

CODE OF ORDINANCES

OF THE CITY OF

ELMIRA, NEW YORK

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be subject to a penalty not to exceed twenty-five dollars for each offense; and in case an order required the doing of any act or the making of any change, repair or improvement, to an additional penalty not exceeding fifty dollars, to be fixed by said city manager in said order for each day on which compliance with and obedience to said order is neglected or refused, to be sued for and recovered by the City of Elmira, and to be credited to the "street fund," and shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or be imprisoned not exceeding fifty days or both such fine and imprisonment in the discretion of the court. (L. 1906, ch. 477, § 166; L.L. No. 1950-4)

Editor's note—See general footnote to article X.

ARTICLE X-A. WATER DEPARTMENT*

Sec. 166-a. Water department a corporation; composition of water board.

The Water Department of the City of Elmira shall consist of a board of five water commissioners to be known as the Elmira Water Board, which shall be a body corporate and in that name may sue and be sued. The commissioners shall be elected for terms of five years each as provided in section one hundred sixty-six-b hereof. Each commissioner of the Elmira Water Board shall receive compensation in the amount of seventy-five dollars (\$75.00) per meeting attended for his or her services as commissioner. The present commissioners shall continue to hold office for the duration of their respective terms as members of such board until their successors are elected.

(L. 1950, ch. 535; L.L. No. 1987-3, § 1; L.L. No. 2002-2, § 1; L.L. No. 2010-1, § 1)

***Editor's note**—Article X-A was added by L. 1950, ch. 535, which repealed L. 1913, ch. 660.

Sec. 166-b. Election of commissioners.

On the first Tuesday in June in each year an election shall be held in the City of Elmira for the purpose of electing a qualified citizen, resident and taxpayer of said city to fill the office of water commissioner, the term of which expires on that day or an unexpired term of which must be filled on that day. Public notice of said election shall be published by the council of the City of Elmira in the official paper of said city once in each of the two weeks preceding said election. Such election shall be held at some convenient and central place or places in said city to be designated by the council, which shall annually at its first regular meeting in May preceding each such election appoint three freeholders and qualified voters of the city to be inspectors of election for each polling place designated and may fill vacancies occurring in their number. The hours of such election shall be from eight o'clock in the morning until five o'clock in the afternoon. Only resident taxpayers of the City of Elmira of the age of twenty-one years or over, whose names appear in the assessment roll made by the assessors of said city next preceding such special election shall be entitled to vote. The election of said water commissioners shall be by ballot. Not more than forty nor less than ten days before the date fixed for such election, each candidate shall file in the city clerk's office a petition signed by at least twenty-five electors, eligible to vote at the last gubernatorial election designating said person as a candidate for election as a commissioner of the Elmira water board. The city clerk shall prepare, cause to be printed and supplied for use at such election official ballots. The ballots shall contain the following matter: Instructions to voters, conforming to those in the general officers' ballot, but without reference to the emblem; title of the office; direction as to the number to be voted for; names of nominated candidates; voting square at the left of each name; below the

name or names, a blank space or spaces in which the voter may write the name of any person for whom he desires to vote whose name is not printed on the ballot.

Except as so provided no names of candidates for election to the office of water commissioner shall be printed, written, stamped or in any manner placed on the official ballot. In case of failure to hold the election at the time aforesaid, or in case of failure for any cause to elect a commissioner or commissioners at the time designated for the election, the council of the City of Elmira shall at its next regular meeting thereafter name a day for the holding of an election giving the same notice of such time as is provided above; and such election shall be conducted in all respects as hereinbefore provided.
(L. 1950, ch. 535)

Sec. 166-c. Term of office and qualifications of commissioners.

The term of office of each water commissioner, except when chosen to fill a vacancy, shall be for five years from the date of election; when elected to fill a vacancy, it shall be for the unexpired term of the commissioner whose place he was elected to fill. Each commissioner shall continue in office until the election and qualification of his successor. All commissioners shall be citizens, electors and taxpayers of the City of Elmira and shall have resided in said city at least five years before their election or appointment.
(L. 1950, ch. 535)

Sec. 166-d. Vacancies and removal of commissioners.

