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Record No. 5090

In the Supreme Court of Appeals of Virginia at Richmond

R. I. BROOKS, ET AL.

v.

ROANOKE COUNTY SANITATION AUTHORITY

FROM THE CIRCUIT COURT OF ROANOKE COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5090

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 8th day of October, 1959.

R. I. BROOKS, ET AL., Appellants,

against

ROANOKE COUNTY SANITATION AUTHORITY, Appellee.

From the Circuit Court of Roanoke County

Upon the pettiion of R. I. Brooks and Brooks and Patton, Incorporated, an appeal is awarded them from a decree entered by the Circuit Court of Roanoke County on the 24th day of April, 1959, in a certain chancery cause then therein depending wherein Roanoke County Sanitation Authority was plaintiff and the petitioners were defendants; upon the petitioners, or some one for them, entering into bond with sufficient security before the Clerk of the said circuit court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

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Filed in the Clerk's Office the 22 day of January, 1959.

Teste:

ROY K. BROWN, Clerk
By GRACE E. FERGUSON, D. C.

BILL IN CHANCERY.

To: The Honorable F. L. Hoback, Judge of the said Court:

Your Complainant respectfully represents:

1. That it is a public body politic and corporate, an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and created as a public corporation under and by virtue of the provisions of Chapter 22.1 of the Code of Virginia of 1950, known as the "Virginia Water and Sewer Authorities Act." The governing body of the political subdivision which created this Authority is the Board of Supervisors of Roanoke County, Virginia. All things necessary to be done in and about the creation of this Authority were duly done, as appears from the minute books of the said Board of Supervisors of Roanoke County, Virginia, which are duly lodged in the Clerk's Office of the Circuit Court of Roanoke County, Virginia, and from the records of the office of the Clerk of the State Corporation Commission of Virginia. Whereupon, a charter was issued by the State Corporation Commission of Virginia, pursuant to the provisions of Title 15-764.8 of the said Code of Virginia, on the 6th day of May, 1955.

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2. Among the purposes for which the Authority was created was to acquire, own and maintain a sanitary sewer system, or systems, in certain areas of Roanoke County, including an area known as "Project 6—Peters Creek," and as an incident to the said project the Authority was empowered, among other things, "to enter into contracts with the Federal Government, the Commonwealth of Virginia, or any agency

or instrumentality thereof, or with any unit, private corporation, co-partnership, association, or individual providing for or relating to the furnishing of service and facilities of any * * * sewer system, sewage disposal system," etc., to carry out the purposes for which the Authority was created (Section 15-764.12(j), Code of Virginia of 1950.)

3. In the latter part of the year, 1955, the defendant, R. I. Brooks, representing himself as the principal owner and officer of the defendant, Brooks & Patton, Inc., did approach the complainant, requesting that sewer service be made available to the defendant corporation for certain lands then owned by said corporation and lying within the area known as "Project 6—Peters Creek," to the end and purpose that said corporation might develop its lands for profit, and thereby enable it to sell said lands to diverse and sundry persons, firms and corporations for business and residential purposes, and that said corporation might be in a position to assure prospective purchasers that sanitary sewer service for said lands was available.

The said defendant, R. I. Brooks, was advised by duly authorized representatives of the Authority, that
page 4 } the Authority was without any funds to construct sewer lines for it, but was further advised that if the owner, or owners, of the land desired to construct a sewer interceptor line and collector lines at its sole expense, pursuant to the adopted policy of the Authority in such cases made and provided, that the said Authority would permit a connection so that sewage originating on the lands then owned by the said defendant, Brooks & Patton, Inc., might flow into the interceptor line of the City of Roanoke and be transported through said Roanoke City interceptor line to the Roanoke City sewage treatment plant for disposal, pursuant to a contract then and now existing between the City of Roanoke and the County of Roanoke for such purposes, the interest of the County of Roanoke having been, by resolution of record, duly assigned to the complainant in this cause. Reference is here had to the minute books of the Board of Supervisors of Roanoke County, wherein said contract, as amended from time to time, is duly set out in full and wherein and whereby the interest of the Board of Supervisors of Roanoke County has been assigned and transferred to the complainant herein.

4. On or about January 5, 1956, the said R. I. Brooks, on behalf of Brooks & Patton, Inc., was pressing the Authority for a definite commitment with reference to its desire to develop its property. Whereupon, at a meeting of the members

of the Authority on January 5, 1956, the following was inserted in the minutes of the Authority:

"The R. I. Brooks contract was discussed and it was ruled that the standard reimbursement policy for repaying developers up to their initial capital outlay for the interceptor line alone would be followed. Any connection charge for connections made to the interceptor or collection system as originally constructed and shown on the map of this sewer to be recorded in the Roanoke County Sanitation Authority Plat Book would be reimbursed to the developer as stated in the standard operating procedure of record in the minutes of September 29, 1955 and October 24, 1955."

page 5 } On the same day, to-wit: January 5, 1956, Mr. James A. Beavers, then Secretary and Manager of the complainant, did communicate by letter with the said Brooks & Patton, Inc. the action of the Authority, and did enclose a copy of the then *exising* operating proceedure concerning the construction of sewer lines by land developers, which the Authority had adopted and caused to be spread in its minutes as of September 29, 1955 and October 24, 1955. A true copy of the letter of James A. Beavers, then Secretary and Manager of the Authority, under date of January 5, 1956, and a true copy of the minutes showing operating procedures which were furnished the said R. I. Brooks, are filed herewith and made a part hereof, and designated as Exhibits 1 and 2, respectively.

Whereupon, the said Brooks & Patton, Inc., and/or its successor in title, R. I. Brooks, did proceed to cause to be constructed, pursuant to plans and specifications previously delivered to the Authority and approved by its Secretary and Manager, a sewer interceptor line running generally from a point where Peters Creek intersects with Route #117 along and through said State Route #117 where it intersects State Route #460, and thence up the northerly line of State Route #460 to a point where an unopened and undedicated street, designated as Pilot Street, intersects with State Route #460, and then up Pilot Street, which the complainant is advised was then owned by the defendant, Brooks & Patton, Inc., to a point in said Pilot Street approximately 80 feet south of the subdivision line as shown on the Monte Vista Map, of record in Plat Book 1, page 373 of the records of the Clerk's Office of your Honor's Court.

5. Subsequent to the installation of said sewer interceptor line, the complainant herein did call upon the defendant, R. I. Brooks, to cause his corporation to execute a muniment of title

wherein and whereby complete title and ownership to the said interceptor line would be vested in the Authority,
page 6 } pursuant to the provisions set out in the aforesaid operating procedure and the aforesaid letter of January 5, 1956, and thereby vesting in the Authority complete ownership of said line, and complete control of the use thereof and all connections thereto. But notwithstanding the repeated demands and requests of representatives of the complainant made to the said R. I. Brooks, in his own right, and representing the defendant, Brooks & Patton, Inc., the said two defendants have repeatedly refused so to do, and have sold off certain portions of their said land to persons, firms and corporations and permitted said persons to whom they sold the said lands to connect to the aforesaid interceptor line, and to discharge domestic sewage into said interceptor line, which had to be received by the Authority, and disposed of by the Authority by transportation to the Roanoke City treatment plant and there treated pursuant to the aforesaid contract. And the said defendants herein have undertaken to make and collect connection fees from said persons, firms and corporations to whom they have sold their parcels of land, and have collected the same for their own use and benefit.

6. Your complainant would further show unto the Court that some time has gone by since the matters and things above alleged took place. Your complainant has had numerous conferences with attorneys for the defendants herein, in which, from time to time, it appeared that the difficulties herein complained of might be resolved without litigation. However, the complainant is advised that there are matters of public health which are now involved, and it becomes necessary that this complainant cause the difficulties herein complained of to be resolved, and that the ownership of said interceptor line and any collector lines transporting sewage thereto, and the rights, duties and responsibility of the complainant concerning the collection and disposition of charges for connection to said interceptor line, be ascertained and adjudi-
page 7 } cated.

7. The complainant alleges that it has exclusive authority and jurisdiction as to the ownership, operation and control of sewer lines and sewer service in the area in which the aforesaid interceptor line has been installed. Furthermore, the complainant alleges that the major portion of the said interceptor line is in the public highways and that neither of said defendants has any right or authority to own, operate, maintain or repair a sewer line in any road or highway in the Commonwealth of Virginia.

8. Your complainant is not advised as to whether Brooks

& Patton, Inc. still exists as a corporation, whether any stock was ever actually issued and whether or not the defendant, R. I. Brooks is, at the present time, the owner of all of the stock of the corporation, or all of the assets of the corporation. For this reason, both have been named as defendants, and it is requested that the Court ascertain the true beneficial ownership thereof.

Whereupon, being without remedy in the premises, save in a Court of equity where such matters are properly cognizable, your complainant prays that the said R. I. Brooks and Brooks & Patton, Inc., be made parties defendant to this cause, and be required to answer the same, but answer under oath is hereby specifically waived; that the ownership of the aforesaid interceptor line and any collector lines transporting sewage thereto, either now existing or hereafter installed, and the rights, duties and responsibilities of the complainant concerning the operation and maintenance of said lines and the collection and disposal of charges for connections to said interceptor line be ascertained and adjudicated; that, if need be, a Special Commissioner of the Court be designated and appointed to convey said lines to the complainant; and that the complainant have such other further and general relief in the premises as the nature of its case may require and to equity may seem meet.

ROANOKE COUNTY SANITATION AUTHORITY
By Counsel.

FURMAN WHITESCARVER, p. q.

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Filed in the Clerk's Office Circuit Court of Roanoke County Mar. 16, 1959.

Teste:

ROY K. BROWN, Clerk
By GRACE E. FERGUSON,
Dep. Clerk.

JOINT AND SEPARATE ANSWERS OF DEFENDANTS.

The joint and separate answers of R. I. Brooks and Brooks and Patton, Incorporated to a Bill of Complaint filed against said R. I. Brooks and Brooks and Patton, Incorporated, in the Circuit Court for the County of Roanoke, by Roanoke County Sanitation Authority (hereinafter called Authority).

These defendants (reserving to himself and itself, respectively, the proof of all just exceptions which may be had or taken to said Bill by reason of its many errors and imperfections, both of form and substance) for answer to said Bill, or to so much thereof as these defendants are advised it is material that said defendants should answer, answering say:

(1) That insofar as the defendants are advised, the allegations of paragraph (1) of the Bill are substantially true.

(2) That the clear, unambiguous language of the charter, which sets forth the purposes of the Authority regarding the area known as "Project 6—Peters Creek" does not conform to the allegations regarding this matter in paragraph (2) of the Bill, but rather the purposes of the Authority as related to "Project 6—Peters Creek" as set forth in page 47 } the charter are "* * * to construct, maintain and operate a sewer system, or systems, to supply sanitary sewage service to an area known as the Peters Creek area * * *", not "to *acquire,* own and maintain" as alleged in the Bill. Furthermore, your defendants deny that the Authority had unlimited right to contract, as clearly implied in the Bill, with various entities, or individuals "* * * providing for or relating to the furnishing of service and facilities of any * * * sewer system, sewage disposal systems * * *", etc. as alleged in the Bill, but rather the Authority's power to contract is limited by the charter of the Authority, as well as the Virginia Code 15-764.4 and 15-764.5. among others, when such contract would contravene the clear purposes of such sections of the Virginia Code * * *, therefore, the allegations of paragraph (2) of the Bill are denied, and strict proof is demanded thereof.

(3) Your defendants admit that the allegations in paragraph (3) of the Bill are substantially true as they relate to the assignment by the Roanoke County Board of Supervisors to the Authority of the former's interest in a contract between said Board of Supervisors and the City of Roanoke relating to the use of the Roanoke City Sewage Disposal System by certain county residents, otherwise, the allegations in paragraph (3) are denied and strict proof thereof is demanded; in further denial of the allegations in para-

graph (3) of the Bill, the defendants aver that thought and planning had been given by the defendants to construct a sewer line in the area in question many months before the Authority ever came into being, and as a matter of fact, were obligated by contract to provide sewer service to a third party prior to the creating of the Authority.

page 48 } (4) That as to the allegations in paragraph (4) of the Bill, your defendants admit constructing a sewer line in the general topographical location, and admit receiving the letter dated January 5, 1956, signed by Mr. James A. Beavers, as alleged in said paragraph, but otherwise, the allegations of paragraph (4) are denied and strict proof thereof is demanded.

(5) That as to the allegations of paragraph (5) of the Bill, your defendants admit that the Authority, subsequent to the installation of the sewer line in question, did demand that the defendants confer title in said line to said Authority, which demand has always been refused by the defendants; your defendants further admit that they have made and collected connection fees, which was their right to do, from various individuals who connected onto the sewer line owned by said defendants; otherwise, the allegations in paragraph (5) of the Bill are denied and strict proof thereof is demanded.

(6) That the allegations of paragraphs (6) and (7) of the Bill are denied and strict proof thereof is demanded.

(7) That the defendants, further answering, say that Brooks and Patton, Incorporated is a legally constituted corporation, incorporated under the laws of Virginia and doing business in said state; that stock was issued with the ownership of said stock now being divided equally between R. I. Brooks and his wife, Faye L. Brooks.

(8) That for further answer to the Bill in Chancery filed by the complainant, these defendants aver that the following constitute the pertinent and revelant facts and circumstances pertaining thereto:

page 49 } (a) That the defendants, prior to the creation of the Authority, contemplated constructing the sewer line in question, and in fact, had plats made and plans prepared for same.

(b) That the defendants were obligated by contract with Esso Standard Oil Company of New *Jersy,* prior to the creation of the Authority, to provide sewer service for a business to be operated by said Standard Oil Company of New Jersey upon land purchased from said defendants in the Peters

Creek area and eventually served by the sewer line in question herein.

(c) That the defendants' plans for the construction of said sewer line were submitted to and approved by the Engineering Departments of Roanoke County and Roanoke City, in accordance with the law thereto appertaining, but were never submitted to nor approved by said Authority, nor did said Authority have any legal cause or right to inspect or approve such plans.

(d) That permits were issued by the State Highway Department and the City of Roanoke for the construction of said sewer line in question and for its connection to that portion of the Roanoke City sewer line in the Peters Creek area; and that such permits were issued prior to the letter referred to in said Bill, dated January 5, 1956, from Mr. James A. Beavers to Brooks and Patton, Incorporated.

(e) That the defendants did not construct the sewer line in question pursuant to, nor in reliance upon, the letter referred to within said Bill, dated January 5, 1956, from Mr. James A. Beavers to Brooks and Patton, Incorporated, as alleged in the Bill, but rather, not only were the plans approved by the Engineering Department of both Roanoke City and Roanoke County, as required, and permits issued, as aforesaid, prior to the January 5th date, 1956, but in addition, the contract was let to Wall, Boyd and Wall,
page 50 } Cambria, Virginia, for construction of said sewer line prior to the January 5th date, 1956.

(f) That the defendants never entered into contract with the Authority to convey the sewer line in question and that the first they knew of any such demand was upon the receipt of the aforesaid letter from Mr. James A. Beavers dated January 5, 1956.

(g) That if the Authority is relying on any contract, either express or implied, no such facts are alleged in the Bill as will justify specific performance of a contract; and the defendants further deny the existence of any contract between the parties hereto, either express or implied; and the defendants deny the right of the Authority to exercise jurisdiction over the land area in question, and to exercise jurisdiction in such manner as to take the property of the defendants in the absence of contract, inasmuch as such taking of private property in such manner would be a violation of due process of law as set forth in the Fourteenth Amendment of the Constitution of the United States, and as guaranteed by Sections 6, 11, 58 and 159 of the Constitution of Virginia.

(h) That your defendants deny the right of the Authority

to exercise any jurisdiction whatsoever over the Peters Creek area as defined in its charter, inasmuch as such charter provision, as interpreted by the Authority, is in violation of the clear and obvious purposes of the Virginia Water and Sewer Authorities Act as set forth in the Code of Virginia of 1950, and in violation of Section 159 of the Constitution of Virginia.

(i) That while there may or may not be a health problem in the Peters Creek area, the defendants deny that the acquisition of the sewer line in question by the Au-
page 51 } thority would alleviate this problem inasmuch as the Authority has rendered itself impotent to construct, at any cost to the Authority, any sewer lines in the Peters Creek area or to extend the Brooks and Patton sewer line, at any cost to the Authority, should the said Brooks and Patton line be acquired by the Authority; by its charter provisions and by the terms of a contract which exists between the Authority and the holders of bonds which were issued by the Authority to finance a sewer system constructed by the Authority in its "Project 1—North 11" as said project was described in Section A of the Authority's charter, the Authority has precluded itself from incurring any expenses to alleviate the health problem alluded to in paragraph (6) of the Bill of Complaint.

(j) The defendants further answer by saying that a sizeable portion of the Brooks and Patton sewer line is located on private property owned by said Brooks and Patton, Incorporated, and to acquire the sewer line in question, without contract or memorandum signed by the defendants, would be in violation of the statute of frauds inasmuch as to acquire said line would obviously, simultaneously, involve the acquisition of an easement over property owned by said Brooks and Patton, Incorporated, which easement, of course, is an interest in real estate as defined by the statute of frauds.

(k) Your defendants further answer by saying that they have perfect right and authority to own, operate, maintain and repair a sewer line in any public road or highway in the Commonwealth of Virginia, and that there is no law, either state statute or local ordinance, which prohibits same, and even if the defendants should be a trespasser as to
page 52 } such highway, the Authority is not the proper party to complain.

And having fully answered, the defendants herein pray to be hence dismissed with reasonable costs in their behalf expended; and that they may have such other and further relief as to equity may seem meet and proper, and R. I. Brooks, not being a proper party to this proceeding, the de-

fendant, R. I. Brooks, asks that he be dismissed as a party to this proceeding.

R. I. BROOKS
BROOKS AND PATTON,
INCORPORATED
By LEWIS S. MINTER
Counsel for the defendants.

* * * * *

Dep.
page 53 }

* * * * *

Filed under seal in the Clerk's Office Circuit Court of Roanoke County Va., Apr. 11, 1959.

Teste:

ROY K. BROWN, Clerk
By FLORENCE HICKS, Dep. Clerk.

DEPOSITIONS.

DEPOSITION of William E. Fitzgerald, taken pursuant to agreement of counsel, before Dorothy L. Ratcliffe, a Notary Public in and for the City of Roanoke, State of Virginia, the 26th day of March, 1959 at 3:30 P. M. at the offices of Woodrum and Gregory, 726 Shenandoah Building, Roanoke, Virginia, said deposition to be read as evidence on behalf of the defendants in the above styled cause.

Appearances: Mr. William E. Fitzgerald—Witness.
Mr. Furman Whitescarver—Counsel for the Complainant.
Mr. Lewis S. Minter—Counsel for the Defendant.

Dep.
page 54 } WILLIAM E. FITZGERALD,
a witness of lawful age, being first duly sworn, deposes and says as follows, to-wit:

Questions by Mr. Minter:
Q. Would you give us your full name, please?
A. William Eugene Fitzgerald.
Q. What is your position or occupation, Mr. Fitzgerald?

William E. Fitzgerald.

A. Engineer for the State Highway Department.

Q. Do you serve in any particular capacity with the State Highway Department?

A. I am Resident Engineer of the Salem District which consists of the counties of Roanoke, Craig and Botetourt. I'm in charge of maintenance and construction in those three counties.

Q. Mr. Fitzgerald, were you connected with the Highway Department in Salem in your present capacity during the month of December and the month of January, 1955 and 1956, respectively?

A. Not in the present capacity. I was Assistant Resident Engineer at that time.

Q. Mr. Fitzgerald, as briefly, but as completely as you can, would you state the policy of the Highway Department concerning the issuance of permits for the installation of sewer lines in public state highways?

A. The policy of the Highway Department is that we tolerate sewer lines, water lines, etc. below the surface of the road and we issue permits for the convenience of the owners of such lines.

Dep. page 55

Q. Do I understand that these permits are issued to the owners of the line?

A. Yes, sir.

Q. Mr. Fitzgerald, was this your policy back on or about January 4, 1956?

A. That's correct.

Q. Mr. Fitzgerald, so far as the Highway Department is concerned, when these sewer lines are installed in public highways does the State Highway Department exercise any control or maintenance over them?

A. We exercise control to the extent that if the utility line, whatever it may be, would endanger the road we would require that it be removed or the condition improved.

Q. Mr. Fitzgerald, do you know on or about January 4 of 1956, did your office in Salem have any agreements with the Roanoke County Sanitation Authority pertaining to the installation of sewer lines in the Peters Creek area, more specifically in U. S. Route 460 and the extremely southern end of 117 in the Peters Creek area?

A. Not to my knowledge.

Q. Mr. Fitzgerald, do you have before you a verifax copy of a permit to install a sewer line?

Dep. page 56

A. Yes, I do.

Q. Would you identify the permit and tell us what that permit is for and what it provides for?

William E. Fitzgerald.

A. This is a copy of a permit that I prepared around the first of January, 1956. The permit was officially issued on January 4, 1956 and on January 5, 1956, I handed a copy to Mr. Boyd.

Q. Who applied for that permit?

A. A Mr. Boyd who was a member of a contracting firm known as Wall, Boyd and Wall, Cambria, Virginia.

Q. On whose behalf was he applying?

A. The permit was issued on behalf of Mr. R. I. Brooks who I was told was the owner.

Q. Were there any charges attending the issuance of that permit?

A. Yes, there was a $18.00 fee for the cost of the permit and we secured in addition, $1,000.00 bond for the satisfactory performance of the work.

Q. Of your own knowledge, do you know who paid for the bond and who paid for the issuance of the permit?

A. I don't remember exactly, but I have an idea it was the contractor. I could find out by checking back to our Richmond office.

Q. Will you identify the permit further, Mr. Fitzgerald, by stating the type and location of installation?

Dep. page 57 } A. As I said, it was a permit prepared by me to install a 18 inch sanitary sewer line which would run along Route 117 and Route 460 in Roanoke County.

Q. How many feet was the line to be?

A. 1400 feet.

Q. We would like to enter this permit as Exhibit A.

Q. To your knowledge, Mr. Fitzgerald, did the Roanoke County Sanitation Authority play any part in the request for this permit or in the issuance of this permit?

A. No, sir.

Q. Did the Highway Department inspect the line once it was installed?

A. Yes, we inspected it several times during the construction and then, of course, made a final inspection. The date of this final inspection was April 19, 1956.

Q. What was the nature of this inspection? What were you inspecting for?

A. I did not make the final inspection. Prior to the time this inspection was made, I was transferred from this area. I went back to Salem as Resident Engineer January 1 of this year. The final inspection was made by Mr. O. T. Igle who was then Resident Engineer.

William E. Fitzgerald.

Q. Do you know of your own knowledge that Mr. Igle made the inspection?

Dep. page 58 } A. Yes.

Q. What was the nature of the inspection?

A. Merely to see that the work was carried on in such a manner that the road was properly restored.

Q. In this inspection, did you have access to the plans from which the sewer line was constructed?

A. I assume we did. I do not recall that we had plans.

Q. As a matter of practice, do you all require plans to be filed with you?

A. Yes, we do that. At that time, however, we issued some permits without plans for sewer lines and whether or not Mr. Boyd had plans I do not remember, but I do assume he had some kind of plans.

Q. In other words, your testimony is that you don't remember whether Mr. Boyd's sewer plans were ever given to you or not?

A. This is an assumption, but if he had plans prepared we would have asked for several plans to be attached to the permit. So I would assume he did not have adequate plans or at least, he did not have them to give to me.

Q. Of your own knowledge, did the Roanoke County Sanitation Authority inspect the sewer line?

A. Not to my knowledge. However, that doesn't mean they didn't.

Dep. page 59 } Q. Was any request ever made to you or to the Department by the Roanoke County Sanitation Authority to inspect the Brooks sewer line?

A. Not to my knowledge.

Q. At that time was there any *requirment* which would have made it mandatory or optional for you to make a report to the Roanoke County Sanitation Authority upon your final inspection?

A. No, there was not.

Q. Mr. Fitzgerald, would you simply state the policy of the Highway Department concerning sewer lines actually installed in a right-of-way starting first with removal?

A. As I said earlier, we tolerate utilities of all kinds as a convenience privileged to owners. At such time as the road needs to be widened or the road needs to change, we notify the owner that it is necessary to remove the sewer or whatever utility might be there.

Q. What happens then?

William E. Fitzgerald.

A. If a owner did not move it, we would simply push it out of the way, after due notice, of course.

Q. Mr. Fitzgerald, so far as the State Highway Department is concerned, if something was to happen to an individual, I mean either a person or entity of some sort, if something should happen to that individual who had installed a sewer line so that they could not be any longer responsible for that sewer line, what would be the position of the Highway Department?

Dep. page 60

A. As of that date, had I known that there was a sewer Authority, I would have undoubtedly contacted the person in charge and would have advised them of the fact that this condition existed and that we were going to have to have the sewer adjusted and advise them to that effect, and further advise them that if they had any interest in the matter it would be to their advantage to make the adjustment.

Q. My question was if an individual who had put in a sewer line had died or gone out of existence, what would be the policy of the Department?

A. The person that had originally installed it?

Q. The owner.

A. Regardless of who installed the sewer originally, the sewer would serve some individual or family or business or maybe a community of all of that. The sewer that was to be disrupted would serve someone whether or not the original owner had moved away or passed away, so then we would attempt to find who the sewer served and contact them and tell them we were going to have to interrupt their service and to take any steps they could to protect their service.

Questions by Mr. Whitescarver:

Q. Assume that the individual who had installed a sewer line in a public highway and put up a bond, which I understand it is the custom to return, or if its a cash bond it is returned, the individual dies or if it is a private corporation, it ceases to exist, and further assume that the line serves quite a number of people, serves the community generally, to whom would the Highway Departmnet look in case of serious trouble with the sewer line such as breakage of the line and consequent damage to the highway?

Dep. page 61

A. I would, of course, contact the Sanitation Authority first. That is, I would now.

Q. If the Sanitation Authority did not exist, who would you contact?

William E. Fitzgerald.

A. I would attempt to find out who was responsible for the line?

Q. If an individual or corporation have ceased to exist, to whom would you look?

A. I would look to the people it served.

Q. Let's assume there were 500 connections. Who would you look to?

A. Before such a situation is pictured, we would no doubt have a considerable project under way.

Q. You are not following my question. Assume the sewer line installed by a private individual or a corporation which substantially ceases to exist, serves 500 connections and something had to be done to repair or maintain that line in the public highway, wouldn't you go to the government involved?

Dep. page 62 } A. Yes.

Q. Would you go to the Board of Supervisors of a county or council of each city?

A. If the Sanitation Authority did not exist, I would go to the County Engineer.

Q. In other words, you would have to look to a government or government agency?

A. I would start there.

Q. There wouldn't be anywhere else to go?

A. Well—

Q. I want the policy of the Highway Department as to a public sewer line that serves the people, regardless of the number of people, would you not go to the government involved or its public agent?

A. Upon looking into the matter, if I found that no one was responsible or any individual or private owner was, then I would start with the County Engineer and if necessary, would advise the County Board of Supervisors.

Q. Going back to my question about the bond, is it correct that a check was given to the Highway Department on or about the 5th day of January, 1956, for $18.00 inspection fee and $1,000.00 completion bond?

A. That's correct.

Q. Did you not return the $1,000.00 when the job was completed?

Dep. page 63 } A. That's correct.

Q. Therefore, there is no way whereby the Highway Department might be protected for any damages that might be done to the Highway itself. Isn't that correct?

William E. Fitzgerald.

A. Yes.

Q. What is the policy of the Highway Department now? Has it changed since this particular installation as to the installation of lines in public highway where the area is under the jurisdiction of Roanoke County Sanitation Authority?

A. I will have to be specific in that we will have to take Roanoke County alone. Now, if an individual came to me and requested a permit for a sewer line, I would recommend to him that he get in touch with the sewer Authority and recommend that he secure his permit in the name of the sewer Authority and that is not policy, but a working agreement between the Highway Department and the Roanoke County Sanitation Authority.

Q. At the present time, are all permits in areas under the jurisdiction of the Authority issued in the name of the Authority?

A. All permits have been, yes*t*, sir.

Q. And you have not issued any permits, have you, to anyone in Roanoke County, except this one in question here, for installation of sewer lines in any public highways in the name of the individual, in this case, such as R. I. Brooks. Isn't that correct? In other words, is he not the only one in Roanoke County who the Highway Department has issued a permit in his name, who is under the jurisdiction of the Authority?

Dep. page 64

A. I actually wouldn't know specifically, but it is the only one to my knowledge that has been and certainly, the only one recently.

Q. Aren't the records of the Highway Department available to determine whether that fact is true or false?

A. It is available, but we issue possibly 1,000 permits a year and it is hard for me to remember, but it is possible that we have issued other permits to other individuals.

Q. Do you know of any at all?

A. None in Roanoke County, but in my thinking it might be possible. I handle three counties and issue permits every day and with that many permits I can't be sure.

Q. You stated, Mr. Fitzgerald, that this permit was delivered January 5, 1956, and I assume the check for $1,018.00 was delivered to you that day?

A. The check was in my hands that day.

Q. Had any construction been started prior to the issuance of that permit?

A. Not to my knowledge.

Q. If so, it would have been a violation?

William E. Fitzgerald.

A. A violation of the law, yes.

Q. Do you have a record as to when you made your first inspection?.

A. No, but we would have probably inspected that quite often as it was on a well beaten path.

Dep. page 65 } Q. I was trying to get the date construction began. I just wondered if you could supply it?

A. No, sir, I couldn't.

Q. Not completed until April 16, 1956?

A. That's correct.

Q. When the request was made by Mr. Boyd, he merely told you that he was contracted to construct the line and employed by Mr. Brooks?

A. That's correct.

Q. He did not go into a discussion with you as to who owned the line or who was supposed to own the line?

A. I asked Mr. Boyd who was having the line put in and he replied that Mr. R. I. Brooks was, and therefore, the permit was issued in the name of Mr. R. I. Brooks.

Q. You mentioned the fact that back at that time there was a rather loose arrangement concerning the issuance of these permits. Would you mind elaborating on that just a little bit?

A. I don't believe I made a statement that it was a loose arrangement, Mr. Whitescarver.

Q. I believe that was your language, they had a loose arrangement with the Highway Department?

A. If I made that statement I'm sorry I made it. I didn't intend to say it. I will say that Roanoke County

Dep. page 66 } has gained considerably in the last two *year*. We have to pay a great deal of attention to all kinds of permits. We did not consider it a loose arrangement then but with the type we have today, somewhat more lenient then.

Q. Did you ever see the sewer line plans made by C. B. Malcolm and Sons under which this line was constructed?

A. I don't recall. As I stated earlier, at the time I first discussed the sewer line I had no plans but some could have been filed later, I don't remember.

Q. You do not inspect the line with reference to infilitration of the line, do you?

A. We have no interest in the fundamentals of the line or service of the line. We are merely interested in protecting the road and seeing that the road was restored to its good con-

dition as it was and that the line was put in with sufficient depth so it will not disturb the road.

Q. There is no particular connection with the type of inspection that you make and the type of inspection which the Authority makes which is particularly with reference to infiltration?

A. No, sir.

Q. There is no point in going back and forth about the inspection itself?

A. Only to this extent. We are interested only in seeing that the trench is back filled in the proper manner and that the road is restored as it should be.

Q. You are not interested in the service of the line?

Dep. page 67 }

A. No.

Q. Your inspection is, therefore, for an entirely different purpose than the inspections made by the Sanitation Authority?

A. I do make inspections accompanied by a representative of the Sanitation Authority in instances where they are involved along with any other owner or responsible party insofar as checking the condition of the line insofar as the road is concerned.

Q. But you are only interested in the road?

A. Yes, we are only interested in the road.

Q. Back when this permit was issued you testified that bond was put up, in this particular instance a check, and then the money was given back when the line was completed. Do you have any different policy from that now? Do you require a bond now?

A. Our policy has not changed. Any sewer line or any installation of a major line, that is other than a crossing or a short stub, we require either a cash bond or a continuing bond.

Q. By a major installation, would you classify this 1400 ft. line as a major one?

A. Today on this road, yes.

Q. With that much traffic?

A. Yes.

Dep. page 68 }

Q. Is that bond with corporate surety? If you don't put up money what do they put up?

A. It is a bonding company bond. The question of how much would be dependent on the conditions. I would say in this case that $1,000.00 would be adequate today.

Q. That is a perpetual bond which stands forever?

William E. Fitzgerald.

A. No, sir, for one year. Most of the bonds we require are for one year.

Questions by Mr. Minter:

Q. Mr. Fitzgerald, Mr. Whitescarver questioned you about a large installation where some 500 people would be served and in the event the owner of that great sewer line would cease to exist, in that event, if you had to move the line or some various difficulties arose concerning the line, it broke or it wasn't functioning properly, that under those circumstances you would probably contact some government agency. Where you have a very small sewer line serving about 15 people, would you not endeavor to contact the individuals served by that sewer line if it had to be moved or some difficulty arose?

