The Municipal Authority in Pennsylvania

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THE MUNICIPAL AUTHORITY IN PENNSYLVANIA

Historical Background

In recent years restrictions and limitations in the constitutions of the various states relating to municipal indebtedness have operated in many instances to obstruct or retard the execution of plans to remedy existing social problems and to provide adequate services to the citizens of the community. Typical of these restrictions is that imposed by the Constitution of Pennsylvania, limiting the debt of any county, city, borough, township or school district to seven percent of the assessed value of taxable property. Since borrowing power is directly tied to assessments that have either remained stable or decreased during the past twenty years, and since during that same period construction costs have soared, the inadequacy of the borrowing power can readily be seen. The magnitude of the problem has been even further enlarged by the ever increasing demand for new and more complex services—services which are an outgrowth of the complexities of modern life, and which are the natural result of the industrialization of the country.

Although there are several ways of evading the direct limitation imposed by the Constitution, the method most widespread in favor and universally acclaimed by authorities on municipal government as the most practical, is the employment of the "municipal authority" device. This method is not one of direct municipal action, but of creation of a corporate entity, separate and distinct from the municipality itself, with broad powers to undertake and finance sewer systems, parking facilities, water supplies and other municipal functions. "They are" said Justice Linn in the case of Lighton et al, v. Abington Township,

1 Constitution of 1874, Article 9, Section 8, as amended Nov. 2, 1920.
4 The Constitution and the Municipal Borrowing Law provide that cities to which have been legally given the power to provide for the construction or acquisition of subways, underground railways, waterworks, or street railways may issue general obligation utility bonds. These bonds are not considered a debt under the Constitutional debt limitation if it can be shown that the income derived from the projects in a five year period either before or after the acquisition, is sufficient to pay for the interest and sinking fund charges during that period. Further the municipality may issue non-debt utility bonds secured solely by liens upon the property which impose no municipal liability. A municipality may also, where authorized by the law to construct, acquire, extend or alter public works and to borrow money therefore by sale of bonds, may issue and sell non-debt revenue bonds. These bonds do not pledge, the credit, nor create any debt, nor are they a lien against any real property of the municipality, but are a lien upon and payable solely from the rentals or charges imposed for use or services of that undertaking. Municipal Borrowing Law of 1941, P.L. 159.
"public corporations, being corporate agencies engaged in the administration of
civil government." These authorities are themselves without taxing power and
must gain their revenue from the ability of their profits to produce income.
The authority owns a revenue-producing project under public control; its business
must be self-liquidating and a limitation of fifty years has been placed upon its
corporate existence. The scope of the activities is limited by the statute pro-
viding for the creation of authorities to certain enumerated projects. The authority
is created by the governing body of the municipality, and although it closely
resembles a municipality it retains many advantages of a private corporation.
It is eligible for federal and state grants in aid, its bonds are tax exempt, but
it is not subject to the multiplicity of restrictions which normally fetter the
local governments.

Contrary to the public view, the concept of the "Municipal Authority" in
general is not a new one. As early as the sixteenth century, there were flourishing
in England, close counterparts of today's device. Furthermore, some ten thousand
local acts of Parliament were passed from the middle of the seventeenth century
to the middle of the nineteenth, establishing and continuing more than eighteen
hundred authorities for special local purposes.

Despite this historical antiquity, the authority concept of financing and
construction found little use in the United States until the early nineteen thirties,
when it developed with a surge. The largest single factor was most probably
the program of appropriations to governmental entities instituted by the federal
government as part of the emergency recovery measures. These grants were
conditioned upon financial participation by the body receiving the grant. Since
the benefits which were to be derived from such a program were of such in-
estimable value, and placed within the reach of the cities improvements and
services which might never otherwise be obtained, it became imperative that
some method of insuring acceptance be found. There were many states which
adopted statutes authorizing creation by municipalities of special types of "author-
ities" or public benefit corporations. Thus Illinois has various special authorities
as the County Highway Authorities and the Metropolitan Transit Authority. Kentucky authorized creation by all cities of recreational commissions, corpora-
tions with perpetual succession with power to operate recreational projects,

