

MINUTES

BETHPAGE WATER DISTRICT

DATE: March 19, 2026 – 3:00pm

Location: Bethpage Water District, 25 Adams Ave

Commissioners and others present:

John Coumatos Theresa Black Scott Greco
Michael Boufis Joseph Daub Diana Long Richard Walker
Richard Humann Michael Weber Gregory Carman Sal Greco

Call to Order: 3:03 pm

Minutes of previous meeting:

February 26th, March 5th, and March 12th minutes

Superintendent's Report: Michael Boufis

1. Supt. Boufis presented the board with a letter dated March 11, 2026, from PERMA on employee Frank Ellingers Workers Compensation Benefits.
2. Supt. Boufis presented the board with a confirmation notice from Morgan Wilshire for the purchase of US Treasury notes in the amount of \$2,123,367.21. Commissioner Coumatos was not agreeable to the action taken by Mr. Lew at RBC with the re-investing of treasuries that came due on 2/28, without proper notification to the board. The January 2026 Treasurers report had noted that those treasuries are maturing on 2/28/26. No action was taken by the District. Richard Walker reported that he informed Mr. Lew the District must receive a 30-day notification of any BWD funding renewals.
3. Supt. Boufis added the District has two projects, BGD Well 2 and North/South Transmission main installation which may need funding in 2026. Commissioner Coumatos stated that the district wasn't notified in advance of reinvesting funds. Commissioner Greco stated that the Flushing account (5295) is maturing on 7/27/26. There is a substantial amount of money that can cover future projects in that account. Superintendent Boufis stated that we can discuss that at a future meeting before that becomes due to fund future projects.
4. Supt Boufis attached a letter from Chairman Coumatos on issues he would like to discuss at the March 19, 2026, regular board meeting. **See New Business, item #6.**
5. Supt. Boufis presented the Board with the February Treasury Report and the year-to-date February Vendor report.

Town of Oyster Bay Bond Claim Forms

None

Correspondence:

1. Tri-party collateral agreement. Capital One and Bank of NY Mellon at 105%. dated 03/09/2026.

Attorney's Report: Gregory Carman

1. Commissioner Coumatos inquired as to the progress with the TOB & BWD concerning the IMA agreement for repairs of their hydrants in the Bethpage Community Park. The IMA is being finalized by Attorney Carman. Mr. Carman stated that the agreement can be adopted, subject to his review and ministerial changes. Commissioner Black made a motion to adopt the IMA agreement. Commissioner Greco seconded the motion, and the agreement was unanimously adopted.
2. Stalco Claim was signed and will be hand delivered to the Town. This will close-out the job.
3. Attorney Carman presented documentation on what the roles are of Commissioners in the District. Memorandum dated July 2024 as well as exhibits to this memo are attached to the minutes for reference.

Engineer's Report: Michael Weber

1. **BPWD1554** - North to South Transmission Main – Phase 2 – (Central Ave.) – H2M met with Bancker today. Schedule on remaining work forthcoming.

Bancker proposing 4% discount for domestic vs imported fittings. Based on conversation H2M had with T-Mina, H2M anticipated closer to a 20% reduction in cost. Commissioner Greco suggested we make a counter proposal for the discount.

Phase 3 (Park): Bids received. Bancker is apparent low bidder. H2M reviewing qualifications of sub-contractor (driller) and will schedule meeting with Bancker/Driller/District to discuss once qualifications are confirmed.

2. **BPWD2107** - Ion Exchange & AOP Treatment at Plant No. 1 – Start-up schedule for remaining systems:
 - Sampling of the PTA/AOP/GAC systems has been completed. H2M to send completed works package to NCDH and request completed works walkthrough once all sample results have been received.
 - SI Controls is scheduled to be on site from March 26th through April 2nd to start up the new chemical treatment safety panel and wire controls for

Well No. 7 panel. Asst. Supt. Daub asked if scheduled for Well No. 8 work. Mr. Weber said that he will find out.

3. **BPWD2553** – Water Main Replacement on Dennis Ln & Elizabeth Dr – H2M submitted responses to NCDH comments of 3/13.
4. **BPWD2275** – Verizon Upgrade at Adams Ave – Upgrades underway. Verizon freeze is currently in effect for 2 weeks pushing this completion out to beginning of April.

Old Business: Asst. Supt Daub

1. Mr. Daub has contacted Calgon Corp. in reference to the current month-to-month rental for Vapor Phase Carbon Vessels at Plant 6 vs a contract to purchase the vessels. Mr. Daub to follow up on current cost to purchase.

New Business: Supt. Boufis

1. Supt. Boufis was contacted by Nassau County Aviation Department regarding the aviation lights on the tower at Grumman Road These were not compliant with the FAA and should be LED and infrared. He reported that these need to be replaced and he received proposals from MMJ Electrical in the amount of \$28,771.33 and NW Management in the amount of \$25,771.33. The proposals will be reviewed.
2. Supt. Boufis reported that 5th grade tours with the Bethpage School District were completed today. The teachers were impressed by the tours. Commissioner Black reported for the record that the water district did a great job, and the kids were engaged in Supt. Boufis' presentation.
3. Commissioner Black added that Island Tree School District tours proposed to be on April 30th and May 8th. Taylor Rosenkind is working out the transportation details. There will be approximately 4 groups of 50 over 2 days. Supt. Boufis has requested pricing for educational handouts for future events including stainless steel water bottles.
4. Commissioner Black and Mr. Cucchi, PMG Marketing, sent out a deadline of April 22nd deadline for poster contest to be held mid-June to both Bethpage and Island Trees School Districts.
5. Commissioner Black commented on the NSWCA meeting held on March 16th. Commissioners David Brackett and Mindy Germain gave an informative outline of their district and the new architecture design of their new pump house. They invited all Commissioners to visit the site. Commissioner Greco added, Supt. Paul Grainger from Hicksville Water District, stated support as needed from all water districts, NSWCA & LIWC for proposed new "Lead Pipe Replacement Act."
6. Commissioner Greco asked if we will be fencing in the property to wellhead BGD 2. Superintendent Boufis stated that we will be fencing in the property.
7. Commissioner Coumatos presented the following issues for discussion:
What positions are needed to fill in house & in the field?
Supt. Boufis reported the need for a Clerk Typist and an Account Clerk & he will start process of canvassing lists.

Who is the go-to person if a commissioner or staff needs information? Commissioner Coumatos presented an example of needing information on Aflac, retirement system, pension etc. and did not know who handles this function. This will be addressed at a later date.

Switch from taking minutes to live stream & taping minutes? Commissioner Coumatos expressed frustration with the minutes and feels they may be incomplete or swayed by different opinions at times. He requested the district investigate live stream or taping. Commissioner Black suggested an app for iPhone called Echo which she currently uses to transcribe LIWC Meeting in her role as Secretary. Richard Walker is aware of a product which uses AI for recording and transcribing and said that we would be eligible for a free trial. Both options will be reviewed.

Explanation from counsel as to what constitutes Executive Session. Attorney Carman explained that the purpose of Executive Session is to discuss personnel issues and litigation matters which should not be in a regular meeting.

Municipal Law in Regard to a Quorum, as it pertains to BWD Commissioner's?

Commissioner Coumatos presented the definition of a Quorum, and this will be attached to these minutes.

8. Commissioner Coumatos commented on the RAB meeting held on March 18th by US Navy and NYSDEC. Engineer Humann stated that he has requested a new "Model" from the USN over a year ago. USGS's input should take precedence with all future projects concerning the USN and NGC remediation of their plume.
9. Commissioner Black referenced the cyber-attack incident reported in the March 12th minutes and feel they should be updated with more detail. Commissioner Coumatos agreed and this will be reviewed.
10. Supt. Boufis will create an Organizational Chart with employee job functions to present to the Board.

Meeting Adjourned: 4:42 pm

Respectfully submitted by Secretary Scott A. Greco



John F. Coumatos, Chairman



Theresa M. Black, Treasurer



Scott A. Greco, Secretary



Sal J Greco, Consultant

MEMORANDUM

DATE: July 2024

TO: Board of Commissioners

FROM: Michael F. Ingham, Esq.

Re: Legal Powers of Water District Board of Commissioners

The powers of the Board of Commissioners are delineated in three interrelated State statutes. The first is Town Law Section 215, Powers and Duties of improvement district commissioners (Exhibit "A"). The second is Nassau County Civil Divisions Act ("NCCDA"), §255.4 Powers (Exhibit "B"). The third is General Construction Law Section 41, Quorum and Majority (Exhibit "C"). The Town Law and the NCCDA enumerate the specific powers of the Board including, but not limited to, procurement, control of District assets and management of District employees. In turn, the General Construction Law outlines those procedures which mandate that the Board exercise its powers "collectively". In 1949, the New York State Comptroller issued an opinion which addressed both statutes and concluded (Exhibit "D"):

It is well settled that a Board of Commissioners may exercise its statutory powers only when the members thereof act collectively. It must act at a meeting where a quorum is present and a majority vote for favorable action is obtained.

