

CHAPTER 434

PAVEMENTS, CURBS, AND GUTTERS

434.01 DEFINITIONS.

L. 1919, c. 65 (ss. 434.01, 434.14 to 434.27), authorized the city council of a city of the fourth class not having a home rule charter to contract for the pavement of streets and to issue certificates of indebtedness to pay the cost thereof without submitting the proposition of such issue to the electors of the city for approval or rejection. *Pike v City of Marshall*, 146 M 413, 178 NW 1006.

L. 1919, c. 65 (ss. 434.01, 434.14 to 434.27), and L. 1925, c. 385 (ss. 429.01 to 429.18), 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. Neither of these laws creates any repeal by implication. *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 the improvement; and a number of alleys cannot be joined in one improvement and thereby the necessity of having 35 per cent of the abutting owners in each alley petition be avoided. *Flynn v City of Worthington*, 177 M 28, 224 NW 254.

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

Chapter 434 is applicable to the financing of local work in a village to connect with a street road constituting the main street in the village. OAG July 23, 1946 (396-G-7).

A village cannot levy an assessment under sections 434.01 to 434.27 to raise money for paying engineering and legal expense of a contemplated improvement where the village had entered into an agreement with the commissioner of highways pursuant to the provisions of section 160.41. OAG Aug. 29, 1946 (396-C-17).

434.02 PAVEMENTS AND GUTTER CURBS.

A temporary injunction restraining a city from entering into any contract for the improvement of a street, whereby any pecuniary liability will be incurred by or in behalf of said city for any of said improvement which will necessitate the payment or expenditure of any of the current funds of said city whatever, save and except such as can be lawfully raised by special assessments made on property benefited other than property belonging to the city, did not render invalid a contract for the improvement which imposed no liability for its cost upon the city, but expressly provided that it should be paid for out of money lawfully raised by special assessment on property other than that owned by the city. *City of Mankato v Barber Asphalt Paving Co.* 142 F. 329.

Sections 434.01, 434.02 to 434.13, 434.14 to 434.27, 434.28 to 434.36, and sections 429.01 to 429.18, each constitute a whole and complete law and neither of such acts is repugnant to any other nor are such acts or any of them to be construed as repealing the other. OAG May 13, 1946 (396-G-7).

434.03 COST ASSESSED AGAINST ABUTTING PROPERTY.

Where the village voted to issue bonds for the purpose of making improvements in conjunction with trunk highway improvements, and it is found that by so doing

the village debt limit would be exceeded, money for the improvement must be raised under the provisions of chapter 434. OAG July 23, 1946 (396-G-7).

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

The signer of a petition for paving may withdraw his name any time prior to the time when the council determines that the necessary number have signed. Except upon consent of the council, the signing of a petition opposing the project will not be construed as the withdrawal of the name from the original petition. After a date has been set for hearing on a petition the name of the petitioner cannot be withdrawn except with the consent of the council. OAG Sept. 5, 1945 (396-c-10).

Sections 147.11 to 147.13 are not superseded or repealed by sections 434.01 and 434.14 to 434.27. Each act is complete and the acts are alternative and cumulative, and a village may proceed under either. OAG May 13, 1946 (396-G-7).

Sections 434.01 and 434.14 to 434.27 authorize a village to widen a pavement and lay new gutters and curbs for a distance of two blocks. OAG May 18, 1946 (396-G-7).

A petition signed by property owners is a prerequisite to widening streets under section 434.14. OAG Sept. 16, 1946 (396-C-6).

A petition for improvement of streets is sufficient if it carries signatures of owners of 35 per cent of the frontage abutting upon the improvement, although it does not carry the signature of the owners of 35 per cent of the frontage on one block to be improved. OAG April 1, 1947 (396-C-10).

434.15 ASSESSMENT OF ABUTTING PROPERTY.

Property used for railroad purposes; benefits conferred. 15 MLR 609.

434.18 PLANS, SPECIFICATIONS, AND ADVERTISEMENTS.

Where under authority of section 160.41 a contract is entered into between a village and the commissioner of highways for the improvement of a village street, the bond provided for in section 434.18 is not required. OAG Aug. 19, 1946 (396-C-17).

This section relates to local improvements, such as pavements, curbs, and gutters. The village council may expend current funds and money received from taxes in the process of collection. OAG April 1, 1947 (707-a-15).

434.25 OBJECTION TO ASSESSMENT.

The filing of objections to the confirmation of an assessment long after the improvement was made; the filing of a petition asking for a different pavement; the payment of general taxes which included an instalment of the assessment; and, the failure to apply for injunctive release did not constitute a waiver of the taxpayer's rights to raise the question of lack of jurisdictional notice. Appeal of Meyer, 158 M 433, 199 NW 746.

Where the special assessment is levied under an act which provides the manner in which 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 by law and cannot attack the assessment in proceedings brought to enforce its collection; but where a special assessment is to be collected under the general tax laws which give the property owner no opportunity to contest in the prior proceedings, he may take the opportunity of defense in proceedings under the general tax laws. *Rock County v McDowell*, 157 M 296, 196 NW 178.

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

L. 1903, c. 382, does not cover the acquisition of a right of way for a new street. 1942 OAG 183, Aug. 7, 1942 (396-G).

MINNESOTA STATUTES 1947 ANNOTATIONS

434.37 PAVEMENTS, CURBS, AND GUTTERS

992

This section is broad enough to permit a municipality to construct curbs and gutters under this section. OAG Dec. 10, 1946 (396-C-6).

434.37 BOULEVARDS, POWER TO CONSTRUCT OR REBUILD.

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