REVENUE FINANCING OF PUBLIC ENTERPRISES

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COURTS have been slow to take judicial notice of the growing needs of local communities. Legislatures have restrained municipal corporations from engaging in business enterprises upon the assumption that the object was mere hope of gain, that the investment of municipal funds in such enterprises was simply a speculation, or that the effect was to divert municipal corporations from their legitimate ends and to poach upon the preserves of private enterprise. Novel municipal undertakings have been feared as an entering wedge of state socialism or governmental paternalism. Even when the instrumentality of private adventure was disposed to leave a need unsatisfied, and even when a municipal enterprise was for the benefit of the general public and was not undertaken primarily for profit, novelty in the functions of local government usually met with a judicial veto.¹

*This article is based upon a paper read by the author before the Municipal Corporation Section of the American Bar Association at its annual meeting at Los Angeles, California, July 16, 1935. The paper has been considerably revised and the footnotes brought down to date. Appendices collecting pertinent statutes and cases have been added.

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¹ E. g., Opinion of the Justices, 155 Mass. 598, 30 N. E. 1142 (1892); Opinion of the Justices, 182 Mass. 605, 66 N. E. 25 (1903); Baker v. Grand Rapids, 142 Mich. 687, 106 N. W. 208 (1906) (to buy and sell fuel); State ex rel. City of Toledo v. Lynch, 88 Ohio St. 71, 102 N. E. 670 (1913); State ex rel. Smith v. City of Hiawatha, 127 Kan. 183, 272 P. 113 (1928) (to operate a motion picture theater); Brooks v. Incorporated Town of Brooklyn, 146 Iowa 136, 124 N. W. 868 (1910) (to construct an opera house); Union Ice & Coal Co. v. Town of Ruston, 135 La. 898, 66 So. 262 (1914); State ex rel. Kansas City v. Orear, 277 Mo. 303, 210 S. W. 392 (1919) (to own, maintain and operate ice-making plants); State ex rel. Coleman v. Kelly, 71 Kan. 811, 81 P. 450 (1905) (to establish and operate an oil refinery); State ex rel. Mellott v. Kaw Valley Drainage District, 126 Kan. 43, 267 P. 31 (1928) (to operate a sand plant); Attorney General v. City of Eau Claire, 37 Wis. 400 (1875) (to sell power to private consumers); Mauldin v. City Council of Greenville, 33 S. C. 1, 11 S. E. 434 (1890) (to operate an incandescent lighting system).
Equally reluctant have been the legislatures to create and the courts to sustain new local governmental agencies. Twenty-five years ago a Mr. Hon Yost was arrested on a charge of public intoxication and was imprisoned under a commitment issued by the "Police Justice of the Area or Territory of Sylvan Beach, New York." Hon Yost pleaded that the "Area or Territory of Sylvan Beach" was incorporated in violation of the Constitution of New York and as a corollary to his plea that the office of police justice within the "Area or Territory of Sylvan Beach" was nonexistent and therefore without legal power to hold him accountable for his insobriety. The Court of Appeals of New York sustained Hon Yost's plea. Though it had previously held that municipal corporations were emanations of the supreme law-making power of the state, the court held that the people of the state by recognizing in the constitution counties, towns, cities and villages as the civil divisions of the state exercising general powers of local government had limited the legislature in the creation of other civil divisions vested with similar powers.

Until the present decade the state legislatures hesitated to create new forms of public corporations for municipal purposes with powers to cope with new social and economic problems, and were content to create special districts (many of which were overlapping),

2 People ex rel. Hon Yost v. Becker, 203 N. Y. 201, 96 N. E. 381 (1911).
4 "From this brief review of the parts of the Constitution which relate to the instrumentalities and methods of local government it is apparent that it constitutes the counties, cities, towns and villages of the state the civil divisions for political purposes and indispensable to the continuation of the government organized by it. Their distinctive character and attributes cannot be conferred upon municipal corporations differently denominated without subverting the form of government which it framed. The constitutional provisions to which we have referred, and legislative acts, such as, for instance, the Election Law, the Public Health Law, or the Liquor Tax Law, would be foreign and inoperative as to a shire, parish, manor, or area or territory although given the powers conferred upon counties, towns, cities and villages, and therefrom would result uncertainty and disorder superseding government." Collin, J., in People ex rel. Hon Yost v. Becker, 203 N. Y. 201 at 208, 96 N. E. 381 (1911). Other courts have been prone to veto the creation of new forms of public corporations. See 4 DILLON, MUNICIPAL CORPORATIONS, 5th ed., § 1434 (1911). State (Lydecker, Prosecutor) v. Englewood Drainage Comrs., 41 N. J. L. 154 (1879); Van Cleve v. Passaic Valley Sewerage Comrs., 71 N. J. L. 574, 60 A. 214 (1905), reversing 71 N. J. L. 183, 58 A. 571 (1904).

5 In a recent study it was reported that in Cook County, Illinois, there were 392 units of government, each of which had the power to levy general property taxes. In addition there were at least 28 semi-independent tax levying agencies, tax levies of which were spread by some of the local governing bodies. Besides the state and county tax levies in Cook County, the local governments within Cook County with
such as park, irrigation, drainage, water, road, conservancy

independent tax levying powers included some 10 cities, 80 villages, 27 townships, 201 school districts, 39 park districts, 22 road and bridge districts, 6 sanitary districts, 2 mosquito abatement districts, 1 public health district, 1 driveway maintenance district and 1 forest preserve district. See Jacobs, Assessments of Real Estate and Personal Property in Cook County, Illinois 29 (1934).


and sidewalk\textsuperscript{12} districts. The improvements were paid for by means of ad valorem taxes or assessments in accordance with benefits. Rarely was one of these districts dependent for its existence solely upon its income-producing ability.\textsuperscript{18}

Lawyers learned in municipal law and active in its practice had left what seemed to them a dull and uninspiring field to devote their energy and resourcefulness to the manifold problems which challenged private corporations during the era of rugged individualism. Legal ingenuity concentrated upon organizing, merging, financing and reorganizing private corporations, and upon corporate advantages without incorporation. The trust indenture was the sacred ark of corporate finance. The temples of municipal law were deserted.

Meanwhile, inhabitants of local communities were demanding that services supplied by private corporations be furnished by local units of government. Soon private water companies became the exception rather than the rule. Private sewer companies practically disappeared. Novelty no longer imposed an absolute veto upon the construction or operation by municipal corporations of gas works,\textsuperscript{14} power plants,\textsuperscript{15} markets,\textsuperscript{16} airports,\textsuperscript{17} transportation facilities,\textsuperscript{18} and low-cost housing projects.\textsuperscript{19}

Many municipal corporations, still in the chains of charters conceived in an atmosphere of hostility toward any novelty in the functions of local government, found that they lacked the power and flex-


\textsuperscript{13}For an early district with power to make charges for services but without power to levy taxes or assessments, see Maine Laws (1899), c. 200, discussed in Kennebec Water District v. City of Waterville, 96 Me. 234, 52 A. 774 (1902).


\textsuperscript{15}Middleton v. St. Augustine, 42 Fla. 287, 29 So. 421 (1900); Park v. Greenwood County, 174 S. C. 35, 176 S. E. 870 (1934).


\textsuperscript{17}Dysart v. City of St. Louis, 321 Mo. 514, 11 S. W. (2d) 1045 (1928); Hesse v. Rath, 249 N. Y. 436, 164 N. E. 342 (1928).


\textsuperscript{19}Willmon v. Powell, 91 Cal. App. 1, 266 P. 1029 (1928).
ibility to manage efficiently the variety of public service enterprises thrust upon them. The need for a new and different public institution was gradually recognized. In this situation the legislatures began to apply from sheer necessity some of the genius which had been continually displayed in private corporate ventures, and the outgrowth was a new legal philosophy in the financing of municipal public service enterprises by means of the revenue derived from their operation. The creation of a new form of public corporation to construct and operate public service enterprises is a natural development of this philosophy. It may be of interest to review the progress during the past few years of the law relating to such public corporations and to municipal revenue financing.

In December, 1934, the public corporation as an instrumentality of state government for the purpose of meeting the vital social problems confronting the American nation was recognized by the President of the United States. During that month the President wrote the governor of every state suggesting that the governor, in formulating a program for the next session of the state legislature, might wish to consider the need for legislation which would enable the state through municipal and other public corporations to participate more fully in any additional public works program which the Seventy-fourth Congress might authorize. Considerable legislation simplifying the procedure for the issuance of municipal bonds had already been enacted by the states in order that municipal corporations might

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21 For statutes authorizing revenue financing of public works by municipal corporations, see Appendix A; by housing authorities, by rural electrification authorities, and by other types of authorities and state institutions, see Appendix B.
22 The first two paragraphs of President Roosevelt's letter to Governor Fitzgerald of Michigan read as follows:

"In the event that an additional public-works program is authorized at the coming session of the Congress, I should like to see the municipalities of your State legally able to take full advantage of such a program. With this in mind, I have instructed Administrator Ickes to place at your disposal the Legal Division of the Public Works Administration for the purpose of suggesting bills which if enacted into law would enable municipalities of your State to secure the benefits of this phase of the recovery program.

"Our experience in the past eighteen months has brought to light the difficulty of gearing the legal machinery which has served municipalities of your State adequately for decades to the speed with which the Federal Government must extend credit to achieve desired results. It has been found that revision of the procedure relative to municipal financing is essential, at least for the duration of the existing emergency. . . ."
secure the benefits of Title II of the National Industrial Recovery Act.\(^23\)

Confident that there was a way, in that crucial period, whereby the state legislatures could cooperate further with the Federal Government in its attempt to increase employment by providing for the construction of useful public works, the President suggested two lines of attack. The first was the enactment of laws which would create or provide for the creation of public corporations empowered to construct and finance self-liquidating public service enterprises. The second line of attack was the enactment of laws which would utilize existing municipal corporations in carrying out the functions of constructing and financing revenue-producing improvements. Almost unanimously the governors responded to the President, expressing a desire to cooperate in securing whatever additional legislation might be necessary to meet the needs of municipalities in their states.

**THE MUNICIPAL IMPROVEMENT AUTHORITY**

Public officials have been impelled by the taxpayer to consider more profoundly a vehicle by which revenue-producing improvements might be constructed on a self-liquidating basis. The increasing complexity of political and governmental matters, which engage the constant attention of officers of municipal corporations, has made it difficult for them to devote the time required for the successful management and operation of public service enterprises. In addition, it has been recognized that business experience and technical ability more than political sagacity are essential to the successful operation of a public service enterprise. The realization of these facts resulted in the establishment of administrative agencies or boards to conduct the management of municipal enterprises such as sewer,\(^24\) water,\(^25\) and


light. Recently the device of the public corporation has supplied this governmental need. With self-liquidating public improvements increasing in popular favor, the device of the public corporation is finding a niche in the structure of local government.

