

12-811. Purchase by city of corporate utility plants upon expiration of franchise; petition to court; notice; appraisers; election; bonds. In any city wherein the franchise of a corporation supplying water, natural or artificial gas, electric light or power, heat, or operating a street railway, has expired or will expire before the completion of the proceedings contemplated by this section, unless an earlier date is fixed by the franchise, the governing body may by resolution declare it necessary and for the interest of such city to acquire control and operate any such plant. Upon the passage of such resolution an application may be presented in writing to the district court of the county in which such city is located, which shall set forth the action of the said city relative thereto, and a copy of the resolution so passed by the city, and praying for the appointment of commissioners to ascertain and determine the value of such plant.

Thereupon a time shall be fixed for the hearing thereof, of which either at least ten days' notice shall be given in writing, or at least thirty days' notice shall be given by publication once in the official city paper, to the person, company or corporation owning said plant and to all persons having or claiming liens on such property. *Provided*, That publication in the city paper shall not be made until an affidavit has been filed showing that actual service of notice cannot be made and that a diligent effort has been made to obtain such service, and said court shall make an order granting such application, and provide for the appointment and selection of three commissioners, one of whom shall be selected by the city, and one by the person, company, or corporation owning such plant, and the third shall be designated by the judge of the court, who shall be an expert engineer; and the said commissioners shall take an oath to faithfully, honestly and to the best of their skill and ability, appraise and ascertain the fair cash value of said plant and the appurtenances thereunto belonging or in any way appertaining to same; but in the determination of such value said commissioners shall not take into account the value of the franchise or contract given or granted by said city to such person, company or corporation.

The said commissioners shall carefully examine said plant and may examine experts and persons familiar with the cost, construction and reproduction cost of such plant, and resort to any other means by which they may arrive at the value thereof, and the city or the person, company or corporation owning such plant may produce such testimony before said commissioners as in their judgment seems necessary and desirable. Said commissioners shall make their report in writing under oath and file the same with the clerk of the district court. Each party shall have ten days from the filing of said report to file exceptions thereto. Thereupon at a time to be fixed by the court, of which each party shall have ten days' notice in writing, a hearing shall be had upon the said report and the exceptions thereto, and the court thereupon shall confirm, reject or modify said report, and its decision therein shall be a final order from which an appeal may be taken to the supreme court. If any city by a majority vote of the electors voting upon the proposition at an election called and held according to law shall elect to take the property at the amount so ascertained, the governing body is hereby authorized to enact a proper ordinance providing for the issue of bonds according to law to be sold and the proceeds thereof used for the purchase of such plant.

If the city elects to pay the award of said commissioners as approved by the district court it may do so at any time within six months from the date of final order of the district court on the report of the commissioners if no appeal to the supreme court be taken, or from the final judgment in case thereafter an appeal is determined, by paying the amount of the award to the clerk of the district court, and thereupon the title, right and possession of such plant and appurtenances shall vest absolutely in the city and the city shall have the right to enter into and take possession thereof. The court shall make all orders necessary to protect such city in the possession of the property and plant. When the purchase money is paid into court for such plant, it shall be paid out only upon the order of the court. If there are any liens or encumbrances upon such plant, the nature and extent thereof shall be ascertained by the court after fixing a time for the hearing, of which all parties in interest shall have sufficient notice. The ascertained liens and encumbrances shall first be paid out of the said fund and the balance to the person, company or corporation owning such plant.

History: R.S. 1923, § 12-811; L. 1941, ch. 105, § 1; June 30.