

places of business of each and all of the creditors of the seller and the amount owing each creditor; and unless the purchaser shall at least five (5) days before the sale, in good faith, notify or cause to be notified, personally or by registered mail, each of the seller's creditors of whom the purchaser has knowledge, or can with the exercise of reasonable diligence acquire knowledge of said proposed sale, and of the said cost price of the merchandise to be sold, and of the price proposed to be paid therefor by the purchaser. The seller shall at least five (5) days before such sale fully and truthfully answer, in writing, each and all of said inquiries.

SEC. 2. Except as expressly provided in this act, nothing therein contained nor any act thereunder shall change or affect the present rules of evidence or the present presumptions of law.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved April 19th, 1899.

H. F. No. 684.

CHAPTER 292.

Cities of more than 50,000. Condemnation for public markets.

An act authorizing cities of more than fifty thousand (50,000) inhabitants to acquire land by condemnation for the purpose of public markets.

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

Location for, how proposed.

SECTION 1. Whenever the common council in any city of this state having at the last preceding state census more than fifty thousand (50,000) inhabitants shall consider it necessary to procure grounds for a public market, such common council shall appoint a committee of not less than three (3) of its members, who, together with the city engineer of such city, shall make examination and propose to said common council a location and description of the land suitable for such market, and present to the common council a plat of the land proposed to be taken, and in their report shall show, so far as the committee shall deem necessary, what buildings or structures can be used in the appropriation and any other matters which the committee shall deem proper for the information of the common council, and such committee may present for the consideration of the common council more than one location and plat.

SEC. 2. Such committee shall file their report with the city clerk of such city, who shall give notice by publication twice in the official paper of such city that such report is on file in his office for the inspection of all persons interested, and that the same will be presented to the common council for action thereon at a meeting of such common council to be named in such notice, which shall be the regular meeting of such common council, which shall occur next after one week from the second publication of such notice. At the meeting named in said notice the city clerk shall next, after reading the minutes of the previous meeting, present such report, and the matter may be acted upon by the common council at the same or any subsequent meeting. The common council under such rules as it may prescribe may hear any person interested in the matter or refer the matter to a committee to hear such persons and report.

Notice of proposed location; hearing by common council.

SEC. 3. Whenever the common council shall determine upon the lands to be taken and appropriated for the purposes of a market, it shall designate the same as nearly as may be convenient, and shall cause such plat or survey as may be necessary to show or explain the same to be made and filed therewith with the city clerk, and such common council shall then or afterwards appoint five (5) commissioners who shall be freeholders of said city, and no two of whom shall reside in the same ward, to view the lands or premises to be [so] taken and appropriated, and ascertain and award the amount of damages and compensation to be paid to the owners of the property so to be taken and appropriated. Three or more of such commissioners shall constitute a quorum, and be competent to do any act required of such commissioners. They shall be notified by the city clerk by notice to be served on them severally, either personally or through the mail, to attend at his office on or before a day fixed by him, not less than two (2) days after the service or mailing of such notice, to qualify and enter upon their duties, and if any commissioner shall refuse or neglect to attend as aforesaid he shall forfeit and pay to said city the sum of fifty (50) dollars, to be recovered to the use of such city in a civil action in any court located in the county in which such city shall be situated; and in case a quorum of such commissioners shall not so attend at the time and place designated in such notice, the mayor of such city may, in writing, appoint one or more commissioners in the stead of any such absentees. The commissioners shall be sworn, by the clerk of any officer authorized to administer oaths, to discharge their duties as such commissioners in the matter with fidelity and impartiality and make due return of their action to such common council. They shall

Commissioners to be appointed to assess damages. Commission, how organized.

give notice by two (2) publications in the official paper of such city that they will on the day designated in such notice, which shall be at least ten (10) days after the first (1st) publication of such notice, meet at a place designated in such notice on or near the premises proposed to be taken and appropriated, and ascertain and award therefor compensation and damages, and that they will then and there hear such allegations and proofs as interested persons may offer. Such commissioners shall meet and view the premises pursuant to such notice, and may adjourn from time to time, and after having viewed the premises may, for the hearing of evidence and the preparation of their award, adjourn or go to any other convenient place in such city; and such commissioners shall make a true and impartial appraisal and award of the compensation and damages to be paid to each person whose property is to be taken or appropriated, and report the same to said common council, and such award shall lie over until the next regular meeting of such common council, which shall occur at least one week after the reception of such award, at which or any subsequent time the said common council may act on such award and hear any objections made thereto, or may refer the matter to a committee to hear such objections, and report thereon. The common council may confirm such award by a vote of two-thirds ($\frac{2}{3}$) of the members elect thereof, or annul the same, or send the same back to the same or a new board of commissioners for further consideration; and such commissioners may, in such case, again, on giving notice published once in the official paper of such city, meet at a time and place to be designated in such notice, which shall be at least two (2) days after the publication of such notice, and hear any further evidence that may be adduced by interested persons, and may adjourn from time to time, and correct any mistakes in such award, and revise and alter the same, as they may deem just, and again report such award to such common council, who may confirm or annul the same; when any such award shall be confirmed by the common council by a vote of two-thirds ($\frac{2}{3}$) of the members-elect thereof the same shall be final and conclusive upon all parties interested, except as hereinafter provided.

Two-thirds
vote of council
to confirm re-
port of com-
mission.

Condemnation,
what consti-
tutes.

