488

LAW OFFICES
CONNER & WETTERHAHN, P.C.
1747 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006

TROY B. CONNER, JR.
MARK J. WETTERHAHN
ROBERT M. RADER
INGRID M. OLSON
ARCH A. MOORE, JR.*
ROBERT H. PURL
OF COUNSEL
*NOT ADMITTED IN D.C.

(202) 833-3500
CABLE ADDRESS: ATOMLAW



June 1, 1984

Christine N. Kohl, Chairman
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Gary J. Edles
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. Reginald L. Gotchy
Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555



In the Matter of
Philadelphia Electric Company
(Limerick Generating Station,
Units 1 and 2)

Dear Board Members:

In Applicant's Answer To Request By Del-Aware To Set Aside The Partial Initial Decision on Supplementary Cooling Water System Contentions (filed May 30, 1984), we stated at page 2, footnote 2, that, on May 29, 1984, the Court of Common Pleas of Bucks County entered an Opinion and Order rejecting the position that the Agreement between PECO and NWRA is void.

Enclosed for your information is a copy of the opinion, which we received today.

Sincerely,

Troy B. Conner, Jr.

Troy B. Conner, Jr.

TBC/ac
Enclosure
cc: Service List



D503

COURT OF COMMON PLEAS OF BUCKS COUNTY - CIVIL

DANIEL J. SULLIVAN, et al : No. 83-8358-05-5

v. :

COUNTY OF BUCKS, et al :

OPINION AND ORDER

All of the defendants in this case have filed preliminary objections to the amended complaints of the original plaintiff and the intervening plaintiffs. The intervening plaintiffs are Philadelphia Electric Company (PECO) as well as the North Penn and North Wales Municipal Authorities. The defendants are both the County of Bucks and Neshaminy Water Resources Authority (NWRA), as well as the individual members of the Bucks County Board of Commissioners and three of the individual members of NWRA as well as the executive director of that Authority.

This particular law suit, one of many spawned by this controversy, was instituted initially as a taxpayers action to enjoin the County of Bucks from implementing its Ordinance No. 59 whereby and wherein it purported to take over the Point Pleasant pumping station project. We refused a

temporary restraining order at the inception of that law suit but permitted PECO and the North Penn and North Wales Municipal Authorities to intervene. Accordingly they filed complaints on their own behalf and subsequently amended complaints. Preliminary objections have been filed by both the County and NWRA to all of those complaints and they are now before us for disposition.

In terms of the numbers of parties involved, the multitude of documents, pleadings, briefs and memoranda filed of record, and the legion of attorneys participating the complexities of this matter would appear to be overwhelming. However, the threshold question raised by these preliminary objections almost strikes to the very heart of the legal controversy and its resolution may very well largely resolve the issues in dispute. For this reason, it makes sense for us to address the issues involving the amended complaint of PECO first before addressing the primary complaint filed by the original plaintiff in this case. We say that because it is now obvious to all that the Board of County Commissioners and NWRA now desire to terminate this project. As we have stated on several occasions in the past, that decision represents a legislative, executive and political one on their part. However, as we have likewise observed in the past, there may be certain contractual obligations which stand in the way. Therefore, the question of the validity and enforceability of the contract between NWRA

and PECO is of paramount importance.

The most significant contention made by NWRA in the preliminary objections to the amended complaint of PECO is the contention that the contract between PECO and NWRA is ultra vires as being beyond the power of NWRA.[1] Defendants' rely upon Price v. Philadelphia Parking Authority, 422 Pa. 317 (1966) in their contention regarding the unlawfulness of this contract. In that case the Supreme Court held that a municipal authority is empowered to act only for the public benefit and that such authority may not employ its resources for the primary and paramount benefit of a private endeavor. "An engagement essentially private in nature may not be justified on the theory that the public will be incidentally benefited." Price v. Philadelphia Parking Authority, supra, page 333. Furthermore, ". . . we hold that the Parking Authority may not cloak a private interest, as is here proposed, with benefits so grossly disproportionate to the benefits according to the public. The challenged agreement, therefore, was beyond the Authority's power and appellants were entitled to injunctive relief." Price v. Philadelphia Parking Authority supra, page 340.

Based upon this decision the defendants analyze

[1] In view of the fact that no one has raised the question, we will proceed to address the issue of ultra vires altthough we are not completely satisfied that it is a matter which can be raised on preliminary objections. See Morris v. Hanover Township Supervisors, 4 D & C 3d 245 (1977).

the agreement between NWRA and PECO of February 12, 1980 and assert that it is, in fact, a contract solely for the benefit of PECO only thinly masked or veiled as one in the public interest.[2] As we view that agreement we do not come to the same conclusions as the defendants. The preamble to the agreement recognizes that the Authority has heretofore acquired certain land and constructed certain reservoirs, dams and other facilities for the purpose of flood control, recreation and water supply, and that in connection with the Authority's water supply program the Authority presently plans to acquire and construct a pumping station, water transmission mains, a water treatment plant for the purpose of furnishing water to municipalities, municipal authorities and other public bodies and public utilities. Further the preamble provides that the Authority proposes to finance acquisition and construction of the water project from available funds of the Authority acquired from prior financings and a proposed bond issue or bond issues of the Authority. The water project is to be acquired and constructed in phases as required for the purpose of furnishing water to the public with the first phase to include a pumping station, water transmission mains and a water treatment plant designed in a manner to permit expansion or supplementation in

---

[2] The plaintiffs have not asserted, at leaston these preliminary objections, the doctrine of estoppel and it therefore will not be addressed herein. Whether the assertion of estoppel is denied the plaintiffs by Central Storage & Transfer Co. v. Kaplan, 487 Pa. 465 (1979) is a question not now before us.

the future in order to provide greater capacity as needed.

With regard to the construction of the first phase project, it is provided that this contract shall be part of the first phase project which provides for delivery of Delaware River water beyond the Bradshaw Reservoir to the north branch of the Neshaminy Creek and to the east branch of the Perkiomen Creek. It is provided that the pumping station will take water from the Delaware River and pump this water through the combined transmission main to the Bradshaw Reservoir and that the water will divide at that reservoir with water for the Authority being released to flow by gravity through the north branch transmission main to the Neshaminy's north branch channel. Water pumped to the Bradshaw Reservoir by the Authority to be released to the Authority from the Bradshaw Reservoir will be released without charge to the Authority. However, water for use by PECO will be pumped by PECO from the Bradshaw Reservoir through the east branch transmission main to be constructed by PECO to the Perkiomen's east branch channel. It is provided that the combined transmission main which normally will deliver water to the Bradshaw Reservoir shall be designed in such a way that the Bradshaw Reservoir can be bypassed for the delivery of water to the north branch transmission main. The north branch transmission main and certain other water facilities to be constructed as a part of the first phase project are not the subject of this agreement and are the sole responsibility of the Authority. The Bradshaw Reservoir, however, and its integral pumping station and the east branch transmission main

are the sole responsibility of PECO

It is further provided in the agreement that the contemplated ultimate capacity of this project shall mean the sum of the capacities reserved for PECO and for the Authority at such future time as the construction shall be fully completed. The ultimate capacity is to be 95 million gallons per day with 46 million gallons per day to be allocated to PECO and 49 million gallons per day to the Authority.

