

## **TAKING OF PUBLIC UTILITY BY CITY**

### **Act 119 of 1919**

AN ACT to authorize any city having a population of 25,000 or more to take for public use the absolute title in fee to any public utility for supplying water, light, heat, power or transportation to the municipality and the inhabitants thereof within or without its corporate limits.

**History:** 1919, Act 119, Eff. Aug. 14, 1919.

*The People of the State of Michigan enact:*

#### **213.111 Cities, authority to take over public utilities.**

Sec. 1. Any city in this state having a population of 25,000 or more is hereby authorized to take for public use the absolute title in fee to any public utility for supplying water, light, heat, power or transportation to the municipality and the inhabitants thereof within or without its corporate limits, the same being then and there the private property of any person or of any corporation, within the limits of the state constitution, and to institute and prosecute proceedings for that purpose.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3811;—CL 1948, 213.111.

#### **213.112 Institution of proceedings; council's resolution of necessity, contents; circuit court, jurisdiction.**

Sec. 2. Such proceedings may be begun and prosecuted under this act whenever the common council of such city shall have declared by resolution that it deems it necessary that such city take for public use the absolute title in fee to any such public utility. Such resolution shall describe the property sought to be taken for public use and direct the city attorney, corporation counsel or other law officer of the city by whatsoever name or title designated, to institute the necessary proceedings on behalf of such city to carry out the object of such resolution to take the absolute title in fee to private property by such city. Jurisdiction is hereby conferred upon the circuit court for the county in which such city is situated.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3812;—CL 1948, 213.112.

#### **213.113 Institution of proceedings; petition, contents; separate juries on request to determine necessity, damages.**

Sec. 3. The city clerk shall make and deliver to such attorney or other law officer of the city, as may be, a copy of such resolution certified under the seal of the city and it shall be the duty of such attorney, corporation counsel or other law officer of the city to prepare and file in the name of the city, in such circuit court a petition signed by him in his official character and duly verified by him, to which petition a certified copy of the resolution of the common council shall be annexed. Said certified copy shall be prima facie evidence of the action taken by the common council and of the passage of said resolution. The petition shall state, among other things, that it is made and filed as commencement of judicial proceedings by the city in pursuance of this act to acquire the right to take, for public use, either within or without its corporate limits, the absolute title in fee to public utilities for supplying water, light, heat, power or transportation to the municipality and the inhabitants thereof, the same being then and there the private property of any person or of any corporation, without the consent of the owners, for a just compensation to be made. A description of the property to be taken shall be given and, generally, the nature and extent of the use thereof that will be required in making and maintaining the property shall be stated, and also the names of the owners and others interested in the property, so far as can be ascertained, including those in possession of the premises. The petition shall ask that a jury be summoned and empaneled to ascertain and determine whether it is necessary to take for public use the absolute title in fee to such private property as it is proposed to take and to ascertain and determine the just compensation to be made therefor. The petition may state any other pertinent matters or things and may pray for any other or further relief to which the city may be entitled within the objects of this act: Provided always, That upon request of said city attorney, corporation counsel or other law officer of the city, made at any time before the empaneling of a jury, such jury shall be empaneled to try only the question of the necessity of taking the absolute title in fee to such private property for public use, and if such jury determine that it is necessary to take the absolute title in fee to such private property for such public use, that another jury be empaneled to determine the compensation to which any person or persons may be entitled because of the taking of such property for public use, in manner and form as is hereinafter provided.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3813;—CL 1948, 213.113.

#### **213.114 Summons; issuance, contents.**

Sec. 4. Upon receiving such petition it shall be the duty of the clerk of said court to issue a summons against the respondents named in said petition, stating briefly the object of said petition, and commanding them in the name of the people of the state of Michigan to appear before said court, at a time and place to be named in said summons, not less than 20 nor more than 40 days from the date of the same, there to show cause, if any they have, why the prayer of said petition should not be granted.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3814;—CL 1948, 213.114.

