Financing Municipal Sewage Treatment Facilities in Pennsylvania by Use of Minicipality Authorities

P. Eugene Reader

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The pollution of streams of the Commonwealth of Pennsylvania by the discharge therein of mine washings, industrial wastes and untreated sewage has been taking place for many years, but it is only in recent years that any real effort has been exerted by the Commonwealth to curb these practices.

The pollution of streams may give private persons the right to protect their riparian rights at law or in equity and may create a public nuisance which equity will enjoin. However, for various practical reasons, these common law remedies have proved ineffective to curb pollution. Further, it became established that a municipality at common law had the power to discharge sewage into a stream. The first statutory regulation in Pennsylvania was the Act of 1905, which was limited to sewage and did not apply to existing facilities, nor to new sewers, if a permit was obtained. A later Act conferred upon the Department of Health power to issue orders to protect water sources approved by the Department for public supply, but this too exempted industrial wastes and mine discharges and was not effective in practice.

Finally, in 1937, the General Assembly set up an over-all stream purification program, and put teeth in it, by enacting the popularly called “Clean Streams Law”. This Act, as amended, prohibits the discharge of any industrial wastes or of any sewage into any of the waters of the Commonwealth, except as specifically permitted in the Act.

STATE COMPULSION OF MUNICIPAL SEWAGE TREATMENT

This Article is limited to the problem of the discharge of sewage by municipalities. With respect to them, this statute provides that, upon application by the municipal authorities, the Sanitary Water Board in the Department of Health will consider the case of any sewer system or extension thereof, otherwise prohibited from discharging sewage into streams, and shall, if it finds such discharge to be necessary and not injurious to public health, or animal, or aquatic life, stipulate in a permit the conditions upon and the time dur-

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* A.B., The College of Wooster; L.L.B., University of Pennsylvania. Member of firm of Rhoads, Sinon & Reader, Harrisburg, Pennsylvania. Professor of Law, Dickinson School of Law. Member of Pennsylvania Bar Association. (Chairman, Section on Administrative Law, 1950-1952). Contributor of articles to various legal periodicals.

1 See Note, 100 U. of Pa. L. Rev. 225, 227-231 (1951).
2 Act of April 27, 1905, P.L. 182.
5 By the Act of May 8, 1945, P.L. 435.
6 Id. Section 301, 35 P.S. 691.301.
7 Id. Section 201, 35 P.S. 691.201.
ing which such discharge may be permitted. Such a permit is subject to modification or revocation by the Board on due notice, and after investigation and hearing. The notice must state the time within which the discharge of sewage shall be discontinued, which shall not exceed two years.

All plans and relevant data for the construction or extension of any sewer system, or for the construction of any treatment works or intercepting sewers, must be submitted to the Board for its approval, by issuance of a permit. Where the Board does grant a permit for construction of a sewer system, a mandatory injunction will issue against the municipality directing it to complete such in compliance with the permit.

The most important provision of the Act is that which gives the Board the power to order municipalities to discontinue existing discharges of sewage. This is done by notice in writing, after investigation and hearing, which fixes the length of time within which the discharge shall be discontinued and which "shall in no case exceed two years." The continued discharge of sewage after expiration of the time fixed in any such notice is declared to be a nuisance, as is any other violation of the Act or of the Rules and Regulations of the Board. Further, the Attorney General, at the instance of the Board, may enforce its order to abate the discharge of sewage by an action of mandamus. Hence, when such an order issues the municipality must take steps for the acquisition or construction of the requisite sewage system, or sewage treatment works, or both.

Due to World War II not much was done by way of enforcing the Act until 1944. That year the Board held a series of ten hearings, wherein it promulgated and explained its basic requirements that all sewage must be treated to a certain degree, with additional treatment in particular cases. In 1945 it began to issue orders to municipalities requiring them to submit plans for the treatment of sewage. The Board issued its first order directing a municipality to begin construction of a sewage treatment plant on December 18, 1947, to the City of Altoona. Other such orders followed in 1949, beginning with the Delaware Water Shed. However, due to high construction costs and the scarcity of materials caused by the Korean situation the Board was lenient and patient and, for the most part, the municipalities were not pressed so long as they were proceeding with plans. However, more recently the Board has been exercising its power to compel construc-

8 Id. Section 206, 35 P.S. 691.206.
9 Id. Section 208, 35 P.S. 691.208.
10 Id. Section 207, 35 P.S. 691.207.
12 Supra, note 4, section 203, 35 P.S. 691.203.
13 See Sections previously cited.
tion. As of April 1, 1954, the Board has issued 565 notices to abate or submit plans to municipalities and approximately 175 orders have been issued against municipalities to begin construction of treatment plants. Mandamus has been brought against one municipality to force it to comply with such a construction order.

Hundreds of communities of this Commonwealth are now faced with the fact that they must proceed with the construction of sewage systems, including sewage treatment plants. Construction costs are high and the problem which confronts the municipalities is how they can finance it. The Act suggests several available methods of financing and expressly provides for the issuance of non-debt revenue bonds for the purpose. However, the municipality may finance it by the issuance of bonds or other means provided under any other law; and the choice of the means of financing is wholly up to the municipality.

**Partial Financing By Assessment of Property Owners By The Municipality**

The Third Class City Code permits such cities to raise part of the cost of sewer construction by assessment of abutting property owners. The cost of local, lateral and branch sewers, and the local sewerage part of main sewers, may be assessed against the abutting property according to the foot-frontage, or the assessed valuation thereof, or according to benefits. The cost of all main sewers must be paid from city funds. Where the cost of constructing any sewer is paid from city funds, wholly or partially, it may charge a reasonable fee for tapping or connecting therewith.

This Act also provides that if the city constructs a sewerage system of sewers, with lateral and branch sewers therefrom, as one project and under the same contract, the cost thereof may be assessed as above. It also states that the city may construct a sewage treatment work as a part of the same contract, but nothing is said here as to assessing the costs. Accordingly, financing by assessment is limited to local sewers, or to main and lateral sewers when erected as a part of one overall improvement.

The Borough Code provides that where a borough constructs sewers in its streets it may assess the costs upon the property benefited according to benefits,
or by the foot-front rule. The same applies to construction of sanitary sewers and sewer pipes on either side of the cartway or curb lines. It also provides that when a borough authorizes the construction or acquisition of any sewer or system of sewers and the entire cost or a part thereof shall be assessed against the abutting properties, either by the foot-front rule or according to the benefits, it may provide that the assessment may be paid in installments bearing interest at a rate not exceeding 6%. Assessments may be employed only to cover the costs of sewers and not to cover construction of sewage treatment works.

The First Class Township Code provides that the cost of construction of "any system of sewers or drains" may be charged upon the properties benefited thereby and that the charge for any such "sewer system construction" shall be assessed upon the property "abutting on the sewer" in proportion to its frontage or to benefits. Another Section provides that in order to make the necessary provisions for the disposition of sewage the township may acquire lands or interest therein, as shall be necessary for the proper construction and operation of "sewer mains, drains, or treatment works". Since this Section makes no provision for assessments and the Sections providing for assessments refer solely to sewer systems it would appear that assessments are not available to cover the cost of a treatment works. Provision may be made for paying the assessments in installments. The township may require adjacent property owners to connect with the sewer system and all persons connecting may be required to pay the cost of making such connection.

The Second Class Township Code contains provisions practically identical to those in the First Class Township Code relative to the construction of sewer systems, assessment of the cost thereof and requiring connections thereto. However, this Act requires the supervisors to assess the cost of construction of such "system of sewers or drains" to the extent permitted by law; and where the cost has been financed by issuance of general obligation bonds the proceeds of such assessments are deposited in the sinking fund for the purpose of retiring such bonds. Nothing therein, however, prevents financing the cost of such construction.

