

The term "public utility" as used in 196.80 (1) (d) comprehends a company owning and operating a street railway or interurban railway and the sale by such company of its trackless trolley system requires consent and approval of the public service commission. 31 Atty. Gen. 244.

196.81 History: 1931 c. 183 s. 3; 1931 c. 475 s. 12; Stats. 1931 c. 196.81; 1951 c. 565; 1957 c. 637.

A water heating utility could not diminish the scope of its original undertaking merely by filing declarations with the public service commission and avowedly holding itself out to furnish service only as limited by such declarations. Northern States P. Co. v. Public Service Comm. 246 W 215, 16 NW (2d) 790.

The public service commission had jurisdiction under 196.81, Stats. 1947, to order an electric interurban railway, not a part of a general steam-railroad system and not owning or operating any railway properties outside the state, to restore a connecting interstate freight service between points within the state, the U. S. government not having pre-empted the field, and the interstate commerce commission having stated that it was without jurisdiction, and the order in question not being discriminatory nor in any way interfering with interstate commerce. Kenosha M. C. Lines, Inc. v. Public Service Comm. 254 W 509, 37 NW (2d) 78.

Where the proceedings in question, terminating in the order authorizing a company (already authorized to operate streetcars and motorbusses) to establish a motorbus service which would be in competition with an existing street car service over a certain street and viaduct in Milwaukee, dealt not only with an application to change or establish routes of service but also with an application for abandonment of streetcar service, the order, without any finding of public convenience or necessity or of taking into consideration existing transportation facilities in the territory, was supported, under the evidence, as within the power of the public service commission to approve an abandonment of service on "such terms * * * as in its judgment are necessary to protect the public interest." Chicago & M. E. R. Co. v. Public Service Comm. 254 W 551, 37 NW (2d) 42.

A city has the right to enforce by court order the obligation of a street railway company to repair tracks and to remove them on abandonment, notwithstanding the public service commission's failure to impose terms or conditions on the abandonment. And the city could recover the necessary expenses of necessary repairs to the track zone after abandonment. In re Madison Railways Co. 102 F (2d) 178.

196.85 History: 1931 c. 183 s. 3; 1931 c. 475 s. 11; Stats. 1931 c. 196.85; Spl. S. 1931 c. 16; 1933 c. 4 s. 1, 2; 1933 c. 298; 1939 c. 446; 1943 c. 375 s. 80; 1949 c. 360; 1951 c. 261 s. 10; 1951 c. 712; 1957 c. 523; 1959 c. 135; 1965 c. 163; 1965 c. 433 s. 121; 1967 c. 43; 1967 c. 291 s. 14.

Where the public service commission has conducted an investigation upon a complaint against a railroad under 195.08 (9), Stats. 1943, it must, under the provisions of 196.85 (1), as-

certain the cost of such investigation and assess it against the railroad. 33 Atty. Gen. 40.

196.855 History: 1933 c. 438 s. 1; Stats. 1933 s. 196.855; 1947 c. 472; 1959 c. 659 s. 79.

196.91 History: 1915 c. 380 s. 3; Stats. 1915 s. 1596—14; 1917 c. 474 s. 15; Stats. 1917 s. 31.15; 1919 c. 571 s. 2; 1969 c. 276 s. 231; Stats. 1969 s. 196.91.

196.92 History: 1915 c. 380 s. 3; Stats. 1915 s. 1596—15; 1917 c. 474 s. 16; Stats. 1917 s. 31.16; 1965 c. 252; 1969 c. 276 ss. 231, 614; Stats. 1969 s. 196.92.

196.93 History: 1915 c. 380 s. 3; Stats. 1915 s. 1596—16; 1917 c. 474 s. 17; Stats. 1917 s. 31.17; 1969 c. 276 ss. 231, 614; Stats. 1969 s. 196.93.

CHAPTER 197.

Municipal Acquisition of Utilities.

197.01 History: 1907 c. 499; 1911 c. 663 s. 359; Stats. 1911 s. 1797m—79; 1917 c. 305; 1921 c. 248, 360; 1923 c. 291 s. 3; Stats. 1923 s. 197.01; 1929 c. 504 s. 309.

On impairment of contracts see notes to sec. 12, art. I; on taking private property for public use see notes to sec. 13, art. I; and on formation of corporations see notes to sec. 1, art. XI.