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7 Frederick L. Bird, Director of Municipal Research, Dunn & Bradstreet, in an address of 1949
Conference of the Pennsylvania Municipal Authorities Association.
8 Frederick L. Bird, Authorities and Efficient Municipal Management, MONTHLY BULLETIN,
Department of Internal Affairs, January 1950.
9 There were of course notable exceptions. Spokane, Washington in 1887 issued bonds definitely
payable solely from the revenues of the waterworks system constructed with the proceeds of these
bonds. Another classic example is the Authority of the Port of New York which arose out of
a rate war between the New Jersey ports and that of Manhattan.
11 SMITH HURD, ILLINOIS ANNOTATED STATUTES, Chapter 121. Act of July 21, 1941, LAWS OF
1941, vol. 1, page 496.
12 SMITH HURD, ILLINOIS ANNOTATED STATUTES, Chapter 112, 113.
financed entirely by revenue bonds.\textsuperscript{13} New York state has over twenty special act authorities empowered to construct and maintain as many different types of projects. It should be noted that these were special statutes, outlining and permitting but a single project, thus necessitating a new statute for each new project. Only three states, Alabama,\textsuperscript{14} South Dakota\textsuperscript{15} and Pennsylvania\textsuperscript{16} have enacted statutes of a general permissive nature. Of these three, Pennsylvania has been the most liberal, constantly amending and expanding her original legislation to give a flexibility designed to cover a large number of projects and to insure ease of operation. Thus in none of the states has the Municipal Authority found such widespread utilization as in this Commonwealth. From the passage of the first Municipality Authorities Act\textsuperscript{17} in 1935 it has enjoyed phenomenal growth, fostered in the thirties by the desire to utilize federal recovery benefits and nurtured since the war by pressing demands for repairs, modernization, expansion of old and installation of new facilities.\textsuperscript{18} As of June 15, 1950 there were flourishing in Pennsylvania more than one hundred and twenty such authorities,\textsuperscript{19} forty seven of which were incorporated between November 1, 1949 and June 15, 1950.\textsuperscript{20}

Such rapid expansion has, of course, sired many problems and litigation has been profuse in view of the comparative youth of the authority. It will be our purpose, then, to examine in some detail the presently operative Municipality Authorities Act of 1945, P.L. 382, 53 P.S. 2900Z,\textsuperscript{21} its subsequent amendments\textsuperscript{22} and the litigation that has arisen thereunder.

\textbf{Creation Of The Municipal Authority}\textsuperscript{23}

Whenever the governing bodies of a municipality\textsuperscript{24} or of one or more municipalities desire to establish an Authority, the act requires them to pass a

\begin{footnotesize}
\textsuperscript{13} KENTUCKY REVISED STATUTES, 1942, 97-100.
\textsuperscript{14} Act of 1933, 40 Acts of 1933, 50 ALABAMA CODE of 1940, Chapter 16.
\textsuperscript{15} Act of 1935, 73, 52 SOUTH DAKOTA CODE of 1939, 16.
\textsuperscript{17} Supra.
\textsuperscript{18} Perhaps the greatest single post-war motivating factor in the formation of Municipal Authorities has been the Commonwealth required construction of sewage treatment plants. The scarcity of strategic materials during the recent war rendered enforcement impossible. Now however reason is invalid, and the municipalities are turning to the Authority to solve their problems.
\textsuperscript{20} Supra.
\textsuperscript{21} The Municipality Authority Act of 1945, P.L. 382, is in a practical sense nothing more than a comprehensive amendment to the Act of June 28, 1935, P.L. 463, 53 P.S. 2900, but for convenience that act was repealed. The Act of 1945 contains the same basic provisions and in many instances the identical wording of the original act.
\textsuperscript{22} Act of June 12, 1947, P.L. 571, 53 P.S. 2900z; Act of April 26, 1949, P.L. 761, 53 P.S. 2900z; Act of May 2, 1949, Act 326, 53 P.S. 2900z.
\textsuperscript{23} Act of May 2, 1945, P.L. 382, 53 P.S. 2900z3.
\textsuperscript{24} The term "municipality" includes any county, city, town, borough, or township of the Commonwealth of Pennsylvania. Act of May 2, 1945, P.L. 382, 53 P.S. 2900z.
\end{footnotesize}
resolution or ordinance so indicating. Incorporated within this resolution may be the proposed articles of incorporation but only their general context need be included in the required publishing. This publication must also include notice of intent to file articles of incorporation with the Secretary of the Commonwealth. These articles of incorporation must include the name of the authority, its legislative authorization, a statement of the existence or non-existence of any other Authority of the municipality, the names of the incorporating municipalities together with a listing of their ruling officers. This statement must also include the names of the first members of the new Authority and be executed under seal by the municipal governing body.

If the articles are approved, the Secretary of the Commonwealth files the articles and issues a certificate of incorporation to be filed in the office of the Recorder of Deeds in the county of the Authority. Hereupon the corporate existence begins.

