

Ch. 40 LAND—ACQUISITION—ABANDONMENT 40 § 14

to seventy-five, inclusive, of chapter one hundred and fifty-two shall be paid; but no money shall be appropriated for such purpose while the fund equals or exceeds one per cent of such assessed valuation. Such fund shall be managed and administered by the sinking fund commissioners of the city or town, if any, otherwise by the commissioners of trust funds of said city or town.

Library references: Municipal Corporations ¶887; C.J.S. Municipal Corporations § 1884.

Historical Note

St. 1923 c. 234.

Cross References

Appropriations, see section 5(1) of this chapter.

Law Review Commentaries

Liability insurance for cities and towns, workmen's compensation claims. George K. Gardner, 2 Annual Survey of Mass. Law, Boston College, pp. 181, 182 (1955).

[SCHOOL PHYSICIANS]

§ 13B. Residence quarters for school physicians. A town of not exceeding three thousand inhabitants which accepts this section by vote in town meeting may appropriate for free residence quarters for a school physician a sum not exceeding five hundred dollars.

Library references: Municipal Corporations ¶861; C.J.S. Municipal Corporations § 1840.

Historical Note

St. 1925 c. 303 § 1.

TAKING, PURCHASE AND ABANDONMENT OF LAND

§ 14. Purchase of land; conditions; limitations. The aldermen of any city, except Boston, or the selectmen of a town may purchase, or take by eminent domain under chapter seventy-nine, any land, easement or right therein within the city or town not already appropriated to public use, for any municipal purpose for which the purchase or taking of land, easement or right therein is not otherwise authorized or directed by statute; but no land, easement or right therein shall be taken or purchased under this section unless the taking or purchase thereof has previously been authorized by the city council or by vote of the town, nor until an appropriation of money, to be raised by loan or otherwise, has been made for the purpose by a

two thirds vote of the city council or by a two thirds vote of the town, and no lot of land shall be purchased for any municipal purpose by any city subject to this section for a price more than twenty-five per cent in excess of its average assessed valuation during the previous three years. As amended St.1933, c. 283, § 1.

Historical Note

St. 1848 c. 237 § 1.	St. 1894 c. 145.	St. 1915 c. 263.
St. 1851 c. 186.	St. 1897 c. 299 §§ 1, 4.	St. 1918 c. 291 §§ 6, 8.
St. 1855 c. 318.	St. 1899 c. 379 §§ 1, 4.	St. 1921 c. 486 § 7.
G.S. 1860 c. 38 § 38.	St. 1900 c. 437.	St. 1923 c. 266.
St. 1869 c. 411 § 1.	R.L. 1902 c. 25 §§ 45, 47.	St. 1925 c. 272.
St. 1874 c. 342.	St.1915 c. 143.	
P.S. 1882 c. 27 § 43; c. 44 § 40.		

St.1931, c. 336 validated certain votes taken by towns which related to land takings.

Sections 1 and 2 of St.1932, c. 68, which authorized the town of Marblehead to acquire unimproved lands to establish shore reservations, provided as follows:

"Section 1. For the purpose of establishing shore reservations, the town of Marblehead may from time to time take or purchase, subject to the provisions of section fourteen of chapter forty of

the General Laws, unimproved lands therein bordering on the sea, and may hold and maintain the same as such reservations under the supervision and control of the selectmen and subject to such rules and regulations as they may prescribe.

"Section 2. This act shall be submitted for acceptance to the voters of said town at a town meeting in the current year and shall take full effect upon its acceptance by a majority of the voters voting on the question."

Cross References

Applicability to a taking by park commissioners, see c. 45, § 3.
 City council, purchase or taking of land by, see c. 43, § 30.
 Constitutional authority for taking private property, see Const. Pt. 1, § 10.
 Parks, see c. 45, § 3.
 Public domain, see c. 45, § 20.
 Public schools, acquisition of property for, see c. 71, § 16.
 Public ways, taking of land by eminent domain for, see c. 82, § 24.