The initial capacity of the first phase project means the ultimate capacity reserved for PECO plus an amount determined during design to be reasonably required by the Authority at that time. Provisions shall be included in the first phase project to enable the facilities to be expanded to the contemplated ultimate capacity of the entire project, 95 million gallons per day. The initial construction shall include the complete water intake structure, complete installation of the intake conduit under the canal, all work associated with the ultimate pump structure, the complete discharge manifold and about 1,600 feet of a full capacity combined transmission main leading away from the pump's structure. The remaining facilities and the rest of the main to Bradshaw shall be sized for the initial capacity requirements.

It is further provided that the Bradshaw Reservoir will be built by PECO and may be utilized by the Authority as part of its transmission system at no cost to the Authority.

The agreement further provides that the Authority covenants to complete the contemplated water project as required for purposes of furnishing water to the public. However the Authority reserves the right to enlarge or make any desirable or necessary additions or improvements and any necessary or desirable deletions to the contemplated water project at any time following the initial operation of the first phase project to reflect revised needs of the public in a manner so as not to interfere with the required supply of water to the Bradshaw Reservoir.

The defendants rely heavily upon certain provisions of the contract which provide that charges set forth in the agreement shall not be increased to reflect the cost of any such additions or improvements unless PECO has, prior to their implementation, in writing both approved said additions or improvements and accepted the increased costs associated therewith. The defendants further point to the provision that PECO shall have the right to review proposed construction involving such additions or improvements and make recommendations in areas where the proposed construction could adversely affect the supply of water to the Bradshaw Reservoir. It is provided that the Authority shall act in accordance with such recommendations whenever PECO advises the Authority in writing that failure to accept the recommendations would adversely affect the reliability, construction costs, operating costs, or construction schedule of the contract project, provided that no such recommendation by the company shall require the Authority to violate its obligation to comply

with all public bidding requirements and any applicable laws.[3]

The contract also provides, of course, for the formula of compensation by PECO to the Authority for the water utilized. The agreement likewise provides for payment by PECO to the Authority for financing and managing the portions of the facilties in question or components to be used for the benefit of PECO.

If we terminate our analysis at this point, the preliminary objections would have to be dismissed. To state the obvious, preliminary objections admit as true all well pleaded material facts set forth in the complaint, as well as all inferences reasonably deducible therefrom. Clevenstein v. Rizzuto, 439 Pa. 397 (1970) and Dana Perfumes v. Greater Wilkes-Barre Industrial Fund, Inc., 248 Pa. Superior Ct. 395, 275 A.2d 105 (1977). The complaint asserts that PECO has contracted with the Authority for these water resources because of the need for water to be used as a coolant at its Limerick atomic energy electric generating plant which is currently under construction and nearing completion. The complaint alleges that there is no other source of available water for this purpose. The complaint further asserts that PECO has invested something in excess of 3 billion

[3] Whether the requirement not to violate any applicable laws relates to the authority entering into an ultra vires contract is an aphorism of some interest.

dollars for the construction of the nuclear plant and based upon this asserts the necessity of receiving the water to be generated by this pumping station. In light of those allegations, at least at the preliminary objection stage, one can well understand why the contract between PECO and the Authority would contain some substantial provisions for control by PECO of the construction project to insure that the water necessary to meet its needs will be furnished. The fact of those provisions standing alor certainly is not a sufficient basis upon which to find this contract ultra vires as a matter of law.

However, although we recognize the danger of ever deciding more than is necessary, because of the unique nature of this dispute,we deem it appropriate to go beyond the point we have now reached. As we stated previously, if a determination regarding the viability of PECO's contract with the Authority can be made, we believe that substantial progress will be made towards resolving the entirety of this dispute. That is not to say that there are not other contractual interests involved which may very well withstand a determination that PECO's contract is unlawful. We know that among the intervenors in this case are the North Penn and North Wales Municipal Authorities both of whom claim derivative rights through a contract between the County of Montgomery and the County of Bucks. To date the County of Montgomery has yet to be heard from. Notwithstanding that, it is apparent to us that a resolution of the legality

of the contract with PECO is imperative to an ultimate decision in this case. Therefore we will proceed.

Of greater importance is the fact that in determining the validity of this contract we cannot view it or the Point Pleasant project in a vacuum. Rather it must be recognized that the Point Pleasant project is but one part of a tremendous undertaking to manage, control and utilize the water resources of this area for flood control, drinking water and recreational purposes. As has been established and found in a companion law suit, Plumstead Township v. Neshaminy Water Resources Authority in an adjudication and decree nisi (slip opinion of May 26, 1983 No. 253 of 1983) the Authority was created by the Board of County Commissioners of Bucks County for various purposes including, inter alia, to acquire, hold, construct, improve, maintain and operate flood control projects, low head dams, water works, water supply works, water distribution systems, lakes and appurtenant parks, recreation grounds and facilities. Prior to the creation of the Authority the Department of Environment Resources (DER) and the Counties of Montgomery and Bucks as well as the Federal Soil Conservation Service commissioned a study and plan for the management of the water resources of the Bucks and Montgomery county areas. As a result DER adopted a plan which was approved by the Governor of Pennsylvania, the Board of County Commissioners of Bucks County, the Board of County Commissioners of Montgomery County and the Congress of the United States. That plan recommended the construction of

eight flood control dams, two multi-purpose dams, and a water supply system with a water diversion facility at Point Pleasant in Plumstead Township, Bucks County, Pennsylvania, this project. Furthermore, the Delaware River Basin Commission (DRBC) a commission formed by compact between the States of New York, New Jersey, Delaware and the Commonwealth of Pennsylvania, together with the United States, was charged with the responsibility for managing the water resources of the Delaware River basin. That commission approved the construction of the eight flood control dams, the construction of the two multi-purpose dams (Core Creek Park and Peace Valley Park) and on February 18, 1981 issued its docket decision approving the Point Pleasant Diversion Project. The water allocation permits were issued by DER in or about 1970 which provided for the construction of the water diversion facility at Point Pleasant and a water treatment plant at Chalfont, Bucks County, Pennsylvania. In 1979 the 1970 permit was modified which reduced the amount of water authorized by the Authority to withdraw from the Delaware River. The Army Corps of Engineers has likewise issued its permit for the construction of the intake and related facilities at Point Pleasant.

