.

Opinion.

Turning to the reasons argued by the prosecutors, they are:

First.—The Act P. L. 1929, Chapter 171, under which respondent assumes to act, is unconstitutional;

(a) Because it violates Article IV, Section 7, paragraph 11, of the State Constitution, which provides: “The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say, laying out, opening, altering and widening roads or highways, regulating the internal affairs of towns and counties * * *.”

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(b) Because it contravenes Article IV, Section 7, paragraph 4 of the State Constitution, which provides: “* * * Every law shall embrace but one object and that shall be expressed in the title * * *.” Long Branch adopted and became incorporated under “An Act relating to, regulating and providing for the government of cities” (P. L. 1903, Chapter 168), and on March 12, 1912, adopted the provisions of the Walsh Act (P. L. 1911, Chapter 221). The statute of 1929, *supra*, which is attacked, is entitled: “A supplement to an Act entitled ‘An act relating to regulating and providing for the government of cities,’ approved April 8, 1903.” It is a supplement, therefore, to the act under which Long Branch is incorporated. It was approved April 23, 1929, took effect immediately, and is as follows:

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“Any city now or hereafter governed by the provisions of the act to which this act is a supplement, in addition to the powers by the said act conferred, shall have the power to manage, regulate and control its finances

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Opinion.

10 and property, real and personal; to borrow money, and negotiate temporary loans in anticipation of taxes and other revenues, and to authorize, provide and pay for public improvements, including the acquiring, laying out, widening, straightening, improving, constructing, reconstructing and maintaining streets and highways, and to issue bonds, notes and other evidences of debt in payment thereof, which said bonds, notes and other evidences of debt may be refunded or repaid, in whole or in part, from benefit assessments, levied on property in such city, benefited thereby, which said bonds, notes or other evidences of debt, so issued, for the purposes of this act, shall not be included as part of the debt statement, or computed in the net debt of the municipality, or in anywise subject to the provisions of an act entitled 'An act to authorize and regulate the issuance of bonds and other obligations and the incurring of indebtedness by county, city, borough, village, town, township or any municipality governed by an improvement commission.', Approved March 22, 1916, and the acts amendatory thereof and supplemental thereto."

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30 Under the first contention of unconstitutionality it is urged, that up to the present time, Long Branch is the only municipality that has adopted and is operating under the City Act of 1903, *supra*, and that the supplement of 1929, among other things, exempts bonds issued for road and highway purposes from the debt limit provided for and fixed by the Pierson Act (P. L. 1916, Sec. 12, Par. 3, p. 538, Amended by Chapter 174, P. L. 1929), thereby singling out, separating and setting apart Long Branch as the only municipality not affected and controlled by the Pierson Act, which by its terms, otherwise, applies to every class of municipality in the State.

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Opinion.

There appears to be no effort on the part of the respondent to conceal or refute the fact that the very purpose of the supplement is to relieve any city operating under the City Act of 1903 from the requirements and restrictions of the Pierson Act, and in fact, such an effort would have been abortive for such is the only conclusion that can be reached from its plain language. 10

It is true, as prosecutors' counsel argues, that the Pierson Act applies, in the broadest generality, to all municipalities. But if that act, by its terms, had excluded from its operation any cities or municipalities belonging to a recognized class, or had it provided that indebtedness of municipalities, or those of any one or more class, issued to meet the expense of improvements such as provided for in the legislation now under attack, would that act thereby fall as prohibited by our constitution? Undoubtedly not. Nor do we think that the act in question has any such infirmity, because it does no more, it seems to us, than take cities incorporated under the City Act of 1903 out of the operation and control of the Pierson Act. It may well be that it is not desirable legislation and may be the initial movement to remove, one after another, municipalities of the several recognized classes from the requirements and control of the Pierson Act, so that, eventually, it will completely lose its value and effectiveness. But, it would seem, with this the courts are not concerned but it is rather a matter requiring the exercise of legislative discretion and judgment. 20 30

In *Harrington Township Road Board vs. Harrington*, 55 N. J. L. 327, it was held, "A law framed in general terms is not specialized by the fact that it exempts another general law from its operation." 40

Opinion.