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Library references

Municipal Corporations ⇐ 221.
 C.J.S. Municipal Corporations § 950.

§ 40. § 13A

CITIES—TOWNS—DISTRICTS

§ 13A. Workmen's compensation insurance funds; management

Any city or town which has accepted chapter eight hundred and seven of the acts of nineteen hundred and thirteen and which accepts this section, by vote of the city council or of the voters in town meeting, may appropriate an amount not exceeding in any one year one twentieth of one per cent of its equalized valuation as defined in section one of chapter forty-four, to establish and maintain an insurance fund to pay workmen's compensation, from which any compensation payable under the provisions of sections sixty-nine to seventy-five, inclusive, of chapter one hundred and fifty-two shall be paid; but no money shall be appropriated for such purpose while the fund equals or exceeds one per cent of such equalized valuation. Such fund shall be managed and administered by the sinking fund commissioners of the city or town, if any, otherwise by the commissioners of trust funds of said city or town. If any city or town has such an insurance fund, it may appropriate from such fund, including the income thereof, such sums as may be necessary for the purpose of paying a proper charge for effecting insurance to cover its liability to pay workmen's compensation.

Amended by St.1963, c. 127; St.1969, c. 849, § 33; St.1974, c. 274.

1963 Amendment. St.1963, c. 127, approved May 29, 1974, added the third sentence to read: "If any city or town having such insurance fund has neglected or failed for a period of five consecutive years to appropriate funds therefor, for any reason other than that the maximum amount authorized in such fund has been accumulated, it may appropriate from such fund, including the income thereof, such sums as may be necessary for the purpose of paying a proper charge for effecting insurance to cover its liability to pay workmen's compensation."

1969 Amendment. St.1969, c. 849, § 33, approved Aug. 28, 1969, and by section 79 made effective July 1, 1971, modified first sentence by substituting "equalized valuation as defined in section one of chapter forty-four" for "assessed valuation" and by substituting "equalized" for "assessed".

St.1970, c. 194, § 4, amended section 79 to change the effective date of St.1969, c. 849, from July 1, 1971 to July 1, 1972.

St.1971, c. 766, § 29, amended section 79 to extend the effective date of St.1969, c. 849, from July 1, 1972 to July 1, 1973.

1974 Amendment. St.1974, c. 274, approved May 29, 1974, rewrote the third sentence.

1. In general

City or town which provides workmen's compensation benefits and self-insures pursuant to this section must provide workmen's compensation benefits for its Emergency Employment Act [42 U.S.C.A. § 4871 et seq.] employees in the same manner, and not through contract with private insurance carriers. Op.Atty.Gen. April 19, 1972, p. 113.

TAKING, PURCHASE AND ABANDONMENT OF LAND

§ 14. Purchase of land; conditions; limitations; definition

The aldermen of any city, except Boston, or the selectmen of a town may purchase, or take by eminent domain under chapter seventy-nine, any land, easement or right therein within the city or town not already appropriated to public use, for any municipal purpose for which the purchase or taking of land, easement or right therein is not otherwise authorized or directed by statute; but no land, easement or right therein shall be taken or purchased under this section unless the taking or purchase thereof has previously been authorized by the city council or by vote of the town, nor until an appropriation of money, to be raised by loan or otherwise, has been made for the purpose by a two thirds vote of the city council or by a two thirds vote of the town, and no lot of land shall be purchased for any municipal purpose by any city subject to this section for a price more than twenty-five per cent in excess of its average assessed valuation during the previous three years.

The words "municipal purpose", as used in this section, shall include any such land, easement or right therein within the city or town, so purchased or taken by

eminent domain for the purpose of conveying or granting the same to the commonwealth for the use of a regional community college.

As amended St.1967, c. 59, § 3.

1967 Amendment. St.1967, c. 59, § 3, an emergency act, approved March 21, 1967, added second paragraph. See, also, notes under c. 15, § 28.

Law Review Commentaries

Property, utility, and fairness; ethical foundations of "just compensation" law. Frank I. Michelman (1967) 80 Harvard L. Rev. 1165.

