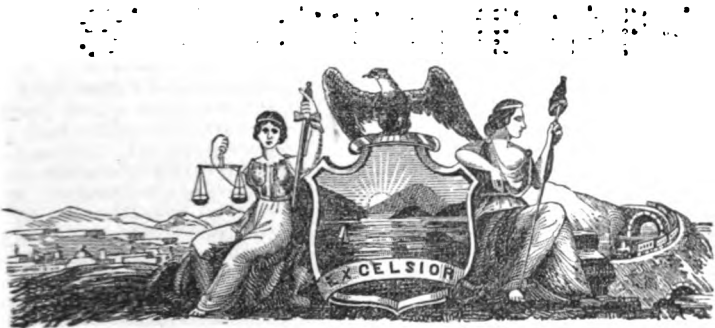


L A W S  
OF THE  
STATE OF NEW YORK,  
//  
PASSED AT THE  
EIGHTY-SECOND SESSION

OF THE  
LEGISLATURE,

BEGUN JANUARY FOURTH, AND ENDED APRIL NINETEENTH, 1859, IN THE  
CITY OF ALBANY.



ALBANY :  
W. C. LITTLE & COMPANY,  
LAW BOOKSELLERS, 515 BROADWAY.  
1859.

in any of the inland public waters of this state, with any net, seine, weir, basket, spear, grapple, or any other device or composition whatever, between the fifteenth day of September and the fifteenth day of February in each year, and whoever shall offend against the provisions of this section shall, for each offense, forfeit the sum of twenty-five dollars, to be sued for and recovered, with costs of suit, as provided in section five.

Exception.

§ 7. The Cayuga and Seneca, Crooked and Otsego lakes are excepted from the action of this bill, and all laws now in force, relating to the fisheries in said lakes, are hereby repealed.

§ 8. All acts or parts of acts inconsistent with this act, are hereby repealed.

## Chap. 512.

AN ACT to incorporate the Auburn Water Works Company.

Passed April 19, 1859; three-fifths being present.

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

Names of  
corporators.

SECTION 1. William Beach, Benjamin F. Hall, Theodore Dimon, George W. Peck, Franklin L. Sheldon, Albert H. Goss, William H. Carpenter, John S. Clark and Paul D. Cornell, and all such persons as are or may hereafter be associated with them, are constituted a body corporate by the name of the Auburn Water Works Company.

Capital  
stock.

§ 2. The capital stock of said company shall be fixed by the directors thereof, but the same shall not be less than fifty thousand dollars, nor more than one hundred thousand dollars, to be divided into shares of fifty dollars each.

Subscription.

§ 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.

§ 4. The property and business affairs of said corporation shall be managed by nine 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 April, at such time of day and place in the city of Auburn as the directors for the time being shall appoint. The first election shall be held on the first Monday of April, in the year eighteen hundred and sixty, commencing at ten o'clock in the forenoon of that day. Three weeks previous notice of every annual election of directors shall be given, by the publication of a notice thereof, subscribed by the president and secretary, or a majority of the directors for the time being, in at least two newspapers published in said city. At such elections each and every stockholder shall be entitled to cast one vote upon each share of stock held by him or her, for at least ten days previous thereto. Voting shall be in all cases by ballot, and may be in person or by proxy, duly authorized by the holder by an instrument in writing, bearing his signature, and duly sealed and acknowledged.

Business to be managed by directors

First election.

Each share of stock entitled to one vote.

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

President, secretary and treasurer to be appointed.

§ 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 forfeiture of the stock so subscribed for, and all previous payments made thereon. But before the stock of any subscriber shall be declared forfeited for non-payment of any installment called for by the directors, there must be a notice of said call published in at least two newspapers in said city, at least once in each week for four consecutive weeks next preceding the time of making such a declaration, and also ten days personal notice served upon every stockholder residing in the county of Cayuga, and a service by mail, and postage paid thereon, served on all

Subscriptions to stock.

stockholders residing in any other county or place, to be inclosed in an envelope and directed to the stockholder, at his place of residence, at least twenty days before such stock shall be forfeited.

First  
directors.

§ 7. The persons named in the first section shall be the first directors, and shall hold their offices until Tuesday next after the first Monday of April, eighteen hundred and sixty, and until others are elected or chosen in their places; and in case of vacancy in the direction, by reason of the death, resignation or removal from the state 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 inspectors at their annual elections of directors. If no inspectors shall be elected by the stockholders, or if, after having been elected, they or any of them be unable or unwilling to discharge their duties, at the time and place of the election next ensuing, it shall be the duty of the directors to appoint them. 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 any other subsequent day, provided, however, that it shall not be held until after the publication of the notice provided for in the fourth section of this act. The directors may prescribe the duties of all officers appointed by them; may require from them good and sufficient official bonds and sureties conditioned for their faithful performance of such duties, and for their accounting for and payment over to said company, or the proper officers thereof, of all moneys of the company which shall come into their hands; and may remove them from such offices, and fill all vacancies in such offices which shall occur by death, resignation or removal, from time to time, at any regular meeting of the board of directors, held in conformity with the by-laws of the company.

