

CHAPTER 65.

[S. F. No. 188.]

AN ACT TO AUTHORIZE ALL MUNICIPAL CORPORATIONS AND CORPORATIONS ORGANIZED FOR THE PURPOSE OF CONSTRUCTING AND MAINTAINING WATER WORKS FOR THE PURPOSE OF SUPPLYING ANY TOWN, CITY OR VILLAGE WITH WATER, TO CONDEMN AND TAKE PRIVATE PROPERTY FOR THE USE OF SUCH CORPORATION, AND TO ENTER UPON PRIVATE PROPERTY FOR THE PURPOSE OF MAKING SURVEYS AND LOCATING SUCH WATER WORKS.

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

Right to exercise power of eminent domain.

SECTION 1. All municipal corporations in this state, and all corporations organized for the purpose of supplying any town, city or village in this state, or the inhabitants thereof, with water, are hereby authorized to exercise the power of eminent domain, and to condemn, take and use private property for the use of such corporations when necessary or convenient to carry out the purposes and objects of said corporation.

May condemn, how.

SEC. 2. Whenever such municipal or other corporation in the construction of its water works, or in enlarging or extending the same, shall deem it desirable to condemn, take, use or occupy private property in the construction of its said works, or in making new lines of work, said corporation may condemn, take and use said private property, first making just compensation therefor, and proceed as hereinafter provided.

Privileges.

SEC. 3. Whenever such corporation in the construction of its water works, or in extending its said water works, or in making new lines of work, shall deem it necessary it may, as hereinafter provided, draw water from any river, lake or creek by means of pipes, ditches, drains, conduits, aqueducts or other means of conducting water so as to connect such rivers, lakes or creeks with its said works, and may erect and construct dams, bulk-heads, gates and other needed structures and means of controlling said water and its protection and, in general, do any other act necessary or convenient in accomplishing the purpose contemplated by this act.

Survey to be made.

SEC. 4. Whenever such corporation shall propose to construct or extend its said works, or shall propose to extend its line of works so as to connect with any river, lake or creek, and to direct the water of any river, lake, creek or body of water within its said water works, it shall proceed as follows: The said corporation shall cause to be made a survey of the line along which it proposes to construct or extend said works and of all lands or other property to be affected by flowage, drainage or by the con-

struction of ditches, drains, conduits, aqueducts or otherwise, and for that purpose such corporation may, by its officers and agents, enter upon any land for the purpose of making such surveys and measurements or for obtaining any other necessary information relative to the construction or extension of said water works, doing no unnecessary damage to said real estate. After such survey shall have been made and such line located it shall cause to be made a map showing the location of said line, extension and improvements, and the lands necessary to be taken for such construction, extension or improvement, and all lands or other property to be affected by flowage, drainage or otherwise. Said map shall be verified under oath by the surveyor making the same as just and correct, as he verily believes. Said map shall also be acknowledged by the mayor, clerk or recorder, or other proper officer of such city, town or village so seeking to condemn and take such real estate, or by the president, secretary or director of the corporation so seeking to condemn and take such real estate, and thereupon said map shall be filed as a record in the office of the register of deeds in and for the county in which said real estate so sought to be condemned, taken and used is situate, and a duly certified copy of said map shall be filed in the office of the clerk of the district court in said county.

Map showing
location of
line, verified

Filed as record

SEC. 5. After the making and filing of the map and certified copy thereof in the office of register of deeds and clerk of the district court in the county where said real estate so sought to be condemned and taken is situate, the corporation so intending and desiring to condemn, take and use said real estate, may present to the district court in and for said county in which said lands so proposed to be taken, condemned and used shall be situate, a petition signed by the president and secretary of such corporation, or by the mayor, recorder or other executive officer of said city, town or village, setting forth a description of said enterprise to be prosecuted by them, and describing with reasonable certainty and by reference to said map or plat, or otherwise, the lands, property and estate which it will be necessary to appropriate, take, use, overflow, drain or otherwise affect, setting forth the name of each and every owner, encumbrancer, or other person interested in the same or any part thereof, so far as the same can be ascertained by the public records, and by view of the premises, or other inquiry touching the occupation thereof, and praying the appointment of three competent disinterested persons as commissioners to ascertain and determine the compensation to be made to such owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such lands or real estate.

Petition to dis-
trict court for
commissioners

Notice of said petition to be served upon owners of land to be taken.

How served.

Proof of service.

