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Utilities-Utility District

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The Tennessee UTILITY DISTRICT

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Arthur B. Winter

The Tennessee Utility District :

A Problem of Urbanization /

By ARTHUR B. WINTER
..

Published for

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Foreword

One of the most characteristic features of life in the United States at present is the incomplete and unsatisfactory condition of urban-type services in the fringe areas of cities. Attempts to remedy this condition have often been made in the form of special districts with limited functions. Tennessee has not escaped this type of activity. Dr. Winter's study describes the Tennessee development.

The present study was made under the co-operative auspices of the Bureau of Public Administration and the Municipal Technical Advisory Service of The University of Tennessee. Responsibility for the factual accuracy of the report and for opinions expressed therein is, of course, that of the author alone. Dr. Winter wishes to thank the numerous public officials and others throughout the state who generously assisted him by furnishing information. Miss Mary Alice Heaps and Mrs. John Donaldson have revised the manuscript for publication and prepared the index.

The special district is still in the process of development and events have transpired which are not recorded here. The basic lines of development remain unchanged and we believe the study is a reflection of conditions which continue to exist.

LEE S. GREENE, *Director*
The Bureau of Public Administration

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Growth of the Special District

IN TENNESSEE DURING THE PAST FIFTEEN YEARS, UTILITY districts, as well as other types of special districts, have played an increasingly important role in the activities of local government. Originally, local governmental structure in Tennessee was relatively simple, but with the growth of urban communities that simplicity has disappeared. The special district, particularly the utility district, has been one of the principal complicating factors.

The utility district has stood as a corporate entity equipped to function in lieu of regular municipal government. It has led in importance the other principal types of autonomous special districts functioning in Tennessee: the housing authority, the special school district, and the soil conservation district. The utility district has been a means by which particular areas have furnished themselves with much needed urban-type services, but its very creation has generated a number of unsolved problems. The possibility of intergovernmental conflicts has arisen; the need for co-ordinating intergovernmental activities has developed; the problem of insuring accountable and efficient management of utility district affairs has remained unsolved.

Special districts have not been unusual in the scheme of local governments. Although the major subdivisions of the state are usually considered to be the county, the city, the town, and the village, this represents an over-simplified picture. In the United States in 1952 there were not only 16,778 municipalities and 3,049 counties, but also 12,319 special districts and 67,346 school districts. Thus, local government can by no stretch of the imagination be confined to counties and regular municipalities.

A list of the types of special municipal corporations yields a total of over fifty varieties designated by over a hundred different names.¹ There are few functions which districts have not been authorized to perform. This versatility has brought the special district into an extremely significant position in the field of state and local government in the United States. It has been a handy "gadget" appealing to our traditional empirical and pragmatic tendencies. Should a county sheriff refuse to

¹See Table 1.

TABLE 1

SPECIAL MUNICIPAL CORPORATIONS, 107 NAMES OR 52 VARIETIES

Agriculture Development District	Municipal Water District
Agriculture District	Navigable Canal District
Airport District	Navigation District
Boat Course District	No-fence or Stock-law District
Boulevard District	Overflow District
Bridge District	Park District
Canal District	Paving District
Cemetery District	Pleasure Driveway and Park District
Commercial Waterway District	Poor District
Community Centers	Port District
Conservancy District	Port and Terminal Facilities District
Conservation District	Power District
Cooperative Agriculture District	Protection District
County Power Pumping District	Public Cemetery District
County Water District	Public Health District
Diking District	Public Utilities District
Ditch District	Railroad Aid and Benefit District
Drainage District	Reclamation District
Drainage Improvement District	River District
Electrical District	River Improvement District
Fire District	River Regulating District
Flood Control District	Road District
Flood Control and Soil Conservation District	Road, Bridge and Street Improvement District
Flood Prevention District	Road Improvement District
Flood Protection District	Rural Community
Forest Fire District	Rural Improvement District
Forest Preserve District	Sanitary District
Fresh Water Supply District	Sanitary Drainage District
Good Roads District	Sanitation District
Harbor Improvement District	School District (under 34 names or 8 varieties)
Health District	Sea Wall District
Highway District	Sewage District
Highway Improvement District	Slough District
Hospital District	Soil Conservation District
Housing and Community Redevelopment District	Street Lighting District
Housing Authority	Storm Water District
Improvement District	Stumpage District
Incorporated District	Stumping and Land Clearing District
Independent Highway District	Swamp Land Reclamation District
Inlet District	Taxing District
Internal Improvement District	Terminal Authority
Irrigation District	Tunnel District
Irrigation and Water Conservation District	Urban Water Supply District
Junior College District	Utility District
Lamp or Lighting District	Watch District
Levee District	Water Authority
Library District	Water Development District
Light, Heat, and Power District	Water District
Local Improvement District	Water Improvement District
Metropolitan Park District	Water Power District
Metropolitan Utilities District	Water Storage District
Mine Drainage District	Waterworks District
Mosquito Abatement District	Waterworks Improvement District
Municipal Improvement District	

provide police protection or a city council decline to extend fire services, special districts may be formed to fill the gap. If two counties of moderate means need hospital facilities that neither alone can provide, the creation of a special district may solve their problem. If citizens desire establishment of some novel and untried service not authorized by the city charter—public housing, for instance—this may be provided by a local housing authority which is in essence a special district.

In many states the statutes have been so drawn that the establishment of special districts has often been not only the most attractive, but also the easiest solution to community problems—even though their creation frequently provides only short-term solutions. This becomes strikingly apparent in districts which are created in urban fringe areas where troubles lie dormant until the “nucleus” city embarks upon an annexation program. It was such a problem which stimulated this study and brought into focus the realization that only infrequent and narrow inquiries had been pushed into the “vistas” which lie beyond the term “special district.”

This report is confined to a study of utility districts in Tennessee. Its purpose has been to discover the broader problems inherent in the utility district, to point them up, and where possible to suggest solutions. Also, since Tennessee shares its problems with other states, some concurrent attention to other commonwealths has been included in this study.

MEANING OF THE TERM “SPECIAL DISTRICT”

What is a special district? The simplest approach to the problem is to say what it is not. Thus, “The term, ‘special district’ or ‘special unit of government’ applies to any local government entity which is neither city, county, township, nor village.”² Another definition states:

The special municipal corporation may be defined as a public corporation, formed for a single purpose or for a few closely related purposes, with territory and inhabitants, autonomous, with power to select its own officers, issue bonds and levy taxes for the accomplishment of its corporate purpose. Not all of these markings need appear distinct in each species.³

In this report it has been assumed that the special district, including

²Stanley Scott and John C. Bollens, *Special Districts in California Local Government* (Berkeley: Bureau of Public Administration, University of California, April, 1949), p. 1.

³F. H. Guild, “Special Municipal Corporations,” *National Municipal Review*, XVIII, No. 5 (May, 1929), p. 321.

4 *The Tennessee Utility District*

the utility district, is a unit of government having the following characteristics:

1. It is generally recognized as within and subject to the state;
2. It is a unit other than a county or a regularly established municipal corporation;
3. It does not function primarily as a mere administrative unit of a county or city;
4. It possesses functional (usually unfunctional) and/or geographical jurisdiction;
5. It is properly chartered by legislative act as one or more of the following: (a) "municipal corporation," (b) a "public corporation," (c) a "municipality," (d) a public body corporate and politic or at least "body corporate and politic"; and so considered by the courts;
6. It has been delegated sufficient legislative and executive authority to act autonomously under the state;
7. It possesses a substantial amount of fiscal autonomy;
8. Its acts and proceedings are not controllable or reviewable by any other unit of local government.

Districts which satisfy these requirements in the State of Tennessee include sanitary, soil conservation, special school, taxing, and utility districts. Autonomous power districts have been authorized, but not formed. Housing authorities have also been created in many areas of the state. However, it may be pointed out that in one case the Tennessee Supreme Court recognized the Knoxville Housing Authority as a unit of that municipality.

DESCRIPTION OF SPECIAL DISTRICTS

Throughout the United States the organizational procedure, the structure, the operating techniques, and the powers under which special districts operate are quite similar. With almost no exceptions, districts have been created either by private acts or in pursuance of a general law of state-wide application. Where private acts have operated, activation of the district has taken place even after the officials, the commissioners, or trustees have been chosen by election or appointment as the case may be. Districts formed under general laws were usually launched through one of two channels: (1) through the action of a governmental agency or (2) by petition of a requisite number of citizens in the community desiring to form the district. Governing bodies of special districts have been generally known as boards of commissioners with the members being designated as trustees, directors, commissioners, or supervisors.

In many instances, especially in the case of special school districts, members of the board have been chosen by the state legislature in the enabling acts. In both urban and rural districts in certain states board members have been popularly elected by the body politic of which they are representative. In urban areas when popular election was not used, special district board members have been chosen by city commissions, boards of mayor and aldermen, or mayors. In unincorporated territory and in rural areas judges, county commissioners, and others have chosen members of district boards. In other types of special districts board members have been selected by several groups. In the particular case of soil conservation districts some members have been appointed by the State Soil Conservation Committee and others have been elected by land-owners of the district.

Once activated, special districts, with the exception of the larger housing districts, have maintained an essential simplicity of structure. Rarely have there been more than three hierarchical levels of authority. In the field of personnel administration special districts seldom embrace personnel programs involving civil service machinery, pension plans, and other job security devices.

From a fiscal point of view, all special districts may be divided into taxing and non-taxing groups. As a rule the special district has been permitted by state legislation to levy taxes along with counties and municipalities. In some states, however, special district operations have been financed through revenue bond issues or short-term loans serviced by receipts from charges, tolls or fees. Sometimes, as in Tennessee, the General Assembly imposed district tax levies. In general, special districts throughout the United States have been authorized by statute to acquire property by eminent domain, to conduct investigations in all matters of district concern, and to pass ordinances, rules, and regulations. Most special districts have been unfunctional, but some have been authorized to undertake almost as many functions as the average municipal corporation. District governing bodies almost without exception have been authorized to spend money, make contracts, appoint personnel, and supervise the work of the district using such subordinate officers as they considered necessary.

The legal status of special districts has presented a problem. The courts in some states have held that road districts, drainage districts, and similar organizations were legally equal to ordinary municipal corporations. In other states, only water utility districts and school districts have been accorded such legal status. In still other states, all special districts have been classified as quasi-municipal corporations. Thus, the statutes

and decisions of individual states must be examined in order to determine the status of a particular type of special district in a particular state.

EARLY USES OF THE SPECIAL DISTRICT

The special district is nothing new. The British have made much use of a similar administrative device. Like the development of the special district in the United States, the British unit was a product of changing times. It grew out of the need to provide new types of services required by the industrial revolution. From the Tudor era until the latter part of the eighteenth century local government stood on "two legs." The King governed rural areas through the "county" (the Justice of the Peace and the Court of Quarter Sessions) and its subordinate agency, the "parish" (the vestry meeting); he governed urban areas through the "borough" (the close corporation).⁴

These units became highly rigidified and increasingly inept in solving problems of public health and transportation arising from greater urbanization and the wider use of the stagecoach. A system of *ad hoc* authorities, governed by improvement or police commissioners, worked with the entirely new urban problems of paving, lighting, policing, and street cleaning which the growing cities presented. The Turnpike Trust was created to meet the transportation problem, and: "Beginning about 1700, there came to be over 1,100 of them [Turnpike Trusts] simultaneously in existence in 1835. This was twice as many as all the other kinds of statutory authorities together and five times the number of Municipal Corporations. They were nearly all the same in structure and in powers."⁵

As the nineteenth century progressed, Parliament continued to authorize additional *ad hoc* authorities to meet various local needs in all parts of the realm. Districts became so numerous that in some areas taxpayers contributed to as many as eighteen different authorities.⁶ Not all of these authorities were controlled by the local electorate; some were under the centralized supervision of the Home Office. The Incorporated Guardians of the Poor, which operated under a central supervisory body, presented a signal example. In the potpourri of authorities the Guardians of the Poor had task after task heaped upon them so that they came to be more than the mere welfare agencies which their name

⁴Charles Barratt, *Your Local Authority*, 2nd ed. (London: Sir Isaac Pitman & Sons, Ltd., 1949), pp. 8-10.

⁵K. B. Smellie, *A History of Local Government* (London: George Allen & Unwin Ltd., 1947), p. 23.

⁶Barratt, *op. cit.*, p. 12.

implies. Ultimately, in the middle and the late nineteenth century, faulty allotment of duties bred disaffection and jurisdictional conflict so that:

... a most confused state of affairs resulted, upon which even the Medical Officer of the Privy Council (Sir John Simon) and other high authorities could not pronounce with certainty. "On the most favourable construction of the law at present, I suppose we may say that in all country districts there is one authority for every privy and another authority for every pig-sty; but I also apprehend, with regard to the privy, that one authority is expected to prevent its being a nuisance, and the other to require it to be put to rights if it is a nuisance."⁷

In the early 1870's, the pattern of local government was further complicated by the establishment of school boards to administer the educational function at the elementary level. This may represent the zenith of the special district in England. From this point onward a counter-trend set in. Although there still remain many independent local authorities in Britain, the majority of civil governmental agencies have come within the purview of regular municipal and county borough jurisdiction.

THE SPECIAL DISTRICT IN THE UNITED STATES

The deviation from the use of the established local governmental units for local functions began in the United States as early as 1789 with the creation of school districts in Massachusetts. Poor districts were established in Pennsylvania in 1831; fire districts in Rhode Island in 1841; and levee, reclamation, swampland, drainage, and internal improvement districts sprang up in various parts of the country. The latter five groups dealt mainly with problems arising in rural areas, but in the urban areas authorities and special districts also began to play a significant role. In 1869 park districts were created in Illinois; later in the same state sanitary districts sprang up; and in 1891 a special district was created to deal with the problems of the Port of Portland in Oregon.⁸ Of all these types of special districts, probably the one most widely used was the school district. Literally thousands of these have been created, the principal impetus coming from professional educators. These persons seemed to feel that separation from old-line units of government would provide secure insulation from dubious and sinister political pressures. In short, school districts were formed to keep

⁷Royal Sanitary Commission, *Minutes of Evidence*, 22. 1810-12, p. 98, cited in V. D. Lipman, *Local Government Areas, 1834-1945* (Oxford: Basil Blackwell, 1949), pp. 62-63.

⁸Guild, *op. cit.*, pp. 320-321.

"politics" out of education. Similar arguments have been used to justify the creation of various other types of special districts, most notably the utility district in Tennessee.

Writers in the field of state and local government have listed a number of reasons to explain the growth of the special district. Governmental problems have not necessarily been coterminous with administrative areas. For instance, corporate limits may extend roughly in a radius of five miles from City Hall, but the demand for water facilities may extend to ten. Another important reason for the development of special districts has been the desire on the part of the community to evade certain state constitutional provisions, such as those which place strict limitations upon taxing and borrowing powers.

Still other justifications have been given. Special districts were set up, according to one author, because they allowed considerable local control. They have also a psychological attraction "... for there is a specific tax . . . applied to a specific function area. The taxpayer is more willing to pay his taxes when he is certain of the purpose for which the money will be used. . . ." ⁹ Other reasons given for the establishment of special districts have been "... the desire to avoid the opposition certain to arise in connection with more drastic comprehensive programs for reforming the systems of local government, and . . . of escaping the impact of partisan politics." ¹⁰

The ultimate test, however, of whether a special district is to be installed in a particular area, always reduces to the practical question: "Is there a governmental vacuum?" If cities and counties fail to provide services to a community, the special district stands ready, provided it can furnish an affirmative answer to the usual question: "Will it work?"

THE SPECIAL DISTRICT IN TENNESSEE

In comparison with Great Britain or the United States as a whole, the development of special districts in Tennessee presents nothing that is ancient, unique, spectacular or voluminous. For the most part the history of special districts in Tennessee has been written not in textbooks, newspapers, or professional journals but in the statutes, court decisions, Congressional hearing reports related to districts affected by

⁹Emmett Asseff, *Special Districts in Louisiana* (Baton Rouge: Bureau of Government Research, Louisiana State University, 1951), p. 3; *Community Services Commission for Davidson County and the City of Nashville, A Future for Nashville* (Nashville: 1952), pp. 145-150.

¹⁰W. L. Godshall (Ed.), *Principles of Government in the United States* (New York: D. Van Nostrand Company, Inc., 1948), p. 957.

federal law, and the records of the districts themselves. Tennessee's first venture in the special district began not as a result of over-urbanization but in connection with the administration of the disposition of public lands. For this purpose, in various regions throughout the state, counties were combined to form administrative areas, the principal officer of which appears to have been the county register. Aside from this, the school district was the only other one of importance from the early part of the nineteenth century until 1879.

For many years the school district corresponded to the civil district and was in the main administered by the county court through the county superintendent of schools. It is questionable, therefore, whether one could have considered the nineteenth century school district in Tennessee as an independent unit of government or merely a means of administering state-wide educational policy among various counties. In the early years of the present century a distinction arose between the standard county school district and what developed as the "special school district." The latter organization originated in certain communities dissatisfied with county educational policy; and, as it gained popularity, hundreds of communities "seceded" from county educational systems with the assistance of local legislative delegations using private legislative acts as instruments of "secession."

The taxing district, a governmental device which somewhat predated the special school district, came into effect in 1879. The first unit of this class was established by the General Assembly to assist the City of Memphis in recovering from the ravages of the yellow fever epidemics of the middle 1870's. ¹¹ It has been said that the General Assembly used the Memphis epidemics as an excuse to pass legislation which would permit Tennessee municipalities to overcome the dilemma in which they found themselves as a result of over-indulgence in railroad speculations. If that were true, the hope was shattered by a Supreme Court decision making the Shelby County Taxing District the legal successor to the extinguished corporation and liable for its debts. ¹² Later, in 1881, a general act was passed permitting any municipality below 30,000 population to surrender its charter and resolve itself into a taxing district second class. ¹³

Since the peculiarities of the Tennessee Constitution permitted only cities and counties to exercise taxing power, it was necessary to devise some means whereby the new taxing district would be able to finance

¹¹*Public Acts of Tennessee*, 1879, ch. 11. Hereinafter referred to as *Public Acts*.

¹²*John O'Conner v. City of Memphis*, 74 Tenn. (6 Lea), 730 (1881).

¹³*Public Acts*, 1881, ch. 127.

its activities. This was accomplished through the passage of general or special acts permitting districts to collect a specified sum on the basis of a General Assembly tax levy. A taxing district in Tennessee, therefore, did not levy, but only collected taxes levied by the state legislature. The same principle applied to special school districts which were in essence nothing but one form of taxing district. This fiscal inhibition has discouraged the development of special districts in Tennessee and, except for incidental water control and road districts whose financial support came from taxes levied by the county court, no new types survived the test of constitutionality until the advent of revenue bond-financed districts of the 1930's.

Table 2 shows the development in numbers of the units of government in Tennessee. If the county agencies (the flood, drainage, and levee districts, and the road and bridge districts) are eliminated from consideration, this table indicates that special districts grew from nothing to 26 units in 1942; by 1953 this figure was 141 units, an increase of 442.3 per cent, while cities increased from 206 to 250, a gain of 21.4 per cent for the same period. Or, considered with respect to the total number of local governmental units, the table reveals that special districts (not including county agencies), which comprised 8 per cent of the total (327) in 1942, increased to 29 per cent of the total active units (484) by 1953. If water control and road and bridge districts are counted, special districts comprised 39 per cent of all local governmental units (536) in 1934, and 44 per cent of the total active units (613) in 1953. Cities increased from 233 in 1934 to 250 in 1953—a gain of 7 per cent. The number of active special districts (including those considered as county agencies) grew from 208 to 270 during the same period, a gain of 29 per cent.

We should note that the *de jure* utility district or housing authority had yet to be activated. While many of these units could expire, a change in national politics could have the effect of activating nearly all units shown in Table 2. As of November, 1953, apparently either because of the end of hostilities in Korea and/or the Treasury's "honest dollar" policy, interest rates were so high that new utility districts could not afford to issue bonds. Housing authorities not yet activated were even more firmly held in check by the Housing Act of 1953 and appropriations therefor.

Even taking into account the imperfection in statistical data, it is evident that special districts in Tennessee are on an upward trend numerically. They promise to play an increasingly important role in local government.

TABLE 2
UNITS OF GOVERNMENT IN TENNESSEE, 1934 TO 1953

Unit	1934'	1941	1942	1952	1953 (Active)	1953 (Inactive)	1953 (Total)
Counties	95	95	95	95	95	—	95
Cities	233	204	206	241	250	—	250
Special Districts:							
Flood Drainage and Levee	191	—	2	—	129	1	130
Housing Authorities	—	9	10	16	24	16	40
Port and Terminal Authorities	—	—	—	1	—	—	—
Road and Bridge	17	—	—	—	—	—	—
Soil Conservation	—	—	—	40	65	—	65
Special School	—	—	11	13	13	—	13
Utility	—	—	5	28	39	22	61
Special District Totals	208	9	28	98	270	39	309

Before the middle thirties, special school and taxing districts were essentially the only types of *bona fide* special districts extant in Tennessee. With the advent of the New Deal, Tennessee, along with many other states, passed a law in 1935 permitting the creation of local housing authorities.¹⁴ During the same year power districts were authorized as local units to work in conjunction with TVA.¹⁵ A third type of special unit, the soil conservation district, also sponsored under federal auspices, was authorized by the General Assembly in 1939.¹⁶ Besides these, a fourth type, the utility district, designed to provide water, sewer and fire protection services to unincorporated areas, appeared in 1937.¹⁷

In addition to units chartered by the general act, the 1930's saw the passage of private acts creating the Cherry Bottom Drainage District,¹⁸ East Brainerd Taxing District (Water Supply),¹⁹ Hickory Valley Taxing District (chartered to provide practically all municipal functions),²⁰ Lauderdale County Special Hospital District,²¹ Madrid Bend Levee District,²² Orlando Taxing District²³ and Walden Ridge Taxing Dis-

¹⁴Public Acts, 1935, ex. sess., ch. 20.

