

[No. 149, A.]

[Published April 9, 1878.]

CHAPTER 264.

AN ACT to amend chapter sixty-four of the general laws of 1871, entitled "An act to authorize town supervisors to construct drains in certain cases."

The people of the state of Wisconsin represented in senate and assembly, do enact as follows:

Amended.

Application for laying out drain

SECTION 1. Section one of chapter sixty-four of the general laws of 1871, entitled "An act to authorize town supervisors to construct drains in certain cases," is hereby amended to read as follows: When any six or more freeholders, residing in any town in this state in which any marsh, swamp or lands overflowed by water shall be located, shall wish to have a ditch or drain laid out for the purpose of draining any such marsh, swamp or overflowed lands, or for the purpose of straightening or enlarging any water-course within their town, one or more of whom shall be the owner or owners of a portion of the lands through which said ditch is proposed to be laid out, they may make application to the supervisors of the town in which they reside, and in which such lands or water-course are located, for that purpose, which application shall be in writing, and shall describe the lands through which such proposed ditch, drain or enlargement is to pass, together with the route of the same, as nearly as is practicable, and the said supervisors shall proceed to lay out and establish such ditch or drain, or to deepen, widen, or in any form enlarge any water-course for the purpose of draining the lands embraced in such application, if, in their judgment, such ditch, drain or enlargement is demanded by, or will conduce to the public health or welfare.

Amended.

Duties of supervisors.

SECTION 2. Section two of said chapter sixty-four is hereby amended so as to read as follows: Whenever application shall be made to supervisors of any town within this state, as provided in section one of this act, for the purpose of having any ditch, drain or enlargement of a water-course laid out and established, as contemplated in section one of this act, the said supervisors shall make out a notice, in which said notice they shall state the time when and the place where they will meet to examine and decide upon such application; every such notice shall specify, as nearly as practicable, the route of the proposed ditch, drain or enlargement of a water-course, and the several tracts or

parcels of land through which the same may or will pass, and the supervisors shall serve or cause to be served upon each of the resident owners of the lands through which the proposed ditch, drain or enlargement of a water-course may pass, a copy of such notice, which notice shall be served at least five days before the time appointed for such meeting, and shall be served personally or by copy left at the usual place of abode of the resident owners of such lands, and shall also post or cause to be posted in three public places within their town copies of such notice at least ten days prior to the time appointed for such meeting.

SECTION 3. Section four of said chapter sixty-four is hereby amended so as to read as follows: Whenever the supervisors shall decide to lay out and establish any ditch, drain, or enlargement of a water-course, under the provisions of this act, they shall cause an accurate survey thereof to be made; shall establish the route through which such ditch, drain, or enlargement of a water-course shall pass, together with the width thereof at the top and bottom, and the depth thereof at different points along the line on which it is to be constructed, and shall incorporate the same in an order to be signed by said supervisors, and shall cause such order to be filed and recorded in the office of the town clerk of their town, and shall also file with such order a map or plan of such ditch, drain, or enlargement of a water course, showing the line or the route of the same, with the courses and distances and the sections of land through which it will pass, together with the sections into which they may have, for the purpose of construction divided such ditch, drain, or water-course, with specifications setting forth or showing the amount and character of the work required in the construction of each section separately, which map or plan, and order laying out and establishing the same shall be filed in the office of the town clerk within twenty days after the time fixed by them for deciding upon the application for laying out and establishing such ditch, drain or water-course, and in case said supervisors shall decide against such application so made, as provided in section one of this act, they, the said supervisors, shall, within twenty days after the day of the hearing upon such application, file in the office of the town clerk of their town, the said application, and a copy of the notice required by section two, together with the proofs of the service of such notice and the posting thereof, and also their decision in writing; and

Amended.

Survey.

Appeals, how

taken and decided.

