

CHAPTER 220—S. F. No. 927

[Coded as Sections 106.011, 106.081, 106.101, 106.111, 106.121, 106.221, 106.231]

An act relating to public drainage systems; the establishment, construction, improvement, maintenance and repair thereof; empowering the district court and the county board to cooperate with the United States or its agencies in drainage or flood control projects; amending Laws 1947, Chapter 143, Section 1, Subdivision 16, and Sections 8, 10, 11, 12, 22 and 23.

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

Section 1. Laws 1947, Chapter 143, Section 1, Subd. 16, is amended to read:

Subd. 16. "Ditch," "drainage system," "public drainage system," "improvement," or "drainage proceeding" means either an open or tiled system and all laterals or parts thereof; also the improvement of any natural waterway included in or utilized in the construction of any drainage system; *also the adoption and inclusion in any drainage project of any overall plan for flood control as proposed by the United States or any of its agencies*; and includes any work, excavation, structure, or improvement necessary to complete the system as adopted and ordered by the board or court.

Sec. 2. Laws 1947, Chapter 143, Section 8, is amended to read:

[106.081] Sec. 8. **Preliminary survey and report.** Subdivision 1. **Survey and report.** The engineer shall promptly proceed and examine all matters set forth in the petition and order, make such preliminary survey of the territory likely to be affected by the proposed improvement as will enable him to determine whether the same is necessary and feasible, and report accordingly. If some other plan than that described in the petition is found practical, the engineer shall so report, giving such detail and information as is necessary to inform the court or board on all matters pertaining to the feasibility of the proposed plan, either as outlined in the petition or according to a different plan recommended by the engineer. He shall show all changes, whether by extension, adding laterals, or otherwise, that may be necessary to make the plan of the proposed improvement practicable and feasible. If the

construction of a ditch or drain is involved in the proposed improvement, the engineer shall examine and report the nature and capacity of the outlet and any necessary extension thereof.

Subd. 2. Adoption of Federal project, including data, plats, plans, details or information. The engineer may adopt and approve and include as a part of his report, any project of the United States relating to drainage or flood control which is within the drainage area, and may accept any data, plats, plans, details or information pertaining to such United States project furnished him by the United States engineers, and the engineer need not make the preliminary survey called for in Subdivision 1 of this section if the data furnished by the United States is sufficient for the engineer to make his report without such survey.

Subd. 3. Inclusion in preliminary report. If he finds the improvement petitioned for is feasible, he shall include in his report a preliminary plan of the proposed system showing thereon the proposed drain and laterals or other improvements, and the outlet thereof, together with the watershed of such drainage system and the lands and properties likely to be affected, including so far as known the names of the owners thereof. He shall show upon such plan the elevation of the outlet and the controlling elevations of the lands likely to be affected and also the probable size and character of the ditches and laterals necessary to make the plan practicable and feasible. All elevations so far as practical shall be referred to standard sea level datum. He shall show in his report the character of the outlet and the sufficiency thereof and also the probable cost of the drains and improvements shown on his plan, and all other information and data necessary to disclose the practicability, necessity and feasibility of the proposed improvement, including such other information as the board or court may order.

Subd. 4. Limitation of survey. The engineer shall confine his preliminary survey to the drainage area described in the petition, except to secure outlet, unless authorized by order of the board or court, with the consent of the bondsmen, at a hearing after ten days' notice by mail to the petitioners and bondsmen; and any investigation made by the engineer as to outlet, without such order, shall be confined to running the necessary levels to ascertain the distance necessary to secure the proper fall.

Sec. 3. Laws 1947, Chapter 143, Section 10, is amended by adding thereto a new subdivision reading as follows:

[106.101] Subd. 7. **Court may approve adoption of plan relating to federal flood control project.** *In the event that the proposed drainage or flood control project described in the petition therefor, constitutes a part or portion of a general flood control plan proposed by the United States or any of its agencies for the relief of flood conditions in the natural rivers or streams within said county or counties, a substantial portion of the cost of which improvement will be borne by the United States, the court, upon the initial consideration of the petition, or at any time thereafter, upon the submission of preliminary plans and engineering data prepared by the government therefor and such additional information as may be necessary to determine the boundaries, ownership and description of the lands to be affected thereby, may approve the adoption of such project in accordance with said preliminary plans and may authorize and direct the board of county commissioners in the county or counties affected by said project, to enter into a contract or agreement with the government wherein and whereby the said county boards do undertake and agree to furnish and comply with the necessary elements of local co-operation as are required in the authorization for such project.*

