
DEPOSITORIES

CHAPTER 92.

[H. B. No. 54—Halaas]

DEPOSIT OF COUNTY SINKING FUNDS.

AN ACT Amending Section 2439 of the Revised Codes of 1905, Relating to County Funds.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 2439 of the revised codes of 1905 is amended to read as follows:

§ 2439. SINKING FUND. DUTY OF COUNTY COMMISSIONERS.] Whenever there shall be accumulated in the sinking fund, or any other revenue county funds established by law, in any of the counties of this state an amount of money exceeding one thousand five hundred dollars, and for which there is no immediate use, the board of county commissioners of such county are authorized and empowered to direct a time deposit of such funds for a period of one year, as they may deem expedient, either in one or more of the county depositories as created by law, or such state or national bank as the said board of county commissioners may designate; provided, that the rate of interest offered by banks making bids for sinking funds shall be the same rate of interest as paid on other county funds.

Approved March 14, 1907.

DRAINS

CHAPTER 93.

[S. B. No. 205—Cashel]

DRAINAGE.

AN ACT to Amend Sections 1819, 1820, 1821, 1822, 1823, 1827, 1828, 1831, 1832, 1835, 1840 and 1849 of the Revised Codes of 1905, the Same Being Embraced in Chapter 23 of the Political Code, Relating to Drainage.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Sections 1819, 1820, 1821, 1822, 1823, 1827, 1828, 1831, 1832, 1835, 1840 and 1849 are hereby amended to read as follows:

§ 1819. BOARD OF DRAIN COMMISSIONERS, HOW APPOINTED.] The board of county commissioners of any organized county in this state shall have power and is authorized at any meeting of the board by a majority vote of all the members, upon its own motion or on the petition of any person interested, to appoint three freeholders of the county as a board of drain commissioners of such county, who shall hold office for two years and until their successors are appointed and qualified. The board of county commissioners may remove any or all of such drain commissioners, and in case of a vacancy may fill the same by appointment. The board of county commissioners shall provide an office for said board of drain commissioners at the county seat, suitable for its use and the keeping of its records, and shall provide suitable record books for its use.

§ 1820. OATH. BOND. ORGANIZATION. LEGAL ADVICE.] Any person appointed as a member of the board of drain commissioners shall within ten days after his appointment take, subscribe and file in the office of the county auditor an oath faithfully to perform the duties of a drain commissioner under the law, and within the same time make, execute and file in the auditor's office a bond to the county with sureties to be approved by the auditor in such sum as shall be ordered by the board of county commissioners, conditioned for the faithful discharge of his duties as drain commissioner. The members of the drainage board shall organize by electing from their number a chairman and a secretary; they shall keep an office at the county seat at which all hearings upon notice shall be held and shall keep a record of its acts and proceedings and a separate record of the proceedings relating to each separate drain, all of which shall be open for public inspection, and such records shall have the same force and effect as other public records. Two members of said board shall at all times constitute a quorum for the transaction of business. Said board may, when in its judgment it is necessary, employ a clerk and fix his compensation; it may also employ and call to its assistance a competent surveyor. The state's attorney of each county shall, so far as his other duties will permit, act as the legal advisor of the board. The board may, however, by and with the consent of the county commissioners, employ other counsel to advise and represent it in its proceedings.

§ 1821. HOW ESTABLISHED.] A petition for the construction of a drain may be made in writing to the board of drain commissioners, which petition shall designate the starting point and terminus and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience or welfare of the people of any city or other municipality, the petition shall be signed by a sufficient number of the citizens of such municipality or municipalities to satisfy the board of drain commissioners that there is a public demand for