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25 Id. Sections 2102, 2103, and 2108, 53 P.S. §§ 14232, 14251, and 14254.
26 Id. Sections 2115 and 2116, 53 P.S. §§ 14281, 14282.
27 Id. Section 2140, 53 P.S. 14371.
28 Id. Section 2101, 53 P.S. 14231.
29 Act of June 24, 1931, P.L. 1206, as re-enacted and amended by the Act of May 2, 1949, P.L. 1955, 53 P.S. 19092 - 101. This applies to townships having a population of at least 300,000 inhabitants per square mile. Section 2, 53 P.S. Section 19092 - 201.
30 Id. Section 2406, 53 P.S. 19092 - 2406.
31 Id. Section 2408, 53 P.S. 19092 - 2408.
32 Id. Section 2403, 53 P.S. 19092 - 2403.
33 The township has the power to enter into a contract to release property owners from any liability for assessment in consideration of their granting a right-of-way. Nether Providence Township Sewer District Assessment Case, 148 Pa. Sup. 7 (1942).
34 Id. Section 2401, 53 P.S. 19092 - 2401.
by an authority. Further, where a sewer or drainage system is constructed and the township is divided into districts the proportion charged to each district of the total cost of "main sewers, pumping stations, pressure lines, et cetera" may be assessed upon the properties abutting on the sewer in proportion to benefits, or on properties using the sewer as sewer rentals, in the manner provided by law for the assessment of sewer rentals, or the cost of a local sewer may be assessed in proportion to frontage or benefits and the balance assessed as sewer rentals.

This statutory language is not too clear, but it scarcely could be construed so as to permit property assessments for the cost of a treatment works.

The General County Law, which applies to all counties except those of the First and Second Class, empowers counties to construct sanitary sewers and sewage disposal plants, upon approval by the Grand Jury and the Court of Quarter Sessions, in one or more sewer districts. The Commissioners may assess an annual tax of not more than 2 mills upon real and personal property for the purpose of paying all costs of such construction and the maintenance thereof. There is no provision for assessment of the costs against abutting property owners, nor for the collection of sewer rentals. No law empowers First or Second Class Counties to construct sewer systems, although they can form a Municipality Authority for this purpose.

The several municipal codes provide that municipalities may join to construct sewer systems, including treatment works, and may connect existing sewers with such systems. When this is done each participating municipality may assess its portion of the cost, to the extent it is legally assessable and in the manner provided under its code. Any portion of the cost not assessed or assessable shall be paid by the respective municipalities as agreed upon.

So long as the municipalities of this Commonwealth could get by merely by constructing sewers and having the sewage proceed by gravity into the streams, financing presented no problem. The costs of construction could be raised by assessing the abutting property owners, or partly by this method and partly out of tax revenues, and the maintenance costs could be met out of the general taxing powers. Now that municipalities are being forced to construct sewage treatment or disposal plants the burden of financing the substantial construction costs is presented to the municipalities.

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87 Id. Section 1507, 53 P.S. 19093 - 1507. And see Sections 1501, 1504, and 1509, 53 P.S. §§ 19093 - 1501, 1504, and 1509.
88 Id. Section 1508, 53 P.S. 19093 - 1508.
89 Act of May 2, 1929, P.L. 1278, 16 P.S. 1.
90 It was repealed as to counties of the second class by the Second Class County Code, the Act of July 28, 1933, P.L. 723, § 3301.
91 Id. Sections 1001, 1002, and 1011, 16 P.S. §§ 1001, 1002 and 1011. No other municipality is given added taxing power for this purpose.
92 Third Class Cities, supra note 17, Section 3240, 53 P.S. 12198 - 3240; Boroughs, supra note 21, §§ 2120 -, 53 P.S. 14301 -; First Class Townships, supra note 26, Section 2440, 53 P.S. 19092 - 2440; Second Class Townships, supra note 33, § 1606, 53 P.S. 19093 - 1606. The General County Law, supra note 36, § 1013, 16 P.S. 1013, provides that after construction of a main or trunk sewer by a county any city, borough, or township may connect thereto by laterals, free of charge. For an example of a joint project and assessment procedure thereunder see Millvale Borough's Petition et al, 126 Pa. Sup. 66 (1937).
volved is a heavy one. Municipalities cannot raise sufficient funds within their general taxing powers for the purpose, and, as seen, assessments are not available for the purpose. Accordingly, public financing is necessary. It is the purpose of this article to discuss the possible means of so financing and particularly to explore the authority method of financing.

PUBLIC FINANCING

General Obligation Bonds

Municipalities may issue general obligation bonds, which pledge the credit of the issuing municipality. Under the Pennsylvania Constitution the total of such indebtedness cannot exceed 7% of the assessed value of the taxable property in the municipality, and the indebtedness cannot exceed 2% of such assessed value without the consent of the electors. At or before the time of incurring any such indebtedness the municipality must provide for the collection of an annual tax sufficient to pay the interest on and principal thereof within thirty years. The Municipal Borrowing Law sets forth the procedure which must be followed in issuing general obligation bonds, as well as the conditions and limitations upon such issuance.

Since these bonds pledge the general credit of the municipality they have better marketability than any other type of bond, hereinafter discussed, that can be issued. The interest rates at which they can be sold, of course, will vary in accordance with the credit standing of the particular municipality, as well as with prevailing bond market conditions. However, due to the constitutional limitations upon the amount of such bonded indebtedness, not many municipalities, even if the electors can be persuaded to approve the maximum amount, can finance the construction of a required new sewage system and treatment plant through the issuance of general obligation bonds. Accordingly, in most instances, another method of financing must be employed.

Non-Debt Revenue Bonds

One attempt to meet this need is found in the various statutory provisions empowering municipalities to issue non-debt revenue bonds. These bonds do not pledge the credit, or create any debt of, or constitute a lien against any real property of, a municipality, nor are they a charge against its general revenues. They are a lien upon and are payable solely from the rentals or charges imposed for the use or services of the public works involved. The Clean Streams Law provides that, for the purpose of financing the cost of constructing, acquiring or extending any sewer system, or sewage treatment works, a municipality may issue non-debt revenue bonds secured solely by a pledge of the annual rentals or charges imposed.

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43 Article IX, Section 8. An exception is made with respect to the City of Philadelphia, which may have a debt up to 131/2% of the average assessed valuations over a ten-year period.
44 Article IX, Section 10.
45 Act of June 25, 1941, P.L. 159, 53 P.S. 2011.101 -.
for the use of such sewer system. Such bonds must be offered on competitive bidding, but where no bids are received they then may be sold at a negotiated sale for not less than par. Such bonds shall be payable in not more than thirty years, shall be issued in series payable in equal annual installments, and shall bear interest at a rate not exceeding 6%. 46

The later enacted Municipal Borrowing Law, 47 which provides that “hereafter a municipality may borrow money on bonds only as provided in this Act and not otherwise” 48 provides that any municipality authorized by law to construct, acquire or extend any public works may borrow money therefor by the issuance of non-debt revenue bonds. It sets forth the procedure for issuing such bonds, provides that sufficient additional bonds as may be necessary can be issued to provide for interest, taxes, and sinking fund charges during construction, and that such bonds shall be serial bonds, maturing annually according to prescribed formula in the same manner as required for general obligation bonds, and shall have maturities not exceeding the estimated period of usefulness of the property for which they are issued. 49

The several municipal codes heretofore noted, by practically identical provisions, empower municipalities to issue non-debt revenue sewer bonds for the purpose of financing the cost, or their share of the cost, of constructing or acquiring sewer systems or sewage treatment works. 50

The validity of the issuance of non-debt sewer revenue bonds pursuant to the provisions of the First Class Township Code was adjudicated in Lighton vs. Abington Township. 51 Here the Township proposed to issue such non-debt revenue bonds in an amount exceeding the 2% limit on the issuance of general obligation bonds. The ordinance provided that the bonds would be secured by a trust indenture from the Township to Provident Trust Company, under which the annual rentals for the use of the sewer system were pledged for the payment of the principal and interest on the bonds. The trust indenture provided, inter alia, that in case of default the trustee could enter upon and take possession of the sewer system, together with all records of the Township relating thereto, and could manage and operate the system and collect the sewer rentals. The trustee also was empowered, by mandamus, to require the Township to collect rentals and charges adequate to carry out the agreement and to require the Township to account as if it were trustee of an express trust, and, by suit in equity, to enjoin any acts which might be in violation of the rights of the bondholders.