Sec. 4. Laws 1947, Chapter 143, Section 11, is amended to read:

[106.111] Sec. 11. **Order for detailed survey.**

Subdivision 1. Upon the filing of the order as specified in subdivision 5 of section 10 of this act, the board or court shall order the engineer or any other engineer, if a change of engineers be determined, to proceed to make a detailed survey and furnish all necessary plans and specifications for the proposed improvement and report the same to the board or court with all reasonable dispatch. All of the provisions of section 7 of this act shall be applicable to the employment of the engineer.

Subd. 2. *Such detailed survey may be waived by the court if it appears that sufficient data, plans and specifications have been furnished by the United States engineer to make such survey unnecessary.*

Sec. 5. Laws 1947, Chapter 143, Section 12, is amended to read:

[106.121] **Sec. 12. Engineer's survey.** *Subdivision 1. Survey and examination.* Upon the filing of the order named in section 11 of this act, the engineer shall proceed to survey the lines of the drainage improvement petitioned for and approved by order made upon preliminary hearing, and to survey and examine all lands and properties affected thereby.

Subd. 2. Waiver. The engineer need not make such survey if the same has been waived by the court.

Subd. 3. Survey. All ditch lines shall be surveyed in one hundred foot stations and levels shall be based on standard sea level datum if practical. Bench marks shall be established upon permanent objects along the line of the drains, not more than a mile apart. All field notes made by the engineer shall be entered in bound field books and preserved by him.

Subd. 4. Data required. The engineer shall prepare and submit the following data and report:

a. A complete map of the drainage system or improvement drawn to scale, showing thereon (1) the termini and course of each drain and whether open or tile, and the location of all other proposed improvements; (2) the location and situation of the outlet; (3) the watershed of the drainage system and the sub-watershed of main branches, if any, together with the location of existing highway bridges and culverts; (4) all lands and properties affected, together with the names of the owners thereof so far as known; (5) public streets, highways and railways affected; (6) the outlines of any meandered lake and public body of water affected; (7) such other physical characteristics of the watershed as may appear necessary for the understanding thereof.

b. A profile of all lines of ditch proposed showing graphically, the elevation of the ground and gradient at each 100 foot station, the station number at each section line and at each property line, whether open or tiled, the size of tile and the bottom width and side slope of open ditch sections, and such other information as may appear necessary for the understanding thereof.

c. Plans for all private bridges and culverts proposed to be constructed by and as a part of the ditch system, together with plans for all other works and items of construction nec-

essary for the completion of the drainage system or improvement. A list showing the required minimum waterway opening at all railway and highway open ditch crossings and at other prospective open ditch crossings where bridges and culverts are not specified to be constructed as a part of the ditch, together with plans and estimates of the cost of highway bridges and culverts required for the information of the viewers in determining benefits and damages.

d. A tabular statement showing the number of cubic yards of earth to be excavated on all open ditches, the footage of each size of tile on each tile line with the average depth thereof, and all bridges, culverts, works and other construction items required by the plans for the completion of the system, together with the estimated unit cost of each of said items and a summary of the total cost thereof. Such summary shall include an estimate of the cost of fully completing the system, including supervision and other costs thereof.

e. The acreage which will be required and taken as right of way upon each government lot and forty-acre tract or fraction thereof under separate ownership required for right of way for any open ditch.

f. Specifications for drain tile shall require that all drain tile used shall comply with the requirements of the American Society for Testing Materials standard specifications for drain tile, except where the depths to which the drains are to be laid or the conditions of the soil, in the opinion of the engineer, require tile of a special and higher quality.

g. When more economical construction will result, the engineer may recommend that the work be divided into sections and let separately, and that open and tile work or tile and labor thereon be let separately, and the time and manner so far as practicable in which the whole work or any section thereof shall be done.

h. Such other detail and information as shall appear requisite to fully inform the board or court of the practicability and necessity of the proposed improvements, together with his recommendations thereon.