¹⁵Public Acts, 1935, ex. sess., ch. 4.

¹⁶Public Acts, 1939, ch. 197.

¹⁷Public Acts, 1937, ch. 248.

¹⁸Private Acts of Tennessee, 1937, ch. 684. Hereinafter referred to as *Private Acts*.

¹⁹Private Acts, 1931, ch. 539 and *Private Acts*, 1935, ch. 371.

²⁰Private Acts, 1931, ch. 689.

²¹Private Acts, 1937, ch. 626.

²²Private Acts, 1937, ch. 355.

²³Private Acts, 1937, ch. 481.

trict.²⁴ Ridgeside, another taxing district, existed from 1925 to 1931.²⁵ Another form of governmental unit, the sanitary district, was provided by the General Assembly to perform governmental services for "... small or sparsely populated areas." However, "Ridgetop is the only district known to have been organized. . . ." In 1935 it was reorganized as a regular municipal corporation.²⁶ Except for the East Brainerd and Walden's Ridge bodies, all of these have long since ceased to function.²⁷

TENNESSEE UTILITY DISTRICTS

On the short-term basis any significant developments, tending toward numerical expansion and a wider role for special districts in Tennessee local government, seemed available only through the utility district. In 1953 only thirteen special school districts (meeting the criteria for special districts) seemed active, and there appeared to be no obvious pressure either to create more or to abolish these bodies. In 1953 with the curtailment of federal funds for new housing projects, the Housing Act of 1953 brought public housing in Tennessee to a developmental plateau. At this time it also appeared questionable whether the Federal Soil Conservation Service would be able to provide the necessary assistance for the establishment of new soil conservation districts. Thus, utility districts are the most vigorous form of special district in the state today. Although high interest rates on revenue bond issues may cut into planned establishments, there is a certain amount of momentum which will carry the multiplication of utility districts forward for some time to come.

Established utility districts exercise much influence in the affairs of Tennessee's local governments. They have formed the basis for urbanization of country towns such as Tazewell, New Tazewell, Hendersonville, Blountville, Bulls Gap, Church Hill, Fall Branch, and Surgoinville. They have brought natural gas services to a number of West Tennessee cities and towns not able to finance individual local gas systems. They have also created actual and potential planning, engineering, financial and legal problems for eleven metropolitan areas throughout the state; moreover, organized but inactive utility districts present potential problems to a number of other municipalities.

²⁴*Private Acts*, 1931, ch. 400 and *Public Acts and Private Acts*, 1931, 1st and 2nd ex. sess. priv. ch. 8.

²⁵Lyndon E. Abbott and Lee S. Greene, *Municipal Government and Administration in Tennessee*, The University of Tennessee Record, Extension Series, XV, No. 1 (February, 1939), 38.

²⁶*Loc. Cit.*; *Public Acts* 1901, ch. 64.

²⁷Now utility districts.

In short, the utility district has been used increasingly for all sorts of typical municipal functions. Its methods of establishment, its organizational form, its powers and jurisdiction therefore have vital significance to Tennessee county and municipal officials and the public at large.

TABLE 3

NUCLEUS CITIES AND SATELLITE UTILITY DISTRICTS

City	Active Utility Districts	Inactive Utility Districts
Bristol	Blountville, South Bristol- Weaver Pike	Bristol-Bluff City Holston
Chattanooga	East Brainerd Elixon Lookout Valley Red Bank Walden's Ridge	
Clarksville	New Providence	St. Bethlehem
Clinton	First Anderson	
Cookeville		Putnam County
Elizabethton	First Carter Milligan	Hampton Watauga
Jackson	Jackson Suburban East Union South Jackson	
Johnson City	Milligan North Johnson City	
Kingsport	Bloomingdale Consolidated East Kingsport Kingsport-Long Island North Kingsport Sullivan Gardens	Tri-City
Knoxville	Fountain City Sanitary District	
Lenoir City		Dixie-Lee
Maryville		Eagleton Rock Gardens
Memphis	Memphis Suburban Whitehaven	Ellendale Raleigh
Nashville	First Suburban Madison Nashville Suburban Old Hickory	

C H A P T E R

The Utility District Act of 1937

THE INADAPTABILITY OF COUNTY GOVERNMENT TO THE needs of people living in rural and suburban unincorporated areas created a need for new devices to provide services demanded by modern living standards. In Tennessee, a primary step was taken in this direction through the federally-sponsored Rural Electrification Administration program. But this provided electricity only, and there remained the necessity of providing other utilities such as water, gas, sewage collection, garbage disposal, and fire protection.

In specific instances some of these services had been provided through the device of the taxing district. However, the very fact of its taxing power made its use generally unpopular. Another alternative to incorporation—the sanitary district—was likewise shunned by fringe areas and rural communities. Of course, some relief was available through private utility ventures, but few entrepreneurs were willing to risk the double contingencies of “less-than-urban-population” concentrations and the possibility of unprofitable fixed rates. So the problem persisted until the passage of the Utility District Act of 1937.

The theoretical justification for the act was, as briefly stated above, merely “a need for urban utility services.” However, there also exists a purported explanation, which cannot be completely ignored, concerning the origin of this piece of legislation. In a certain county there existed a private water utility which had apparently been losing money. In searching for a remedy, the owners managed to stumble on an idea, the “kernel” of which formed the basis for utility districts—Tennessee style. The “remedy” was administered in the form of a public act, similar to an old Kentucky law.¹

Substantially the act provided that utility districts could be created by a decree of the county judge, in response to a petition by twenty-five resident-property owners within a defined area. Once established, the district was to be administered by a self-perpetuating, three-man com-

¹The draftsman (author) of ch. 248, *Public Acts, 1937* (The Utility District Act of 1937) disclaims any connection between the Tennessee and Kentucky acts. However, see *Acts of the General Assembly of the Commonwealth of Kentucky, 1926*, ch. 139. Frankfort: The State Journal Co., 1927.

mission,² the incumbents of which were to be appointed by the petitioners, and confirmed at the same time and by the same judge who created the district. Revenue bonds were to be the basis for fiscal activation; debt service was to be provided by the operating revenue of the system.

From the standpoint of our legendary water proprietor, the advantages of the utility district were: (a) the facility with which it could be organized, and (b) its independence from popular and/or representative control. The structure of the district allowed private proprietors to save a fading private venture by shifting from private to public operation. Specifically, private proprietors could benefit in four ways: (a) as recipients of the proceeds from the sale of the water company; (b) as policy-making members of a new utility district; (c) as salaried managers of the district's system; and (d) as bondholders. Apparently this type of transfer has been successfully carried through several times to greater or lesser degree in establishing other utility districts.

According to one interviewee, the impetus for sponsoring the Utility District Act sprang from three sources: (a) investment bankers; (b) certain persons in the Sanitation Division of the Tennessee State Health Department; and (c) a group of real estate agents, water consumers, and water company associates, all of whom were interested in developing suburban subdivisions in the southeast fringe area of Nashville. This person explained further that property owners and residents in the area were fundamentally opposed to incorporation as a municipality or annexation to Nashville.

Before introduction of the utility district bill in the House of Representatives, a preliminary draft was executed in Nashville and checked by Chapman and Cutler, Chicago bond attorneys. It was the suggestion of this firm that the board of utility district commissioners be made self-perpetuating. The rationale for this device was that since utility districts are “co-operative” ventures performing proprietary functions, and since the clientele is free to patronize or not patronize the water service, a self-perpetuating board of interested commissioners would be the preferable way to maintain efficiency and integrity. It was also felt that a popularly elected body would tend to inject “politics” into the district's operations.

House Bill 1122, which eventually became the Utility District Act, was introduced near the end of the 1937 legislative session. No public hearings, legislative deliberations or debates were held in connection with the bill. The General Assembly was, at that time, more interested

²The candidates' names were appended to the petition document.

in a piece of pending liquor legislation and other measures. Chances were that even just prior to its final passage, no more than a handful of legislators had even heard of the utility district bill—much less deliberated upon it. Among the newspaper descriptions of the last days of the 70th General Assembly, the following seem to have extracted its “flavor”:

Representatives shucked off their coats, rolled up their sleeves and passed bill after bill, sometimes interrupting an explanation of its contents to bring about a vote. The Senate was a little more sedate but on one occasion Senator Elmer Davies (Davidson) said it was a “damn shame” to pass bills when nobody knows what’s in them.³

It has never been definitely proved that the complete surrender of legislative responsibility is a refreshing condition in public affairs. No matter how earnest and sincere a governor may be, it is always well to allow for full, free and frank discussion and consideration of matters affecting the public welfare.

This the 1937 Legislature did not do.⁴

The only public notice of the passage of the act was this Associated Press “squib”: “Among measures signed into law by Governor Browning were the following: . . . Permit citizens of an unincorporated community to form a district for the purpose of establishing a waterworks and to issue bonds, these to be paid for from the revenue from the system.”⁵

PROCEDURE FOR CREATING UTILITY DISTRICTS

With five exceptions, all of the utility districts in Tennessee have been created under the provisions of the general act. As a primary step in establishment, this act requires that a petition be submitted by twenty-five property owners who reside within the territorial limits of the district. It is mandatory that the petition include: (a) a statement of the necessity of the service to be supplied by the proposed district; (b) the district’s corporate name and boundaries; (c) the estimated cost of acquisition or construction of the proposed facilities of the district; and (d) the names of three residents to be appointed as commissioners. Then, it is presented to the county judge or the chairman of the county court. This must be accompanied by a sworn statement (of the persons circulating the petition) that all signatures of petitioners were witnessed and that each petitioner was at the time of signing an owner of real property and a resident within the proposed district.

In actual practice, petitions usually contain from 25 to 50 legible

and illegible names. Addresses of petitioners are sometimes included and sometimes not. Very often it is apparent that both husband and wife, domiciled under the same roof, sign as property owners. Frequently, the names of the proposed commissioners appear among the petitioners. An examination of Sullivan County petitions revealed that in one case the salesman who was promoting the bond issue for a district solicited petitioners; in another case the engineer who had drawn the district’s water system plans collected names; and in yet another case signatures were collected by the owner of the private utility which the proposed district planned to acquire. (All of these petitions appeared to be in order although on one petition there appeared a bare minimum of twenty-five names, seven of which, apparently, were from the same family.)

The act requires that a hearing on the petition be held not later than thirty days after the petition is filed. Notice of hearing must be published “. . . in a newspaper of general circulation in the proposed district, or if there be no such newspaper, then by posting such notice in five (5) conspicuous public places within the boundaries of the proposed district.”⁶ The record shows that in all of the districts, no irregularities existed, insofar as notices of hearings are concerned. In some cases, throughout the state, affidavits of publications of notices of hearings are available, but this practice is not stringently followed from county to county.

The Utility District Act is very definite about the bases for the creation of utility districts; it states:

If at said public hearing the county judge or chairman of the county court finds (a) that the public convenience and necessity requires the creation of the district, and (b) that the creation of the district is economically sound and desirable, he shall enter an order of the court so finding, approving the creation of the district. . . .⁷

In interpreting the law the general belief among county judges appears to be that the very fact of the petition makes approval of the proposed district mandatory. In this view, the decree creating a utility district was a “ministerial” act, and the law does not allow judges the power to turn down the petitioners. However, one case is known in which a judge consulted with experts, such as bankers, engineers, and bond brokers to satisfy himself personally that the project actually

⁶*Tennessee Code Annotated, The Official Code of Tennessee* (Indianapolis: The Bobbs-Merrill Company, Inc., 1955), sec. 6-2604. Hereinafter referred to as *Tenn. Off. Code Anno.*

⁷*Ibid.*

³*The Nashville Tennessean*, May 22, 1937.

⁴*The Commercial Appeal*, May 23, 1937.

⁵*The Knoxville Journal*, May 21, 1937.

would serve the "public convenience" and was "economically sound and desirable." In addition, this judge sought the advice of leading citizens and persons whose judgment he trusted.

In the process of the public hearing:

Any party, having an interest in the subject-matter and aggrieved or prejudiced by the finding and adjudication of the county judge or chairman of the county court, may pray and obtain an appeal therefrom to the circuit court of the county in the manner provided by law for appeals from the county court, upon the execution of appeal bond as provided by law.⁸

County judges are not required to transcribe or otherwise record the particulars of such proceedings. And county judges queried could not recall any instances of organized or concentrated opposition to the formation of any of the present utility districts. No reported instances of opposition to the creation of the utility districts, i.e., open opposition at the public hearings or protests in the press, were found. In fact, the impression remains that by the time plans for a new utility district reach the petition and hearing state, the project has the almost unanimous approval of those persons affected.

ORGANIZATIONAL CHARACTERISTICS OF UTILITY DISTRICTS

Utility districts in Tennessee are considered as "municipalities" or public corporations. District powers are vested in, and exercised by, a majority of the members of the board of commissioners. As long as the district provides those services which it is authorized to furnish under the act, it is given the sole public corporate right to furnish such services within the boundaries of the district, ". . . unless and until it shall have been established that the public convenience and necessity requires other or additional services."⁹ However, a more recent statute provides that annexing municipalities "shall have the exclusive right to perform or provide municipal and utility functions and services in any territory which it annexes."¹⁰

The governing body of utility districts is called the "board of commissioners." The original board serves staggered terms of two, three, and four years respectively from the date of the establishment decree; thereafter, a commissioner's regular term is four years. Vacancies are filled by vote of the two remaining incumbents. In case of a deadlock in electing a successor, the commission ". . . shall certify that fact to

⁸*Ibid.*, sec. 6-2606.

⁹*Ibid.*, sec. 6-2607.

¹⁰*Public Acts*, 1955, ch. 113, sec. 9.

the county judge or chairman of the county court within thirty (30) days of the date upon which such vacancy occurs, and, thereupon, within ten (10) days the county judge or chairman of the county court shall appoint a third commissioner to fill such vacancy."¹¹ Fulfillment of this provision has been effected several times. In one case an entire commission resigned simultaneously. In this instance the bond brokers, who were acting as designated agents of the individual firms and corporations who held all of the utility district revenue bonds of the Bloomingdale Utility District, petitioned the Sullivan County Court for the appointment of three new commissioners and the court acceded to the request. Although no statutory basis exists for this move, it has not been challenged.

Commissioners serve without compensation, but are entitled to reimbursement for all expenses incurred in connection with the performance of their duties, the commissioners having the exclusive prerogative of interpreting the phrase, "performance of their duties."

The act requires the board at its first meeting to elect from its membership a president and a secretary. The president presides, and the secretary is charged by the act with keeping a record and acting as custodian of ". . . all proceedings of the commission which shall be available for inspection as other public records. . . ."¹² In spite of this latter provision, in practice, some units permit the attorney of the utility district rather than the secretary to act as custodian.

CORPORATE PURPOSES AND POWERS OF UTILITY DISTRICTS

The original Utility District Act made provision for the three services only: water, sewer, and fire protection. In 1947, the act was amended so that utility districts could furnish police protection, sewage disposal, garbage collection, garbage disposal, street lighting, parks, and recreational services.¹³ This was done to facilitate the establishment of Old Hickory Utility District. In 1951, the act was further amended to authorize all districts to distribute natural and artificial gas.¹⁴ In

¹¹*Tenn. Off. Code Anno.*, sec. 6-2614. Only residents in the district were eligible for election to the board.

¹²*Ibid.*, sec. 6-2615.

¹³*Public Acts*, 1947, ch. 76; as H. B. 46, this amendment passed both houses unanimously.

¹⁴*Public Acts*, 1951, ch. 262; the original bill, S. B. 481, was amended so ". . . that no such district may furnish natural gas service to any area now actually served by a private company." As amended, the Natural Gas Amendment to ch. 248, *Public Acts*, 1937, passed unanimously except for two senators and ten representatives, who were present but did not vote.

authorizing the districts to undertake the police protection function, the legislature carefully indicated that such an activity must be contingent upon prior arrangements with the sheriff of the county involved. The amended act specifically states: that ". . . nothing contained in this chapter shall be construed as meaning or intending any encroachment upon the police powers of the sheriff. . . ."¹⁵

Districts are enjoined from providing police, garbage collection, or disposal, street lighting, park and recreational services:

. . . unless and until it shall first have obtained the consent in writing of subscribers representing seventy-five per cent (75%) in number of the total subscribers to the existing services furnished by said utility district at the time such written consents are obtained. The determination by the board of commissioners of any such district as to the percentage represented by the written consent of such subscribers shall be conclusive. . . .¹⁶

Although prohibited from levying taxes, utility districts are authorized to undertake almost every function usually performed by general municipal corporations. They may sue and be sued in the courts. They are authorized to have a seal, incur debts, borrow money, issue negotiable bonds, and provide for the rights of the holders thereof. They may fix, maintain, collect, and revise rates and charges for any services. Also, they are authorized:

(g) To pledge all or any part of [their] revenues.

(h) To make such covenants in connection with the issuance of bonds, or to secure the payment of bonds, that a private business corporation can make under the general laws of the state, notwithstanding that such covenants may operate as limitations on the exercise of any power granted by this chapter.¹⁷

They may:

. . . acquire by purchase, gift, devise, lease or exercise of the power of eminent domain or other mode of acquisition, hold and dispose of real and personal property of every kind within or without the district, whether or not subject to mortgage or any other liens.¹⁸

In exercising eminent domain, districts have the power to condemn either the fee or such right, title, interest, or easement in the property as the commission may deem necessary for any of the purposes mentioned in this act. "Such power of condemnation may be exercised in

¹⁵Tenn. Off. Code Anno., sec. 6-2608.

¹⁶Ibid., sec. 6-2609.

¹⁷Tenn. Off. Code Anno., sec. 6-2610.

¹⁸Ibid.

the mode or method of procedure described by chapter 14 of title 23, or in the mode or method or procedure prescribed by any other applicable statutory provisions. . . ."¹⁹ In cases where utility district installations require access to the roads or properties held by the state or "any political subdivision thereof," the law requires the district to obtain the prior consent of the governing body of such unit before proceeding with construction. Since utility districts ordinarily operate in unincorporated areas, permissive legislation usually takes the form of a resolution by the county court.

District boards have considerable power and authority. They may by ordinance, vote, or resolution exercise all of the general and specific powers of the district. They may make all the needful rules, regulations, and by-laws for the management and the conduct of the affairs of the district. It is within their power to adopt the seal, prescribe the style thereof, and alter the same at pleasure. They are authorized to lease, purchase, sell, convey, and mortgage the property in the district, and to execute all instruments in connection with such action. They may inquire into any matter relating to the affairs of the district and compel by subpoena the attendance of witnesses, and the production of books, papers, and material in any such proceeding; they may administer oaths and examine witnesses. They have complete authority to appoint and dismiss all officers, employees, agents, and experts; and they have the power to fix any salary scales to apply to officers and personnel acting or working for the district. Finally they are empowered "To do all things necessary or convenient to carry out [the district's] functions."²⁰

CONTROLS ON UTILITY DISTRICTS

Utility districts are excluded from the jurisdiction of the State Railroad and Public Utilities Commission—or any board or commission ". . . of like character hereafter created. . . ."²¹ According to the "architect" of the Utility District Act, state commission regulation would entail: (1) the necessity for involved, time-consuming rate hearings and (2) the expenditure of large sums of money for professional services at such hearings. Both of these conditions, he asserted, would present a continuing threat to cripple the operations of districts already established. He averred further that any incidental, regulatory, or remedial action against utility districts which might be necessary, could be had,

¹⁹Ibid., sec. 6-2611.

²⁰Ibid., sec. 6-2616.

²¹Ibid., sec. 6-2613.

easily and inexpensively, through the use of the writ of *mandamus*.

Even though state regulation of utility districts was not authorized, many citizens have appealed to the State Railroad and Public Utilities Commission with the hope of obtaining relief, only to be disappointed. At each of the last six sessions of the General Assembly, an unsuccessful attempt was made to amend the Utility District Act so as to bring these districts within the supervision of the state regulatory agency.

The most stringent regulation imposed on utility districts stems from the negative pronouncement in the act to the effect that "... nothing [in this chapter] shall be construed as impairing the powers and duties of the department of health of this state."²²

The original Utility District Act of 1937 made no arrangement whereby the district was obligated to report to anyone or any unit of government. This deficiency was somewhat corrected in 1949 by an amendment requiring utility districts to publish annual statements within ninety days after the close of the fiscal year. More specifically, districts must publish, "... in a newspaper of general circulation, published in the county in which the district is situated ..." a statement of (a) the financial condition of the district; (b) the earnings of the district during the past fiscal year; and (c) a statement of the water rates then being charged by the district with a description of the method used in arriving at such rates.²³

"Within thirty (30) days of the date on which this statement is published, any water user of the district may file with the commissioners of the district a protest, giving reasons why, in the opinion of the water user, the rates so published are too high or too low."²⁴ The initiation of such a protest by a consumer obliges the commission to hold a public hearing within sixty days after the protest has been filed. On the occasion of the hearing, petitioners are permitted to produce statements, exhibits, and arguments and to have their own counsel. The commissioners, after hearing the presentations, are obliged to arrive at a determination of the "... reasonableness or unreasonableness of the published rates. ..." ²⁵ It is presumed that the commissioners will, at this time, adjust the rates in accordance with their findings. If such

²²*Ibid.*, sec. 6-2627.