The use of the municipal improvement authority form of public corporation is illustrated by an act passed by the 1935 session of the legislature of South Dakota. A dictum by the Supreme Court of South Dakota in the case of *Hesse v. City of Watertown* had raised a critical problem for cities and towns of that state. In that case the city had relied on the so-called "special fund doctrine," which affirms that obligations payable solely from a special fund derived from the revenues of the enterprise for the acquisition or improvement of which such obligations are issued do not constitute bonds or debts within the meaning of any constitutional limitation or restriction upon the issuing of bonds or the incurring of indebtedness. The court's opinion contained language to the effect that an obligation issued for the improvement or extension of a revenue-producing enterprise would be a debt within the constitutional restrictions if the municipal corporation issuing the obligation pledged to its payment an established income derived from the enterprise. Cities and towns of the state which had reached the limit of their constitutional or economic power to incur further indebtedness found themselves unable to finance the construction of necessary improvements or extensions to existing public service enterprises, no matter how essential the improvements or exten-


sions might be and no matter whether or not the enterprise would be self-sustaining. 29

To cope with this problem the South Dakota legislature adopted a general law providing for the incorporation of public bodies to be known as improvement authorities. 30 Under this law the inhabitants of a territory conforming to the boundaries of a city or town are authorized to incorporate as an improvement authority, after a public hearing on a petition to the governing body of the city or town and if such incorporation is approved by the qualified electors of such territory. The board of trustees of the authority is appointed by the governing body of the city or town. Each authority so incorporated is a public corporation in perpetuity. So long as the authority furnishes services in a territory it is the sole public corporation empowered to furnish such services in that territory. It may furnish water, sewer, gas or electric light services, depending upon the corporate purposes specified in the petition for its incorporation. The members of the board of trustees are not entitled to compensation, nor may they hold any public office under the city or town. Jurisdiction, supervision, title, possession and control of the existing systems, furnishing the services to be rendered by the authority, are transferred from the city or town affected to the authority. The authority has power to enlarge or diminish services by following a procedure fixed in the statute. All of its moneys are paid to the state treasurer as agent for the authority. It is given broad powers to charge rates for its services and to borrow money and issue bonds. The bonds are payable solely from the funds of the authority, and the act declares that the bonds shall not be a debt of the state, nor a debt of the city or town. The holders of the bonds are given the right by mandamus to enforce their rights against the authority and the board of trustees and the right to require the authority to account as if it were the trustee of an express trust for the benefit of the bondholders. In addition, if there is a default in payment of principal or interest for sixty days a receiver may be appointed to enter and take possession of the enterprise and to operate and maintain it in the same manner in which the authority itself might do.

29 Difficulty encountered by application of Elk Point, South Dakota, for a loan from PWA under S. D. Laws (1931), c. 194, to finance extension to existing power plant is illustrative. Despite its technical soundness and admitted social desirability, the project could not be financed by revenue bonds because of the restrictive holding of the Hesse case. 30 S. D. Laws (1935), c. 73, p. 104.
A similar act was passed in 1935 by the legislature of the state of Alabama, providing for the incorporation of improvement authorities in rural as well as urban areas.\footnote{Ala. Acts (1935), No. 40, p. 72.} The Pennsylvania legislature also adopted in 1935 an act which permits the governing body of a city to incorporate an improvement authority without an election.\footnote{Pa. Laws (1935), No. 191, p. 463, Stat. Ann. (Purdon 1935), tit. 53, § 2900f et seq.} Therefore it has been the legislature in Pennsylvania that has blocked the progress of public corporations,\footnote{During the Special Session of the General Assembly, 1933-34, a general bill providing for the incorporation of improvement authorities was introduced but was not enacted into law (S. B. 30).} and it will be interesting to observe the position which the Pennsylvania courts will ultimately take with respect to public corporations organized under this act.\footnote{Tranter v. Allegheny County Authority, 316 Pa. 65, 173 A. 289 (1934). See Kelly v. Earle, 320 Pa. 449, 182 A. 501 (1936). In the latter case the Supreme Court of Pennsylvania, dealing with the act creating the General State Authority (Laws 1935, No. 191), struck down a proposed lease of a waterworks to the commonwealth under which lease the commonwealth obtained title to the waterworks after paying the authority the stipulated rentals, on the grounds that such an arrangement amounted to the purchase by the commonwealth of a capital improvement and the promise to pay the annual installments constituted a debt of the commonwealth prohibited by the constitution of Pennsylvania. Although there is no definite statement that the act itself is held unconstitutional, the majority opinion (there were three dissenting opinions) uses language from which the position that the act is unconstitutional might not unreasonably be supported. Restricted to the facts in the case, however, the opinion is consistent with the court's holding in Tranter v. Allegheny County Authority and earlier Pennsylvania cases. It is entirely possible that the Pennsylvania Supreme Court can hold constitutional the act creating the General State Authority and at the same time condemn the particular method of financing employed in the Kelly case.}  

The Court of Appeals of New York has already made it clear that the legislature may create\footnote{Robertson v. Zimmermann, 268 N. Y. 52, 195 N. E. 740 (1935); Gaynor v. Marohn, 268 N. Y. 417, 198 N. E. 13 (1935).} or provide for the creation\footnote{Suffolk County v. Water Power and Control Comm., 269 N. Y. 158, 199 N. E. 41 (1935).} of an authority where there is no attempt to grant it general powers of local government, but that in the absence of a clear and unequivocal delegation of power, a municipal corporation may not create an authority by local law.\footnote{Tierney v. Cohen, 268 N. Y. 464, 198 N. E. 225 (1935). See Foley, "The Case of Tierney v. Cohen," 5 Fordham L. Rev. 73 (1936).}

The public corporation which may be organized under the county water authority law of New York\footnote{N. Y. Laws (1934), c. 847, as amended by Laws (1935), c. 176.} or under the improvement authori-
ty law of Pennsylvania or that of South Dakota or Alabama has no power to tax. It has no police power. It cannot perform functions which may be performed concurrently by the municipal corporation in which it operates. It has no power to enact penal ordinances. It cannot regulate the use of streets. It cannot license. It has no power to exercise any of the characteristic powers of local government usually bestowed upon a municipal corporation. The fact is that the municipal improvement authorities are not municipal corporations at all. They are, nevertheless, public corporations and in the language of the South Dakota act, are "appropriate instrumentalities of the state, without power to tax but with adequate power to aid the state in the construction, financing and administration of public enterprises, the benefits of which will enure to the people of the state." 39

Since a municipal improvement authority is not a municipal corporation but is a public corporation endowed with specific functions separate from those vested in municipal corporations proper, it would seem clear that constitutional provisions limiting the number and kind of municipal corporations and imposing restrictions on municipal indebtedness do not apply to a public corporation such as the improvement authority. It would be a serious blow to this encouraging progress in municipal law and financing if the courts were to hold that the power of the legislature with respect to the creation of such a public corporation is not plenary.

The obligations of the municipal improvement authority are not only those of an independent legal entity but they are issued by such an entity to finance revenue-producing undertakings. Therefore, there are two reasons for concluding that these obligations do not constitute debts of the municipal corporation which functions within the same territorial boundaries as those within which the improvement authority operates.

It is submitted that the following propositions which have already been accepted by the Court of Appeals of New York are sound:

(1) The power of a municipal corporation to create an authority must be clearly authorized by statute;

(2) The legislature may create or provide for the creation of an authority for various purposes, where there is no attempt to grant it general powers of local government;

(3) Obligations of an authority payable solely from the revenue of the authority are not debts, within the meaning of the

39 S. D. Laws (1935), c. 73, § 2, p. 104.
public revenue financing

(4) The transfer by the legislature of property of a municipal corporation to an authority for a limited period, such as for the duration of the life of the authority, does not deprive the municipal corporation or its taxpayers of property without due process of law. 40

Encouraged by the Public Works Administration, a number of states have used the authority also as a means for providing safe and sanitary dwelling accommodations for persons of low income. 41 The housing authority is a public corporation and is neither the city nor the alter ego of the city. It is a separate legal entity created for the purpose of achieving a desired social result. Like other authorities, it has no power to levy taxes. The creation of housing authorities with power to clear slums, to construct dwellings for persons of low income and to finance such construction by means of loans payable solely from the revenues derived from such dwellings and secured by a mortgage on the property of the authority, is the result of a militant social consciousness seizing upon the public corporation as a weapon for the common good. 42

THE RURAL ELECTRIFICATION AUTHORITY

The continued development of the municipal improvement authority seems to be an equitable and proper method of accomplishing the objective of establishing legal institutions which serve the public with-

40 Foley, "A Note on Recent Authority Case," I LEGAL NOTES ON LOCAL GOVERNMENT 2 (1936).
41 Statutes creating housing authorities are cited in Appendix B. Housing authorities should be distinguished from housing companies with voluntary limited profits. For a general discussion of these limited dividend companies, see Wood, SLUMS AND BLIGHTED AREAS IN THE UNITED STATES (1935), Federal Emergency Administration of Public Works, Housing Division Bulletin No. 1.
out the incentive of the profit motive. With this in mind, some states utilized the authority as a method for achieving the electrification of rural areas.\(^4^3\) Private corporations have for the most part been reluctant to invest their funds in the construction of distribution lines through rural areas and contiguous small communities because of the heavy expense of such operations in comparison with the small profit to be realized. Another deterrent is the length of time required for amortization of the investment.

A corporation under public control, administered solely in the interests of the public and without the urgency of earning a profit, is a proper and effective institution for carrying out an economically sound and socially desirable rural electrification program. Through such public corporations the benefits of electricity may be made available, at the lowest possible rates consistent with sound economy and prudent management, to the mass of people heretofore denied this type of service.

The case of *Lower Colorado River Authority v. McCraw*\(^4^4\) illustrates the attitude which a court should take in considering the power of a legislature to create a public corporation without taxing power in the face of extraordinarily restrictive constitutional limitations.\(^4^5\) The Lower Colorado River Authority Act created a corporate board with power to develop water power and distribute electric energy.\(^4^6\) It is apparent from the opinion that the Supreme Court of Texas approved the principle that it was not its province, but rather the province of the legislature, to adjudge the method to be used by the state in making possible its electrification program.

A similar view was taken by the Supreme Court of Nebraska in a case \(^4^7\) involving the act authorizing the incorporation of public power districts.\(^4^8\) The court disposed of the contention that the enabling act was unconstitutional, because it permitted a district created under the act to compete with municipal and privately owned and operated electric light and power plants to the injury of the owners of such plants, by pointing out that such a contention went not to the validity but to the wisdom of the legislation, a matter not subject to review by the court. Though termed a "district," the Loup River Public Power Dis-

\(^{43}\) For statutes creating electrification authorities, see Appendix B.
\(^{44}\) 125 Tex. 268, 83 S. W. (2d) 629 (1935).
\(^{45}\) Tex. Const., Art. XVI, § 59.
\(^{47}\) State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N. W. 409 (1934).
\(^{48}\) Neb. Laws (1933), c. 86, p. 338, Comp. Stat. (1933), § 70-701 et seq.
district which was created under the Nebraska act is neither a taxing nor an assessment district. It is a public corporation without the power to tax but with the power to charge rates for the services provided by it. In other respects it has the same characteristics as an authority. Since rentals such as those charged by such a district do not constitute a tax or an assessment, rules of law governing the formation and operation of the orthodox special taxing or assessment district have no application to such a corporation.

