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OF THE

STATE OF MISSOURI,

PASSED AT THE

REGULAR SESSION

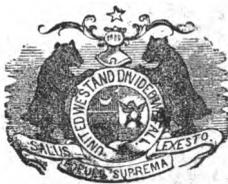
OF THE

XXVIITH GENERAL ASSEMBLY,

BEGUN AND HELD AT THE

CITY OF JEFFERSON, WEDNESDAY, JANUARY 1, 1873.

BY AUTHORITY.



JEFFERSON CITY:
REGAN & CARTER, STATE PRINTERS.
1873.

TOWNS AND CITIES: KANSAS CITY—WATER-WORKS.

AN ACT concerning water-works and a supply of water for the city of Kansas.

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Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. The city of Kansas is hereby empowered to construct water-works, to take and convey into and throughout the city, for the use of the same and others therein, water of the Missouri river, Blue river or Kaw river, or all, from any point or points, and to that end to acquire, hold, use, control and dispose of real estate and personal property within and without the corporate limits of the city, and also in the state of Kansas, necessary for laying pipe, constructing reservoirs, aqueducts, appliances and means, and erecting buildings and machinery proper and convenient for such water-works, and for operating and repairing the same; to receive, take, purify, store, conduct and distribute in and throughout the city such water, and in general to do all things necessary and proper to carry this act into effect and accomplish the object thereof.

SEC. 2. When the city shall, by ordinance, decide to construct water-works, the mayor of the city of Kansas shall, within sixty days after approval of such ordinance by a two-thirds majority of voters, as hereinafter provided, by and with the advice and consent of a majority of the common council of the city, appoint three persons as a board of water commissioners; and water-works shall be constructed, repaired and operated through the agency of such board. No person shall be appointed or remain a member of such board who shall not be a citizen of the United States, a qualified voter of this state and a resident of said city, and shall have been a resident of said city for the three years next preceding his appointment. The common council of the city, by ordinance passed by two-thirds of the members elect, and approved by the mayor, may remove any one of such board from office at any time. No person elected a member of the common council shall be appointed a member of such board during the term for which he has been or may be elected. Each member of such board

shall, within twenty days after his appointment, give bond to the city, with two or more sufficient securities, resident freeholders of the city, in the penal sum of fifty thousand dollars, conditioned for the faithful performance of all the duties required of him as a member of said board, the sufficiency of which sureties shall be certified by the mayor: *provided*, that a new bond shall at any [time] be given if required by the common council. Each member of the board shall, within the same time, take, subscribe and file with the city clerk, an oath or affirmation that he is not and will not become directly or indirectly interested in any land necessary for the construction of said water-works; that he will not become directly or indirectly interested in the sale of the securities of the city for said water-works, and that he will not be concerned nor interested, pecuniarily, in any contract, or work or material furnished, for or about the construction, repair or operation of such water-works, while a member of said board. The bonds shall be given and the oath taken before any person enters on his duties as a member of such board.

SEC. 2 [3.] The members of such board, to be appointed as aforesaid, shall hold their offices, respectively, for one, two and three years, to be determined by lot, before the mayor of the city of Kansas, from the first Monday of June next succeeding their appointment, and until their successors are duly appointed and qualified. During the month of May, in the year when the term of office of any member of such board shall expire, and every year thereafter, a new member of said board shall be appointed as aforesaid. Every vacancy in said board, made by removal, or resulting from other causes, shall be filled by appointment, as aforesaid, and the appointee shall forthwith qualify as other members of the board, and hold office for the remainder of the term of said office, subject to removal as other members. The said board shall have control of all matters relating to the water supply in the city of Kansas, and of the management of water-works hereafter constructed in connection therewith, and collect all revenue accruing or becoming due to the city for water or on account of the water-works, in virtue of any law or ordinance. The board shall keep or cause to be kept a full and true account, in suitable books, of all licenses issued for the use of water, and all moneys received on account of the use of water; and the whole of the net revenue and income so arising, is hereby solemnly and irrevocably pledged for the redemption and payment of the principal and interest of the bonds hereinafter mentioned.