In support of this proposition, the Comptroller cited to an earlier decision by the Appellate Division-Second Department which governs Long Island. See, Amity Holding Corp. v Eden, 238 A.D. 628 (2nd Dept. 1933)(Eden)(Exhibit "E"). The Eden case involved the Board of Commissioners of the Manhasset-Lakeville Water District. Apparently, two members of the prior Board had undertaken informal discussions with a real estate developer implying that the District would follow past practice and "purchase" the developer's water mains once the Town accepted the subdivision roads for dedication. Subsequent Board members rejected this "oral" contract and the developer sued. Citing General Construction Law §41, the Second Department opined that individual Board members could not bind the District. The Court concluded that the Board could not act except by a majority vote recorded in the minutes of a duly convened meeting:

The Defendants are a statutory Board. They have no powers other than those given to them by statute. The powers conferred on them as a Board and may not be exercised except as a Board. This record contains no showing that the Board as such ever exercised any of its powers by way of taking over or agreeing to pay the petitioner's water mains. It is well settled that such a Board may exercise its statutory powers only when the members thereof act collectively (General Construction Law §41) it must act at a meeting where a quorum is present and a majority vote for a favorable action obtained. This rule is applied to private corporations, the Board of Directors of which may not act individually or casually. They must act as a Board that is act collectively (citations omitted).

While the Eden decision is nearly 80 years old, its general principals of law are still followed today (see Corpus Juris Secundum, 94 C.J.S. Waters §553, enclosed as Exhibit "F", which is a national legal treatis, and New York Jurisprudence Second, which is our New York legal treatis at 108 N.Y. Jur.2nd, Water §567 enclosed as Exhibit "G"). Indeed, in 1992 the New York State Attorney General addressed the General Construction Law as it impacted the five (5) member Temporary State Commission on Local Government Ethics (Exhibit "H"). The A.G. concluded that a "telephone conference" of all of the members of the Board constituted a "quorum". That issue was subsequently codified by the 2000 amendment of the General Construction Law addressing "videoconferencing".

Conclusion

For all of the above reasons, it is respectfully submitted that the Board adopt the following Resolution:

The Board of Commissioners are restricted to exercising only those powers specifically authorized by Town Law §215 and the Nassau County Civil Divisions Act. Pursuant to General Construction Law §41, they may only exercise these limited powers exclusively through an appropriate Board Resolution adopted by majority vote at a properly convened Board meeting. The Board's principal statutory responsibilities are to audit the District's claims and to manage its expenditures in revenue in relation to the adopted budget. By virtue of New York State Civil Service regulations, the Superintendent is personally responsible for water quality and daily management of District personnel (Civil Service Classification and Superintendent Duties enclosed as Exhibit "I"). Accordingly, the Board may discuss relevant personnel issues with the Superintendent in Executive Session. However, individual Commissioners may not act on behalf of the District or use District stationary for any purpose without an express Board resolution. Further, individual Commissioners may not issue requests, directives, instructions or orders to District employees. Such requests, directives, instructions or orders can only be issued by the District Superintendent.

Respectfully submitted,

Michael F. Ingham

EXHIBIT A.

FOR EDUCATIONAL USE ONLY

McKinney's Town Law § 215

McKinney's Consolidated Laws of New York Annotated Currentness

Town Law (Refs & Annos)

^@ Chapter 62. Of the Consolidated Laws (Refs & Annos)

^@ Article 13. Improvement District Commissioners

➔ § 215. Powers and duties of improvement district commissioners

Subject to law and the provisions of this chapter, the commissioners of every improvement district shall constitute and be known as the board of commissioners of such improvement district. Such board of commissioners

1. Shall elect one of their members as chairman and another as secretary of the board of commissioners at the first meeting thereof following each annual election of district commissioners, or the board of commissioners may designate the town clerk of such town as secretary of the board of commissioners and when so designated the town clerk shall act as secretary thereof without additional compensation. Every board of commissioners shall file and maintain in the office of the town clerk a complete and accurate record of all proceedings of such board including certified copies of the minutes of each meeting within ten days after each such meeting.

1-a. May, when specifically authorized by the town board and subject to such restrictions as the town board may impose not inconsistent with law, designate one of their members as treasurer and disbursing officer for such district in place of the supervisor, and when a commissioner has been so designated, the supervisor, and the receiver of taxes and assessments or town tax collector shall pay over to the treasurer of the district all taxes, assessments or water rates or rentals assessed, levied or collected for district purposes or services rendered by such district, and all proceeds of obligations issued for district improvements. The proceeds of obligations issued for district improvements shall be deposited, secured and used pursuant to the manner prescribed by section 165.00 of the local finance law. The treasurer shall, within ten days, deposit and secure all other moneys in the manner provided by section ten of the general municipal law. The board of commissioners shall require the treasurer so designated, before entering upon the duties of his office, to give an official undertaking, conditioned for the faithful performance of his duties and that he will well and truly keep, pay over and account for all moneys and property belonging to the district and coming into his hands as treasurer, in such form, in such sum and with such sureties as the board of commissioners shall direct and approve, and such approval shall be indicated upon such undertaking; and when approved, such undertaking shall be filed in the office of the town clerk. The board of commissioners may determine by resolution that such undertaking shall be executed by a surety company authorized to transact business in the state of New York, and the expense thereof shall be a charge on the district.

1-b. Shall audit all claims against the district and shall order the payment thereof by the district treasurer or the town supervisor, as the case may be, in the amounts allowed. Except as otherwise provided by this subdivision, no such claim shall be audited or ordered paid by the board of commissioners unless an itemized voucher therefor, verified by or on behalf of the claimant, in such form as the board of commissioners shall prescribe, shall have been presented to the board of commissioners for audit and allowance. The board of commissioners may, however, provide by resolution, that any such claim may be presented, audited and paid if it shall have been certified to be true and correct in a statement signed by or on behalf of the claimant upon a form prescribed by the board of commissioners. The provisions of this subdivision shall not be applicable to claims for the payment of fixed salaries of officers or employees, the principal of or interest on obligations issued for purposes of the district, fixed amounts becoming due on lawful contracts for periods exceeding one year, and amounts which the district may be required to pay to the state employees' retirement system on account of contributions for past and current services of officers and employees.

1-c. Notwithstanding the provisions of subdivision one-b of this section, may by resolution establish a

petty cash fund for the Improvement district treasurer for the payment, in advance of audit, of properly itemized and verified or certified bills for materials, supplies or services furnished to the Improvement district for the conduct of its affairs and upon terms calling for payment to the vendor upon the delivery of any such materials or supplies or the rendering of any such services. The amount of such petty cash fund shall not exceed two hundred fifty dollars. At the time of any payment from such fund, the treasurer shall require delivery to him of a bill in form sufficient for audit by the board of commissioners of such Improvement district as required by law. At each meeting of the board of commissioners a list of all expenditures made from such funds since the last meeting of the board, together with the bill supporting such expenditures, shall be presented by the treasurer to the board of commissioners for audit. The board of commissioners of such Improvement district shall direct the treasurer to reimburse such petty cash fund from the appropriate budgetary item or items, in an amount equal to the total of such bills which it shall so audit and allow. Any of such bills or any portion of such bills which the board of commissioners shall refuse to audit and allow shall be the personal liability of the treasurer and he shall promptly reimburse such petty cash fund in the amount of such disallowances. If such reimbursement has not been made by the time of the first payment of salary to the treasurer after the action of the board of commissioners in disallowing an amount so expended, such amount shall be withheld from such salary payment to the treasurer and, if necessary, subsequent salary payments and paid into such petty cash fund until an amount equal to the amount so disallowed in the audit of the board of commissioners has been repaid to the petty cash fund. Any bond or undertaking filed by the treasurer shall be available to the Improvement district for recovery of any losses incurred by reason of the operation of such petty cash funds.

