

L A W S

OF THE

STATE OF NEW YORK,

PASSED AT THE

NINETY-SECOND SESSION

OF THE

LEGISLATURE,

BEGUN JANUARY FIFTH, AND ENDED MAY TENTH, 1869,  
IN THE CITY OF ALBANY.

VOL. I.



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## Chap. 402.

**AN ACT** to incorporate the Elmira Water Works Company, and to provide for supplying water to the city of Elmira.

Passed April 29, 1869 ; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

**SECTION 1.** Jervis Langdon, Edwin Eldridge, Alexander S. Diven, George M. Diven, James L. Woods, Uriah S. Lowe, Eugene Diven, and all such persons as are or may hereafter be associated with them, are constituted a body corporate, by the name of the Elmira Water Works Company.

Corporators.

Corporate name.

§ 2. The capital stock of said company shall be fifty thousand dollars, to be divided into shares of one hundred dollars each, and the said company is hereby empowered to increase its capital stock at any time not to exceed two hundred thousand dollars.

Capital stock.

Increase thereof authorized.

§ 3. Books of subscription for the capital stock of said corporation shall be opened under the direction of the directors hereinafter named, subject to such rules and regulations as they shall prescribe, and the stock shall be considered personal property, and shall be assignable and transferable on the books of the company.

Subscription to stock.

Stock to be personal property,

§ 4. The concerns of said corporation shall be managed by seven directors, who shall be stockholders, and who shall hold their offices for one year and until others are chosen in their places. The directors shall be chosen annually on the first Monday of June, at such time of day and place in the city of Elmira as the directors for the time being shall appoint. The first election shall be held on the first Monday of June, eighteen hundred and sixty-nine. Three weeks' notice of such election, and of every subsequent election, shall be given by a publication, at least once in each week, in two newspapers published in said city, if so many newspapers shall be published therein. Each stockholder shall be entitled to one vote upon each share of stock held by him or her, for at least twenty days previous to an elec-

Board of directors.

Annual election.

First election.

Notice of elections.

Manner of voting.

tion. Voting shall be by ballot, and may be in person or by proxy.

**Officers.** § 5. The directors shall annually appoint a president, secretary and treasurer, and such other officers as they shall deem necessary, who shall hold their offices until others are appointed in their places, and they make and ordain such by-laws and regulations as they may deem necessary and proper for the management of their business and for accomplishing the purposes of the corporation.

**By-laws.**

**Payment of subscriptions.** § 6. The directors may require payment of subscriptions to the stock at such times and in such proportions as they may see fit, under the penalty of forfeiting all stock and previous payments thereon, and may sue for and recover all such subscriptions. Notice of the time and place of said payments shall be published for four weeks previous to said time, at least once each week, in two newspapers published in said city.

**First directors.** § 7. The persons named in the first section shall be the first directors, and shall hold their offices until the said first Monday of June, eighteen hundred and sixty-nine, and until others are chosen in their places, and in case of vacancy in the direction by reason of the death or resignation of any director or of his ceasing to be a stockholder, it may be filled by the remaining directors, until the next annual election or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors are chosen the directors may appoint three, from time to time. The directors may remove all officers appointed by them and appoint others in their places, and fill all vacancies in the offices. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day in such manner as shall be prescribed by the directors or provided for by the by-laws.

**Inspection of election.**

**Directors may remove officers.**

**Company may hold real estate.** § 8. For the purpose of supplying the said city of Elmira with pure and wholesome water, the said com-

pany may purchase, take and hold any real estate, and by its directors, agents, servants or other persons employed, may enter upon the lands of any person or persons, which may be necessary for said purpose, and may take the water from any springs, not used for domestic purposes, streams, fountains, rivers, ponds or lakes, and divert and convey the same to the said city, and may lay and construct any pipes, conduits, aqueducts, wells, reservoirs and other works or machinery necessary or proper for said purpose, upon any lands so entered upon, purchased, taken or held; and may, as aforesaid, enter upon any lands, streets, highways, roads, lanes or public squares through which said company may deem it proper to convey the water from said springs, streams, fountains, rivers, ponds or lakes, and lay and construct any pipes, conduits or other works for that purpose, under and subject to such reasonable rules, regulations and penalties as the common council of said city may from time to time prescribe, and leaving the said lands, streets, highways, roads, lanes and public squares, in the same condition, as nearly as may be, as they were before said entry, and the said city may sue and recover from said company for any damages that may be sustained by said city by reason of failure on the part of said company so to restore said lands, streets, highways, roads, lanes and public squares. And the said company may purchase, upon such terms as may be agreed upon, any works now existing for supplying said city with water, and may pay therefor in the shares of the capital stock of said company at the par value of said shares, and the shares of capital stock issued to pay for such works shall, for all the purposes of this act, be considered as full paid shares of such stock.

