

# L A W S

OF THE

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## L E G I S L A T U R E .

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**ALBANY:**  
**WEED, PARSONS AND COMPANY, PRINTERS.**  
1881.

## CHAP. 29.

**AN ACT** to empower the executive board of the city of Rochester to acquire land and other property for the water works of said city.

PASSED March 15, 1881.

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

Executive board, with consent of common council, may acquire title to real estate for water works

SECTION 1. The executive board of the city of Rochester, by and with the consent of the common council, is hereby authorized to acquire by purchase or in pursuance of the provisions of this act, the title to the lands, waters, lakes, springs, ponds, or streams, or any easement therein, which may be necessary for the purposes of the water works of said city. In case the said executive board is unable to obtain by purchase the said lands, waters, lakes, springs, ponds, or streams, or easements therein, they shall be, and are hereby authorized to proceed to acquire such title or rights in the manner hereinafter specified.

Title, how acquired in case of failure to obtain consent of owner.

§ 2. The said board may present a petition in the name of the city of Rochester, praying for the appointment of commissioners of appraisal, to the supreme court at any general or special term thereof held in the seventh judicial district. Such petition shall be signed and verified either by the mayor of said city or any member of said executive board. It shall contain a description of the property or rights which are sought to be acquired, and must state, in effect, that the property so sought to be acquired is requisite for the purpose of constructing, improving or operating said water works; that the said city or said executive board has not been able to acquire title thereto, and the reason of such inability. It must also state the names and places of residence of the parties who own or have, or claim to own or have, estates or interest in the property so sought to be acquired, so far as the same can, by reasonable diligence, be ascertained. If any of such persons are infants, their ages, as near as may be, must be stated. If any are idiots, or persons of unsound mind, or unknown, that fact must be stated, together with such other allegations and statements of liens, or incumbrances, as the said executive board may see fit to make.

Copy of petition and notice to be served.

How served.

In case of non-residents.

§ 3. A copy of such petition, with a notice of the time when and place where the same will be presented to the supreme court, must be served on all persons whose interests are to be affected by such proceedings, at least ten days prior to the presentation of such petition to the court. If the person upon whom such service is made resides in this state and is not an infant, idiot or person of unsound mind, service of a copy of such petition and notice must be made upon him personally or by leaving the same at his usual place of residence with some person of suitable age. If the person on whom such service is to be made resides out of this state and in any of the states of the United States, or in any of the British colonies in North America, such service must be made by delivering to such person personally or leaving at his last place of residence, if known, a copy of such petition and notice at least thirty days before presenting the same to the court; or such service may be made by publishing a notice stating briefly the object of the application, and giving a description of the land or other property to be taken in the state paper and in a news-

paper printed in the county in which the property to be taken is situated, once a week for six weeks next previous to the presentation, and by depositing a copy of the petition and notice in the post-office at Rochester, properly folded and directed to such person at his post-office address, if the same can be ascertained, and if not, at the post-office nearest his last place of residence, at least thirty days before presenting such petition to the court, and paying the postage thereon. If such person is an infant and resides in this state, such service shall be made as aforesaid upon his general guardian, if he has one, and upon such infant personally, if over the age of fourteen years; if under that age, then upon the person who has the care of, or with whom such infant resides. If the person upon whom such service is to be made is an idiot or of unsound mind, and resides in this state, such service may be made upon the committee of his person or estate. If he has no such committee, then upon the person who has the care and charge of such idiot or person of unsound mind. If the person upon whom such service is to be made is unknown, or his residence is unknown, and cannot by reasonable diligence be ascertained, then such service may be made, under the direction of the court, by publishing a notice stating the time and place where the petition will be presented and the object thereof, with a description of the land or other property to be affected by the proceedings, in the state paper, and in a paper printed in the county where the land or other property is situated, once in each week for six weeks previous to the presentation thereof to the court. In all cases not herein otherwise provided for service of the petition, notices and other papers in the proceedings authorized by this act shall be made as the supreme court in the seventh judicial district, or a judge thereof, shall direct.

Service on guardians of infants.

On committees of idiots, etc.

On unknown owners.

In cases not provided for, as the court directs.

§ 4. In case any party to be affected by the proceedings hereby authorized is an infant, idiot or of unsound mind, and has no general guardian or committee, the court to which such petition shall be presented shall, before taking any other proceedings thereon, appoint a special guardian to attend to the interests of such person in such proceeding. If a general guardian or committee has been appointed for such person in this state, it shall be the duty of such general guardian or committee to attend to the interest of such infant, idiot or person of unsound mind. The court may require such security to be given by such general or special guardian or committee as it may deem necessary to protect the rights of such infant, idiot or person of unsound mind. All notices required to be served in the progress of the proceedings may be served on such general or special guardian or committee. Any person may appear in such proceedings by an attorney, upon whom all papers shall be served at the place designated by him in such notice of appearance. The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent.

Special guardian to be appointed.

General guardian, duty of.

Security.

Persons may appear by attorney.

Attorney for unknown owners.