such drain. If the chief purpose of such drain is the drainage of agricultural, meadow, grazing or other lands the petition shall be signed by at least six or more freeholders whose property shall be affected by the proposed drain. Upon the presentation of a petition as hereinbefore provided, and filing of the same, the board of drain commissioners shall personally as soon as practicable proceed to examine the line of the proposed drain, and if in its opinion it is necessary for the public good, it shall enter a resolution to that effect, and shall also enter a resolution designating a competent surveyor who shall survey the line thereof and establish the commencement and terminus, and determine the route, width, length and depth thereof. For the purpose of making examinations or surveys the board of drain commissioners, surveyors and their employes may enter upon land traversed by any such proposed drain, or upon other lands when necessary. Such surveyor shall prepare profiles, plans and specifications of the proposed drain, an estimate of the cost thereof and a map or plat of the lands to be drained, in duplicate, showing the regular subdivisions thereof, one copy of which shall be filed in the office of the county auditor in the county in which the drain is proposed to be constructed and the other with the board of drain commissioners, subject to inspection. In locating a drain the board of drain commissioners may, under the advice of the surveyor, vary from the line described in the petition as it seems best. When the line proposed is along highways already established, the drain shall be located at a sufficient distance from the center of such highway to permit a good road along the central line thereof; when the length of the line described in the petition does not give sufficient fall to drain the lands sought to be drained the board of drain commissioners may extend the drain below the outlet named in the petition far enough to obtain a sufficient fall and outlet. Drains shall, as far as practicable, be located on dividing lines between sections or regular subdivisions thereof, but the general utility of the drain must not be sacrificed to avoid crossing any tract of land in such direction as the board of drain commissioners find advisable. Upon the filing of the surveyor's report the board of drain commissioners shall fix a date for hearing objections to the petition, and shall give notice of such hearing by causing five notices to be posted along the line of the proposed drain at such points as will be likely, in the opinion of the board, to secure the greatest publicity. Such notices shall contain a copy of the petition and a statement of the date of filing of the surveyor's report, and the date when the board will act upon the petition, and shall be signed by the members of the board or a majority thereof. All persons whose land may be affected by any such drain may appear before the board of drain commissioners and fully express their opinion and offer evidence upon the matters pertaining thereto.

§ 1822. SHOWING REQUIRED TO ESTABLISH DRAIN.] If upon the examination by the board of drain commissioners before the survey has been made, or if upon the hearing upon the petition or upon the trial in the district court it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of benefit to be derived therefrom, the board of drain commissioners shall deny the petition, and the petitioners shall be jointly and severally liable to such board for all costs and expenses incurred in the proceedings, to be recovered by such board by action. If it shall appear that there was sufficient cause for the making of such petition and that the proposed drain will not cost more than the amount of the benefits to be derived therefrom the board of drain commissioners shall thereupon make an order establishing the drain, accurately describing it, and give the same a name by which it shall be recorded and indexed.

§ 1823. RIGHT-OF-WAY.] The right-of-way for the construction of any proposed drain, if not conveyed to the county by the owner, may be acquired in such manner as may now or hereafter be prescribed by law. Such right-of-way, when acquired, shall be the property of the county.

§ 1827. RETURN OF ASSESSMENT OF BENEFITS.] After the assessment of benefits has been made, as provided in the last section, and has been confirmed upon the hearing, and the specific amounts of each assessment has been extended as hereinafter provided, the board of drain commissioners shall make return thereof to the county auditor, who shall record the same in a book to be provided by the county for that purpose. Such return shall contain the petition for the drain, the minutes of the survey signed by the surveyor, a copy of the order establishing the drain, conveyance of the right-of-way, if any, and the assessment of benefits.

§ 1828. NOTICE OF CONSTRUCTION.] After completing the percentage assessment as hereinbefore provided, the board of drain commissioners shall without delay divide the line thereof into convenient divisions for construction, make diagrams of the same with specifications of the width of excavation at the bottom, the slope of the sides, and such other matters as may be necessary for the proper construction of the drain, and set suitable stakes in such places as may be necessary to show the beginning and end of divisions, and grade stakes to show the depth of cuts at such intervals as may be necessary. Such board shall give at least ten days' notice of the time when and the place where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county and printed notices not less than five in all and at least one in each township or municipality interested in such drain shall be posted in such township and municipalities at such points as will be likely, in the opinion of the

board, to secure the greatest publicity for such notice. Such notice shall also state that at the time and place of such letting of contracts the assessment of benefits will be subject to review, unless such assessment has already been reviewed, under the provisions of section 1825.

