

RECORD OF PROCEEDINGS

100 LEAVES

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE PUEBLO CONSERVANCY DISTRICT

December 14, 1937

A special meeting of the Board of Directors of The Pueblo Conservancy District was held in the office of Charles M. Rose, attorney for the District at 12 noon December, 14, 1937. Directors present Holmes, Pryor and Mathis. Charles M. Rose presided at the meeting and City Attorney John M. Barbrick attended.

Mr. Rose read the attached letter to the Board and after discussion as to the advisability of the plans submitted, the following resolution was drawn:

BE IT RESOLVED by the Directors of The Pueblo Conservancy District that the City of Pueblo file with the District its plans and specifications for Sewage Disposal Plant insofar as the same affects in any way the works or property of the District; and further that subject to the approval of competent engineers selected by the District and certification by them that the proposed works of the City will not damage or be the source of damage to the works of the District or interfere with flood protection, and the approval of counsel designated by the District as to the terms and conditions thereof, it is the opinion of the Board that a license should be granted to the City of Pueblo for the use of the works and property of the District particularly the north levee wall for the construction of said Disposal Plant and Sewer Lines according to the existing plans and specifications; provided however, that no grant shall be made in any event which does not reserve to the District the full exercise of all its statutory powers with reference to the works of the District and also with reference to any works constructed by the City thereon.

Motion was made by Mr. Mathis that this resolution be adopted, seconded by Mr. Pryor, the vote being unanimous in favor of same. The Secretary was instructed to prepare two certified copies of this resolution to be turned over to Mr. Barbrick.

Thereupon the meeting adjourned.


Secretary

CHARLES M. ROSE
ATTORNEY AT LAW
THATCHER BUILDING
PUEBLO, COLORADO

December 14 1937

To the Directors of the
PUEBLO CONSERVANCY DISTRICT,
Pueblo, Colorado.

Gentlemen:

At your request, through Mr. John T. Barbrick, City Attorney, I have considered the proposition of the City to acquire rights for the use of the north levee of the new channel, and also the use of the channel itself for the purpose of constructing and maintaining 12" to 16" steel sewer pipes and transfer sections of the sewer across the channel, all in connection with the plans and specifications for the sewage disposal plant at the City.

In Mr. Barbrick's written memoranda, and in your communication to me, the gist of the proposal is that the City will guarantee and indemnify the District for any damage or loss resulting in the future after the construction of the sewer, and occasioned by such construction. In other words, according to this proposition the District is to be guaranteed in perpetuity against any contingent loss or damage in unknown amount and this is the obligation to be satisfied by general levy which the City is to undertake.

It seems clear that the City cannot make a legal contract of this kind for the following reasons:

1. In any event such a contract is forbidden by Section 11 of Article 9 of the Charter and the constitutional provisions therein referred to.
2. If this obligation of the City is considered as part of the cost of construction it is not in accordance with Section 8 of Article 9 of the Charter, and is contrary to the ordinance providing for the financing and construction of the sewage disposal plant.
3. If such a City obligation is considered as a future current expense it is contrary to the limitation for time in such contracts in Section 8 of Article 9 of the Charter.
4. It is a general principle of law that a city may not contract for a contingent future indemnity of this kind arising from construction of public works and without regard to the question of negligence in the construction of such works. It is a debatable question whether this principle is modified by the fact that Pueblo is a charter city with constitutional powers. In my opinion it is not so modified because the reason of the rule is such purposes are not public purposes from the standpoint of the City.

No. 2 - Pueblo Conservancy District.

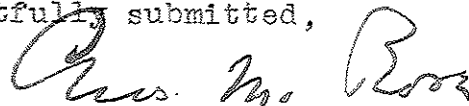
I have not tried to exhaust the reasons why the matter cannot be arranged as suggested. Accordingly, any action taken by the District will have to be without legal recourse against the City for future contingent damages of the kind contemplated.

In this connection it might well be that the construction according to the plans and specifications prepared are of such a character that they might well have been included originally as part of the construction made by the District and the cost assessed to the City. If this Board were assured of that fact by competent, independent engineering advice (preferably by engineers originally employed) there would be no legal objection to permitting the work to be done now which might have been done then.

In all of the above matters I have confined myself to damages to the works of the District. As the matter now stands the District, in my opinion, is protected against any claim from land-owners if any part of the works so constructed by the District should, for any reason, fail. This is because that in the construction thereof the District performed its full duty by employing the competent and independent engineers and following their construction. If a change is contemplated by the addition of this sewer to the work so constructed the District should protect itself by like engineering advice against any claims of land-owners.

In addition to the foregoing, let me call attention to the fact that any arrangement completed with the City must preserve intact the powers and functions of the District with respect to the statutory purposes for which it was created, and for which it holds its property in trust.

Respectfully submitted,



CMR:c

STATE OF COLORADO }
COUNTY OF PUEBLO } ss.

I hereby certify that the resolution hereto attached is a true and correct copy of a resolution unanimously adopted by the Board of Directors of the Pueblo Conservancy District at a meeting of said Board in the office of Charles M. Rose, held December 14th, 1937, as the same appears from the records of said District in my possession as Secretary thereof.

Witness my hand and the seal of said District this _____ day of December, A. D. 1937.

Secretary.

(Seal)

THE PUEBLO CONSERVANCY DISTRICT

BOARD OF DIRECTORS
JOHN M. HOLMES, CHAIRMAN
W. T. MATHIS
FRANK PRYOR, JR.

JOHN M. HOLMES, PRES.
WINIFRED CROSS, SECY
R. C. THATCHER, TREAS.

PUEBLO, COLORADO

BE IT RESOLVED by the Directors of The Pueblo Conservancy District that the City of Pueblo file with the District its plans and specifications for Sewage Disposal Plant inso far as the same affects in any way the works or property of the District; and further that subject to the approval of competent engineers selected by the District and certification by them that the proposed works of the City will not damage or be the source of damage to the works of the District or interfere with flood protection, and the approval of counsel designated by the District as to the terms and conditions thereof, it is the opinion of the Board that a license should be granted to the City of Pueblo for the use of the works and property of the District particularly the north levee wall for the construction of said Disposal Plant and Sewer Lines according to the existing plans and specifications; provided however, that no grant shall be made in any event which does not reserve to the District the full exercise of all its statutory powers with reference to the works of the District and also with reference to any works constructed by the City thereon.