ENLARGEMENT OF TOWNSHIP BURIAL GROUNDS
Act 272 of 1909

AN ACT to authorize the boards of trustees of the townships of this state to acquire and enlarge burying grounds and approaches to burying grounds in their respective townships and to provide the manner of acquiring private property for that purpose.

History: 1909, Act 272, Eff. Sept. 1, 1909;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

The People of the State of Michigan enact:

128.151 Township board of trustees; providing new burying ground or enlarging limits of existing burying ground; providing suitable approaches or enlarging limits of existing approach; inability to agree; application for jury; determining just compensation and necessity for using real estate.

Sec. 1. The board of trustees of a township of this state, when it considers it desirable and necessary, may provide new burying ground in the township, or may enlarge the limits of an existing burying ground in the township, and may provide for suitable approaches to the burying ground, or may enlarge the limits of an existing approach to a burying ground in the township. If the board of trustees is unable to agree with the owner or owners of the land or a right in the land which the board desires to include within the limits of the burying ground or approaches to the burying ground, as to the compensation to be paid, the board of trustees may authorize 1 or more of its members to apply to the circuit court judge or district court judge for a jury from the vicinage. The jury shall determine the just compensation to be paid for the real estate acquired by the board of trustees for the burying ground or its approaches, or an enlargement of the burying ground, and the necessity for using the real estate. The application shall be in writing and shall describe the real estate required by the board as accurately as is required in a conveyance of real estate.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5123;—CL 1929, 3867;—CL 1948, 128.151;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

128.152 Summons or venire facias commanding county sheriff or constable to summon freeholders to appear as jury; application and issuance; ascertaining just compensation and necessity for using real estate; notice to owner or occupant; service.

Sec. 2. The circuit court judge or district court judge, upon application, shall issue a summons or venire facias, directed to the sheriff or a constable of the county, commanding the sheriff or constable to summon 18 freeholders residing within the vicinity of the site, who are not related, either by blood or marriage, to the owner of the real estate, and who are not interested in the real estate, to appear before the judge, at the time and place named, not less than 20 or more than 50 days after the time of issuing the summons or venire facias, as a jury to ascertain and determine the just compensation to be made for the real estate required by the board of trustees for burying ground, the necessity for using the same, and to notify the owner or occupant of the real estate, if the owner can be found in the county, of the time when and the place where the jury is summoned to appear and the object for which the jury is summoned. The notice shall be served at least 10 days before the time specified in the summons or venire facias for the jury to appear.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5124;—CL 1929, 3868;—CL 1948, 128.152;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

128.153 Notice to township board of trustees; publication; service of notice on owner.

Sec. 3. Thirty days' previous notice of the time when and the place where the jury will assemble shall be given by the board of trustees of the township, if the owner or owners of the real estate are unknown, nonresidents of the county, minors, insane, non compos mentis, or inmates of a prison by publishing the notice in a newspaper published in the county where the real estate is situated. If a newspaper is not published in the county, the notice shall be given in some newspaper published in the nearest county where a newspaper is published. The notice shall be published once each week for 4 successive weeks, shall be signed by the board of trustees or by the township clerk, shall describe the real estate required for the burying ground, and state the time when and place where the jury will assemble and the object for which they will assemble. Notice may be served on the owner personally, or by leaving a copy of the notice at the owner's last place of residence.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5125;—CL 1929, 3869;—CL 1948, 128.153;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

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128.154 Judge; duties; jury summons, return, contents; empaneling.

Sec. 4. It shall be the duty of such judge, commissioner, or justice, and of the persons summoned as jurors, as hereinbefore provided, and of the sheriff or constable summoning them, to attend at the time and place specified in such summons or venire; and the officer who summoned the jury shall return such summons or venire to the officer who issued the same, with the names of the persons summoned by him as jurors, and shall certify the manner of notifying the owner or owners of such real estate, if he was found; and if he could not be found in said county, he shall certify that fact. Either party may challenge any of the said jurors for the same causes as in civil action. If more than 12 of said jurors in attendance shall be found qualified to serve as jurors, the officer in attendance, and who issued the summons or venire for such jury, shall strike from the list of jurors a number sufficient to reduce the number of jurors in attendance to 12; and in case less than 12 of the number so summoned as jurors shall attend, the sheriff or constable shall summon a sufficient number of freeholders to make up the number of 12; and the officer issuing the summons or venire for such jury, may issue an attachment for any person summoned as a juror who shall fail to attend, and may enforce obedience of such summons, venire or attachment, as courts of record, or justices' courts are authorized to do in civil cases.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5126;—CL 1929, 3870;—CL 1948, 128.154.

