

L A W S  
OF THE  
STATE OF NEW YORK,  
PASSED AT THE  
SEVENTY-FIFTH SESSION  
OF THE  
LEGISLATURE,

BEGUN THE SIXTH DAY OF JANUARY, AND ENDED THE SEVENTEENTH DAY OF APRIL, 1852, AT THE CITY OF ALBANY.



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1852.

## Chap. 356.

AN ACT to incorporate the Rochester Water Works Company.

Passed April 16, 1852, three-fifths being present.

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

§ 1. Levi A. Ward, Isaac R. Elwood, Azariah Boody, Charles A. Jones, William A. Reynolds, E. Darwin Smith, Hamblin Stilwell, Samuel Miller, William Buell, John B. Robertson, Freeman Clarke, and all such persons as are or may hereafter be associated with them, are constituted a body corporate by the name of the Rochester Water Works Company. Corporation created.

§ 2. The capital stock of said company shall be two hundred 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 five hundred 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

§ 4. The concerns of said corporation shall be managed by eleven 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 May, at such time of day and place in said city, as the directors for the time being shall appoint. The first election shall be held on the first Wednesday of May, eighteen hundred and fifty-two. Three weeks notice of such election shall be given by a publication at least once in each week, in two newspapers published in said city. 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. Concerns to be managed by 11 directors.

§ 5. The directors shall annually appoint a president,

Directors to  
appoint officers.

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.

Payment of  
subscriptions.

§ 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 payments shall be published for four weeks previous to said time, at least once in each week, in two newspapers published in said city.

First directors.

§ 7. The persons named in the first section shall be the first directors and shall hold their offices until the said first Wednesday of May, eighteen hundred and fifty-three, 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 elections. 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.

May purchase and  
hold real estate.

§ 8. For the purpose of supplying the said city of Rochester with pure and wholesome water, the said company may purchase, take and hold any real estate, and by their directors, agents, servants or other persons employed, may enter upon the lands of any person or persons which may be necessary for said purpose, and may take the water from any springs, ponds, fountains, wells, rivers, streams or lakes, and divert and convey the same to the said city, and may lay, and construct any pipes, conduits, aqueducts, wells, reservoirs, and other works or machinery, necessary

Water may  
be taken.

or proper for said purpose, upon any lands so entered upon, purchased, taken or held, and may as aforesaid 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, wells, rivers, streams or lakes, and lay and construct any pipes, conduits 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, but the said company shall not lay and construct said pipes, conduits, aqueducts, and other works through any (private garden and) court yard, without the written consent of the owner 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 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 Monroe.

Survey and maps to be made of lands intended to be used.

The company, by any 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.

§ 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 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 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 a notice of at least twenty days, of the time and place of their meeting, to be served upon such of the owners, of said land 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

Proceedings in case of disagreement with owners of land.

any legal disability of such owner to act, thereupon serving notice in like manner upon his guardian or person appointed to act for him 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 two newspapers published in said city, 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 oaths to such witnesses. They shall make a written report of all their proceedings, containing the testimony taken by them, and showing 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, and if not sworn and testifying who the commissioners shall certify were properly and necessarily subpoenaed, the sum of seventy-five cents per day, and four cents per mile travel in going and returning, if living more than three miles from the place of meeting.

Appeals may  
be made  
within ten  
days.

§ 11. The said company or any party to the proceedings before the commissioners may appeal from any award or determination of the commissioners, provided the party appealing shall, within ten days after such award or determination shall be made, give notice in writing, of the appeal to the other party or parties interested in the same, and the said court shall, upon the report of the commissioners and upon additional testimony to be taken by them, if they deem the same to be necessary, proceed to hear the said appeals, and may confirm the proceedings of the commissioners in whole or in part, or may increase or diminish the amount of compensation awarded by the said commissioners, 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 the notices to be given to parties as may not be inconsistent with this act, and as the nature of the case and the interest of the parties may require.