The office of water commissioner shall become vacant upon the happening of any of the events specified in section thirty of the public officers law. Any water commissioner may, at any time be suspended or removed from office by the council after a hearing on grounds of incompetency or misconduct. The

person whose removal is sought shall have written notice of such proposed removal and of the reasons therefor, and shall be furnished with a copy of any charges preferred against him, and shall be allowed a reasonable time for answering same in writing. Resignations must be submitted in writing to the city clerk and shall take effect upon delivery to him or when filed in his office. In case of a vacancy in the office of water commissioner, the council shall fill such vacancy by appointment, and the person appointed shall hold his office until the next annual election of water commissioners at which the vacancy can be filled and until another shall qualify and take his place. Every commissioner, whether appointed or elected, shall before entering upon his duties of office, and within fifteen days after the mailing by the city clerk of notice of his appointment or election, take and sign in the city clerk's office the constitutional oath of office; and before entering upon his duties of office shall also file in the city clerk's office a bond to the City of Elmira in a penal sum to be fixed by the council, with a surety company authorized to do business in the State of New York to be approved by the council, conditioned for the faithful performance of his duties as such commissioner.

(L. 1950, ch. 535)

Sec. 166-e. Presiding officer; appointment; powers and duties.

The presiding officer of the water board shall be the president, chosen by a majority of the board for the term of one year at the annual meeting thereof which shall be held in the month of June in each year following the election of commissioners at a time convenient to the board. He shall, in addition to presiding at all meetings of the board, sign all checks authorized by the board for the payment of moneys and carry out such other duties as the bylaws may provide. In the case

of his absence or inability to act, any commissioner may sign checks authorized by the board.

(L. 1950, ch. 535)

Sec. 166-f. Secretary and treasurer; corporation counsel, legal adviser.

(a) The Elmira water board shall appoint a secretary and a treasurer who shall be subject to removal at the discretion of the commissioners; subject, however, to the provisions of the civil service law and the rules of the municipal civil service commission of the City of Elmira.

(b) The secretary and the treasurer shall receive salaries to be fixed by said board. The secretary shall keep a record of the appointment or election and qualification of the commissioners and the organization of the board and shall keep the records of said board and its proceedings, sign and issue notices of meetings, and perform such other duties as board may direct.

(c) The treasurer shall, before entering upon the duties of his office hereinafter set out, file with the city clerk a bond to the City of Elmira, in a penalty to be fixed by the council, and with a surety company authorized to do business in the State of New York, to be approved by said council, conditioned for the faithful performance of his duties as such treasurer.

(d) The premiums on all surety company bonds furnished by commissioners of the Elmira water board and its officers and employees shall be paid out of the treasury of said board. The treasurer shall, in addition to the president, sign all checks authorized by the board for the payment of money.

(e) All moneys derived from the penalties and water rates provided by this act shall be paid to the treasurer of said water board, and shall by him be immediately deposited to the

credit of the Elmira water board in the bank, banks or trust company designated by the commissioners. The treasurer of the Elmira water board is hereby authorized and directed to prepare or cause to be prepared, and at all times to keep a book or records in which shall be entered all moneys received and deposited by him in any bank, banks or trust company and all moneys paid out on orders or checks signed by him, and also shall keep on file all resolutions, instruments and other papers received by him and a record of all acts and things required to be done by him under the provisions of this act.

(f) Notwithstanding any other provisions of this act, the commissioners by resolution may establish a petty cash fund for payment by the treasurer in advance of audit of properly itemized and verified or certified bills for materials, supplies or services furnished to the Elmira water board for the conduct of its affairs, and upon terms calling for the payment of cash to the vendor upon the delivery of any such material or supplies, or the rendering of any such services. The amount of such petty cash fund shall not exceed one thousand dollars. At the time of any payment from a petty cash fund the treasurer shall require delivery to him of a bill in form sufficient for audit. At each meeting of the Elmira water board a list of all expenditures made from such petty cash fund since the last meeting of said board, together with the bills supporting said expenditure, shall be presented by the treasurer to the board for complete audit. The board shall direct the treasurer to reimburse such petty cash fund, from the proper accounts, in an amount equal to the total of such bills which it shall so audit and allow. Any of such bills or any portion of any of such bills which the board shall refuse to audit and allow, shall be the personal responsibility of the treasurer, and the treasurer shall promptly reimburse such petty cash fund in the amount of such disallowances. If such reimbursement has not

been made by the time of the first payment of salary to the treasurer after the action of the board disallowing an amount so expended, such amount shall be withheld from such salary payment and, if necessary, subsequent salary payments, and paid into such petty cash fund until an amount equal to the amount so disallowed in the audit of the Elmira water board has been repaid to the petty cash fund. Any bond or undertaking filed by the treasurer shall be available to the Elmira water board or the City of Elmira for recovery of any losses incurred by reason of the operation of any such petty cash fund.

