

CHAPTER 453

MANAGEMENT OF MUNICIPALLY-OWNED UTILITIES

453.01 POWER AND LIGHT COMMISSIONS CREATED.

HISTORY. 1907 c. 412 ss. 1, 2; G.S. 1913 ss. 1807, 1808; G.S. 1923 ss. 1852, 1853; M.S. 1927 ss. 1852, 1853.

The water, light, and building commission created by Laws 1907, Chapter 412, for cities and villages containing less than 10,000 has exclusive control of the village or city light or water plant with authority to employ all help necessary to properly operate the same, to audit and allow all accounts for expenses incurred in the department, and to issue in the manner therein prescribed warrants on the treasury therefor. *State ex rel v McIlraith*, 113 M 237, 129 NW 377.

The water, light, power, and building commission of the city of East Grand Forks, being a governmental department of the city, the city attorney is its legal adviser and it has no express or implied power to employ its own attorney, thereby creating liability against the city. *State ex rel v Gorman*, 117 M 323, 136 NW 402.

A village council has not the authority to remove at will and without a hearing members of its water, light, power, and building commission created under Laws 1907, Chapter 412, and amendatory acts. *State ex rel v Bergeron*, 156 M 276, 194 NW 624.

In determining whether sections 453.01 to 453.07 are applicable to a village the present population is immaterial as it is conclusively presumed that the present population is its population in the last state census. OAG Feb. 1, 1933.

Laws 1907, Chapter 412, under which a village created a water, light, power, and building commission continues applicable after the population of the village exceeds 10,000 according to the last census. OAG Feb. 14, 1933.

A water and light commission has no power to enter into a lease providing for an option to buy stokers without advertising for bids. OAG Aug. 12, 1933.

A member of a village council may enter into a contract with the water, light, power, and building commission of the village, having full charge of construction work. OAG March 19, 1934.

The board of water commissioners of the city of Stillwater is a part of the city government and not an independent corporation separate from the city, and employees of the board are "public employees" of the city within the meaning of the public employees retirement association act. OAG May 18, 1938 (331b).

The village commission may contract with an independent telephone company for joint use of telephone poles. 1942 OAG 250, Nov. 5, 1941 (624C-14).

453.02 MEMBERS, APPOINTMENT.

HISTORY. 1907 c. 412 s. 3; G.S. 1913 s. 1809; G.S. 1923 s. 1854; 1925 c. 327 s. 1; M.S. 1927 s. 1854.

It is mandatory for each member to act as president during the last year of his term. OAG March 16, 1929.

"Appointment" requires the naming of a person other than a person exercising the appointing power, and hence a member of village council is ineligible to appointment as a member of water and light commission. OAG March 30, 1933; OAG Jan. 17, 1935 (358e-1).

A member of water, light, power, and building commission must be an inhabitant and resident of the city. OAG Feb. 2, 1934.

The terms of office cannot be lengthened or shortened by a municipal ordinance. OAG April 25, 1935 (785e-1).

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It is a ground for the removal of a member of water, light, power, and building commission that he sells supplies to the commission or purchases supplies from other members, but the village council has no power to remove the officer. OAG Feb. 11, 1936 (707b-6).

The commission may not pay salaries to each of its members, with the exception of the secretary. OAG March 1, 1937 (469b-6).

City council has no authority to remove a member of water and light commission. OAG May 15, 1937 (358e-1).

A commissioner holds over until his successor is appointed and qualifies. OAG Dec. 8, 1938 (469b-6).

Upon due cause shown the village council may remove a member of the commission. OAG Feb. 9, 1944 (624e-7).

453.03 SECRETARY OF COMMISSION.

HISTORY. 1907 c. 412 s. 5; 1911 c. 239 s. 1; G.S. 1913 s. 1811; G.S. 1923 s. 1856; 1927 c. 357; M.S. 1927 s. 1856; 1937 c. 281 s. 1; M. Supp. s. 1856.

Member of commission may not act as secretary. OAG March 16, 1929.

Commission may appoint one of its members as secretary for one year and fix his compensation. OAG Dec. 7, 1936 (624e-7).

Secretary should keep the books of the commission as a part of his duties and is not entitled to extra compensation therefor. OAG Dec. 1, 1936 (624a-3).

Commission has no authority to raise the salary of its secretary above \$75.00 per month. OAG June 20, 1934, (624e-11).

