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Approved March 9, 1891.

## ARTESIAN WELLS.

### CHAPTER 33.

[H. B. No. 118.]

#### PROVIDING FOR ISSUING OF BONDS BY CIVIL TOWNSHIPS.

AN ACT to Enable Civil Townships to Issue Bonds for the Purpose of Sinking Artesian Wells, and to Provide for Locating the Same.

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

§ 1. BONDS MAY BE VOTED.] That at any annual or special town meeting in any regularly organized township in this State, the question of bonding said township for the purpose of sinking one or more artesian wells, or of improving natural springs in said township, may be submitted to the vote of the people; *Provided*, The notices posted by the town clerk, as required by law, contain a notice of such proposed bonding.

§ 2. DUTIES OF SUPERVISORS.] When three-fourths of the legal voters voting at such town meeting as described in Section 1 of this act shall vote in favor of bonding, it shall be the duty of the town board of supervisors, to forthwith issue the bonds of said township in the denomination or denominations which they shall deem best, but which shall not aggregate more than a given amount specified by vote at the aforesaid town meeting. The concurrence of a majority of the township board of supervisors shall be sufficient to legalize the issuing of township bonds under this act. All bonds issued under this act shall bear interest at the rate of seven (7) per cent. per annum, payable semi-annually; the bonds and the interest thereon to be paid at such place and times as the township board shall designate; *Provided, however*, That said bonds shall be payable in not less than five nor more than ten years.

§ 3. BONDS, HOW ISSUED.] Said bonds shall be signed by the chairman of the board of township supervisors, and attested by the clerk of said township; said bonds shall also be verified by a certificate signed by both chairman and clerk that the bonds

are issued in accordance with the provisions of this act, and are within the debt limit.

§ 4. BIDS FOR BONDS.] It shall be the duty of the township board to receive sealed bids for the purchase of said bonds, after having given thirty days' notice in such manner as they may deem best; said bonds shall be sold to the highest bidder for cash, and shall not be sold for less than their par value; *Provided*, That the township board of supervisors shall have authority to reject all bids and postpone the sale of said bonds for a time not to exceed ten days.

§ 5. FUNDS, HOW PAID OUT.] The proceeds arising from the sale of said bonds shall be paid by the purchaser thereof to the treasurer of said township, or to his authorized agent upon the delivery of said bonds; and such proceeds shall be paid out only on the order of the township board. The treasurer of any township board may be required to give additional bonds, with sureties to be approved by the board of township supervisors, before or after the proceeds of said bonds are turned over to him.

§ 6. TAX LEVY FOR INTEREST ON BONDS.] Said board of township supervisors shall levy a tax at the time and in the manner that other taxes are levied, sufficient to pay the interest as it falls due on the said bonds and also a sinking fund tax sufficient to take up the bonds when they become due, neither the interest fund nor the sinking fund shall be used for any other purpose than that for which it is levied; *Provided, however*, That the sinking fund may be deposited or loaned in any safe place for the purpose of earning interest, which shall be credited to the sinking fund, and *Provided, further*, That any balances remaining in said fund after the payment of said bonds shall be transferred to any other township fund or funds designated by the township board of supervisors.

§ 7. TREASURER'S FEES—WELLS, HOW LOCATED.] The township treasurer shall receive one per cent. for handling the proceeds received from the sale of said bonds. Upon the payment of any of the said bonds or the coupons thereto attached, it shall be the duty of the township treasurer to cancel the same by writing the word "paid" across the face of the same and the date of payment. The township treasurer shall also keep a record of these bonds showing date, maturity, amount, rate of interest, to whom and where payable; and when any interest coupon is paid, it shall be credited upon said record, giving date of payment. All moneys derived from the sale of bonds, as provided in this act, shall be kept as a separate fund and shall be expended by the township board of supervisors in making such wells as a majority of the freeholders of said township shall think desirable; *Provided*, That such portion of said fund as shall not be used in making said wells, may at the discretion of the supervisors be transferred to the sinking fund for the payment of said bonds. Before locating a well under the provisions of this act it shall be the duty

of the board of supervisors to cause to be made a survey of the natural waterways of their township, and the first well shall be placed as nearly as practicable, at the head of the longest natural waterway in said township, unless by a vote of two-thirds of the freeholders of said township it is located at some other stated point. All subsequent wells shall be locate by a majority vote of the legal voters in said township.