49 Id., §§ 8 and 13.

50 Thus, it is a public corporation and may sue and be sued in its corporate name (id., § 2); its corporate powers are exercised by a board of directors none of whom may be a member of the governing body of any municipality in the district (id., § 5); it has the usual broad powers of a corporation for public purposes (id., § 6); and may incur indebtedness for any corporate purpose to be repaid solely with its revenue, income, receipts and profits (id., § 9).


53 Many laws in the western states providing for the creation of special taxing or assessment districts are patterned after the Wright Act of California. Cal. Stat. (1887), p. 29, Gen. Laws (Deering 1931), Act 3845. In the establishment of a special district involving the imposition of a tax or assessment upon land owners there are two points in the usual procedure with respect to which the due process clause of the Fourteenth Amendment may require that notice be given and a hearing be accorded to those whose interest will be affected. The first is the determination of what lands are to be included in the district. The second is the actual tax or assessment upon the several land owners within the district. See Fallbrook Irrigation Co. v. Bradley, 164 U. S. 112, 17 S. Ct. 56 (1896); Browning v. Hooper, 269 U. S. 366, 46 S. Ct. 141 (1926). There is a wide variance in the holdings of the courts on the nature of the obligations issued by such districts. Early Montana cases held that bonds of irrigation districts were general obligations of the district. See Cosman v. Chestnut Valley Irrigation District, 74 Mont. 111, 238 P. 829 (1925); Clark v. Demers, 78 Mont. 287, 254 P. 162 (1927); Drake v. Schorege, 85 Mont. 94, 277 P. 527 (1929). Later the Supreme Court of Montana expressly overruled its previous decisions and held that such bonds were not general obligations of the district, but merely a charge against the lands in the district, and that each tract of land was only liable for its proportion of the entire bonded indebtedness. State ex rel. Malott v. Board of County Commrs., 89 Mont. 37, 296 P. 1 (1931). The Circuit Court of Appeals of the Ninth Circuit has recently concluded that the earlier decisions of the Montana court were correct and that the later decisions are erroneous. Judith Basin Irrigation District v. Malott, (C. C. A. 9th, 1934) 73 F. (2d) 142. The Circuit Court of Appeals of the Eighth Circuit in Norris v. Montezuma Valley Irrigation District, (C. C. A. 8th, 1918) 248 F. 369, held that the bonds of an irrigation district organized under the laws of Colorado, patterned after the Wright Act of California, were the general obligations of the district. Here again there is a direct conflict between the federal court and the supreme court of the state. Interstate Trust Co. v.
A case which sets the high water mark in the development of the authority as an instrument for carrying out a state program of electrification is *Clarke v. South Carolina Public Service Authority*. The General Assembly of South Carolina in 1934 created the South Carolina Public Service Authority and empowered it to construct a hydroelectric and navigation project by diverting the waters of the Santee River into the Cooper River. The authority was authorized, without in any way pledging the faith, credit and taxing power of the state, to finance the construction of what is generally known as "The Santee-Cooper Hydro-Electric and Navigation Project," by borrowing money to be evidenced by bonds payable from the revenues of the project and further secured by a foreclosable mortgage on the project.

The authority applied to the Public Works Administration for a loan and a grant with which to finance the project. After the project had been approved by the President for inclusion in the federal public works program, a contract was drawn up pursuant to which the Gov-


By Public Resolution No. 11, 49 Stat. L. 115, approved April 8, 1935, the 74th Congress appropriated $4,880,000,000 for "relief, work relief and to increase employment by providing for useful projects." Section 1 (g) authorizes "loans or grants, or both, for projects of States, Territories, Possessions, including subdivisions and agencies thereof, municipalities, and the District of Columbia, and self-liquidating projects of public bodies thereof, where in the determination of the President, not less than twenty-five per centum of the loan or the grant, or the aggregate thereof, is to be expended for work under each particular project." By Executive Order No. 7064 of June 7, 1935, President Roosevelt authorized the Federal Emergency Administration of Public Works to continue to perform after June 16, 1935, all functions which it was authorized to perform prior to that date and in addition to make loans
government agreed to advance funds to the authority by way of loan and grant; the loan was to be evidenced by bonds of the authority secured by a mortgage on the property to be acquired with the proceeds of the loan and grant. A taxpayer challenged the constitutionality of the act creating the authority on thirteen different grounds, the most serious of which were: (1) whether the General Assembly had power to create the authority as an agency of the state to engage in the power business in competition with private industries and to engage in interstate commerce, and (2) whether the bonds of the authority, secured by a foreclosable mortgage, would constitute a debt of the state within constitutional limitations.

Applying the same reasoning as the Texas and Nebraska courts, the South Carolina court declared that the policy of the undertaking was for determination by the legislature and not by the court, and upheld the power of the authority, as an agency of the state, to build and operate the project and to sell electrical energy within and with-

out the boundaries of the state regardless of what effect it might have on private enterprises. The question whether the bonds of the authority constituted debts of the state brought to a focus the effect of having a foreclosable mortgage as additional security for bonds of a public corporation. The court held that the bonds of the authority were not debts of the state, despite the fact that the bonds were to be secured by a mortgage on the property to be acquired with the proceeds of a loan and a grant to be made by the Federal Emergency Administration of Public Works.58

THE EFFECT OF A PUBLIC CORPORATE MORTGAGE

In addition to the law creating the South Carolina Public Service Authority, laws in various states provide that similar public corporations may execute mortgages to secure their bonds. For example, bridge,59 market,60 power,61 water,62 port,63 park64 and housing65 authorities are frequently empowered to execute conventional mortgages.

It has been said that there cannot be a mortgage without a debt.66 This was not true at common law.67 Of course it is true that in some states where statutes have been passed prohibiting a strict foreclosure or requiring a public sale of property on foreclosure, the holder of a

58 See cases cited infra, note 69.
60 N. Y. Laws (1933), c. 231, as amended by Laws (1935), c. 844; and Laws (1933), c. 232, as amended by Laws (1935), c. 846.
61 S. C. Acts (1934), No. 887.
62 Mont. Laws (Ex. Sess. 1933-34), c. 35 as amended by Laws (1935), c. 95 and c. 169.
63 N. J. Laws (1926), c. 336, as amended by Laws (1927), c. 33.
64 N. Y. Laws (1933), c. 801.
65 See housing authority statutes cited in Appendix B.
66 "The provision for a mortgage implies a debt, since a mortgage cannot exist without a debt." City of Joliet v. Alexander, 194 Ill. 457 at 462, 62 N. E. 861 (1902).
67 1 JONES, MORTGAGES, 8th ed., § 323 (1928). See Fisk v. Stewart, 24 Minn. 97 (1877); Brant v. Robertson, 16 Mo. 129 (1852); Burke v. Murphy, 275 Mo. 397, 205 S. W. 32 (1918). The Civil Code of California defines a mortgage as a "contract by which a specific property is hypothecated for the performance of an act without the necessity of a change in possession." Cal. Civil Code (Deering 1931), § 2920. The same definition is used in the North Dakota Statutes, N. D. Comp. Laws (1913), § 6725.
mortgage secured by an obligation which is not reducible to a money judgment or decree may be without a remedy. This results from statutory changes in the common-law rules applicable to foreclosures rather than from any essential relation between a mortgage and a debt.

Assuming that a debt is incurred when a mortgage is given by a public corporation, it would seem to be the debt only of the corporate mortgagor. Even if a court should take the view that an authority is an agency of a municipal corporation, it does not follow that the issuance by the authority of obligations secured by a mortgage creates a debt of the municipal corporation; for, if the obligations are payable solely from the rents and revenues derived from the property acquired with the proceeds of the bonds, it is clear that they would not be a debt of the municipal corporation, and the fact that the obligations are additionally secured by a mortgage on the same property would not appear to be a valid distinction.

There have been intimations in some jurisdictions that obligations of a municipal corporation secured by a mortgage do constitute a debt. The argument is that the mortgagor may forfeit the equity which it is assumed to have acquired in mortgaged properties by paying the obligations as they become due. It is said that this risk of loss coerces the corporation to pay off the mortgage. This may well be so if property theretofore owned by a municipal or other public corporation is mortgaged in addition to the property acquired with the proceeds of the sale of bonds of the corporation. But such reasoning is hardly tenable if the mortgage covers only property acquired with the proceeds of the loan in question.

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69 State ex rel. City of Excelsior Springs v. Smith, 336 Mo. 1104, 82 S. W. (2d) 37 (1935); Clarke v. South Carolina Public Service Authority, 177 S. C. 427, 181 S. E. 481 (1935); Hawkins v. Board of Examiners, 97 Mont. 441, 35 P. (2d) 116 (1935); State ex rel. Normile v. Cooney, 100 Mont. 391, 47 P. (2d) 637 (1935); Farmers' State Bank v. City of Conrad, 100 Mont. 415, 47 P. (2d) 853 (1935); Hughes v. State Board of Health, 260 Ky. 228, 84 S. W. (2d) 52 (1935). Earlier cases in which revenue bonds were upheld where a mortgage in the nature of a purchase money mortgage was given as additional security: Kasch v. Miller, 104
Presumably the value of the mortgaged property at the outset is equal to the amount of the loan, for the property has been acquired or constructed with the proceeds of the loan. Payment of the bonds issued to secure the loan is required to be made solely from the revenues derived from the enterprise itself. In the Clarke case the Supreme Court of South Carolina held that bonds of the South Carolina Public Service Authority secured by a foreclosable mortgage on the property to be acquired with the proceeds of the federal loan and grant would not constitute debts of the state, it being clearly shown by the record that the mortgage would not cover any property already owned by the state or to be acquired by taxation.

Recent cases in Montana and Missouri had already developed this principle. The Supreme Court of Montana had held that bonds of the state of Montana, secured by a pledge of the revenues of, and a foreclosable mortgage on, the project constructed with the proceeds of such bonds did not create a debt of the state within the meaning of the constitutional provision limiting state indebtedness.

The Missouri case involved the validity of mortgage revenue bonds issued by the city of Excelsior Springs to finance the development of its mineral water. The city owned park lands on which were located valuable mineral wells. It sold these lands. Subsequently, the city issued bonds for the purposes of acquiring lands containing mineral wells and developing these wells for their curative qualities. Some of these lands were the same as those which the city had previously sold; others it had never owned. The bonds authorized by the city were secured by a mortgage on all the lands and the income from the bathing facilities located on such lands. The state auditor refused to register the bonds on the ground that they created an indebtedness in excess of the amount authorized by the constitution.