Commission has no legal right to pay the premium on the bond of the secretary. OAG May 25, 1933.

Probably the council and not the commission should execute the contract for purchase of electrical energy. 1942 OAG 248, Sept. 5, 1941 (624C-2).

453.04 POWERS OF COMMISSIONS.

HISTORY. 1907 c. 412 s. 6; G.S. 1913 s. 1812; G.S. 1923 s. 1857; M.S. 1927 s. 1857; 1933 c. 278; M. Supp. s. 1857.

The water, light, and building commission created by Laws 1907, Chapter 412, for cities and villages containing less than 10,000 inhabitants, has exclusive control of the village or city light or water plant, with authority to employ all help necessary to properly operate the same, to audit and allow all accounts for expenses incurred in the department, and to issue in the manner therein prescribed warrants on the treasury therefor. State ex rel v McIlraith, 113 M 237, 129 NW 377.

A city accepting water from a well for six years was liable for the contract price, though the contract was let without a proper call for bids and contained terms not included in call and purported to bind the city to the abandonment of a certain mine. Chisholm Water Supply Co. v City of Chisholm, 205 M 645, 285 NW 895.

The water, light, power, and building commission of the city of East Grand Forks has no express or implied power to employ its own attorney, thereby creating a liability against the city. State ex rel v Gorman, 117 M 323, 136 NW 402.

Commission may not employ an attorney to advise them at a meeting or to collect delinquent water bills, nor can it pay for the collection of bills on a percentage basis. OAG June 19, 1935 (624c-11).

Where the village attorney is required to act in an advisory capacity to a village, this makes him attorney for the water, light, and power commission, and the commission has no authority to employ other counsel. OAG Feb. 3, 1932.

Commission is clothed with all power necessary to operate plant, including the purchase of materials and the fixing of rates to patrons, and has power to prescribe rules as to whether or not its list of customers shall be open to general inspection by taxpayers. OAG March 13, 1933.

Commission has exclusive power to contract hereunder without the signature of the mayor or the approval of the council, and this section prevails over inconsistent provisions of city charter. OAG March 24, 1933.

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Management and control of a local utility operating under the commission are lodged in the commission and not in the village council. OAG July 3, 1934 (469b-6).

Power to manage, operate and extend, add to, modify, or change the utilities plant is vested in the commission and not in the city council. OAG Dec. 1, 1936 (624a-1).

City water, light, and power commission has power to terminate an unexpired contract of its superintendent without the approval of the city council. OAG May 15, 1937 (358e-1).

Commission need not advertise for bids before purchasing a second-hand machine for \$5,000. OAG March 1, 1934.

A village organized under Laws 1885, Chapter 145, but having a commission under this act, may purchase a second-hand Diesel engine from another village without advertising for bids. OAG May 26, 1936 (624a-3).

Commission has power to contract for a new well and pumping house, but has no authority to issue bonds of the village. OAG Aug. 30, 1933.

A power commission may purchase equipment on the instalment plan if the cost thereof is to be paid from the earnings of the water plant. OAG Jan. 23, 1934.

Where village of North St. Paul desires to enter into a contract with Ramsey County for the purchase of water temporarily pending the digging of a new well, the contract is to be entered into by the water, light, power, and building commission and not the village council, and such commission may require bids or not as it shall determine. OAG Dec. 11, 1934 (469b-6).

The council of the village of Hawley having a water, light, power, and building commission, is the proper agency to contract for the purchase of electrical energy, and the approval of the commission is unnecessary. OAG Feb. 3, 1932.

The water, light, power, and building commission of Grand Rapids has not power to construct a gas plant and gas mains for the distribution and sale of gas. OAG Aug. 14, 1931.

The water, light, power, and building commission of a village may not invest surplus earnings in outstanding village warrants. OAG Sept. 19, 1935 (469b-6).

Surplus earnings may be used for other municipal purposes. OAG Feb. 14, 1936 (476b-15); OAG May 18, 1939 (624a-6).

There is no procedure for limiting the authority of the commission solely to the affairs of the water department. OAG March 1, 1937 (469b-6).

This section does not authorize the leasing of a part of a municipal building for a term of years to a theater company. OAG March 21, 1937 (469a-9).

Village council cannot adopt an ordinance interfering with the powers of the commission. OAG Feb. 5, 1934; OAG July 20, 1935 (469h-6).