(g) The treasurer may, if authorized by a general resolution of the board, pay fixed salaries, principal or interest, on a bonded indebtedness or other loan, or for the regular or stated compensation of officers and employees of the water board, including per diem laborers, and general bills providing for discount for prompt payment, without prior audit by the board when said expenditures fall due prior to a regular meeting of the board.

(h) The corporation counsel of the City of Elmira shall be counsel for said Elmira water board, and shall have charge of the legal business of said board, and in addition to his salary as corporation counsel, shall be paid such additional compensation for his services as counsel to the said water board as may be fixed and determined by said board. He shall also be paid his necessary expenses and disbursements in any action or proceeding brought by or against the board, and shall receive all costs and allowances collected from the adverse party for his own use. (L. 1950, ch. 535)

Sec. 166-g. Duties of city chamberlain.

The city chamberlain shall annually at the close of business for the calendar year verify the balances of the Elmira water board and report same to the council. He shall have the

right to make such examinations of the books of the water board during the course of the year he deems advisable.

(L. 1950, ch. 535)

Sec. 166-h. Conduct of business.

A formal notice of every meeting shall be given to each commissioner a reasonable time before the meeting or notice mailed to his address at least twenty-four hours prior to said meeting. The water board shall provide in its bylaws for the time, place and number of regular meetings, except that said board shall meet regularly at least once a month. Special meetings may be called by the president or any commissioner upon twenty-four hours' notice. Any action of the board shall require the approval of at least three commissioners. The yeas and nays shall be taken on every resolution, and the vote thereon recorded in full in the minutes of the board.

(L. 1950, ch. 535)

Sec. 166-i. Bylaws, rules and regulations.

The said Elmira water board shall make, publish and enforce all needful bylaws, rules and regulations in relation to their own government and for the protection and operation of the water works, and all the property and appurtenances thereof, and in relation to the management thereof and the supply of water thereby, whether to individuals or corporations, and may alter and modify the same from time to time, and may fix a penalty not exceeding five hundred dollars (\$500.00) for the violation of any said rules and regulations. The city council may aid enforcement by ordinance. The said water board may prosecute in its own name for all violations of said rules, regulations and ordinances. The bylaws, rules and regulations, and all amendments thereto shall be filed in the office of the water board and in the city clerk's office before they shall take legal effect.

(L. 1950, ch. 535; L.L. No. 1988-1, § 1)

Sec. 166-j. Commissioners not to be interested in contracts.

No commissioner of the Elmira water board, or any of its officers, shall be directly or indirectly interested in any contract relating to property acquired or work done or materials furnished under the authority or provisions of this article or in any other manner in any contract, lease, concession or other agreement in which the city is a party. Any violation of this provision shall be a misdemeanor, and all contracts made in violation of this section shall be void.

(L. 1950, ch. 535)

Sec. 166-k. Eligibility of city officers.

The acceptance by any city officer of the office of water commissioner of the Elmira water board shall not be deemed to vacate the city office so held, nor shall the appointment of the city chamberlain or corporation counsel to the position of treasurer or counsel respectively for the water board be deemed to vacate their respective city offices or in any way affect their right to compensation for services in the respective offices. Immediately upon the effective date of this article, the city chamberlain shall transfer all accounts, funds, records, and checks in his office pertaining to the water board to the treasurer appointed pursuant to this section.

(L. 1950, ch. 535)

Sec. 166-l. Liability of commissioners and officers.

(1) As used in this section, unless the context otherwise requires:

- (a) The term "commissioner" shall be the duly elected commission of the Elmira water board;
- (b) The term "officer" shall include the general manager and secretary-treasurer.