Real estate  
may be  
purchased.

§ 8. For the purpose of supplying the said city of Auburn with pure and wholesome water, the said company may purchase, take and hold any real estate within the city of Auburn, and towns of Fleming and Owasco, and by their directors, officers, agents, servants, work-

men or other persons employed, may enter upon the lands of any and every person or persons in said city or towns which may be necessary for said purpose, and may take the water from any springs, ponds, fountains, rivers, creeks, brooks or streams in, or flowing into or through any part of said city, and appropriate, divert from their present beds, courses or channels, and convey the same to any ward, district or part of said city; and for that purpose said company may purchase, manufacture, construct and build any dam, bulkhead, water-gate, flume, raceway, hydraulic machinery, pump-house, well, cistern or reservoir upon, and may lay, connect, adjust and repair any aqueduct, conduit or pipes which may be necessary for the purposes of said water works, upon or through any of the lands so entered upon, purchased, taken or held. Said corporation may, for the purposes aforesaid, also enter upon any lands, streets, highways, roads, lanes or public squares through which they may deem it proper to convey the water from said springs, ponds, fountains, rivers, creeks, streams, wells or reservoirs, and lay, connect, adjust and repair any aqueduct, conduit or pipe, or other works for that purpose, 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; provided, however, the said company shall not, within the bounds of the city of Auburn, lay any of their main conduits or pipes through any private garden, court-yard or building lot, without the written consent of the owner or owners thereof.

§ 9. Before entering, taking or using any land for the purposes of this act, the directors of this 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 each owner or occupant intended to be taken or used shall be designated, and which map shall be signed by the engineer or surveyor making the same, and by the president of said company, and be filed in the clerk's office of the county of Cayuga. The company, by any of its officers, agents or servants, may enter upon any lands for the purpose of making any surveys and examinations, doing no unnecessary damage.

§ 10. In case the said company are unable to agree with any of the owners or occupants of any of the land or water intended to be taken and used for the purposes

Surveys  
and maps  
to be made.

In case of  
this agree-  
ment com-  
missioners

to be ap-  
pointed.

aforesaid, for the purchase thereof, the directors may apply to the supreme court, at any term or session thereof, held in the seventh judicial district, for the appointment of three commissioners, by whom the compensation to be paid for the damages suffered or to be suffered, sustained or to be sustained by any person or persons, by reason of the taking and using thereof by said company, and constructing any of the works of the company thereon, shall be ascertained, appraised and determined; and in case of the death, resignation, refusal or disability to act of said commissioners, the said court may, on like application, appoint another or others to act in their places; and it shall be the duty of said supreme court to entertain and hear said applications, and to appoint such commissioners as may be necessary to enable the company to obtain the water and lands which may be necessary for their purposes. Before the commissioners so appointed shall proceed to make any appraisal and determination of damages under this act, they shall cause a notice, of at least ten days, of the time and place of their meeting for that purpose, to be served upon such of the owners of the said water, water rights, and land, as can be found within this state, which notice shall be served personally, or in case of their absence from their dwellings or places of business, by leaving the same thereat with some person of suitable age and intelligence to know its import; and in case of any legal disability of any such owner to act for himself or herself, then such notice shall be served in like manner upon his or her guardian, or person appointed to act for him or her, as hereinafter directed; and in case any of said owners cannot be found in this state, such notice shall be given by publishing the same for six weeks successively in two newspapers published in said city; and if any of said owners shall be married women, infants, insane persons or idiots, the said court shall, on application of said company, or next of kin to said married women, infants, insane persons or idiots, appoint some suitable person to attend in their behalf before said commissioners, and take proper care of their interests in the premises. The commissioners so appointed may, on the application of either party, issue subpoenas to compel the attendance of witnesses to testify before them, and either one of them shall have

Notice to be  
given.

May issue  
subpoenas  
and hear  
testimony.

power to administer the usual oath to such witnesses. They shall view the premises, and hear the testimony of witnesses produced by the respective parties before them, and shall appraise and determine the said damages according to the best of their judgment, or the judgment of a majority of them, upon the whole case presented; and they, or a majority of them, shall thereupon make and subscribe a written report of their appraisal and determination, showing the sum awarded by them to each of said owners, and return the same to the said court to be filed. The company shall pay to each commissioner the sum of three dollars per day, for every day necessarily devoted by him in the performance of his duties under this act, and to such witnesses, necessarily subpoenaed to attend the commissioners, the sum of fifty cents per day, and four cents per mile for travel to and from the place of meeting of the said commissioners.

