

# L A W S

OF THE

# STATE OF NEW YORK,

PASSED AT THE

ONE HUNDRED AND SEVENTEENTH SESSION

OF THE

# LEGISLATURE,

BEGUN JANUARY SECOND, 1894, AND ENDED APRIL TWENTY-  
SEVENTH, 1894, IN THE CITY OF ALBANY.

V O L . I .



ALBANY:  
JAMES B. LYON, PRINTER.

1894.

Suspensions from pay or duty.

board may suspend from pay or duty, or both, any member of the force or other persons appointed by said board, but not longer than thirty days from pay at one suspension. If such suspension shall be for more than ten days the board shall make and file with the clerk of the board a decision in writing, setting forth the grounds for such suspension.

Hearing of complaints for violation of excise law.

§ 22S. Any hearing or trial upon any complaint for violation of the excise law, may be conducted by either member of the board without the presence of the other members, but the testimony shall be taken in writing, and no decision shall be rendered, except by concurrence of the board, upon consideration of the evidence in the case. The person charged with such violation shall be served with a written copy of the charges against him and shall have the right to be represented by counsel and to produce witnesses and proofs in his behalf upon such trial or hearing. For any other business to be transacted, both commissioners shall be present and concur.

Repeal.

§ 2. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 3. This act shall take effect immediately.

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## Chap. 36.

AN ACT supplementary to and amendatory of chapter four hundred and seventy-nine of the laws of eighteen hundred and ninety-two, entitled "An act to supply the city of Auburn with water."

BECAME a law February 23, 1894, 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:*

Act amended.

Chapter four hundred and seventy-nine of the laws of eighteen hundred and ninety-two, entitled "An act to supply the city of Auburn with water," is hereby amended so as to read as follows:

Water commissioners.

Section 1. The water commissioners heretofore appointed by the common council of the city of Auburn, under chapter four hundred and seventy-nine, laws of eighteen hundred and ninety-

two, shall hold office during the terms for which they were severally appointed by the common council of said city, and until their several successors are appointed and qualify, and they and their successors in office, are constituted a department of the city government, under the name of the water board of the city of Auburn, and in that name may sue and be sued, complain and defend in any court. On the first Monday, after the first Tuesday in March in each and every year thereafter, the common council of the city of Auburn shall appoint one person to be a water commissioner of said city, for the term of three years, such term to commence on the day of such appointment. No person shall be eligible for such appointment, unless he is an elector and taxpayer of said city.

Water board.

Annual appointments.

Eligibility to office.

§ 2. Neither the mayor, or any member of the common council while in office, or any person who is not an elector and taxpayer of said city, shall be eligible to the office of water commissioner. No two commissioners shall be appointed from the same ward. A water commissioner may be removed from office for official misconduct, by the common council, by a concurring vote of eight members elected thereto; but notice of the charges against him, and an opportunity to be heard in his defense shall be first given him. A removal from the city of any water commissioner, or his failure to take the oath of office within the time prescribed in this act, or his resignation, shall create a vacancy in his office. If a vacancy shall occur in said office before the expiration of the term of any commissioner, the common council shall appoint some eligible person to such office for the unexpired term, and until his successor shall qualify.

Removal for cause.

Vacancies

§ 3. Every commissioner shall, before entering upon the duties of his office, and within ten days after notice of his appointment, take and file with the city clerk, the constitutional oath of this state, and execute a bond in the penal sum of five thousand dollars, to said city, with sureties to be approved by the mayor, conditioned for the faithful performance of his duties as such commissioner. The water commissioners now in office shall execute a similar bond, approved as aforesaid, to said city, on or before July first, eighteen hundred and ninety-four.

Oath of office.

Official bond.

§ 4. At the first meeting in March in each year, after the appointment of a commissioner as hereinbefore directed, said commissioners shall elect one of their number president, who

President.

shall hold office as such, for one year and until his successor is appointed.

Quorum.

§ 5. The presence of two commissioners shall be necessary for the transaction of business.

Clerk and superintendent.

§ 6. The said water board shall appoint a clerk and superintendent of the water works, who shall hold office at the pleasure of the board. Said superintendent and clerk shall be paid salaries, to be fixed by the commissioners before their appointment. That of the superintendent shall not exceed two thousand dollars, and that of the clerk shall not exceed twelve hundred dollars annually, payable in installments, at such time as the water board shall direct. Before entering upon the duties of their office, they shall give bonds in such amount as the commissioners shall determine, with sureties to be approved by the mayor.

