

L A W S
OF THE
STATE OF NEW YORK,
PASSED AT THE
ONE HUNDRED AND TWENTY-SECOND SESSION
OF THE
LEGISLATURE,

BEGUN JANUARY FOURTH, 1899, AND ENDED APRIL TWENTY-
EIGHTH, 1899, IN THE CITY OF ALBANY.

VOL. II.



ALBANY:
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1899.

of schools in the city of New York as constituted prior to the passage of this act, shall be and become the superintendent of schools of the boroughs of Manhattan and the Bronx; and the assistant superintendents of the city of New York as then constituted, shall be and become associate superintendents of the boroughs of Manhattan and the Bronx; the superintendent of public instruction of the city of Brooklyn as constituted prior to the passage of this act, shall be and become the superintendent of schools of the borough of Brooklyn; and the associate superintendents of the city of Brooklyn as then constituted, shall become associate superintendents of the borough of Brooklyn. The duties of all of these officers, on and after February first, eighteen hundred and ninety-eight, shall be entirely defined and limited by the provisions of this act. All persons transferred by this section to the service of the consolidated city who hold office for definite terms, shall be transferred for the remainder of their respective terms only.

Chap. 645.

AN ACT to establish and maintain a water department in and for the city of Hornellsville.

Accepted by the city.

Became a law May 25, 1899, with the approval of the Governor. Passed, three-fifths being present.

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

Board of
water com-
missioners

Section 1. Within sixty days after the first Tuesday in May, eighteen hundred and ninety-nine, the mayor of the city of Hornellsville shall appoint, subject to confirmation by the common council of said city, a board of water commissioners to be known as the "Hornellsville Water Board," which shall at all times consist of six members, residents of said city. No more than three of said commissioners shall, when either of them is appointed, belong to the same party, or be of the same political opinion on state and national politics. The first six commissioners shall respectively hold office until the first Tuesday in January, one thousand nine hundred and one, one thousand nine hundred and two, one thousand nine hundred and three, one thousand nine hundred and four, one thousand nine hundred and five, one thou-

Terms of
office.

sand nine hundred and six. When appointed their respective terms of office shall be designated, and so that the commissioners whose terms of office expire in an even year shall belong to the same political party. The terms of office of all other water commissioners appointed under this act, except to fill vacancies, shall be six years, and they shall be respectively appointed by the mayor within twenty days prior to the expiration of the term of any commissioner they are appointed, to succeed. In case of a vacancy for any cause the mayor shall appoint a commissioner for the unexpired term. Each commissioner shall hold office until the appointment and qualification of his successor. The office of water commissioner holding office under this act shall become vacant by his death, resignation, removal from said city, or his refusal or neglect for six months to perform the duties of his office without being excused by a vote of the board or by his becoming of unsound mind. Resignation may be made in writing to the mayor of said city. No other city office shall be held by any water commissioner while he remains in office as such water commissioner. Any water commissioner may at any time be removed from office in the manner provided by the charter of the city of Hornellsville for the removal of other appointed officers. A majority of all the commissioners in office shall constitute a quorum for the transaction of business provided a formal notice shall have been given to each commissioner a reasonable time before the meeting or a notice mailed to his address at least twenty-four hours prior to said meeting.

§ 2. Within fifteen days after the appointment of the first six commissioners, at a time designated by the mayor, they shall meet at the office of the city clerk, take and file the oath of office prescribed by the constitution of this state and organize by electing one of their number president. The city clerk of the city of Hornellsville shall, without additional compensation, at all times act as secretary of said board of water commissioners and shall keep a record of the appointment and qualification of the commissioners and of the organization of the board and shall also keep the records of said board. Said clerk shall also give notice in writing to the city chamberlain of the appointment, qualification and organization of the said board.

§ 3. The said "Hornellsville Water Board" is hereby authorized and directed, for and in the name of the city of Hornells-

Vacancies.

The Office, when deemed vacant.

Resignation.

Removal for cause.

Business quorum.

Organization of board.

Secretary of board.

General powers.

