

Clippert, mileage from Minneapolis and return, balance on mileage outside the Territory, \$26.40.

For Mrs. Julia R. Schumaker, mileage from Duluth to Bismarck and return, balance on mileage outside the Territory, \$25.10.

For Miss Bertha Kinney, mileage from Duluth to Bismarck and return, balance on mileage outside the Territory, \$25.10.

§ 2. ON ORDER OF COMMITTEE.] The Territorial Treasurer shall pay the aforesaid amounts on the order of the said committee duly approved by the Chairman thereof.

§ 3. EFFECT—WHEN.] This resolution shall take effect immediately on its passage.

Approved, February 18, 1887.

ARTESIAN WELLS.

CHAPTER 14.

TO PROVIDE FOR SINKING AND CONSTRUCTION OF WATER COURSES THEREFROM.

AN ACT To Provide for the Sinking of Artesian Wells and Construction of Water Courses therefrom.

Be it Enacted by the Legislative Assembly of the Territory of Dakota :

§ 1. COMMISSIONER CREATED.] That for the purpose of carrying into effect the provisions of this act, the Judge of Probate of each county shall be ex-officio county Artesian Well Commissioner, which office is hereby created.

§ 2. APPLICATION BY TEN RESIDENT FREEHOLDERS.] Before the Artesian Well commissioner shall take any action toward creating or establishing any Artesian well, there shall be filed with him an application, signed by not less than ten resident free holders of any township or townships in which such Artesian well and the lands to be benefited thereby, and to be assessed therefor, may be situated giving a description of the place where said well is proposed to be located, and also a definite description of the beginning, the route, and the terminus of the water way through which it is proposed that the water from such well shall flow when the same is completed and in operation, and offering the right of way for said well and such water way through their said land, and who shall be subject to direct assessment therefor.

§ 3. APPOINTMENT OF VIEWERS—DUTIES.] At the expiration of twenty days after the filing of such application the said commissioners shall appoint three disinterested persons as viewers who shall without unnecessary delay proceed to personally examine the place where said well is to be located and the course, route and terminus of said proposed waterway, and shall ascertain whether said location of such well and establishment of said waterway is practicable and necessary and beneficial to the public welfare of the district in which the same is proposed to be located, and shall report the result of such investigations in writing to said well commissioner, having first been duly sworn to faithfully and impartially discharge their duties as such viewers. If any person upon whose land the proposed well is located or through whose land any waterway therefrom may pass, shall have filed any protest against the location of said proposed well and waterway, prior to the appointment of said viewers, they shall assess the damages, if any, which such person may sustain from the location of such well or said water ways through his land, and shall report said damages with the report of their proceedings made as heretofore provided.

§ 4. REPORT WHEN DAMAGES ASSESSED.] If a majority of the viewers assess and report damages in favor of any person protesting against the location of such well or its water ways, their report shall be presented to the board of county commissioners of said county, and if said board shall consider the proposed well of sufficient importance to the public they shall order the costs and damages to be paid out of the county treasury; but if a majority report against the claims for damages of such person he shall be liable for the costs of such appraisement.

§ 5. POWER OF COUNTY COMMISSIONERS.] If it shall be made to appear to the board of county commissioners that the damages assessed are unreasonable they may set aside such assessment, and in such case the artesian well commissioner may order another appraisement by different persons, under the same regulations as provided in the first appraisement.

§ 6. APPEAL TO DISTRICT COURT.] Any person aggrieved by any decision of any board of commissioners had under this chapter may appeal therefrom to the district court, the same as provided relating to highways, bridges and ferries. (Section 29, chapter 29, Political Code, 1217 General Laws.)

§ 7. FEE OF VIEWERS.] The viewers appointed under the provisions of section 3 of this act shall receive the sum of two dollars per day for their services as described in said section, to be paid by the persons who signed the application for said well, who shall be severally liable to pay the same.

§ 8. SURVEY AFTER FAVORABLE REPORT—PLAT FILED.] If the viewers make and file a written report with said commissioners recommending said location and route as practicable, necessary and beneficial the commissioners shall cause a survey and measurement of

the location of said well and the line of the proposed water way to be made by the county surveyor, and a plat thereof shall be filed in the office of the register of deeds of said county, and be subject to public inspection, and shall show the location of the well and the lines and route of the water way therefrom.

