

allowance for such clerk hire shall be made or received in any case except for services actually rendered.

Sec. 3. **Not to repeal other acts.** - This act shall not be construed as expressly or impliedly repealing any act previously enacted at the 1927 session of the legislature of the State of Minnesota, which deals with the subject matter herein referred to.

Approved March 17, 1927.

CHAPTER 51 S. F. No. 411

An act to amend Sections 41, 53, 54 and 74 of Chapter 415, Laws 1925, relating to the establishment, construction and repair of public drainage systems.

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

Section 1. **Engineer to superintend laying of tile, etc.** - That Section 41, Chapter 415, Laws 1925, be and the same hereby is amended so as to read as follows:

Sec. 41. (a) It shall be the duty of the engineer during the progress of the work to inspect the laying of tile, excavation and all other work of construction from time to time as provided for in the specifications and provisions in his report and as provided in the contract for construction, and every thirty days during the progress of the work to report in writing to the county board of the district court, as the case may be, as to all work completed since the last prior report, including all material furnished in accordance with the provisions of the contract, and his services for making such inspection shall be at the rate and in the same manner as other services rendered, and each thirty days or at such times as provided in the contract, during the progress of the work of construction, the engineer may issue preliminary certificates for work done and approved, in accordance with the plans and specifications, or for material or other supplies furnished and delivered along the line of said improvement, or otherwise delivered in accordance with the contract and to be used for the construction or installment of tile or other enclosed drains or for bridges or culverts along the line of and as a part of said proposed drainage system, which preliminary certificate shall contain the station number or numbers of the work covered by such certificate, and in case of an open ditch the actual yardage of the excavation certified, and the total value thereof according to the contract of construction, or in case the same is for material furnished, then an estimate of the total value of such material

according to contract. Such certificate shall further show the percentage of such total value of the work or material to be paid, by the county or counties, and if the proportion has been fixed by order of the court such certificate shall further show the proportion of such total value to be paid by the respective counties. Such certificates shall be executed in duplicate by said engineer or in such manner as may be necessary, and as many thereof marked "duplicate" shall be delivered to the contractor as there are counties affected, and such engineer shall further file one thereof with the county auditor of each county affected; provided, that except as hereinafter provided, no engineer in drainage proceedings shall by preliminary certificate certify or recommend for payment, and no county auditor shall cause to be paid a sum exceeding *85 per cent of the total value of work done and approved or exceeding 75 per cent of the total value of material furnished or delivered as such total value as shown by such preliminary certificate*; but such material shall be delivered only as required for use in the course of construction, and at such reasonable times and in such quantities as the engineer shall determine and direct.

(b) Provided, that in case of the construction of an open ditch where the contract provided for the construction of highway bridges across the ditch when any such bridge has been completed and open for public use and has been finally accepted by the engineer and the county board, then the contractor shall be entitled to full payment therefor.

(c) Provided, further, that no certificate of partial completion or of furnishing material shall be furnished or delivered by the engineer unless said certificate shall be accompanied by the engineer's written certificate that no loss will result from such partial payment.

(d) Provided, further, that the said certificate of the engineer in the matter of any county or judicial drainage proceeding or any other estimate or certificate required under any of the drainage laws of this state to be made by him shall not constitute prima facie evidence of the truth of the contents thereof or the completion of any ditch or any part thereof by the contractor or otherwise, or of the fulfillment of the contract or part thereof, and in all cases where the county or counties have paid for material furnished and delivered on a preliminary estimate of the engineer, such county or counties shall have a lien on the said material to the amount of all payments made thereon by such county or counties."

Sec. 2. Expense of repair and cleaning to be paid from county revenue funds.—That Section 53, Chapter 415, Laws 1925, be and the same hereby is amended so as to read as follows:

"Sec. 53. (a) The county board of the several counties in this state within which is constructed or may hereafter be constructed, any state, county or judicial drainage system lying wholly or partly within such county, shall keep the same or such part thereof as lies within such county in proper repair and free from obstruction in the manner specified in this act so as to answer its purpose, and in case there is sufficient funds to the credit of the drainage system to make such repair and the improvement consists of cleaning out and repair only, *and does not contemplate any improvement other than of restoring the ditch, as nearly as practicable, to the same condition as it was when originally constructed,* such funds may be expended by the county board for such purpose without further assessment as specified in this act: but no part of the original ditch fund shall be used for repair or cleaning out a system or any part thereof until the same has been completed according to plans and specifications and the board or court shall have so found and determined.

(b) In case there is not sufficient funds to the credit of such drainage system so to be repaired, the county board may pay for the same out of the general revenue fund of the county, and to raise the necessary money to reimburse that fund it is hereby authorized to apportion and assess the costs of such repairs upon all lands originally assessed for benefits in proceedings for the construction of such system said apportionment and assessment to be in the same proportion as was originally assessed for benefits.