(2) [Duty to provide defense:]

- (a) Upon compliance by the commissioner or officer with the provisions of subdivision four (4) of this section, the Elmira water board shall provide for the defense of the commissioner or officer in any civil action or proceeding in any municipal, state or federal court, including an action or proceeding which is brought to enforce a provision of section 1981 or section 1983 of Title 42 of the United States Code, arising out of any alleged act or omission which occurred while the commissioner or officer was acting within the scope or his or her public duties. This duty to provide for a defense shall not arise where such civil proceeding is brought by or on behalf of the Elmira water board.
- (b) Subject to the provisions set forth in paragraph (a) of this subdivision, the commissioner or officer shall be entitled to be represented by the Elmira water board attorney, except that the commissioner or officer shall be entitled to be represented by private counsel in any civil judicial proceeding as follows:
 - (i) Whenever the Elmira water board attorney determines, based upon an investigation and review of the facts and circumstances of the case, that representation by the Elmira water board attorney would be inappropriate; or
 - (ii) Whenever the Elmira water board attorney determines, based upon an investigation and review of the facts and circumstances of the case, that representation by the Elmira water board attorney would be inadvisable due to the unavailability of resources in the department of law; or

- (iii) Whenever a court of competent jurisdiction, upon proper motion or by a special proceeding, determines that a conflict of interest exists and that the commissioner or officer is entitled to be represented by private counsel; and
- (iv) Where such representation by private counsel is approved by act of the Elmira water board.

Where a commissioner or officer is entitled to representation by private counsel pursuant to subparagraph (i), (ii), (iii), hereof, the Elmira water board attorney shall notify the commissioner or officer in writing of such determination and so certify in a communication to the Elmira water board. Where the Elmira water board approves such representation, it shall designate the private counsel to be retained. Upon approval by the Elmira water board, the general manager of the Elmira water board shall notify the commissioner or officer in writing of such determination. Reasonable attorneys' fees and litigation expenses shall be paid by the Elmira water board to such private counsel from time to time during the pendency of the civil action of proceeding, subject to approval by act of the Elmira water board.

- (c) Where the commissioner or officer delivers process and a written request for a defense to the Elmira water board attorney as required by subdivision four (4) of this section, the Elmira water board attorney shall take all necessary steps on behalf of the commissioner or officer to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(3) [Indemnification; representation:]

- (a) The Elmira water board shall indemnify and save harmless its commissioners or officers in the amount of any judgment obtained against such commissioner or officer in any municipal, state or federal court, or in the amount of any settlement of a claim provided that the act or omission from which such judgment or settlement arose occurred while the commissioner or officer was acting within the scope of his or her public employment or duties. The duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the commissioner or officer.
- (b) Where a commissioner or officer is represented by private counsel, any proposed settlement which may be subject to indemnification by the Elmira water board shall be submitted by counsel to the Elmira water board. The Elmira water board shall review such proposed settlement and shall give its approval if, in its judgment, the settlement is in the best interest of the Elmira water board. After approval by the Elmira water board, the settlement shall be paid upon the audit and warrant of the budget officer. Nothing in this subdivision shall be construed to authorize the Elmira water board to indemnify or save harmless a commissioner or officer with respect to a settlement not so reviewed and approved by the Elmira water board.
- (c) Where a commissioner or officer is represented by the Elmira water board attorney, any proposed settlement which may be subject to indemnification by the Elmira water board shall

be submitted by the Elmira water board attorney to the Elmira water board. The Elmira water board shall review such proposed settlement and give its approval if, in its judgment, the settlement is in the best interest of the Elmira water board. After approval by the Elmira water board, the settlement shall be paid upon the audit and warrant of the budget officer. Nothing in this subdivision shall be construed to authorize the Elmira water board to indemnify or save harmless a commissioner or officer with respect to a settlement not so reviewed and approved by the Elmira water board.

