

CHAPTER 89.

STATE ROAD.

AN ACT legalizing a certain state road therein named.

Legalizing. SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That the establishment of the state road running from Bloomfield, Davis county, Iowa, via Albia, in Monroe county, Knoxville, in Marion county, Indianola, in Warren county, to Wintersett, in Madison county, Iowa, is hereby declared legal and valid.

Duty of county judge. SEC. 2. That it is hereby made the duty of the county judge of Davis county, Iowa, to notify within thirty days from the day this law goes into effect, the various supervisors having jurisdiction along the route of said road, within the limits of the county of Davis, to open said road.

SEC. 3. This act to be in force from and after its publication in the Democratic Standard, Marion county, Iowa, and Iowa Flag, Bloomfield, Davis county, Iowa, and Albia Independent Press, without expense to the State.

Approved January 23d, 1857.

I certify the foregoing act was published in the Democratic Standard, Feb. 13, 1857.

ELIJAH SELLS,
Sec'y of State.

CHAPTER 90.

CITY OF DAVENPORT.

AN ACT to amend an act entitled an act to incorporate the city of Davenport, and amend the several acts amendatory thereto.

Boundaries. SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That all that district of country embraced within the following boundaries be, and the same is hereby declared to be within the limits of the said city of Davenport, to wit: Beginning in the middle of the main channel

of the Mississippi river, due south of the central or half section line of section number thirty, in township seventy-eight, north of range four east, thence north along said central line to the line between sections nineteen and thirty, thence west along said section line and the southern boundary line of section twenty-four in township seventy-eight, north of range three east, to a point due north of the north-east corner of the tract of land reserved by the government of the United States, and donated to Antoine Le Claire, and known as Le Claire's reserve, in said township seventy-eight, north range three east, thence north to the east and west central or half section line of section twenty-four in said last mentioned township, thence west on said central or half section line to the north-west corner of the south west quarter of section twenty-three, thence south to a point half way between said corner and the south-east corner of section twenty-two, thence west to the western boundary line of said south east quarter of section twenty-two, thence south to the county road known as the telegraph road, thence westerly along the north side of said road to the section line between sections twenty-seven and twenty-eight, thence south to the south-west corner of the north west quarter of section thirty-four, thence east to the south-east corner of said quarter section, thence south to the middle of the main channel of the Mississippi river, and thence up and along the middle of the main channel thereof to the place of beginning.

SEC. 2. The city council shall have power by ordinance to levy and collect a special tax on the owners of lots, on any street, lane, avenue, alley or block, or the side of a block fronting or lying on any alley, or part of any street, lane, avenue or alley, according to their respective fronts owned by them, for the purpose of paving or grading the side walks, grading, paving or macadamizing such streets, lanes, avenues and alleys, or parts thereof, and for lighting the same, on being petitioned so to do by the owners of more than half the property so to be taxed.

SEC. 3. In case of the sickness of the mayor or of his absence from the city for a less period than two months, said city council may elect one of the aldermen mayor *pro*

tem, who shall possess all the authority and perform all the duties of the office of mayor during such such sickness or temporary absence of the mayor.

Road tax.

SEC. 4. From and after the passage of this act, it shall not be lawful for the county authorities of Scott county to levy a road tax on any property or a road poll tax on residents in said city; and the said city council is hereby authorized to levy and collect the road tax, if not more than three mills on the dollar, on all property liable to road tax within said city, the collection and payment thereof into the city treasury to be regulated by ordinance of the said city council.

Appeals.

SEC. 5. The said city of Davenport shall have the right of appeal to the district court of Scott county from decisions in all cases arising under the provisions of the charter of said city and the amendments thereto or of any ordinance passed in pursuance thereof.

Powers of council.

SEC. 6. The city council shall have power to lay out public squares or grounds, streets, alleys, lanes or highways, and to make wharves in the river, and alter, widen, contract, straighten, and discontinue the same. They shall cause all streets, alleys, lanes, highways, or public squares, or grounds laid out by them, to be surveyed, described, and recorded in a book to be kept by the clerk, showing particularly the proposed improvements and the real estate required to be taken therefor, and the same when opened and made shall be public highways.

Notice.

SEC. 7. Whenever any street, alley, lane, highway, or public square, or ground, is laid out, altered, widened, or straightened, by virtue hereof, the city council shall give notice of their intention to appropriate and take the land necessary for the same, to the owner or owners thereof, by publishing said notice for ten days, in some newspaper published in said city, at the expiration of which time, they shall choose by ballot three disinterested freeholders residing in said city as commissioners, to ascertain and assess the damages and recompense the owners of such lands respectively, and at the same time to determine what persons will be benefitted, and assess the damages and expenses thereof on the real estate of persons benefitted, in proportion as nearly as

may be the benefits resulting to each. A majority of all the aldermen authorized by law to be elected, shall be necessary to the choice of such commissioners: *Provided*, that the provisions of this section shall not apply in any case where such street or alley has already been ordered to be opened and the damages are not yet paid.