Purchase of water plant.

§ 7. The water board of the city of Auburn is hereby authorized and empowered, in the name of said city, to purchase the entire plant of the Auburn water-works company, with all rights, title and privileges now owned or enjoyed by the said company, and all materials and fixtures on hand, including pipe, hydrants, valves, connections, meters, tools, supplies, office furniture, safes and maps, for the sum of four hundred and twenty-five thousand dollars, and in part payment of the purchase price thereof, to assume in behalf of the city of Auburn, the payment of any outstanding bonds heretofore issued by the Auburn water-works company, and then outstanding.

Issue of bonds.

§ 8. It shall be the duty of the common council to raise by loan, from time to time, as needed, a sum not exceeding in the whole five hundred thousand dollars, and for that purpose they shall issue the bonds of said city, to be known and designated as "water bonds," in sums of not less than five hundred, and not more than twenty-five thousand dollars each, with interest payable semi-annually, at a rate not exceeding four per centum per annum, to be signed by the mayor and city clerk; the first issue of bonds, not exceeding three hundred and thirteen thousand dollars in amount, shall be made payable in sums of twenty-five thousand dollars in each year, commencing twenty years from their date, and may, if the commissioners so determine, be made payable, both principal and interest, in gold. The balance of said bonds shall be issued from time to time when needed, for

When payable, etc.

the purposes authorized by this act, and shall be payable at such times, and in such amounts as the water board shall direct. A record of all bonds issued shall be kept in the office of the city clerk. No bond shall be negotiable until countersigned by the president of the water board. The water board shall dispose of all bonds issued under this act, but at not less than par, and accrued interest.

Record.

Sale of bonds.

§ 9. All moneys received from the sale of such bonds shall be paid to and deposited with the city treasurer of the city of Auburn, who shall place the same in a special fund, to be known as "the water fund." The moneys so received, from time to time, from the sale of such bonds, to the amount of four hundred and twenty-five thousand dollars, shall, under the direction and upon the order of said water commissioners, be paid to the Auburn water-works company, and the holders of its five per cent bonds outstanding. The balance remaining in said fund after such payment, if any, may be withdrawn or transferred by said commissioners to and deposited in the bank, banking-house or trust company designated for the deposit of moneys by them, under the provisions of section sixteen of this act, and withdrawn therefrom and used for such purposes, at such times and in such amounts as they shall direct. Any money realized from the sale of bonds, after the full payment for the plant and property purchased of said Auburn water-works company, may be used by said commissioners, when necessary, for the purpose of extending the water mains or for paying for extraordinary repairs made necessary by accident or casualty, or for paying the purchase-price of, or damages sustained by the owner of any real property or easement therein purchased or taken for the purposes of this act, or which may be injuriously affected by any act of said water board in furnishing water to the city of Auburn, under the provisions of this act, and for no other purpose whatever. Before receiving such money, or any portion thereof, said city treasurer shall execute a bond to the city of Auburn, in such penal sum and with such sureties, and containing such conditions as the common council shall direct, the amount of such bond to be not less than the sum received from the sale of said bonds, and said sureties to be approved by the mayor. The common council may require said city treasurer to execute additional bonds, at any time when additional sums of money are

Disposition of proceeds.

After payment for plant, etc.

City treasurer to give bond.

received from the sale of bonds, and may reduce and cancel said bonds, when the money in said water fund has been either wholly or partly disbursed.

Employment of engineers, etc.

§ 10. It shall be the duty of said commissioners to examine and consider all matters relative to supplying the city of Auburn with a sufficient quantity of good and wholesome water, and for that purpose they shall have power to employ engineers, surveyors and such other persons as they shall deem necessary; they shall adopt such plans as in their judgment will be most expedient for procuring such supply of water, which shall embrace the proper distribution of main pipes for a supply to all the streets in said city, so far as said commissioners shall deem the same expedient, and also the furnishing and placing such number of street hydrants for supplying water for the extinguishment of fires, as they shall deem advisable. For that purpose they shall have power to contract for and purchase, and take by deed or other instrument, under seal, in the name of said city, all lands, tenements, hereditaments, rights or privileges whatever, situate at any place within the county of Cayuga, which may be required for the purpose, and to contract for the execution of the work, or any part thereof, or the supply of any necessary material, and the commissioners and their agents and employes, are authorized to enter upon any land or water for the purpose of making surveys, and to agree with the owner of property, real and personal, which may be required for the purposes of this act, as to the amount of compensation to be paid such owner.

