

CHAPTER 434

PAVEMENTS, CURBS, AND GUTTERS

434.01 DEFINITIONS.

HISTORY. 1919 c. 65 s. 1; 1921 c. 419 s. 1; G.S. 1923 s. 1815; 1927 c. 185 s. 1; M.S. 1927 s. 1815; 1933 c. 200 s. 1; M. Supp. s. 1815.

If the council wishes, and has the money it may make improvements out of the general revenue fund. If a charge is to be made against abutting property owners the council must act on a petition. 1942 OAG 182, May 23, 1942 (396G-10).

434.02 PAVEMENTS AND GUTTER CURBS.

HISTORY. R.S. 1851 c. 41 ss. 35, 36; 1895 c. 8 s. 252; 1917 c. 364 s. 1; G.S. 1923 s. 1907; M.S. 1927 s. 1907.

434.03 COST ASSESSED AGAINST ABUTTING PROPERTY.

HISTORY. 1895 c. 8 s. 257; 1917 c. 364 s. 2; G.S. 1923 s. 1908; M.S. 1927 s. 1908.

434.04 ORDINANCE FOR IMPROVEMENT.

HISTORY. 1917 c. 364 s. 3; G.S. 1923 s. 1909; M.S. 1927 s. 1909.

434.05 BRANCH SEWERS AND WATER PIPES.

HISTORY. 1917 c. 364 s. 4; G.S. 1923 s. 1910; M.S. 1927 s. 1910.

434.06 PLANS, SPECIFICATIONS; BIDS.

HISTORY. 1917 c. 364 s. 5; G.S. 1923 s. 1911; M.S. 1927 s. 1911.

434.065 UNNECESSARY, IN CERTAIN INSTANCES, TO ADVERTISE FOR BIDS.

HISTORY. 1945 c. 335 s. 1.

434.07 PAYMENTS TO CONTRACTOR.

HISTORY. 1917 c. 364 s. 6; G.S. 1923 s. 1912; M.S. 1927 s. 1912.

434.08 SPREADING OF ASSESSMENT.

HISTORY. 1917 c. 364 s. 7; G.S. 1923 s. 1913; M.S. 1927 s. 1913.

434.09 OMISSIONS AND ERRORS.

HISTORY. 1917 c. 364 s. 8; G.S. 1923 s. 1914; M.S. 1927 s. 1914.

434.10 WARRANTS TO PAY COST.

HISTORY. 1917 c. 364 s. 9; G.S. 1923 s. 1915; M.S. 1927 s. 1915.

434.11 REASSESSMENT.

HISTORY. 1917 c. 364 s. 10; G.S. 1923 s. 1916; M.S. 1927 s. 1916.

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434.12 OBJECTIONS.

HISTORY. 1917 c. 364 s. 11; G.S. 1923 s. 1917; M.S. 1927 s. 1917.

434.13 APPEAL TO THE DISTRICT COURT.

HISTORY. 1917 c. 364 s. 12; G.S. 1923 s. 1918; M.S. 1927 s. 1918.

434.14 STREET AND ALLEY IMPROVEMENTS IN VILLAGES AND IN CITIES OF THE FOURTH CLASS.

HISTORY. 1919 c. 65 s. 1; 1921 c. 419 s. 1; G.S. 1923 s. 1815; 1927 c. 185 s. 1; M.S. 1927 s. 1815; 1933 c. 200 s. 1; M. Supp. s. 1815.

Laws 1919, Chapter 65, does not apply to cities of the fourth class having home rule charters, and hence does not apply to the city of Warren. *Lodoen v City of Warren*, 146 M 181, 178 NW 741.

In a proceeding for the paving of streets in a city of the fourth class it will be presumed, in the absence of proof to the contrary, that the city council did its duty and satisfied itself of the qualifications of the petitioners. In *re Appeal of Meyer from Confirmation of Paving Assessment*, 158 M 433, 197 NW 970, 199 NW 746.

It is common knowledge that paving necessarily requires drainage, the cost of which may be properly included in the general expense for the improvement. In *re Appeal of Meyer from Confirmation of Paving Assessment*, 158 M 433, 197 NW 970, 199 NW 746.

Engineer's expenses are a matter for the council and the trial court and, in the absence of a showing of some irregularity, the same will not be disturbed by the supreme court. In *re Appeal of Meyer from Confirmation of Paving Assessment*, 158 M 433, 197 NW 970, 199 NW 746.

