

CHAPTER 191—H. F. No. 644.

An Act to provide for the drainage of marsh, swamp, or wet lands, in any town or township in the State of Minnesota, by the owners of such lands, when the same cannot be drained without affecting the lands of others, and providing for a penalty for obstructing or injuring the ditches or drains constructed under the provisions of this act.

07 C 191
09 - - 83
09 - - 127
09 - - 257
102-M - 442
105-M - 56
114-NW 244
1907 C 191
12 CL
1838 n 85

1907 C 191
114-M - 145
130-NW 450

Be it enacted by the Legislature of the State of Minnesota :

Petition to be filed with town clerk or clerks—supervisors to give notice of hearing.—Section 1. When any person or persons, who are the owners of any swamp, marsh or wet land, which on account of its condition may endanger the public health, or the drainage of which will result in the reclamation of otherwise waste lands, desire to construct for the purpose of such drainage any open ditch, tile or underground drain or ditch, or a drain in part open and in part tiled, through the lands of another, and shall be unable to agree in regard thereto with the person through whose lands he or they may desire to construct the same, or where the construction of such ditch or drain is of benefit to the lands of adjoining owner or owners, and such adjoining owner or owners refuse to bear their proportional share of the cost of construction regardless of whether the ditch or drain enters upon their lands or not, he or they shall file with the town clerk of the township in which such land is situate, and if such land is situate in more than one township, then with the town clerk of each town in which any part or portion of said land is situate, a petition therefor, giving a description of the lands through which it is desired to construct said ditch or drain, the general course, character, size and depth of the same, and the town clerk shall forthwith notify the board of supervisors of the township of the filing of said petition.

The town board of supervisors shall fix a time and place for the hearing of the same, not more than sixty nor less than twenty days distant. They shall cause the town clerk to notify, in writing, the owners if known, of the time and place of such hearing. In case the owner is absent from the county, or such owner is unknown, service may be had by posting written notices in three public places in the township at least ten days before the hearing, and one notice upon the land of such absent or unknown owner.

Supervisors to examine personally—decision—award of damages—all proceedings to be filed with town clerk.—Sec.

2. The supervisors at the time and place fixed in said notice, if they are satisfied that the provisions of the preceding section have been complied with, and the requisite notices given, proof of which shall be made by affidavit, shall proceed to examine personally, the territory affected by said proposed ditch or drain, and shall hear any reason for or against the laying out and construction of the same, and shall decide upon the application as they deem proper. If they decide in favor of laying out and constructing such ditch or drain, they shall make or cause to be made, an accurate description thereof, and incorporate the same in an order to be signed by them, and shall cause such order, together with the petition and affidavits of service of notice, to be filed in the office of the town clerk, who shall note the time of filing the same, and on refusal of the supervisors to lay out and construct such ditch or drain, they shall note the fact on the back of the petition and file the same as aforesaid.

All orders, petitions and affidavits, together with the award of damages, shall be made out and filed in the town clerk's office, within five days after the date of the order for the laying out and construction of such ditch or drain. In addition to their other findings, said board shall include in said order establishing such ditch or drain, the size and depth thereof, when it shall be constructed and how kept in repair.

Damages—how arrived at—assessments—duty of clerk—benefits assessed not to exceed cost of construction of ditch—when ditch may be constructed.—Sec. 3. In arriving at the amount of damages to be paid, any owner or owners, the board of supervisors shall take into consideration the benefits to any land owner or owners, resulting from the construction of said ditch or drain, and if the benefits to said land owner or owners exceed the damages, then and in that case, such land owner or land owners shall be allowed no damages, but the amount which said benefits exceed the amount of such damages shall, unless paid by the owner or owners of the lands benefited, into the town treasury of such town, within fifteen days after the construction of said ditch or drain, be by the said board of supervisors, assessed against the land so benefited, and the town clerk of said township shall certify the amount thereof to the county auditor of the county in which said land lies, and the said county auditor shall, and it is

hereby made his duty, to extend the same as taxes against said land, at the same time, and in the same manner as other taxes under the laws of this state are extended against the said land, and said amount so assessed, shall be collected and paid, as other taxes under the laws of this state. *Provided*, that the total amount of benefits so assessed shall not exceed in amount the costs of laying out and constructing said ditch or drain added to the amount of all damages assessed by reason of the laying out and construction of the same.