A. In the first place, we are talking about a condition that, in my experience, has never come up. We are talking about a particular installation, so let's talk about this installation. At sometime after this permit was issued and the line installed, had there been some difficulty with the line, I would have contacted Mr. Brooks and advised him that the condition needed correcting. If he would not have done it I would have contacted the Roanoke County Engineer who would have been the next man to look to. Today I would do the same thing. Had I issued a permit to Mr. Brooks today, I would contact the Sanitation Authority assuming they would have an interest in the matter.

Dep. page 69

Q. In any event, you would not contact anybody unless the trouble affected the highway?

A. I would not, no, sir.

Q. This check that was given for $1,018.00, was that check given by either Mr. Boyd or Mr. Brooks at the time the application was made?

A. The check was given to me by Mr. Boyd for $1,018.00 at the time the application was made.

Q. As I understand it, that application was made some four or five days before the actual issuance of the permit?

A. Yes, I imagine so. It is possible that he could have applied in the morning and I made a permit right then, but normally its at least a day or two.

Q. If any individual came to you and requested a permit, would you issue that permit to him?

A. There again, if it was a small installation such as a stub or a crossing I would probably issue it to the individual, but

William E. Fitzgerald.

if it was any sort of a major installation I would advise the applicant that he should contact the Sanitation Au-
Dep. thority and make application through them since
page 70 } we have a working agreement with the Sanitation Authority to handle these permits.

Q. Do you know if there is a law that requires this?

A. No.

Q. It is simply an agreement between the Highway Department and the Sanitation Authority?

A. That's correct.

Q. In this particular case, there is no question at all that the permit was issued to Brooks?

A. No question in my mind.

Q. Was April 19, 1956 the date of completion of the line or was that the date of final inspection?

A. That was the date of final inspection.

Q. Do you know whether that was the date of completion?

A. I would think not, because we are usually told that such work has been completed and is now ready for inspection and we may be several days or a week before looking at it.

Q. This policy that was in effect January, 1956, was that policy applicable over all the state?

A. Yes, there has been no change in policy. The policy that existed in 1956 exists today. The Resident Engineer has authority in the matter to work it out to the best
Dep. interest he can for the Highway Department and
page 71 } the Owner.

Q. Was any representative of the Sanitation Authority present during any of the inspections of the Brooks line?

A. No, sir.

Q. Do you authorize the Notary Public to sign your name to this deposition?

A. Yes.

WILLIAM E. FITZGERALD

.....

By Notary Public.

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* * * * *

DECREE.

This cause came on this day to be heard upon the Bill of Complaint, and its exhibits, duly filed and matured as to both respondents; upon the demurrer filed by the respondents, R. I. Brooks and Brooks & Patton, Incorporated, on February 25, 1959; upon the decree entered in this cause March 5, 1959, over-ruling the said demurrer; upon the Petition of J. Carl Poindexter to intervene herein and the decree enterd March 5, 1959 denying the Petition of J. Carl Poindexter to intervene herein; upon the joint and separate Answer of the respondents, R. I. Brooks and Brooks & Patton, Incorporated; upon the depositions of William E. Fitzgerald, taken pursuant to agreement of counsel on March 26, 1959, and filed in this cause on April 11, 1959; upon evidence of witnesses for both the complainant and the respondents, duly heard on April 20, 1959 *ore tenus* before this Court and exhibits filed with said evidence; upon various motions made by the respondents herein; and was argued by counsel.

page 76 } Upon consideration whereof, and for reasons assigned by the Court during the hearing of April 20, 1959, and at the conclusion thereof, and set forth in the record of the proceedings had herein, it is hereby ADJUDGED, ORDERED and DECREED as follows, to-wit:

1. The motion of the respondents R. I. Brooks and Brooks & Patton, Incorporated, to strike complainant's evidence and dismiss the cause is hereby over-ruled.

2. The motion of R. I. Brooks and Brooks & Patton, Incorporated to drop R. I. Brooks as an individual respondent in this proceeding, is hereby over-ruled.

3. The prayer of the bill of complaint in this cause is hereby sustained, and the ownership of the sewer line, or lines, constructed by the respondents, R. I. Brooks and Brooks & Patton, Incorporated, as shown on the plan, specification and profile, as set out on the Malcolm map prepared for the respondents herein, and filed in this cause as "Respondent's Exhibit D, pages 1 and 2," and running from Manhole No. 1 where Route #117 intersects Peter's Creek, or the east side thereof, to Manholes Nos. 2, 3, 4, 5, 6, 7, 8 and 9, inclusive, and also the lines installed in Pilot Street and Edgelawn Avenue, as shown on said map, as well as the management thereof, is hereby adjudged to be vested in Roanoke County Sanitation Authority, pursuant to the terms and provisions of the agreement herein established between the complainant and the respondents.

4. The respondent, Brooks & Patton, Incorporated, is en-

titled to reimbursement for its proven expenditures for the construction of said line, or lines, out of any and all
page 77 } inspection and connection charges which are levied and collected where connection is made on the line constructed by Brooks & Patton, Incorporated, but not on any extension of said line, nor in any portion of the collector system, that is to say: as to connections made on the line constructed by Brooks & Patton, Incorporated, beginning at Manhole No. 1 at or near the point where Peter's Creek intersects State Route #117 and running to Manhole No. 9 in U. S. Route #460, all inspection and connection fees received by the Authority for a period of ten (10) years from April 2, 1956 are to be remitted to Brooks & Patton, incorporated by the Authority, but not exceeding the total cost of said line which, as proven in this case, is $6,902.96, but said amount is to be credited with the sum of $300.00 collected from Esso Standard Oil Company by Brooks & Patton, Incorporated; $300.00 collected for the Gulf Oil Company station; $500.00 for the Brown Derby and $2,000.00 for the property occupied by the Great Atlantic & Pacific Tea Company.

5. The Roanoke County Sanitation Authority shall levy and collect from those who desire to connect to said interceptor line its established inspection and connection charge as now in effect or as hereafter modified and changed in accordance with the law, until the defendant, Brooks & Patton, Incorporated, has either been fully reimbursed, or until April 2, 1966, the date the ten year period expires.

6. The complainant, Roanoke County Sanitation Authority, shall not be required to collect any inspection or connection fees for the property now occupied by the Great Atlantic & Pacific Tea Company, that being a matter previously undertaken by the respondents.

7. All motions concerning the jurisdiction of the
page 78 } Authority in the "Peter's Creek Area," as referred to in the pleadings, and allegations of *ultra vires* acts of the complainant, are hereby over-ruled.

8. That the respondents, Brooks & Patton, Incorporated and R. I. Brooks, insofar as his interest may appear, do execute a deed to Roanoke County Sanitation Authority conveying the sewer line, or lines, involved herein, in conformity with the terms of this decree on or before April 30, 1959; and should said respondents not execute such a deed within said period of time, then in that event a Special Commissioner shall be appointed by this Court to execute a deed on behalf of said respondents in conformity with the terms of this decree.

9. The Clerk of this Court is hereby directed to enter this

decree in the current chancery order book of this Court, and also spread the same upon the current deed book of this Court, and index the same on the grantor side of the indices in the name of R. I. Brooks and in the name of Brooks & Patton, Incorporated, and on the grantee indices he shall index the same in the name of Roanoke County Sanitation Authority.

And the Respondents, Brooks & Patton, Incorporated, and R. I. Brooks, by Counsel, duly excepted to the rulings of the Court and the entry of this Decree, and, having indicated their intention to apply to the Supreme Court of Appeals of Virginia for an appeal, and having asked for a stay of execution of the terms and provisions of this Decree, it is still further ADJUDGED, ORDERED and DECREED that the execution of the terms and provisions of this decree be, and the same are, hereby stayed for a period of sixty (60) days from the date hereof, conditioned upon the said respondents entering into a good and sufficient bond before the Clerk of this Court, with surety thereon to be approved by the Clerk of this Court in the amount of Five Hundred ($500.00) Dollars, conditioned according to law.

page 79 } And this cause is continued.

Enter: April 24, 1959.

F. L. HOBACK, Judge.

We ask for the entry of this Decree:

FURMAN WHITESCARVER
BENJ. E. CHAPMAN
(Attorneys for the Complainant).

We have seen this Decree and except to its entry:

WOODRUM & GREGORY
By LEWIS S. MINTER
(Counsel for Respondents.)

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: Roy K. Brown, Clerk of the Circuit Court of Roanoke County:

Notice is given that R. I. Brooks and Brooks and Patton, Incorporated, appeal from the Final Decree entered in this case on April 24, 1959, and set forth the following assignments of error:

1. That the Court erred in overruling the Motion to strike the complainant's evidence and dismiss the suit.
2. That the Court erred in failing to drop R. I. Brooks, individually, as a party to this suit.
3. That the Court erred in sustaining the prayer of the Bill of Complaint insofar as the Decree ordered the respondents to convey to the complainant the sewer line in issue.

The respondents are unable to ascertain from the Final Decree entered herein whether the Court, in ordering that the sewer line in issue be conveyed by the respondents to the complainant, purports to be enforcing an alleged contract between complainant and respondents, or whether the ownership of the sewer line in issue has been determined as a matter of law because of the evidence presented in this case relative to the "policy" of the complainant or resolutions page 84 } passed by the Board of Directors of the complainant; the Bill of Complaint is ambiguous and uncertain as to the basis for the relief sought, and because of general references to the Bill in the opinion, the opinion falls within the same category, and it is, therefore, incumbent upon the respondents to set forth objections to the Decree in the alternative. Therefore, the respondents set forth the following as assignments of error of the Court in sustaining the Bill of Complaint insofar as the decree ordered the respondents to convey to the complainant the sewer line in issue:

1. The evidence fails to show any agreement between the complainant and the respondents whereby the respondents agreed to convey said sewer line as decreed.
2. Should the letter of January 5, 1956, from complainant to respondents, in evidence, purport to be a contract between the parties, such agreement would be illegal and void, as well as ultra-vires as to the complainant, and in any event, unenforceable by either complainant or respondents.
3. Absent a legal contract between the parties whereby respondents agreed to convey the sewer line in issue to the complainant, the Decree of the Court constitutes a taking of private property, to-wit: Respondent's sewer line and an easement over respondent's property, in violation of the Statute of Frauds and in violation of due process of law as guaranteed to the respondents by the 14th Amendment of

the Constitution of the United States, and by Section 6 and Section 11 of the Constitution of Virginia.

4. That the Court erred in sustaining the position of the complainant that it has valid jurisdiction over the area served by the respondent's sewer system, contrary to the clear intent of the Virginia Water and Sewer Authority's
page 85 } Act, and that such exercise of jurisdiction as currently exerted by the Complainant is a violation of the constitutional rights by the respondents.

5. That the Court erred in holding that the respondents cannot own a sewer line located in a public highway.

6. That the Court erred in decreeing title to sewer line in issue is in Complaint and then further decreeing that a collection of the sewer connection fee charge from the A & P Supermarket shall be the responsibility of the respondents.

LEWIS S. MINTER
Counsel for R. I. Brooks and
Brooks and Patton, Incorporated.

WOODRUM AND GREGORY
726 Shenandoah Building
Roanoke, Virginia.

I certify that a copy of the foregoing Notice of Appeals and Assignments of Error was personally delivered on June 22, 1959, to Furman Whitescarver and Benjamin E. Chapman, both of Salem, Virginia, counsel of record for Roanoke County Sanitation Authority.

LEWIS S. MINTER.

Filed in the Clerk's Office Circuit Court of Roanoke County Va., Jun. 22, 1959.

Teste:

N. C. LOGAN, Dep. Clerk.

• • • • •

page 90 } April 20, 1959
9:30 o'clock, A. M.

(The reporter was sworn.)

The Court: All right. Roanoke County Sanitation Au-

thority, Complainant, against R. I. Brooks and Brooks & Patton, Inc. Is the Complainant ready?

Mr. Whitescarver: Yes, sir.

The Court: Defendant ready?

Mr. Minter: Yes, sir.

The Court: All right. All the witnesses who intend to testify just stand and be sworn at this time. It will save us time as we proceed.

(The witnesses were called forward and sworn.)

The Court: It is the Court's recollection that the decree entered on March 5, 1959, and the responsive pleadings of the defendants were directed to be filed, and the case was originally set for March 26, 1959. Since that date, there have been two continuances; is that correct?

Mr. Minter: Yes.

The Court: And this is the actual hearing continued from March 26, 1959. Presumably, you have all the appearances, Mr. Bieler?

The Reporter: Yes, sir.

page 91 } The Court: Do you gentlemen wish to make any preliminary remarks or just go ahead with the evidence?

Mr. Whitescarver: If your honor please, I think it might be helpful to outline what we propose to offer.

The Court: All right, sir.

Mr. Whitescarver: And, if your honor would like to do so—to follow the code section on in—I have a copy of the code here, because paragraph 7 of the defendant's pleading denies jurisdiction in the authority of the area.

It is my purpose to—our purpose to first offer evidence going to the jurisdiction of the sanitation authority in this area and exclusive jurisdiction. If you would like to follow the code, sir?

The Court: Is that the one from the library?

Mr. Whitescarver: No, sir; this is mine (indicating.) Title 15, please; 15-764, I think is the code section.

The Court: All right. Mr. Whitescarver, what section are you referring to now?

Mr. Whitescarver: 15-764.

The Court: All right, sir.

page 92 } Mr. Whitescarver: On the creation of the authority starting with Point 3. If your honor please, it would be our first purpose to offer the resolution of the intent, a photo copy of which will be offered with Miss Logan as deputy clerk, and as such deputy clerk

of the Board of Supervisors of Roanoke County, a true photo copy of the Resolution of Intent to Create the Authority. We shall also offer, by Miss Logan, a true photo copy of the advertisement of this Resolution of Intent, which is required under the Act. We will then offer the resolution confirming the Resolution of Intent which directs the creation of the Authority itself as a corporation. The existence of the Authority as a corporation has been admitted in the pleadings but we also have a certificate here of amendment of the Authority charter, which is not important for the purpose of this litigation.

We shall also, and with that in mind and considering the fact that the Peters Creek area is the area which is involved here and is set out by metes and bounds, both in the Resolution of Intent, in the advertisement, and in the resolution adopting the Resolution of Intent, and the Charter itself specifically includes the area in which Brooks and Patton, or R. I. Brooks, or both of them undertook to install, and did install, a sewer interceptor line.

page 93 } We will also undertake to show that the sewage emanating from the area involved is discharged into a line which runs across the road 117, and is discharged into a sewer interceptor owned and operated by the City of Roanoke, and through the Roanoke City transportation system the water-borne sewage is transported to the treatment plant on the periphery of the city at the east, or southeast, side. We will undertake to show that Roanoke County and Roanoke City have a contract wherein, and whereby the County is permitted to discharge such sewage into the Roanoke City interceptor system, and the City of Roanoke obligates itself over a period of many years to receive that sewage and transport it, and cause it to be treated at a fixed cost. Originally, that cost was $30.00 per million gallons. The contract with the city has been amended now and it costs $34.05 per million.

We shall offer, through Miss Logan, a true copy of that contract. We shall undertake to show, then, that the Board of Supervisors of Roanoke County has assigned and transferred to the Roanoke County Sanitation Authority its entire rights, duties, and responsibilities in said contract to the Roanoke County Sanitation Authority, and the Authority has, by the Board and through the resolutions as above set forth,

page 94 } placed in the Authority the exclusive jurisdiction over the discharge of sewage, the collection of sewage, and treatment of sewage in the area in which the defendant constructed the interceptor line.

We shall also show, through Mr. Broyles, that the City of

Roanoke does not, under any circumstances, issue a permit to any private individual or corporation to connect to a sewer line belonging to the city and to discharge sewage therein in any of the areas which are under contract between the City of Roanoke and the County of Roanoke. He will tell you that there are only seventeen (17) sewage connections to the Roanoke City line that are not connections made by and through Roanoke County, and the Roanoke County Sanitation Authority—and these in smaller areas over which the Authority has never been granted and does not undertake to exercise any jurisdiction.

We will show that the Authority was created by Charter issued May 5th or 6th, 1955, and at that time, Mr. Brooks—or Brooks and Patton, Inc.,—were undertaking to develop certain lands which are involved in this proceeding; that they had had some preliminary maps made, or perhaps had an option of some kind of a contract whereby they could sell to the Esso Standard Oil Company one of its lots for a gasoline station, provided water-borne sewage could be provided. During all that period of time, the Au-
page 95 } thority itself was being organized, and Brooks & Patton, Inc. was likewise undertaking to develop its land.

It will be shown to you that Mr. Brooks of Brooks & Patton, Inc. and perhaps Mr. Patton, also—a gentleman I have never met—did meet with Mr. Matthews on several occasions—with Mr. Matthews, who had two different jobs at that time. He was a county executive officer; he was also Secretary and Treasurer of the Roanoke County Sanitation Authority and remained as a member of the Board until after the transactions involved in this proceeding took place. It will be shown that Mr. Matthews, in turn, turned Mr Brooks or Mr. Patton over to—or one of them—to Mr. Beavers, who went to work about that time, I think, on December 30th, 1955, and from that time on, dealings were had between Mr. Brooks and Mr. Beavers for the sewage service charges—I mean, for sewage service.

On the 5th of January of 1956, there was a meeting of the Authority and Mr. Matthews was present at that time. Minutes of that meeting appear as an exhibit with the Bill of Complaint—and on the same day, by letter signed by Mr. Beavers, attached also as an exhibit to the Bill of Complaint, there was a complete statement of the terms and
page 96 } conditions under which the defendant herein could install and connect—install a sewer interceptor line and connect in such a way as the sewage would be transferred to the county operation or rather, the Sanitary Au-

thority operation and thence to the Roanoke city treatment line. Our position is that Brooks & Patton, Inc. or Mr. Brooks, or both, relied upon the authority issued and contained in that letter of Mr. Beavers of January 5th, together with a copy of the minutes which were attached as a part of that letter and that that is the only permit of kind, if it be considered a permit,—it is the only permit ever, at any time, issued to Mr. Brooks or Brooks & Patton, Inc. that would permit Mr. Brooks or the corporation to cause a connection to be made, and to discharge sewage into the line over which the Authority had jurisdiction, and for which it has been then, and for the past three years has been responsible and has served and collected connection fees.

We will also show that it was necessary to obtain the right-of-way from a Mr. E. F. Nichols and that right-of-way was obtained and here it is on the original mimeographed form used by the Authority in rights-of-way in all the areas in which we operate—and it is the right-of-way to cross the land of E. F. Nichols, and the pipe line installed

page 97 } by the defendants runs through that land at this time. We shall also show you the rate schedule, the adoption of same, and perhaps some matters that I have not brought out. If there are any questions, I will be glad to undertake to answer them.

The Court: All right, sir. Mr. Minter, do you wish to make a preliminary statement about your position in the matter—and if you contest any of these matters that Mr. Whitescarver has referred to, point them out? Otherwise, I think we might well stipulate the Board did various and sundry things, and save time. If you can't stipulate, of course, you will have to prove it. All right, sir.

Mr. Minter: If your honor please, we find ourselves in somewhat of a perplexing state of mind, after Mr. Whitescarver's opening remarks. The scope of his original petition, I think, unquestionably was a very broad one. I think it included effectively the various points which Mr. Whitescarver brought out; however, it was the understanding of the defendant in this cause that after a pre-trial hearing with the court, it was more or less concluded that the basic issue in this case was going to be whether or not there was a contract existing between the Sanitation Authority and Brooks & Patton, Inc.

page 98 } This certainly does not take the defense by surprise. We are well aware of the fact that the issues are considerably broader than that as to whether there is, or is not a contract between the parties here today.

The Court: Well, now, if you don't mind me interrupting

you—your recollection is exactly that of the court's, but it seems following that recollection in the pre-trial conference, you have raised all the different points Mr. Whitescarver has talked about in your responsive pleading; consequently, I take it he is put to the proof of those unless you are willing to waive them, or stipulate. That's why I asked whether they are stipulated.

Mr. Minter: If your honor please, we understand fully, your honor, that we did in fact bring all of these other ramifications into the case strictly because we felt the original petition, as filed by the Sanitation Authority which would become part of the record, was such that we had to actually file an answer in accordance with the pleadings that had been filed with the court previously.

The Court: Well, in substance, the constitutionality points were raised in the demurrer.

Mr. Minter: Yes, sir.

page 99 } The Court: And this court has already ruled on it by decree entered March 5th, '59.

Mr. Minter: That's correct; yes, sir.

The Court: But anyway, if you are going into it again—unless you all can stipulate as to these different things—then we will just have to put it all in the record.

Mr. Minter: I feel as though we can agree with Mr. Whitescarver only to the extent that the Sanitation Authority has, in fact, been formed pursuant to the enabling act—Virginia Water and Sewage Authorities Act—and that various notices were in fact published; that the rate schedule was in fact published; and we still deny the Sanitation Authority has jurisdiction over the Peters Creek area.

We further deny the existence of any contract, either expressed or implied, between the Sanitation Authority and Brooks & Patton, Inc. We hope our evidence will show here today that Brooks & Patton are the owners of a certain tract of land in the Peters Creek area; that this land has never been officially dedicated; the streets and roadways, which are currently in use, are subject to change—they have never been dedicated to the public. Mr. Brooks, who is now

page 100 } President of Brooks & Patton, Inc., we feel is not a proper party defendant—is not a proper defendant personally in this case—we trust our evidence will show that.

We think the evidence will show that a sewer line consisting of over 900 feet runs in this private property—runs through this private property owned by Brooks & Patton, Inc. Approximately 1400 feet of the line run down U. S. 460 and ultimately connect into the Roanoke City Sewer sys-

tem. It is our position in this case, your honor, that Brooks & Patton, Inc. had contemplated building a sewer in this area, even prior to the formation of the Roanoke County Sanitation Authority.

We feel further that Brooks & Patton, Inc. dealt with, and had the approval of the proper officials of Roanoke County and Roanoke City, in order to install this sewer line; that a permit was issued by the State Highway Department for the placement of this sewer line in U. S. 460; that a permit was issued by the City of Roanoke for the connection into the Roanoke city sewer system. At no time did Brooks & Patton, Inc. seek the permission of Roanoke County Sanitation Authority to install this line, or any part of it.

page 101 } It is our contention that the defendant, Brooks & Patton, Inc. in fact were not obligated to seek the permission of the Roanoke County Sanitation Authority. We would further show you that Brooks & Patton, Inc. were obligated under contract with Standard Oil Company of New Jersey to furnish sewer services in this area, which contract was entered into prior to the formation of the Roanoke County Sanitation Authority.

This letter, to which Mr. Whitescarver refers, dated January 5, 1956 we contend is nothing more than an arbitrary demand on the part of the Sanitation Authority. We think our evidence will prove that that letter was not the basis on which Brooks & Patton installed the sewer line; that, in fact, a contract was let, materials were ordered before this letter was ever received. We feel further that Brooks & Patton, Inc., and I think our evidence will show, never agreed to this demand of the Sanitation Authority to turn its sewer system over to the Authority.

We also hope, your honor, to show that the Roanoke County Sanitation Authority was formed pursuant to an ordinance, a resolution passed by the Board of Supervisors. In it, it recounted a certain expenditure—a certain expenditure of money to be used to install sewers in what will come out as the North 11 area Project 1, as designated by the ordinance

page 102 } which, after ratified by the State Corporation Commission, in fact became the Charter of the Roanoke County Sanitation Authority. We believe that an engineering study, which we hope to introduce in evidence here, will show that the engineers recognized the fact that the North 11 area was not sufficiently populated to support the cost of the sewer system itself; therefore, various other geographical areas were arbitrarily incorporated into the initial charter, designated as being under the jurisdiction of the Roanoke County Sanitation Authority—which areas

were brought into the Authority and placed under their jurisdiction and, in effect, bonded to pay off the North 11 debt—which areas were brought in for the sole purpose of helping to amortize the $600,000.00 bond issue that had been issued to finance the North 11 sewer district.

It is our contention that the Peters Creek area, in which Mr. Brooks and Brooks & Patton, Inc. have installed their sewer line—that that area derives no benefit whatsoever from the North 11 sewer service. We contend further that the water and sewer authorities act of the Virginia Legislature, Code 1950, never intended that any such arbitrary enlargement of a sanitation district was ever contemplated and we certainly, of course, contend that that is unconstitutional; that is taking property without due process of law. I don't know that there is anything else particularly that we wish to bring out at this time.

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The Court: All right, sir. Just proceed then with your first witness.

Mr. Whitescarver: If your honor please, Mr. Broyles of the City Engineering Department, has a council meeting this afternoon and if it's agreeable with the court, I would like to put him on first so that he can get away.

The Court: All right, sir. Any objection, Mr. Minter?

Mr. Minter: No, sir.

MR. H. CLETUS BROYLES,

called as a witness in behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Whitescarver:

Q. I believe you are Mr. H. Cletus Broyles?

A. Yes, sir.

Q. And what is your title, sir, with the City of Roanoke?

A. City Engineer.

Q. City Engineer; I'd like to ask you if you or your department has ever, at any time, issued a permit to connect to the Roanoke City sewer interceptor system by R. I. Brooks, or Brooks & Patton, Inc.?

page 104

A. To my knowledge, no, sir.

Q. I show you here what purports to be a certificate authorizing Roanoke County to make a connection for the benefit of the land in question (indicating.) Did you sign that?

A. Yes, sir.

H. Cletus Broyles.

Mr. Whitescarver: I would like to file that as complainant's Exhibit No. 1.

Mr. Minter: May I see that, please?

Mr. Whitescarver: It's a photo copy.

The Court: Let Mr. Bieler mark it as plaintiff's Exhibit No. 1.

(The certificate referred to above was received in evidence and marked "Complainant's Exhibit No. 1).

By Mr. Whitescarver: (Continues examination)

Q. Mr. Broyles, what is the policy of the City of Roanoke with reference to connections to its interceptor lines for areas that are not within the city of Roanoke? That is, to take care of sewage emanating from areas outside the city of Roanoke?

A. City Council, on the 6th of February, 1956, by Ordinance No. 12657 set forth the provisions and the policy of this city for connections to the city system in those areas
page 105 } outside of the areas covered by contract with the county.

Q. What is the policy as to areas that are covered by contract with the county?

A. The city does not enter into any individual contract with firms or individuals. It is handled on a county basis.

Q. Under similar circumstances, would you issue a permit now to Mr. Brooks, or his corporation, or anybody else to connect to a Roanoke City interceptor line as to any area covered by contract with Roanoke county?

A. According to this ordinance enacted in 1956, it would be in conflict with that ordinance. We could not.

Q. In other words, the policy has been declared by ordinance actually published by the City of Roanoke?

A. That's correct; yes, sir.

Q. Do you have any correspondence with reference to the particular line in question with Mr. Matthews, the County Engineer?

A. Yes. Letter dated February 9, 1956, from Mr. Matthews. It was in regard to approval of the sewer line.

Q. The line in question in this litigation?

A. The line in question in this case.

Q. Read that into the record, sir.

A. (Reading)

H. Cletus Broyles.

"9th of February, 1956." Addressed to me as
page 106 } City Engineer.

"Dear Mr. Broyles: With reference to the sewer being constructed on a property of a R. I. Brooks—Mr. Brooks does not have a definite subdivision layout nor is he certain whether he will sub-divide it himself, or sell the land without subdividing. Therefore, Mr. Brooks desires to wait until such time as a definite plan has been made for the property before installing laterals. Under the provisions of the Roanoke County Land Sub-division Ordinance, we would require him to install laterals before streets were paved and accepted as a part of the state's secondary system of highways.

"I feel like under the circumstances he would be justified in—we would be justified in waiting until Mr. Brooks has a definite plan for his property before requiring laterals to be installed. Very truly yours, Paul B. Matthews, Executive Officer."

This came about, as you know, because under the contract with the Roanoke County, the city is required to approve the plans and specifications for any sewer lines to be connected to the Roanoke city sewer. Also, as part of the subdivision requirements that the city have, we also have the right to approve those layouts within a three-mile jurisdiction
of the city, beyond the city limits. We were in-
page 107 } sisting at that particular time that the laterals in
this particular street be put in, so this was a little clarification and understanding between the county and the city as to this particular sewer line.

Q. You referred to the policy there, I believe, that ordinance was effected the 6th of February—or was effective the 6th of February, 1956?

A. I lost my place; wasn't that the date I gave on that, February 6th?

Q. I believe that's correct. The Judge asked for the date.

The Court: That's the date I put on here (indicating.)

By Mr. Whitescarver:

Q. I thought that was correct. Mr. Broyles, was there any change that was the effective date of the ordinance—had it been the same policy before or was any actual change made?

H. Cletus Broyles.

A. We had not at that time, it was my understanding, entered into any contract with any private individuals.
Q. And this was a mere clarification of your prior policy?
A. That's correct; yes, sir.

Mr. Whitescarver: Your witness.

CROSS EXAMINATION.

By Mr. Minter:
Q. Mr. Broyles, this certificate which Mr.
page 108 } Whitescarver introduced just a moment ago—

The Court: (Interposing) Now, are you referring to Exhibit 1?
Mr. Minter: Yes, sir.
The Court: All right.

By Mr. Minter: (Continues examination)
Q. —which is dated May 25, 1956, it says it's a certificate granting authority to the County of Roanoke to connect with the City of Roanoke sewer system. Now I take it this is actually a permit, is it not, to permit the Brooks & Patton sewer line to be connected to the Roanoke city system; is that correct?
A. What is the date of that again, please, sir?
Q. This is the Exhibit 1 which was filed; the date is May 25, 1956, signed by you and Mr. Wentworth and Mr. Hildebrand and Mr.—it looks like—Finnell.
A. That's '55.
Q. I beg your pardon; May 25, 1956. What is this? What does this certificate purport to do?
A. What is stated on the certificate, sir? Would you read it?
Q. Yes, sir; let me show it to you.

(Complainant's Exhibit No. 1 handed to the witness.)

A. The first paragraph of this, if I may read it—

"Location of—description of area proposed to be connected with city sewer."

page 109 } It says "Beginning at Peters Creek, extending along Route 117 and Route 460, fifteen hundred

visors—you say the date of that was the 6th—that was February 9, 1956?

A. The 6th day of February, 1956.

Q. February 6th; of your own knowledge, sir, were any connections at all made to the Roanoke City sewer system by private individuals before this date?

page 111 } A. There were some agreements entered into with individuals as a result of easements that the city acquired for sewer lines out in the county.

Q. I take it by your testimony that prior to the enacting of this ordinance by the Roanoke City Council—that there was nothing illegal about the city granting permission to an individual to tie into the Roanoke city sewer system?

A. The city had the right to enter agreements at that time—at that particular time. I think the ordinance more or less clarified it and that was the purpose of it.

Q. I notice from this certificate that we have been referring to, marked Exhibit 1, that the applications presumably sought for the County of Roanoke—I take it the Roanoke County Sanitation Authority had nothing to do with the seeking of permission to tie this Brooks & Patton sewer line into the Roanoke city sewer system?

A. If I recall, the first knowledge that I had of this particular sewer line was that Mr. Brooks, or his representative, contacted the city about the constructing the same and he was referred to deal with the county, because it was covered by a resolution area. Thereafter, of course, as set forth in the agreement with the county and the city, the plans were prepared and both the county and the city approved these plans, and it was constructed—and we had our inspector to the job to follow through to see that the specifications and plans were complied with.

page 112 } Q. I take it then, Mr. Broyles, that in order for a person, at this time, to connect on to the city sewer system that the only thing required of them was that the plans of proposed sewer—the plans be inspected and approved by the city and that the installation, once placed in the street, had to be approved by the city?

A. And had to be covered by a resolution agreement with the county; that is your basic contract again, going back to that. We would not deal with individuals.

Q. Mr. Broyles, I have here what purports to be the plans, or the proposed plans for the sewer. Would you identify them please, sir?

(Handed to the witness.)

feet serving property of R. I. Brooks, E. F. Marcus," I believe, "and L. F. Morgan."

The Court: "E. F. Nichols and L. F. Morgan."

The Witness: And the second paragraph "Area to be served by Council Resolution No. 123789, dated March 1955," which goes back to the basic contract with Roanoke County.

By Mr. Minter:

Q. My only question is—what is this?

A. That is a certificate as brought out in the rest of it to show that it was covered by Council resolution; that the plans have been approved; that the installation had been approved and accepted by the city and your proper authorities had signed it with full knowledge of the transaction, as set forth.

Q. In other words, as I understand it, Mr. Broyles, this simple gives—this simply means that this sewer line described in this document is legally connected to the Roanoke city sewer system; is that correct?

The Court: Well, the certificate speaks for itself, Mr. Minter. I don't think it's right to ask him his interpretation of it.

Mr. Minter: I've simply been trying to determine, your honor, just what this purports to be.

page 110 } The Court: Well, it states right at the top of it "Certificate granting authority to the County of Roanoke to connect with the City of Roanoke sewer system." I take it that's what it is; that's what it says it is. Go ahead.

By Mr. Minter: (Continues examination)

Q. Yes, sir. Mr. Broyles, is there any other application or permit which is required—which was required by the City of Roanoke at this time, in order to be validly connected to the Roanoke city sewer system?