SEC. 4. Whenever an award of compensation and damages shall be confirmed by such common council and not appealed from, and whenever the same, when appealed from, shall not be set aside by the court, the same shall constitute a lawful and sufficient condemnation and appropriation for public use of the land and property and rights of property for which compensation or damages are so awarded, and such damages or compensation shall

thereupon become a public charge against such city, to be payable within one year after the confirmation of the award or the determination of the appeal therefrom; such common council may at its election cause such compensation or damages to be paid from the permanent improvement fund of such city or from funds not otherwise appropriated or from funds to be raised by taxation in the same manner as funds are raised for other public purposes in such city. In case such payment is not made within one year after the confirmation of such award or the determination of the appeal therefrom, the proceedings shall be deemed to be abandoned. Before payment of such award, the owner of such property or the claimant of the award shall furnish an abstract of title showing himself entitled to all of the compensation and damages claimed. In case of neglect to furnish such abstract, or there shall be any doubt as to who is entitled to such compensation or damage, or any part of the same, the amount so awarded shall be by the common council appropriated and set apart in the city treasury for whoever shall show clear right to receive the same. The common council may, in its discretion, require of such claimant a bond, of good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages or for the property for which the same was awarded, and all loss, costs or expenses on account of such claims. *Provided*, that whenever the attorney for such city shall certify in writing, through the common council, that in his opinion he is in doubt to whom the said award shall be paid, the said common council may order a warrant to be drawn for the same payable to the clerk of the district court of the county in which said city may be located, and the city clerk shall deliver the same to said clerk of the court and ask him receipt for the same, which deposit with said clerk of the court shall have the same effect as if set aside in the city treasury, as hereinbefore provided; and in case the parties entitled to the same shall establish their right to the same by a petition to said district court setting up the facts entitling them thereto, and by proving the same to the satisfaction of the court, when so established the court shall make an order directing to whom the same shall be paid. Upon the payment of said award or appropriation, or the setting apart of the money in the city treasury to pay the same as aforesaid, the city shall become vested with the title to the property taken and condemned, absolutely, for all purposes for which the city may have occasion to use the same; and may forthwith enter upon and use the same.

Compensation,
how paid.

Compensation,
how paid in
case of doubt.

Appeal to dis-
trict court,
how taken.

SEC. 5. Any person whose property is proposed to be taken or condemned under any of the provisions of this act, and who deems that there is any irregularity in the proceedings of the common council or action of the commissioners, 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 interference with his property, may, at any time before such award shall be confirmed by such common council, file with the city clerk in writing his objections to such confirmation, setting forth therein specifically the particular injuries complained of, and containing a description of the property affected by such proceedings, and if, notwithstanding such objections, the common council shall confirm the award, such persons so objecting shall have the right to appeal from such order of confirmation to the district court of the county in which said city is located, at any time within ten (10) days after such order. Such appeal shall be made by serving a written notice of such appeal upon the city clerk of said city; which shall specify the property of the person affected by such award and refer to the objections filed as aforesaid, and also by delivering to said city clerk a bond to such city, executed by the appellant or by some one on his behalf, with two sureties, who shall justify in the penal sum of fifty (50) dollars, conditioned to pay all costs that may be awarded against the appellant. Thereupon the city clerk shall make out and transmit to the clerk of said district court a copy of the award of said commissioners as confirmed by the common council, and of the order of the common council confirming the same, and of the objections filed by the appellant as aforesaid, all certified by the city clerk to be true copies, within ten (10) days after the taking of such appeal, but if more than one appeal be taken from any award it shall not be necessary that the clerk in appeals subsequent to the first (1st) shall send up anything except the certified copy of the appellant's objections. There shall be no pleading in such 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 his said written objections, that as to him the award or assessment of the commissioners ought not to stand, and whether said commissioners had jurisdiction to take action in the premises. The case may be brought on for hearing on eight (8) days' notice, at any regular or special term of the court, and shall have precedence of other civil cases, and the judgment of the court shall be either to confirm or annul the proceedings only as the same affected the property of the appellant proposed to

Hearing by
court.

be taken and described in said written objection. From such determination no appeal or 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 disinterested freeholders residents of said city commissioners to reappraise such damages and benefits. The parties to such appeal shall be heard by said court upon the appointment of such commissioners, and the court shall fix the time and place of the meeting of such commissioners; they shall be sworn to the faithful discharge of their duties as such commissioners, and shall proceed to view the premises and hear the parties interested, with their allegations and proofs pertaining to the question of the amount of such damages. Such commissioners shall be governed by the same provisions in respect to the method of arriving at the amount of damages and in all other material respects as are in this act made for the government of commissioners appointed by the common council. They shall, after such hearing and view of the premises, make report to said court of their appraisal of damages in respect to such appellant. The award of such commissioners 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 commissioners or appoint a new board, 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 commissioners for their services, and make such award of costs in such appeal, including compensation of such commissioners, as it shall deem just in the premises. In case the court shall be of the opinion that said appeal was frivolous and vexatious, it may adjudge double costs against such appellant.

SEC. 6. Whenever any portion of any award made by the commissioners and confirmed by the common council, as hereinbefore provided in this act, shall be annulled by the court upon appeal as hereinbefore provided for, the common council may again appoint commissioners to view the property which was affected by such appeal, and appraise and amend the compensation and damages to be paid for the taking or appropriation of the same, and like proceedings shall be had, so far as applicable, as hereinbefore prescribed. If such award shall again, upon appeal, be annulled by the court, still another commission may be appointed and award made in the same manner, and so on until a successful award may be made.

SEC. 7. This act shall be in force and take effect from and after its passage.

Approved April 19th, 1899.

Second proceedings when first is set aside by the court.