A proceeding by a city to acquire a public utility under sec. 1797m—79, Stats. 1911, although denominated a purchase and requiring no notice to be given to the holders of liens upon the property was, in effect, a condemnation proceeding. Connell v. Kaukauna, 164 W 471, 159 NW 927, 160 NW 1035.

Ch. 197, Stats. 1927, has no effect upon a city's authority to condemn property for street purposes. Chicago & Northwestern R. Co. v. Racine, 200 W 170, 227 NW 859.

The methods prescribed by 66.06 and 197.01 to 197.05, Stats. 1933, for the municipal acquisition of public utilities are separate, distinct, and mutually exclusive. Wisconsin P. & L. Co. v. Public Service Comm. 222 W 25, 267 NW 386.

A majority of the electors of Edgerton voted affirmatively on the following question: "Shall the City of Edgerton purchase the rights and property of the Wisconsin Power and Light Company actually used and useful for transmission, delivery and furnishing of heat, light, and power within the City of Edgerton, and construct and operate a plant and equipment for production and furnishing of electricity?" The 2 propositions were clearly stated; those in favor of both would vote "Yes," while those in favor of either and opposed to the other, as well as those opposed to both, would vote "No." The proceedings were valid and authorized the acquisition of rights and property even if located outside the city limits if used and useful for furnishing power within the city limits. Wisconsin P. & L. Co. v. Public Service Comm. 224 W 286, 272 NW 50.

Ch. 197, Stats. 1935, provides a complete procedure for the acquisition by a city of a public utility operating under an indeterminate permit and an exclusive procedure for

discontinuing proceedings duly initiated and conducted, after the public service commission has determined the just compensation to be paid. 10.43 has no application to such situation. *Henderson v. Hoesley*, 225 W 596, 275 NW 413.

In proceedings by a village to acquire a public utility the voters' affirmative answer to a question whether the "plant and equipment" "located in the village" should be acquired by the village did not authorize the acquisition of utility property located outside the village. *Wisconsin P. & L. Co. v. Public Service Comm.* 226 W 370, 276 NW 625.

196.39, Stats. 1935, relating to the regulation of public utilities, providing in part that the public service commission may reopen any case for further evidence following the issuance of an order therein, does not apply to acquisition proceedings brought before the commission by a municipality under ch. 197, and vests no power in the commission to reopen such a proceeding for further evidence following its issuance of an order fixing just compensation for the municipal acquisition of the property of the utility in question. *Superior W. L. & P. Co. v. Public Service Comm.* 232 W 616, 288 NW 243.

Whether certain property owned by the utility is used and useful for the convenience of the public, so as to be required to be included in the property to be taken by the municipality, is a question of fact and a finding of the public service commission as to the property used and useful can be set aside only when of such a character that the court can clearly say that the finding is unreasonable. A determination of the public service commission excluding from the property used and useful required to be taken by the city, the local operator's house, the local manager's home, an interest in the power line serving the city, and certain substation property, was neither unlawful nor unreasonable. *Lake Superior Dist. P. Co. v. Public Service Comm.* 235 W 667, 294 NW 45.

The provisions of 196.24 (3), Stats. 1941, apply to municipal acquisition proceedings under ch. 197, so as to permit the hearing of testimony by an examiner of the commission in such proceedings. *Lake Superior D. P. Co. v. Public Service Comm.* 244 W 543, 13 NW (2d) 89.

An inventory of the utility property to be acquired must necessarily be made by the public service commission prior to the date of the commission's award, and such prior inventory does not prevent the commission from fixing the value of the property as of the date of the award. *Pardeeville E. L. Co. v. Public Service Comm.* 246 W 504, 17 NW (2d) 586.

As used in an order of the public service commission fixing the amount of compensation to be paid and other terms and conditions for a village's acquisition of the property of an electric utility, and providing that in case of an action to review the order the time of payment should be extended to a date 4 months subsequent to the date of final judgment in such action, the term "final judgment" meant a judgment not open to attack by appeal or as to which an appeal had been pursued and the judgment of the circuit court affirmed, so that, there having been no appeal

from that court's judgment affirming the order, the judgment became final within the meaning of the order when the 60 days permitted for appeal had fully expired. *Northwestern Wisconsin Elec. Co. v. Public Service Comm.* 248 W 479, 22 NW (2d) 472, 23 NW (2d) 459.

Where a municipality severs a public utility and takes over only a part thereof, consequential damages resulting to the part remaining must be assessed. 4 Atty. Gen. 568.