In *Booth vs. McGuinness*, 78 N. J. L. 346, it is said:

10 “In the exercise of the judicial function of declaring an act of the legislature unconstitutional, the ultimate question is not whether the court regards the constitution as permitting the act, but whether the constitution permits the court to disregard the act; the test being not the court’s judgment as to the constitutionality of the act but its conclusion as to what judgment was permissible to the legislative branch of the government in which the constitution has reposed the duty of making such judgment as an incident of the law-making power; hence, if there be a permissible doubt as to the existence of the constitutional limitation invoked against the validity of an act, the courts will not declare the act to be contrary to the constitution.”

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The contention that the act is unconstitutional because it embraces more than one object and its title is not sufficient is based upon this that while it is a supplement to the City Act of 1903 and by its first object quite appropriately enlarged the powers of cities of that class in the management, regulation and control of their finances and properties and with respect to the financing of street and highway improvements nevertheless it has a second object, which is the exempting of such obligations from the provisions, requirements and limitations of the Pierson Act, thereby making this legislation constitutionally defective for the reasons stated.

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In *Boniewsky vs. Polish Home*, 103 N. J. L. 323 at 332 it was held that the construction to be placed upon the constitutional provision here invoked is, “that the leading subject of a statute should be fairly expressed in its title”, citing

40 *State Board vs. Phillipsburg*, 83 N. J. Eq. 402;

Opinion.

aff'd 85 *Id.* 161; and further, as held in *Gottuso vs. Baker*, 80 N. J. L. 520, "Under our constitutional provision the title of an act is in the nature of a label by which the object of the act is displayed; it is not a table of contents or an index to everything that the Statute contains." This was approved in the Court of Errors and Appeals in *Board vs. Tait*, 81 N. J. Eq. 161.

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Measured by these standards, we conclude that the Statute in question is not unconstitutional for either of the reasons advanced and urged.

Second.—The prosecutors next urge that the ordinances are repugnant to Section 73, P. L. 1903, as amended by Chapter 103, P. L. 1907, being the City Act before referred to, under which Long Branch was incorporated.

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The highway improvement ordinance cannot be, in anywise, affected by this contention. The ordinance does not point to, or by its terms, rest upon any particular statute as the authority for and basis of its enactment, and, therefore, as held in *Livermore vs. Millville*, 85 N. J. L. 655, at 657. "If there was and is any legislation permitting such a bond issue for the purpose indicated, the city is entitled to rely upon it without specific reference thereto in the ordinance." It is apparent that such highway ordinance is authorized by the Home Rule Act. (P. L. 1917, Chapter 152), which supersedes the Walsh Act (P. L. 1911, p. 462): *Public Service vs. General Omnibus*, 93 N. J. L. 344; *Wethling vs. Orange*, 94 *Id.* 36, and *Lombardi vs. Lodi*, 7 Misc. Rep. 72. But again it is urged that adoption of this ordinance under the Home Rule Act cannot be justified because notices of intention to adopt the ordinance were not mailed to persons whose property would be

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Opinion.

subject to assessment for the improvement as required by Chapter 287, P. L. 1929, page 674, Section 1, Paragraph "B". Such ordinance having been in all other respects regularly and properly adopted under the terms of such statute we are

10 unable to see how these prosecutors can complain or successfully raise this question inasmuch as their lands are concededly so far beyond the line of the proposed improvement as to be outside of the assessment zone. The Statute itself provides that "Failure to mail the notice herein provided for shall not invalidate any ordinance, proceeding or assessment" and this was construed by this Court in *Root vs. Jersey City*, 5 Misc. Rep. 973, adversely to prosecutors' contention. But, if that

20 were not so, Chapter 127, P. L. 1930, approved April 15, 1930, validates any improvement ordinance adopted by a city for the improving and constructing of highways "notwithstanding any omission or defect in said ordinances or notice thereof: provided said ordinances were adopted and notice thereof given by publication in newspapers as required by law". Such legislation, it seems to us, rests entirely in legislative discretion and cures any defect respecting the mailing of notices of intention to adopt.