One of the distinct advantages of the use of the Authority is that it does not confine the scope of the projects to any single municipality. Joint Authorities may be formed, and municipalities may join those already in existence. In the latter case, upon approval by the joining municipality signified by ordinance or resolution, the approval of the existing Authority, and publication of the intent, petition may be made to the Secretary of the Commonwealth for approval of such entry. This petition shall include all the information as required for original Authority organization, and shall be joined in by the officers of the incoming municipality together with the proper officials of the Authority. Upon approval by the Secretary of the Commonwealth a certificate of joinder will be issued and from the date of its recordation, the new member is entitled to all the rights, privileges and obligations of the others.

Rigidity of organization, confining the authority to its original articles of incorporation has given way to flexibility by virtue of the Amendment of April 26, 1949 Act No. 107, Section 2. Herein it is provided that the original articles may be amended to adopt a new name, to modify (within the restrictions of the original act) any provision limiting the term of the Authority's existence and to enlarge the scope of its activities and purposes. Such changes, are however, subject to approval by the governing bodies of the municipalities involved. This is followed by submission for approval to the Secretary of the Commonwealth in much the same manner as the original articles of incorporation.

**Purposes And Powers**

Under the Municipality Authorities Act of 1945, Municipal Authorities may be created for any of the following purposes: "acquiring, holding, con-

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25 Supra.
26 Supra, section 5 as amended by Act of June 12, 1947, P.L. 571, 53 P.S. 290025.
27 Supra.
structing, improving, maintaining and operating, owning, leasing, either in capacity of lessor or lessee, buildings to be devoted wholly or partially for public uses and for revenue producing purposes; transportation, marketing, shopping, terminals, bridges, tunnels, streets, highways, parkways, traffic distribution centers, traffic circles, parking spaces, airports and all facilities necessary or incident thereto, parks, recreation grounds and facilities, sewers, sewer systems or parts thereof, sewage treatment works, steam heating plants and distribution systems, incinerator plants, waterworks, water supply works, water distribution systems, swimming pools, playgrounds, lakes, low head dams, hospitals, motor buses for public use and subways." The law was amended in 1947 to permit Authorities to undertake flood control projects, works for treating and disposing of industrial waste, and public school buildings. The Authorities are prohibited from operating any of the aforementioned projects, where such operation would duplicate or be in competition with existing enterprises serving the same purposes.

Many of these powers appeared to be functions heretofore reserved to the municipalities and it was understandable therefore that the statute's constitutionality was challenged in the light of the provisions of Article III, Section 20, of the Pennsylvania Constitution. This provides that "The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise, or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever." However, judicial interpretation of the nature of the Authority has excluded it from the scope of that provision. "The Act is not a special commission in any sense in which these words were used in the Constitution, either in substance or in spirit." With even more clarification, the Authorities of themselves have been held to be public bodies.

The powers and duties of the Municipal Authorities are outlined and defined in the Municipality Authorities Act of 1945 in Section 4. They are here briefly outlined with notation of any actions which have arisen thereunder:

Each Authority is granted the right to exist for a fifty year period. Authorities are granted the right to sue in all courts, and are equally subject to suit. Research has disclosed but a single case wherein an Authority at-

29 Evidence of the ever increasing scope of the functions of the Authority is offered by Section 4 of the original act wherein only twenty-two projects were authorized.
32 The Act of 1935 provided for a corporate existence limited to thirty-two years.
tempted to assert a defense of immunity. In it the defendant Authority operated a reservoir, and through its negligence permitted water to escape injuring the plaintiff's property. In dismissing the objection of the Authority the court said "The only immunity granted to the Authority by the Legislature was the exemption from taxation . . . Had the Legislature intended that the Authority should enjoy immunity for its torts, whether by acts of commission or omission on the part of its officers, agents, servants or employees it would have so stated. It did not confer such immunity." 8

If an individual is injured by the establishment of an Authority, he is of course entitled to judicial remedy. He may, within thirty days, appeal a municipal ordinance to the Court of Quarter Sessions and there secure its judicial repeal. However, such injury is one in which private property as distinct from public property is affected. A citizen or taxpayer is without standing as such, to enjoin either the creation or operation of an Authority. He himself must sustain the injury. 84

They may adopt for their use a corporate seal.

They may "acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it." 85

Acquisition of property by purchase, lease or otherwise, and to construct, improve, maintain, repair and operate projects is permitted.

Such bodies are empowered to make bylaws for the management and regulation of their affairs and to appoint officers, agents, employees and servants, prescribing their duties and fixing their compensation.