Library references

Comment. Conveyancing, see M.P.S. vol. 28, Park, § 505.

Power of cities and towns to acquire and hold property, see M.P.S. vol. 18, Hardy, § 11.

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1. In general

City's purported takings of land and interests in land without compliance with all the preliminary requirements prescribed by law were invalid. *Chwalek v. City of Pittsfield* (1975) 329 N.E.2d 156, 1975 Mass.App.Adv.Sh. 818.

Rule that public lands devoted to public use cannot be diverted to another inconsistent public use without plain and exclusive legislation authorizing that diversion applies only to lands which are in fact devoted to one public use. *Muir v. City of Leominster* (1974) 317 N.E.2d 212, 2 Mass. App. 587.

Town's authority to take land by eminent domain exists only where Legislature has delegated power in express terms or by necessary implication; it is not to be inferred from vague and doubtful general phrases. *Trustees of Reservations v. Town of Stockbridge* (1965) 204 N.E.2d 463, 348 Mass. 511.

St.1963, c. 824, authorizing town to acquire certain land by purchase or otherwise necessarily implied power of eminent domain. *Id.*

Provision of this section requiring a town vote for the purchase or taking of land where not otherwise authorized by statute, does not apply to the purchase or taking of land for conservation purposes which is so "otherwise authorized" by section 8C of this chapter. *Op.Atty.Gen. Dec. 12, 1969, p. 83.*

4. Construction and application

Requirement of § 8C of this chapter that municipal taking of land or waters for conservation purposes be founded upon written request of conservation commission is a condition precedent to validity of such a taking. *Town of Dedham v. Gobbi* (1978) 376 N.E.2d 1254, 1978 Mass.App.Adv.Sh. 622.

Inconclusive references in minutes of conservation commission and testimony of commission chairman concerning votes not recorded in minutes did not establish written request of conservation commission for purposes of § 8C of this chapter requiring that municipal taking of land or waters for conservation purposes be founded upon written request of commission. *Id.*

Word "taken" in section 15 of this chapter which sets forth the procedure for the abandonment by a city or town of any land taken for such city or town, otherwise than by purchase, and which is preceded by this section authorizing the taking by a city or town of land by eminent domain is used in its accepted and traditional meaning of "taken by eminent domain"; thus, section 15 of this chapter refers to abandonment of land taken by eminent domain and not to abandonment of land given to city. *Muir v. City of Leominster* (1974) 317 N.E.2d 212, 2 Mass.App. 587.

The word "municipal" was to be distinguished from and given considerably narrower meaning than word "public" in this section, and it was intention of legislature to limit "municipal" purposes for which town could take land by eminent domain to those in which land was to be held, used and operated for public purpose by town itself and those in which land was to be taken for purpose of conveying it to Commonwealth for use of regional community college. *Ballantine v. Town of Falmouth* (1973) 294 N.E.2d 524, 1 Mass.App. 47, affirmed 298 N.E.2d 695, 363 Mass. 760.

Statutes delegating power to appropriate private property for public use must be construed with reasonable strictness, so that no citizen shall be deprived of use and enjoyment of his land except by valid exercise of appropriating power subject to which all private property is held. *City of Newton v. Trustees of State Colleges* (1971) 270 N.E.2d 907, 359 Mass. 668.

The selectmen of a town may take land for town purposes only after the town's authorizing vote. *DeiPrete v. Board of Selectmen of Rockland* (1966) 220 N.E.2d 912, 351 Mass. 344.

Lumber Co. v. City of Boston (1910) 90 N.E. 598, 204 Mass. 218.

Under St.1890, c. 418, requiring the execution of a formal contract for the erection of a public building for a city in addition to the acceptance of the proposal, and providing that every proposal shall be accompanied by a deposit for the performance of the proposal, a bidder for the erection of a schoolhouse, who agrees that if, within 20 days after a specified date, notice that his proposal is accepted be given him, he will deliver a contract for the work, and that the deposit shall be the property of the city on his failure to carry out the proposal, must stand by his proposal, at least until the expiration of the specified time, and the acceptance by the city of a lower bid

is not a rejection of his bid, and a subsequent acceptance of his bid within the specified time, after refusal of a lower bidder to enter into a contract, is binding on the bidder, and on his failing to execute the contract the deposit is the property of the city. Id.