Plans for water supply.

Power to take property and to contract.

Entry upon lands.

Agreement with owner.

Proceedings in case of disagreement.

Appointment of commissioners.

§ 11. In case of disagreement between the commissioners and the owner of any property, rights or easement, as to the amount of compensation to be paid, or in case any such owner shall be an infant, insane, absent from the state, unknown, or the owner of an uncertain or contingent interest, the supreme court at any special term in the seventh judicial district, or the county court of Cayuga county, at any special term thereof, upon the application of such commissioners after ten days' personal notice to such owners, to be served upon an infant or insane person in the same manner as a summons in a civil action in the supreme court, is required by law to be served upon them, or where such notice can not be served within the state, or the party in interest is unknown, after three weeks' notice of such application shall have been published in all the daily newspapers of the city of Auburn,

shall appoint three disinterested persons as commissioners, to ascertain and appraise the compensation to be made to such owners who, upon being duly sworn faithfully and impartially to discharge their duties, shall examine the said property, take such evidence as may be offered before them, and estimate, determine, and report to said court, appointing them the several sums which will be a just compensation to such owners respectively, for the appropriation to the purposes of this act of any property, right or easement which may be required, or for the temporary use thereof.

Duties of commissioners.

§ 12. The said water commissioners may, after the final completion and making of said report, after publishing a notice for three successive weeks in a newspaper published in said city of Auburn, of their intention so to do, present the same for confirmation to the court in which the proceedings were instituted. No other papers shall be read by either party, upon the application to confirm said report, than the evidence and objections taken before said commissioners, which shall accompany said report. Only such persons who shall have filed written objections shall be heard upon such application. The court may confirm the said report in whole or in part. In case such report shall not be confirmed by said court, as to one or more or all of such owners or parties interested, the court shall, without notice, appoint the same, or three other disinterested persons as commissioners of estimate, who shall proceed with reference to the owners or parties interested, as to which said report shall not be confirmed in all respects as above specified, and the report of such commissioners shall be treated as final, and shall be confirmed by the court. When such report shall have been confirmed by said court, the said commissioners may deposit or pay to such owners, or to such other person or persons as the court shall direct, the sums mentioned in said report as and for full compensation for the property so required, and upon furnishing satisfactory proof thereof to the said court, an order shall be made stating the said proceedings, and such payment or deposit, which order shall be prima facie evidence in all courts, of the facts therein recited, which shall be recorded in the records of deeds in the clerk's office of Cayuga county, and thereupon the city of Auburn shall become and be seized in fee, of the property and rights so acquired, and shall be discharged from

Confirmation of report after notice.

Deposit or payment of awards.

Order of court and effect thereof.

all claims and demands by reason of the appropriation and use thereof.

Supplying  
of water.

§ 13. The said commissioners may furnish water to owners or occupants of property lying outside of, but adjacent to the city of Auburn, as well as to residents of said city. Said commissioners

Scale of  
water rent.

shall establish a scale of rent to be charged and paid from time to time, either in advance, or at such time and times as the commissioners shall prescribe, for the supply of water, to be called "water rates or rents," which shall be based on actual consumption of water, as determined by meter or apportioned to the different classes of buildings and premises in, or adjacent to said city, with reference to their ordinary uses for dwellings, stores, shops, stables, and other purposes, number of families or occupants, sprinkling of lawns, or consumption of water as near as may be practicable, and according to the judgment and discretion of said commissioners; and may, from time to time, alter, amend, modify, increase or diminish such rents in said scale, and extend it to other descriptions of buildings, establishments or uses; but the rents shall be so fixed and kept, after the second year of operation of said water works, that the annual aggregate amount collected therefrom, shall be at all times equal to at least three per centum of the then existing water debt of said city, over and above all expenses of repairs, maintenance, management, salaries and interest on existing water debt. Said

Alteration  
of same.

commissioners may also establish annually a rate or sum not exceeding fifteen thousand dollars, which shall be paid by the city of Auburn annually for fire protection to property within its limits, and for water used by it for street and sewer purposes, water troughs and in city buildings, exclusive of hose-houses and school buildings. The common council shall annually

Regulation  
of rent  
after  
second  
year.

levy and raise the amount of money so established by said water board, and the amount so to be raised shall be levied and collected at the same time, and in the same manner, as other general taxes of said city are levied and raised, and in addition thereto, and shall be paid by the city treasurer to said water board upon its order, and shall be used, applied and expended under the direction of the water commissioners.