The Authorities are granted the exclusive power to fix and collect reasonable and uniform rates and charges in the area served by it. The proceeds of such charges are to be used in the work of the Authority and for the retirement of its obligations. Further the Authority is to determine the services and improvements in the areas served. In the case of Joint Authorities, the expenditure of receipts must be for the benefit of the entire service area. Provision is made for challenging the reasonableness or uniformity of rates, with such controversies placed within the sole jurisdiction of the court of common pleas of the county wherein is located the principal office of the authority. Further provision is made for appeals from such decisions to the Superior Court.

86 Act of May 2, 1945, P.L. 382, 53 P.S. 2900z5Bd.
The original Act of 1935, P.L. 63, although granting the power to the Authority to fix, alter, charge and collect rates, did not in the eyes of the courts, make it an exclusive right. The Superior Court in State College Borough Authority v. Pennsylvania Public Utility Commission, maintained that there was a strong presumption that the legislature intended to fully implement the regulatory power of the Public Utility Commission in reference to control of rates. "... if the legislature had intended to deprive the commission of all power... it would have said so, either in section 301 of the Public Utility Commission Act or in the Municipality Authorities Act."

The legislature in session at the time of the decision immediately passed an amendment to the Act of 1935, P.L. 463 which amendment was approved May 26, 1943 P.L. 661 and read "To fix, alter... uniform rates, to be determined by it exclusively." It also gave supervisory powers over this matter in the following words: "The provisions of this clause shall not prohibit any rate-payer from proceeding in the court of common pleas of the county wherein the project is located to determine the reasonableness and uniformity of rates fixed by the Authority." The same provisions are contained in the present Municipality Authorities Act of 1945, P.L. 382, with the Court of Common Pleas awarded exclusive jurisdiction as to rate reasonableness.

Unreasonableness of rates is not shown by a surplus in a debt service fund or an excess of income above current expenditures from increased rates. This is true since the Authority in determining the rates need not confine itself to revenue merely sufficient to retire its obligations, but may also take into consideration engineering services, legal expenses, repairs, improvements and any charges necessary to fulfill its agreements.

The Authority shall have the right to borrow money and to issue bonds or other evidences of indebtedness. The life of such bonds is limited to forty years and if they are refunding bonds to the life of the Authority. These obligations may be secured by a pledge or deed of trust of all or any part of the revenues and receipts.

It may make any contract and do any act or thing necessary or convenient to carry on its business. This is to include the right to contract with any municipality, corporation, or any public Authority of Pennsylvania or any adjoining state, for the construction and operation of any project which is partly within the Commonwealth and partly in an adjoining state, or to supply water or other services.

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87 AFFIRMED: Pyle et al v. Oakmont Municipal Authority, 70 D. & C. 1 (1950); Rankin v. Chester Municipal Authority, 36 Delaware Co. 73 (1949).
Permission is granted to borrow money or to accept grants in aid from any governmental unit.

Authorities are to have the power of eminent domain.

Group insurance, retirement and pension plans are authorized for the benefit of employees.

In respect to sewer construction costs, the act authorizes the application of the foot front rule against the properties benefited thereby. Such charges are constituted a lien against the benefited property if prior to construction of the sewer the plans thereof have been approved by the governing board of the municipality and if the estimated cost as approved by that body is not exceeded by the actual construction expenditures.

It authorizes an additional fee when the owner of any property connects with such a sewer system.

It has been held that this assessment power does not violate the constitutional requirement of uniformity of taxation. Such an assessment, although in the nature of a tax, is in reality a levy or claim against property owners for the presumed increase in the value of their properties resulting from the improvements and therefore does not have to meet the requirement of uniformity.

Nor is this right of assessment an unrestricted grant of power to tax, in that the right of the Authority to create an assessment is not determined by itself, but is limited directly by the acts of the municipality, a duly elected body. The Authority merely initially submits the plan of construction and the estimated cost thereof. If the cost of actual construction should exceed the cost as submitted to and approved by the municipal body, the right of assessment is entirely lost. Any power which the Authority might have is circumscribed by the act of the municipal body. Directly the tax, the assessment, and the total amount thereof is limited by the municipal body.

**Administrative Organization**

The administration of the Authority is to be vested in a governing body or "Board", which, in the case of a single incorporating municipality, shall comprise five members, each of whom must be a resident of that incorporating municipality. Their term of office is to be five years in length, and so staggered that one vacancy will occur each year. This necessitates initial appointments for one, two, three, four and five year terms and appointees may succeed themselves.

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40 Supra.
Vacancies are to be filled by the governing body of the municipality. Where such vacancy is caused by the expiration of the original appointment, the subsequent appointee shall have a five year term. Where a vacancy is the result of death, resignation, removal or other such cause, the appointment will be effective only for the unexpired portion of the original appointment.

