

RECORD OF PROCEEDINGS

100 LEAVES

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS
OF THE PUEBLO CONSERVANCY DISTRICT

November 20, 1953

A Special Meeting of the Board of Directors of The Pueblo Conservancy District was held at the office of the District, 113 West Fifth Street, at 10:00 o'clock A. M. on November 20, 1953.

Directors Present: John M. Holmes, W. T. Mathis, Frank Pryor.

The minutes of the meeting of September 18, 1953, were read and approved.

Upon motion of Mr. Mathis, seconded by Mr. Pryor, the Sale of Certificates listed below was approved because they were sold in a manner believed to be in the best interest of the District and the property holder:

| | | |
|-----------------------------------|---------------------------------|-------------------------------|
| Receipt Pages Nos. 550 - 554 inc. | | |
| Cert. No. | 105488; 106320 | \$217.34 John Hernandez |
| | 107094 | 6.22 B. V. Ruppel-Salv. Army |
| | 97481; 97846; 98732; 100004; | |
| | 101059; 102355; 105472; 106312; | |
| | 107095 | 49.88 B. C. Ruppel-Salv. Army |
| | 90511; 87795; 85473; 88118 | 849.41 E. T. Pate |
| | 100955 | 257.76 Frank Fossecco |

The following Vouchers were read and approved:

| | | |
|-------|--------------------------------|-----------|
| 12186 | Mountain States T&T Co. | 15.09 |
| 12187 | Charles M. Rose-Sept. | 100.00 |
| 12188 | John M. Holmes -" | 68.95 |
| 12189 | Elbert D. Greene " | 266.42 |
| 12190 | Director of Internal Revenue | 53.70 |
| 12191 | State Treas. State of Colorado | 35.25 |
| 12192 | O'Brien Ptg & Sta. Co. | 87.25 |
| 12193 | J. E. Creel, Co. Treas. | 273.80 |
| 12194 | J. E. Creel, Co. Treas. | 1.00 |
| 12195 | Blackburn Eng. Co. | 517.25 |
| 12196 | J. E. Creel, Co. Treas. | 5.00 |
| 12197 | J. E. Creel, Co. Treas. | 2.40 |
| 12198 | J. E. Creel, Co. Treas. | .60 |
| 12199 | Mt. St. T&T Co. | 15.09 |
| 12200 | Charles M. Rose - Oct. | 100.00 |
| 12201 | John M. Holmes " | 49.25 |
| 12202 | Elbert D. Greene " | 266.43 |
| 12203 | Director of Internal Revenue | 53.70 |
| 12204 | First National Bank of Pueblo | 1.16 |
| 12205 | First National Bank of Pueblo | 64,465.00 |
| 12206 | Middelkamp Agency Co. | 2.50 |
| 12207 | John M. Holmes | 10.00 |
| 12208 | W. T. Mathis | 10.00 |
| 12209 | Frank Pryor | 10.00 |
| 12210 | Blackburn Eng. Co. | 420.71 |


Mr. Holmes stated that this meeting had been called for the purpose of considering an offer of \$1000 to be paid to the District in consideration of the District cancelling all outstanding Conservancy District Certificates of Purchase and future assessments on the property which prior to the building being destroyed by fire on August 29, 1953, was known as the Central Block. Assessments on this property including principal and interest had been paid for the years 1925 to 1947 inclusive, - the total amount paid being approximately \$54,000.

On May 22, 1936, a Tax Deed was issued to the Board of County Commissioners of Pueblo County for unpaid County taxes. Later title to this property became vested in the Northern Colorado Loan Association - this Association now being the owners. Because of the Tax Title in the chain of title, the Northern Colorado Loan Association quit paying Conservancy assessments in 1948, after the Supreme Court rendered its decision in the case of Real Estate Co., vs. Sullivan, and have paid no Conservancy assessments since that date. Tax Sale Certificates representing the unpaid Conservancy assessments for the years 1948 to 1952 inclusive, are held by the District, total face value of these Certificates being \$11,385.76. The assessments for the years 1953, 1954 and 1955, not represented by Tax Certificates amount to approximately \$5,670.00, making the total of the amount due on Certificates plus assessments from 1953 to 1955 inclusive, approximately \$17,050.00.



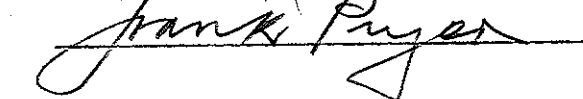
Holmes stated that he and Greene had conferred at considerable length with Attorney Rose regarding the advisability of accepting this offer. Attached hereto and made a part hereof is a letter from Attorney Rose regarding this matter and it will be noted that Rose says in this letter that in his opinion "the Conservancy District has no defense as against an action to quiet title and remove the lien of these assessments including the lien represented by the certificates and the 1953 and subsequent assessments."

