

### **6B.46 Special proceedings to condemn existing utility.**

1. When any city has voted at an election to purchase, establish, erect, maintain and operate heating plants, waterworks, gasworks or electric light or power plants, or when it has voted to contract an indebtedness and issue bonds for such purposes, and in such city there exists any such utility, or incomplete parts thereof or more than one, not publicly owned, and the contract or franchise of the owner of the utility has expired or been surrendered, and the owner and the city cannot agree upon terms of purchase, it may, by resolution, proceed to acquire by condemnation any one or more of the utilities or incomplete parts thereof. When so acquired it may apply the proceeds of the bonds in payment therefor and in making extensions and improvements to such works or plants so acquired, but not more than one utility may be so acquired when the municipality is indebted in excess of the statutory limitation of indebtedness for such purposes for any such acquired property.

2. Upon the passage of the resolution as provided in [subsection 1](#) and the presentation of a certified copy thereof to the supreme court while in session, or to the chief justice of the supreme court, the court or chief justice shall within five days appoint as a court of condemnation three district court judges from three judicial districts, one of whom shall be from the district in which the city is located, if not a resident of the city, and shall enter an order requiring the judges to attend as such court of condemnation at the county seat of the county in which the city is located within ten days. The district court judges shall attend and constitute a court of condemnation.

3. Said court when it meets to organize or at any time during the proceedings, which may be adjourned from time to time for any purpose, may fix the time for the appearance of any person that any party desires to have joined in the proceedings, and whom the court deems necessary. The time for appearance shall be sufficiently remote to serve notice upon the parties, but if the time for appearance occurs after the proceedings are begun, the proceedings may be reviewed by the court to give all parties a full opportunity to be heard.

4. Persons not voluntarily appearing, but having any right, title, or interest in or to the property which is the subject of condemnation, or any part thereof, including all leaseholders, mortgagees and trustees of bondholders, who are to be made parties to the proceedings shall be served with notice of the proceedings and the time and place of meeting of the court in the same manner and for the same length of time as for the service of original notice, either by personal service, or by service by publication, the time so set being the time at which the parties so served are required to appear, and actual personal service of the notice within or without the state shall supersede the necessity for publication.

5. The court of condemnation shall have power to summon and swear witnesses, take evidence, order the taking of depositions, require the production of any books or papers, and may appoint a shorthand reporter. It shall perform all the duties of commissioners in the condemnation of property. The duties and the method of procedure and condemnation, including provisions for appeal shall be except as otherwise specifically provided, as provided for the taking of private property for works of internal improvement. The clerk of the district court of the county where the city is located shall perform all of the duties required of the sheriff in the condemnation; and in case of a vacancy in the court, the vacancy shall be filled in the manner in which the original appointment was made. When necessary by reason of a vacancy, the court may review any evidence in its record.

6. The costs of the proceedings shall be the same and paid in the same manner as in proceedings in the district court, and the district court judges of the court of condemnation shall receive, while engaged in such service, their actual expenses, which expenses shall be taxed as costs in the case.

[C73, §474; C97, §722; S13, §722; C24, 27, 31, 35, 39, §6135; C46, 50, 54, 58, 62, 66, 71, §397.20; C73, 75, 77, 79, 81, §472.46]

C93, §6B.46

[2006 Acts, 1st Ex, ch 1001, §47, 49](#)

Time and manner of service, R.C.P. 1.302 - 1.315  
Costs generally, chapter 625