When it appeared that the city council was without jurisdiction to order the improvement because of failure to publish the notice of hearing called for by Laws 1919, Chapter 65, Section 3 (434.16) the assessment could not be confirmed unless there was proof and a finding of waiver or notice or of estoppel. In *re Appeal of Meyer from Confirmation of Paving Assessment*, 158 M 433, 197 NW 970, 199 NW 746.

The filing of objections to the confirmation of the assessment long after the improvement was made is not evidence of waiver, nor did the filing of a petition after the improvement was ordered asking for a different pavement than the one laid estop appellant from insisting on his jurisdictional objection. In *re Appeal of Meyer from Confirmation of Paving Assessment*, 158 M 433, 197 NW 970, 199 NW 746.

No waiver or estoppel is to be found in the fact that appellant, while the appeal from the confirmation was pending in the district court, paid his general taxes, which included an instalment of the assessment for the improvement. In *re Appeal of Meyer from Confirmation of Paving Assessment*, 158 M 433, 197 NW 970, 199 NW 746.

Under the statute authorizing the city council to order an improvement like the one in question to be made, the property owner is not to be held to have waived his right to the jurisdictional notice, because, with knowledge that the improvement was being made, he did not seek injunctive relief, but relied for redress upon the provisions of the statute. In *re Appeal of Meyer from Confirmation of Assessment*, 158 M 433, 197 NW 970, 199 NW 746.

Where the proceeding for the improvement of a street was based upon a petition not signed by the requisite percentage of abutting owners the improvement should be enjoined. *Soukup v City of New Prague*, 161 M 299, 201 NW 604.

Laws 1919, Chapter 65, and Laws 1925, Chapter 382, grant powers and are not construed as imposing conditions or limitations on the municipalities therein mentioned to make public improvements. These laws are cumulative in their application. They are not repugnant but are reconcilable, and neither of these laws creates any repeal by implication. *Borgerding v Village of Freeport*, 166 M 202, 207 NW 309.

Villages organized under Laws 1885, Chapter 145, may at their option proceed with a street paving improvement in one of three methods:

- (a) Under Laws 1885, Chapter 145;
- (b) Under Laws 1919, Chapter 65;
- (c) Under Laws 1925, Chapter 382. *Borgerding v Village of Freeport*, 166 M 202, 207 NW 309.

The improvement of an alley cannot be made unless 35 per cent of the abutting owners petition for it, although a number of alleys are joined in one improvement and 35 per cent of all the owners petition. *Flynn v City of Worthington*, 177 M 28, 224 NW-254.

The city of New Ulm, under its general powers of control over its streets, may reasonably prescribe a 20-foot boulevard in the middle of a residence street 120 feet wide. *Apitz v City of New Ulm*, 185 M 345, 241 NW 47.

A city cannot institute a paving improvement under this act and then follow the procedure under the city charter relative to notice, resolution, etc., but the city may abandon the project and start a new one under a different statute. OAG May 5, 1936 (125a-18).

Property owned by the city is not to be included in giving the required number of signatures to a petition. OAG June 30, 1936 (396c-6).

City of Fairmont cannot widen a street entering the business section without a petition signed by the requisite number of abutting owners. OAG Sept. 29, 1936 (396c-6).

Where a city wishes to cooperate with the state in improving a trunk highway compliance must be had with the provisions of section 160.41. 1942 OAG 181, July 15, 1941 (396C-17).

434.15 ASSESSMENT OF ABUTTING PROPERTY.

HISTORY. 1919 c. 65 s. 2; G.S. 1923 s. 1816; 1925 c. 210; M.S. 1927 s. 1816.

Railroad right of way is subject to assessments for pavement on a street abutting the railroad. OAG May 11, 1936 (396g-12).

Where bonds were sold pursuant to authority vested by law, and all these bonds have been paid and there is a surplus in the special street improvement fund, such surplus belongs to the people who paid the assessments, and the council has no authority to transfer or loan the surplus to any other city fund. OAG July 2, 1931.

434.16 RESOLUTION FOR IMPROVEMENT.

HISTORY. 1919 c. 65 s. 3; G.S. 1923 s. 1817; M.S. 1927 s. 1817.

Where the statute requires notice of process to be served by publication for a stated number of weeks, the service becomes complete a week after the last publication. In re Appeal of Meyer from Confirmation of Paving Assessment, 158 M 433, 197 NW 970, 199 NW 746.

When it appeared that the council was without jurisdiction to order the improvement because of failure to publish the notice of hearing called for by this section, the assessment could not be confirmed unless there was proof and finding of waiver of notice or of estoppel. In re Appeal of Meyer from Confirmation of Paving Assessment, 158 M 433, 197 NW 970, 199 NW 746.