(c) *For the purpose of creating a fund in the general ditch fund to the credit of each of such drainage systems to be used for such repairs, the county board is hereby authorized to levy an annual assessment against all of the lands originally assessed for benefits in the proceedings for the establishment of such drainage systems, at a rate not exceeding 30 mills on each dollar of such assessed benefits as confirmed by the court or board in the original proceedings. Such assessment shall be levied by the county board at its annual meeting held in July of each year. Before the levy of any such assessment shall be made the board shall give at least fifteen days notice by publication in two successive issues of the official paper of the county of its intention to make such a levy, and at such July meeting any person interested therein may appear before said board and be heard. The action of the county board as a result of the said hearing shall be final and binding on all lands involved. Following the levying of such assessment and before the first day of January next following the county auditor shall enter the amounts thereof upon the tax lists against the lands affected by such drainage system, located within the county, in proportion to the benefits confirmed by the court or board in the original proceedings, and the same shall be collected in the same manner as real estate taxes. Whenever the amount in the general*

ditch fund standing to the credit of any drainage system, available for use in making repairs, shall exceed 3 per cent of the total original assessment of benefits, no further assessment for the purpose of creating such fund for general repairs shall be made until such fund shall have fallen below said percentage.

(d) If the improvement consists of the cleaning out and repair of a state ditch that has been constructed otherwise than by assessment against property benefited, or if it consists of the deepening, widening or extending of a county, state or judicial ditch, then the county board or district court, as the case may be, is hereby authorized to cause the benefits and damages that will result from such improvements to be ascertained and determined and to assess the cost of the same against the property benefited by the construction of the original system and all property benefited by the construction of any subsequent ditch or lateral, public or private, emptying into said original system or any lake or pond to which said original system forms an outlet or which contributes to the necessity of deepening, widening or extending said original system to obtain a better outlet, in proportion to the benefits received in the manner provided in this act.

(e) The question as to which of the procedures provided in this section shall be followed in keeping drainage systems in repair shall be discretionary with the board, and in the event that the board chooses to proceed by the levying of an annual assessment as provided herein, no lien shall be made, prepared, filed or recorded in the office of the county auditor or register of deeds as required in Sections 44 and 45 of this act; and in all cases where the total cost of any one job of repairing a drainage system does not exceed the sum of five hundred dollars, the board shall have authority to proceed with such repairs without the formality of awarding a contract. In all counties having a ditch inspector it shall be the duty of such ditch inspector, when instructed by the board, to make report of needed repairs and to act as engineer for the board in all matters affecting repair of drainage systems. In counties where no ditch inspector has been appointed the board shall have authority to appoint an engineer to act in repair proceedings as provided in Section 54 of this act."

Sec. 3. Petitions for repair of ditches.—That Section 54, Chapter 415, Laws 1925, be and the same hereby is amended so as to read as follows:

"Sec. 54. *(a)* Upon the filing of a petition by any party, parties or corporation, municipal or otherwise, interested in or affected by a drainage system with the county auditor of any county in the case of a county, state or judicial drainage system lying wholly within such county, or with the clerk of the district court of any county affected, in the case of a state drainage system affecting two or more counties, or with the

clerk of the district court where the original petition was filed in case of a judicial drainage system affecting two or more counties, therein setting forth that such drainage system, describing the same by number or other description sufficient to identify the same, is out of repair or that portions thereof are obstructed and describing in general terms the nature, extent and location of such obstruction, or that such system by reason of the additional laterals, either public or private, or for any other reason is of insufficient capacity, or needs deepening, widening or extending so as to furnish sufficient capacity or better outlet and the probable total cost of such repairs, cleaning out or improvement does not exceed 30 per cent of the original cost of construction of such ditch and that the petitioners will pay all costs and expenses which may be incurred in case the proceedings for the proposed repairs, for any reason, are dismissed, it shall be the duty of the county auditor in case of a drainage system lying wholly within such county to present the same to the county board at their next meeting, and of such clerk of the district court in case of a system affecting two or more counties to present the same to the judge of said court, within ten days from the filing thereof, and thereupon if the cost of making such repairs or removing such obstruction does not exceed 30 per cent of the original cost of construction of such ditch, it shall be the duty of the county board or the judge of the district court, as the case may be, to appoint a competent engineer to examine such drainage system and to make report thereon to said board or court, as the case may be.

(b) In all cases where the costs of repairing, cleaning out, or improvement of any ditch heretofore constructed, exceeds the sum of 30 per cent of the original cost of the construction of such ditch, then and in that event no action whatever can be taken by such County Board, or District Court judge, as the case may be, after ascertaining that such proposed expenditure exceeds 30 per cent of the original cost of construction of such ditch until a majority of the property owners owning 51 per cent of the property affected thereby join in the petition for such repair, cleaning out or improvement, except where the majority of the property owners owning 51 per cent of the property have theretofore signed such petition, and in the event the requisite number of petitioners, as herein provided, do not sign such petition, then and in that event the original petitioners and their bondsmen, upon whose petition such procedure was started, shall be liable for all costs incurred.