§ 9. Before entering, taking or using any land for the purpose of this act, the directors of said company shall cause a survey and map to be made of the lands intended to be taken or entered upon for any of said purposes, and by which the land of such owner or occupant intended to be taken or used, shall be designated, and which map shall be signed by the surveyor or engineer making the same, and by the president of said company,

May lay  
water  
pipes.

May enter  
upon lands,  
streets,  
squares,  
&c.

To leave  
streets and  
lands in  
proper  
condition.  
City may  
recover  
damages  
for failure  
to restore  
streets, &c.

Company  
may pur-  
chase ex-  
isting wa-  
ter-works.

How to be  
paid.

Survey and  
map of  
lands to  
be taken,  
how filed.

and be filed in the office of the clerk of the county of Chemung. The company, by any two, three or four of its officers, agents or servants, may enter upon any lands for the purpose of making any examination, and of making said survey and map.

Company may acquire title in case of disagreement.

Commissioners to appraise damages.

Notice to resident land owners.

Notice to guardians, non-residents, infants, &c.

§ 10. In case the said company cannot agree with the said owners and occupants of any lands or water intended to be taken or used as aforesaid, for the purchase thereof, or with any person who may be injured or suffer damage by reason of the permanent diversion of water, intended to be taken or used as aforesaid, the directors may apply to the Supreme Court, at any term or session thereof, held in the sixth judicial district, for the appointment of three commissioners, by whom the compensation to be paid for the damages suffered or to be suffered by any person or persons, by reason of taking or diverting said lands and water, and constructing any of the works of said company, shall be ascertained and determined; and in case of the death, resignation, refusal or disability to act of any of said commissioners, the said court may appoint others in their places. The commissioners shall cause a notice, of at least twenty days, of the time and place of meeting, to be served upon such of the owners of said land and water as can be found in this State, which may be served personally, or, in their absence from their dwellings or places of business, by leaving the same thereat with some person of suitable age; and in case of any legal disability of such owner to act, by serving notice in like manner upon his guardian or person appointed to act for him, as hereinafter directed; and in case any of said owners cannot be found in this State, such notice shall be served upon them as is required in the case of procedure for the service of summons on non-residents of this State; and if any of said owners shall be married women, insane, infants or idiots, the court shall appoint some suitable person to attend in their behalf before said commissioners, and take care of their interests in the premises. The commissioners may issue subpoenas to compel the attendance of witnesses to testify before them, and they or any one of them may administer the usual oaths to such witnesses. They shall make a writ-

ten report of all their proceedings containing the testimony taken by them, and showing the sum awarded to each owner or any other person, and return the same to the said court to be filed of record. The company shall pay to each commissioner the sum of three dollars per day for every day necessarily spent by him in the performance of his duties under this act, and to each witness sworn and testifying, and if not sworn and testifying, who the commissioners shall certify were properly and necessarily subpoenaed, the sum of one dollar per day and four cents per mile travel in going and returning, if living more than three miles from the place of meeting.

Report  
of commis-  
sioners.

Compensation

Fees of  
witnesses.

§ 11. The said company, or any party to the proceedings of the commissioners, may appeal from any award or determination of the commissioners; provided that party appealing shall, within ten days after any such award or determination shall be made and published, give notice in writing, as provided in the tenth section, of the appeal to the other party or parties interested in the same, and the said court shall, upon the report of the commissioners (and upon additional testimony to be taken by them, if they deem the same to be necessary, proceed to hear the said appeals, and may confirm the proceedings of the commissioners, or may increase or diminish the amount of compensation awarded by the said commissioners; and if their proceedings in any case have been irregular, the court may set them aside, and order new proceedings and appraisement; and the said court may make such orders in reference to the proceedings of the commissioners and of the notice to be given to parties as may not be inconsistent with this act, and as the nature of the case and the interest of the parties may require.

Appeals.

Hearing  
and deter-  
mination  
thereof.

§ 12. Upon the payment or legal tender of the compensation awarded by the said commissioners or (in case of appeal) by the said court, the said company shall be entitled to enter upon, for the purposes contemplated by this act, all the lands, waters and real estate for which said compensation shall be paid or tendered, as aforesaid, and to hold, use and divert the same, and continue to hold, use and divert the same, for the said pur-

When,  
company  
to be en-  
titled to  
enter upon  
lands.

