CHAPTER 429

PUBLIC IMPROVEMENTS IN VILLAGES, BOROUGHS, AND CITIES OF THE FOURTH CLASS

429.01 DEFINITIONS.

L. 1919, c. 65 (ss. 434.01, 434.14 to 434.27) and L. 1925, c. 382 (ss. 429.01 to 429.18) grant powers and are not construed as imposing conditions or limitations on the municipalities therein mentioned to make public improvements. These laws are cumulative in their application. They are not repugnant but are reconcilable. Neither of these laws creates any repeal by implication. Borgerding v Village of Freeport, 166 M 202, 207 NW 309.

Where sections 278.01 and 429.16 affords a taxpayer an adequate remedy at law to contest assessment proceeding or the collection of the assessments the taxpayer is not entitled to maintain a suit in equity to enjoin the collection of the assessment. Payment by a taxpayer of a portion of a tax or assessment "under protest" but not as a result of duress or coercion constitutes a waiver by the taxpayer of any objections he might have to the assessment proceedings on jurisdictional grounds. Rosso v Village of Brooklyn Center, 214 M 364, 8 NW(2d) 219.

If the council wishes to pave streets and is willing to meet the cost out of general revenue funds, it may act on its own motion without any petition. But if it wishes to assess the cost against abutting owners, it may only proceed after a petition. 1942 OAG 178, Sept. 30, 1941 (387-B-1); 1942 OAG 182, May 23, 1942 (396-G-10).

Sections 429.01 to 429.18, 434.01, 434.02 to 434.13, 434.14 to 434.27, and 434.28 to 434.36, each constitute a whole and complete law and neither of such acts are repugnant to each other, nor are such acts or any of them to be construed as repealing each other. OAG May 13, 1946 (396-G-7).

Where the petition for an improvement is signed by all the owners of property abutting on the street affected, the local improvement may be done by day labor; and the petitioners may waive notice. OAG May 6, 1947 (396-C-6).

429.02 MAKING OF IMPROVEMENTS AND ASSESSMENT OF COSTS.

If the plan proposed to be adopted in assessing the cost of the pavement is wrong, the laws give a remedy in the assessment proceeding. The condition of the city treasury is not a material question; and performance of a paving contract will not be enjoined for either of the reasons above stated. Hamre v City of Thief River Falls, 150 M 40, 184 NW 225.

429.03 PETITION FOR IMPROVEMENT.

In a proceeding for the paving of streets in a city of the fourth class, it will be presumed, in the absence of proof to the contrary, that the city council did its duty and satisfied itself of the qualifications of the petitioners. The burden of sustaining the issues involved for paving is upon the party alleging the facts constituting the issue. Appeal of Meyer, 158 M 433, 197 NW 970; 199 NW 746.

Under the statute authorizing the city council to order an improvement, as in the instant case, the property owner is not to be held to have waived his right to the jurisdictional notice because, with knowledge that the improvement was being made he did not seek injunctive relief, but relied for redress upon the provisions of the statute. Appeal of Meyers, 158 M 433, 197 NW 970, 199 NW 746.

A petition is ineffective unless it names the street where the improvement is to be made. It should designate the starting point and route. OAG Aug. 3, 1945 (624-D-11).

A private citizen cannot compel the village council to improve any particular street. OAG July 10, 1946 (396-G-7).

Village may accept a bid for the construction of a sewer even though it be in excess of the engineer's estimate. OAG July 17, 1947 (707-a-15).

429.04 PROCEDURE BY COUNCIL ON PETITION; NOTICES.

In a petition by property owners for construction or extension of sanitary or storm sewers the village council must hold hearings and shall use discretion to determine whether or not the petition should be granted. OAG April 6, 1946 (18-D).

429.05 HEARINGS.

Under the provisions of sections 429.01 et seq. and 431.01 et seq. a city without a special election may finance the extension of water mains, sewers and street improvements. OAG June 8, 1946 (624-D-11).