A. It's all covered on that (indicating).

Q. This is it right here? (indicating)

A. Together with the plans and everything—that is a summary, more or less, of the whole works.

Q. This ordinance which you referred to, which restricts the power of the city to contract with individuals in Roanoke county for the disposal of sewage, which individuals are located in an area incorporated under the contract between the City of Roanoke and the Roanoke County Board of Super-

H. Cletus Broyles.

By Mr. Minter: (continues examination)

Q. I take it then, Mr. Broyles, that these were the plans from which the Brooks & Patton sewer line was constructed (indicating) and that these plans were actually submitted to the City of Roanoke Engineering Department, and approved by you on behalf of the city, in the month of December, 1955; is that correct, sir?

A. That is correct; however, as pointed out, there is a note indicated on the plan that there were certain changes.

Q. I understand.

A. That is the first plans in general—they complied with the City of Roanoke specifications.

Q. In order to clarify that point for the record at this time, am I correct, Mr. Broyles, in stating that these proposed plans are the plans actually prepared by an engineer for the construction of the sewer line and then, once the sewer line is constructed, an "as built plan" is submitted to show any changes or deviations between the proposed plan and the final construction, that might have resulted from some finding by the contractor, as to maybe it wasn't necessary page 115 } to sink the line quite as low, or they may have deviated slightly one way or the other, in order to serve the area better, when they actually got into the construction; am I correct in that?

A. Substantially—yes, sir.

Q. Am I not correct too, sir, that one of the prime reasons for "as built plan" is to show the little elbows—the little connector points that are actually installed in the streets to which various individuals tie into the line; in other words, the "as built plan" will show exactly where a connection can be made to the installed sewer line?

A. It is accurate information that could be used in the future.

Q. Correct; in other words, there is nothing illegal or improper about having preliminary plans and then have some slight deviation in them "as built"?

A. That's right.

Q. Yes, sir. Mr. Broyles, I take it that as a result of this ordinance passed by the City of Roanoke on February 6, 1956, that the city has the right, and publicly states it, to grant permission to individuals to tie into their sewer system, so long as the area in question has not already been incorporated into the contract between the City of Roanoke and Roanoke County—the City of Roanoke and Roanoke County Board of Supervisors; is that correct?

H. Cletus Broyles.

You will notice what purports to be your signature on both of those papers, Mr. Broyles.

(Two maps were then handed to the witness.)

What is that word—what does that word "void" mean?

A. These are plans that were submitted which were approved by the city and the county authorities. The more or less preliminary plans during construction—certain minor changes were made. This was marked "void" and a note made "See as built plans," which I have copies here and which I think would be a little more up to date
page 113 } if you do not have copies. My belief is they were made by the same engineer, Mr. Malcolm.

Q. I'm not interested now in "as built." These, I take it, are the plans which were—

The Court: Submitted originally.

By Mr. Minter:

Q. What were the dates on those two plans there that you signed?

A. November 14, 1955.

Q. November 14, 1955; I take it that when these plans were submitted to the City of Roanoke for approval at some considerably earlier date than February 6, 1956, the date of the ordinance; that's correct, sir?

A. They were; at least, that is the engineer's date that he had on the plans. The date of approval, if you will recall, opposite my name is December 20th.

Q. What year?

A. 1955.

Q. How about the other ones?

A. And on the second one, it appears to be the same date on both of these.

Q. Now as I understand it, Mr. Broyles, these are the plans—

Mr. Whitescarver: You offer those as exhibits?

Mr. Minter: Yes, sir.

The Court: Do you want to introduce them at
page 114 } this time?

Mr. Minter: I can. I was going to use them later.

The Court: Go ahead; either one is all right so we can keep the record straight.

H. Cletus Broyles.

Q. So I take it this is the area in question? (indicating)
A. That's right; well within the area.
By Mr. Whitescarver: (interposing)
Q. When was that made—May 2nd?
A. Yes; May 2, 1955.

By the Court:
Q. What was the resolution of May 2, 1955 that you referred to, Mr. Broyles? What, in substance, was it?
A. That's Council Resolution entering into an agreement with the county, covering this particular area, amending its base contract and including this as a new area to be served. (indicating)

page 118 } By Mr. Minter: (Continues examination)
Q. I take it, Mr. Broyles, that this contract which existed was strictly between the Roanoke County Board of Supervisors and the City Council of Roanoke; is that correct?
A. I'd like to read the first two paragraphs of this—may I? I think the resolution amending the contract of September 28, 1954, between the City of Roanoke and the County of Roanoke dealing with the treatment of domestic commercial wastes and providing for emergency.

"Whereas the Board of Supervisors of Roanoke County, Virginia, by a proper resolution adopted on the 21st day of February, 1955, requested the City of Roanoke to amend the contract of September 28, 1954, between the City of Roanoke and the County of Roanoke, dealing with the treatment of domestic commercial wastes, to the extent only said contract is hereafter amended, which request is agreeable to the Council," and so on.

Q. Well, Mr. Broyles, what I am trying to determine here is this—that this contract for the disposition of sewage in the Peters Creek area existed between Roanoke city and Roanoke County Board of Supervisors; that the contract itself does not exist between Roanoke city and the Roanoke County Sanitation Authority; am I correct in that, sir?
A. I can't testify to that; I have read you the
page 119 } two paragraphs.

Mr. Minter: I think that's all, Mr. Broyles.

H. Cletus Broyles.

page 116 } A. It was pretty much, up until that time, assumed policy. We, as agents for the city, had been acting in that fashion; whereever, a resolution area had been passed, covering a particular county area—we would deal with the county for any sewer connections to the city system from that area. In this particular case—I mean the resolution area—was enacted on the second day of May, 1955, by Resolution No. 12379 which before the submission of the plans, and before the ordinance of council adopted the policy of connection. However, the resolution itself was—we had been following that and had not been issuing any permits to individuals—we had been dealing with the county.

Q. That is provided the individuals were in an area specifically covered by the contract with the county?

A. That's right.

Q. Mr. Broyles, in December, 1955, or at the time these plans were approved, was the Peters Creek area in question in the contract which existed between Roanoke City and Roanoke County Board of Supervisors for the disposition of sewage?

A. Would you please repeat that question again? I didn't quite catch it, sir.

Q. At the time these plans were approved, was the area in question, the specific area served by this sewer line—was that area under contract? Was it incorporated within the contract which existed between Roanoke City and Roanoke County Board of Supervisors, relative to the disposition of sewage?

page 117 } A. Under Resolution No. 12379, passed on the second day of May, 1955, which we referred to as Area No. 4—I'd like to show you on the map the area in question.

(Witness produced map of various colors.)

This is Area No. 4 (indicating).

Q. Uh-hum.

A. Which covers a considerable area, both north and south of Melrose Avenue. It goes on over to *Green Road* to the west and on up to 116 to the north (indicating), and on down to Virginia route—the Salem turnpike.

Q. Where is 117 on here, Mr. Broyles?

A. 117 is here (indicating).

H. Cletus Broyles.

Q. Then I take it the sewer was constructed and actually tied into the city sewer system before this certificate was ever issued?

A. (There was no response.)

Q. Well, if the certificate was not issued until after the sewer line was completed, Mr. Broyles, I should think it would have to have been tied into the city; would it not?

A. The sewer line was under construction in April or May of 1956, so the line was completed and accepted
page 121 } by us from the standpoint of meeting the specifications, and upon completion of this line, the certificate to connect to the city sewer was issued to the county.

Q. Mr. Broyles, I don't mean to press you, sir, but will you please—all I want to know is—was this sewer actually completely constructed before this certificate was ever issued?

A. To my knowledge, it was.

Q. It was?

A. Right.

Q. So then, I take it that this certificate is nothing more than a formality provided the "as built" sewer reasonably conformed to the proposed plans which you approved back in December, '55?

A. What is your definition of "reasonably"?

Q. Well, I will have to leave it up to you, sir. Reasonable similarity—obviously, you are not going to issue a certificate to a sewer line which in no way conforms to the plans as originally approved—but assuming that there are only slight deviations from the plans which you approved, I take it this issuance of a certificate is a mere formality; yes or not, sir, please?

A. I think that, as a matter of good business, it is, if there is an assurance that all of the steps required under the city ordinance is complied with. Now, if you can call it
page 122 } formality—

Q. Then I take it this certificate is not required to actually tie in to the sewer line—the only thing required to tie in to the sewer line is the approval of the plans and this is issued simply to show that those plans have been conformed with?

A. It is the city policy that no line shall be connected with the city without the issuance of that certificate.

Q. You have already told me, sir, that this sewer line was connected to the Roanoke city sewer system before the certificate was issued?

H. Cletus Broyles.

RE-DIRECT EXAMINATION.

By Mr. Whitescarver:

Q. Just a minute, Mr. Broyles. Mr. Broyles, it is my understanding— I just want it to be clarified in my own mind about it—that the contract of the City of Roanoke as to this particular area was amended and effective as of May 2, 1955, and that the plans that have been shown to you from C. B. Malcolm & Son,—the plans were approved by you in December, 1955, and in May of 1956, you issued to Roanoke County, and to nobody else, a permit to make a connection; is that correct?

A. I'm not sure of that last date; I'd have to verify that date.

Q. Well,—

A. It's substantially correct.

Q. The contract was amended and it was effective as of this area May 2, 1955?

A. That's correct.

Q. You approved the plans in December of '55?

A. That's correct.

Q. And you issued the permit, or the right to connect to Roanoke—issued to Roanoke County a right to connect as shown on the plaintiff's Exhibit No. 1?

A. That's correct.

page 120 } Mr. Whitescarver: That's all.

RE-CROSS EXAMINATION.

By Mr. Minter:

Q. Mr. Broyles, let me just ask one question on that point, sir, if I may. I take it that the issuance of this permit, this certificate—once the plans had been approved back in December, 1955,—that the issuance of this certificate was nothing more than a formality provided the sewer was in fact satisfactorily built, according to the "as built plans"; is that correct, sir?

A. Of course, we had no assurance that the line would be actually built.

Q. Yes, sir.

A. Approved plans are no assurance that it was built, so we wait until the line is actually constructed to the satisfaction of the city, according to the city's specifications and plans as set forth in the plans.

reads "Construction and installation of proposed new sewer to be connected, approved, and accepted when satisfactorily "as built plans" are filed." Well, this doesn't indicate that it had been constructed or connected either. I don't know if you have any information on that?

A. Your honor, I have "as built plans" that were submitted by C. B. Malcolm, dated April 3, 1956, involving two sheets; so I'd say at that time and according with the notes that the line was completed as of April 3, 1956.

Q. April 30th?

A. April 3rd; I'm sorry.

Q. The 3rd?

A. Yes, sir.

By Mr. Minter: (continues examination)

Q. I take it, Mr. Broyles, that these "as built plans" dated April 3rd, that certainly the sewer line itself was finished before that because C. B. Malcolm & Son had to actually go out there and plan it; did they not—and plat it, did they not, and then prepare these blueprints; am I correct, sir?

A. No, sir. My inspector has the same date, April 3, 1956, at which the laterals and the plusses were

page 125 } taken off—and it bears the same date here (indicating). I suppose the "as built plans" were dated the same date that was shown in our field book.

Q. Then I take it the "as built plans" could not have been prepared until the sewer was, in fact, completed; is that correct?

A. That's a reasonable assumption, yes.

Q. Then I take it the sewer line was completed and the city connection to the city sewer system was completed on April 3, 1956?

A. Yes, sir.

Q. This certificate rather here from the Roanoke City to the Roanoke County, dated May 25th—I call your attention to the fact the signatures aren't actually affixed thereto, or weren't, until July of 1956; that certainly this thing is not turned, or is not interpreted to be the granting of permission to tie into the city sewer system. I have asked this question before, sir, and I hate to persist in it?

A. Sir? The top of it, I think, is the answer you want. Would you please read that again?

Q. "Certificate granting an authority to the County of Roanoke to connect with the city of Roanoke sewer system."

A. I think that's it.

H. Cletus Broyles.

A. It may have been connected in the construction; that is the city's final okay as far as official connecting to the system.

Q. All right; in other words, this is a final okay—a routine proposition which simply signifies that the line is, in fact, affixed and it does, in fact, conform to the plans you approved?

A. There is the county's authority (indicating) and the city record (indicating), and the county's record on that; that is the date on which it is accepted in the city system.

Q. This is an acceptance and no actual certificate was required before this line was tied in to the city sewer system; the only thing required was the approval of these plans; am I correct, sir?

A. You say "before that"?

page 123 } Q. Mr. Broyles, you have testified here, sir, that these plans for the Brooks & Patton sewer line were approved by you during the month of December, 1955, and that the sewer was, in fact, tied in to the city sewer system physically before this certificate was issued?

A. What date was given?

The Court: When was it? That's what I want to know. When was it tied in, Mr. Minter?

Mr. Minter: The line was tied in, your honor, sometime in February or March of 1956.

The Court: Well, we have no evidence to that effect yet.

Mr. Minter: Yes, sir; well, I'm gathering from what Mr. Broyles has testified that the line was in fact completed; I think he testified the line was completed, which would certainly signify that it was tied into the sewer system. I don't know whether he did or not.

Q. Let's come down to whether it was completed on May 5th of '56 or not, Mr. Broyles—the particular sewer line in question?

A. Before we issue that permit, it would be completed. Now, in some cases—and I'm not able to testify to this exact point—we have left out a short connection at the last manhole, to be sure that the line was completely

page 124 } finished before we permit connection. Whether this was done in the particular case, I am not able to testify.

By the Court:

Q. Well, this No. 4 of your certificate, plaintiff's Exhibit 1

H. Cletus Broyles.

Q. So I take it then, this is not termed a per-
page 126 } mit; it's merely a certificate showing that valid connection has, in fact, been made; is that correct, sir?

A. That's correct.

Mr. Minter: That's all, sir.

The Court: Any other questions?

RE-RE-DIRECT EXAMINATION.

By Mr. Whitescarver:

Q. When did you start billing the county for sewage going through there, if you have that information?

A. The first records we have that anything on R. I. Brooks was August 27, '57.

Q. '57?

A. That's right. Now this is—it could have been included prior to that but our records—

Q. You don't bill Brooks himself, do you? You bill the county?

A. That is the county.

Q. The county pays for all the sewage going through the line?

A. That's correct.

RE-RE-CROSS EXAMINATION.

By Mr. Minter:

Q. Mr. Broyles, how do you know that refers to the Brooks line?

A. It's got "R. I. Brooks" on here (indicating).

page 127 } Q. Why would it have "R. I. Brooks" on there, if it's simply a general bill to the Roanoke county?

A. Because this particular line is referred to as the "R. I. Brooks Sub-division or general area." We have others.

Q. May I see that, sir?

(Records handed to Mr. Miller for examination.)

Q. What is this?

A. That's more or less a master list that shows various areas and sub-divisions that connect to the city sewer.

Q. What date are you reading from, sir, in here?—the one in the last column?

H. Cletus Broyles.

A. I'm reading here. (Indicating)

Q. What does that column represent, according to the form, sir?

A. The dates that we were sure that the line was in use, and connection made to it by people discharging sewage into it.

Q. Well now, what does this heading say here, sir, which is over this column of dates that we are reading from (indicating)? Would you read it, sir?

A. "Connection date."

Q. Connection date; and what is the date you have on there under that column, besides Mr. Brooks?

A. August 27, '57.

page 128 } Q. What is that document there, sir? Mr. Whitescarver I believe, asked you when sewage started going through there. That form wouldn't indicate that?

A. This is the compilation of sewers in the county, which areas were build by the city.

Q. Can I see that list again, sir? Well, is this intended, Mr. Broyles, to represent the date on which sewage was first flowing through the Brooks & Patton system?

A. These records were complied by a person other than myself; I have no substantiation of the facts on it.

Q. Mr. Broyles, let me interrupt you just a minute, sir. Please, if you will—I have no objection whatsoever to your explaining in great detail, as you are, but I would appreciate it, sir, if you would answer our question. Does that list propose to recite the date on which sewage first flowed through the Brooks line into the city system?

A. I don't know.

Mr. Minter: You don't know; that's all, sir.

The Court: You have not introduced this map. Do you propose to introduce a copy of it?

Mr. Minter: Your Honor, we will stipulate this area is in that time.

The Witness: I would like to have it.

page 129 } Mr. Whitescarver: You stipulate that Area No. 4, the Peters Creek area, was within the Roanoke City contract after May 2, 1955?

Mr. Minter: Yes, sir; I so stipulate.

The witness stands aside.

Miss N. C. Logan.

and the resolution of intent? (indicating) You have made a correction there?

A. Yes, I made a correction on this.

Q. To show Mr. Starkey's initials as H. W.?

A. Yes; and Minor Keffer, instead of M. R. Keffer.

Mr. Whitescarver: Yes; we offer this as com-
page 131 } plainant's Exhibit No. 3.

(The certificate of publication and copy of resolution referred to above were received in evidence and marked "'Complainant's Exhibit No. 3.)

By Mr. Whitescarver: (continues examination)

Q. I show you next what purports to be minutes of the Board of Supervisors on a public hearing, in which the incorporation was authorized by the Board of Supervisors. I would like to ask you if that is a true photo copy of your records?

A. It is, as spread in Supervisor's Book No. 13, page 254.

By the Court: (interposing)

Q. What is the date of it, please?

A. "Meeting of the Board of Supervisors of Roanoke County, held on the 4th day of May, 1955, at 4:00 p. m. in the Supervisor's room in the Court House Building in Salem, Virginia."

The Court: Thank you.

Mr. Whitescarver: That will be complainant's Exhibit—

The Court: If there are no objections, it will be complainant's Exhibit No. 4.

(Resolution of incorporation referred to above was received in evidence and marked "Complainant's Exhibit No. 4.)

By Mr. Whitescarver:

Q. And this is the contract, (indicating) I show
page 132 } you herewith photographic copy of a letter ad-
dressed to Mr. Howard W. Starkey, Chairman, Board of Supervisors, Roanoke County by J. Robert Thomas, City Clerk—with the enclosing of a resolution of City Council, and the language of the Roanoke City contract. I ask

MISS N. C. LOGAN,
called as a witness in behalf of the complainant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Whitescarver:
Q. I believe you are the Deputy Clerk of Roanoke County, and also as such, you handle the records for the Board of Supervisors of Roanoke County?
A. Correct.
Q. I am going to run through these hurriedly, if I may. This is the resolution—copy of the resolution, Mr. Minter.

(Copy handed to Mr. Minter for inspection.)

Mr. Minter: Yes, sir.

By Mr. Whitescarver:
Q. I will ask you if this is a photo copy of the original records in your office as to the action of the Board of Supervisors in Roanoke County, in passing a Resolution of Intent to Create the Authority?
A. We copied it on May 18, 1955, and it's recorded in Supervisor's Record Book No. 13, page 247.
Q. That is a true copy?
page 130 } A. A true copy.

Mr. Whitescarver: We'd like to offer this as plaintiff's Exhibit No. 2.
The Court: Let's make it complainant's Exhibit No. 2.

(The resolution referred to above was received in evidence and marked "complainant's exhibit No. 2).

Mr. Whtiescarver: Your Honor, the act requires publication on this resolution of intent and including designation of the areas—this being one. Miss Logan, I show you herewith a certificate or photo copy of certificate of the publisher, together with the publication.
By way of explanation to the court, I might say that language contains the language of the Charter. It is not required to file it in the Clerk's office of this court, but in Richmond only, and the Charter is in those regulations.

Q. I will ask you if this is a true copy of the publication

Miss N. C. Logan.

Mr. Minter: I take it there was one.

Mr. Whitescarver: I have a certificate of amendment but I don't know—I don't have it in my files and don't know what it's about. I have a certificate over there and I will show it to you.

Mr. Minter: What is this document here, sir? (indicating)

page 134 } Mr. Whitescarver: That is an extract of the record of the Board of Supervisors of Roanoke County, whereby all benefits, duties, and responsibilities of the Authority on the Roanoke City contract have been assigned and transferred to Roanoke County Sanitation Authority.

Mr. Minter: I see.

By Mr. Whitescarver: (continues examination)

Q. Miss Logan, I show you next extract of minutes of the Board of Supervisors pertaining to an assignment by the Board of Supervisors to the Roanoke County Sanitation Authority. I will ask you if that is a true copy of the records in your Board of Supervisors—

A. Yes, sir; it is spread in Supervisors Book 13, page 378, and it's entered on October 17, 1955.

Q. October 17, '55?

A. '55.

The Court: Exhibit No. 7.

Mr. Whitescarver: Complainant's Exhibit No. 7.

(The resolution referred to above was received in evidence and marked "complainant's Exhibit No. 7.)

Mr. Whitescarver: That's all for Miss Logan.

The Court: Mr. Minter, do you have any questions to ask Miss Longan concerning these exhibits?

Mr. Minter: No, sir.

page 135 } The Court: All right. If everyone is finished with Miss Logan, we can excuse her subject to call. You will be available, Maam. Suppose we take a little recess ourselves.

(A recess was then taken from 11 o'clock A. M. to 11:10 o'clock A. M.)

Mr. Whitescarver: If your honor please, I've found the location of some of my missing records. I sent them to Wash-

you if they are true copies of the records in your office—the Supervisor's records in your office?

A. Yes; in Supervisor's Record Book 13, page 161. And this was at a meeting held on October 18, 1954, pursuant to the order of the Board of Supervisors of Roanoke County, entered at the September meeting, 1954. The following documents are entered of record in the current minute book of this Board, to-wit:

That was a resolution of the City of Roanoke No. 12232, signed by J. Robert Thomas and I attested that as Deputy Clerk.

And then, in Supervisor's Record Book 13, Page 162, is a copy of the contract dated September 28, 1954, between the City of Roanoke and the County of Roanoke. Yes; there are two copies.

Mr. Whitescarver: We offer this as complainant's Exhibit No. 5.

(The letter and allied papers referred to above were received in evidence and marked "Complainant's Exhibit No. 5.)

Mr. Whitescarver: If your honor please, the next in order would be the amendment of the contract as to the area in question, which I understand has been stipulated,
page 133 } was amended as of May 2, 1955.

The Court: You would just as well introduce it.

Mr. Whitescarver: I do not have it with me, sir, and if you'd like to have it for the record to be complete, in spite of the stipulation, I will have it made at lunch time—but it has been so stipulated.

Mr. Minter: If your honor please, we certainly don't object to it at all, but it might be wise to have it in there along with the notice.

The Court: I suppose that will be understood, then, that that will be supplied and introduced as complainant's Exhibit No. 6.

Mr. Whitescarver: All right; to keep it in order, I will have that done at lunch time.

Mr. Minter: Do you propose to introduce the notice pertaining to the amended charter?

Mr. Whitescarver: I can't find it.

record the exhibit that is missing, or the amendment to the City of Roanoke county contract that applies to the area that is involved—the Peters Creek area—effective May 2, 1955.

The Court: That's already referred to as Exhibit 6.

Mr. Whitescarver: Yes, sir; I just want to tell you that I told Mr. Beavers to have the clerk prepare two copies of the resolution which constitute the contract and they will be filed as an exhibit. I would like to put Mr. Beavers on the stand.

Mr. Minter, do you have the date on that amendment?

Mr. Minter: I take it it was amended December 5, 1955.

Mr. Whitescarver: Will you take the stand, Mr. Beavers?

MR. JAMES A. BEAVERS,

called as a witness in behalf of the complainant, page 138 } being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Whitescarver:

Q. Mr. Beavers, tell the court your name and your connection with Roanoke County Sanitation Authority.

A. My name is James A. Beavers. At the present time, I am Executive Director and Secretary-Treasurer of the Roanoke County Sanitation Authority.

Q. You have in your possession the records of the Authority, have you not?

A. Yes, sir.

Q. When did you become first connected with the Authority?

A. The first actual connection would be approximately October of 1955.

Q. October?

A. Yes, sir.

Q. Were you regularly employed in October?

A. No; actually, regularly and full time employed as of January 1st—

Q. As of—

A. —1956.

Q. As of January 1, 1956?

A. Exactly.

Q. Then the dealings with reference to the in- page 139 } terceptor line in question were in progress when you first came with the Authority?

A. Yes.

burn in New York, in connection with the bond issue, and they are not in my files.

The Court: Can't you get copies?

Mr. Whitescarver: Well, he has admitted the organization and the issuance of the charter; that's all it was. I found this one as amended and I sent the original to New York in connection with the bond issue.

Mr. Minter: I understand here is the original, Mr. Whitescarver (indicating).

Mr. Whitescarver: The original charter; well, go ahead—it's perfectly all right.

Mr. Minter: This is a letter from Mr. Norman Elliott, Counsel for the SEC, in which he says the original charter was amended in 1955 on a public hearing on November 10th; so I take it the publication did have notice.

Mr. Whitescarver: It went to Reed, Hayt, Taylor and Washburn, N. 2, Wall Street in New York.

page 136 } Mr. Minter: Weren't those filed?

Mr. Whitescarver: No; it would be—our original copies went to the bond attorneys, Reed, Hayt, Taylor and Washburn in New York. The charter itself is lodged in the State Corporation Commission under the Water and Sewer Authorities Act. No provision is made for them being lodged in the clerk's office here, as is usually the case.

Mr. Minter: Isn't the amendment itself reflected by an ordinance of some sort which would be part of the minutes of the Board of Supervisors?

Mr. Whitescarver: I don't know what the amendment actually is; I have in my hands a notice of an issuance of an amendment.

Mr. Minter: Well, this court and Mr. Elliott says the amendment increased the area to be served and necessarily raised the estimated cost of the project. We are willing to stipulate that it was in fact done, but frankly, we intend at some time along the line to take issue with the authenticity of the notice.

Mr. Whitescarver: Notice on the amendment to the area?

Mr. Minter: To the charter to the amendment; in other words, I take it before the actual—

Mr. Whitescarver: Well, I'll try to find some-
page 137 } thing at lunch time but I think I do not have it.

Mr. Minter: All right, sir.

The Court: All right, sir; are you ready to proceed?

Mr. Whitescarver: Call Mr. Beavers; if your honor please, I intend the Clerk of the Court to prepare and file for the

James A. Beavers.

A. I would say yes; it was mailed on that date.

Q. Was that letter written and—kill that question. You referred to minutes of a board meeting of the members of the Authority held the same day, January 5, 1956. Did you bring that Brooks matter before the Authority at that time?

A. I did.

Q. Was that the action of the Authority on the basis of the request that Mr. Brooks made to you, that action that you read into the record from the minutes?

A. It was.

Q. Were you directed by the Authority to cover such—to cause such letter to be written and transmitted to Mr. Brooks?

A. I was.

Q. Do you know when the actual permit was issued by the Department of Highways of Virginia to install a portion of this interceptor line in the public highway?

A. I do not, at this time, know. I am not aware of the date.

Q. You are not aware of that date?

A. Not of the exact date.

Q. You heard the testimony of Mr. Fitzgerald that was taken in depositions in the office of Woodrum & Gregory some time ago. Do you recall the date specified by
page 145 } him?

A. I recall that it was very shortly after the date of this letter—I would say two or three days.

Mr. Minter: If your honor please, that is in the deposition and actually, Mr. Beavers is incorrect. The date of the permit was before the date of this letter. I ask the court to—

The Witness: Yes, sir.

Mr. Whitescarver: The date of the permit, I believe, Mr. Minter—correct me if I am wrong—was the 4th of January, 1956.

Mr. Minter: That's correct, sir.

By Mr. Whitescarver:

Q. And the date of the meeting of the Sanitation Authority was January 5th, and the date of this letter to Mr. Brooks is January 5th. Do you know when construction actually started on this interceptor line?

A. To the best of my knowledge, approximately April of '56.

James A. Beavers.

Q. Go ahead and finish.
A. If I may read from the minutes of the Roanoke County Sanitation Authority, the meeting of January 5, 1956.

"The R. I. Brooks contract was discussed and it was ruled that the standard reimbursement policy for repaying developers up to their initial capital outlay for the interceptor line alone would be followed. Any connection charge for connections made to the interceptor or collection system, as originally constructed and shown on the map of this sewer to be recorded in the Roanoke County Sanitation Authority Plat book, would be reimbursed to the developer as stated in the standard operating procedure of record in the minutes of September 29, 1955, and October 24, 1955."

page 143 } Q. Mr. Beavers, we can''t hear you; at least, I can't.
A. Shall I read the entire letter or paragraph, rather?
Q. I'm going to show it to you next. Go ahead with your minutes.
A. Well, this is finished—"October 24, 1955."
Q. I show you here what was filed as Exhibit 1 with the bill of complaint and purports to be a copy of a letter on the date of January 5, 1956, addressed to Brooks & Patton, Inc., signed by Roanoke County Sanitation Authority; by you as Secretary and Manager. Is that a true copy of a communication that you gave to Mr. Brooks?
A. It is; yes—gave or mailed.
Q. Did you hand it to him or mail it, or do you remember.
A. I do not recall handing it to him; therefore, I assume that it was mailed.

The Court: Now you state that was attached as an exhibit to the bill of complaint?
Mr. Whitescarver: Yes, sir.
The Court: I don't remember that.

By Mr. Whitescarver:
Q. Mr. Beavers' signature does not appear; this is a photo copy of a carbon but that is a true copy of what was delivered to Mr. Brooks?
A. Yes, it is.
page 144 } Q. Was it delivered to him on or approximately the same date as it was dated there, January 5, 1956?

at that time, at least so far as the preliminary sewer plan maps show, the land of Brooks & Patton.

Q. Go ahead.

A. As a result of the conversation with Mr. Brooks, the situation or the circumstances were put before

page 141 } the Sanitation Authority at their next regular meeting which, I believe, was January 6, of 1956.

Q. Had you seen the plans before that?

A. Yes, sir.

Q. Who showed them to you?

A. To the best of my knowledge and as far as I know, Mr. Brooks. It may have been in collaberation with Mr. Matthews.

Q. Did you have an office at that time?

A. Yes; we had just, as I recall, just recently been assigned the office that we have at the present time.

Q. Was anybody with Mr. Brooks?

A. Not to my knowledge.

Q. Did he bring the plans with him?

A. Again, as I say, it may have been Mr. Brooks or Mr. Matthews; I am not positive.

Q. Well, go ahead and tell the substance of your dealings with him.

A. As I say, the situation was described to the Authority and the letter which was written jointly by Mr. Whitescarver and myself—the letter of January 6, 1956—addressed to Mr. R. I. Brooks was the result of the Authorities discussion of that particular situation.

By Mr. Minter: (interposing)

Q. What was the date of that letter? Excuse me.

A. As I recall, January 6th.

page 142 } The Court: You have the original file? Go ahead.

The Witness: May I get the minute book of the Authority?

Mr. Whitescarver: Yes; you may.

(Witness left the stand to obtain the minute book of the Authority and returned therewith.)

By Mr. Whitescarver: (continues examination)

Q. Did Mr. Brooks discuss with you his desire, or any desire, that he be furnished with water-borne sewage for the lands that either he, or his corporation, owned?

A. Yes.

James A. Beavers.

Q. I am going to ask you to tell the court please, in your own way, your dealings with Mr. Brooks or Mr. Patton, if you dealt with them and how it came about that the interceptor in question is connected into an area—into a line for which the Sanitation Authority is responsible, and for which the Sanitation Authority is paying bills to the City of Roanoke for treatment—tell first your connection with Mr. Brooks and when and how you found out about this matter.

A. In approximately December of 1955—

Q. A little bit louder, sir.

A. In approximately December of 1955, the Authority was in the process of setting up an office. Actually, we were not in official, or I should say not in actual operation, in that we had no sewage customers at that time. We were primarily interested, or primarily involved in the construction of a North 11 system and the establishment of further areas, or other sewage systems in which the Authority was interested and had title to, or was securing title to.

During December of 1955 or thereabouts, as I recall, Mr. Paul Matthews, who at that time was County Executive Officer for the Board of Supervisors, as well as the County—

Q. A little bit louder, Mr. Beavers.

page 140 } A. Excuse me. Did you get all of that? (Addressing the reporter)

The Court: Yes; but I'm the one that's supposed to hear it so please speak up.

A. All right; during that particular time Mr. Matthews, Paul Matthews, was executive officer for the Board of Supervisors of Roanoke County. He was also County Engineer and he was also Secretary and Treasurer of the Roanoke County Sanitation Authority.

As I recall, Mr. Matthews brought Mr. Brooks, or referred Mr. Brooks to me as an employee of the Authority, as a new—perhaps I should say novice employee of the Authority—requesting that I give him as much information as possible concerning the policies of the Authority, and the means whereby Mr. Brooks might secure sewage services for his land located on Melrose Avenue, or Route 460.

By Mr. Whitescarver: (continues examination)

Q. You mean his land, or do you mean the land of his own, or Brooks & Patton, Inc.?

A. To my knowledge—to the best of my knowledge—it was

James A. Beavers.

Q. You think that would be classified as a collector line and not an interceptor line?
A. Exactly.

The Court: Are you introducing that easement?
Mr. Whitescarver: Yes, sir; this is a recorded easement and we would like to file it.
Mr. Minter: Can I see it?
Mr. Whitescarver: We would like to file it as complainant's exhibit No. 8.
The Court: No. 8 then, and filed.

