

PUBLIC DOMAIN

CHAPTER 117

EMINENT DOMAIN

NOTE: Prior to the enactment of R.L. 1905, c. 41, each act authorizing condemnation of land set forth its own procedure. Chapter 117 originated with the 1905 revision. The original chapter was a general statute of procedure and did not grant any right of eminent domain in any specific instance. Since 1905 certain substantive laws have been added to the chapter.

117.01 RIGHT OF EMINENT DOMAIN.

An abutting owner's right of access to a public highway is an interest in land and incident to the ownership thereof, subject to condemnation under the law of eminent domain, which may be taken thereunder for public use by the state in its sovereign capacity, upon the payment of proper compensation to the owner. *Burnquist v Cook*, 220 M 86, 19 NW(2d) 394.

A highway condemnation proceeding is in rem. No question of jurisdiction is presented if, without formal intervention under the statute, interested taxpayers are permitted to apply for and procure injunctive relief appropriate to the proceeding. *State ex rel v Werder*, 200 M 148, 273 NW 714.

The market value of property taken in condemnation is not measured by the benefits to, or needs of, the condemnor. The question is: What has the owner lost? not, What has the taker gained? The just compensation to which the owner of property taken for public purpose is constitutionally entitled is the market value thereof at the time of the taking in money. The sum so to be paid is to be arrived at upon just consideration of all the uses for which it is suitable; and the highest and most profitable use for which the property is adaptable and needed, or likely to be needed, in the reasonably near future, is to be considered to the extent that the prospects of demand for such use affect the market value thereof while the property is privately held. That value does not include, nor is the owner entitled to compensation for, any element resulting subsequently to or because of the taking. *Minneapolis-St. Paul District v Fitzpatrick*, 201 M 442, 277 NW 394.

The defendant sanitary district in conducting a condemnation proceeding does so as an arm of the state in the discharge of a sovereign legislative function and is not liable in tort for the alleged malicious prosecution of such proceeding. *Barnel v Minneapolis-St. Paul District*, 201 M 622, 277 NW 208.

The mere existence of the right of the state, if it so desires, to take possession of appellants' property upon filing the petition for condemnation, when such right is not exercised, does not effect a vesting of title in the state nor does it vest a right in the property owner to the award which may subsequently be made. *State ex rel v Appleton*, 208 M 436, 294 NW 418.

The state cannot avoid its duty to compensate for lands taken, on the ground the funds provided for the project are exhausted, since compensation is sufficiently "secured" within the meaning of Minn. Const. Art. 1, s. 13, if the amount when determined is made a charge upon the public treasury of the state or some subdivision thereof. Courts will assume the legislature will respect constitutional mandates. Flooding of land which results in serious interruption to its common and necessary use is a "taking" of the property. *State ex rel v Bentley*, 216 M 146, 12 NW(2d) 347.

The owner of land abutting on a road is entitled under section 163.13 to compensation for inconvenience of access between different parts of his land caused

MINNESOTA STATUTES 1947 ANNOTATIONS

117.01 EMINENT DOMAIN

320

by vacating the road as "damages sustained by reason of vacating any road." *Underwood v Town of Empire*, 217 M 385, 14 NW(2d) 459.

Riparian rights are valuable property rights, of which the owner may not be deprived without just compensation in the manner provided by law. A riparian owner as such has an interest and property right in the maintenance of the waters in their natural condition which is special and distinct from that of the public in general, a right which may be protected by legal process. *Petraborg v Zontelli*, 217 M 536, 15 NW(2d) 174.

An order granting the motion of an omitted property owner, or an order appointing commissioners, in eminent domain proceedings by the state is not appealable. *Antl v State*, 220 M 129, 19 NW(2d) 78.

Title to property condemned passes on payment of the award, and relates back to date of filing of the award by the commissioners. *Drake v City of St. Paul*, 65 F(2d) 119.

In determining damages to which owners of land were entitled for flowage easements taken by government on Minnesota lands bordering Lake of the Woods, and Warroad and Rainy Rivers under statute carrying into effect treaty with Canada regulating levels of Lake of the Woods, it is for the jury to decide whether landowners were deprived of all value which inhered in lands on which such easements were imposed. *Karlson v United States*, 82 F(2d) 330.

Where the United States held Indian allotted lands in trust for allottees, proceeding to condemn right of way for highway across the allotted lands could not be maintained by a state without the consent of the United States. *State v United States*, 59 SC 292 (305 US).

Proposed public use of state-owned land by the federal government as Indian reserve to conserve wild rice for certain Indians permanently is paramount to the state's public use thereof as public hunting ground and game refuge with reservation of such Indian's right to harvest wild rice thereon, so as to authorize the condemnation thereof by the federal government. *United States v Acres of Land*, 27 F. Supp. 168; *State v United States*, 125 F(2d) 636.