SEC. 3 [4.] Within ten days after all the members of the board are qualified, they shall assemble and organize, by appointing one of their number president, to preside over their deliberations, and by appointing a secretary, whose duty it shall be to make and preserve a true record of all the proceedings of said board. The board shall hold such regular meetings as it may deem proper, and at all times have power to assemble and act on the call of the president. The record to be kept by the secretary shall at all times be subject to inspection by the officers of the city, and on the first of May and first of November of each year, and at such other times as may be directed by ordinance, the secretary shall make out and lay before the common council a particular report of all the acts and proceedings of the board, and the condition and the progress of the works under its charge.

SEC. 4 [5.] Each member of the board shall devote his entire time and attention to the duties of his office, and shall not hold any other office of profit, or attend to any other business as an occupation,

and receive, annually, a salary to be fixed by ordinance, payable quarterly.

SEC. 5 [6.] The said board first appointed shall, with all dispatch, prepare and resolve upon a plan for permanent water-works best suited to the circumstances of the city of Kansas, capable of affording a daily supply of at least five millions of gallons of clear, wholesome water, and admitting of future extension. The board of water commissioners may acquire for the city, by contract or otherwise, as hereinafter provided, all such real estate, water right and easements as may be needed for the construction of such water-works and extensions thereof, and efficient operation of the same; and, for the city, construct water-works, with one or more permanent reservoirs within or without the city, at such point as the board may elect; and take water from such point or points on one or all of said rivers as it may select; and enter upon and dig up any street, road, railroad, horse railway, alley or public ground, for the purpose of laying pipe, with proper attachments and appliances beneath the surface, and repairing the same; and construct any aqueduct over or under any water-course, street, road or railroad, in such manner as not unnecessarily to obstruct travel thereon; and use for reservoirs all streets, alleys, highways and land held for public use, other than water-works purposes or ground selected therefor; and, in general, do all things necessary and proper for carrying this act into effect.

SEC. 6 [7.] Contracts for the doing of all work, and the furnishing of all materials and supplies for the water-works contemplated by this act, shall be let out and awarded by the "board of water commissioners" to the lowest and best bidder, except in cases where it is not practicable to do such work or furnish such supplies and materials by contract so let out; and in all contracts the consideration to be paid on the part of the city shall be money. When any contract is to be so let out, notice that the board will receive proposals for such work, materials and supplies shall be published for at least two weeks next before the day fixed for opening bids, in not less than two newspapers published in said city, and, when the board may think it expedient, so long and in such newspapers of other cities as the board may direct. Such notice shall state the kind and amount of work to be done, or the material and supplies to be furnished, and the time when to be done and furnished, and the place where the plans and specifications may be seen, and the place where and the time within which bids will be received, and the day for opening the same. Each bid must be signed by the bidder, and be accompanied by an undertaking signed by the persons offered by the bidder as his sureties, who must in all cases be resident freeholders of the state of Missouri, declaring their consent to be such sureties in the event of the contract being awarded to such bidder; and if any contract be so awarded, and such bidder shall fail to complete the execution of a contract therefor, with security for its performance approved by said board, such bidder, and the party or parties so undertaking for the bidder, shall be liable to pay to the city any damage and loss resulting from such failure.

SEC. 7 [8.] The bid and the undertaking must be inclosed in a sealed envelope, and the bidder shall state his own place of residence and all other particulars required by the notice. Bids shall be opened by the chairman at the office of the board, in the presence of the majority of its members and any bidders that may wish to be present, between twelve o'clock M. and one o'clock P. M. of the day mentioned in the notice; and no bid shall be rejected on account of supposed insufficiency of the sureties offered in connection therewith, unless

such insufficiency be declared on the day the bids are opened, and the bidder should fail to furnish other and sufficient sureties or give proof of the sufficiency of those first offered before the close of business hours of the next day. But the omission to declare the sureties offered insufficient at the first presentment of the question shall not be taken as a waiver of all objections thereto on the part of the board; and the board may reject all the bids made as too high.

SEC. 8 [9.] The performance of all contracts let out and awarded as aforesaid shall be secured by at least two sureties, resident freeholders of the state of Missouri, to be approved by said board, and undertaking for such performance in the full estimated amount of the contract, when the amount to be paid thereon by the city shall be estimated at fifty thousand dollars or less, and when such amount shall be estimated at over fifty thousand dollars, the board shall fix the amount of security to be given, but the same shall in no case exceed the estimated amount to be paid upon the contract.

