

[No. 438, A.]

[Published April 12, 1889.]

## CHAPTER 307.

AN ACT to authorize towns, villages and cities to acquire the title to toll roads.

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

Towns may acquire title to toll roads, when.

SECTION 1. Any town in this state may acquire the title to so much of any toll road as shall lie within its limits by purchase from the company, person or persons owning such toll road or by condemnation proceedings in the manner herein-after prescribed for the purpose of making such toll road a common public highway.

Terms of purchase, how fixed.

SECTION 2. If the town board of the town in which said toll road is located can agree upon terms of purchase of such road with the proper officers of the company, person or persons owning the same, then the title of the road shall be acquired by the town pursuant to the terms of such purchase. But if the town board cannot agree with such officers, person or persons upon the terms of purchase of the road, then the town board may apply to the circuit court of the county in which the principal office of the company, person or persons owning the road may be located, to appoint three commissioners to determine the amount of compensation that shall be paid to said company, person or persons by the town for the road proposed to be taken, which shall include all damages by reason of such taking. But the town board shall not make such purchase or make such application to the circuit court for the appointment of commissioners as aforesaid, until they shall first be authorized so to do by a vote of the qualified electors of the town at some annual town meeting.

Commissioners to be chosen.

To be submitted to vote.

Notice of application for, how given.

SECTION 3. The town board shall give notice of their application for the appointment of such commissioners by serving a copy thereof upon the president or secretary of said company, person or persons owning the road, fifteen days prior to the time named in such application for the appointment of said commissioners. Upon due

proof of the service of said notice the court shall at the time named for such appointment, or as soon thereafter as the parties can be heard, make an order appointing three disinterested and competent freeholders, who reside in some other town than the one where the road to be appraised is situated, commissioners to ascertain and appraise the compensation to be made to the company, person or persons owning the road proposed to be taken.

**SECTION 4.** The commissioners shall, before entering on the discharge of their duties, take and subscribe an oath that they will support the constitution of the United States and the constitution of the state of Wisconsin and faithfully discharge their duties as such commissioners to the best of their ability. Thereupon said commissioners shall proceed to view and examine the road proposed to be taken and hear the allegations and proofs of the parties, and shall appraise, ascertain and determine the value of said road with the appurtenances thereto and the damages sustained by the company, person or persons owning such road by reason of the taking thereof, and fix the amount of compensation to be made to said company, person or persons; provided, however, that said commissioners shall give ten days' previous notice in writing to the chairman of the town board and to the president or secretary of said company, person or persons, of the time and place where they will meet to consider the amount of compensation that should be paid to said company, owner or owners. A majority of the commissioners, all being present, shall be competent to determine all matters before them. The commissioners shall be entitled to such compensation as the court may direct, which shall be paid equally by each party.

To take oath,  
their powers  
and duties.

Compensation.

**SECTION 5.** Within two months after their appointment, the commissioners shall perform all their duties for which they were appointed and within said time shall make and file in the office of the clerk of the circuit court appointing them, a report of their proceedings concerning such toll road, setting forth the award made by them to the company, person or persons owning the same.

Time in which  
to report.

**SECTION 6.** Within thirty days after the filing of the report of the commissioners in the office

Appeal may be  
taken from.

of the clerk of such circuit court, either party may appeal to such circuit court from the award made by the commissioners by filing in the office of said clerk a written notice of appeal. Upon his receiving such notice the appeal shall be considered an action pending in court subject to a change of the place of trial and appeal to the supreme court as other actions, and shall be entered by the clerk upon the records of the court by setting down the company, person or persons owning the road for which such award was made as plaintiff and the town as defendant. Such appeal shall be tried by jury unless a trial by jury is waived by both parties, costs shall be allowed to the successful party on such appeal, and if in favor of the plaintiff, be added to the amount of the verdict; if in favor of the defendant, be deducted therefrom, and judgment shall be rendered thereon according to the rights of the parties.

Report to be recorded by clerk. Award, when to be paid and how.

SECTION 7. The report of the commissioners shall be recorded by the clerk in whose office the same is filed in the judgment book of such court, and within two years after the making of such award the town shall pay to the company, person or persons owning the road so taken, or to the clerk of said court for the use of such company, person or persons, the amount awarded by such commissioners, and may enter upon, take and use the road for the purpose for which it was condemned, and may move said court or judge thereof upon twenty-four hours' notice that a writ of assistance may be issued to put such town into the possession of the same, and said court or judge shall award the same. If such town be in possession or be put in possession of such road pending an appeal, the company, person or persons entitled thereto, shall be entitled to receive the money paid into court on account of the award appealed from, without prejudice to the appeal taken; but if the town shall have appealed, such money shall only be so withdrawn upon filing a bond in such sum and with such surety as shall be approved by the court or judge to repay the amount by which such award shall be abated on such appeal with costs.

Award or judgment, how collected.