#### **213.115 Summons; service; guardian ad litem; alias, pluries summons; return, evidence.**

Sec. 5. Said summons shall be served by the sheriff, under-sheriff, deputy sheriff of the county, or by any member of the metropolitan police of the city of Detroit, at least 5 days before the return day thereof upon all of the respondents found within the county by exhibiting the original and delivering a copy to each of them. If any respondent who is a resident of the county can not be found, the summons shall be served by leaving a copy thereof at his or her usual or last place of abode, with some person of suitable age and discretion. If any minor or person of unsound mind is interested in the premises to be taken, service may be made upon the guardian of such person, if any, and if there is no guardian the court may appoint some discreet and proper person to be guardian of such person in such proceedings; any such guardian shall have authority to represent such person in said proceedings. The proceedings to appoint such guardian shall be the same as in other cases provided by statute. If it shall appear on the return day of the summons that any respondent can not be found within the county and has not been served in the manner provided, or is a non-resident and has not voluntarily appeared, the court may make an order requiring such respondent or respondents to appear and show cause why the prayer of the petition should not be granted on a day to be named in the order not less than 30 days from the date thereof, and may require that a certified copy of such order be personally served on such respondents wherever found, if practicable, at least 6 days before the time named in the order for appearance, or the court may make such order for appearance and require as to any or all such respondents who shall not have been personally served and have not appeared, that service be made by publishing a certified copy of such order for 3 successive weeks at least once in each week in at least 1 newspaper published within the county, if there be one, and if not then in a paper published in the county nearest thereto, the last publication to be at least 6 days before the day fixed in the order for appearance. Alias and pluries summons may be issued and the court may adjourn the proceedings from time to time as there shall be occasion and as in other civil cases. Service of such order for appearance in either mode prescribed shall be sufficient notice of the proceedings to bind the respondents and the property represented by them. The return of the officer upon the summons and an affidavit of the due service or the publication of the order for appearance, if any, shall be filed in the clerk's office before a jury shall be empaneled and shall be sufficient evidence of service on the respondents and of the manner of service.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3815;—CL 1948, 213.115.

#### **213.116 Jury to be empaneled.**

Sec. 6. On the return day of the summons or on some subsequent day to which the proceedings shall have been adjourned, if no sufficient cause to the contrary has been shown, the court shall make an order that a jury be empaneled in the cause. Such jury shall be composed of 12 freeholders of the county and not directly interested in said proceedings and shall be selected and empaneled as follows: The sheriff, under-sheriff or deputy sheriff of the county shall, on the same day or at an adjourned day, make a list of 24 resident freeholders of such county, and the city attorney, corporation counsel or other law officer of the city, in person or by an assistant or deputy, and the respondents collectively, shall each have the right to strike 6 names from the list of persons written down as aforesaid, and, subject to objection for cause, the 12 persons whose names are left on the list shall compose the jury for the trial of the cause, and shall be summoned to attend at such time as the court shall direct, by a venire issued by the clerk of the court, and to be served by 1 of the officers aforesaid. If the respondents neglect or refuse to strike 6 names from said list, it shall be done by the judge of the court, and in case any of the persons to be summoned cannot be found in the county, or being summoned do not attend, or shall be excused for cause or otherwise, talesmen possessing the necessary qualifications may be summoned as jurors in the case by such sheriff or sheriff's officer, or other authorized person, and the practice and proceedings under this act, except as herein provided, relative to empaneling, summoning and excusing jurors and talesmen, and imposing penalties or fines upon them for non-attendance, shall be the same as the practice and proceedings of the circuit courts of the state relative to petit jurors in civil cases in such courts.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3816;—CL 1948, 213.116.

#### **213.117 Jury; oath; duties; instruction; written verdict.**

Sec. 7. The jurors so empaneled shall be sworn or shall affirm in substance as follows: "You do solemnly swear (or affirm) that you will well and truly ascertain and determine whether it is necessary to take for public use the absolute title in fee to the private property which the petition describes and prays may be taken for such public use, and if you determine that it is necessary to take the absolute title in fee to such private property for public use, that then you ascertain, determine and award the just compensation to be made therefor, and faithfully and impartially discharge all other duties as devolve upon you in this case, and unless discharged by the court a true verdict give according to the law and the evidence, so help you God, (or under the pains and penalties of perjury)." The jury shall hear the proofs and allegations of the parties and, if so ordered by the court, shall go to the place where the public utility sought to be taken for public use is situated, in the charge of an officer. They shall be instructed as to their duties and the laws of the case by the judge of the court and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and be signed by the foreman or by all the jurors.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3817;—CL 1948, 213.117.