- (d) Nothing in this subdivision shall authorize the Elmira water board to indemnify or save harmless a commissioner or officer with respect to fines or penalties.
- (e) Within ten (10) days of entry of a final judgment against a commissioner or officer represented by private counsel, (i) a copy of such judgment along with a written statement recommending either payment of the judgment or prosecution of an appeal shall be submitted by counsel to the Elmira water board by certified or registered mail, and (ii) a protective notice of appeal shall be filed by counsel with the court, whereupon the Elmira water board shall authorize either payment of the judgment or prosecution of an appeal, whichever may be in the best interests of the Elmira water board. Where payment of the judgment is authorized, it shall be paid upon the audit and warrant of the budget officer. Where prosecution of any appeal is authorized, reasonable attorney's fees and litigation expenses shall be paid by the Elmira water board to

such private counsel from time to time during the pendency of the appeal, subject to approval by act of the Elmira water board.

- (f) Upon entry of a final judgment against a commissioner or officer represented by the Elmira water board attorney, a copy of such judgment shall be submitted to the Elmira water board by the Elmira water board attorney within ten (10) days where the Elmira water board attorney believes payment of the judgment to be in the best interest of the Elmira water board. Where payment of the judgment is authorized by act of the Elmira water board, it shall be paid upon the audit and warrant of the budget officer.

(4) The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (i) delivery by the commissioner or officer to the Elmira water board attorney at the office of the department of law of the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after said commissioner or officer is served with such document and prior to the entry of any default judgment, together with (ii) a written request from the commissioner or officer for a defense, and (iii) the full cooperation of the commissioner or officer in the defense of such action or proceeding and in defense of any action or proceeding against the Elmira water board based upon the same act or omission and in the prosecution of any appeal. In the event that the Elmira water board attorney shall assume a commissioner's or officer's defense and thereafter the commissioner or officer fails to or refuses to cooperate in the formation or presentation of his defense, the court shall permit the Elmira water board attorney to withdraw his representation ten (10) days after giving written notice to the commissioner or officer of his intention to discontinue such representation.

(5) In the event that the act or omission upon which the court proceeding against the commissioner or officer is based was or is also the basis of a disciplinary proceeding by the commissioner's or officer's agency against the commissioner or officer, representation by the Elmira water board attorney and indemnification by the Elmira water board may be withheld (i) until such disciplinary proceeding has been resolved and (ii) unless the resolution of the disciplinary proceeding exonerated the commissioner or officer as to such act or omission.

(6) The benefits of this section shall inure only to commissioners or officers as defined herein and shall not enlarge or diminish the rights of any other party.

(7) This section shall not in any way affect the obligation of any claimant to give notice to the Elmira water board under any provision of law.

(8) The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(9) The provisions of this section shall apply to all actions and proceedings instituted on or after the effective date thereof.

(10) Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer, or commissioner of the Elmira water board or any other level of government, or any right to defense and/or indemnification provided for any commissioner or officer by, in accordance with, or by reason of any other provision of municipal, state or federal statutory or common law.

(11) The provisions of this section shall not be separable to the end that if any such provision or the application thereof to any

person or circumstances be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall render the remaining provisions of this section null and void pending further action by the Elmira water board.

(L. 1950, ch. 535; L.L. No. 1986-1, §§ 1—11)

Sec. 166-m. Attendance at conventions.

The Elmira water board may by a majority vote of its members authorize any one or more of its commissioners, officers, agents or employees to attend an official or unofficial convention of water works employees if believed to be of benefit to the City of Elmira. Such authorization must be by resolution adopted prior to such attendance duly entered in the records of the proceedings of the board. All actual and necessary expenses of travel, meals and lodging by any persons so authorized to attend a convention shall be a charge against the Elmira water board and the amount thereof shall be audited, allowed and paid in the same manner as are other claims against the Elmira water board. If travel is by a car owned by any person so authorized, he shall receive reimbursement therefor on the basis of a mileage rate which the Elmira water board established by resolution as the fair value of the use of a personally owned car on official business. No such person shall be entitled to any compensation for the time spent in attending such convention except that no deduction shall be made from the salary of a person so attending because of such attendance.

The board by general resolution may empower the manager to allow any officer or employee, including himself, to travel on the business of the water board and certify to the board for audit his or her expenses as above provided.

(L. 1950, ch. 535)

Sec. 166-n. Powers of the board.

(a) The Elmira water board is hereby authorized and empowered, for and in the name of the City of Elmira, to maintain control and operate a system of water works, including the existing water system and facilities, to furnish the City of Elmira and its inhabitants and territory in the county of Chemung and persons, corporations and inhabitants thereof with water.