The Neshaminy water supply system is part of an overall project which includes the construction of eight flood control dams, two multi-purpose dams and a water supply system. The Point Pleasant pumping station is a part of the Neshaminy

water supply system. The cost of the entirety of the Neshaminy water supply system is something in excess of 50 million dollars.

Additionally, approximately 32 million dollars in bonds have been issued by the Authority for the construction of the flood control dams, the multi-purpose reservoir (Peace Valley Park and Core Creek Park), and the Neshaminy water supply system.

As might be expected, because of the multiplicity of purposes and far reaching effects of the totality of this project, of which the Point Pleasant pumping station is but a part, there is a variety of other contractual relationships involved. On March 1, 1967 the Authority entered into a contract with the County of Bucks regarding the total undertaking of this water management project. This agreement constitutes both an agreement and a lease whereby and wherein the Authority leases all of the park lands created by virtue of the establishment of the dams and reservoirs to the County for use by the County as park lands. In the preamble to that agreement and pursuant to the request of the County, the Authority undertook as its first project the construction and acquisition of facilities for the control of floods, development of water resources, the conservation of soil, and assistance to recreation, including the construction of two reservoirs for the combined purposes of flood control and water supply, the construction of eight reservoirs primarily for flood control, the acquisition of the existing water supply reservoir, the construction of intakes and pumping stations at two locations

to take water from the Delaware river. This of course has been amended to one intake only, the one in question herein. A significant portion of the entirety of this project has already been constructed and completed. It is further provided in that agreement that the project shall be funded, at least in part, by the issuance of two or more series of bonds under a certain bond indenture. Article I of that agreement and lease provides that the Authority shall take and cause to be taken all requisite action to construct and complete the project out of the proceeds to be received by it from the sale of the 1967 series bonds. The County is obligated to consider all proposals for the progress of the project with reasonable promptness and required to approve the same as submitted or subject to any changes directed by the County not inconsistent with the provisions of any agreement relating to the federal grant, to comply with the provisions of the watershed work plan agreement and with its obligations under any other agreement to which it is a party relating to either the federal grant or any future grant or subsidy in connection with the construction of the project. The County is further obligated to acquire land and other interests in real estate as required and shown on the plans for the project.

That agreement and lease further provides that the County shall lease the reservoirs and park system from the Authority paying rent therefor which obviously was contemplated to be used by the Authority for the payment of interest and reduction of the principle on the bonds it had offered and sold. It is further provided that the county shall use its

best efforts to obtain from public or private water supply and distribution agencies and from any consumers of large quantities of water written contracts for the purchase of all water available for such purposes from the reservoir and park system. Clearly, PECO represents a substantial purchaser of water from the system which purchases are, of course, necessary to permit the Authority to retire its bonded indebtedness.

The agreement also acknowledges that all right, title and interest of the Authority under it are to be assigned to the trustee appointed under the bond indenture. In fact, that agreement and lease was assigned to the bond trustee as collateral and security for the bonds themselves.

Of course, there is also a bond indenture which must be considered as one of the contractual obligations involved in this case. The bond indenture was dated March 1, 1967 and was exectuted on behalf of the Authority and the trustee. In the preamble to the indenture reference is made to the project including the pumping station at Point Pleasant. Reference is further made to the lease and agreement dated March 1, 1967 as heretofore referred to. In the definition section of the trust indenture the authorized purpose of the borrowing is set out as the completion of the construction of the entirety of the project which includes the pumping station at Point Pleasant.

The trust indenture further provides for supplemental indentures. It makes reference to the ordinance or resolution of the Board of County Commissioners authorizing execution by

the county of the supplemental lease referred to previously and makes reference to an opinion of counsel regarding the purposes for which additional bonds are to be authenticated and delivered and further that all leases and supplemental leases are valid, binding and enforceable instruments and in accordance with their terms and have been duly pledged by the Authority with the trustees.

The bond indenture further obligates the Authority to take and cause to be taken all requisite action to construct and complete the project and further that no fundamental change or alteration will be made in the scope of the project or in any plans and specification unless and until the changes or alterations shall have been submitted to and approved by the Authority, the County and the consulting engineers. The County covenants that it will faithfully perform each and every covenant and agreement on its part to be performed under the contracts for the construction of the project.

The bond indenture provides that a default shall occur if there shall be a default under the lease or any supplemental lease or if the reservoirs or pumping station or any part thereof shall be destroyed or damaged and shall not be promptly repaired. The indenture further provides for a default if the contemplated project shall not be built.

Essentially the bond indenture is largely dependent upon the agreements between the County and the Authority as contained in the agreement and lease of March 1, 1967 and any supplemental agreements thereto as security for the bonds that

are issued. The lease of the reservoir and park lands to the county represents a source of income to the Authority for purposes of helping to meet its bond obligation.

In addition there is an agreement between and among the Board of County Commissioners of Bucks County and Montgomery County as well as the Authority dated January 14, 1981. In this agreement the County agrees to construct or cause to be constructed by the Authority, inter alia, the Point Pleasant pumping station. The County and the Authority agree in this contract to proceed diligently with the design, construction and operation of the treatment plant and the Point Pleasant facilities.

Lastly, there are two agreements entered into between Montgomery County and the North Penn Municipal Authority and the North Wales Municipal Authority. In each of these agreements the County of Montgomery agrees to furnish water to each of these authorities so that drinking water may be furnished to the customers of those authorities. Obviously, these agreements between these two authorities and the County of Montgomery are dependent upon the agreement between the County of Bucks and the County of Montgomery of January 14, 1981.

See the opinion in the companion case of County of Bucks v. Neshaminy Water Resources Authority (slip opinion entered July 14, 1983 as No. 4408 of 1983).

As we view it, we cannot merely assess the contract with PECO in determining whether or not it is a contract beyond the legal authority of NWRA. We believe that this contract

is but one integral part of the entirety of the project having to do with water management of the Delaware River basin. As can be seen it is but one aspect of a series of inter-related contractual relationships between and among the Authority, the County of Bucks, the County of Montgomery, the two water authorities of Eastern Montgomery County, the bond indenture as well as the regulatory agencies involved in these decisions which are concerned with the water management of the Delaware River basin. As such we determine that this contract is not ultra vires and is in fact binding. Therefore, the preliminary objections on the grounds of ultra vires are denied.