Commission may contract for group life insurance on its employees. OAG Dec. 22, 1937 (469b-6).

Water, light, and power commissions in villages operating under Laws 1885, Chapter 145, should advertise for bids when constructing a filtration system at a cost of \$4,000. OAG April 24, 1939 (707a-15).

Generally the utilities commission must advertise for bids for equipment. 1942 OAG 247, Jan. 27, 1942 (624E-1).

The commission has no duties regarding sewers. OAG Feb. 9, 1944 (624e-7).

Power and light funds carried as a surplus may be transferred to the general fund and thereafter used to purchase airports. OAG Oct. 12, 1944 (234b).

453.05 RATES, HOW FIXED; WARRANTS; PUBLICATION OF PROCEEDINGS.

HISTORY. 1907 c. 412 s. 7; 1911 c. 239 s. 2; G.S. 1913 s. 1813; G.S. 1923 s. 1858; M.S. 1927 s. 1858.

Changes in water, light, and power rates need not be approved by the village council and need not be submitted to the voters of the village. OAG Feb. 8, 1932.

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City may enter into an agreement with its water and light commission fixing the rates which the city is to pay for water and light, provided such rates do not exceed the rates charged to private parties. OAG June 13, 1932.

Where a village prior to organization under this act operated its own public utilities and fixed rate by ordinance, upon the creation of a commission under this act to operate such public utilities, the right to fix and change rate passed to the commission. OAG Sept. 29, 1934 (624e-5).

Where a tax has been levied for water and light purposes, commission may fix rates and collect for water furnished to residents of village, and can refuse to furnish water to persons owing delinquent accounts. OAG March 2, 1935 (469b-6).

Commission may fix water rates different from those set under an old ordinance and without interference on the part of the village council. OAG June 19, 1935 (624c-11).

Water and light commission may furnish heat to a particular class of users, such as churches, at less than the rates charged to consumers generally so long as it does not act arbitrarily or fix rates which are unjust and unreasonable. OAG April 1, 1938 (59b-7).

City charging rates which were discriminatory between consumers of the same class may make rebate to persons paying charges for services in excess of that charged another under flat rate. OAG July 29, 1938 (624c-11).

The village council may not draw on the water and light fund to pay bills and expenses properly chargeable against the general fund and the road and bridge fund. OAG Feb. 3, 1932.

Claims in connection with obligations of village water, light, power, and building commission are to be audited and allowed by the commission and must be verified and identified. OAG Aug. 12, 1932.

If city charter permits water bills to be assessed against real estate, they become a lien thereon of which the purchaser of the lands must take notice, although not filed with the county auditor. OAG Nov. 3, 1934 (624d-5).

Village may not make water rent a lien against the real property of the user in the absence of a statute or a charter authorization. OAG Aug. 7, 1936 (477h-36).

Proceedings are published after they have been taken, and publication is not a prerequisite to the effectiveness of any order. OAG May 15, 1939 (624c-4).

A resolution fixing water and light rates and providing for the discontinuance of service to delinquent customers need not be published in a newspaper before going into effect. OAG May 15, 1939 (624c-4).

453.06 PROVISIONS ACCEPTED BY RESOLUTION.

HISTORY. 1907 c. 412 s. 8; G.S. 1913 s. 1814; G.S. 1923 s. 1859; M.S. 1927 s. 1859.

A village council of a village operating under Laws 1885, Chapter 145, need not publish the resolution establishing the commission. OAG March 1, 1937 (469b-6).

453.07 APPLICATION.

HISTORY. 1907 c. 412 s. 9; G.S. 1913 s. 1815; G.S. 1923 s. 1860; M.S. 1927 s. 1860; 1939 c. 230; M. Supp. s. 1860.

453.08 CITIES OR VILLAGES MAY RESCIND ACTION.

HISTORY. 1931 c. 190 s. 1; M. Supp. s. 1860-½.

Council has no power to abolish the commission without submitting the question to a vote of the electors. OAG June 20, 1934 (624e-11).

A water and light commission adopted in accordance with the provisions of section 453.01, et seq., can only be abolished as provided in this act, and it is immaterial that the village has been incorporated as a city of the fourth class. OAG Oct. 4, 1934 (624e-11).

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453.09 PETITION.

HISTORY. 1931 c. 190 s. 2; M. Supp. s. 1860-½a.

