

MINNESOTA STATUTES 1947 ANNOTATIONS

428.01 PUBLIC IMPROVEMENTS—SECOND AND THIRD CLASS CITIES 974

CHAPTER 428

PUBLIC IMPROVEMENTS IN CITIES OF THE SECOND OR THIRD CLASS

428.01 CERTAIN CITIES TO MAKE LOCAL IMPROVEMENTS AND ASSESS COSTS TO PROPERTY BENEFITED.

Warrants held by plaintiffs were intended to be in renewal or in lieu of original warrants issued against a particular fund. Such new warrants amounted to a substitution of one creditor for another. Plaintiffs are not in a position to question the validity of, or the city's authority to issue such warrants as they are charged with notice of charter limitations and could acquire no greater rights against the city than the officers thereof were authorized to grant. *Judd v City of St. Cloud*, 198 M 592, 272 NW 577.

While removing an obstruction to the completion of a storm sewer project, employees of the city dug under respondent's building causing the wall to sag. The city failed to make out a defense of ultra vires to an action of trespass, and the plaintiff in the trial court was entitled to recover damages. *Clark v City of Brainerd*, 210 M 377, 298 NW 364.

The city of South St. Paul under its charter may expend money for general purposes using the moneys in a special fund. OAG July 17, 1945 (198-B-10).

In making improvements, Fergus Falls need not follow state law. It must follow the procedure set forth in its charter. OAG Nov. 29, 1945 (59-A-4).

Property owned by a city of the second class cannot be used for housing purposes. The use of such property is not deemed a public purpose. OAG July 22, 1946 (59-A-40).

428.04 PLANS AND SPECIFICATIONS; ESTIMATE OF COST.

Amended by L. 1947 c. 445 s. 1.

In assessing the cost of repairs it is not necessary that notice be given to the property owners before levying the assessment. OAG July 16, 1945 (602-J).

428.06 CONTRACTS.

Where contractors engaged in sewer construction which necessitated the use of explosives contracted with the city to pay damages in case of harm done to public or private property in connection with the work, a person damaged may bring an action directly against the contractors. A creditor or donee beneficiary of a contract may recover thereon though not a party to the contract. It is not a bar to his recovery that the promise in his favor is conditioned on a future event nor is it essential that he be identified when the contract is made. *LaMourea v Rhude*, 209 M 53, 295 NW 304.

428.10 WHAT CONTRACT FOR PAVING MAY INCLUDE.

Where a paving contract expressly required the contractor to take notice of the condition of the soil and declared that he did the work at his own risk, the contractor having guaranteed the pavement for ten years cannot recover from the city for repairs occasioned by the nature of the subsoil, by the insufficient crown on the streets, or by the presence of street car tracks, the contractor being bound to notice those conditions before entering into the agreement. *Barber Asphalt Co. v City of St. Paul*, 224 F. 842.

428.18 CONTRACTOR TO EXECUTE BOND.

Where plans and specifications are prepared for the construction of a system of sewers and bids are invited and defendants submitted a bid which was accepted

MINNESOTA STATUTES 1947 ANNOTATIONS

975 PUBLIC IMPROVEMENTS—SECOND AND THIRD CLASS CITIES 428.22

by the city council and a contract subsequently entered into where the work to be done and the compensation were stipulated and there was a default wherein the city was entitled to damages, the sureties on the contractor's bond were properly held liable. *City of Winona v Jackson*, 92 M 453, 100 NW 368.

428.19 BOND OR CERTIFIED CHECK WITH BID.

Pursuant to an order of the city council the commissioner of public works published a notice inviting bids for the furnishment to the city of asphalt for resurfacing certain streets. The notice stated that a bond for 20 per cent of the bids or a certified check for 10 per cent thereof must accompany each bid "as a surety for the making and execution of a contract." This language does not indicate an intention to regard the bond or check as liquidated damages and there can be no forfeitures of plaintiff's checks. *Barber Asphalt Co. v City of St. Paul*, 136 M 396, 162 NW 470.

428.20 ASSESSMENTS.

Successive special assessments may be levied if they are not for the same improvement. The power to levy them is continuous and co-extensive with benefits received. Special benefits to lands in the locality of a tract acquired and dedicated to the public as a park may result from such acquisition and dedication although the land is left in its natural state and there may be an immediate assessment of such benefits. *Improvement of Lake of the Isles*, 152 M 39, 188 NW 59.

Where the park board covenanted to exempt the grantor's land from assessments, but assessments were nevertheless placed on the general tax rolls and proceedings by action at law under the remedy prescribed by the statute was uncertain, an action in equity might be maintained. *In re Minnehaha Pkwy.* 167 M 258, 209 NW 939.

