

L A W S

OF THE

STATE OF NEW YORK,

PASSED AT THE

NINETIETH SESSION

OF THE

LEGISLATURE,

BEGUN JANUARY FIRST, AND ENDED APRIL TWENTIETH, 1867,
IN THE CITY OF ALBANY.

VOL. II.



ALBANY:

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1867.

Chap. 780.

AN ACT to supply the city of Binghamton with pure and wholesome water.

Passed April 25, 1867; three-fifths being present.

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

SECTION 1. Frederick Lewis, Edward F. Jones, John S. Wells, William P. Pope and Sabin McKinney, and their successors in office, are hereby constituted a body corporate by the name of "Water Commissioners of the city of Binghamton," and in that name may sue and be sued, complain and defend in any court.

Water commissioners.

§ 2. Within twenty days after the passage of this act, the persons named in the foregoing section shall meet at the office of the city clerk of said city, and shall then and there determine by lot the order in which their term of office shall expire, and the determination so made shall be certified by said clerk to the common council of said city. If said commissioners shall neglect or refuse to assemble and determine as aforesaid, the said common council shall, within twenty days thereafter, make such determination. The term of office of the commissioner first going out of office shall expire on the first Monday of June, eighteen hundred and seventy; that of the second on the first Monday of June, eighteen hundred and seventy-one; that of the third on the first Monday of June, eighteen hundred and seventy-two; that of the fourth on the first Monday of June, eighteen hundred and seventy-three, and that of the fifth on the first Monday of June, eighteen hundred and seventy-four.

Terms of office; how to be determined.

§ 3. On the first Monday in June, in the year eighteen hundred and seventy, and upon the same day in each year thereafter, an election shall be held in said city for the purpose of electing a suitable person to fill the place of the commissioner whose term of office shall expire on that day, and to fill any vacancy that may have occurred, and public notice

Election in June, eighteen hundred and seventy.

Terms of
office of
elective
commis-
sioners.

of such election shall be given by said common council by publishing notice of such election in all the newspapers of said city once in each week for two weeks previous to such time of election, and such elections shall be conducted in all respects as elections of mayor of said city are directed to be conducted, and the term of office of each commissioner (except one chosen to fill a vacancy) shall be the period of five years, and the term of one elected to fill a vacancy shall be the unexpired term of the person whose place he was elected to fill. All commissioners shall be electors of said city, and no other officer shall be elected on the same day with the commissioners. All commissioners shall continue in office until a successor shall be elected and shall qualify. In case of failure to hold the election at the time aforesaid, or in case of failure for any cause to elect a commissioner or commissioners at the time aforesaid, said common council shall immediately thereafter name a day for the holding of an election, giving the like notice of such time as above provided and such election shall be conducted in all respects as provided for the election of the first Monday of June. In case of vacancy in office by death, removal, or resignation or any other inability to serve, the commissioners then duly in office shall fill such vacancy by appointment, and the person appointed shall hold his office until the next annual election, and until another shall be qualified to fill his place.

Vacancies.

Bonds and
oaths of
office.

§ 4. Every commissioner, whether elected or appointed, shall, before entering upon his duties of office, and within ten days after notice of election or appointment, take and file with said city clerk the constitutional oath of this State, and shall also enter into a bond to said city with sureties to be approved by said common council, conditioned for the faithful performance of his duties as such commissioner, the penalty of the bond of each commissioner in office previous to June first, eighteen hundred and seventy, to be the sum of fifty thousand dollars, and of each commissioner in office subsequent to June first, eighteen hundred and seventy, in the penal sum of five thousand dollars.

§ 5. The commissioners shall, from time to time, as a vacancy in the office of treasurer shall occur, appoint one of their number treasurer, who shall be subject to removal at the discretion of the commissioners, and who shall perform his duties without fee or reward, and who shall, before he enters upon his duties as treasurer, execute and deliver to said common council a bond in the penal sum of fifty thousand dollars, with such sureties as shall be approved by the mayor of said city, conditioned that he will faithfully perform his duties as such treasurer; and such commissioners shall appoint a clerk, at such compensation as they shall deem just, subject to removal at their discretion.

Treasurer.

Bond of

Clerk.

§ 6. A meeting of a majority of the board of commissioners shall be necessary for the transaction of business, though a meeting of less than a majority shall have authority to create a legal adjournment.

Quorum.

§ 7. It shall be the duty of the commissioners to examine and consider all matters relative to supplying the city of Binghamton with pure and wholesome water, and for that purpose they shall have power to employ engineers, surveyors, and such other persons as may be necessary for that purpose; and they shall adopt such plans as in their opinion may be most feasible for procuring such supply of water, and which shall embrace proper distribution pipes and supplies for all streets and places, where, in their opinion, it shall be of interest to the city, and shall ascertain the probable amount of money necessary to carry the same into effect, and 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, and situate at any place within the county of Broome, 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 employees 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

Duties of commissioners.