### **213.118 Jury; determination and award; title vested in petitioner.**

Sec. 8. The jury shall determine by their verdict the necessity for taking the absolute title in fee to such private property for public use, and in case they find such necessity exists, they shall award just compensation therefor to the owners of the property taken as well as to the owners of any mortgage, lease, agreement or other lien, estate or other interest therein. But the petitioner may take the absolute title in fee to said property subject to any mortgage or other lien thereon whenever its intention so to do is declared in the resolution of the common council, provided for in section 2 of this act, as well as in the petition of the city attorney, corporation counsel or other legal representative of the city under section 3 of this act, and in that event no compensation shall be awarded to the holder of such mortgage or lien.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3818;—CL 1948, 213.118.

### **213.119 Jury; use of petition, map, blank verdict, form.**

Sec. 9. To assist the jury in arriving at their verdict the court may allow the jury, when they retire, to take with them the petition filed in the case and a map showing the location of the public utility proposed to be taken for public use and may also submit to them a blank verdict, which may be as follows:

#### **PART I.**

We find that it is ..... necessary to take the absolute title in fee to the private property described in the petition in this cause, for the use of the public.

#### **PART II.**

The just compensation to be paid for such private property we have ascertained and determined, and hereby award as follows:

| Description of the property to be taken. | Owners, occupants and others interested in each parcel. | Compensation. | To whom payable. |
|------------------------------------------|---------------------------------------------------------|---------------|------------------|
|                                          |                                                         |               |                  |
|                                          |                                                         |               |                  |
|                                          |                                                         |               |                  |

The different descriptions of the property and the names of the occupants, owners and others interested therein, may be inserted in said blank verdict, under the direction of the court, before it is submitted to the jury, or it may be done by the jury.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3819;—CL 1948, 213.119.

### **213.120 Jury to determine necessity; oath; duties; instruction; written verdict.**

Sec. 10. Whenever the city attorney, corporation council [counsel] or the law officer of the city shall request that the jury be empaneled under the proviso contained in section 3 of this act, such jury shall be sworn or shall affirm in substance as follows: "You do solemnly swear (or affirm) that you will well and truly ascertain and determine whether it is necessary to take for public use the absolute title in fee to the public utility which the petition describes and prays may be taken for public use, and faithfully and impartially discharge all other duties as devolve upon you in this case and unless discharged by the court a true verdict

give according to the laws and the evidence, so help you God (or under the pains and penalties of perjury).” The jury shall hear the proofs and allegations of the parties and if so ordered by the court shall, in charge of an officer, go to the place where the public utility sought to be taken is situated and upon or as near thereto as practicable and examine the premises. They shall be instructed as to their duties and the law of the case by the judge of the court and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and be signed by the foreman or by all the jurors.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3820;—CL 1948, 213.120.

#### **213.121 Finding of no necessity to take absolute fee; further proceedings.**

Sec. 11. If the jury find that it is not necessary to take the absolute title in fee to the public utility mentioned in the petition for public use, such finding may be set aside either on a motion for a new trial or on appeal to the supreme court, as herein provided, but such finding shall in no event be a bar to the institution of new proceedings.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3821;—CL 1948, 213.121.

#### **213.122 Finding of necessity; right to possession on giving security; writ of assistance.**

Sec. 12. If the jury find that it is necessary to take for public use the absolute title in fee to such public utility, the petitioner may at once take possession of said property upon giving security to be approved by the court, after due notice to all parties concerned, to make just compensation to all persons entitled thereto for the taking the absolute title in fee to said public utility for public use by petitioner, under this act and in case said verdict is set aside said city to account to the owner or persons interested for all rents or profits derived by it from such possession and to indemnify them for all damages they may sustain thereby, and in the event said petitioner shall be entitled, on making a sufficient showing, to a writ of assistance to put it in possession of the property, as if the compensation for the taking of the absolute title in fee to such property awarded by the jury had been awarded and paid into the city treasury in accordance with section 20 of this act.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3822;—CL 1948, 213.122.