Subd. 5. Soil survey. If deemed necessary by the engineer, or if ordered by the board or court, or requested by the

director, the engineer shall make a soil survey showing the nature and character of the soil in the area proposed to be drained and shall report his findings thereon.

Subd. 6. Variance. In planning a public drainage system, the engineer may vary from the line and plan described in the petition as finally adopted by the board or court at the preliminary hearing or from the starting point thereof, as he finds necessary for the proper drainage of the land likely to be assessed for the drainage system described in the petition and approved at the preliminary hearing. He shall have authority to survey and recommend the location of such branch ditch or ditches as may be found necessary. Where better results will be accomplished and more desirable outlets secured, the engineer may provide for the extension of the outlet, or he may provide for different parts of the drainage to flow in different directions with more than one outlet. It shall not be necessary for such ditches to connect if they accomplish the drainage of the area to be affected by the petition instituting the proceedings.

Subd. 7. Outlet in another state. Where no practical outlet can be had but through the lands of an adjoining state, the engineer shall procure a description of the necessary right of way and the probable cost thereof and shall estimate the cost of constructing such outlet and include the same in his report.

Subd. 8. Filing. The engineer shall prepare and complete set of plans, specifications and estimates of cost required by this section and shall make a complete report in duplicate of his work and recommendations to the board or court, including therein all maps, profiles and matters herein provided for, and file the same with the auditor or clerk where the proceedings are pending. If the same be filed with the clerk, a complete copy thereof shall also be filed with the auditor of each county affected.

After the final acceptance of the ditch, the engineer shall make revisions of his plan, profiles and designs of structures to show the project as actually constructed on the original tracings, and shall file the same, together with a copy thereof, with the auditor or clerk. The auditor or clerk shall forward the original or copy to the director for permanent record.

Sec. 6. Laws 1947, Chapter 143, Section 22, is amended to read:

[106.221] Sec. 22. **Contract and bond.** Subdivision 1. **Provisions.** The contract and bond to be executed and furnished by the contractor shall be attached. The contract shall contain the specific description of the work to be done, either expressly or by reference to the plans and specifications, and shall provide that the work shall be done and completed as provided in the plans and specifications and subject to the inspection and approval of the engineer. The county attorney, the engineer, and the attorney for the petitioners shall prepare the contract and bond. The contractor shall make and file with the auditor or clerk a bond, with good and sufficient surety, to be approved by the auditor or clerk, in a sum not less than 75 per cent of the contract price of the work. Every such contract and bond shall embrace all the provisions required by this chapter and provided by law for bonds given by contractors for public works, and shall be conditioned as provided by statute in case of public contractors for the better security of the contracting county or counties and of parties performing labor and furnishing material in and about the performance of the contract. It shall be provided that time will be of the essence of the contract, and that if there be any failure to perform the work according to the terms of the contract within the time therein limited, originally or by extension, the contractors shall forfeit and pay the county or counties a certain sum to be named therein, as liquidated damages. Such sum shall be fixed by the auditor or auditors for each day that such failure shall continue. The bond shall provide that the bondsmen shall be liable for all damages resulting from any such failure, whether the work be resold or not, and that any person or corporation, public or private, showing himself injured by such failure, may maintain an action upon such bond in his own name, and actions may be successive in favor of all persons so injured; provided, however, that the aggregate liability of the surety for all such damages shall in no event exceed the amount of said bond. Such contractor shall be considered a public officer, and such bond an official bond within the meaning of the statutory provisions construing the official bonds of public officers as security to all persons, and providing for actions on such bonds by any injured party.

Subd. 2. **Changes during construction.** The contract shall give the engineer the right, with the consent of the

board or court, to modify his reports, plans and specifications as the work proceeds and as circumstances may require. It shall provide that the increased cost resulting from such changes will be paid by the county to the contractor at not to exceed the price for like work in the contract. No change shall be made that will substantially impair the usefulness of any part of the drainage system or substantially alter its original character or increase its total cost by more than 10 per cent of the total original contract price. In no event shall any change be made that will cause the cost to exceed the total estimated benefits found by the board or court.

Subd. 3. Contract with Federal unit. In case all or any portion of the work is to be done by the United States, or any of its agencies, no such bond or contract need be attached as to that portion of the work, but a contract shall be attached between the local governmental units concerned and the United States, or its appropriate agency, containing such terms, conditions, provisions and guaranties as the United States or its agencies may require before proceeding with said work.