The provisions of Acts 1890, c. 418, §§ 4-6, requiring an advertisement for proposals for the construction of sewers costing more than \$2,000, and a bond for faithful performance of the contract, are conditions precedent to the building of the sewer, so that noncompliance therewith is a good defense to proceedings to collect assessments. Bowditch v. Superintendent of Streets of City of Boston (1897) 46 N.E. 1026, 168 Mass. 239.

§ 30. Purchase or taking of land. At the request of any department, and with the approval of the mayor and city council under Plan A, B or C, or with the approval of the city manager and the city council under Plan D or E, the city council may, in the name of the city, purchase, or take by eminent domain under chapter seventy-nine, any land within its limits for any municipal purpose. Whenever the price proposed to be paid for land for any municipal purpose is more than twenty-five per cent higher than its average assessed valuation during the previous three years the land shall not be purchased, but shall be taken as aforesaid. No land shall be taken or purchased until an appropriation by loan or otherwise for the general purpose for which land is needed has been made by the city council, by a two thirds vote of all its members; nor shall a price be paid in excess of the appropriation, unless a larger sum is awarded by a court of competent jurisdiction. All proceedings in the taking of land shall be under the advice of the law department, and a record thereof shall be kept by said department. As amended St.1938, c. 378, § 11; St.1948, c. 459, § 7.

Historical Note

St. 1915 c. 267 pt. 1

§ 30.

The 1948 amendment changed only the first sentence of the section by requiring the approval of the manager and

city council, instead of the approval of the mayor and council, in cities under Plan D charters.

Cross References

Eminent domain, generally, see Const. pt. 1, art. 10; c. 79, § 1 et seq.

Taking or purchase of land by cities and towns authorized, see c. 40, § 14.

Law Review Commentaries

Conflict between agencies with eminent domain power. Richard G. Huber, 11 Annual Survey of Mass.Law, Boston College, p. 178 (1964).

Constitutional limitations on eminent domain. (Feb.1964) 77 Harvard L.Rev. 717.

Eminent domain. Cornelius J. Moynihan, 4 Annual Survey of Mass.Law, Boston College, p. 70 (1957).

Extent of the power of eminent domain. (Jan.1902) 15 Harvard L.Rev. 399.

Land damage evidence. Walter H. McLaughlin, Jr., 11 Annual Survey of Mass.Law, Boston College, p. 287 (1964).

Public use land. Richard G. Huber, 10 Annual Survey of Mass.Law, Boston College, p. 159 (1963).

Right of attaching creditor to eminent domain damages. George P. Davis, 11

Annual Survey of Mass.Law, Boston College, p. 19 (1964).

Severance damages in eminent domain. Richard G. Huber, 11 Annual Survey of Mass.Law, Boston College, p. 179 (1964).

Tenancy at sufferance created by eminent domain. William Schwartz, 11 Annual Survey of Mass.Law, Boston College, p. 25 (1964).

Validity of takings by eminent domain and easement. Joseph C. Duggan, 3 Annual Survey of Mass.Law, Boston College, p. 181 (1956).

Value evidence in eminent domain. Richard G. Huber, 11 Annual Survey of Mass.Law, Boston College, p. 180 (1964).

Who owns the railroad bed? (June 1967) 52 Mass.L.Q. No. 2, p. 182.

§ 1. Order of taking; contents

The taking of real estate or of any interest therein by right of eminent domain may be effected in the following manner. A board of officers upon whom authority to take real estate by eminent domain on behalf of any body politic or corporate has been conferred by law, having first complied with all the preliminary requirements prescribed by law, may adopt an order of taking, which shall contain a description of the land taken sufficiently accurate for identification, and shall state the interest therein taken and the purpose for which such property is taken, and in case such taking is for an improvement for which betterments may be assessed shall state whether betterments are to be assessed therefor. In case there are trees upon the land taken, or structures affixed thereto, the order of taking shall state whether the same are to be included in the taking, and, if they are not so included, shall allow the owner a reasonable time after the date of the order or after entry or possession to remove the same, to be specified in the order.