Power.

be required for the purposes of this act, as to the amount of compensation to be paid such owner.

Proceedings
in case of
disagree-
ment with
owners of
land, etc.,
etc.

Court to
appoint
referees.

Duty of
referees;
report of
and pro-
ceedings
when
report
is not con-
firmed

§ 8. In case of disagreement between the commissioners, and the owner of any property which may be required for the purposes aforesaid, or affected by any operation connected therewith, as to the amount to be paid such owner, or in case such owner shall be an infant or married woman, or insane or absent from this State, or unknown, or the owner of a contingent or uncertain interest, the supreme court at any general term, within the sixth judicial district, shall, upon the application of either party, after ten days' personal notice, or where such notice cannot be served within this State, after three weeks' notice of such application published in all the weekly newspapers in said city, nominate and appoint three disinterested persons, referees for the whole or each case of disagreement, to examine such property, who, upon being duly sworn faithfully and impartially to discharge their duties, shall estimate and report to said court at general term in said district, for confirmation, 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 which may be so required, or for the title or use of any such property. Such referees may examine witnesses upon hearings before them, and all evidence taken before them shall accompany said report. In case said report shall not be confirmed by said court, as to one or more of such respective owners, the said court shall, upon the same notices before provided, appoint other three disinterested persons as referees, who shall proceed in all respects as above specified, as to referees, and the report of such new referees shall be treated as final, and shall be confirmed by the court.

When
confirmed.

§ 9. Whenever any report of referees shall have been confirmed by said supreme court, the said commissioners may deposit as said court may direct, or pay to said owner or to such person or persons as the court may direct, the sum mentioned in said report in full compensation for the property so required, and thereupon the said city shall become seized in fee of the property so acquired, and said

commissioners and said city shall be discharged from all claim by reason of any such appropriation or use.

§ 10. The said commissioners shall have power and it shall be their duty to borrow, from time to time, upon the credit of the city of Binghamton, a sum not exceeding in the whole one hundred thousand dollars, upon such term of credit not exceeding thirty years, and at a rate of interest not exceeding seven per cent per annum, as shall seem to them for the best interest of said city, and to secure said loan, said commissioners are authorized to make, execute and deliver bonds, certificates or other obligations, which shall be signed by them or any three of them, as such commissioners, which said bonds, certificates or other obligations, shall be made payable in such respective amounts and at such respective times as such commissioners shall deem best, and the same, and the interest thereon, shall be a valid liability against said city, and the credit of said city is pledged for the payment of the same, and the said moneys so borrowed shall be appropriated by said commissioners to supplying said city with water agreeably with the provisions of this act.

Amount
Commis-
sioners may
loan.

Bonds.

§ 11. Said commissioners shall have power to make all necessary contracts for labor and materials in the construction of the work and all pertaining thereto, which said contract shall be in writing, signed by a majority of the commissioners and of which there shall be three originals executed by the parties, which shall be numbered with the same number, one of which shall be given to the contractor, one to the city clerk, and one retained by the commissioners; and three weeks' public notice shall be given in one or more newspapers published in said city as the commissioners shall direct, of the times and places at which sealed proposals will be received for entering into contracts, and the commissioners shall have full discretion as to the acceptance or rejection of any and all sealed proposals; and in case any materials or labor shall then remain uncontracted for, the like notice for sealed proposals and like proceeding may be had as above provided, and so from

Contracts
labor etc.

time to time as said commissioners may desire to contract for work or materials; and every person who shall enter into any contract for the supply of materials or the performance of any work shall give satisfactory security to said commissioners for the faithful performance of his contract according to its terms.

Commissioners not to be interested in contracts.

§ 12. No commissioner shall be directly or indirectly interested in any contract relating to the work or materials therefor, nor in any work or materials for the work, nor for any portion of the water-works, nor shall he receive any compensation for his services nor for anything pertaining thereto, further than all necessary expenses and disbursements paid by him.

Right to use streets, etc.

§ 13. The said commissioners and all persons acting under their authority shall have the right to use the ground or soil under any street, highway or road within the county of Broome for the purpose of introducing water into and through any and all portions of the city of Binghamton, on condition that they shall cause the surface of such street, highway or road to be relaid and restored to its usual state, and all damages done thereto to be repaired, and such right shall be continuous for the purpose of repairing or relaying water-pipes upon like conditions.

Rents.

§ 14. The said commissioners shall establish a scale of rents to be charged and paid to the commissioners 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-rents," and apportioned to the different classes of buildings in said city in reference to their dimensions, values, exposures to fires, ordinary or extraordinary uses for dwellings, stores, shops hotels, factories, livery stables, barns and all other buildings, establishments and trades, yards, number of families or occupants, or consumption of water, as near as may be practicable, and from time to time either modify, amend, increase or diminish such rents; and said commissioners and their respective employees shall be authorized at all times to enter into any building or place where water is used from supply pipes, to examine

as to the water, quantity of water used and manner of using it.