In view of Rose's opinion as to the legal aspects of the matter, Mathis moved that the District accept the \$1000 offer and that Rose be instructed to prepare the necessary petition, court order, etc., to effect the acceptance of this proposition and that Holmes as President of the District be hereby authorized to sign the Petition to the Court. Pryor seconded the motion which was unanimously carried.

There being no further business, the meeting adjourned.


Secretary

Read and approved:

CHARLES M. ROSE
ATTORNEY AT LAW
THATCHER BUILDING
PUEBLO, COLORADO

November 17, 1953

Directors Pueblo Conservancy District
Mr. John Holmes, Chairman
113 West Fifth Street
Pueblo, Colorado

Gentlemen:

In re: Central Block

I have gone over this matter, including the records, carefully and the situation is as follows:

1. Since 1911 the county has had the right to acquire the property by tax deed on which the county held certificates of tax sale. (Chapter 142, CSA., Section 247).

2. In 1922 we included the same principle in the Conservancy Act of Colorado so that the conservancy district had the same right as a county; and we added to it the provision that no sale of any property for general taxes or tax deed thereon should affect the lien of the conservancy tax.

3. In 1935 the General Assembly passed a special procedural act to carry into effect the right of the county above mentioned. This Act was silent as to the lien of special assessments. It was under this Act that the county acquired the Central Block property.

4. In 1941 the General Assembly passed a further procedural act applicable to the right of the county above mentioned. This 1941 Act specifically preserved and excepted the lien of any special assessments from being affected by a tax deed procured by the county. This statute has no application to the Central Block transaction as the county's deed was acquired prior thereto. The effect of this Act need not now be discussed except to say that its legal effect was the same in general terms as the language in the 1922 Conservancy Act.

5. In 1947 the Supreme Court in the case of Real Estate Co. v. Sullivan 116.C. 169, held in a four to three decision that a provision in like terms as that

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contained in our Conservancy Act (supra) was unconstitutional. At your direction I filed briefs in that case as did the Attorneys for the Moffat Tunnel District and as did several other attorneys - specialists in municipal bonds. It is my belief that all possible questions and all possible authorities were presented to the Court at that time. While it is true that the decision was by a divided Court, I have no reason to believe that after this length of time the Court could be induced to change its mind. This is especially true as we were obliged to secure a record on the question of assessments due subsequent to the issuance of a tax deed, an issue which was decided against the District in the cases of Moore v. Pueblo Conservancy District, 120 C.287, and Florman v. Pueblo Conservancy District, 120 C.293.

So much for the legal history and background of the question of superiority of tax deed titles to special assessment liens.

In this particular case prior to the time that the county actually secured a deed under the 1935 statute, the district considered the matter of satisfying the county's claim and the taking over of this property. At that time and under the circumstances in existence and the prospect of continuing ownership and operating the building, such transaction was considered too highly speculative for the use of public money; and, further, the Directors of the District at that time relied upon the validity of that portion of the Conservancy Act of Colorado which preserved our lien as against such tax sale; and that conclusion, as their counsel, I approved.

Various suggestions have been made and considered which might operate as an estoppel. In my opinion that doctrine does not operate in this case. If ever admissible on the basis of a mutual mistake of law, there is no way to make such matters obligatory or effectual as against a subsequent record owner of the property.

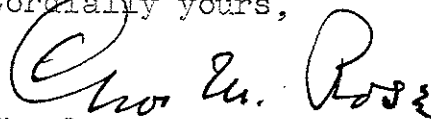
My conclusion is that on the title record of this case the Conservancy District has no defense as against an action to quiet title and remove the lien of these assessments including the lien represented by the certificates and the 1953 and subsequent assessments. The only question, it seems to me, is a practical one which I have discussed with Mr. Holmes and Mr. Greene and which they have explained to you.

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The only method outside of a judgment to quiet title, which I should think that the Northern Colorado Loan Association would prefer on the same basis of a thousand dollars to the Conservancy District, is a petition to the Court to sell the certificates and apply the thousand dollars in satisfaction of the 1953 and subsequent assessments. (CSA., 4A, Chapter 138, §175(1)).

Cordially yours,

A handwritten signature in cursive script that reads "Charles M. Rose". The signature is written in dark ink and is positioned above the printed name.

Charles M. Rose

CMR:MPE