²³*Ibid.*, sec. 6-2617. The requirement of an annual statement was, according to one interviewee, the product of consumer pressure groups from the Radnor Utility District. Since that district was established in the late '30's, disputes between subscribers and district management—over rate scales—were frequent and fiery. Interview at Nashville, April 7, 1953.

²⁴*Tenn. Off. Code Anno.*, sec. 6-2618.

²⁵*Ibid.*

action is rejected by the petitioners, the law allows for review in circuit court through the use of the common law writ of *certiorari*.²⁶

To date, there has been only one suit filed which has made some use of the 1949 "reporting" amendment. The suit, filed by a group of residents in the Madison Utility District, alleged in the bill of particulars (among other things) that the incumbent commissioners "... refused to give protestants a hearing concerning complaints."²⁷ Other court action may well be taken under this amendment, as it appears that many subscribers in other districts throughout the state are dissatisfied with rate schedules in effect.

The Utility District Act of 1937 has provided a much-needed "vehicle" whereby certain communities have been able to obtain those services so indispensable to present-day living standards. Furthermore, from a political standpoint the act does not, nor can it, subvert the plenary power of the Tennessee General Assembly to control these units of government. Thus any organizational and/or operational defects in the districts can be acted upon by the state legislature whenever such a course of action is deemed advisable. Insofar as state functional control over water, sewage collection, or sewage disposal utility districts is concerned, the act preserves to the State Department of Health its usual jurisdiction, as exercised over any municipality.

If, however, the Anglo-Saxon and American concept of placing the responsibility for local government upon the shoulders of the local population is considered, this act violates the concept both in spirit and in practice. Furthermore, the act, because it is so loosely drawn, encourages exploitation of the public domain and body politic by certain private entrepreneurs such as bond brokers, engineers, and real estate promoters. Even though these professional groups have, as a whole, shown public-spirited concern in practicing under the act, its defects have perpetuated the possibilities of exploitation by unscrupulous individuals—especially individuals in the professional groups mentioned.

In the petitioning procedure the requirement of "... twenty-five (25) owners of real property, who ... reside within the boundaries of the proposed district" seems quantitatively too small.²⁸ A clique, or combination of persons could initiate and promote the establishment of a district to the exclusion of considering the effects upon or the wishes of the majority of persons within the boundaries of the proposed district. The act is unsound because established non-property holding residents

²⁶*Ibid.*, sec. 6-2618.

²⁷*The Nashville Tennessean*, March 12, 1953.

²⁸*Tenn. Off. Code Anno.*, sec. 6-2602.

are excluded from considering a question which is political as well as economic—utility districts are authorized to provide governmental as well as proprietary services. Twenty-five resident property owners situated in a small, remote corner of a district could very well commit the whole community to an undeliberated course of action, except for adding new services to an existing utility district.²⁹

The petition submitted is comprised of five elements: (1) "a statement of the necessity for the services to be supplied . . ."; (2) "the proposed corporate name and boundaries of the district"; (3) "an estimate of the cost of the acquisition or construction of the facilities . . ."; (4) "the nomination of three (3) residents . . . as commissioners. . . ."; and (5) signatures and addresses of petitioners.³⁰ It does not require a time limit for activation of the district facilities, or a proposed estimated rate schedule with maximum limits. Finally, there exists no statutory provisions requiring the district to serve all parties within its boundaries.

These omissions are the direct result of another omission in the act: there is no differentiation between the petitioner (the ordinary householder who answers the doorbell and signs up for "pure water," "natural gas" or "fire protection," etc.) and the persons who draw and initiate the petition. Thus, the former have no statutory protection against fraudulent misrepresentations of the latter. Under present circumstances, people in a proposed district must rely upon estimates provided by a promotional agency. And, since nothing in the act requires (a) the soliciting of competitive bids, (b) the posting of performance bonds (with appropriate county officials), and (c) the execution of a project within a certain specified time, it is to be expected that cost estimates from a single private agency would be raised, for example, from \$250,000 on the petition to \$300,000 in actuality—upon completion. Nor is it surprising to find that reserves are not set aside to pay the expenses of serving members of the "body politic and corporate" who live in the more inaccessible areas of a district.

The present law places too great a burden upon the county judge, who is required to assume complete responsibility in determining the necessity and feasibility of the proposed district. One would not expect such an officer to be versed in any other field of specialization than law. Thus, it would appear reasonable to require that appropriate county officials, who are qualified in the fields of engineering and finance, be seated with the judge to form a three-man "board of establishment"

in order to determine whether or not the prayer of the petitioners should be honored. Also, the criteria by which these officers are to be guided could well be included in the present law. The act now in effect makes no attempt to bar county judges, who may have interests in a proposed utility district, from presiding over the procedures of establishment.

As presently constituted, utility districts are governed by a self-perpetuating board of commissioners, whose powers are both legislative and executive. Such an institutional arrangement could hardly be expected to be sensitive to the wishes of the body politic.

Although the state legislature can exercise complete power over these boards, supervision can in actual practice only be given sporadically during the seventy-five-day biennial sessions of the General Assembly. Legislative control over districts and boards is usually expressed through private acts which, in Tennessee, are excluded (by custom) from general consideration and deliberation. Such measures almost always pass unanimously if no member of the sponsoring local delegation poses objections. Thus, the unaccountability and irresponsibility of the self-perpetuating board is further complicated by the equally irresponsible manner in which "autonomous" local delegates funnel bills through the legislature.

Commissioners must be primarily interested in satisfying the bondholders and their agents, because it is this group which can exercise a certain amount of economic control and, in fact, can compel complaint performance. The act places no legal compulsion on the commissioners to work toward rate reductions, adequate and efficient service throughout the district, and good public relations. Neither are commissioners troubled by the necessity of placating an antagonistic electorate every two years. The community can exercise over commissioners only such informal and extra-legal sanctions as can be applied through more-or-less unorganized social channels. Social control is frequently very effective, especially in predominantly rural districts where relationships are on a close personal and family basis. Unfortunately, the effectiveness of socially channeled sanctions decreases proportionately as urbanization increases so that the consumers in the larger and more populous units (such as Radnor and East Brainerd) are, in fact, almost completely powerless.

Of course, at this point, it should be noted that organized *ad hoc* civic associations have arisen to exert pressure on certain utility district management, but such movements have not been very effective on a day-to-day basis. No regularly scheduled public meetings of the board are required by the act; so the commissioners are not only freed from

²⁹*Supra*, p. 20.

³⁰*Tenn. Off. Code Anno.*, sec. 6-2602.

political sanctions at the polls, but also from scrutiny and resulting criticism by the public and the press—a most unhealthy mode of existence for a governmental body and its officers. Open, scheduled meetings would certainly pave the way for the assumption of greater community responsibility and, at the same time, reduce opportunities for making “deals.”

It seems trite to suggest that utility district control be brought within the hands of the citizens when the boards themselves appear to have been designed to provide the community with “built-in” irresponsibility and unaccountability. Certain alternatives present themselves. Popular election of commissioners might be one feasible mode of control; election of commissioners by the county court might be another answer. The important thing is to “anchor” utility district operation where it belongs—in the haven of its own local community.

C H A P T E R

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Legislative and Administrative Controls

THE GENERAL ASSEMBLY HAS ENACTED A NUMBER OF LAWS supplementing or complementing the Utility District Act of 1937. However, little of this legislation seems to reflect a determined effort toward improving the over-all utility district picture. Instead, most measures were passed piecemeal, usually as a result of sporadic pressure-group activity. As far as could be determined, the General Assembly has never created any special committees to study the over-all effect of the utility district upon the state and its communities.

PUBLIC AND PRIVATE ACTS OF AMENDATORY EFFECT

One type of act frequently passed validates past actions of districts. The major impetus for validating acts affecting utility districts stems from a desire, on the part of bond houses, to render bondholders safe from litigation.

Curative law relating to utility districts in Tennessee has taken the form of both private and public acts. The practice thus far has been to validate proceedings and bond issues in individual districts by private acts and, at some later date, to validate by statute all acts, proceedings, and bond issues undertaken by all utility districts in the state.

To date, seven private measures have been passed to validate utility district activities—these being in connection with East Brainerd, Blountville, Kingsport-Long Island, Carderview, Jasper, Dixie-Lee, and Gibson County districts.¹ All of this legislation passed unanimously in both houses; there were no debates; there were no abstentions; and the records indicate that no amendments were offered. Probably the most astonishing and all-embracing provision encountered was the one which gave East Brainerd commissioners prior authorization and power:

. . . to do all things necessary to the issuance of said bonds and to make any changes in the provisions of the aforesaid [bond] resolution which it may consider advisable, and the making of such changes shall not in any way impair the curative effect of this Act.²

¹*Private Acts*, 1941, ch. 58; *Private Acts*, 1947, ch. 244; *Private Acts*, 1949, ch. 688; *Private Acts*, 1949, ch. 598; *Private Acts*, 1951, ch. 719; *Private Acts*, 1951, ch. 270, *Private Acts*, ch. 192.

²*Private Acts*, 1941, ch. 58, sec. 4.

With three exceptions these acts appear to have been introduced and passed with the intent of protecting bond holders. The Jasper Act was passed "because of the loss of the court records covering the creation of said utility district. . . ." The Dixie-Lee measure was designed purposely to evade the two-year activation limit set by the county judge in the establishment decree. The Gibson County Act was passed to provide the district with a five-man commission, one from each of the cities involved.

ACTS BROADENING AND EXTENDING SERVICE

Functional diversification. Just prior to the passage of a law giving blanket permission to utility districts to enter the gas business, three private acts were passed to permit specific utility districts in Hamilton County to act as distributors of natural gas in addition to the services which they were already undertaking. It appears likely that these measures represented nothing more than permissive legislation passed to accommodate the districts named.³

Further diversification of utility district functional jurisdiction was effected by a law permitting the First Utility District of Carter County to construct a telephone system.⁴ It is presumed that such a measure was prompted by the failure of the Inter-Mountain Telephone Company to provide adequate service in certain Carter County communities. An amendment to subject this service to regulation by the State Railroad and Public Utilities Commission failed, and the original bill passed both houses unanimously.

Extension of service areas. One of the most vexatious problems presented by the creation of utility districts derives from their competitive relationship in overlapping service areas *vis-à-vis* cities. Specifically, disputes arise over the question of which unit of government shall provide the particular service in the disputed territory. This difficulty is compounded by the fact that many cities (Johnson City, for example) are by their charters not permitted to extend services beyond the municipal limits. But the original utility district act provided that such units could extend systems within or without district boundaries. Presumably, it was to resolve such jurisdictional disputes that a law was passed in 1949, reading:

Each county, utility district, municipality or other public

³The districts were Daisy-Soddy-Falling Water (*Private Acts*, 1951, ch. 292); Hixson (*Private Acts*, 1951, ch. 293); and Lookout Valley (*Private Acts*, 1951, ch. 482). *Public Acts*, 1951, ch. 262 provided blanket authorization for utility districts to distribute gas.

⁴*Private Acts*, 1951, ch. 498.

agency conducting any utility service specifically including water works, water plants and water distribution systems and sewage collection and treatment systems is authorized to extend such services beyond the boundaries of such county, utility district, municipality or public agency to customers desiring each such service.

Any such county, utility district, municipality or other public utility agency shall establish proper charges for the services so rendered so that any such outside service shall be self-supporting.

No such county, utility district, municipality, or public utility agency shall extend its services into sections of roads or streets already occupied by other public agencies rendering the same service so long as such other public agency continues to render such service.⁵

Although it appears that this act clarifies to some extent the existing problems, it has not been so interpreted by certain city officials. In Johnson City, for instance, the former city manager insisted that it was not possible for Johnson City's water utility to extend or make improvements into the fringe areas. According to his interpretation the city charter was binding upon Johnson City, the general act to the contrary notwithstanding.

In addition to provisions extending utility district jurisdiction, there was one act in effect from 1943 to 1953 which excluded these units from Knox County.⁶ The statute in question was enacted in response to the storms of protest from Fountain City residents who were opposing the formation of a utility district by another group of citizens from the same area. The anti-utility district faction, although desirous of obtaining sewer and fire protection services, wanted no part of a unit which governed through a self-perpetuating board. In due course, the Fountain City problem was solved when the next legislature passed the Fountain City Sanitary District Act.⁷ In 1953 the Knox Exclusion Act of 1943 was repealed in order to clear the road for formation of a utility district in Holston Hills.⁸

UTILITY DISTRICT ESTABLISHMENT THROUGH SPECIAL LEGISLATION

In addition to utility districts formed under the 1937 Act, five legislative measures have been passed to authorize districts having similar

⁵*Tenn. Off. Code Anno.*, sec. 6-604.

⁶*Public Acts*, 1943, ch. 126.

⁷*Private Acts*, 1945, ch. 176.

⁸*Public Acts*, 1953, ch. 15. Fountain City and Holston Hills are suburbs of Knoxville.

characteristics. In chronological order these are: the Fountain City Sanitary District Act of 1945, the Rock Gardens Utility District Act of 1947, the Consolidated District Act of 1951, the Oak Ridge Gas District Act of 1951, and the Calhoun-Charleston Utility District Act of 1953.⁹

BACKGROUND TO LEGISLATION

Certain citizens of Fountain City successfully opposed the formation of a local utility district. Equally odious to them was the idea of annexation to the City of Knoxville. Neither did they relish the idea of establishing an orthodox municipal corporation of their own with its attendant taxing power. To overcome these objections, the Knox County legislative delegation drew an act establishing a form of utility district called a "sanitary district" but bearing no similarity to the standard sanitary district provided for in the Tennessee Code.¹⁰ In fact the Fountain City Act closely resembles the Utility District Act of 1937. When originally constituted, the governmental unit of Fountain City was designed to provide municipal sewerage, garbage disposal, and fire protection services; legislative action in 1949 added "the furnishing of water" as an additional function.¹¹

The Rock Gardens Act was passed to create a unit which would serve a small suburb in the fringe areas of Alcoa-Maryville. The act permitted the exercise of the fire protection function only. To date, this district has never been activated.

Another existing unit, though inactive, is the Oak Ridge Utility District, which, at its inception, presented unusually favorable prospects for an early operational future. Oak Ridge, an unincorporated area in Anderson County under the direct control of the Atomic Energy Commission (AEC), had since its establishment been troubled by an unfortunate smoke problem. To correct the difficulty, the Atomic Energy Commission published a prospectus requesting utility companies throughout the country to bid on gas installations. This proposition was supplemented by a promise to sell natural gas at 26¢ per thousand cubic feet. Presumably because Oak Ridge is completely under the control of the federal government, private utility operators were reluctant to bid, and citizens of the community proposed that a utility

⁹Acts of establishment: Fountain City, *Private Acts*, 1945, ch. 176, as amended by chs. 143 and 831 *Private Acts*, 1947, 1949 respectively; Rock Gardens, *Private Acts*, 1947, ch. 824; Consolidated, *Public Acts*, 1951, ch. 51; Oak Ridge, *Private Acts*, 1951, ch. 503; Calhoun-Charleston, *Public Acts*, 1953, ch. 45.

¹⁰Tenn. Off. Code Anno., secs. 6-2501-6-2533, 6-901-6-910.

¹¹*Private Acts*, 1949, ch. 831, sec. 1.

district rather than a privately-owned gas distribution system would better answer the over-all problem.

Unfortunately, just after the district was formed, the Korean War situation made it necessary for AEC to revise the original selling offer from 26¢ per thousand cubic feet upward to 45¢ per thousand cubic feet. The result was to complicate the situation further and to invalidate engineering and financial estimates based upon the original plan. Another discouraging element was introduced when it was found that AEC, which had originally agreed to pay for converting residential installation, withdrew its offer. The effect of this action would have been to place the financial burden of conversion upon individual families in the community. Since the entire Oak Ridge area was still property of the United States Government and since the inhabitants were tenants rather than householders, the interested engineers and bonding houses felt that the coal-to-gas conversion costs would act to discourage so many potential consumers that resultant revenues would be insufficient to pay construction, maintenance, and debt service expenses.

Thus far, we have considered only those units incorporated by private acts and confined completely within the boundaries of a single county. Unlike these, the Consolidated and the Calhoun-Charleston districts are two-county installations established by "public acts of local application," that is, acts involving more than one county. From a physical standpoint, the Consolidated Utility District has been an entity from its inception. However, since the Utility District Act of 1937 does not authorize the creation of districts in more than one county, it was necessary to create two districts, the Gray in Washington County and the Fordtown-Colonial Heights in Sullivan. Together, these included within their corporate limits the entire service area of the Consolidated system. From both a political and an administrative angle, this arrangement proved highly unsatisfactory. So, at the 1951 meeting of the General Assembly, commissioners of both districts and other interested persons were successful in obtaining legislative authority to combine the two districts.

In McMinn and Bradley counties, the development of a similar situation was dealt with (prior to construction of a system) by legislative creation of the Calhoun-Charleston Utility District.¹² This move was stimulated by the construction of a multi-million dollar paper mill in that area.

¹²*Public Acts*, 1953, ch. 45.

CORPORATE STATUS

The legal status of all five of these units approximates that of the standard utility district formed under the 1937 law. All are designated as "public corporations in perpetuity" but without the power of taxation. Each has exclusive functional jurisdiction within its service area. All, except the Oak Ridge Utility District, are styled as "municipalities"—the Oak Ridge District having been afforded (consciously or unconsciously) statutory recognition as a "municipal corporation." Nevertheless, practically no statutory grounds exist for interpreting any utility district charters in such a way as to place one utility district upon a higher "municipal plane" than another; and any court which would do so could be properly accused of legal "hairsplitting."

POWERS OF DISTRICTS

Each district charter contains a schedule of enumerated powers under which districts are allowed: (a) to incur debts; (b) to issue negotiable bonds; (c) to exercise the power of eminent domain; (d) to sue and be sued; (e) to have a seal; and (f) to fix, maintain, collect and revise rates and charges for service. With only trivial exceptions, these powers are set forth almost verbatim with the powers enumerated in the Utility District Act of 1937. In like manner, the powers granted the boards are parallel to companion material in the 1937 Act. An amendment to the Fountain City Act requires that "... the owner, tenant or occupant of each lot or parcel of land which abuts upon a street, alley or other public way containing a sanitary sewer ready for service . . . shall immediately connect . . . with such sanitary sewer. . . ."¹³ In all acts, public and private, applying to utility districts, this is the only provision compelling use of corporate facilities.

By specific provision (in most cases) or by implication, utility district boards have plenary power to appoint and remove all subordinate personnel. Generally, however, no definite positions or status of such positions are mentioned in charter acts. Exceptions to this are found in the Consolidated and Calhoun-Charleston acts where specific mention is made of a general manager and an attorney and where employment of persons related to any board members within the third degree of consanguinity or affinity is forbidden.¹⁴

The texts of all types of utility district charters imply that certain records are to be kept. At a minimum all districts maintain the "minutes" of commissioners' meetings, customers' accounts, and other fiscal

data and information sufficient to compile required annual financial reports. Consolidated and Calhoun-Charleston district charters both require an annual financial report identical to that required by the 1937 Act; Rock Gardens, Oak Ridge, and Fountain City districts must be audited annually by a certified public accountant. In all charters except Consolidated's, board minutes are expressly designated as public records open to inspection. However, it is presumed that this omission was an unintentional legislative slip and that upon request the records of that district would be produced as quickly as those of any other unit.

Fountain City's charter requires that bond issues be authorized by referendum, but in all other districts the board has the power to authorize bond issues. In all five of these districts, bond issues are authorized to run for forty years and interest on such bonds may not exceed 6 per cent. Table 4 contains pertinent information on the number, method of appointment and removal, terms of office, and qualifications of commissioners.

None of the districts is subject to the jurisdiction of the State Public Service Commission. However, the original unamended Fountain City Act did provide for regulation by that body. This feature was eliminated by amendment in 1949.¹⁵ In all other respects these districts conformed to the provisions laid down in the Utility District Act of 1937.

CONTROLS APPLYING TO ALL UTILITY DISTRICTS

Without exception, all utility districts are by charter brought under the Uniform Negotiable Instruments Act, and the provisions of Tennessee's general eminent domain statutes.¹⁶ The Oak Ridge and Fountain City charters specifically place these two corporations under the Ouster Law. On the basis of a court decision, the Ouster Law can be applied to all utility districts.¹⁷ The general charter granted by the Utility District Act of 1937 and all special utility district charters are written so as to bring all of these units within the jurisdiction of the State Department of Health.

SUPERVISION BY THE DEPARTMENT OF HEALTH

Statutory authorization. The 1937 Act and all special legislation establishing utility districts outline a formula as follows: "... nothing

¹³*Private Acts*, 1949, ch. 831.

¹⁴*Tenn. Off. Code Anno.*, secs. 47-101-47-706, 55-101-55-102, 23-1401-23-1512.

¹⁵*First Suburban Water Utility District v. McCaless*, 177 Tenn. (13 Beeler) 128; 146 S. W. (2d) 948. Provisions of the Ouster Law are found in *Tenn. Off. Code Anno.*, secs. 8-2701-8-2726.

¹⁶*Private Acts*, 1949, ch. 831.

¹⁷*Public Acts*, 1951, ch. 51; *Public Acts*, 1953, ch. 45.

