

CHAPTER 431

SEWERS AND SEWAGE DISPOSAL

431.01 CITIES AND VILLAGES MAY CONSTRUCT SEWAGE DISPOSAL PLANTS.

Sp. L. 1881, c. 410, declaring that the waters of Goose Lake shall remain free for common and public use and that they shall not be connected with or applied to a public or private use does not prevent condemnation by the city for a sewage disposal plant and connected use. The city of White Bear Lake has authority under its home rule charter to condemn land outside its corporate limits for public use. *City of White Bear Lake v Leuthold*, 172 M 255, 214 NW 930.

A sewer discharging offensive unpure effluent into a natural stream so as to create a nuisance by such discharge is the proximate and not the remote cause or condition of the nuisance; and where a city enacts an ordinance forbidding certain offensive matter from being cast into its sewers, such an enactment affords the city no defense to an action for nuisance brought against it by a local riparian owner for polluting a stream into which the sewer is drained with sewage which includes such offensive matter. *Huber v City of Blue Earth*, 213 M 319, 6 NW(2d) 471.

The council by resolution and without a vote of the people has power to pledge the credit of the village for deficiencies in the sewer fund which arise when special assessments are insufficient; but anticipation warrants cannot be issued until an assessment is made. 1944 OAG 182, Sept. 15, 1944 (476-C-1).

Money being on hand, a village may construct a sewage disposal plant without submitting the question to the people. OAG Nov. 27, 1946 (387-E-9).

431.02 CLASSIFICATION OF SEWER SYSTEMS.

There is no constitutional invalidity in a provision for paying for a sewer by general or district taxation instead of by local assessment. The dividing of a city into sewer districts is a valid process, and general taxation applied to each particular district where the taxes under the levy go into a special district fund to be expended either for sewers or relief sewers within the district is a valid method of the establishment of sewers and taxation to pay the expense. *Re Delinquent Polk County Real Estate Taxes*, 147 M 344, 180 NW 240.

431.04 ORDINANCE FOR IMPROVEMENT.

Under process as provided in sections 429.01 et seq., and 431.01 et seq., a city without a special election may finance the construction or extension of water mains and sewer and certain street improvements. OAG June 8, 1946 624-D-11).

431.05 COST OF SYSTEM.

Sewer warrants issued pursuant to sections 431.01 et seq., are not a part of the outstanding obligations of the city within the meaning of sections 477.10 and 477.11. *Leslie v City of White Bear Lake*, 186 M 543, 243 NW 786.

431.06 SPREADING OF ASSESSMENTS.

L. 1903, c. 312, coded as sections 431.01 et seq., is not unconstitutional because it requires that each lot or tract of land within the district shall be assessed for the cost of improvements in the ratio of area of square feet to the total assessable area of the district; but in establishing sewer districts under the above cited sections the common council is required to exercise its judgment so as to include within

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the district such real estate as will be benefited by the improvement and to apportion the cost thereof on all of the property according to the benefits. *Mayer v City of Shakopee*, 114 M 80, 130 NW 77.

There is no personal liability quasi ex contractu on the part of a land owner under an invalid assessment for a local improvement upon the grounds that the land owner has received the benefits of the improvement and used it where the statute authorizing the assessment provides an exclusive remedy in rem against the land only without personal liability on the part of the owner. *Independent School District v White Bear Lake*, 208 M 29, 292 NW 777.

431.08 COST OF LATERAL SEWERS.

Where a city established a sewer system under sections 431.01 et seq., and the owner of a lot in the middle of the block filed a petition for a lateral sewer which would run the depth of corner lots owned by persons who had already paid for the sewer in front of their lots, such lots could nevertheless be reassessed under section 431.08 if constitutional, but the language is permissive not mandatory, and the city might properly pay the cost from a general fund or allow petitioner to lay the sewer under section 431.13, subd. 1, at his own expense. OAG Oct. 2, 1945 (59-B-12).

431.11 ADVERTISEMENTS FOR BIDS.

Section 431.11 specifically applies to the borough of Belle Plaine which therefore cannot contract for construction of a sewer which may cost \$5,000 or more without first advertising for bids. OAG May 28, 1943 (387-G-3).

431.13 AMOUNT OF SPECIAL ASSESSMENT.

See, *Independent School District v White Bear Lake*, 208 M 29, 292 NW 777, noted under section 431.06.

A village sewer may be constructed before the benefits have been assessed against abutting owners. OAG May 11, 1943 (387-G-1).

A city may allow a lot owner, whose property is in the middle of the block, to connect with the city sewer system at his own expense. OAG Oct. 2, 1945 (59-B-12).

It would be illegal for a city to construct lateral sewers postponing the first assessment for a period of from five to ten years. OAG April 16, 1946 (387-B-1).

Special assessment on property used for railroad purposes. 12 MLR 524.

431.15 FUND FOR EACH PROPOSED SEWER.

The improvement warrants were issued by the city pursuant to its home rule charter which granted authority for the creation of a special fund to pay for such improvements, and the defendant city cannot be held generally liable as it has faithfully done everything required of it in the way of ascertaining the cost and providing for payment by levying assessments against certain benefited property. The warrants are purely contractual and constituted a charge or claim only against the particular fund out of which promised payment was made. This follows the rule in *Leslie v City of White Bear Lake*, 186 M 543, 243 NW 786. *Judd v City of St. Cloud*, 198 M 591, 272 NW 577.

431.16 PAYMENT OF WARRANT.

An assessment must be laid before warrants are issued. OAG Sept. 15, 1944 (476c-1).

431.29 GOVERNING BODY MAY CONSTRUCT AND RECONSTRUCT SEWERS.

When a village makes a ditch on a street cutting off access to adjoining owner, a culvert or crossing must be placed at village expense. OAG April 14, 1947 (377-A-3).

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431.30 MAY ASSESS BENEFITS.

The city of Ely entered into contracts for the construction of sewers and street improvements, whereby it assumed a general and unlimited obligation to pay for doing such work. Held: That the city charter authorized the making of such contracts; that it gave the council power to provide the funds to pay the liabilities so assumed; that it did not require such payments to be made from the proceeds of special assessments nor from any particular fund; but that it did require the council to levy and enforce special assessments against the property benefited to reimburse the city for such expenditures. Held further: That a general taxpayer may, by mandamus, compel the city council to levy and enforce such special assessments; but that he cannot enjoin the city from paying for the construction of such improvements at the time and in the manner stipulated in its contracts. State ex rel v City of Ely, 129 M 42, 151 NW 545.

Where special assessments are made for sewer construction or repair, the liens attach when the council by resolution confirms the proposed assessments. OAG June 6, 1941 (387-G-1).