After the expiration of ten days from the filing of the order so establishing said ditch or drain, the petitioners therefor may proceed to construct the same, in the way and manner provided in the order of said board of supervisors establishing said ditch or drain, but no ditch or drain shall be constructed until the damages assessed are paid to the person entitled thereto, or paid into the town treasury for the benefit of the person entitled thereto.

Securities may be required.—Sec. 4. The board of supervisors are hereby authorized to require such security as they may deem necessary, suitable and proper from the petitioners, for the proper performance of all their duties under the terms of this act, at any stage in the proceedings thereunder, and the said ditch or drain shall be constructed under the supervision of the said board of supervisors, who shall have authority to approve the same.

Town boards to act as a body.—Sec. 5. Whenever any town board receives a petition praying for the location and construction of a ditch or drain in their town and extending into other town or towns, they shall immediately notify the town boards of such other town or towns, and the town boards of each of said town or towns, or a majority thereof, acting as one board, shall determine said petition. They shall be governed as to notices of hearing, and all other matters pertaining to their duties, by the provisions of this act provided for the government of town boards of supervisors in establishing such ditch or drain. A copy of the proceedings shall be filed in the town clerk's office, in each town mentioned in the petition, and the town boards of such towns, or a majority of each acting together, shall determine said petition, notwithstanding the fact that there may be townships located in different counties of this state, and the fact that said townships are located in different counties shall not affect their right to hear and determine said

petition, and act thereon; but in case of an assessment against any lands by reason of, or on account of the establishment of said ditch or drain, which land lies in a county different from which is located the starting point of said ditch, then and in that case, the town clerk of the town in which said ditch or drain commences, shall certify to the county auditor the amount of the assessment against the land in his said county, and it is hereby made the duty of the county auditor of the county in which said land is located, upon receipt of such certificate, to extend the amount as a tax against said lands, the same and in all respects as hereinbefore provided for the extension of the same as a tax against the lands benefited thereby.

Assessments—how collected and how paid.—Sec. 6. In the event of an assessment against any land, as hereinbefore provided, upon the collection thereof by the county treasurer, the same shall be paid into the town treasury of the town in which said land is located, by the county treasurer so collecting the same, and the petitioners for the said ditch who have constructed the same, shall be entitled to said money paid into the town treasury under this act, for the construction of such ditch or drain, or for the benefit of said petitioners, paid to them upon a proper application therefor, duly filed with the town clerk of said township and upon a warrant drawn upon the treasurer of said town, by the order of the board of supervisors thereof, which order shall be made whenever a sufficient showing is made to said board of supervisors, that the petitioners for said ditch are entitled thereto.

Board to consider cost of ditch.—Sec. 7. In deciding whether any ditch or drain shall be laid out and constructed under the provisions of this act, the board of supervisors may take into consideration the extent of the cost thereof to each person, over or through whose lands the same may be located.

Town boards to keep in repair—expense of same.—Sec. 8. The town board or town boards of supervisors under whose authority any ditch or drain has been constructed, under the provisions of this act, shall, on their own motion, or on the petition of an owner of lands affected by said ditch or drain, keep the same in repair and free from all obstructions. They may widen, deepen or enlarge the same so as to answer its purpose, *provided*, that such town board or boards shall, before making repairs or other works, give not less than five days' notice of their intentions so to do, which

notice shall be served upon the same parties and in the same manner as is provided in section 1 hereof in the case of an original proceeding. The expense and cost of such repair or other work, shall be assessed by such town board or boards, in the same manner and against the same lands, as is provided in the original cost of construction, and the town clerks and county auditors, shall perform the same acts as in assessing the original cost of construction, it being the purpose of this paragraph that the cost of such repair and other work shall be assessed against and paid by the same lands as bore the expense of the original construction thereof.

Petitioners to pay costs.—Sec. 9. The petitioners shall pay the costs and fees of the board of supervisors, and clerk, in advance if demanded, for the serving of notices of hearing and all other services required by this act. If, after the decision of the board of supervisors locating said drain, the parties applying therefor shall pay to the party through whose land the said drain is to be constructed, the damages awarded to said party or parties, or shall pay the same into the town treasury for his use, he or they may proceed to construct such drain in accordance with the decision of the board of supervisors, then and in that case, the taking of an appeal shall not affect his right to proceed with the construction of the same.