197.02 History: 1907 c. 499; 1909 c. 213; 1911 c. 596; Stats. 1911 s. 1797m—80; 1923 c. 291 s. 3; Stats. 1923 s. 197.02; 1929 c. 504 s. 310.

Unless otherwise provided by law, notice of election under sec. 926-31, Stats. 1911, must be given. *Janesville W. Co. v. Janesville*, 156 W 655, 146 NW 784.

A municipality, upon acquiring a public utility operating within its limits, does not render itself liable for unpaid rent on a lease owned by such utility and acquired in the proceedings. Such acquisition is limited strictly to property of the public utility. Debts are not assumed unless secured by liens on the property. *Green Bay & M. C. Co. v. Kaukauna G. E. L. & P. Co.* 157 W 412, 147 NW 701.

In any action under sec. 1797m—80, Stats. 1913, no judgment is provided for or contemplated, and no appeal lies from the verdict or the finding. If a judgment be in fact entered no appeal can be taken. The curative provision of 269.51 cannot be applied to any such unauthorized appeal. *Menasha v. Wisconsin T., L., H. & P. Co.* 161 W 605, 155 NW 142.

Absence of legal power on the part of a city to acquire a public utility goes to the jurisdiction of the circuit court to entertain an action under sec. 1797m—80, Stats. 1913, and certiorari will lie to review court proceedings in that behalf; but under secs. 1797m—77 and 1797m—80 municipalities are empowered to condemn utilities operating under licenses, permits or franchises granted before the utilities law took effect. Such a grant to a corporation to furnish light and power to its residents constituted the corporation a public utility, even though the operating power was procured from a source outside of the city, and the franchises in such case having become indeterminate, the city became entitled to acquire the utility by condemnation. *State ex rel. Wisconsin T., L., H. & P. Co. v. Circuit Court*, 162 W 234, 155 NW 139.

See note to 274.33, on orders appealable under 274.33 (2), citing *Bangor v. Hussa C. & P. Co.* 208 W 191, 242 NW 565, and other cases.

197.03 History: 1907 c. 499; 1909 c. 213; Stats. 1911 s. 1797m—81; 1923 c. 291 s. 3; Stats. 1923 s. 197.03; 1929 c. 504 s. 311.

Where the public service commission by order of July 18, 1938, fixed the just compensation to be paid for the municipal acquisition of the property of a utility on the basis of values as of December 31, 1935, the order or award fixing just compensation was invalid as not fixing compensation as of the date of the award. *Pardeeville E. L. Co. v. Public Service Comm.* 238 W 97, 297 NW 394.

197.04 History: 1917 c. 393; 1917 c. 678 s. 2; Stats. 1917 s. 1797m—81a; 1919 c. 658; 1923 c.

106; 1923 c. 291 s. 3; Stats. 1923 s. 197.04; 1925 c. 208, 232; 1929 c. 504 s. 312; 1943 c. 517.

When the public service commission makes an award which may be the subject of discontinuance proceedings the making of that award is the time of taking and the time as of which just compensation should be fixed. Wisconsin P. & L. Co. v. Public Service Comm. 231 W 390, 286 NW 392.

197.05 History: 1907 c. 499; 1911 c. 13; 1911 c. 662; Stats. 1911 s. 1797m—82; 1913 c. 160; 1921 c. 360; 1923 c. 291 s. 3; Stats. 1923 s. 197.05; 1929 c. 504 s. 313; 1965 c. 252.

"Just compensation" which the railroad commission must award means fair and reasonable value at the time of taking possession, and, though payment may be deferred, legal interest in that case must be provided for in the order until the payment is actually made. It does not include the cost of taking up and relaying pavements for the placing of service pipes which may legally be and ought to be assessed against the consumers. Going value should be included. It is that value which comes from the fact that the business is a going concern. It is not franchise value nor good will. Costs of an action which may thereafter be brought against the commission to alter or amend its order, whether excessive or not, cannot be included as a part of the compensation. Neither can anything be included as the value of the indeterminate permit. Appleton W. Co. v. Railroad Comm. 154 W 121, 142 NW 476.

Interest must be allowed if payment is not made when the railroad commission files its certificate and the exclusive use is transferred to the city. Until the certificate of the commission is filed the property of the public utility remains the property of the company and the city must pay for it as it exists at the time it is turned over. After the commission has determined the price and the terms and conditions of the sale, it is required to notify the municipality of its action and give it a reasonable time after such notice and before the certificate is filed to levy the direct annual tax required by the constitution; and when so notified it is the duty of the municipality within such reasonable time to levy the tax. Bonds for the purchase of a utility may be issued without a special vote therefor by the electors, when they have first voted in favor of such purchase. Janes v. Racine, 155 W 1, 143 NW 707.

