

577

ACTS
AND
RESOLVES

PASSED BY THE

General Court of Massachusetts,

IN THE YEAR

1845:

TOGETHER WITH THE ROLLS AND MESSAGES.

PUBLISHED BY THE SECRETARY OF THE COMMONWEALTH.



Boston:

DUTTON AND WENTWORTH, PRINTERS TO THE STATE.

.....
1845.

An Act for supplying the City of Boston with Pure Water.

Chap 220.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

SECT. 1. The city of Boston is authorized, in the manner hereinafter provided, to convey into and through the said city, the waters of Charles River, at and from some point in the town of Watertown, with the consent of said town, to be determined upon by the commissioners to be appointed under this act, or the waters of Long Pond, so called, in the towns of Natick, Wayland, and Framingham, and the waters which may flow into and from the same, and to take and hold the said Long Pond, and the waters flowing into and from the same, and also any other ponds and streams within the distance of four miles of said Long Pond, for the purpose of furnishing a supply of pure water for said city, and the city government shall determine, by a majority of votes in joint ballot, from which source to bring this water.

City may obtain water from Charles River, Watertown, &c., or from Long Pond, &c. in Natick, &c.

SECT. 2. The said city of Boston may take the waters of said Charles River, or of said ponds and streams, or either of them, and any water rights connected therewith, and may also take and hold any real estate necessary for laying aqueducts and forming reservoirs, and for any of the purposes of this act, and may build one or more permanent aqueducts leading from the said water sources into and through the city, and secure and maintain the same by any proper works, and may connect the said water sources with one another, may erect and maintain dams to raise and retain the waters therein, and make and maintain reservoirs within and without the city, and in general may do any other act necessary or convenient for the purposes of this act, and may distribute the water throughout the city, regulate its use, and the price to be paid therefor, within and without the city; and the said city, for the purposes aforesaid, may carry any works by them to be constructed, over or under any highway, town-way, street, turnpike road, or rail-road, in such manner as not to obstruct or impede travel thereon; and may enter upon and dig up any highway, town-way, turnpike road or street, for the purpose of laying down pipes beneath the surface thereof, or for the purpose of repairing the same.

May take waters of Charles River, or of said ponds, &c., and estate for aqueducts, &c. and construct aqueducts, dams, and reservoirs, &c. and distribute waters, &c., and cross and dig up high-ways. &c.

SECT. 3. The said city is also authorized to purchase and hold all the property, estates, rights and privileges of the aqueduct corporation, incorporated by an act passed February twenty-seven, in the year one thousand seven hundred and ninety-five, and by any convenient mode may connect the same with their other works.

May purchase property, &c., of the Jamaica Pond Aqueduct Corporation, &c.

SECT. 4. All the authority hereinbefore given shall be exclusively exercised through and by commissioners to be

Authority to be exercised by commissioners.

appointed as hereinafter directed, until the office of commissioners shall cease as hereinafter provided.

Election of
commissioners.

SECT. 5. Three commissioners shall be chosen by ballot, by the mayor, aldermen, and common council, assembled in convention; and any vacancy in the board of commissioners shall be filled in the same manner. Before the election of said commissioners, the mayor and aldermen and common council, in convention as aforesaid, shall establish and fix the compensation to be paid to the said commissioners during the progress, and until the completion of the works herein provided for: *provided, however*, that such compensation shall not be fixed at a less sum than three thousand dollars or more than five thousand dollars a year for each commissioner during said time; and shall also fix and establish the compensation to be paid to each commissioner after the completion of said works: *provided*, that such last mentioned compensation shall not be fixed at a less sum than one thousand dollars a year for each commissioner. And whereas it may, after the completion of said works, be expedient that one of said commissioners should be chiefly charged with the care and superintendence of the said works, the collection of rents, and the general executive duties of the board; one of the said board shall be designated as chief commissioner by the mayor and aldermen and common council, in like manner as is herein provided for the original choice; and the said chief commissioner shall be paid, in addition to his other salary, a further sum not exceeding two thousand dollars a year; and the respective salaries hereby provided for said commissioners, shall not be reduced during their continuance respectively in said office.

Their compensation.

Chief commissioners.

Removal of
commissioners.

SECT. 6. Every commissioner appointed as aforesaid, shall remain in office until removed by the mayor and aldermen and common council assembled in convention as aforesaid; and no commissioner shall be liable to be removed except for incapacity, mismanagement, or unfaithfulness in the discharge of the duties of his office, nor without having had an opportunity to be heard before such convention, nor unless three-fourths of the persons elected as aldermen and members of the common council in convention as aforesaid shall vote for such removal.

Remedy of owners of lands, &c. in case of disagreement as to damages.

