

CHAPTER 397.

[Published June 26, 1862.]

AN ACT to appropriate to Andrew Henry the sum of money therein named.

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

SECTION 1. The sum of eighty-one dollars is hereby ^{§81} appropriated to Andrew Henry, of Buffalo county, payable from the school fund, being the amount of depreciation on loan obtained from [the] school fund in April, A. D. 1861; and the school land commissioners are hereby directed to pay the same by endorsement on the note of said Andrew Henry, (which is secured by mortgage,) the sum herein named, and charge the same to the school fund.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved June 18, 1862.

CHAPTER 398.

[Published June 26, 1862.]

AN ACT to authorize the county supervisors to construct drains in certain cases.

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

SECTION 1. That the county board of supervisors of any county, shall have power, at any regular session, whenever, in their opinion, the same is demanded by or will be conducive [conducive] to the public health, convenience or welfare, to cause to be established, located and constructed, as hereinafter provided, any ditch, drain or water-course within such county. Boards of supervisors may cause to be constructed ditches, &c.

SECTION 2. That, before the county board of supervisors of any county shall take any steps toward locating or establishing any ditch, drain or water-course, Application therefor.

Bond for expenses.

Survey and report.

Notice to owners of lands.

Notice to non-residents, &c.

there shall be filed with the clerk of the board of supervisors, a petition from one or more persons owning lands adjacent to the line of such proposed ditch, drain or water-course, setting forth the necessity of the same, with a description of its proposed starting point, route and terminus, together with the names of all persons liable to be benefited or damaged thereby, so far as known to the petitioner; and shall, at the same time, file a bond, with good and sufficient sureties, to the acceptance of the clerk of the board of supervisors, conditioned to pay all expenses incurred in case the county board of supervisors shall refuse to grant the prayer of the petition; and it shall be the duty of the clerk of the board of supervisors immediately thereafter, to place a correct copy of said petition in the hands of the county surveyor, or a competent engineer, who shall thereupon, taking with him the necessary assistance, proceed to make an accurate survey of the route of the proposed ditch, drain or water-course; and on the completion thereof, shall return a plot or plots and profile of the same to the said clerk of the board of supervisors, and shall also set forth in his return, a description of the proposed route, its availability and necessity, with a description of each separate tract of land through which the same is proposed to be located, how it will be effected [affected] thereby, and its situation and level as compared with that of the adjoining lands, together with such other facts as may be deemed material. It shall be the duty of the clerk of the board of county supervisors, immediately on said report being filed, to cause notice, in writing, to be given to the owner or one of the owners of each tract of land along the route of such proposed ditch, drain or water-course, of the pendency and prayer of said petition, and of the time of the session of the county board of supervisors at which the same will be heard, which notice shall be served at least ten days prior to said session, and an affidavit of said service filed with the clerk of the board of supervisors; and in case any such owner is not a resident of the county, or should any party or parties in interest die during the pendency of said proceeding, such death shall not work an abatement of such proceeding, but the commissioners, on being notified thereof, shall make

such order as they may deem proper for giving notice to the party or parties succeeding to the right of such deceased party or parties; and notice of the pendency and prayer of said petition, and the time of hearing the same, shall be given to such owner or persons, by publication for three consecutive weeks, in some paper published, or of general circulation, in said county.