(The easement referred to above was received in evidence and marked "Complainant's Exhibit No. 8.)

page 148 } By Mr. Whitescarver: (continues examination)
Q. Mr. Beavers, does water-borne sewage originate on the land of Brooks & Patton, Inc.?
A. It does.
Q. And is now being discharged into lines over which this Authority has control and jurisdiction?
A. It does; yes.
Q. Who pays for it to the City of Roanoke?
A. The Roanoke County Sanitation Authority pays the sewage treatment charge to the City of Roanoke.
Q. How many customers on the line, at the present time, that this involves?
A. There are four relatively large businesses and approximately eleven or twelve apartment units—that is, residential apartment units.
Q. I show you herewith a piece of paper; I would like to ask if it is a memorandum made in your own handwriting, and whether or not this list, or lists the various people who are now connected on this line?
A. Yes; this is the listing of the businesses and the apartment units that are connected to the sewage system that is being discussed.
Q. Does the Authority service all those accounts?
A. The Authority does; yes.
Q. And pays the bill?
page 149 } A. Yes.

Mr. Whitescarver: I would like to file that as complainant's Exhibit No. 9.
Mr. Minter: What is that?

James A. Beavers.

Q. Approximately April?
A. Yes; I would say the early part of April.
Q. Could you be in error on that?
A. I could; yes. I do not have any actual record of that particular date.
Q. Did you inspect the line from time to time?
A. Yes; periodically.
page 146 } Q. From time to time?
A. Periodically; yes.
Q. Periodically; is all of this interceptor line within the state highway?
A. That portion within Route 460, Melrose Avenue, is within the state right-of-way. The portion on Route 117 is partially within the right-of-way and partially within the private properties of E. F. Nichols and, I believe, a Mr. Morgan.
Q. I show you here what purports to be a sewer line easement from E. F. Nichols and Atlas Elizabeth Nichols, which purports to grant to the Authority a 20-foot easement for sewer line. I will ask you if that is on a standard, mimeographed form used by the Authority?
A. It is.
Q. Was that easement obtained for the purpose of putting this sewer line in it?
A. This easement was secured for the purpose of putting in this particular sewer line, as well as the one that serves the Norwood and north Norwood areas.
Q. In other words, the easement, however, is to the Authority—gives to the Authority and a part of the sewer line in question—this interceptor line—is now located within that easement—
A. Yes, sir.
Q. —To which title is invested in the Authority?
page 147 } A. Correct.
Q. You said you referred to Route 460 and you said that all of that line is within the highway. A part of it was in 117 and a part runs through this Nichols property. Isn't there additional portion of the interceptor involved that is not on the state highway?
A. As I mentioned previously, there is a small portion that is perhaps on the land of a Mr. Morgan adjacent to the Nichols property—the interceptor.
Q. I'm referring to the westerly end of it on the street.
A. That, in differentiation from the interceptor line which is in, of course—

James A. Beavers.

Mr. Whitescarver: It's a list of customers on the line.

(The customers list referred to above was received in evidence and marked "Complainant's Exhibit No. 9.")

By Mr. Whitescarver:

Q. You collect regularly from all those customers?

A. Yes, sir.

Q. Mr. Beavers, have you had some other conversation with Mr. Brooks, other than the one that you told us about prior to January 5, 1956?

A. Yes; following the meeting of the Sanitation Authority on January 5, 1956, and I would say, during the next approximate three to four months, there were several conversations with Mr. Brooks.

Q. Say that again?

A. As I say, following the meeting of the Sanitation Authority on January 5, 1956, and the letter to Mr. Brooks on January 5, 1956, there were several conversations with Mr. Brooks.

Q. By you?

A. By me; yes, sir.

page 150 } Q. Anybody else present at those conversations?

A. You were present, I would say, at at least two of those meetings, or during two of those discussions.

Q. Were they in the court house here?

A. Yes.

Mr. Whitescarver: Your honor, we would like to reproduce this and keep our original record.

(Paper handed to Mr. Minter.)

By Mr. Whitescarver:

Q. I show you herewith a paper marked and headed "Roanoke County Sanitation Authority, No. 82," which purports to grant to the Esso Standard Oil Company a sewer connection permit on the date of January 9, 1956, and signed by you. Is that an original record in your office?

A. It is; yes, sir.

Q. Who asked you for a permit for the Esso Standard Oil Company? Who asked you to issue it?

A. I do not recall the particular circumstances of this par-

ticular request for a permit to connect, and a subsequent inspection of that permit. I would assume that the building contractor for the Esso Standard Oil Company did.

Q. The building contractor for Esso?

A. Yes; that's the normal procedure.

Q. Did Esso Standard Oil pay a connection fee for that permit?

page 151 } A. They paid no connection fee to this Authority.

Q. Do you know whether they paid any connection fee?

A. I do not know that they did; I know that during several, or possibly during two or three of the conferences with Mr. Brooks, questions were asked by Mr. Brooks as to the amount of the normal sewer connection fee that the Authority would have charged, if the Authority charged a connection fee for this service station.

Q. Mr. Brooks asked you what the standard connection fees were for, or as established by the Roanoke County Sanitation Authority?

A. Yes.

Q. The letter of—your letter of January 5, 1956 had in it, as I recall, that Brooks or Brooks & Patton would be entitled to reimbursement at the rate of 100% of all connection fees for a period of ten years; isn't that correct?

A. Yes, sir; that is a summary of the actual reimbursement paragraph of the letter.

Q. The pleadings filed by Mr. Brooks show that he has made some connections fees and collected them direct. Do you know what they are—what connection fees he has made for these customers that are on that list?

A. I do not know the amounts; I have heard indirectly that Mr. Brooks has charged either a sewer connection fee as such, or included the connection fee as a portion of the

page 152 } cost of the land.

Q. Cost of the land?

A. Yes.

Mr. Whitescarver: I'd like to file this as complainant's Exhibit No. 10, with the request that we withdraw the original record and make a photo copy for this record.

Mr. Minter: What is that?

Mr. Whitescarver: This is the connection permit from the Sanitation Authority for the Esso Standard Oil.

(The sewer connection permit referred to above was re-

noke County Sanitation Authority, by Paul B. Matthews, Secretary" which sets out in detail connections fees and charges and rates and charges for connecting on to the line. Is that also a true copy of your records?

A. Yes, sir; it is.

Mr. Whitescarver: We would like to file that as complainant's Exhibit No. 11.

(The legal advertising referred to above was received in evidence and marked "complainant's Exhibit No. 11.")

Q. (Continued) Is that the rate schedule still in effect now?

A. It is; yes, sir—with very minor modifications.

Q. Modifications by contract under the Act?

A. Would you tell me what you mean by "contract"?

Q. Well, the Water and Sewer Authorities Act authorizes contracts which gives the Authority rather wide scope of powers in contracting. You mean, amended by way of contract?

A. Yes.

Mr. Whitescarver: If your honor please, with the exception of what has to be furnished by the clerk, that is all we want to put in by this witness.

By the Court:

page 155 } Q. Before you examine, let me ask a question so that you can examine him further, if you wish. Mr. Beavers, you stated that a number of requests have been made to the defendants to give the title to the Authority. Has that title actually been given to the Authority?

A. No, sir; it has not.

Q. It has not; well, then, I also believe you stated that it was the policy not to permit connections until the title had been given. Why was there an exception in this case?

A. Firstly, your honor, as stated this was the first—oh, let's say the first of one, two, or three sewage systems to be constructed in Roanoke County in areas in which the Authority had jurisdiction. We were in the process of thrashing out policy—policies not only concerning the actual operation of an existing system, but the policies of accepting sewage systems installed or constructed and installed at the cost of individual developers.

ceived in evidence and marked "complainant's Exhibit No. 10.")

By Mr. Whitescarver:

Q. Mr. Beavers, has request been made of Mr. Brooks that he, or his corporation, give evidence of title to the Authority?

A. Yes, sir; many times.

Q. Many times?

A. Many times.

Q. Going how far back?

A. I would say approximately April of 1956, or possibly even March of 1956. Normally, we attempt to settle all matters of deeding sewage systems to the Authority prior to the beginning of construction, or at least prior to the completion and connection to a city main or—

page 153 } Q. Prior to any connection?

A. Yes, sir.

Q. And that has been the standard policy of the Authority—to require that title vested in the Authority prior to connection?

A. Yes, sir.

Q. This, I believe, was the first one that ever came up; is it not?

A. This was; yes, sir.

Q. This one and the Rosalind Homes?

A. Yes.

Q. Do you know of any connections that have been made since that time without the question of title and ownership being first settled?

A. No, sir; I do not.

Q. Did you make it clear to Mr. Brooks that the title and ownership of this land, and complete control thereof, must rest in the Authority?

A. I believe that firstly the letter makes that particular requirement adequately clear and certainly, in subsequent conversations with Mr. Brooks, it was reiterated.

Q. Do you have the rate schedule there before you? I mean, do you have it in the form that I can file it as an exhibit?

(Witness handed paper to Mr. Whitescarver.)

page 154 } Q. I show you herewith a photo copy of notice of a public hearing—of a legal publication headed "Notice of Public Hearing, signed November 30, 1955, Roa-

460—perhaps I should stop there. As to its ownership, as to the rights of the Authority, I don't know.

Q. In other words, you must have a determination as to the rights—

A. Yes.

Q. —Duties and responsibilities of the Authority?

A. As I see it, we do not have a clear right to touch any portion of that particular system.

Q. Is there a pollution problem up near the terminus of this line on Pilot Street?

A. I am advised that there is—Pilot Street.

Q. Can the Authority do anything about it without paralleling this line?

A. No, sir; I cannot see that we can.

Q. Can we do anything with this interceptor line that is in the public highway without having complete con-

page 158 } trol of it?

A. I cannot see that we could; I cannot see that we could.

Q. Are you positive that this sewer line runs through an easement which has been deeded to the Authority and not to Brooks & Patton?

A. So far as the information that I am able to secure from the highway department as to their right-of-way limits, the line is definitely within the rights-of-way, as assigned to the Authority by the property owner, E. F. Nichols, and his wife.

Q. Will you show that to the court, on the map, please sir, where the line does go on our easement. I think you're going to have to take it to the bench, Mr. Beavers.

The Court: No map is in exhibit yet.

Mr. Whitescarver: Not except those offered by Mr. Minter. He said he was going to file them. I understood you're going to file these maps as exhibits? (indicating maps)

Mr. Minter: Yes, sir.

By Mr. Whitescarver:

Q. Point out to the court, on this map here, what we are talking about.

A. Those are the preliminary—we stated these or this is "as built" in this particular case. They may agree.

Q. Well, let's see if they do and let's get it in the record.

page 159 } (The witness compared two sets of maps.)

Also, the Authority at that time had its hands full with the construction of the North 11 system, and the financial problems encountered there. We also did not feel that, or perhaps I should state it in this manner—that we hoped, and Mr. Brooks gave us every indication, that we were correct in hoping that we could come to an agreement with him and that he would assign the title to the sewage system, or to the Authority, without the necessity of taking it into court.

Q. I take it, then, that is the same explanation
page 156 } as to why the Authority waited until February 9, 1959—over three years—to institute the present suit; is that correct?

A. Yes, sir; it is.

By Mr. Whitescarver:

Q. Just one minute; I want to ask one more question on direct. Mr. Beavers, you have been involved with this matter now for—with the sewage operation and with the operation of the Authority for more than three years. In your opinion, can the Authority operate a public sewer system effectively, without having complete control thereof?

A. No, sir; it cannot.

Q. Why not?

A. Firstly, as you are well aware as attorney for the Authority, we have many problems of maintenance. In order to maintain a system properly, we must be able to get to the system itself, to the manholes—to the line, if it becomes necessary to, let's say, dig up and reconstruct. We cannot go through private property without the prior approval of the owners. That, I would assume, is the basic reason.

Q. Can the Authority extend this line without complete ownership, or at least complete control of it?

A. No, sir; I cannot see that the Authority could and that the present—or perhaps I should clarify that—the present collector system is entirely on the lands of Mr. Brooks, or the Brooks & Patton Corporation. In order to extend
page 157 } the system, it would be necessary to go into the land of Mr. Brooks, or the Brooks & Patton Corporation.

Q. In other words, you could not extend this line at all—

A. That's correct.

Q. —to serve the public down there unless you owned it.

A. That's correct; the interceptor line located within the right-of-way of Route 460 is within the right-of-way of Route

James A. Beavers.

Q. Well now, have all of the parties listed on Exhibit No. 9 been paying, or been charged with the sewer assessment or service charges, or whatever you call it, by the Authority?

A. They have been billed by the Authority and the majority of them have paid the sewage service charge to date. We have, as you know, some difficulty with those—or some difficulty with residential property owners who page 161 } either pay under protest, or do not pay at all.

The Court: All right, sir.

By Mr. Whitescarver: (continues examination)

Q. Anybody paying under protest down there now, except Mr. Brooks?

A. Well, Mr. Brooks has been paying a portion of the sewage service charges himself, as the owner of the property, and he has been paying, as I recall, under protest.

The Court: All right, Mr. Minter. You may proceed.

CROSS EXAMINATION.

By Mr. Minter:

Q. Mr. Beavers, I believe you testified that you were associated in some manner with the Authority back in October, in 1955? Is that correct?

A. Yes.

Q. What was the nature of that association?

A. Actually, if I may go into this further in detail, I was hired as an assistant to Paul Matthews, as County Engineer and County Executive Officer—and also to assume a portion of his duties as the Secretary and Treasurer of the Authority. Now, in October, we began securing the first rights-of-way sewer line easements for the North 11 system.

The Court: Mr. Beaver, I just can't hear you.

Mr. Minter: Talk directly to the Judge. I am closer and I can hear you.

page 162 } The Court: No; I am going to make you talk or else get off the stand—one or the other.

The Witness: May I say I had the same trouble sitting over there (indicating) in hearing others here.

The Court: I don't care about your trouble but I want to hear you.

James A. Beavers.

A. There are minor changes in that particular section (indicating) but they are so minor as to location.

Q. Well, the Judge can't hear you there.

A. There are minor changes from the "as-built" or rather, from the preliminary to the "as built"—minor changes which so far as location, are not great enough to change the exact location or the actual location of the sewer line.

Q. Are you satisfied, from the map Mr. Minter is going to put in the record, that this line goes through the Nichols property which you have an easement to?

A. Yes, sir; insofar as my information from the highway department is concerned.

Mr. Whitescarver: Your witness.

By the Court:

Q. Now, one more question. Exhibit No. 10 is, I understand it, a permit granted to Esso Service Station for a connection. Exhibit No. 9 lists other connections to the R. I. Brooks line. Who granted the permits to these people to connect?

A. Those permits, I might say—those permits that were issued were issued by the Sanitation Authority Office.

Q. Well, do I understand that you have a permit granted to the A & P Food Store?

A. Yes, sir.

Q. And the Melrose Gulf Station?

page 160 } A. Your Honor, I don't believe that the Gulf Service Station was connected by permit. I might go further, if I may. We issued permits, I would say, during the first year or so reluctantly but still hoping that the disagreement between the Authority and Mr. Brooks could be settled. The Gulf Service Station and the Brown Derby Restaurant were not issued, as I recall, any permit. They were not issued any permit by the Authority, at least.

Q. Then No. 5 on this Exhibit No. 9 says "Apartment houses owned by R. I. Brooks—four units—three units—two units"?

A. Yes, sir; one of those—

Q. Were any permits issued in these instances?

A. One permit was issued.

Q. To whom?

A. I'm sorry, your honor, I don't have the record with me. I assume it was to Mr. Brooks, as the owner of the property.

James A. Beavers.

A. Yes.

Q. I take it then the acquisition of easements and rights-of-way that you were acquiring on behalf of the
page 164 } Sanitation Authority were those limited to the North 11 area?

A. They were limited in the beginning only in that that was the initial area of the Authorities Jurisdiction and projects.

Q. Well, I don't care about the reasons, Mr. Beaver; the easements and rights-of-way that you were acquiring for the Authority were limited to the North 11 area—right?

A. No; no.

Q. Well, where else were you acquiring easements?

A. The only additional area that we were concerned with, at that time, as I say were the Norwood area and of course, the R. I. Brooks area. Those two systems were constructed at approximately the same time.

Q. Did you in fact acquire any easements or right-of-way during that period for any area other than North 11?

A. Yes; I do not recall the exact dates—we have easements on record that we secured for the installation of the Norwood interceptor line, a portion of which went across the E. F. Nichols property.

Q. I take it then as of January 1, 1956, you were no longer associated with Mr. Paul Matthews in any way, but were regularly employed in the present capacity with the Authority?

A. I was regularly employed by the Authority; yes.

Q. Mr. Beavers, isn't it true, sir, that you first became cognizant of the Brooks' plan to install a sewer
page 165 } because of your association with Mr. Paul Matthews, and Mr. Matthews' office?

A. Mr. Matthews was Secretary and Treasurer of the Authority, as well as County Executive and County Engineer—I could not say which came first.

Q. In other words, as I understand it, sir, you don't know whether you became apprised of the Brooks project because of your association with Mr. Matthews, or because of your association with the Authority?

A. I would say that my official dealings with Mr. Brooks, or officially becoming aware of his situation, came as a result basically of my being an employee of the Authority.

Q. Well now, suppose I show you the plans here, sir, of the proposed project which was signed by Mr. Paul Matthews.

James A. Beavers.

By Mr. Minter: (continues examination)

Q. The Judge has got to decide this case and we'd like for him to hear all of it.

A. On July 1, 1955, I was employed as assistant to Paul Matthews—as assistant to him as County Executive Officer and as County Engineer—and also to assume a portion of the duties as Secretary and Treasurer of the Authority.

In the beginning ,those duties as assistant, insofar as the Authority was concerned, were very light in that the Authority was still in the process of commencing construction in the North 11 area, or perhaps I should say in settling all matters pertaining to the funds to be made available for the construction of that system.

Q. Will you wait just one moment, Mr. Beavers. I can't hear you over the ringing of the bell.

A. In October—

By the Court:

Q. Do you have to go into all that detail just to tell us what you were doing in October of '56?

page 163 } A. Only insofar as it concerns the Authority.

Q. I mean '55. We 11, what was your connection in October, '55?

A. In October, 1955, I was assigned the job of securing sewer line easements and rights-of-way for the North 11 system.

The Court: All right.

By Mr. Minter: (continues examination)

Q. As I understand it then, sir, in October, 1955, the only reason you had any connection with the Authority was because you were assistant to Mr. Paul Matthews?

A. No; I would not agree entirely on that.

Q. Were you employed by the Sanitation Authority in October, 1955?

A. Yes, sir.

Q. Were you on their payroll?

A. Yes.

Q. Then I take it you were duly employed during that period by the same Sanitation Authority and also Mr. Paul Matthews?

A. Correct; excuse me—correction on that—by the Roanoke County Board of Supervisors.

Q. Yes; employed to be in Mr. Matthews' office?

James A. Beavers.

A. To my knowledge, Mr. Brooks has not submitted any written application to the Authority.

Q. Right; then I take it from that, Mr. Beavers, that there is a very good likelihood that the only time you ever saw plans of the proposed Brooks line, until the time it was completed, was in your capacity as assistant to Mr. Paul Matthews, who did in fact approve these plans; isn't that correct, sir?

A. No, sir; I don't believe that would be correct in that as I stated before, Mr. Brooks came to the office several times. We discussed the situation—we discussed it, as I recall, the proposed system and the proposed connections at that time.

Q. Uh-hum. Mr. Beavers, I show you the proposed plans. Would you please determine if the Sanitation Authority ever approved those or if your signature is on those plans?

A. There is no signature on the plans which they sent the Authority, or any representative of the Authority as such.

Q. Who, in fact, did sign those plans?

page 168 } A. The two signatures are H. Cletus Broyles, City Engineer, and Paul B. Matthews, Engineer of Roanoke County.

Q. Does Mr. Broyles indicate on there that he is acting on behalf of the Authority?

A. He does not.

Q. Then I take it these plans were approved by Mr. Paul Matthews, as Engineer for Roanoke County, and I take it further from the evidence here that the Sanitation Authority did not approve those plans?

A. The Sanitation Authority, as such—meaning the five individual members—rarely approves plans.

Q. I take it that the five individual members are not required to approve the plans but I think, if the plans are submitted, it would require some proof or some action on behalf of the Authority, which would in fact approve them.

A. Yes, sir.

Q. In fact, no such approval was given if we can believe what the plans says; is that correct, sir?

A. The only thing that I could say to that is that they were not approved by me as the agent of the Authority. They are approved by Mr. Paul B. Matthews as "On the plans Engineer, Roanoke County."

Q. Are you saying that Mr. Matthews did not approve these plans as County Engineer?

A. Not at all; I'm merely saying that the signature on the

James A. Beavers.

Would you say it's possible that by being in Mr. Paul Matthews office that you saw those plans there?

A. I would say it's entirely possible; yes.

Q. Do you happen to have, on behalf of the Authority, any plans of the proposed sewer line?

A. Of the proposed R. I. Brooks sewer line?

Q. Yes, sir.

A. Yes.

Q. You do have them?

A. Yes.

Q. The proposed plans—could we see those?

page 166 } A. You have them there on the proposed, I believe. As I say, I have seen the proposed plans; I also have a copy of the as-built. I do not, in the office of the Authority, have a copy of the proposed. As a matter of fact, we do not normally keep the proposed copy once the system is constructed.

Q. I take it, or as you have testified then, that you did in fact have plans of the proposed sewer in your capacity?

A. No, sir; I cannot say that we did have them.

Q. In other words as I understand it, sir, the Roanoke County Sanitation Authority does not have, and probably never did have, plans of the proposed Brooks sewer line?

A. I would say the Authority, and the Authority office in which I was located, did not have those; no.

Q. According to the minutes of the Roanoke County Sanitation Authority, which we propose to introduce into evidence here shortly—a copy of which you sent to Mr. R. I. Brooks, enclosed with this letter of January 5, 1956, says "That an application shall be made to the Authority and a map of the proposed development, etc. to be enclosed therewith." I take it that if you ever had a map that it become a part of the official record of the Sanitation Authority; would it not?

A. The map, yes. As I stated before, at the time if it was a preliminary map, that map would have been destroyed upon the completion of the system, in that as-built system, in many cases, differs greatly from the original proposed.

page 167 } Q. Then it is impossible to determine, I take it from the records of your office whether these minutes of the Roanoke County Sanitation Authority were ever complied with or not?

A. I would say from the records in the office that you are correct to my knowledge.

Q. Is it normal to destroy records of that nature?

James A. Beavers.

A. I would say not in that; the original plan as I was made aware of it was that I was employed primarily by the Authority or, let's say, for the Authority in that as the Authority grew and needed, let's say, more of my time, then that time would be devoted until such time as a full time employee of the Authority was required.

Q. I take it then, though, that you are unable to recall at the time this introduction which was made, first of all—you can't recall exactly when it was, and I take it you can't recall whether Mr. Brooks was introduced to you

page 171 } as an agent of the Sanitation Authority or as an assistant of Mr. Matthews?

A. I think the one possibly—the one date that would clarify this would be the date that the Authority officially moved into the office that it now occupies.

Q. What is that date, sir?

A. I'm sorry, I don't have it at my fingertips at the present time. I have it in the records downstairs in the office.

Q. Isn't it quite possible, Mr. Beavers, that Mr. Matthews introduced you to Mr. Brooks because Mr. Brooks had been asking Mr. Matthews if the county could build—foot the bill for his sewer line?

A. No, sir; I don't believe that that could have been possible.

Q. Then how do you explain paragraph 2 of your *lette* of January 5, 1956, in which you said "You will understand that the Authority has no funds to assist your company"?

A. I can only say that that was a very definite statement of the Authority from the beginning to any developer in that the normal situation, as I say it, the normal attitude of a developer would be to secure all the financial assistance possible from any agency.

Q. Mr. Beavers, I believe when you are reading from the minutes of January 5, 1956, at which meeting the Authority authorized you to write this letter to Mr. Brooks

page 172 } that you said "The Board of Directors authorized you to reimburse Mr. Brooks for connection fee charges to both connector and interceptor line"; am I correct, sir?

A. That is the statement in the minutes; yes, as read.

Q. I take it though that the letter that you sent to Mr. Brooks didn't conform to that, did it?

A. It didn't in that going further into that, as I recall, the discussions during the actual official meeting of the Au-

map is "Paul B. Matthews, Engineer of Roanoke
page 169 } County."

Q. I take it, Mr. Beavers, as Mr. Matthews assistant, you probably handled all sorts of plans of this sort; you were more or less Mr. Matthews right-hand man—is that correct?

A. I was Mr. Matthews assistant; yes.

Q. And things that would come into Mr. Matthews office ordinarily would certainly come to your knowledge in the usual course of events, wouldn't they?

A. Normally, yes.

Q. And if we can show here that Mr. Brooks did, in fact, go in and talk with Mr. Paul Matthews on numerous occasions, that there is a very strong possibility that you were present during some of the conversations when those two gentlemen—during some of the conversations between those two gentlemen and that further, you did learn from those conversations and from Mr. Matthews' discussions, you did in fact learn of the proposed sewer system; isn't that correct?

A. No, sir; I cannot agree to that.

Q. I see; but yet, no plans were submitted to the Authority and no plans were approved by the Authority but yet you know about this?

A. Yes, sir.

Q. I see.

A. May I go further on that?

Q. You may, sir.

A. As stated previously, as I recall Mr. Mat-
page 170 } thews brought Mr. Brooks, and the plans, to the
office of the Authority.

Q. I may say, sir, that I was going to question you on that next. We will go into that subject; I believe you did testify earlier that Mr. Matthews introduced Mr. Brooks to you. Do you remember when that introduction took place?

A. No, sir; I could not say that excepting that it was shortly after the actual setting-up of the office, the official office of the Authority—the present office.

Q. And I believe you testified that the office was set up during December, 1955?

A. I would say approximately; yes.

Q. And I would take it that inasmuch as you were not fully employed by the Authority until January 1, 1956, that probably Mr. Matthews' introduction of Mr. Brooks to you was as Mr. Matthews' assistant?

thority and prior to the time that the letter was actually written, resulted in the change that you have there.

Q. I take it though that you sent a letter to Mr. Brooks here which actually was not complete within the scope of your authorization, or your order. They had authorized you, I take it, to offer to Mr. Brooks reimbursement for both connector and interceptor lines but that letter doesn't say that?

A. No, sir; it does not and I do not recall the circumstances, but Mr. Whitescarver may.

Q. I see; was Mr. Brooks present at this January 5th meeting of the Board?

A. No, sir; he was not.

Q. Had Mr. Brooks petitioned, in any way, the Board for a permit to construct this line?

A. Mr. Brooks had had no written correspondence with the Authority to my knowledge, or to any other

page 173 } agent or agency.

Q. Mr. Beavers, are you completely sure about the construction date of this sewer line?

A. No; I am not. As I said, I believe that I stated before, or testified before, I have no actually written records, in that periodic inspections were made during construction.

Q. Well now, I believe you have in your file there a copy of the as-built sewer system. What is the date on that, sir?

A. The date is April 3, 1956.

Q. I believe you testified that it was your recollection that the sewer was—that the construction of the sewer commenced in the month of April?

A. Would you repeat that, please?

Q. As I recall your testimony, you stated that it was your recollection that the construction date for the sewer line began in the month of April?

A. I believe that I stated March or April or May: I'm not positive of that. I say I am not positive of the date of construction, or the period exactly.

Q. I take it the as-built plan actually represents the completed sewer line; does it not?

A. Yes.

Q. And I take it the sewer line would have to be complete, at least by April 3rd of 1956?

A. I would certainly assume so.

page 174 } Q. Yes. Mr. Beavers, inasmuch as this proposed construction was not approved by the Roa-

noke County Engineer until the 30th—I beg your pardon—until the 20th of December, and was not approved until the 19th of December by Roanoke City, would you tell me on what authority, and by what logic, the Authority acquired an easement from E. F. Nichols, which is dated December 9th, 1959?

A. The easement was primarily, and in the beginning, secured for the Norwood and North Norwood interceptor line at the time the R. I. Brooks line was proposed. I talked to Mr. E. F. Nichols and made him aware of what was proposed and asked whether an additional sewer line easement could be secured.

Q. I take it then—

Mr. Whitescarver: Let him finish, please, sir. Let him finish his answer.

The Witness: And at that time Mr. Brooks, or Mr. Nichols, said that he could see no reason why an additional easement would be necessary, in that the original easement could be used for both.

By Mr. Minter: (continues examination)

Q. I take it then that your testimony that this easement was acquired so that the Brooks line could be built was in error?

A. I believe that if you will check my testimony that nothing
page 175 } was stated to the extent that it was acquired only for Norwood line.

Mr. Minter: I would like the reporter to find that in the record, your honor, please. It was the question of Mr. Whitescarver that this easement was acquired so that the Brooks sewer line could be built. Would you find the question and answer on that, please, sir?

(The reporter read the question and answer requested.)

Q. (Continued) And I take it, Mr. Beavers, that the date that easement was acquired that actually it was, in fact, acquired strictly for the Norwood section, inasmuch as the preliminary plans here hadn't even been approved by the proper authority for the Brooks sewer line?

A. The only answer that I can give you there to the best of my knowledge, is that I was aware, as was Mr. Nichols, that both systems were proposed.

James A. Beavers.

By the Court: (interposing)
Q. What both systems were that?
A. That both systems, meaning the Norwood system and the R. I. Brooks system, both of which would cross his property.

By Mr. Minter: (continues examination)
Q. You say you were aware both systems were proposed?
A. Yes.
Q. And this easement is dated December 9th so I take it negotiations must have started some time before
page 176 } then?
A. Perhaps so; as I believe I stated—

The Court: I wish you all would give the year. December 9th doesn't mean anything.
Mr. Minter: I beg your pardon, sir; December 9, 1955. That would be December 9, 1955, wouldn't it?
The Court: I don't know; what is the date on that easement, Mr. Bieler?
The Reporter: December 9, 1955.
The Witness: It was 1955; I would say so.

By Mr. Minter: (continues examination)
Q. 1955; I take it, Mr. Beavers, that you must have known then about the Brooks sewer line sometime, or the very early part of December, or possibly November?
A. I would say that I must have; yes.
Q. And I repeat my question—it is quite likely, quite possible, from your knowledge or if your knowledge was acquired because of your contact with the Roanoke County Engineering Office?
A. With the Roanoke County Engineer in his dual capacity, perhaps yes. The two were so intermingled that I am sorry I could not cleave the two.
Q. So then it's possible?
A. It's possible; yes.
Q. It's possible, yes. I understand that part of this Brooks sewer line—I believe you referred to it as being
page 177 } in the Morgan property—part of it crosses the Morgan property; is that correct?
A. Morton? Morgan, I believe it is.
Q. Morgan?
A. Yes.
Q. Has an easement been acquired for that?

James A. Beavers.

A. Not by this Authority; no.

Q. Then I take it that the Nichols easement again, then, was not specifically acquired because of the—

A. I can only answer that by saying that at the time of this discussion, or of a discussion with the highway department, no one was seemingly aware of the exact location of this right-of-way line or the property line, either of Mr. Morgan or Mr. Nichols.

The statement of the highway department is that they have a 60-foot wide right-of-way. If the line is installed as shown on the map and as it was understood that it would be at that time, then the line is partially on the land of Nichols, without any doubt; and as to that of Morgan, I am not positive.

Q. Am I correct, then, that you are not completely sure whether the Brooks line is completely in 460, or not?

A. I believe you mean Route 117 in this particular case.

Q. Well, yes.

page 178 } A. Repeat the question and I'll answer it.

Q. Do you conclude from what you say that there is a question as to whether or not a portion of the Brooks sewer line is in the Nichols property? Let me phrase it that way.

A. There is a small doubt that could only, as I see it, only be settled by an actual survey.

Q. Yes; so then I take it even further that this easement was not acquired to build the Brooks sewer line?

A. Not primarily.

Q. No, sir. You have been discussing permits here that were issued earlier. What is the nature of these permits and what do they mean?

A. The permits are basically for the purpose of controlling sewer connections in Roanoke County. They are issued by the Authority as the only agency in Roanoke County set up for that purpose, or doing that type of work.

Q. Yes, sir; is the permit necessary for a person to tie into the sewer line at Brooks?

A. Legally, yes.

Q. I believe you testified here that the Authority has made no connection fees and has actually collected no connection fees from anyone who is tied into the Brooks line?

A. That's correct.

Q. I believe you testified further that Mr. Brooks came to you and talked with you about the amount to

page 179 } charge for connection fees?

A. That is correct.

James A. Beavers.

Q. And what was it in connection with? What was it, or what was the occasion for Mr. Brooks talking with you about connection fee charges?

A. The three particular connections that I recall were for—one for the A & P Food Store; (2) for the Gulf Service, and (3) the Brown Derby Restaurant.

Q. Mr. Beavers, I am intrigued with this. If the Authority under their contract here claims they will make the connection fee charges reimbursement to Mr. Brooks, why would Mr. Brooks come to you and ask you what the connection fee charges were, and why would the Authority, for a period of three years, fail to make any connection charges?

A. Basically and purely for the reason that Mr. Brooks, himself, suggested that he make the connection charge and collect it himself since we had proposed to charge, or rather charged the normal sewer connection fee and we rebate all of it, 100% to Mr. Brooks.