Acquisition of lands, rights, etc.

ville, to acquire, condemn, construct, maintain, control and operate a system of water works to furnish the city of Hornellsville and its inhabitants with water, and may employ engineers, surveyors, superintendents, officers, agents and such other persons as may be necessary for that purpose, and fix their compensation and terms of employment, and discharge them at will. The board may also contract for, purchase and acquire by deed or otherwise, in the name of the city of Hornellsville all lands, waters, easements, property, tenements, hereditaments, rights, privileges and franchises and any ponds, fountains, dams, mains, pipes, conduits, hydrants, machinery and all other real and personal property whatsoever, necessary for the acquisition or construction and for the maintenance, control and operation of said water works, and to contract for the execution of said work or any part thereof, and for supplying any and all necessary materials therefor. Said board may also acquire the property, rights of property and franchises owned or possessed by any existing corporation or company organized to supply the city of Hornellsville and its inhabitants with water, or having or claiming any right so to do, and control, maintain and operate the same. And the said Hornellsville Water Board, in the name of said city of Hornellsville, is hereby authorized to acquire for public use, by condemnation, free of all liens and incumbrances whatsoever, the reservoir, water rights, pipes, machinery, rights of way, franchises and all other property of the Hornellsville water company for the public use provided for in this act. The title of any and all property acquired pursuant to this act shall vest and be in the city of Hornellsville. The board, its officers, agents and employees are authorized to enter upon any lands or waters for the purpose of making such surveys, examinations and investigations as shall seem to them necessary in the faithful performance of their duties.

Title to property.

Entry upon lands.

Proceedings for acquiring property, etc.

§ 4. In case the "Hornellsville Water Board" shall be unable to acquire by purchase any property necessary for the acquisition, construction, maintenance, control and operation of the system of water works contemplated by this act, including the property, rights of property, privileges and franchises owned or possessed by the Hornellsville Water company, or by any corporation or company organized to supply said city of Hornellsville and its inhabitants with water, or having or claiming any

right so to do, it is hereby authorized to acquire the same in the manner following:

§ 5. The board may present its petition at a term of the appellate division of the supreme court held in the fourth judicial department, or at a special term of the supreme court held in the seventh judicial district, praying for the appointment of commissioners of appraisal to ascertain and determine the amount of compensation which ought justly to be made to either or any of the owners or persons interested in any or all of the property, rights, privileges and franchises, either as owners, lessees, mortgagees or otherwise, deemed necessary by the board. Such petition shall be signed and verified by a member of the board. It shall contain a description of the property sought to be acquired, and must state in effect that the property is requisite to the acquiring, constructing, improving, maintaining, controlling or operating said water works; that the board has not been able to acquire title thereto, and the reason of such inability. It must also state the names and places of residence of the owners or parties interested in the property sought to be acquired, so far as the same can by reasonable diligence be ascertained. If any such persons are infants, their ages as near as may be, must be stated; if any are idiots or persons of unsound mind, or unknown, that fact must be stated, together with such other allegations or statements of liens or incumbrances as the board may see fit to make.

Application for commissioners of appraisal.

Contents of petition

§ 6. A copy of such petition, with a notice of the time and place when and where the same will be presented to the court, must be served on all persons whose interests are to be affected, at least ten days prior to its presentation to the court. If the person upon whom such service is to be made resides in this state, and is not an infant, idiot or person of unsound mind, service of a copy of the petition and notice must be made upon him personally, or by leaving the same at his usual place of residence with some person of suitable age. If the person upon whom such service is to be made resides out of the state, or is unknown, or his residence cannot by reasonable diligence be ascertained, such service must be made by delivering to such person personally, or by leaving at his last place of residence, if known, a copy of such petition and notice, at least twenty days before presenting the same to the court; or such service may be made by publishing a notice, stating briefly the object of the application and giving

Service of copy of petition and notice.

