

L A W S

OF THE

STATE OF NEW YORK,

PASSED AT THE

NINETY-SEVENTH SESSION

OF THE

LEGISLATURE.

BEGUN JANUARY SIXTH AND ENDED APRIL THIRTIETH, 1874,  
IN THE CITY OF ALBANY.



ALBANY:  
HUGH J. HASTINGS, PUBLISHER.  
1874.

- may  
make. deem proper for the election of their officers, and as to the duties of their officers and employees, and as to the means of enforcing said duties, and for regulation of the time and manner of holding meetings of said commissioners, and for enforcing the collection of water rents, and regulating the manner of 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, the Constitution of this state or of the United States.
- Observance, how enforced. § 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 any such commissioner, his term of office shall be deemed vacant.
- Misdemeanor. § 23. As soon after the passage of this act as shall be deemed advisable by said board of trustees, a meeting of the resident tax-payers of said village, as shown by the last preceding assessment roll of said village, shall be called by the said board of trustees, upon a notice published for two weeks in all the newspapers published in said village, 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 village as in this act provided; and 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. Such vote shall be by ballot, and there shall be written or printed on the ballot of those in favor of such taxes "In favor of taxes for water-works," and on the ballots of those opposed "Against taxes for water-works."
- Meeting of resident tax payers. Notice of Questions to be submitted. Repeal. § 24. Chapter eight hundred and twenty-one of the laws of eighteen hundred and seventy-one is hereby repealed.
- § 25. This act shall take effect immediately.

## Chap. 617.

### AN ACT to incorporate the Lewiston Water-works Company.

Passed June 8, 1874; three-fifths being present.

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

- Corporators. SECTION 1. James Van Cleve, Joseph E. Ways, William Hotchkiss, Leander K. Scovell, Peter P. Barton, Arthur Gray, George H. Tryon, and all such persons as are or may be hereafter associated with them, are constituted a body corporate, by the name of the Lewiston Water-works Company.
- Corporate name. § 2. The capital stock of said company shall be fifty thousand dollars to be divided into shares of fifty dollars each, and the said company are hereby empowered to increase their capital stock at any time, not to exceed one hundred and twenty-five thousand dollars.
- Capital stock. § 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.
- Books of subscription. Directors. § 4. The concerns of said company shall be managed by seven directors, who shall be stockholders, and a majority of whom shall be resi-

dents of the town of Lewiston, 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 Wednesday of December, at such time of day and place, in the village of Lewiston, as the directors, for the time being, shall appoint. The first election shall be held on the first Wednesday of December, eighteen hundred and seventy-four. Two weeks' notice of such election shall be given by notice being posted in four conspicuous places in said village. Each stockholder shall be entitled to one vote upon each share of stock held by him or her for at least twenty days previous to an election. Voting shall be by ballot, and may be in person or by proxy.

Their term of office.  
To be chosen annually.  
First election.  
Notice of

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

President, &c., to be appointed.  
By laws.

§ 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 forfeiting all stock and previous payments thereon, and may sue for and recover all such subscriptions. Notice of the time and place of said payment shall be published for two weeks previous to said time, at least once in each week, in a newspaper published in Niagara county.

Payment of stock subscriptions.  
Notice.

§ 7. The persons named in the first section shall be the first directors, and shall hold their offices until the said first Wednesday of December, eighteen hundred and seventy-four, and until others are chosen in their places, and in case of vacancy in the direction, by reason of the death or resignation 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 such inspectors at the annual election. If no inspectors are chosen, the directors may appoint three from time to time. The directors may remove all officers appointed by them, and appoint others in their places, and fill all vacancies in the offices. 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 another day in such manner as shall be prescribed by the directors, or provided for by the by-laws.

First directors.  
Vacancy, how filled.  
Inspectors of election.  
Failure of election not to dissolve corporation.

§ 8. For the purpose of supplying the said village of Lewiston with water, and also the farms north and east of the said village with water, the said company may purchase, take and hold any real estate, and, by their directors, agents or other persons employed, may enter upon the lands of any person or persons which may be necessary for the said purpose, and may take the water from the Niagara river, or from any stream emptying into the said river, at such point of said river or stream as the said company shall deem necessary, and divert and convey the same to the said village and to the farming vicinity north and east of the said village, and may construct any pipes, conduits, aqueducts, reservoirs and other works or machinery necessary or proper for the said purpose, upon any lands so entered upon, held or taken, by purchase or otherwise, as hereinafter provided. The said company may, as aforesaid, enter upon any lands, streets, highways, roads or public squares, through which they may deem it proper to convey the

Power to take and hold real estate, to enter upon lands, &c.  
To enter upon streets, &c.

water so as aforesaid to be taken, and lay and construct any pipes or other works for that purpose, leaving the said lands, streets, highways, roads and public squares, as nearly as may be, as they were before said entry; but the said company shall not, within the village of Lewiston, nor on the farms north or east of the said village, construct any such works on any occupied lot or farm, without the written consent of the owner or owners thereof first had or obtained.