453.10 TWO-THIRDS VOTE REQUIRED TO RESCIND.

HISTORY. 1931 c. 190 s. 3; M. Supp. s. 1860-½b.

453.11 POWERS OF COMMISSION ENLARGED IN CERTAIN CASES.

HISTORY. 1933 c. 111 s. 1; M. Supp. s. 1860-½c.

Where the amount in the reserve fund, plus early monthly accretions will take care of an immediate replacement of part of the plant, the contract is legal. Not so, if a tax levy would be required. 1942 OAG 251, Jan. 29, 1942 (624C-5).

453.12 COMMISSION TO COLLECT FUNDS.

HISTORY. 1933 c. 111 s. 2; M. Supp. s. 1860-½d; 1943 c. 518 s. 1.

453.13 TO CREATE RESERVE FUND.

HISTORY. 1933 c. 111 s. 3; M. Supp. s. 1860-½e.

Commission can invest its reserve fund in bonds or warrants of the village, but should always maintain a sufficient reserve or surplus out of which to take care of any maturing bond issues or interest and to meet the ordinary operating expenses of utilities. OAG Aug. 26, 1935 (476b-15).

453.14 NO LIMITATION OR EXTENSION OF POWERS OF TAXATION.

HISTORY. 1933 c. 111 s. 4; M. Supp. s. 1860-½f.

453.15 BOARD OF WATER COMMISSIONERS.

HISTORY. 1911 c. 21 ss. 1, 18; M.S. 1927 ss. 1703-8, 1703-25.

453.16 GENERAL POWERS.

HISTORY. 1911 c. 21 s. 2; M.S. 1927 s. 1703-9.

453.17 MEMBERS OF BOARD.

HISTORY. 1911 c. 21 s. 3; M.S. 1927 s. 1703-10.

453.18 PRESIDENT AND VICE-PRESIDENT.

HISTORY. 1911 c. 21 s. 4; M.S. 1703-11.

453.19 SECRETARY.

HISTORY. 1911 c. 21 s. 5; M.S. 1927 s. 1703-12.

453.20 TREASURER; WATER-WORKS FUND; REPORTS.

HISTORY. 1911 c. 21 s. 6; M.S. 1927 s. 1703-13.

453.21 POWERS OF BOARD ENUMERATED.

HISTORY. 1911 c. 21 s. 7; M.S. 1927 s. 1703-14.

453.22 DISTRIBUTION OF WATER; WATER RATES; LIEN OF RATES; WASTAGE.

HISTORY. 1911 c. 21 s. 8; M.S. 1927 s. 1703-15.

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453.23 USE OF GROUND UNDER ROADS, STREETS, AND RAILROADS.

HISTORY. 1911 c. 21 s. 9; M.S. 1927 s. 1703-16.

453.24 ASSESSMENT OF WATER FRONTAGE TAX; EXEMPTIONS FROM.

HISTORY. 1911 c. 21 s. 10; M.S. 1927 s. 1703-17.

453.25 ASSESSMENT ROLLS OF WATER FRONTAGE TAX.

HISTORY. 1911 c. 21 s. 11; M.S. 1927 s. 1703-18.

453.26 INSTALMENTS OF WATER FRONTAGE TAX, NOTICE WHEN DUE.

HISTORY. 1911 c. 21 s. 12; M.S. 1927 s. 1703-19.

453.27 DELINQUENT WATER FRONTAGE TAXES; PENALTIES.

HISTORY. 1911 c. 21 s. 13; M.S. 1927 s. 1703-20.

453.28 DELINQUENT WATER FRONTAGE TAXES; COLLECTION, PAYMENT, CANCELATION OR CHANGE OF ASSESSMENTS.

HISTORY. 1911 c. 21 s. 14; M.S. 1927 s. 1703-21.

453.29 CANCELATION OF ASSESSMENTS BY COURT; REASSESSMENTS.

HISTORY. 1911 c. 21 s. 15; M.S. 1927 s. 1703-22.

453.30 EXTENSION OF WATER-WORKS SYSTEMS; CERTIFICATES OF INDEBTEDNESS.

HISTORY. 1911 c. 21 s. 16; M.S. 1927 s. 1703-23.

453.31 CERTIFICATES OF INDEBTEDNESS NOT PART OF CITY INDEBTEDNESS.

HISTORY. 1911 c. 21 s. 17; M.S. 1927 s. 1703-24.