Where the federal government's appeal from condemnation awards was dismissed because the government did not file separate notice of appeal as required by Minnesota Law, the government was not entitled to amend notice of appeal after expiration of statutory time. The notice is "jurisdictional" and filing of separate notices after expiration of time would not be an "amendment," but would extend time for appeal beyond statutory time. *United States v Federal Land Bank*, 127 F(2d) 505.

Right of way for new street or easement is acquired by a village under eminent domain in the manner prescribed by statute. 1942 OAG 183, Aug. 7, 1942 (396G); OAG May 7, 1945 (396G).

After the city council has agreed upon a proposed airport site, and has obtained the consent of the commissioner of aeronautics by following the procedure prescribed by statute, proceedings for condemnation are in order. Possession may not be taken when condemnation proceedings are instituted, but such possession may be taken at any time after the filing of the report of the commissioners. 1944 OAG 1, July 30, 1943 (234-B).

But see, L. 1945, c. 303, ss. 6, 11.

In acquisition of land for an airport a city should follow the procedure outlined by its charter, and if a survey is necessary, the engineer may enter upon the property to make the survey of the land proposed to be taken, and thereafter proceed to obtain title in the manner prescribed by the charter. The fact that the land to be acquired lies outside the city limits does not alter the situation. 1944 OAG 12, April 14, 1943 (59-A-14); 1944 OAG 4, Oct. 8, 1943 (234-B).

But see, L. 1945, c. 303, s. 11, subd. 2.

Commissioner has a veto power over other established statutory agencies in the matter of water levels and control of the flow of water. 1944 OAG 60, July 28, 1944 (983-D).

Except with the consent of the franchise holder, the city of Northfield may only purchase the gas plant at the expiration of the franchise. Before the city may exercise the power of eminent domain the resolution of authority must be adopted by two-thirds of the city council; and before a bond issue there must be an authorization by four-sevenths of the legal voters registered and voting at a special election called for that purpose. 1944 OAG 241, May 24, 1944 (624-c-10).

Condemnation of leased premises. 1 MLR 281.

Recovery in tort for wrongful institution of condemnation proceedings. 3 MLR 284.

Does award in condemnation proceedings go to owner of determinate fee or to grantor's heirs? 9 MLR 293.

Compensation to owner of land taken for damages to remainder from use to which lands of others applied. 9 MLR 386.

Remedy where land is taken for public purpose without just compensation. 9 MLR 480.

City planning; methods of securing public property. 9 MLR 520, 593.

Set-off of benefits; not permitted where remaining land is assessed for improvement. 11 MLR 565.

Eminent domain as relating to additional servitudes on the highway of telegraph, telephone and electric power lines. 14 MLR 183.

Measure of compensation in eminent domain. 17 MLR 461.

Ascertainment of interest on eminent domain compensation award. 18 MLR 878.

Interpretation of "public use," and limitation on the exercise of the power of eminent domain by the federal government. 19 MLR 705.

Substitution of proceeds for land condemned through eminent domain. 20 MLR 315.

Right of compensation for taking an equitable servitude. 24 MLR 425.

Power of the United States to condemn land devoted by a state to a public use. 24 MLR 870.

Constitutional provision against taking or damaging property for public use without compensation. 26 MLR 868.

Review of administrative proceedings. 29 MLR 183.

Procedure for securing compensation under right of eminent domain. 29 MLR 214.

117.02 DEFINITIONS.

As McCarthy's house was located on Kearney's land under a revocable permit, with leave to remove the house if the license was revoked, there is no basis for his claim of damages he having removed the house when the property was taken by the state for trunk highway purposes. *State v Riley*, 208 M 6, 293 NW 95; 213 M 448, 7 NW(2d) 770.

An abutting property owner's right of access to a public highway is an interest in land and an incident to the ownership thereof, subject to condemnation under the law of eminent domain, which may be taken thereunder for public use by the state in its sovereign capacity, upon the payment of proper compensation to the owner. The commissioner had the right to acquire appellant's right of access to trunk highway No. 36 for the purpose of making it a "free-way" highway. *Petition of Burnquist*, 220 M 48, 19 NW(2d) 395.

The right of eminent domain extends to every kind of property, including as in the instant case, access to or egress from a public road. Any right or interest in property may be modified upon good cause shown, and by exercise of the statutory procedure. *Petition of Burnquist*, 220 M 129, 19 NW(2d) 394.

Subd. 2. TAKING. Defendant county in 1940 collected and gathered surface water by the reconstruction of a county road with its adjoining ditch and cast it upon the premises of the plaintiffs in increased and injurious quantities, and the trial court was right in awarding damages, and enjoining the county from directing water on plaintiffs' premises. *Ostlund v County of Stearns*, 221 M 329, 22 NW(2d) 173.

"Taken, destroyed or damaged." 30 MLR 171.