Consent of owners.

Survey and map.

§ 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 such owner or occupant intended to be taken or used shall be designated, and which map shall be signed by the surveyor or engineer making the same, and by the president of said company, and be filed in the office of the clerk of the county of Niagara, and notice thereof given to each person whose land or water it is proposed to take for the purposes of this act. The company, by any two of its officers, agents or servants, may enter upon any lands for the purpose of making any examination, and of making said survey and map, doing no unnecessary damage.

Map to be filed and notice given.

Commissioners to estimate damages, how appointed.

§ 10. In case the said company cannot agree with the said owners and occupants of any lands or water intended to be taken or used as aforesaid for the purchase thereof, the directors may apply to the county court of the county of Niagara, or to the Supreme Court, at any term or session thereof held in the county of Niagara, on ten days previous notice to each person, whose land or water is proposed to be taken as aforesaid, for the appointment of three disinterested commissioners, who are hereby authorized to examine all land and water proposed to be taken for the purposes of this act, and to determine what land and water may be taken and used by said company for the purposes contemplated by this act, and by whom the compensation to be paid for the damages suffered, or to be suffered, by any person or persons by reason of taking said lands and water and constructing any of the works of said company, shall be ascertained and determined; and in case of the death, resignation, refusal or disability to act of any of said commissioners, the said court may appoint others in their places. The commissioners shall cause notice of at least twenty days of the time and place of their meeting, to determine what land or water may be taken for the purposes of this act, and to assess the damages therefor, to be served upon such of the owners of said land

Commissioners to give notice of meeting.

How served.

and water as can be found in this State, which may be served personally, or in their absence from their dwellings or places of business, by leaving the same thereat with some person of suitable age; and in case of any legal disability of such owner to act, thereupon serving notice 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 them by publishing the same for six weeks successively in a newspaper published in said county; and if any of said owners shall be married women, insane, infants or idiots, the said court shall appoint some suitable person to attend in their behalf before said commissioners, and take care of their interests in the premises. The commissioners may issue subpoenas to compel the attendance of witnesses to testify before them, and they, or any one of them, may administer the usual oath to such witnesses. They shall make a written report of all their proceedings, containing the testimony taken by them, and showing a description of the land allowed to be taken, and of the water to be used, and the manner in

Guardian for infants, &c.

Report of commissioners.

which the same may be used and conveyed, the sum awarded to each owner or any other person, and return the same to the said court to be filed of record. The company shall pay to each commissioner the sum of three dollars per day for every day necessarily spent by him in the performance of his duties under this act, and to each witness sworn and testifying, whom the commissioners shall certify were properly and necessarily subpoenaed, the sum of one dollar per day, and four cents per mile travel coming and returning, if living more than three miles from the place of meeting.

Their compensation. Witness fees.

§ 11. The said company, or any party to the proceedings of the commissioners, may appeal from any award or determination of the commissioners, to the court appointing them, provided the party appealing shall, within ten days after receiving or giving notice of the determination of said commissioners, either in relation to the land or water to be taken or the compensation therefor, give notice in writing of the appeal to the other party or parties interested in the same, and if their proceedings in any case have been irregular, the court may set the same aside and order new proceedings and appraisement, and the said court may make such orders in reference to the proceedings of the commissioners, and of notices to be given to parties, as may not be inconsistent with this act, and as the nature of the case and the interests of the parties may require.

Appeal.

§ 12. Upon the payment or legal tender of the compensation awarded by the said commissioners, or the determination of said court on appeal, as the case may be, the said company shall be entitled to enter upon for the purpose contemplated by this act, all the lands, waters and real estate which they shall be permitted to take by the determination of said commissioner or the court as aforesaid, 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 forever. If any person to whom any compensation shall be awarded or who shall be entitled to the same by virtue of said award, cannot be found, or shall refuse to receive the sum awarded to him or her, then the said payment may be made by depositing the amount of said award to the credit of said person in such bank as may be appointed by said court.

When company may enter upon lands, &c.

A certificate of such deposit, signed by the cashier of the bank, shall be published by said company in two newspapers published in said county, for four weeks successively, immediately after said deposit. If the person to whom compensation is awarded or who is entitled to receive the same as aforesaid, be under legal disability as aforesaid, payment may be made to his or her guardian or person appointed as aforesaid by the said court, and if said guardian or person appointed cannot be found, then by deposit in bank as aforesaid.

When sum awarded may be deposited.

§ 13. The said company shall also take and hold, for the purposes contemplated by this act, all the lands, waters and real estate which they shall in any way legally enter upon and take by virtue hereof to them and their successors during the continuance of this act.

Certificate thereof be published.

§ 14. In laying pipes, conduits or aqueducts or constructing or erecting works in the streets, lanes or public squares of the village of Lewiston, the company shall conform to such regulations as the board of trustees of said village shall prescribe.

Payment to guardian.