(aa) The general manager of the water board is the chief executive of the board and shall have full power to appoint and terminate all employees except the officers and counsel of the board; subject, however, to the provisions of the Civil Service Law and the rules of the municipal civil service commission of the City of Elmira.

(b) The Elmira water board may employ and discharge managers, officers and counsel and fix their compensation; subject, however, to the provisions of the Civil Service Law and the rules of the municipal civil service commission of the City of Elmira.

(c) The Elmira water board may perform public work and repair work relating to its functions using for such purpose its own employees or private contractors.

(d) The Elmira water board may also contract for, purchase and acquire by deed or otherwise in the name of the City of Elmira, all lands, water easements, property, tenements, hereditaments, rights, privileges and franchises to any ponds, lakes, springs, streams, and any and all sources of water supply whatsoever; also to any and all dams, reservoirs, mains, pipes, conduits, hydrants, machinery and all other real and personal property whatsoever necessary for the maintenance, control and operation of said water works, and for supplying any and all necessary materials therefor.

(e) The Elmira water board is authorized to acquire by purchase or condemnation proceedings any lands, water rights, rights-of-way, or other property, whatsoever [wheresoever] situated, which it shall deem necessary in order to supply water for the purposes of this article, and to contract for such property and to construct such works as in its discretion may be necessary. The condemnation law of the State of New York shall govern and will be applicable in all proceedings taken under this article for the condemnation of property, where the same is not inconsistent with the provisions of this act.

(f) The Elmira water board, except as herein otherwise provided, shall have power to make all contracts necessary or incidental to the execution of the powers conferred by this article, but no contract for the purchase of equipment, material or supplies requiring an expenditure of more than three thousand dollars (\$3,000.00) or a contract for public work involving an expenditure of five thousand dollars (\$5,000.00) shall be entered into without first advertising in the official newspaper published in the City of Elmira, and such other papers and periodicals as said board may direct, for proposals to enter into contract for the work, materials or supplies required. At least five (5) days shall elapse between the publication of such advertisement and the reading of bids. All such contracts shall be let to the lowest responsible bidder, who shall furnish such security for the faithful performance of the contract as shall be approved by the board; but the board may, as many times as it shall determine, reject any and all of such bids in its discretion and readvertise for proposals. Each proposal received shall be publicly opened in the presence of a commissioner or the manager of the water board at its main office at the time designated in the proposal and each proposal received and each contract entered into by the board, or the copies thereof, shall be filed

with the secretary of the board, and each bid must be accompanied with such security as said board shall prescribe.

(g) The Elmira water board shall have power to insure, keep insured and pay the premiums on policies on any or all of the property of the water board against fire, theft, liability, workmen's compensation, and any other type of insurance deemed advisable by the board.

(h) The Elmira water board shall keep books, showing the cost of acquisition, construction and maintenance of said water works and of extending the same, and all its collections, receipts, expenditures, proceedings, or doings, and shall make a report thereof to the said council at or before the last regular meeting of said council in the month of February of each year, and as often as the council may require; and shall furnish at all times such other or further information as to the business and affairs of the board as may be required by the council. All the books, records, vouchers, contracts and all other papers kept by the Elmira water board, or in its possession or under its control, shall at all reasonable times be subject to inspection of the mayor and council or of any committee or agent designated by either of them.

(i) The Elmira water board shall have power by resolution to establish and to change from time to time a mileage rate of reimbursement for the fair value of the use of personally owned cars on official business.

(j) The Elmira water board may delegate to the manager power to hire laborers at stated rates of compensation, subject, however, to the provisions of the civil service law and the rules of the municipal civil service commission of the City of Elmira, and such other ministerial powers as it deems advisable in the efficient operation of the water department.

(k) For the purpose of succession to functions, powers and duties of the water board, heretofore created and existing under chapter six hundred sixty of the laws of nineteen hundred thirteen in the control of the existing system and facilities of the City of Elmira, the board hereby created shall be deemed and held to constitute a continuation thereof.

