

## HIGHWAYS.

### CHAPTER 97.

[S. B. 164.]

#### PRESCRIBING DUTIES OF SUPERVISORS.

AN ACT Amending Sections 3, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 21 of Chapter 112 of the Laws of 1897, Being an Act Relating to Opening and Vacating Highways, Prescribing the Duties of Supervisors and County Commissioners in Relation Thereto and Regulating Appeals from the Awards Thereof, and for the Repeal of Sections 1050 to 1075, both Inclusive, of the Revised Codes of North Dakota.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That sections 3, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 21 of chapter 112 of the Laws of 1897 be and the same are hereby amended to read as follows:

§ 3. SECTION LINES CONSIDERED PUBLIC ROADS, WHEN.] In all townships in this state outside the limits of incorporated cities, villages or towns, the congressional section lines shall be considered public roads, to be opened to the width of two rods on each side of such section lines, where the same have not already been opened upon the order of the board having jurisdiction as provided by section 4 of this chapter without any survey being had, except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this chapter in relation to assessments of damages.

§ 5. PETITION FOR LAYING OUT, ALTERING OR DISCONTINUING ROADS.] The board having jurisdiction as provided by the provision of the preceding section may alter or discontinue any road, or lay out any new road upon the petition of not less than six legal voters, who own real estate, or who occupy real estate under the homestead laws of the United States, or under contract from the State of North Dakota, in the vicinity of the road to be altered, discontinued or laid out; said petition shall set forth in writing a description of the road and what part thereof is to be altered or discontinued: and, if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate; provided, that all roads, or parts thereof heretofore or hereafter laid out by authority of the board of county commissioners, or township supervisors, and not open to public use with-

in ten years from the time when so laid out are hereby declared vacant; provided further, that whenever any tract of land is surveyed or sold in tracts less than the original sub-division as established by the government survey thereof, so that any part thereof does not touch upon some of the lines now considered as public roads and so allow the owner of such tract access to a public highway, the board of county commissioners or board of township supervisors may, upon a petition as herein provided, open a cartway or highway along the lines of any such tract or tracts when in the judgment of such board such cartway or highway is necessary; provided, however, that no such cartway or highway shall exceed two rods in width unless in the judgment of such board a roadway two rods in width shall not be sufficient to accommodate the travel thereon. The provisions of this act shall apply to all lands owned by the state or any institution thereof, or held by virtue of any contract with the state, and notice of the altering, laying out or discontinuing of any such cartway or highway shall be served by registered mail upon the board of university and school lands not less than thirty days prior to any such board taking action in regard to altering, laying out or discontinuing such cartway or highway.

§ 6. COPY OF PETITION TO BE POSTED.] Whenever such number of legal voters, determine to petition, as aforesaid, for the alteration or discontinuance of any road, or for laying out any new road, they shall cause a copy of their petition to be posted up in three of the most public places in the county, or township, having jurisdiction thereof twenty days before any action is had in relation thereto.

§ 7. NOTICE TO ALL PARTIES TO BE GIVEN.] When the board having jurisdiction receives a petition in compliance with the preceding sections for laying out, altering or discontinuing any highway, they shall, within thirty days, make out a notice and fix therein a time and place at which they will meet and decide upon such application, and the applicant shall ten days previous to such time so fixed, cause such notice to be given to all occupants of the land through which such highway may pass, which notice shall be served personally or by copy left at the abode of such occupant.

The said board shall also cause copies of such notice to be posted in three public places in said county, or township, at least ten days previous to such meeting; every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered or discontinued, and the tract of land through which the same may pass.

§ 8. EXAMINATION OF PROPOSED HIGHWAY.] The said board upon being satisfied that the notices required in the preceding section have been duly served, proof of which shall be shown by affidavit, shall proceed to examine such proposed highway and shall hear any reasons for or against the laying out, altering or discontinuing the same, and decide upon the application as they deem proper.

§ 9. PROCEEDINGS WHEN ROAD IS LAID OUT, ALTERED OR DISCONTINUED.] Whenever such board of county commissioners or

supervisors shall lay out, alter or discontinue any highway, they shall cause a survey thereof to be made when necessary, and they shall make out an accurate description of the highway so altered, discontinued or laid out, and incorporate the same, in an order to be signed by them, and shall cause such order, together with all the petitions and affidavits of service of notice, to be filed in the office of the county auditor, if by county commissioners, and in the office of the town clerk if by township supervisors, who shall note the time of filing the same; but on the refusal of said board to lay out, alter or discontinue such road they shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions, and affidavits, together with the award of damages, shall be made out and filed within five days after the date of the order for laying out, altering or discontinuing such highway. But the county auditor or town clerk shall not record such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed, and such order, together with the award, has been recorded by said county auditor or town clerk as the case may require, the same shall be filed in the office of the county auditor. And in case the board having jurisdiction shall fail to file such order within twenty days they shall be deemed to have decided against such application.