Service by publication.

a description of the land or other property to be taken, in two daily newspapers published in the city of Hornellsville, twice a week for three successive weeks; and by depositing a copy of the petition and notice in the post office at Hornellsville, New York, properly folded and directed to such person at his post office address, if the same can be ascertained; and if not, at the post office at or nearest his last place of residence, at least twenty days before presenting such petition to the court, and paying the postage thereon. If such person is an infant and resides in this state, service shall be made as aforesaid, upon his general guardian, if he has one, and on such infant personally if over the age of fourteen years; if under that age, then upon the person who has the care of or with whom such infant resides. If the person to be served is an idiot or of unsound mind, and resides in this state, service may be made upon the committee of his person or estate; if he has no committee, then upon the person who has the care and charge of such person. In all cases not herein provided for, service of the petition, notice and other papers in the proceedings authorized by this act shall be made as the supreme court in the seventh judicial district, or a judge thereof, shall direct.

Upon
guardian,
etc.

Appoint-
ment of
special
guardian.

Duty of
guardian.

Appear-
ances.

§ 7. In case any party to be affected by the proceedings hereby authorized is an infant, idiot or person of unsound mind, and has no general guardian or committee, the court to which such petition shall be presented, shall, before taking any proceedings thereon, appoint a special guardian to attend to the interests of such person. If a general guardian or committee has been appointed for such person in this state, it shall be his duty to attend to the interest of such infant, idiot or person of unsound mind in such proceedings. The court may require such security to be given by such general or special guardian or committee as it may deem necessary to protect the rights of such infant, idiot or person of unsound mind. All notices required to be served in the progress of the proceedings, may be served on such guardian or committee. Any person may appear in such proceedings by attorney, and all papers shall be served at the place designated by him. The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown or whose residence is unknown, and who has not appeared in the proceedings personally, or by attorney or agent.

§ 8. On presenting such petition to the supreme court as aforesaid, with proof of service of a copy thereof and notice aforesaid, any of the persons whose estates or interests are to be affected by the proceedings may show cause against granting the prayer of the petition, and may to that end disprove any of the facts alleged therein. The court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, it shall make an order for the appointment of three disinterested and competent freeholders, residents of the state of New York, as commissioners to ascertain and determine the compensation which ought justly to be made to the Hornellsville water company, or to the owners or persons interested in the property so to be acquired, and shall fix the time and place for the first meeting of such commissioners. The commissioners shall take and subscribe the oath prescribed by the thirteenth article of the constitution. Any of them may issue subpoenas and administer oaths to witnesses. A majority of them may adjourn the proceedings from time to time in their discretion. They shall view the premises described in the petition, hear the proofs and allegations of the parties and reduce the testimony taken by them, if any, to writing, but it shall not be necessary for the witnesses to sign their testimony, and after the testimony is taken and closed in such proceedings, they, or a majority of them, all being present, or having notice of the meeting to the end that they may be present, shall, without unnecessary delay, ascertain and determine the compensation which ought justly to be made to either or any of the owners or persons interested in the property so sought to be acquired. They, or a majority of them, shall also determine what sum ought to be paid to the general or special guardian or committee of any infant, idiot or person of unsound mind, or attorney appointed to attend to the interests of any unknown owner or party in interest not personally served with notice of the proceedings and who has not appeared, for his reasonable costs and expenses. They shall make a report of their proceedings to the supreme court, with the minutes of the testimony taken by them. The compensation to which they each shall be entitled, shall be fixed by the court, not exceeding ten dollars a day, and such compensation, together with their necessary expenses, shall be paid by the Hornellsville Water Board. When the owners or parties interested in the property sought to be acquired, shall have awarded to them an

Hearing
and
appoint-
ment of
commis-
sioners.

Duties of
commis-
sioners.

Report of
proceed-
ings.

Compensation.

Deduction
of costs,
etc., from
award.

amount not exceeding the compensation offered by the board, the costs and expenses of such proceedings, or any part thereof to be fixed by the court, may be deducted from any such award, and proof of the amount of compensation offered by the board may be made, by affidavit to the court, upon the application for the confirmation of the report of the commissioners, as herein provided.

Change of ownership not to affect proceedings.

§ 9. When any proceedings of appraisal under this act shall have been commenced, no change of ownership shall in any manner affect such proceedings.

Confirmation of report.

§ 10. On such report being made by the commissioners, the board may give notice to the owners or parties interested, or their attorneys, according to the rules and practice of the supreme court, that application will be made to the court at a term of the appellate division of the supreme court, to be held in the fourth judicial department, or at a special term of the supreme court to be held in the seventh judicial district, for the confirmation of such report; and if the report be confirmed the court shall thereupon make an order containing a recital of the substance of the proceedings, a description of the property appraised, and shall direct to whom the money shall be paid, or in what bank and in what manner it shall be deposited by the board.