The Supreme Court of Missouri had previously held that munici-


pal obligations payable only from income were not debts within the meaning of the constitution. It had, however, been careful to point out that no lien on the physical property acquired with the proceeds of the bonds was involved. In the *Excelsior Springs* case the court held that it made no difference that the bonds of the city were secured, not only by a foreclosable mortgage on the lands and the improvements to be made, but on the revenues of the property as well. The view taken by the Missouri court was that the beneficial interest in the properties would not be acquired by the city until it had paid the bonds from the income derived from the properties and it followed, therefore, that the city could lose no property by the foreclosure of the mortgage.

The Missouri case illustrates the utilization by the state of an existing municipal corporation to perform a function far removed from the historic functions of a municipal corporation. The powers delegated to the city of Excelsior Springs for the purpose of developing the balneological qualities of its mineral wells might have been delegated to a public corporation created for that special purpose. In the state of New York a similar development of the mineral springs at the Saratoga Spa has been accomplished by the Saratoga Springs Authority created by the legislature of New York in 1933 for that express purpose. Instead of using an existing municipal corporation to meet a special problem as the Missouri legislature did in the case of Excelsior Springs, the New York legislature has pursued for several years the policy of forming a special public benefit corporation, to deal with each particular problem as it arises, and more recently, of

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73 State ex rel. City of Hannibal v. Smith, 335 Mo. 825, 74 S. W. (2d) 367 (1934); Bell v. City of Fayette, 325 Mo. 75, 28 S. W. (2d) 356 (1930); State ex rel. Smith v. City of Neosho, 203 Mo. 40, 101 S. W. 99 (1907).


75 New York statutes creating authorities are cited in Appendix B. In his annual message to the New York Legislature delivered on January 1, 1936, Governor Lehman urged the Legislature to exercise restraint in the establishment of additional authorities. The Governor stated: "In certain instances an authority may well be a sound and reasonable method by which to reach a desired end. Equally true, an authority such as the Port of New York Authority may be the only suitable agency. Authorities should not, however, be used to displace the permanent and regular governmental agencies." 85 N. Y. TIMES 14:8 (Jan. 2, 1936). The necessity for additional authorities in the State of New York has to some extent been eliminated by Chapter 525, Laws (1935), adopted upon recommendation of the Governor. See message of the Governor to the Legislature, April 8, 1935 [published 90 Bond Buyer.
conferring on an existing public benefit corporation the power to undertake more than one project.\textsuperscript{77}

**The Buffalo Sewer Authority**

The enactment of legislation creating special public benefit corporations in New York has solved many pressing problems. For example, the city of Buffalo had for many years allowed raw sewage to pour into the Buffalo and Niagara Rivers and Lake Erie and Lake Ontario. The danger of contamination and pestilence imbued successive city as well as state administrations with the desire to install modern engineering devices to eliminate this dangerous pollution. The Dominion of Canada and the Province of Ontario had protested on behalf of their citizens living along the waters affected. Downstream communities in the state of New York laid typhoid epidemics at the door of the offending but helpless city. The state department of health by formal order directed the officers of the city to take action to remove the menace to the health of the inhabitants of the state. To construct the necessary sewage disposal facilities would cost at least $15,000,000. But the city had power to borrow only $6,000,000 within its constitutional debt limitation,\textsuperscript{78} and the state had no money which it would appropriate to the city. In this emergency the harried municipal officers sought the counsel and aid of the President of the United States.

The President, before sending these officials to the Administrator of Public Works, indicated that the formation of a public corporation might meet their problem. The legal division of the Public Works Administration and the office of the Buffalo corporation counsel collaborated in drafting a bill for the creation of the Buffalo Sewer Authority which was then passed by the legislature.\textsuperscript{79} The act provided for the appointment by the mayor of the city of Buffalo of a board constituted as a public benefit corporation. Its corporate existence was limited to five years and for such further time as might be necessary for the amortization of outstanding bonds and the discharge of its other liabilities. The authority was given power to construct sewage facilities which in its judgment would provide an effectual means

\textsuperscript{77} E. g., N. Y. Laws (1933), c. 145, as amended by Laws (1936), c. 555.
\textsuperscript{78} N. Y. Const., Art. VIII, § 10.
\textsuperscript{79} N. Y. Laws (1935), c. 349.
of preventing further pollution by the city of Buffalo and other municipal corporations in the county of Erie. Jurisdiction, control, possession and supervision of the existing sewage facilities of the city were transferred to the authority for the duration of its corporate existence. The authority was given power to fix sewer rents to be collected from the real property which it served and to issue negotiable bonds to the amount of $15,000,000 payable solely from the funds of the authority. The sewer rents upon their due date were made a lien with the same priority and superiority as the general tax of the city, subject to foreclosure in the same manner as a general tax lien.

The act was immediately attacked by taxpayers. In the case of *Robertson v. Zimmermann*, two principal points to defeat the powers conferred upon the authority were raised. It was first objected that the act authorized the city of Buffalo to incur a bonded indebtedness in excess of the constitutional limitation. To this argument the Court of Appeals replied that the project constituted a self-liquidating improvement and that the authority could not pledge the credit of the city in any way, its bonds being payable solely from funds of the authority. The Court of Appeals pointed out that the sewer rents were to be derived from the owners of property using the new system and said that this did not involve the diversion of any existing source of revenue of the city.

The second main objection raised by the taxpayers was that the transfer of the existing sewer system of the city to the authority deprived the city of property without due process of law. To this argument the Court of Appeals, following the Supreme Court of the United States, answered that the power of the legislature over the rights and property of cities is unrestrained by the due process clause of the state or Federal Constitution.

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81 It is to be hoped that the court did not mean to imply that its decision would have been otherwise had the sewer system which was transferred to the authority previously produced revenues for the city. For cases holding that no debt is created when revenues of an existing revenue producing system are pledged to the payment of bonds issued to finance an improvement or extension to such system, see Foley, "Some Recent Developments in the Law Relating to Municipal Financing of Public Works," 4 Fordham L. Rev. 13, n. 73 (1935). See cases cited in Appendix C.
A Trend in Municipal Financing

The necessity for the creation of independent public corporations, such as the Buffalo Sewer Authority, with broad powers to effectuate their corporate purposes is frequently eliminated by the enactment of general laws commonly termed revenue bond acts. These laws usually delegate to an existing municipal corporation broad powers similar to those powers which would be delegated to an authority if one were created for the purpose. It has been realized for some time that the issuance of obligations anticipating the income of self-sustaining municipal enterprises is a practical method of financing the construction of such improvements. The zeal with which the President and the Administrator of Public Works have encouraged local governmental units to participate with the Federal Government in a national program of self-liquidating public works has given a sharp stimulus to the use of revenue bonds.

Some interesting comparisons could be drawn between the revenue bond laws enacted in past years and those enacted by the state legislatures during 1935. The older revenue bond laws are characterized by the detail with which the legislature prescribed the manner in which the newly conferred powers might be exercised. Little was left to the discretion or business judgment of municipal officials. The statute was in effect an irrevocable indenture which set forth the duties of the municipal corporation and the rights of the bondholders.

The trend in the new statutes has been to delegate to municipal corporations, authorized to construct and finance a revenue-producing business enterprise, the same broad and elastic powers which any private corporation engaged in a similar activity would have by virtue of its charter or certificate of incorporation. To endow a municipal corporation not only with powers of government over a given locality, but to a certain extent with the powers of a private corporation, is shocking to those who feel that the functions of a municipal corporation should be limited to duties traditionally governmental. If, however, the policy of the legislature is to foster municipal public service enterprises, it follows that a municipal corporation should have sufficient flexibility of action to enable it to adjust itself to changing eco-

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83 Statutes authorizing municipal corporations to finance public enterprises by means of revenue obligations are cited in Appendix A.
85 Compare statutes cited supra n. 84 with N. C. Laws (1935), c. 473, p. 827.
nomic conditions. It has already been pointed out that state legislatures have created public corporations for the purpose of furnishing services of a character heretofore supplied exclusively by private corporations, and that these public corporations have been given powers akin to those of private corporations. It would appear that the delegation to a municipal corporation of powers necessary to do all things in relation to a public service enterprise which a private business corporation could do under the laws of the state, is not only consistent with this development of public corporate enterprise but is essential if the municipal corporation is to be used as an agency for similar purposes. A possible danger in utilizing municipal corporations for these purposes is that the courts are apt to take a more rigid attitude in construing broad grants of power to a municipal corporation than in construing similar grants to an agency of the state.

The use of revenue bonds has been encouraged during the past few years by judicial pronouncements in more than a dozen states upholding this method of public financing.

In contrast with the decisions of the courts which have upheld the issuance of revenue bonds, a series of cases decided by the Supreme Court of Florida in 1936 shows a novel application of the principles underlying the special fund doctrine. In enunciating a rationale applicable to revenue financing, the Supreme Court of Florida drew a distinction between such financing by the state and by municipal corporations of the state. The Florida court had previously held that revenue obligations issued by a city to finance necessary improvements to a waterworks system, where such obligations were secured by a pledge of the net revenues of such system as extended, did not constitute bonds within the meaning of the provision of the Florida constitution requiring the issuance of municipal bonds to be approved at a popular election.

In 1935 the Florida legislature passed an act authorizing municipalities of the state to issue mortgage revenue certificates or debentures for the construction of revenue-producing utilities, such obliga-

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88 State ex rel. Diver v. City of Miami, 113 Fla. 280, 152 So. 6 (1933); State v. City of Lake City, 116 Fla. 10, 156 So. 924 (1934); State v. City of Daytona Beach, 118 Fla. 29, 158 So. 300 (1934).
tions to be secured by a pledge of the revenues of the utility and a foreclosable mortgage on the property thereof, together with a contingent franchise to be granted to the purchaser of the utility in the event of a foreclosure.90

In a suit brought to test the validity of obligations issued without an election, pursuant to this act, the court held that the obligations were bonds within the meaning of the constitution.91 Immediately following this case the Florida Supreme Court considered a number of other cases involving the question of the issuance of revenue obligations either by a municipal corporation without an election or by some agency of the state.

The first of these cases involved the issuance of revenue certificates by a county for the construction of a waterworks project which was to serve a portion of the county. The court held that the proposed certificates would not be bonds within the meaning of the constitution and an election was not necessary to authorize their issuance.92 The next case involved the issuance of revenue certificates by the State Board of Control to finance a new dining hall and new dormitories at various state educational institutions. The sole security for payment of the proposed obligations was a lien on the income and revenue derived from fees, rentals and other charges collected from students, faculty members and others using or being served by the projects constructed with the proceeds of the obligations. Again the court held that such obligations did not come within the purview of the applicable constitutional provision.93

The next case decided by the court held that mortgage revenue certificates proposed to be issued by the State Tuberculosis Board to construct a new sanatorium would constitute bonds of the state prohibited by the constitution.94 The plan for financing this sanatorium included as an alternative to a foreclosable mortgage, as additional security for the revenue certificates, a pledge of an appropriation of $200,000 for the establishment, maintenance and support of a tuberculosis sanatorium which the legislature had made in 1927 and which had never

90 Fla. Laws (1935), c. 17118.
91 Boykin v. Town of River Junction, 121 Fla. 902, 164 So. 558 (1935).
92 Board of County Commissioners of Pinellas County v. Herrick, (Fla. 1936) 167 So. 386. Under the enabling act construed in this case, the Board of County Commissioners of Pinellas County was utilized as an agency of the state to supply water to certain islands off the gulf coast within the boundaries of Pinellas County.
93 Hopkins v. Baldwin, (Fla. 1936) 167 So. 677.
94 Brash v. State Tuberculosis Board, (Fla. 1936) 167 So. 827.
been utilized.\textsuperscript{95} It was proposed to pledge and assign so much of this appropriation as might be necessary to make up any deficiency in the revenues pledged to the payment of the proposed certificates.