§ 10. ORDER OR CERTIFIED COPY. COMPETENT EVIDENCE.] The order laying out, altering or discontinuing any highway, or a copy of the record duly certified by the county auditor or town clerk, as each case may require, shall be received in all courts as competent evidence of the fact therein contained and shall be prima facie evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal, when such appeal has been taken within the time limited in this chapter.

§ 11. DAMAGES, HOW ASCERTAINED.] The damages sustained by reason of laying out, altering or discontinuing any road may be ascertained by the agreement of the owners and county commissioners or township supervisors, as the case may be, and unless such agreement is made, or the owners shall, in writing, release all claim to damages, the same shall be assessed in the manner hereinafter prescribed before the same is opened, worked or used. Every agreement and release shall be filed in the town clerk's office when with a township and in the county auditor's office when with a county and shall forever preclude such owners of land from all further claim for damages. In case the board and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered or discontinued, is unknown, the board shall in their award of damages specify the amount of damages awarded to all such owners, giving a brief description of such parcel of land in their award; the board having jurisdiction shall assess the damages at what they deem just and right to each individual claimant, with whom they cannot agree. Supervisors shall deposit a statement of the amount of damages assessed with the town

clerk, county commissioners with the county auditor, who shall note the time of filing the same. The board in assessing damages shall estimate the advantages and benefits the new road or alteration of an old one will confer on the claimant for the same as well as the disadvantages.

Any person living on United States land who has made his declaratory statement for the same in the proper land office, shall for all the purposes of this act be considered the owner of such lands.

§ 13. DETERMINATION FINAL FOR ONE YEAR.] The determination of boards of county commissioners, or supervisors of any town in refusing to lay out, alter or discontinue any highway, shall be final (unless such determination shall be appealed from as is hereinafter provided in this act), for the term of one year after the filing of such order or determination in the county auditor's or town clerk's office, as the case may be; and no application for laying out, altering or discontinuing any such highway shall again be acted upon by such board within said time of one year; and in case the determination of any such board in laying out, altering or discontinuing any highway shall be appealed from, as provided in this chapter, and such determination shall be reversed on appeal, the said board shall not, within one year after the making of the determination so reversed on appeal, act again upon an application to lay out, alter or discontinue any such highway.

§ 14. NOTICE TO PARTY TO REMOVE FENCES.] Whenever any public road has been laid out through any inclosed, cultivated or improved lands, in conformity with the provisions of this chapter and the decision of the board laying out such road has not been appealed from, such board shall give the owner or occupant of the land through which such road is laid out twenty days notice, in writing, to remove his fences; if such owner does not remove his fences within twenty days after such notice such board shall cause such fences to be removed and direct the road to be opened and worked; provided, that no inclosure shall be ordered opened between the first day of April and the first day of October.

§ 21. WHEN APPEAL SUSTAINED. DUTY OF THE BOARD.] When an appeal shall have been made from the determination of any board of supervisors or county commissioners, and such determination shall have been reversed or altered, the supervisors or commissioners from whose determination such appeal was taken, shall proceed to lay out, alter or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon shall be the same as if they had originally so determined to lay out, alter or discontinue such highway, the amount of damages finally determined and awarded by the supervisors, commissioners or by the court or jury, together with all the charges of officers and other persons necessarily employed in laying out, altering or discontinuing any town or county road, shall be audited by the county commissioners or township supervisors, as the case may be, specifying the amount of charges and damages due each individual, and the

respective amounts shall be certified to by said commissioners or supervisors and by them deposited with the county auditor or township clerk and paid by the county or town, as the case may be. Before any road shall be opened or used, an amount of town orders or county warrants, as the case may be, equal to the damages assessed to individuals, shall be duly issued and deposited with said county auditor or town clerk, as the case may be, for the use and benefit of said individuals, and shall be delivered to him or them on demand. The issuing and depositing of said orders or warrants shall be deemed to be sufficient security for the payment of said damages. In no case shall a town be compelled to pay any damages that may be awarded in laying out, altering or discontinuing any county road.

§ 22. EMERGENCY.] Whereas, there is no provisions of law for laying out roads in unorganized townships, an emergency exists and this act shall take effect and be in force from and after its passage and approval.

Approved March 9, 1899.

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## HOME FOR ORPHANS.

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### CHAPTER 98.

[H. B. 167.]

#### HOMES FOR ORPHANS.

AN ACT to Amend Sections 2 and 5 of Chapter 87 of the Laws of 1897.

Being "An Act Relating to Societies Organized for the Purpose of Securing Homes for Orphans or Abandoned, Neglected or Grossly Ill-treated Children, by Adoption or Otherwise, and Providing Rules for the Regulation of the Same."

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That sections 2 and 5 of chapter 87 of the Laws of 1897, being an act passed by the Fifth legislative assembly of the State of North Dakota and approved March 12, 1897, entitled "An act relating to societies organized for the purpose of securing homes for orphans or abandoned, neglected or grossly ill-treated children, by adoption or otherwise, and providing rules for the regulation of the same," be and the same are hereby amended to read as follows:

§ 2. POWERS OF THE SOCIETY.] That such society shall have the power to receive into its hands and under its control, and may become the legal guardian of any child under fourteen years of