If the Authority is a joint endeavor, then the board shall consist of a number of members at least equal to the number of incorporating municipalities, but in no instance less than five. Should a new municipality join the Authority, then it too is entitled to a seat on the Board. Apportionment of the representation is otherwise left to the method outlined by the articles of incorporation.

Although salaries are authorized by the Act, many board members receive no compensation for their services. Where fees are paid, the amount is usually nominal, more in the nature of a director's fee than compensation. Membership is deemed a position of honor and trust, and generally the board members are individuals in high standing within their communities, public spirited and interested in civic affairs.

Members of the Authority may be removed from their offices for cause shown. Jurisdiction in these cases is granted to the Court of Quarter Sessions.

The Act makes no reservation or qualification as to membership other than that of residency. Nowhere is there a semblance of prohibitory language disqualifying any class of individuals. It was the practice in some municipalities for councilmen to name themselves to membership on the governing board of Authority. Such procedure was challenged in the case of Commonwealth ex rel McCreary v. Major and the challenge sustained. Public policy, the court said, prohibits the members of Council from using their official appointive power as councilmen to appoint themselves members of the Board of the Authority, this being true even when a member abstains from voting on his own appointment. It was further stated that since other acts relating to the General State Authority, and to housing authorities, specifically authorized certain officials to serve on their governing boards, the Municipality Authorities Act would also have to contain a specific authorization to permit designated officials to serve on a board. In absence of a closer intent upon the part of the General Assembly, a councilman should not be appointed. Nor does the mere fact that a councilman agrees to waive compensation for services remove the disqualification—"If the legislature had intended that a councilman could serve by waiving his compensation, it would have specifically so provided."

This principle has also been extended to the office of burgess. On an appeal from a decision of the Pennsylvania Department of State in refusing articles of incorporation because a burgess was named as a member of the

Authority, it was said that the two positions are inimical and consequently not in conformity with the law (Pennsylvania Department of State v. Mt. Joy Borough). Since approval of acquisition of the project, of the termination of the Authority, or of the municipal assumption of the project and its obligations must be made by ordinance, the burgess therefore can approve or disapprove, by use of his veto power of action of the Authority, possibly acting against the previous decision of that Authority. These seem to be examples of a man serving two masters and contrary to the common law.

If such an appointment has been made, the acts of such appointee are none the less binding prior to his removal. He is a de facto officer while serving and as far as the public is concerned, his acts are valid. Under such circumstances it has been held that the proper action for removing such officers is by quo warranto proceedings, not by a suit in equity nor under the provision of the Municipality Authorities Act giving jurisdiction for removal to the Court of Quarter Sessions. The latter procedure was held to be applicable only where the member was to be removed for cause.

Financial Operations

Legality of Indebtedness

Earlier it was disclosed that the use of the Authority permits the municipalities to evade the constitutionally imposed debt limitation placed upon them. Despite the fact that this enables municipalities to acquire and operate worthwhile projects that would otherwise be beyond grasp, critics have damned it as an evil subterfuge. The courts in upholding its validity have taken a far more realistic and progressive view. Said Judge Woodside in Zimmerman v. Susquehanna Township Authority, "The Municipality Authorities Act does not violate the debt limitation clause under Article IX, Section 8 of the Pennsylvania Constitution since Section 4-C of the Municipal Authorities Act makes it amply clear that an authority can not in any manner incur an obligation which is or may become a "debt" of the municipality because it is forbidden to pledge the municipality's credit, and prospective purchasers of bonds of the Authority are so advised." As to its alleged evasiveness, it has universally been pronounced by our courts that, "It is never an illegal evasion to accomplish a desired result, lawful in itself, by discovering a legal way to do it."
NOTES

Bonds

Initially, the chief source of revenue is from the issuance of bonds which may be secured by the full faith and credit of the Authority or may be restricted to a pledge of the revenues derived from operation of the project. Certain restrictions have been imposed by law; the bonds must have a maturity date no longer than forty years from their issuance, may bear no more than six percent interest and are redeemable at no more than one hundred and five percent of their principal amount. Furthermore under no circumstances may the full faith or credit of the Commonwealth or the incorporating municipalities be pledged to secure the issue.

Most Authorities have been predicated on revenue bonds, bonds secured by a lien on the revenues of the project and not a lien on the property which produces that revenue. Principal and interest are payable solely from the revenues of the project.

These bonds may be sold either at public or at private sale. This is in contrast to municipalities, which are required by the Municipal Borrowing Law to hold public sale of their bonds. Authorities have, in most instances, consummated these sales privately.