30 The irresistible conclusion is that this legislation excuses and cures any defect in the highway improvement ordinance, and that it does so even if the 1929 supplement to the City Act of 1903 is unconstitutional and even if the fact should be that it was not adopted in strict conformity with the Home Rule Act amendment of 1929.

40 We conclude, therefore, that the highway improvement ordinance is a valid municipal act, first, because the supplement of 1929 to the City Act of 1903 is constitutional and, second, that it

Opinion.

is so under the Home Rule Act amendment of 1929, page 674, Section 1, Paragraph "B", notwithstanding failure to give notice of intention to adopt it.

Turning now to the bonding ordinance, it is urged that it cannot be justified or find support under the City Act of 1903 because Section 73 thereof fixes the term at not exceeding thirty years: the rate of interest at not more than 4½% per annum and before issuance of such bonds the question of so doing shall be submitted to the legal voters, and the total shall not exceed 15% of the value of property for taxing purposes in such city. It seems to be conceded that the financing of the improvement in question as provided for in this ordinance is not in accord with the provisions and limitations of such statute. Obviously it is not and it must rest for authority to support it upon the Pierson Act (P. L. 1916, p. 525). In that respect, prosecutors urge, the ordinance cannot find legal support for the reason that the financing contemplated will cause the debt limit to be exceeded and because no supplemental debt statement was filed prior to the passage of the ordinance.

Respondent says that the financing proposed by this ordinance will not produce an excess of indebtedness limited by the statute and that prosecutors have not shown that it will and that the burden is theirs to so show, and further urge that it has not been shown that a supplemental debt statement was not filed prior to the passage of the ordinance.

The return made to the writ does not include such supplemental debt statement, and in that situation we think we are obliged to assume that none was filed. We also conclude that the burden

Opinion.

10 of establishing whether or not the debt limit will be exceeded does not rest upon the prosecutors but would appear to be a precedent requirement resting upon the municipality under paragraph 2 of Section 12 which expressly requires: "Prior to the passage of any ordinance or resolution authorizing notes or bonds under this act the chief financial officer shall make and file a supplemental debt statement * * *". An exception is therein contained when the notes or bonds are exclusively for certain purposes. The purposes referred to do not include the purposes covered by the ordinance in question.

20 We think this provision of the Pierson Act presents a positive requirement, and does not leave obedience thereto discretionary or in anywise excusable. Its undoubted purpose is to present substantial evidence of the financial condition of the municipality for the use and benefit of taxpayers, purchasers of its securities and all other interested parties; information, otherwise difficult, if not impossible for such parties to obtain. To repeat, it seems to us that this requirement is mandatory and that it does not lie in the hands of the chief financial officer of the municipality to say that a proposed financing will not cause an exceeding of the debt limit. On the contrary, there is a plain, unbending requirement that he shall cause such a statement to be filed annually, and a supplemental statement to be filed "prior to the passage of any ordinance * * * authorizing * * * bonds under this act * * *".

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Technical as this ground may appear to be, we conclude it is substantial, and non-compliance cannot be excused.

40 But respondent urges that notwithstanding such ordinance may not have been adopted in

Opinion.

strict compliance with the Pierson Act, *supra*, it is nevertheless valid because it is adopted under Chapter 128, P. L. 1930, which provides that when any municipality has been authorized by any act to issue notes or bonds for any public work or improvement and such act is silent as to the method or mode of procedure to be adopted it shall conform, in all respects, to the provisions of the Pierson Act. This is well enough and is undoubtedly the license and authority for the respondent to resort to that Act. It also urges Chapter 126, P. L. 1930 as validating such ordinance. That statute provides that all proceedings adopted by cities of this State before the passage of the Act for the issuance of bonds for the purpose of financing a highway "are hereby validated, ratified and confirmed notwithstanding that ordinances authorizing such bonds shall not have been in compliance with the provisions * * *" of the Pierson Act, "and the issuance of such bonds pursuant to said act and this act and by virtue of said ordinances is hereby authorized, validated and approved; provided, that an ordinance authorizing such bonds has been adopted and published by such city in accordance with the provisions * * *" of the Home Rule Act, *supra*.