#### **213.123 Finding of necessity; determination of compensation; oath of jurors; duties; instruction; award.**

Sec. 13. If the jury find that it is necessary to take for public use the absolute title in fee to the public utility mentioned in the petition, and no motion for a new trial having been made or determined, and no appeal from such finding of said jury being pending in the supreme court, then either the petitioner or any person entitled to compensation for the taking of said property may move the court for the empaneling of a jury to determine the just compensation therefor, and thereupon a jury shall be summoned and empaneled in accordance with section 6 of this act. All jurors so empaneled shall be sworn or shall affirm in substance as follows: “You do solemnly swear (or affirm) that you will well and truly ascertain, determine and award the just compensation to be made for the taking for public use the absolute title in fee to the utility mentioned in the petition and faithfully and impartially discharge all other duties that devolve upon you in this case and unless discharged by the court a true verdict give according to the law and the evidence, so help you God (or under the pains and penalties of perjury).” The jury shall hear the proofs and allegations of the parties and if so ordered by the court shall, in the charge of an officer, go to the place where said public utility sought to be taken is situated, and upon or as near thereto as practicable and examine the premises. They shall be instructed in their duties and the law of the case by the judge of the court and shall retire under the charge of an officer and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing and be signed by the foreman or by all the jurors. The jury shall award just compensation therefor to the owners of the absolute title in fee of the property taken, as well as to the owners of any mortgage, lease, agreement, lien, estate, or other interest therein, but the petitioner may take such property subject to any mortgage or lien therein in manner and form as provided in section 8 of this act.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3823;—CL 1948, 213.123.

#### **213.124 Setting aside verdict; new trial; amendments.**

Sec. 14. The verdict of the jury may be set aside by the court, either wholly or in part, and a new trial ordered either upon the whole case or upon such parts thereof as the court may deem just. Amendments either in form or substance may be allowed in any paper, petition, process, record or proceedings, or in the description of property proposed to be taken, or the name of any person, whether contained in a resolution passed by the common council, or otherwise, whenever the amendment will not interfere with the substantial rights of the parties. Any such amendment may be made after as well as before judgment confirming the

verdict of the jury.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3824;—CL 1948, 213.124.

### **213.125 Motions for new trial; proceedings arrested; confirmation, judgment, finality.**

Sec. 15. Motions for a new trial or to arrest the proceedings shall be made within 2 days after the rendition of the verdict unless further time is allowed by the court; and if no such motion is made, or being made is overruled, the court shall enter an order or judgment confirming the verdict of the jury; and such judgment of confirmation, unless reversed by the supreme court, shall be final and conclusive as to all persons interested therein.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3825;—CL 1948, 213.125.

### **213.126 Appeal; procedure.**

Sec. 16. Any person whose property may be taken, as well as the petitioner, considering himself aggrieved, may appeal to the supreme court from the judgment of the court confirming the verdict of the jury by filing in writing with the clerk of said court a notice of such appeal within 5 days after the confirmation and within the same time serving a copy thereof on the city attorney, corporation counsel or other law officer of the city and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment and the payment of all costs, damages and expenses that may be awarded against him, in case the judgment or confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted as an appeal in chancery, as near as may be, subject to the provisions of this act.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3826;—CL 1948, 213.126.

### **213.127 Appeal; records transmitted, fees; settlement of case by judge.**

Sec. 17. In case of such appeal the clerk of the court, on payment of his legal fees and charges, shall transmit to the supreme court a certified copy of the necessary files, records and proceedings in the case; and the judge of the court shall, at the request of the appellant, settle a case according to the usual practice of said court, showing the material evidence and instructions given to the jury bearing upon any disputed points to which exception was taken, and the objections, rulings, and exceptions in the case, all of which shall be returned by said clerk as part of the records, to the clerk of the supreme court.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3827;—CL 1948, 213.127.

### **213.128 Appeal; hearing; determination; expenses, compensation, damage.**

Sec. 18. The said appeal may be brought on for hearing at any term of the supreme court, and said court may affirm, or for any substantial error reverse the judgment, either in whole or in part, and may grant a new trial, either upon the whole case or upon such parts as the court may deem just. The said court shall allow the prevailing party his reasonable costs and expenses to be taxed, and all costs, damages and expenses awarded to the city, if it so elect, may be applied on or deducted from the compensation, if any, to be paid, or execution may issue on the judgment. Damages may be awarded against a party appealing without reasonable cause.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3828;—CL 1948, 213.128.

### **213.129 Verdict; copy transmitted to council; collection of award.**

Sec. 19. When the verdict of the jury shall have been finally confirmed by the court, and the time in which to take an appeal has expired, or, if an appeal is taken, on the filing in the court below of a certified copy of the order of the supreme court affirming the judgment of confirmation, it shall be the duty of the clerk of the court to transmit to the common council a certified copy of the verdict of the jury, and of the judgment of confirmation, and of the judgment, if any, of affirmance; and thereupon the proper and necessary proceedings, in due course, shall be taken for the collection of the sum or sums awarded by the jury.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3829;—CL 1948, 213.129.