TABLE 4
SELECTED INFORMATION ON UTILITY DISTRICTS
AUTHORIZED BY PRIVATE ACTS

Utility District	No. of Commis- sioners	Term	Method of Selection	Salary	Qualifi- cations	Removal
Fountain City	3	6 yrs.	Elected by Real Estate Owners	None	Resident Property Owners	Recall and Ouster Law
Rock Gardens	3	6 yrs.	Same as above	None	Eligible District Elector	Recall and Ouster Law
Oak Ridge	5	5 yrs.	Named in Act Self-per- petuating	\$50 Meet- ing per month	District Resident	Ouster Law
Consolidated Utility	7	4 yrs.	Same as above	None	Six must be Resident Property Owners	Ouster Law
Calhoun-Charleston Utility District	5	5 yrs.	Named in Act	None	Must be Resident Property Owners. No more than three from one county.	Ouster Law
1937 Utility District Act	3	4 yrs.	Named in Act Self-per- petuating	None	Residents	Ouster Law

in this chapter shall be construed as impairing the powers and duties of the department of health of this state."¹⁸ In actual practice this formula applies only to those utility districts which operate public water or sewerage systems; and, prior to 1945, the role of the Department of Health was in effect only advisory. In pursuance of this advisory power the Department did work out a system of rating public water supplies; but until 1945, no effective direct control could be legally exercised.

Under the 1945 law the Department was given the right to exercise general supervision over the construction, operation, and maintenance of public water supplies and sewerage systems throughout the state. By this law the Department is authorized to inspect and approve on the basis of its own standards such modifications, conditions, and regulations as may be required for the protection of the public health. Water supply systems which fail to comply with State Health Department

specifications and regulations can be ordered by that Department to correct the conditions within a specified time or be subject to fines ranging from \$10 to \$100 for each violation and each day of continued violation. Departmental action against water and sewerage utilities is reviewable by the chancery court of the county wherein such systems are located.¹⁹

In pursuance of this law the Department of Health has issued regulations defining the terms of the statute and setting forth proceedings of public water systems with respect to preliminary plans, water samples, complete plans, revision of plans, records and reports, supervision of operation, and other directions to render the public safe from impure water supplies or faulty sewage disposal systems. The Department has also issued a special regulation respecting the fluoridation of public water supplies. Although authority exists whereby violators of sanitary regulations may be brought into court, officials of the Department reveal that attempts are made to operate routinely on the basis of persuasion rather than coercion.

¹⁹*Public Acts*, 1945, ch. 52; *Tenn. Off. Code Anno.*, secs. 53-2001-53-2008.

¹⁸*Tenn. Off. Code Anno.*, sec. 6-2627.

C H A P T E R

4

Creation of the Utility District

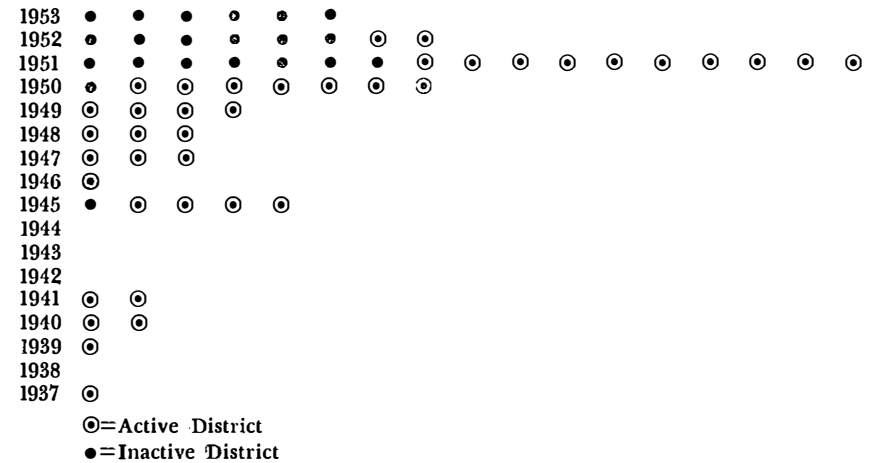
TENNESSEE UTILITY DISTRICTS IN MANY WAYS CONSTITUTE the most important type of special district now operating in the state. They have the greatest amount of political autonomy; they are financially most self-sufficient; they are the most indispensable of all special districts; they have shown the most rapid growth in the past five years and they present the most problems on the local governmental scene. Originally authorized primarily for local water supply purposes, districts are now given the power to undertake practically every municipal function except street construction.

In general, utility districts furnish water service only, but seven of them perform at least one function in lieu of, or in addition to, water supply. As of July, 1953, sixty-one active and inactive districts were legally in existence. Of thirty-nine active districts, twenty-seven were located in the urban fringe areas of incorporated cities and towns. A district's presence in the urban fringe is more often than not a manifestation of the policy of the nucleus city not to annex territory or to provide outside services. Eleven active districts served country towns where citizens decided against the organization of orthodox municipal corporations with taxing powers.¹

The latest category of active district to come into the picture is the natural gas distributing type. At present, only one of these, the Gibson County Utility District supplying the cities of Milan, Trenton, Dyer and Rutherford, is now in operation. Others have been created but are not yet active. Among these is the West Tennessee Utility District, a multi-county body, which will provide natural gas to the cities and towns of Dresden, Sharon, Greenfield, Gleason, McKenzie, Huntingdon, Hollow Rock, Bruceton, and Camden located in Benton, Carroll, Henry, and Weakley counties. Also in existence but not yet activated is a gas utility district in Oak Ridge. A multi-county district formed for water

¹Sneedville in Hancock County is an exception; it was recently incorporated, although the Sneedville Utility District continues to provide water service. First Suburban Utility District of Davidson County serves Berry Hill, an incorporated town. Belle Meade, another incorporated community, receives its water from Nashville Suburban Utility District.

FIGURE I—UTILITY DISTRICTS IN TENNESSEE, NUMBER ESTABLISHED YEARLY TO JULY, 1953



Source: Files of the county court clerk, appropriate counties. Files of the Tennessee Department of Public Health, Division of Sanitary Engineering, Nashville, 1953.

supply purposes is the Calhoun-Charleston Utility District in McMinn and Bradley counties.

Second only to housing authorities in the amount of invested capital, utility districts loom much larger than any other type of district on the horizon of local government in Tennessee. They are more independent than any other type of special district in the state. Both soil conservation districts and housing authorities are indirectly beholden to the federal government for services and contributions in cash and in kind. Their charters are drawn especially to facilitate such assistance. But, except for several isolated cases involving utility district acceptance of federal loans and services for planning and other purposes, these bodies have been neither subsidized, supervised, nor regulated by federal or state administrative machinery. Utility districts are even more independent than special school districts whose operations are closely overseen by the Tennessee Department of Education and whose coffers are regularly replenished by both federal and state subsidies.

Furthermore, as matters now stand, utility district commissioners are nearly a law unto themselves. They have no legal obligations to the county courts within whose jurisdictions they are formed or to the boards of mayor and aldermen of the cities and towns whose borders

TABLE 5

UTILITY DISTRICTS IN TENNESSEE IN ACTIVE STATUS

District	County Where Located	Year Established	Year of Activation
Bloomington	Sullivan	1949	1950
Blountville	Sullivan	1945	1947
Bulls Gap	Hawkins	1947	1948
Carderview	Johnson	1948	1951
Church Hill	Hawkins	1948	1949
Claiborne County	Claiborne	1946	1949
Consolidated	Sullivan-Washington	1950	1951
Daisy-Soddy-			
Falling Water	Hamilton	1945	1947
East Brainerd	Hamilton	1940	1940
East Kingsport	Sullivan	1951	1952
East Union	Madison	1952	1953
Fall Branch	Washington	1950	1951
First Anderson	Anderson	1951	1951
First Carter	Carter	1950	1951
First Suburban	Davidson	1937	1937
Fountain City	Knox	1945	1951
Gibson County	Gibson	1951	1953
Hendersonville	Sumner	1950	1951
Hixson	Hamilton	1941	1944
Jackson Suburban	Madison	1950	1951
Kingsport-			
Long Island	Sullivan	1948	1949
Lookout Valley	Hamilton	1945	—
Madison Suburban	Davidson	1939	1940
Memphis Suburban	Shelby	1949	1950
Milligan	Carter	1951	1953
Nashville Suburban	Davidson	1941	1941
New Providence	Montgomery	1951	1952
North Johnson City	Washington	1951	1953
North Kingsport	Sullivan	1950	1950
Old Hickory	Davidson	1951	1952
Piney Flats	Sullivan	1951	1952
Red Bank	Hamilton	1940	—
Sneedville	Hancock	1951	1952
South Bristol-			
Weaver Pike	Sullivan	1950	1952
South Jackson	Madison	1952	1953
Sullivan Gardens	Sullivan	1949	1950
Surgoinsville	Hawkins	1951	1952
Walden's Ridge	Hamilton	1947	1952
Whitehaven	Shelby	1949	1950

they abut, or to the citizens of their own bodies corporate and politic. Probably it is their independence which makes utility districts the most prolific breeders of problems and, therefore, potentially of greatest interest to the student of local government. At the same time, these districts in many cases have been forced into existence by the insistent demand for a public water supply and it appears that this trend will continue.

TABLE 6

DISTRICTS PROVIDING SERVICES IN ADDITION TO OR IN LIEU OF WATER SUPPLY, 1953

Active Utility District	Water Supply	Fire Pro- tection	Sewer- age Col- lection	Garbage Col- lection	Street Light- ing	Natural Gas Dis- tribution
Claiborne						
County	Yes	Yes	No	No	No	No
Fountain City						
Sanitary District	Yes	No	Yes	No	No	No
Gibson						
County	No	No	No	No	No	Yes
Memphis						
Suburban	Yes	Yes	No	No	No	No
Old						
Hickory	Yes	Yes	Yes	Yes	Yes	No
Red Bank	No	No	Yes	No	No	No
Whitehaven	Yes	Yes	No	No	No	No

TABLE 7

UTILITY DISTRICTS IN TENNESSEE IN INACTIVE STATUS

District	County Where Located	Year Established	Remarks
Bristol-Bluff City	Sullivan	—	Petition filed, 1952, not granted
Charleston-Calhoun	Bradley-McMinn	1953	By act of Legislature
Dixie-Lee	Loudon	1952	Activating
Dover	Stewart	1945	Completely inactive
Eagleton (fire)	Blount	1951	Completely inactive
Ellendale	Shelby	1953	—
Friendsville	Blount	1951	—
Greenback	Loudon	1952	—
Hampton	Carter	1952	—
Holston	Sullivan	1952	—
Jacksboro	Campbell	1951	Activating
Jasper	Marion	1950	—
Oak Ridge (gas)	Anderson	1951	May activate
Plateau	Morgan	1952	May activate
Putnam County	Putnam	1951	Completely inactive
Raleigh	Shelby	1953	Activating
Rock Gardens (fire)	Blount	1947	Completely inactive
St. Bethlehem	Montgomery	1953	Activating
Tri-City	Sullivan	1951	—
Watauga	Carter	1951	Completely inactive
West Tennessee (gas)	Carroll-Weakley	1953	Activating
Whitwell	Marion	1952	—

The first utility districts were created in Davidson County in Middle Tennessee. However, since World War II utility district development has been concentrated largely in upper East Tennessee in the Hawkins, Sullivan, Washington, and Carter county area. Of the thirty-nine active districts extant, twenty-seven are located in East Tennessee, of which nine are in Sullivan County with seven more being distributed among Carter, Hawkins, and Washington counties. Next to Sullivan, Hamilton County (Chattanooga) has the largest concentration of utility districts. Middle Tennessee districts are largely clustered around Nashville; of West Tennessee communities, Jackson has the greatest number of districts located in her fringe areas. Fifteen of the inactive utility districts are located in East Tennessee; four, in Middle; and three, in West Tennessee.

Several factors are probably responsible for the almost phenomenal utility district growth in East Tennessee. In the first place, Tennessee's greatest increases in population in recent years have occurred in the eastern portion of the state. Second, although there has been a basic desire on the part of citizens for better water supplies, the active work of several local engineering firms and bond houses has centered largely in upper East Tennessee. Third, communities located outside of the corporate limits of Bristol, Elizabethton, Kingsport, and Johnson City have been denied access to established municipal systems—either because those cities refused to extend the service or because the prospect of annexation to the city involved seemed odious. And fourth, certain communities such as those incorporated into the Bulls Gap, Church Hill, Consolidated, Fall Branch, and Surgoinsville districts were so situated that nothing but a new water system would have provided an answer to community problems. It is true that these unincorporated population centers could have formed regular municipal corporations, but citizens generally objected to the prospect of paying municipal taxes. Besides, it was much easier to form a utility district.

With these general facts in mind, one turns attention to more specific matters. How are utility districts promoted? In what sort of political activity do they engage? What are some of the stories back of them? How do they perform their functions? How are they financed? How do their systems and service rates compare with the systems and rates in Tennessee cities and towns?

THE PROMOTIONAL ASPECT

Before World War II, with the exception of the three districts in the

Nashville area and the East Brainerd and Hixson units in Hamilton County, few communities availed themselves of the opportunities presented by the Utility District Act. This relative lack of activity has been attributed to the fact that few people knew about the act or its possibilities. Then, during World War II, districts could not be formed because the bond attorneys would not approve a district issue where contractors could not obtain materials. And before bonds are issued, it is necessary for an engineer to certify that all is in readiness to put the system "into the ground." Thus, no utility districts were formed from 1941 to 1944.

With the end of the war in 1945 the East Tennessee districts in Blountville and Daisy-Soddy-Falling Water were created, and a district was established in Dover in Middle Tennessee. In 1946 the Claiborne County district was formed, but it was not placed in operation until 1949. Moreover, 1946 was not a good year because the market was fluctuating "wildly," and since utility district revenue bonds are considered to be of a speculative nature, few were sold under the then-prevailing market conditions. After 1946 the rate of utility district growth accelerated until the peak year of 1951. Quite a number of districts were formed in 1953, but unsettled market conditions in the spring of that year kept many of these new units from activating. However, since November 1952, the marketability of utility district bond issues has improved.

In Middle and West Tennessee the creation of utility districts seems to have proceeded at a more or less moderate rate, sponsored and initiated in the majority of instances by the citizens themselves without undue promotional activity on the part of the engineering firms, bond houses, or real estate agencies. This is in contrast to the history of district development in upper East Tennessee where the majority of these bodies were initiated by outside interests.

The initiators of this activity, especially in Sullivan, Washington, and Carter counties, were for the most part either selected bond houses or engineering firms who took it upon themselves to promote the community moves necessary to form utility districts. It should be understood that nothing said here is by way of unfavorable general criticism of specific bond houses or engineering firms. The law was there, the people needed the water, and these entrepreneurs were willing to provide the "know how." Undoubtedly, mistakes were made and there are certain districts which should never have been allowed to incorporate. However, some districts whose antecedents were equally unfavorable have survived despite initial handicaps. Other outside forces also

have had a decided effect upon the rapid development of utility districts in upper East Tennessee. Foremost among these are official health agencies at various governmental levels.

Some have thought that real estate people who wanted water for subdivisions have formed the primary group interested in district development. The writer has discovered, however, that engineering firms and bond houses play a much more active role than real estate people.

An example of engineering firm promotion is found in the following typical activities. Engineering firm X makes a large contribution to utility district development in one portion of the state. This organization has had so much experience in promoting, establishing, and constructing utility districts systems that planning, organizational, and executional phases of the task are thoroughly familiar to the firm. First, by inspection or field survey, engineers find an area which needs a public water supply. Various health departments are helpful in giving unofficial tips as to what communities need public water systems. Having found a fertile area, the engineer checks the population concentration, studies population trends, determines the sources of supply, and plans the tentative boundaries. If all of the factors involved seem favorable, he arranges for the necessary popular support and the execution of the appropriate documents needed to establish the district. The matter then passes into the hands of the county judge who receives the petition, arranges for prescribed notices and hearings, and, if all is in order to his satisfaction, officially decrees district establishment.

Next, it is up to the district to issue and market its bonds. More often than not, the groundwork for this step has already been laid by some investment house working in cooperation with the engineer so that the role of the district's commissioners in passing the necessary bond resolution is but a mere *pro forma* proceeding. After it appears reasonably certain that the district will have financial backing, the engineer draws up final plans and specifications and submits them to the Division of Sanitary Engineering of the Tennessee Department of Public Health for final approval as required by law. At last, the engineer makes his major and final contribution by supervising the construction of the system itself.

One type of bond house promotion is exemplified by the activities of the Investment Y Company. This company is enthusiastic about the promotion of utility districts and sees them as a useful enterprise for the community involved. The installation of a public water system is regarded as a prime means of meeting the needs and demands for urbani-

zation and industrialization which have been coming from the various unincorporated areas in certain counties.

At the initial stage of district promotion, Y or any other bond house agent may, like engineering consultants, search for communities with no adequate water supply. It is also imperative that such communities have an urban or semi-urban concentration of houses. Travelling through "promotional" territory, the bond man is alert to notice if there are wells, cisterns, and pumps behind individual houses or clusters of houses in a given area. If such signs appear, he makes appropriate inquiries at filling stations, general stores, and other community gathering places. If his queries receive favorable responses and the people have a water supply problem and are well disposed toward the idea of a regular water system, the bond man seeks out the leaders of the community and enlists their support. If there is no leadership of consequence, the bond house representative with as much caution as necessary begins the promotional campaign himself by making calls and holding meetings until sufficient support for the project appears to have been gained.

At this point one should point out that upon discovery of potential utility district territory, the bond promoter must call in a qualified engineer to appraise the situation and make the necessary surveys and figure cost estimates to determine whether from a physical and financial point of view the construction of a system would be feasible. Assuming the engineering report is favorable and that costs are not prohibitive, the bond man working closely with the engineer prepares the necessary documents, circulates the petitions to be presented to the county judge, chooses the commissioners, maps out the territory to be included within the district, seeks necessary legal advice, and when ready brings proceedings before the county judge who establishes the district. There are, of course, instances where districts are formed without the direct influence of outside interests at the initial stages.

Having arranged for the issuance of the bonds, the bond houses frequently form syndicates to dispose of the bonds. In the case of utility district financing, most of these firms act both as fiscal agents in arranging issuance of securities and as sole purchasers of issues.

PROMOTION BY INDIVIDUALS AND OTHER INTERESTS

Besides engineers and bond house people, private persons also for various reasons have taken the initiative in promoting utility districts.

Thus far, three categories of utility district promotion have been discussed. No discussion of utility districts in Tennessee would be com-

plete without covering a fourth type of promotion, i.e., district initiation by private water companies. Of the thirty-nine active districts operating today, the following now embrace either all or a part of a former privately owned water system:

Bloomington	Madison Suburban
Claiborne County	Memphis Suburban
Consolidated	Nashville Suburban
East Kingsport	North Kingsport
First Anderson	Old Hickory
First Suburban	Piney Flats
Fountain City	

Of these thirteen, three districts (First Anderson, First Suburban, and Old Hickory) are known to have been promoted directly or indirectly for the profit or the convenience of the profit or the convenience of the private interest involved. Of the twenty-two districts in inactive status, two which will probably be placed in operation—the Hampton and Jacksboro bodies—are to be based primarily on private systems.

A significant set of data is shown in Table 8. It is to be regretted that neither the Tennessee Railroad and Public Utilities Commission nor the Tennessee State Planning Commission published water rates for the Radnor Water Company (which was succeeded by the First Suburban Utility District of Davidson County) and the Ore Bank Water Company. Nevertheless, Table 8 shows rather clearly that, in the limited number of cases indicated, water rates increased when ownership of a system passed from private control into the hands of a utility district.

Because of the nature of the Utility District Act, one hesitates to be too critical of the average promotional plan outlined above except in cases where districts are used to subsidize an established private operation when no additional benefits are passed on to the consumer. Under any governmental activity which utilizes revenue bonds, it is understood that the "benefits received" principle will legitimately function. But it appears that this principle is violated when a district is established and bonds are issued solely for the purpose of taking the private concern out from under the jurisdiction of the Tennessee Railroad and Public Utilities Commission. The General Assembly should certainly step in and take measures to prevent the Utility District Act from being used for such purposes.

BOND ISSUES

Since utility districts have no taxing power, it is mandatory for them to raise the funds for building systems by some other means. While

TABLE 8

SELECTED DOMESTIC WATER RATE COMPARISONS

First Rate Set by Utility District *Vis à Vis*
Last Rate Charged by Private Water System Acquired by Same District

District and Companion Water Company	Comparative Monthly Charges		
	Minimum or 2,500 gals.	5,000 gals.	10,000 gals.
First Anderson	\$2.00	\$3.00	\$5.30
South Clinton Water Co.	1.00	2.72	5.60
Fountain City	1.86	2.22	3.72
Knox County Water Co.	1.60	1.96	3.46
North Kingsport	3.00	5.25	9.00
Tennava Water Co.	1.80	3.30	6.30
Old Hickory	1.50	1.80	3.30
Old Hickory (du Pont)	"Water service being included as part of the rent"		

federal relief programs were still in effect, utility districts were eligible as municipal corporations for grants and assistance. Both the East Brainerd and Red Bank systems were constructed in considerable part through federal subsidies. Contributions to East Brainerd amounted to approximately \$113,886 or about 14 per cent of the total plant cost. Federal aid to Red Bank totalled \$339,505 or 77 per cent of that district's sewer plant value.

With these exceptions all other utility districts in the state have had to rely entirely upon private lending agencies for financial backing. Bonds of utility districts may be issued by simple majority vote of the board of commissioners; no popular referendum is necessary. However, according to the Fountain City Sanitary District charter, bonds may not be issued without the approval of the qualified voters of that jurisdiction. The Utility District Act places only two major limitations upon bond issues: (a) that interest rates shall not exceed 6 per cent, and (b) that the life of district revenue bonds shall not exceed forty years. In his research on this project the writer found no violations of these mandates.