Defendants contend that the contract with PECO is in violation of Article 3, §31 of the Pennsylvania Constitution because of the alleged delegation of authority to PECO to control the construction of the project. That provision of the Constitution provides as follows:

> "The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever. . ."

This provision of the constitution has been held to apply to municipal corporations as well as agents of the State. See Wilson v. Philadelphia School District, 328 Pa. 225 (1937). and Weatherly Borough v. Warner, 148 Pa. Superior Ct. 557 (1942).

To some extent, but not entirely, this contention is a variation on the same theme as the ultra vires argument on the basis of Price v. Philadelphia Parking Authority, supra. As we

have held previously in this opinion we are satisfied that this contract is part of a much larger undertating designed and intended for genuine and necessary public purposes. That PECO may incidentally benefit is of no moment. See Basehore v. Hampden Industrial Development Authority, 433 Pa. 40 (1968).[4]

We do not believe that the Authority has delegated the control and construction of this project to PECO. The concept, specifications and plans for the entirety of the project were drawn by the engineers specifically engaged by the Authority to meet the overall requirements of the project itself. It was based upon these conceptual reports, plans and specifications that the permits from the DRBC, DER, and United States Corps of Engineers were issued. This project at Point Pleasant is being constructed according to the plans and specifications drawn by the engineers engaged by the Authority and the construction is being supervised by the engineers engaged by the Authority. The construction contracts were entered into by the Authority and the prime and sub-contractors and not by PECO. The contract between PECO and the Authority does not delegate to PECO the right to construct or to require construction according to PECO's plans and specifications. Distinguish Weatherly Borough v. Warner, supra. Admittedly certain rights of participation in evolving changes in those plans are given to PECO in this contract. Delegation merely

[4] We need not address PECO's contention that it, strictly speaking, is not the same as a private corporation because of the fact that it is a public utility.

of some control over details in construction or various aspects of the project itself would not run afoul of this constitutional requirement. Wilson v. Philadelphia School District, 328 Pa. 225 (1937). Considering that PECO is a major purchaser of water from the NWRA and that the sale of water is necessary for the retirement of the public bonds sold for the purpose of raising the capital for the construction of the entire project, it is not surprising that PECO have some input in the construction and decision making process regarding that portion of the project which will furnish the water to PECO. PECO's need for this water to be able to operate its nuclear generating plant in which it has invested so heavily converts PECO into an important customer of the Authority for the sale of water. Therefore, we conclude that this contract is not in violation of Article 3, §31 of the Pennsylvania Constitution.

Defendants next contend that the contract with PECO is ultra vires and therefore invalid by virtue of the application of the provisions of Article 9, §9 of the Pennsylvania Constitution. In relevant part that section provides as follows:

> "The General Assembly shall not authorize any municipality or incorporated district to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, institution or individual. . ."

This provision has been construed to mean that the municipality may not lend its credit to a purely private enterprise. Rettig v. Board of County Commissioners, 425 Pa. 274 (1967). However, the constitutional provision

was not intended to prevent a municipal corporation from entering into engagements to carry out a proper governmental purpose, though the incurring of indebtedness results. Appeal of German, 25 Pa. Commonwealth Ct. 108 (1976). Although by virtue of this constitutional provision, the municipal entity is restricted from appropriating public funds to a purely private enterprise, the undertaking by the municipal corporation does not lose its public character merely because there may exist in the undertaking some feature of private gain, for if the public good is enhanced, it is immaterial that a private interest may also be benefited. Belovsky v. Redevelopment Authority, 357 Pa. 329 (1947).

We have previously found herein that the totality of the undertaking of the Authority is of a public nature intended for the enhancement of the public interest. Of importance to that undertaking is the sale of water. As a result of that sale, there is an incidental benefit, perhaps even a substantial one, to PECO. However, the construction of the Point Pleasant project itself is an integral part of the totality of the project so that water may be available for the recreational use of the public in the reservoirs behind the dams, for the control of the Delaware River in both high volume and low volume flow, and for the purpose of making water available for drinking purposes. That PECO, as a private enterprise, derives benefit as a customer of the municipal authority, makes the overall project no less a public one than a situation where a private vendor renders services to the Juvenile Court for care, treatment and super-

vision of juvenile delinquents. Therefore, the contention that the contract is ultra vires under the provisions of Artile 9, §9 of the Pennsylvania Constitution is without merit.

Defendants next argue that even if the contract with PECO should be considered to have been valid when entered into, it has now been rendered invalid by virtue of the events which have since transpired. This ingenious argument is supported solely by its own bootstraps. The defendants contend that the contract with PECO is now rendered unlawful because all public purpose has been taken from it by virtue of the avowed purpose of the Authority and Bucks County no longer to proceed with the project itself. Needless to say, the purpose of these proceedings is to determine whether the Authority and Bucks County must, by force of law, be required to proceed with the various contracts. Defendants lose sight of the fact that there are other parties on this record who seek enforcement of this contract, not the least of which are the North Penn and North Wales Municipal Authorities. In light of that, we are hardly able to find that the contract with PECO is unlawful based solely upon the allegedly expressed intention of the Board members of the Authority and of the Board of County Commissioners of Bucks County not to proceed with the Neshaminy project.

Defendants' argument under the "force mageure" provision of the contract is equally unsubstantial. That provision provides in relevant part as follows:

> "A party shall not be considered in default in the performance of its obligations hereunder, or any of them, to the extent that performance of such obligations, or any of them, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. . ."

Assuming that the prevention or delay of the performance of the obligation is contemplated to be the disinclination of the Commissioners of the County of Bucks to proceed with the project, that argument misses the mark. Once again, the right of the County Commissioners to disengage from this project in the face of asserted contractual obligations is the matter at issue in this law suit. Furthermore, and regardless of whether or not this court may order the County Commissioners to exercise their right of eminent domain to acquire the additional property necessary for the completion of the project, it must be remembered that the Authority likewise possesses powers of eminent domain.

At this stage of the proceedings we need not get into the thicket of when the County Commissioners' actions cannot be considered binding upon their elected successors. We are here to decide at this time the validity of a contract between the Authority and PECO.

Defendants contend that their preliminary objections should be sustained and the complaints dismissed on the basis of the constitutional concept of separation of powers and the prohibition upon the judiciary in invading the prerogatives of the legislative branch of government. However, it is clear to us that the plaintiffs herein do not seek any order of this court directed to the exercise of the legislative

powers of the Board of County Commissioners of Bucks County. Rather, these complaints seek to redress contractual rights already engaged by the Authority and the County. As was stated in Philadelphia v. Fidelity-Philadelphia Trust Co., 358 Pa. 155 (1948):

> "The right now being adjudicated as solely one of mutual contractual rights and reciprocal obligations."