128.155 Jury sworn by judge; subpoenas for witnesses; visiting and examining premises; jurors' certificate; signatures and indorsement; judge's certificate.

Sec. 5. (1) The 12 persons selected as the jury shall be sworn by the judge in attendance, to inquire, ascertain, and determine, faithfully and impartially, the just compensation to be made for the real estate required by the board of trustees for the burying ground, and the necessity for using the same in the manner proposed by the board of trustees.

(2) Subpoenas for witnesses may be issued, and their attendance compelled by the judge in the same manner as may be done by a circuit court or by a district court in civil cases.

(3) The jury may visit and examine the premises, and from examination and other evidence presented before it, shall ascertain and determine the necessity for using the real estate in the manner and for the purpose proposed by the board of trustees, and the just compensation to be made for the real estate. If the jury finds that it is necessary that the real estate shall be used in the manner or for the purpose proposed by the board of trustees, the jury shall sign a certificate in writing, stating that it is necessary that the real estate, describing it, should be used as a burying ground or as an addition to a burying ground already established in the township, or as an approach to the burying ground, and the sum to be paid by the township as the just compensation for the same.

(4) The judge shall sign and attach to and indorse upon the certificate thus subscribed by the jurors, a certificate stating the time when and the place where the jury assembled, that the jurors were sworn by the judge as required, and that they subscribed the certificate. The judge also shall state in the certificate who appeared for the respective parties on the hearing and inquiry and shall deliver the certificates to the township clerk, or to a member of the board of trustees of the township.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5127;—CL 1929, 3871;—CL 1948, 128.155;—Am. 1980, Act 380, Imd. Eff. Jan. 2, 1981.

128.156 Judgment; collection.

Sec. 6. Upon filing such certificates in the circuit court of the county where such real estate is situated, such court shall, if it finds all the proceedings regular, render judgment for the sum specified in the certificate signed by such jury, against such township, which judgment shall be collected and paid in the manner as other judgments against townships are collected and paid.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5128;—CL 1929, 3872;—CL 1948, 128.156.

128.157 Incompetent or unknown owner; county treasurer, duties; funds subject to court order.

Sec. 7. In case the owner of such real estate shall be unknown, insane, non compos mentis, or an infant, or cannot be found within such county, it shall be lawful for the said township to deposit the amount of such judgment with the county treasurer of such county, for the use of the person or persons entitled thereto; it shall be the duty of such county treasurer to receive such money, and at the time of receiving it, to give a receipt or certificate to the person depositing the same with him, stating the time when such deposit was made, and for what purpose; and such county treasurer and his sureties shall be liable on his bond for any money which shall come into his hands under the provisions of this act, in case he shall refuse to pay or account for the same, as herein provided: Provided, That no such money shall be drawn from such county

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treasury except upon an order of the circuit court, circuit court commissioner, or judge of probate, as hereinafter provided.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5129;—CL 1929, 3873;—CL 1948, 128.157.

128.158 Vesting of fee; conditions; writ of possession.

Sec. 8. Upon satisfactory evidence being presented to the circuit court of the county where such real estate lies, that such judgment, or the sum ascertained and determined by the jury as the just compensation to be paid by such district for such burying grounds, has been paid, or that the amount thereof has been deposited according to the provisions of the preceding sections, such court shall, by an order or decree, adjudge and determine that the title in fee of such real estate shall, from the time of making such payment or deposit, forever thereafter be vested in such township and its successors and assigns, and shall, in and by such order or decree, award to such township a writ of possession for the recovery of the possession of such real estate, a copy of which order or decree, certified by the clerk of said county, shall be recorded in the office of the register of deeds of such county, and the title of such real estate shall thenceforth, from the time of making such payment or deposit, be vested forever thereafter in such township and its successors and assigns in fee.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5130;—CL 1929, 3874;—CL 1948, 128.158.