2. Shall cause a map to be prepared showing the exact boundaries of the district and file a certified copy thereof in the office of the town clerk.
3. Shall give notice of annual elections in the manner provided in this article.
4. Subject to the provisions of this article, shall have the management and control of the property of the district and may insure the same against loss or damage from any risk whatsoever.
5. Subject to the provisions of this article, may acquire by purchase, lease, gift, devise or by condemnation, real property for any of the purposes authorized by law. All real property required for any district purpose, shall be deemed to be required for public use and may be acquired by such district.
6. May sue and be sued as the board of commissioners of the district for the breach of any contract entered into by them, pursuant to this article. Any sum of money recovered by them in such an action shall be paid over to the town treasury and be credited to the improvement district. In the event of the entry of any judgment against such board of commissioners such board shall notify the town board as to the amount of such judgment, interest and costs, and the town board shall forthwith satisfy and pay such judgment, interest and costs, and the amount so paid in satisfaction of any such judgment, interest and costs shall be a charge against such improvement district and as such levied against the taxable property therein, or the amount of any such judgment, including interest and costs may be financed pursuant to the local finance law in which event amounts necessary to provide for the annual payments of principal of and interest on any obligations issued by the town for such purpose shall be a charge against such improvement district and as such levied against the taxable property therein.
8. [FN1] Shall have the power, with the approval of the majority of the town board, and, if a public hearing thereon is required by paragraph (a) of subdivision twelve of section one hundred ninety-eight of this chapter, after such hearing, and within the limits authorized by such paragraph, to sell or lease any real or personal property owned by, but not required for the purposes of, the district. The receipts from such sale or lease shall be paid to the supervisor of the town and credited to the district and may be expended for any district purpose permitted by law, as the board of commissioners may direct.
9. Shall, on or before the fifteenth day of January, of each and every year, file with the town clerk and post on the website of the district, provided such website is maintained, a report for the

preceding year ending the thirty-first day of December, containing a statement of the following facts:

- a. The amount of money on hand at the beginning of the year, and the receipts from all sources during such year.
- b. An itemized statement of the amount paid out during such year, and the balance on hand.
- c. The outstanding indebtedness of the district, either bonded or otherwise, separately stated.
- d. The estimated deficiency in the amount necessary to pay principal or interest or the expenses of the district during the next year, after applying thereto the probable amount of income.
- e. The improvements and extensions made during such preceding year in the district.
- f. Such other facts as the board deems important for the information of the district, together with such recommendations concerning such district as may be deemed proper. Upon receipt of the filing of the report, the town clerk shall cause a copy of the report to be posted on the website of the town, if such website is maintained.

9-a. Shall annually prepare an estimate of proposed expenditures for and revenues of such district for the year beginning with the next succeeding January first. [FN2] Such estimate shall specify by item all proposed expenditures for general purposes, including expert and professional services, and for debt service. Such estimate may contain for contingent purposes, an amount not to exceed ten per centum of the amount estimated as necessary to meet the expense of maintaining the improvement exclusive of the amount necessary to pay debt service and judgments. The board of commissioners shall conduct a public hearing on such estimate on the first Thursday following the first Tuesday of September or, in Westchester and Monroe counties, the first Thursday following the first Tuesday of October. Notice of such hearing shall be published at least once in the official newspaper of the town wherein such district is located, or if no official newspaper has been designated by the town, in any newspaper having general circulation in the district. The notice may be published in such other newspapers as the board of commissioners may direct. The notice of hearing shall be published not more than twenty nor less than five days prior to the day specified for the hearing. The notice of hearing shall state the time when and the place where the public hearing will be held, the purpose thereof, and that a copy of the estimate of proposed expenditures for and revenues of such district for the year beginning with the succeeding first day of January is available for public inspection at specified times and at a specified public place. After the public hearing, the board of commissioners of an improvement district may change, alter and revise such estimate prior to filing with the budget officer. Notice of such public hearing shall also be posted on the websites of the district and the town in which the district is located, provided such websites are maintained, on the signboard of the town and conspicuously posted in three or more designated public locations within the district, on or about the day on which such notice is published.

10. Shall, after the public hearing conducted as prescribed in subdivision nine-a of this section, annually file with the budget officer at the time specified in sections one hundred four and two hundred two-a of this chapter and post on the website of the district, if such website is maintained, the estimate of proposed expenditures for and revenues of such district for the year beginning with the succeeding first day of January. Upon receipt of the filing of the estimate, the budget officer shall cause a copy of such estimate to be posted on the website of the town, if such website is maintained. In any town, the town board may reduce any item specified in such estimate, but may not reduce any item relating to estimated revenues and debt service unless the majority of the commissioners of an improvement district request such reduction in writing.

11. May award contracts in the same manner and upon the same notice as provided for the award of contracts by the town board in article twelve, provided, however, that the board of commissioners shall not incur any indebtedness or contract any obligation in excess of the amount provided for in the annual estimate and for which a tax or assessment has been previously levied upon the district, except pursuant to petition as hereinafter provided or except from funds made available pursuant to the local finance law.

12. Shall adopt a resolution prescribing how water connections shall be made and shall make and establish from time to time, water rates to be paid by consumers and may provide for the payment of such water charges in advance. The board of commissioners may provide that a discount shall be allowed for the prompt payment of water rates within the time required by such board for the payment thereof. Such water charges shall be a lien upon the real property upon which or in connection with which said water was used. The board of commissioners may provide that unpaid water rates which are in arrears for thirty days or longer shall be subject to a penalty not exceeding ten per centum of the amount due and may further provide for cutting off the supply of water if such water charges are not paid within sixty days from the date due, in a water district. At the same time as the filing of the estimates specified in section one hundred four of this chapter, or in case the town board shall elect by resolution a subsequent date, which in no event shall be later than November first in any year, the water commissioners shall annually file with the town board, and with the supervisors of adjoining towns in which permits have been issued to property owners, statements showing the unpaid water charges in the respective districts and towns and which have not appeared on any such statements previously filed.

13. Shall adopt a resolution or ordinance prescribing how sewer connections shall be made, in a sewer district.

14. Shall adopt a resolution or ordinance prescribing how storm sewer connections shall be made, in a drainage district.

15. Shall have all the powers provided in section two hundred one of this chapter to require the installation of sewer connections, in a sewer or drainage district and water connections, in a water district. All notices therein required shall be given by the board of commissioners and the cost or expense of the improvement shall be certified to the town board and assessed by it.

16. Shall have all the powers of the town board, pursuant to subdivision four of section one hundred ninety-eight, in a park district.

17. Shall have all the powers of the town board, pursuant to subdivision seven of section one hundred ninety-eight, in a refuse and garbage district.

18. Shall have all the powers of the town board, pursuant to subdivision eight of section one hundred ninety-eight, in a public dock district.

19. Except as otherwise provided by this article, shall have and exercise any power conferred upon the town board of the town in such a district, pursuant to provisions of article twelve and of sections two hundred thirty-seven, two hundred thirty-eight and two hundred thirty-nine of article fifteen, when delegated to it by the town board.

20. May provide by resolution that candidates for district offices shall file their names with the secretary of the board of commissioners at least thirty days prior to the date of the district elections, and, in addition, require that such nominations be submitted in petition form subscribed by twenty-five registered voters of the district. Thereafter, the ballots for the election of district officers shall specify the names of the candidates duly filed and, in addition, provide proper blank spaces for each office to be filled at such election. If any such resolution shall be adopted, the requirements thereof shall be specified in the notice of each district election held thereafter. The board of commissioners may rescind such resolution at any time and thereafter district officers shall be elected as otherwise provided herein.

21. Whenever a vacancy shall occur or exist in any elective district office, the town board of the town in which such district is located shall appoint a qualified person to fill the vacancy and the person so appointed shall hold office until the thirty-first day of December next succeeding the first annual district election held at least sixty days after such vacancy shall occur or exist, provided, however, that if a vacancy so occurs or exists in any elective district office, the term of which would expire on the thirty-first day of December next succeeding, the person so appointed shall hold office only until

such thirty-first day of December; and at the first annual district election held at least sixty days after such vacancy shall occur and exist, a successor shall be elected for the unexpired portion of the term beginning on the first day of January next succeeding. Whenever a vacancy shall occur or exist in any other district office, the board of commissioners of such district may appoint a qualified person to fill the vacancy who shall hold office for the remainder of the unexpired term.

22. May regularly employ an attorney or an engineer for professional services and advice, or may employ from time to time and whenever necessary an attorney or engineer or counsel or expert engineering service in relation to a specific subject matter, improvement, proceedings or litigation, provided however, that no such attorney, engineer, counsel or engineering service shall be employed unless and until the town board of the town in which such district is located shall adopt a resolution authorizing such employment. With the consent of the town board, the town attorney or the town engineer may perform professional services for the district and receive such compensation therefor as may be agreed upon between the commissioners and such town attorney or town engineer.

23. May purchase uniforms and protective apparel for employees of the district.

CREDIT(S)

(L.1932, c. 634. Amended L.1933, c. 645, § 3; L.1933, c. 751, § 27; L.1934, c. 817, §§ 7, 8; L.1938, c. 634, §§ 12, 13; L.1941, c. 601, § 23; L.1943, c. 345, § 2; L.1943, c. 710, pt. 1, § 2618; L.1945, c. 348; L.1945, c. 797, § 2; L.1947, c. 282, § 2; L.1941, c. 517; L.1952, c. 181; L.1952, c. 773, § 2; L.1954, c. 269, § 5; L.1957, c. 161; L.1966, c. 101; L.1969, c. 1049, § 39; L.1976, c. 678, § 1; L.1980, c. 305, § 1; L.1985, c. 210, § 2; L.1985, c. 400, § 4; L.1992, c. 708, § 36; L.2004, c. 656, § 8, eff. Oct. 26, 2004; L.2008, c. 421, §§ 2 to 4, eff. Jan. 1, 2009.)

