

No. 642, A.]

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CHAPTER 336

AN ACT to repeal and recreate chapter 608, laws of 1913, section 5 (h), relating to the rule-making powers of sewerage commissions in cities of the first class and the issuance of permits for the special use of the sewerage system.

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

Chapter 608, laws of 1913, section 5 (h) is repealed and recreated to read:

(Chapter 608, laws of 1913) Section 5 (h) Whenever necessary in order to promote the best results from the construction, operation and maintenance of the sewerage system herein provided for and of the sewerage systems of the several towns, villages, cities, sanitary districts, and metropolitan sewerage districts which connect with or use the sewerage system herein provided for, and to prevent damage to the same from misuse, injury to employes, surcharging the sewerage system or any portion thereof, or interference with the process of sewage treatment or disposal, the commission, acting on behalf of the metropolitan sewerage district created under section 59.96 of the statutes, as amended, and acting jointly with the metropolitan sewerage commission created thereunder as to all matters of rule making and issuance of special orders which in any way come within the jurisdiction of either or both of said agencies, shall have power to:

1. Adopt such rules for the supervision, protection, management and use of such system as it may deem expedient. Such rules may prohibit discharge into the sewerage system herein provided for, either directly or indirectly, of any liquid, gaseous, or solid wastes deemed detrimental to such system, or to its employes, or to the process of sewage treatment or disposal, or prescribe the conditions upon which such wastes may be discharged; and may prescribe standards of sewer design, construction, operation, alteration and maintenance applicable to any sewerage system connecting with or using the system herein provided for and the conditions upon and the manner in which connections to main sewers and intercepting sewers and replacement of existing sewers shall be made; provided, that this enumeration shall not be construed as limiting to any degree the scope of the general rule-making powers hereinbefore conferred upon said commission. Such rules shall be applicable throughout the territory served by the sewerage system herein provided for, and shall have precedence over any conflicting ordinance, code, or regulations of, or permit issued by, any town, village, or city within the territory served by such sewerage system.

a. A rule shall be adopted, amended or repealed by the commission, acting jointly with the metropolitan sewerage commission created under section 59.96 of the statutes, only after notice and public hearing thereon; provided, that if the preservation of the public health, safety or welfare necessitates putting a rule into effect prior to the time it could be put into effect if the said commissions were to comply with the notice and hearing requirements hereof, the said commissions may adopt such rule as an emergency rule effective only for a period of 120 days. The said commissions shall fix a time and place for hearing on any proposed rule, except an emergency rule, and shall cause notice by publication to be made of the proposed rule, or an informative summary thereof, or a description of the subject matter to be discussed, and of the time and place of such hearing. Such publication shall be made at least once not

less than 30 days prior to such hearing in a newspaper of general circulation in the county in which such city of the first class is located. At least 30 days' notice in writing shall be given to each city, village and town in said district, by mailing a copy of such notice to the clerk thereof. The said commissions shall take such other steps as they deem necessary to convey effective notice to persons who are likely to have an interest in the proposed rule making. Failure of any person to receive notice of a hearing on proposed rule making is not grounds for invalidating the resulting rule if notice of the hearing was published as provided herein. Insofar as applicable, the provisions of section 227.022 of the statutes shall govern the conduct of such hearings. A rule adopted by the said commissions shall be effective upon its publication in a newspaper of general circulation in the county in which such city of the first class is located. The rules of the commission adopted prior to the effective date hereof shall continue in effect for a period of 120 days from the effective date hereof, pending the re-adoption, amendment or repeal of such rules in accordance with this subsection.

b. Except as provided in section 227.05 (3) of the statutes, the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of such rule brought in the circuit court for the county in which such city of the first class is located. The summons in such action shall be served by delivering a copy to any member of the said commissions or to the secretary thereof. The court shall render a declaratory judgment in such action only when it appears from the complaint and the evidence presented in support thereof that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. A declaratory judgment may be rendered whether or not the plaintiff has first requested the said commissions to pass upon the validity of the rule in question. Insofar as applicable section 227.05 (2), (3), (4), and (5) of the statutes shall govern any declaratory judgment proceeding hereunder.

2. Issue special orders directing particular users of the sewerage system herein provided for to comply with the rules of said commissions within a specified time. All such orders shall be in writing and shall specifically state what action is required to effect compliance therewith. Service and proof of service of any such order may be made in the manner provided for service of summons and proof thereof.

a. Any person aggrieved by a special order of the said commissions which directly affects the legal rights, duties or privileges of such person may secure a review of the necessity for and reasonableness of such order in the following manner: Within 30 days after service of such special order, such person may file with the said commissions a verified petition setting forth specifically the modification or change desired in such order. Upon receipt of such petition, the said commissions shall order a public hearing thereon and make such further investigations as they shall deem advisable. Insofar as applicable, sections 227.10 to 227.14 of the statutes shall govern any such proceeding. The determination of the said commissions upon any such petition shall be subject to review in a proceeding brought within 30 days after service of notice thereof in the circuit court for the county in which such city of the first class is located. Insofar as applicable sections 227.15 to 227.21 of the statutes shall govern any proceeding for judicial review hereunder.

b. If any person fails to comply with a special order of said commissions within the time specified or, in case of a proceeding for review thereof, within 20 days after the determination thereof shall have become final, or to in good faith begin to obey, such person is declared to be creating a public nuisance enjoinable under section 280.02 of the statutes, and shall forfeit to the metropolitan sewerage district not more than

\$1,000 for each day such failure continues, to be recovered by the metropolitan sewerage district in a civil action brought by the commission in the name of such district and paid into the general funds of the commission for the benefit of such district.

3. The commissions, acting jointly, may designate representatives thereof to conduct any hearings required under the provisions of this section, and may designate any member or members thereof, the chief engineer or other appropriate administrative employe of either of said commissions for such purpose. If more than one person is designated, the commissions shall specify the presiding officer for such hearing. All testimony or other evidence taken, appearances for and against the matter involved, and a summary of the arguments on both sides, shall be reported to the said commissions in such manner as the commission prescribes.

4. The commission shall have the power to issue permits for the special use of the sewerage system to private persons, firms or corporations for the transmission and disposal of any liquid, gaseous or solid wastes deemed not detrimental to the sewerage system or to its employes or to the process of sewage treatment, upon such terms and conditions as it may provide. The commission may prescribe and collect an annual fee for any such permit not to exceed \$500. Any such permit shall be revocable by the commission summarily for violation of the terms or conditions thereof; and no holder of any such permit shall be deemed to acquire any vested right or privilege by reason thereof. Any private person, firm or corporation making any such use of the sewerage system herein provided for without a permit therefor or continuing such use after notice of revocation of a permit therefor, shall forfeit to the metropolitan sewerage district not more than \$500 for each such violation, to be recovered by the metropolitan sewerage district in a civil action brought by the commission in the name of such district and paid into the general funds of the commission for the benefit of such district.

Approved July 5, 1957.