After the court had held that this proposed method of financing was prohibited by the constitution, the plan was revised so as to require the issuance of purely revenue certificates not additionally secured by either a mortgage or an appropriation of tax moneys, but making use directly in the construction of the project of the moneys appropriated by the 1927 legislature. When the revised plan came before the court, it was held that the proposed obligations were not state bonds within the meaning of the constitution.\textsuperscript{96} On the same day on which this opinion was filed there was also filed a decision of the court holding that revenue obligations proposed to be issued by the city of Sebring for the construction of a new gas plant\textsuperscript{97} would constitute bonds of the city within the meaning of amended section 6 of Article IX of the Florida constitution.\textsuperscript{98}

Superficially, the Florida decisions relating to state revenue financing appear to be inconsistent with those relating to revenue financing by cities. The basis for the court's holding that the proposed revenue obligations of the state were not bonds was that the issuance of these obligations would not directly or indirectly impose an added burden on the taxing power of the state or have the effect of impairing the credit of the state. The basis for the court's holding that the proposed revenue obligations of municipal corporations were bonds was that the issuance of these obligations would indirectly create a burden on the taxing power. If the construction of a project will result in a coercive moral or legal necessity for levying a tax in the event that the revenues of the project should be insufficient to operate it, then, under the Florida decisions, any obligations whether payable from revenues or taxes, issued to finance the original construction of the project are bonds within the meaning of the constitutional provision.

\textsuperscript{95} Fl. Acts (1927), c. 12284, Comp. Gen. Laws (1927), §§ 3308-3316.
\textsuperscript{96} Brash v. State Tuberculosis Board, (Fla. 1936) 169 So. 218.
\textsuperscript{97} Hygema v. City of Sebring, (Fla. 1936) 169 So. 366.
\textsuperscript{98} The Florida Supreme Court has followed its earlier decisions relating to the issuance of revenue obligations for improvements to existing municipal utilities. E. g., Wilson v. City of Bartow, (Fla. 1936) 168 So. 545; State v. City of Clearwater, (Fla. 1936) 168 So. 546; State v. City of Punta Gorda, (Fla. 1936) 168 So. 835; Boykin v. Town of River Junction, (Fla. 1936) 169 So. 492; State ex rel. City of Vero Beach v. MacConnell, (Fla. 1936) 169 So. 628, 657; Williams v. Town of Dunnellon, (Fla. 1936) 169 So. 631. Compare Kathleen Citrus Land Co. v. City of Lake-land, (Fla. 1936) 169 So. 356; Charles v. City of Miami, (Fla. 1936) 169 So. 589.
The court's view is that the embarkation upon a new municipal venture might lead to the necessity at some future time for levying a tax in order to continue the services of the new venture, and the court would not interfere with a levy of a tax for such purpose. But in the case of a state project, if an attempt should be made to levy a tax for the purpose of operating a project originally financed by the issuance of revenue obligations, the court intimates that it would render appropriate injunctive relief. Thus, the Florida court applies the special fund doctrine to revenue financing by the state or agencies of the state differently from the way it applies the doctrine to municipal revenue financing. The fact that the constitutional provision relating to state bonds is an absolute prohibition whereas the provision relating to municipal bonds is only a partial restriction which can be surmounted by holding an election, undoubtedly is a factor in explaining this difference in the attitude of the Florida court towards state and municipal revenue financing.

The Supreme Court of Florida has in effect rejected the special fund doctrine as applied to the financing of new municipal enterprises, but, oddly enough, has applied the doctrine to the financing of improvements to an existing municipally owned enterprise. In other words, the Florida court applies the special fund doctrine in situations where only some courts apply the doctrine, but rejects the special fund doctrine in situations where virtually all courts apply the doctrine. The decisions of the Florida Supreme Court on the issuance of revenue obligations are clearly out of line with the overwhelming weight of authority.

Questions Yet to Be Determined

Many aspects of the law relating to revenue financing have not yet received adequate consideration by the courts. How, for example, should a municipality account for the cost of services and products of a municipally owned enterprise which are furnished to the municipality itself or to any of its agencies or departments? A number of statutes require or authorize a municipality to transfer from its general fund to the income fund of an enterprise the reasonable cost of such services and products. It is not uncommon for a municipality, in an

ordinance authorizing the issuance of revenue bonds for a particular enterprise, to covenant that, so long as any of such bonds are outstanding, it will not render any of the services of such enterprise free of charge; that if the municipality or any of its agencies or departments avails itself of the services of the enterprise, the reasonable value of such services will be paid; and that any sums so paid will be accounted for in the same manner as any other revenues of the enterprise. That such a covenant becomes a part of the contract with the holder of the bonds, and that the power to make such a covenant is coextensive with the power to issue such bonds, have recently been decided by the Supreme Court of Mississippi. 101 A line of cases in Kentucky holds that such a covenant does not render revenue bonds a debt of the municipality within the meaning of constitutional limitations on debt-incurring power. 102 Under the Kentucky decisions, if the municipality does not bind itself to take the services of the enterprise, but agrees only to pay for any services which may be used by it, no indebtedness within the meaning of constitutional limitations is created. 103

If the municipality promises that as long as the bonds are outstanding it will transfer a fixed amount of money from its corporate funds to the special fund of the enterprise in payment for any services which may be rendered to the municipality, such a promise may result in losing the protection of the special fund doctrine, for it can then be argued that the bonds are backed, at least in part, by the taxing power of the municipality. 104 Where, however, the municipality agrees only to pay the reasonable cost of any services which it may take, without binding itself to take a definite amount of the services, such an agreement, like a long-term contract with a third party to take water

101 Street v. Town of Ripley, 173 Miss. 225, 161 So. 855 (1935).
103 Accord: Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923); Barnes v. Lehi City, 74 Utah 321, 279 P. 878 (1929); Uhler v. City of Olympia, 87 Wash. 1, 151 P. 117, 152 P. 998 (1915); State v. City of Punta Gorda, (Fla. 1936) 168 So. 835; see Street v. Town of Ripley, 173 Miss. 225, 161 So. 855 (1935); Fjeldsted v. Ogden City, 83 Utah 278, 28 P. (2d) 144 (1933).
or light services, should be construed as an agreement to pay out of current revenues for the ordinary expenses and recurrent needs of the municipality.\textsuperscript{105}

The rights and remedies of the holder of a revenue bond have not yet been clearly defined by the courts because the occasion for the assertion of rights and the enforcement of remedies has not yet arisen.\textsuperscript{106} Analogies will probably be drawn to the legal principles applied in the enforcement of remedies of private corporate bonds,\textsuperscript{107} and special assessment bonds of municipalities.\textsuperscript{108} To what extent the remedies of the holder of a revenue bond will depend upon the powers of the authority or the municipal corporation to contract with reference to remedies at the time of the issuance of the bonds, constitutes a crucial question of municipal powers in relation to revenue-producing enterprises of increasing importance.

Attempts by municipal corporations to finance new revenue-pro-


\textsuperscript{106} "The 'operation on default' clause in the contract which permits the contractor in case of default in payment to take over and operate the plant as the agent of the village would not render the entire contract invalid even if it were unenforceable. . . . We may well withhold our decision on this point until the question arises." Kelly v. Merry, 262 N. Y. 151 at 159-160, 186 N. E. 425 (1933). "What would result, in the event the district should mortgage its plant, default in the conditions of the mortgage and a foreclosure follow, and whether the plant could be sold and title given to a private individual or corporation, is a question that is not now before us and presents a contingency that may never arise." State ex rel. Loseke v. Fricke, 126 Neb. 736 at 741, 254 N. W. 409 (1934).

\textsuperscript{107} The principle is well settled that property held for governmental purposes cannot be subjected to the debts of a municipal corporation. In the exercise of its governmental powers a municipal corporation is clothed with the immunities of a sovereign. Meriwether v. Garrett, 102 U. S. 472 (1880); Lyon v. City of Elizabeth, 43 N. J. L. 158 (1881). When a municipal corporation steps outside the domain where it is engaged strictly in the performance of governmental functions and engages in an enterprise of a business character, it drops this cloak of immunity and its property is subject to attachment. Harman v. City of Ft. Lauderdale, 134 Misc. 133, 234 N. Y. S. 196 (1929); Doyle v. City of Astoria, 147 Misc. 127, 262 N. Y. S. 572 (1932). See Kelly v. Earle, 320 Pa. 449, 182 A. 501 (1936); Milheim v. Moffat Tunnel, 262 U. S. 710, 43 S. Ct. 694 (1923); Moffat Tunnel Improvement District v. Denver & Salt Lake Ry., (C. C. A. 10th, 1930) 45 F. (2d) 715, certiorari denied, 283 U. S. 837, 51 S. Ct. 485 (1931); Eastern Union Co. v. Moffat Tunnel Improvement District, (Del. 1935) 178 A. 864.

ducing public improvements by the issuance of bonds payable solely from the income of such improvements, in the absence of express statutory authority to issue such obligations, have been uniformly repulsed by the courts. A more liberal view has been taken where a municipality already owning and operating an enterprise which is producing revenue, attempts to finance additions and betterments by issuing obligations in anticipation of the revenues of such enterprise. When a municipal corporation is engaged in the operation and management of a public service enterprise, pursuant to express statutory authority, the extent to which a court may thereafter imply power to carry out the powers expressly conferred, should depend on the application of sound economic principles to a complex economic problem.

It is to be hoped that the courts will deal with the problem of the authority and the municipal corporation, operating public service enterprises, with the breadth of vision and enlightened understanding which characterized the Appellate Division of the Supreme Court of New York in 1896 when it decided that the construction of rapid transit facilities was a proper city purpose for New York City. In an opinion breathing freshness and inspiration into the law of municipal corporations, and which is as pertinent today as the day when it was written, Justice Barrett wrote:

“Growth and extension are as necessary in the domain of municipal action as in the domain of law. New conditions constantly arise which confront the Legislature with new problems. As the structure of society grows more complex, needs spring up which never existed before. These needs may be so general in their nature as to affect the whole country or the whole State, or they may be local and confined to a single county or municipality.