[FN1] So in original. No subd. 7 has been enacted.

[FN2] So in original ("fist" should be "first").

HISTORICAL AND STATUTORY NOTES

EXHIBIT B

III

NASSAU COUNTY
CIVIL DIVISIONS ACT

bed and to be in such manner as not to interfere with the main damaged road bed.

2. The consent of the majority of the electors as herein provided shall be in addition to the requirements of the rail road law.

3. No railroad shall be constructed.

4. On Greenwich street in the village of Hempstead.

5. On Bay View Avenue extending from Little Neck road to the Steamboat road on the west side of Great Neck in the town of North Hempstead.

6. On Central Avenue extending from Park Road to Woodmere in the town of Hempstead.

7. On the highway leading from the unincorporated village of Oyster Bay through Oyster Bay Cove to Cold Spring commonly known as the Cove road in the town of Oyster Bay.

8. On Old Broadway from the city line to the lands on Oak Street, Jay Lane, Grand View Avenue, Neilson Avenue, Roanoke Avenue, Saint Paul Street, Grove Avenue, Franklin Avenue, Ocean Avenue, Cornaga Avenue, Broadway Avenue, or on Mott Avenue between James Street and Grand View Avenue, or on Central Avenue south of Rockwood Avenue and north of Mott Avenue.

ARTICLE 6. WATER DISTRICTS.

255.1 Alteration of boundaries of water districts.

255.2 Dissolution of the New Cassel water district.

255.3 Improvements in water districts.

255.4 Powers of the water districts.

255.5 Alteration of boundaries of water districts (C).

of commissioners, may establish a capital reserve fund in the manner specified in section six-c of the general municipal law for the financing of all or part of the cost of the construction, re-construction or acquisition of a specific capital improvement or of the acquisition of a specific item or specific items of equipment or of the construction, re-construction or acquisition of a type of capital improvement or of the acquisition of a type of equipment and may transfer moneys in a repair reserve fund established pursuant to section six-d of the general municipal law to such capital reserve fund.

(Added by L. 1974, Ch. 642, in effect May 30, 1974.)

§ 255.4 Powers. The board of commissioners of every water district in the county of Nassau shall have the following powers in addition to all other powers now or hereafter conferred on such board by any general or special laws:

(a) May sue and be sued as the board of commissioners of the district. Any sum of money recovered by them in

(Continued on Page 58)

such an action shall be deposited and disbursed for such district purposes as are permitted by law as the board of commissioners may direct. In the event of the entry of any judgment against such board of commissioners such board shall notify the town board as to the amount of such judgment, interest and costs, and the town board shall forthwith satisfy and pay such judgment, interest and costs, and the amount so paid in satisfaction of any such judgment, interest and costs shall be a charge against such water district and as such levied against the taxable property therein, or the amount of any such judgment, including interest and costs, may be financed pursuant to the local finance law, in which event amounts necessary to provide for the annual payments of principal of and interest on any obligations issued by the town for such purpose shall be a charge against such water district and as such levied against the taxable property therein.

(b) Shall have the power to sell or lease any real or personal property owned by the district and not required for the purposes thereof. The receipts from such sale or lease shall be deposited and disbursed for such district purposes as are permitted by law, as the board of commissioners may direct.

(c) Shall have the power to make any and all contracts for district purposes, including contracts with developers of subdivisions for the installation of a system of water mains and hydrants in such subdivisions and for the purchase of water supply pipe lines, materials and appurtenances, except that contracts for improvements to the facilities of the district and for the construction or extension of water mains and for the increase, improvement or reconstruction of the facilities of any part of the existing water supply system, shall be awarded in the same manner and upon the same notice as provided for the award of contracts by the town board in article twelve of the town law, provided, however, that the board of commissioners shall not incur any indebtedness nor contract any obligation in excess of the amount provided in the annual estimate and for which a reserve has been provided out of water rents or for which a tax or assessment has been previously levied

upon the district, except pursuant to provision by the board of commissioners to the town board for funds to be made available pursuant to the local finance law. Nothing in this subdivision shall preclude the board of commissioners from making such improvements and construction, such as in the laying of labor and materials of the district.

(d) May purchase equipment and supplies exceeding the amount to be purchased by each five thousand dollars when the contract for same shall be awarded in the same manner and upon the same notice as provided for the award of contract by the town board in article twelve of the town law, provided however that the board of commissioners shall not incur any indebtedness nor contract any obligation for an excess of the amount for which provisions made in the annual estimate and for which a reserve fund is provided out of the revenues of town which a rate of assessment has been lawfully levied upon the town, or except pursuant to provision by the board of commissioners to the town board for funds to be made available pursuant to the local finance law.

(e) Where the supply of water to the consumers is measured by meters, the board of commissioners may in its discretion install and repair supply pipes connecting the district mains to the meters and may establish rate of water sold by the consumers of the district and the same. The money given under this subdivision shall not be considered mandatory but permissive only.

(f) The board of commissioners designates one of its members as auditor and disbursing officer for such duties pursuant to the authorization of the town board by the board of commissioners may receive and collect all water and sewer rates and charges on behalf of the district and such money shall be deposited and disbursed in accordance with the provisions of the appropriate general or special laws. This subdivision shall not relieve the board of commissioners from its duty under section 16 of article 17 of the constitution of the town law to annually report to the town board the budget, water charges, if the board of commissioners fails to designate one of its members as

cashier and disbursing officer, or if there be no com-
missioners in such district, the town supervisor shall be
the cashier and disbursing officer for the district, and
the town board or town board of education employees, in
board may authorize shall collect water rates and other
fees and charges of said district and such money shall be
deposited and disbursed for the use and purposes of the
district.

(2) The board of commissioners, by resolution in which
it shall specify cash paid for the treasury of date of the
board of the district fund for each such official for the
year in advance of approval by the board of property
items and bills of expensed bills for materials, sup-
plies or services furnished to the board for the conduct
of its affairs and upon terms of bill for the payment of
such to the vendor upon the delivery of any such mate-
rial or supplies or the rendering of any such service. The
amount of such petty cash fund shall not exceed two
hundred dollars. At the time of payment from a petty
cash fund the official for whose use such fund is ap-
plied shall receive the delivery of him of a bill in form ap-
proved for approval. At each meeting of the board the
total of all expenditures made from the petty cash fund and the
balance remaining of the board together with the bills ac-
counting therefor and the same shall be presented by such com-
missioner to the board for approval. The board shall direct the
cashier to reimburse such petty cash fund from the ap-
propriate district any item or items in an amount equal
to the total of such bills which it shall approve and it
shall not be the duty of the board to approve and it
shall be the personal liability of the official
responsible of the use of the petty cash fund from which
payments on account thereof are made and such amount
shall promptly remain in the petty cash fund on the ac-
count of such disbursements. All such disbursements shall
not be made by the time of the first payment of such
to the board after the action of the board in disallowing
an amount so expended, such amount shall be withheld
from all other payments and if necessary subsequent

salary payments, and paid into such petty cash fund until an amount equal to the amount so disallowed in the approval of the board has been repaid to the petty cash fund. Any bond or undertaking filed by any such official shall be available to the board for recovery of any losses incurred by reason of the operation of any such petty cash fund.

(Added by L. 1949 Ch. 270, in effect March 23, 1949.)

h. May from time to time adopt ordinances, rules and regulations (1) relating to the operation of the water district and the use of water therein, including but not limited to the regulation of cross-connections, the operation, manner of construction, alteration, removal and inspection of the water mains, lateral mains and water service mains, the plumbing in all existing and proposed buildings and structures, the manner in which connections shall be made to the water mains, lateral mains and water service mains, the type of materials to be used therefor, and (2) prohibiting any construction, alteration or use of any materials, which do not comply with such ordinances, rules and regulations.

The board of commissioners may enforce the provisions of the ordinances, rules and regulations by the imposition of a fine in an amount not exceeding two hundred fifty dollars for each violation, and may also maintain an action in a court of competent jurisdiction to compel compliance

(Continued on Page 61)

therewith or may make application to restrain by temporary or permanent injunction, restraining order or other equitable relief the violation of such ordinances, rules and regulations.

(Added by L. 1981 Ch. 220, in effect September 1, 1981.)

ARTICLE 8. *REFUSE AND GARBAGE DISTRICTS

- § 255.5 Establishment or extension of refuse and garbage districts.
- § 255.6 Expense of establishment of refuse and garbage districts and improvements therein.
- § 255.7 Power to contract with other municipalities.
- § 255.8 Power to contract with private collectors.
- § 255.9 Special district under town law.
- § 255.10 Additional powers of town board.