SEC. 9 [10.] If any bidder whose bid is accepted by the board shall fail to enter into a written contract for the performance thereof, with sureties hereinbefore provided, within six days after such contract is prepared and ready for his signature, exclusive of Sundays, such bidder and those who have undertaken for him as aforesaid shall be immediately liable to pay to the city all damages resulting from such failure; and the board may proceed to award the contract to the next lowest and best bidder, or, in its discretion, may give notice for new proposals; and any bidder who has failed to make his bid good, as hereinbefore provided, shall be excluded from bidding, directly or indirectly, for any work, material or supplies, unless, for good cause shown, the board shall remove such disability.

SEC. 10 [11.] All contracts made with any contractor and his sureties shall be executed in duplicate, the board to retain one copy and the contractor the other, and before being approved by the board shall be submitted to the city counsellor, or in his absence or inability to act, to the city attorney, for approval of the form thereof, and after being approved by the board, the copy retained by it shall be recorded in full in the office of such board, and such other copies made and preserved as the city may by ordinance direct. Every such contract shall, on the one part, purport to be made by the city as a party thereto by the board of water commissioners, and be signed on behalf of the city in such mode as the board may prescribe, and shall state on the face thereof that the power is reserved to the board of water commissioners to suspend the execution of the contract, or to annul the same, whenever the contractor fails to comply with its terms or with any proper directions of the board, in relation thereto, or in superintending the work, as to the results thereof, and that such suspension or annulment shall not affect the right of the city to recover any damage from such failure.

SEC. 11 [12.] The board shall carefully examine and audit all accounts presented to it for work done or material and supplies furnished under contract, and for all land and other property purchased, or services rendered, and, when satisfied of their correctness, shall cause the same to be paid, keeping an exact and complete record of all accounts so paid; and at the final payment upon any contract, a detailed statement of all the work done and materials and supplies furnished shall be entered upon the record books of the board, and whenever the work has been done according to detailed plans and drawings, the same shall be recorded in another [book] kept for the purpose.

SEC. 12 [13.] All field and memorandum books and drawings used and made for and during the construction of any part of the water-works, shall be carefully filed and preserved in the office of the board. A connected map of the whole shall be made and preserved in said office, on which shall appear the location and size of the several reservoirs, engine-houses, conduit and distributing pipes, stop valves and fire plugs, and the elevation above the city, direction of pipes at all street crossings, together with the location and dimensions of all lands sold for the water-works. In addition to this map, an atlas shall be made, showing the same things more in detail, and on a larger scale.

SEC. 13 [14.] The city of Kansas shall be liable for all damages that may be sustained by any person by the taking of his or her lands or real estate, or any right of way, or easement therein, or the use of any streets, alleys, highways or land held for public use other than water-works purposes, for a reservoir or reservoirs. The board of water commissioners are hereby authorized to agree with the owner or owners of any property which may be required for said purposes, or be damaged as aforesaid, as to the amount of compensation to be paid them therefor. If the board shall not agree with the owner or owners of real estate and land taken as aforesaid, or which may be permanently injured in value by the use for reservoir or reservoirs, of any street, alley, highway or land held for public use other than for water-works purposes, or for the right of way for laying and repairing pipes, upon the damage to be paid therefor, the said board of water-work commissioners may apply to the circuit court of Jackson county, Missouri, at said city, by petition in the name of the city, for the assessment of such damages; such petition shall describe the land to be taken or damaged, or in or over which the right of way for laying, maintaining and repairing pipes or other easements is sought, and give the names of owners and claimants thereof, and may be filed in vacation or term time, in the clerk's office of said court, and the clerk shall thereupon issue a summons, and annex the same to the petition, returnable on such day as the court or judge in vacation shall order, requiring the defendants to appear and answer the petition on or before the return day. The said petition and summons shall be served ten days at least before the return day thereof, by the sheriff of said county delivering a copy of the petition and summons, certified by the clerk or officer making the service, to be correct, to each owner personally, or by leaving for such owner such copy of the petition and summons at his usual place of abode, with some person, a member of the family, over the age of fifteen years. In case the sheriff returns that he can not make service of the writ on any party or parties defendant in Jackson county, the petition and summons, or if necessary, a new summons, for parties not served, returnable on such other day as may be ordered, shall be published in such newspaper, published in the city, as the court or judge may order, for four successive weeks, the last insertion to be two weeks before the return day. Lien-holders and incumbrancers shall be deemed owners. Several distinct parcels of land, owned by different parties, may be joined in the same petition. The matter may be continued from time to time, and new writs issued, until jurisdiction of the proper parties is obtained. The court, or judge in vacation, may, on default or hearing of the owner, appoint three judicious disinterested freeholders of said Jackson county, who shall assess the damage, if any, which such parties will sustain, or may have sustained as aforesaid; and the award of said freeholders, or two of them, returned into and accepted by the court, or judge in vacation, shall be final, and judgment shall be rendered thereon, and execution issue