Copy of order to be filed.

§ 11. A certified copy of the order so made shall be recorded in the clerk's office of the county in which the property described is situated, and thereupon and on the payment or deposit by the board of the sums to be paid as compensation for the property, and for costs and expenses as directed by the order, the board shall be entitled to enter upon, take possession of, and use the property for the purpose of the water works aforesaid; and all persons and corporations who have been made parties to the proceedings shall be divested of all right, title, lien and interest in and to the same. All property acquired pursuant to the provisions of this act shall be deemed to be acquired for public use, and the title thereto shall vest in the city of Hornellsville. Within twenty days after the confirmation of the report, either party may appeal, in the manner provided by the code of civil procedure for appeals in actions, to the appellate division of the supreme court, from the appraisal and report of the commissioners. Such appeal shall be heard at a term of the appellate division of the supreme court, to be held in the fourth judicial department, on the usual notice required by the rules

Board entitled to possession.

Appeal from appraisal and report.

and practice of such court. On the hearing of such appeal, the court may direct a new appraisal, before the same or new commissioners, in its discretion. The second report shall be final and conclusive on all parties interested. If the amount of compensation to be made by the board is increased by the second report, the difference shall be paid by the board to the persons entitled thereto, or deposited in the bank as the court shall direct. If the amount is diminished, the difference shall be refunded to the board by the party to whom the same may have been paid, and judgment therefor may be rendered by the court on the filing of the second report, against the party liable to pay the same. No appeal shall affect the possession or right of possession or use by the board of the property so appraised, and when an appeal is taken by others than the board, it shall not be heard except upon stipulation of the party appealing not to disturb such possession.

§ 12. If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the property taken, the court may direct the moneys to be paid into court, and may determine who is entitled to the same, and to whom the same shall be paid, in a summary manner, and may order a reference to ascertain the facts on which such determination and order shall be made.

Adverse
and con-
flicting
claimants.

§ 13. In cases of appraisal under this act, the court shall have power to make all necessary orders and directions to carry into effect the object and intent of this act, and to compel the delivery to the board of possession and control of all property or rights acquired thereby. The practice in such cases shall conform as nearly as may be to the ordinary practice of said court.

Powers of
court in
cases of
appraisal.

§ 14. When the mode or manner of conducting any proceedings for the appraisal of property sought to be taken, and the proceedings consequent thereon, are not expressly provided for in this act, the court before whom such proceedings are pending shall have power to make all necessary orders to that end. And the court shall also have the power at any time to amend any defect or informality in any of the proceedings authorized by this act, or to cause new parties to be added and other notices to be given to any party in interest, as it may deem proper, and shall also have power to appoint commissioners in place of any who shall die, refuse or neglect to serve, or be incapable of serving.

Court may
make
necessary
orders.

Correction
of defects,
etc.

Contracts
and
proposals.

§ 15. The Hornellsville Water Board shall have power to make all contracts necessary or incidental to the execution of the powers conferred by this act, but no contract or agreement requiring an expenditure of more than five hundred dollars shall be entered into, except for the employment of officers, agents, engineers, counsel and other employes of the board, without first advertising at least twice a week for two successive weeks in two of the daily newspapers published in the city of Hornellsville, for proposals to enter into contract for the work or materials required; and all such contracts shall be let to the lowest bidder who shall furnish such security for faithful performance as shall be approved by the board; but the board may reject such bids in its discretion and readvertise for proposals. A copy of each proposal received and every contract entered into by the board shall be filed with the city clerk.

Award of
contracts.

Not to be
interested
in con-
tract, etc.

§ 16. No member of the board, or any of its officers, or any officer of the city of Hornellsville shall be directly or indirectly interested in any contract relating to the work done for or materials furnished to the board, as such; and any violation of this provision shall be a misdemeanor. No member of the board shall receive any compensation for his services as such.

Compensa-
tion.

Use of
highways
and public
streets.