As noted in that case, a municipal corporation is subject to the same duties and liabilities as any private corporation and it cannot violate the obligation of a contract entered into by it in its capacity as a public body because it deems it to be for the benefit of the citizens to do so. As noted in Allegheny County v. Pennsylvania Public Utility Commission, 192 Pa. Superior Ct. 100 (1960) where, as contended here, the County is seeking to evade the provisions of a contract already entered into, the municipality is not at liberty to avoid its contractual obligations merely because it deems it to be for the benefit of the citizens to do so.

Delaware River Port Authority v. Thornburgh, ___ Pa. ___, 459 A.2d, 717 (1983), relied upon by the defendants, does not derogate from this result. That case involved a petition by the Authority invoking the original jurisdiction of the Commonwealth Court for an order as in the nature of writ of mandamus directed to the Commonwealth Department of Transportation, the Secretary of Transportation, the Governor and the General

Assembly. All filed preliminary objections which were sustained by the Commonwealth Court dismissing the petition before it and remanding the entire matter to the Board of Claims. On petition for review to the Supreme Court it reversed the order of the Commonwealth Court and directed that the Commonwealth Court hear the petition for review as in the nature of a writ of mandamus. In so doing the Supreme Court did sustain the preliminary objections filed on behalf of the General Assembly only on the grounds of the constitutional provisions of separation of powers. In so doing the Supreme Court stated as follows:

> "However, in focusing solely upon appellees' alleged breach of contract to construct the Pulaski Highway, the Commonwealth Court misperceived the scope of the Authority's petition for review. That petition seeks to restrain appellees' alleged interference with the performance of the Authority's statutory duties and to enforce appellees' compliance with their statutory duties under the interstate compact, not merely to compel appellees' performance of their duties under a construction contract."

Here, of course, the plaintiffs seek only to compel performance of the contracts in question, and not to require that the Board of County Commissioners exercise their legislative functions in any way at all.

Defendants next contend that counts 6 and 7 of PECO's complaint must be dismissed for failure to state a cause of action. In count 6 PECO seeks specific performance of the water sales agreement between the Authority, Bucks County and Montgomery County of January 14, 1981, and in count 7 damages

for breach of that agreement. It is the contention of the defendants that PECO has no standing to seek such relief because it is not a party to such contracts. PECO claims standing based on the concept of third party beneficiary.

In view of our finding that the contract between PECO and the Authority is a valid and binding one, we are not at all certain that it is necessary in this opinion to determine PECO's rights to enforcement of or damages upon the breach of the water sales agreement. However, as we have already found, the water sales agreement is but one part of the entire project with which we are concerned, although, as with the contract between PECO and the Authority, an integral part thereof. Furthermore, as we have observed, the North Wales and North Penn Authorities have likewise intervened in this matter and have been granted leave to file amended complaints essentially the same as that of PECO's. They, of course, derive their rights from the water sales agreement itself. It would be difficult to conclude, regardless of PECO's rights, that they do not qualify as third party beneficiaries under the concepts enunciated in Guy v. Liederbach, 501 Pa. 47, 459 A.2d 744 (1983). Although it has been argued that PECO has no right to litigate the merits of this contract, clearly these two authorities have and we have heard no argument to the effect that this contract is in any way unlawful or ultra vires with respect to them. As such, we find herein that the water sales contract of January 14, 1981 is a lawful one.

As far as the question of whether it should be specifically enforced or damages awarded for its breach, those matters are premature at this stage. That contract has not been breached, at least not on this record. Therefore, thepreliminary objections to counts 6 and 7 of PECO's complaint are denied.

Count 3 of PECO's complaint asserts a claim for tortious interference with its contractual relationships. It is based upon this claim that defendants Cepparulo, Elfman, Eisenhart and Carluccio have been joined as parties defendant. Basically, it is asserted that Cepparulo, Elfman and Eisenhart were appointed to the Board of the Authority in January of this year by the County Commissioners for the express purpose of terminating the various obligations of the Authority and stopping construction of the pump. It is further asserted that those three Board members caused the appointment of Carluccio, an avowed opponent to the pump as the executive director of the Authority. In this regard we are satisfied that the preliminary objections of the Authority are well taken, that count 3 of the complaint must be dismissed and the cause of action against these four individuals likewise dismissed.

The tort of inducing breach of contract is defined as inducing or otherwise causing a third person not to perform a contract with another, or not to enter into or continue a business relationship with another, without a privilege to do so. Glazer v. Chandler, 414 Pa. 304 (1964). Recovery for such

a tort in Pennsylvania has involved a defendant's interference with known contracts or business relations existing between third parties and the plaintiff. However, where the allegations and evidence only disclose that the defendant breached his own contract with the plaintiff and that as an incidental consequence thereof plaintiff's business relationships with third parties has been affected, an action lies only in contract for defendant's direct breaches of contract and consequential damages recoverable, if any, may be adjudicated only in that action. Glazer v. Chandler, supra. Therefore, two prerequesites to liability must exist; the absence of a privilege and the action by a third person. There must be a third person who induces the breach. It is not a claim which can be made by the parties to a contract against each other. No person or company can be guilty of inducing himself or itself to breach his or its own contract. See Wells v. Thomas, 569 Fed. Sup. 426 (E.D. Pa. 1983), construing Pennsylvania law.

As such, we are satisfied that if the Authority cannot be found liable for tortious interference of its own contracts with PECO neither can its agents be held liable. Nowhere is it asserted that the four individuals acted as anything other than agents and representatives of the Authority. They were acting at all times in their official capacities, even if we find that the descriptive terms of "intentionally, or maliciously", are found to exist. Notwithstanding, no third party can be said to have interfered with the contractual relationship now before us. Wells v. Thomas supra.

As in Wells v. Thomas, supra, in any event, the cause

of action against the four individuals is merely redundant of PECO's claim against the Authority on their contract. Therefore, the preliminary objections to count 3 of the complaint are sustained and the complaint embodied therein against the four individual defendants is dismissed.

Defendants contend that the complaint of PECO should be dismissed for lack of jurisdiction in a court of equity on the grounds that PECO has an adequate remedy at law, or at the very least, that it should be transferred to the law side of the court. The adequate remedy at law contended for by the defendants obviously is the right to recover damages for breach of its contract with the Authority.