117.03 PROCEEDINGS, BY WHOM INSTITUTED.

The defendant sanitary district in conducting a condemnation proceeding does so as an arm of the state in the discharge of a legislative function. The proceeding is not a civil action, but a special proceeding, only quasi judicial in nature. It is not a criminal prosecution. The district is not liable in tort. *Barmel v Minneapolis-St. Paul District*, 201 M 625, 277 NW 208.

A person whose lands are actually taken, although not described in the condemnation petition, has such an interest in the proceedings that he will either gain or lose by the direct legal effect of the judgment therein so as to permit him under section 544.13, to intervene in the proceedings. *State ex rel v Bentley*, 216 M 146, 12 NW(2d) 347.

When the acquisition is by the state, the "proceeding shall be taken in the name of the state," by the attorney general, upon the request of the officer, board, or other body charged by law with the execution of such purpose. *State ex rel v Anderson*, 220 M 139, 19 NW(2d) 70; *Petition of Burnquist*, 220 M 129, 19 NW(2d) 77.

To establish a new road the board must proceed in accordance with the provisions of section 162.21; but when the board desires to straighten or widen an existing road they may proceed under chapter 117. OAG Jan. 29, 1947 (817n).

117.04 ENTRY FOR SURVEYS.

The approval of the commissioner is required for condemnation of property for an airport. While possession may not be taken when condemnation proceedings are instituted, such possession may be taken at any time after the filing of the report of commissioners. But see, L. 1945, c. 303, sections 6 and 11. 1944 OAG 1, July 30, 1943 (234-B).

The condemner of property for an airport has the right of survey prior to commencement of condemnation proceedings. (See, L. 1945, c. 303, section 11, subd. 2). 1944 OAG 12, April 14, 1943 (59-A-14).

117.05 PETITION AND NOTICE.

One who has been duly served with notice of hearing in a proceeding to take land for a public use by a city under the right of eminent domain may not have the proceeding vacated on the ground that certain nonresident owners, or unascertained owners, of part of land sought to be taken had not been served with valid published notice. *Sackette v City of Duluth*, 201 M 121, 275 NW 617.

Where in condemnation proceedings the state took a single appeal from awards made to two separately owned tracts, the appeal was properly dismissed for duplicity. The right to appeal is statutory and there is no statute authorizing a joint appeal from separate awards. *State ex rel v May*, 204 M 564, 285 NW 834.

An order granting the motion of an omitted property owner to intervene in eminent domain proceedings by the state, and appointing commissioners therein, is not appealable. *Antl v State*, 220 M 129, 19 NW(2d) 77.

Where the United States held Indian attached lands in trust for allottees, proceeding to condemn right of way by the state for highway purposes across the allotted lands could not be maintained by a state without the consent of the United States. *State v United States*, 59 SC 292 (305 US).

Proposed public use of state owned land by the federal government as Indian reserve to permanently conserve wild rice for certain Indians is paramount to the

use of the property by the state, and such land may be condemned by the federal government. *United States v Acres of Land*, 27 F. Supp. 168; *State v United States*, 125 F(2d) 636.

In condemnation proceedings in federal court the modes, forms, practice and procedure of the state courts must be followed. *United States v Federal Land Bank*, 127 F(2d) 505.

117.07 COURT TO APPOINT COMMISSIONERS OF APPRAISAL.

Where lands are damaged or taken in construction of a public project and are not included in a condemnation proceeding, aggrieved owners of such omitted lands may compel condemnation of them by an action in mandamus against the officer empowered to acquire by condemnation the land required. In such case the state has the right to be heard. The state and the parties may appeal, and all are bound by the final order. *State ex rel v Anderson*, 220 M 139, 19 NW(2d) 70; *State ex rel v Antl*, 220 M 129, 19 NW(2d) 77.

A school district may convey a strip of its school property to a village for street purposes. The transfer must be authorized by a vote of the district voters, and must be for a fair consideration. The property must not be needed for school purposes. The village, under section 412.19 may exercise the power of eminent domain under sections 117.07, 117.09. The land cannot be donated by the district. OAG June 4, 1947 (622-a-8).

Power of city to lease to private persons property acquired and owned by the city in fee. 6 MLR 523.

Privileges in gross to do acts on the land of another. 13 MLR 593.

117.08 APPRAISERS, POWERS AND DUTIES.

The measure of compensation in eminent domain. 17 MLR 461.

Ascertainment of interest on compensation awards. 18 MLR 878.

Increase in value because of an actual or prospective taking. 27 MLR 534.

117.10 PAYMENT; TENDER; DEPOSIT IN COURT.

Under L. 1941, c. 43, s. 1, (section 282.24), providing that a landowner at the time of the forfeiture of his property for delinquent taxes is given the right of repurchase if made prior to a given date "unless prior to the time repurchase is made such parcel shall have been sold by the state as provided by law," a "taking" under condemnation is not a "sale" of the property within the meaning of the repurchase act. *State v Flach*, 213 M 355, 6 NW(2d) 806.