SECTION 8. The amount of such award or in case of an appeal from the same, then the amount of the final judgment which shall be rendered

on such appeals shall be collected as judgments against towns are collected under section 781, of the revised statutes. If it shall be made to appear to the court by petition or otherwise that there is any defect of title to, or incumbrance upon said road, or any claim adverse to the title of the company, person or persons, claiming to own the same or any claim adverse to said company to the money or any part of it, to be paid as compensation for the road so taken, the court shall hear and determine the rights of the parties to said money and for that purpose may order a reference or an issue to be tried by a jury. Either party may except to the decisions of the court and appeal to the supreme court in like manner as in actions, and either court may award costs to the prevailing party and render judgment therefor against the other party.

SECTION 9. When no appeal shall be taken from the award within the time provided by law and the town shall have paid the amount thereof, into court or filed a receipt therefor, executed by the duly authorized officers of said company, person or persons and acknowledged before an officer authorized to take the acknowledgment of deeds in the office of the clerk of the court or when after the determination of such an appeal the town shall have paid into court the amount of the judgment rendered thereon, or filed a receipt therefor as aforesaid, the clerk of said court shall make a minute of such payment or of the filing of such receipt at the foot of the record of the report of such commissioners in the judgment book, of said court, and thereupon the title of the road so taken and the appurtenances thereunto belonging shall vest in said town, its successors and assigns without any other or further act, deed or conveyance, and said record or a certified copy thereof shall be prima facie evidence of such title in all courts and places.

Duty of clerk of court, when no appeal taken.

SECTION 10. The qualified electors of the town shall have power at any annual town meeting to authorize the town board to purchase or take by condemnation proceedings under the provisions of this act, any toll road or any part thereof lying within the limits of such town and to issue and negotiate bonds of the town, not exceeding ten thousand dollars in the aggregate for the purpose

Qualified voters at town meeting may authorize purchase.

of paying in whole or in part for the purchase or taking of such road or part thereof for a public highway.

Two or more towns may unite in purchase.

SECTION 11. Two or more towns may unite in the purchase of a toll road lying within their limits or in condemnation proceedings for taking the same and the commissioners authorized to be appointed under this act shall fix, determine and award the amount of compensation that shall be paid by each town to the company, person or persons owning such toll road by reason of such taking. Either party, or any town or towns may appeal from the award of said commissioners to the circuit court appointing them and from the circuit court to the supreme court within the time and in the manner provided in section 6, of this act. All other proceedings including paying for said toll road and providing means for the same, and vesting the title thereof in the several towns, shall be the same as in the case when one town acquires the title to a toll road under the provisions of this act.

Either may appeal from award.

Title may be acquired by purchase or condemnation by city or village.

SECTION 12. Any city or village in this state may acquire the title to that part of a toll road lying within its limits, for the purpose of making the same a public highway, by purchase, or by taking the same by condemnation proceedings in the same manner that each may be authorized to take land of private parties for the purpose of laying out a street.

Expenses, tax for, may be levied.

SECTION 13. For the purposes of payment of the expenses, including all damages and costs incurred for the purchase or the taking of a toll-road for a public highway, such city or village may, by its proper officers, levy and assess the whole or any part of such expenses as a tax upon such property as such officers shall determine is specially benefited thereby, in the same manner as they assess special assessments on property on account of benefits arising from laying out and opening a public street through private property of an individual, and the balance of such expense shall be chargeable to and payable out of the same fund as the same would have been paid had the land of an individual, instead of such toll road, being taken and acquired by such city or village for a public highway. Whenever the title of any toll road or any part of it shall be acquired

by any town, city or village, and such road or any part of it shall become a public highway as herein provided, the same shall be improved and maintained and be subject to the same uses as other similar highways in such towns, cities and villages are. How improved.

SECTION 14. This act shall take effect and be in force from and after its passage and publication.  
Approved April 8, 1889.

[No. 453, A.]

[Published April 10, 1889.]

## CHAPTER 308.

AN ACT relating to the manner of making election returns, and amendatory of chapter 360, laws of 1887.

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

SECTION 1. Section 1, of chapter 360, laws of 1887, is hereby amended so as to read as follows: Amendg ch. 360, law 1887.

Section 1. Section 44, of the revised statutes of 1878, is hereby amended so as to read as follows:

Section 44. The chairman of the inspectors, or one of them appointed by him, shall forthwith deliver to the clerk of the town, city or village, one of said statements and one of said poll lists, Election returns.

to be filed and preserved in his office, and shall with all convenient dispatch and within two days after the election, deliver the other statement to the county clerk, it having been by the inspectors carefully sealed up, together with the other, poll list with the oaths of inspectors and clerks affixed, in an envelope, properly directed to the county clerk, and the person delivering such returns to the county clerk shall receive as compensation therefor the sum of two dollars, and mileage at the rate of six cents per mile for each mile necessarily traveled in going to and returning from such county clerk's office, to be paid out of the county treasury, on the warrant of the county clerk. Statement and poll list to be delivered to county clerk by inspector.

Statement and poll list to be delivered to county clerk by inspector.