Practically all utility district bonds are issued on a serial basis with a one- to five-year deferment period.² This allows time for the district to "get on its feet" financially before the necessity of making payments on the principal arises. Of eighteen issues surveyed at random, six were for forty years, four were from thirty-five to thirty years in duration, two were for twenty-seven and twenty-six years respectively, and six were set up for periods ranging from twenty-five down to twenty years. There

²Financial statements; *Private Acts*, 1945, ch. 176.

was no apparent consistent correlation between lower interest rates and shorter amortization periods. However, the twenty-year issue made by the Jackson Suburban Utility District carried 3 per cent interest, the lowest utility district interest rate recorded. Bond house officials say generally that issues on water systems which extend much beyond the twenty-five to thirty year amortization period are apt to carry higher interest rates. Practically all district issues are callable after ten years. A premium rate which is scheduled to diminish as the time after the callable date increases is usually appended to the call feature.

All Tennessee utility district securities provide that bond holders have a statutory first mortgage upon the district properties, such mortgage remaining in force until full payment of principal and interest has been made.

Restrictions upon the disposition of a utility district (found in agreements with bondholders) could work to the disadvantage of not only the district but also the nearby city. If, for example, Johnson City wished to embark upon the annexation of territory lying within the boundaries of the Milligan district, it would be difficult for the district to sell to Johnson City an appropriate portion of the district's system within the territory proposed to be annexed. The general characteristics of all utility district bond issues are shown in columns four and five of Table 9. To date, approximately \$15,274,000 have been invested in Tennessee utility district bonds of all types; of this amount \$13,000,000 has been to support water utilities, \$1,500,000 has been invested in gas, and \$1,057,000 has been invested for combined water and/or sewer issues. During the seventeen years of utility district operation, the largest single issue was the Gibson County gas district issue of \$1,500,000, which also is the maximum debt incurred by any utility district to date.

A survey and analysis were also made of debt service schedules of sixteen issues ranging in retirement length from twenty-two to forty years. According to authorities in the field of local debt administration, utility bond issue debt retirement schedules should be so planned that after allowances have been made for payment of necessary operating expenses, the principal and interest payments will reach a peak debt retirement year chosen as soon after the beginning of the debt service term as possible. From that point on to the end of the retirement period, principal and interest payments should be tailored to taper off as much as possible to the end of the debt service term. With such an arrangement, the utility district reaches the year of greatest debt service obligation as soon as possible and thus facilitates new financing of plant expansions if such a step is deemed advisable.

TABLE 9
CHARACTERISTICS OF UTILITY DISTRICT BOND ISSUES

<i>District and Year Activated</i>	<i>Bond House Arranging Issue</i>	<i>Estimated Amount of Bond Issue^a</i>	<i>Actual Amount of Bond Issue</i>	<i>Published Interest Rate of Issue (in percent)</i>
Bloomingtondale 1950	L. H. Ghormley & Co., Knoxville	\$ 325,000	\$ 425,000 ^b	4.00 ^b
Blountville 1947	W. N. Estes & Co., Nashville; Lucien L. Bailey & Co., Knoxville	210,000	275,000	3.00
Bulls Gap 1948	Lucien L. Bailey & Co., Knoxville	—	50,000	—
Carderview 1951	L. H. Ghormley & Co., Knoxville	67,614 ^b	78,000 ^c	3.75 ^c
Church Hill 1949	Lucien L. Bailey & Co., Knoxville	—	—	—
Claiborne County 1949	Fisher Hawes & Co., Knoxville; C. H. Little & Co., Knoxville	—	400,000	3.00
Consolidated 1951	Cumberland Securities Corp., Knoxville; Fisher Hawes & Co., Knoxville	—	511,000 ^b	3.75 ^b
Daisy-Soddy- Falling Water 1947	R. S. Nichols & Co., Chattanooga	150,000	378,000 ^c (debt 1952)	3.75 ^c
East Brainerd 1940	R. S. Nichols & Co., Chattanooga	—	40,000 (1940) 250,000 (1946) (refund) 244,000 (1950) 250,000 (1950)	4.25 — 3.25 3.25
East Kingsport 1952	Cumberland Securities Corp., Knoxville; Fisher Hawes & Co., Knoxville	350,000	390,000 ^b	3.75 ^b
East Union 1953	L. H. Ghormley & Co., Knoxville	300,000	260,000	4.00
Fall Branch 1951	Fisher Hawes & Co., Knoxville	—	107,000 ^b	3.75 ^b
First Anderson 1951	Fisher Hawes & Co., Knoxville	125,000	132,000 ^c	3.50 ^c
First Carter 1951	Lucien L. Bailey & Co., Knoxville; L. H. Ghormley & Co., Knoxville	500,000	425,000	—
First Suburban (Davidson) 1937	W. N. Estes & Co., Nashville	Not shown	160,000 ^a 65,000 (1947)	4.50 3.50
Fountain City 1951	Fisher Hawes & Co., Knoxville; Davidson & Co., Inc., Knoxville	—	467,000 ^c 960,000 (1952)	3.25 ^c 3.75
Gibson County 1953	Davidson & Co., Inc., Knoxville	1,700,000 ^a	1,500,000 ^c	4.90
Hendersonville 1951	—	—	—	—

TABLE 9 (cont.)

CHARACTERISTICS OF UTILITY DISTRICT BOND ISSUES

<i>District and Year Activated</i>	<i>Bond House Arranging Issue</i>	<i>Estimated Amount of Bond Issue^a</i>	<i>Actual Amount of Bond Issue</i>	<i>Published Interest Rate of Issue (in per cent)</i>
Hixson 1944	R. S. Nichols & Co., Chattanooga	100,000	150,000 (1944) ^c 3.75 ^c 125,000 (1945) 3.75 75,000 (1947) 3.75 154,000 (1952) 4.00 (refunded) 71,000 (1952) 3.75 75,000 3.00	
Jackson Suburban 1951	C. H. Little & Co., Jackson; W. N. Estes & Co., Nashville	Not shown	75,000	3.00
Kingsport-Long Island 1949	Lucien L. Bailey & Co., Knoxville; L. H. Ghormley & Co., Knoxville	100,000	275,000 ^f	4.00 ^f
Lookout Valley 1940	R. S. Nichols & Co., Chattanooga	115,000	—	—
Madison Suburban 1940	W. N. Estes & Co., Nashville	Not shown	200,000 ^d 100,000 227,000 (1949)	4.00 3.00 3.50
Memphis Suburban 1950	Wendell Spragius, Memphis	Not shown	600,000 (serial) ^e (sold at 106.75) 500,000 (term) (2.10-3.10%) 280,000 (1952)	3.50 ^e 3.75
Milligan 1953	L. H. Ghormley & Co., Knoxville	500,000	525,000 ^f	4.00 ^f
Nashville Suburban 1941	W. N. Estes & Co., Nashville	400,000	460,000 ^d 340,000 (1952)	3.50
New Providence 1952	W. N. Estes & Co., Nashville	225,000	325,000	3.50
North Johnson City 1953	Cumberland Securities Corp., Knoxville; Fisher Hawes & Co., Knoxville	—	985,000 ^f	4.00 ^f
North Kingsport 1950	L. H. Ghormley & Co., Knoxville	275,000	275,000 ^b	4.00 ^b
Old Hickory 1952	—	125,000 ^e	—	—
Piney Flats 1952	Investment Securities Co., Bristol, Virginia	125,000	185,000 ^b	3.75 ^b
Red Bank	R. S. Nichols & Co., Chattanooga	200,000	97,000 ^e (bonded debt, 1948) 172,000	4.93 ^c (estimated)
Sneedville 1952	—	—	—	4.00
South Bristol-Weaver Pike 1952	Investment Securities Co., Bristol, Virginia	150,000	130,000 ^b	3.50 ^b
South Jackson 1953	L. H. Ghormley & Co., Knoxville	500,000	550,000 ^f	4.50 ^f

TABLE 9 (cont.)

CHARACTERISTICS OF UTILITY DISTRICT BOND ISSUES

<i>District and Year Activated</i>	<i>Bond House Arranging Issue</i>	<i>Estimated Amount of Bond Issue^a</i>	<i>Actual Amount of Bond Issue</i>	<i>Published Interest Rate of Issue (in per cent)</i>
Sullivan Gardens 1950	L. H. Ghormley & Co., Knoxville	225,000	250,000 ^b	4.00 ^b
Surgoinsville 1952	Magnus & Co., Cincinnati, Ohio	—	167,000	3.75
Walden's Ridge 1952	R. S. Nichols & Co., Chattanooga	160,000	379,000 ^b	—
Whitehaven 1950	Leftwich & Ross, Memphis	Not shown	550,000	3.00

^aFiles of the county court clerk, appropriate county.^bFiles of King Engineering Company, Kingsport.^cFinancial statements of the district, year indicated.^dCommunity Services Commission for Davidson County and the City of Nashville, *A Future for Nashville* (Nashville) 1952, pp. 50-52.^eEngineering Report by Barnard and Burk, Baton Rouge, Louisiana.^fProspectus or preliminary circular announcing bond issues.^gH. B. Richards, "Organization of Old Hickory Utility District," *Journal American Water Works Association*, 44, (April, 1952), p. 330.^hTennessee State Planning Commission, State Planning Division, *Public Works Planning Newsletter*, V. 8, (February, 1952) p. 6.

This plan was carried out fairly closely in the Milligan and Carder-view issues. Five of the amortization schedules examined—those for the East Kingsport, Fall Branch, North Kingsport, Piney Flats, and South Bristol-Weaver Pike districts—tended to remain at about the same level year by year during the entire life of the issue. A third pattern was discernible from the Gibson County, North Johnson City, and Consolidated schedules. Debt service requirements for these three issues reached a series of two or three moderate but definite peaks, usually with the maximum one first and the others following in descending order. The peaks were most noticeable in the Gibson County issue. Aside from the peaks, annual debt service requirements for these three tended to be fairly even. In the remaining seven issues floated by Bloomingdale, Blountville, First Anderson, Fountain City, Kingsport-Long Island, South Jackson, and Sullivan Gardens districts, debt retirement payments remained fairly level throughout the entire term until the last and final payment. The latter increased considerably (from two to five times the amount of other normal annual requirements) and varied from 13 per cent of the gross issue for the South Jackson district to approximately 45 per cent of the gross Fountain City issue.

Although debt service plans which provide for almost equal annual payments or annual payments arranged with two or three moderate and reasonably spaced peak payments may not be as satisfactory as the plan

used by the Milligan and Carderview districts, they are definitely preferable to amortization plans with large terminal maturities. Schedules which plan final payments amounting to over one-third of the total issue or several times the average debt service requirement jeopardize the district's financial security.

Before discussing the criteria for issuing bonds, the writer should say a word or two about refunding issues. East Brainerd, Hixson, and Kingsport-Long Island are the only districts coming to the writer's attention which have made refunding issues. The former district took that step in 1950, a low interest rate year, and refunded \$244,000 of a \$250,000 issue (1946) for 3.25 per cent. Since the interest rate on the 1946 issue was somewhat higher than the interest rate of the refunding issue, the move can be presumed to be a beneficial one. The details of Hixson's refunding action are not known except for the fact that the published interest rate of the refunding issue is the same as that of the original issue. In this case the motivation may have been either a plan to spread the issue over a longer period—a questionable practice—or it may have been the expectation that the new issue would sell at a premium. It is reported that the Kingsport-Long Island Utility District recently was forced to negotiate a refunding issue of bonds having a longer maturity than the initial issue.

The writer discussed with investment house representatives the question of what criteria were used in determining whether a proposed water bond issue was safe financially. One interviewee said that a utility district bond issue of \$750 per customer or per tap would give an "absolutely sound" financial basis. Another thought that the amount of bond issue per customer tap should be no more than \$600. He also intimated that issues should be kept to a minimum of \$200,000. More recently a Knoxville bond broker declared that (a) districts should have at least three to four hundred potential customers, (b) boundaries should be so staked out that eventually a district would have a population of from 3,000 to 3,500 people, and (c) a \$500 bond issue per tap customer was the maximum safe limit.

Table 10 shows the extent to which these criteria have been followed in actual practice. Using the latest listings of customers per utility district, except where indicated otherwise, it was found that thirteen out of the thirty-five water districts for which information was available issued bonds at a ratio of more than \$750 per customer tap, and twenty-one out of thirty-five were financed on a basis of more than \$500-\$600 per customer tap. If East Brainerd, which was financed largely by federal grants, is excluded, it will be noted that bonds were issued on

TABLE 10

DISPARITIES BETWEEN ESTIMATES AND ACTUAL BOND ISSUES, ALSO BOND ISSUE DOLLARS PER CUSTOMER, BY TENNESSEE UTILITY DISTRICTS

<i>District and Year Activated</i>	<i>Amount of Initial Bond Issue (in Thousands of Dollars)</i>	<i>Increase of Actual Issue Over Estimated Issue*</i>	<i>Per Cent Increase</i>	<i>Number of Customers (Taps) 1953*</i>	<i>Bond Issue Dollars per Customer</i>
Bloomingtondale 1950	\$ 425 ^b	\$ 100	30.7	886	\$ 479
Blountville 1947	275	65	50.9	250 (1947)	1,100
Bulls Gap 1947	50	—	—	400	125
Carderview 1951	78 ^c	10.3	15.4	125 ^b	624
Church Hill 1949	—	—	—	700	—
Claiborne County 1949	400	—	—	415	964
Consolidated 1951	511 ^b	—	—	800	638
Daisy-Soddy- Falling Water 1947	378	228	152.0	1,250	302
East Brainerd 1940	40	—	—	237 (1940)	169
East Kingsport 1952	390 ^b	40	11.4	450	866
East Union	260	40 (under)	—	300	866
Fall Branch 1951	107 ^b	—	—	130	823
First Anderson 1951	132 ^d	7	5.6	500 ^a	264
First Carter 1951	425	75 (under)	—	410	1,036
First Suburban 1937	160	Petition missing	—	750 ^e (1937)	231
Fountain City 1951	1,427 ^c	—	—	4,181 ^c	341
Gibson County 1953 (gas)	1,500 ^c	200 (under)	—	—	—
Hendersonville 1951	—	—	—	125	—
Hixson 1944	150	50	50.0	2,194	68
Jackson Suburban 1951	75 ^c	Not shown	—	85	882
Kingsport-Long Island 1949	275 ^c	175	175.0	290	948
Lookout Valley	115 ^a (estimated)	—	—	625	184
Madison Suburban 1940	300 ^f	Petition missing	—	1,475 (1940)	203

TABLE 10 (cont.)

DISPARITIES BETWEEN ESTIMATES AND ACTUAL BOND ISSUES, ALSO BOND ISSUE DOLLARS PER CUSTOMER, BY TENNESSEE UTILITY DISTRICTS

District and Year Activated	Amount of Initial Bond Issue (in Thousands of Dollars)	Increase of Actual Issue Over Estimated Issue ^a	Per Cent Increase	Number of Customers (Taps) 1953 ^a	Bond Issue Dollars per Customer
Memphis Suburban 1950	1,100 ^a	Not shown	—	2,360	466
Milligan 1953	525	25	5.0	700	750
Nashville Suburban 1941	460 ^c	60	15.0	3,300 ^c (1941)	139
New Providence 1952	325	100	44.4	650	500
North Johnson City 1953	985 ^e	—	—	500 ^e	1,970
North Kingsport 1950	275 ^b	None	—	425	647
Old Hickory 1952	125 ^e	None	—	1,170	—
Piney Flats 1952	185 ^e	60	48.0	200	925
Red Bank	97 ^d	103 (under)	—	—	—
Sneedville 1952	172	—	—	145	1,186
South Bristol-Weaver Pike 1952	130 ^b	20 (under)	—	158	823
South Jackson 1953	550 ^e	50	10.0	765 ^e	719
Sullivan Gardens 1950	250 ^b	25	11.0	350	714
Surgoinsville 1952	167	—	—	60 ^b	2,983
Walden's Ridge 1952	379	219	136.8	450	842
Whitehaven 1950	550	Not shown	—	1,230	447

^aFiles of the county court clerk, appropriate county.^bFiles of the King Engineering Co., Kingsport.^cProspectus or preliminary circular announcing bond issue.^dFinancial statement.^eTennessee State Planning Commission; *Sanitary Service Charges in Tennessee 1953*, Publication Number 251 (Nashville: 1953), pp. 74-80, *passim*.^fCommunity Services Commission for Davidson County and the City of Nashville, *A Future for Nashville* (Nashville: 1952), p. 46.^gH. B. Richards, "Organization of Old Hickory Utility District," *Journal American Water Works Association*, 44 (April, 1952) 327-330.^hFiles of the Tennessee Department of Public Health, Nashville.ⁱTennessee State Planning Commission, *Public Works Planning Newsletter*, V (February, 1952), 6.

bases which ranged from \$2,783 per customer in the case of Surgoinsville to \$68 per customer in the Hixson district. It appears, therefore, that the bond issue dollar per customer ratio as applied to utility district issues has generally been honored in the breach more than otherwise.

Another noteworthy fact to be derived from Table 10 is that of the thirty-five issues there were ten in which the actual bonds sold amounted to \$40,000 more than the estimated figure on original petition documents. Errors in estimating issues varied from 5 per cent on the Milligan issue to 175 per cent on the Kingsport-Long Island issue. Since it has not been possible to make a complete study of the financial histories of all these districts, it would not be fitting to draw a "bill of indictment" against the various companies responsible. Factors of time, increasing costs, unknown geological conditions, and acts of God in certain instances may have made departures from original estimates a prime necessity. However, when a cost estimate is exceeded by 175, 152, or 136.8 per cent (as occurred in the cases of the original Kingsport-Long Island, Daisy-Soddy, and Walden's Ridge issues), it is reasonable to assume that something about them was radically wrong.

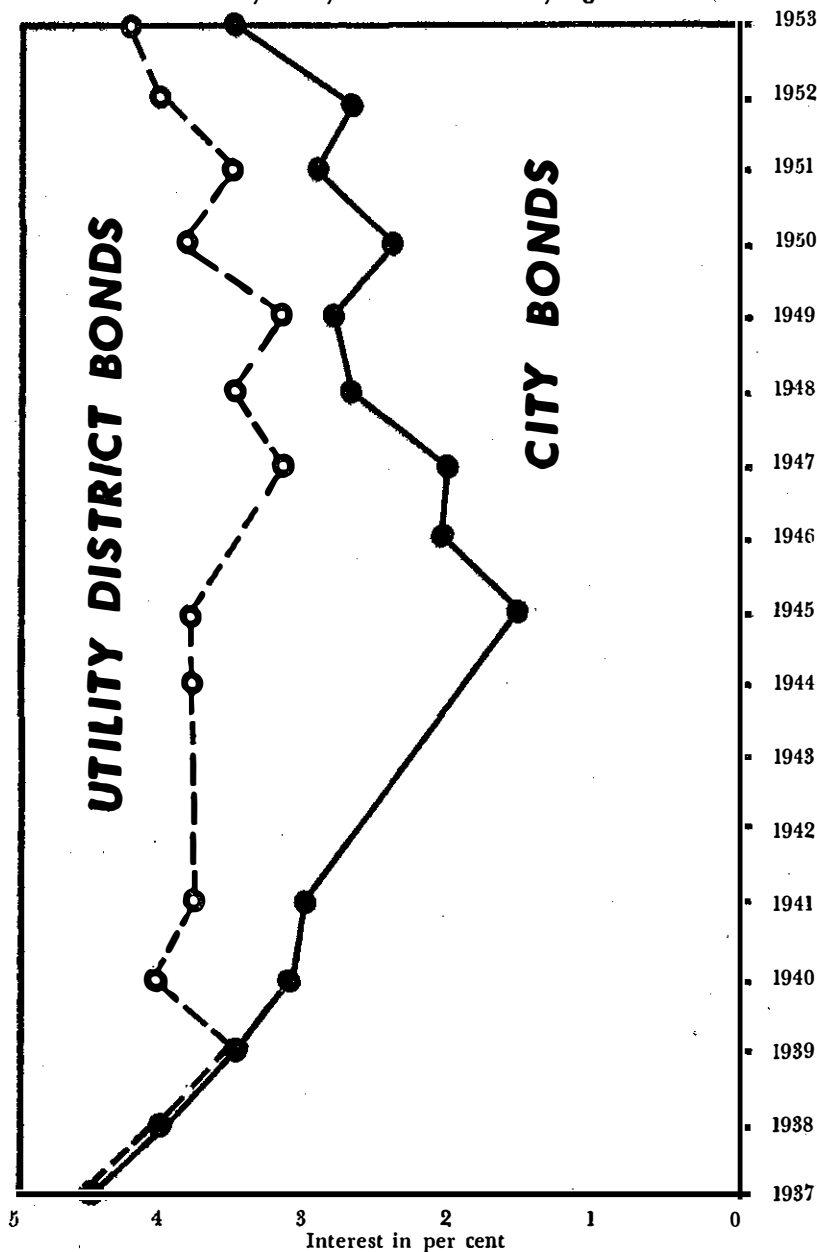
Interest rates paid on district securities have not shown too broad variations in the past seventeen years. Referring to Figure II which shows interest rate averages for about forty utility issues from 1937 to 1953, one sees that all variations have not exceeded a 1.5 per cent range. The highest rate of interest at 4.93 per cent was paid on Red Bank sewer bonds. Gibson County gas bond issues in 1953 brought 4.9 per cent. On water district securities, the highest rate of 4.5 per cent was paid back in 1937 on the initial First Suburban issue and in 1953 by the South Jackson district on its first financial venture. The lowest interest rate of 3.0 per cent was paid by Madison Suburban Utility District on part of its 1939 series, the Claiborne County district on its 1949 issue, and Jackson Suburban on its 1951 bonds. It is not known at what price above or below par the Madison and South Jackson issues were sold, but the Claiborne County district reported that \$60,000 was paid for handling its \$400,000 issue. The First Anderson Utility District paid a total cost of \$23,000 or 17.42 per cent on its \$132,000 in waterworks revenue bonds.³ In these cases, therefore, the published interest rates are completely unrealistic insofar as bond issue costs are concerned.

