

**PUBLIC WORKS**

**CHAPTER 440**

**WORK OR WORKS ON OR IN STREETS**

**440.01 ROAD LABOR.**

While sections 440.01 to 440.07 have not been repealed nor specifically superseded, they are practically obsolete because of the provisions of section 441.253 and other alternative provisions.

Exemption of property from taxation in the United States. 18 MLR 411.

**440.08 STREETS AND HIGHWAYS; ACQUISITION OF PROPERTY AND EASEMENTS FOR.**

Condemnation proceedings are in rem. They are largely administrative. The fixing of the amount of damages is a step in such proceedings and at most only quasi judicial. The delegation of power to fix such damages, subject to appeal, is not such delegation of judicial power as to violate a constitutional provision. Re Improvement of Third Street, 177 M 146, 225 NW 86..

Liability of a municipal corporation for removal of lateral support in making a street grade. 2 MLR 207.

Right of an abutting landowner to gain an easement in a public street. 9 MLR 479.

**440.09 CONDEMNATION PROCEEDINGS.**

Right of a city through its council or its board of public works or like body to acquire private property for public use, by condemnation proceedings. *Kuschke v City of St. Paul*, 45 M 225, 47 NW 786; *State ex rel v Otis*, 53 M 318, 55 NW 143; *State v District Court*, 77 M 248, 79 NW 971; *State ex rel v District Court*, 87 M 146, 91 NW 300; *State ex rel v District Court*, 128 M 432, 151 NW 144; *Improvement of Third Street*, 177 M 146, 225 NW 86.

**440.13 COUNCIL MAY VACATE STREETS IN CITIES OF THE FOURTH CLASS.**

The vacation of a street under legislative authority or under charter powers is wholly a legislative function and a question of expediency for the proper municipal authorities, and the courts will not interfere except in case of manifest abuse. *State v Board*, 100 M 150, 110 NW 1121; *Steenerson v Fontaine*, 106 M 225, 119 NW 400; *In re White*, 114 M 213, 130 NW 1028; *Thorpe v City of Ada*, 137 M 86, 162 NW 886.

**440.14 CONTRACTS FOR LIGHTING STREETS.**

The action of a city in accepting a bid must be by the council itself and may not be delegated to a committee or agency; and must be by formal resolution or ordinance. *Mpls. Gas Light v City*, 36 M 159, 30 NW 450; *Broderick v City of St. Paul*, 90 M 443, 97 NW 118.

**440.25 MAY CONDEMN PROPERTY.**

While an easement of access to a public highway is a property right, it may be extinguished by the state under eminent domain, and a city has a right to close drive-ins that the city council determines are hazardous. While the circumstances

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of each case govern, in general the abutting owners are entitled to compensation. OAG March 13, 1947 (59-a-53).

### 440.38 ACQUISITION OF PROPERTY.

Municipalities authorized to take private property for certain designated purposes can take such property for no purposes other than so designated. Whether a municipality has been given power to take property for the purpose for which it is sought to be taken, and whether such purpose is a public purpose, are questions for the courts; but if such power has been given and the purpose is a public one, the necessity and propriety of the taking is a legislative question over which the courts have no control. *State ex rel v District Court*, 133 M 221, 158 NW 240.

### 440.39 CONDEMNATION PROCEEDINGS.

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; and the construction and maintenance by a citizen of a rock garden upon a small triangular tract purchased by a city immediately adjoining one of its streets, the garden being accessible to the public at all times except at night, when the gates of an ornamental fence around the tract are locked, is a public use and does not constitute an abandonment of the tract for public purposes. *Kendrick v City of St. Paul*, 213 M 283, 6 NW(2d) 449.

While an easement of access to a public highway is a property right, it may be extinguished by the state under eminent domain, and a city has a right to close drive-ins that the city council determines are hazardous. While the circumstances of each case govern, in general the abutting owners are entitled to compensation. OAG March 13, 1947 (59-a-53).