

**115.48 ASSUMPTION OF POWER BY AGENCY.**

Subdivision 1. **Agency may assume power.** In lieu of enforcement action as provided by section 115.071, the agency, in case of failure by any municipality or its governing or managing body or officers to comply with any order of the agency for the construction, installation, maintenance, or operation of a disposal system or part thereof, may by resolution assume the powers of the legislative authority of the municipality and confer on the commissioner the powers of the administrative officers of the municipality relating to the construction, installation, maintenance, or operation of a disposal system, or part thereof, or issuing bonds and levying taxes therefor, after holding a hearing on the case as provided by Minnesota Statutes 1961, sections 115.03 and 115.05, upon notice specifying the particulars of the alleged failure to comply with the order and the powers proposed to be assumed for the purpose of remedying such failure. The resolution shall include or have attached thereto a copy of the order, shall set forth the findings of the agency as to failure of compliance therewith after the hearing thereon, and shall set forth the powers assumed and determine the action to be taken. Certified copies of the resolution and order shall be transmitted by the secretary of the agency to the commissioner and to the clerk or other recording officer of the municipality concerned. The resolution and order and certified copies thereof shall be prima facie evidence that the order is reasonable and valid, that all requirements of law relating thereto and to the hearing thereon have been complied with by the agency, that the municipality and its governing or managing body and officers have failed to comply with the order as set forth in the resolution, and that the powers so assumed are vested in the agency and the commissioner as therein set forth. Thereupon the agency and the commissioner shall have charge of the case, and all other proceedings for enforcement of the order shall be suspended until the authority of the commissioner in the case has been terminated as hereinafter provided. At this stage of the case there is a right of judicial review, and the resolution and attached order shall be deemed a final order for the purpose of judicial review, but failure at this stage to seek judicial review does not preclude judicial relief at a subsequent stage where, and in a manner, otherwise appropriate.

Subd. 2. **Powers vest in agency.** Upon the assumption of powers as provided in subdivision 1, all the powers of the municipality and its governing or managing body and officers with respect to the subject matter of the order shall thereby be forthwith transferred to and vested in the agency and the commissioner, and they shall thereafter exercise the same in the name of the municipality or its governing or managing body or officers, as the case may require, until terminated as hereinafter provided. Such powers shall include, without limitation, the power to levy taxes, to certify such taxes for collection, to levy assessments on benefited property, to prescribe service or use charges, to borrow money, to issue bonds, to employ necessary assistance, to acquire necessary real or personal property, to let contracts or otherwise provide for the doing of work or the construction, installation, maintenance, or operation of facilities, and to do and perform for the municipality or its governing or managing body or officers all other acts and things required to effectuate, carry out, and accomplish the purposes of the order and which might have been done or performed by the municipality or its governing or managing body or officers. The exercise of any and all such powers by the agency and the commissioner shall have like force and effect as if the same had been exercised by the municipality or by its governing or managing body or officers. All such acts or things done or performed by the agency or the commissioner shall be prima facie lawful and valid, and it shall be presumed that all requirements of law or charter relating thereto have been complied with. Any bond pursuant to this section in the hands of a holder in good faith and for value reciting that such bond is issued for the purposes of a disposal system, or part thereof, pursuant to the order of the agency under this section shall be conclusively deemed to have been issued for such purpose and in compliance with all requirements of law relating thereto and shall be a valid and binding instrument enforceable against the municipality in accordance with its terms. The impact on a municipality of taxes or special assessments which are likely to result from compliance with an order made under section 115.43, subdivision 3, clause (1), weighed against the urgency of the need

for compliance in the light of public health and the policy and purposes of sections 115.41 to 115.53 shall be a relevant consideration in any judicial inquiry into the reasonableness of the order.

Subd. 3. **Municipal provisions apply.** Except as otherwise provided herein, all proceedings of the agency or the commissioner under subdivision 2 shall be governed by the laws or charter provisions governing like proceedings of the governing or managing body or administrative officers of the municipality, so far as applicable, and they shall have like powers and duties with respect thereto as the governing or managing body, the mayor or other presiding officer, the clerk or other recording officer, and any other officer of the municipality having authority in the matter, respectively. In any case where the governing or managing body of the municipality is required to act by motion, resolution, or ordinance, the adoption thereof by resolution or order of the agency shall have like force and effect as adoption by the governing or managing body and approval by the mayor or other presiding officer of the municipality, if required.

Subd. 4. **Reinstatement of municipal powers.** If at any time while the agency and the commissioner have charge of a case as provided in this section, the governing or managing body or the officers or the municipality concerned shall offer to exercise their powers and perform their duties with respect to the subject matter in accordance with the order of the agency, the agency may by order, of which certified copies shall be transmitted to the secretary of the agency and to the clerk or other recording officer of the municipality, reinstate such powers to the extent and subject to any conditions specified in the order, and the governing or managing body or officers of the municipality may thereupon exercise such powers accordingly. Such reinstatement may be revoked by the agency by order in like manner in case it shall determine that the affected powers have not been properly or effectively exercised by the governing or managing body or the officers of the municipality.

Subd. 5. **Agency action no longer necessary.** If, at any time while the agency and the commissioner have charge of a case hereunder, the agency shall determine that the further exercise of the powers of the municipality assumed in the case will not be feasible or will not be the most effective procedure for accomplishing the purposes of the agency's order involved, it may by order so declare. Certified copies of the order shall be transmitted by the secretary of the agency to the commissioner and the clerk or other recording officer of the municipality concerned. Thereupon the powers assumed shall be revested in the municipality, and the agency may proceed with the enforcement of its order in such manner as may be authorized by law.

**History:** 1963 c 874 s 10; 1969 c 9 s 21; 1976 c 2 s 51