At this point it might be well to discuss briefly the question of bond house fees. Naturally, there are few areas of inquiry which are cloaked in as much secrecy, but the question of what a securities firm gets or

³Elliott D. Adams, "Audit Report, First Utility District of Anderson County, Tennessee," June 30, 1952.

FIGURE II—REVENUE BOND MEAN INTEREST RATE TRENDS, 1937-1953

Twenty-Four Tennessee Cities with Fifty-One Issues and
Thirty Utility Districts with Thirty-Eight Issues



should get for its services as fiscal agent and/or (as usual in the case of utility district issues) as purchaser of a district issue is of vital interest to taxpayers and local officials. In a recent series of technical discussion sessions conducted by the Tennessee Municipal Finance Officers Association, about a half dozen queries on this point were made by municipal officials of one of the speakers on the program. The speaker, a representative of one of Tennessee's leading investment houses, quoted the figure of 1 to 1.5 per cent of the gross issue as a reasonable fee for bond house services in connection with the purchase of an issue. It has been found, however, in checking over preliminary reports of engineering firms that around 10 per cent of the gross proposed bond issue amount is usually allowed for "financing."

Selling prices on six other issues, besides Claiborne, were obtained by the writer. Moreover, he found that nearly all of them amounted to approximately 10 rather than 1 per cent of the gross bond issue. For instance, the East Union, Sneedville, and Surgoinsville bonds sold at 90; this meant that the districts were required to pay \$26,000, \$17,200, and \$16,700 respectively over and above the published bond interest rates. One of the lowest financing costs was found in the New Providence issue which amounted to \$9,473.75 or about 2.9 per cent on the gross issue of \$325,000. Fountain City also did rather well on its water issue of \$467,000 at 3.25 per cent in 1951 and its water and sewer issue of \$960,000 at 3.75 per cent in 1952. These figures represent merely a random sample of the total. It can be seen from them, however, that the 1 to 1.5 per cent charge on the gross issue estimated by the one authority represents only a small fraction of the total cost of financing a utility district bond issue.

Because of the limited number of available financial statements, it is not possible to any great extent to integrate financial data in such a way as to show definite effects of these financing costs on the individual utility districts. It seems clear, however, that, in the event of another economic slump, some districts and some district bond-holders may wish that there had been a statutory requirement making it mandatory for utility district securities to be sold only under the conditions of competitive bidding.

C H A P T E R

5

The Utility District in Action

SERVICE RATES

TABLE 11 SHOWS THE 1953 DOMESTIC RATES FOR 2,500 gallons of water in practically all of Tennessee's utility districts. Commercial and industrial rates were not considered because, with few exceptions, utility district water customers were in the domestic class, and only seven out of thirty-seven districts had more than one rate category. The arbitrary figure of 2,500 gallons was chosen because it represents a monthly consumption of slightly over eighty gallons per day or about twenty gallons more per day per family than is usually allowed in the average engineering report. It is also the basis upon which the Tennessee State Planning Commission set up tables showing minimum charges in its publication, *Sanitary Service Charges in Tennessee*. An allowance of eighty gallons per day, of course, is not realistic as a basis for industrial or commercial rates.

TABLE 11
COMPARATIVE MONTHLY WATER CHARGES, 1953^a
Tennessee Utility Districts, Arranged In Increasing Order

District	Domestic Monthly Charge for 2,500 Gallons, or Minimum Rate	Commercial and Industrial Rates	Remarks
Nashville Suburban	\$1.10	None	----
Old Hickory	1.50	Commercial: \$2.00 for 5,000 gallons; next 4,000 gallons: 30¢ per 1,000; next 20,000 gallons: 25¢ per 1,000; next 30,000 gallons: per 1,000: 20¢, balance 15¢ per 1,000.	Rate set in 1951.
East Brainerd	1.60	\$6.25 per month basic charge for 25,000 gallons; balance: 25¢ per 1,000 gallons.	Rate set in 1941. Tapping fee \$100 outside old taxing district
First Suburban	1.70	\$4.30 basic charge for 300 cu. ft.; next 1,000 cu. ft.: 55¢/100 cu. ft.; next 5,000 cu. ft.: 52¢/100 cu. ft.; balance: 47¢/100 cu. ft.	Rate set in 1952.

TABLE 11 (cont.)
COMPARATIVE MONTHLY WATER CHARGES, 1953^a
Tennessee Utility Districts, Arranged In Increasing Order

District	Domestic Monthly Charge for 2,500 Gallons, or Minimum Rate	Commercial and Industrial Rates	Remarks
Fountain City ^b	1.86	----	----
Bulls Gap	2.00	None	----
First Anderson	2.00	\$3.00 for 5,000 gallons.	Tapping fees: \$35.00 and \$40.00
Lookout (Mountain) Valley ^c	2.25	----	----
Daisy-Soddy-Falling Water	2.50	\$12.50 per month basic charge; balance: 25¢ per 1,000 gallons.	Rate set in 1947.
Hixson	2.50	\$12.50 per month basic charge; balance: 25¢ per 1,000 gallons.	Rate set in 1945.
Memphis Suburban	2.50	None	Rate set in 1949.
New Providence	2.50	None	----
Bloomingtondale	3.00	None	Rate set in 1950. \$50.00 tapping fee
Church Hill	3.00	None	Rate set in 1950.
Consolidated	3.00	None	Rate set in 1952.
East Kingsport ^b	3.00	----	Rate set in 1951.
Fall Branch	3.00	None	Rate set in 1951.
First Carter	3.00	None	----
Hendersonville	3.00	None	----
Kingsport-Long Island	3.00	None	Rate set in 1951.
Madison Suburban	3.00	None	Tapping fee \$150
Milligan	3.00	None	Rate set in 1952.
North Kingsport	3.00	None	Rate set in 1951.
Piney Flats	3.00	----	Rate set in 1952.
South Bristol-Weaver Pike	3.00	None	Rate set in 1951.
South Jackson ^b	3.00	None	Rate set in 1953.
Sullivan Gardens	3.00	None	----
North Johnson City	3.25	None	Rate set in 1953.
Sneedville	3.25	None	----
Jackson Suburban	3.50	None	Rate set in 1952.
Walden's Ridge	3.50	----	----
Whitehaven	3.75	None	Rate set in 1950.
Blountville	3.86	\$3.00 per month basic charge; next 100,000 gallons: 35¢ per 1,000; balance: 25¢ per 1,000.	Rate set in 1949. \$50.00 tapping fee off highway U. S. 11W
Claiborne County	4.50	None	Rate set in 1949.
Carderview	5.00	None	Tapping fee: \$17.50
East Union	----	----	----
Surgoinsville	----	----	----

^aTennessee State Planning Commission, *Sanitary Service Charges in Tennessee 1953*, Publication Number 251 (Nashville: 1953), pp. 78-80.

^bFrom bond prospectus.

^cTennessee Taxpayers Association, *Local Government in the Chattanooga-Hamilton County Metropolitan Area*, Research Report No. 94 (Nashville: 1952), p. 18.

In examining and comparing rates it should be noted that nearly every utility district has a tapping charge. Since these additional items were not available for the greater number of districts shown in Table 11, no account is taken of them in the general discussion which follows. Besides tapping charges, districts may also make *ad hoc* agreements with real estate developers in order to cover the expense of extending lines. Under one arrangement the developer agrees to pay the minimum or a computed minimum water bill for each lot in the subdivision for a stipulated time. As lots are sold and improvements made, the new occupant becomes a utility district subscriber and the developer no longer is required to pay the bill for that parcel of property. Another plan, used by Whitehaven Utility District, requires the developer or contractor to pay the full cost of extending mains to his subdivision. As lines are transferred to new owners or occupants, the district makes an annual refund based on the gross water bill and terminated in ten years or when three quarters of the cost of the extension has been made, whichever comes first.

The average minimum domestic water rate charged by Tennessee utility districts is \$2.81 per month; taking all the rates into consideration, \$3.00 per month is at the halfway point between the highest and lowest rate; in fact, fifteen districts have set \$3.00 per month as a minimum charge for 2,500 gallons of water. Of all the districts Nashville Suburban and Old Hickory utility districts have the lowest service charges, while the Carderview and Claiborne County districts sell water at the highest and the next to highest prices respectively.

There are no patent explanations for these high and low figures, but the following comments about the districts having extreme maximum or minimum rates may give some insight into the picture. Nashville Suburban, according to its financial statements, appears to have been operated quite conservatively; it has been slow to make improvements; furthermore, in expanding its system, the management chose to use 2" and 1" pipes instead of the more expensive 6", 8", and 10" mains. The system was taken over from the Nashville Water Company in 1941, but after five years it was reported that: "Engineers familiar with the system say that it must either cease to add new customers or build new reservoirs . . . if it wants to avoid recurring water shortages."¹ Five years after this statement was published the district had added about 4,000 new customers,² but no new bonds were issued until 1952.³ It

¹*The Nashville Tennessean*, June 20, 1946. See also *The Nashville Tennessean*, June 4, 1948.

²Community Services Commission for Davidson County and the City of Nashville, *A Future for Nashville* (Nashville: 1952), p. 47.

³Financial Statement, 1952.

does the Nashville Suburban Commission credit that district rates are still so low, but from the standpoint of maintaining an effective water system, the rates probably should have been raised earlier with an eye to building up the depreciation account.⁴ Such an action initiated in 1946 might have permitted expansion on a "pay as you go" basis and eliminated the necessity for a bond issue in 1952.

The low water rate charged by Old Hickory directly reflects the fact that the present system was donated to the community in return for acceptance of a utility district charter in lieu of a regularly organized municipal corporation.⁵

The high rate charged by Carderview is attributable to several factors. First, there were only a small number of people in the community. Secondly, since there were no industries in the area and not too many commercial establishments, the commissioners decided to charge a flat rate of \$5.00 per month for both domestic and commercial users.⁶ Thirdly, because the system was not metered, the district wanted to establish a slightly higher rate as a safety factor.

At first glance it would appear that these factors would be outweighed by the fact that Carderview has a gravity flow water system with no expensive installations, but that too is somewhat offset by the fact that over 50 per cent of the mains are 6 inches in diameter or better. The difference in the cost of installing 6-inch instead of 4-inch mains probably amounted to around \$8,000. Since a pump would have cost around \$3,000 and a pump house an additional \$4,000 to \$6,000, the cost of the larger mains almost equaled the savings effected by having a gravity flow instead of a pump pressured system. Nevertheless, taking all known factors into consideration and assuming that the cost of financing the district was not excessive, the writer believes that the rates as set at present need to be reappraised as soon as the district has operated long enough to establish fiscal norms. Jackson Suburban, a district of comparable size, with a higher pipe line footage per customer and a bond cost per customer of approximately \$2.00 more than Carderview, charges only \$3.50 per month for water service. This fact alone should stimulate an inquiry into rates.

In the case of Claiborne County's high rate of \$4.50 for 2,500 gallons of water, two obvious reasons present themselves. Namely, the bond cost

⁴In the Community Services Commission Report, *A Future for Nashville*, *op. cit.*, pp. 50-51, it was pointed out that this district was not making sufficient payments into the appropriate depreciation accounts.

⁵*The Nashville Tennessean*, May 19, 1951.

⁶In such a situation, this is recommended by the Tennessee State Planning Commission. See their *Sanitary Service Charges in Tennessee*, 1953, p. 75.

per customer is extremely high (\$924); secondly, over 60 per cent of the district's system consists of 6- to 10-inch pipe lines. It cannot be stated unqualifiedly that Claiborne's rates are a reflection of the excessive cost of financing, but the writer would venture a judicious guess that this is the case and that under the present adverse circumstances no reduction in rates seems possible.

Aside from water systems, certain utility districts provide other services. Claiborne County, Memphis Suburban, Old Hickory, and Whitehaven operate fire departments in conjunction with the water systems. In the Claiborne and Whitehaven districts fire protection service is provided free to all water subscribers. Old Hickory residents pay an additional fire protection fee of from \$10 to \$16 per year, the exact amount depending upon the assessed valuation of the house. In the Memphis Suburban Utility District:

Charges for fire protection service, payable annually in advance, are to be made only to those residents who are not water customers, the yearly rate being \$6 for each building containing four or less rooms, \$9 for five rooms, \$12 for six rooms. A penalty of \$5 or 50% of the bill, whichever is greater, is to be levied against residents delinquent three months in signing for fire protection service; \$10 or 100% if six months delinquent.⁷

Fountain City, Old Hickory, and Red Bank districts have sewerage services. Rates for Fountain City users are "... based upon water usage with a minimum bill of \$2.75 per month for the first 3,000 gallons of water used and 30 cents for each additional thousand gallons. The District will determine equitable charges for sewer service for large users of water, not discharging comparable volumes of sewage."⁸ Red Bank charges \$1.00 per month per customer. Old Hickory sewer charges are 50 cents per month for domestic users and \$1.00 for commercial accounts. Other services and charges in Old Hickory are: street lighting at 25 cents per month per family, and garbage and trash collections for \$1.00 per month.

Essentially, the rate structure of all Tennessee utility districts is based on the same considerations as that of all Tennessee local governments financing utilities by revenue bond issues. That is, after payment of operating expenses, the main consideration is that of servicing bond principal and interest requirements and of meeting other obligations which may be set down in the bond indenture.

⁷Tennessee State Planning Commission, *Public Works Planning Newsletter*, III, No. 3 (September, 1949).

⁸Fountain City Sanitary District, Preliminary Circular of \$960,000 bond issue, December 1, 1950, p. 4.

THE ADMINISTRATIVE ASPECT

With two exceptions, all the districts for which firsthand information was available provided water service only; therefore, the following discussion will be focused on administrative problems of water districts except where otherwise indicated.

More akin to the soil conservation district and less similar to the housing authority and special school district, the typical utility district in Tennessee has little or no formal administrative machinery below the level of the legislative-executive board of commissioners. Among the districts visited, Whitehaven had the most elaborate plant and organizational structure; Piney Flats had the least elaborate organization; and Jackson Suburban had no administrative apparatus at all but depended entirely upon outside institutional assistance to carry on district operations. On the basis of observations made on field trips, it was found that the average district employed a manager and one additional employee, usually a female office worker. Generally, functions in a utility district are distributed as shown in Figure III.

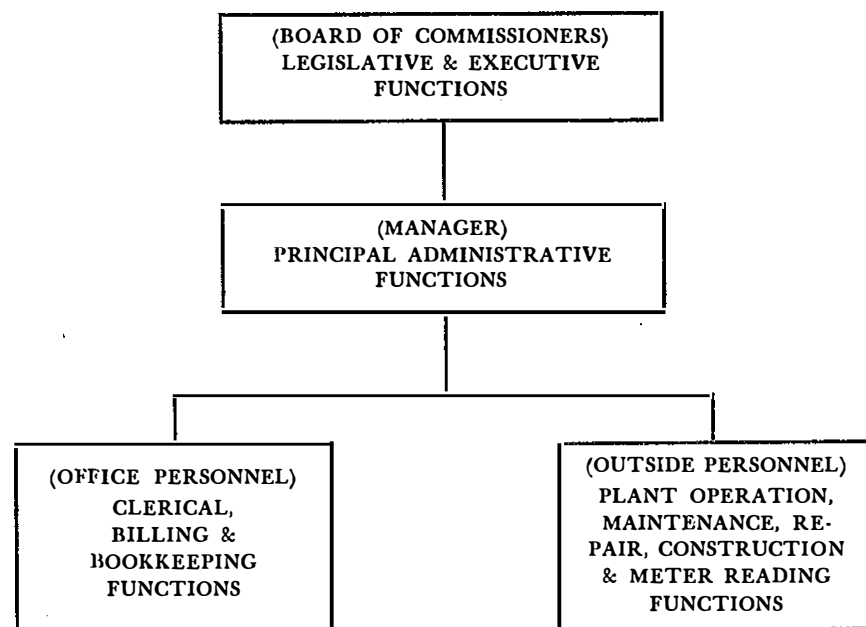


FIGURE III—ORGANIZATIONAL DISTRIBUTION OF FUNCTIONS IN A TYPICAL TENNESSEE UTILITY DISTRICT

Contingent upon his capacities and the district's needs, the manager may perform the clerical, billing, and bookkeeping functions and delegate the others to a superintendent of water works or an assistant manager who undertakes the plant maintenance and operation duties. Or a converse arrangement may be made whereby the manager performs outside duties and his assistant works in the district office.

All districts hire personnel on a manager-to-individual basis. As far as research on this project has developed, there is no evidence to indicate that district employees are union members. Also, even though wages and salaries appear to be on the whole quite modest, the writer knows of no labor disputes or strikes involving utility district personnel.

Organizationally speaking, utility districts at the administrative level closely resemble the council-manager form of municipal government, usually on a unifunctional basis. Such a comparison is completely valid in districts which hire an outside specialist to manage the system. Where members of the board of commissioners undertake to administer or manage the district, the comparison becomes somewhat distorted. But in Tennessee utility districts the position of manager has in practice become almost an hierarchical necessity regardless of the official status of the incumbent. In the majority of districts—for example, Bloomingdale, Claiborne County, Consolidated, East Brainerd, First Anderson, First Suburban, Fountain City, Memphis Suburban, and Whitehaven—the manager is an outsider hired by the board. Smaller districts may be administered by a district board member (usually the secretary) who is given complete administrative powers. Such is the case in Blountville and North Kingsport. Or, the district may be loosely administered by the board as a collegial body as is the case in Piney Flats.

Whether the single manager is a board member or not, it is common practice to vest in him complete powers of appointment and removal of subordinate personnel. Here again utility district practice is similar to that of the council-manager type of government. Utility district managers are also accorded complete supervision of all district employees. These organizational arrangements have developed entirely on pragmatic bases. No mention is made of the position of manager in the Utility District Act. It is evident, therefore, that his duties and responsibilities have evolved from operational experience and necessity. Legally the board of commissioners has full power and responsibility to prescribe, direct, control, investigate, and in any manner they see fit operate the district. From what could be gathered from managers, commissioners, and others connected with districts, the average board seldom, if ever,

interferes with the manager or fails to support his administrative decisions.

In the utility districts visited, the manager was found to be supervising from one to fourteen persons on a permanent staff. In the largest district—Fountain City—two men were employed to supervise the work of ten men who were assigned to outside jobs of operation, maintenance, repair, and meter reading. Also the Fountain City organization had two inside office positions which entailed collections of cash, bookkeeping, payrolls, billing, and all other clerical, stenographic, fiscal, and administrative tasks below the managerial level. East Brainerd is the only other district visited where two office workers were employed. Generally, one may conclude that the average district had from one to two people working on the outside duties of operation, maintenance, repairs, and meter reading and one person employed to do all the paper work.

Prior to actual activation and in some cases prior to the completion of the system, utility districts attempt to get firm agreements from prospective subscribers containing assurances that district services, if offered, will be used. Circulation and execution of such agreements, of "water contracts" as they are sometimes called, is usually the first administrative task of district personnel. Since no revenue is being received at this stage of the district's operational life, the job of executing water contracts usually is done by the commissioners themselves, frequently with the assistance of others interested in the district's future.

The importance of drawing up a properly worded document and getting prospective subscribers to agree to its provisions cannot be overestimated. It is understood that the financial troubles which plagued the Blountville Utility District in its early years and part of the difficulties encountered in the Kingsport-Long Island operation were due to mistakes in estimating the number of taps upon which the district could count for revenue purposes. Such mistakes were made, in part, because district-subscriber agreements were carelessly drawn and/or casually executed.

The writer has examined forms used by some districts which looked more like petition documents than water contracts. Usually these petition-type agreements have the terms mimeographed on the upper portion of the first page. The lower portion is ruled with lines for signatures and addresses, and three or four pages are attached to page one to complete the document. With such an instrument in hand, district commissioners and other participants are almost forced into a performance resembling that of a recall movement of an unpopular mayor. When a full page contract is used, individual prospects are more likely to read

the document carefully and completely before affixing their signatures to the page. This arrangement is in the long run of much more benefit to the district than the mass signature proceeding because it tends to reflect more accurately the number of persons who will use water service.

After a district and its system are well established, water contracts continue to be used, but they may vary somewhat due to differences in district status. The executed contracts are kept on file in the district office and serve as a matter of record and measure of protection to the district in case of disputes. Administration of these contracts, which serve also as applications for service, is entrusted to the district's office personnel.

The billing system most commonly used in Tennessee is the post card system. Two districts, Jackson Suburban and Whitehaven, have contracted with the Central Service Association of Jackson, Mississippi, to do all billing. Commonly bills are addressed by typewriter, but Bloomingdale, East Brainerd, and other of the larger districts use an addressograph or similar type of machine.

On matters of bookkeeping most districts visited maintained only such records as were essential to a minimum operation. As far as ascertainable, none of the districts were interested in providing data for statistical or cost purposes. Blountville, East Kingsport, and Piney Flats used single-entry accounting systems in contrast to the double-entry system used by the others. All were on a cash rather than an accrual basis. None set up budgets or encumbrance accounts. A Kingsport attorney has observed that of all the utility districts in Sullivan and Washington counties only one, the Consolidated district, had its bookkeeping and accounting procedures set up by a certified public accountant. This again brings up the matter of annual financial reporting. Of the Sullivan County districts, only North Kingsport and Blountville have thus far had annual audits made. And only Blountville is known to have published an annual report. With the exception of the Gibson County, Jackson Suburban, and New Providence districts, all of the others which the writer visited in Middle and West Tennessee and in the Chattanooga area have been audited and have published annual reports. All of the large districts in the Nashville and Memphis areas have also published financial statements in accordance with the requirements of *Public Acts*, 1949, chapter 256.⁹

Customer payments for service are usually made at the district's office. Exceptions are found in the Chattanooga area where the City

⁹*Tenn. Off. Code Anno.*, secs. 6-2617, 6-2618.