Approved March 11, 1891.

## CHAPTER 34.

[S. B. No. 148.]

### TO ENCOURAGE CONSTRUCTION OF ARTESIAN WELLS.

AN ACT to Encourage the Construction of Artesian Wells and Defining the Rights and Liabilities of Persons, Corporations and Companies Constructing said Wells for the Purpose of Power and for the Purpose of Irrigating Agricultural Lands.

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

§ 1. WHO MAY CONSTRUCT ARTESIAN WELLS.] It shall be lawful for any person or persons, or association of persons, to construct artesian wells upon any lands owned or leased by them for the purpose of power, or the irrigation of lands for agricultural purposes, and for any and all purposes for which said water from such wells may be utilized.

§ 2. SURFACE WATER, HOW DISPOSED OF.] When any person, persons or association of persons shall desire to dispose of any surplus water from any artesian well, pond or storage reservoir, he or they shall make application to the county court in and for the county in which the lands over or through which it is desired to conduct such waters, for an order for a hearing to determine whether any lands over which such water is proposed to be conducted, will be damaged to any extent beyond the resultant benefit, and if so, to what extent.

§ 3. NOTICE OF HEARING BEFORE COURT.] At the time of applying for, and the issuing of such order, the judge of the county court shall also issue notices to the party or parties whose lands are affected, to appear and be heard at the time of such hearing, and prove any damage that the proposed water will incur to him or them; such notices shall be served by the sheriff or any other officer authorized to serve processes in civil cases.

§ 4. HEARING AND DETERMINATION OF DAMAGES.] The order for hearing shall issue at least ten (10) days prior to the day upon which the hearing is to be held, and if the person or persons whose lands are affected, can show by affidavit that they are not ready to be heard, an adjournment may be taken for a period not exceeding ten (10) days, when the hearing must take place; and if the judge determine that the damage will be in excess of the resultant benefit, he shall issue his order to the party or parties seeking such damage, directing such party or parties to pay such amounts as he may find and determine to the person or persons over whose land the drainage is to be had; *Provided*, That no routes for waterways shall be located without the written consent of the owner, within fifteen rods of the dwelling house, or other buildings on the premises, or across any orchard or garden, without such written consent.

§ 5. DRAINAGE DITCHES.] In drawing any surplus waters from any artesian well, pond, or storage reservoir, over any adjacent lands, they shall be confined in a ditch or drain not exceeding four (4) feet in width, unless the party or parties otherwise agree. The party or parties obtaining the drainage shall provide reasonable means for crossing any ditch constructed by him or them, in as many places as may be determined necessary by the county judge at the time of holding the hearing.

§ 6. BENEFITS—APPEALS FROM DECISION OF COURT.] In estimating the amount of damage, if any, on account of drainage, the judge shall take into consideration any benefit that may accrue to the party or parties over whose land or lands the drainage is affected by reason of the moisture furnished by the flowing water; and if the benefit, in the judgment of the court, is equal to the amount of damage, if any, then the court shall order that the drainage shall be given without compensation; *Provided*, That either party, feeling aggrieved by the decision of the county court, may appeal to the district court, in and for the district wherein said lands are located, in such manner as is or may be provided by law for appeals, and the amount of such damages upon the appeal, when demanded by either party, shall be determined by a jury, and the question of damages shall be tried as in other civil cases; *Provided, further*, That the construction of said waterways or ditches shall not be delayed by the appeal if the amount of the damages assessed shall be deposited with the clerk of the said district court, together with a sufficient bond to be approved by said clerk, conditioned to pay any excess that may be adjudged by said district court.