SEC. 8. In any case where a grade has been established ^{Damages.} by the city engineer, and any person has built or made any improvements on a street according to said grade, and the city authorities shall alter said grade in such a manner as to injure or diminish the value of said property said city shall pay to the owner or owners of said property so injured, the amount of such damage or injury.

SEC. 9. Said damage or injury shall be assessed by three ^{How assessed.} persons, one of whom shall be appointed by the mayor of said city, one by the owner of the property, and one by these two so appointed, or in case of their disagreement, by the Mayor and owner, or in case of their disagreement by the city council: *Provided*, That if the owner of such property shall fail to appoint one such appraiser in ten days from the time of receiving notice so to do, then the city council shall appoint all said appraisers, and no such alteration of grade shall be made until said damages so assessed shall have been paid or tendered to the owner or owners of the property so injured or damaged.

SEC. 10. The commissioners shall be sworn faithfully to ^{Oath of Commissioners.} execute their duties according to the best of their ability. Before entering upon their duties they shall give notice, to the persons interested, of the time and place of their meeting, for the purpose of viewing the premises and making their assessment, at least ten days before the time of said meeting, by publishing the same in some newspaper published in said city. They shall view the premises, and in their discretion receive any legal evidence, and may adjourn from day to day.

SEC. 11. If there should be any building standing in ^{Buildings standing.} whole or in part upon the land to be taken, the commissioners, before proceeding to make their assessment, shall first estimate and determine the whole value of such building to the owner, aside from the value of the land, and the injury

to him in having such building taken from him; and secondly the value of such building to him to remove.

Notice to owner.

SEC. 12. At least five days personal notice shall be given to the owner, of such determination, when known and a resident of the city, or left at his usual place of residence. If not known, or a non-resident, notice to all persons interested shall be given by publication for ten days in some newspaper of said city. Such notice shall be signed by the commissioners, and specify the building and the award of the commissioners. It shall also require parties interested to appear on a day therein named, or give notice of their election to the city council, either to accept the award of the commissioners, and allow such building to be taken with the land condemned or appropriated, or of their intention to remove such building at the value set thereon by the commissioners, to remove. If the owner shall agree to remove the building, he shall have such time for the removal as the city council may allow.

Owner refusing.

SEC. 13. If the owner refuse to take the building at the value to remove, or fail to give notice of his election as aforesaid, within the time prescribed, the city council shall have power to direct the sale of such building at public auction, for cash, giving ten days public notice of the sale. The proceeds of the sale shall be paid to the owner, or deposited to his use.

Assessment.

SEC. 14. The commissioners shall thereupon proceed to make their assessment and determine and appraise to the owner or owners the value of the real estate appropriated for the improvement, and the injury arising to them respectively from the condemnation thereof, which shall be assessed to such owners respectively, as damages, after making all due allowances therefrom, for any benefit which such owners may respectively derive from such improvement. In the estimate of damage to the land, the commissioners shall include the value of the building, (if the property of the owner of such land) as estimated by them as aforesaid, less the proceeds of the sale thereof, or if taken by the owner, at the value to remove; in that case they shall only include the difference between such value and the whole estimated value of such building.

SEC. 15. If the lands and buildings belong to different ^{Different owners.} persons, or if the land be subject to lease, or mortgage, the injury done to such persons respectively may be awarded to them by the commissioners, less the benefits resulting to them respectively from the improvement.

SEC. 16. Having ascertained the damages and expenses ^{Assessment of damages-} of such improvement as aforesaid, the commissioners shall thereupon apportion and assess the same, together with the costs of the proceedings, upon the real estate of them deemed benefitted, in proportion to the benefits resulting thereto from the improvements, as nearly as may be, and shall describe the real estate upon which their assessment may be made. When completed, the commissioners shall sign and return the same to the city council within forty days of their appointment.

SEC. 17. The clerk shall give ten days notice in some ^{Notice of return.} newspaper of said city that such assessment has been returned, and on a day to be specified therein, will be confirmed by the city council unless objections to the same are made by some person interested. Objections may be heard before the city council, and the hearing may be adjourned from day to day. The council shall have power in their discretion to confirm or annul the assessment, or refer the same back to the commissioners. If annulled, all the proceedings shall be void. If confirmed, an order of confirmation shall be entered, directing a warrant to issue for the collection thereof in accordance with the provisions of any ordinance then in force, regulating the collection of such assessments. If referred back to the same or other commissioners, they shall proceed to make their assessments and return the same in like manner and give like notices as herein required in relation to the first, and all parties in interest shall have the like notices and rights, and the city council shall perform like duties and have like powers in relation to any subsequent determination as are herein given in relation to the first.

SEC. 18. The city council shall have power to remove ^{Council may remove.} commissioners, and from time to time appoint others in the place of such as may be removed, refuse, neglect, or be unable, from any cause, to serve.

Land not to be taken.