We are at an absolute loss to understand how this Act can possibly validate the ordinance in question. The Home Rule Act (P. L. 1917, Chapter 152) contains no provisions respecting the issuing of bonds. The nearest approach to any such authority is Section 1, Subdivision a of Article XIV, which authorizes the adoption of ordinances "To manage, regulate and control the finances and property, real and personal of the municipality".

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Rule for Judgment of Affirmance.

This ordinance, we conclude, cannot be justified under the City Act of 1903 (P. L. 1903, Chapter 168), nor the Walsh Act (P. L. 1911, p. 462), as to which it may be said that it contains no bonding provisions, nor the Home Rule Act (P. L. 1917, Chapter 152). It can only find authority in the
 10 Pierson Act (P. L. 1916, p. 525), and, as has been shown, was not adopted in conformity to the provisions of that Act.

This ordinance (Bond Issue, Case, 255) must therefore be set aside and the Highway Construction Ordinance (Case, 254) affirmed and approved and the writ bringing it up for review dismissed.

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Rule for Judgment of Affirmance.

NEW JERSEY SUPREME COURT.

WALTON SHERMAN and FRANK M.
 BAXTER,
 Prosecutors,

vs.

CITY OF LONG BRANCH,
 Defendant.

On Certiorari:
 Suit No. 1—
 Highway
 Construction.

Rule for
 Judgment of
 Affirmance.

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The Court having inspected the Ordinance and proceedings returned with the writ of certiorari in this cause, the reasons assigned, heard the argument of counsel thereon, and having maturely considered the same:

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Do ORDER that an Ordinance of the City of Long Branch entitled, "An ordinance providing

Rule for Judgment of Affirmance.

for the laying out, widening, straightening, improving and constructing a new highway or avenue from the Monmouth Beach line southerly to the intersection of West End Avenue with West End Plaza and to acquire as much land or real estate or interest therein as may be necessary for the making of such improvement, either by purchase or condemnation in the manner prescribed by law; and providing for the grading, curbing and paving of said highway or avenue so laid out and constructed and for the levying of assessments on the property especially benefited thereby'', be and the same is in all things affirmed and approved.

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A true copy,

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FRED L. BLOODGOOD,
Clerk.

Dated: January 19, 1931.

Entered Jan. 19, 1931, on motion of McDERMOTT,
ENRIGHT & CARPENTER.

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Notice of Appeal.

NEW JERSEY SUPREME COURT.

WALTON SHERMAN and FRANK M.
BAXTER,
Prosecutors,

vs.

CITY OF LONG BRANCH,
Defendant.

On Certiorari:
Suit No. 1—
Highway
Construction.

Notice of Appeal.
(Served 3/28/31.)

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To

WILLIAM L. EDWARDS, Esq., Attorney for De-
fendant.

20 TAKE NOTICE that Walton Sherman and Frank
M. Baxter, prosecutors in above entitled cause,
do hereby appeal to the New Jersey Court of Er-
rors and Appeals, in the last Resort in all Causes,
from the judgment of the New Jersey Supreme
Court entered in the above entitled cause the 19th
day of January, 1931, affirming and approving an
Ordinance of the City of Long Branch entitled,
"An ordinance providing for the laying out,
widening, straightening, improving and construct-
ing of a new highway or avenue from the Mon-
mouth Beach line southerly to the intersection of
30 West End Avenue with West End Plaza and to
acquire as much land or real estate or interest
therein as may be necessary for the making of
such improvement, either by purchase or con-
demnation in the manner prescribed by law; and
providing for the grading, curbing and paving of
said highway or avenue so laid out and con-
structed and for the levying of assessments on the
property especially benefited thereby".

