

CHAPTER 58.

DES MOINES RIVER IMPROVEMENT.

AN ACT to secure a more vigorous prosecution, and early completion of the Des Moines river improvement, and amendatory and supplemental to all other acts now in force in relation thereto.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. The office of president, secretary and treasurer abolished—new officers created. That the offices of president, secretary and treasurer, of the board of public works be, and the same are hereby abolished; that the control and management of the Des Moines river improvement is given to the officers hereinafter mentioned.

SEC. 2. Sales suspended. That all sales of lands granted by the United States for said improvement are suspended, except as herein provided.

SEC. 3. Governor shall appoint a commissioner—oath—bond—governor approve—filed. The governor shall, by and with the advice and consent of the senate, appoint a suitable individual to be known as commissioner of the Des Moines river improvement, who shall hold his office for the term of two years from and after the first day of February, 1851, and until his successor is [132] duly appointed and qualified. Before entering upon the discharge of his duties he shall take and subscribe the following oath, before some person authorized to administer the same: "I —— do solemnly swear that I will to the best of my ability, honestly and faithfully, discharge the duties imposed upon me as commissioner of the Des Moines river improvement, and to the utmost of my exertions, strive to promote the vigorous prosecution, and secure the early and economical completion of the said work; and that I will give my constant and unremitting personal attention thereto." The said commissioner shall also, previous to entering upon the discharge of the duties of his office, execute a bond to the state of Iowa, in the sum of thirty thousand dollars, with freehold security, to be approved by the governor, conditioned for the faithful and honest discharge of his duties as commissioner aforesaid: which said bond and oath shall be filed with the secretary of state, and preserved by him.

SEC. 4. Register—oath—bond—approval and filed—proviso. There shall in like manner be appointed some suitable person to the office of register of the Des Moines river improvement, who shall hold his office for the like term as the commissioner, and until his successor is duly appointed and qualified. Before entering upon the discharge of the duties of his office, he is required to take and subscribe (so far as applicable) a like oath with that taken by the commissioner, and he shall also execute a bond in the sum of fifty thousand dollars, with like security, and to be similarly approved, filed and preserved as the bond executed by the commissioner: provided, that if the appointment hereby authorized to be made shall not be made in time for confirmation by the senate, the governor shall have the same right to appoint as though a vacancy existed.

SEC. 5. Commissioner and register to be appointed every two years. At the regular meeting of the general assembly in the year 1852, and every two years thereafter there shall in like manner be appointed by the governor, by and with the advice and consent of the senate, a commissioner and register of the Des Moines river improvement, who shall qualify severally, as required in the two preceding sections.

SEC. 6. Commissioner's duty—oversight and control of works—take charge of books, papers, etc.—deliver to successor. It is the duty of the commis-

sioner to take a personal oversight and control of the improvement as it progresses;— [133] examining each and every part thereof as often as practicable;—to do all things properly developing upon such an officer, and in all his acts connected with said improvement; to have special reference to the permanency of and early completion of the entire work. He shall immediately after qualifying as herein provided, proceed at once to the discharge of his duties;—shall take charge of all books, papers, plans and other matters of whatever kind or description, now in the hands of the president of the board of public works, etc., in like manner deliver the same to his successor in office, and in general perform all duties now devolving on such president with such additional duties as are herein provided.

SEC. 7. **Register's duty.** The register is to do and perform all such acts and things connected with the sale of the lands mentioned in this act as have heretofore been done and performed by the secretary and treasurer of the board of public works, and such other duties as are herein imposed, or would properly come within the scope of such an officer, under such rules and regulations as have been or may be established by the board, or said commissioner and register.

SEC. 8. **May contract for completion of work below Keosauqua—may sell water rents and tolls—tolls limited—must complete works.** The commissioner and register are hereby authorized to contract with any individual or individuals, company or companies, for the completion of that part of the improvement of said river at and below Keosauqua, by allowing the contractors in payment for such work, as the same progresses, any portion of the lands granted for the improvement of said river which lie below Raccoon Forks, at a price not less than one dollar and twenty-five cents per acre; and if the lands lying below the Raccoon Forks cannot be disposed of upon such terms as to procure the completion of the works mentioned in this section, after having made provisions for the payment of the present liabilities of said work, the commissioner and register are hereby authorized and empowered, to contract and consent on the part of the state, to surrender to such contractor or contractors, the water rents of the power created by the above improvement, and also the tolls at the locks, upon such conditions and for such time as will compensate such contractor or contractors for such work:—but the tolls shall not exceed in their average rate those now [134] charged on the Monongahala river, in the state of Pennsylvania, nor shall the water powers thus to be surrendered include the water power needed for the purposes of lockage;—nor shall the contract above contemplated be entered into unless it will secure the completion of the improvement above mentioned.