§ 15. The connecting or supplying 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 building or yard, and shall not be inserted or connected with the main pipe, until a permit therefor shall be obtained from said commissioners or other person having charge thereof, and all such connecting or supply pipes shall be constructed in the manner directed by said commissioners or persons in charge.

Supplying pipes; by whom to be kept in repair.

§ 16. The entire annual receipts for water rents, after deducting therefrom 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, shall be applied toward the payment of the interest on the loans, and also towards the creation of a sinking fund for the payment of the principal of the loan, as it shall from time to time become due and payable, which sinking fund shall be managed by said commissioners.

Application of receipts for water rents.

§ 17. In case the entire annual receipts for water-rents, after deducting as in said section sixteen provided, shall, in any year or any respective years, not be sufficient to pay the interest for that respective year on said loans, it shall be the duty of the common council of said city, and they are hereby directed to cause such deficiency to be assessed, levied and collected from the taxable property of said city, at the same time and in the same manner as other contingent expenses of said city are assessed, levied and collected, and with such other contingent expenses, and the same shall be applied to the payment of such interest.

Tax for deficiency of interest

§ 18. The said common council shall annually, at the same time with the annual assessment of contingent expenses of said city, and in the same manner as other contingent expenses of said city are assessed, levied and collected, cause to be assessed, levied and collected from the taxable property of said city, the sum of fifteen hundred dollars, which amount, when collected, shall be paid to said commissioners

Assessment for sinking fund.

for the purpose of increase of the sinking fund for the payment of said principal.

Annual
report to
council.

§ 19. The said commissioners shall annually, on the first day of March in each year, and at all such other times as required by the common council, deliver to said common council a detailed statement of all their accounts; a general statement of all their work and condition of their affairs and state of finances, including a full detail of the amount expended in the progress of the work, and a particular statement of any deficiency as to the water-rents, as to meeting the interest upon the principal sum borrowed as in the previous section hereiubefore referred to, and all books and papers of every kind and description kept by said commissioners upon which are entries of their transactions as such, shall at all times be subject to inspection by said common council and by every elector of said city.

Judgment
against
commis-
sioners.

§ 20. All judgments against said commissioners in their name of office, and judgments against them where the transaction upon which the action was brought shall have been in the performance of their duties as commissioners, shall be deemed judgments against said city, and shall be paid by said city, and shall not be enforced against the individual property of either of the said commissioners.

By-laws.

§ 21. The said commissioners shall have power, from time to time, to make and establish such by-laws, rules and regulations as they shall judge proper for the election of their officers, and as to the duties of these officers and employees, and as to the means of enforcing said duties, and for the regulation of times and manner of holding meetings of commissioners, and for enforcing the collection of water-rents and manner of the using water, and generally for transacting, managing and directing the affairs of the commissioners; and may provide regulations as to water used, water and water-rents, and enforce the observance thereof by cutting off the use and supply of water, provided that such by-laws, rules and regulations are not repugnant to this act and the constitution of this State or of the United States.

§ 22. A violation of any of the provisions of this

act by any of such commissioners, shall be deemed a misdemeanor, and upon conviction thereof of such commissioner his term of office shall be deemed vacant.

Violation of act misdemeanor.

§ 23. As soon after the passage of this act as possible, a meeting of the electors of said city shall be called by said common council, upon notice published for ten days in all the daily newspapers in said city, and once in each weekly newspaper published in said city, at which the question shall be submitted whether the taxes in this act authorized, for the purposes aforesaid, shall be levied and collected from the city, as in this act provided; and the said commissioners shall not proceed with their duties under this act unless the majority of voters voting at such meeting shall vote in favor of such taxes. Said vote shall be by ballot, and there shall be written or printed on the ballots of those in favor of the taxes: "For the taxes," and on the ballots of those opposed, "Against the taxes."

Vote of electors to be first had in favor of taxes before commissioners enter on duty.

§ 24. This act shall take effect immediately.

Chap. 781.

AN ACT to amend an act entitled "An act to simplify and abridge the practice, pleadings and proceedings of the courts of this State," passed April twelfth, eighteen hundred and forty-eight.

Passed April 25, 1867.

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

SECTION 1. The second subdivision of the eleventh section of an act entitled "An act to simplify and abridge the practice, pleadings and proceedings of the courts of this State," passed April twelfth, eighteen hundred and forty-eight, is hereby amended so as to read as follows:

"2. In an order affecting a substantial right, made in such action, when such order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, and when

In what case appeal from an order granting a new trial to court of appeals, on case made