SECT. 7. If any owner of lands, waters, or water-rights, taken for the purposes of this act, shall not agree with the said city upon the price to be paid therefor, he may, at any time within, but not after three years from the time of such taking, apply by petition to the court of common pleas, holden within and for the county in which such lands, waters, or water-rights shall have been taken, either before or during any term of such court, and, after fourteen days' notice, which may be given by leaving a copy of such petition with

the mayor of said city, the court may proceed to the hearing of the petitioner upon the appearance or default of the adverse party; and the said court may thereupon appoint three disinterested persons, being freeholders and inhabitants of this Commonwealth, to determine the damages, if any, which such petitioner may have sustained; and, after reasonable notice to the parties, to estimate such damages; and the award of the persons so appointed, or of the major part of them, shall be binding and conclusive upon the parties, and shall be returned by them, as soon as may be, into the said court; and, upon the acceptance thereof by said court, judgment shall be rendered for the party prevailing, with costs, and execution shall issue accordingly: *provided, always*, that if either party shall be dissatisfied with such award, such party may apply to the said court for a trial by jury at the bar of said court, to hear and determine all questions relating to such damages, and to assess the amount thereof; and the said court shall enter judgment and issue execution accordingly; and costs shall be allowed to the parties respectively, in the same manner as is provided by law, in regard to proceedings relating to the laying out of highways: *provided*, that no complaint shall be made as aforesaid, for the taking of any water-rights, until the waters aforesaid shall be actually withdrawn by the said city by virtue of the provisions of this act; and any party whose rights may be thus affected, may make his complaint in manner aforesaid, at any time within three years from the time when he first sustains such injury.

SECT. 8. The said commissioners shall exclusively exercise all the rights, powers and authority given by this act to the said city; and in pursuance thereof, may make all suitable contracts, and employ all proper engineers, clerks and other agents in the premises, until the office of such commissioners shall cease as hereinafter provided.

Commissioners to make contracts and appoint agents.

SECT. 9. For the purpose of defraying all the expenses and cost of such lands, waters and water-rights as shall be taken or purchased for the purposes of this act, and of constructing all works necessary to the accomplishment of said purposes, and all expenses incidental thereto, the said board of commissioners shall have authority to issue, in the name of the said city, notes, or scrip, or certificates of debt, to be denominated on the face "Boston Aqueduct Scrip," to an amount, in the whole, not exceeding the sum of two millions five hundred thousand dollars, and bearing an interest not exceeding five per cent. per annum; and said interest shall be payable semi-annually, and the principal of said debt shall be payable at periods of not less than fifteen, nor more than forty years from date; and the said commissioners may sell the same at public or private sale, and may pledge the same for money borrowed at a rate not exceed-

Commissioners may issue city scrip to the amount of \$2,500,000, bearing interest, &c., payable at dates, &c.

- and scrip for payments of interest, *provided, &c.*
- ing six per cent. per annum, when such scrip cannot be sold at the par value thereof. And in addition to the said sum of two millions five hundred thousand dollars, the said commissioners may issue and dispose of scrip in the manner hereinbefore provided, to meet all payments of interest accruing upon any scrip by them issued as aforesaid: *provided, however*, that no such scrip shall be issued by said commissioners, beyond two years after the completion of said works; but the payment of all accruing interest after that time, shall be provided for by the city government, in such manner as they may think proper. All certificates to be issued as aforesaid, shall be signed by the said commissioners, or a majority of them, and shall be countersigned by the mayor of said city; and a record of said certificates, shall be made and kept by the treasurer of said city.
- Form of scrip.
- Records of the same.
- Deposits, accounts, and reports of commissioners.
- All money received by said commissioners, shall be deposited to their joint credit, in some bank or banks of good credit, within said city, and subject only to their joint order. The said commissioners shall keep regular books of accounts, and books for the recording of their doings; and the clerks employed therein, shall be sworn to the faithful discharge of their duty; and all such books shall be open to the examination of any person or persons appointed therefor by the mayor and aldermen, or by the common council of said city. The said commissioners shall, once in every six months, make to the city council a report of their doings, accompanied with complete exhibits of all their receipts and expenditures of money in the premises. When the funds provided as aforesaid shall be exhausted, the said commissioners shall report the fact to the city council, and shall suspend the prosecution of the works, until supplied with other funds, except so far as to secure and preserve what shall have been done.
- Exclusive right of the city to waters, &c.
- SECT. 11. The city of Boston shall have the exclusive right of using and disposing of such of the waters aforesaid, as may be taken by them for the purposes aforesaid; and an action of trespass on the case, against any person for using the same without the consent of said city, may be maintained by the said commissioners.
- Commissioners to regulate use and price of water.
- SECT. 12. The said board of commissioners, for the time being, shall regulate the distribution and use of the water, within and without the city; and, from time to time, shall fix the price for the use thereof; and they may establish such a number of public hydrants, and in such public places, as they shall see fit, and direct for what purposes the same shall be used; all which they may change at their discretion.
- Owner and occupant both liable for price of water.
- SECT. 13. The owner and occupier of any tenement, shall each be liable for the payment of the price or rent, for the use of the water by such occupier.