SECTION 3. That any person or persons claiming compensation for land appropriated for the purpose of constructing any ditch, drain or water-course under the provisions of this act, shall make his, her or their application in writing therefor, to the county board of supervisors, on or before the third day of the session at which the petition has been set for a hearing; and if any application or applications for compensation as aforesaid shall have been made, the amount of said compensation may be determined by agreement between the supervisors and such owner or owners. Every such agreement shall be reduced to writing, and be signed by such owner and the county supervisors, and filed in the office of the clerk of the board of county supervisors; and every such agreement and every release of damages given, shall forever preclude such owner and all persons claiming under him, from all further claim for damages. If there be any owner or owners of land through which said drain, ditch or water-course shall be located, who shall not apply for, or who shall not agree with the supervisors as to the compensation they shall receive for damages sustained by them, by reason of the location of such drain, ditch or water-course, as provided in this act, said supervisors shall proceed to assess the damages which such owner or owners will sustain by reason of locating said ditch, drain or water-course as aforesaid, and make an award in writing, specifying therein the sum awarded by them to each of said owners for their respective damages. Said award shall be signed by said supervisors, and be filed in the office of the clerk of the board of supervisors, with the return of the surveyor or engineers; and further proceedings thereafter by the supervisors, shall be adjourned till the next session of the county board.

Damages and release therefor.

When supervisors may award damages.

SECTION 4. If any applicant for compensation as aforesaid, shall not be satisfied with the sum awarded for damages by such supervisors, he may, within sixty

Appeal.

days after the filing of the award of damages in the office of the clerk of the board of supervisors, as provided in the preceding section, apply to the county judge of the county for a jury to assess and appraise such damages. Such application shall be in writing, describing the premises, and any number of persons claiming damages on account of said ditch, drain or water-course, may join in such application. The party appealing shall serve on the clerk of the board of supervisors of the county, at least six days before the time fixed for making such application, a notice in writing, specifying the time when such application will be made.

When notice to be served.

Bond for costs.

Jury.

Return of jury.

SECTION 5. Any person applying for a jury, as mentioned in the preceding section, shall, by himself or agent, execute to the supervisors of the county, and file with the county judge, a bond with one or more sureties, to be approved by said judge, conditioned to pay all costs arising from such appeal and apportionment of damages, provided such jury shall not award a larger amount of damages than was awarded by the board of county supervisors. Upon any such application, the county judge shall make a list of fifteen disinterested freeholders of the county, not of kin to the owner or occupant of the said lands. Each party may object to five on such list, and if none of the supervisors shall be present, the county judge shall strike off the five names for the supervisors, and shall thereupon issue a precept to the sheriff, directing him to summon the five persons named in such list not objected to by the parties, to meet at a time and place to be specified in such precept, to appraise the damage sustained by the owner or owners appealing from the assessment of the county board as aforesaid, by the location of the said ditch, drain or water-course. At the time and place appointed for the appearance of such jury, they shall be sworn by the county judge, justly and impartially to make such appraisal, and shall proceed to view the premises where said ditch, drain or water-course is proposed to be located, and hear the statements and proof of parties, if they deem it necessary; and they shall make their return of appraisal to the county judge, which shall be certified by such judge and filed with the clerk of the board of supervisors, with the award

of the board of supervisors as aforesaid; and if the amount of appraisal of such jury shall exceed the amount awarded by the supervisors, the costs and expenses shall be paid by the county; but if the jury shall not award greater damages than were awarded by the supervisors, the costs and expenses shall be paid by the appellant; and the said county board of supervisors shall, at their next regular session after the appraisalment by the jury is rendered as aforesaid, proceed to locate and establish such ditch, drain or water-course, as herein provided. The costs and compensation allowed shall be paid out of the county treasury, from the general fund, or remain deposited therein, subject to the order of such claimant or claimants.

Costs.

Location of ditch, &c.

SECTION 6. That said county board of supervisors, whenever they shall have established any such ditch, drain or water-course, shall divide the same into suitable sections, not less in number than the number of owners of land through which the same may be located, and shall also prescribe the time within which the work upon such sections shall be completed.

Division of ditch, &c., into sections.

SECTION 7. That the clerk of the county board of supervisors shall cause notice to be given of the time and place of letting out, of the kind of work to be done upon said sections, and the time fixed by the county board of supervisors for its completion, by publication for thirty days in some newspaper printed, or of general circulation, in said county, and shall let the work in said sections respectively to the lowest bidder therefor; and the person or persons taking such work at such letting, shall, on the completion thereof to the satisfaction of the county board of supervisors, be paid for such work out of the county treasury, upon the order of the said board of supervisors, properly attested: *provided*, that if any person or persons to whom any portion of said work shall be let as aforesaid, shall fail to perform said work, the same shall be relet by the clerk of the board of supervisors, in the manner hereinbefore provided.