Even though a lease conveys no actual interest in the land itself and as such is not real estate, yet, when it creates a right in the lessee for a definite term, it is property for which, in condemnation, compensation must be made. *Seabloom v Krier*, 219 M 362, 18 NW(2d) 88.

The city of Eveleth, in acquiring an airport, cannot by condemnation proceedings acquire title to the minerals which may exist under the land it proposes to acquire. 1944 OAG 9, Feb. 2, 1944 (817-F).

Right to award as between owner of determinable fee and grantor's heirs. 9 MLR 293.

117.13 APPEAL.

The appeal of the federal government was properly dismissed as it was based on one notice and one appeal from separate awards. The Minnesota rule, which must be followed, requires separate appeals from awards to owners of separate parcels. *United States v Federal Land Bank*, 127 F(2d) 505; *State ex rel v May*, 204 M 564, 285 NW 834.

117.14 TRIAL, COSTS.

Where the difference between the award and the value of the property taken was so great as to amount to fraud upon the state, the award in excess of the property value is set aside and the overage returned to the state. *State v Riley*, 213 M 448, 7 NW(2d) 770.

The fact that certain other landowners have not been served is not ground for dismissal as to those served. *Sackette v City of Duluth*, 201 M 121, 275 NW 617.

Admissibility of sales of other land to prove the value of land sought to be condemned. 14 MLR 689.

117.15 JUDGMENT; POSSESSION.

An award of damages in condemnation may be made in gross and apportioned later between the parties in interest according to their interests. All such parties are bound and concluded by the award as fixed and determined in the condemnation proceedings. *Seabloom v Krier*, 219 M 362, 18 NW(2d) 88.

An order granting the federal government possession of property in advance or during pendency of condemnation proceedings is discretionary. *Commercial Station v United States*, 48 F(2d) 183.

While possession may not be taken when proceedings to condemn land for an airport are instituted, such possession may be taken at any time after the filing of the report of the commissioners. 1944 OAG 1, July 30, 1943 (234-B).

But see, L. 1945, c. 303, ss. 6, 11.

117.16 INTEREST; AWARD, WHEN PAYABLE; DISMISSAL.

Award on abandonment of proceedings. *McRostie v Owatonna*, 152 M 67, 188 NW 52; *Benson v Lesslie*, 195 M 408, 263 NW 295; *Minneapolis-St. Paul District v Fitzpatrick*; 197 M 275, 266 NW 849; *Barmel v Minneapolis-St. Paul District*, 201 M 622, 277 NW 209.

Rights accruing to property owner upon voluntary abandonment of proceedings. 3 MLR 263.

Measure of compensation. 17 MLR 461.

Ascertainment of interest. 18 MLR 878.

117.18 PROPERTY TAKEN BY STATE IS ESTATE WITHOUT RIGHT OF REVERSION.

A warranty deed to a municipality from the owner of lands condemned in eminent domain proceedings vests fee simple title in the municipality in trust for the public. *Kendrick v City of St. Paul*, 213 M 283, 6 NW(2d) 449.

117.20 PROCEEDINGS BY STATE OR ITS AGENCIES.

Amended by L. 1947 c. 312 s. 1.

Appeal from award. *State ex rel v May*, 204 M 564, 285 NW 834; *Antl v State*, 220 M 129, 19 NW(2d) 77; *State ex rel v Anderson*, 220 M 139, 19 NW(2d) 70; *United States v Federal Land Bank*, 127 F(2d) 505.

Requisition and payment. *Petition of Burnquist*; 212 M 452, 4 NW(2d) 361; *State ex rel v Bentley*, 216 M 146, 12 NW(2d) 347; *State ex rel v Anderson*, 220 M 139, 19 NW(2d) 70.

An order appointing commissioners in eminent domain proceedings by the state is not a final one and is not appealable. *State ex rel v Fuchs*, 212 M 453, 4 NW(2d) 361.

Right of intervention. *State ex rel v Bentley*, 216 M 146, 12 NW(2d) 347; *Antl v State*, 220 M 129, 19 NW(2d) 77; *State ex rel v Anderson*, 220 M 139, 19 NW(2d) 70.

MINNESOTA STATUTES 1947 ANNOTATIONS

325

EMINENT DOMAIN 117.47

If in acquiring a site or an addition thereto the board deems the price asked excessive, the board may proceed by condemnation. OAG June 27, 1947 (622-B).

117.46 TACONITE MINING COMPANY GRANTED POWER OF EMINENT DOMAIN.

HISTORY. 1945 c. 275 s. 1.

117.47 PERMITS AND LICENSES.

HISTORY. 1945 c. 275 s. 2.