

The allowance for clerk hire shall in all cases be for actual services rendered, and the total amount shall not exceed, in any one year, the amount as fixed by the county commissioners.

SEC. 3. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed so far as they or any of them now or hereafter apply to said Wright county, and no general laws passed hereafter shall be construed or taken to apply to said county when its provisions are in conflict with any of the provisions of this act, unless such application is specifically mentioned therein.

SEC. 4. This act shall take effect and be in force from and after the first (1st) day of January, eighteen hundred and ninety (1890).

Approved April 2, 1889.

CHAPTER 382.

[S. F. No. 565.]

AN ACT PROVIDING FOR THE ACQUISITION AND IMPROVEMENT OF LANDS FOR PUBLIC PARKS AND PARKWAYS, IN THE CITY OF WINONA, AND FOR THE CARE AND GOVERNMENT THEREOF.

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

SECTION 1. That on the third (3d) Monday in April, eighteen hundred and eighty-nine (1889), the acting mayor of the city of Winona, shall appoint five (5) persons, each of whom is a citizen and freeholder of the city of Winona, as commissioners for the purposes specified in the title to this act, and with the powers and subject to the restrictions hereinafter contained. One of said commissioners shall be appointed for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years, and one for five (5) years, and annually thereafter the acting mayor shall appoint one (1) commissioner, qualified as above for the term of five (5) years, to fill the place of the one whose term expires, and each commissioner shall continue to act, until his successor is appointed and qualified.

Upon filing a written acceptance of their appointment, and an oath of office in the office of the city recorder, said commissioners shall meet and organize by the designation one of their number as president, and one of their number as vice-president, and shall also appoint a secretary.

Upon effecting such organization, the said commissioners and their successors shall constitute and be designated "The board of park commissioners of the city of Winona."

The said board shall make rules to govern its proceedings, and may meet from time to time, and adjourn its meetings as it may by rule or vote determine.

It shall adopt a seal and shall make and publish from time to time, rules and regulations for the government of its agents, servants and employees, and for the government and regulation of all parks and parkways in the city of Winona.

A majority of the members of the board shall constitute a quorum, but it shall require an affirmative vote of at least three (3) members of the board to pass any order or resolution purchasing or designating any lands for parks or creating a bonded indebtedness.

The board shall keep a record of all its proceedings and shall make and publish in the official paper of the city an annual report containing an itemized statement of its receipts and expenditures.

All vacancies in the office of park commissioners shall be filled by the remaining members of the board.

The said commissioners shall receive no compensation for their services, but may receive such sums for the necessary and actual expenses incurred in performing their official duties, as may be audited and allowed by the board.

The board shall have the power to employ and dismiss such attorneys, surveyors, agents and employees as may be necessary, and to fix their compensation, which shall be payable from the fund hereinafter established for the purpose of this act, upon the order of the board.

No commissioner shall be interested in any contract made by the board, or in any lands to be acquired by the board, except that if any commissioner shall be interested in any lands which may be designated or appointed for the uses of this act, he shall be entitled to receive compensation for his interest therein as provided herein, but he shall not act officially in respect to any matter in which he is pecuniarily interested.

SEC. 2. The board of commissioners herein appointed and their successors shall have power and it shall be its duty, to devise and adopt a system of public parks and parkways within the limits of, and for the use of the city of Winona, to designate the lands and grounds to be used and appropriated for such purposes, to cause the same to be surveyed, platted, and the plat thereof to be filed in the office of the city engineer, and upon obtaining title or the right to possession of the same or any part thereof, to take possession of, hold, govern and administer the same, and to lay out and improve the same, according to such plans as said board may adopt for such purposes.

SEC. 3. The said board of commissioners and their successors shall have power and it is hereby authorized to obtain title for and in the name of the city of Winona, to any lands so designated by it, for the purposes of this act, by gift, devise, purchase or lease, and shall have power to accept and receive donations of money, property or lands for the use of the said city for the purposes contemplated in this act.

SEC. 4. The said board of commissioners shall have power and it is hereby authorized to condemn for the use of said city, any tract or tracts, parcel or parcels of land, or any interest therein which it may have designated, as hereinbefore provided in the second (2nd) section of this act, and when such condemnation shall have been completed and the lands paid for as hereinbefore provided, the title to such lands shall pass and be vested in fee in the said city. For the purpose of making and perfecting such condemnation, the said board of commissioners shall proceed in the following manner:

First—The board of park commissioners shall appoint three (3) appraisers who shall be disinterested freeholders and qualified voters

of said city, to view the premises and appraise the damages which may be occasioned by the taking of private property or otherwise, in making said improvements. Said appraisers shall be notified as soon as practicable, by the secretary of said board, to attend, at a time to be fixed by him, for the purpose of qualifying and entering upon their duties; and in case any such appraiser, upon being so notified, shall neglect or refuse to attend as aforesaid, he shall forfeit and pay a fine to said city not exceeding fifty (50) dollars and shall be liable to be prosecuted therefor before the municipal court of said city as in case of fine for violation of an ordinance of said city, and the appraisers in attendance shall be authorized to appoint another appraiser or appraisers in place of an absentee or absentees, aforesaid, and possessing the qualifications aforesaid. In all other cases of vacancy, the board of park commissioners shall fill such vacancy.