Compensation.

§ 11. Either party may appeal to the supreme court of the seventh judicial district, from any appraisal and determination of the commissioners, provided the party appealing shall, within ten days after any such appraisal and determination shall be made and filed, give notice in writing of the appeal to the other party or parties interested in the same; and the said court shall, at any circuit or special term thereof, upon the report of said commissioners, and such additional testimony as shall be offered in the case, proceed without delay to pronounce a judgment, affirming or modifying the determination of the commissioners, or if it shall appear that the proceedings before the commissioners have been irregular, to set the same aside and direct a re-appraisal; and the said court may make such orders concerning the proceedings of the commissioners, and the notices to be given to parties in interest, in water or lands to be appraised, not inconsistent with this act, as the nature of the case and the ends of justice shall require.

Appeals may be taken.

§ 12. Upon the payment or legal tender of the compensation determined and awarded by the said commissioners, or (in cases appealed) by the said court, the said company shall be authorized to enter upon and take, for the purposes contemplated by this act, all the waters, lands and real estate for which said compensation shall be paid or tendered as aforesaid, and to hold and use the same for the said purposes, to them and their successors

After payment of award, company may enter premises.

forever. If any person to whom any compensation shall be awarded, or who shall be entitled thereto, cannot be found, or shall refuse to receive the sum so awarded, then the said payment may be made by depositing the same with the clerk of the county of Cayuga, who shall be responsible therefor. If the person to whom compensation shall be awarded, or who shall be entitled to receive the same, be at the time under any legal disability, payment may be made to his or her lawful guardian or trustee, or, if there be none, then to such person as shall be designated by said court.

May hold, in fee simple, all lands, waters, &c., which they may acquire

§ 13. The said company shall be authorized to hold in fee simple, for the purposes contemplated by this act, all the waters, lands and real estate which they shall in any manner acquire, enter upon and take by virtue of this act, to them and their successors forever.

Company opening streets to conform to regulations relative to.

§ 14. Whenever the said company shall break or disturb any street, or sidewalk in the city of Auburn, for the purpose of laying, connecting or repairing any conduit or pipe of said company therein, they shall conform to such regulations respecting the time and manner of opening and closing the breaches and the restoration of the same to its former condition, as near as may be, as the common council thereof may prescribe.

By-laws rules and regulations.

§ 15. The directors of said company shall have power to make and establish all necessary by-laws, rules and regulations for the preservation and protection of their works, and every part thereof, for the use of by patrons and customers, and for the prevention of waste of the water in or derived from their works, and may impose, sue for and collect penalties and forfeitures for any violation of said by-laws, rules and regulations, provided such penalty for a single violation shall not exceed five dollars; which penalty may be recovered, with 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. A copy of said by-laws, rules and regulations, certified by the secretary of the said company, and affidavits of the publication of the same in the manner provided in this section, made by one of the publishers of said newspapers, or by one of the foremen in their respective offices, shall be received

To be published.



as evidence of the making, establishment and existence of said by-laws, rules and regulations, in all courts and places.

§ 16. The governor, lieutenant-governor and comptroller of the state may, in their discretion, make a contract with said company to supply the state prison and lunatic asylum for insane convicts with water, on such terms as they shall deem for the best interests of the state, not exceeding ten years, at Auburn. The said company shall furnish water also to the city of Auburn, for the purpose of supplying the public reservoirs and hydrants and for extinguishing fires, upon such terms as may be agreed upon between them and the common council of said city; and if they are unable to agree upon the amount of compensation to be paid by said city, it shall be lawful for either said company or the corporate authorities of said city to apply to the supreme court in the seventh judicial district for and obtain the appointment of three commissioners, as provided by section ten of this act, to fix and determine the same, subject to an appeal by either party to said court, at a circuit or special term thereof, in the same manner as is provided in section eleven of this act. Any agreement on the part of said common council, or determination by such commissioners, or (if the matter have been appealed) the court, shall be obligatory upon said city and the said company for the term of five years from the date of said agreement or determination, for the supply of water therein specified, unless sooner revoked by the parties: provided, always, that nothing herein contained shall be construed to authorize the common council of said city to agree to pay to said company, for the purposes aforesaid, any sum or sums of money, annually, which said common council are not or shall not be authorized by the charter of said city to levy and raise by tax for such purpose.

State officers may contract with company to furnish prisons and lunatic asylum with water.

To furnish water to city of Auburn.