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46 Supra note 4, Sections 211-212, 35 P.S. §§ 691.211 - 691.212.
47 Supra note 45.
48 Id. Section 103, 53 P.S. 2011.103.
50 Third Class Cities, supra note 17, § 3260, 53 P.S. 12198 - 3260; Boroughs, supra note 21, § 2108, 53 P.S. 14477; First Class Townships, supra note 26, § 2445, 53 P.S. 19092 - 2445; Second Class Townships, supra note 33, § 1545, 53 P.S. 19093 - 1545. The General County Law, supra note 36, has no provision for the issuance of non-debt sewer revenue bonds, but the Municipal Borrowing Law, supra note 42, does include all counties other than those of the First Class.
51 336 Pa. 345 (1939).
A taxpayer's bill was brought to enjoin the proposed construction and bond issue. It was contended that the Act violated the Pennsylvania Constitution because: (1) it conflicted with Article III, Section 20, in that it attempted to authorize the Township to delegate to a private corporation (the trustee) power to interfere with a municipal improvement; and (2) it violated Article IX, Section 8, in attempting to authorize an increase of indebtedness in excess of 2% of the assessed valuation without the consent of the electors. The Court sustained the first objection and did not consider the latter. The Court held that "the Act of 1937, as proposed to be applied by the defendants, is a delegation to the township of a power to delegate to a trustee the control and management of the sewerage system in the circumstances described"; and that this violated the constitutional provision 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.".52

This decision did not hold that the Act empowering the issuance of non-debt revenue bonds was invalid. However, it did cast a cloud over such bonds, did expressly preclude giving these particular remedies to the bondholders on default, and did create serious doubts as to the circumstances under which such an issue could be valid. Without these powers in the trustee either to compel the municipal authorities to properly manage the sewer system and collect adequate charges, or to take it over and manage it and collect the charges itself, the bond certainly is not attractive to investors. As a result of this decision bond counsel and investment banking houses are wary of these non-debt revenue bonds.

The opinion in the Lighton case pointed out that these same remedies had been conferred on the trustee in indentures securing municipality authority bond issues and stated that such were valid. The Court drew the distinction that in the authority cases title to the property is in the authority and in case of default the trustee enters under it, so that there is no interference with municipally owned property, which is what the Constitution prohibits.53 This points up the superiority of the security behind authority bonds, as compared to non-debt revenue bonds. The former also are free of some of the restrictions, noted above, imposed on the latter (such as the requirement that they be serial bonds), which aids their marketability. This leads to a discussion of the authority method of financing.

Municipality Authority Bonds

The problem of financing public works in the face of constitutional debt limitations, of course, is not confined to sewerage systems, although the latter is more acute due to State compulsion. Neither is the problem a new one, or one limited to the Commonwealth of Pennsylvania. Many years ago it was realized that some method would have to be devised whereby a State and its municipal subdivisions could finance the acquisition or construction of public works essential

52 Id. page 352.
53 Id. page 354.
to the public well-being, without pledging the credit of the government. The most effective, facile and popular method evolved was that of employing an incorporated authority. By this method the State or municipality forms a separate, corporate entity, which, in turn, acquires or constructs the public works and finances the same by issuing its own bonds. The authority pays the principal and interest on the bonds, either from the revenue which it derives by operating the particular facility, or from rental it receives by leasing it to the State or municipality under a long-term lease.

Pennsylvania first adopted this authority device in 1933, when the Legislature empowered Allegheny County to create an authority to construct highway projects, borrow the necessary funds from the United States Government, and repay such through the collection of tolls. This Act was upheld in Tranter vs. Allegheny County Authority over numerous objections, including the one that it violated the constitutional debt limitation. As to the latter, it was argued that the creation of the authority was a fiction designed to evade the constitutional limitation. To this the court replied that "it is never an illegal evasion to accomplish a desired result, lawful in itself, by discovering a legal way to do it". The Court pointed out that the statute denied the power to pledge the credit of the county, the sole source for payment of the bonds and interest thereon being the funds arising from tolls, rents and other charges in connection with the highway project. The fact that the county transferred property to the authority was not deemed important because such property was not pledged as security. The fact that the county obligated itself to operate, repair and maintain the highway system was held to be immaterial, on the ground that such expenditures are made out of current revenues and hence the obligation to make them is not a debt, in the constitutional sense.

The Legislature created the General State Authority in 1935 and empowered it to construct public works and lease them to the state or municipalities. This Act first came before the courts in Kelley vs. Earle et al., where it was held to be unconstitutional. The agreement provided that upon expiration of the term of the lease the waterworks would be conveyed to the Commonwealth; and that the bondholders, upon default, could take the property originally conveyed by the Commonwealth to the authority. The Court held that this, in effect, constituted a purchase of a capital asset by installments and that it did not appear that there would be sufficient current revenues to meet the contemplated payments.

Thereafter the Court granted a rehearing, upon the filing of a stipulation embodying new and additional facts. These showed that the indenture exempted the land of the authority from execution, the remedy of the trustee or receiver being limited to operation of the facilities; that the Commonwealth would pay

\[55\] 316 Pa. 65 (1934).
\[56\] Id. page 84.
\[58\] 320 Pa. 449 (1936).
less under these leases than it was currently paying under its system of leasing such facilities; that the Commonwealth readily could appropriate the rental as an ordinary and current expense of government; and that the new lease would be a "straight" lease, so that at the end of the thirty year period title would remain in the authority. In the light of these new facts the court upheld the Act and the particular project. The opinion pointed out that it is perfectly legal for the State or its municipalities to rent properties for public use and that, so long as the rental is to be met solely out of current revenues from year to year, such cannot be considered a debt; that the Commonwealth was not acquiring a capital asset, the obligation to pay for, which would constitute an indebtedness; and that a pledge of income, including the right upon default to operate the property and collect its revenues, is to be distinguished from a pledge of property, which creates a debt.

In 1935 the Legislature passed the Municipality Authorities Act, which empowered municipalities to organize authorities for the purpose of constructing various public works. This Act was held to be constitutional in Williams vs. Samuel, et al over various constitutional objections. This case involved a project whereby the City of Philadelphia was to convey its water and sewer systems to an authority formed by it and lease them back, together with the improvements and extensions to be made by the authority, under a thirty year lease, at a rental sufficient to pay off the interest and principal of the authority's bonds, plus a surplus. The court followed the Tranter and Kelley vs. Earle cases, supra, in sustaining this Act under the constitutional debt limitation provision. The opinion emphasized the fact that this project was a self-liquidating one, since the rental would be sufficient to meet the authority's administration costs and all debt charges, and that the City obligated itself to charge sufficient water and sewer rentals to pay the operating costs of the water and sewer systems plus 133% of the lease rental. The judgment was rendered on the express condition that sewer and water rentals be charged in sufficient amounts to make the project self liquidating "to avoid requiring any contribution out of the general tax levy".

At the same term of court the same Act was upheld as to a project by an authority to erect a pumping station to force sewage, under an agreement with four municipalities who agreed to pay "either from current revenues or from sewer rentals" an annual sum, designated rental, over a period of 26 years. The opinion stressed that a contract which can be met from current revenue does not create indebtedness, in the constitutional sense, and pointed out that the borough there in question could, by increasing its tax rate within legal limits, raise an annual sum twenty times greater than the annual rental called for in the agreement. How-

59 325 Pa. 337 (1937).
60 Id. pages 347 - 348.
61 Id. pages 349 - 351.
63 332 Pa. 265 (1938).
64 Gemmill vs. Calder, 332 Pa. 281 (1938).
ever, the opinion continued by saying “the decree which we shall enter is based upon the assumption that such (sewer) rentals will be imposed to meet the required payment and be pledged to the Authority in order that the project may be self liquidating.”66

This decree, together with the like one in Williams vs. Samuel, raised some doubt as to whether the lessee municipality could pledge its general current revenues, including its taxing power, for the payment of rental, or whether it was limited to a pledge of such charges as it could exact for use of the sewerage system or other project leased from the authority. This doubt was removed in Greenhalgh vs. Woolworth,68 where the Court sustained the validity of the Act creating the State Public School Building Authority,67 together with the particular lease between that authority and the school district under the “self liquidating” requirement. The Court said that “in the Gemmill case the project was self liquidating because the Borough of Swarthmore would have ample current revenues (potentially twenty times more than requirements) wherewith to pay the annual rentals” necessary for liquidation of the authority’s bonds (i.e. ample taxing power); and that in the Williams case the decree was necessitated by reason of the fact that the municipality had been operating at a deficit for years and was without sufficient current revenues to pay the rental. The opinion continued:68

“‘Current revenues’ of a municipality have been defined by this Court as including ‘taxes for the ensuing year and all liquid assets, such as delinquent taxes, licenses, fines and other revenues which, in the judgment of the authorities, are collectible.’”