Second—The appraisers shall be sworn to discharge their duty as appraisers in the matter with impartiality and fidelity and to make due return of their acts to the board of park commissioners.

Third—The said appraisers shall, with all reasonable speed, give notice by publication in the official newspaper of said city for at least ten (10) days to the effect that a plat of the lands designated by the board of park commissioners has been filed and that the said appraisers will meet at a place and time designated by them, and thence proceed to view the premises, and appraise the damages for property to be taken, or which may be damaged by such improvement.

Fourth—At the time and place according to said notice the said appraisers shall view the premises and may hear any evidence or proof offered by the parties interested and adjourn from day to day for the purpose aforesaid. When their view and hearing shall be concluded they shall determine and appraise the amount of damages to be paid to the owner or owners of each parcel of property proposed to be taken, or which may be damaged by such improvement.

Fifth—If there should be any building standing in whole or in part upon the land to be taken, the appraisers shall in each case determine the amount of damages which should be paid to the owner or owners thereof in case such building, or so much thereof as may be necessary should be taken, and shall also appraise and determine the amount of damages to be paid such owner or owners in case he or they should elect to remove such building, and the damages in relation to building aforesaid, shall be appraised separately from the damages in relation to the land upon which they are erected.

Sixth—If the lands and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate in it less than an estate in fee, the injury or damage done to such persons or interests, respectively, may be awarded to them by the appraisers, provided that neither such award of the appraisers nor the confirmation thereof by the board of park commissioners shall be deemed to require payment of such damages to the person or persons named in said award in case it shall transpire that such persons are not entitled to receive the same. []

Seventh—The said appraisers having ascertained and appraised the damage aforesaid, shall make and file with the secretary of said board of park commissioners a written report to said board of park commis-

sioners, of their action in the premises, embracing schedule or appraisalment of the damages in each case, with a description of the land and names of the owners, if known to them, and also a statement of the cost of the proceedings.

Eighth—Upon such report being filed, the secretary of the board of park commissioners shall give at least ten (10) days notice by publication in the official newspaper of said city, to the effect that said appraisalment has been returned, and that the same will be confirmed by the board of park commissioners at a meeting thereof to be named in said notice, unless objections are made in writing by persons interested in any lands required to be taken. Any person interested in buildings standing in whole or in part upon any land required to be taken by such improvement, shall, on or before the time specified in such notice, notify said board of park commissioners in writing of their election to remove such building. The board of park commissioners, upon the day fixed for the consideration of such report, or at such subsequent meetings to which the same shall stand over or be referred, shall have power, in their discretion, to confirm, revise or annul the appraisalment, giving due consideration to any objections interposed by any parties interested.

Ninth—The damages appraised shall be paid out of the park fund, and shall be so paid or tendered or be deposited, and set apart, in the treasury of said city, to and for the use of the parties entitled thereto, within six (6) months after the confirmation of such appraisalment or report; but in case any appeal or appeals shall be taken from the order confirming said appraisalment, then the amount of such damages shall not in any case be required to be paid or tendered or deposited and set apart, as aforesaid, until thirty (30) days after the termination of all appeals which shall have been so taken. The land and property required to be taken for the purposes aforesaid, shall not be appropriated until the damages awarded to the owner thereof shall have been paid or tendered to such owner, or deposited and set apart for his use, as aforesaid; and in case the board of park commissioners shall be unable to determine to whom the damages so awarded should in any particular case be paid, or in case of disputed claims in relation thereto, the amount of damages in any such case may be deposited, by order of the board of park commissioners, in the district court of Winona county, and said court, upon the proper application of any person claiming the award or any part thereof, shall determine to whom the same shall be paid.

Tenth—In case any owner or owners of buildings as aforesaid shall have neglected in manner aforesaid to remove his or their buildings, he or they shall so remove them within thirty (30) days from the confirmation of such report, or within such further time as the board of park commissioners may allow for the purpose, and shall thenceforth be entitled to payment from said park fund, of the amount of damages awarded in such case in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected to remove) to remove the same within the time prescribed, such buildings, or so much thereof as may be necessary, upon payment or depositing the damages awarded, for such taking in manner aforesaid, may be taken and ap-

propriated, sold or disposed of, as the said board of park commissioners shall direct, and the same, or the proceeds thereof, shall belong to the said park fund.