§ 15. The said directors of said company may establish rules and regulations for and concerning the conduct of all such persons as shall use the water from their works, so far as respects the preservation and use and restraining the waste thereof, and may thereby impose penalties and forfeitures for any violation of said rules and regulations, so

How long company may hold land, &c.

Regulations for laying pipes, &c.

Regulations for use of water.

Penalties and forfeiture.

that such penalty and forfeitures shall not in any case exceed ten dollars, which penalties may be recovered with the costs in the name of the company before any justice of the peace of said county. Said rules and regulations shall be published for three weeks successively in a newspaper published in said county, and a copy of said rules and regulations certified by the president or secretary of said company with affidavits of the publication of the same, made by any one of the publishers of said paper or by a foreman in the office where published, shall be received as evidence in all courts and places.

**Rules, &c., to be published.**  
**Evidence.**  
**Village may subscribe to capital stock.**  
**Consent of tax-payers.**  
**Bonds.**

§ 16. After the organization of said company, and the expenditure of fifty per cent. of its capital by said company, the village of Lewiston, in its corporate capacity, may subscribe, for fire purposes, to the capital stock of said company to the amount of twenty-five thousand dollars; provided, nevertheless, that a majority of the tax-payers, representing a majority of the assessed valuation of said village appearing upon the last preceding assessment roll or tax list of said village, shall have first given their consent thereto in meeting,\* and may issue bonds therefor of said village; such stock when issued to said village to be paid for in the same manner, and to be subject to the same provisions as other stock of said corporation.

**Company to furnish water to extinguish fire.**  
**Agreements, &c.**

§ 17. The said company shall furnish water to the village of Lewiston for the purpose of extinguishing fires, upon such terms as may be agreed upon between them and the trustees of said village. The said company may make any agreements, contracts, grants and leases for the sale, use and distribution of water that may be agreed upon between said company and any person or persons, associations and corporations, which agreements, contracts, grants and leases shall be valid and effectual in law, but the said company shall make no lease or contract for the use of any water power south of the brow of the mountain.

**Willful injury to works, &c., a misdemeanor.**  
**Provisions of R. S. applied.**

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

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

**Liability of stockholders.**  
**Capital stock, when to be paid in.**

§ 20. All the stockholders of the company hereby created shall be severally and 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 contracts made by said company, until the whole amount of the capital stock fixed and limited by the directors of said company shall be paid in and a certificate thereof shall have been made and recorded as prescribed in the following section, and the capital stock so fixed shall all be paid in, one-half thereof in one year, and the other half within two years from the time of the commencement of the works of said company under this act, or the corporation hereby created shall be dissolved.

**Certificate that capital stock has been paid in.**

§ 21. The president and a majority of the directors within thirty days after the payment of the last installment of the capital stock, shall make a certificate of the amount of the capital fixed and paid in, which certificate shall be signed and sworn to by the president and a majority of the directors, and shall, within thirty days, be recorded in the clerk's office of Niagara county.

\* So in original.

§ 22. The stockholders of said company shall be jointly and severally liable for all debts that may be due and owing to all their laborers and servants for services performed for said company.

Liability to laborers and servants.

§ 23. The indebtedness of said company shall not at any time exceed an amount equal to fifty per cent. of its capital stock, and if the indebtedness of said company shall at any time exceed such amount, the directors of said company assenting thereto shall be personally and individually liable for such excess to the creditors of said company.

Limit of indebtedness, &c.

§ 24. No person holding stock in said company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be subject to any liability as a stockholder of said company, but the person pledging the said stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be 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 had been living and competent to act and hold the stock in his 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.

Executor, &c., not personally liable as stockholders.

Liability of estates.

Executors, &c., may vote as stockholder.

§ 25. No stockholder shall be personally liable for any debt contracted by said company, unless a suit for the collection of said debt shall be brought against said company, within one year after the debt shall have become due, and no suit shall be brought against any stockholder until an execution against the company shall be returned unsatisfied, in whole or part, and every contract to be made under this act by which said company shall obtain credit shall be in writing, and there shall be attached to the copy of said contract delivered to the creditor a printed copy of this section of said act.

When suit may be brought against stockholder.

Contracts to be in writing.

§ 26. If the said directors shall at any time after the organization of said company, determine to increase the capital stock as herein provided, the books of subscription for said additional stock shall be opened in the same manner as provided in section three of this act, and the said directors may require payment of the subscription to the said additional stock, in the same manner as provided in section six of this act.

Increase of capital stock.

§ 27. Whenever the village of Lewiston shall pay to the said company such sum as will, when added to the annual receipts of the said company over and above the necessary annual expenditures of the said company, make the interest amount to eight per cent. per annum upon the capital stock actually paid in and expended, together with the sum so paid in and expended, then the said water-works and all the lands, fixtures, appurtenances and property, shall become the property of the said village, provided a majority of the stockholders shall assent thereto. But the said village shall be bound by any existing contracts, leases, agreements or liabilities of the said company.

When water works to become property of village.