

CHAPTER 455

ELECTRICAL

455.01 CITIES OF THE SECOND OR THIRD CLASS MAY CONSTRUCT OR PURCHASE ELECTRIC LIGHT PLANT.

The rule that a municipal corporation is not liable for an injury occasioned by a neglect or other failure to perform its governmental functions applied to the alleged failure of the city of Minneapolis to properly lay one of its streets much frequented by pedestrians; and the rule remains the same whether the neglect be characterized as creating a nuisance or as mere negligence on the part of the officers of the municipality. *Bojko v City of Mpls.* 154 M 167, 191 NW 399.

Cooperatives distributing to their customers electricity purchased from municipal light plants are "public utilities." *Meeker Assn. v Phillips*, 158 F(2d) 698.

455.02 BONDS.

Under its home rule charter the city of Virginia has power to purchase an existing water and light plant and issue bonds to the extent of \$450,000. The acquisition may be by purchase without resorting to eminent domain procedure. The obligations are general obligations of the city and may be issued without a prior tax levy. *Backus v City of Virginia*, 123 M 48, 142 NW 1042.

455.12 PURCHASE OF ELECTRICAL ENERGY; CONTRACTS.

Where the legislative body of a municipality has authority to make a contract with a third party for lighting its streets but has not pursued the legal course provided by law in awarding the contract, the signing and delivering thereof may be enjoined at the suit of a taxpayer. *Schiffmann v City of St. Paul*, 88 M 43, 92 NW 503.

To constitute a franchise the right possessed must be such as cannot be exercised without the express permission of the sovereign power, a privilege or immunity of a public nature which cannot be legally exercised without a legislative grant; and tested by that rule a cooperative association organized under the provisions of section 308.05 and engaged in the manufacture and distributing of heat, light, and power was legally organized. *General Minnesota Utilities Co. v Carlton County Cooperative Assn.* 221 M 510, 22 NW(2d) 673.

A city having power, under its charter, to provide for furnishing water and light to the city and its inhabitants, and to control the erection of works for such purposes, has power to contract for the furnishing of water and light by third parties, and to grant the franchises and privileges necessary to carry out such contracts; and contracts so made by ordinance, by which the city grants franchises and agrees to pay a stipulated sum to the grantees each six months for water and light for public uses during a term of years, where such contracts are reasonable, and properly protect the city's rights, are binding, and cannot be annulled by the city without the consent of the other parties, who have expended money in the erection of works, and have in all respects performed such contracts on their part. *Anoka Power Co. v City of Anoka*, 109 F. 580.

The fact that the village had granted a non-exclusive franchise for distribution of electricity does not foreclose it from entering into the field itself and operating its own plant within the provisions of section 457.01. OAG May 23, 1946 (624-C-6).

455.13 PURCHASE OF ELECTRICITY.

A contract for purchase of electricity for city of Ely may be by authority and in the manner prescribed by statute or under the provisions of the city charter. OAG April 3, 1945 (624-E-2).

455.23 ELECTRIC LIGHT AND POWER PLANTS IN CITIES OF FOURTH CLASS, AND VILLAGES.

Where a city by contract and ordinance purchased a plant for the generation, distribution, and sale of electric energy to be paid from net earnings and not from taxation or from the general funds of the city, the proceeds were void because of failure to provide for the provisions of the home rule charter relating to competitive bidding. *City of Bemidji v Ervin*, 204 M 90, 282 NW 683.

So long as the village council acted freely and independently and for the best interests of the village, the mere fact that it incorporated into the plans and specifications suggestions advanced by representatives of possible bidders appearing at open public meetings is not ground to set the contract aside when the competition was open and not unreasonably limited. *Davis v Village of Madelia*, 205 M 526, 287 NW 1.

455.24 SUBMISSION TO VOTERS.

The village council of Cambridge is without power to purchase an electric distribution system without submitting the proposition to the voters. OAG Nov. 8, 1945 (624-C-8).

455.27 POWERS OF COUNCIL.

If the power lines of a power company are located upon its own private right-of-way and outside of the city limits, upon extension of the city limits to include the property of the power company the city would have no right to deprive the power company of its private property without paying for it and could not compel the power company to move its line installations without compensation. OAG March 26, 1947 (624-C-14).

455.29 MUNICIPALITIES MAY EXTEND ELECTRIC SERVICE.

Except as restricted by section 455.30, the city water and light commission of Fergus Falls may extend its electric service beyond that city when the electorate of the city has authorized it to do so; and the invaded municipality has consented; and the power company has agreed to modify their contract with the city. OAG July 30, 1946 (624-C-12).

455.30 NOT TO EXTEND INTO OTHER MUNICIPALITIES.

Except as restricted by section 455.29, the water and light commission of the city of Fergus Falls, a city of the third class, may under the provisions of section 455.29 extend its lines beyond the city limits. OAG July 30, 1946 (624-C-12).

455.32 DISPOSITION OF SURPLUS ELECTRICITY TO PRIVATE CONSUMERS OUTSIDE CITY.

Under the provisions of section 455.32 a city of 10,000 inhabitants or less which has an electric plant is authorized to purchase electric current and to sell surplus current to consumers beyond the limits of the city. The matter of selling service beyond the city limits is discretionary, and the court cannot require the city to furnish service to consumers outside of the city nor fix the price at which the current shall be furnished. *Guth v City of Staples*, 183 M 552, 237 NW 411.