A suit in equity will not lie where a plain, adequate and complete remedy at law may be had. Stuyvesant Insurance Co. v. Keystate Insurance Agency, Inc., 420 Pa.578 (1966). However, a court of equity has jurisdiction and in furtherance of justice will afford relief if the statutory or legal remedy is not adequate, or if equitable relief is necessary to prevent irreparable harm. Pennsylvania State Chamber of Commerce v. Torquato, 386 Pa. 306 (1956). The mere fact that a remedy may exist is not sufficient. The remedy must be adequate and complete. Philadelphia Life Insurance Co. v. The Commonwealth, 410 Pa. 571 (1963). Thus, in order for equity to refuse relief, it is not sufficient that the plaintiff may have some remedy at law. An existing remedy at law to induce equity to decline the exercise

of its jurisdiction must be an adequate and complete one. When, from the nature and complications of a given case, justice can best be reached by means of the flexible machinery of a court of equity, in short where a full, perfect and complete remedy cannot be afforded at law, equity extends its jurisdiction in furtherance of justice. Pennsylvania State Chamber of Commerce v. Torquato, supra. Therefore, recognizing that the mere existence of a legal remedy is not always sufficient to preclude equity jurisdiction, a court of equity may, in the exercise of its discretion, determine whether the legal remedy is full, adequate and complete in view of all the surrounding circumstances and the conduct of the parties. Long John Silver's, Inc. v. Fiore, 255 Pa. Superior Ct. 183 (1978).

We are not satisfied on the present record before us that PECO does have a full, adequate and complete remedy at law. Obviously, if the Authority breaches its contract and fails to complete the project and as a result thereof PECO is denied the water it anticipated as a coolant, it would have a right against the Authority for damages. We would presume that the measure of the damages would be computed by determining PECO's financial losses as a result of its being unable to operate its nuclear plant at Limerick for whatever period of time it would take to find an alternate source of cooling water, assuming such an alternate source exists. Even if such an alternate source exists, it must be recognized that the period of time required to secure the adequate permits from the various administrative agencies involved, assuming those permits can be secured, for the formulation and drafting of an entirely new construction project and then

for the construction thereof, we are probably talking in terms of anywhere from 2 to 5 years or longer. Without considering whatever loss of profit there may be to PECO for denial of its use of the Limerick plant, a matter of considerable speculation at this stage of the game, but merely considering that the construction costs of Limerick are something in excess of 3 billion dollars, the cost of carrying and satisfying that debt service is alone staggering. The Authority itself is of limited financial resources. Of course there are the bonds issued of approximately 32 million dollars, a significant portion of which has already been spent for construction and other fees and costs.[5] In addition, of course, the Authority owns the two parks and reservoirs which have been built. Even assuming that a money judgment in favor of PECO could be partially satisfied by a sheriff's sale of the county parks, it is questionable at best whether there is sufficient value to satisfy the kind of judgment that PECO can be anticipated to receive in a breach of contract suit of this magnitude.

Of course, if the county proceeds on its ordinance 59 to take over the project, then PECO could look to the entire taxing power of the county to satisfy its judgment. On this score the aspect of an adequate remedy of law and its corollary of irreparable harm takes on a slightly different com-

---

[5] Of course this assumes that the bond revenues will remain available to the Authority, a proposition which is questionable at best, if the project should be stopped and the bond trustee take the position that a bond default has occurred.

plexion. We are now talking about the taxing authority of the County as the resource to be used in terms of satisfying a judgment in favor of PECO. Of course, the County, with its taxing authority, has a considerably deeper pocket than the Authority. However, even that pocket is not unlimited. Even, however, if the size of the judgment were to be such that the County could conceivably raise such funds by its taxing power, the burden thereupon imposed upon the taxpayers may very well be unconscionable.

Of course all of these matters are highly speculative at the present time. It must be remembered that we are no concerned only with PECO in this law suit. The North Penn and North Wales Authorities likewise have interests in this law suit and they may very well be irreperably damaged if this project were not completed. In their cases, as well as that of Montgomery County, it may very well be that the lost water is totally irreplaceable. That being the case, their claims cannot possibly be satisfied by a law suit for damages.

Considering all of these matters and the intricasies and complications of them, we clearly are not in a position to decide as a matter of preliminary objection and as a matter of law at this time that PECO or the two water authorities do in fact have adequate remedies at law. Therefore, the preliminary objections on this ground are denied.

We turn now to the preliminary objections to the complaint filed by Daniel J. Sullivan. Actually we are addressing preliminary objections to Sullivan's third amended complaint.

On November 18, 1983 the Board of Commissioners of the County of Bucks adopted ordinance 59 whereby the county sought to take over the project of the Authority under and pursuant to §18 (A) of the Municipality Authorities Act of 1945, the Act of July 10, 1957, P.L. 683, §3, 53 P.S. 321 (A). By the terms of that ordinance the County likewise purported to assume all of the obligations incurred by the Authority with respect to the project. It was that Act which inspired Sullivan's suit as in the nature of a class action on behalf of all taxpayers of Bucks County for the purpose of enjoining the County from implementing that ordinance. It is Sullivan's contention that the County lacks authority to take over the project. We believe this contention to be in error and therefore sustain the preliminary objection to Sullivan's complaint seeking an injunction on this ground.

The Act of Assembly in relevant part provides as follows:

> "If a project shall have been established under this Act by a Board appointed by a municipality or municipalities, which project is of a character which the municipality or municipalities have power to establish, maintain or operate, and such municipality or municipalities desire to acquire the same, it or they may by appropriate resolution or ordinance adopted by the proper authorities signify its or their desire to do so, and thereupon the authorities shall convey by appropriate instrument said project to such municipality

> or municipalities, upon the assumption by the latter of all the obligations incurred by the Authority with respect to that project."

The ordinance enacted by the Board of County Commissioners is in compliance with this Act of Assembly. Sullivan contends, however, that the County lacks the right to take over this project under these circumstances and relies on County of Mifflin v. Mifflin County Airport Authority, ___ Commonwealth Ct. ___ 437 A.2d 781 (1981). In that case the County Commissioners of Mifflin County attempted to assume control over the Mifflin County Airport which had been established and was operated by the Mifflin County Airport Authority which had previously been created by the Mifflin County Board of County Commissioners. When the Authority refused to convey the assets of the airport to the County pursuant to the ordinance the County Commissioners instituted an action in mandamus. The lower court concluded that the County did not have a clear legal right to such a property transfer and, therefore, denied the relief sought in the action in mandamus. On appeal the Commonwealth Court affirmed holding that the County had failed to establish a clear and specific legal right in it and a corresponding duty in the defendant Authority to convey the property. The Commonwealth Court found that a clear and legal right in the plaintiff was lacking because of certain specific provisions in the outstanding bond indentures which financed the construction of the airport, as well as a lack of showing of complaince with the Local Government Unit Debt Act, the Act of April 28, 1978, P.L. 124, No. 52,

§1, 53 P.S. 6780-1 et seq. Therefore, it was held that the provisions of §14 of the Municipality Authorities Act barred the transfer. In these respects that case is distinguishable from this one. Rather, this case is indistinguishable in these respects from Lower Southampton Township v. Lower Southampton Township Municipal Authority, 39 Bucks County Law Reporter, 74 (1982) wherein this court (Beckert, J.) distinguished the Mifflin County case.