The court held that in the case of a school district its “current revenues” also include all appropriations and reimbursements due from the State.

Thus was it made clear that where the authority leases its project back to the municipality the latter may agree not only to exact charges for the use of the project, but also to levy such taxes as may be necessary to meet the annual rentals. So long as it fairly appears that the municipality’s current revenues from charges and taxes will be adequate to meet these rentals, together with its other obligations under the lease and other municipal expenses and obligations, no indebtedness, in the constitutional sense, will be incurred by the municipality.

It is to be noted that, although the lease cannot require the authority to convey the leased property to the municipality upon full payment of the rentals, the municipality does have the means of acquiring title thereto under the Municipality Authorities Act of 1945.69 Section 14 provides that when an authority shall have

66 Id. at 285. The Court also held that a provision entitling the authority upon default to take such legal action to collect as it might deem proper, with interest at 6%, an attorney’s fee and a penalty of 10%, must be eliminated; stating that the remedy of the bondholders would be limited to the right to take over the property and operate it, making reasonable charges for the service rendered.
69 361 Pa., at 552 - 553.
paid off all bonds secured by pledge of the revenues of a project it "may convey such project to the municipality or municipalities creating the authority". Since the creating municipalities appoint the members of the authority board they would incur no difficulty in bringing about such conveyance. This same section provides that upon termination of the existence of the authority "the property of said Authority shall pass to the municipality ...". The Act also provides that if the municipalities desire to acquire a project the Authority shall convey it to the municipality "upon the assumption by the latter of all the obligations incurred by the Authorities (sic.) with respect to that project". In a recent case, where the lease between the municipality authority and the lessee school districts provided that at the termination of the lease the latter would surrender possession to the authority, it was held that the fact that the school districts contemplated acquisition of the property at some future time and agreed among themselves as to how their interests would be apportioned, did not destroy the effectiveness of the lease or validity of the bond issue. The court referred to the above provisions of Section 14 of the Act.

In 1945 the Legislature repealed the Act of 1935 and enacted the Municipality Authorities Act of 1945. Under this Act any municipality of the Commonwealth, or two or more of them jointly, may form an authority for the purpose, inter alia, of acquiring, constructing, improving, operating, and leasing, either as lessor or lessee, "sewers, sewer systems or parts thereof, sewage treatment works, including works for treating and disposing of industrial waste". This Act furnishes an effective and practical means and, for many municipalities, the only means, whereby municipalities can finance the sewer systems, including sewage treatment works, which the State now demands that they furnish.

Formation of the Authority

Where the sewer project involved will be limited to a single municipality it alone will form the authority and the members of the authority board will be residents of that municipality. The governing body of the municipality appoints the members of the board, not less than five in number, whose terms of office shall be staggered originally for terms of from one to five years, unless otherwise provided in the Articles of Incorporation. Where the proposed project or projects will extend into a number of municipalities, any one or more of such municipalities may form the authority and the members of the board will be citizens of the incorporating municipalities, or of any municipality into which the project extends.

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70 Id. 53 P.S. 2900Z-15.
71 Id. Section 18, 53 P.S. 2900Z-19. These same provisions in the 1935 Authorities Act were recognized as valid in Gemmill vs. Calder, supra note 64, where it was held that the property would pass only to those incorporating municipalities which contributed to the cost of the project, not to all of the incorporating municipalities.
73 Supra note 69.
74 Id. Section 4, as amended, 53 P.S. 2900Z-5.
or is to extend, or has been or is to be leased. If it is incorporated by two or more municipalities the board consists of a number of members at least equal to the number of municipalities, but in no event less than five. The members are appointed and their terms fixed and staggered and vacancies filled, and, where two or more municipalities form the authority, are apportioned in such manner as the Articles of Incorporation shall provide.75

The governing body of the municipality cannot appoint one of its own members to the board of the authority, for it is against public policy for one having authority to appoint a fit person to public office to appoint himself; and this is not altered by reason of the fact that the appointee did not vote for or participate in his appointment.76

The governing body of the municipality or of each of the municipalities joining in the formation of an authority must select a corporate name,77 select the initial members of the authority board, and adopt a formal resolution or ordinance expressing the desire to create the authority and setting forth in substance the proposed Articles of Incorporation. Thereafter a notice of such resolution or ordinance must be published, once each in the legal periodical and in a newspaper published in the county or counties in which the authority is to be organized, containing a brief statement of the substance of the resolution, including the substance of the articles, and stating the day, not less than three days after publication, when the articles will be filed with the Secretary of the Commonwealth. Such publication is sufficient despite any other publication requirements contained in other statutes with respect to municipal resolutions or ordinances.

Thereafter the articles, certified copies of the resolution or resolutions, proofs of publication of notice, and the filing fee of $30.00 are filed with the Secretary. The Secretary will approve the articles if they conform with law and issue a certificate of incorporation, together with a photocopy of the approved articles and accompanying resolutions. After incorporation an organization meeting of the authority will be held, at which officers are elected, by-laws adopted, a principal office selected, and other preliminary matters effected. The secretary of the authority must certify to the Secretary of the Commonwealth the names and addresses of its officers and the location of the principal office of the authority. Any change in the principal office likewise must be certified within ten days after such change.78

75 Id. Section 7A, 53 P.S. 2900Z-8.
76 Commonwealth vs. Major, 343 Pa. 355 (1941). However, during the period that such illegally appointed members acted as such they are defacto officers and their acts are valid as respects the public. At page 364.
77 The name of a particular municipality, county, or area may be associated with good credit standing, which should be kept in mind in selecting the corporate name. Thus the bonds of “Northern York County Authority” probably will be more attractive to investors and sell at a better net interest cost than bonds of “Fairview-Newberry Authority”, although the former is formed by the latter two townships.
78 Supra note 69, Section 3, 53 P. S. 2900Z-3.
Where an authority has been incorporated by two or more municipalities any one or more of them may withdraw, if the authority consents to it, but no withdrawal can be permitted after any obligation has been incurred by the authority. Other municipalities also may join an existing authority with its consent.79

The organizing municipality or municipalities may, in the original resolution, or, from time to time, by subsequent resolutions, specify the project or projects to be undertaken by the authority and no other projects shall be undertaken by it. If the organizing resolution fails to specify the projects to be undertaken, then the authority has all the powers granted by the Act.80 The members of the authority board may receive such salaries as may be determined by the municipality or municipalities, which salaries cannot be increased or diminished during the term for which the member receiving such shall have been appointed.81 The board may appoint officers, agents, employees and servants, and prescribe their duties and fix their compensation.82

After the municipality or municipalities involved have approved the plans for the sewer project and have agreed that such should be undertaken, it, or they, will, by formal resolution, request the authority to undertake the project and it in turn, by resolution, will agree to do so. It is then up to the authority to proceed with the construction of the project and to finance the costs thereof.