The elements or factors to be considered in assessing the value of a utility are stated in Oshkosh W. W. Co. v. Railroad Comm. 161 W 122, 152 NW 859.

On the sufficiency of notice required under this section and the sufficiency of facts in lieu of such notice see Connell v. Kaukauna, 164 W 471, 159 NW 927, 160 NW 1035.

That the public has a perpetual right to take a public utility upon making just compensation must be given great weight in determining the present fair value for rate making purposes, and just compensation means the fair and reasonable value of the property taken at the time possession is acquired, to be arrived at in the exercise of sound judgment based upon the various elements of value. Waukesha G. & E. Co. v. Railroad Comm. 181 W 281, 194 NW 846.

Where a public utility found it more economical to scrap its power plant and obtain power from an independent company, and could have recouped its loss through increased rates, the value of the scrapped plant was properly considered in fixing the value of the entire utility in its sale to the plaintiff. Land purchased by M., the original owner of the utility, for its use and upon which part of the utility was located, and which was treated by the corporation, the public, and the taxing authority as land of the corporation, constituted property "used and useful" for the purpose of the utility, although M. had never conveyed the title to the land; and the railroad commission properly included the land in its valuation on condition that M. convey to the corporation, which was done. Milton v. Railroad Comm. 185 W 294, 201 NW 381.

A municipality purchasing a local electric utility was required to pay as compensation therefor the value of the physical property taken and the going value of the local utility, but was not required to pay overhead costs or severance damages for diminution in value of the electric company's property as a whole by reason of the taking of a portion thereof. The cost of removing high-tension lines and facilities for transforming high-tension current and transferring it to distribution lines, and the value of the substation comprising these facilities, as compensation for a local electric utility purchased by a municipality, may be determined when removal takes place. The public service commission's order for joint use by an electric company and a municipality, purchasing a local electric utility, of poles carrying the electric company's high-tension transmission lines was proper under the statute requiring a utility to permit another utility to use its poles and other equipment, and the statute giving the public service commission power to fix terms and conditions of purchase. Wisconsin P. & L. Co. v. Public Service Comm. 219 W 104, 261 NW 711, 262 NW 257.

Where a resolution and notice of election for the municipal acquisition of the plant and equipment of an electric utility specified that payment was to be made by the issuance of mortgage bonds under 66.06 (9) (b), Stats. 1931, which would not be a village debt, and did not limit the proposed acquisitions to only such property as was actually used and useful for the convenience of the public, the proceedings are considered as being under 66.06 (8), (9), relating to acquisition by agreement, rather than under 197.01 to 197.05, providing for acquisition by action against the utility and subsequent proceedings before the public service commission, and limiting the subject of the acquisition to property used and useful for the convenience of the public; especially since the method of financing specified in the instant proceedings is applicable to an acquisition by voluntary agreement only; and, therefore, the commission was without jurisdiction in the premises to fix the compensation of the utility. Wisconsin P. & L. Co. v. Public Service Comm. 222 W 25, 267 NW 386.

The statute required just compensation to be fixed as of the time when the public service commission makes its award. Where the commission ascertained just compensation on the basis of the value of the property as of June

27, 1933, and the award in fact was not made until March 30, 1936, its order fixing just compensation was unlawful. The commission should have fixed the compensation as of the date of its award. The date of the award is fixed upon because when the matter is presented to the municipal council it must have something definite and certain upon which to act and if a referendum is held the people of the municipality are entitled to know upon what they are voting. Wisconsin P. & L. Co. v. Public Service Comm. 231 W 390, 284 NW 586, 286 NW 392.

The power exercised by the public service commission in fixing just compensation in acquisition proceedings under ch. 197 is a quasi-judicial rather than a legislative power. (Contrary statement in Wisconsin P. & L. Co. v. Public Service Comm. 231 W 390, corrected.) Superior W. L. & P. Co. v. Public Service Comm. 232 W 616, 288 NW 243.

197.06 History: 1907 c. 499; 1911 c. 662; Stats. 1911 s. 1797m—83; 1923 c. 291 s. 3; Stats. 1923 s. 197.06; 1929 c. 504 s. 314; 1931 c. 79 s. 23; 1943 c. 375 s. 81.