### **213.130 Verdict; collection resolution; treasurer, duties; borrowing power; right to possession; writ of assistance.**

Sec. 20. Within 1 year after the confirmation of the verdict of the jury or after the judgment of confirmation shall on appeal be confirmed, the common council shall set apart and cause to be provided in the treasury, unless already provided, the amount required to make compensation to the owners and persons interested for the absolute title in fee to the private property taken as awarded by the jury, and shall, in the resolution setting apart and providing said sum, if not already provided, direct the city treasurer to pay to the persons respectively entitled to the money so set apart and provided, to each his or her proportion, as ascertained and awarded by said verdict. And it shall be the duty of the treasurer to securely hold such money

in the treasury for the purpose of paying for the property taken, and pay the same to the persons entitled thereto, according to the verdict of the jury, on demand, and not pay out the money for any other purpose whatever. The common council may provide the necessary amount by borrowing from any other money or fund in the treasury and to repay the same from money raised to pay the compensation awarded by the jury when collected, or otherwise, as they may provide. Whenever the necessary sum is actually in the treasury for such purpose, the treasurer shall make and sign duplicate certificates, verified by his oath, showing that the amount of compensation awarded by the jury is actually in the treasury for payment of the private property taken in the case, giving the title of the case; he shall cause 1 of the certificates to be filed in the office of the clerk of the court in which the proceedings were had, and the other to be filed with the city clerk, which certificates shall be prima facie evidence of the matters therein stated. Whenever the amount of such compensation is in the treasury and this secured to be paid, the city may enter upon and take possession of and use such private property and said city, its successors and assigns shall be seized and possessed of the absolute title in fee to the property so taken. In case of resistance or refusal on the part of any one to the common council or its agents and servants entering upon and taking possession of such private property for the use and purpose for which it is taken, at any time, after the amount of the compensation aforesaid is actually in the treasury, ready to be paid to those entitled thereto, the common council, by the city attorney, corporation counsel or other law officer of the city, may apply to the court, and shall be entitled, on making a sufficient showing, to a writ of assistance to put them in possession of the property: Provided always, That when the money awarded by the jury for just compensation for the taking of any such public utility shall have been paid into the city treasury as above provided, or the payment thereof secured to the satisfaction of the court, after due notice to all concerned, then the petitioners shall be entitled to enter into and take possession of any such public utility and to have the writ of assistance of need to, notwithstanding the pendency of an appeal to the supreme court.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3830;—CL 1948, 213.130.

#### **213.131 Jury fees; compensation.**

Sec. 21. Officers, jurors and witnesses in any proceedings under this act shall be entitled to receive from the city instituting the proceedings the same fees and compensation as are provided by law for similar services in an ordinary action at law in the circuit courts of this state.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3831;—CL 1948, 213.131.

#### **213.132 Attorney fees; expenses, costs; payment by municipality.**

Sec. 22. All the expenses and costs of the proceedings to take and use private property under this act incurred by the city shall be paid out of the general fund, contingent fund, or a fund provided for such purposes, as the case may be; and it shall be lawful for the judge in any case to order the payment by the city to any respondent of such a reasonable attorney fee as he may deem just not exceeding 25 dollars, which may be taxed with the costs.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3832;—CL 1948, 213.132.

#### **213.133 Discontinuance prohibited after verdict; further proceedings.**

Sec. 23. The common council shall not have the power to discontinue proceedings under this act after the rendition of the verdict of the jury that it is necessary to take the absolute title in fee to the property for public use and awarding compensation therefor, but they may direct the city attorney, corporation counsel, or other law officer of the city, to move for a new trial, or to arrest the proceedings, or to take an appeal to the supreme court, and in any such case the same proceedings shall be taken as are hereinbefore prescribed in the case of like proceedings on the part of any respondent, except that no bond shall be required.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3833;—CL 1948, 213.133.

#### **213.134 Property ownership; prima facie evidence.**

Sec. 24. It shall be prima facie evidence as to who are owners of and persons interested in any property proposed to be taken in the proceedings instituted under this act if the register or deputy register of deeds of the county shall testify in open court that he has examined the records and titles in his office, and states who such records show are the owners of and persons interested in such property, and the nature and extent of such ownership and interest; and an abstract of the title of such property, or of any parcel or parcels thereof, certified by the register or deputy register of deeds, shall also be prima facie evidence as to ownership, and persons having an interest in any such property, and the extent and nature of such interest.

**History:** 1919, Act 119, Eff. Aug. 14, 1919;—CL 1929, 3834;—CL 1948, 213.134.