Q. I think the letter here, that was dated January 5, 1956, was modified by some sort of subsequent agreement between the parties; is that right, I take it?

A. I could not call it an agreement. Mr. Brooks apparently has legal title to the land; it is his money that was used to construct the line and it would appear that, if we page 180 } did not want to go into court, that we are not at his mercy, necessarily, but certainly must go along with him to a certain extent, especially if he wouldn't come to an agreement without any actual legal action against him.

Q. I wish you would talk to the Judge, please.

The Court: I wish you would, too.

The Witness: I'm sorry, Judge.

The Court: I'll have to get you a loudspeaker or something.

The Witness: We need it, your honor.

By Mr. Minter:

Q. Mr. Beavers, isn't it true that this letter of January 5, 1956 is nothing more than a proposal to Mr. Brooks?

A. No; I can't say that it was a proposal. It was the Authorities' agreed upon policy at that particular time, and an initial policy.

Q. Excuse me; in other words, this letter manifests the policy of the Roanoke County Sanitation Authority?

A. At that time; yes.

Q. And it does not purport to be a contract?

James A. Beavers.

A. It would be, as I see it, a listing of the terms of a contract; yes. A listing of the terms under which Mr. Brooks could have that particular sewer line installed.

Q. Well now, the terms under which Mr. Brooks can install his line, and an agreement to terms under which
page 181 } Mr. Brooks would install his line, are two different things. Now, does this document—does the Sanitation Authority feel they have a contract with Mr. Brooks, which they are suing here today to enforce?

A. I believe that you have the answer in Mr. Whitescarver's answer or rather, complaint.

Q. Mr. Beavers, I take it that if this sanitation line were acquired based on what has already been testified here, that the Authority would expect an easement over Mr. Brooks' land, or that portion of the line which lies in his property; is that correct?

A. I would say that that would be correct today; at the time this letter was written, and according to the preliminary plans, a public street was to have been dedicated in which this sewer line would have been installed—all of the sewage system.

Q. Excuse me; has that street ever been dedicated?

A. Not to my knowledge.

Q. Then I ask you this, sir—do you have any instrument, any document whatsoever signed by Mr. Brooks, agreeing to transfer his sewer line and to give you an easement over part of his property?

A. There is no written document of that type.

Q. In other words, I take it, this letter right here is absolutely the only thing you have?
page 182 } A. That's the only written document of any type.

Q. Mr. Beavers, would you identify this document, please, sir?

(The letter was handed to witness.)

A. This is apparently a copy of the minutes of September 29, 1955, and October 24, 1955, which are referred to in my letter of January 5, 1956.

Q. What do those minutes purport to do? You don't have to read it, Mr. Beavers; we will introduce it into the record—but what is the purport? What is the intent of that?

(Witness read the minutes to himself, silently.)

James A. Beavers.

A. This listing of an excerpt from the minutes of the Authority lists the policies and procedures of the Authority, as regarding extensions or installations of sewage systems, over which the Authority would have control.

Q. Mr. Beavers, do the policies, as set forth in these minutes, conform to the letter you sent Mr. Brooks?

A. I would say this—that if compared, they might not entirely conform. The policies of the Authority, at that time, particularly as pertains to extensions or installations of systems by private developers, was very changeable.

Q. Why was this sent to Mr. Brooks?

A. As stated previously, Mr. Brooks had requested information as to the Authorities policies concerning
page 183 } the installation of a sewage system—his one, in particular.

Mr. Minter: If your honor please, we'd like to read just a very short part of this or Mr. Beavers—if Mr. Beavers doesn't object, I will read it.

The Court: Is that in the record?

Mr. Minter: It's going to be, sir.

Mr. Whitescarver: Isn't it filed as an Exhibit?

Mr. Minter: I intend to, sir.

Mr. Whitescarver: Don't we have it as an exhibit attached to the Bill of Complaint?

Mr. Minter: I don't think this one is filed; there seem to be several excerpts from various minutes filed.

The Court: All right, sir.

By Mr. Minter:

Q. It says "A sewage collection system may be constructed in the county under areas included within the project specified for the Authority, by the following methods." Now, Mr. Beavers, what does "a sewage collection system" cover in the context, as used here?

A. Normally, a sewage collection—

Q. Not normally, sir; what is it intended to mean here?

A. May I read it, sir?

Q. Yes, sir.

(Minutes handed to the witness.)

A. I can only answer by saying that in this, or
page 184 } any other circumstance, a collection system is a system within the streets to which the individual

laterals are normally connected, and which system could not normally be construed as a sewer trunk line, one which basically carries sewage rather than has individual connections.

Q. Let's clarify this point right here. In other words, I take it, that portion of Mr. Brooks sewer line in 460 would be considered what?

A. Basically, that line would be considered an interceptor line—a trunk line, which one—which can be extended to a collection system.

Q. And what would that portion of Pilot Street be considered?

A. That would be considered a collection system.

Q. Now, I quote from paragraph 1 of these minutes, sent to Mr. Brooks. It says "The following is the established procedure for the construction of individual sewage projects.

"In cases where a developer of a sub-division, or other interested party desires to install said facilities at the expense of such party, or parties."

Now, would you say that these minutes, Mr. Beavers, were intended by the Board to cover the installation of sewers generally, or do you think it's restricted specifically to a so-called collection system, in the technical sense?

A. I would think that that would be sewer col-
page 185 } lector, or interceptor, to the entire system.

Q. In other words, a sewage collection system, in all probability, referred to in these minutes would include a project, as defined up here in paragraph 1; is that correct?

A. I can only go back to my definition of collector *versus* interceptor.

Q. Well, I read further. It says "A sewage collection system may be constructed in the county under areas included within the project specified for the Authority, by the following methods:

"A. They may be constructed by the developer, or other interested party, in their entirety, and if so, shall be conveyed to the Authority for its control, operation and maintenance."

Now, that is presumably one method whereby a sewer system is constructed in the county; am I correct in that, sir?

James A. Beavers.

A. Yes; that would be one method.
Q. That is distinguished from B here, which says:

"B. They may be constructed by the developer, or other interested party, and if so, shall be conveyed to the Authority with certain reimbursements accruing to the developer, as set forth in the following sections:"

Then, under paragraph B there, there are two page 186 } sections which presumably have to be met—requirements that have to be met in order to entitle the sub-divider to reimbursements. Now, under this section, I take it, in order to be entitled to reimbursements that you have to conform to another paragraph of these minutes which requires the actual application by the owner of the land, in which he gives the total area to be developed and the number of residential or business properties to be connected to the total length of the sewer line, the estimated cost of the same, and the like—and attached to such application shall be a map of the proposed development, etc. Now, I believe you testified here that Mr. Brooks never, in fact, submitted such a map or never, in fact, submitted such an application?
A. That is correct.
Q. So I take it according to these minutes here, he is not entitled to reimbursement, according to the reading of the minutes; am I correct?
A. I would say that he has not gone through the normal procedure.
Q. Now, I notice further in the minutes here, it says:

"In the event an interceptor line is required on the particular construction, and such interceptor is approved by the Authority for future use of other drainage areas, the developer, or other interested party may construct the same under the control of the Authority, and may be page 187 } reimbursed to the extent of one hundred per cent of the cost of such interceptor" as distinguished from reimbursement from connector lines; is that correct, Mr. Beavers?
A. Connector lines?
Q. So I take it, here we have minutes of the Board of Sanitation Authority which says, in order to get any reimbursement at all, you must make proper application setting forth various requirements and even if you do that, then you are

entitled only to reimbursement from the so-called interceptor line?

A. Yes, sir.

Q. Not from the connector line, or from the feeder line?

A. As stated previously, the Authority was in the throes of working out policies to not only enable, but to encourage the installation of sewage systems in Roanoke County. Those policies have changed since; they have changed several times. Their intent was to encourage the installation of sewage systems in Roanoke County where possible some portion of the actual cost of installation has been rebated back to the developer, those actually footing the cost of construction.

Q. Well, Mr. Beavers, I take it we are struck with this anomylous situation in which you send a letter to Mr. Brooks, dated January 5, 1956, in which you state that Mr. Brooks can build his line but if he does, the title's going to have to be vested in the Authority and they will reimburse page 188 } him for a period up to ten years and up to the total cost of installation, from connection fee charges made in the interceptor line only and yet, the actual resolution passed by the Board of the Sanitation Authority, on the same date, January 5, 1956, authorized you to reimburse Mr. Brooks a hundred cents on the dollar for connection fees on the entire line?

A. Excepting that you will recall his entire land area was owned, at that time, by his corporation: consequently, any connection within that land area to the collector system would be from properties belonging to him. Any connection fee charged would be purely and simply a bookkeeping venture.

Q. Are you suggesting that the same land is not still owned by Brooks & Patton, Inc.?

A. I have no recent knowledge of any transfers, or lack of transfers to any of the property.

Mr. Minter: We would like to submit this in evidence, your honor, please.

The Court: That will be respondent's Exhibit No. A.

(The standard operating procedures referred to above were received in evidence and marked "Respondent's Exhibit A.")

By Mr. Minter:

Q. Mr. Beavers, how do you account for a situation, from just your statement that the Sanitation Authority was in

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somewhat of a growing stage—how do you account for the obvious discrepancies here as to the terms on page 189 } which this sewer line would be built. We have two separate actions of the Board of Directors and then a letter from the Roanoke County Sanitation Authority, none of which agree?

A. I cannot see, personally, that there is any great difference between the letter and the intent of the Authority, as expressed at their meeting.

Q. I would say there is quite a bit of difference if the Authority authorized you to reimburse Mr. Brooks for the entire line, both feeder and connector, and spelled it out in there—and then you come along and make a distinction between the two. You actually spell it out in your letter "we will reimburse you from the interceptor but will not from the—"?

A. I can only say the letter was written as a result of the meeting—that the letter itself was submitted to Roanoke County Sanitation Authority by telephone, prior to its actual mailing; that it was approved by the Authority and that it was the statement of the Authority as to their intent.

Q. Well, as a matter of absolute fact then, going back to this conversation that you had with Mr. Brooks on various occasions, I should think it would be almost impossible to tell Mr. Brooks what the policy of the Authority was?

A. No; I would not agree with that.

Q. Well, the three manifestations of it right here in the record today and how could you possibly have stated to Mr. Brooks what the policy of the Authority was in page 190 } which he could have relied on building the sewer?

Mr. Whitescarver: I want to interpose an objection if your honor please. This is purely argumentative; he's been over it a half dozen times. It's true it's not a jury case; the alleged discrepancy is fully explained by the fact that he owned all the land that would be affected by it.

The Court: Well, you are arguing your case now, Mr. Minter. He's already answered your question and it is all in the record, so let's proceed.

Mr. Minter: Yes, sir. What I am trying to establish, your honor, is that actually Mr. Brooks did not go to—

The Court: Well, you are not testifying; you establish something or whatever you want to by asking the witness.

Mr. Minter: All right.

The Court: And you can argue your case later.

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By Mr. Minter: (continues examination)

Q. All right, sir. Mr. Beavers, you testified, I believe, in your direct examination that you felt it essential that the Brooks sewer line vest in the Authority; is that correct?

A. That is correct.

Q. Why do you say that?

page 191 } A. As stated in my testimony, in the maintenance of any sewage system, you must have title to that system and the right to maintain; the right to get to it; the right to reconstruct it, if necessary. If you have the responsibility of maintaining that system, then you must be able to get to it.

By the Court: (interposing)

Q. Do you have the responsibility to maintain this particular line?

A. Your honor, so far as my own interpretation, I would say yes. The Board of Supervisors has been granted permission to operate this particular system by the City of Roanoke—the City of Roanoke.

Q. No; they haven't been granted any authority to operate it. They were granted the authority to connect to their line.

A. Yes, sir; they have been granted the authority, let's say, to have that area sewered or for it to be sewered under the responsibility of the Board of Supervisors. That responsibility has been delegated to the Sanitation Authority; if that has been done, then I can only see that we are ultimately responsible for the maintenance of the system; responsible to the people, as well as responsible to the city.

Q. Well, in the event the line on Route 460 should become out of repair, or a break or a leak develop, whose responsibility would it be to fix it—Brooks & Company, or the sewer Authority?

page 192 } A. As I see it, it would be the Sanitation Authorities.

Q. Have you done any repair work since it was installed?

A. There have been no instances, to my knowledge, or no instances, at least, that have been brought to the attention of the Authority in which this particular system has required any maintenance.

By Mr. Minter:

Q. Mr. Beavers, I take it the Sigmon line is also in the Peters Creek area?

James A. Beavers.

A. Yes.

Q. I take it that line has not been conveyed to the Authority?

A. Not legally conveyed to the Authority; no.

Q. Do you know, of your own knowledge, whether or not that sewer line has ever been stopped up?

A. It has been stopped up on numerous occasions; yes.

Q. Who repaired it?

A. Many of those have been done by a contractor engaged by the developer, Howard Sigmon.

Q. Were any of the repairs on the Sigmon line made by the Roanoke County Sanitation Authority?

A. There have been no repairs, to date, made at the expense of the Authority.

Mr. Whitescarver: If your honor please, I am page 193 } going to have to object to that line of testimony. We are not trying the Sigmon case; it is entirely different from this. He is not alleging a meeting of minds with Mr. Sigmon, or the Rosaland Hill Corporation, at all. It is an entirely different case. If you want to argue the one about the case where you drew a deed to the Authority across the road, we will talk about that.

Mr. Minter: If your honor please, Mr. Beavers testified here that he thought, or felt it was their duty and obligation to maintain the Brooks line, even though they don't have legal title. He's admitted the Sigmon line is in the same area, supposedly under the jurisdiction—

The Court: I don't know anything about the Sigmon line; I will have to confine it to this particular line.

By Mr. Minter:

Q. All right, sir. Mr. Beavers, I believe you testified earlier, too, about somewhat of a health problem that exists in the Peters Creek area. What relation does that have to the bringing of this suit?

A. To the bringing of this suit, or sewage?

Q. Suit; to the bringing of this suit. I believe you expressed a desire—I beg your pardon; scratch that. I believe your earlier testified that it was necessary that the Authority have the line of the Brooks line because of the page 194 } health problem in this Peters Creek area; is that correct?

A. Essentially; yes, sir.

James A. Beavers.

Q. What difference would it make to that health problem should the Authority have control of the Brooks line, or title to the Brooks line?

A. If the Authority has definitely has title to the Brooks line, and can extend it or, let's say, gain control of extensions then we are in a position to allow connections from the area in question—the area in which pollution problems exist.

Q. Are you suggesting, sir, that no connections can be made to the Brooks line right now?

A. I don't know that I can answer that; no legal connection can be made, one which the Board of Directors, as I see it, or the Authority could allow.

Q. Now, why is it no legal connections can be made to the Brooks line?

A. Firstly, since the Authority does not have title to that line, how can we allow,—at this point, how can we allow connections to something that we don't have title to—or something to which ownership is in question?

Q. In other words, I take it the only reason further connections can't be made to the Brooks line is because of the rule of the Sanitation Authority?

page 195 } A. No; because of a Board of Directors resolution requiring that, as I recall, a permit be issued by the County and I assume it means the agency involved. We cannot—it's a policy of the Authority that we cannot allow connections to a system to which we are, and do not have title to or control of.

Q. To ask the question specifically, the only reason further connection could not be made at this time is because the Authority wouldn't grant permission?

A. I do not know.

Q. You don't know?

A. No.

Q. You're a director of the Authority?

A. That is true; that is true.

Q. Are there any other employees of the Authority?

A. There are other employees, none of which would be in any better capacity to answer.

Q. How many employees—

A. May I go further?

Q. How many employees are there?

A. There are three employees at the present time.

Q. Would you designate them, sir?

A. Yes; myself, of course; Mrs. Margaret Irby, who is

Secretary in the office of the Authority—secretary-stenographer; and Mr. R. J. Farris, who is engaged as an inspector of construction and connections.

Q. And your statement is that you don't know why legal connection can't be made to the Brooks sewer line?

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A. I don't believe I testified in that manner. If I did, I did not intend to do so. As you know, and as I believe most of us are aware, the R. I. Brooks line ends within the Brooks land. Dr. Poindexter—Dr. J. Carl Poindexter has extended something in the neighborhood of 780 foot in the way of a sewer main extension. That sewer main is also, so far as we are concerned, one which we do not have legal title, nor control to. In order to properly solve these particular pollution problems in question, a connection, or connections, would have to be made or an extension made to the Poindexter line, which is, in turn, an extension of the Brooks line.

Q. Isn't it true here, Mr. Beavers, that a great many or that numerous connections have been made to the Brooks line without a permit being issued by the Roanoke County Sanitation Authority?

A. That is correct.

Q. And isn't it true that permits were actually issued by the Sanitation Authority prior, and at the time when no title was in the Authority?

A. Yes; that is true.

Q. But then, I take it, the only subsequent or the only reason that present connections aren't being made to the line is because of a policy of the Roanoke County Sanitation Authority?

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A. Because of a policy which is to this—

Q. Will you just answer my question yes or no?

A. Repeat the question, please.

Q. Is it not the only reason why connections aren't permitted to the Brooks line today—isn't the only reason because of policy of the Roanoke County Sanitation Authority?

A. That is correct.

Q. Right; isn't it true, Mr. Beavers, that even if the Authority had the sewer line, that they would be unable to extend it because of limitations of charter and bond contract?

A. I do not agree to that definition; no.

Q. What does the Charter provisions say as to the cost in the Peters Creek area to be incurred by the Authority?

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Mr. Whitescarver: Just a minute: I believe that was passed on in the demurrer. I believe that matter was raised on demurrer and has been passed on.

The Court: Well, it's been set up again in the responsive pleadings. Just go ahead and answer it. I will overrule your objection.

The Witness: Would you ask the question again?

Mr. Minter: (Addressing the reporter) Will you repeat the question, Mr. Bieler?

(The reporter read the last question above.)

A. In order to be accurate, I would have to refer you to a copy of the Charter or resolution.

page 198 } (Papers handed to the witness.)

Q. Will you read that for the court?

A. I presume you mean Section C—Project 6—Peters Creek.

Q. That's correct; don't read the metes.

A. "Project 6 shall be to construct, maintain and operate a sewer system, or systems, to supply sanitary sewage service to an area known as the Peters Creek area, the estimated cost to the Authority for the construction of said project is —none."

By the Court:

Q. Is what?

A. "None." "The constructions cost for this area are to be paid for by the sub-dividors and the property owners." Shall I go further?

By Mr. Minter:

Q. That is all that is necessary. Then I take it from the Charter provision the Sanitary Authority, of which you are its Director, that the Sanitation Authority, even though they agreed this line would be limited to—could not spend any money to extend that line?

A. I would not agree to that definition. I say, where there is a pollution problem and finances available to solve the pollution problem, that the Authority could do so.

page 199 } Q. All right. Mr. Beavers, isn't it true that in the bond contract, which exists between the Authority and the holders of the bonds, that the

Sanitation Authority is precluded from borrowing any money for a period of forty years?

A. Any additional funds.

Q. Any additional funds, that's correct?

A. That's correct; though, to this degree—the bond resolution, as an agreement, is a deed of trust agreement between two parties and can normally be changed, if those two parties are agreeable to it.

Q. Well, I won't ask you for a legal conclusion on that, sir. My question was at the time, isn't it true that under the contract between the Roanoke County Sanitation Authority and the bond holders—isn't the Sanitation Authority precluded?

A. Under the original terms of the original bond resolution; yes.

Q. Does that resolution still stand?

A. Yes.

Q. So then I take it the Charter and the bond contract—the bond resolution certainly put some limitation on the Authority of the Roanoke County Sanitation Authority to go into greater debt; is that true, as it presently stands?

A. Yes.

Q. And whether or not such can be changed, properly, is not before us here. Mr. Beavers, isn't it true that the Charter, which at that time was simply a resolu-
page 200 } tion of the Board of Supervisors—isn't it true that when this document was published and has been introduced in evidence—when that was published that the amount of expenditure was limited to the North 11 area, and was stated in the paper to be $405,600.00?

A. I could only say this—I was not aware of any conditions of the Charter at the time; my duties as an employee of the Authority did not include any portion of that.

The Court: Suppose we adjourn at this point, until two o'clock, for lunch.

(A recess for lunch was then taken from 1:00 o'clock P. M. until 2:00 o'clock P. M.)

AFTERNOON SESSION.

The Court: I have marked on my notes that that is complainant's Exhibit No. 6 and it is in two parts.

Mr. Whitescarver: All right, sir; that is in two parts.

(The amendment resolution referred to above was received in evidence and marked "Complainant's Exhibit No. 6.)

MR. JAMES A. BEAVERS,
the witness, returned to the stand.

CROSS EXAMINATION. (Continued)

By Mr. Minter:

page 201 } Q. Mr. Beavers, I will try to be as brief as possible with the remainder. I believe Mr. Whitescarver introduced the connection fee schedule, which was published in the paper. Are you familiar with that, sir?

A. Yes.

Q. Mr. Beavers, what is the intent of the Authority—that that connection fee schedule should apply universally to all areas designated in the Charter?

A. I would say this; that the Authority was firstly and primarily interested in the construction of the North 11 system. The rates and charges were actually set up and recommended by the engineering firm of Hayes, Seay, Mattern, & Mattern. I don't think sufficient time was available to give any thought, to dig all system extensions, or what have you. The primary purpose, at the time, was to get the North 11 system under construction—under way.

Q. Well, coming back to the question, sir. Was it the intent of the Authority that the published connection fee schedule should apply universally in those geographical areas, as set forth by the Charter?

A. I can only say that the rate and charges were in effect. They are, apparently, legally in effect over the areas in question; as to the intent, I cannot answer that.

Q. Now, tell me this, sir, isn't it true that in the bond contract which exists between the Authority and the

page 202 } bond holders, that the revenue as defined in that bond contract included the connection fee charges that were to be made, and that that was the revenue from which the bond holders were to be paid?

A. I cannot answer that in that I am not totally familiar with the definition. Those definitions of those particular clauses in the resolution.

Q. Just one other little point I want to clear up here, sir,

in relation to that. This letter dated January 5, 1956, which has been admitted to evidence; I take it that was undoubtedly mailed to Mr. Brooks on January 5th?

A. I believe so; I believe so.

Q. Which means, presumably he received it some time subsequent to January 5, 1956?

A. I would think so; yes.

Q. Mr. Beavers, under the Charter as originally published in the Salem newspaper, do you recall what the rates, the service rates, were as set forth for the North 11 area?

A. I would have to refer on some particular cases, although I am not, in general, familiar with it.

(Paper handed to the witness.)

Thank you. Do I have a definite question concerning the rates?

Q. Yes; what does the Charter—what does that say the rates would be in the North 11 area?

A. In the North 11 area, service charges for page 203 } residences shall be $2.75 monthly.

Q. In the Peters Creek area, which is the area in question?

A. Excuse me; I'm not finished—if I may go further.

Q. Yes, sir; I'm sorry.

A. For small business services, service stations, etc., $3.00 per month minimum or 40% of the water bill. For motels, $1.00 per unit minimum or 40% of water bill; and for restaurants and schools, $20.00 per month minimum or 40% of water bill.

Q. Is that all?

A. This is the end of Project 1.

Q. Now, in the Peters Creek area, what is the rate set?

A. Project 6, Peters Creek; the estimated initial monthly rate for services, $2.00 per month per living unit.

Q. Is that all it says?

A. I think the next sentence might be usable. "These estimated costs are certified by said responsible engineers."

Q. As a matter of fact, what are the rates now in the Peters Creek area?

A. The rates, county-wide, are residential, $3.00 per month for residential units; business—actually, all business service charge rates are on the basis of water consumption.

Q. When was the rate changed, Mr. Beavers?

page 204 } Mr. Whitescarver: If your honor please, I think I'd have to object to that question.

The Court: What's that got to do with the title to the sewer line, Mr. Minter?

Mr. Minter: If your honor please, in our answer we question seriously that the Sanitation Authority had any jurisdiction at all over the Peters Creek area, and it is our purpose here to show that the sole reason why the Peters Creek area was incorporated into the Sanitation Authority was for the purpose of raising money to pay off the North 11 sewer debts, from which the Peters Creek area would derive no benefit.

The Court: Well, whatever the rates were, if you don't contend they don't have any jurisdiction, it doesn't make any difference what the rates are, so let's don't get into the rates on this particular issue.

By Mr. Minter: (continues examination)

Q. All right, sir. Mr. Beavers, were any bonds issued for the Peters Creek area to install sewers in the Peters Creek area?

A. No; not to my knowledge. No; none.

Q. To your knowledge, how much money was actually obtained by the issuance of bonds by the district?

A. $600,000.00 actually; that's the total bond issue.

Q. Where is that to be obtained?

page 205 } A. That was to be obtained—it is my understanding, for the North 11 sewer system to be installed to serve basically the so-called North 11 area.

Q. Do you know why, then, the Authority included all of these other areas in the district, if the primary purpose was to borrow $600,000.00 and to install sewers only in the North Eleven area?

A. Any knowledge that I have of this is second hand; as to whether it's usable evidence, I would have to be instructed.

Q. I should think, as Director of the Authority, Mr. Beavers, that you would be familiar with the purposes for which the Authority was organized?

A. I think that I have adequately stated the purposes previously.

Mr. Minter: If your honor please, I would like Mr. Beavers to answer the question as originally asked.

The Court: Well, I wouldn't because I don't think it's

germane to the issue now before the court, which is the title to the Brooks sewer line.

By Mr. Minter:

Q. Yes, sir. Just one more thing now, Mr. Beavers. Mr. Beavers, is this your signature, sir?

(Paper handed to the witness.)

A. I would say that it is; yes.

Q. Would you identify that letter?

page 206 } A. This is a letter written to Dr. J. Carl Poindexter under date of August 26, 1957, and on the letterhead of the Roanoke County Sanitation Authority.

Mr. Minter: If your honor please, we would like to submit—will you see if those two are identical? This is a verifax copy of that letter. (indicating)

The Court: Any objection, Mr. Whitescarver?

Mr. Whitescarver: I haven't *see* it yet, sir.

(Copy of letter handed to Mr. Whitescarver.)

Mr. Whitescarver: I don't think it's germane, your honor.

The Witness: This is a copy; that is true (indicating).

The Court: What is the purpose of it?

Mr. Minter: Your honor, here is the purpose. This letter was written to Dr. Poindexter in response to a letter from Dr. Poindexter to the Authority, and in this letter Mr. Beavers, as Executive Director of the Roanoke County Sanitation Authority said, and I quote from paragraph 2 here

"They" I take it meaning the Authority, "have requested that I send you a copy of the letter stating to Mr. Brooks the conditions whereby the Sanitation Authority would take over the operation and maintenance of the sewage

page 207 } system, as constructed for Mr. Brooks."

Q. I take it, Mr. Beavers, the letter referred to there is a copy of the letter of January 5, 1956?

A. It is.

Q. Am I correct?

A. Yes.

Q. The next sentence says

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"To-date, Mr. Brooks has not given any indication of agreeing to these conditions and is still, legally, the owner of the sewage system inasmuch as he has not legally subdivided, or dedicated the public streets within his land."

and I quote further in the last paragraph of the letter

"A copy of the original proposal to Mr. Brooks is attached"

I take it that is the letter of January 5, 1956?
A. Correct.
Q. The next sentence says

"As stated, this is the only communication between the Authority and Mr. Brooks"

and we submit this for whatever value it may be to substantiate our position that the only communication that the Sanitation Authority ever had with Mr. Brooks was on the date he received the letter of January 5, 1956.

page 208 } Mr. Whitescarver: The only written—
Mr. Minter: That no contract arose from that there and that there is no fact—and that there is, in fact, no contract.
The Court: Well, let the record show it is introduced as respondent's Exhibit B.
Mr. Minter: Yes, sir.
The Court: Did you wish to ask him any questions concerning this?
Mr. Minter: No, sir; I think that's all, your honor.

(The letter referred to above was received in evidence and marked "Respondent's Exhibit B.")

RE-DIRECT EXAMINATION.

By Mr. Whitescarver:
Q. Mr. Beavers, you didn't intend to express a legal opinion in that letter to Dr. Poindexter, did you?
A. Definitely not.
Q. And whether or not there was a contract implied by the actual connection, you expressed no opinion at all?

James A. Beavers.

A. No, sir; my intent was to show and tell Dr. Poindexter that we could not authorize any connection to the Brooks line.

Q. I will ask you to what line Mr. Brooks connected for the purpose of transmitting water-borne sewage into page 209 } the Roanoke City interceptor?

A. Mr. Brooks' sewer interceptor line is, and was connected to a part of the Norwood sewer interceptor line.

Q. I show you herewith an indenture from the Norwood Corporation to Roanoke County Sanitation Authority, purporting to convey to the Authority—

Mr. Minter: If your honor please, I will have to object to that on the same grounds Mr. Whitescaver did relating to the Sigmon line. I don't think the Norwood line is in issue here. Whether the Norwood line has, or has not been conveyed to the Authority is not in issue.

Mr. Whitescarver: If your honor please, the purpose of that is to show that we have legal title to the line into which Mr. Brooks connected and through that line we receive water-borne sewage and transmit it to the Roanoke City interceptor. That is the sole purpose of the introduction.

The Court: I think it could be introduced for that purpose; then let it be so.

By Mr. Whitescarver:

Q. Is this the original?

A. This is the original.

Mr. Whitescarver: That will be complainant's Exhibit No. 12.

page 210 } (The agreement referred to above was received in evidence and marked "Complainant's Exhibit No. 12.")

Mr. Minter: Is that all?

Mr. Whitescarver: No.

The Court: Wait a minute. What is the date of that?

Mr. Whitescarver: That's 1957; I am glad you pointed that out.

Q. (Continued) Mr. Beavers, you will notice that this is

dated July 25, 1957; was there some question about the acquisition of legal title of that line, also of the Brooks line?

A. There was a little situation; as I see it, a little question concerning the acquisition of the line. The actual deed, of course, is dated in '57.

Q. Who was the president of the Norwood Corporation?

A. Mr. W. E. Cundiff.

Q. And I believe he is Chairman of the Board of Supervisors of Roanoke County?

A. Exactly.

Q. And was a party to the creation of this Authority?

A. Yes.

By the Court:

Q. Well, as I understand it, that the Brooks line goes into the Norwood line?

page 211 } A. Yes, sir.

Mr. Whitescarver: Yes, sir.

The Court: And that it went into the Norwood line apparently before the Authority got title to it?

By Mr. Whitescarver:

Q. Before you got conveyance of title?

The Court: Before you got legal title, or whatever you want to call it.

The Witness: May I make a statement? We secured the sewer line right-of-way for the Norwood Corporation in the name of the Sanitation Authority and this, of course, was done in 1955. It was our understanding with the Norwood Corporation that we would assume title upon its completion or actually, as it turned out, we could get the title or in time, to actually prepare a deed—and there was no question at any time as to our securing legal title.

By the Court:

Q. Well, did you have the record easement title to where the line was in 19—whatever it was—'55?

A. 1955; yes, sir.

By Mr. Whitescarver: (Continues examination)

Q. Wasn't there some six or eight different privately owned property, or properties, that line runs through?

James A. Beavers.

A. I would say approximately six or seven.

page 212 } Q. And all of those easements are titled in the vested—and vested in the name of the Authority?

A. Yes.

Q. And Norwood was putting up the money—some of it?

A. Yes.

Q. You have in your file, Mr. Beavers, the easements in question on that Norwood line?

A. I do; yes. They are also recorded in the Clerk's Office.

Q. Recorded in the Clerk's Office; do you have them here?

A. There may be—I believe all of them are probably in the folder that you have before you.

Q. Were they all acquired prior to January 5, 1956?

A. I believe so, in that the Norwood line was constructed and completed during December of '55, and January of '56.

Q. In other words, the Norwood line was constructed and the easements all acquired prior to that time?

A. Yes, sir.

Q. I believe Mr. Brooks made some contribution to that portion of the Norwood line that crosses the road; didn't he?

A. I'm not—I have no first hand knowledge of it. I have heard that he did bear a portion of the cost.

The Court: Don't tell what you heard. That's

page 213 } hearsay.

By Mr. Whitescarver:

Q. Do you know what the Brooks line cost, or has it been reported to you by Mr. Brooks, or anybody else?

A. Mr. Brooks has, at various times, quoted—I wouldn't say various figures, but as I recall, approximately $8,000.00.

Q. Approximately $8,000.00?

A. Yes.

Q. Do you know how much money he has already received by way of reimbursement for connecting to the line?

A. I do not.

Q. Would you mind seeing if you can find those easements and put them in as exhibits? One of them, I believe, is already in—the E. F. Nichols easement?

A. Yes.

Q Mr. Beavers, I show you here—I show you herewith six easements, all on mimeographed forms. I will ask you if that is the standard form used by the Authority in acquiring easements?

A. It was at that time; yes, sir.

James A. Beavers.

Mr. Minter: What is this easement for, Mr. Whitescarver? (Indicating)

Mr. Whitescarver: To show the ownership of the line he hooked on to.

page 214 } Mr. Minter: What does the easement cover?

Mr. Whitescarver: The easement covers the area that is occupied by the Norwood line, to show that we had easements, and the line was put in there with Norwood money.