Payment  
and tender  
of awards.

Deposits  
may be  
made  
thereof  
in certain  
cases.

Company  
may hold  
lands, wa-  
ters, &c.

Rules and  
regulations  
for use of  
water.

Penalties  
for viola-  
tions there-  
of.

Regula-  
tions to be  
published.

Company  
to furnish  
water to  
city.

poses, to it and its successors forever. If any person to whom any compensation shall be awarded, or who shall be entitled to the same by virtue of said award, cannot be found, or shall refuse to receive the sum awarded to him when duly tendered, then the said payment may be made by depositing the amount of said award to the credit of said person in such bank as may be appointed by said court, and by serving notice upon him as provided in the tenth section hereof, of such deposit having been made. If the person to whom compensation is awarded, or who is entitled to receive the same as aforesaid, be under legal disability, as aforesaid, payment may be made to his guardian, or person appointed, as aforesaid, by the said court, and if said guardian, or person appointed, cannot be found, then by deposit in bank as aforesaid.

§ 13. The said company shall also take and hold, for the purposes contemplated by this act, all the lands, waters, and real estate which it shall in any way legally enter upon and take by virtue thereof, to it and its successors forever.

§ 14. The said directors of said company may establish rules and regulations for and concerning the conduct of all such persons as shall use the water from their works, so far as respects the preservation and use, and restraining the waste thereof, and may thereby impose penalties and forfeitures for any violation of said rules and regulations, so that such penalty and forfeitures shall not, in any case, exceed twenty-five dollars, which penalties may be recovered, with the costs, in the name of the company, before any justice of the peace of said city; said rules and regulations shall be published for three weeks successively, in two newspapers published in said city, and a copy of said rules and regulations, certified by the president or secretary of said company, with affidavits of the publication of the same, made by any of the publishers of said papers, or by a foreman of their offices, shall be received as evidence in all courts and places.

§ 15. The said company shall furnish water to the city of Elmira, for the purpose of extinguishing fire and for other purposes required by said city, upon suc

terms as may be agreed upon between said company and the common council of said city, and the said common council may contract with said company for such water for a period of time not to exceed five years for any one contract, and may, for that purpose, raise by tax, in the manner provided in the charter of said city, for the raising of other taxes, sufficient funds in addition to the taxes which said common council may now levy and collect; and if the said city and the said company cannot agree upon terms for such supply of water, application may be made by the common council of said city for the appointment of commissioners as provided in section ten of this act, who shall prescribe the terms upon which said water shall be furnished, subject to an appeal by either party, as provided in section eleven of this act; and such company shall furnish water upon the terms so prescribed for the period of two years, at the expiration of which time a new commission may be applied for by said common council, and thereafter, once in two years a like application may be made.

Common council may make contracts therefor.

Proceedings in case of disagreement, as to terms.

§ 16. The said company may make any agreements, contracts, grants and leases for the sale, use and distribution of water to any person or persons, associations and corporations, which agreements, contracts, grants and leases shall be valid and effectual in law, and may establish and alter from time to time, as may be deemed expedient, a uniform and reasonable tariff of water rates to be paid by the consumers of water furnished by said company.

Company may make contracts, leases, &c., for use of water.

Water rates.

§ 17. Any person who shall willfully or maliciously destroy or injure, or cause to be destroyed or injured, any of the works or property of said company, or shall without permission enter upon the reservoir grounds of said company, or who shall maliciously or willfully commit any act which shall injuriously affect, or tend thus to affect or injure the water in any of the reservoirs of said company, or flowing thereto or therefrom, shall be deemed guilty of a misdemeanor, and may be punished by fine or imprisonment, or both, in the discretion of the court, and shall also forfeit and pay to the company treble damages sustained thereby, to be recovered in any court having cognizance thereof, with costs.

Injury to water-works, how punished.



Penalty for  
fraudulent  
or willful  
injury to  
water  
meters or  
pipes.

§ 18. Every person who shall willfully or fraudulently injure or suffer to be injured any meter, pipe or fittings belonging to said company, or willfully or fraudulently prevent any meter from duly registering the quantity of water supplied through the same, or shall willfully or fraudulently alter the index of any such meter, or in any manner willfully or fraudulently hinder or interfere with its proper action or just registration, or shall fraudulently use the water of said company, or waste the same, or shall willfully or fraudulently divert or convey the water from or around such meter, shall for every such offense forfeit, and pay to said company the sum of fifty dollars, and in addition thereto, shall pay to said company the amount of damage sustained by reason of such injury, prevention, waste, consumption, diversion or hindrance, to be recovered in any court having cognizance thereof, with costs.