Eleventh—When any known owner of lands or tenements affected by any proceedings within this act shall be an infant, or shall labor under any legal disability, a judge of the district court of Winona county may, upon application of said commissioners, or of said board of park commissioners, or such party or his next friend, appoint a suitable guardian for such party, and all notices required by this act shall be served upon such guardian.

Twelfth—Any person whose property is proposed to be taken or interfered with under the provisions of this act, and who deems that there is any irregularity in the proceedings of said board of park commissioners, or action of the appraisers, by reason of which the award of the commissioners ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of or interfering with his property, may at any time before such award shall be confirmed by the board of commissioners, file with the secretary of said board in writing, his objections to such confirmation, setting forth therein specifically, the particular irregularities complained of, and containing a description of the property affected by said proceedings, and if, notwithstanding such objections, the said board shall confirm the award, such person so objecting shall have the right to appeal from such order or confirmation of the board, to the district court of the county of Winona at any term, within ten (10) days after such order.

Such appeal shall be made by serving a written notice of such appeal upon the secretary of said board, which shall specify the property of the appellant affected by such award, and refer to the objection filed as aforesaid, and by also delivering to said secretary a bond to the city of Winona, executed by the appellant or by some one in his behalf, with two (2) sureties who shall justify in the penal sum of fifty (50) dollars, condition to pay all costs that may be awarded against the appellant. Thereupon the said secretary shall make out and transmit to the clerk of the said district court a copy of the award of said commissioners, as confirmed by the board and of the order of the board confirming the same, and of the objection filed by the appellant as aforesaid, all certified by said secretary to be true copies, within ten (10) days, after the taking of such appeal.

But if more than one (1) appeal be taken from any award, it shall not be necessary that the secretary in appeal, subsequent to the first, (1st) shall send up any thing except the certified copy of the appellant's objection. There shall be no pleading on such an appeal, but the court shall determine in the first (1st) instance whether there was in the proceedings, any such irregularity or omission of duty prejudicial to the appellant and specified in said written objections, that as to him the award or appraisal of the appraisers ought not to stand, and whether said appraisers had jurisdiction to take action in the premises.

The case may be brought on for hearing on eight (8) days notice, at any general or special term of the court, and shall have precedence of other civil cases, and the judgment of the court shall be either to con-

firm or annul the proceedings only as the same affects the property of the appellant proposed to be taken or damaged and described in said written objection.

From such determination no appeal nor writ of error shall lie. In case the amount of damages awarded is complained of by such appellant, the court shall, if the proceedings shall be confirmed in other respects, upon such confirmation, appoint three (3) disinterested freeholders, residents of said city, appraisers to re-appraise such damages. The parties to such appeal shall be heard by said court, upon the appointment of such appraisers, and the court shall fix the time and place of meeting of such appraisers. They shall be sworn to the faithful discharge of their duty as such appraisers and shall proceed to view the premises and to hear the parties interested, with their allegations and proofs pertinent to the question of the amount of such damages. Such appraisers shall be governed by the same provisions in respect to the method of arriving at the amount of damages, and in all material respects, as are in this act made for the government of appraisers appointed by said board. They shall, after such hearing and view of the premises, make a report to said court of their appraisal of damages in respect to such appellant. The award of such appraisers shall be final, unless set aside by the court for good cause shown. In case such report is set aside, the court may, in its discretion, recommit the same to the same appraisers or appoint new appraisers, as it shall deem best, but no appeal or writ of error shall be allowed from any order of the court in the premises. Said court shall allow a reasonable compensation to such appraisers for their services, and make such award of costs on such appeal, including the compensation of such appraisers, as it shall deem just in the premises. In case the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant. The board of park commissioners shall have the right at any time during the pendency of any proceedings for the acquisition of any lands for any improvement authorized by this act, or at any time within thirty (30) days after the final disposition by the court, of all appeals taken in such proceeding to abandon all such proceedings in respect to the whole improvement or any part thereof, whenever they shall deem it for the interests of the city so to do.