SEC. 9. **May build dams and locks above Keosauqua.** The said commissioner and register have the same power to build dams and locks above Keosauqua, at such points as they may deem necessary for the best interest of the improvement, as has heretofore been given by law to the board of public works; and they are hereby authorized and required to build a lock at any point above Keosauqua, provided they can get an individual or company to build the dam and abutment at the said point for the use of the water power thus created; the dam to be built according to the plans and specifications adopted for said improvement; and provided further, that said dam and lock shall be located at such point or points as will assist in carrying out the general system of said improvements, and shall be paid for from the lands granted above the Raccoon Forks.

SEC. 10. **May make arrangements to secure navigation, etc.** If no satisfactory arrangement can be made by which the locks and dams now under contract can be finished as specified above, the said commissioner and register may make such arrangement as to complete such portion of said improve-

ment as will secure the navigation of said river for the longest period of time in each year.

SEC. 11. Contractor's pay must come from improvement fund. In all contracts herein contemplated the individual or individuals, company or companies, so contracted with, shall look alone to the funds and lands belonging to said improvement for payment, and not to the state.

SEC. 12. Work must be done under the supervision of the officers. Such work, whether done by a company or companies or otherwise, is to be done according to such plans and specifications as are or may be adopted by the officers having the management of the improvements, and shall be under their supervision.

SEC. 13. Moneys must be paid to register. All loans or other moneys procured under the provisions of this act, must be paid to the register, or upon his order; and no creditor has any claim for money loaned, and [135] no debtor any credit for money paid, until such money has been paid to the register, or upon his order.

SEC. 14. Contracts not valid until signed and approved by governor. None of the above mentioned contracts will be valid until they are signed by the commissioner, countersigned by the register, and approved by the governor; and, subject to such approval, the commissioner may in like manner make any other arrangement of the kind and character of those above authorized, having the same object in view, and not exceeding in their general operations the authority above conferred.

SEC. 15. Sale of lands—governor approve—\$1.25 per acre. The commissioner and register also have power to dispose of any other lands which have been or may hereafter be granted for the improvement of the Des Moines river, in any mode above specified, subject to the like approval of the governor; or they may direct any portion thereof to be sold, but not for less price than one dollar and twenty-five cents per acre. Such lands or their proceeds shall be devoted to the completion of said improvement to the greatest extent practicable.

SEC. 16. Pre-emption. Any of the lands which may be occupied by actual settlement on the first day of April next, may be purchased by the occupant at any time before the first day of July next, under such rules and regulations as may be established by the commissioner and register under this act, and the laws now in force not conflicting herewith; and the same shall not be subject to be contracted away, as above provided, prior to said first day of July, 1851, except such contract, if made before that time, shall reserve to the said occupant the right to purchase as aforesaid; and said occupant shall have the right to purchase at the rate of one dollar and twenty-five cents per acre.

SEC. 17. Contracts triplicate—one to be filed with register—secretary of state—contractor. All contracts authorized by this act shall be executed in triplicate, one of which shall be filed with the register, and by him recorded in a book to be kept for that purpose, another of which is to be filed with the secretary of state, to be by him preserved, and the other to be delivered to the contractor.

SEC. 18. Triplicate receipts for land sold—purchaser—commissioner to examine, endorse and forward to secretary of state. The register is required to make out triplicate receipts for all lands purchased at his office under this act— [136] one to be filed in his office and to be recorded by him in a book to be kept for that purpose—one to be given to the purchaser; and as to the third, he shall at least once in each month or oftener if required by the commissioner, make out a full and correct statement of all lands entered at his office, by whom and when entered, and of all monies received, and, after verifying the same by affidavit, shall hand the same together with

the said third receipt, or receipts, over to the commissioner, which said **statement and receipts, after having been examined and compared by the said commissioner with the books and papers in the office of said register, shall be endorsed and so examined and approved by said commissioner and by him forwarded to the secretary of state, to be by him preserved.**

SEC. 19. Commissioner may discharge engineers and employ them again, or others. The commissioner has power to discharge all engineers in the employ of the state in the prosecution of said improvement, and to employ the same or others if he deems their service necessary; but it shall be and is hereby **made the absolute duty of said commissioner, to employ no more or other engineer or engineers than are strictly necessary to the speedy and proper prosecution of said work.**

SEC. 20. Salaries—commissioner \$1,000—register \$1,000. The commissioner and register shall receive, as the only compensation for their services, annual **salaries, to be paid quarterly out of any funds arising from the grant of lands mentioned in this act. The salary of the commissioner shall be ten hundred dollars, and that of register ten hundred dollars per year.**

SEC. 21. Work on canal suspended—preservation. For the present, all further work on the canal at the mouth of the Des Moines river is suspended, and it is not to be regarded as a part of the improvement mentioned in this act; but the said commissioner and register shall nevertheless place the said canal in such condition as to prevent injury to the work already done, and shall see that all the property of the state in connection therewith is properly preserved.

