

24-702. Hearing and proceedings on the petition; notice; commissioners, bonds, oath and duties; remonstrance by landowners; appeal to supreme court, time. (a) Upon the filing of the petition for drainage, as provided in K.S.A. 24-701, and amendments thereto, in the office of the clerk of the district court, the clerk shall enter a minute of the filing of such petition in the civil appearance docket of the court and shall fix a time for the hearing of such petition by the court, which shall not be less than 45 days nor more than 60 days after the filing of such petition. The clerk shall issue a notice directed to all persons, corporations and municipalities named in the petition as occupants or owners of lands, easements or other property to be affected by such drainage, other than the petitioners themselves, which notice shall be written or printed, and shall set forth the route of the proposed drain, as described in the petition, the fact of the filing and pendency of the petition, and the time when such petition will be heard.

(b) The notice, when issued by the clerk, shall be delivered to the sheriff of the county, and it shall be the duty of the sheriff to cause to be published in some newspaper printed and published in the county in which such drain is proposed to be established a copy of the notice, which notice shall be published and proof of publication made in the same manner as is provided by law for the publication of summons for nonresident defendants in civil action, the first publication of such notice to be at least 41 days prior to the day fixed for the hearing of such petition. All persons appearing at the hearing of such petition, and all persons, corporations or municipalities named in the notice published shall thereafter be deemed to have notice of all steps taken in such proceedings. If it appears to the court, at the time fixed for the hearing of such petition, that the publication has been given, the court shall consider such petition and hear any demurrer or written objection to the sufficiency of the petition offered by any person named in such petition, or by any other person who shall satisfy the court, by such showing as the court may require, that such person has an interest that will be affected by such drainage. All questions arising at the hearing of such petition shall be heard and determined by the court.

(c) If the court finds the petition defective, the same may be amended, by leave or order of the court, and if not so amended may be dismissed at the cost of the petitioner or petitioners. If, upon the hearing of such petition, the court finds and determines such petition to be sufficient, the court shall appoint two discreet citizens of the county, who, together with a civil engineer, who need not be a resident of the county, also to be appointed by the court, shall be commissioners to manage, control and conduct such proposed drainage, and shall fix a bond to be given by such commissioners, in such sum as the court may deem requisite, and such petition shall be referred to such commissioners for their action thereon. Before entering upon their duties as such commissioners, they shall give a joint and several bond to the state of Kansas in the sum fixed by the court, with one or more good and sufficient sureties thereon, to be approved by the judge of the court, conditioned for the faithful performance of their duties as such commissioners, and that they will faithfully account for and pay over all moneys that may come into their hands as such commissioners, and shall take and subscribe an oath before the clerk of the court that they will support the constitution of the United States and the constitution of the state of Kansas, and faithfully perform the duties of commissioners of drainage in such proceeding, and obey and perform all of the orders and directions of the court made therein. All objections to the petition or to any drainage commissioner not made before the reference of the petition to the drainage commissioners shall be deemed waived.

(d) The court shall have the power in the interest of justice to adjourn the hearing of such petition from time to time, in order that all persons interested may have an opportunity to be heard before the reference of such petition to the drainage commissioners. In the order of the court appointing such drainage commissioners, the court shall fix a time and place for the meeting of the drainage commissioners, and a time when they shall file their preliminary report. The clerk shall deliver to the commissioners a certified copy of the petition and of the order of their appointment, and they shall meet accordingly. The drainage commissioners shall make a personal inspection of the land described in the petition, and of all other lands likely to be affected by the proposed work. The commissioner who is an engineer shall make the necessary surveys for the purpose of ascertaining the facts from which to make their report, and such commissioners shall, within a reasonable time allowed and fixed by the court, make to the court a preliminary report in which such commissioners shall show:

(1) The source or head and general direction and outlet of the drain and of each arm or branch thereof, and average width and the depth, what part is to be opened and what part is to be tiled, if any, and whether it is to be dug by shovel, dredge or otherwise.