SEC. 6. A notice stating briefly the object of the petition and containing a description of the lands proposed to be taken, and stating the time and place, when and where the same will be presented to said court, shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein, at least ten (10) days previous to the time designated in said notice for the presentation of said petition. Such service shall be made by delivering a copy of said notice to each person named therein if a resident of this state, or in case of the absence of such person, by leaving a copy of such notice at his or her usual place of abode, with some person of suitable age and discretion then resident therein. In case of domestic corporation such service may be made upon the president, secretary or any director or trustee of such corporation; in case of minors or their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or distracted persons, on their guardian or committee; or in case no guardian or committee shall have been appointed, then on the person in whose care or charge they are found; in case of feme covert, on the husband as well as on the feme covert. In all cases where the owner or persons claiming an interest in such real property is a non-resident of this state, or where the residence of such owner or person is unknown and an affidavit by the agent or attorney of the corporation shall be filed showing that such owner or person is a non-resident of this state, or that, after diligent inquiry, the residence is unknown, or cannot be ascertained by such deponent, service of such notice may be made by the publication thereof in any newspaper published in the county where such lands are situate once a week for three successive weeks; and in case no newspaper shall be published in said county, then such publication may be had in a newspaper published at the seat of government in this state, and such publication shall be deemed service upon each of such non-resident persons, or persons whose residence is unknown. Due proof of the service of such notice, by the affidavit of the person serving the same or by the printer's affidavit of publication, shall be filed with the clerk of such district court before the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons having been served with the notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In cases where the enterprise shall be located through or upon school or university lands, or any other lands belonging to this state, such notice shall be served upon the secretary of state or his assistant, and the commissioners shall award the damages to the state in like manner as to private persons or corporations.

SEC. 7. The court may, upon the application of the petitioner or owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any person whose interest may be affected. At the hearing of said petition, if the court shall have satisfactory proof that all parties interested in the lands described in said petition have been duly served with said notice, as above prescribed, the court may then proceed to determine, first (1st), whether the public interests require the prosecution of said enterprise set forth and described in said petition; second, as to whether it is necessary in the prosecution of said enterprise to take, condemn, use, overflow, drain or otherwise appropriate, injure or use said real estate mentioned and described in the petition, or any part thereof, the said court may, in its discretion, authorize the condemning, taking, using of the whole or any part of the real estate mentioned and described in said petition.

Courts may adjourn proceedings for cause.

When the court is satisfied by competent proof, it shall make an order, which shall be entered in the minutes of said court, and filed in the office of the clerk thereof, determining whether the public interests require the prosecution of the enterprise set forth and described in the petition, and the real estate necessary to be taken and condemned under said proceedings. The court may make an order to be recorded in the minutes thereof, appointing three (3) competent, disinterested persons, resident in said county, commissioners to ascertain and determine the amount to be paid by such corporation to each of such owners or persons interested, as compensation for his or her damages by reason of taking or injuriously affecting any such land or real estate, and specifying the time and place of the first meeting of said commissioners, and fixing their compensation. Before entering upon their duties, such commissioners shall severally take and subscribe an oath, before some person qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment.

Commissioners.

SEC. 8. The commissioners so appointed shall meet at the time and place mentioned in the order appointing them, and to proceed to examine all of the real estate described in said petition and map proposed to be used or taken for said improvement, or so much thereof as is designated in the order of the court to be taken, injuriously affected, appropriated or used in said improvement, construction or extension of said water works, and shall hear the allegation and testimony of all persons interested, and proceed to make in each case a separate assessment of damages which will result to any parties, persons, corporation or company, by reason of the construction or extension of said water works, or the taking, using or injuriously affecting said

Commissioners shall meet and examine real estate, make assessments, etc.

real estate, and shall determine, appraise and award to the owners of such land, property, easement, or any other right proposed to be taken or injuriously affected, the amount of damages arising to them respectively from the taking or injuriously affecting their said lands, property, right or estate thereof, for the purposes of said enterprise or improvement.

Report of commissioners to be filed in office clerk court.

SEC. 9. Within sixty (60) days after completing their examination and the making of said appraising and assessments of damages, the said commissioners shall file a report of their doings in the premises in the office of the clerk of said court, accompanied by all papers, maps and records placed in their hands as such commissioners, or received by them in the course of the discharge of their duties, and thereupon the corporation so seeking to condemn, take and use said lands, shall notify all parties interested in such report that the same is made and filed, and such notice shall be served as provided for by section six (6) of this chapter; *Provided*, that if any such party shall have appeared by attorney service may be made upon such attorney.

Payment of damages, how made.

SEC. 10. Upon the filing of said report, the petitioners or any officers of or other persons duly appointed by said corporation, may make payment of the damages assessed to parties entitled to the same, in the manner following:

First. To parties laboring under no disability.

Second. To guardians of infants, husbands or trustees of femes covert.