Appeals.—Sec. 10. Either party may appeal to the district court of the county in which said land is situate, for the purpose only of reviewing the assessment of benefits and damages, or either thereof, by filing in the office of the town clerk a written notice of appeal within ten days after the filing of the order establishing said ditch or drain, notifying him of the taking of such appeal.

In case of appeal, the town clerk shall certify to the district court, a transcript of the proceedings before the board of supervisors, which shall be filed in said court with an appeal bond to be approved by the clerk of court, the party appealing paying for said transcript. If the appellant is the party petitioning for the said ditch or drain, he shall file a bond, conditioned to pay all costs of appeal that may be assessed against him, the amount of which bond shall be fixed and approved by the clerk of court of the county in which said land is situated. Such appeal shall be entered upon the calendar for trial at the next general term of court, occurring more than twenty days after the appeal is perfected, ex-

cept where the parties otherwise agree. The court or jury may reassess the damages and benefits, but its proceedings shall be based upon the same principles that the board of supervisors were required to follow in its determination. Upon final judgment rendered, the clerk of the district court shall file a certified transcript thereof, with the town clerk of each town affected by such determination. If the determination appealed from be affirmed, the appellant shall pay costs and disbursements, but if the appellant prevail, then he shall recover his costs and disbursements, the same to be taxed and allowed as in other cases, and judgment entered therefor in like manner.

Penalty for obstructing.—Sec. 11. Any person who shall dam up, obstruct, or in any way injure any ditch or drain, constructed under the provisions of this act, or shall suffer or permit it to be filled up or obstructed by stock going over or through the same, shall be liable to pay the person owning or occupying the lands for the draining of which such ditch or drain shall have been constructed, double the damage that may be sustained by said owner or occupant, and in case of a second or subsequent offense by the same person, triple the amount to be recovered in a civil action, in any court having jurisdiction.

Construction of word "person."—Sec. 12. Whenever the word "person" is used in this act in reference to persons or parties applying for the said ditch or drain, it shall be construed to include and mean all petitioners for such ditch or drain.

Application as to town and county treasurer.—Sec. 13. All the provisions of this act, in reference to the payment of money collected by the county treasurer to the town treasurer of the town in which such assessment was made, shall apply to and govern the action of every county treasurer collecting any assessment under the provisions of this act.

Construction across public highway.—Sec. 14. Whenever any such ditch or drain shall be constructed across a public highway it shall be the duty of the town board of supervisors of said town to at once construct and thereafter maintain, at the cost and expense of said town, a suitable, safe and proper bridge or culvert over the same; and if the construction and maintenance of the said ditch or drain benefits the public highway of said town, said town shall be assessed

and pay such portion of the cost of construction and maintenance of said ditch or drain as the assessing board or boards shall deem reasonable and proper.

Approved April 15, 1907.

CHAPTER 192—H. F. No. 935.

An Act entitled An act fixing and regulating the salaries and compensation and help of the county attorney and assistant county attorney, and providing for the appointment of the latter in counties having or which may hereafter have a population of not less than one hundred thousand (100,000) inhabitants and not more than two hundred thousand (200,000) inhabitants.

Be it enacted by the Legislature of the State of Minnesota :

Salary of county attorney \$3,600 per annum.—Section 1. The salary of the county attorney in each county in this state, having or which may have hereafter a population of not less than one hundred thousand (100,000) inhabitants and not more than two hundred thousand (200,000) inhabitants shall be three thousand six hundred (\$3,600) dollars per annum.

Appointment of first assistant at \$2,000 per annum.—Sec. 2. The county attorney of each of said counties, with the approval of one of the judges of the district court in and for said county, shall appoint an assistant, who shall be an attorney duly admitted to practice law in all of the courts of the State of Minnesota, and who shall hold his office as such assistant county attorney for the full period of time for which the county attorney under whom he is appointed has been elected, and the person so appointed shall take the official oath of office and execute a bond in all respects the same as the county attorney is by law required to execute, and said assistant county attorney shall thereupon be fully authorized and empowered to do and perform at the direction of the county attorney, any and all the duties pertaining to such office of county attorney, as fully and completely as the county attorney himself may do or perform; and said assistant shall be known and designated as first assistant county attorney, and such first assistant shall be paid a salary of two thousand (\$2,000) dollars per annum, payable in equal