(2) A description of all lands which will be affected by the proposed drainage, with the names and residence of the owners, if known, and if not, so stating; also the name of any city, school district or other public corporation or highway or street not named in the petition which will be affected by such drainage.

(3) Whether such drainage is practicable and will be sufficient properly to drain the lands to be affected.

(4) Whether, when accomplished, the proposed drainage will improve the public health, benefit any public highway or grounds in the county, or any street or public grounds of any city therein, or be of public utility.

(e) Such report of the drainage commissioners, in all subsequent proceedings, shall be prima facie evidence of the facts therein stated. In case any lands not named in the petition and not owned by any person who has appeared in the petition are named in the second item of such preliminary report of the commissioners, notice of such report, setting out the substance thereof, shall be issued by the clerk, and shall be served and published by the sheriff in the same manner as provided for notice of the hearing of the petition. Any petitioner, landowner, corporation or municipality named in the petition, or who has appeared thereto, shall have 20 days from the filing of such preliminary report within which to file any exceptions thereto. Any landowner not named in the petition and whose lands are not described therein, but who is named in such report and lands therein described, and any city, school district or other municipality so brought in, shall have the same time for filing exceptions to such preliminary report as is required to be given of the time and place of the hearing of the petition.

(f) If the court, on examination of the preliminary report of the commissioners, finds that such drainage is not practicable, and will not be sufficient to properly drain the lands to be affected by it, or that it will not improve the public health, nor benefit any public highway or grounds in the county, or streets or public ground in any city, or be of public utility, or if 2/3 of the landowners affected, as shown by such preliminary report, within 20 days after the filing of such report, remonstrates against the construction of such proposed drain, the petition shall be dismissed. The court shall enter judgment against the petitioner or petitioners for all costs and expenses, including all compensation of the drainage commissioners. But if the court finds affirmatively as to each of such items, and if no remonstrance signed by 2/3 of the persons to be affected by such drainage is filed, the court shall refer the petition back to the drainage

commissioners, with directions to proceed with the work and make their final report, as provided in K.S.A. 24-705, and amendments thereto. Such order and judgment of the court in dismissing the petition or in referring it back to the drainage commissioners for a final report, and of prior rulings and orders of the court in relation to such drainage, shall be conclusive, unless proceedings in error be prosecuted therefrom to the supreme court, as hereinafter provided. Any person, corporation or municipality who is aggrieved by such judgment or dismissal or order of reference, or by any prior ruling or order of the court, may at the time of the ruling of the court on the preliminary report of the commissioners prosecute proceedings in error to the supreme court for the purpose of reversing any judgment, order or ruling of the court by which the party may feel aggrieved, by filing a written notice of such appeal within three days after the final order of the court made on the hearing of the preliminary report, and by filing with the clerk of the court, within 30 days thereafter, a bond, the amount to be fixed by the order of the court, or of the judge in vacation, conditioned that such person prosecuting error will pay all costs, expenses, damages and loss occasioned by such party proceeding in error, and by perfecting such party proceedings in error by filing in the supreme court such party's petition in error, with a case-made or transcript of the record thereof attached, within 90 days after the rendition of the judgment and the order of the court upon the hearing of the preliminary report of the commissioners.

(g) All parties affected by such proceedings shall take notice of such proceeding in error and be bound thereby, and all proceedings in the matter of such drainage shall be stayed until the determination of such proceeding in error. The rule of procedure for extending time for making a case, for suggesting amendments thereto and for settling and signing the same shall be the same as in ordinary civil actions. No appeal from the judgment or orders of the court made upon the hearing of the preliminary report of the commissioners shall be taken unless the same shall be perfected within 90 days after such judgment or order, but upon perfecting such proceeding in error, all previous orders and rulings of the court, made at any time in the proceedings, may be reviewed.

History: L. 1907, ch. 197, § 2; L. 1909, ch. 129, § 2; L. 1911, ch. 171, § 1; R.S. 1923, 24-702; L. 1992, ch. 314, § 5; July 1.