429.06 ORDERS AND CONTRACTS FOR IMPROVEMENTS.

The charter of the city of Willmar permits the city council to contract for the building and repair of such sidewalks as may be ordered by the council during the calendar year; but curbing is not so incidental to or connected with the building or repair of sidewalks that a valid contract may be entered into for the building of such curbing as may be ordered by the city council during the calendar year. Nelson v City of Willmar, 201 M 305, 276 NW 234.

Where the contract for the building of sewer provided that questions raised as to compliance with the contract should be decided by engineers, the refusal of the engineers to classify certain material encountered as quick sand was conclusive. Kennedy v City of White Bear, 39 F(2d) 608.

429.08 PROPORTIONATE SHARE OF COSTS OF IMPROVEMENTS PAID BY MUNICIPALITIES.

Where a sanitary sewer is constructed no assessment may be laid against the state highway department; and as to whether an assessment may be laid against a county school district, or an agricultural society, depends upon if they are factually benefited, there being no presumption of benefit. OAG June 1, 1945 (408-g).

429.09 COST OF CERTAIN IMPROVEMENTS PAID BY MUNICIPALITIES.

The city may pay a reasonable portion of the cost of installation of the sewer system applicable to intersecting streets, and between street intersections, but the rest of the cost should be met by special assessment against the benefited property. 1942 OAG 178, Sept. 30, 1941 (387-B-1).

That part of the cost of constructing an interceptor sewer charged to an area by the street intersections or by the street or alley intersections, must be paid by the municipality. OAG Aug. 26, 1946 (387-G-5).

429.10 ASSESSMENTS.

Where a water main is laid on a village boundary, the council in its discretion may assess the entire cost against the property in the village abutting on the street, or could assess a less part, and the balance would be payable by the village as a whole. 1944 OAG 215, June 10, 1943 (624-D-10).

Unless inconsistent with charter provisions a storm sewer is an improvement, the cost of which may be assessed against property along which the sewer is laid. OAG March 14, 1946 (387-B-10)..

After the water main has been installed and an assessment made, the transaction is complete and persons not a party to the original proceeding may not be assessed, but the village council may provide terms upon which those not an original party to the improvement may be charged for connecting with the water

main. Assessments paid by the original parties to the assessment cannot be refunded. OAG April 23, 1947 (624-D-10).

429.11 ASSESSMENTS; INSTALMENTS; COLLECTION.

See, Rosso v Village of Brooklyn Center, 214 M 364, 8 NW(2d) 219, noted under section 429.01.

Interest on deferred instalments of assessments for local improvements is to be computed from "due date." OAG Jan. 2, 1947 (387-G-1).

429.12 ASSESSMENTS, NOTICE TO COUNTY OR SCHOOL DISTRICT.

See, In re Meyer, 158 M 433, 199 NW 746, noted under section 429.03.

429.13 ERRORS IN ASSESSMENTS.

See, Hamre v City of Thief River Falls, 150 M 40, 184 NW 225, noted under section 429.02.

429.15 DISPOSAL OF FUNDS.

Subject to the debt limitation provided for in section 472.23, a city in order to finance extensions of water mains and sewer, and certain street improvements, may sell bonds and other evidences of indebtedness by proposal subscriptions and without a vote of the electors as provided in section 475.14. OAG June 8, 1946 (624-D-11).

429.16 APPEALS; SALE OF CERTIFICATES.

In a proceeding to paving a village street under the power conferred by this chapter, the written objections filed by the plaintiff raised the issue whether the assessment returned against his property exceeded the amount in which it was benefited. This was a question of fact to be determined by the trial court on an appeal from the action of the village council; and the question whether or not the judgment does not apportion the assessment properly between several parcels can not be raised in the appellate court where no application was made to the trial court to make necessary finds or to modify the order of judgment. Armour v Village of Litchfield, 152 M 382, 188 NW 1006.