No waiver or estoppel is to be found in the fact that appellant, while the appeal from the confirmation was pending in the district court, paid his general taxes which included an instalment of the assessment for the improvement. In re Appeal of Meyer from Confirmation of Paving Assessment, 158 M 433, 197 NW 970, 199 NW 746.

434.17 BRANCH SEWERS AND WATER PIPES.

HISTORY. 1919 c. 65 s. 4; G.S. 1923 s. 1818; M.S. 1927 s. 1818.

434.18 PLANS, SPECIFICATIONS, AND ADVERTISEMENTS.

HISTORY. 1919 c. 65 s. 5; G.S. 1923 s. 1819; M.S. 1927 s. 1819.

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434.19 PAYMENTS.

HISTORY. 1919 c. 65 s. 6; G.S. 1923 s. 1820; M.S. 1927 s. 1820.

434.20 INTEREST RATE ON SPECIAL ASSESSMENTS.

HISTORY. 1919 c. 65 s. 7; G.S. 1923 s. 1821; M.S. 1927 s. 1821; 1939 c. 135; M. Supp. s. 1821.

434.21 COUNTY BOARDS AND SCHOOL DISTRICTS TO PAY ASSESSMENTS.

HISTORY. 1919 c. 65 s. 7a; G.S. 1923 s. 1822; M.S. 1927 s. 1822.

434.22 SUPPLEMENTAL ASSESSMENTS.

HISTORY. 1919 c. 65 s. 8; G.S. 1923 s. 1823; M.S. 1927 s. 1823.

434.23 CERTIFICATES OF INDEBTEDNESS AUTHORIZED.

HISTORY. 1919 c. 65 s. 9; G.S. 1923 s. 1824; M.S. 1927 s. 1824.

434.24 REASSESSMENT.

HISTORY. 1919 c. 65 s. 10; G.S. 1923 s. 1825; M.S. 1927 s. 1825.

The presumption of validity attending an assessment, by the proper authority, of the cost of a public improvement, while strong, is rebuttable. When that presumption is opposed by positive evidence that the assessment was made arbitrarily and without regard to actual benefits and that in fact it was in excess of such benefits and so confiscatory, an issue of fact arises upon which ordinarily the decision of the trial court is final. *In re Appeal of Meyer*, 176 M 240, 223 NW 135.

434.25 OBJECTION TO ASSESSMENT.

HISTORY. 1919 c. 65 s. 11; G.S. 1923 s. 1826; M.S. 1927 s. 1826.

Where an act authorizing a special assessment provides when and in what manner a property owner may contest the validity and amount of the assessment and gives him a proper opportunity to do so, he must make his defense at the time and in the manner provided and cannot attack the assessment in proceedings subsequently brought to enforce its collection. *County of Rock v McDowell*, 157 M 296, 196 NW 178.

434.26 APPEAL TO DISTRICT COURT.

HISTORY. 1919 c. 65 s. 12; G.S. 1923 s. 1827; M.S. 1927 s. 1827.

See annotations to section 434.24.

434.27 APPLICATION.

HISTORY. 1919 c. 65 s. 12a; 1921 c. 419 ss. 2, 3; G.S. 1923 s. 1828; M.S. 1927 s. 1828.

434.28 PUBLIC IMPROVEMENTS IN VILLAGES AND IN CITIES OF THE FOURTH CLASS.

HISTORY. 1903 c. 382 s. 1.

434.29 PUBLICATION OF RESOLUTION; AFFIDAVIT.

HISTORY. 1903 c. 382 s. 2.

434.30 HEARING; MANNER OF DOING THE WORK.

HISTORY. 1903 c. 382 s. 3.

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434.31 HEARING.

HISTORY. 1903 c. 382 s. 4.

434.32 DETERMINATION OF BENEFITS.

HISTORY. 1903 c. 382 s. 5.

434.33 CERTIFIED COPY, DELIVERY.

HISTORY. 1903 c. 382 s. 6.

434.34 VILLAGE OR CITY ORDERS ISSUED.

HISTORY. 1903 c. 382 s. 7.

434.35 TAX LEVY.

HISTORY. 1903 c. 382 s. 8.

434.36 CONSTRUCTION.

HISTORY. 1903 c. 382 s. 10.

434.37 BOULEVARDS, POWER TO CONSTRUCT OR REBUILD.

HISTORY. 1905 c. 330 s. 1; G.S. 1913 s. 1826; G.S. 1923 s. 1874; M.S. 1927 s. 1874.

434.38 SERVICE OF RESOLUTION.

HISTORY. 1905 c. 330 s. 2; G.S. 1913 s. 1827; G.S. 1923 s. 1875; M.S. 1927 s. 1875.