THE FINANCING OF A SEWER PROJECT BY THE AUTHORITY

The authority, much in the same manner as a municipality, may meet the costs of laying lateral sewers by assessing the abutting property owners. The Authorities Act provides that an authority shall have the power "to charge the cost of construction of any sewer constructed by the Authority against the properties benefited, improved or accommodated thereby," to the extent of such benefits by employing eminent domain proceedings (which would appear to be an impracticable method), or according to the foot front rule. Where the latter method is employed the charges may be assessed and collected and liens may be enforced in the manner provided by law for the municipality in which the authority is located. However, no such charge can be assessed unless prior to construction of the sewer the authority shall have submitted the plan of construction and estimated costs to the municipality in which the project is to be undertaken and the municipality shall have approved the plan and estimated cost. The charges against the properties cannot exceed "an aggregate amount in excess of the estimated cost as approved."83 This method of assessment was held to be valid in Evans vs. West Norriton Township Municipal Authority,84 on the ground that this did not dele-

79 Id. Section 3.1, 53 P.S. 2900Z-4. This Section sets forth the procedure for joining or withdrawing, which is more involved than the formation of an authority.
80 Id. Section 4, 53 P.S. 2900Z-5.
81 Id. Section 7, 53 P.S. 2900Z-8.
82 Id. Section 4B(g), 53 P. S. 2900Z-5.
83 Id. Section 4B(r)(s), 53 P.S. 2900Z-5.
84 370 Pa. 150 (1952).
gate the power to levy taxes upon the authority, since the elected public officials determine the cost, charges and liening thereof, and all that is delegated to the authority is the agency to perform the administrative details. This opinion construed the original language of the act as meaning that the actual cost of construction cannot exceed the estimated cost, as so approved. The wording was amended in 1951 to read as above, so that it is now clear that the right of assessment is not lost, although the aggregate amount of the charges assessed cannot exceed the approved estimated cost. The authority also may charge a tapping fee whenever a property owner connects with the sewer system constructed by the authority, which is in addition to any charges assessed against the property.

Any municipality may convey, with or without consideration, any existing sewers or sewer system to the authority, and may transfer to it any funds available for construction purposes, including the proceeds of municipal bonds issued for such purposes, which may be used by the authority in the construction, maintenance or operation of the project. It also would appear that the municipality could agree to pay the authority the cost of installation of lateral sewers, which cost is to be recouped by the municipality through assessments against the abutting property owners. It was held in *Griffith vs. McCandless Township* that such an agreement with respect to a water system was valid and consistent with the provisions in the Second Class Township Code providing for assessments to pay for the cost of water lines. The same should be true of the provisions, heretofore noted, for assessing the cost of sewers.

To the extent to which the cost of the overall sewer project cannot be met by the authority’s assessments, or by funds received from the municipalities, such must be met by a bond issue of the authority. The authority then can raise the funds needed to pay the interest on and principal of such bonds in either of two ways, namely: (a) by operating the sewer system itself and exacting sufficient charges from the users to cover all costs of maintenance and operation plus the debt service, or (b) by leasing the sewer system back to the municipality or municipalities involved at an annual net rental which, over the life of the lease, will pay off the bonds.

Many practical considerations enter into the determination of whether the authority operation or lease-back method should be employed. Such considerations are beyond the purview of this article. However, one consideration which affects the security of the bonds, and hence the net interest cost, should be noted. Where the authority operates the project the sole source of revenue for meeting the debt service is the net revenue which it can earn from charges exacted from users of

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85 And see Zimmerman et al vs. Susquehanna Township, 59 Dauph. Co. Rep. 359, 369 (1948), stating that if the actual cost exceeds the approved estimated cost the right of assessment is entirely lost.
86 Act of September 26, 1951, P.L. 1505.
87 Supra note 83, subsection (t).
88 Supra note 69, Section 9A, 53 P.S. 2900Z-10 and see note 141, infra.
the system. On the other hand, when a lease-back is employed the rental will be fixed at an amount sufficient to meet the maximum annual debt service and to exceed the average annual debt service, and this rental will be secured by the taxing power of the lessee municipality as well as by its power to charge the users, as was established in the Greenhalgh case, supra. This leads to a discussion of some of the legal aspects incident to each of these methods.

**Lease Back of The Project**

Where the lease-back method is employed, the only responsibility of the authority is that of constructing the particular sewer project and financing such through the issuance of its bonds. The operation and maintenance of the project and the production of the revenues needed for such operation, as well as to pay off the bonds, is the responsibility of the municipality or municipalities. The contract of lease entered into between the authority and the municipality will contain an agreement by the former to construct the sewage project in accordance with the plans and specifications of the engineer, to set aside funds for interest during construction and for contingencies, and to pay all costs and expenses of financing the project through the sale of its bonds. The authority leases the sewage project to the municipality for a term equal to the maturity of the bonds.

The municipality agrees to operate, maintain, keep in good repair and insure the sewer system at its expense. It also agrees to pay regular periodic rental in the amount fixed in the lease, which amount will be sufficient to meet the debt service on the bonds, together with an additional margin, as heretofore noted. The municipality also agrees to charge and collect sewer rents and connection charges sufficient, together with its current revenues, to pay the rental payments, plus the expenses of operation, maintenance and repair, together with a margin of safety. It also will agree to provide in each of its annual budgets for sufficient current revenues for sewer purposes to meet these requirements.

The municipality assents to an assignment of the lease and all rentals payable thereunder to the trustee, as security for the bondholders. The lease also provides what constitutes a default by the lessee and empowers the authority, trustee, or receiver to terminate the lease upon default and to take possession of the sewer system and all records relating to it, and operate the same; and confers such other rights as are set forth in the Authorities Act and in the indenture.

The municipality will raise the necessary funds to perform its obligations under the lease through tapping fees or connecting charges and, principally, by

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90 The authority's bonds cannot qualify as a legal investment unless the rental gives at least 1.20 coverage—i.e. the net rental must be 120% of the average annual debt service. Infra note 114.

91 Hereinafter the singular alone will be used and this will be deemed to include joint projects where two or more municipalities are the lessees.

92 Which cannot exceed forty years. Supra note 69, Section 5, 53 P.S. 2900Z-6. If the term of the lease exceeds 21 years the lease should be recorded. Act of March 18, 1775, 1 Sm. L. 422, Sections 1 and 3, 21 P.S. 444 and 16 P.S. 3521. See Williams vs. Downing, 18 Pa. 60, 66 (1851).
levying charges on those who make use of the sewer system. Power to do the latter is conferred by a general statute, popularly called the General Sewer Rental Act.\textsuperscript{93} This Act provides that whenever any county of the second class, city, borough, incorporated town, or township, either singly or jointly with other municipalities, has entered into any contract with an authority for the construction of a sewage system or treatment works, it may provide by ordinance for the imposition and collection of an annual rental or charge for the use of such system from the owners of, or the users of water in or on, the property to be served by it, or from both the owner and the water user, whether such property is located within or without the corporate limits of the municipality. The rental so imposed is a lien on the property that is served.\textsuperscript{94}

Such charge may be, but is not limited to, such sum as may be sufficient to meet: (a) the amount expended annually by the municipality in the operation, maintenance, repair, or other expenses relating to such sewerage system, (b) such annual amount as may be sufficient to pay the amount agreed to be paid under the terms of the lease with the authority, and (c) sufficient to establish a margin of safety of 10\%. Any unused surplus arising from such charges shall be kept in the fund accruing therefrom and when the amount exceeds this margin of safety the excess shall be paid into the sinking fund.\textsuperscript{95} Thus the moneys raised from sewer rentals are kept in a sewer revenue account, earmarked for sewage purposes, and the sinking fund makes it possible for the municipality, by rental prepayments or otherwise, to have the authority's bonds redeemed or purchased prior to maturity.

The annual rental or charge must be "apportioned equitably among the properties served by" the sewer system.\textsuperscript{96} The Act makes no attempt to prescribe in what manner the charges shall be imposed, so as to be "apportioned equitably." In \textit{Hamilton's Appeal}\textsuperscript{97} the court construed this language and held that it applies solely to charges based upon actual user of the sewer system and that it requires that the charge be reasonably proportional to the value of the service rendered, and not in excess of it.\textsuperscript{98} It invalidated an ordinance of the City of Philadelphia, which imposed a charge upon each lot of land having any connection with, or being available for connection with, the sewer system, at a rate proportional to the assessed value, on the grounds that: (a) this imposed a charge upon property owners who made no use of the system; and (b) assessed value does not have any relationship to the extent or value of the use made of a sewer facility.

\textsuperscript{94} Id. Section 1, 53 P.S. 1030.
\textsuperscript{95} Id. Section 2, 53 P.S. 1031.
\textsuperscript{96} Id. The Act also has a special provision with respect to agreements with an authority organized by a county of the second class—i.e. Allegheny County—including the power to assign and pledge sewer rentals to such an authority and to assign to it the power to charge and collect the same. Id. Section 2.1, 53 P.S. 1031.1.
\textsuperscript{97} 340 Pa. 17 (1940).
\textsuperscript{98} At page 22.
After this decision the City Council eliminated the charge upon properties not actually using the sewer system and fixed the charge by a combination of two factors: (1) three mills upon each dollar of the assessed valuation, and (2) twenty-five per cent of the water rent. This was held to be invalid also, in Philadelphia’s Petition,99 the opinion stating that, although "we cannot say that a measure of sewer use based upon water use is inequitable", the other factor has no relationship to the use made of the sewers.100 Accordingly, where a combination of factors is used each factor must bear a reasonable relationship to sewer usage.