SECT. 14. The said commissioners shall make no contract for the price of using the water beyond the term of five years; and at the expiration of any term or lease, the price of the use shall be adjusted according to the regulations then established, and which may, from time to time, be established by the commissioners while in office, or by the city council afterwards.

Contracts for price not to extend beyond 5 years, to be adjusted henceforward on expiration of leases, &c.

SECT. 15. It shall be the duty of the said commissioners, to regulate the price of the water, with reference ultimately, to paying from the proceeds thereof, the interest and principal of the aqueduct scrip aforesaid, as far as shall be found practicable, consistently with the purposes of this act. And the net proceeds of the water rents, after paying all expenses for maintaining the distribution of the water, and for salaries, wages, and incidental charges, shall be a collateral security to the holders of said aqueduct scrip, in addition to the liability of the city, for the payment of the interest from time to time, and the final reimbursement of the principal of said scrip; and when any surplus of funds shall be on hand, the said commissioners may buy up any of said scrip for the benefit of the said city, and the same shall then be cancelled.

Appropriation of proceeds of water rents.

SECT. 16. Each of the said commissioners shall, before entering upon his trust, give bond with sufficient surety or sureties to the said city of Boston, in the penal sum of fifty thousand dollars, conditioned for the faithful performance of the duties of his office.

Bonds of commissioners.

SECT. 17. A major part of said commissioners shall constitute a quorum for doing and performing all things allowed or required by the powers or duties of their commission. And all contracts, engagements, acts and doings of a majority of the said commissioners, within the scope of their duty or authority, shall be obligatory upon, and be in law considered as done by said city.

City bound by legal acts of a majority of commissioners.

SECT. 18. When the said aqueduct scrip shall all have been paid or cancelled, all balances of money, books, records, and documents, and all property shall be disposed of in such manner as the said city council may direct; the office of commissioners shall cease, and all the rights, powers and duties touching the aqueduct, the distribution of the waters, and the price for its use, shall be exercised by the city in such manner, and by such servants and agents as the city council may, from time to time, direct and appoint; and all rights of action vested in said commissioners, shall therefrom vest in said city.

Moneys, &c. and property to vest in the city after payment of scrip, to be disposed of by city council, &c.

SECT. 19. The said commissioners may prosecute and defend any action or process at law and in equity, on contract or tort, by the name of "The Water Commissioners of the city of Boston," against any person or persons for money due for the use of the water, for the breach of any

Commissioners may prosecute and defend actions.

contract express or implied, touching the execution or management of the works, or the distribution of the water, or of any other promise or contract made to or with them; and also for any injury, trespass, or nuisance, done or suffered to the water, water sources, works, or establishments within or without the said city; and any vacancy in the Board of Commissioners, or the filling of any vacancy either before or after any such injury, trespass or nuisance, or before or after the making of any such contract, as aforesaid, or cause of action accruing, shall not change the right of said commissioners as a body, to commence or maintain such action or process at law or in equity, but in all such cases, they shall be considered, from the time of the organization of the board, as a corporation.

Penalty for diverting or corrupting water, &c.

SECT. 20. If any person or persons shall maliciously divert the water of said river, ponds or water sources, or shall corrupt or render impure the same, or any connected therewith, or shall destroy or injure any drain, pipe, aqueduct, conduit, machinery, or other property used in the premises, such person or persons, and their aiders and abettors, shall forfeit to the said city, to be recovered in an action of trespass, or trespass on the case, by the said commissioners, treble the amount of damage which shall appear on trial to have been sustained thereby; and may, upon conviction, be further punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year.

Act to be void, if not accepted by majority of voters in wards, &c. within 60 days.

SECT. 21. The mayor and aldermen of said city, shall notify and warn the legal voters of said city, to meet in their respective wards, within sixty days from the passage of this act, for the purpose of voting by ballot, upon the question, whether they will or will not accept the same; and if a majority of the votes given in shall be in the negative, this act shall be void.

When to take effect.

SECT. 22. This act shall take effect from and after its passage. [*Approved by the Governor, March 25, 1845.*]

Chap 221.

An Act concerning the Duties of County Commissioners.

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

Committee, &c. of county commissioners to inspect prisons; provided, &c.

The twenty-ninth section of the one hundred and forty-third chapter of the Revised Statutes is so amended, that the county commissioners, by a committee of not less than two of their number, shall twice in each year visit and inspect all the prisons in their county, provided the interval between the visits and inspections of said prisons shall not exceed eight months. [*Approved by the Governor, March 25, 1845.*]