In any case, it is the duty of that legislative body which has the power and jurisdiction to apply the remedy. To hold that the Legislature of this State, acting as the *parens patriae* may employ for the relief or welfare of the inhabitants of the cities of the State only those methods and agencies which have proved adequate in the past would be a narrow and dangerous interpretation to put upon the fundamental law. . . .

"Unless, therefore, we are to lay down a hard and fast rule limiting municipal action to what has already been done, and to nothing else, the mere fact that a rapid transit railroad in a city was never before planned nor the plan executed by a municipal corporation ought not to foreclose the question. The true test is that which requires that the work should be essentially public and for the general good of all the inhabitants of the city. It must not be undertaken merely for gain or for private objects. Gain or loss may incidentally follow, but the purpose must be primarily to satisfy the need or contribute to the convenience of the people of the city at large. Within that sphere of action, novelty should impose no veto. . . ."

**APPENDIX A**

**REVENUE BOND LEGISLATION**

*Alabama:* Gen. Acts (1931), No. 118, p. 186 (toll bridges); Gen. Acts (Ex. Sess. 1932), No. 264, p. 254 (sewers and sewage disposal); No. 265, p. 264 (waterworks); Gen. Acts (Ex. Sess. 1933), No. 46, p. 22 (waterworks); No. 47, p. 29 (sewerage works); No. 102, p. 88, as amended by Gen. Acts (1935), No. 46, p. 108 (water, sewer, sewage disposal and gas); Gen. Acts (Ex. Sess. 1933), No. 107, p. 100 (electric light and power generating and distribution plans and systems); Gen. Acts (1935), No. 154, p. 195 (causeways, tunnels, viaducts, bridges and other crossings, highways, parks, parkways, airports, docks, piers, wharves, seaport or river terminals, hospitals, public markets, tennis courts, swimming pools, golf courses, stadiums, armories, auditoriums, and other public buildings of all kinds, incinerator plants, water systems, sewer systems, gas or electric heat, light or power systems for public and private uses, cold storage plants, cooling plants, sterilization plants, warehouses, graneries, and any other plants, works, machinery or equipment useful for the preservation or preparation of agricultural products for market or use and for the conversion of agricultural products into usable and marketable condition and for the conversion of the same into usable and marketable products).

*Arizona:* Laws (3rd Spec. Sess. 1933), c. 9 (any work or undertaking not prohibited by the state constitution); Laws (3rd Spec. Sess. 1933), c. 11 (light and power, water, sewer, gas, garbage and rubbish plants).

*Arkansas:* Acts (1933), No. 131, as amended by Acts (1935), No. 96 and No. 107 (waterworks); Acts (1933), No. 132 (sewers and sewage disposal).

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Colorado: Laws (Ex. Sess. 1933), c. 16, as amended by Laws (1935), c. 180 (all types of revenue producing undertakings).


Delaware: Laws (2d Spec. Sess. 1933), c. 21 (sewers, drainage systems, sewage disposal or treatment plants, reservoirs, waterworks, streets, bridges, highways, gas, heat, light, power systems and other permanent municipal improvements).

Florida: Special Acts (1933), c. 16344 (toll bridge across Apalachicola river); Laws (1935), c. 16847 (deep water ship harbor with dock and terminal facilities by the Canaveral Harbor District); Laws (1935), c. 17118, as amended by Laws (1935), c. 17119 (waterworks, sewers, sewage disposal, garbage collection and disposal, airports, hospitals, jails, golf courses, gas plants); Laws (1935), c. 17174 (airports, auditoriums, bridges, tunnels, viaducts, city and town halls, community houses, hospitals, sanitariums, dispensaries, jails, ice plants, precooling and cold storage plants and warehouses—by cities and towns located in counties having a population of not more than 31,000 and not less than 29,000 and any county having such population); Laws (1935), c. 17175 (similar to Laws 1935, c. 17174, but applicable only to Sumter County, Pasco County and cities and towns located in said counties); Laws (1935), c. 17176 (similar to Laws 1935, c. 17174, but applicable only to cities and towns located in a county having over 180,000 population and to counties having such population); Laws (1935), c. 17177 (similar to Laws 1935, c. 17174, but applicable only to cities and towns located in a county having not less than 10,000 nor more than 10,500 population and to any county having such population); Laws (1935), c. 17246 (toll bridge by Duval County); Special Acts (1935), c. 17558 (public buildings, golf courses, waterworks systems, water softening plants, board walks, sewerage systems, fishing piers, casinos, streets and parkways, parks, sea walls, public utilities, aviation fields, community and recreation centers, playgrounds, baseball fields, sport stadiums—applicable only to the City of Hollywood); Special Acts (1935), c. 17640 (toll bridge by Special Road and Bridge District No. 5 of Palm Beach County); Special Acts (1935), c. 17642 (waterworks improvements by City of Panama City); Special Acts (1935), c. 17644 (water supply and distribution system by Pinellas County); Laws (1935), c. 16837 (toll bridge by Bridge District of Palm Beach).

Idaho: Laws (1933), c. 186 (waterworks).


**Iowa:** Acts (1931), c. 158, Iowa Code (1931), §§ 6134-d1 to 6134-d7, as amended by Acts (Ex. Sess. 1933-34), c. 74 (public utilities); Acts (1933), c. 111, as amended by Acts (Ex. Sess. 1933-34), c. 71 (sewage treatment plants, swimming pools, golf courses); Acts (1933), c. 112 (hospitals).

**Kansas:** Laws (Spec. Sess. 1933), c. 32 (utilities); Laws (Spec. Sess. 1933), c. 43 (levies, docks, wharves, river terminals, storage facilities).


**Louisiana:** Constitution, Art. 14, § 14 (m) (revenue producing utilities); Acts (Ex. Sess. 1921), No. 80, Gen. Stat. (Dart 1932), §§ 5757-5763 (revenue producing utilities); Acts (1934), No. 31, p. 191 (sewer and sewage disposal); Acts (1934), No. 49, p. 247 (gas).

**Maryland:** Laws (Spec. Sess. 1933), c. 30, p. 138, as supplemented by Laws (1935), c. 393, p. 861, and Laws (Spec. Sess. 1936), c. 84 (any undertaking not prohibited by the Constitution, except gas and electric utilities).

**Michigan:** Constitution of 1908, art. 8, § 24 (public utilities); Pub. Acts (1931), No. 316 (sewage disposal); Pub. Acts (1933), No. 94, as amended by Pub. Acts (1935), No. 66 (housing facilities, garbage, rubbish and sewage disposal plants and systems, incinerators, public markets and storage facilities, merchandise marts, industrial malls, commercial marts, yacht basins, harbors, docks, wharves, terminal facilities, bridges over, tunnels under, ferries across rivers, streams and channels, community buildings, stadiums, convention halls and auditoriums, dormitories, hospitals, buildings devoted to public use, parks and recreational facilities, reforestation projects, aeronautic facilities and marine railways); Pub. Acts (Ex. Sess. 1933), No. 18 (housing facilities); Pub. Acts (1935), No. 147 (toll bridges).

**Minnesota:** Laws (1935), c. 221 (sewers and sewage disposal).

**Mississippi:** Laws (1934), c. 316, as amended by Laws (1936), c. 318 (waterworks, water supply, electric light or generating electric plants, electric distribution system, electric transmission system, gas system, garbage, rubbish, or sewage disposal plants, incinerators, storage facilities, docks, wharves, terminal facilities, cotton compresses, airports, hospitals, warehouses); Laws (1934), c. 317 as amended by Laws (1936), c. 186 (waterworks, water supply, sewage disposal system, gas system, electric transmission and distribution system, garbage disposal system, rubbish disposal system, toll bridges, viaducts, docks, wharves, terminal facilities, hospitals, airports, incinerators,
storage facilities, warehouses and cotton compresses); Laws (Ex. Sess. 1935), c. 44.


Montana: Laws (1935), c. 141 (water, gas, sewerage disposal, heating systems).


New Hampshire: Laws (1935), c. 113 (abattoirs, airports, auditoriums, bridges, tunnels and viaducts, town and city halls, bulkheads, jetties, harbors and harbor structures, community houses, court houses, dams, docks, piers and wharves, gas or electric heat, light and power plants, and systems for the distribution thereof; hospitals, sanitaria, dispensaries, alms-houses, jails, workhouses and reformatories; libraries, markets, memorials, museums and art galleries; parks, playgrounds, and recreation centers; golf courses and buildings in connection therewith; public buildings and plazas, reservoirs, waterworks and water distributing systems, schools (where the municipality does not constitute an independent school district); sewers, sewage or drainage systems and sewage disposal or treatment plants; stadiums; streets, roads, avenues, alleys and highways; sidewalks, curbs, gutters and storm sewers or drains; swimming pools).

New Mexico: Laws (1933), c. 57, as amended by Laws (Ex. Sess. 1934), c. 4 (any public utility); Laws (1935), c. 51 (auditorium and other public buildings).

New York: Laws (1935), c. 525 (causeways, tunnels, viaducts, bridges and other crossings, highways, parkways, airports, docks, piers, wharves, water supply, disposal of waste, sewage and storm water).

North Carolina: Pub. Laws (1935), c. 473, p. 827 (water, sewerage, gas or electric heat, light or power).


Oregon: Laws (1933), c. 289, Code (Supp. 1935), §§ 56-1811 to 56-1817 (sewers and sewage disposal); Laws (Spec. Sess. 1935), c. 64 (any project not prohibited by the Oregon constitution, including auditoriums, city and town halls, courthouses, jails, parks, reservoirs, waterworks and water distribution systems, sewers, sewage or drainage systems and sewage disposal or treatment plants, streets, bridges and highways, and swimming pools).


South Carolina: Acts (1933), No. 236, as amended by Acts (1934), No. 740 (waterworks, sewage, hospitals, power plants and electrical distribution systems, toll bridges, ferries, drainage systems, grading and paving and repairing streets, and sidewalks and highways, public buildings and common jails); Acts (1933), No. 299, as amended by Acts (1934), No. 798 (waterworks, water supply, sewer, sanitary disposal equipment, light plant, natural gas systems, ice plants, power plants and distribution systems, gas plants, incinerator plants, hospitals, piers, docks, terminals, airports, toll bridges, ferries, drainage systems, city halls, court houses, armories, fire stations, auditoriums, hotels, municipal buildings, theatres, community auditoriums, and hotels, city halls and hotels, public buildings and structures, public markets, public recreation parks, swimming pools, golf courses and stadia).
South Dakota: Sess. Laws (1931), c. 194 (waterworks and light, heat and power systems); Sess. Laws (1935), c. 163, p. 251 (water, sewerage, gas or electric heat, light or power).