§ 7. WATERWAYS ON RAILROAD RIGHT OF WAY.] Whenever it is necessary to construct a waterway from an artesian well, pond or storage reservoir across the right of way of any railroad company, it shall be the duty of said railroad company, when notified by the party or parties constructing said waterway so to do, to make 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 pay a penalty of ten (10) dollars for each day's refusal or neglect to make such opening and construct such culvert. The county 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 party or parties interested, collect such penalty, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction.

§ 8. PENALTY FOR INTERFERING WITH ARTIFICIAL WATER COURSES.] Any person or persons who shall willfully open, close, change or interfere with any head gates, water boxes, pipes or any other appliances for controlling or utilizing water, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten (10) dollars nor more than one hundred (100) dollars, and may be imprisoned in the county jail not exceeding ninety (90) days.

§ 9. WATER DITCHES TO BE KEPT IN REPAIR.] It shall be the duty of the proprietor or proprietors of artesian wells constructed under the provisions of this act to keep all ditches and waterways in good repair at all seasons of the year, and for the purpose of making the necessary repairs they shall have the right to enter upon the lands where such ditches or waterways are located, along the line thereof, taking care that no unnecessary damage be done; and whatever actual damage may be done shall be paid to the owner of said lands; *Provided*, That whenever said ditches or waterways have been injured or put out of order by the acts of any person, or by the animals or stock of such person, it shall be his duty to repair the same at his own expense, and no compensation for damages shall be recovered by such owner.

§ 10. WATER FOR PUBLIC USE.] Whenever waterways or ditches are located or constructed along any public highway, the water which may be flowing therein shall be for the use of the public; *Provided*, That when any owner or occupant of lands adjoining or lying along such highway desires to use any portion of the water flowing in such waterways or ditch, he shall make application to the proprietor or proprietors of said artesian well, for the use of said water, and the adjustment of the amount of rental to be paid to said proprietor or proprietors for the use of same and the terms and conditions therefor.

§ 11. RIGHT OF WAY ON SCHOOL LANDS.] When any waterway or ditch must necessarily be constructed across any of the school lands of the State, except in the highway along the same, permission to construct the same may be obtained from the "county board of appraisal of the common school lands," upon an appli-

cation in writing, duly verified, showing the location and character of such lands, together with a proper plat showing the location of the proposed route across the same, and the permission may be granted under such conditions as shall be prescribed by them, with the approval of the Board of University and School Lands.

§ 12. EMERGENCY.] Whereas, it is important for the best interests of this State that the system of irrigation provided for in this act should be set in motion at once, to promote the raising of crops during the coming season, it is hereby declared that an emergency exists, and that this act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1891.

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## ASSIGNMENTS.

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### CHAPTER 35.

[S. B. No. 179]

#### AMENDING CIVIL CODE IN RELATION TO ASSIGNMENT FOR BENEFIT OF CREDITORS.

AN ACT to Amend Section 2027 of Title III of Part II of the Civil Code.

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

§ 1. AMENDMENT.] That Section 2027 of Title III of Part II of the Civil Code, shall be amended so as to read as follows:

Sec. 2027. ASSIGNMENT, WHEN ALLOWABLE.] An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust towards the satisfaction of his creditors, in conformity to the provisions of this title; subject, however, to the provisions of this Code relative to trusts and to fraudulent transfers and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specified classes or [of] persons; *Provided, moreover,* That such assignment shall not be valid if it be upon, or contain any trust or condition by which any creditor is to receive a preference or priority over any other creditor; but in such case the property of the insolvent shall become a trust fund to be administered in equity, in the district court, and shall inure to the benefit of all the creditors in proportion to their respective claims or demands; and *Provided, further,* That no transaction shall be deemed to be