128.159 Possession by township; writ of possession.

Sec. 9. Such township may, at any time after making the payment or deposit hereinbefore required, enter upon and take possession of such real estate for the use of said township. And it shall be the duty of the county clerk of said county, on the request of said township, to issue out of and under the seal of the circuit court of said county a writ of possession as awarded in such order or decree; which writ shall be directed to the sheriff of said county, and shall be tested and made returnable, and shall be substantially, so far as may be, in the same form provided for writs of possession in actions of ejectment; and it shall be the duty of such sheriff thereupon to remove the respondent or respondents in such proceedings, and all persons holding under them, or either of them, from the real estate described in such decree and in such writ, and deliver the possession thereof, with the appurtenances, to such township.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5131;—CL 1929, 3875;—CL 1948, 128.159.

128.160 Jury disagreement; adjournment, limit.

Sec. 10. In case the jury hereinbefore provided for shall not agree, another jury may be summoned in the same manner, and the same proceedings may be had, except that no further notice of the proceedings shall be necessary; but instead of such notice, the judge, commissioner, or justice may adjourn the proceedings to such times as he shall think reasonable, not exceeding 30 days, and shall make the process to summon a jury returnable at such time and place as the said proceedings shall be adjourned to. Such proceedings may be adjourned from time to time by the said judge, or commissioner, or justice, on the application of either party, and for good cause, to be shown by the party applying for such adjournment unless the other party shall consent to such adjournment; but such adjournments shall not in all exceed 3 months.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5132;—CL 1929, 3876;—CL 1948, 128.160.

128.161 Parties to suit; proof of claims; settlement.

Sec. 11. In case the said burying grounds or addition or approach thereto, is encumbered by mortgage, levy, tax sale, or otherwise, as aforesaid, the mortgagee, or other parties claiming to be interested in said title, shall severally be made a party to the procedure as aforesaid, and shall be authorized upon filing of the certificate of the jury in the circuit court of said county, to appear before the circuit judge and make proof relative to their proportionate claims to the said burying grounds, or addition or approach thereto, or the compensation to be made therefor, as determined by said jury. And the said circuit judge shall, by decree, settle their several claims in accordance with the rights of the parties respectively, and may divide the sum awarded by said jury between the claimants as in his judgment will be equitable and right, rendering against said township a separate judgment for each of the amounts so awarded.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5133;—CL 1929, 3877;—CL 1948, 128.161.

128.162 Payment order; issuance, receipt; evidence.

Sec. 12. The circuit judge, judge of probate, or circuit court commissioner of any county where any money has been deposited with the county treasurer of such county, as hereinbefore provided, shall, upon the written application of any person or persons entitled to such money, and upon receiving satisfactory evidence of the right of such applicant to the money thus deposited, make an order directing the county treasurer to pay the money thus deposited with him to said applicant; and it shall be the duty of such county treasurer, on the

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presentation of such order, with the receipt of the person named therein, endorsed on said order and duly acknowledged, in the same manner as conveyances of real estate are required to be acknowledged to pay the same; and such order, with the receipt of the applicant or person in whose favor the same shall be drawn, shall, in all courts and places, be presumptive evidence in favor of such county treasurer, to exonerate him from all liability to any person or persons for said money thus paid by him.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5134;—CL 1929, 3878;—CL 1948, 128.162.

128.163 Subsequent proceedings.

Sec. 13. In case any circuit judge, circuit court commissioner, or justice of the peace, who shall issue a summons or venire for a jury, shall be unable to attend to any of the subsequent proceedings in such case, any other circuit court commissioner or justice of the peace may attend and finish said proceedings.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5135;—CL 1929, 3879;—CL 1948, 128.163.

128.164 Fees; compensation.

Sec. 14. Circuit judges, circuit court commissioners, and justices of the peace, for any services rendered under the provisions of this act, shall be entitled to the same fees and compensation as for similar services in other special proceedings. Jurors, constables, and sheriffs shall be entitled to the same fees as for like services in civil cases in circuit court.

History: 1909, Act 272, Eff. Sept. 1, 1909;—CL 1915, 5136;—CL 1929, 3880;—CL 1948, 128.164.

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