§ 17. The Hornellsville Water Board and all persons acting under its authority and direction, shall have the right to enter, appropriate, occupy and use any public street, highway, square, avenue, road, park or other public ground for the purpose of constructing, maintaining and operating water works for supplying the city of Hornellsville with water, and for all the other purposes of this act; but the board shall in all cases, restore such public street, highway, square, avenue, road, park and other public ground to its former state of usefulness.

Issue of
bonds.

§ 18. Whenever the Hornellsville Water Board shall consider it necessary that any bonds of the city of Hornellsville shall be issued for the purposes of this act, it shall certify to the mayor and common council of the city the amount so desired and the purpose or purposes for which required; whereupon it shall be the duty of the mayor and common council, by resolution, to cause bonds for the amount so certified to be issued in the name and upon the credit of the city of Hornellsville, which shall be executed by the mayor under the corporate seal of the city, and countersigned by the city clerk. The faith and credit of the city

of Hornellsville is hereby pledged for the payment of both principal and interest of any bonds issued under and in pursuance of this act. Said bonds shall be issued with interest coupons in such denominations or amounts as the common council may deem expedient, but not less than fifty dollars each, with interest at the rate of not to exceed four per centum per annum, payable semi-annually at the office of the chamberlain of said city on the first days of February and August of each year, and shall be so classified and issued that at least five per centum of the principal thereof shall become due and payable in each year, making the last bond payable in twenty years from its date; said bonds shall not be sold at less than par and none of them shall be sold until wanted for the expenses of condemning or acquiring said lands and easements or for work done, or services rendered or materials furnished. Said bonds must be sold to the highest bidder and in such way or manner as said Hornellsville Water Board may deem best to obtain the highest price and the lowest rate of interest therefor. The proceeds of said bonds shall be paid over to the city chamberlain of said city and credited to a fund which shall be known as "water fund account," and said chamberlain shall immediately upon the receipt of the same deposit such proceeds in such bank or banks or trust company as shall be designated by resolution of the Hornellsville Water Board, and only be paid out on warrants numbered consecutively as issued and signed by the president of the Hornellsville Water Board and city clerk and countersigned by the city chamberlain; which warrants shall be issued only as fast as necessary for the purpose aforesaid. No order or warrant for the payment of such moneys shall be issued except upon the resolution of the board, duly entered upon its minutes, a certified copy whereof shall be filed with the city chamberlain. The voucher or other paper on account of which such order is issued shall be filed with the papers of the Hornellsville Water Board and shall bear a number corresponding with the number of the order or warrant issued thereon; the board may, however, at any time, by resolution and order issued in the manner aforesaid, transfer any funds from any bank or banks or trust company to any other bank or trust company. The funds so transferred, and all interest accruing thereon, shall be held and paid out by such bank or banks or trust company only in the manner above pro-

Sale and application of proceeds.

Deposit of proceeds in bank.

Payments from fund.

Limitation of deposit. vided. The amount of moneys on deposit at any time with any such bank or banks or trust company shall not exceed thirty per centum of the full paid capital stock and surplus of any such bank or trust company.

Application of receipts. § 19. The amount derived from receipts from all sources, as hereinafter provided, shall, so far as necessary, be applied to the payment of the cost of maintaining, operating and extending the said system of water works and to the payment of the principal and interest falling due on said bonds, and in each year in which said amount shall be insufficient for that purpose, the common council of said city shall make due provision by tax for the payment of the deficiency, and such deficiency shall be assessed, levied and raised in the same manner as any other general tax of said city, and in addition to and in connection with the general taxes of said city.

Tax for deficiency.

Use of proceeds of bonds restricted. § 20. The proceeds of all bonds issued under the provisions of this act shall be used and applied by the Hornellsville Water Board solely for the acquisition and construction of the system of water works herein provided for, and for the purpose of acquiring property, rights, privileges and franchises therefor or to be used in connection therewith.

Water rate. § 21. The Hornellsville Water Board shall from time to time fix and determine the water rates to be paid by all consumers of water, including a just annual rate to be paid by the city at large on account of the use of water for municipal purposes. All moneys and income which shall be received by the board for water or on account of said system of water works shall be deposited to the credit of the "water fund account" of said city in the bank or banks or trust company designated by said water board, and shall be paid out only as provided by this act.