for the prevailing party, with costs, unless the city, or some party defendant, shall claim a trial by jury. If any party or parties be dissatisfied with the award of damage made, as hereinbefore provided, they may, within twenty days after judgment, claim, in writing, filed in court in term time, or in the clerk's office in vacation, a trial by jury, in which case, all questions of fact as to damages shall be tried in court by a jury, which shall assess the amount thereof, and the verdict of the jury shall be final and conclusive, and judgment shall be rendered and execution issued thereon, and costs shall be recovered by the parties respectively, as the court may order. The court or judge shall award execution to put the city in possession of any property taken at any time after acceptance of award of freeholders. No demand for a jury trial shall prevent the city from taking possession of any property taken, and, if necessary, execution shall issue to deliver possession to the city before a jury trial is had. The court may submit to the same jury the case as to several parties at the same time, or order a severance to try the rights of different parties separately, as it may be deemed advisable. Failure of the water commissioners to agree, or to attempt to agree, with owners as to the compensation to be paid, shall not affect the validity of the proceedings. In every case of a petition under this section, the city of Kansas, by any of its officers, or board of water commissioners, may tender to the owner or owners any sum that the board shall think proper, or bring the same into court to be paid to the owner or owners for damages sustained by him or them; and if the owner, being able to convey by deed, accept the same, he shall be entitled to his costs up to the time of tender, or payment into court, and not after; but if he shall proceed in the suit, the city shall recover costs afterward, unless greater damages than were so offered shall be recovered by the owner. If the offer be accepted, the owner shall convey the land to the city. The final judgment of the court or judge, entered as above, and the payment of the damages so awarded by the city or board of water commissioners, shall operate to transfer the title of such land or real estate to the city, when the prayer in the petition is for the assessment of the full value of the land, and otherwise to grant the city an easement and right of way is or may be sought. Any land, the value of which, or the damages to which, may be assessed by the freeholders, and approved by the court, may be entered upon, dug up, and used for the purposes before specified, without waiting for a final judgment in the case. If the city demand a jury trial, the demand shall specify the particular land and owners mentioned in the petition as to which such trial is desired. If any one or more defendants demand such trial, the demand shall specify the property and interest as to which such trial is desired, and the award of the three freeholders as to other property not embraced in the demand shall not be affected by such demand. The court may, on application of parties interested, decide on all questions as to distribution of compensation summarily, on motion, or in a civil action brought for the purpose.

SEC. 14 [15.] The said board shall, at its discretion, appoint, employ and discharge all officers, agents, ministers and servants necessary for the management and service of the water-works, and for the collection of the revenue arising therefrom, as herein provided, and shall determine the compensation to be paid to each one so employed; and said board shall make all needful rules and regulations to govern its own deliberations, and for the observance of the officers, agents, ministers and servants by it employed, and shall determine the pen-

alty and condition of the bond to be given by each of such officers, agents, ministers and servants to the city of Kansas, and approve the same and sureties therein.

SEC. 15 [16.] If said board of water commissioners shall corruptly or capriciously and wantonly, and without just and probable cause, accept or reject any bid for the doing of any work, or the furnishing of any material or supplies, that may be required under this act, or if any member of said board, voting with the majority, shall give his vote corruptly, capriciously or wantonly, and without just and probable cause, to accept or reject any bid for the doing of any work, or the furnishing of any material or supplies that may be required under this act, every member of said board so offending shall, together with his sureties on his official bond, be liable to pay to the city of Kansas double damages and costs for all losses or injuries sustained by the city of Kansas by reason of such delinquency, and shall be disqualified for acting as a member of such board.