Water Company accepts cash for any of the districts to which it provides water. Also, collections for the Jackson Suburban Utility District are made by the National Bank of Commerce in the city of Jackson. Among the districts where collections are made locally, the office personnel receive customers' payments, give receipts, and return stubs corresponding to each transaction. Stubs are tallied with cash at the end of the working day. In the matter of accounting for cash, about half of the districts separate the function so that the person receiving payments does not maintain the cash records. In the remaining districts, usually the smaller ones, cash collection and accounting are in the hands of the same employee.

Utility districts, like most other utilities publicly or privately operated, generally require payment of bills by a certain date followed by a ten-day grace period. After passage of ten days customers are required to pay approximately 10 per cent more than the net bill. Failure to pay a bill within thirty days usually means suspension of service until payment is made. It should be understood that these administrative policies, while generally followed, are not always put into effect automatically even though clauses in the water contracts may set forth the consequences of delinquency.

Utility district personnel administration follows quite closely the practices in other small local governmental units throughout the state. There are no standards of recruitment. None of the districts have civil service or merit systems. Prospective employees are not required to take any type of examination as a condition of employment. There are no tenure arrangements, "promotional ladder" schemes, or position classification systems. Of all the districts covered, only Madison Suburban was found to have a retirement or pension plan. Certain districts, Fountain City, for example, participate in the federal social security system. Mr. Tillman, manager of Whitehaven Utility District, indicated that his personnel were covered by the state workmen's compensation plan.

District managers tend to remain in their positions for fairly long periods of time. Of course, it must be remembered that since the majority of districts have been operating only since 1950, this statement about manager tenure applies only to the older districts like Blountville, East Brainerd, First Suburban, Hixson, and Nashville Suburban.

Utility district superintendents of waterworks usually attend the annual waterworks school at the University of Tennessee's College of Engineering. The school lasts approximately five days and consists of lectures and discussions designed to keep waterworks plant operators aware of new developments and techniques and to refresh the memories of

those whose store of information has been depleted. Waterworks people from all systems are welcomed at these sessions. Attendance is not mandatory, but any system in the state which does not have at least one man on its staff who has attended these annual schools has its annual health rating lowered by the Tennessee Department of Public Health. Table 12 shows the comparative ratings of all utility districts within the state

TABLE 12
TENNESSEE DEPARTMENT OF PUBLIC HEALTH RATINGS
OF WATER UTILITY DISTRICTS^a

District	Year Operation Began	Ratings by Years				
		1949	1950	1951	1952	1953
Bloomingsdale	1950	—	—	—	76	—
Blountville	1947	—	87	82	88	—
Bulls Gap	1948	59 ^b	67	69	81	—
Carderview	1951	—	—	71	70 ^b	—
Church Hill	1949	—	—	—	—	—
Claiborne County	1949	67 ^a	96	99	99	—
Consolidated	1951	—	—	—	not rated	79 ^b
Daisy-Soddy-Falling Water	1947	85	96	81	80	89 ^b
East Brainerd	1940	(Same as Chattanooga)				
East Kingsport	1952	—	—	—	not rated	—
East Union	1953	—	—	—	—	—
Fall Branch	1951	—	—	66	88	—
First Anderson	1951	—	—	68	68	78
First Carter County	1951	—	—	—	77	—
First Suburban (Radnor)	1937	(Same as Nashville)				
Fountain City	1951	—	—	—	93	—
Hendersonville	1951	—	—	—	86	—
Hixson	1944	(Same as Chattanooga)				
Jackson Suburban	1951	(Same as Jackson)				
Kingsport-Long Island	1949	(Same as Kingsport)				
Lookout Valley	—	—	—	—	—	—
Madison Suburban	1939	93	94	94	98	—
Memphis Suburban	1950	—	60	95	95	—
Nashville Suburban	1941	(Same as Nashville)				
New Providence	1952	—	—	—	not rated	—
North Johnson City	1953	—	—	—	—	—
North Kingsport	1950	—	—	96	99	—
Old Hickory	1952	—	—	—	97	—
Piney Flats	1952	—	—	—	not rated	—
Sneedville	1952	—	—	—	not rated	—
South Bristol-Weaver Pike	1952	(Same as Bristol)				
South Jackson	1953	—	—	—	—	—
Sullivan Gardens	1950	—	—	70	68	72
Surgoinsville	1952	—	—	—	not rated	67 ^b
Walden's Ridge	1952	—	—	—	not rated	70
Whitehaven	1950	—	—	67	98	98

^aFrom Files of Division of Sanitary Engineering, Tennessee Department of Public Health, Nashville, July 7, 1953.

^bLack of certified operator, lack of cross connection, ordinance and statement.

^cMore or less tentative.

except those which buy their water from a city system (in which case the district gets the same rating as the city).

Another type of state sponsored in-service training program is the annual fire school at Murfreesboro conducted by the Division of Vocational Education of the State Department of Education. Unfortunately interviews for this report included only one district with a fire department, so information is not available on the number of firemen and volunteers from the other three districts providing fire protection service. If, however, these three districts are maintaining as stringent a training program as the one at Whitehaven, utility districts providing fire service in Tennessee are doing an excellent job. Thus far, only the chief from Whitehaven has attended the Murfreesboro sessions, but efforts are being made to send other members of the department to future school sessions. That the district's program is functioning fairly successfully is indicated by two things. First, from February, 1951, to August, 1953, the average response of volunteers to a fire call has been eight men. Second, since the department has been organized the district's fire insurance rating has dropped from class ten to class seven.

As a final topic of discussion under personnel administration, the question of compensation will be dealt with briefly. As far as is known, no utility district manager receives more than an \$8,500 annual salary. In fact, this represents a maximum which probably has been lowered. The next highest salary paid to a district manager is about \$7,000. The lowest known managerial salary is \$1,500. Actually there is one case on record where the co-managers of a district received no compensation at all.

As intimated at the beginning of the discussion on personnel administration, there are no "promotional ladders."

RELATIONS WITH CITIES AND TOWNS

Of all special governmental units, the utility district gives the greatest promise of complicating the affairs of municipal government. Housing authorities and soil conservation districts perform functions never undertaken by Tennessee municipalities in the past, not at present being performed by them, and not likely to be engaged in by them in the future. Thus, in their relationships with cities and counties they are seldom, if ever, placed in a position of competition or conflict. Special school districts, while competing functionally with counties and municipalities, tend to complement rather than to supplement the educational activities of these regular local governmental units. And there is, of

TABLE 13

SELECTED UTILITY DISTRICTS: EMPLOYEES ENGAGED IN PRINCIPAL FUNCTIONS AND ANNUAL COMPENSATION IN EACH CLASSIFICATION, 1953

District and Number of Customers	Managers		Supervisory, Operational, and Maintenance Personnel		Meter Readers, Custodial, and Subordinate Personnel		Clerical Personnel	
	No.	Pay	No.	Pay	No.	Pay	No.	Pay
Bloomingsdale 886	1	\$1500 ^a	1	\$2100	0	\$ —	1	\$1200
Blountville 429	1	2100	1	2400	0	—	0	—
Consolidated 800	1	3000	unknown		unknown		unknown	
East Brainerd 2900	1	7000 ^a	2	2500 ^a	9	2050 ^a	2	3500 ^a
East Kingsport 450	1	3000	0	—	0	—	1	—
First Carter 410	1	1500	0	—	0	—	0	—
First Suburban 4855	1	8500 ^c	1	6000 ^b	8	2100 ^c	unknown	
Fountain City 4181	1	—	2	—	10	—	2	—
Jackson Suburban 85	(All work done by private firms on a contract basis)							
New Providence 650	0	—	1	2500	1	1500	1	1500
North Kingsport 425	1	3500	—	—	—	—	1	1500
Piney Flats 200	(No salaried employees except meterman who is paid \$1.75 per hour)							
South Bristol-Weaver Pike 158	1	1500	—	—	—	—	—	—
Whitehaven 1230	1	5000	2	3000	1 3	1500 1300	1	2100

^aApproximate salary.^bNashville Banner, January 23, 1953.^cNashville Banner, April 6, 1953.

course, the restraining hand of the State Department of Education which maintains a firm hold over all local systems and keeps operations as standardized as possible. Finally, the number of special school districts appears to be diminishing, and the populations and territories over which they now exercise control are quite limited. One concludes, therefore, that problems arising from the city (or county)—special school district relationship are localized and uncomplicated.

But this is not at all true where utility districts have been established to abut municipal boundaries. Unfortunately it is difficult to point up the importance of city (or county)—utility district relations because the

basis of such lies more in the future, promising somewhat vague, potential, future troubles rather than providing pressing present ones. This means that city officials are prone to dismiss the problem as if it were an imaginary one. Utility district people, when they show interest in the problem at all, are inclined to share the city's view that things will work themselves out. "After all," they frequently say, and rightly, "the city showed no concern over the plight of the fringe area dweller so that they (the utility district) had to come in and provide the services desired."¹⁰

If the problem is one for the future, it nevertheless basically is an easy one to describe. Briefly from a city's standpoint, a municipality surrounded or flanked by growing suburban settlements appears to have three courses of action. It may extend services (water, sewer, fire protection) at cost and thus to some extent subsidize non-taxpaying fringe dwellers. It may extend services at above cost making the fringe area dweller "pay the freight." It may refuse to extend services. The growing fringe area, on the other hand, has at least five avenues of approach. It may attempt to annex to the nucleus city and thus obtain services along with the added cost of city taxes. It may importune the city to extend services. It may encourage private citizens to dig wells, install septic tanks, and so forth. It may incorporate. It may form a utility district.

From the record, it is found that generally cities either refuse to extend services or fail to better what services are already being provided. Suburban citizens have responded to their problems in varying ways, but since 1950 the trend seems to have been to form utility districts for the primary purpose of providing water and in some instances to obtain fire protection services. In the Fountain City Sanitary District and in the Red Bank Utility District sewer systems are now being provided; also, a move is underfoot to include sewage disposal services in the Memphis Suburban district. Thus, the specific major problems arising from fringe area utility districts are those involving water systems and fire defenses. Having examined the plans and specifications of these satellite water systems, the writer finds it a mere statement of fact that their physical plants are uniformly below standards maintained in the nucleus city's

¹⁰There are signal exceptions to both attitudes. The city of Bristol and the South Bristol-Weaver Pike districts have made an agreement setting forth terms for the city's acquisition of the district's system in the event of annexation. Similar agreements exist between Clarksville and the New Providence Utility District and also between the Jackson Suburban district and Jackson. Furthermore, in the Johnson City area, it was the owner (and unofficial leader) of the water supply sources of the Consolidated and North Johnson City districts who made the first overtures towards settling the water supply problem of that large community with Johnson City as a nucleus.

system. Of course, in exceptional cases the plants are adequate. The inadequacies of these fringe systems are due primarily to: inferior pipe, lower volume of flow due to excessive use of small pipe, and failure to provide fire hydrants either entirely or in sufficient number. In some districts standpipe hose connections are used instead of hydrants.

From the fringe area dweller's viewpoint, this means that in all fringe area utility district systems the fire insurance ratings are lower than in the nucleus city. Therefore, in many instances the fringe dweller, while escaping higher city taxes, pays fire insurance premiums in an amount which exceeds the savings afforded by avoiding the city taxes.

Because of the rather mundane and simple nature of these inadequacies, they are usually overlooked by the average citizen and taxpayer, and, as stated above, seldom are recognized by city officials themselves until a district is established in the suburbs. Then, as in the case of *Johnson City v. Milligan Utility District*, a jurisdictional dispute may arise where city and utility district water systems come into competitive situations. Such a difficulty seems fantastic, if not impossible, until one realizes that it has happened. The problem is then one for the courts and becomes a costly procedure in which the city, the district, and the water consumers are placed in uncomfortable positions.

Another set of problems arises when cities move to annex areas served by utility districts. Again, primary problems will most likely be of a legal nature involving jurisdictional conflicts. For instance, as is the case in most fringe areas in the state,¹¹ district mains serve areas abutting city limits and the annexing city has the immediate problem of deciding what to do about it. According to state law, functional service areas may not overlap. So two alternatives present themselves: either the city must resign itself to allowing continuation of utility district service within the area to be annexed, or agreement must be reached with the utility district to acquire the system within the area in question.

If a city accepts the first alternative, it automatically jeopardizes its fire insurance rating for there is not one utility district water system having a fire rating equal to or above that of its nucleus city. Aside from loss of prestige, this would mean additional expense on the part of all fire insurance holders within the city. If the second alternative is chosen, the city has the immediate problem of how to negotiate the

purchase. Jackson, Bristol, and Clarksville have anticipated this step and concluded agreements as to terms of the purchase of the district system. In the event that no purchase agreement exists, there remains the problem of fixing terms under which the city will acquire district properties.

At this point it becomes apparent that a city stands in a weak bargaining position unless the district purchases its water from the city under a contractual agreement permitting the city to shut off service or manipulate rates. Without such a contract the district can set the sale price of the system as high as it chooses because there is no law, written or unwritten, which requires the district to divest itself of its properties. Then there is the hypothetical problem raised by the former city manager of Johnson City concerning the recipients of funds in case a district system is debt free at the proposed time of purchase.

¹¹Memphis: Memphis Suburban, Whitehaven; Nashville: Nashville Suburban and First Suburban (Davidson); Knoxville: Fountain City Sanitary District; Kingsport: North Kingsport, East Kingsport, Bloomingdale, Kingsport-Long Island; Bristol: South Bristol-Weaver Pike, Blountville; Johnson City: North Johnson City, Milligan; Elizabethton: First Carter; Clarksville: New Providence; Jackson: Jackson Suburban; Chattanooga: East Brainerd, Hixson, Walden's Ridge, Lookout Valley.

C H A P T E R

6

Special Districts and the Courts

TWO BROAD CATEGORIES OF DISTRICTS HAVE BEEN DECLARED constitutional by the Supreme Court of Tennessee—taxing districts and revenue bond districts. In the former group are included taxing districts first and second class such as Memphis and Lebanon (in the late nineteenth century), special taxing districts such as East Brainerd and Walden's Ridge (in the 1920's and 30's), and special school districts. Paradoxically, with few exceptions, no Tennessee taxing districts have the power to tax, but must depend upon the General Assembly for a specific tax levy as a means of financial nourishment. The second category, the revenue bond group, which includes the utility district and the housing authority, must look to the proceeds of a revenue bond issue for initial financial activation. Thereafter, these units subsist on fees and charges as a means of satisfying their financial needs. Soil conservation districts, which draw financial as well as material and personnel assistance from other units of government, form a third category, but neither their constitutional status nor their organization or operation has been questioned in the courts of this state.

The history of the special district in Tennessee to date shows that any attempt to charter a public corporation, the life of which depended on some fiscal device other than these mentioned above, has invariably ended with a declaration of unconstitutionality from the state's highest tribunal. In each case the decision rested upon the Court's interpretation of Article II, section 29, Constitution of Tennessee which says:

The General Assembly shall have power to authorize the several counties and incorporated towns of this State, to impose taxes for County and Corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed, according to its value, upon the principles established in regard to state taxation.¹

UNCONSTITUTIONAL CHARTERS

Specifically, the Court has inferred from the words, "*The General Assembly shall have power to authorize the several counties and in-*

¹*Tennessee Blue Book* 1947-1948 (Nashville: Baird-Ward Printing Company, 1948), p. 139.

corporated towns . . ." that the General Assembly *shall not* have the power to authorize any other subdivisions of the state to levy taxes. The first case on this section was decided in 1874, the Court holding that "The taxing power can only be delegated by the Legislature to counties and incorporated towns." The power, continued the Court, "cannot be delegated to a separate corporation. . . ."² The decision in question did not involve a special district *per se*, but upon this decision rests all Supreme Court cases (except one) involving unconstitutional special district charter provisions.³

Application of the doctrine to a special district came in 1896 when the Reelfoot Lake Levee District was extinguished by the judicial hand. Here the legislature had provided:

That, for the purposes of building and maintaining the levee . . . and for carrying into effect the objects and purposes of this Act, the Board of Levee Directors shall have the power . . . to assess and levy a contribution tax, not exceeding ten cents per acre, and two per cent valuation tax on all the land embraced within the said boundary of said levee district. . . .⁴

The district was overthrown by the words

It is perfectly manifest that the present Act does not fall within Sec. 29 [Constitution of Tennessee, Article II], because the Reelfoot Lake Levee District is in no sense either a county or an incorporated town. All taxes that are leviable at all, except those authorized to be levied by counties and incorporated towns respectively, must, undoubtedly, be levied by the Legislature. . . . It follows, therefore, that if a levy of taxes for the benefit of the Reelfoot Lake Levee District be permissible at all, it must be made by the Legislature, and subject to those restrictions.⁵

At the same time the Court ruled that a special assessment was a tax, but their pronouncement on that point was later reversed.⁶ Later the principle of special assessments was upheld for use by drainage and levee districts.⁷ This by no means meant that any special district established with special assessments as a fiscal vehicle was secure. A recent statute created the West Tennessee Flood Control and Soil Conservation District, and vested it with the power ". . . to levy special assessments

²*C. F. Waterhouse, et al. v. The Board of President and Directors of the Cleveland Public Schools and the County of Bradley*, 55 Tenn. (8 Heiskell), 857 (1874).

³*See: Garner, et al. v. Scales, et al.*, 183 Tenn. (19 Beeler), 577 (1946).

⁴*Reelfoot Lake Levee District v. Dawson*, 97 Tenn. (13 Pickle), 151, pp. 154-155 (1896). *Public Acts*, 1895, ex. sess., ch. 1, sec. 6.

⁵97 Tenn. (13 Pickle), 151, at p. 171 (1896).

⁶*In: Arnold v. Knoxville*, 115 Tenn. (7 Cates), 195, at p. 228 (1905).

⁷*In: State ex rel. Bigelow v. Powers*, 124 Tenn. (16 Cates), 553 (1911). Here, however, the assessments made under *Public Acts*, 1909, ch. 185 involved action authorized by the county for the benefit of its creature, the drainage district.

against any and all lands within the district which may be benefited by said improvements in an amount . . . not to exceed fifty cents per acre in any one year, said benefits to be determined by said Commissioners. . . ."⁸

The district's power was challenged and Mr. Chief Justice Neil, delivering the opinion of the Supreme Court, said of the arrangement:

Whether or not the Act in question is an unlawful delegation of the taxing power is not determined by the term, "special assessments." While the law recognizes differences between special assessments and a tax, the purpose for which it is levied is controlling. The differences between a special assessment and a tax are: (1) a special assessment can be levied only on land for special purposes; (2) a special assessment is based wholly on lands benefited.⁹

"In other words," he continued, "if the money collected, all or any part of it, is used for some purpose other than as a direct benefit to the land assessed, it is a tax."¹⁰ On the ground of this reasoning it is highly doubtful whether any special assessment device could be sustained. By pushing the words "all or any part of it" to their logical conclusion, a valid argument could be made against payment of any sort of front-footage assessment on the grounds that the contractor involved and his wage-earning workmen received from the project some benefits in which the property owner could not participate. That phrase in itself possibly seals the doom of future special districts based on such assessments.

The judiciary also blocked another channel leading to the narrow waters of Article II, section 29. In 1937, the General Assembly set up a taxing district for drainage purposes and levied a tax not to exceed a \$1.00 limit.¹¹ When the matter came before the Supreme Court of Tennessee, it was found that the discretionary powers vested in district directors amounted to an illegal delegation of taxing powers.¹² This means, of course, that no taxing district can be given authority to collect other than the exact amount of the legislative levy.

CONSTITUTIONAL DISTRICTS

Tennessee's ventures in the field of the special district have undoubtedly been limited by the inhibitions inherent in Article II, section

29, of her constitution. Nevertheless, when "counties and incorporated towns" have not been able to accommodate to local situations, the General Assembly has met with some success in providing special corporate entities to do the job.

THE TAXING DISTRICT OF SHELBY COUNTY

Repeated yellow fever epidemics during the middle and late 1870's forced the city of Memphis into the abyss of bankruptcy. The problem was to find some means by which civil government could continue without being required to contend with the burdens of default in the immediate future. The solution was found in the taxing district device. After formal extinction of the old municipal charter, a new corporation was formed in which the legislative power (excluding the taxing power) was conferred upon a legislative council, consisting of three commissioners and five supervisors.

Under the new charter, corporate taxing power was to be exercised by the Tennessee General Assembly. Soon after passage the new creation was challenged in the courts and finally upheld in the Supreme Court.¹³ The language of the Court's decision rejected the notions that *Public Acts*, 1879, chapter 11: (1) constituted special legislation;¹⁴ (2) embraced more than one subject; (3) illegally vested local taxing power in the General Assembly; or (4) created an unconstitutional corporate body. In defining the status of taxing districts first class, the Court held them to be nothing more than municipal corporations. To date, this taxing district has survived all judicial assaults and remains defined as a municipal corporation.

Taxing districts, second class. Some four years after the authorization of first class taxing districts,¹⁵ the legislature passed a similar law¹⁶ which permitted towns under 30,000 population to surrender their charters and form taxing districts second class. Several towns, among them Brownsville and Lebanon, whose governmental situations were temporarily in an "unhealthy" state, took advantage of the new taxing district statute forthwith. The act itself was never challenged, but the constitutionality of second class taxing districts indirectly and the status of the new

⁸*Public Acts*, 1949, ch. 247, sec. 6.

⁹*West Tennessee Flood Control and Soil Conservation District v. Wyatt, et al.*, 193 Tenn. (29 Beeler), 566, at p. 572 (1952).