§ 255.5 Establishment or extension of refuse and garbage districts. The town board of any town in the county of Nassau, upon its own motion and without a petition, may establish and from time to time extend a refuse and garbage district in such town outside of any incorporated village or city, after a public hearing thereon, for the collection and disposition or for the disposition alone, of garbage, ashes, rubbish and other waste matter, and for that purpose may construct, acquire, operate and maintain refuse disposal or incinerator plants, may acquire the necessary land therefor, or may utilize town lands available as the site of such plants or for the utilization of non-burnable waste and may purchase, operate and maintain all necessary appliances appurtenant thereto, including such trucks, furnishings, machinery and apparatus and equipment as may be required for the collection or disposition of waste matter. If in such town a sanitary district as defined by chapter two hundred seventy-three of the laws of nineteen hundred thirty-nine shall have been theretofore established and shall then be maintaining and operating an incinerator plant, such sanitary district shall be ex-

*See also § 222.0 of Article I - A for establishment and extension.

EXHIBIT C

FOR EDUCATIONAL USE ONLY

McKinney's General Construction Law § 41

McKinney's Consolidated Laws of New York Annotated Currentness

General Construction Law (Refs & Annos)

^ Chapter 22. Of the Consolidated Laws (Refs & Annos)

^ Article 2. Meaning of Terms

→ § 41. Quorum and majority

Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, gathered together in the presence of each other or through the use of videoconferencing, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty. For the purpose of this provision the words "whole number" shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting.

CREDIT(S)

(L.1909, c. 27. Amended L.1948, c. 320, eff. March 21, 1948; L.2000, c. 289, § 5, eff. Aug. 23, 2000.)

HISTORICAL AND STATUTORY NOTES

Note of Commission

Amendment by L.1948, c. 320, affecting this section was recommended by the Law Revision Commission. "Its purpose is to clarify the definition of quorum and the rules relating to the number of votes required for the exercise of the powers conferred upon public bodies consisting of three or more members. It provides that a majority of the authorized membership constitutes a quorum and that not less than a majority of the authorized membership may act". 1948, Leg.Doc. 65(H); 1948 Report, Recommendations and Studies, pp. ____.

1909 Law. "This section provides what shall constitute a quorum or majority where not expressly stated and in this sense is a definition of terms. The last sentence of § 19 of the Statutory Construction Law has been assigned to the Code of Civil Procedure [now Civil Practice Act] as relating entirely to the subject of evidence." 1907 Report of Board of Statutory Consolidation, p. 2152.

Derivation

Section derived from Statutory Construction Law of 1892, c. 677, § 19, pt. 1; originally revised from R.S., pt. 1, ch. 16, tit. 1, § 125; R.S., pt. 3, ch. 8, tit. 17, § 27, as amended by L.1874, c. 321; L.1842, c. 130, tit. 8, § 2; L.1886, c. 21, § 20.

CROSS REFERENCES

Majority and quorum of--

Common council of second class cities, see Second Class Cities Law § 34.

Town board, see Town Law § 63.

Majority of--

EXHIBIT D

CONCLUSION

A village trustee, while holding office, may not be employed by the village to assist the village engineer.

July 13, 1949.

File No. 3996

TOWN LAW, SECTION 215; GENERAL CONSTRUCTION LAW, SECTION 41.

Town water commissioners have no powers other than those given them by statute. The board of water commissioners must meet collectively to perform duties. ~~Noticed or meetings of such board when not provided for~~ by resolution of such board.

Town Water Commissioners are a statutory board and have no powers other than those given them by statute (*Amity Holding Corp. v. Eden*, 1933, 238 App. Div. 628, 265 N. Y. S. 23).

Section 215 of the Town Law sets out the powers and duties which are granted to and imposed upon the board of commissioners.

In relation to the manner of exercising these powers and duties your attention is called to section 41 of the General Construction Law which provides as follows:

"Section 41. Quorum and majority

Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty. For the purpose of this provision the words "whole number" shall be construed to mean the total number which the board, commission, body or other group of persons or officers would have were there no vacancies and were none of the persons or officers disqualified from acting." (As amended Laws 1948, chapter 320, eff. March 21, 1948.)

It is well settled that a board of water commissioners may exercise its statutory powers only when the members thereof act collectively. It must act at a meeting where a quorum is present and a majority vote for favorable action is obtained (*Amity Holding Corp. v. Eden*, supra).

Your attention is called, again, to section 41 of the General Construction Law in relation to the meetings at which a majority of such officers may act. There is no law which fixes the time of meetings of such board. However, subdivision 1 of section 215 of the Town Law provides that such board of commissioners:

"1. Shall elect one of their members as chairman and another as secretary of the board of commissioners at the first meeting thereof following each annual election of district commissioners, * * *"

The above would indicate that the commissioners should hold a meeting subsequent to the annual election of district commissioners for the purpose of selecting a chairman and secretary of the board of commissioners.

We assume that the time and place of meetings of your board has not been fixed by any by-law duly adopted by such board and that such board did not adjourn the last meeting thereof to a specific time and place. It would, therefore, follow, pursuant to the provision of section 41 of the General Construction Laws, that the majority of the whole number of such persons or officers, at a meeting duly held upon reasonable notice to all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise the power, authority or duty of the board of water commissioners. We believe that if the rules and regulations of the board of water commissioners do not provide for the method and by whom a notice of a meeting of such board shall be given, a notice of meeting, given a reasonable time before such meeting, signed by all or a majority of the whole number of the members thereof, stating the time, place and purpose of the meeting, would be sufficient.

July 13, 1949.

File No. 3943

GENERAL MUNICIPAL LAW, SECTION 77-b.

City may not pay personal dues of city engineer in American Public Works Association.

INQUIRY

May a city pay the personal dues of the city engineer in the American Public Works Association?

STATEMENT OF LAW

This Department has consistently held that personal dues of municipal officers in professional associations or associations of public officers may not be paid by the municipality. See the following opinions in which such view is expressed: Department of Audit and Control, Opinion No. 845; 2 Op. State Compt. 85, 1946; 3 Op. State Compt. 79, 1947; 5 Op. State Compt. 210, 1949.

CONCLUSION

A city may not pay the personal dues of the city engineer in the American Public Works Association.

July 14, 1949.

EXHIBIT E

FOR EDUCATIONAL USE ONLY

238 A.D. 628, 265 N.Y.S. 23

View New York Official Reports versionSupreme Court, Appellate Division, Second Department, New York.
AMITY HOLDING CORPORATIONv.
EDEN et al.

June 9, 1933.

Certiorari proceeding by Amity Holding Corporation to review the action of Kenelm H. Eden and others as water commissioners of Manhasset-Lakeville Water District of the Town of North Hempstead, Nassau County, New York, in rejecting a claim submitted to them by petitioner.

Determination of the Board of Water Commissioners unanimously confirmed, and certiorari proceeding dismissed.

West Headnotes

[1] KeyCite Citing References for this Headnote**405 Water Law****405XII Public Water Supply****405XII(B) Domestic and Municipal Purposes****405XII(B)2 Local Water Districts**

405k1898 k. Powers and authority in general. Most Cited Cases
(Formerly 405k183.5, 405k1831/2)

Town water commissioners are statutory board and have no powers other than those given to them by statute.

[2] KeyCite Citing References for this Headnote**405 Water Law****405XII Public Water Supply****405XII(B) Domestic and Municipal Purposes****405XII(B)2 Local Water Districts**

405k1898 k. Powers and authority in general. Most Cited Cases
(Formerly 405k183.5, 405k1831/2)

Powers conferred on town water commissioners as board cannot be exercised except as board, by members acting collectively with quorum present, and not individually. General Construction Law, § 41.

[3] KeyCite Citing References for this Headnote**405 Water Law****405XII Public Water Supply****405XII(B) Domestic and Municipal Purposes****405XII(B)2 Local Water Districts**

405k1898 k. Powers and authority in general. Most Cited Cases

(Formerly 405k183.5, 405k1831/2)

405 Water Law KeyCite Citing References for this Headnote

405XII Public Water Supply

405XII(B) Domestic and Municipal Purposes

405XII(B)2 Local Water Districts

405k1903 k. Issuance of bonds. Most Cited Cases

(Formerly 405k183.5, 405k1831/2)

Town water board held not authorized under statutes in effect in 1927 and 1929 to purchase water mains in private development without approval of bonds to be issued for payment thereof by electors. Town Law, §§ 296-a, 299.