SEC. 19. The land required to be taken, for the making, opening, or widening any street, alley, lane, or any other highway, shall not be appropriated until the damages awarded therefor to any owner thereof under this act shall be paid or tendered to such owner or his agent, or in case the said owner or his agent cannot be found in said city, deposited to his or their credit in some safe place of deposit other than the hands of the treasurer, and then, not before, such lands may be taken and appropriated for the purpose required in making such improvements, and such streets, alleys, lanes, highways and squares, may be made and opened.

Whole lots taken.

SEC. 20. Where the whole of any lot or parcel of land or other premises, under lease or other contract, shall be taken for any of the purposes aforesaid, by virtue of this act, all of the covenants, contracts, and engagements between landlords and tenants, or any other contracting parties, touching the same, or any part thereof, shall, upon confirmation of such report, respectively cease, and be absolutely discharged. Where part only of any lot or parcel of land or other premises under lease or other contract, shall be taken for any of the purposes aforesaid, all the covenants, contracts, agreements and engagements respecting the same upon confirmation of such report, shall be absolutely discharged as to the part thereof so taken, but shall remain valid as to the residue thereof, and the rents, considerations and payments reserved, payable and to be paid for, or in respect to the same, shall be so proportioned as that the part thereof justly and equitably payable for such residue thereof, and no more, shall be paid or recoverable for in any respect of the same.

Appeal.

SEC. 21. Any person interested may appeal from any final order of the city council for opening or widening any street, alley, lane, public ground, or highway, to the district court of Scott county, by notice in writing to the mayor or clerk, at any time before the expiration of twenty days after the passage of such final order. In case of appeal, the city council shall make return within thirty days after notice thereof, and the court shall at the next term after return filed in the office of the clerk thereof, hear and determine

such appeal, and confirm or annul the proceedings. Upon trial of the appeal, all questions involved in said proceedings, including the amount of damages, shall be open to investigation by deposition or oral testimony, and the burden of proof shall in all cases be upon the city to show that the proceedings are in conformity with this act.

SEC. 22. In all cases when any known owner residing in said city or elsewhere, shall be an infant, and any proceedings shall be had under this act, the district court, or the judge thereof, or the county judge of Scott county may, upon the application of the city council, or such infant, or his next friend, appoint a guardian for such infant, taking security from such guardian for the faithful execution of such trusts; and all notices and summons required by this act shall be served on such guardian. Minors.

SEC. 23. Nothing herein contained, or in the acts to which this is amendatory, shall authorize the city council to discontinue or contract any street, lane, alley or highway, or any part thereof, without the consent, in writing, of all persons owning land adjoining said street, lane, alley or highway. Limitation.

SEC. 24. In all cases where there is no agreement to the contrary, the owner, or landlord, and not the occupant or tenant, shall be deemed the person who ought to pay and bear every assessment made for the expense of the public improvement. Where any such assessment shall be made upon or paid by any person, when by agreement or by law, the same ought to be borne or paid by another person, it shall be lawful for one so paying to sue for and recover of the person bound to pay the same, the amount so paid, with interest. Nothing herein contained shall impair or in any way affect any agreement between any landlord and tenant or other persons respecting the payment of such assessments. Owners pay assessments.

SEC. 25. Said city council is hereby authorized to grant and allow by ordinance, such compensation to the aldermen of said council for their services as shall be approved by a vote of two-thirds of all the members elected. Compensation.

SEC. 26. At the first election for mayor and aldermen Police magis'te.

after the taking effect of this act, and every second year thereafter, there shall be elected by the legal and qualified voters of said city a justice of the peace, who shall reside in and be a qualified voter of said city, who shall be called a police magistrate, who shall have and possess all the powers and jurisdiction of other justices of the peace in Scott county and concurrent jurisdiction with the mayor of said city in all cases arising under the ordinances of said city, who shall take the same oath of office and qualify as other justices of the peace of Scott county and who shall hold his office for the term of two years and until his successor is elected and qualified.

Repeal.

SEC. 27. That the whole of article seven of said act to incorporate the city of Davenport, and all other acts and parts of acts inconsistent with the provisions of this act, be, and the same are hereby repealed.

SEC. 28. This act to be in force and take effect from and after its publication in the Davenport Gazette, Iowa State Democrat, and Evening News, or any two of them, at the expense of the city of Davenport.

Approved January 23, 1857.

I certify that the foregoing act was published in the Iowa State Democrat, Feb. 10, 1857.

ELIJAH SELLS,
Secretary of State.

CHAPTER 91.

STATE ROAD.

AN ACT to locate a State road from Newton, Jasper county, via Saylorville, to Adel, in Dallas county.

Commissioners SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That Albert Ship, of Jasper county, John Saylor, of Polk county, and Peter T. Russell, of Dallas county, be, and are hereby appointed commissioners to locate a state road from Newton, in Jasper county, to Adel in Dallas county, via Saylorville, in Polk county.