Water fund account.

Rules and regulations. § 22. The said Hornellsville Water Board shall make, publish and enforce all needful rules and regulations in relation to the said water works, and all the property and appliances pertaining thereto and in relation to the management thereof and the supply of water thereby, whether to individuals or corporations, and may alter and modify the same from time to time, and may fix a penalty not exceeding fifty dollars for the violation of any of said rules or regulations. The said common council may aid such enforcement by ordinance. The said board may prosecute in the name of the said city for all violations of said rules, regulations or ordinances.

Penalties.

§ 23. The said Hornellsville Water Board shall fix and collect the annual, quarterly or monthly prices of water supply by means of said water works to the dwellings, establishments or uses of individuals, companies or corporations.

Annual, etc., prices of water supply.

§ 24. The moneys derived from the penalties and water rents mentioned in this act shall be paid over to the city chamberlain, by him to be immediately deposited in the said bank or banks or trust company designated by the said board to the credit of the "water fund account" of said city, and shall be applied, as provided by section nineteen of this act. If the receipts from all of said sources shall be more than sufficient for said purposes, the balance thereof may be used for any lawful municipal purpose.

Payment over of moneys from rents and penalties.

Application of regular receipts.

§ 25. No obligation shall be incurred or money expended, or issue of bonds demanded under this act, by the Hornellsville Water Board, except by resolution duly passed by a majority of the members of the board. In every case the vote shall be taken by yeas and nays, and every such resolution and the vote thereon shall be recorded in full in the minutes of the board.

Incurring of obligation and expenditure of money.

§ 26. Any and all actions or proceedings authorized by this act shall be brought, taken and instituted by the Hornellsville Water Board in the name of the city of Hornellsville; and all actions, suits or other legal proceedings brought, instituted or commenced by any person or corporation, on account of any act or thing done or omitted by said board, shall be brought, instituted and commenced against the city of Hornellsville in its name, and shall be defended by it under the direction of the board; and all such claims or demands may be compromised and paid by said board, and any final judgment recovered thereon shall be satisfied by it out of the funds obtained by it and in pursuance of the provisions of this act. Such payments to be made only in the manner hereinbefore provided. No commissioner appointed under this act shall be personally liable for any act done in the performance of his official duty.

Actions, etc., how instituted, etc.

Compromise of claims.

Liability of commissioners.

§ 27. Said Hornellsville Water Board shall keep books showing the cost of the acquisition, construction and maintenance of said water works and of extending the same and all its collections, receipts, expenditures, proceedings and doings and shall make a report thereof to the said common council on the first Monday of November in each year, and as much oftener as the common council may require, and shall furnish at all times such other or fur-

Books to be kept.

Reports to council.

ther information as to the business and affairs of the board ~~as~~ may be required by the mayor and common council. All the books, records, vouchers, contracts and all other papers kept by the Hornellsville Water Board, or in their possession, or under their control, shall at all reasonable times be subject to inspection by any officer or duly authorized agent of the city of Hornellsville.

Books, etc., open to inspection.

Duty of city clerk and chamberlain.

§ 28. The city clerk of the city of Hornellsville is hereby authorized and directed to deliver to the Hornellsville Water Board certified copies of all resolutions, acts and ordinances passed by the common council pursuant to the provisions of this act, or in any way relating to the Hornellsville Water Board or the Hornellsville system of water works. The chamberlain of the city of Hornellsville is hereby authorized and directed to prepare and at all times keep a book or books, in which shall be entered all moneys received and deposited in any bank or banks or trust company, and all moneys paid out or orders or warrants countersigned by him, and also shall keep on file all resolutions, instruments and other papers sent or received by him and all acts and things required to be done by said chamberlain under the provisions of this act.

Penalty for wilful acts or injury to property, etc.

§ 29. Any wilful act whereby the said water works or any property, apparatus or appliances pertaining thereto shall be injured or the supply of water obstructed, impaired or made less pure, shall be deemed a misdemeanor and the person or persons convicted thereof shall be punished accordingly.

§ 30. This act shall take effect immediately.