

144 Me. 417
Supreme Judicial Court of Maine.

OPINION OF THE JUSTICES.

April 28, 1949.

West Headnotes (5)

[1] **Municipal Corporations**

🔑 Appointment or Election

Officers and Public Employees

🔑 Criminal Responsibility

Provision of section 7, of senate paper No. 584, Legislative Document No. 1258, entitled “An Act to Create the Waterville Sewerage District”, which provides that the Board of Commissioners who are to manage the district shall be appointed by the mayor of the city of Waterville, with approval of majority of city council, rather than that commissioners should be elected by inhabitants of district, does not render the proposed act unconstitutional.

[1 Cases that cite this headnote](#)

[2] **Constitutional Law**

🔑 Constitutionality of Statutory Provisions

The constitutionality of legislative enactment depends not only upon whether enactment violates some limitation of legislative power imposed by constitution, but also on whether its application to existing rights would violate the constitutional guarantees of those possessing the rights.

[Cases that cite this headnote](#)

[3] **Municipal Corporations**

🔑 Separate Municipalities in Same Territory or in Consolidated Corporation

Within prescribed limitations, the legislature may create distinct and separate bodies politic and corporate with identical inhabitants and territory.

[Cases that cite this headnote](#)

[4] **Municipal Corporations**

🔑 Constitutional Provisions

The identity of inhabitancy and territory existing between sewerage district proposed by Senate paper No. 584, Legislative Document No. 1258, entitled “An Act to Create the Waterville Sewerage District,” and the city of Waterville, does not effect the constitutionality of the proposed act.

[1 Cases that cite this headnote](#)

[5] **Municipal Corporations**

🔑 Special Charters or Acts

The purpose of Senate paper No. 584, Legislative Document No. 1258, entitled “An Act to Create the Waterville Sewerage District,” is not such, that in and of itself, prevents the creating of the proposed body politic and corporate.

[1 Cases that cite this headnote](#)

Opinion

****376** Opinion of the Justices in response to request of the Senate for an opinion as to the constitutionality of Senate paper No. 584, Legislative Document No. 1258, entitled ‘An Act to Create the Waterville Sewerage District’.

State of Maine

In Senate

April 28, 1949

***417** Whereas there is now pending before the legislature Senate Paper No. 584, Legislative Document No. 1258, ‘An Act to Create the Waterville Sewerage District,’ copies of which are herewith submitted and made a part hereof; and

Whereas questions have been raised regarding the constitutionality of the act which creates a body politic and corporate under the name of Waterville Sewerage District, which is comprised of the territory and people within the limits of the City of Waterville, and the purpose of which act

is to take over, control, manage and operate the sewers now owned by the City of Waterville with all the appurtenances thereto, and to extend, enlarge and improve the present system now serving the city, which has proved to be inadequate; and

Whereas it is provided in said act that the district shall be managed by five commissioners resident therein, who shall be appointed by the mayor of the City of Waterville with the approval of a majority of the city council, two of whom shall be appointed from the minority political party; and

Whereas the commissioners are authorized to issue the notes and bonds of the district in an amount not exceeding \$1,000,000 for accomplishing the purposes of the act, and these are made legal investments for Maine savings bank; and

Whereas doubt as to the constitutionality of the act would tend to impair the sale and marketability of the notes *418 and bonds of the district, and it having been represented to the Senate that there is a necessity for the creation of a district to begin immediately the enlargement, extension and improvement of sewerage facilities in said city in the interests of the health and welfare of the inhabitants of said district, and the Senate deeming that the questions hereinafter propounded present **377 important questions of law, that the occasion is a solemn one, and that any doubt as to the power of the legislature to enact this measure should be resolved by the Honorable Justices of the Supreme Judicial Court,

Now, Therefore, Be It Ordered that in accordance with the provisions of the Constitution of the State the Justices of the Supreme Judicial Court are hereby respectfully requested to give the Senate their opinion on the following questions:

- 1) Would Senate Paper No. 584, Legislative Document No. 1258 entitled 'An Act to Create the Waterville Sewerage District,' if enacted by the legislature in its present form, be constitutional?
- 2) Would the provisions of Section 7 thereof providing that the board of five commissioners shall be appointed by the mayor of the City of Waterville with the approval of the majority of the city council, rather than a provision for their election by the inhabitants of the district, affect the constitutionality of said act?
- 3) Would notes and bonds issued in accordance with and under the authority of Section 8 of said proposed act be valid and legal obligations of the district?

In Senate

April 28, 1949

Passed

Chester T. Winslow

Secretary of the Senate

*419 To the Honorable Senate of the State of Maine:

Complying with the provisions of Section 3 of Article VI of the Constitution, the undersigned Justices of the Supreme Judicial Court, having considered the questions submitted to them by the foregoing Senate Order, and the pending legislation to which they relate, incorporated by reference in said Order, respectfully advise that they are individually, and unanimously, of opinion that:

[1] The only question that can be definitely answered is the second. The provisions of Section 7 providing that the board of five commissioners shall be appointed by the mayor of the City of Waterville with the approval of the majority of the city council, rather than a provision for their election by the inhabitants of the district, standing alone, does not affect the constitutionality of the proposed act.

[2] [3] [4] [5] It is not possible to answer the other questions specifically. The constitutionality of a legislative enactment depends not only upon whether the same violate some limitation on legislative power imposed by the constitution, but also whether or not its application to existing rights would violate the constitutional guaranties of those possessing the same. Within the limitations set forth in [Kelley et al. v. Brunswick School District et al.](#), 134 Me. 414, 187 A. 703, the legislature may create distinct and separate bodies politic and corporate with identical inhabitants and territory. The identity of inhabitancy and territory existing between the proposed Sewer District and the City of Waterville does not affect the constitutionality of the proposed act; nor is the purpose of the act such that in and of itself it would prevent the creating of the proposed body politic and corporate.

On the other hand the determination of questions dependent upon the application of the provisions of the proposed act to existing vested rights can only be made with full knowledge of all pertinent facts. For example we have *420

no knowledge of the history and development of the present sewer system in the City of Waterville.

Our statutes relative to sewers are of such ancient origin and the duties of cities and towns with respect thereto are of such nature, that there may be vested rights, which if infringed upon might render action taken under some provisions of the proposed act unconstitutional. Conclusive determination of these questions can only be had upon proper proceedings in the courts where all parties are heard, all facts presented, and judgment pronounced after full hearing.

The constitutionality of the proposed act, and the validity of such notes and bonds as might be issued under authority of Section 8 thereof, depend to such an extent upon the existence of facts beyond our ****378** knowledge that further definite answers respecting the same cannot be given. Dated this 4th day of May, 1949

Respectfully submitted,

HAROLD H. MURCHIE

SIDNEY ST. F. THAXTER

RAYMOND FELLOWS

EDWARD F. MERRILL

WILLIAM B. NULTY

All Citations

144 Me. 417, 66 A.2d 376

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