[4] KeyCite Citing References for this Headnote

405 Water Law

405XII Public Water Supply

405XII(B) Domestic and Municipal Purposes

405XII(B)2 Local Water Districts

405k1902 k. Duties, liabilities, and immunity. Most Cited Cases

(Formerly 405k183.5, 405k1831/2)

Statements and acts of individual members of town water board held not construable as purchase or agreement to purchase by town water board of water mains installed by development company. Town Law, §§ 296-a, 299.

[5] KeyCite Citing References for this Headnote

405 Water Law

405XII Public Water Supply

405XII(B) Domestic and Municipal Purposes

405XII(B)2 Local Water Districts

405k1906 k. Judicial intervention, actions, and review. Most Cited Cases

(Formerly 405k183.5, 405k1831/2)

Private development company's deed to town of streets held not to convey title to water mains in streets laid out by company, as respects validity of company's claim against town water district for reimbursement for laying water mains.

[6] KeyCite Citing References for this Headnote

405 Water Law

405XII Public Water Supply

405XII(B) Domestic and Municipal Purposes

405XII(B)2 Local Water Districts

405k1906 k. Judicial intervention, actions, and review. Most Cited Cases

(Formerly 405k183.5, 405k1831/2)

Individuals dealing with officers of public body or corporation, such as town water board, must ascertain extent of authority of such officers.

**24 *629 G. Burchard Smith, of Mineola (James L. Dowsey, of Mineola, on the brief), for petitioner.

Marcus G. Christ, of Hempstead, L. I. (Percy F. Griffin, of Hempstead, L. I., on the brief), for

respondents.

Argued before LAZANSKY, P. J., and YOUNG, HAGARTY, CARSWELL, and DAVIS, JJ.

CARSWELL, Justice.

On a petition of Amity Holding Corporation under section 1283, Civil Practice Act, et seq., a certiorari order has issued, returnable in this court, pursuant to section 1300, Civil Practice Act, to review the action of defendant board of water commissioners in rejecting petitioner's claim. The claim rejected is for \$11,161, with interest from December 7, 1927.

The facts so far as are essential to a decision are not in dispute. The dispute relates to their effect.

****25** The defendants are the board of water commissioners of the Manhasset-Lakeville water district of the town of North Hempstead.

The petitioner engaged in a land development operation at Manhasset, within that water district. It laid water mains in this private development in 1927, to supply with water the houses constructed therein. It did so in accordance with plans and specifications that conformed to those required by the water district. It seeks to be repaid for the cost of installation of these water mains. It founds its claims on conversations had by its representative with George D. Smith and Clarence Webb, former members of the board of water commissioners, which board consisted of three persons. It does not claim that in these conversations either commissioner agreed in terms that the water district would pay for the water mains. It claims that the talks had with these individuals, ***630** considered in connection with the acts of the board of water commissioners, can be understood only on the theory that the water district recognized that it owned the water mains or agreed to pay for them; in other words, that the circumstances it recounts imply an agreement on the part of the water district to pay for the mains. An examination of these acts, however, discloses that they are equally consistent with an entirely different arrangement, fairly implied from the acts of the parties, which does not involve a recognition that the water district either owned or agreed to purchase the water mains. This different conclusion is more readily accepted when we find that there was no official action by the board as such agreeing to take over or pay for the mains, evidenced either by a resolution or by informed proof of action by the board as such, as distinguished from acts of individual members not acting as a board. These conversations need not be given in detail. They may be summarized. They are, substance, that Smith talked with petitioner's representative when the latter inquired about getting a supply of water to petitioner's property. Smith referred him to Webb, another member of the board. Smith states that he remembers that Webb reported to the commission that the installation of water mains was proceeding in petitioner's development in accordance with the requirements of the water district. He states that on other occasions mains were constructed in a similar manner and were taken over and paid for by the commissioners when the streets in which they were laid became a part of the system's highways and when in the judgment of the water commissioners the mains showed a fair percentage of revenue as against the cost of construction. He further states that the petitioner's claim was discussed ****26** and that the attitude of the commission was in accord with the foregoing.

Webb makes a similar affidavit. He quotes Jahngen, petitioner's representative, as having asked him whether it would be satisfactory if the Hoban corporation put in the mains, and that he, Webb, said that it would, as said corporation was familiar with the water district's specifications and requirements. He further states that he told Jahngen that if the water district's regulations were complied with the mains 'could become' a part of the water system when the roads were taken into the town system, and that the water district would take the mains into the system under those conditions. Webb, too, says that under like circumstances the water district 'had taken over' mains after they were constructed and paid for, and that the district paid for them. He further states that the water mains were connected up with the water district under permits issued by it and that from time to time repairs were made by employees of the water district.

***631** It appears that on November 9, 1928, the petitioner asked the town board of Hempstead to take over the streets in the development, and represented that they were in perfect condition 'and all utilities installed,' and that on February 4, 1929, before any claim was made to the water commissioners for payment of these water mains, the petitioner conveyed the streets in which the

mains were laid to the town of North Hempstead.

It appears that on April 8, 1929, the town superintendent of highways, pursuant to action of the town board, made an order taking the streets into the town system of highways.

It was at this stage that the petitioner filed its first claim with the water district board, on August 27, 1929, at which time Smith and Webb were members, Smith continuing for one year longer and Webb for three months longer. No favorable action was taken upon the claim.

On August 13, 1930, the petitioner asked the water district board to include in its budget an item to pay for the mains, and pursuant to resolution the water district board stated it did not intend to purchase the mains and that it had no power to do so. Smith concurred in this action. The matter came up again from time to time, according to the records of the water board, but no action favorable to the petitioner was taken.

On July 17, 1931, the petitioner's claim, in connection with similar claims, was rejected under a unanimously adopted resolution, and the petitioner was notified on July 24, 1931.

****27** On February 19, 1932, petitioner filed a new proof of claim, supported by the affidavits which recount the conversations had with Smith and Webb; also that the water board's annual revenue for water delivered through these mains is \$1,000. On August 5, 1932, the present commissioners rejected the claim on the ground that it was not a legal obligation of the district. Thereupon the certiorari order to this court was obtained.

[1] [2] The defendants are a statutory board. They have no powers other than those given to them by statute. The powers conferred on them as a board may not be exercised except as a board. This record contains no showing that the board as such ever exercised any of its powers by way of taking over or agreeing to pay for petitioner's water mains. It is well settled that such a board may exercise its statutory powers only when the members thereof act collectively. (General Construction Law, § 41.) It must act at a meeting where a quorum is present and a majority vote for favorable action obtained. This rule is applied to private corporations, the board of directors of which may not act individually or casually. They must act as a board, that is, act collectively. ***632** Gerard v. Empire Square Realty Co., 195 App. Div. 244, 248, 187 N. Y. S. 306; Barnes v. All American Investing Co., Inc., 206 App. Div. 631, 198 N. Y. S. 900; Walker v. Dunspaugh, 20 N. Y. 170.

There is no board action in any formally recorded form that binds the water board to take over and pay for these mains. There is no showing of board action informally evidenced. We have merely the equivocal declarations of two individual members, acting separately and apart from each other and their associates on the board, which declarations are made after they ceased to be members of the water board.

Therefore, assuming the board had power to pay for these water mains and to agree to do this upon an arrangement such as the petitioner invokes, there is no board action that will sustain petitioner's claim.

[3] A further barrier, however, exists in the statutes. The pertinent provisions are section 296-a and section 299 of the Town Law. In 1927 the board had no authority, so far as section 299 was concerned, to take over private mains under any procedure. When section 299 was amended in April, 1929 (Laws 1929, c. 390), to enable the board to acquire by purchase water mains laid by a private person or corporation, that power could only be exercised in a manner that enabled the electors to have a voice in it.

****28** In so far as section 296-a is concerned, that statute in the form in which it was in effect in 1927 and 1929, contained no authorization to extend water mains or systems by purchase thereof from a private person or corporation. The effect of the two sections seems to be that the board could act under section 299, enlarge the water supply system (including purchase of private mains), and make payment therefor by means of bonds after the project had been approved by the electors.

When the board saw fit, however, to act under section 296-a, which in terms gave it no power to take over private mains, the cost thereof had to be liquidated by taxation not to exceed a specified rate.

The facts invoked by the petitioner herein show no compliance with either section, and particularly no compliance with section 299, under which the board was authorized under proper procedure to acquire mains installed by a private person or corporation.

[4] On the facts, the vice in petitioner's position is that it assumes that the acts of individual members of the water board and the acts of the water board itself can only be understood on the theory that the water board had purchased or agreed to purchase the water mains. The contrary is the fact. The acts recounted, especially in the light of no official action by the board as such, evidenced formally or informally, fairly imply that this private development *633 company found it desirable to install these water mains in its own property so as to enable it to sell its lots, and possibly absorbed the cost of such installation in the sales price of lots; that the compliance with the regulations of the water district was due to that being the easiest way in which petitioner could get water to private dwellings in its development, which water was needed to enable petitioner to sell its property. The arrangement between petitioner and its lot buyers, or possibly some other similar motive, actuated the installing of the mains by the petitioner. Having the water district collect the revenue and maintain the service is understandable on the same basis. The furnishing of the water by the water district through pipes owned by the petitioner under these informal circumstances thus operated to the advantage of the petitioner but did not obligate the water district to pay for the water main installation.