Sec.

- 662. Municipal Property.
- 663. Alternate Method of Eminent Domain Takings and Betterment Assessments by Judicial Proceedings.
- 664. Requirement of Offers in Settlement or Payments Pro Tanto.
- 665. Status of Tenant of Property Taken.
- 666. Relocation Assistance.
- 667. Miscellaneous Considerations.

Library References:

C.J.S. Eminent Domain § 1 et seq.
West's Key No. Digests, Eminent Domain ⇐ 1 et seq.

§ 641. The Right to Take by Eminent Domain for Municipal Purposes

The general laws authorize any city, except Boston, and any town, to take by eminent domain, land, or easements or rights in land, not already appropriated to public use, for any municipal purpose. Every such taking must be preceded by a specific vote of authorization and a two-thirds vote appropriating funds for the purpose by the city council or by the town, as the case may be.¹ A taking without such previous authority or appropriation

1. M.G.L.A. c. 40, § 14. There is a similar authorization for charter cities. See M.G.L.A. c. 43, § 30.

M.G.L.A. c. 40, § 14 was intended to enlarge the powers of municipalities to take land needed for municipal purposes where that power was not given by any other statute. See *Burnham v. Mayor and Aldermen of Beverly*, 309 Mass. 388, 35 N.E.2d 242, 135 A.L.R. 750 (1941). (This case upheld the right of the city to take land for a municipal airport.)

In *Ellison v. City of Haverhill*, 309 Mass. 350, 35 N.E.2d 202 (1941), it was held that the requirement of a two-thirds vote appropriating money under this section was satisfied by a two-thirds vote of the city council members present at the meeting.

Instances where the required votes preceding the takings were defective are referred to in *Reed v. City of Springfield*, 258 Mass. 115, 154 N.E. 554 (1927), where the city council order, authorizing the park commissioners to take land for park purposes, failed to describe or refer to the petitioner's land; and in *Walker v. City of Medford*, 272 Mass. 161, 172 N.E. 248 (1930), where the board of aldermen failed, in its order, to state the interest in the land to be taken.

Whether a taking by eminent domain is for a public use is a judicial question. The fact that the legislature has declared a certain purpose a public use is not conclusive. However, if the purpose is a public use, the expediency of taking a particular piece of land is a legis-



CITY OF CAMBRIDGE

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OFFICE OF
THE CITY CLERK

May 21, 1979

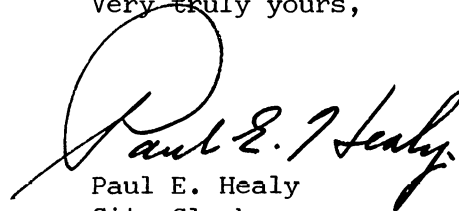
The Honorable, the City Council
City Hall
Cambridge, Massachusetts

Dear Councillor:

Enclosed please find copies of Chapter 40, Sections 13A and 14; Chapter 43, Section 30; Chapter 79, Section 1 and Section 641 of Municipal Practice relative to the taking and purchase of land by eminent domain in the Commonwealth of Massachusetts.

As you can appreciate, all sections should be read together and it should appear that Chapter 43, Section 30 is the controlling legislation for cities operating under the Plan E Charter.

Very truly yours,


Paul E. Healy
City Clerk

PEH/cs

Enc.

13. S-288

Comm. from Paul E. Healy, City Clerk, transmitting copies of Chapter 40, Sections 13A and 14; Chapter 43, Section 30; Chapter 79, Section 1 and Section 641 of Municipal Practice re: taking and purchase of land in the Comm'lth of Massachusetts.

In City Council,
May 21, 1979

5/21/1979
Referred to the
City Solicitor.
Copy sent 5/23/79