§ 9. ORDER OF LOCATION BY COMMISSIONER—DAMAGES.] Upon the filing of the plat and the minutes of said survey as provided in said section 5, the said commissioner shall make an order in writing in which he shall declare said well and said water ways therefrom to be located in accordance with said plat and survey; *Provided*, That in cases where damages have been appraised and assessed, the same shall first be paid to the person entitled thereto, or paid into the county treasury for their use, before such lands shall be actually taken.

§ 10. RAILWAY'S CONTRIBUTION TO WATER WAY—PENALTY—COLLECTION.] Whenever it is necessary to construct a water way from any artesian well across the right of way or road bed of any railroad company it shall be the duty of the railroad, when notified by the commissioners so to do, to make and maintain the necessary opening through said road bed, and to build and maintain a suitable culvert. Notice in writing to make such opening and to construct such culvert may be served on such company as provided in the service of summons, at least thirty days before such railroad company shall become liable.

In case such railroad company shall refuse or neglect to comply with the provisions of this section, it shall be liable to a penalty of ten dollars for each day's refusal or neglect to make such opening and construct such culvert. The district attorney of the county in which such railroad company shall have refused or neglected to comply with the provisions of this section, shall upon complaint being made by the artesian well commissioner bring suit to collect such penalty or fines, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction.

§ 11. DUTY OF ROAD OVERSEERS, ETC.] All that part of such artesian well or artesian well water course, which is laid and constructed within the limits of or across any public highway shall be under the jurisdiction of the overseer of public highways or road supervisors, and it shall be his duty to keep the same open and free from all obstructions, and when any highway is subsequently constructed along or across such artesian well water way then so much thereof as shall come within the limits of such highway shall also be kept open and free from obstructions as above provided.

§ 12. NAME OF WELL.] In his order locating any well under the provisions of this act the artesian well commissioner shall give the same a name by which it shall be known and recorded.

§ 13. ADVERTISE FOR BIDS FOR CONSTRUCTION—CONTRACT—SECURITY.] After making said order locating said well and the water ways thereof, the artesian well commissioner shall proceed to

advertise for bids for contracts for sinking or making such well, and constructing said water ways. He shall give not less than sixty days notice of the time and place where such bids may be offered and opened, by causing a notice thereof to be published, not less than eight weekly insertions, in the official paper of said county, such bids shall be filed with the county clerk of said county by the parties making the same and shall be taken subject to the approval of the board of county commissioners of said county. No contract made by the artesian well commissioner shall be valid unless approved by the board of county commissioners of such county, and their approval endorsed thereon by the chairman of said board.

The artesian well commissioner shall contract with the lowest responsible bidder giving adequate security for the performance of the work.

Such security shall cover the completion of the job in the manner and within the time fixed in the contract, and the amount thereof shall be fixed by said artesian well commissioner. Said commissioner shall reserve the right to reject any and all bids and may adjourn the time for receiving such bids from time to time, by publishing a notice of such adjournment but not in all more than sixty days from, and after the time named in the first advertisement, for receiving such bids. The contract for sinking the well may be separate from the contract for constructing the water ways and may be let to different persons. Whenever any such artesian well shall have been fully completed and final report thereof made by the well commissioner, to the board of county commissioners, the said board shall turn over the control and management of said well and appurtenances to the board of supervisors of the township wherein said well is situated.

§ 14. BOARD OF ASSESSMENT—MEETINGS.] Immediately after making his order locating said well, the artesian well commissioner shall notify the chairman of the board of county commissioners and the county treasurer of said county, who shall together with said well commissioner constitute a board of assessment herein. The county clerk of said county shall be the clerk of said board of assessment. The members of said board shall meet within twenty days after receiving said notice, and may adjourn from day to day until their duties are performed as hereinafter set forth.