[5] The deed to the town of North Hempstead of the streets in which the water mains were laid did not convey the title to the water mains and thus create a bar to petitioner's claim on that ground as against the water district. We may not now pass upon the rights of the parties with respect to these water mains.

**29 [6] It suffices to say, for the reasons indicated, that the claim was properly rejected. A contrary holding would sanction a frustration of statutory safeguards regulating the exercise of power by the water board and disregard the rule that individuals dealing with officers of a public body or corporation must ascertain the extent of the authority of such officers in connection with dealings had with them. McDonald v. Mayor, etc., of City of New York, 68 N. Y. 23, 23 Am. Rep. 144. It would, likewise, nullify the statutory provisions designed to enable the qualified voters to approve or disapprove such projects.

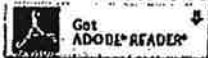
The determination should be confirmed and the certiorari proceeding dismissed, with \$50 costs and disbursements.

Determination of the Board of Water Commissioners unanimously confirmed and certiorari proceeding dismissed, with \$50 costs and disbursements. All concur.

N.Y.A.D. 2 Dept. 1933
AMITY HOLDING CORPORATION v. EDEN
238 A.D. 628, 265 N.Y.S. 23

END OF DOCUMENT

Adobe Reader is required to view PDF images.



(c) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works

EXHIBIT F

FOR EDUCATIONAL USE ONLY

94 C.J.S. Waters § 553

Corpus Juris Secundum
Database updated September 2012

Waters
John Bourdeau, J.D.

IX. Public and Municipal Water Supply
B. Municipal Waterworks and Water Districts
4. Water Districts
c. Governing Body; Officers

Topic Summary References

§ 553. Generally**West's Key Number Digest**

West's Key Number Digest, Water Law §§ 1025, 1027, 1028, 1030 to 1037, 1885 to 1906
In general, the governing bodies of water districts and officers thereof are provided for by the statutes under which the districts are organized, which determine their method of selection, tenure, and powers.

In the absence of constitutional provision to the contrary, the governing body of a water district, and the tenure of its members, are as provided by the statutes governing such bodies.[FN1] Such bodies are statutory, and they have no powers other than those given to them by statute.[FN2]

Officers to whom are entrusted the conduct of the affairs of a water district are public officers.[FN3] They are not a municipal or a quasi-municipal corporation,[FN4] or a quasi-corporation[FN5] where such a character is not expressly given by statute and a quasi-corporate capacity is not essential to the proper conduct of their office.

Commissioners of a water district are merely administrative officers,[FN6] with power to make contracts in their official name and capacity,[FN7] and they are not agents of the town in which the district is located or of the town board,[FN8] or town officers,[FN9] or agents of the district.[FN10] Where a water district never has a duly authorized water commission, alleged water commissioners are not in actuality commissioners and can be terminated by the governing body of the municipality.[FN11]

The powers conferred on the members of the governing body of a water district as a body may not be exercised except as a body, that is, by the members acting collectively,[FN12] and then only in conformity with such procedure as may be prescribed by statute.[FN13] When exercising its statutory powers, a municipal water district's governing board of necessity has considerable discretion to decide what is in best interest of population it serves.[FN14]

Bond for faithful performance of duties.

Immaterial defects in recitals of a bond given, as required by law, for the faithful performance of the duties of an officer of a water district, as to the official designation of such officer do not invalidate the bond.[FN15]

[FN1] La.—State ex rel. Barre v. Fulton, 63 So. 2d 21 (La. Ct. App., Orleans 1953).

[FN2]

Duty to know powers

Individuals dealing with members of a board of a water district of town must ascertain the extent of their authority.

N.Y.—Amity Holding Corp. v. Eden, 238 A.D. 628, 265 N.Y.S. 23 (2d Dep't 1933).

Governing board of district

The governing board of water improvement districts is composed of its directors and they control all matters pertaining to the business of the district.

Tex.—Snelson v. Murray, 252 S.W.2d 720 (Tex. Civ. App. El Paso 1952), writ refused n.r.e.

[FN3] N.Y.—Salmon v. Rochester & Lake Ontario Water Co., 120 Misc. 131, 197 N.Y.S. 769 (Sup 1923).

- Tex.—Hale v. Colorado River Mun. Water Dist., 818 S.W.2d 537 (Tex. App. Austin 1991).

[FN4] N.Y.—Salmon v. Rochester & Lake Ontario Water Co., 120 Misc. 131, 197 N.Y.S. 769 (Sup 1923).

[FN5] N.Y.—People ex rel. Farley v. Winkler, 203 N.Y. 445, 96 N.E. 928 (1911).

[FN6] N.Y.—People ex rel. Farley v. Winkler, 203 N.Y. 445, 96 N.E. 928 (1911).

[FN7] N.Y.—People ex rel. Farley v. Winkler, 203 N.Y. 445, 96 N.E. 928 (1911).

[FN8] N.Y.—People v. Stoll, 242 N.Y. 453, 152 N.E. 259 (1926).

[FN9] N.Y.—Bryan v. Town Bd. of Brighton, 133 Misc. 315, 232 N.Y.S. 18 (Sup 1928).

[FN10] N.Y.—People ex rel. Farley v. Winkler, 203 N.Y. 445, 96 N.E. 928 (1911).

[FN11] N.Y.—Kanaly v. Q'Neil, 147 Misc. 2d 149, 555 N.Y.S.2d 567 (Sup 1990).

[FN12]

Requirements for valid action

The board must act at a meeting where a quorum is present and a majority vote for favorable action obtained.

N.Y.—Amity Holding Corp. v. Eden, 238 A.D. 628, 265 N.Y.S. 23 (2d Dep't 1933).

[FN13]

Approval by electors

The board of a water district is not authorized to purchase water mains in a private development without the approval of bonds to be issued for the payment thereof by the electors.

N.Y.—Amity Holding Corp. v. Eden, 238 A.D. 628, 265 N.Y.S. 23 (2d Dep't 1933).

[FN14] Cal.—Building Industry Assn. v. Marin Mun. Water Dist., 235 Cal. App. 3d 1641, 1 Cal. Rptr. 2d 625 (1st Dist. 1991).

[FN15] Tex.—State v. Stickle, 11 S.W.2d 837 (Tex. Civ. App. Dallas 1928), writ dismissed w.o.j., (Feb. 27, 1929).

Westlaw. © 2012 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

CJS WATERS § 553

END OF DOCUMENT

(c) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works

EXHIBIT G

FOR EDUCATIONAL USE ONLY

108 N.Y. Jur. 2d Water § 567

New York Jurisprudence, Second Edition
Database updated July 2012

Water

John J. Dvorske, J.D., M.A.; Tracy Bateman Farrell, J.D.; Christine M. Gimeno, J.D., LL.M.; Alan J. Jacobs, J.D.; Rachel M. Kane, J.D., M.A.; Kimberly C. Simmons, J.D.; Lisa A. Zakolski, J.D.

Part Three. Water Supply Systems and Waterworks Corporations
XII. Establishment and Management
C. County and Town Water Districts
2. Town Water, Water Supply, and Water Storage and Distribution Districts
c. Administration and Operation
(1) In General

[Topic Summary](#) [Correlation Table](#) [References](#)

§ 567. Generally; board of commissioners—Powers and duties

West's Key Number Digest

West's Key Number Digest, Waters and Watercourses ⇨183.5

Forms

Ordinance establishing water rates for utility company, [Am. Jur. Legal Forms 2d, Waterworks and Water Companies § 261:19](#)

Petition or declaration for writ of mandamus to compel municipality to issue water service connection permit waterworks owned and operated by municipality, [Am. Jur. Pleading and Practice Forms, Waterworks and Water Companies § 10](#)

Petition or declaration for writ of mandamus to compel quasi-municipal water supply organization to supply water service, [Am. Jur. Pleading and Practice Forms, Waterworks and Water Companies § 11](#)

Since a town board of water commissioners is a statutory board, it has no powers other than those given to it by statute, and any powers conferred on it as a board may not be exercised except as a board, with the members acting collectively.[FN1] Their duties are ministerial.[FN2] Statutory provision details the powers and duties of improvement district commissioners, including water district commissioners.[FN3] The board of commissioners of a water district is required to adopt a resolution prescribing how water connections must be made, and to make and establish water rates to be paid by consumers, which may be made payable in advance.[FN4] In addition, the board has the power to require water connections in a water district.[FN5]

The board of water commissioners may exercise any and all of the powers and duties of fire district commissioners.[FN6]

EXHIBIT I

[FN1] Amity Holding Corp. v. Eden, 238 A.D. 628, 265 N.Y.S. 23 (2d Dep't 1933).

