

(c) When delay in issuing * * * letters is caused by an appeal from the county court which suspends the proceedings therein, the time of such delay shall not be counted as any part of said three years.

SECTION 2. This act shall take effect upon passage and publication.

Approved May 1, 1941.

No. 209, S.]

[Published May 3, 1941.

CHAPTER 78.

AN ACT to renumber 196.80 (4) and (5) to be 196.80 (5) and (6), respectively, and to create 196.80 (4) of the statutes, relating to consolidation of public utilities.

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

SECTION 1. Subsections (4) and (5) of section 196.80 of the statutes are renumbered to be subsections (5) and (6), respectively, of said section 196.80.

SECTION 2. Subsection (4) of section 196.80 of the statutes is created to read:

(196.80) (4) (a) No consolidation as authorized by subsection (1) of this section shall be effective unless a written plan of consolidation shall be approved by at least a two-thirds vote of each class of stock and each issue, series, or kind of preferred stock of each of the constituent companies at meetings of the stockholders of such respective constituent companies called for the purpose of acting upon the proposed plan on not less than 30 days' notice by mail to each stockholder at his last address appearing on the records of the corporation and on not less than 3 weeks' publication of notice of meeting in a general newspaper published in the cities in Wisconsin in which is located the principal office of the respective constituent corporations.

(b) No such consolidation shall be effective unless the Public Service Commission shall find that the plan of consolidation is just and reasonable in its effect on stockholders and creditors of each of the constituent companies and is consistent with public interest. Notice of hearing on application for commission approval of a proposed plan of consolidation shall be given by publication for at least 3 weeks in a newspaper of

general circulation in Wisconsin as may be designated by the commission as best adapted to apprise the stockholders of such meeting. The order of approval may precede or follow the vote of the stockholders of one or more of the constituent companies in respect to approval of the plan of consolidation.

(c) 1. The written plan of consolidation shall specify the name of the constituent company which is to be adopted by the consolidated company and the directors and officers of the consolidated company who shall first serve until the first annual meeting of the stockholders of the consolidated company or until their respective successors are duly elected and qualified.

2. The plan of consolidation may provide for the procedure set forth in subparagraphs a or b hereunder of this paragraph or such other plan as the commission may approve.

a. The authorized capital stock and the issued capital stock, the authorized number of shares, and the issued number of shares of the consolidated company shall be the same as the authorized aggregate capital stock and the authorized aggregate number of shares, the issued capital stock and the issued number of shares of the constituent companies before consolidation and the preferred stock and each issue, series, and kind thereof of each constituent company shall retain its dividend rate and redemption price, if any, and shall be given no other preference over any of the preferred stock of the consolidated company; but nothing in this subsection shall be construed as preventing the consolidated company from extending to all of the preferred stock of the constituent companies so aggregated the most favorable provisions as to voting rights upon default, restrictions on the borrowing power of the issuing corporation and other like restrictions specified in respect to any of the preferred stock of any constituent corporation and other provisions, if any, required by public official authority having jurisdiction in the premises. Preferred stock of each constituent company shall become preferred stock of like par value, dividend rate and redemption price, if any, of the consolidated company, and the common stock of each constituent company shall become common stock of like par value of the consolidated company.

b. All of the outstanding capital stock, both preferred and common, of the constituent companies may be surrendered and cancelled and the consolidated company may issue any class or classes of preferred stock, or common stock, or both, or offer

cash in exchange for the capital stock held by the stockholders of the constituent companies.

(d) No such consolidation shall be effective except upon the filing with the secretary of state of:

1. Articles of incorporation of the consolidated company prepared in accordance with this subsection and with authorized capital stock aggregating the authorized capital stock of the constituent companies, and with powers aggregating the corporate powers of the constituent corporations, and specifying the number constituting the board of directors, their term of office and the manner of their election, and otherwise complying with the requirements of section 180.02, accompanied by the usual fee for filing articles of incorporation or amendments thereof but after crediting the amounts paid by the respective constituent companies in respect of authorized capital stock, which articles of incorporation shall be signed and acknowledged by the president and secretary of each of the constituent companies at the time of consolidation and filed and recorded in the manner specified in subsection (2) of section 180.02, for which purpose copies of articles of incorporation may be verified by the oaths of any 2 of the signers.