197.08 History: 1907 c. 499; Stats. 1911 s. 1797m—85; 1923 c. 291 s. 3; Stats. 1923 s. 197.08; 1929 c. 504 s. 316.

197.09 History: 1907 c. 499; Stats. 1911 s. 1797m—86; 1923 c. 291 s. 3; Stats. 1923 s. 197.09; 1929 c. 504 s. 317.

197.10 History: 1921 c. 525 s. 1; Stats. 1921 s. 1797m—86m; 1923 c. 291 s. 3; Stats. 1923 s. 197.10; 1929 c. 504 s. 318; 1931 c. 79 s. 24; 1953 c. 61; 1955 c. 10 s. 138.

197.20 History: 1945 c. 62; Stats. 1945 s. 197.20; 1959 c. 19, 135; 1959 c. 228 s. 68; 1961 c. 226.

CHAPTER 198.

Municipal Power Districts.

198.01 History: 1931 c. 50; Stats. 1931 s. 198.01; 1951 c. 33; 1951 c. 247 s. 46; 1969 c. 276 s. 599.

198.02 History: 1931 c. 50; Stats. 1931 s. 198.02.

198.025 History: 1931 c. 50; Stats. 1931 s. 198.025.

198.03 History: 1931 c. 50; Stats. 1931 s. 198.03.

Failure to insert a request to a county clerk to call an election may be cured by a subsequent request and does not prevent the public service commission from giving a recommendation as to the feasibility of a power district proposed in resolutions as passed, of which the commission is notified. 24 Atty. Gen. 185.

A petition for formation of a municipal power district under 198.03 (2), Stats. 1935, is not invalidated by the designation of residences of signers by post-office addresses instead of the municipality in which they reside. 24 Atty. Gen. 611.

The required number of signatures under 198.03 (2), Stats. 1935, need not be filed at one and the same time. A voter may not withdraw his signature after the county clerk has

notified the public service commission in accordance with 198.04 (1). 25 Atty. Gen. 78.

198.04 History: 1931 c. 50; Stats. 1931 s. 198.04.

Under the municipal power district law the public service commission, in determining the feasibility of a proposed municipal power district, has the duty to consider and evaluate all of the factors relating to feasibility, such as whether the debt which it will probably be necessary to incur is too great, whether funds can be supplied elsewhere than from the district, at what rate of interest funds can be supplied, how the debt of the district may be amortized, and what the probable saving of general expenses will be. Clam River Elec. Co. v. Public Service Comm. 225 W 198, 274 NW 140.

198.04 (3), Stats. 1933, is mandatory. 24 Atty. Gen. 63.

The county clerk of one county may call an election in another county to determine formation of a municipal power district comprising municipalities in both counties. 24 Atty. Gen. 185.

198.05 History: 1931 c. 50; Stats. 1931 s. 198.05.

198.06 History: 1931 c. 50; Stats. 1931 s. 198.06; 1955 c. 430; 1965 c. 666 s. 22 (13); 1967 c. 26.

The word "voters" in 198.06 (4), Stats. 1935, has reference to the vote for governor at the last general election. 24 Atty. Gen. 600.

The provisions of 198.06 (5), Stats. 1937, respecting approval or disapproval by the public service commission of the formation of a municipal power district are directory. 27 Atty. Gen. 72.

198.07 History: 1931 c. 50; Stats. 1931 s. 198.07.

198.08 History: 1931 c. 50; Stats. 1931 s. 198.08.

198.09 History: 1931 c. 50; Stats. 1931 s. 198.09.

198.10 History: 1931 c. 50; Stats. 1931 s. 198.10; 1943 c. 20 s. 1; 1955 c. 77; 1969 c. 276 s. 590 (1).

198.11 History: 1931 c. 50; Stats. 1931 s. 198.11.

198.12 History: 1931 c. 50; Stats. 1931 s. 198.12; 1955 c. 10.

198.13 History: 1931 c. 50; Stats. 1931 s. 198.13; 1955 c. 661.

198.14 History: 1931 c. 50; Stats. 1931 s. 198.14; 1947 c. 362 s. 2; 1955 c. 429; 1965 c. 252.

198.145 History: 1931 c. 50; Stats. 1931 s. 198.145.

198.15 History: 1931 c. 50; Stats. 1931 s. 198.15; 1955 c. 429; 1965 c. 252.

198.16 History: 1931 c. 50; Stats. 1931 s. 198.16; 1965 c. 252.

General managers of power districts are required to publish reports as to the business