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Respectfully yours,

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Prosecutors.

Dated: March 27, 1931.

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p style="text-align: center;">WALTON SHERMAN and FRANK M. BAXTER, Prosecutors-Appellants,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">CITY OF LONG BRANCH, Defendant-Appellee.</p>	}	<p>Suit No. 1—Highway Construction: 10</p> <p>On Certiorari:</p> <p>On Appeal from Supreme Court:</p> <p style="padding-left: 20px;">Grounds of Appeal.</p> <p style="padding-left: 20px;">(Filed April 25/31.)</p>
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The prosecutors-appellants hereby specify the following grounds for appeal in the above entitled cause: 20

(1) Because the Supreme Court did in all things affirm and approve the ordinance of the City of Long Branch which is quoted at length in the notice of appeal and the writ of certiorari.

(2) Because Chapter 171 of the Laws of 1929, the Act under which said ordinance was attempted to be adopted by the City of Long Branch, is violative of Article IV, Section VII, paragraph 11 of the State Constitution, in that it is a private, local or special law relating to the laying out and opening of a road or highway; and regulates the internal affairs of the City of Long Branch. 30

(3) In that said Chapter 171 of the Laws of 1929 is violative of Article IV, Section VII, paragraph 4 of the State Constitution, in that said statute does not embrace one object and that object is not expressed in the title. 40

Grounds of Appeal.

(4) In that said Chapter 171 of the Laws of 1929 is violative of Article IV, Section VII, paragraph 4 of the State Constitution, in that said law while purporting to be a general law is in fact special and local in character applying only to the City of Long Branch.

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(5) Because said ordinance violates Section 73 of an Act of the Legislature of the State of New Jersey entitled, "An Act relating to, regulating and providing for the government of cities" (P. L. 1903, p. 292, as amended by P. L. 1907, p. 257), and Section 74 of said Act as amended by P. L. 1905, page 407 (Comp. Stat., Vol. 1, pp. 1192-1193) in that an election of the voters of the City of Long Branch was not held for the purpose of adopting said ordinance for the purpose of issuing bonds and obligations for the purpose described in said ordinance.

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(6) Because in said ordinance it was provided, paragraph 5, that the estimated cost of the improvements provided for in said ordinance was \$2,000,000, and the sum of \$2,000,000 was appropriated by the City of Long Branch to carry out the cost of said improvements, whereas the cost of said improvements would increase the debt of the City of Long Branch in excess of fifteen per centum (15%) of the value of property therein as rated for taxation, as shown by last duplicates of assessments for taxes made therein prior to the adoption of said ordinance, and the City of Long Branch was therefore without power to adopt the said ordinance.

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(7) Because in said ordinance it was provided, paragraph 5, that the estimated cost of the improvements provided for in said ordinance was \$2,000,000 and the sum of \$2,000,000 was appro-

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Grounds of Appeal.

priated by the City of Long Branch to carry out the cost of said improvements, whereas the \$2,000,000 cost of said improvements would and does increase the debt of the City of Long Branch beyond the statutory limit of indebtedness permitted either under the Pierson Act or any other valid act of the Legislature of the State of New Jersey. 10

(8) Because Chapter 127, P. L. 1930, approved April 15, 1930, by which it is attempted to validate the ordinance under review, did not accomplish the purpose for the reason that Long Branch did not in any way comply with paragraph 1 (b) of "An Act concerning municipalities", being Chapter 287 of the Laws of 1929, and did not cause to be mailed a copy of such ordinance, together with a notice of the introduction thereof, and the time and place when and where such ordinance would be further considered for final passage, to every person whose lands may be affected by such ordinance or any assessment which may be made in pursuance thereof, by reason whereof the condition of the so-called validating act was not complied with, and the said ordinance was not legally validated. 20

(9) Because the Supreme Court erred in holding that Chapter 127, P. L. 1930, validated the said ordinance under review. 30

For all of which reasons appellants aver that the judgment of the Supreme Court under review should be reversed.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Prosecutors-
Appellants. 40

