

2012 Kansas Statutes

19-3517. Procedure for purchase or acquisition of existing water supply and distribution system; assumption of indebtedness. In any water district so created and established as provided for in this act, the water district board may by resolution, declare it necessary for the benefit and interest of the water district to negotiate a purchase or otherwise acquire, control and operate such water supply and distribution system.

Upon the passage of such resolution, a certified copy shall be filed with the county clerk of the county in which a greatest portion of such water district is situated with a certificate of service stating that a copy of such resolution has been served on the secretary of the corporation owning such water supply and distribution system serving the water district, following which the water district board and the owner of the water supply [and] distribution system may negotiate a written agreement providing and setting forth terms, conditions and arrangements mutually agreeable to the water district board and the owner of said water supply and distribution system pursuant to which the water district may purchase and acquire the existing water supply and distribution system: *Provided*, That such purchase and acquisition shall not be made until and unless the question of making such purchase and acquisition shall have been submitted to a vote of the legal electors residing in the water district at a special election and a majority of those voting on the question shall have declared by their votes to be in favor of such purchase and acquisition; and such election shall be called, noticed, held and canvassed in like manner as provided in K.S.A. 19-3507 and 19-3508 for elections to issue revenue bonds for such water district except as herein otherwise provided; and that at any such election the question of the issuance of revenue bonds may also be submitted but such question, if so submitted, shall be submitted and voted on as a separate proposition. A copy of such negotiated agreement shall be published as a part of the notice of the special election at which the question of the purchase and acquisition of the existing water supply and distribution system pursuant thereto is to be voted upon. The proposition shall be stated on the ballot and submitted to the qualified electors in substantially the following form:

Water district No. _____ of _____ county, shall be authorized to acquire by purchase, in accordance with the terms of the negotiated agreement published in connection with the notice of this election, the water supply and distribution system of

(Here insert name of owner of water supply
and distribution system)

at an estimated aggregate cost to the water district of _____ dollars.

Yes] No]

If the proposition to purchase and acquire said water supply and distribution system in accordance with the negotiated agreement is not approved by a majority of the votes cast at the special election when such question is submitted to a vote of the electors or, if the water district board is unable to negotiate an agreement to purchase and acquire the existing water supply and distribution system which is agreeable to said board, a written petition shall be presented by the water district board to the district court of the county in which the greatest portion of such water district is located, which shall set forth the action of said water district board relative thereto, and the resolution so adopted by the water district board and shall contain a prayer for the appointment of appraisers if necessary to ascertain and determine the value of such water supply and distribution system. Thereupon a time and place shall be fixed by the court for the hearing thereof, notice of which shall be given by the clerk of the court at least ten (10) days prior thereto, in writing to the person, partnership, company or corporation owning said water supply and distribution system and to all persons of record having or claiming liens on such property and by causing a notice thereof to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the county in which the water district is located, the last publication to be not less than three (3) nor more than ten (10) days prior to such hearing.

At said hearing, the court or the judge thereof, in which said petition is filed, shall examine said petition and determine whether the petitioner has the power of eminent domain, and if found in the affirmative, such finding shall be entered in the record and the court or judge thereof shall thereupon make an order granting such petition. The court or judge thereof shall thereupon appoint three (3) appraisers, one (1) of whom shall be a licensed hydraulic engineer. The three (3) appraisers 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 water supply and distribution system and all appurtenances thereunto belonging or in any way appertaining. The said appraisers shall carefully examine said water supply and distribution system and may examine experts and persons familiar with the cost of construction and reproduction of such plant, and may resort to any other means by which they may arrive at the value thereof, and at a hearing the time and place of which shall be fixed by majority vote of the three (3) appraisers, who shall give written notice of such hearing to the water district board and to the person, partnership, company or corporation owning such water supply and distribution system and the water district board and the person, partnership, company or corporation owning such water supply and distribution system or either of them may produce such testimony before said appraisers as in their judgment seems material, necessary and desirable: *Provided*, That said appraisers may by majority vote terminate any such hearing of testimony. Said appraisers shall make their report in writing under oath and file the same with the clerk of the district court. Thereupon at a time and place to be fixed by the court, a hearing shall be had upon said report and the exceptions thereto. The clerk of the court shall give written notice of said hearing to the water district board and to the person, partnership, company or corporation owning any such water supply and distribution system. All exceptions to the appraisers' report must be in writing and filed with the clerk of the district court ten (10) days prior to the time fixed for the hearing of same. Thereupon the court shall confirm, reject or modify said report and its decision shall be a final order from which an appeal may be taken to the supreme court. If the water district board elects to pay the award of said appraisers as approved by the district court, it may do so at any time within six (6) months, from the date of the final order of the district court on the appraisers' report, if no appeal to the supreme court is taken, or from the date of final judgment in case an appeal is thereafter determined, by paying the amount of the award to the clerk of the court and thereupon the title and right of possession of such water supply and distribution system and appurtenances thereto belonging or in any way appertaining shall vest absolutely in the water district and said water district shall be entitled to immediate possession thereof and all remedies provided by law for the security of such title and possession.

When and if the purchase money is paid into the court for such water supply and distribution system 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, partnership, company or corporation owning such plant. If the water district board shall not within six (6) months comply with all of the terms of the final order of the district court or appeal therefrom, judgment for the cost of such proceedings, including appraisers' fees, which the court shall have power to fix, shall be entered against said water district. No condemnation proceedings instituted under the provisions of this act for the acquisition of an existing water supply and distribution system shall be maintained unless all of the real and personal property of such existing water supply and distribution system is included therein. If the water district board acquires the properties of a privately owned water district and supply system for and in the name of the water district by purchase, pursuant to a negotiated agreement, or otherwise it may assume in behalf of the district any outstanding indebtedness secured by a lien against said properties.

History: L. 1951, ch. 240, § 17; L. 1953, ch. 159, § 4; L. 1955, ch. 170, §2; L. 1957, ch. 192, § 11; April 17.