The Authority Act provides that since the function of the Authority is the performance of essential governmental projects, the Authority shall be exempted from taxation and that Authority bonds and their income shall likewise be freed from this burden. This privilege was upheld in the case of Kelly v. Earle, wherein the General State Authority was challenged. It was contended that such immunity was a violation of Article II, Section 7, of the Constitution wherein is found a prohibition against "granting to any corporation, association or individual any special or exclusive privilege or immunity." This argument was disposed of summarily by the court in holding that the section was not applicable to municipal corporations or agencies of the State.

81 Act of May 2, 1945, P.L. 382, 53 P.S. 2900z6ABC.
82 Supra.
83 Supra.
84 The basic idea of debt liquidation from revenues of a particular nature and accrued from a specific service goes far back in history as there is a record of the Republic of Venice pledging revenues for the security of government debt in the twelfth century. Loans secured by various devices other than physical property appear throughout history. The loans made by the Fuggers in the sixteenth century to various European monarchs were probably so secured.
85 The earliest cases of loans payable solely from the revenues of enterprises constructed from borrowed funds appear to be the toll highway revenue bonds issued in England in the early eighteenth century. Toll bridges were probably the next enterprise so financed and the Port of London Authority appeared early in the nineteenth century. Charles Haydock, "MUNICIPAL AUTHORITIES," Address of March 22, 1950, before the John H. Allen Foundation, Easton, Pa.
88 325 Pa. 337, 190 A. 140 (1937).
This does not mean that the Authority is always so privileged. The immunity extends only to those cases that may be brought within the justification outlined by Section 15 of the Act. In the case, *In re Hazleton City Authority,* the court pronounced that realty of an Authority leased to or through private individuals for the purpose of increasing employment in the municipality or of providing offices for a state department or for housing state vehicles could not be exempted from taxation.

Rights and Remedies of Bondholders

Since the whole concept of Authority financing is predicated upon the sale of bonds, adequate safeguards must be insured for the protection of such bondholders. Bonds are the life blood of the operation and as many practical inducements as possible are therefore necessary to attract investors. It has earlier been mentioned that the bonds and their income are tax exempt, but this of itself is not enough. Investors desire the maximum in security of investment. For that reason the Legislature has evolved a comprehensive set of remedies for the bondholders' protection.

Should the Authority default on payment of either principal or interest within thirty days of the obligations' due date, or if it fails to comply with the provisions of the Act, or further, if it defaults on any agreement made with the bondholders, the holders of twenty-five percent of the principal amount of the bonds may secure the appointment of a trustee to represent their interests.

This trustee may, upon written authorization of the holders of the required percentage of the principal of the bonds (twenty-five per cent where no other stipulation is made), proceed in his own name to protect the interest of his principals. Several types of remedial action are outlined. Suit may be brought upon the bonds, an action may be brought in equity to compel an accounting as though the Authority were the trustee of an express trust for the bondholders, or a suit in equity may be maintained to enjoin any acts or things unlawful or in violation of the rights of the bondholders. The trustee may by any permissible action enforce all rights of the bondholders, including the right to require the Authority to carry out any agreement as to or pledge of the revenues or receipts of the Authority or any other agreement made for the benefit of the bondholders. The trustee may in writing to the Authority declare all bonds due and payable. If at this time the defaults are made good, then, upon approval again by the required percentage of bondholders, the declaration of trust and its consequences may be annulled.

89 Act of May 2, 1945, P.L. 382, 53 P.S. 290027. For certain restrictions as to rights of bondholders, see Zeigler v. Municipal Authority, 93 P.L.J. 165.
Any action by such a trustee comes within the jurisdiction of the Court of Common Pleas. Any trustee as a matter of right, whether or not all bonds have been declared due and payable, shall be entitled to the appointment of a receiver. This receiver is empowered to take possession of any or all of the facilities, the revenues or receipts from which are or may be applicable to the payment of any bonds in default, and operate and maintain the same. The receiver may operate and maintain these facilities, collecting and receiving all revenues as the Authority itself might do, but these funds must be placed in a separate account and applied as the court shall direct. The costs of any of this litigation constitutes a first charge on the revenues derived from the facilities of the Authority. The trustee shall also "have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth or incident to the general representation of the bondholders in the enforcement and protection of their rights."

Under no circumstance shall the receiver be authorized to sell, assign, mortgage or otherwise dispose of the assets of the Authority. It is the expressed intent of the Legislature "to limit the powers of such receiver to the operation and maintenance of the facilities of the Authority as the court shall direct."

Another protection and assurance to bondholders is offered by the Legislature itself. The Commonwealth pledges that it will not limit or alter the rights vested in the Authority till such time as the obligations or bonds of the Authority are fully discharged.60 This insures stability of operation.