Subd. 4. Guaranty of tile work. When tile is used in the construction of any drainage improvement, and, if prior to the commencement of advertising for the sale of the work, a majority of the persons interested shall file a written request therefor with the auditor or clerk, then such tile work shall be let separately and the contractor shall be required to guarantee the tile work covered by his contract for a period of three years after the completion thereof against any fault or negligence on his part. In such event the call for bids shall include such requirement and the contract and bond shall guarantee all tile work done by such contractor for a period of three years after the completion thereof against any fault or negligence on his part.

Subd. 5. Modification of contract by agreement. Nothing contained in this chapter shall in any manner prevent the persons whose lands are affected by the construction of any ditch from uniting in a written agreement with the contractor and his bondsmen for the modification of any such contract as to the manner or time within which such ditch or any part thereof shall be constructed, provided that such modification is recommended in writing by the engineer and approved by the board or court.

Sec. 7. Laws 1947, Chapter 143, Section 23, is amended to read:

[106.231] Sec. 23. **Letting contract.** *Subdivision 1.* After the expiration of 30 days following the filing of the order establishing a drainage system, the auditor and chairman of the county board, in the instance of a county ditch, and the auditors of the respective counties, or a majority of them, in the instance of a judicial ditch, shall proceed to let the job of constructing the system. In judicial ditch proceedings the auditors shall hold the letting at the office of the auditor of the county in which the proceedings are pending.

Subd. 2. If it shall appear at the expiration of 30 days from the filing of the order establishing the system, that one or more appeals have been taken involving the question of benefits or damages, no contract shall be let until the appeals have been determined, unless ordered by the board or court. Application for such order may be made by the auditor or auditors or any interested person. If application be made by some person other than an auditor, then the auditor or auditors shall be given five days' notice of hearing upon such application.

Subd. 3. The auditor of the county in which the proceedings are pending shall give notice of the letting of the contract by publication in a newspaper in such county stating the time and place where the contract shall be let. When the estimated cost of construction is more than \$3,000.00, the auditor shall also advertise such letting in a trade paper. Such notice shall state the approximate amount of work and the estimated cost thereof and shall invite bids for the work as one job, or in sections, or separately, for bridges, open work, tile, or tile construction work, as may be required or deemed advisable. The right shall be reserved to reject any and all bids. The notice shall require that each bid be accompanied by a certified check payable to the auditor or auditors for not less than 10 per cent of the bid, as security that the bidder will enter into a contract and give a bond as required by section 22 of this act.

Subd. 4. The engineer shall attend the letting and no bid shall be accepted without his approval as to compliance with plans and specifications.

Subd. 5. The job may be let in one job, or in sections, or separately for labor and material, and shall be let to the lowest responsible bidder or bidders therefor.

Subd. 6. Bids shall not be entertained which in the aggregate exceed by more than 30 per cent the total estimated cost of construction.

Subd. 7. The auditor, with such chairman, or auditors, as the case may be, shall contract, in the name of the county, or in the names of the respective counties, each acting by and through its auditor, with the party to whom such work or any part thereof is let, requiring him to construct the same in the time and manner and according to the plans and specifications and the contract provisions in this chapter set forth.

Subd. 8. *In the event all or any portion of such work is to be done by the United States, or any of its agencies, no notice of letting of a contract need be published and no contract for its construction need be entered into as to such portion so to be constructed. The municipal units concerned may enter into a contract or other arrangement with the United States, or any agency or department thereof, for cooperation or assistance in constructing, maintaining and operating such drainage work, or the control of waters in such district, or in making a survey and investigation or reports thereon, and may provide such guaranty and protection to the United States or its agencies as may be required.*

Approved March 31, 1949.

CHAPTER 221—H. F. No. 754

[Coded as Section 340.245]

An act relating to the sale of intoxicating liquors and prohibiting municipalities in certain cases from operating municipal liquor stores or issuing licenses.

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

[340.245] **Section 1. Limitation upon establishment of municipal liquor store.** When an election shall be held in any county on the question whether the sale of intoxicating liquors shall be permitted within such county and the results of such election is in the negative, and when a majority of the votes cast at such election by the voters of any city or village 90 per