Mr. Minter: I don't think it's been proved or shown here that the portion of the line that Brooks ties into is in any land that is included in that easement. I think it's completely irrelevant.

Mr. Whitescarver: The Judge has raised the question.

The Court: I understood that they stated that the Brooks line was tied into the Norwood line, which in turn went into the Roanoke City system, and I understood that is what you stated.

Mr. Whitescarver: Yes, sir.

Mr. Minter: Your honor, it is my understanding that the link between these two—I am assuming, for the minute, it is correct—actually takes place in state property; therefore, these easements are of no value at all.

Mr. Whitescarver: These are easements over private properties, Mr. Minter.

The Court: I don't know where they are.

page 215 } Mr. Whitescarver: They are all through private properties and the Norwood line crosses them, and that's where the line is located.

Q. The first one is from Harry Smith and Virgie Smith, dated December 10, 1955, through lots 11, 12, and 13 of Section 5, Monte Vista; is that one of them? (Indicating)

A. Yes.

The Court: That is 13.

(The easement referred to above was received in evidence and marked "Complainant's Exhibit No. 13.")

By Mr. Whitescarver:

Q. The next is January 4, 1956, from R. B. Layman and Elsie R. Layman; these are all recorded, by the way. Is that a part of the property?

A. Yes; it is.

(The easement referred to above was received in evidence and marked "Complainant's Exhibit No. 14.")

Q. The next is January 4, 1956, from O. H. Keesling and Thelma M. Keesling; that is one of them?

A. It is.

(The easement referred to above was received in evidence and marked "Complainant's Exhibit No. 15.")

Q. The next is December 30, 1955, from D. E. Martin?

A. That's a portion of the area; yes.

(The easement referred to above was received in evidence and marked "Complainant's Exhibit No. 16.")

page 216 } Q. The next one is December 20, 1955, from Randolph M. Stanley and Elizabeth Stanley?

A. Yes, sir.

(The easement referred to above was received in evidence and marked "Complainant's Exhibit No. 17.")

Q. The next is John Joseph Bower and Irma L. Bower; is that another one?

A. It is.

(The easement referred to above was received in evidence and marked "Complainant's Exhibit No. 18.")

Q. As far as—does the Norwood line run through all of those properties?

A. It does; yes, sir.

Q. Does it run through any other property other than Nichols?

A. No.

Q. In other words, the Norwood line runs through privately owned properties entirely?

A. Yes, sir.

Q. And the ownership of the line is in the name of the Authority?

A. Yes.

Mr. Whitescarver: That's all.

James A. Beavers.

RE-CROSS EXAMINATION.

By Mr. Minter:

page 217 } Q. Mr. Beavers, I take it this instrument here, which is dated the 25th day of July, 1957, the agreement between Norwood Corporation and Roanoke County Sanitation Authority—I take it this is the actual document that purports to convey legal title to the Authority of the entire Norwood sewer line; am I correct?

A. That is correct.

Q. In other words, I take it prior to the 25th day of July, 1957, there were instruments existing between the two?

A. There was no written deed executed by the Norwood Corporation.

Q. And I take it further that this document here simply purports to be an agreement between the Authority and Norwood Corporation, similar to the agreement which the Authority is trying to force on R. I. Brooks?

A. Re-phrase your question, please, and I will answer it.

Q. Mr. Minter: (Addressing the reporter) Will you repeat the question?

(The reporter read the last question above.)

A. I cannot answer it when you have "trying to force."

Mr. Minter: That's all.

By the Court:

Q. Now, Mr. Beavers, let me ask you a question or two. As I understand it, the Norwood line was con-

page 218 } structed on property that the Authority had the easements for?

A. Yes, sir.

Q. Well, why did you need any title if you already had it?

A. Your honor, that has been a question I've asked myself in several cases as to whether the sewer line underground belongs to the party that put it in—the party that actually paid good money to have the sewer line installed, or whether—

Q. That may be a legal question, but actually—

A. We did not feel—

Q. —the line is still on the property that was owned by the Authority under the easements, as I understand it?

James A. Beavers.

A. The easement does give the Authority the right to operate, maintain, and install any sewage system.

Q. Now then, you said a moment ago in reply to a question that counsel for Mr. Brooks asked, concerning respondent's Exhibit B, the letter written to Dr. Poindexter, that you couldn't authorize any connection to the Brooks line. The Authority, meaning you—meaning the Authority—who could authorize the connection to the Brooks line if the Authority couldn't?

A. I cannot see that anyone, your honor, as I understand it, under the present laws of Roanoke County and of the State, that anyone could authorize a connection to that line.

Q. Except the Authority?

page 219 } A. Excepting to the Authority and the Authority can not, if the Authority does not have legal title in one manner or another.

Q. Well then, is it your contention that the connection as made to the Brooks line, as reflected by Complainant's Exhibit No. 9, which was the list you prepared, are not legal connections?

A. I am afraid that I would say yes. That is true; they are not.

Q. Then why have you, or the Authority, permitted those connections to remain all this time, then?

A. Your honor, my only answer there is that the Authority has tried in every way to work with Mr. Brooks, and to come to a satisfactory agreement, prior to coming into this court; we have bent over backwards.

Q. Have you undertaken to obtain any injunctions compelling the severance of the illegal connections?

A. No, sir; not previously.

Q. Why haven't they? Mr. Brooks doesn't control the legal processes of this court?

A. Your honor, the only thing I can answer there is, as stated previously, that at various times Mr. Brooks has conferred with the Authority, to Authority representatives—meaning myself and Mr. Whitescarver—and his attorneys had discussed the situation with Mr. Whitescarver in

page 220 } particular, and at all times, it was hoped and at times we would—we were positive that Mr. Brooks was going to deed, legally deed, the system to the Authority.

Q. Well, I know; but do I understand that the Authority has permitted, for a period of three years, illegal connections?

A. Yes.

James A. Beavers.

Q. You are an agency of the Board of Supervisors, which is the government of the county?

A. Yes; and I'm an executive officer of that group.

Q. How many other illegal connections exist in the county?

A. I cannot give a number; I can only state that in the Norwood area, we do not have legal title, so far, to the Howard Sigmon line, the North Norwood line, and I might go further—

Q. Well, do the people who have connections, or who have connected, have any contracts with the City of Roanoke for the treatment of sewage?

A. No, sir; they do not. The Authority—I should say the Board of Supervisors is responsible to the city for sewage treatment charges for those areas. The Board is billed by the city; the Board refers those bills to the Authority and they are paid by the Authority.

The Court: All right, sir. Any other questions
page 221 } anybody has of Mr. Beavers?

By Mr. Whitescarver:

Q. I'd like to follow the Court's questioning just a little bit, if I may. Mr. Beavers, on the contract between Norwood and the Authority, aren't there certain provisions in there by way of reimbursement?

A. There are; yes.

Q. And the Authority merely acquired the rights-of-way, the easements, rather, through the various privately owned properties; Norwood put up the money?

A. That's correct.

Q. And this is the evidence of the contract of how they might get some of it back—no question as to who owns and controls the line; isn't that the purport of that? (Indicating)

A. That is correct; yes.

Q. Hasn't the Authority also given some considerations in the matter that the Court has just mentioned, and why they have not gotten an injunction, or sought an injunction to require certain persons, such as Mr. Brooks here, to disconnect their line?

A. I'm sorry; will you repeat the question, if you will, fully?

Q. I say, hasn't the Authority, in its deliberations, discussed the matter of enforcement of the law and disconnection of the lines?

page 222 } A. Many times; yes.

Q. And isn't it true that on advice of counsel,

you were apprehensive that the public health was involved?
A. That's correct.
Q. And that the Court would not grant an injunction?
A. That is correct; yes, sir.

By the Court:
Q. Who inspected the connections when they were made?
A. Those that were made under permit from the Authority, either I or Mr. Farris, who is our inspector, have checked them.
Q. Well, who inspected the ones, if anybody, that weren't authorized by permits?
A. Your honor; I cannot answer; I don't know.
Q. Don't you think the health of the county demanded that somebody check those, too?
A. I personally think so, yes; I think that all connections should be inspected. I think that no connection should be made to any system without a permit and proper inspection.
Q. This whole Sanitation Authority is based on the health and welfare of the county, isn't it?
A. Yes, sir.
Q. Well, why hasn't it been following it up to see that it's being complied with, then?
page 223 } A. I feel that the questions that Mr. Whitescarver has asked, and my answers, answers that one, Your Honor. When I personally wish that action had been taken two years ago or three years ago—but it hasn't.
Q. Well, then, so far as the Authority knows, you may have some connections that are not sanitarily made; is that correct?
A. That is correct; although most connectoins are fairly simple and clear-cut, that is possible.
Q. That might be but if there is reason to inspect one, there would be a reason to inspect all; isn't that true?
A. That is correct; however, the basic reason for inspection so far as the property owner is concerned is to insure him that, from an engineering standpoint, that connection is proper; that it is a tight connection—one that will not give trouble, and not so much a situation of possible pollution, or an actual situation that would cause a public health danger.

Mr. Minter: Judge, may I ask Mr. Beavers just one more question?
The Court: Yes, sir.

James A. Beavers.

By Mr. Minter:

Q. Mr. Beavers, I believe I did not make notes as Mr. Whitescarver was introducing them but I believe all those easements are dated in the latter part of 1955; is that correct?

A. Yes, sir; either the latter part of '55 or the

page 224 } first part of '56.

Q. Isn't it true, sir, that Howard Sigmon and the Norwood Corporation are joint venturers in that part of the line which comes down the hill beside Peters Creek?

A. I know nothing first-hand about it; again, I have heard it rumored that they are, yes.

Q. Isn't it true further, sir, that the sewer in question was constructed, considerably ante-dating the date of these easements?

A. I don't recall the exact dates.

Q. Is it your testimony, then, you don't know when these easements were acquired before or after the sewer line was built?

A. These easements were definitely secured before the construction, in all cases.

Q. Well, you just said you didn't know whether the sewer line was built before they were acquired, or not?

A. No; I just said I wasn't positive as to the exact dates of construction.

By the Court:

Q. You are talking about the Norwood sewer line now?

A. Yes, sir.

The Court: That's just so I get the record straight.

By Mr. Minter:

Q. Are you aware of the fact, Mr. Beavers, that

page 225 } from the juncture of the Brooks sewer line onward to the Roanoke City sewer line, that it was a divided cost proposition between Howard Sigmon and the Norwood Corporation and Mr. Brooks?

A. Not that I have ever discussed the matter with Mr. Brooks, nor with the Norwood Corporation, nor with Mr. Sigmon.

Q. Well, you know you are testifying here, then, that of your own knowledge, the sewer—the Norwood Corporation sewer—was not built until sometime after 1956?

A. Sometime after January 1st of 1956.

James A. Beavers.

Mr. Minter: That's all.

By Mr. Whitescarver:

Q. Mr. Beavers, of the 25 or more areas now under the jurisdiction of the Authority, do you know of any unlawful connections to any of its lines, other than these first two—the Brooks line and the Howard Sigmon line?

A. No, sir; there are no known existing illegal connections elsewhere.

Q. Do you know whether or not these two cases have anything to do with the fixing of a firm policy by the Authority for the future?

A. Yes, sir; they did. They somewhat speeded up, at least, the policies of the Authority.

Mr. Whitescarver: All right.

The witness stands aside.

page 226 } Mr. Whitescarver: Complainant rests.
The Court: All right, sir.

Mr. Minter: If your honor please, at this time the defendant would like to move the Court to strike the evidence submitted on behalf of the Sanitation Authority, inasmuch as no contract, no agreement has been proved between the parties and it is our contention here that to force the Brooks line to be turned over to the Roanoke County Sanitation Authority, without the Authority exercising the clear right of *eminent domain,* it is unconstitutional in taking property without due process of law.

And that further, the Authority has no jurisdiction in the Peters Creek area, as defined by the clear intent of the Sewer Water Authorities Act, under which the Roanoke County Sanitation Authority was organized.

The Court: Do you wish to demur to the evidence and stand on that motion?

Mr. Minter: No, sir.

The Court: Or do you want to put on any evidence?

Mr. Minter: I do, sir.

The Court: All right; I will take the motion under advisement, then. Proceed with the evidence.

Mr. Minter: Mr. Brooks, will you please take
page 227 } the stand. If your honor please, at this time we would like to call attention to the fact that the deposition has been filed with the clerk of William E. Fitz-

gerald, and we would like to ask, at this time, that that deposition be considered as part of the record and read, and considered.

The Court: It was taken, as I see, from the deposition filed on April 11, 1959, pursuant to agreement between counsel, and it will be read and considered as though William E. Fitzgerald were now testifying before the Court.

Mr. Minter: Yes, sir.

Evidence adduced in behalf of the defendants.

REAFFORD IVIL BROOKS,

a defendant, called as a witness on his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Minter:

Q. State your full name to the Court.

A. Reafford Ivil Brooks.

Q. Mr. Brooks, what is your official capacity in Brooks & Patton, Inc.?

A. President of the corporation.

Q. I take it then, Mr. Brooks, that Brooks & Patton has, in fact, been incorporated?

page 228 } A. It has.

Q. Could you tell me, sir, whether the stock has been issued?

A. It has.

Q. Who owns the stock now of Brooks & Patton, Inc.?

A. Myself and my wife.

Q. Does your wife occupy any office in the corporation?

A. She's Vice-President and Treasurer.

Q. Originally, how many members—strike that. Originally, how many stockholders were there?

A. Four.

Q. Did Brooks & Patton, Inc. build the sewer in question?

A. They did.

The Court: When was the corporation chartered? Just so we can have it in the record.

Mr. Minter: Yes, sir; do you recall?

By the Court:

Q. When did you incorporate?

Reafford Ivil Brooks.

A. As I recall, possible in 19—the latter part of '53 or '54.

Mr. Whitescarver: If your honor please, we will stipulate it was chartered—it was incorporated October 4, 1954.

Mr. Minter: Thank you, sir.

page 229 } Mr. Whitescarver: I have a copy of the charter here.

The Court: Okay; when?

Mr. Whitescarver: October 4, 1954.

Mr. Minter: Would you care for that to be introduced in the record, with Mr. Whitescarver's permission?

The Court: All right; whatever you want to do.

Mr. Minter: At this time, we were going to move the Court to dismiss Mr. Brooks as a personal defendant in this suit and, in accordance with our answer and plea filed therein.

The Court: Any objection?

Mr. Whitescarver: If your honor please, Mr. Brooks was made a party defendant to this proceeding because I was unable to ascertain at the time of the preparation of the bill as to whether the corporation was in existance, or whether it was not; and all of the transactions that I or Mr. Beavers had were with Mr. Brooks personally. I see no particular objection to dropping him, if he disclaims any interest and his corporation claims full responsibility; but his own counsel didn't know that the corporation had ever completed its organization or not, or whether the stock had been issued.

Mr. Minter: Mr. Whitescarver, I have to take

page 230 } exception to that. I told you it was a corporation; I did not know who the stockholders were at the time you asked me that, but I did know that it was incorporated in January 5, 1956. Mr. James A. Beavers addressed to Brooks & Patton, Inc., Attention Mr. R. I. Brooks—

Mr. Whitescarver: Well, I talked to three members of your firm about this; I don't know which one—

Mr. Minter: I can't be responsible for the other members of my firm, sir, but I would like to submit to the court that.

The Court: Well, I will take it under advisement because it may be that he's incurred certain individual liabilities; I can't tell until I hear all the evidence.

Mr. Minter: We would like to move, at this time, he be dismissed.

The Court: I've got the motion under advisement.

(The certificate of incorporation referred to above was

received in evidence and marked "Complainant's Exhibit No. 19.")

By Mr. Minter: (Continues examination)

Q. Mr. Brooks, will you describe the tract of land in question, as originally owned by you before various parts were sold off?

(Map was handed to the witness.)

A. I would like to ask this; the original tract that I owned or the entire tract that was taken over and bought
page 231 } by Brooks & Patton?

Q. The Brooks & Patton part, sir.

A. The Brooks & Patton part?

Q. Yes, sir.

A. Do you want it by metes and bounds?

Q. No, sir; would you just define it on here; where does the tract begin and end on this? (Indicating)

A. Beginning at a point on Highway 460, it extends north to Edgelawn Avenue, east on Edgelawn—correction, it extends to the rear of these lots on Surry Street. The Brooks & Patton property adjoins the rear of these lots, block 1 (indicating) on Surry Street; it goes east to a point at Pilot Street, which is an unpaved or undeveloped street, crosses over there—

Q. Crosses over Pilot?

A. That's Pilot, butted off right there, dead ends next to Brooks & Patton property. It extended over here to the corner of Stanley—Randolph Stanley property.

Q. Yes, sir.

A. Continues south adjoining the Peters property to a point just off of Highway 117, or to the, I'd say, the northwest corner of E. F. Nichols property; extends with E. F. Nichols property down to 117; west on Highway 117 and 460 to the point of beginning.

By the Court:

Q. What is the plat you are referring to, Mr.
page 232 } Brooks?

A. It's just a plot of ground in there; it was three or more parcels of land acquired by Brooks & Patton from various individuals. One parcel of land was the old Munger estate.

Q. No; I mean, it appears that isn't in the evidence yet, but

Reafford Ivil Brooks.

I am trying to find out what is it? It shows certain lots and streets laid off on a map—what is it a map of?

A. That is proposed, your honor; it has never been submitted to record and, at the present time, it's one tract of land less the highway frontage that has been sold off to various businesses.

Mr. Whitescarver: Would you like to see the plat?

The Court: Not if it isn't an official map.

Mr. Minter: I take it, your honor, it is an official map so far as the metes and boundary of the Brooks & Patton land is concerned; but parcels of it fronting on 460 have, in fact, been sold to these various individuals that Mr. Beavers was discussing. We would like to introduce this into evidence to show the general terrain, or tract.

The Court: Any objection?

Mr. Whitescarver: No, sir.

The Court: All right; that is respondent's Exhibit C.

(The map referred to above was received in evidence and marked "Respondent's Exhibit C.")

page 233 } By Mr. Minter: (Continues examination)

Q. Mr. Brooks, I believe, has there been a dedication of any of this land?

A. There has not.

Q. Any dedication of any of the streets?

A. No, sir.

The Court: I mean, that's the point. Now, he just introduced a map showing it; that's why I was asking you what it was. He may have dedicated it just now but you wanted it introduced, so it's in the record.

By Mr. Minter: (Continues examination)

Q. All right, sir. Mr. Brooks, would you describe the sewer? Where does it begin on your land and where does it end?

A. It begins at approximately, I'd say, 80 feet from the west boundary of Brooks & Patton's property on—facing Highway 460, approximately 80 feet east of the west line; extends eastward on 460 to a point of 117 and 460. It curves and follows the highway around to Peters Creek; there, it connects into the sewage line built by Sigmon and Cundiff.

Mr. Brooks, does this represent the proposed sewer as prepared for you?

Reafford Ivil Brooks.

(Map handed to witness.)

A. As far as I know, yes.

Mr. Minter: Well, rather than going into the
page 234 } details of it again, your honor, we have gone through it, I think, with Mr. Beavers—at this time, I'd simply like to submit these two; they are two sheets of the proposed sewer line, both endorsed and approved by Mr. Paul Matthews, and also the Roanoke City Engineers Department.

The Court: Any objections? Those two sheets will be respondent's Exhibit D.

(The maps referred to above were received in evidence and marked "Respondent's Exhibit D.")

By Mr. Minter:

Q. Mr. Brooks, how long was it before this sewer was built before you were contemplating building the sewer in this area?

A. Possibly one year.

Q. What is the actual date on these plans here, Mr. Brooks? (Indicating)

A. The date is November 14, 1955.

Q. How long before these actual plans were prepared by C. B. Malcolm—we have been talking about C. B. Malcolm—that you had been talking with him about preparing these plans?

A. Well, I guess I had conferences with Mr. Malcolm relative to that possibly soon after I acquired the property. The first tract was acquired by me.

Q. And when was that, sir?

page 235 } A. That was June, 1949.

Q. During this period of time before and after your plans were drawn, who in the county did you talk with concerning the installation of this sewer?

A. Mr. Paul Matthews.

Q. Matthews; would you just describe the nature of your conversations with Mr. Matthews?

A. I went to Mr. Matthews and asked him if the county could help, in some way, construct a sewer line in that vicinity. At that time, I had a septic tank and it was overflowing. He told me that the county was not in a position to help finance the sewer line at that time.

Reafford Ivil Brooks.

By the Court: (Interposing)

Q. What time was that?

A. Your honor, I would hesitate to say because I'm not positive but it was some time when this sewer septic tank started giving me trouble.

Q. Well, you see, from the standpoint of the record, Mr. Brooks, that unless you have some date it doesn't mean much to say that you talked to him sometime. I don't know when it was.

A. I would say possibly in '52 or '53.

By Mr. Minter: (Continues examination)

Q. Did you talk with him after that concerning the installation of a sewer?

page 236 } A. Yes; I had conferences with him up until possibly the time the sewer line was started.

Q. Could you just describe to us the nature of those conferences with Mr. Matthews, leading up to the actual construction of your sewer?

A. More or less, I was getting information and guidance in having the line constructed. Previously, he had told me that I could construct a line at my own expense and in these conferences I had with him was to get specifications and data, and stuff necessarily to build the line.

Q. During the course of these conversations, did Mr. Matthews ever represent to you that he was representing the Sanitation Authority, or mention the Sanitation Authority?

A. No; my first conference with him in regard to the sewer line, there was no Sanitation Authority.

Q. Mr. Brooks, would you identify this instrument, please, sir.

(Paper handed to the witness.)

A. Yes, sir.

By Mr. Whitescarver:

Q. What is it?

A. That is a contract of sale.

By Mr. Minter: (Continues examination)

Q. Between whom, sir?

A. Between the—with your permission, or the

page 237 } court's permission, I will say this: "Contract of sale made and entered into this 18th day of April,

1955, by and between Brooks & Patton Inc., parties of the first part, and Esso Standard Oil Company."

Mr. Whitescarver: May I see that, please?
Mr. Minter: You certainly may, sir.

Q. Mr. Brooks, under the terms of that contract, was there any provision for the furnishing of sewer to the purchaser there?
A. There was.
Q. What was Brooks & Patton, Inc. obligated to do under the terms of that contract?
A. To furnish sewage.
Q. Well, suppose we just hold it up a second and we can actually read it. Have you finished?

Mr. Whitescarver: Yes.

(Paper returned to Mr. Minter.)

By Mr. Minter: (Continues examination)
Q. All right, sir; would you read that?
A. "Water and sewer service to be made available to the purchaser by present owner. Entire plot to be graded to approximate street level."
Q. Well, that's sufficient, sir. At the time this contract was entered into, I take it Brooks & Patton was the present owner?
A. That's right.

page 238 } Mr. Minter: We would like to introduce this into evidence, your honor.
The Court: All right. Respondent's Exhibit E, I believe it is.

(The contract of sale referred to above was received in evidence and marked "Respondent's Exhibit E.")

By Mr. Minter:
Q. Mr. Brooks, what is the nature of the soil in the tract of land in question?
A. It's shaly and rocky.
Q. According to your own experience or information furnished you by the county, or some other responsible engineer,

what would you conclude as to the feasibiltiy of using septic tanks in the area in question?

A. They would be wholly unsatisfactory.

Q. Mr. Brooks, you have heard the testimony here today. When was it you first met Mr. Beavers?

A. I first met Mr. Beavers in Mr. Paul Matthews office; the date I cannot ascertain.

Q. Can you recall anything about that meeting? What was Mr. Beavers doing?

A. The first chance as I recall seeing Mr. Beavers, I walked in Mr. Matthews office, exchanged greeting with him, Mr. Matthews—and Mr. Beavers was standing over at the corner of the office, studying some blueprints. As I re-
page 239 } call, that was when Mr. Matthews introduced me to Mr. Beavers.

Q. Can you recall any of the conversation you had with Mr. Beavers at that time, or did you have any conversation with Mr. Beavers?

A. I cannot recall.

Q. All right; so far as you know, was Mr. Beavers working in Mr. Matthews office as his assistant, at that time?

A. That was my understanding.

Q. Mr. Brooks, have you ever entered into any contract with the Roanoke County Sanitation Authority, agreeing to convey your line to it in consideration for certain reimbursement, as outlined in the letter of January 5, 1956, from Mr. Beavers to you?

A. No, sir.

Q. Did you ever appear before the Board of Directors asking permission to install this sewer line?

A. No, sir; I did not.

The Court: What Board of Directors are you talking about?

By Mr. Minter:

Q. I beg your pardon; the Board of Directors of the Roanoke County Sanitation Authority?

A. No.

Q. Did you ever request permission from Mr. Beavers to install your sewer line?

page 240 } A. No, sir.

Q. Can you recall asking Mr. Beavers if there was any way money could be obtained from the county to install your sewer line?

Reafford Ivil Brooks.

A. Not that I can recall, though that conference was with Mr. Paul Matthews.

Q. Right; I take it then that the first you knew of this letter dated January 5, 1956, which has been introduced into evidence here, was when you received it?

A. That's right.

Q. And you had no knowledge of the contents of that letter, or were anticipating anything that was in the letter until you received it?

A. No, sir.

Q. Who actually did the construction work on your sewer line, Mr. Brooks?

A. Wall, Boyd & Wall, a contracting firm at Cambria, Virginia.

Q. Would you identify this, Mr. Brooks?

(Paper handed to the witness.)

A. Yes, sir; that's their estimate on building the sewer line in question, according to the plans outlined by the engineering firm of C. B. Malcolm.

Q. Who signed that?

A. That is signed by Mr. Harry A. Wall.

page 241 } Q. And that is the letter received by you?

A. Yes, sir.

Q. What is the date on it, sir?

A. December 17, 1955.

Q. What is the amount that Wall, Boyd and Wall agreed to construct this line for you?

A. $6,217.20.

Mr. Minter: We would like to introduce this into evidence, your honor.

The Court: That is Respondent's Exhibit F.

(The estimate referred to above was received in evidence and marked "Respondent's Exhibit F.")

By Mr. Minter:

Q. Mr. Brooks, did you accept that offer?

A. I did.

Q. Would you identify this, please, sir?

(Paper handed to the witness.)

Reafford Ivil Brooks.

A. I can.
Q. What is it?
A. That is a letter written by Brooks & Patton, signed by me, addressed to Wall, Boyd and Wall, Cambria, accepting their bid for the construction of the sewer line.
Q. And what is the date of that letter, sir?
A. That's December 28, 1955.

Mr. Minter: I would like to introduce that into
page 242 } evidence, your honor.
The Court: That is Respondent's Exhibit G.

(The letter referred to above was received in evidence and marked "Respondent's Exhibit G.")

By Mr. Minter:
Q. Approximately—I don't expect a dollar and cent correct figure—Mr. Brooks, how much did it cost you to build this line?
A. At the time, I had the exact figure or the exact amount; I don't recall but it was in the neighborhood of eight or nine thousand dollars. That included complete job connection fees to the connecting line, engineering services, and everything.
Q. In other words, this—am I correct—will you tell me this? Did this estimate of Wall, Boyd and Wall include any fees to C. B. Malcolm for preparing these plans?
A. No, sir.
Q. That was in addition to the $6,217.20 as set forth here? (Indicating)
A. That's right.
Q. Mr. Brooks, when the sewer line went down 117, how was it fastened into the Roanoke City Sewer system?
A. It was joined into the line built by Cundiff and Sigmon.
Q. Where did that line connect into the Cundiff and Sigmon line?
page 243 } A. Just west of the hard surface on Highway 117, right at the Peters Creek—right where Peters Creek flows under the highway.
Q. Was it your understanding that the terminal point of those lines was in the state right-of-way?
A. That's right.
Q. Could you describe the actual connection from the point where your line connected, and over to the city line? Will you just describe that completion in there, please, sir?
A. Where Peters Creeks flows under Highway 117, Mr.

Cundiff's line comes here (indicating) and I connect right here. (indicating)

Q. At right angles?

A. At right angles; they continue to flow straight under the creek and under the highway, over and into Roanoke City line (indicating).

Q. How much was the cost of the line from where you joined, and where it joined into the Roanoke City line?

A. I was never given the exact figures but my portion of the cost I was—this is hearsay—it was a joint venture. My proportion of the cost was $682.00, as I recall.

Q. Would you identify that check, Mr. Brooks?

(Check handed to the witness.)

A. Yes, sir.

Q. What is it?

page 244 } A. That is a check signed by Brooks & Patton; Faye L. Brooks, Treasurer, R. I. Brooks, President—made payable to Gimbert & Gimbert in the sum of $685.76.

Q. What does that represent? What is it in payment for?

A. In full, for Brooks & Patton, Incorporated's part of the construction of sewer line to Roanoke City line.

Q. Was it your understanding between Brooks & Patton, Inc. and Sigmon and Norwood Corporation that you were to pay a certain percentage of that cost?

A. That was between myself and Mr. Cundiff.

Q. Would you tell us the percentage that you were to have paid?

A. I was suppose to pay approximately a third of the cost.

Q. Mr. Brooks, at the time this sewer was built—at the time the contract was let, did you have any idea that the Roanoke County Sanitation Authority claimed jurisdiction over the area?

A. No, sir; I did not.

Q. Mr. Brooks, would you name the various entities who have purchased lots from you in this land area? Well, better yet, rather than to have you take the time to do that, is the list, as presented and prepared by Mr. Beavers, correct as to the people who purchased from you? Would you like to see that?

page 245 } The Court: That's Exhibit No. 9. Let you examine it and see it.

Reafford Ivil Brooks.

(Exhibit No. 9 handed to the witness.)

A. The first parcel of land sold Esso Standard Oil Company.

By Mr. Minter:
Q. From that, did you make a connection fee charge?
A. Yes, sir.
Q. How much?
A. $300.00.
Q. Where did you get the figure?
A. From Mr. Beavers' office.
Q. Did Mr. Beavers raise any objection to your collecting the connection fee?
A. He did not.
Q. Was he reluctant to tell you how much the connection fee was?
A. No; he was not.
Q. What is the next establishment?
A. The A & P Food Store property was sold to a Mrs. Moses, I believe the deed was made to.
Q. Have they actually paid a connection fee charge?
A. They have not.
Q. Have you waived it?
A. Sir?
page 246 } Q. Have you waived that connection fee charge?
A. No, sir; I have not.
Q. Are you currently making any efforts to obtain the connection fee charge from the A & P?
A. I am.
Q. How much were you planning on charging for the connection for A & P?
A. $2,000.00.
Q. Where did you get that figure?
A. That figure was—came from Mr. Beavers' office, based on the number of employees that A & P had on their opening day.
Q. Did Mr. Beavers object to giving you that figure?
A. He did not.
Q. Did Mr. Beavers offer to collect either of those two connection fees?
A. No, sir.
Q. To your knowledge, has he ever made any efforts to collect those connection fees?
A. No, sir.

Reafford Ivil Brooks.

Q. What is the next one, sir?
A. Melrose Gulf Service Station.
Q. Was any connection fee made there?
A. Yes, sir.
Q. Who made it?
page 247 } A. The connection proper was made by the contractor who built the station.
Q. I beg your pardon, sir; who made the connection fee charge for the Gulf Oil?
A. Brooks & Patton.
Q. What was the charge, do you recall?
A. $300.00.
Q. Where did you get that figure?
A. That was the figures I got from Mr. Beavers office, according to the number of employees that would be employed at that particular kind of an establishment.
Q. Mr. Beavers offer to make that connection fee charge?
A. He did not.
Q. What is the next one?
A. That is the Brown Derby Restaurant.
Q. Was the connection fee charged—or charge made there?
A. There was not.
Q. Why not?
A. If it please the court, I will say this. I sold to this party, who built the Brown Derby, a tract of land. In this agreement with the parties who bought the land, I included in the cost of that land the fee that would have been charged to the Brown Derby Restaurant.
page 248 } Q. What is the next one, sir?

By the Court: (Interposing)
Q. Which would be how much, Mr. Brooks?
A. $500.00.
Q. $500.00; and how did you arrive at that figure of $500.00?
A. That also came from Mr. Beavers' office, according to the number of employees that would be employed in that kind of an establishment.

The Court: All right, sir.

By Mr. Minter: (Continues examination)
Q. Did Mr. Beavers volunteer to make that connection fee charge?
A. He did not.

Reafford Ivil Brooks.

Q. Did he object to your not, in fact, making a connection fee charge at that time, rather than off-setting it?
A. He did not.
Q. What is the next one, sir?

By the Court:
Q. Did he know that you were doing it that way or did you tell him?
A. I do not recall, your honor, if that information was in his possession, or not.

The Court: Well, of course, he couldn't object unless he knew about it. That's why I asked at this point.
page 249 } Go ahead, Mr. Minter.

By Mr. Minter:
Q. Are there any more of them on there, sir?
A. There is three houses, three dwelling units, at the present time owned by Brooks & Patton on that line.
Q. And were any connection fees ever paid to the Authority for those houses?
A. There was not.
Q. Has the Sanitation Authority ever asked to see any receipt or any cancelled checks, or any checks or anything from any of these purchasers, to ascertain whether or not you made a connection fee charge, as you have alleged?
A. They did not.