The City of Philadelphia was successful in its third attempt to fix the measure of the charge. This time the ordinance provided that the user shall pay an "annual charge based upon the water consumption of the property served as measured by the charges for water supplied for the then current calendar year". This was upheld as a reasonable measure of sewer usage, over objections that it resulted in discrimination between water users paying by meter and those paying appliance rates, and between small and large users, and in favor of certain classes of users, the Court recognizing that reasonable classification of rates is permissible.101

In actual practice a number of bases, used singly or in combination, are used, the principal ones being: water consumption or water bill; use or classification of the building; number and type of plumbing fixtures; number and size of sewer connections; flat rate; and number of rooms or of plumbing fixtures in the building.102

The municipality will enact an ordinance imposing sewer rents and connection charges prior to and as a condition to execution of the lease, and the lease will provide that such charges cannot be reduced except upon satisfying certain conditions. Since any such charges are based upon estimates, they may prove inadequate and, accordingly, the lease requires the lessee to increase the charges in that event. Since sewer rentals can only be charged to those using the sewer system and it will take time to complete the construction, the authority will include additional bonds in its issue, the funds from which will be used to pay interest on the bond issue, together with other expenses, during construction; and the rentals, under the lease, will not commence until the estimated date of completion.

The bonds issued by the authority will be secured by a trust indenture from the authority to the trustee, which will be a bank having trust powers. This indenture will set forth the form of the bonds, the interest rates and maturity dates thereof, and the provisions for redemption. It also will have provisions for the issuance of additional bonds for refunding purposes, or to complete the project if the money in the construction fund proves to be insufficient, or to reconstruct or replace property damaged by fire or other casualty, to the extent that insurance moneys are insufficient, and to acquire or construct capital improvements and

100 At page 50.
102 See Sewer Rentals in Pennsylvania Municipalities, supra note 15, pages 21-34.
additions. Of course, it is essential that provision be made for improvements and additions. However, when such additional bonds are issued the security of the original bond purchasers must not be impaired. Accordingly, the indenture will make it a condition to such issuance that the additional bonds be supported by additional rental, preserving the ratio of revenue to debt service on all bonds, and that there be assurances that increased sewer charges, or the increase in users resulting from the improvement or addition, or increases in the amounts to be provided by the municipality out of its current revenues will be adequate to meet the increased rental. The addition may involve extending the system into another municipality, in which case the latter may join the authority and will become a party to the agreement of lease, or to a separate agreement, and pay rentals covering the costs of such project, or its proportionate share thereof.

The proceeds from the sale of the bonds go to the trustee, which will pay therefrom a fixed sum to the authority for working capital, and all costs and expenses of the financing, including legal fees and expenses, and the trustee's fees and expenses, and will set aside reserves for debt service until rental payments commence. The balance will be paid into the construction fund, which sum will be an amount sufficient to pay for land acquisitions and equipment, to pay the construction contractors, and to pay the engineer's or architect's fees, and to cover contingencies.

The rentals are assigned to the trustee and are placed in a clearing fund as received. Out of this fund there is paid a fixed amount each year to the authority for working capital. There also is paid periodically into a debt service fund a sufficient amount to pay interest on the bonds and the principal of bonds maturing during the period. From the balance funds are paid into a debt service reserve fund until this fund equals an amount approximating the average annual debt service. This fund is used to meet debt service in case the debt service fund should at any time be insufficient for that purpose; and if it is so used it must be built up again to the required level. The moneys in this fund are kept invested by the trustee in direct obligations of the United States. Moneys also will be paid into a maintenance reserve fund, to be used for maintaining or repairing the sewer system, or making replacements, in case such cannot be met from the sewer revenue account maintained by the municipality. Funds remaining in the clearing fund, after the above payments have been made, may be paid into the construction fund, if additional funds are needed to complete the project, and any balance will be placed in a bond redemption and improvement fund, from which payments may be made for capital additions and improvements and to purchase or redeem the bonds.

The indenture also will contain covenants of the authority that it will, or will cause the municipality to, operate, maintain, insure and keep in good repair the sewer system, et cetera; and will enumerate the events of default and set forth the remedies of the trustee upon default.
Where the authority operates the sewer system it will agree, by formal resolution and by the terms of the indenture authorized thereby, not only to acquire and construct the sewer system according to the plans, but also to operate and maintain it and keep it insured and in good repair, and also to impose such sewer charges and rentals upon the users of the sewer system as will be sufficient to cover the costs of operation and to pay the principal of and interest on the bonds issued by it. Here the authority board is responsible for all phases of operation and must employ such personnel as shall be needed to operate the system efficiently.

The Authorities Act empowers an authority to “fix and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by it, for the purpose of providing for . . . (its expenses), the construction, improvement, repair, maintenance and operation of its facilities and properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreement made with the purchasers or holders of any such obligations”, or with any municipality. This Act, like the Sewer Rental Act, does not go into the methods to be employed in fixing the rates and it would seem that the same general principles would apply here.

In Rankin vs. Chester Municipal Authority it was held, with respect to an authority’s water rates, that the rules applicable to ordinary public utilities do not apply because an authority can charge rates sufficient, inter alia, to fulfill the terms of any agreements made with bondholders. There the indenture provided that the authority could issue additional bonds for improvements and additions, provided that in each of the two preceding years the payment into the debt service fund was equal to 120% of the debt service requirements of the existing bonds plus what the debt service would have been on the proposed additional bonds had they been outstanding. The Court held the authority could increase the rates sufficiently to meet such requirement, in order to finance needed improvements, even though this caused the present water users temporarily to pay higher rates.

The Act provides that any person questioning the reasonableness or uniformity of any rate fixed may bring suit against the authority in the court of common pleas of the county where the project is located, or where the principal office of the project is located, if it is in more than one county. This court is given exclusive jurisdiction to determine these matters. It is to be noted that no like provision is present in the Authorities Act relative to service, and hence the Public

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103 Section 4B(h), 53 P.S. 2900Z-5.
105 Supra, note 103. This Section impliedly repeals Section 301 of the Public Utility Law and the court of common pleas has exclusive jurisdiction to inquire into the reasonableness of the rates charged by the authority, beyond, as well as within, the corporate limits of the municipality that created it. Griffith vs. McCandless Township, 366 Pa. 309 (1951), and the Rankin Case, supra note 104.
Utility Commission has jurisdiction over the service, extensions, connections, et cetera of an authority, with respect to service furnished beyond the corporate limits of the incorporating municipality.\textsuperscript{106}

The trust indenture will have provisions similar to those where the lease-back method is used, as previously noted. However, there will be certain differences, due to the fact that the authority alone must raise the money needed for operational costs and for debt service. For example, the provision for issuance of additional bonds for improvements and additions must be conditioned upon a satisfactory past earnings record, as well as upon adequate estimated projected earnings, so that the revenues available for debt service on the original issue will not be diminished. A provision like that in the \textit{Rankin Case}\textsuperscript{107} may prove to be too restrictive and preclude the construction of badly needed improvements and additions. The problem is to achieve a happy medium whereby the bondholders will be protected, while at the same time improvements and additions can be assured, as needed.

The authority will agree to charge such sewer rentals as will be sufficient to pay its administration expenses, to pay the expenses of operating, maintaining, repairing, insuring, and making necessary renewals and replacements to the sewer system, and provide an amount each year equal to the average annual debt service requirements, plus a surplus of not less than 20\%. The authority will pay over to the trustee all revenues arising from operation of the sewer system, which will be paid into a revenue fund. From this fund the trustee will transfer amounts needed to pay or reimburse the authority for its administration expenses and expenses of operating the system and to keep its working capital adequate, and amounts into the funds for debt service, bond redemption and improvements, as in the indenture heretofore discussed.