(l) The water board shall have the power, at the request of the City of Elmira, to provide information to the City of Elmira and the Chemung County-Elmira Sewer District regarding water usage of its customers, to prepare and mail sewer bills based on water consumption, and to enter into contracts and execute any necessary papers to carry out the foregoing powers.

(L. 1950, ch. 535; L.L. No. 1978-4, § 1; L.L. No. 1979-3, § 1; L.L. No. 1981-1, § 1)

Sec. 166-o. Power to establish rates and discounts.

The Elmira water board shall from time to time fix and determine and may modify, alter and amend, increase or decrease the water rates to be paid by all consumers of water, provided always that the rates and charges for water service shall be such as will produce revenue at least sufficient to pay when due all bonds and interest thereon which the City of Elmira may have issued for water purposes, and to provide for all expenses of operation and maintenance including reserves therefor of the Elmira water works system, and it may provide that a discount shall be allowed for the prompt payment of water charges within the time required by the board for the payment thereof and for penalties and interest for delayed payment thereof, or both, provided that said schedules shall be filed in the office of the water board and in the city clerk's office before becoming effective. The Elmira water board may earn from and out of its operations an amount equivalent to taxes which the said water

board if privately owned would pay to the City of Elmira, and in addition the Elmira water board may earn from and out of its operations at least a fair return on the value of the property used and useful in such water works system over and above the costs of operation and necessary and proper reserves. Profits or surplus resulting from the operation of such water works system may be used by the City of Elmira for general municipal purposes provided that a request therefor is made by the council to the water board between the time of the filing of the chief executive officer's estimate of sums required for operation of the city for the particular year and the time that the budget for that particular year is adopted by the council.

The Elmira water board may require a deposit from the owner or tenant of any building in a sum to be fixed by it not greater than the cost of the meter installed, which deposit shall be paid to the water board prior to the installation of a water meter or the providing of water service to said building. The Elmira water board shall place the moneys deposited in a special account and may invest same in obligations of the federal government, obligations of the State of New York or obligations of the City of Elmira only, and may pay interest thereon to the depositor at a rate fixed by the board not greater than the prevailing rate of interest allowed on savings bank deposits.

The City of Elmira shall not be liable for any charge for water used for municipal purposes or for the rental of hydrants on any municipal property within the corporate limits of the city, or elsewhere if specifically exempted by resolution of the board.
(L. 1950, ch. 535)

Sec. 166-p. Collection of water charges; liens.

The Elmira water board shall collect the charges for water supply to the dwellings,

buildings, places, establishments or uses of individuals, companies or corporations, determine when the same shall be due and payable and shall have the right to discontinue or shut off and refuse to turn on any water for nonpayment of any charges for water services or service installation costs, or violation of any rules or regulations of said board. Charges for water service, together with the amount of any penalty prescribed by the board and due for nonpayment of such charges within the time prescribed by the board, shall be a lien on the real property wherever located upon which the water is used from the time such charge is recorded in the office of the Elmira water board. Charges for service installation costs, laying of mains and individual connections shall be a lien on the property benefited from the time a notice of such lien is filed in the office of the clerk of the county of Chemung. Such liens are prior and superior to every other lien or claim except the lien of an existing tax and the water commissioner may bring and maintain an action in the name of the Elmira water board to recover the amount thereof or to foreclose the lien for such water charges in the manner provided by article three of the lien law.

(L. 1950, ch. 535)

Sec. 166-q. Right to sell water outside city.

Said board may sell water to any corporation or individual outside of the city and the right to make connections with the mains for the purpose of using water therefrom and fix the price and charges therefor, the payment of which and enforcement of the collection thereof shall be enforced in the same manner as in the city, but said water board shall not permit such use of water if thereby the supply of water for the city or its inhabitants will be insufficient.

(L. 1950, ch. 535)

Sec. 166-r. Handling of funds.