Mr. Minter: Your honor, we would like to introduce this check into evidence.
The Court: That will be respondent's Exhibit H.

(The check referred to above was received in evidence and marked "Respondent's Exhibit H.")

By Mr. Minter:
Q. Mr. Brooks, you heard the testimony concerning the maintenance of the line here. Who has assumed the responsibility for the maintenance of your line since it was put in?
A. Brooks & Patton.
Q. Have you ever been told by anybody as to whose responsibility it was?
page 250 } A. Yes.
Q. Who told you, sir?
A. Mr. Beavers.

Reafford Ivil Brooks.

Q. What was it Mr. Beavers said?

A. That I would be responsible for the maintenance of the line as long as title was in my possession.

Q. Do you substantiate Mr. Beavers' testimony earlier that there was an agreement, apparently, between you and the Sanitation Authority that you would keep this line until you were reimbursed yourself, and you would make connections for your charges?

A. No written agreement.

Q. It was your understanding with Mr. Beavers that you were to make these connection fee charges?

A. Yes.

Q. Mr. Brooks, when you got this letter of January 5, 1956, what did you do?

A. I went down to see Mr. Beavers and Mr. Whitescarver.

Q. Would you tell us what happened?

A. As I recall, I went down to Mr. Beavers' office, talked to him, and he taken me up to Mr. Whitescarver's office and introduced me to Mr. Whitescarver.

Mr. Whitescarver: Have you fixed a time on page 251 that, Mr. Minter?

Mr. Minter: You have.

Mr. Whitescarver: I say, have you?

Mr. Minter: I believe the testimony was, Mr. Whitescarver, it was after he received the letter of January 5, 1956.

Q. (Continued) Do you recall the exact date, Mr. Brooks?

A. No; I do not.

Q. Was it a short period of time or a long period of time after you received this letter?

A. Well, I would say it was a reasonably short period of time.

Q. Why did you go to see Mr. Beavers after you had received this letter?

A. Mr. Beavers, at that time, was the only one that I knew in authority down there, after he had been made Executive Secretary to the Sanitation Authority.

Q. Did you know Mr. Beavers was secretary of the Sanitation Authority before you received this letter of January 5, 1956?

A. I presume that I did.

Q. Well, what was the reason for going to see Mr. Beavers after you received this letter?

A. His office—

Reafford Ivil Brooks.

Q. Were you objecting to this letter?

page 252 } A. Yes; I objected to the contents of the letter. That's why I went to see him.

Q. And following your meeting then with Mr. Beavers, I take it that's when the informal arrangement was made, whereby you would make the connection fees charges, etc.; is that correct?

A. Yes; pardon me, will you state that question again, please?

Q. I say, after you went to see Mr. Beavers then concerning this letter of January 5, 1956, did you all have any understanding?

A. My understanding was with Mr. Whitescarver, when Mr. Beavers introduced me, and taken me to Mr. Whitescarver's office and introduced me to him.

Q. Was Mr. Beavers present?

A. I don't recall whether he was still there, or whether he had departed; possibly he was still there.

The Court: Your understanding was what? You never did complete it.

Mr. Minter: I'm sorry. What was the understanding you all had at that time?

Mr. Whitescarver: Specify who "you all" is, too, Mr. Minter.

By Mr. Minter:

Q. I beg your pardon, Mr. Whitescarver. That was Mr. Whitescarver, and possibly Mr. Beavers, and Mr.

page 253 } Brooks?

A. Mr. Whitescarver told me to ignore the letter at that time and I would keep possession of the line, and collect the connection—the connecting fees.

Mr. Whitescarver: If your honor please, may I interrupt just a minute. It would appear, from the statement from the witness, that I would, perhaps, have to testify in this case and—

The Court: Well, at such time as you do decide you have to testify, of course you are familiar with the rules.

Mr. Whitescarver: I do not want to be in violation of the code of ethics, and it would appear now that I am going to have to testify.

The Court: Well, if it appears you will have to testify, then—

Reafford Ivil Brooks.

Mr. Whitescarver: It appears I may have to testify; I may not, sir, but as of now it seems probable that I will.

The Court: At such time as you are definitely advised that you will have to testify, then you will have to withdraw as counsel in the case.

Mr. Whitescarver: Thank you, sir.

The Court: All right.

By Mr. Minter: (Continues examination)

Q. Where were we? After this agreement was

page 254 } made, then, Mr. Brooks, I take it you did, in fact, continue to make—you did make the connection fee charges, as you have outlined here?

A. I did.

The Court: After what agreement, Mr. Minter?

Mr. Minter: After the agreement between Mr. Whitescarver and possibly Mr. Beavers, and Mr. Brooks.

The Court: Now, I didn't know anything about an agreement.

Mr. Minter: The agreement, your honor, following the letter of January 5, 1956.

The Court: I understood Mr. Brooks to say that his understanding was that Mr. Whitescarver told him to ignore the letter and the line would remain his; is that your understanding at the time?

The Witness: I didn't get to finish; that's right.

Q. Well, that's what I know; you didn't get to finish. I want you to finish; go ahead and just give me all your understanding, at the time, of whatever you thought took place.

A. That I would retain title to the line; I would be responsible for the maintenance of the line until such time as I got my construction costs back.

Q. Then what?

A. Then I would deed the line over to the Authority free, and without cost.

page 255 } By Mr. Minter: (Continues examination)

Q. Mr. Brooks, as a practical matter, would it have been possible to amortize this $9,000.00 debt exclusively on to the lots, the sale of the lots which you can envision in your tract of land?

A. To divide it up equally, it might have made the price of the lots prohibitive.

Reafford Ivil Brooks.

Q. I take it that, of course, would depend entirely on how many lots were sold from the area?
A. Yes.
Q. At the time this sewer was built—at the time all of this transaction was taking place with the Sanitation Authority, did you know exactly how many lots you intended to sell from this area?
A. I did not.
Q. Today, do you know exactly how many lots you will sell before all your land is gone?
A. No; I do not.
Q. Mr. Brooks, did you ever talk to the City of Roanoke about building the sewer out there?
A. I did.
Q. Would you identify these, sir?

(Papers handed to the witness.)

A. This is a letter I received from the City Manager, Owens, in regard to sewers that I had been in con-
page 256 } ference with him about.
Q. Were those sewers proposed in the area where sewers were finally built?
A. In the area where Brooks & Patton finally constructed the sewer.
Q. What is the date of that letter?
A. That's April 6, 1954.

Mr. Minter: Thank you, sir. I would like to introduce that in evidence.
The Court: Any objection? The letter from Mr. Owens, I believe—is that it?
Mr. Whitescarver: That's just the letter of transmittal.
The Court: That is the exhibit. It will be Exhibit I—the letter of transmittal.

(The letter of transmittal referred to above was received in evidence and marked "Respondent's Exhibit I.")

By Mr. Minter:
Q. What is the correspondence?
A. This is a communication addressed to Mr. A. S. Owens, City Manager, from Mr. Wentworth, Director of Public Works of the City of Roanoke.

Q. Will you read it?
A. Date, March 30, 1954.

"To Mr. A. S. Owens, City Manager—from
page 257 } Mr. J. L. Wentworth, Director of Public Works.
Subject: Sewer to serve property of R. I. Brooks on U. S. Route 460, approximately 600 feet west of the west corporate limits.

"It is estimated that approximately 970 feet of 8-inch sewer will be required in connection with this property. The estimated cost of this sewer work amounts to $4,850.00. Signed: J. L. Wentworth, Director of Public Works."

Q. What are the facts that brought this letter on, Mr. Brooks?
A. At that time, I was trying to get city water and sewer service to that property.
Q. The property in question here?
A. The property in question; yes.
Q. Had you consulted with Mr. Wentworth as to how much it would cost you to build it, or had you asked them to build it? What does this communication intend to do?
A. My dealings were with Mr. Owens, City Manager.
Q. And what does this purport to do? Why was it sent to you, sir?
A. I presume that Mr. Wentworth sent me a copy of this letter to Mr. Owens.

Mr. Minter: We would like to introduce this, if your honor please; if Mr. Whitescarver has no objection.
page 258 } The Court: Exhibit J.

(The letter referred to above was received in evidence and marked "Respondent's Exhibit J".)

Mr. Minter: I believe that's all.
The Court: Let's let Mr. Bieler have a little rest.
Mr. Minter: If your honor please, with Mr. Whitescarver's permission and the Court's permission, there is one further question I would like to ask Mr. Brooks, if I may do so.
The Court: Sure; go ahead.

By Mr. Minter: (Continues examination)
Q. Mr. Brooks, was a permit obtained from the State High-

way Department in order to install this portion of the sewer line in U. S. 460?

A. There was.

Q. Who paid the cost of that permit?

A. Brooks & Patton.

Q. Was any bond required?

A. Yes, sir.

Q. Do you know how much?

A. $1,000.00 cash.

Q. A thousand dollar cash bond?

A. Yes.

Q. Who paid that?

page 259 } A. That was posted by the contractor.

Q. What final disposition was made of that thousand dollars?

A. I presume it was returned to the contractor when the work was completely installed in, and accepted.

Q. Would you tell us how many of your—how many feet of your line were actually installed in 460, approximately?

A. As I recall, approximately, I'd say 1400 feet.

Q. And approximately how much in your private property?

A. I'd say approximately 900.

Q. And for that, no permit was required, was it?

A. No.

Mr. Minter: That's all, sir.

The Court: All right; cross examine.

CROSS EXAMINATION.

By Mr. Chapman:

Q. Mr. Brooks, on that bond you put up with the highway department—that was merely a performance bond that you had to place to take care of any damage that might be done to the highway by reason of constructing the line; was it not?

A. That was posted by the contractor.

Q. And after the expiration of the required time, you got that money back, didn't you?

A. They got it back.

Q. You think that time was one year?

page 260 } A. I don't know what their time limit was.

Q. Well now, Mr. Brooks, I think there are very few points we need to clear up here but as I understand it,

your corporation owned this, what I would call rather a large tract of land that you contemplated developing, and you are still developing it; are you not?

A. Not in the sense of a housing project or development. The land is there, undeveloped.

Q. You would entertain offers to buy all, or any part of it, would you not?

A. Sir?

Q. It is for sale, isn't it?

A. Yes, sir.

Q. Any part of it, or all of it?

A. Yes, sir.

Q. And so you have it there for sale for development, do you not?

A. Yes, sir.

Q. The first sale you made on this proposed development was the sale to Esso Standard Oil Company; was it not?

A. That's right.

Q. And in that contract, which you have exhibited here as your Exhibit No. E, you warranted and promised to the prospective purchaser that you would furnish water and sewer services; did you not?

page 261 } (Exhibit handed to the witness.)

Suppose you read that paragraph. (Indicating)

A. "Water and sewer service to be made available to purchaser by present owner."

Q. Your corporation was the present owner, were you not?

A. That's right.

Q. And you promised to make water and sewage available?

A. Yes.

Q. And by reason of having entered into this contract with Standard Oil Company, you set about trying to provide a method of getting sewage service—water-borne sewage service; isn't that correct?

A. Those efforts on my part were started a year or so prior to the sale of that particular parcel of land.

Q. But after that sale, it became incumbent upon you to do something, didn't it?

A. That's right.

Q. And is that when you started your negotiations with Mr. Beavers and Mr. Matthews, and in going to see Mr. Owens, in the City of Roanoke, and other methods of trying to get water and sewer service?

Reafford Ivil Brooks.

A. No, sir; my efforts in that behalf were prior to the sale of this property.

page 262 } Q. Your actual installation of the sewer line was after that date of that contract; was it? What is the date of that contract?

A. Start of that construction?

Q. What is the date of this contract?

A. April, 1955.

Q. When did you install what is known as the Brooks sewer line here?

A. Was that '55 or '54?

By Mr. Minter: (Interposing)

Q. What is that, Mr. Brooks?

A. The date we started construction of the sewer line.

The Court: Well, just look at Exhibit G, Mr. Brooks; your letter of acceptance of the estimate from the contractor. When is that date?

Mr. Chapman: May I first show you Exhibit F; what is the date?

The Court: That is the estimate.

By Mr. Chapman:

Q. Are the estimate from Wall, Boyd and Wall?

A. That was December 7, '55.

The Court: All right; now Exhibit G.

By Mr. Chapman:

Q. And then, in your Exhibit G, your acceptance of it?

A. December 28, '55.

page 263 } Q. All right; now, I will ask you which is the earlier document, the contract of sale or your contract to install your sewer line?

A. The contract of sale.

Q. And so, I again ask you after making this contract of sale with Standard Oil Company, it was incumbent upon you to build a sewer line and get water?

A. Either a sewer line or a suitable septic tank. Sewage was to be made available.

Q. Did you not testify in your direct examination that the nature of your soil was such that septic tanks would not work satisfactorily?

A. I did.

Reafford Ivil Brooks.

Q. After your sale to Standard Oil Company, then, did you have your conferences with Mr.—first with Mr. Matthews and then with Mr. Beavers—relative to installing what we speak of here as the Brooks trunk line?

A. Re-state the question, please.

Q. I say, after your sale to Standard Oil Company, didn't you then have most of your conferences with Mr. Matthews and Mr. Beavers about the installing of a sewer line that is in question here?

A. I wouldn't say that I had the most of them; no.

Q. Well, it was installed subsequent to that
page 264 } date, wasn't it?

A. Yes.

Q. You already testified, in fact, it was a year later that you completed the installation?

A. Yes.

Q. Mr. Brooks, with whose permission did you install the sewer line, or various permissions? You said you had permission from the State Highway Department?

A. Yes.

Q. Did you have permission from Mr. Beavers?

A. Orally, yes.

Q. And who was he representing?

A. The Roanoke County Sanitation Authority, I presume.

Q. Did you have permission with someone representing Norwood Corporation to tap on to the Norwood line?

A. I did.

Q. Did you have permission from the City of Roanoke?

A. I did not.

Q. I show you your Exhibit No. H, which you heretofore filed, showing that you paid Gimbert & Gimbert $685.76 and that was your portion of the cost of building the line from the point where your line tapped into the Norwood line—from that to the city line; is that correct?

A. That's right.

Q. Mr. Brooks, isn't it a fact that your con-
page 265 } struction of this trunk line was with the permission, as you stated a while ago, and advice and consent of Mr. Beavers, representing the Roanoke County Sanitation Authority?

A. Re-state the question, please.

Q. I say, isn't it a fact that you installed your trunk line with the permission and advice of the Roanoke County Sanitation Authority, through Mr. Beavers, its Secretary?

A. I got his permission to build the line rather than put in

septic tanks for four other pieces of property in the area I had at that time.

Q. Now, after you received this letter from Mr. Beavers, dated January 5, 1956, you say you came to Mr. Beavers' office?

A. I did.

Q. And talked with him about it?

A. I did.

Q. And after some conference with him, you went from Mr. Beavers' office up to Mr. Whitescarver's office?

A. That's correct.

Q. And after you left that office, you went back and built your line and connected it up with the Norwood line?

A. With the permission from the parties who were constructing their line.

Q. The Norwood line?

A. The Norwood line.

page 266 } Q. Mr. Brooks, you remember the exhibit introduced here earlier this morning, concerning the eight or ten pieces of property that are using the line, do you not?

A. I do.

Q. Now, I want to know who pays for those users?

The Court: Are you referring to Exhibit No. 9?

Mr. Chapman: Exhibit No. 9—I believe it is, your honor.

The Court: All right; let's get the numbers.

By Mr. Chapman: (Continues examination)

Q. Who pays the Sanitation Authority for—

(Exhibit No. 9 handed to the witness.)

—for the Edgewood Esso Service Station?

A. I guess they pay it themselves; I do not know. I do not pay it myself.

Q. All right; who pays for the A & P Food Market?

A. I could not say.

Q. Who pays for Melrose Gulf Service Station?

A. I could not say.

Q. Who pays for the next one—the Brown Derby Restaurant?

A. I do not know.

Q. Who pays for the apartment houses owned by R. I. Brooks?

Reafford Ivil Brooks.

A. The Brooks & Patton.

Q. Who do you pay that money to?

page 267 } A. Roanoke County Sanitation Authority.

Q. Why do you pay them?

A. They assessed the charges.

Q. Does not the Roanoke County Sanitation Authority have the responsibliity of operating that line?

A. They do not.

Q. Well, why do you pay them?

A. Their charges for the treating the sewage that runs through the line that was constructed by Brooks & Patton.

Q. Why don't you pay direct to Roanoke City?

A. There's no agreement between Brooks & Patton and Roanoke City.

Q. Who was your agreement with?

A. Mr. Beavers, who represented the Sanitation Authority.

Q. Does the Sanitation Authority have the agreement with the city?

A. That I do not know.

Q. I think that's in the record. Who do you expect to receive and dispose of that sewage?

A. The Roanoke City accepts it with the contract they have with the county.

Q. I mean, who do you expect to receive it from your tenants, the people you sell to—the people you sell your property to? Who do you expect to receive and dispage 268 } pose of sewage?

A. That's their responsibility.

Q. You expect the Roanoke County Sanitation Authority to handle it; do you not?

A. That's the responsibility to the parties who buy the property.

Q. As a matter of fact, the Sanitation Authority does receive it from your tenants in one case, or the people you sold to, your grantees in the other cases; isn't that true?

A. That is true.

Q. Mr. Brooks, your corporation, Brooks & Patton, Inc. is what we speak of as a regular private business corporation, is it not?

A. It is.

Q. It is not a public service corporation?

A. No.

Q. It doesn't have the power of *eminent domain* or condemnation of property, does it?

A. No.
Q. Is this a copy of the charter of your corporation?

(Handed to witness.)

A. It is.
Q. The record will show that that is duly recorded in the Clerk's Office of the Hustings Court of the City of Roanoke; is it not?
A. I presume it is; yes.

page 269 } Mr. Chapman: Mr. Minter, do you wish to see this?
Mr. Minter: Certainly.

By Mr. Chapman:
Q. Mr. Brooks, will you file that as an exhibit with your testimony and let—
A. Get the advice from my counsel.

Mr. Minter: Yes, sir.
The Court: Do you want that as complainant's exhibit? That will be Complainant's Exhibit No. 19.

(The Certificate of Incorporation referred to above was received in evidence and marked "Complainant's Exhibit No. 19.")

By Mr. Chapman: (Continues examination)
Q. Mr. Brooks, the nature of handling sewage for a large number of property owners, tenants, or users, as in your case, is certainly a public service; is it not?

Mr. Minter: Your honor, that is asking him for a conclusion of law, it seems to me.
The Court: I think it is, too. Sustain the objection.

By Mr. Chapman:
Q. Let me ask you one more question. I think this ought to be proper. Under your Charter, which you have just examined and which the Court now has, do you have the right to operate public service, or to perform public service functions?
A. Is that a proper question?

page 270 } Mr. Minter: Your honor, it seems to me he is still asking Mr. Brooks—asking him for a definition of a public service corporation and then for him to analyze the provisions of the Charter, in terms, whether he is chartered to perform such public service acts. It seems to me it is the same.

The Court: Well, as President, he ought to know something about the Charter. I think I would let him answer the question; if he can't answer it, all he's got to do is say so.

Q. Do you know what rights you do have, Mr. Brooks, under your Charter? Would you like to see it? Or if you can't answer it, just say so and we will proceed.

Mr. Chapman: I simply state it is our contention that the operation of a sewage system is a public service function and that he has no legal right what-so-ever to—

The Court: Well that, I would think, would be a legal question.

Mr. Chapman: —to carry it out, and it might be added that in his responsive pleading under paragraph K on page 6 thereof, the defendant further answers and says that he has a perfect right and authority to maintain and operate a sewer line on the public highway.

Q. I'm asking you, do you have such authority page 271 } under your charter?

A. Is that in the Charter?

Q. No; it's in your answer.

A. I would say so far as with the permission of Mr. Beavers, the County Executive Secretary, I do; where the statement or where the permit is issued by the State Highway Department.

Mr. Chapman: That's all, your honor.

RE-DIRECT EXAMINATION.

By Mr. Minter:

Q. Mr. Brooks, this Esso Standard Oil Company contract, which has been introduced dated sometime in the month of April, 1955, when did title pass to them? When was the deed prepared; do you know?

A. I do not know but it was prepared within the time limits

of the option that they obtained, or a few days near that date.

Q. You see if you can find the time element on there, please?

(Exhibit handed to the witness.)

A. This paragraph here. (Indicating)

Q. When was the contract to be performed?

A. "Deed shall be delivered and final settlement shall be made on or before October 31, 1955, as per terms of Esso Standard Oil Company option, and time shall be page 272 } of the essence."

Q. So then I take it the deed was delivered to Esso Standard Oil sometime prior, or on October 1955; is that correct? October 31, 1955? Is that correct?

A. Repeat that again, please? The deed was what?

Q. I take it then that the deed conveying legal title to the Esso Standard Oil was actually made sometime on or before October 31, 1955?

A. Yes; I think that's right.

Q. Do you recall, of your own knowledge, when during the period?

A. No; I do not.

Q. Mr. Brooks, in this contract is there any provision which makes time of the essence as to the furnishing of sewer or water?

A. No.

Q. Did you agree to any such stipulation that you would have to furnish it in a given amount of time?

A. No.

Q. Mr. Brooks, I believe you testified on cross examination that you had built the sewer line pursuant to permission from Mr. Beavers, who is the Executive Director of the Roanoke County Sanitation Authority. What was the nature of this permission?

A. I would say I built the line with his knowl- page 273 } edge.

Q. Did he ever actually give you permission to build the line?

A. No.

Q. Did you ever submit a request to Mr. Beavers asking to be permitted to build the line?

A. No; not in writing.

Q. Did you ask him orally?

A. No; not as I recall.

Reafford Ivil Brooks.

Q. I believe you testified in cross examination that you did not obtain permission from the city to build the sewer; did anybody obtain permission?

A. The contractor got permission; the permit was issued by the State Highway Department.

Q. Well now, how about permission from the city to tie into the sewer system; did you have anything to do with the certificate that was put into the record here this morning from the City of Roanoke, granting or certifying the proper connection had been made?

A. No.

Q. Who handled that, do you know?

A. That was the contractor.

Q. The contractor handled that?

A. Yes; I secured permission from the builders of the Norwood line for him to tie onto.

Q. Do you know about when you obtained that
page 274 } permission?

A. No; I do not.

Q. I believe Mr. Chapman asked you why you paid rates for the use of your own sewer line, to the Roanoke County Sanitation Authority. Mr. Brooks, of your own knowledge, what are the legal consequences if you don't pay this assessment?

A. I have been informed that a lien would be levied against the property for the bill.

Q. Did you, therefore, pay these charges to the Sanitation Authority of your own free will, or volition, or in accordance with any contract that existed between you and the Authority?

A. Those charges were paid free, willingly until, I'll say, January—or I'll go back farther; I'll say possibly October '58. I would have to check back on the cancelled checks and see when the first one was paid under protest.

Q. I repeat my question as to part of that, Mr. Brooks. Did you ever enter into any contract with the Sanitation Authority, whereby you agreed to pay this $3.00?

A. No.

Q. Mr. Brooks, who prepared this Charter for you?

A. Attorney Lindsey.

Q. Attorney Lindsey?

A. Attorney Lindsey.

Q. Where is he located?

A. In the Shenandoah Building.

page 275 } Q. In Roanoke?

A. In Roanoke.

Reafford Ivil Brooks.

Q. Did you outline to him, at the time the Charter was prepared, what you intended to do with the land?

A. I can't recall that definitely because at that time, Mr. Patton was in the corporation.

Mr. Minter: I think it is a matter of law as to what powers are under this Charter, and I see no sense in pursuing that further, as far as the question is concerned.

The Court: Well, you don't contend as a matter of law the corporation has a right to operate as a public utility, do you?

Mr. Minter: I am not contending for or against, your honor.

The Court: All right; and the Charter itself says it does not have the power of *eminent domain*—it is in the Charter.

Mr. Minter: To my knowledge, sir, we have never attempted to prove here, or introduce evidence which would indicate that Mr. Brooks had the power of *eminent domain*. I believe that's all, sir.

RE-CROSS EXAMINATION.

By Mr. Chapman:

Q. Your honor, I'd like to ask just one or two
page 276 } more questions. Mr. Brooks, you testified that,
as I understood it, that you paid the charges required by the Sanitation Authority freely and voluntarily, up until about October, 1958?

A. I think that's about right.

Q. Didn't you agree with Mr. Beavers as to what those charges would be originally—the service charges?

A. I paid—

Mr. Minter: If your honor please, the charges are not a matter of personal contract, I don't believe, between the parties. The charges, I take it, are made pursuant to the Charter provisions and as a matter of law, are charged; they are not subject to the contract or any agreement between Mr. Brooks and Mr. Beavers, I don't believe.

The Court: Well, I don't know whether he made an agreement or not.

By Mr. Chapman:

Q. That's what I want to ask him; did you make a separate agreement with him as to the charges?

Reafford Ivil Brooks.

A. I paid each bill as it was sent to me for that particular period.

Q. And you knew that those bills were sent pursuant to the regular charges made by the Sanitation Authority, pursuant to its published notice and approved rates, and a public hearing; did you not? You know that of your own

page 277 } knowledge, not only being charged with the situation, and everyone else would be charged with such knowledge; you knew it or didn't you?

A. Oh, yes.

Q. You referred to those rates when you would deal with your tenants, or with your prospective purchasers; would you not?

A. If it pleases the Court, I'll make this statement; I was not billed for the regular full charges prior, I'll say, to October '58.

Q. Where were you billed for?

A. The bills came from Mr. Beavers' office for a stipulated amount each quarter and they were paid at a certain time; there was a situation developed whereby Mr. Beavers notified me that I would have to pay the full charges. At that time, I had two or three vacancies in the buildings; I told Mr. Beavers I could not pay it, as the rent I was receiving from the property would not justify it.

He suggested that the tenants be asked to pay their own sewage charges; on a certain date after that, I notified each tenant by writing—in writing—that due to changes in the accounting department of the Sanitation Authority, I could no longer absorb those charges in the rents; and therefore, they would have to pay the charges direct to the Authority.

Q. Did they pay those charges then direct to the

page 278 } Authority?

A. Some of the parties did, and some did not. Mr. Beavers informed me that those that were not paid, a lien would be placed against the property for collection. I paid one bill marked on the check "paid under protest," paying up to that date. I think I'm correct in saying that for the first quarter of '59, some of the people paid their own bill; some of them did not.

Q. And the ones who did not pay,—you paid?

A. I have not paid yet; I received the bill.

Q. But you did take advice from Mr. Beavers on connection charges that you were charged for people who tacked on to the line; did you not?

A. I did.

Reafford Ivil Brooks.

Q. In other words, Mr. Brooks, throughout this entire transaction, you have considered the Sanitation Authority as the authority in charge of this line, have you not?

A. No, sir; I have not.

Q. Well, who have you considered as in authority?

A. Brooks & Patton built the line and has title to it.

Q. You didn't expect to get the Sanitation Authority to handle, or receive the sewage without payment and compensation, did you?

A. I did not.

Q. Mr. Brooks, who has authority to decide who else will connect on to this line? Suppose I should go down there and buy a little tract of land between the Esso Service page 279 } Station and the Brown Derby that you own in there, from you; would you think that I'd have the right to just tap on to that line?

A. I don't have any property in that particular area.

Mr. Minter: If your honor please, isn't that again a sort of collateral issue in this case? Isn't it asking Mr. Brooks for a conclusion? I think he has proved what he has done by his conduct.

The Court: I don't know whether he owns any more property in there; if he doesn't own anymore, all he's got to do is say he doesn't own it.

By Mr. Chapman: (Continues examination)

Q. You own a lot of property in there that could be served by this sewer line, do you not?

A. I do.

Q. I just ask you from a practical standpoint—suppose I wanted to come and buy one of your lots. What would you tell me about the sewer line?

A. That would be—the sewage would be available if the County Sanitation Authority wanted to handle it for you.

Mr. Chapman: That's all.

Mr. Minter: That's all, sir?

Mr. Chapman: That's all.

RE-RE-DIRECT EXAMINATION.

By Mr. Minter:

Q. Mr. Brooks, in connection with the last com- page 280 } ment that you just made that you would tell the purchaser that sewage was available if the Sani-

tation Authority would handle it. Did that particular question come up at any time when you were dealing with the corporations and individuals, who previously have purchased lots from you? Did that question arise, for instance, in relation to Standard Oil, or Gulf, or Brown Derby? Did you tell them—

A. No, sir; I did not.

Q. Well, when did this change of mind come about and why?

A. It has never been asked of me.

Q. Has never been asked?

A. If the Sanitation Authority would permit them to hook on, or would they handle the sewage?

Q. In recent months, have you received any communication from the Sanitation Authority that said they would refuse to permit any more connections to be made to your line?

A. No; I have not.

Q. Mr. Brooks, did you actually lost any tenants because of the increase in rates?

A. I did.

Q. Did you actually wind up paying some of those yourself, in order to prevent the lien from affixing to your property?

A. I did.

page 281 } Q. And as I understand it, sir, even after there was a published rate schedule of the Roanoke County Sanitation Authority, Mr. Beavers made you some sort of an offer which entailed less payment than the published rate schedule; is that correct?

A. I'm sorry; I don't believe I followed you there.

Q. I say even though there was a published rate schedule that involved $3.00 per month per unit, which has been introduced into the record here, I take it Mr. Beavers offered you a rate which was lower than the $3.00 per month per unit; is that correct?

A. The bills I received were less; that is true.

Q. Well then, you actually—did you enter into any contract with him whereby he would bill you less, or what led him to bill you less than the published rate schedule?

A. I could not answer that. From time to time, I kept Mr. Beavers informed of the apartments that were vacant. Sometime, they were all full; sometimes, there were two or three vacancies and I got and paid the bills as I received them.

Q. Well, at the time you built your sewer line, construction of which I take it was started shortly after the acceptance

of the bid, which has been introduced in evidence—at that time, prior to the construction—the actual construction or prior to letting the contract to Wall, Boyd and Wall, did you have any agreement with Mr. Beavers as to how much you were going to be charged per month in the form of a sewer rate?

page 282 } A. No; with the exception there would be no charges for any lines that I hooked on on my property.

Q. Now, was this understanding entered into before or after the letter of January 5, 1956?

A. I would say after the January 5th.

Mr. Minter: I believe that's all.

By the Court:

Q. Mr. Brooks, let me ask a question or two. As I understand it, your land is owned by a corporation?

A. That's right.

Q. Do you have any corporate resolutions or minutes on behalf of the corporation that authorized you to enter into any kind of agreement with the Authority, or otherwise?

A. I do not recall at this time, your honor, if there was something. I would have to go back and check the minutes.

Q. Well, being President of the corporation you know, of course, that the corporation has to act pursuant—

A. That's right.

Q. —to corporate minutes or resolutions?

A. That's right.

Q. Now then, you have undertaken to act in the individual capacity, have you not, as the President of the Corporation, or as an individual?

A. Sir?

Q. Have you been acting as the President of the

page 283 } Corporation or as an individual?

A. In my dealings with the various ones, that's been as President of the Corporation.

Q. But you don't have any corporate resolutions authorizing you to introduce here, in evidence?

A. No; I do not.

Q. Now then, in your dealings with Mr. Beavers, were you acting with him or with the Authority?

A. I presume it was with the Authority, through him as their representative.

Q. All right; are you familiar with the provisions of the

general law which states that a majority of the members of the Authority shall constitute a quorum, and the vote of the majority of the members shall be necessary for any action taken by the Authority? Did you ever have a meeting with the Authority after the letter of January 5, 1956, which you stated you received—in which letter was set out the action of the Authority, and not Mr. Beavers?

A. No, sir; I have not.

Q. You had no such subsequent meeting with the Authority since that date?

A. No, sir.

Q. Then any understanding which you may or may not have had with Mr. Beavers, or with Mr. Whitescarver, wouldn't bind the Authority, would it?

page 284 } A. That I wouldn't say.

Q. But you have had no other action with the Authority since you received the letter of January 5, 1956?

A. No, sir.

Q. Now, Mr. Brooks, why did you charge the same schedule of connection fees as is set up in the Authority's regulations to those people you permitted to connect to the sewer line?

A. Mr. Beavers informed me that I would more or less have to comply with those charges, and I would not be—would not be fair or something to charge far more than the rates set up by the Authority.

Q. Then you do think the Authority had something to do with it, or you wouldn't charge their rates; isn't that correct? If it was your line, what business would it be of the Authority what rate you charged to connect?

A. No, sir; I didn't want to over-charge, or charge an exhorbitant price to someone who possibly wouldn't be able to afford it, in order to get all of my money back from.

Q. Now, but you charged the same identical rates that the Authority had specified in its schedule and as I understand your evidence, you actually asked the Executive Officer of the Authority for these rates each time; is that right?

A. I wouldn't say that I asked him; he informed me of those rates.

page 285 } Q. And they are the rates you charged?

A. Yes, sir.

Q. Now under what you say the understanding was, you were to keep the title until you were re-paid and you said "I" each time. I presume you mean the corporation?

A. The corporation; that's correct.

Reafford Ivil Brooks.