\textbf{The Authority Bonds}

The bonds to be issued by the authority are authorized by resolution of its board and may be of such series, mature at such time, not exceeding forty years from their date, bear interest at such rate or rates not exceeding 6\%, be in such denominations, be in such form, carry such registration or exchangeability privileges, and be subject to such terms of redemption, not exceeding 105\%, as shall be provided in the resolution.\textsuperscript{108} Often the bond issue will consist of a combination of serial and term bonds, the latter being redeemed by lot annually from a sinking fund. The bond is a bearer instrument, but can be registered, while the


\textsuperscript{107} Supra note 104.

\textsuperscript{108} Authorities Act, supra note 69, Section 5, 53 P.S. 2900Z-6.
coupons are always payable to bearer. The bonds have all the qualities of negotiable instruments. They must be signed by such “officers” as the authority determines and the interest coupons contain the facsimile signature of the treasurer. The bonds may be sold at public or private sale for such price as the authority may determine, provided that the interest cost to maturity of the money received for any issue shall not exceed 6%.  

The authority will enter into an agreement with an investment banking firm whereby the latter will undertake the sale of the bonds. This agreement may provide that the bonds are to be sold at competitive bidding, in which case the financial advisor will receive a fee for setting up the issue and conducting the public sale. The agreement may provide that the investment banking firm will be given an opportunity to submit a proposal for the purchase of the bonds, which the authority is free to accept or reject. Because of a decision by the Supreme Court of Florida  

110 doubt has been created as to whether the firm, in the latter type of agreement, can be assured of a fee in case its proposal is rejected. In that case the agreement provided that if the bonds were purchased by the fiscal agent there would be no charge for the services, but if they were sold to anyone else it would receive two dollars per bond for its services. The fiscal agent did purchase the bonds and a suit was brought to enjoin the sale. The Court held that the contract and the sale of the bonds were contrary to public policy and void, on the ground that this agreement, entitling the fiscal agent to a fee, made it an agent of the city; and that an agent could not also act as a principal by entering into a contract with the authority to purchase its bonds—quoting Matthew, that “no man can serve two masters”. The Court also referred to a statute making it unlawful for any “officer” of a municipality to be anywise interested in its contracts and to the city charter’s provision that officers and “employes” shall not be interested in any contract of the city, and concluded that these terms include advisors and agents of the municipality. It is to be noted that the Authorities Act provides that no member of the authority “or officer or employe thereof shall either directly or indirectly be a party or be in any manner interested in any contract or agreement with the Authority . . . by reason whereof any liability or indebtedness shall in any way be created against such Authority”, and that any such agreement “shall be null and void.”  

The interest on authority bonds is exempt from all present Federal income taxes. The bonds, their transfer, and the income therefrom, including profits made on the sale thereof, shall at all times be free from taxation (except gift, succession, or inheritance taxes, or any other taxes not levied or assessed directly on the

109 Id.
111 Supra, note 69, Section 10D, 53 P.S. 2900Z-11. In general, as to this Section, see Markus, "May an Authority Member, Officer, or Employee Contract With the Authority," The Authority, Spring 1954, page 12
bonds) within the Commonwealth of Pennsylvania.\textsuperscript{112} Since an authority is a governmental instrumentality the Legislature has the power thus to exempt its bonds from taxation.\textsuperscript{113}

The bonds qualify as "legal" or "authorized" investments for fiduciaries provided that they are not in default and that, for the period of five fiscal years next preceding the date of acquisition, the income of the authority available for fixed charges has averaged not less than 1.20 times the average annual fixed charges of such obligations over their life.\textsuperscript{114} State funds available for investment also may be invested in authority bonds, subject to the same conditions as to default and earnings record.\textsuperscript{115}

As to the remedies of the bondholders, the Authorities Act provides\textsuperscript{116} that, in addition to any rights and remedies lawfully granted by the resolution or trust indenture, the bondholders, in event the authority defaults in the payment of principal or interest for a period of thirty days, or fails to comply with the Act, or defaults in any agreement made with the holders of the bonds, the holders of 25% of the bonds outstanding, by instrument filed in the office of the recorder of deeds, may appoint a trustee to represent the bondholders. Such trustee and any trustee under the trust indenture may, and, upon request of 25% of the holders of the bonds, shall assert various remedies as follows: (a) by mandamus compel the authority to collect rentals or charges adequate to carry out its agreement and to carry out any other agreements; (b) sue on the bonds; (c) require the authority to account as if it were the trustee of an express trust; (d) enjoin any acts in violation of the rights of the bondholders; and (e) declare all bonds due and payable. The trustee also is entitled as of right to the appointment of a receiver, who may take possession of the properties of the authority, operate the same, collect rentals, and otherwise do what the authority might do.\textsuperscript{117} Of course, as previously noted, the receiver cannot sell or dispose of any of the assets of whatever kind belonging to the authority. The trust indenture will include these statutory provisions and spell them out in more detail and add thereto.

\textbf{STATE AND OTHER AID}

In 1953 the Legislature recognized that the responsibility for improving the purity of its waters is partly that of the State and that since it is requiring municipalities to construct sewage treatment plants it should make some financial contribution thereto. It enacted a statute\textsuperscript{118} which provides that, commencing July 1,

\begin{itemize}
\item \textsuperscript{112} Id. Section 15, 53 P.S. 2900Z-16. They are expressly exempted from the county personal property tax. Act of June 17, 1913, P.L. 507, Section 1, as amended, 72 P.S. 4821.
\item \textsuperscript{113} Kelly vs. Earle, 325 Pa. 337 (1937), and Williams vs. Samuel, 332 Pa. 265 (1938).
\item \textsuperscript{114} Fiduciaries Investment Act, Act of May 26, 1949, P.L. 1828, Section 5(3), 20 P.S. 821.5.
\item Where an authority acquires an operating corporation its past income so available may be included.
\item \textsuperscript{115} Act of April 25, 1929, P.L. 723, as amended by the Act of August 26, 1953, P.L. 1459, 72 P.S. 3603.
\item \textsuperscript{116} Supra, note 69, Section 6, 53 P.S. 2900Z-7.
\item \textsuperscript{117} Id.
\item \textsuperscript{118} Act of August 20, 1953, P.L. 1217, 35 P.S. 701.
\end{itemize}
1954, and annually thereafter, the Commonwealth "shall pay toward the cost of operating, maintaining, repairing, replacing and other expenses relating to sewage treatment plants" an amount not to exceed 2% of the costs for the acquisition and construction of such plants by municipalities and municipality authorities to control stream pollution, and expended by them from September 1, 1937 up to December 31 of the year preceding the year in which such payment is made. "Construction" includes, in addition to treatment works, pumping stations and intercepting sewers which are an integral part of the treatment facilities, and the altering, improving, or adding to of such facilities, provided that the acquisition and construction has been directed by the Department of Health and placed in operation in accordance with the Clean Streams Law. The amounts to be expended for such purposes are recommended by the Secretary of Health and approved by the Governor in accordance with regulations promulgated by the Department of Health, and are based upon reports filed with the Secretary prior to January 31, 1954, and annually thereafter, by the municipality or municipality authority. Two million dollars was appropriated for the purpose.

It will be noted that these grants are not for the purpose of defraying the costs of acquisition and construction, and such costs still must be financed in full by the municipality, through the authority, as above. However, these grants will augment the revenue of the authority coming from lease rentals or from sewer rentals and thus will improve the security behind the authority's bonds.

In 1945 the Legislature appropriated $12,325,000 to the Department of Health for various purposes, including the payment of a share, not exceeding 50%, of the cost of preparing engineering and architectural plans and estimates for the construction of plants for the treatment of sewage to be constructed by municipalities and municipality authorities. The Department issued regulations to implement the Act, which, inter alia, limit such grants to a percentage (varying according to a graduated table) of the estimated cost of the system and specify what costs are to be included or excluded in preparing the report of estimated costs. The actual amount to be paid must be recommended by the Secretary of Health and approved by the Governor. As of the time this was written over $1,000,000 of the appropriation remains unexpended.

The General County Law empowers the county commissioners to appropriate moneys to aid third class cities, boroughs and townships in the construction or maintenance of sewers or sewage treatment works where such have been approved by the Sanitary Water Board.