Rate for  
city.

Levy and  
collection  
of tax.

Connecting  
or supply  
pipes.

§ 14. The connecting or supply pipes leading from buildings or yards to the distribution pipes, shall be inserted and kept in repair at the expense of the owner or occupants of the premises,



and shall not be inserted or connected with the main pipe, until a permit therefor shall be obtained from said commissioners, and all such connecting or supply pipes and fixtures shall be constructed, laid and placed in the manner directed by said commissioners.

§ 15. The entire receipts for water rents, after deducting there-  
 from such sums as may be necessary to defray the expenses of  
 repair of said water works, and of extending the same, and other  
 necessary expenses incurred by said board; including the salaries  
 and compensation of its employes, shall be applied toward the  
 payment of the interest on the loan, and the creation of a sink-  
 ing fund for the payment of the principal of the loan, as it shall,  
 from time to time, become due and payable, which sink-  
 ing fund shall be managed by said commissioners. Any  
 surplus money remaining in the hands of said water board,  
 received from said water rents, or from any other source,  
 for water so furnished the city of Auburn, and residents  
 therein or adjacent thereto, after the payment of the interest  
 upon said water loan, and the expenses of operating and main-  
 taining said water works, in any one year, may be invested by  
 said water commissioners, either in the bonds of the United  
 States, the state of New York, or any bond of the city of Auburn.  
 All bonds purchased under the provisions of this act, shall be  
 stamped by the commissioners as belonging to said water loan;  
 and shall be deposited with, and held by the city treasurer, who  
 shall collect the interest thereon, and place the same to the  
 credit of said water loan, which said interest so collected, may  
 from time to time, be invested by the water commissioners, in  
 bonds of the United States, the state of New York, or any bonds  
 of the city of Auburn.

Annual receipts for rents, how applied.

Investment of surplus.

Bonds purchased.

§ 16. All moneys collected by the water board for water,  
 together with the money levied, raised and paid by the city for  
 water purpose, shall be deposited to the credit of the water  
 board, in one or more banks, banking houses or trust companies,  
 to be designated by the water board, and shall be payable only on  
 the order of two commissioners, countersigned by the clerk or  
 acting clerk of the board. No money shall be drawn from the  
 water fund in the hands of the city treasurer, except on an order  
 signed by all the commissioners. All orders for money so depos-  
 ited or kept, shall specify for what purpose the amount named

Deposit of moneys collected.

Disbursement of funds.

Bond re-  
quired of  
depository.

therein shall be paid, and the clerk of the board shall keep an accurate account of all orders drawn on said fund, in a book to be kept by him for that purpose, and shall report at each monthly meeting of the board, the amount of such orders drawn, since the last preceding meeting. The water board shall require from any depository designated for the deposit of such moneys, a bond in such amount, and with such sureties as shall be approved by the mayor and said water board, for the safe-keeping of such moneys, and the payment of the same as required upon the orders of the board, which said bond shall be renewed whenever required by the water board. Such bonds shall be made payable to said water board, and filed in the office of the clerk of Cayuga county, and suit shall be brought thereon by said water board, for any failure in complying with any of the conditions thereof.

Contracts  
for labor  
and ma-  
terials.

§ 17. Said commissioners shall have power to make all necessary contracts for labor and materials, which said contract shall be in writing, and signed by a majority of the commissioners. Of each of said contracts there shall be three originals executed by the parties, one of which shall be given to the contractor, one to the city clerk, and one retained by said commissioners. Said board may purchase any materials, and cause any work authorized by this act to be done by its superintendent.

Purchase  
of mate-  
rials.

Proposals  
for con-  
tracts.