[FN2] Holroyd v. Town of Indian Lake, 180 N.Y. 318, 73 N.E. 36 (1905) (since the duties of the water commissioners were ministerial, performance could be required by mandamus).

[FN3] N.Y. Town Law § 215.

- For a general discussion of the powers and duties of Improvement district commissioners, see N.Y. Jur. 2d, Counties, Towns, and Municipal Corporations §§ 1271 to 1279.

[FN4] N.Y. Town Law § 215(12), discussed in § § 623, 656.

[FN5] N.Y. Town Law § 215(15).

[FN6] N.Y. Town Law § 186(3).

Westlaw. © 2012 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

NYJUR WATERS § 567

END OF DOCUMENT

(c) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works

EXHIBIT H

FOR EDUCATIONAL USE ONLY

1992 N.Y. Op. Atty. Gen. 18, 1992 WL 479117 (N.Y.A.G.)

Office of the Attorney General
State of New York
Formal Opinion No. 92-F6

*1 August 4, 1992

GENERAL CONSTRUCTION LAW § 41; GENERAL MUNICIPAL LAW § 813.

The Public Advisory Council to the Temporary State Commission on Local Government Ethics, which is not subject to the provisions of the Open Meetings Law, may conduct its meetings by means of a conference call, assuming that all other requirements for a duly held meeting have been satisfied.

Hon. Jay C. Carlisle
Chairman
Public Advisory Council
Temporary State Commission
on Local Government Ethics
235 Mamaroneck Avenue
White Plains, NY 10605

Dear Chairman Carlisle:

Special Counsel to the Temporary State Commission on Local Government Ethics has asked whether the Commission's Public Advisory Council has the legal authority to conduct a meeting by means of a telephone conference call where each member can hear what his colleagues are saying and all other legal requirements for a duly held meeting have been satisfied. We are aware of nothing that would prohibit this practice when all members are within the State. We express no opinion as to whether the Council has the authority to conduct meetings by conference call if any member is participating in the conference call from outside the State.

The Council consists of five members, who are appointed by the Governor in the following manner: three in his sole discretion; one on the nomination of the Speaker of the Assembly; and one on the nomination of the Temporary President of the Senate. General Municipal Law § 813(17)(b). The members serve for four year terms concurrent with the term of the Governor. Id., § 813(17)(c). The Governor designates the chairman. The chairman or any three members may call a meeting. Ibid. Three members constitute a quorum and the Council may act only by a majority of its whole number. Id., § 813(17)(f).

The Ethics in Government Act specifically exempts the proceedings of the Council from the Open Meetings Law. Id., § 813(17)(i). The Executive Director of the Committee on Open Government has issued advisory opinions concluding that bodies subject to the Open Meetings Law may not conduct meetings by means of conference calls, primarily because such a procedure limits the ability of the public to observe the deliberations of the public body, contrary to the intent of the Open Meetings Law. See, e.g., Advisory Opinion No. 687, issued October 6, 1981. This concern is not relevant to the Council, which is not subject to the Open Meetings Law.

We also note that General Construction Law § 41 provides:

"Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number of such persons or officers, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to

all of them, shall constitute a quorum and not less than a majority of the whole number may perform and exercise such power, authority or duty."

*2 This provision requires that the members of a body convene "at a meeting" where a quorum is present. The apparent purpose of this requirement is to ensure that the members can deliberate as a collective body. See, e.g., Matter of Amity Holding Corporation v Eden, 238 App Div 628 (2d Dept 1933). This purpose is fulfilled through a meeting whereby the members can freely discuss issues, deliberate and make decisions as a body. If this can be accomplished by telephone conference call, in our view that conference call constitutes a "meeting" consistent with the provisions of section 41 of the General Construction Law.

Therefore, we conclude that the Council, which is not subject to the provisions of the Open Meetings Law, may conduct its meetings by means of a conference call, assuming that all other requirements for a duly held meeting have been satisfied. We express no opinion as to whether the Council has the authority to conduct meetings by conference call if any member is participating in the conference call from outside the State.

Very truly yours,

Robert Abrams
Attorney General

1992 N.Y. Op. Atty. Gen. 18, 1992 WL 479117 (N.Y.A.G.)

END OF DOCUMENT

(c) 2012 Thomson Reuters. No Claim to Orig. US Gov. Works

EXHIBIT I

[Go Back](#)**NASSAU COUNTY**

**Title : SUPERINTENDENT OF WATER
AUTHORITY OR DISTRICT
(ADMINISTRATIVE)
(ENGINEERING) (OPERATIONAL)**

**SPECIAL DISTRICTS
CLASS SPECIFICATION**

Code : 860145 7RF**Page : 1 of 3****GENERAL STATEMENT OF DUTIES**

Administers and directs all facets of the operation and maintenance of a water treatment and distribution system; performs related duties as required.

COMPLEXITY OF DUTIES

Under general supervision, the duties require the use of independent judgment in administering and directing all facets of the operation and maintenance of a water treatment and distribution system.

TYPICAL DUTIES

1. Administers and directs all facets of the operation and maintenance of a water treatment and distribution system.
2. Reviews and upholds compliance with all current laws, regulations and guidelines, including the filing of all records of water treatment required by regulatory agencies.
3. Coordinates activities of all operating units, including the sampling, testing, and treating of the water supply.
4. Confers with engineers, Board of Commissioners, department heads, chairperson, equipment manufacturers and employees to discuss matters, including those pertaining to construction and operational planning.
5. Collaborates with State and local Health Departments to ensure compliance with water system monitoring requirements.
6. Remains informed of advancements in water treatment technologies, plans, and makes arrangements to update water treatment facilities with relevant equipment.
7. Directs subordinates and participates in chemical treatment procedures.
8. Treats for emerging water supply contaminants with various techniques, including but not limited to Advanced Oxidation Procedures.
9. Supervises the preparation of annual operating budgets, long-range and annual capital budgets, and monthly financial statements.
10. Oversees all agency purchases in accordance with policies, maintains inventory controls, prepares, reviews, and recommends approval of purchase requisitions, payrolls and bid pamphlets, attends bid openings, and participates in recommending bid awards.
11. Prepares press, radio, television, and other media releases, and addresses various groups concerning activities.
12. May prepare specifications for work contracted, and inspect and approve installation and major repair work performed by contractors.
13. May also be responsible for the administration of a fire district.

***TYPICAL ADA ESSENTIAL FUNCTIONS**

- over -

NASSAU COUNTY

**Title : SUPERINTENDENT OF WATER
AUTHORITY OR DISTRICT
(ADMINISTRATIVE)
(ENGINEERING) (OPERATIONAL)**

SPECIAL DISTRICTS**Code : 860145 7RF**

CLASS SPECIFICATION

FULL PERFORMANCE KNOWLEDGES, SKILLS, AND ABILITIES

1. Extensive knowledge of the practices and equipment utilized in the operation and maintenance of a water treatment plant.
2. Extensive knowledge of water distribution system planning, design and testing.
3. Extensive knowledge of the operation and maintenance of pumps, valves, and related mechanical and electrical equipment.
4. Extensive knowledge of technical information and construction and site plans related to water line systems.
5. Extensive knowledge of the laws, regulations and guidelines relevant to water treatment and purification.
6. Considerable knowledge of the science of water treatment and purification.
7. Knowledge of the practices and equipment used in advanced oxidation procedures.
8. Ability to plan, organize, direct and evaluate the work of subordinate supervisory personnel.
9. Ability to express oneself effectively, both orally and in writing.

MINIMUM QUALIFICATIONS

Training and Experience

For Appointment to Administrative

Bachelor's degree from a regionally accredited or New York State registered college or university and

Six years of satisfactory administrative experience in a utility environment performing regulatory compliance, purchasing and budget functions and which must include personnel and/or procurement activities.

For Appointment to Engineering

Bachelor's degree from a regionally accredited or New York State registered college or university in Engineering and

Six years of satisfactory experience in the design of water system projects.

- over -

NASSAU COUNTY

**Title : SUPERINTENDENT OF WATER
AUTHORITY OR DISTRICT
(ADMINISTRATIVE)
(ENGINEERING) (OPERATIONAL)**

SPECIAL DISTRICTS
CLASS SPECIFICATION

Code: 860145 7RF
Page : 3 of 3

For Appointment to Operational

Graduation from high school and

Six years of satisfactory experience operating a water treatment plant and distribution system.

Necessary Special Requirement for Operational

Continuing possession of an appropriate public water treatment and purification plant operator's grade I-B certificate issued by the New York State Department of Health.

[Go Back](#)