The Federal Water Pollution Control Act of 1948, as amended, was designed to enable the Federal Government to co-operate with States and munici-

119 Supra note 4.
120 Evidently, under the authority of Greenhalgh vs. Woolworth, supra note 66, these grants would be taken into account in determining the municipality's current revenues available to pay rental.
121 Act 62A.
122 Supra, note 39, Section 448, 16 P.S. 448.
palities in the formulation and execution of their stream pollution abatement programs. The Act specifically authorized appropriations to be made to the Federal Security Agency to make grants to States and municipalities to aid in financing the preparation of plans for sewage treatment works\textsuperscript{124} and appropriations to the Department of Health, Education, and Welfare to make loans to States and municipalities for the construction of treatment works and for preparation of plans therefor.\textsuperscript{125} However, there are no funds available for these purposes, since Congress has not chosen, to date, to make the actual appropriations therefor.

\textbf{Miscellaneous Provisions}

An authority may amend its articles to adopt a new name, to increase its term of existence, not exceeding fifty years from the amendment, to change or add to its purposes, and to change the number of members of its board, and reapportion the representation and revise the terms of office.\textsuperscript{126}

The Commonwealth pledges to and agrees with the bondholders that it will not limit or alter the rights vested in the authority until all bonds are fully discharged.\textsuperscript{127}

Moneys of the authority must be deposited in one or more banks or trust companies. To the extent that any account is not insured it must be secured by a pledge of direct obligations of the United States, the Commonwealth, or the incorporating municipality.\textsuperscript{128} The indenture will require the trustee to secure funds in this manner. The authority must have an annual audit, a copy of which is delivered to the incorporating municipality, and it must publish a concise financial statement annually.\textsuperscript{129}

 Authorities cannot be required to pay any taxes or assessments upon any property acquired or used by them for proper corporate purposes.\textsuperscript{130}

All construction, improvements, or repairs of any project where the entire cost exceeds $500 shall be done only under contracts entered into with the lowest responsible bidder after due public notice; and such contracts must require the contractor to give performance and labor and material bonds. Likewise, all supplies and materials costing $500 or more shall be purchased only after competitive bidding, except patented and manufactured products offered in a non-competitive market. A notice must be published at least ten days before the award of the contract in a newspaper published where the authority has its principal office, or, if there is none, in a newspaper in the county where it has its office. The notice may be waived if an emergency exists and supplies and materials must be purchased

\textsuperscript{124} Id. 33 U.S.C.A. Section 466g(c).
\textsuperscript{125} Id. 33 U.S.C.A. Sections 466f and 466d.
\textsuperscript{126} Authorities Act, Supra, note 69, Section 3.2, 53 P.S. 2900Z-4. 1.
\textsuperscript{127} Id. Section 13, 53 P.S. 2900Z-14.
\textsuperscript{128} Id. Section 8, 53 P.S. 2900Z-9.
\textsuperscript{129} Id.
\textsuperscript{130} Id. Section 15, 53 P.S. 2900Z-16. See In Re Hazleton City Authority, 68 D. & C. 171 (1949).
immediately.\footnote{181} The Act of 1913,\footnote{182} which applies to the construction and alteration "of any public building", and requires separate specifications and bids upon each of the branches of the work, is applicable to authority projects.\footnote{183}

An authority has the power to acquire, by eminent domain proceedings, either the fee or an easement in such lands, water and water rights as it may deem necessary for any of the purposes mentioned in the Authorities Act. The right is exercised in the manner provided by law for the exercise of such right by municipalities of the same class as that by which the authority was organized or, in the case of a joint authority, as provided for municipalities of the same class as the one in which the right is to be exercised.\footnote{184} The latter provision as to the manner of exercising eminent domain is procedural only and the authority has the substantive right to exercise it outside of the municipality, even though the incorporating municipality has no power of eminent domain outside its boundaries.\footnote{185}

No property owned or used by the United States, the Commonwealth or any political sub-division thereof, or any municipality authority, and no property of a public service company, or property used for burial purposes or places of public worship, shall be taken under the right of eminent domain.\footnote{186} In \textit{White Oak Borough Authority Appeal}\footnote{187} a water authority started eminent domain proceedings to acquire water lines constructed by a city outside its corporate limits. The Supreme Court observed that a city operating a water system is acting in its private or proprietary capacity and is not considered as a sub-division of the State, but it did not decide whether it was a "political sub-division" within the meaning of this Act. It did decide that since the water lines were outside the city limits they were subject to the jurisdiction of the Public Utility Commission and hence the authority could not acquire title thereto without the approval of the Commission, under Section 9B of the Authorities Act.\footnote{188}

\footnote{181} Id. Section 10, 53 P.S. 2900Z-11. The requirement of competitive bidding does not apply where the work is unsuited for such, because the extent of needed repairs could not be known until the equipment involved was dismantled. Underwood Corporation vs. Chester Municipal Authority, 31 Del. Rep. 571, 49 D. & C. 295 (1942). The requirement for competitive bidding in the Township Code does not apply to contracts between a township and an authority. Griffith vs. McCandless Township, supra note 89.

\footnote{182} Act of May 1, 1913, P.L. 155, 71 P.S. 1618.

\footnote{183} It was held in Pittsburgh Public Authority Petition, 366 Pa. 10 (1950), that this statute applied to parking authorities since the Parking Authority Law did not expressly repeal it. A fortiori, it applies to municipality authorities and could apply to a sewage treatment plant.

\footnote{184} Authorities Act, supra, note 69, Section 11, 53 P.S. 2900Z-12. If it acquires by purchase 90% of the stock of a corporation owning a project it can acquire the remainder of the stock by eminent domain. Id. Section 11.1, 53 P.S. 2900Z-11. 1.

\footnote{185} Falls Township Authority vs. Levitt and Sons, Inc., 84 D. & C. 223 (1952). This case also held that the authority need not show that it is impracticable to construct a sewer line over public roads, as the Township Code requires, for the authority need only "deem it necessary" and such determination by its board is valid and determinative, at least in the absence of fraud or palpable bad faith. This case also illustrates that since an authority has no taxing power it must post a bond and have the same approved as a condition precedent to taking possession of the properties to be condemned.

\footnote{186} Supra note 134.

\footnote{187} 372 Pa. 424 (1953).

\footnote{188} 53 P.S. 2900Z-10B.
Thereafter this authority applied to the Public Utility Commission for permission to acquire these water lines by compulsory process and, on appeal therefrom, in *White Oak Borough Authority vs. Pennsylvania Public Utility Commission* the Superior Court held that Section 9 of the Authorities Act only contemplates acquisition by agreement and that the lines could not be taken by eminent domain because they were owned by a political sub-division of the Commonwealth.

A special Act, which applies only to sewer authorities organized by a county of the second class or by a city of the third class, requires municipalities and authorities engaged in supplying water to shut off the water service to users who have failed to pay sewer rentals and to supply water billings to such sewer authorities and authorizes them to act as the billing and collecting agents for such authorities.

The Act of 1949 empowers any municipality to create a special fund for expenditure for preparing plans for, or constructing, improving or replacing a sewage disposal system; and such funds may be transferred to an authority to be used for such purposes. The special fund consists of moneys from appropriations for a particular purpose which are not needed, or surplus moneys in the general fund at the end of any fiscal year, and moneys appropriated to the fund in the annual budget.

Matters of general import in the field of municipal law are beyond the scope of this article. Even within its limited scope it does not purport to be detailed or exhaustive. Thus, possible variations from the alternatives to the standard lease-back and authority operation methods of financing, and combinations thereof in an authority's project or projects, are not considered. The regulations promulgated by the Sanitary Water Board and the Department of Health, which, together with application and report forms and informative booklets, are published by and procurable from the Department, are not covered. However, it is hoped that the principal legal aspects of authority sewage financing are explored sufficiently to be informative, suggestive and helpful.

142 Such as having the authority lease a sewer system from the municipality (Balmer, et al vs. Joint Municipal Authority of Wyomissing Valley, et al, 45 Berks Co. L. J. 119, and 157 (1953)), or employing two or more authorities to finance portions of a joint project, or agreements permitting a municipality to connect its sewers with the authority's project in return for payment of fixed or calculable charges, or pre-planning stage agreements, et cetera.