SEC. 16 [17.] If any member of said board of water commissioners, or the secretary or treasurer of said board, shall at any time apply to his own use any of the money which may come into his hands or under his control by virtue of this act, or which, being a part of the revenue for the use of the water furnished by any water-works constructed, or the proceeds of the sale of lands by this act authorized, which shall in any way come to the hand or under the control of any such member, secretary or treasurer, the person so offending and his sureties shall forfeit and pay to the city of Kansas a sum of money which shall be two-fold greater than the sum of money so applied for the use of the offender, to be recovered by action on his official bond, and the person so offending shall, on conviction thereof, in a court of competent criminal jurisdiction, be adjudged guilty of felony, and punished by imprisonment in the penitentiary for a term not exceeding ten years.

SEC. 17 [18.] Whenever a majority in interest of the property owners on any street, avenue or alley, or portion thereof, or whenever the common council of said city shall, by a vote of two-thirds of all the members thereof, declare the laying of water pipe to be necessary, the said board of water commissioners shall cause the same to be laid, and the cost of laying all such pipe shall be apportioned among the owners of property on such street, avenue or alley, or portion thereof, improved, according to the frontage of their lots thereon, and to be levied according to provisions of ordinance on the subject, as a special tax against the lots respectively; and any such property holder failing to pay their proportion of such tax may be sued therefor in the name of the city of Kansas, as for work and labor done and materials furnished to his or her use, at his or her request, and which tax shall be a lien on such lots respectively from the levy thereof, with interest thereon at ten per cent. per annum from levy until paid—lien holders and incumbrancers to be deemed owners; but as against them judgment and execution shall be special, to be levied only on the property bound by the lien. In no case shall a license be issued for the use of water until the tax for water pipe has been paid; but no tax on any lot under this section shall be greater than the expense of a six-inch pipe for the length chargeable under this section to any such lot.

SEC. 18 [19.] For the purpose of defraying all the costs of requiring real estate for reservoirs, laying pipe, purchasing and establishing engines and constructing all the work contemplated by this act, the city of Kansas, on the requisition of the said board of water

commissioners, shall issue bonds for the sum of one thousand dollars each, payable in not less than twenty years from date of issue, to be denominated on the face thereof, "Kansas City water bonds," to an amount not exceeding in the aggregate six hundred thousand dollars, bearing interest at the rate of seven per cent. per annum, payable at said city or in the city of New York, where also the principal shall be payable; and the board of water commissioners may sell the same for not less than ninety-five cents on the dollar of the principal; but no commission or other compensation shall be charged or paid to any member of said board for effecting the sale or negotiation thereof. All such bonds shall be executed as directed by the charter of the city as other city bonds, and the record thereof shall be made and kept by the said board and city auditor of the city. But no bonds shall be issued, nor the construction of water-works be undertaken, until an ordinance of the city therefor, limiting the amount of bonds to be issued for the purpose, be approved by two-thirds of the qualified voters of the city voting on the matter at a general election, or a special election ordered and held for the purpose, the result of such election to be declared by an ordinance passed and approved as other ordinances, which declaration shall be conclusive evidence for all purposes of such result.

SEC. 19 [20.] The proceeds of the sale of said bonds, and also all the revenue derived from the water-works and the special tax for water-pipe, shall be received by said board of water commissioners and placed on deposit in such bank or banking and saving association in the city of Kansas as will receive the same on the most advantageous terms for the city of Kansas, giving for the safe keeping and repayment thereof satisfactory security, to be approved by said board; all moneys to be disbursed thereout, on account of said water-works, shall be drawn upon warrants signed by the president and countersigned by the secretary of the board.

SEC. 20 [21.] The board may, from time to time, recommend to the common council any alteration in the prices or rents to be paid for the use of water from the water-works, and the whole net income, rents and receipts of the water-works shall be invested in Kansas city water-bonds if the same can be done advantageously, and if not, in other bonds issued by the city or in bonds issued by the United States; and the whole sum so invested shall be set apart as a sinking fund, solemnly appropriated to and for the payment of the principal of said water-bonds, and shall be applied solely to that purpose until the whole of said bonds shall be paid; and the board shall, whenever required, render a just, true and full account to the common council of all receipts, payments and proceedings under this section.