2. A copy of the resolution of the stockholders of each constituent company adopting the plan of consolidation duly certified in the manner specified in subsection (2) of section 180.07.

3. A duly certified copy of the order of the commission approving the plan of consolidation.

(e) The secretary of state upon the filing and recording in the manner specified by subsection (2) of section 180.02 of the articles of incorporation of the consolidated company shall issue a certificate of incorporation to the consolidated company and thereupon the corporate existence of the constituent companies shall cease, but the consolidated company so formed shall hold and enjoy all of the powers, privileges, rights, franchises, properties, estates, and choses in action which at the time of such union were held and enjoyed by any of the constituent companies as fully and entirely and without change or diminution as the same were before held and enjoyed by the constituent company, and it shall be subject to all contracts, liabilities, and obligations existing against the constituent companies; and all actions at law or pending suits and other proceedings instituted by or against

any of the constituent companies shall be continued by or against the consolidated company. All mortgages or other liens upon the property of any of the constituent companies shall continue as a lien against such property and such additions thereto, if any, as may be contemplated by the instrument creating such lien. The consolidated company may execute any supplementary indenture or other like instrument consistent with the provisions of this subsection which may be required to be executed in the event of the consolidation of the mortgagor by the terms of any mortgage or other like instrument executed by a constituent company.

(f) Any preferred stockholder of any constituent company entering into any consolidation pursuant to this subsection who shall have dissented from the proposed consolidation and shall have recorded such dissent at the meeting of the stockholders at which the plan of consolidation was approved, shall have the right upon written notice to the consolidated company within 60 days of the completion of the consolidation to receive at the expiration of one year from the completion of such consolidation and upon the surrender of a certificate or certificates representing such stock duly endorsed in blank, all unpaid dividends accruing since the date of the consolidation and unpaid dividends accruing prior thereto, if such dividends be cumulative, together with the redemption price, if any, specified in respect of such stock, and if no redemption price be specified, then the par value thereof. The preferred stock so acquired need not be cancelled or retired but may be held by the consolidated company as reacquired stock and mortgaged, pledged, or otherwise disposed of.

(g) Any holder of common stock of any constituent company entering into any consolidation pursuant to this subsection who shall have dissented from the proposed consolidation and have recorded such dissent at the meeting of the stockholders at which the plan of consolidation was approved, shall have the right upon written notice to the consolidated company within 60 days of the completion of the consolidation to receive at the expiration of one year from such completion of the consolidation and upon the surrender of a certificate or certificates representing such stock duly endorsed in blank, the fair value of such stock as fixed by the commission after hearing upon the application of a holder of common stock or upon application by the consolidated company. Upon any such application, notice shall be given to

all dissenting stockholders of common stock by publication for at least 3 weeks in advance of such hearing in a newspaper of general circulation in Wisconsin as may be designated by the commission as best adapted to apprise the dissenting stockholders of such hearing. Any such determination of the commission shall be subject to judicial review as provided by this chapter in respect to other orders of the commission. The commission or court in fixing such value may adjust the same for reasonably probable interim earnings which may remain undistributed between the date of the determination and the expiration of said period of one year. Common stock so acquired need not be cancelled or retired but may be held by the consolidated company as reacquired stock and thereafter sold or otherwise disposed of.

(h) The certificates representing the preferred or common stock of any constituent company, except stock held by dissenting stockholders who are provided for in paragraphs (f) and (g) of this subsection, may be exchanged at the option of the consolidated company for certificates of stock issued by it. After consolidation shall have been consummated and until such exchange, the certificates of stock of the constituent company shall represent stock of the consolidated company in the amount and of the character and kind described in such respective certificate or certificates.

SECTION 3. This act shall take effect upon passage and publication.

Approved May 1, 1941.

No. 358, A.]

[Published May 3, 1941.]

CHAPTER 79.

AN ACT to renumber 61.45 (1) and (6) to be 61.45 (2) and (3) and 61.45 (2) to (5) to be 61.455 (2) to (5); and to create 61.45 (1) and (4) and 61.455 (1) and (6) of the statutes, relating to sanitary and storm sewers, drains and sewage plants in villages.

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

SECTION 1. Subsections (1) and (4) of section 61.45 of the statutes are created and the section heading of said section is