Q. The entire cost of the sewer line, at which time you were to deed it to the Authority without cost?

A. That's right.

Q. And then you did understand that the title was to go to the Authority at some time?

A. Yes; at some time.

Q. And the controversy between you and the Authority is as to when the title was to go to it; is that right?

A. Presumably, yes.

Q. Well then, why didn't you set up a charge for the three dwelling units owned by Brooks & Patton, Inc.?

A. Mr. Beavers said there would be no charges for those properties connected on our property, connected to our own sewer line.

Q. No; but how would you ever know when you got back your total cost unless you charged for every connection? Beyond the agreement—I thought you contended you were to charge for every connection until you got your money back, and then you'd deed it to the Authority?

page 286 } A. As the parcels of land were sold off.

Q. Oh, not as to parcels which you retained?

A. No.

Q. Then if you retained it all, then you would never deed it to the Authority; is that correct? If you never did sell anymore?

A. If I never got all my money back.

Q. As I understand it, you or the corporation never did enter into any agreement with the City of Roanoke—

A. No, sir.

Q. —as to treatment of sewage?

A. No, sir.

Q. Or connection of the sewer line?

A. No, sir.

Q. Or otherwise?

A. (The witness shook his head.)

The Court: All right, sir. Any other questions anybody has for Mr. Brooks?

By Mr. Minter:

Q. I would like to ask Mr. Brooks this one question. When did Mr. Beavers inform you that you probably should stick to the published connection fee schedule in charging these people?

A. I would say about the time that the Sanitation Authority

was formed, and he was made Executive Secretary and he was in his office.

page 287 } Q. After you had received this letter of January 5, 1956, and you talked with Mr. Beavers, was it—did they tell you or make it clear to you that—

The Court: Who do you mean by "they"?

Mr. Minter: Mr. Beavers—the Roanoke County Sanitation Authority.

The Court: He's not the Authority. Either Mr. Beavers, or the Authority—one or the other. Mr. Beavers, as I take it, has no power to act for the Authority in any capacity that would be binding upon the Authority.

Mr. Minter: Well, if your honor please, isn't that ultimately a question of actual law, to be decided by this Court?

The Court: Yes, sir; that's the question I am entering as a judicial ruling right now. That's what I am talking about.

By Mr. Minter:

Q. Well, did Mr. Beavers lead you to believe that he did have the authority to act?

A. He did.

The Court: Well, that's a contest between him and Beavers, and not the Authority.

Mr. Minter: Yes, sir; if this is not a proper question, I will just strike it.

page 288 } The Court: In other words, what I am trying to point out, Mr. Brooks is no more Brooks & Patton, Inc. than Mr. Beavers is the Roanoke County Sewer Authority. It is a parallel example.

Mr. Minter: Well, your honor, as a matter of law if an individual holds himself out as an agent with authority and power, and presumably before an extended period of time, and the Authority presumably knew on behalf of it that Mr. Beavers—

The Court: You haven't shown any of that so far. I have to go on the evidence before me.

Mr. Minter: Yes, sir; all right, sir. Well, your honor, again I will attempt to re-phase this question and if you still fell it is improper, I will withdraw it.

The Court: You just re-phrase it.

By Mr. Minter:

Q. Mr. Brooks, were you led to—were you led to believe by what you deemed to be the Authority, an active agent of the Roanoke County Sanitation Authority, that as a matter of law, they were going to own your line—that there was nothing you could do about it?

A. No, sir.

Q. Well, how did you interpret this letter of January 5, 1956?

page 289 } A. That was what I was in doubt about. I didn't know what it was all about and I went to see him, and I talked to Mr. Beavers and he, in turn, taken me up and introduced me to Mr. Whitescarver.

Q. Well again, just for the record, your honor, what was it Mr. Beavers led you to believe this letter meant?

The Court: Well, you have been into all of that on direct. I don't want to keep hearing it.

Mr. Minter: All right, sir, I will withdraw the question. That is all.

The witness stands aside.

Mr. Minter: Our next witness is Mr. Paul Matthews, your honor. I understand somebody went to get him.

MR. PAUL B. MATTHEWS,

called as a witness in behalf of the defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Minter:

Q. Will you state your name, sir?

A. Paul B. Matthews.

Q. Mr. Matthews, in the years from about 1954 to 1955, what was the nature of your profession, sir?

A. I have been County Engineer and Executive Officer for several years prior to that date. I don't know,

page 290 } but up to the present time.

Q. Would you just, in order to save the time of the Court, would you just recount, to the best of your recollection, various conferences you had with Mr. R. I. Brooks, President of the Brooks & Patton, Inc. concerning

the installation of sewers in the Peters Creek area in land owned by him there. I take it you are familiar with that land?

A. Yes, sir; I am. The first conversation I had with Mr. Brooks was, I suppose, soon after he and a Mr. Patton purchased the land. Came in the office one day and was talking to me about developing it into some church camping activity, and using the front portion of 460 for the manufacturing of a concrete or some masonry building unit.

Q. Mr. Matthews, may I interrupt you for a minute? If you will, because of the lateness of the hour, will you restrict your testimony, as much of that as possible, to the pertinent matters of the installation of the sewer?

A. Sometime after that time, Mr. Brooks—I don't know whether Mr. Patton was with him, I don't recall—I think it was only Mr. Brooks, came in to ask me about getting the sewer line, or about his—a sewer line or sewage service to a tract of land that he had an opportunity to sell to Esso Standard Oil for a filling station.

At that time, I think he asked me what part the county could play in financing a sewer line. My answer page 291 } was to him that the county was not in position to build any sewer lines; that would have to be a project of his own.

Q. Did Mr. Brooks ever submit plans to you of a proposed sewer line?

A. Oh, yes; yes, sir.

Q. Mr. Matthews, do these represent the proposed Brooks sewer line?

(Exhibit B handed to the witness.)

A. Yes, sir; this is what just goes all the way down to where it hooked into the city of Roanoke (indicating); this one doesn't (indicating). Yes, this is all of it.

Q. Where were these plans approved by you—were they approved by you?

A. Yes, sir.

Q. What was the date you approved them?

A. September; no, December 19, 1955.

Q. Are both of them dated the same?

A. I believe they are; yes, sir.

Q. Mr. Matthews, why were these plans submitted to you?

A. I think one reason they were submitted to me was because on May 4, 1955, the Board of Supervisors adopted an

ordinance specifying that all sewer projects in the county, or sewer installations in the county, would be approved by the County Engineer.

page 292 } Q. I take it then these plans were submitted to you because the county ordinance required that your office—

A. They be approved by the County Engineer; yes, sir.

Q. Mr. Matthews, to your knowledge, at the time these plans were submitted to you, was there any law requiring approval of these plans by the Sanitation Authority?

A. I don't know whether they had adopted any regulations or not.

Q. You had not been advised by them, or had you been advised by them that these plans should be submitted to the Authority, also?

A. I don't think so; I don't think that there had ever been any requirement that they be submitted to any other person except me, and the City Engineering Department. I'm not sure about that.

Q. You say it had to be submitted to the City Engineering, too? Why was that?

A. Because we have authority to hook sewer lines to the city sewer system and I think, in our contract with the city, it states that all such installations by the city department of Public Works be approved.

By the Court: (interposing)

Q. You say "we"; you mean the Board of Supervisors of the county?

A. Yes; that's right.

page 293 } The Court: All right.

By Mr. Minter: (continues examination)

Q. Mr. Matthews, would you have had the authority to refuse permission to build this sewer line for any reason?

A. I don't know of any reason I would have had except from an engineering standpoint. If they had not been prepared—if they had not been prepared to standard engineering practices, then I certainly would have not approved the plans.

Q. I take it then, you did in fact approve them on an engineering basis?

A. That's it exactly.

Paul B. Matthews.

Q. Were these plans ever submitted to the City of Roanoke?

A. I note the signature of Mr. H. Cletus Broyles of the City of Roanoke.

Q. Of your own knowledge, did you see the city get copies of these plans?

A. No, sir.

Q. Mr. Matthews, did your office seek permission from the City of Roanoke to connect on to the city sewer?

A. The City of Roanoke issues a certificate to the county for all connections to its system. Soon afterwards, or prior to the connection of this line, we received from them a certificate granting connection privilege to the city system.

page 294 } Q. Am I to understand then, sir, that the only thing necessary to tie into the city sewer line is the approval of the plans and the certificate, itself, is issued after it's properly inspected and the city is satisfied it is all engineeringly proper, and then they issue the certificate?

A. They usually use that procedure; yes, sir.

Q. Is that the proceeding followed? If not, will you describe it?

A. It was at that time; yes, sir.

Q. Mr. Matthews, did you ever introduce Mr. Brooks to Mr. Beavers?

A. I believe I did, although I don't know whether I actually went over to the office with him, or not—or whether I told him that Mr. Beavers would have to handle, or would handle his project from then on, and showed him where Mr. Beaver's office was. Whether I went into the office with him, that I do not recall.

Q. Excuse me if I am repeating something; I don't recall. Did you ever submit plans of this sewer to the Sanitation Authority or anyone a representative thereof?

A. Well actually, when I was dealing with this at that time, there was no plans to extend this sewer line up Pilot Street and on—I believe it's Edgelawn Avenue. I had discussed with Mr. Brooks this connection with the Esso Standard Oil because there had been some difficulty about the development

page 295 } of those streets in there. In fact, as of this date, I don't think there was a sub-division map of record of that.

Q. Well, going back to the question, Mr. Matthews, did you ever submit these plans to the Roanoke County Sanitation Authority?

Paul B. Matthews.

A. I have no recollection of ever giving them to them.

Q. Of your own knowledge, did the Roanoke County Sanitation Authority ever see, or approve these plans?

A. I don't know what they submitted to them after they had talked with them.

Q. Mr. Matthews, are you familiar with the Cundiff-Sigmon line, into which Mr. Brooks tied?

A. Somewhat; yes, sir.

Q. Will you tell us what you know about that in relation to the Brooks tie-in?

A. I don't know anything about the tie-in; I know that there was a lot of conversation about that line in regard to getting some pollution out of the stream up there.

Q. Do you know whether the—do you know approximately when the Sigmon-Cundiff line, coming down the side of Peters Creek there—do you know about when that was constructed?

A. No, sir; no definite date.

Q. Do you have any idea based on your own recollection and knowledge, or reasonable knowledge?

A. No, sir; I would just be guessing and—

page 296 } Q. Well, I don't want that, sir.

A. Well, I don't have any idea because after, I think, Mr. Beavers went to work with the Authority on or about October 18, 1955, and after that date, all sewer lines or —and anything pertaining to a sewer system was referred to him exclusively; and anything that might have taken place with any sewer line after that date, I had no connection with it whatsoever.

Q. Do I understand that you would refer it to Mr. Beavers, if it came to you?

A. Yes.

Q. I believe you testified here, sir, that you did not, in fact, refer these plans to the Authority?

A. I don't recall going over; I know he went there temporarily. In other words, I think the order read that he was—the Sanitation Authority asked that he be assigned to them on a temporary basis, full time; then on January—no, on October 25, I think, he went in there on a temporary basis, full time, and then on January '56, he went in there full time, not on a temporary basis; so I think it was on October 25th that anything that happened after that time, I don't recall.

Q. Mr. Matthews, were you familiar with the terrain of

the Brooks & Patton real estate as to its general characteristics?

A. Very well.

Q. Will you state that the area is adaptable

page 297 } satisfactorily for the use of septic tanks?

A. I have never run any percolation tests on it; just from the observation of the soil, from the grade of the streets and so forth, I would say for a housing development, it would not be satisfactory for septic tanks. You might go over a wide area and get some spaces that you could use.

Q. Are you familiar with the nature of the soil there?

A. To some extent.

Q. Mr. Matthews, at the time these plans were submitted to you, of your own knowledge was there any ordinance in the county or any regulations governing your office and the conduct of it, which prevented an individual from putting a private sewer in use on 460 and part of 117, so long as it met engineering standards?

A. No, sir; I know of none.

Q. In other words do I understand you, sir, that you have no reluctance at all to issue it, to okay it and to approve the plans and give permission to build the sewer line, so long as it meets engineering standards?

A. That's correct.

Q. And that was your authority, as you understood it?

A. If you read the ordinance, that is exactly what it says.

Mr. Minter: I believe that's all, sir.

page 298 } CROSS EXAMINATION.

By Mr. Chapman:

Q. Mr. Matthews, during the time that Mr. Brooks was negotiating with you, you were actually a member of the Sanitation Authority, were you not?

A. Yes, sir.

Q. When did you lose your status, or change your status from a member of the Sanitation Authority?

A. Must have been May, '56.

Q. So during all this period, you were both a county executive officer, which position you still hold—

A. Yes, sir.

Q. —and also on the Sanitation Authority?

A. Yes; that's correct.

Q. You were present at the meeting of January 5, 1956,

Paul B. Matthews.

let him go back and make the standard tap when they would build on them; and I believe that is all I know about the line in those streets.

Q. In fact, Mr. Matthews, you did not approve what would be called the collector line, unless that line would be in a map (indicating); neither was this (indicating). None of public street; would you?

A. Well, this street was not dedicated on any sub-division map (indicating); neither was this (indicating). None of this has ever been reported as a sub-division map.

Q. And therefore, the only portion of that line which you approved was the interceptor line along 460?

A. Apparently, I approved what was on this map.

Q. Well, did you intend to do that? I will ask you that?

A. I don't know; I don't know what my intentions were based on that but I do know that after that thing was put on there, there was some discussion as to whether the laterals would be built or not, and I talked to Mr. Broyles about it and he agreed that we would not require the page 301 } laterals put in. Now, I don't know how I got into that, either, but that is, I do know I taken that up with the City Engineer.

Q. Mr. Matthews, under your authority to approve sewer systems pursuant to the resolution of the Board of Supervisors of May 4, 1956, you cannot approve any sewer system unless it is in a public street, or an easement given to the Authority; isn't that correct?

A. (There was no response.)

Q. You can't approve a sewer system running through John Jones' field, can you?

A. Well, this order that you are speaking of was adopted on May 4, 1955.

Q. '55; I beg your pardon. Doesn't that ordinance require that the sewer line be in either a public street, thoroughfare, or alley, or in a strip of land that has been—or over which an easement has been granted to the county? I mean by that, the Sanitation Authority?

A. Mr. Chapman, I don't know. Of course, knowing that that was—that belonged in 460 was in a public right-of-way. I didn't know whether I gave it any thought who was going to own it or know what is going to own it, or who was going to maintain it, or wasn't going to maintain it. I primarily was interested in trying to get some development in the county, a chance to get a sewer line to get in there to bring some development on 460; and of course, I was approving

when the decision was made relative to the Brooks contract; were you not?

A. (There was no response.)

Q. The minute books; I show you a copy of the minutes of the Authority meeting on January 5, 1956, and suppose you read who were present?

A. Yes; I was present. Hunter Akers, Chairman; Paul B. Matthews, Treasurer; Elbert H. Waldron; F. B. Whitescarver, Authority Attorney; James A. Beavers, Executive Director and Secretary.

page 299 } Q. And the absent member?

A. Reginald M. Wood.

By the Court:

Q. Who?

A. Reginald M. Wood.

By Mr. Chapman: (continues examination)

Q. And I believe it's already in the record, the fact that pursuant to that meeting is when the letter was written to Mr. Brooks—that is in the record here, on January 6th?

A. I don't have any idea about the letter.

Q. Well, the record is clear on that. Mr. Matthews, I want to ask you just one or two questions.

A. All right.

Q. Your original approval of this Brooks sewer line was mainly for the purpose of providing sewage for the lot to be acquired by Esso Standard Oil Company, was it not?

A. When Mr. Brooks talked to me about a sewer, he told me that he had an opportunity to sell that lot, provided he could get sewage services to it; that's right.

Q. Did you consider the proposed extension, up what is known as Pilot Street and Edgelawn Avenue, at that time?

A. I don't think I ever discussed with Mr. Brooks or anyone the placing of this line in this street. The only other contact that I had in regard to that line in Pilot Street, and possibly in the Edgelawn Avenue, was, I believe

page 300 } the city wanted Mr. Brooks to put laterals to each and every lot that you see along here (indicating) and I talked with Mr. Broyles, the City Engineer, and told him that Mr. Brooks had not, at that time, a development plan and to put a lateral in at that time might fall not in the proper location, and asked him if the city would concede to not placing those laterals on there at that time, and

Paul B. Matthews.

Q. Then, were any plans sent to you showing it going up Pilot Street?

A. Then this one came along later that we approved. (indicating) Now, I recall seeing one that was not prepared as a complete engineering drawing. It did not show the connections to the City of Roanoke line where it is today. As well as I recall, it went down and crossed 117 and went, generally, in the back of a filling station and hooked on to the same location that the Shell Station is now, and there was some—I was down there with an engineer one time and there was some discussion as to whether the city would leave that for their future connection; whether the city page 304 } would need the capacity after siphon, or something. Then it was decided that this line would be taken on out and hooked in at the creek—at Peters Creek, along with the line coming out of Norwood and North Norwood. I think this other one was prepared long before this one was ever presented (indicating); whether it was ever prepared as a working plan or not, I don't know.

By Mr. Minter:

Q. Mr. Matthews, as a matter of fact, this prepared plan here says what? Down here at the bottom? (indicating)

A. "Prepared by R. I. Brooks and S. E. Patton, trading as Brooks & Patton—C. B. Malcolm & Son, Virginia State Engineers—November 14, '55".

Q. Now, I take it these proposed plans do show the entire Brooks & Patton sewer line, the connector line going up what is commonly known as Pilot Street, does it not?

A. I know from being out on the ground that these manholes were in that location (indicating); yes, sir.

Q. In other words, does or does not this map show a sewer line going up in this upper area, so-called connector line?

A. It shows in there; yes, sir.

Q. It does show it?

A. Yes, sir.

By the Court:

Q. Wait a minute; being on the ground? How page 305 } can being on the ground with what Pilot Street have—what Pilot Street?

A. Pilot Street is definitely on the ground and so is Edgelawn Avenue, and part of Overbrook Street is on location there.

Paul B. Matthews.

it from an engineer's standpoint only. I had no
page 302 } interests in who was going to own it or to get
revenue from it, or anything else.

Q. And the actual details of who was going to control it, or who was to own it, who was to service it, would be regulated pursuant to the Sanitation Authority's Charter and corporation, would it not?

A. That I couldn't answer, Mr. Chapman.

Q. In other words, all the sewage that is delivered into the Roanoke city system is handled through the Sanitation Authority; is it not?

A. Yes.

Q. Except certain special, general—except certain special places like General Electric plant?

A. General Electric; that's all.

Q. Or probably the V.A. or some other?

A. No; V.A's go to the City of Roanoke.

Q. The V.A. goes directly to the City of Roanoke?

A. Yes.

Mr. Chapman: All right; that's all.

RE-DIRECT EXAMINATION.

By Mr. Minter:

Q. Mr. Matthews, in relation to the ordinance of May, '55, I take it the connector system that was to go up into Brooks' private sub-division, you understood the Brooks & Patton
land, did you not?
page 303 } A. I knew whose land it was; yes.
Q. You knew whose land it was?

A. Yes; sure.

Q. So there was certainly no problem of easement or right-of-way so far as that portion of the line going up into the corporation's own property, was there?

A. No.

By the Court: (interposing)

Q. Did you approve that part of the system that went up what is called Pilot Street?

A. Well, actually I don't recall what was on the first plan that was approved or where, along the line, my first knowledge of seeing the sewer line to serve the filling station was only along 460 only.

James A. Beavers.

Q. I take it from these plans, Mr. Matthews, the plan does show that the actual Brooks & Patton sewer line is there; is that correct?

A. Yes, sir.

page 307 } Q. And I take it the full, complete Brooks & Patton sewer line was, in fact, approved by both the City of Roanoke and your office; is that correct?

A. Yes, sir.

Q. Is there any limitation at all shown on these plans as the fact that either you, or the city may have approved only a little part or any part of it other than the whole?

A. As far as I know, they built it exactly like it is shown on there, except for the service connections to the lots. I don't think they were put in there.

Mr. Minter: That's all.

The Witness Stands Aside

Mr. Minter: I believe that is all, your honor.

Mr. Chapman: Your honor, I would like to recall Mr. Beavers for just one or two questions.

MR. JAMES A. BEAVERS,
recalled in rebuttal in behalf of the complainant, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Chapman:

Q. Mr. Beavers, were you present and in Mr. Whitescarver's office on the occasion that Mr. Brooks previously testified about a while ago?

A. Yes.

page 308 } Q. It is my recollection that Mr Brooks made some type of statement to the effect that Mr. Whitescarver indicated to Mr. Brooks that he, Mr. Brooks, could disregard that letter dated January 6th —the 5th, 1956. Did Mr. Whitescarver make any such statement on that occasion?

A. Not while I was present; certainly not.

Q. What was said about the letter, if you recall? What suggestions did Mr. Whitescarver make?

A. As I recall it, the question concerning connection fees

Paul B. Matthews.

Q. Well, they are on the ground and open streets; is that correct?

A. You can travel on Pilot Street to 460 but you have to trespass on the property of the A & P Company to get into 460 because there is no curve outlet at Pilot Street.

Q. Well, is there a street open there that you can see the manholes on the ground?

A. It is a street; yes, sir. It's part of Pilot Street and that is surface-treated for a distance, maybe, of 300 or 400 feet north of Edgelawn Avenue. Edgelawn Avenue is treated from Overbrook on to the existing street and a part of the highway system now.

Q. Been treated by whom?

A. By Mr. Brooks.

By Mr. Minter:

Q. That part is actually, or has actually been taken into the highway system?

A. That part is actually taken into the system.

By the Court:

Q. Been taken into the system?

A. That's right.

page 306 } Q. There has been a dedication of part of it?

Mr. Minter: I don't think there's been any dedication in which the sewer is connected, your honor. I think there is a street in the overall tract owned by Brooks & Patton which, I take it, has gone into the system; is that correct?

A. We have it in the system from a point of which would be Overbrook to the existing end of Edgelawn Avenue in the highway system, or ready for the highway system when this thing is dedicated. It's been approved as an addition, provided that a satisfactory dedication of the right-of-way has been made. As far as I know now, there is no dedication ever been made. Sometime ago, I made an inspection with the highway department and we agreed that that part of the street could be accepted as an addition to the highway system. I wrote Mr. Brooks and told him that his streets would meet our requirements, provided he could get a satisfactory dedication of the right-of-way.

By Mr. Minter:

Q. Was that street paved, back in 1955 and '56?

A. No, sir; no, sir.

James A. Beavers.

Q. I am not interested in the beginning at all; to me, that is a legal question and it is stated in the Code.

A. I previously stated I am an Executive Officer of the Authority; I have no power to make decisions. You are correct.

Q. Can the Authority, except as a unit or as a board at a regular constituted, or called meeting?

A. No, sir! they can not.

Q. All right; has there been any such meeting in which the letter of January 5, 1956, was changed?

A. There have been many discussions of that letter but not changing it.

The Court: All right, sir.

CROSS EXAMINATION.

By Mr. Minter:

Q. Mr. Beavers, was the letter of January 5, 1956, ever submitted to the Board, as a Board of the Roanoke County Sanitation Authority, to prove the variance between it and the actual minutes?

A. I do not recall, Mr. Minter, whether the letter itself was submitted; I only can say that the Chairman of the Authority was contacted in each case of this type. In other words, if the letter was written as a result of an

page 311 } Authority meeting or decision, or decision or policy, then the Chairman of the Authority, at the very least, was consulted.

Q. And it does—does the Chairman of the Authority have the right to authorize the variance between the minutes, as approved by the Board, and the resolutions approved by the Board and the letter?

A. No.

Mr. Minter: That's all.

Mr. Chapman: Your honor, I object to any statement that there was a conflict between the letter and the minutes of the Board, or the Authority.

The Court: Have you shown me any? What variance are you referring to?

Mr. Minter: I understand the minutes, your honor, that what Mr. Beaver read into evidence—that what he is author-

for connections within the lands of Mr. Brooks—that is, to the sewer collector system—was the thing that Mr. Brooks was so disturbed about and as a result of our discussion, that is of Mr. Whitescarver, Mr. Brooks, and myself, and the knowledge of the Authority that we were making the change from the letter—when I say "we", actually I wouldn't differentiate between Mr. Whitescarver and myself any—we told Mr. Brooks that since the land belonged to him, that any connections made by him or perhaps I should say his agent, that no sewer connection fee would be charged and that it would only be, as I stated, a bookkeeping entry.

Q. That it would not be necessary to make a separate charge—

A. Yes.

Q. —for it?

A. Yes; I would.

Q. It would just increase the price of his land

page 309 } to get it back?

A. Yes; I would say that it was made in the manner of a proposal to Mr. Brooks that it could be done.

Q. In other words, you proposed to him that you might leave out the reimbursement clause entirely and add the cost of building the line to the price of his land when he sold it?

A. That was discussed, Mr. Chapman; as to whether it was discussed at that particular meeting, or on that particular date, I'm not positive. As I stated previously, there were several discussions and meetings with Mr. Brooks, and that certainly was taken up at one of those meetings, or one or more meetings.

By the Court:

Q. Well, Mr. Beavers, regardless of what may or may not have been discussed at that meeting, do you have any records showing that the Authority ever took any affirmative action changing in any particulars the letter of January 5, 1956, and the enclosure?

A. No, sir; I have no records of that change or of any change of that type.

Q. Do you consider that you have the right to change the action of the Authority, by what you may or may not say?

A. No, sir; I do not. I do know this—

Q. Neither do I.

A. May I make one further statement?

page 310 } Q. Yes.

A. That, especially in the beginning, that during the period—

ized by the Board to reimburse Brooks & Patton, Inc. a hundred cents on the dollar in both the collector line and the interceptor line—but the letter, as written to Mr. Brooks, dated January 5, 1956, specifically excludes the collector line and agrees to reimburse a hundred cents on the dollar only for the interceptor line, which I should think is quite a variance because almost half of Brooks & Patton's sewer line is not in 460. Some 900 feet of it are running up in his page 312 } own property; approximately 1400 feet of it are in 460. That is quite a difference, I should think, in the two sums of money.

Mr. Whitescarver: If your honor please, we have tried to say a number of times that Brooks himself owned all that property. What difference does it make—there is no variance; he owned all the property involved in the connector lines.

Mr. Minter: Under the provisions of the published schedule, I think he should be entitled to make connection fee charges to everybody.

The Court: Is that the only difference in the contest?

Mr. Minter: Sir?

The Court: Is Mr. Brooks willing to deed the line if he gets those connection charges up to re-payment, the entire cost of the line?

Mr. Minter: If your honor please, as we understand the pleadings as filed, we raise the issue and the allegation that the Authority does not have valid jurisdiction in the area.

The Court: Well, I know you have raised that and I have overruled it. I am asking now does Mr. Brooks want to deed the line, if the understanding is that he would get all the connection charges in the interceptor line, as well page 313 } as—what do you call it—the collector line, until he is repaid a hundred per cent? If so, we might be able to terminate all of this right now as far as I am concerned.

Mr. Minter: Your honor, I don't know; I think Mr. Brooks ought to have time to consider that in relation to the number of lots that remain up in there.

The Court: Well, I understood he contends himself that the understanding was that he would collect until he did get it, and then he would voluntarily deed the line.

Mr. Minter: I believe it has not come out here but I believe there was some—if you will excuse me, I take it, completely off the record—I take it there has been, from the beginning, some dispute as to—as between the Sanitation Authority and Brooks & Patton as to who all he did have the right to make these connection fee charges from; that is,

whether or not he could hope to make some charge to a person who connects at the northern terminus of his line, or the actual terminus of anyone of the feeder lines, so that he can help reimburse himself. I think the Authority—

The Court: Well, regardless of all of the controversy, Mr. Brooks himself stated that he would retain title—these are his words—it is his understanding—until such page 314 } time as he would get back the cost, then he was to deed the line to the Authority free and without cost." Now, I take it he means, by line, everything. Now, my question is would he be willing to deed it now with the understanding he would be repaid a hundred per cent of the costs of the line, as and when connections are made by whatever parties on the Route 460 or up in the sub-division; and in the meantime, of course, the Authority is assuming the maintenance and the upkeep and repair of the line.

Mr. Minter: I think, if the Authority would agree to reimburse Mr. Brooks a hundred cents on the dollar for construction fee costs, I think there'd be no question he would receive it.

The Court: That is, as and when they receive it.

Mr. Minter: Suppose they do not, in fact, receive anything resembling the costs?

The Court: Well, I just throw that out as a feeler. If you gentlemen wish to explore it, let me know. In the meantime, is there any other evidence?

Mr. Whitescarver: No, sir.

The Court: Any other evidence?

Mr. Minter: No, sir.

Mr. Whitescarver: I might add this to the suggestion from the Court; there is an original period of ten years on this reimbursement from the time of completion of the page 315 } line. We can't do this bookkeeping indefinitely; there must be a termination at some time. The evidence, as I see it up to now is that this contract costs $6,217.20 and I didn't get the amount of Malcolm's check, which was six hundred and some-odd dollars: he's already received a total of $1,100.00 that we are aware of.

The Court: No; he's received more than that.

Mr. Whitescarver: Received $300.00 from Esso; $300.00 from—

The Court: He's received $3,100.00. That's right: $3,100.00.

Mr. Minter: How do you arrive at that?

Mr. Whitescarver: He's not received that $2,000.00.

The Court: All right. There's no use to take all this down, Mr. Bieler. It is already in the record.

(Discussion off the record.)

Mr. Minter: We would like to renew our motion as made at the end of the plaintiff's testimony.

The Court: The motion to strike the evidence and dismiss; is that it?

Mr. Minter: Yes, sir, as plaintiff's have not proved the contract.

The Court: All right; the motion of respondent to strike and dismiss is overruled.

page 316 } Mr. Minter: We note an exception.

The Court: And the motion to drop R. I. Brooks as an individual is overruled, in that he has assumed to act as an individual without any corporate authority, and he will be—the order will include him, as his rights may or may not appear rather.

And in the opinion of the Court the prayer of the bill of complaint will be sustained, and the respondents will be granted a period of ten days within which to comply by deeding the line, after which time, if that is not done, a special commissioner in chancery will be appointed for the purpose.

The evidence before the Court—while there has been very loose handling on the part of both complainant and respondents—and the Court is, of course, familiar with the fact that this is largely a trial-blazing matter with not much precedent to go on—nevertheless, things have been loosely handled both on the part of the Authority and the respondents. But it is clear in the evidence that a letter was sent to Mr. Brooks on January 5th, 1956, which he acknowledged receiving; he states that he has never acted or gone back to the Authority as a group but only to an individual—Beavers, or Mr. Whitescarver, either or both; he has actually built the

page 317 } line after having it approved by the City Authorities and the County Authorities; the schedule of charges for connections have been adopted in accordance with the rates of the Authority; he admits that neither he nor his corporation has any agreement with the City of Roanoke in connection with either the treatment of, or disposal of the sewage; in addition to that, he has paid, or his corporation, the sewer charges as has, so far as he knows, those who have been connected with the line; the whole action has been in accordance with the Authority and the understanding and the contract with the Roanoke County Sewer Authority.

In addition to that, insofar as the constitutional questions are concerned: Under Section 15-764.8, there is a conclusive presumption that when the Charter has been issued and granted by the State Corporation Commission as said Code Section recites: "Such authority shall be conclusively deemed

to have been lawfully and properly created and established to exercise its powers under this chapter."

In addition to that, insofar as the constitutional questions "A majority of the members of the Authority shall constitute a quorum, and the vote of a majority of members shall be necessary for any action taken by the Authority."

page 318 } There has been no evidence introduced contradicting the letter of January 5th, 1956, by the Authority; but all of the actions of the respondents have been in accordance therewith; consequently, an appropriate decree may be entered carrying out the prayer of the bill of complaint and taxing costs against the respondents. Any appropriate exceptions that the respondents wish may be included in the decree. If you gentlemen want to talk about the rest of it, you can let me know. I am through.

Mr. Whitescarver: If your honor please, in drafting that decree, I would like to ask that the matter of the appropriateness involving the Authority—not have the responsibility of carrying the burden of litigation which Brooks & Patton have brought against the owners of the A & P Store, inasmuch as they have been not inclined to convey the property. We feel we should not have the burden of that litigation for any connection fees and we have not been a party to it.

The Court: Well, inasmuch as the respondents have undertaken to deal with the parties in question, and have allocated a cost of $2,000.00 therefor, the decree may show that any collection thereof will be a matter between Brooks & Patton, and whoever it is to be recovered from—the A & P, presumably.

page 319 } Mr. Minter: We want to take exception to that, of course, Your Honor, on the grounds that the evidence is contrary to the law and the evidence—that the ruling, of course, is contrary to the law and the evidence, rather—and on the grounds that the enforcing of this agreement is deprivation of property of the respondents without due process of law, as provided by the 14th Amendment of the United States Constitution, and various provisions of the Virginia State Constitution, and on the further grounds that the Authority has no right to the Brooks & Patton sewer system without exercising the right of *eminent domain;* absent is a clear contractural relationship between the parties—to the contrary.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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James A. Beavers 54, 156
Reafford Ivil Brooks 108
Paul B. Matthews 145

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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