Thirteenth—As soon as said proceedings for acquiring the title to such lands shall have been completed, it shall be the duty of such commissioners to make or cause to be made, an accurate description of all such lands as shall have been so acquired, with a statement of the amount of damages awarded and paid to each former owner for the lands so acquired, which shall be certified by the president and secretary of said board under the official seal of the said board and be filed for record in the office of the register of deeds for said county of Winona; and it is hereby made the duty of said register of deeds to record the same among the records of transfers of real estate, in said county, which records shall be prima facie evidence of title to such land, and of the transfer of all the interests of such former owner in the same, to said city of Winona. It shall also be the duty of said commissioners to file with said register of deeds, correct plats of all such lands as they may acquire for the purposes of this act, which

shall be kept on file and of record in the office of said register of deeds in like manner as plats of additions to the city of Winona.

SEC. 5. For the cost of acquiring title to the lands for said parks and parkways, the said board of park commissioners shall have power and authority to issue bonds of the city of Winona, to be denominated "park bonds," and not exceeding in the aggregate the amount of twenty thousand (20,000.00) dollars, and running not to exceed thirty (30) years, and bearing interest not exceeding five (5) per cent. per annum. These bonds shall issue under the seal of the said board of park commissioners, and shall be signed by the president and secretary of said board, and countersigned by the recorder of the city of Winona. It shall be the duty of the said board of park commissioners, and of the city recorder to keep an accurate register of all bonds issued, showing the number, amount, dates of issue and maturity of each bond; and for the payment of the principal and interest of said bonds, the said parks and the improvement thereon shall be irrevocably pledged with the first lien thereon, and the city of Winona shall be irrevocably bound for payment thereof; and said bonds may be sold by said board of park commissioners, upon such terms and for such prices as in its judgment are the best which can be obtained for the same. *Provided*, the sum realized therefrom shall not be less than par.

SEC. 6. The said board of park commissioners shall annually on or before the first (1st) day of September, in each year, transmit to the recorder of the city of Winona, an estimate in writing of the amount of money necessary for the payment of interest on bonds issued by said board, and that will be required for the improvement, maintenance and government of said parks and parkways, during the succeeding year; and the city recorder shall certify the same to the county auditor of Winona county. *Provided however*, that no more than (\$2,000) two thousand dollars shall be expended in any one (1) year for the improvement, maintenance and government of said parks, unless authority therefor be first obtained by the board of park commissioners from the city council. The county auditor shall proceed to determine what per cent. on the taxable property of the city, the sum, thus certified by the city recorder, is, and shall extend the same on the next general tax list in a separate column, and the same shall be collected in the same manner as other city taxes, and all the provisions of law in respect to the collection of its state and county taxes, and proceedings to enforce the same, so far as applicable, shall apply to said assessments and taxes. The money collected from such taxes and the proceeds from all park bonds issued together with all other moneys provided or received for the purposes of this act, shall be placed by the treasurer of the city of Winona, to the credit of the board of park commissioners, and shall be drawn from the city treasury by warrant signed by the president and secretary of the board and in no other way, and shall constitute a fund to be known and designated as the "city park fund."

SEC. 7. The said board of park commissioners shall have full power and authority to vacate and close up, alter, or widen any and all public roads and highways (except railroads), which may pass

through, divide, or separate any lands selected or appointed by it for the purpose of parks, and to lay out new roads or streets through any such lands, and for such purposes shall have the power to take, and condemn land in the manner hereinbefore provided. No highway or railroad shall be laid out through said parks or any of them, except as said board of park commissioners shall lay out or consent to the laying out of the same.

SEC. 8. The said board shall have power to construct all necessary bridges, and viaducts over water courses, and railroads within or on the line of said park, and parkways.

SEC. 9. The said commissioners, or either of them, may be removed from office by the district court of said county, after trial and conviction upon the petition with the sworn charges presented by not less than ten (10) reputable freeholders of said city, if it shall appear at said trial, that the said commissioner or commissioners have been guilty of misdemeanor, or malfeasance in office under this act.

SEC. 10. The office of any commissioner under this act who shall not attend the meetings of the board for three (3) successive months after having been duly notified of said meetings, without reason satisfactory to the board, or without leave of absence from said board, may by said board be declared, and thereupon shall become vacant.

SEC. 11. The board of park commissioners shall have the same power and due restriction over parks now belonging to the city as over those that may be hereafter acquired under the provisions of this act.

SEC. 12. The power and jurisdiction of the board of park commissioners shall not extend to the police control within the parks, or parkways, except that the said board shall have authority to adopt any ordinance affecting the quiet, orderly and amicable use and enjoyment of said grounds by the people of the city of Winona, and to fix and ordain penalties for the violation thereof, and the police control over said grounds shall be and remain where it is or may be vested by the charter of said city.

SEC. 13. All acts and parts of acts whether in the charter of the city of Winona or elsewhere, inconsistent with any of the provisions of this act, are hereby repealed.

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

Approved April 15, 1889.