(c) In the event the majority of the property owners owning 51 per cent of the property affected, sign such petition before filing such petition, as herein provided, then and in that event the County Board or judge of the District Court, as the case may be, are authorized, empowered and it becomes the duty of such County

Board or judge, as the case may be, to proceed to repair, clean out or improve such ditch in the same manner as in the original construction of such ditch, subject to the other provisions herein, relating to repair, improving or cleaning out such ditch.

(d) Provided, that in all cases of a drainage system lying wholly within one county, subject to provisions herein as to petitions and its or their sufficiency, the county board shall have authority to act upon their own motion and appoint an engineer upon information supplied to said board by report of the ditch inspector or otherwise, to their satisfaction, that a drainage system is out of repair or obstructed, warranting such appointment.

(e) Provided further than in cases where the total cost of making such repairs or removing such obstructions shall not exceed the sum of five hundred dollars, the county board shall have authority to make such repairs without the formality of awarding a contract and pay the cost thereof as provided in Section 53 of this act.

(f) Upon the filing of a petition for the repair of a drainage system, and before any action is taken thereon, one or more of the petitioners shall furnish a bond for the same purpose and in the same manner as outlined in Section 3 of this act, except that the amount of said bond shall be fixed by the county auditor in the case of proceedings before the county board and by the clerk of court in case of proceedings before the judge of the district court."

Sec. 4. Fees for engineers, viewers, etc.—That Section 74, Chapter 415, Laws 1925, be and the same hereby is amended so as to read as follows:

"Sec. 74. The following fees and expenses shall be allowed and paid for services rendered under this act.

(a) To the engineers a sum not exceeding \$12.50 per day, to be fixed by the county board or court making the appointment, for every day necessarily engaged and actual necessary expenses, including cost of bond.

(b) To each assistant engineer a sum not exceeding \$7.50 per day for every day necessarily engaged and actual and necessary expenses.

(c) To each viewer the sum of \$5.00 per day for every day necessarily engaged in viewing ditches and traveling therefor and making up the reports and actual and necessary expenses.

(d) To each roadman a sum of not exceeding \$4.00 per day and actual and necessary expenses.

(e) To each chainman, axeman and other like employes not herein mentioned and necessary to the prompt execution of the work of locating or construction of a public ditch, a sum of not exceeding \$4.00 per day and actual and necessary expenses.

(f) To each member of the county board the sum of \$5.00

per day for each day actually occupied in proceedings to establish or repair or inspect any drainage improvement after its completion or during the course of the work if appointed as a committee for that purpose and the sum of ten cents per mile each way for traveling necessary in attending any special meeting of the county board called for the purpose of transacting any business pertaining to such drainage system and for traveling in inspecting ditches or any other necessary travel in said drainage matter.

(g) To the county auditor, attorney for petitioners, clerk of the district court, the register of deeds and the sheriff performing duties thereunder, such reasonable compensation as shall be fixed by the county board or court, as the case may be, and the fees and compensation of all such county officials in drainage proceedings shall be in addition to all sums and fees allowed them by law, provided that the fees of such auditor shall in no case exceed \$250.00; and provided further that in all proceedings for repair where the costs of the same are to be paid from the annual assessment for repairs provided in Section 53 hereof, the fees of the county auditor or county attorney shall in no case exceed the sum of \$100.00 for each of such proceedings.

(h) That the fees, compensation and expenses hereinbefore specified for members of the county board in drainage proceedings shall be in addition to all other fees, salaries, compensation and expenses allowed to such members of the county board by any other law of this state. In all drainage proceedings where any county is directly interested, the county attorney thereof, shall represent the county. No county attorney or his assistants or any attorney associated with him in business shall otherwise appear in any drainage proceeding for any person or party whatsoever interested therein.

(i) All fees per diem, compensations and expenses provided for in this act and fees for such other legal services and expenses as may be necessary, shall, in the case of a county ditch, be audited, allowed and paid upon the order of the county board and in case of a judicial ditch the judge of the district court having charge thereof shall audit, allow and order the same paid upon ten days' written notice to the county or counties interested which notice may be given to the county auditor or the interested county or counties, that all bills on file with the clerk of the court where such proceeding is pending at the date of such notice, will be brought on for hearing and for allowance, at the time and place named therein.

(j) And in all cases where a judicial ditch proceeding has, for any reason, been dismissed by the court, all fees and expenses connected therewith shall be audited, allowed and ordered paid in like manner."

Approved March 17, 1927.