Tennessee: Pub. Laws (1933), c. 68 (waterworks and sewers); Priv. Laws (1933), c. 469 and 538 (electric light, heat and power by town of Lewisburg and city of Columbia); Pub. Laws (Spec. Sess. 1935), c. 32 (electric plants); Pub. Laws (Spec. Sess. 1935), c. 33 (water, sewerage, gas or electric heat, light or power works, plants and systems); Pub. Laws (Spec. Sess. 1935), c. 11 (bridges, tunnels, viaducts, court houses, hospitals, sanitaria, dispensaries, almshouses, jails, workhouses, reformatories, public buildings, plazas, schools, roads, highways, by counties); Pub. Laws (Spec. Sess. 1935), c. 10 (abattoirs, airports, auditoriums, bridges, tunnels, viaducts, city and town halls, fire halls, community houses, court houses, grain elevators, wharves, docks, harbor and river front improvements, reclamation of land, hospitals, sanitaria, dispensaries, almshouses, jails, workhouses, reformatories, libraries, markets, memorials, parks, playgrounds, recreation centers, public buildings, plazas, reservoirs, waterworks, water distribution systems, schools, sewers, sewerage or drainage systems, sewerage disposal or treatment plants, incinerators, stadiums, streets, roads, avenues, alleys, highways, sidewalks, curbs, gutters, storm water sewers or drains, swimming pools—by cities and incorporated towns).


Utah: Laws (2d Spec. Sess. 1933), c. 22, as amended by Laws (1935), c. 74 (waterworks, sewer, sewage disposal, ice plants, gas or electric systems, toll bridges, hospitals, slaughter houses and any public project or service which may be lawfully owned, operated or managed by any county, city or incorporated town).

Vermont: Acts (1935), No. 69 and No. 70 (any public utility).


Washington: Laws (1931), c. 39, (sewerage and garbage disposal); Laws (1931), c. 53 (water, sewage disposal, stone and asphalt works, cold storage plants, electric and gas systems, street railways and transportation facilities); Laws (Ex. Sess. 1933), c. 18 (toll bridges); and c. 17 (waterworks).

West Virginia: Acts (1st Ex. Sess. 1933), c. 25, as amended by Acts (2d Ex. Sess. 1933), c. 48 (sewers); Acts (1st Ex. Sess. 1933), c. 26, as amended by Acts (2d Ex. Sess. 1933), c. 49 (waterworks); Laws (2d Ex. Sess. 1933), c. 27 (toll bridges); Acts (1935), c. 68 (cemeteries, incinerator plants, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, public markets, stadia, public recreation parks, swimming pools, tennis courts, golf courses, polo grounds, public buildings, including libraries and museums, common jails, grading and paving and repaving streets and alleys).

Wyoming: Laws (1935), c. 75 (sewers).
APPENDIX B

AUTHORITY LEGISLATION

I

Statutes Creating a Particular Authority as an Instrumentality for Financing and Operating Revenue Producing Enterprises


Florida: Laws (1933), c. 16176, Comp. Gen. Laws (Cum. Supp. 1934), § 4151 (177) et seq. (Ship Canal Authority); Laws (1935), c. 16991 (Escambia River Bridge Authority); Laws (1935), c. 17100 (Merritt Island–Peninsular Road and Toll Bridge District); Special Acts (1935), c. 17506 (Broward County Port District); Special Acts (1935), c. 17643 (Panama City Port Authority); Special Acts (1935), c. 17692 (Walton County Bridge Authority).


Idaho: Laws (1st Ex. Sess. 1935), c. 60 (State Water Conservation Board).

Louisiana: Acts (1934), No. 166, p. 537, as amended by Acts (1936), No. 72 (Board of Administrators of the Charity Hospital of Louisiana at New Orleans).

Maryland: Laws (Spec. Sess. 1933), c. 32, p. 150 (Maryland Emergency Housing and Park Commission); Laws (1935), c. 330, p. 743 (Chesapeake Bay Authority).


Montana: Laws (Ex. Sess. 1933-34), c. 35, as amended by Laws (1935), c. 95, 96 and 169 (State Water Conservation Board); Laws (1935), c. 98 (State Rural Electrification Authority).


New Jersey: Laws (1926), c. 336, as amended by Laws (1927), c. 33, Comp. Stat. (Supp. 1925-30), § *161-91 et seq. (South Jersey Port Commission); Laws (1933), c. 373 (Hackensack River Sewerage Authority).

New Mexico: Laws (1935), c. 100 (State Rural Electrification Authority).

New York: Laws (1929), c. 594, as amended by Laws (1930), c. 827, Laws (1931), c. 380; Laws (1933), c. 89 and Laws (1934), c. 300 (Niagara Frontier Bridge Commission); Laws (1931), c. 772 (The Power Authority of the State of New York); Laws (1932), c. 548, as amended by Laws (1933), c. 67, as amended by Laws (1936), c. 686 (New York State Bridge Authority); Laws (1933), c. 68 (Pelham-Portchester Parkway Authority); Laws (1933), c. 70 (Jones Beach State Parkway Authority); Laws (1933), c. 201 and Laws (1936), c. 73 and c. 219 (Lake Champlain Bridge Commission); Laws (1933), c. 208 (Saratoga Springs Authority); Laws (1933), c. 209, as amended by Laws (1936), c. 272 (Thousand Islands Bridge Authority); Laws (1933), c. 214, as amended by Laws (1933), c. 816 and c. 817
(The American Museum of Natural History Planetarium Authority); Laws (1933), c. 231, as amended by Laws (1935), c. 844 (Lower Hudson Regional Market Authority); Laws (1933), c. 232, as amended by Laws (1935), c. 846, and Laws (1936), c. 370 (Central New York Regional Market Authority); Laws (1933), c. 246, as amended by Laws (1934), c. 304 (Industrial Exhibit Authority); Laws (1933), c. 801 (Bethpage Park Authority); Laws (1933), c. 824 (Buffalo and Port Erie Public Bridge Authority); Laws (1934), c. 138 (Henry Hudson Parkway Authority); Laws (1934), c. 162 (Marine Parkway Authority); Laws (1935), c. 843 (Albany Regional Market Authority); Laws (1935), c. 869, and Laws (1936), c. 845 (Rockland-Westchester Hudson River Crossing Authority); Laws (1935), c. 842 (Albany Light, Heat and Power Authority); Laws (1935), c. 349 (Buffalo Sewer Authority); Laws (1933), c. 145, as amended by Laws (1936), c. 555 (Tri- borough Bridge Authority); Laws (1936), c. 1 (New York City Tunnel Authority).


**North Carolina:** Private Laws (1933), c. 75, p. 94 (Morehead Port Commission).


**South Carolina:** Acts (1934), No. 887 (South Carolina Public Service Authority).

**Tennessee:** Pub. Acts (Spec. Sess. 1935), c. 3 (State Rural Electrification Authority).


**Utah:** Acts (1935), c. 136 (Great Basin Authority).


### II

**General Statutes Authorizing the Creation of Authorities**

**Alabama:** Acts (1935), No. 40, p. 72 (Improvement authorities to furnish water, sewerage, telephone, gas or electric heat, light or power services); Acts (1935), No. 56, p. 126 (housing authorities); See Acts (1935), No. 42, p. 87 (power districts); Acts (1935), No. 45, p. 100 (non-profit electric membership corporations).

**Colorado:** Laws (1935), c. 132 (housing authorities); Laws (1935), c. 145 (water conservation districts).

**Delaware:** Laws (2d Spec. Sess. 1933), c. 16 (housing authorities); See Laws (1933), c. 61 (limited dividend housing companies).

**Florida:** Laws (1935), c. 16974 (development authorities for counties having a population between 15,500 and 16,000—toll bridges, highways, public parks and places of amusement, public buildings and community centers, housing facilities).


**Kentucky:** Acts (1934), c. 113, p. 507, Stat. (Baldwin 1934), §§ 274IX-1 to 274IX-15 (housing authorities).

**Louisiana:** Acts (1935), c. 760, Comp. Stat. (1933), §§ 144-501 et seq. (housing authorities).


**Michigan:** Laws (1935), p. 337 (State Highway Toll Bridge Trustees).

**Montana:** Laws (1935), c. 140 (housing authorities).

**Nebraska:** Laws (1933), c. 86, p. 338, Comp. Stat. (1933), § 70-701 et seq. (power districts); Laws (1935), c. 29, p. 128 (housing authorities).

**Nevada:** Laws (1935), c. 72, p. 152 (power districts).

**New Jersey:** Laws (1933), c. 78, as amended by Laws (1933), c. 426 (public housing corporations); see Laws (1933), c. 444.

**New York:** Laws (1934), c. 4 as amended by Laws (1935), c. 310 (housing authorities).


**Pennsylvania:** Laws (Spec. Sess. 1933-34), No. 30, p. 114, Stat. Ann. (Purdon 1935), tit. 16, § 4160-1 et seq. (counties of second class created authorities to construct, maintain and operate bridges, tunnels, streets, highways, traffic distribution circles, airports, hangars, parkways, recreation grounds and facilities, public parks, swimming pools, lakes, dams); Laws (1935), No. 191, p. 463, Stat. Ann. (Purdon 1935), tit. 53, § 29006, et seq. (authorizing the incorporation as bodies corporate and politic of authorities for any county, city, town, borough or township to construct, improve, maintain and operate bridges, tunnels, streets, highways, parkways, traffic distribution centers, traffic circles, parking spaces, airports, hangars, low cost housing.
projects, parks, recreation grounds and facilities, sewers, sewer systems, sewage treatment works, swimming pools, play grounds, lakes, low head dams, hospitals and subways).


South Carolina: Acts (1934), No. 783, as amended by Acts (1935), No. 301 and Acts (1935), No. 345 (housing authorities).

South Dakota: Sess. Laws (1935), c. 73, p. 104 (improvement authorities to furnish water, sewerage, gas or electric heat, light or power); Sess. Laws (1935), c. 162, p. 244 (power districts).


West Virginia: Acts (2nd Ex. Sess. 1933), c. 93 (housing authorities).


III

Statutes Empowering Existing Public Corporations of States to Finance Public Enterprises by the Issuance of Revenue Obligations


Arkansas: Acts (1933), No. 47 (state educational institutions—dormitories).

Colorado: Laws (2nd Ex. Sess. 1936), c. 12 (state educational institutions).

Florida: Laws (1935), c. 16981 (any type of project at state institutions under the jurisdiction of the State Board of Control, including administration, dining, exhibition, lecture, recreational, and teaching halls, commons, dining halls, dormitories, auditoriums, libraries, infirmaries, laundries, laboratories, metallurgical plants, museums, swimming pools, watertowers, fire prevention and fire fighting systems, gymnasium, stadia, dwellings, green houses, farm buildings and stables).

Idaho: Laws (1st Ex. Sess 1935), c. 55 (state educational institutions—all types of buildings and improvements).


Mississippi: Laws (1934), c. 209 (port commissions); Laws (Ex. Sess. 1935), c. 44 (toll bridges).

Montana: Laws (1929), c. 94 (educational institutions—residence halls); Laws (Ex. Sess. 1933-34), c. 7 (buildings at Eastern Montana State Normal School); Laws (Ex. Sess. 1933-34), c. 10 (student union buildings at state educational institutions); Laws (Ex. Sess. 1933-34), c. 17 (state insane asylum); Laws (Ex. Sess. 1933-34), c. 21 (buildings for State Industrial School); Laws (Ex. Sess. 1933-34), c. 22 (State Tuberculosis Sanitarium); Laws (1935), c. 7 (buildings at State Normal School).