§ 17. The said company shall have competent authority to make and enter into any agreement, contract, grant and lease, for the sale, use and distribution of water, monthly, quarterly, annually or for a term of years, not exceeding twenty, that may be negotiated with any individuals, firms, associations and corporations, residing or owning property, or doing business within said city; which agreements, contracts, grants and leases shall be valid and effectual in the law.

May make and enter into agreements relative to sale and distribution of water.

Willful injury to property declared a misdemeanor.

§ 18. Any person who shall maliciously or willfully injure or destroy any of the works or property of said company, or who shall willfully or maliciously commit any act which shall injuriously affect or tend so to affect the water of said company, shall be guilty of a misdemeanor.

Liability of subscribers.

§ 19. Each and every of the subscribers to the stock of this company shall be liable, in case of non-payment of any installment thereof, duly called for by the directors, to an action therefor, brought in any competent court, in the name of the said "The Auburn Water Works Company," and in cases where any sum whatever shall be recovered of a subscriber, by said company, for indebtedness on his or her subscription, the plaintiffs shall be entitled, in addition, as against the defendant in the action, to the taxable costs in such cases.

Li. of stockholders.

§ 20. Each and every stockholder of the company hereby created shall be severally 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 liabilities incurred by the directors, until the whole amount of the capital stock fixed and called for by the directors shall be paid in, and a certificate thereof shall be made and filed in the office of the county clerk of Cayuga county, as herein provided, except as provided in the next section of this act. Whenever it shall appear to the directors that all the installments of the capital stock, as fixed by them, and called for by resolution, shall have been paid in, it shall be the duty of the president and secretary of said company to make, subscribe and verify a certificate of the amount of said capital stock, fixed and paid in as aforesaid, and file the same, within thirty days thereafter, in the office of the said county clerk.

Stockholders liable for wages of employees.

§ 21. The stockholders of said company shall be jointly and severally liable for the wages of all their mechanics, laborers and servants employed in the construction of said water works during the period of said construction, provided such mechanics, laborers and servants shall indicate their intention to look to the stockholders for such payment, by a written notice of such intention, served upon the particular stockholder or stockholders whom he or they intend to hold responsible for such payment, within thirty days after the time of the commencement of the labor for which the wages shall be claimed.

§ 22. No stockholder of said company shall be personally liable for any debt, unless a suit for the collection of said debt shall have been first brought against said company, within one year after the said debt become due, and prosecuted to judgment, and an execution thereon shall have been returned unsatisfied in whole or in part; but whenever any stockholder of said company, who shall be liable for any debt of said company, shall sell and transfer his stock on the books of the company, he shall cease to be liable for any such debt after one year from the time of such sale and transfer, unless a suit therefor shall have been previously commenced by the creditor to whom such debt shall be owing.

Stockholders not liable unless suit is first brought.

§ 23. 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 said stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate 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 or she had been living and competent to act, and held the stock in his or her 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.

Persons holding stock in trust, not personally liable as stockholder

§ 24. The said company are hereby authorized to borrow to the extent of one-half of the amount of the capital thereof, as the same shall be determined upon by the directors from time to time, within the amount of capital limited by this act, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of said bonds, or of any debt contracted by the company in the prosecution and completion of their works; and the directors may confer upon the holder of any bond issued for the money borrowed as aforesaid the right to convert the principal due or owing thereon into the stock of said company, at any time not exceeding ten years from the

May borrow money.

date of the bond, under such regulations as the directors may see fit to adopt.

Indebtedness not to exceed 75 per cent of capital stock.

§ 25. The indebtedness of said company shall not at any time exceed seventy-five per cent of the amount of its capital stock, as the same shall have been fixed by the directors; and if the directors shall contract or incur indebtedness for and in behalf of said company beyond that amount, they shall be personally and individually liable to the creditors of said company for the excess.

Powers and liabilities.

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

§ 27. This act shall take effect immediately.

## Chap. 513.

AN ACT to authorize the canal board to settle the contract of Charles H. Moore and company, contractors upon the Erie Canal enlargement.

Passed April 23, 1859; three-fifths being present.

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

Facts and circumstances to be inquired into.

SECTION 1. The canal board shall inquire into the facts and circumstances connected with the abandonment of the contract of Charles H. Moore and Company, on section two hundred and seven of the Erie canal enlargement, and if upon such investigation it shall appear to them that the contracting board, in declaring the said contract abandoned, did so without good and sufficient cause, then the said Charles H. Moore and Company shall be settled with and paid in full for the work done and materials furnished by them under said contract, according to the contract prices, the same as if the said contract had not been declared abandoned.

Sum allowed to be paid by contractor

§ 2. The treasurer shall pay, on the warrant of the auditor, to said Charles H. Moore and Company, such sum as shall be estimated or allowed under the preceding section, out of any moneys which are or may be applicable to the Erie canal enlargement, not otherwise appropriated.