General  
powers.

§ 19. The corporation hereby created shall possess the powers and be subject to the provisions of title three, chapter eighteen of the first part of the Revised Statutes.

Individual  
liability  
of stock-  
holders.

§ 20. All the stockholders of the company hereby created shall be severally and individually liable to the creditors of said company to an amount equal to the amount of stock held by them, respectively, for all debts and contracts made by said company, until the whole amount of the capital stock fixed and limited by the directors of said company shall be paid in.

Compensation of  
laborers.

§ 21. The stockholders of said company shall be jointly and severally liable for all debts that may be due and owing to all their laborers and servants for services performed for said company.

Liability of  
executors,  
guardians,  
&c.

§ 22. No person holding stock in said company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of said company, but the person pledging the said stock shall be considered as holding the same, and shall be liable as a stockholder accordingly. And the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent, as the testator or intestate, or the

ward or person interested in such fund would have been if he had been living and competent to act, and held the stock in his own name. Every such executor, administrator, guardian or trustee shall represent the shares of stock owned by him as such administrator, guardian or trustee at all meetings of the company, and may vote as a stockholder; and every person pledging his stock as aforesaid may, in like manner, represent the same and vote accordingly.

§ 23. If the directors shall, at any time after the organization of said company, determine to increase the capital stock, as herein provided, the said new stock shall be divided among the stockholders in proportion to the amount held by them respectively at the time of such increase, as they shall severally elect; and in case the same shall not be so distributed, then books of subscription for the balance of said additional stock shall be opened in the manner provided in section three of this act, and the directors may require payment of the subscription to the said additional stock in the same manner as provided in section six of this act.

Proceedings on increase of capital stock.

§ 24. The said corporation may borrow such sum or sums of money as may be necessary to complete said works, and for other purposes authorized by this act, and for that purpose may issue and dispose of its bonds for any amount so borrowed; and the company is hereby authorized to mortgage any or all of its corporate property or privileges to secure the payment of such bonds; and the said directors may confer on the holder of any bond they may issue, for any money so borrowed, the right to convert the principal due thereon in stock of the said corporation at any time not exceeding five years from the date of said bond, under such regulations as the directors may see fit to adopt; and for such purpose the said corporation is authorized to increase its capital stock to the amount so borrowed whenever the persons, or any of them, to whom such money is due, shall elect to convert the same into stock; but nothing herein contained shall be construed to authorize any increase in the capital stock of said company beyond the sum of two hundred thousand dollars. And the said city of Elmira, by a two-thirds vote of its common council rati-

Company may borrow money.

May issue bonds and mortgage its property.

Bonds may be converted into water stock.

Increase of capital stock authorized.

City may, on favorable vote,

guaranty  
water  
bonds.

How to be  
secured.

City may  
purchase  
water-  
works on  
favorable  
vote.  
May issue  
bonds  
therefor.

fied by a vote of the tax payers of said city at a special election to be held in the manner prescribed in the charter of said city, is hereby empowered, upon such terms as may be agreed upon between said common council and said company, to guarantee any of the bonds of said company, not exceeding in amount the sum of seventy-five thousand dollars, which guaranty shall be secured by a mortgage which shall be a first lien upon the property of said company, and the avails of said bonds so guaranteed by said city shall be expended exclusively upon the construction or extension of the works of said company.

§ 25. The said city of Elmira may at any time purchase the property and works of said company upon such terms as may be agreed upon between said city and said company, and may for that purpose make and issue its bonds for an amount sufficient to pay for the same; but no such purchase shall be made unless ratified by a vote of the inhabitants of said city at a special election to be held in the manner prescribed in the charter of said city.

§ 26. This act shall take effect immediately.

## Chap. 403.

AN ACT to amend an act entitled "An act to amend section four of chapter two hundred and sixteen of the laws of eighteen hundred and sixty-seven," entitled "An act to enable the town of South East to raise money to purchase ground and build a town hall," passed March thirtieth, eighteen hundred and sixty-eight.

Passed April 29, 1869; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section first of an act entitled "An act to amend section four of chapter two hundred and sixteen of the laws of eighteen hundred and sixty-seven," entitled "An act to enable the town of South East to raise money to purchase ground and build a town hall,"