The act is not unconstitutional on ground that it makes an irrevocable grant of special privilege merely because of this pledge, since the privilege extends only until the obligations assumed by the Authority are fully discharged.61

Additional Sources of Income62

The Authority law provides that they may ".... accept grants from and to enter into contracts, leases, or other transactions with any Federal agency, Commonwealth of Pennsylvania, municipality, school district, corporation or Authority." This is a major advantage of the Authority as contrasted to the private utility and many Authorities have seized the opportunity to obtain important financial assistance from these sources. It is interesting to note that nearly all these funds have been secured through Federal grants. Grants from the municipalities for the most part have been relatively small and confined to contributions defraying initial expenditures of survey, engineering, preliminary financial and administrative planning. Aid from the Commonwealth has been virtually non-existent but its legality has to an extent been given legal sanction by the Commonwealth's Department of Justice. In an advisory opinion to the

60 Supra, 53 P.S. 2900z14 (1938).
62 Act of May 2, 1945, P.L. 382, 53 P.S. 2900zSBk.
Secretary of Health (*In re Sanitary Water Board*), the Attorney General held that a grant in aid by the Department of Health for preparation of plans and estimates of construction for treatment plants for sewage or industrial waste was permissible.

**Budgetary and Financial Reporting**

Municipal Authorities are not required to submit budgets or annual financial reports to the Department of Internal Affairs. Neither are they required to submit their proposed bond issues to the Department for approval before issuance.

The Financial records of the Authority are however subject to close scrutiny, with the right vested in the Attorney General to examine any of its books, accounts and records. Provision is made for a mandatory periodical audit and the publication of an annual financial statement. If the Authority fails in this duty, it becomes incumbent upon the incorporating municipality to fulfill the requirement but at the Authority's expense.

**Non-Fiscal Operation**

**Acquisition of Projects**

Municipalities, school districts or private owners have been authorized to sell, lease, lend, grant or convey to any Authority any real or personal property which may be used by the Authority in the furtherance of its projects. Furthermore, the municipalities are also permitted to assign to the Authority any uncompleted contracts previously awarded by such unit involving any project falling within the Authority's scope.

The Authority however may not acquire any project subject to the jurisdiction of the Public Utility Commission, without its approval, evidenced by its certificate of public convenience, and the acquisition of such project or part thereof is further subject to the approval of two-thirds of the members of the incorporating municipalities.

The Authority has been granted by the Act of 1945 the power to acquire property not only by purchase or grant, but also through the exercise of eminent domain proceedings. This right, normally restricted to governmental entities, extends to any land or water rights deemed necessary for the fulfillment of any of the purposes included in the Act. The privilege extends to the acquisition of any fee, right, title, interest or easement. Only a few restrictions are imposed, these requiring the approval of the Water and Power Resources Board in

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63 94 P.L.J. 1.
64 Act of May 2, 1945, P.L. 382, 53 P.S. 2800z9.
acquiring water resources and exempting governmental property, cemeteries, and property of public service companies. The procedural features are the same as in a similar proceeding conducted by the municipality creating the Authority.

This right is not confined to the territory of the incorporating municipality; if need be, it may be extended to adjacent territory. Neither is it restricted to a single city, but may be exercised by joint Authorities as well.

This does not give license to the Authority to acquire and operate projects in every part of the state. Some part of each project so acquired and operated must be located within the incorporating municipality although the remainder may be situated outside the corporate limits.  

Award of Contracts

To a large extent, Authorities are subject to the same restrictions and formalities in the awarding of contracts as are their parent municipalities. Wherever construction, repairs, work or purchase of materials involves a sum exceeding five hundred dollars, contracts therefor must be awarded on the basis of competitive bidding and after due public notice has been given by publication at least ten days prior to the award of the contract. Any contractor so benefited is required to give an undertaking with a sufficient surety approved by the Authority and in an amount determined by it to guarantee faithful performance of his contractual obligation. The contract must contain a proviso that the contractor, in consideration for the sum agreed, will pay for all material furnished and for all services rendered. The agreement must also include a statement of the right of such contractor to maintain an action in his own name to recover for such services and materials, but this right must be asserted by litigation within one year after the accrual of the cause of action.

Exemption to the foregoing formalities is granted where the work or materials supplied are obtained through agreement with any State or Federal Agency, or where that work is accomplished by the employees of the Authority itself.