Third. To guardians of insane persons, idiots, lunatics and persons under other disability; and receipts for such payments filed in the office of the clerk aforesaid shall stop the parties giving them, and their principals when they act in a representative capacity, from all further claims or proceedings in the premises. Payments to parties residing in the state, but not in the county where said real estate sought to be condemned is situate, as well as to infants, insane persons, and other persons under disability who have no guardians; and payments to parties residing out of the state, and to persons whose names are unknown, and to persons who refuse to receive the payments when tendered, shall be made by depositing the same with the clerk of said court, to be paid out under the direction of the judge thereof; and such deposits shall have the same effect as the first-mentioned receipts, unless an appeal is taken by the party entitled thereto.

When title is in doubt damages may be paid into court.

SEC. 11. Whenever the title to any tract of land is deemed to be in doubt, and such commissioners have assessed damages for the taking or injuriously affecting a part thereof, the corporation so seeking to condemn, take or use said lands, may make and file with the clerk of said court an affidavit of one of the officers or attorney of such corporation, to the effect that there exists reasonable doubt

as to who is entitled to such damages or any portion thereof, and upon making and filing such affidavit may pay into court the amount of damages so assessed and allowed to any tract or parcel mentioned in said affidavit and the report of said commissioners; and thereupon said corporation shall be released and discharged from any further liability therefor, unless upon appeal the owner should recover a greater amount of damages, and in that case only for the amount in excess of the sum so paid into court. Any person claiming title to said real estate, or claiming to be entitled to any money so paid into court, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that the person so applying is entitled to the said money so paid into court or any part thereof, the court shall make an order directing the payment to such claimant the portion of such money as he should be found entitled to. But if, upon such application, the court should determine that the title to the tract or tracts specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced, and the conflicting claim to such real estate determined according to law.

SEC. 12. Appeals from the assessment made by the commissioners may be taken and prosecuted in the court where the report of such commissioners is filed, by any party interested, and a written notice of such appeal shall be served upon the appellee in the same manner as a summons in a civil action is served. Such notice shall be served at least twenty (20) days before the hearing of said appeal, and no appeal shall be taken after the expiration of thirty (30) days from the time of the notification of the filing of the report aforesaid, and the construction of said water works, or the extension thereof, or the extension of the line of said works, shall not be hindered, delayed or prevented by the prosecution of said appeal, provided the corporation execute and file with the clerk of the court in which said appeal is pending a bond to be approved by said clerk with sufficient surety conditioned, that the person executing the same and surety shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. Said appeal shall bring before the appellate court the propriety of the amount of damage in respect to the parties to the appeal, and unless the parties otherwise agree the matter shall be submitted to the jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall reassess the damages aforesaid.

Appeals may
be taken, how.

SEC. 13. Upon verdict or assessment judgment shall be entered declaring that upon payment of the verdict or assessment and costs, if any, the right to construct said water

Judgment on
appeal.

Payments, how
and when to be
made.

works or the extension thereof, and to do the acts in controversy in said appeal, or to take, use and appropriate the real estate sought to be condemned for the purposes set forth in the petition shall, as against the parties interested in the verdict or assessment, be and remain in said corporation, its successors and assigns forever, and payment of such judgment may be made as payments of assessments by the commissioners are made, as herein provided. All awards for compensation and damage for the taking of lands for public use on behalf of such companies where no appeal is taken shall draw interest at the rate of seven (7) per cent per annum from the time of the filing of such award until paid, and where an appeal is taken the verdict in such appeal shall draw interest at a like rate until paid. If such award, when no appeal is taken, is not paid within sixty (60) days after the filing of such award, or in case an appeal is taken within sixty (60) days after the entering of such final judgment, the court before whom such proceedings were initiated and such award filed or judgment entered shall, upon motion of the owner of the property sought to be condemned, vacate and set aside such proceedings, including the award and judgment, if any, and when such proceedings are discontinued by the corporation, or vacated and set aside by the judge or court, the owner of such property, or his heirs or legal representatives, shall have the right to recover from the corporation initiating such condemnatory proceedings, reasonable costs and expenses, including counsel fees.

When act to
take effect.

SEC. 14. This act shall take effect and be in force from and after its passage.

Approved April 8, 1889.

CHAPTER 66.

[H. F. No. 482.]

AN ACT TO LEGALIZE THE INCORPORATION OF CERTAIN VILLAGES.

Legalizing in-
corporation of
certain
villages.

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

SECTION 1. That all villages heretofore incorporated, or whose incorporation has been attempted under and by virtue of the provisions of any act of the legislature of this state, and which are now exercising or attempting to exercise corporate powers are hereby declared bodies corporate, and all such villages shall possess and are hereby endowed with all the franchises, rights, powers and privileges and