A special assessment for a local improvement must be levied pursuant to the law in force when the assessment proceedings were initiated and consummated and not the law in force at the time the improvement was ordered; and in making the assessment the municipality cannot include improvements made to abutting property during the period of its exemption from such special assessments but may include improvements made subsequent to the termination of the exemption. *Minnesota Transfer v City of St. Paul*, 165 M 8, 207 NW 320; *State v Great Northern*, 165 M 22, 207 NW 322.

Injunction does not lie against a municipality and its officers to restrain the enforcement of special assessments after the same are certified to the county auditor for extension on the tax list. If such assessments are wholly void for want of notice, there is an adequate remedy at law in the proceeding for the enforcement of delinquent taxes and assessments in the district court. *Schultz v City of North Mankato*, 176 M 76, 222 NW 518.

A rule of assessment, properly ignoring both use and value, condemned because in spreading the assessment over a large district, most of the property not abutting on the improvement, it adopts a combination of the factors of frontage and depth in such fashion as to cause discrimination in the assessments in favor of undivided lots and against those which happen to be divided, a lot divided in ownership taking an assessment much larger than an equal undivided lot receiving the same benefits from the improvement. *In re Third Street Improvement*, 185 M 170, 240 NW 355.

428.22 PUBLICATION OF NOTICE OF MEETING; OBJECTIONS IN WRITING.

Where the 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 the proper opportunity to do so, he must make his defense at the time and in the manner provided and cannot attack the assessments in proceedings subsequently brought to enforce the assessment. *County of Rock v McDowell*, 157 M 296, 196 NW 178.

MINNESOTA STATUTES 1947 ANNOTATIONS

428.24 PUBLIC IMPROVEMENTS—SECOND AND THIRD CLASS CITIES 976

Under the statute authorizing the city council to order an improvement such as paving of streets 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. *Re Meyer*, 158 M 434, 199 NW 746.

The presumption of validity attending an assessment by the proper authority of the cost of a public improvement, while strong, is rebuttable; but 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. *Appeal of Meyer*, 176 M 240, 223 NW 135.

428.24 OBJECTIONS.

Upon the application for the confirmation of an assessment it is for the district court to make its finding in accordance with the law; and on appeal the supreme court will review the question of the sufficiency of the evidence to sustain the trial court's finding using the rule applicable in other cases where a finding is attacked, and the appellate court will not reverse the trial court if there is evidence reasonably sustaining its finding. *Re Concord Street Assessment*, 148 M 329, 181 NW 359.

Real property not receiving any special benefit from a local street improvement cannot be assessed to pay any part of the cost; and an assessment greatly in excess of any special benefit to the property is invalid because any such assessment where there are no special benefits or where the assessment greatly exceeds the special benefits is a taking of private property for public use without just compensation. *Re Assessment for Improvement of Superior Street*, 172 M 554, 216 NW 318.

428.28 WARRANT FOR COLLECTION.

Warrants held by plaintiffs were intended to be in renewal or in lieu of original warrants issued against a particular fund. Such new warrants amounted to a substitution of one creditor for another. Plaintiffs are not in a position to question the validity of or city's authority to issue such warrants as they are charged with notice of charter limitations and could acquire no greater rights against the city than the officers thereof were authorized to grant. *Judd v City of St. Cloud*, 198 M 592, 272 NW 577.

482.31 NON-PAYMENT OF ASSESSMENT; PENALTY, COLLECTION.

Where a special assessment is to be collected under the general tax laws and no opportunity is given a property owner to contest it in the prior proceedings, he may do so in the proceedings under the general tax laws; and in proceedings brought under the general tax laws, the delinquent list makes a prima facie case against the property owner. Showing that it includes an assessment from which he took an appeal is not a defense unless he also shows that the appeal resulted in a reduction of the assessment or is still pending. *County of Rock v McDowell*, 157 M 296, 196 NW 178.

428.33 NEW ASSESSMENT.

When judgment declares the contract entered into by the city for the improvement of a street void for failure to comply with the statutory requirements, the city may thereafter institute reassessment proceedings, and if the proper proceedings are followed, the reassessment is valid. *State ex rel v District Court*, 102 M 482, 113 NW 697.

428.57 METHOD OF ASSESSMENT.

Warrants held by plaintiffs were intended to be in renewal or in lieu of original warrants issued against a particular fund. Such new warrants amounted to a substitution of one creditor for another. Plaintiffs are not in a position to question the validity of or city's authority to issue such warrants as they are charged with notice of charter limitations and could acquire no greater rights against the city than the officers thereof were authorized to grant. *Judd v City of St. Cloud*, 198 M 592, 272 NW 577.