Oklahoma: Sess. Laws (1929), c. 256, Stat. (1931), §§ 10392-10395 (toll bridges and toll roads by State Highway Commission); Laws (1931), c. 34, art. 6, p. 128, Stat. (1931), §§ 7141-7148 (dormitories by the Oklahoma Agricultural and Mechanical College); Laws (1931), c. 34, art. 7, p. 130, Stat. (1931), §§ 7149-
7156 (dormitories by the Oklahoma College for Women); Sess. Laws (1935), c. 34, arts. 9-17 (authorizing dormitories at nine specified state educational institutions).


Virginia: Acts (Ex. Sess. 1933), c. 49, p. 83, as amended by Acts (1936), c. 123, p. 212 (any building or improvement involving an outlay of a capital nature by educational institutions).

Washington: Laws (Ex. Sess. 1933), c. 23 (dormitories, hospitals and infirmaries by institutions of higher learning); Laws (Ex. Sess. 1933), c. 24 (dormitory, hospital and infirmary at University of Washington).

West Virginia: Acts (1929), c. 8, Code (1931), §§ 17-17-13 to 17-17-28, as amended by Acts (Ex. Sess. 1932), c. 1 (toll bridges); Acts (1933), c. 9, as amended by Acts (2d Ex. Sess. 1933), c. 38 (gymnasiums or stadia for athletic games, contests or exhibitions or physical training, dormitories, homes, refectories, swimming pools at state educational institutions).

APPENDIX C

CASES ON REVENUE OBLIGATIONS

Alabama: Alabama State Bridge Corp. v. Smith, 217 Ala. 311, 116 So. 695 (1928); In re Opinions of the Justices, 225 Ala. 460, 143 So. 900 (1932); In re Opinions of Justices, 226 Ala. 570, 148 So. 111 (1933); In re Opinions of Justices, 226 Ala. 18, 145 So. 481 (1933); In re Opinions of Justices, 228 Ala. 140, 152 So. 901 (1934); State ex rel. Radcliff v. City of Mobile, 229 Ala. 93, 155 So. 872 (1934); Oppenheim v. City of Florence, 229 Ala. 50, 155 So. 859 (1934); Smith v. Town of Guin, 229 Ala. 61, 155 So. 865 (1934); Bankhead v. Town of Sulligent, 229 Ala. 45, 155 So. 869 (1934); Town of Opp v. Donaldson, 230 Ala. 689, 163 So. 322 (1935).


California: Shelton v. Los Angeles, 206 Cal. 544, 275 P. 421 (1929); In re California Toll Bridge Authority, 212 Cal. 298, 298 P. 485 (1931); Garrett v. Swanton, 216 Cal. 220, 13 P. (2d) 725 (1932); California Toll Bridge Authority v. Kelly, 218 Cal. 7, 21 P. (2d) 425 (1933); Department of Water and Power of City of Los Angeles v. Vroman, 218 Cal. 206, 22 P. (2d) 698 (1933); Lassen Municipal Utility District v. Hopper, 5 Cal. (2d) 18, 53 P. (2d) 347 (1935).
Colorado: In re Canal Certificates, 19 Colo. 63, 34 P. 274 (1893); Larimer County v. City of Ft. Collins, 68 Colo. 364, 189 P. 929 (1920); Shields v. City of Loveland, 74 Colo. 27, 218 P. 913 (1923); Searle v. Town of Haxtun, 84 Colo. 494, 271 P. 629 (1928); Reimer v. Town of Holyoke, 93 Colo. 571, 27 P. (2d) 1032 (1933).

Florida: State ex rel. Diver v. City of Miami, 113 Fla. 280, 152 So. 6 (1933); State v. City of Lake Park, 116 Fla. 15, 156 So. 924 (1934); State v. City of Daytona Beach, 118 Fla. 29, 158 So. 300 (1934); Boykin v. Town of River Junction, 121 Fla. 902, 164 So. 558 (1935); Board of County Commissioners of Pinellas County v. Herrick, (Fla. 1936) 167 So. 386; State ex rel. City of Arcadia v. Daniel, (Fla. 1936) 169 So. 645; Pentecost v. City of Ft. Myers, (Fla. 1936) 169 So. 645; Airth v. City of Live Oak, (Fla. 1936) 169 So. 646; State ex rel. City of Vero Beach v. MacConnell, (Fla. 1936) 169 So. 628; Charles v. City of Miami, (Fla. 1936) 169 So. 589; State v. City of St. Augustine, (Fla. 1936) 169 So. 648; Boykin v. Town of River Junction, (Fla. 1936) 169 So. 492; Hygema v. City of Sebring, (Fla. 1936) 169 So. 366; Kathleen Citrus Land Co. v. City of Lakeland, (Fla. 1936) 169 So. 356; Brash v. State Tuberculosis Board, (Fla. 1936) 169 So. 218; State v. City of Punta Gorda, (Fla. 1936) 168 So. 835; Brash v. State Tuberculosis Board, (Fla. 1936) 167 So. 827; Hopkins v. Baldwin, (Fla. 1936) 167 So. 677; Taylor v. City of Miami, (Fla. 1936) 169 So. 644; State v. City of Clearwater, (Fla. 1936) 168 So. 546; Boynton v. City of Safety Harbor, (Fla. 1936) 169 So. 644; Wilson v. City of Bartow, (Fla. 1936) 168 So. 545; Williams v. Town of Dun nellon, (Fla. 1936) 169 So. 631; Vorhees v. City of Moore Haven, (Fla. 1936) 169 So. 641; City of Clearwater v. Green, (Fla. 1936) 169 So. 647; Patton v. Panama City, (Fla. 1936) 169 So. 638; State ex rel. City of Sarasota v. Richards, (Fla. 1936) 169 So. 643; Bradley v. City of Homestead, (Fla. 1936) 169 So. 639; Blocker v. City of St. Petersburg, (Fla. 1936) 169 So. 647; State ex rel. City of Vero Beach v. MacConnell, (Fla. 1936) 169 So. 657; Roach v. City of Tampa, (Fla. 1936) 169 So. 627; Teachy v. City of Wauchula, (Fla. 1936) 169 So. 640; Mayland Co. v. City of Ft. Lauderdale, (Fla. 1936) 169 So. 642; State v. Calhoun County, (Fla. 1936) 169 So. 673; State v. Town of River Junction, (Fla. 1936) 169 So. 676.

Georgia: McCrary County v. City of Glenville, 149 Ga. 431, 100 S. E. 362 (1919); Byars v. City of Griffin, 168 Ga. 41, 147 S. E. 66 (1929); Morton v. City of Waycross, 173 Ga. 298, 160 S. E. 330 (1931); State v. Board of Regents of the University of Georgia, 179 Ga. 210, 175 S. E. 567 (1934); Williams v. McIntosh County, 179 Ga. 735, 177 S. E. 248 (1934).


Illinois: Joliet v. Alexander, 194 Ill. 457, 62 N. E. 861 (1902); East Moline v. Pope, 224 Ill. 386, 79 N. E. 587 (1906); Lobdell v. City of Chicago, 227 Ill. 218, 81 N. E. 354 (1907); Schnell v. City of Rock Island, 232 Ill. 80, 83 N. E. 462 (1908); Evans v. Holman, 244 Ill. 595, 91 N. E. 723 (1910); Leonard v. City of Metropolis, 278 Ill. 287, 115 N. E. 813 (1916); Maffit v. City of Decatur, 322 Ill. 82, 152 N. E. 602 (1926); Ward v. City of Chicago, 342 Ill. 167, 173 N. E. 810 (1930).

Indiana: Voss v. Waterloo Water Company, 163 Ind. 69, 71 N. E. 208 (1904); Fox v. Bicknell, 193 Ind. 537, 141 N. E. 222 (1923); Underwood v. Fairbanks, Morse & Co., 205 Ind. 316, 185 N. E. 118 (1933); Indiana Service Corp. v. Town of Warren, 206 Ind. 385, 189 N. E. 523 (1934).
Iowa: Iowa Public Service Co. v. City of Emmetsburg, 210 Iowa 300, 227 N. W. 514 (1929); Johnston v. City of Stuart, (Iowa 1929) 226 N. W. 164; Hubbell v. Herring, 216 Iowa 728, 249 N. W. 430 (1933); Greaves v. City of Villisca, 217 Iowa 590, 251 N. W. 766 (1933); Wyatt v. Town of Manning, 217 Iowa 929, 250 N. W. 141 (1933); Chitwood v. Lanning, 218 Iowa 1256, 257 N. W. 345 (1934).


Louisiana: Gisclard v. Donaldsonville, 159 La. 738, 106 So. 287 (1925); McCann v. Morgan City, 173 La. 1063, 139 So. 481 (1932); Caldwell Brothers v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, 176 La. 825, 147 So. 5 (1933); State ex rel. Porterie v. Charity Hospital of Louisiana at New Orleans, 182 La. 268, 161 So. 606 (1935).


Minnesota: Fanning v. University of Minnesota, 183 Minn. 222, 236 N. W. 217 (1931); Williams v. Village of Kenyon, 187 Minn. 161, 244 N. W. 558 (1932).


Missouri: State ex rel. Smith v. City of Neosho, 203 Mo. 40, 101 S. W. 99 (1907); Bell v. City of Fayette, 325 Mo. 75, 28 S. W. (2d) 356 (1930); Hight v. Harrisonville, 328 Mo. 549, 41 S. W. (2d) 155 (1931); Hagler v. City of Salem, 333 Mo. 330, 62 S. W. (2d) 751 (1933); State ex rel. City of Hannibal v. Smith, 335 Mo. 825, 74 S. W. (2d) 367 (1934); State ex rel. City of Blue Springs v. McWilliams, 335 Mo. 816, 74 S. W. (2d) 363 (1934); Sager v. Stanberry, 336 Mo. 213, 78 S. W. (2d) 431 (1934); State ex rel. City of Excelsior Springs v. Smith, 336 Mo. 1104, 82 S. W. (2d) 37 (1935); Grossman v. Public Water Supply Distric No. One of Clay County, (Mo. 1936) 96 S. W. (2d) 701.


New Mexico: Palmer v. City of Albuquerque, 19 N. M. 285, 142 P. 929 (1914); State v. Regents of University of New Mexico, 32 N. M. 428, 258 P. 571 (1927); Seward v. Bowers, 37 N. M. 385, 24 P. (2d) 253 (1933).


North Carolina: Brockenbrough v. Board of Water Commissioners of City of Charlotte, 134 N. C. 1, 46 S. E. 28 (1903).


Ohio: Kasch v. Miller, 104 Ohio St. 281, 135 N. E. 813 (1922); Pathe v. Donaldson, 29 Ohio App. 171, 163 N. E. 204 (1928).