SEC. 22. Commissioner to remove dams and other obstructions. The commissioner is required to remove all obstructions now in said river, in the way of dams or otherwise, when the same in his judgment, are obstructions to the navigation; and he may if he deems it necessary for the best [137] interest of the improvement, remove such obstructions as exist at or near the mouth of said river.

SEC. 23. Deeds. Deeds in fee simple for all lands purchased shall be made **by the register and governor in the same manner as has heretofore been provided for making like deeds by the secretary, but no fee shall be allowed therefor.**

SEC. 24. Vacancy. Should a vacancy occur in either of the above offices at any time, the governor is to fill the same by appointment. The person so appointed shall qualify as those elected, and shall hold his office until the regular appointment and confirmation herein contemplated; and for good cause the governor is hereby empowered to remove either of said officers, and appoint others in their place.

SEC. 25. Commissioner and Register to make annual report to Governor. It is the duty of the commissioner and register to make an annual report of all their doings connected with their offices to the governor, on or before the first day of December in each year, and the governor shall lay the same before the general assembly whenever it may be in session.

SEC. 26. Contractor paid, dam to become property of the State. That any individual or company who may build any dam or dams, on the terms specified in the eighth section of this act shall, when the whole work below Keosauqua **shall be completed and paid for up to that point, be paid for the building of said dam, at the price agreed upon by said individual or company and the commissioner and register before such dam was built, and the whole work shall thereafter be the property of the state.**

SEC. 27. State may take improvement off contractors' hands. The state at any time may have the privilege of taking said improvement off the hands of any contractor, contractors or company herein contemplated, by the payment of all monies due them, over and above the proceeds of the sales of such lands as he or they may have received from the state in payment as above provided.

SEC. 28. Commissioner and Register to settle claim of mill owners for damages—agreed cases—suits—arbitration. The said commissioner and register have full power and authority, and it is hereby made their duty, to settle and arrange all claims and demands preferred and presented by any mill owner on said river, for damages or otherwise; but in so doing, shall take into view all of the circumstances of advantage to said mill owners as well as their delays, and to settle such controversies; have the right to make agreed [138] cases for hearing before any court of competent jurisdiction, or to make any other arrangement that they may deem expedient. Suits may be brought against the commissioner by the name of "A. B. commissioner of the public works of the state of Iowa," and such suits may be brought not only for liabilities incurred by himself but also for those for which the late board of public works might have been sued. The commissioner has power in all cases to settle with contractors or other creditors of the Des Moines river improvement fund, and to submit any controversy that may arise on those subjects to an arbitration when the same cannot be settled amicably.

SEC. 29. May contract for completion of work, etc. That if the commissioner and register can contract for the completion of the entire improvement below Keosauqua, including the canal below St. Francisville with any company or companies by pledging the entire net proceeds arising from the sale of the lands lying below the Raccoon Forks, and water rents and tolls below Keosauqua, they are hereby authorized so to do, any thing in this act to the contrary notwithstanding.

SEC. 30. Repeal. All acts and parts of acts coming in conflict with the provisions of this act are hereby repealed.

SEC. 31. Take effect. This act to take effect and be in force from and after its publication in the "Des Moines Republic" and "Keosauqua Jeffersonian."

Approved, February 5, 1851.

Published in Keosauqua Jeffersonian February 17th, and Des Moines Republic, February 13th, 1851.

[139] CHAPTER 59.

RIGHT OF WAY.

AN ACT granting the Mount Pleasant, Trenton, Deedsville and Brighton plank road and bridge company the right of way.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Right of way. That the Mount Pleasant, Trenton, Deedsville and Brighton plank road and bridge company is hereby authorized to lay out their road, between the towns of Mount Pleasant, Trenton, Deedsville and Brighton, on such grounds as may be deemed suitable for that purpose, including any portion of the public highway; provided, the traveling on such highway is not thereby interrupted.

SEC. 2. Roadway—private property. The quantity of ground to be thus taken shall be merely a roadway, not exceeding sixty feet in breadth; and when private property is thus taken a fair equivalent must be paid therefore before the property can be appropriated by the company.