Where assessments were levied against property owners for the installation of storm drain tile on public highways, and the right to appeal directly to the district court and attack assessments or proceedings in connection with the assessment, or to contest the tax under other applicable statutes, they had "adequate remedy at law," and were not entitled to equitable relief. Rosso v Village of Brooklyn Center, 214 M 364, 8 NW(2d) 219.

429.21 PETITION FOR SIDEWALK OR SEWER.

The village council of Ellendale may proceed to construct sidewalks under the provisions of sections 429.21 to 429.23, and as outlined in State v Burnes, 124 M 471, 145 NW 377. OAG June 7, 1946 (480-G).

If a street easement has been acquired by a village, the street may be opened and a sewer laid, the expense being paid out of the general fund. "Opening" or "establishing" a street distinguished. OAG June 19, 1946 (396-G-7).

A village may rebuild a sidewalk and assess the cost against abutting lots, without the filing of a petition. OAG July 11, 1947 (490-G.)

429.25 TAX LEVY; PAYMENTS BY PROPERTY OWNER.

Where proceedings are instituted to enforce the collection of a special assessment for sewer construction under the provisions of L. 1901, c. 167 (s. 429.21 et seq.) the property owner has an ample remedy at law for an illegal assessment,

under G.S. 1894, s. 1584 (s. 279.15), and cannot maintain an action in equity to restrain and enjoin the village authorities from transmitting to the auditor of the county, the statement provided for by L. 1901, c. 167, s. 5. Fajder v Village of Aitkin, 87 M 455, 92 NW 332, 934; Kerr v City of Waseca, 88 M 191, 92 NW 932.

429.26 REPEALED BY L. 1903, c. 215.

NOTE: Applicability of 1901 sewer and sidewalk law to home rule charter cities and to cities and villages operating under special laws.

L. 1901, c. 167, authorizes certain cities and villages to construct sidewalks and sewers and to finance the construction from special assessments which may be spread over a three-year period. As this law was originally passed, it applied to "any village incorporated under the general laws of this state . . . or any city having a population of 10,000 inhabitants or less incorporated under the general laws of this state." The last section of the act carried the following proviso: "Provided, however, that this act shall not apply to any city or village of this state having a population of less than ten thousand (10,000) operating under a special law or special charter." In 1903 a law was passed (L. 1903, c. 215) which repealed this proviso.

Prior to 1903 the 1901 law did not apply to cities operating under a home rule charter since such cities were not incorporated under the general laws. This is true by the terms of the proviso, too, which make it clear that the law was not intended to affect cities and villages operating under a special law or under home rule charter.

By virtue of the amendment made by the 1903 legislature, it is probable that cities and villages operating under special laws and home rule charter cities, if below 10,000 in population, may now take advantage of the 1901 sewer and sidewalk law. That this was intended is evident from the title of the 1903 law repealing the proviso. The title reads: "An act to repeal the first proviso of Section 6 of Chapter 167 of the Laws of 1901 and also to authorize any and all municipal corporations of less than 10,000 inhabitants operating under a special law or special charter to avail itself of the provisions of Chapter 167, Laws of 1901." The 1903 law did not by its terms make any changes in the phraseology of the first section of the 1901 law which restricted the act to cities and villages operating under general laws but the intent of the act is made manifest in the title.

Unless an amendment is read into the first section of the act to bring about this change, the 1903 law must be construed as having no effect whatever. It involved, under that interpretation, simply a useless act on the part of the legislature. It is obvious that the legislature intended to make some change in the law when it passed the 1903 act. It seems quite clear that cities operating under special laws or special charter may now take advantage of L. 1901, c. 167. The term "special charter" obviously refers to home rule charters since otherwise the term would be synonymous with "special laws" and there would be no point in using both phrases.

The applicability of the 1901 act to cities and villages operating under special laws or special charters has never been determined by our courts and consequently any council of such city or village which chooses to use the law should recognize that there is some doubt about their power to take advantage of it. If a home rule charter city has adequate and satisfactory special assessment provisions in its charter, it may be preferable to avoid all difficulty by following the charter provisions.