§ 1831. APPORTIONMENT AND TAXATION OF COSTS.] After fixing the cost of the construction of the drain, as provided in the preceding section, the board of drain commissioners shall carry out upon the assessment list the specific amount which each municipality and lot or tract of land benefited by the drain for which the tax is levied is liable to pay on account of procuring the right-of-way or the construction of any drain, or both, according to the per cent which by section 1826 it is required to fix and determine, a copy of which shall be served on the clerk or auditor of each municipality against which taxes are to be assessed. Such list shall thereupon be filed in the office of the county auditor of the county in which the municipalities and lands benefited by the drain are situated, and the auditor shall thereupon extend upon the tax lists as a special tax as provided by law the several amounts shown by the drain commissioners' list, specifying in such tax lists the particular drain for the construction or procurement of the right-of-way of which the special tax is assessed, which special tax shall be collected and enforced in the same manner as other taxes. When such special tax is for the right-of-way, the same shall when collected be paid by the county treasurer into court for the benefit of the owners of the right-of-way, and the common council, or other proper taxing authorities of each city or other municipality against which such assessment is made as aforesaid, shall include in the first general tax levy thereafter made in said city or municipality the amount so assessed against it by the board of drain commissioners, and the same shall be extended upon the tax lists of the county for the current year by the county auditor against all the taxable property in such city or municipality in the same manner and with the same effect as other taxes are extended.

§ 1832. COLLECTION OF DRAIN TAXES. PAYMENT OF EXPENSES.] The drain taxes shall be collected by the county treasurer, and all moneys so collected shall be credited to the drain fund to which they belong, and the county treasurer shall be the treasurer of such drain funds. Payment of all expenses and costs of locating and constructing any drain shall be made by the board of drain commissioners issuing warrants in such amounts and to such persons as by such board may be found due, which warrants shall be signed by the chairman and secretary. All warrants drawn by such board in payment for the right-of-way or construction of any drain shall be payable from the proper drain fund and shall be receivable for the taxes levied for the right-of-way or construction of such drain by the treasurer. All such warrants after presentation to the county treasurer for payment, if not paid for

want of funds, shall be registered by the county treasurer and shall thereafter bear interest at the rate of seven per cent per annum.

§ 1835. EXTENSION OF POWERS WHEN NECESSARY.] The powers conferred by this chapter for establishing and constructing drains shall also extend to and include the deepening and widening of any drains which have heretofore been or may hereafter be constructed; also to straightening, clearing out and deepening the channels of creeks and streams and the construction, maintaining, remodeling and repairing of levees, dykes and barriers for the purpose of drainage, and the board of drain commissioners may locate or extend the line of any drain if the same is necessary to provide a suitable outlet, and shall cause a survey thereof to be made, and may establish a drain upon the line of an abandoned drain, and complete the same, or in whole or in part upon the line of an invalid drain. It may also establish and construct lateral drains with outlets in drains heretofore constructed; provided, however, that all proceedings under this section affecting the rights of persons and property shall only be taken upon the petition and in accordance with the procedure governing the establishment and construction of drains in the first instance. Whenever the widening, extending or deepening of a main drain is made necessary by the construction of a lateral drain, the petition for the lateral drain shall contain a request for such widening, deepening or extension, and the cost of such widening, deepening or extension shall be charged as a part of the cost of construction of the drain petitioned for and assessed against the property benefited thereby as a part of the cost of the construction.

§ 1840. LEGAL DRAINS DEFINED. RECORD.] All drains regularly established, opened or constructed under the provisions of any law shall be deemed legal drains and shall be under the control and charge of the county commissioners, and it shall be the duty of all boards of county commissioners in cases where the records of any drain may not have been preserved to see that such record is made in the best manner practicable in the office of the county auditor, and whenever necessary it shall be their duty to complete the records of such drain so as to show their legal character. Said board shall provide a book to be known as "Record of Drains," in which such records shall be recorded.