SEC. 21 [22.] No member of the first board appointed shall be removed, except for good cause in the opinion of the common council, rendering him incompetent or incapable to perform the duties of his office, or for some crime, rendering him, in their opinion, an improper person to fill the office, or failure to give bond when lawfully required. The city may, by ordinance, provide for accomplishing the purposes of this act as to all details not prescribed by this act, or not to be determined and regulated by the said board of water commissioners; and shall have power to assess and collect a special tax on lots chargeable for the cost of laying water-pipe, in case water is not used for the lot therefrom, not exceeding twenty-five cents per front foot.

SEC. 22 [23.] The city of Kansas is hereby empowered to grant to any person or persons, or any corporation, the right to erect and

operate such water-works as the first section of this act provides for, and to accomplish the purpose therein mentioned on such terms and conditions as may be agreed on in a contract therefor: *provided*, that such grant shall only be made by or in all respects pursuant to ordinance, which shall not be valid till the same be approved by two-thirds of the qualified electors of the city voting on the matter at a general election, or special election ordered and held for the purpose, when the matter of the approval of such ordinance shall be submitted to such electors; the power to order, hold and declare the result of any election requisite being hereby conferred on the city, to be exercised by or pursuant to ordinance: *and provided, further*, that no grant so made shall confer the right to operate the water-works for any period beyond twenty years from the time of approval of the ordinance as aforesaid; but the grant may be renewed by or pursuant to ordinance approved as aforesaid during the last of such twenty years, for another term not exceeding twenty years, on terms and conditions specified in the ordinance for the renewal of the grant: *and provided, further*, that in making such grant or renewing the same, the city shall reserve to itself the right, at its option, and at any time, to acquire and become sole owner of such water-works, including all extensions and enlargements thereof, and everything of every nature and description belonging and pertaining thereto, on such terms as may be provided and agreed on between the parties at the time the grant is made; or, if no such right is expressly reserved, or the city can not, according to any reservation, purchase and become sole owner as aforesaid, then the city may, at any time, at its option, acquire and become sole owner of such water-works, including all enlargements and extensions thereof, and everything of every nature and description belonging or pertaining thereto, on paying therefor the fair and equitable value thereof, to be ascertained, if the parties can not agree thereon, by the circuit court of said county, on the petition of the city; the property and subject of purchase to be transferred and belong to the city on payment therefor: *and provided, further*, that at the expiration of the twenty years, if the grant be not renewed, the city shall purchase and become sole owner of such water-works, as aforesaid, and pay therefor a price agreed upon by the parties or ascertained as they may agree, or, if the price can not be thus fixed, then the city shall pay the fair and equitable value of the whole works, to be ascertained by said court on the petition of either party filed for the purpose: *and provided, further*, that the city may furnish any party to whom such grant may be made real estate and right of way for use in constructing and operating such water-works, according to such agreement as may be made in the premises, and guarantee that the works shall earn a certain amount annually, to be specified in the grant; and guarantee clear, over and above current expenses, taxes and assessments; and may secure by a proper deed or agreement for the purpose, to the party to whom such grant is made, the control and possession of any real estate and right of any [kind] condemned or acquired in the exercise of the right of eminent domain, for use during the time such party may need the same under any such grant.

SEC. 23 [24.] The common council shall, in case a grant is made to any person or persons, or corporation, to erect and operate water-works in the city of Kansas, and in case the city shall guarantee to such person or persons, or corporation, that the works they may erect shall earn a certain sum of money, and it becomes necessary to pay any portion of such guarantee out of the public treasury, levy and

collect a tax on all the property fronting on the streets where the supply of water pipes may be laid, not less than five cents per front foot nor more than twenty-four cents per front foot, for the purpose of paying such sum of money guaranteed.

SEC. 24 [25.] This act shall take effect from and after its passage.

APPROVED March 24, 1873.

TOWNS AND CITIES: KIRKSVILLE.

AN ACT to amend and reduce into one act an act entitled "An act to incorporate the town of Kirksville, in the county of Adair," approved January 30, 1857, and the several acts amendatory thereto.

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SECTION

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SECTION

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