In the Mifflin County case the trust indentures themselves specifically provided that the County's right to acquire the assets of the Authority were limited to the Authority's failure, neglect or cessation of operation of the airport. The trust indentures in that case further provided that the Authority will not "sell, exchange, lease, pledge or otherwise dispose of or encumber the airport or any part thereof." The trust indentures in this case bear no provision whatsoever specifically barring the County from acquiring the assets of the Authority. The indentures do provide, as in the Mifflin County case, that the Authority will not sell, exchange, lease, pledge or otherwise dispose of or encumber the reservoir and park system or any part thereof or the receipts and revenues from the reservoir and park system. See §9.08 of the Trust Indenture. However, without the provision barring the County from acquiring the assets of the Authority, as in the Mifflin County case, the provisions of §9.08 of the bond indenture in this case cannot reasonably be

construed to bar a takeover by the County. First of all, what would occur by virtue of the implementation of the Ordinance would not constitute a sale, disposition or encumbrance of the reservoir and park system. Secondly, and of greater significance, the bond indenture and other documents involved in this case specifically contemplate that the reservoir and park system be encumbered for the purpose of producing funds to retire the bonds themselves. As previously noted in this opinion, the reservoir and park system has been leased by the Authority to the County and it is the rental payments on these leases which furnishes the Authority its only source of income until such time as the project is completed and it is ready to begin selling water. In the interim, these funds represent the sole source of money to pay the interest on the outstanding bonds. Furthermore, these same leases have been pledged by the Authority to the bond trustee as collateral for the bonds themselves. As such, it is the bond trustee who collects the rent directly from the County. Therefore, it is contemplated by the bond indentures that the assets of the Authority be encumbered as partial collateral for the bonds themselves. Thus, it would be pure sophistry to argue that this provision in the bond indenture would in some way prohibit the County from acquiring the assets of the Authority pursuant to §18 (A) of the Municipality Authority Act.

Having found, therefore, that there is no encumbrance in the trust indentures to the County acquiring the assets of the Authority without the prior repayment of the

bonded indebtedness, there is no occasion for the application of §14 of the Act. Clearly, without the obstruction of the bonded indebtedness, §§18 (A) and 14 of the Municiaplity Authorities Act can be read together and consistently with one another. The distinction between these two sections is apparent on their face and was graphically described in the Lower Southampton Township case. Section 18 (A) addresses the circumstance wherein the creating governing body determines to take over the project from an Authority it has created and, thereby, assumes all the debts and obligations of the Authority with respect to that project. Section 14 addresses the situation where the municipal authority, having completed its mandate and paid its debts determines to divest itself of some or all of its projects by conveying them to the governing body. Obviously, the Legislature recognized that a municipal authority should not be permitted to foist its debts and obligations upon the governing body without its consent. Therefore, §14 requires that a municipal authority may divest itself of its project only after it has paid and discharged all bonds issued by it. However, no such requirement is found in §18 (A) leaving it to the discretion of the governing body to determine whether to acquire the assets and the liabilities that go with them. Furthermore, and finally in this respect, in the case before us the County had complied with the requirements of the Local Government Unit Debt Act.

Having determined that the County Commissioners have legal right to enact the ordinance and take over the assets of

the Authority, we are satisfied that we may not enjoin the County from implementing that ordinance. Although Sullivan's complaint alleges the intention of the County Commissioners to terminate the project thereby breaching their contractual obligations, and accepting those allegations as true for purposes of these preliminary objections, we still do not believe that they can support an injunction enjoining the County from implementing its ordinance. Of course, both the United States and Pennsylvania Constitutions prohibit any legislative action by the State or its units of local government which impair the integrity of existing contracts. See United States Trust Company of New York v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505, 52 L. Ed. 2d 92 (1977); Pennsylvania Labor Relations Board v. Zelem, 459 Pa. 399 (1974) and Helicon Corp. v. Borough of Brownsville, ___Commonwealth Ct. ___, 449 A.2d 118 (1982). However, the ordinance specifically provides that the County shall assume all obligations of the Authority commensurate with the assets. The obligations would include the contractual obligations, and as previously noted herein, the County will, perforce, assume any and all liabilities for breach thereof.

Regardless of what we may believe the motives of the County Commissioners to be, we believe that to enjoin the Board of County Commissioners from implementing its ordinance would constitute an unconstitutional intrusion by this Court upon the legislative and executive functions of government.

It is presumed that municipal officers act properly for the public good. Robinson v. Philadelphia, 400 Pa. 80 (1960) and Hyam v. Upper Montgomery Joint Authority, 399 Pa. 446 (1960). Courts will not sit in review of municipal actions involving discretion, in the absence of proof of fraud, collusion, bad faith or arbitrary action equating an abuse of discretion. Blumenschein v. Pittsburgh Housing Authority, 379 Pa. 566 (1954). In the absence of proof of fraud, collusion, bad faith or abuse of power, courts do not inquire into the wisdom of municipal actions and judicial discretion should not be substituted for administrative discretion. Goodman Appeal, 425 Pa. 23 (1967); Parker v. Philadelphia, 391 Pa. 242 (1958) and Webber v. Philadelphia, 437 Pa. 179 (1970).

No court has the power to strike down a statute except for constitutional reasons, even where it believes the statute unwise or productive of socially undesirable results. Estate of Armstrong v. Philadelphia Board of Probation, ___ Commonwealth Ct. ___, 405 A. 2d 1099 (1979). The judiciary should not intrude into the legislative area of government unless it is demonstrated that the legislative body, whether it be at the State level or municipal, has acted in a manner violative of the Constitution, Acts of the General Assembly or the organic law of the municipality or in a manner wherein the legislative body lacks the power or authority to act. The wisdom of the legislative act is not within the court's judgment. Mastrangelo v. Buckley, 433 Pa. 352 (1969).

It is not sufficient that opponents disagree with the wisdom of the legislative body's action. A court of equity will not substitute its determination of what may be wise for the decision of the appropriate governmental body, absent a showing of bad faith or abuse of power. Parker v. Philadelphia, supra. The question of the wisdom of the acts of a legislative body are not for the court, there being a presumption that the legislative officials act lawfully in the exercise of their discretion. We may interfere and relieve against oppresive or arbitrary action or abuse of discretion, Breinig v. Allegheny County, 332 Pa. 474 (1938) but we may not intervene so long as no constitutional provision is violated or discretion abused, regardless of the hardship of a particular case or whether our opinion as to what the law ought to be coincides with that of the Legislature. Chester School District's Audit, 301 Pa. 203 (1930).