§ 1849. BONDS, WHEN AND HOW AUTHORIZED.] The board of county commissioners of any county in which any such drain is proposed to be located and constructed is authorized to issue bonds which shall be known as drainage bonds, in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right-of-way or in locating or constructing any such drain, said word "expenses" to be construed to mean and to cover every item of cost of such drain from its inception to its completion as hereinbefore provided, which bonds

shall be paid out of the revenues to be derived from taxes levied, or to be levied, and collected from that portion of the county found by the board of drain commissioners to be benefited thereby. Such bonds shall bear interest at a rate not exceeding seven per cent and shall be divided in such amounts and payable at such periods not exceeding fifteen years, as the board of county commissioners may determine; provided, that any land owner who may desire to pay the entire amount assessed against his land for the entire cost of such drain, including warrants and interest thereon, may, prior to the sale of such bonds, pay into the county treasury the amount of said assessments for which the treasurer shall give his receipt in full, and such lands shall not be included in the list of the lands assessed. The county auditor shall give notice of the determination of the board of county commissioners to issue bonds by publishing a notice in the official newspaper of the county at least fifteen days before the date of selling said bonds. Said notice shall designate the drain proposed to be bonded, and in general terms notify all persons interested of their right to pay their total assessment prior to the date of the sale of said bonds, as provided in this section. The money paid in shall be used to take up warrants, and the bonds issued shall be for such an amount as will pay the remainder of the cost of construction; and the said board shall provide sinking funds for the payment at maturity of each series of bonds issued and for the payment of the annual interest on the same. The bonds issued under the provisions of this chapter shall be signed by the chairman of the board of county commissioners of such county and countersigned by the county auditor, who shall keep a record of the bonds issued under the provisions of this chapter. Such board shall have the power to negotiate such bonds at not less than the par value thereof as it may deem for the best interest of all persons interested in such drain. Such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this chapter and that they are to be paid out of sinking funds to be created as in this chapter provided. Whenever such bonds shall be issued the tax hereinbefore provided for shall not be collected all in one year, but shall be divided into parts corresponding with the amounts and maturities of the bonds, and such parts shall be extended year by year upon the tax lists by the county auditor against the proper parcels of land and property liable to taxation for that purpose and collected in such year, and such fund shall constitute the sinking fund provided by this section.

§ 2. REPEAL.] All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

§ 3. EMERGENCY.] Whereas, an emergency exists in that the present law is cumbersome in its operations, therefore this act shall take effect from and after its passage and approval.

Approved March 20, 1907.

CHAPTER 94.

[H. B. No. 335—Dibley]

COMPENSATION OF DRAIN COMMISSIONERS.

AN ACT to Amend Section 1845, Chapter 23 of the Political Code of the State of North Dakota, Revised Codes of North Dakota of 1905, Relating to Drains.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 1845, revised codes of North Dakota of 1905, is amended to read as follows:

§ 1845. COMPENSATION OF COMMISSIONERS AND PUBLISHERS.] Drain commissioners shall receive for their services such amount not less than three nor exceeding four dollars per day for the time spent by them in the performance of the duties of their office, such per diem to be fixed by the board of county commissioners. Publishers of newspapers shall receive for publishing legal notices and furnishing evidence of such publication the fees prescribed by law for legal advertisements.

§ 2. EMERGENCY.] Whereas, the present law restricts the compensation of commissioners, therefore this act shall be in full force and effect from and after its passage and approval.

Approved March 13, 1907.

EDUCATION

CHAPTER 95.

[S. B. No. 163—Talcott]

AMENDING LAWS RELATING TO EDUCATION.

AN ACT to Amend Sections 747, 778, 799, 819, 836, 847, 879, 892, 912 of the Revised Codes of 1905, Relating to Education.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 747 of the revised codes of 1905 is amended and re-enacted to read as follows:

§ 747. QUALIFICATIONS OF SUPERINTENDENT OF PUBLIC INSTRUCTION. TERMS OF OFFICE.] There shall be elected by the qualified electors of the state at the time of choosing members of the legislative assembly, a superintendent of public instruction, who