§ 5. On presenting such petition to the supreme court as aforesaid, with proof of service of a copy thereof, and notices aforesaid, any of the persons whose estates or interests are to be affected by the proceedings may show cause against granting the prayer of said petition, and may to that end disprove any of the facts alleged therein. The court shall hear the proofs and allegations of the parties. And if no sufficient cause is shown against granting the prayer of the petition, it shall make an order for the appointment of three disinterested and competent freeholders, who reside in the county where the property to be

Proceedings in court on presentation of petition.

Appointment of commissioners.

Official  
oath of.

Duty of.

acquired is situated, or in some adjoining county, as commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the property so to be acquired, and shall fix the time and place for the first meeting of said commissioners. The commissioners shall take and subscribe the oath prescribed by the 12th article of the Constitution. Any of them may issue subpoenas and administer oaths to witnesses. A majority of them may adjourn the proceedings from time to time in their discretion. They shall view the premises described in the petition and hear the proofs and allegations of the parties, and reduce the testimony taken by them, if any, to writing and after the testimony is taken in each case, they, or a majority of them, all being present or having notice of the meeting to the end that they may be present, shall, without unnecessary delay, ascertain and determine the compensation which ought justly to be made to the owners or persons interested in the property so sought to be acquired. They, or a majority of them, shall also determine what sum ought to be paid to the general or special guardian or committee of any infant, idiot, or person of unsound mind, or attorney appointed to attend to the interests of any unknown owner or party in interest not personally served with notice of the proceeding and who has not appeared, for his costs and expenses.

Report of  
commissioners,  
etc.

They shall make a report of their proceedings to the supreme court, with the minutes of the testimony taken by them. They shall each be entitled to five dollars for every day they are actually engaged in the performance of their duties, together with their expenses to be paid by the city of Rochester. Where the owners or persons, interested in the property sought to be acquired, shall have awarded to them an amount not exceeding the compensation offered by said city of Rochester for such property so sought to be acquired or their interest therein, the said city may recover, and the said supreme court may award against such persons, the amount so paid to said commissioners and necessarily expended for witnesses, or such part thereof as said supreme court shall deem proper.

Proceedings not to be affected by change of ownership.

Confirmation of report.

§ 6. When any proceedings of appraisal under this act shall have been commenced, no change of ownership shall in any manner affect such proceedings.

§ 7. On such report being made by said commissioners, the said city of Rochester shall give notice to the parties or their attorneys, according to the rules, and practice of the supreme court, that application will be made to the said court at a general or special term thereof, for the confirmation of such report, and the court shall thereupon confirm such report and shall make an order containing a recital of the substance of the proceedings and a description of the property appraised for which compensation is to be made and shall direct to whom the money is to be paid, or in what bank and in what manner it shall be deposited by said city.

Certified copy of order to be recorded, and on payment of award city may take possession.

§ 8. A certified copy of the order so made shall be recorded in the clerk's office of the county in which the property described is situated, and thereupon and on the payment or deposit by the said city of the sums to be paid as compensation for the property so taken and for costs and expenses as aforesaid, as directed by said order, the said city shall be entitled to enter upon, take possession of and use the said property for the purpose of the water works, aforesaid, and all persons, who have been made parties to the said proceedings shall be divested of all right, estate and interest in the same. All property acquired pursuant to the provisions of this act shall be deemed

to be acquired for public use. Within twenty days after the confirmation of the report of said commissioners, either party may appeal by notice in writing to the others to the supreme court, from the appraisal and report of said commissioners. Such appeal shall be heard by the supreme court at a general or special term thereof on the usual notice required by the rules and practice of said court. On the hearing of such appeal, the court may direct a new appraisal before the same or new commissioners in its discretion. The second report shall be final and conclusive on all parties interested. If the amount of compensation to be made by said city is increased by the second report, the difference shall be paid by said city to the parties entitled thereto, or deposited in bank as the court shall direct. If the amount is diminished, the difference shall be refunded to said city by the party to whom the same may have been paid, and judgment therefor may be rendered by the court on the filing of the second report against the party liable to pay the same. No appeal shall affect the possession or use by said city of the property so appraised, and when the same is made by others than said city, it shall not be heard except on stipulation of the party appealing not to disturb such possession.

Appeal.

Hearing of.

Not to affect possession.

§ 9. If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the property so taken, the court may direct the money to be paid into the court and may determine who is entitled to the same and to whom the same shall be paid in a summary manner, and may order a reference to ascertain the facts on which such determination and order shall be made.

Court to determine conflicting claims.

§ 10. In cases of appraisal under this act the court shall have power to make all necessary orders and directions to carry into effect the object and intent of this act, and to compel the delivery to the said city of Rochester of the possession and control of all property or rights acquired thereby. The practice in such cases shall be conformed as nearly as may be to the ordinary practice of said court.

General power of court

§ 11. When the mode or manner of conducting any of the proceedings to the appraisal of the property sought to be taken, and the proceedings consequent thereon are not expressly provided for in this act, the said court before whom such proceedings are pending shall have power to make all necessary orders to that end. The said court shall also have power at any time to amend any defect or informality in any of the proceedings authorized by this act as may be necessary, or to cause new parties to be added to, and further notice to be given to any party in interest as it may deem proper, and shall also have power to appoint commissioners in place of any who shall die, refuse or neglect to serve, or be incapable of serving.

Amendments.

§ 12. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 13. This act shall take effect immediately.