any freeholder resident of the town feeling himself aggrieved by the determination of the supervisors, either in laying out and establishing any ditch, drain or enlargement of a water-course, or in refusing to lay out and establish such ditch, drain or enlargement may, at any time within fifteen days after the filing of such order or determination, file in the office of the town clerk of the town, a notice of an appeal from the decision of the supervisors, which notice shall contain a description of the lands through which the proposed ditch, drain or enlargement of a water-course is to pass, as shown by the application in the case, and also the proceedings and determination or judgment of the supervisors thereon, and whether the appeal is taken for the purpose of reversing entirely the determination of the supervisors in the matter, or only to reverse a part thereof; and in the latter case, shall state what part, and also a notice that he, or they will, on a certain day and hour of such day, to be named in such notice, which day shall not be less than six nor more than ten days after the date of the filing of such notice in the office of the town clerk, apply to a justice of the peace within the county, naming such justice, for the appointment of commissioners to hear and determine such appeal, and on presentation of such notice by the appellant, his, her or their agent or attorney, to town clerk, he shall immediately file the same with the papers in the case in his office, and shall deliver to the person so presenting such notice of an appeal a certified copy of the same, which certified copy shall be served personally on at least one of the supervisors of the town, at least five days before the day named therein for the appointment of commissioners. And upon the presentation by the appellant, his, her or their agent or attorney, of said certified copy of the notice of appeal to the justice of the peace therein named, upon the day and hour set forth in such notice, together with proof of service of such copy on at least one of the supervisors as herein required, and filing with said justice a bond executed by the appellant to the supervisors of the town, with sufficient sureties, to be approved by such justice, conditioned to pay all costs arising from such appeal, in case the determination or judgment of the supervisors in laying out and establishing, or in refusing to lay out and establish such ditch, drain or enlargement of a water-course (as the case may be), shall not be reversed; the said justice shall thereupon enter the matter in his docket, and shall proceed

to make a list of fifteen disinterested freeholders, residents of the county, not of kin to the resident owners of any of the lands embraced in the notice of appeal, or to the appellant, and from said list so made each party may strike off the names of five persons; and in case no one of the supervisors of the town are present, then the justice shall strike from such list the names for such town, and the justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, directing him to summon the five persons whose names were not stricken from such list, to meet at a time and place to be specified in said summons, to serve as commissioners to hear and determine the matter embraced in such appeal. And the sheriff or any constable to whom such summons shall be delivered shall execute the same by summoning the persons named therein, in the same manner, and with like authority as upon a venire issued in cases pending before justices of the peace, and shall in like manner make return thereof. The persons summoned as commissioners as hereinbefore provided, shall meet at the time and place designated in the summons, and the justice issuing the same shall deliver to such commissioners the certified copy of the notice of appeal on file in his office in the case. The commissioners shall be duly sworn to justly and impartially discharge their duties as such commissioners, and shall proceed to view and examine the lands described in the notice of appeal, and the route of the proposed ditch, drain or enlargement of a water-course, and the determination or judgment of the supervisors in laying out and establishing, or in refusing to lay out and establish such ditch, drain or enlargement of a water-course (as the case may be), and shall hear any reasons which may be offered for and against the determination or judgment of the supervisors in the matter, and may administer oaths, and examine witnesses upon any point relating to the subject matter submitted to them, and may continue the hearing of the cause from day to day if the circumstances of the case, in their judgment, require such continuance. The decision of said commissioners shall be reduced to writing and signed by them, or a majority of them, and shall be by them returned to the justice of the peace issuing the summons in the case, together with the certified copy of the notice of appeal to them delivered, as herein provided, who shall enter the decision in his docket, and file such decision in the office of the town clerk of the town in which the

lands described in the notice of appeal shall be located. And if the determination or judgment of the supervisors shall be affirmed by the decision of the commissioners, the party appealing from such determination or judgment shall pay all the costs and expenses of the proceedings had in the matter; but if such determination or judgment shall be reversed, then and in that case, the costs and expenses shall be paid by the town. Each of the commissioners shall be entitled to the sum of one dollar and fifty cents a day for their services, and the justice and constable shall be entitled to such fees as are allowed by law for like services in other cases. When an appeal shall have been made from the determination or judgment of the supervisors, refusing to lay out and establish a ditch, drain, or enlargement of a water-course, and such determination or judgment shall, upon an appeal, be reversed by the commissioners, the supervisors shall immediately proceed to lay out and establish such ditch, drain, or enlargement of a water-course, in accordance with the provisions of this act, and of chapter sixty-four, to which this is amendatory, the same as if they had themselves originally determined to lay out and establish such ditch, drain or enlargement.

Repealed.

SECTION 4. So much of chapter sixty-four of the general laws of 1871, and the acts amendatory thereof, as conflicts with the provisions of this act, are hereby repealed.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved March 19, 1878.

[No. 473, A.]

[Published April 2, 1878.]

CHAPTER 265.

AN ACT to authorize the commissioners of school and university lands to loan a portion of the trust funds of the state to the town of Moscow, county of Iowa, in this state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Loan authorized.

SECTION 1. The commissioners of school and university lands are hereby authorized to loan a portion of the trust funds of the state, not to exceed eight thous-