§ 15. MODE OF ASSESSMENT AND APPORTIONMENT—TAX COLLECTION.] The said board of assessment shall make an estimate of the costs of constructing said artesian well and the said water ways, for the purpose of raising the funds necessary for the construction of said well. They shall have power to apportion the costs thereof as follows:

1. They shall create a county fund to be known as the Artesian Well Fund, and may levy an assessment upon all taxable property in said county, not exceeding two mills on the dollar, and the basis of value upon which the annual levy of the current or preceding

year was made; *Provided*, That not more than one-tenth of the cost of any artesian well or water ways therefrom, shall be paid out of said fund, and the amount so paid shall be applied to the payment of the expenses and per diem of the well commissioners, the viewers, surveyors, members of the board of assessment, damages for right of way and other like incidental expenses.

2. They shall determine what portion of the costs of said well and its water ways shall be paid by each of the townships in which said well or said water courses therefrom, are situated; *Provided*, That in no case shall the amount apportioned to any one township exceed one-fourth of the estimated cost of such well and water ways, and the county clerk shall present a statement of such amount to the respective clerks of such townships if organized; and said board of assessment shall establish and determine the rate of assessment necessary in such townships to raise the amount so apportioned to such townships. It shall then be the duty of the officers of such townships, who have similar duties to perform, in other matters of township revenue to levy, and they are hereby empowered to levy an assessment upon the taxable property of said township, not exceeding the rate fixed by the board of assessment for such township, which shall be placed upon the tax list under the head of "General township tax for Artesian Well purposes," and collected as other township taxes are collected, and shall be held by the county treasurer when collected as a distinct fund to be disbursed as hereinafter provided, to pay for constructing such well.

3. In addition to the foregoing general township and county assessments, the said board of assessment shall also make a special assessment against each piece and parcel of land directly benefitted by said well and said water courses, carefully adjusting the per cent. and amount of such assessments with reference to the relative distance of such lands from the well itself, and the water courses, and the amounts so apportioned shall be levied as a special tax upon said land, and shall be placed upon the tax list by the county clerk or auditor under the head of "Direct tax for Artesian well," and shall be paid into the county treasury as other taxes, and kept by said treasurer in a special fund to pay for the cost of constructing said well and said water ways; said assessment shall be for a sufficient amount with the general county and township tax aforesaid to pay for said well and water ways.

§ 16. ANNUAL INSTALLMENTS.] Said board of assessment may provide that the entire amount necessary to pay for the construction of said well and water courses, be levied and collected as above in one year, or they may divide the same into two, three, four or five equal installments, one of which shall be collected the first year, and one installment each year following, provided, that the portion designated as county and township tax shall all be collected the first year.

§ 17. REVIEW OF ASSESSMENT—APPEAL.] The owner of any lands directly assessed for the construction of any artesian well under the

provisions of this act, who may feel aggrieved by such assessment, may at any time before such tax becomes delinquent, appear before the board of county commissioners of the county in which such assessment was made, and ask to have said assessment, as to his property, reviewed, and said board shall have the right to raise or lower his assessment, so as to make it just and reasonable; and an appeal may be taken from the action of said board as in other cases.

§ 18. DISQUALIFICATION BY INTEREST—VACANCY—HOW FILLED— No member of any county board, and no county officer, whose lands have been directly assessed under this act, shall act on the board of assessment. In case any member of such board is so disqualified, his place shall be filled by calling in the sheriff of said county, or if said sheriff is so disqualified, the county coroner may act on said board.

§ 19. BENEFITS—PRINCIPLE OF ASSESSMENT.] All assessments of benefits under the provisions of this act shall be upon the principle of benefits derived. All descriptions of land under the provisions of this act shall be made by giving the legal subdivision thereof whenever practicable and when the tract of land which is to be benefitted or affected by such well is less than such legal subdivision, it may be described by designation of the lot or other boundaries, or in some way by which it may be known.

§ 20. ADDITIONAL ASSESSMENT.] Whenever the amount assessed for the construction of any well, shall not be sufficient to complete the same, and to pay all the costs and incidental expenses, a further assessment shall be made to meet the deficit or additional expense. Such further assessment, shall be apportioned, assessed, levied and collected as provided in the first instance, and on the same percentage, and shall be collected in one year.

§ 21. ENROLLMENT OF TAX BY CLERK.] It shall be the duty of the county clerk to spread on his roll the total amount of all the well taxes determined upon by the board of assessment, to be assessed upon any township at large, as a part of the township tax for the year and he shall also spread upon said roll separately, and immediately following the other descriptions, all tracts or parcels of lands specially assessed for benefits, and shall place opposite each description the amount of taxes apportioned thereon for such benefits. All wells shall be entered separately, naming each well.