The role of the judiciary in scrutinizing legislation is limited. We may not, at the invitation of a disgruntled taxpayer or taxpayers, reassess the wisdom and expediency of alternative methods of solving public problems. It is the province of the Legislature not the judiciary to determine the means necessary to confront and solve public problems. Our inquiry is limited to a determination of whether the means selected are so demonstrably irrelevant to the policy of the legislature as to be arbitrary and irrational. Tosto v. Pennsylvania Nursing Home Loan Agency, 460 Pa. 1 (1975). As

was stated in Leahey v. Farrell, 362 Pa. 52 (1949):

> "Under the system of division of governmental powers it frequently happens that the functions of one branch may overlap another. But the successful and efficient administration of government assumes that each branch will cooperate with the other. As was said by the late Chief Justice Moschzisker (when a Judge in Common Pleas No. 3 of Philadelphia) reported in Commonwealth v. Mathues, 210 Pa. 372, 406, 59 A. 961: '. . . the presumption always is that public officers will perform a public trust, not that they will default therein or abuse the trust, and we prefer to believe that the legislure have performed, and will continue to perform, their trust, rather than to stand in any fear of a wrong being attempted at some time in the future by one branch of the government against another, even if the power to commit such a wrong be admitted to exist, which we thoroughly believe is not so.'" (Italics in original)

Sullivan contends that the action by the county is barred by the provisions of §§4, 12 and 13 of the Municipality Authorities Act. This contention is premised upon a misreading of each of these sections.

Section 4 (C), 53 P.S. 306 (C), provides that the Authority shall have no power to pledge the credit or taxing power of the Commonwealth or any political subdivision thereof nor shall any of its obligations be deemed to be obligations of the Commonwealth or of any of its political subdivisions. This is not a case of the Authority in any way pledging the credit or taxing power of the County or the Commonwealth but rather a matter of the County opting to assume the assets and liabilities of the Authority. Obviously, the construction of this section

contended for by Sullivan would render §18 (A), previously construed herein, totally meaningless.

Section 12, 53 P.S. 315, provides in relevant part as follows:

> "That the Authority shall not be authorized to do anything which will impair the security of the holders of the obligations of the Authority or violate any agreements with them or for their benefit."

Once again, obviously, the Authority is not doing anything in the matter before us. We are concerned here with the action of the County in proceeding consistently with §18 (A) of the Act. Nothing contained therein is in violation of §12.

Lastly, §13, 53 P.S. 316, provides that "the Commonwealth" shall not alter or limit the rights and powers of the Authority in any manner which would be inconsistent with the continued maintenance and operation of the project, or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such Federal agency. Obviously, nothing is contemplated by the "Commonwealth" in the matter before us.

Sullivan contends that somehow he has a cause of action as in the nature of a civil rights suit under 42 U.S.C 1983. We consider this contention patently frivolous. That Act of Congress secures to the citizens of the United States a cause of action for deprivation of any right, privilege or immunity secured by the Constitution and laws of the United States if infringed or impaired by any person acting under color of any statute, ordinance, regulation, custom, or usage of any State

or territory of the United States. Although Sullivan pleads generally a violation of some rights under the 5th and 14th amendments of the United States Constitution, he fails to set forth with any specificity which ones he includes. We are unable to divine any constitutional rights affected by the action of the Board of County Commissioners in enacting ordinance No. 59. Therefore the preliminary objections on this count are sustained.

Lastly Sullivan's contention that the resolution of the Board of County Commissioners of February 8, 1984 indemnifying the Authority board members is a violation of Article 9, §9 of the Pennsylvania Constitution is without merit. As earlier stated in this opinion, that section applies only to transactions with purely private enterprises. See Rettig v. Board of County Commissioners, 425 Pa. 274, 288 A.2d 747 (1967) and Appeal of German, 27 Commonwealth Ct. 108, 366 A.2d 311 (1976). Obviously, the Authority is not a purely private enterprise, but rather a creature of the County itself.

We need not address the question of whether Sullivan or the taxpayers of Bucks County as a whole are third party beneficiaries to the various contracts entered into. We believe that Sullivan has standing as a taxpayer with respect to this law suit because of the great amount of tax dollars which may eventually be involved. A taxpayer may seek to enjoin the wrongful or unlawful expenditure of public funds even though he is unable to establish any injury other than to his interest as a taxpayer. Price v. Philadelphia Parking Authority, supra. We can see no difference between that proposition and a lawsuit which seeks a

remedy purported to avoid the loss of public moneys through anticipated litigation. Therefore, although we will sustain the preliminary objections to most of Sullivan's third amended complaint, we will deny the preliminary objection to the extent that he seeks the same relief as that of PECO and the Municipal Authorities of North Penn and North Wales.

Lastly, we do not believe that Sullivan's third amended complaint states a cause of action against the individuals therein named for the same reasons as previously set forth in PECO's amended complaint. Therefore, the complaint against all of the individuals will be dismissed.

In summary therefore we have determined herein that with the exception of count 3 of the complaint of PECO, the preliminary objections are denied, dismissed and overruled.

With regard to count 3, the preliminary objections are sustained, that count is dismissed and the individual defendants therein named are dismissed as defendants.

With respect to the original complaint of Sullivan, the preliminary objections to the entirety of that complaint are sustained for reasons herein set forth and that complaint is dismissed. However, Sullivan as the original plaintiff and in his capacity as a taxpayer shall be considered hereafter as a plaintiff in the complaints of PECO and the Municipal Authorities of North Penn and North Wales.

ORDER

AND NOW, to wit, this 29th day of May 1984, it is hereby ordered that the preliminary objections of the Neshaminy Water Resources Authority to count 3 of the complaint of Philadelphia Electric Company are sustained, that count is dismissed and the individual parties named therein are dismissed as defendants. In all other respects the preliminary objections to the complaint of Philadelphia Electric Company are denied, dismissed and overruled with leave to defendants to file answers within twenty (20) days of the date hereof.

The preliminary objections to the third amended complaint of Daniel J. Sullivan are granted and that complaint is dismissed in its entirety. Daniel J. Sullivan, in his capacity as taxpayer, shall be considered as a party plaintiff in the complaints of Philadelphia Electric Company and the North Penn and North Wales Municipal Authorities.

By the Court,

P.J.