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Watersheds—Minnesota Watershed Act Held Immune From Attack In Equity When Legal Remedy Available—Creation of Watershed District With Power To Assess Specially Benefited Property Is Constitutional: Adelman v. Onischuk, 135 N.W. .2d 670 (Minn. 1965).

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WATERSHEDS—MINNESOTA WATERSHED ACT HELD IMMUNE FROM ATTACK IN EQUITY WHEN LEGAL REMEDY AVAILABLE—CREATION OF WATERSHED DISTRICT WITH POWER TO ASSESS SPECIALLY BENEFITED PROPERTY IS CONSTITUTIONAL*—In *Adelman v. Onischuk*,[1] a special assessment on property specially benefited by a channel improvement project was ordered by the Minnesota Supreme Court to be carried out as provided for in the Minnesota Watershed Act.[2] The high court of Minnesota overruled the district court's holding that the act was unconstitutional as being too vague and a denial of due process, on the ground that the plaintiffs seeking to enjoin the assessment levy had been provided with an adequate remedy at law which they had failed to pursue. The supreme court went on to consider the act's constitutionality and held it to be a constitutional exercise of legislative powers.

Improvements for the control and regulation of the nation's water resources are becoming increasingly necessary. Because the expense involved in planning and constructing important and valuable works is often beyond the means of the states, federal aid, such as that provided for in the Watershed Protection and Flood Prevention Act,[3] must be obtained. To accomplish this, enabling legislation has been passed in a large number of states[4] authorizing the creation of local districts empowered to contract with the federal government according to the terms of the Watershed Protection and Flood Prevention Act. Initiative for formation of such districts lies with the people therein.

The federal act conditions the undertaking of any project on the district's providing easements, rights-of-way, road changes, and providing other forms of local cooperation.[5] Trouble generally develops when property assessments are levied to pay for the acquisition of these items. As long as notice is provided about all

* Adelman v. Onischuk, 135 N.W.2d 670 (Minn. 1965); Minn. Stat. Ann. § 112.60 (1964).

1. 135 N.W.2d 670 (Minn. 1965), *appeal docketed*, Adelman v. Lower Minnesota River Watershed Dist., 34 U.S.L. Week 3081 (U.S. Sept. 14, 1965) (No. 512).

2. Minn. Stat. Ann. §§ 112.34 to 112.85 (1964).

3. 68 Stat. 666 (1954), 16 U.S.C. § 1001 (1964). This act should not be confused with the Flood Control Act, 39 Stat. 950 (1917), as amended, 33 U.S.C. § 701 (1964), though its provisions for cooperation between federal and local governments are quite similar.

4. See Sandals & Adams, Progress in State Legislation Relating to the Watershed Protection and Flood Prevention Act (Tech. Paper No. 126, U.S. Soil Conservation Service 1955); Note, *Small Watershed Development—Application of 1954 Federal Legislation to Kentucky*, 45 Ky. L.J. 182 (1956).

5. 68 Stat. 667 (1954), 16 U.S.C. § 1004 (1964).

steps in the creation of a district and authorization of projects, and there is opportunity to be heard and to object, special assessment levies are within the district's powers.[6] Normally the enabling act will provide for judicial review, initiative by petition, or election; a combination of two, or sometimes all three, is characteristic.

The Watershed Protection and Flood Prevention Act is one of a growing number of federal acts providing for federal aid to the states if matching funds or other forms of local cooperation can be obtained.[7] To avail themselves of the advantages of these acts, many states have enacted enabling legislation whereby local improvement districts and public agencies may contract with the federal government to obtain sewage-treatment, irrigation, recreation, and other types of facilities. The constitutionality of these enabling acts has generally been upheld if the provisions of the acts meet the requirements of due process.[8] The Minnesota decision is consistent with those in other jurisdictions upholding legislative determinations that local districts are the most feasible and effective means of instituting costly improvements necessary to community growth, health, safety, and welfare.[9]

It is becoming increasingly important for the states to provide means for participation in intergovernmental development programs. All too often, state default has hindered development of valuable water resources or has thrown the entire burden on the federal government, with a resultant strain on its finances and an over-dependence of the states. The Watershed Protection and Flood Prevention Act and similar legislation represent an attempt to aid the states in undertaking local improvement programs that will make a contribution to the national economy but which cannot be underwritten locally. The states retain a voice in the planning and execution of the projects and are financially involved. This kind of inter-governmental cooperation is necessary if we are to develop the nation's water resources and yet retain effective local government.

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6. Chesbro v. Los Angeles County Flood Control Dist., 306 U.S. 459 (1939).

7. The Flood Control Act, 39 Stat. 950 (1917), as amended, 33 U.S.C. § 701 (1964), and the Water Pollution Control Act, 62 Stat. 1155 (1948), as amended, 33 U.S.C. § 466 (1964), are good examples.

8. See, *e.g.*, Mizer v. Kansas Bostwick Irr. Dist. No. 2, 172 Kan. 157, 239 P.2d 370 (1951), *appeal dismissed*, 343 U.S. 954 (1952).

9. See Smith, *Districts Affecting Water Use and Control*, 41 Iowa L. Rev. 181 (1956). For an historical background, see Annot., 70 A.L.R. 1274 (1931).

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