The original Municipality Authority Act of 1935 and the amendments of 1937, 1939, and of 1943 made no provision for unrestricted emergency expenditures. It is then not surprising that the validity of such expenditures, not in conformance with statutory restrictions, should be challenged. In an action by the Underwood Corporation to recover for services and materials supplied, the Chester Municipal Authority asserted such a defense in an attempt to bar recovery. Judge Ervin in giving the opinion for the Delaware County Court held that the restrictions did not apply under circumstances when competitive bidding was impossible due to the unknown extent and

67 In re Municipal Authorities, 43 D. & C. 12 (1942).
68 Act of May 2, 1945, P.L. 382, 53 P.S. 2900z11.
nature of the work required and where an emergency existed so great, that any delay in the repair work would have endangered public health and safety. Legislative sanction was given to this view in the presently operative act where such emergency expenditures are specifically exempted as are purchases of patented and manufactured goods offered for sale in a non-competitive market.\textsuperscript{70}

Conveyance By Authorities To Governmental Entities\textsuperscript{71}

Should the project of an Authority be within the scope of those functions which a municipality may maintain, the latter may indicate its desire, by an appropriate resolution, to acquire that project. Such a transfer is subject only to the assumption by that municipality of the obligations incurred by the Authority with respect to the particular project. An almost identical provision is made for the transfer of public school buildings to the appropriate school district.

Where a county Water Authority has been established to operate any phase of water distribution to any but not all of the municipalities therein, subject to the debt assumption and approval of the county authorities, a transfer of such project to the municipality benefitted is proper and permissible.

In upholding the validity of a transfer to municipalities against the challenge that an Authority is a special commission, Mr. Justice Linn, in \textit{Tranter v. Allegheny Co. Authority},\textsuperscript{27} said for the supreme court, "It cannot be said that the creation of a public corporation as a state agency to take over public highways for the limited purpose of improving them, paying for the improvement out of revenues collected for their use and then returning them to the local political subdivisions to which they had formerly been intrusted, is a special commission in any sense in which those words were used in the Constitution, either in substance or spirit." This interpretation has been used to sustain similar transfers by the Municipal Authorities.

Termination Of The Authority\textsuperscript{78}

If no obligation has been incurred by a joint Authority, any participating municipality may withdraw. Administrative procedure in withdrawal is identical to that required in joining a joint Authority.

When an Authority has finally discharged all its obligations, it may convey its projects and property to the parent municipality or school district and petition the Secretary of the Commonwealth for a certificate terminating its existence. Upon approval by the municipality the Secretary will place notice of termination upon the articles of incorporation and return the certificate with his approval to the Authority for recordation in the office of the recorder.

\textsuperscript{70} Act of May 2, 1945, P.L. 382, 53 P.S. 2900z.
\textsuperscript{71} \textit{Supra}, 53 P.S. 2900z19.
\textsuperscript{72} 316 Pa. 65, 173 A. 289 (1934).
of deeds. Thereupon the property of the Authority will pass to the proper governmental unit, and the Authority shall cease to exist.

Conclusion

This has been an attempt to show briefly the historical development and the background of the Municipal Authority in Pennsylvania, the salient features of its operation and the legal principles evolved from litigation arising under it.

The Authority is admittedly not a creature of perfection; it has its shortcomings, but these are outweighed by the advantages derivative from it. The complexities of the management and financing of municipal corporations necessitate the development of separating the governmental and proprietary functions of municipalities. The Authority has fulfilled this need. Through its employment, municipal officers are freed from the burden of supervision of proprietary functions and may devote their energies to their governmental capacities.

Without affecting the general credit or borrowing power of their municipalities, the Authority supplies the means by which projects of great social value may be secured to the citizenry.

There are those critics who condemn the Authority because of the lack of direct responsibility to the voters. But such lack of political control has not hindered the success of nearly all Authorities as evidenced by the almost total absence of failures.

It is true that the costs of financing will in the case of the Authority exceed that of a municipality in a similar venture. This is of course true because only the full faith and credit of the Authority itself may be pledged as security for its obligations. Even this disadvantage may be overcome by the efficiency and economy necessitated from living within the revenues of the project. This the Authority must do if bond purchasers are to be convinced that interest and principal will be promptly paid when due.

The corporate-like character of the Authority permits it to operate with a speed and flexibility not to be found in the ordinary municipality. Nor is it, like a municipality, hampered by set geographical limitations. It may extend the scope of its activities to areas where it benefits citizens who would otherwise be denied the advantages of its projects.

It is not a cure-all, not a patent medicine that can dispel all the ailments of our local governments. But the Municipal Authority has combined the better features of both private and public ownership, and as described by a leading authority on municipal government is "... evidence of the virility of Pennsylvania local government and its ability to solve its problems by practical means." 74

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74 Charles F. Lee Decker, Place of the Municipal Authority in Pennsylvania Local Government, MONTHLY BULLETIN, Department of Internal Affairs, August, 1950.