¹⁰*Ibid.*

¹¹*Private Acts*, 1937, ch. 684.

¹²*Humphreys County ex rel. Cherry Bottom Drainage District v. Burch, et al.*, 179 Tenn. (15 Beeler), 565 (1943).

¹³*Luehrman v. Taxing District of Shelby County and Others*, 70 Tenn. (2 Lea), 425 (1879).

¹⁴At the time considered unconstitutional. 70 Tenn. (2 Lea), 434 (1879).

¹⁵Memphis was the only jurisdiction ever incorporated under *Public Acts*, 1879, ch. 11.

¹⁶*Public Acts*, 1881, ch. 127.

corporation directly were established in a case involving enforcement of state liquor laws.¹⁷

Together, the decisions upholding both classes of taxing districts paved the way for innovation in the field of local government in Tennessee. As an indirect result, levee districts, special school districts and special taxing districts such as the East Brainerd and Walden's Ridge water districts were made possible. It would not be entirely accurate, however, to give the impression that these unfunctional bodies enjoyed wide popularity except in the education field. They did, however, serve a useful purpose in selected areas. It is also necessary to draw a line of distinction between the taxing district as a municipal receivership, as in Memphis, Brownsville and Lebanon, and the taxing district as a means of furnishing new services to a hitherto unincorporated area.

THE UTILITY DISTRICTS

Consideration of utility districts here includes those bodies created in pursuance of the Utility District Act of 1937,¹⁸ others created by private and public acts, and also the Fountain City Sanitary District¹⁹ which shows almost all the characteristics of a typical utility district except for the self-perpetuating board of commissioners.

A suit brought by the First Suburban Utility District of Davidson County against State Finance Commissioner McCanless to recover taxes paid under protest was the occasion which brought the test of constitutionality of the Utility District Act of 1937. Mr. Justice Chambliss delivered the opinion of the court:

The first and chief insistence of the appellants is that this exemption from taxation is, as expressed in the first ground of demurrer, "invalid, void and of no effect, it being in direct contravention of the Constitution of the State of Tennessee and particularly Section 28 of Article 2 of said Constitution, the pertinent part of which is as follows: 'All property, real, personal or mixed, shall be taxed, but the Legislature may except such as may be held by the State, by counties, cities or towns, and used exclusively for public or corporation purposes.'"

(1-3) If this incorporated Utility District is property of the State, or of any one of the arms of the State government, then it is well settled that it may be exempted from taxation by the Legis-

¹⁷*Public Acts*, 1877, ch. 23 prohibited the consumption of intoxicating beverages within four miles of an institution of learning except within an incorporated town. Taxing districts second class were upheld as municipal corporations in *Lea v. State*, 78 Tenn. (10 Lea), 478 (1882), and *Hatcher and Lea v. State*, 80 Tenn. (12 Lea), 368 (1883).

¹⁸*Public Acts*, 1937, ch. 248.

¹⁹Created by *Private Acts*, 1945, ch. 176.

lature. . . . It is said that it does not come within this classification and is not an operation for a State, governmental or public purpose. We think the act quite clearly so classes and characterizes it.²⁰

The Justice then discussed the municipal status of the district—

. . . it is declared [by the General Assembly] to be a "Municipality" or public corporation in perpetuity under its corporate name, etc. A municipal corporation is a body established by law, "chiefly to regulate the local internal affairs of the city, town, or district incorporated," . . . And it was held in *Redistricting Cases*, 111 Tenn. 234, 80 S. W. 750, that municipal corporations are "arms of government," are "means or instrumentalities of the State government. . . ." It is elementary that the Legislature may call such bodies what it pleases, and may give and take away as it chooses their powers and privileges.²¹

In the demurrer filed by the Commissioner of Finance were other allegations: that district powers to serve beyond their boundaries, to issue tax-free bonds, to have the county judge fill vacancies in the governing body—all were unconstitutional. It was also alleged that the districts were unconstitutional monopolies and that their creation was an illegal delegation of legislative power. The Court refused to admit any of these allegations, and upheld all elements of the act.

It is unnecessary to dwell on the question of the municipal status of utility districts because the matter was quite clearly presented in the quotation above. However, one more comment should be made. According to constitutional circumstances a municipal corporation may be a body politic and corporate embracing its governing body, its executive organs, and the citizens under its jurisdiction.²² A deviate, and the writer believes an incorrect view, holds that "municipal corporation" includes only the corporate governing body and its executive organs.

From the terms contained in the Utility District Act, it might be inferred that the former view was held by the legislature and that citizens within a utility district's jurisdiction were to be included as part of the "public body corporate and politic." But in *Madison Suburban Utility District v. Carson*, the Tennessee Supreme Court apparently felt inclined to nourish the latter view and said in dictum: "The appellant

²⁰*Water Utility District v. McCanless*, 177 Tenn. (13 Beeler), 132-133 (1941).

²¹*Ibid.*, p. 133.

²²*Cuddon v. Eastwick*, 1 Stalk [sic.], 192, 193 [correctly: 1 Salkeld, 192, 193 (1704)]. As cited in Eugene McQuillin, *The Law of Municipal Corporations*, 3rd. ed. (Chicago: Callaghan & Company, 1949), sec. 1.93, p. 341. In *O'Connor v. Memphis*, 74 Tenn. (6 Lea), 736 (1881), the Court held that "A charter for municipal purposes is an investing of the people of a place with the local government thereof, constituting an *imperium in imperio*, and the corporators and the territory are the essential elements, all else being mere incidents or forms. . . ."

[district] does not have the power to levy taxes nor is it listed as a municipality under the Federal census and its population is never separately tabulated. The people residing within the district do not have the right of self-government."²³ The writer sees two possible interpretations of the Court's words. The first is that they were merely stating a fact—that since persons within the jurisdiction of a utility district do not choose commissioners by election, such citizens are disenfranchised. The second and more drastic position admits the oligarchical status of the utility district as desirable and cements it into place by judicial pronouncement.

Some discussion has already been devoted to the subject of the Fountain City Sanitary District.²⁴ It is sufficient to state here that the Court took judicial notice of the fact that the Sanitary District Act set up an improvised corporate structure designed to satisfy the local desire for an elected commission of what is, in fact, a utility district. The attack was specifically directed against the district charter as an illegal attempt to circumvent the Utility District Act. But the Court, upholding the constitutionality of the district, averred that the General Assembly had "absolute control over such public corporations." And that "... sanitary conditions may vary in different sections of the state."²⁵

* * *

From a judicial, as well as a legislative, standpoint it is plain that utility districts are constitutional entities styled public corporations. A utility district is more than a public corporation; it is a municipal corporation or, as the courts frequently say, municipality. Because of the character of legislative definition, however, one should be cautious in employing the syllogism: Taxing districts are municipal corporations.²⁶ Special school districts are taxing districts. Therefore, special school districts are municipal corporations. Most special school district charters refer to the units as bodies corporate and politic. None, to the writer's knowledge, have been designated in their charters as municipalities or municipal corporations. Soil conservation districts, while never having undergone judicial review, are designated public corporations by statute. The language used is almost identical to that employed in the Housing Authorities Law. In consulting with officers and others associated with these units, the writer found unanimous support for the contention that soil conservation districts have full public corporate status.

²³191 Tenn. (27 Beeler), 302-303 (1950).

²⁴See Chapter 3.

²⁵*Whedbee v. Godsey*, 190 Tenn. (26 Beeler), 141 (1950).

²⁶*Luehrman v. Taxing District*, 70 Tenn. (2 Lea), 425 (1879) and *Lea v. State*, 78 Tenn. (10 Lea), 478 (1882).

Two rules are derived from these facts:

1. All units, i.e., housing authorities, soil conservation, special school, taxing, and utility districts are public corporate bodies; and, as such, are entitled to any benefits or bound by any disabilities conferred by statute.

2. Taxing and utility districts are public corporate bodies with additional municipal corporate status. They are, therefore, entitled to whatever additional benefits or bound by whatever additional disabilities that that status entails *insofar as applicable* to the municipal functions they perform.

These rules, of course, may not apply beyond the limits of legislative prohibitions or the Tennessee Constitution.

Utility Districts and the Future

IN TENNESSEE, UTILITY DISTRICTS PLAY WHAT MIGHT BE considered by some to be an essential role in the local governmental field. In reality, they are both essential and unessential to the local scene. Utility districts bordering on the corporate limits of cities and towns are, from the standpoint of the metropolitan planner, most likely to be unessential because proper planning prepares for growth and envisages extensions of city services and annexations. The unessential quality ideally may also extend to unincorporated communities with large and concentrated populations, as in the case of Old Hickory. But utility districts are essential where only one or two municipal services are desired by substantial populations of less than urban concentration in communities like Church Hill, or in clusters of communities like Colonial Heights, Fordtown, and Gray.¹ None of these areas is close enough to a city system for water to be furnished economically. At the same time, in such cases incorporation as an orthodox municipality probably would be impractical and, because of the propensity of the people in such small communities to avoid further taxation, generally impossible. Another factor supporting the essential quality of the utility district comes into play when clusters of small communities desire public utility systems, but are unable as separate entities to finance construction of facilities. In these cases the geographically far-flung utility district can obtain enough revenue to meet its obligations, while each small community incorporated as an independent entity would fail. This situation is not confined to unincorporated communities but occurs equally well in small cities desiring establishment of a particular expensive service. The Gibson County gas district is the prime example.

In practice, theoretical considerations of what is essential from a metropolitan planner's viewpoint have, more often than not, been discarded. The presence of nearly thirty utility districts in the fringe areas of Tennessee cities is proof enough of this fact.

THE PROBLEMS

Initially, special governmental districts were invented because of the

¹All served by the Consolidated Utility District.

development of novel social, economic, and political phenomena. Reviewed briefly, these are mainly: (1) the advancement of scientific discovery to the point where technological conditions produced changes in patterns of living creating a demand for new institutions because the old ones could not or would not meet the challenge of providing the services desired; (2) the need for one agency to administer one governmental service over an urbanized metropolitan area having two or more governments inappropriately organized to provide such a service; (3) the financial inability of established governments to carry out new or additional functions; (4) the unwillingness of Congress and state legislative bodies to entrust certain functions (such as education, housing, and soil conservation) to established governments; and (5) emergency situations, such as the Memphis yellow fever epidemic which led to the creation of the taxing district in Tennessee. And all or a combination of these five situations could provide and have provided the stimuli for creation of special districts.

In turn, the very creation of special districts generates problems. First, these new governmental units inject confusion into the existing order of distribution of responsibility and authority among established governments. Ordinarily the citizen thinks in terms of county and city governments. He knows generally what to expect of both. Should a sanitary district be established in a given community, the citizen finds it necessary to reorient his views and discover what his attitudes and obligations are with respect to the new district. Frequently, the discovery of these attitudes and the realization of obligations or commitments come as a rude awakening. For example, certain citizens of Jacksboro discussing the activation of a new utility district were brought to such an awakening in the presence of the writer. To their dismay they had not realized that the new government would have the sole right to operate a public water system in their town, and that there was no easy way to abolish the district once it had begun to operate. This incident occurred in a very small and uncomplicated community within only one jurisdiction, the county. How much more difficult it is for residents of metropolitan areas with an overlay of a dozen or so special districts to determine what governments exist and what a citizen's democratic responsibilities are to each. The condition is aggravated more if district boards are popularly elected and the voter finds that the long ballot has been lengthened even further.

The second problem derives from the extra cost. An established city may assign additional functions to existing departments without the expense of complete organizational and plant establishment, but a new

governmental unit always requires new personnel, equipment, and capital improvements—all of which entail expense and may increase the cost of government more than would have been the case if the established city or county had been prevailed upon to do the job. There is probably not a fringe area utility district water system in Tennessee which could not have been constructed more cheaply by the nucleus city.

The third problem arises from state legislative control. In states permitting special legislation, as in Tennessee, creation of utility districts adds to the burdens of the state's governing body. The weight of these burdens can be verified immediately by inspection of the volumes of private acts where page after page is devoted to minor municipal matters, a majority of which are fit subjects for municipal governing bodies, but not for state general assemblies. Legislators are compelled to abandon their deliberative roles and funnel special legislation through both houses (relying upon only fleeting consultations to make sure no one objects)—handling the private bills in batches, having the clerk mumble each bill's number and part of the title thus preserving the aura of legality, and recording what amounts to a false vote in the legislative journals.

A fourth problem, involving co-ordination of governmental activity, arises because there are seldom statutory provisions preventing establishment of services by new public corporations in areas which might well be served by existing corporations. For example, immediately adjacent to Kingsport, a utility district was established on Long Island at high cost to the community. Under conditions of proper co-ordination, the services desired could have been provided by the City of Kingsport at considerably lower cost and without complicating the existing pattern of government in the area.² Tennessee laws exist to prohibit two public corporations providing utility services from competing along the same rights-of-way, but no statutory directives exist which could have prevented the Long Island district from being established—at least not on the basis that there already existed a public corporation which could have served the area.

The fifth problem concerns intergovernmental conflicts. Students of local government are aware of the traditional antagonisms between the urban-oriented municipality and the rural-oriented county. Yet these two institutions have generally found bases of accommodation so

²In William T. R. Fox and Annette Baker Fox, "Municipal Government and Special Purpose Authorities," *The Annals of the American Academy of Political and Social Science*, 207 (January, 1940), 182, is reported how the Chicago Sanitary District, the Chicago Park District, and the City of Chicago all maintain separate pumping stations to serve approximately the same area.

that, for example, sheriff's deputies do not encroach upon urban police jurisdictions and vice versa. The special district, however, intrudes in both rural and urban jurisdictions. Its legal status and its substantive importance still are not fully determined, and on occasion, in cases of conflict, even the courts are hard put to determine the status of a special district.³ In certain instances both county and city officials have criticized acts and deprecated the very existence of certain Tennessee special districts. Special district personnel reciprocated. Generally, in these exchanges, little or no concern was expressed for the welfare of the community as a whole and its stake in the problems. County and city people consistently ignored the fact that urbanized, thickly populated, though unincorporated, areas need urban services. Antagonistic feelings against the cities and counties on the part of representatives of special districts were usually based on the notion that the two older governments were trying to interfere with the district's legitimate functions.

The five problems discussed immediately above are not the only general problems encountered, but they may be numbered among the most significant ones.

RECOMMENDATIONS

Several steps could be taken to improve the utility district as a unit for providing urban-type services. One positive step needs to be taken in the field of finance. On the basis of what has been discovered while preparing this report, it is apparent that not only utility districts, but also small municipalities and the less populous counties, are forced to issue bonds under circumstances adverse to the public interest. This has come about because the smaller governmental units cannot afford expert advice and because the laws do not afford protection. Example after example has been noted where bond issues were not properly planned, where sealed bidding was eschewed, and where the bond issue itself was unnecessary. The present loosely drawn bond statutes have cost citizens millions of dollars. Tennessee should consider activation and reorganization of its Department of Local Finance⁴ on a plan similar to the one used by North Carolina for its Commission of Local Government.⁵ Such an agency, properly financed and staffed, could advise and assist local governments in issuing and marketing bonds so that the ruinous costs of negotiated bids and unwise refunding will be avoided.

³*Supra*, Chapter 6.

⁴See *Tenn. Off. Code Anno.*, sec. 4-333.

⁵*The General Statutes of North Carolina*, Vol. 3C (Charlottesville: The Michie Company, Law Publishers), secs. 159-1ff.

Further considerations for improving general financial administration may be taken, but the problem of unwise bond financing is one that needs immediate attention.

Tennessee utility districts should be democratized. All self-perpetuating boards should be abolished and the Utility District Act of 1937 amended to provide election of commissioners by popular vote of all qualified voters of the area proposed to be included within the district. Furthermore, the act should be amended to provide a minimum time limit between the date of establishment and the date of activation. Another needed feature of the act would be a clause making it mandatory for a district to serve all persons within its boundaries after a reasonable length of time. This would discourage excessive size in future districts.

A code of engineering specifications needs to be included in the act for each utility service authorized. As an alternate suggestion, an appropriate state agency might be designated or established to enforce standards of construction and operation. This would not exclude present supervision by the Tennessee Department of Public Health.

The most significant problem resulting from the formation of utility districts concerns their involvement in urban fringe area development. The problem arises from the fact that the suburbanite population wants municipal services such as water supply, sewerage, and fire protection without paying city taxes. Therefore, these fringe populations will reject proposals to annex to cities unless annexation is the only means of obtaining such services. Generally, cities have extended services to unincorporated areas only when such extensions could be justified financially. In approaching this situation, seldom do the fringe dwellers or the cities consider the problem on a community-wide or metropolitan regional basis. Both parties measure the problem only in terms of dollars and cents on a short-term basis. Because only a small percentage of the outside areas have been willing to annex to the cities and because the cities have been willing to extend services on a limited basis only, there has developed a "gap" between fringe area needs and the services available to satisfy such needs. Generally, master plans should be in existence to take into consideration not only the needs of the city or the needs of the suburbanite, but rather the over-all desideratum for the fruitful growth of each metropolitan region. Without such planning, blighted areas are certain to develop giving birth to area-wide problems of police, health, and fire administration—to say nothing of the general deterioration and physical unattractiveness resulting from this unplanned urban development. The utility district in Tennessee

has become the "villain of the piece" because it has provided services to the fringe areas where "gaps" existed, where the citizens would not annex, and where the cities would not extend services. By satisfying the needs of these areas, the utility district has deferred the day of reckoning when the metropolitan community as a whole will be recognized and all groups in the community will see the wisdom of planning for the development of the entire community and not for the development of just the city or the fringes or a particular neighborhood.

Another reprehensible feature of utility district development is the general low quality and ultimately higher cost of services provided. Suburbanites may feel that district services are adequate and tend to congratulate themselves on avoiding city taxes. But more often than not, a few simple calculations will show that they pay more in increased insurance expense, garbage collection, and fire protection fees than is saved by avoiding city taxes. Frequently, they also pay more in transportation fares, and the day comes when they discover that certain transport facilities still do not make deliveries outside the nucleus city's corporate limits. But the deluded fringe communities are not the only ones which suffer. The city also pays a price. A low level of law enforcement, conflagration areas, health hazards, and an absence of zoning regulations and building inspection all characterize unrestricted urban fringe development and ultimately present a "bill for payment" to the city which must have them as neighbors. Arresting utility district growth will not solve all fringe area problems and automatically orient community thinking along the proper lines of metropolitan planning, but if utility districts in fringe areas are brought under controls, the present level of services might be raised and the future cost of integrating community water, sewerage, and fire protection services might be lowered. It is with these ends in mind that the following paragraphs are written.

In order to avoid continuance of the present encirclement of cities by substandard utility district water and sewerage systems, a general law should be drawn to allow some state-empowered authority the right to inspect plans for any proposed utility district within a certain radius of a city's corporate limits. If such plans were disapproved, the law should permit the city's governing body to veto establishment of district facilities until they are brought up to city standards with respect to such items as pipe diameters, number and placement of fire hydrants, and adequacy of pumping and storage facilities. Also, the state should compel existing fringe area utility districts which provide water and/or fire service to meet acceptable standards within a given period of time.

Consideration should be made of providing subsidies to assist this program.

Finally, a new law should be enacted permitting utility districts to consolidate with other utility districts, with cities, and with counties. It is understood that such a law would provide for liquidation of district properties and obligations.

* * *

From 1932 to 1953 special districts have increased in number and proportionate influence in the local governmental picture in Tennessee and the nation.⁶ As an indication of such a trend in Tennessee, it was noted that at least six new utility districts were formed and more have been proposed since this study began in September, 1952. As yet, however, except possibly for Sullivan County,⁷ special district development in Tennessee has not reached the saturation point. Nor are there any cases in Tennessee to match the plight of the Briton who paid taxes to eighteen different jurisdictions.⁸

Finally, special governmental districts in Tennessee and the nation are not to be lauded or condemned *per se*. Their existence is merely symptomatic of the fact that established local governments have not met the requirements of a given new or novel situation. In some cases the established local units are at fault. In others the choice to utilize a special district was made by higher authority. Special districts may serve a useful purpose, but, if allowed to multiply without restraint, will ultimately tend to complicate the structure of American local government to a point of great disability.

⁶*Supra*, pp. 8-13, *passim*.

⁷Sullivan County has nine active and three inactive utility districts plus the Kingsport Housing Authority.

⁸*Supra*, p. 6.

Appendix

ACTS AFFECTING UTILITY DISTRICTS PASSED SINCE 1953

Public Acts, 1953, chapter 122

Amends Utility District Act of 1937 to allow utility districts to be created embracing territory in two or more counties.

Public Acts, 1955, chapter 144

Amends Public Acts, 1947, chapter 222, and extends to utility districts the powers to require owners, tenants, or occupants of any residential, commercial or industrial buildings to connect to sewer lines. The charges for water and sewer services may be combined into one statement and either the water service or the sewer service or both may be discontinued if the bill is not paid. Legal action may be taken to recover the amount of delinquent charges with interest. Cities, towns, and utility districts are authorized to enter into a contract with other public or private corporation or municipal utility board or commission operating a water system for the collection of sewer charges.

Public Acts, 1955, chapter 275

Amends Utility District Act of 1937 to permit creation of utility districts embracing territory in two or more counties. Each county must be represented on the Board of Commissioners.

Public Acts, 1957, chapter 128

Amends the Utility District Act of 1937 to allow utility districts to operate transit systems within or without the district.

Public Acts, 1957, chapter 381

Provides that a city annexing an area served by a utility district will either (1) operate the utility property and account for the revenues in such a manner as not to impair the obligations of outstanding bond contracts, or (2) take over the entire utility system with its contractual obligations.

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