§ 12. Upon the payment or legal tender of the compensation awarded by the said commissioners, or (in case of an appeal) by the said court, the said company shall be entitled to enter upon, for the purpose contemplated by this act, all the lands, waters 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 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, 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. A certificate of such deposit, signed by the cashier of the bank, shall be published by said company in two newspapers published in said city, for four weeks successively immediately after said deposite. If the person to whom compensation is awarded, or who is entitled to receive the sum as aforesaid, be under legal disability as aforesaid, payment may be made to his guardian or person appointed as aforesaid, by said court, and if said guardian or person appointed cannot be found, then by deposite in bank as aforesaid.

Lands, when  
to be taken  
possession of

§ 13. The said company shall all 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 forever.

To be held  
by the com-  
pany.

§ 14. In laying pipes, conduits or aqueducts, or constructing or erecting works in the streets, lanes or public squares of the city of Rochester, the company shall conform to such regulations as the common council of the said city of Rochester shall prescribe.

Laying of  
pipes, con-  
duits, &c.

§ 15. The said directors of said company may establish rules and regulations for and concerning the use of the water from their works, and 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 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 city; said rules and regulations shall be published for three weeks successively

Rules and  
regulations  
in using  
water.

in two newspapers published in said city, 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 papers, or by a foreman in their offices, shall be received as evidence in all courts and places.

To furnish water to extinguish fires.

§ 16. The said company shall furnish water to the city of Rochester for the purpose of extinguishing fires, upon such terms as may be agreed upon between them and the common council of said city. 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.

Penalty for injuring water works.

§ 17. Any person who shall maliciously or wilfully destroy or injure any of the works or property of said company, or who shall maliciously or wilfully commit any act which shall injuriously affect, or tend thus to affect, the water of said company, shall be guilty of a misdemeanor, and may be punished by fine or imprisonment, or both, in the discretion of the court, and shall also forfeit and pay to the company treble the damages sustained thereby, to be recovered in any court having cognizance thereof, with cost.

General powers.

§ 18. 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, so far as the same are applicable and not otherwise provided for in this act.

Liability of stockholders.

§ 19. 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 of amount of capital to be made.

§ 20. The president and a majority of the directors within thirty days after the payment of the last instalment

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 Monroe county.

§ 21. 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 for debts.

§ 22. The indebtedness of said company shall not at any time exceed an amount equal to seventy-five 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. Indebtedness limited.

§ 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 the said stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and the 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 had been living and competent to act and held 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. Persons holding stock as executors, administrators, &c.

§ 24. No stockholder shall be personally liable for the payment of any debt contracted by said company, unless a suit for the collection of said debt shall be brought against said company, within six years after the debt shall have become due, and no suit shall be brought against any stockholder for any such debt, until an execution against the company shall be returned unsatisfied in whole or in part. Suits must be brought within six years.

§ 25. 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 is provided in section six of this act.

City may take not to exceed \$150,000 of stock.

§ 26. The common council of the city of Rochester may, and they are hereby authorized to subscribe to the capital stock of said water works company an amount not exceeding one hundred and fifty thousand dollars, and for that purpose may issue the bonds of said city, payable in not less than twenty years, and shall be represented in the same manner in the management of the affairs of said company as the other stockholders. The bonds so issued shall not be sold for less than par and the rate of interest not exceed seven per cent. per annum.

Water works may become property of the city.

§ 27. If the common council of the city of Rochester shall at any time within twenty years after the passage of this act, make provision for the repayment to the said "Rochester water works company" for the amount of capital stock actually paid in and expended by them, together with a premium at the following rates, namely: If within five years a premium of twenty per cent. upon the amount of capital stock so as aforesaid paid in and expended by said company, if after five and within six years nineteen per cent., if after six and within seven years eighteen per cent., thus reducing the amount of premium to be paid by the said city of Rochester one per cent. for every year beyond five years that said works shall remain in possession of the said "water works company," so that if not taken until the twentieth year, the premium so to be paid shall be five per cent., and the said city of Rochester shall also pay to the said Rochester water works company, whenever it shall so as aforesaid take the said water works, such additional sum as will when added to the annual receipts of said company over and above their necessary annual expenses, make the interest amount to twelve per cent. per annum upon the capital stock actually paid in and expended, then the said water works, together with all lands, fixtures and appurtenances shall vest in and become the property of the said city of Rochester.

§ 28. This act shall take effect immediately.