434.39 ASSESSMENTS.

HISTORY. 1905 c. 330 s. 3; G.S. 1913 s. 1828; G.S. 1923 s. 1876; M.S. 1927 s. 1876.

434.40 ISSUE AND SALE OF TREASURY ORDERS.

HISTORY. 1905 c. 330 s. 4; G.S. 1913 s. 1829; G.S. 1923 s. 1877; M.S. 1927 s. 1877.

434.41 TAX LEVY.

HISTORY. 1905 c. 330 s. 5; G.S. 1913 s. 1830; G.S. 1923 s. 1878; M.S. 1927 s. 1878.

434.42 APPLICATION.

HISTORY. 1905 c. 330 s. 6; G.S. 1913 s. 1831; G.S. 1923 s. 1879; M.S. 1927 s. 1879.

434.43 CURBS AND GUTTERS.

HISTORY. 1917 c. 123 s. 1; G.S. 1923 s. 1779; M.S. 1927 s. 1779.

434.44 PROCEEDINGS FOR CONSTRUCTION.

HISTORY. 1917 c. 123 s. 2; G.S. 1923 s. 1780; M.S. 1927 s. 1780.

434.45 PERFORMANCE OF WORK.

HISTORY. 1917 c. 123 s. 3; G.S. 1923 s. 1781; M.S. 1927 s. 1781.

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434.46 CERTIFICATE OF INDEBTEDNESS.

HISTORY. 1917 c. 123 s. 4; G.S. 1923 s. 1782; M.S. 1927 s. 1782.

434.47 TAX LEVY AUTHORIZED.

HISTORY. 1917 c. 123 s. 5; G.S. 1923 s. 1783; M.S. 1927 s. 1783.

434.48 NOT TO AFFECT ASSESSMENT ALREADY LEVIED.

HISTORY. 1917 c. 123 s. 6; G.S. 1923 s. 1784; M.S. 1927 s. 1784.

434.49 APPLICATION.

HISTORY. 1917 c. 123 s. 7; G.S. 1923 s. 1785; M.S. 1927 s. 1785.

434.50 SPECIAL ASSESSMENTS IN INSTALMENTS FOR PAVING.

HISTORY. 1911 c. 134 s. 1; G.S. 1913 s. 1416; G.S. 1923 s. 1352; M.S. 1927 s. 1352.

Under the laws of the state applicable to Red Wing, paving assessments may be made payable in instalments, and in such case they are certified to the county treasurer and are collected and enforced with and in the same manner as general taxes. State ex rel v City of Red Wing, 134 M 204, 158 NW 977.

434.51 INSTALMENTS, HOW DETERMINED.

HISTORY. 1911 c. 134 s. 2; G.S. 1913 s. 1417; G.S. 1923 s. 1353; M.S. 1927 s. 1353.

434.52 HOW COLLECTED.

HISTORY. 1911 c. 134 s. 3; G.S. 1913 s. 1418; G.S. 1923 s. 1354; M.S. 1927 s. 1354.

In cities governed by general laws, local improvement assessments after they become delinquent are certified to the county auditor and are included with delinquent general taxes in all subsequent proceedings for judgment, sale, and execution. Midway Realty Co. v City of St. Paul, 124 M 300, 303, 145 NW 21. See State ex rel v City of Red Wing, 134 M 204, 158 NW 977.

434.53 CERTIFICATES OF INDEBTEDNESS.

HISTORY. 1911 c. 134 s. 4; G.S. 1913 s. 1419; 1921 c. 88; G.S. 1923 s. 1355; M.S. 1927 s. 1355.

434.54 CERTIFICATES, HOW EXECUTED AND PAYABLE.

HISTORY. 1911 c. 134 s. 5; G.S. 1913 s. 1420; G.S. 1923 s. 1356; M.S. 1927 s. 1356.

434.55 FORM OF CERTIFICATES; APPLICATION OF MONEYS.

HISTORY. 1911 c. 134 s. 6; G.S. 1913 s. 1421; G.S. 1923 s. 1357; M.S. 1927 s. 1357.

434.56 REPLACING SIDEWALKS.

HISTORY. 1903 c. 213 s. 1; R.L. 1905 s. 759; G.S. 1913 s. 1546; G.S. 1923 s. 1532; M.S. 1927 s. 1532.

434.57 CITIES OF THE FIRST CLASS MAY SELL SPECIAL ASSESSMENT IMPROVEMENT BONDS BELOW PAR.

HISTORY. 1921 c. 226 s. 1; G.S. 1923 s. 1625; M.S. 1927 s. 1625.