§ 18. Public notice shall be given by the said commissioners for at least thirty days, in one or more of the daily newspapers of said city, of the times and places at which sealed proposals will be received for entering into contracts for any materials or work, which said commissioners shall determine to purchase, or do by contract. All sealed proposals for contracts shall be for a sum certain as to the price to be paid, and no proposal which is not thus definite and certain, or which shall contain any alternative condition, or limitation as to price, shall be received or acted upon, and no more than one proposition shall be made or received from any one person for the same contract, and no proposal or contract shall be assigned, without the written consent of the commissioners indorsed thereon. Each sealed proposal must be accompanied by a bond signed by the party so proposing, and by two or more sureties justifying in all in double the sum for which the party proposes to do the work, or furnish the material, con-

Bond to  
accompany  
same.

ditioned that if such proposal be accepted the obligor will enter into a contract, in conformity with said proposal with said water board. Any or all proposals so received may be rejected by said commissioners, if in their judgment the same are not for the best interest of the city.

Rejection of proposals.

§ 19. All contracts shall be awarded to the lowest responsible bidder, and every person who shall enter into any contract for the supply of materials or performance of any work, shall be required to give satisfactory security to said commissioners for the faithful performance of his contract.

Award of contracts.

§ 20. No commissioner or member of the common council of said city, shall be interested, directly or indirectly, in any contract, purchase or work done under this act, under penalty of forfeiture of his office, and in addition thereto he shall be deemed guilty of a misdemeanor, and all such contracts shall be void.

Interest, etc., in contracts prohibited.

§ 21. It shall be the duty of the said commissioners, to keep a record of all their proceedings in suitable books, and keep a register of the names of all persons furnished with water, together with the rates charged therefor, and they shall have and exercise a general supervisory and controlling power and direction in all matters relating to the preservation and continuance of the work authorized by this act, and of all lands, property and rights acquired thereunder.

Record books and registers.

General powers of commissioners.

§ 22. The said commissioners and persons acting under their authority, shall have the right to use the ground or soil under any street, highway or road in the county of Cayuga, for the purpose of laying pipes and conduits and introducing water into, and through any portion of the city of Auburn or county of Cayuga adjacent to said city, and maintaining and keeping the same in repair, but they shall cause the surface of said street, highway or road to be restored to its former state, or to such a state as shall not unnecessarily have impaired its usefulness.

Use of highways.

Restoration of surface.

§ 23. The said water board shall make such by-laws, rules, regulations and orders for the preservation, protection and management of said water works, and the use and control of the water, as they shall deem advisable, and shall establish and impose penalties for a violation thereof or non-compliance therewith, not exceeding twenty-five dollars in any one case. The common council shall enact such ordinances for the preservation and protection of said water works, and the property connected

By-laws, rules and ordinances

therewith, as the water board shall request, which ordinances shall have the same force and effect as any ordinance enacted by said common council, and said common council shall impose such fines, penalties and punishments for the violation or infringement thereof as they are now authorized to impose for the violation of any ordinance which they are now authorized to enact under the charter of said city.

Penalty for injury to property, etc.

§ 24. If any person shall willfully do, or cause to be done, any act whereby any work, materials or property whatsoever, erected or used by said city, or by said commissioners, or by any person acting under their authority, for the purpose of procuring or furnishing water shall in any manner be injured, such person shall be deemed guilty of a misdemeanor, and upon conviction be punished accordingly.

Rules to be printed, etc.

§ 25. The rules and regulations for the use of the water shall be printed on each permit, and distributed to each house or building supplied therewith, which shall be notice to the owners or occupants thereof. Any penalty established by said water board for any violation of or non-compliance with the rules, regulations, by-laws or orders made by it may be recovered in an action at law instituted by said board, in any court having jurisdiction, and the observance of said rules, regulations, by-laws and orders, may be enforced by cutting off the supply of water.

Recovery of penalties.

Cutting off supply.

Annual report.

§ 26. The said commissioners, on the first Monday in March in each year shall deliver to the mayor of said city, to be presented to the common council, a report in detail of all moneys expended by them during the preceding year, and the purposes for which said moneys were expended, the receipts for water rents and from all other sources during the same period, and the amount of moneys on hand and invested as herein provided for. The said commissioners shall also, whenever required by the common council, make such other report as shall be by it demanded, and shall, if required, appear before said common council, or any committee appointed by it, and exhibit their records, books, vouchers and other papers, and give such explanation thereof and information relating thereto as shall be requested.

Other reports.

Repeal.

§ 27. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 28. This act shall take effect immediately.