Notice for proposals—work to be let to the lowest bidder.

Payment for work.

SECTION 8. That the clerk of the board of supervisors shall keep a full and complete record of all proceedings had in each case under this act.

Record.

SECTION 9. That the clerk of the board of supervisors, and surveyor and engineer, shall be allowed such

Fees, costs, &c.

fees for services under this act, as the county board of supervisors shall in each case deem reasonable and allow; and all other fees and costs accruing under this act, shall be the same as provided by law for like services in other cases; and all costs, expenses, costs of construction, fees and compensation for property appropriated, which shall accrue and be assessed and be determined under this act, shall be paid out of the county treasury, out of the general fund, on the order of the said board of supervisors, properly attested: *provided*, that no part of the same, except the compensation for property appropriated, shall be paid out of the county treasury, till the same shall have been levied and collected, as provided in the next section of this act.

Apportionment
of costs, &c.

SECTION 10. That the county board of supervisors shall make an equitable apportionment of the costs, expenses, costs of construction, fees and compensation for property appropriated, which shall accrue and be assessed and be determined under this act, among the owners of the land benefited by the location and construction of such ditch, drain or water-course, in proportion to the benefit to each of them, through and along the lines or in the vicinity of whose lands the same may be located and constructed respectively; and the same shall be levied upon the lands of the owners so benefited, in said proportions and collected in the same manner that other taxes are levied and collected for county purposes.

Repairs.

SECTION 11. Whenever it may be necessary to repair such work, any one of the persons benefited by it may cause such repairs to be made, and may compel contributions from each person benefited by such repairs on any ditch, drain or water-course, on the basis of the apportionment of the costs of such ditch, drain or water-course by the county board of supervisors, to the actual necessary cost of such repairs.

Penalty for ob-
structing ditch,
&c.

SECTION 12. Any person who may dam up, obstruct or in any way injure any ditch, drain or water-course, shall be liable to pay for the first act double the amount of damages occasioned thereby, and for any like act thereafter, treble the amount of damage done, to be collected by any of the parties owning the lands assessed for the construction of said ditch, drain or water-course.

SECTION 13. The county board of supervisors are hereby empowered to locate and construct any ditch, drain or water-course through the land of other persons, for the purpose of draining any of the lands known as swamp and overflowed lands in their respective counties, and shall, if they shall deem it advisable, authorize and empower the drainage fund commissioners for the county to locate and construct any such ditch, drain or water-course, as aforesaid, through the lands of other persons, whenever he [they] may deem it expedient, in order to thoroughly drain any of said lands.

Swamp and overflowed lands may be drained.

SECTION 14. The damages and costs incurred under the provisions of section 13 of this act, shall be paid out of the swamp land fund belonging to the county.

How damages, &c., paid.

SECTION 15. This act shall be in force from and after its passage.

Approved June 18, 1862.

CHAPTER 399.

[Published June 26, 1862.]

AN ACT to amend and revise chapter 129 of the general laws of 1861, entitled "an act to amend chapter 13 of the revised statutes, entitled 'of counties and county officers.'"

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

SECTION 1. The county board of supervisors of each of the organized counties of this state, shall consist of three electors, one to be elected in and for each of the supervisor districts hereinafter mentioned, by the qualified voters of such district; but in those counties which contain three or more assembly districts, there shall be elected one supervisor in and for each assembly district, by the qualified voters of such district; and in those counties where there are more than three and an even number of assembly districts, there shall be elected one additional supervisor for the county at large, by the qualified voters of such county. Such supervisors shall be elected biennially, on the Tuesday succeeding

Number of members of county board.

To be elected biennially.