§ 22. COLLECTION—MODE OF.] All taxes assessed under the provisions of this act shall be collected in the same manner as territorial and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are, or may be conferred by law, for collecting general taxes. All taxes levied under the provisions of this act, with all lawful costs, interest and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid.

§ 23. SALE FOR DELINQUENCY.] If the taxes levied for the construction of any well are not paid to the county treasurer as provided

herein, he shall proceed to sell the said lands for such taxes, at the same time and in the same manner in every respect, as in the case of any other tax and with like effect.

§ 24. COMPENSATION OF OFFICERS.] The artesian well commissioner and the members of the board of assessment herein provided for, shall receive for their services a sum not to exceed three dollars per day for each day actually and necessarily spent by them in the discharge of their respective duties as hereinbefore described. All expenses, except on contract for constructing said well or such water courses, shall be paid out of the general fund of the county on the order of the board of county commissioners, as other claims against the county are paid; said fund to be reimbursed, out of the first money collected under the provisions of subdivision 1 of section 15 of this act.

§ 25. BLANKS DRAWN BY ATTORNEY GENERAL.] It shall be the duty of the attorney general to draft a complete set of all the blank forms that may be required under this act, and county clerks are authorized, and it shall be their duty to procure at the expense of their respective counties, the necessary books and blanks to carry out the provisions of this act.

§ 26. MODE OF PAYMENT TO CONTRACTOR.] No payment shall be made to any person contracting to construct or sink an artesian well or any water course therefrom under the provisions of this act except as follows: One-third of the amount to be paid for the entire performance of the contract may be paid when one-third of said work is done; one third of said amount may be paid when two-thirds of said work is completed; but the balance of said amount shall not be paid until said contract has been fully completed and the work accepted and approved by the artesian well commissioner. The said payments shall be made in the following manner: The contractor shall make a statement of the amount claimed by him to be due under his contract, and if the same is correct it shall be approved by the artesian well commissioner whose duty it shall be to carefully examine the work done under said contract; said claim so approved, shall be presented to the board of county commissioners, and if correct they shall issue county orders or warrants upon the well funds of each particular well, naming it; *Provided*, That if the assessment of taxes for such well has been divided into installments as provided in this act said board shall not issue orders payable in any one year for a larger amount than the said installment for that year, but shall draw as near as may be, to the exact amount of such installment. When such orders or warrants are presented to the county treasurer for payment, if he has not yet received sufficient funds to pay the same then such orders may be endorsed and registered as other county warrants under the general law, and shall bear the same rate of interest as other warrants.

§ 27. DESCRIPTION OF ASSESSED LANDS FILED WITH REGISTER—LIEN.] The clerk of the board of assessment provided for in this act,

shall make a statement of the direct assessment for benefits made against the several pieces and parcels of lands, giving a description of such lands, the amount of the direct assessment against each piece or parcel, the name of the well for which the assessment was made, and shall file the same with the register of deeds of said county and the same shall thereafter be a lien upon said lands to secure the payment of any orders or warrants issued as herein provided; which lien may be foreclosed by the holder of such warrants or orders, and shall be prior to all other liens except for taxes.

§ 28. WATER COURSE UNOBSTRUCTED, DUTY OF OVERSEER OF HIGHWAYS.] It is hereby made the duty of every person through whose land any water course constructed under this act may pass to keep the same open and unobstructed. On failure so to do, any person aggrieved may complain to the Overseer of Highways in the district where such water course is situated, and such overseer shall have the authority, and it is hereby made his duty, to call out the persons residing in said district who are liable for road tax, and open said waterway, and the expense thereof shall be entered by the County Clerk as a tax against said land.

§ 29. REPEAL.] All laws heretofore enacted on the subject of Artesian wells are hereby repealed; provided, that all proceedings heretofore had and all contracts made under the provisions of existing laws on the subject of Artesian wells, are hereby declared to be valid and may be continued and completed under the provisions of this act.

§ 30. EFFECT WHEN.] This act shall take effect on the 1st day of July, 1889.

Approved March 8th, 1889.