The amount derived from receipts from all sources except from the proceeds of obligations shall be applied:

1. To the payment of the necessary cost of maintaining, managing and operating the said system of water works.
2. To the payment of the principal of and interest on all city obligations issued to finance water supply.
3. To the payment of the cost of necessary extensions and additions.
4. To providing a capital reserve fund for the construction, reconstruction or acquisition of specific capital improvements or the acquisition of a type of equipment, or for repairs to its property and equipment, except that no funds may be placed in such a fund without specific authorization of the city council. The moneys so appropriated shall be deposited in any bank, banks, or trust company designated by resolution of the Elmira water board in special funds kept in separate bank accounts. The Elmira water board may invest the moneys in each such fund only in obligations of the federal government, obligations of the State of New York or obligations of the City of Elmira. Obligations so purchased shall be registered in the name of the Elmira water board and shall be purchased only if they are payable or redeemable at the option of the holder within two years of the date of purchase. Any interest earned or capital gains realized on the moneys so deposited or invested shall accrue to and become part of each such fund. The separate identity of each such fund shall be maintained, whether its assets consist of cash or investments or both. No expenditures shall be made from such

funds except pursuant to a resolution by the Elmira water board and only for the purposes for which the fund was established. The commissioners of the Elmira water board are hereby declared trustees of such funds and shall be subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by the City of Elmira or by any officer or taxpayer thereof.

(L. 1950, ch. 535)

Sec. 166-s. Payment of deficiencies.

In any year in which said income shall be sufficient for the purpose of maintaining and operating the said system of water works, and paying the debt service thereon, the Elmira water board shall certify to the council of said city on or before the first regular meeting of the council held in January of each year the amount thereof, and the council shall make due provision for the payment of said deficiency.

(L. 1950, ch. 535)

Sec. 166-t. Obligations issued by the council of the City of Elmira.

Whenever any capital improvement to the water system is deemed necessary by the Elmira water board, and no funds are available for such capital improvements from the income, receipt earnings, capital reserve funds or surplus of said water works or from any other source herein provided, the Elmira water board may thereupon certify such facts to the council of said city together with a description of such proposed capital improvement and a statement of the amount needed therefor, and if the council concurs therein, said council shall raise the same taxation in the next succeeding annual tax levy. Provided, however, that in any event such improvement may be financed by the council

pursuant to the local finance law. The proceeds, inclusive of premiums, from the sale of bonds, bond anticipation notes or budget notes, shall be deposited in a special account in a bank or trust company located and authorized to do business in this state designated by the board, shall not be commingled with other funds of the Elmira water board and shall be expended only for the object or purpose for which such obligations were issued. In the event that any portion of the proceeds, inclusive of premiums, from the sale of bonds, bond anticipation notes, capital notes or budget notes, is not expended for the object or purpose for which such obligations were issued, such portion shall be applied only to the payment of the principal of and interest on such obligations respectively. Notwithstanding the foregoing provisions of this section, the council of the City of Elmira may adopt a resolution providing that the proceeds, inclusive of premiums of capital notes issued in amounts of one hundred thousand dollars or less and all budget notes, need not be deposited in a special account but may be deposited and commingled with other funds of the Elmira water board in any account of the Elmira water board in a bank or trust company located and authorized to do business in this state designated by said Elmira water board, but such power shall not be construed as authorizing the use of such proceeds for an object or purpose other than that for which the obligations were issued but shall be subject to taxation outside the corporate limits of the city.

(L. 1950, ch. 535)

Sec. 166-u. Exemption from taxation.

The property of the Elmira water board located within the corporate limits of the city shall not be subject to taxation.

(L. 1950, ch. 535)

Sec. 166-v. Right to use streets.

The Elmira water board, and all persons acting under its authority and direction, shall

have the right to enter, appropriate, occupy and use any public street, highway, square, avenue, road, park or other public grounds for the purpose of constructing, maintaining and operating the water works system herein provided for only after obtaining permission from the local public official or his designated representative in charge thereof, or in the case of state highways, after complying with the conditions and regulations of the superintendent of public works, but the said board shall in all cases restore such public street, highway, square, avenue, road, park and public ground to its former condition under the direction and supervision of the public official or his designated representative in charge of maintaining such.

(L. 1950, ch. 535)

Sec. 166-w. Inspection of premises.

Said commissioners, their representatives and employees are authorized at all times to enter into any building or place where water is used from supply pipes of the board to examine as to the pipes, water, quantity of water used, and manner of using it.

(L. 1950, ch. 535)

Sec. 166-x. Injury to property.

Any willful act whereby the said water works or any property, apparatus or appliances pertaining thereto shall be injured, or the supply of water wrongfully obstructed, impeded, impaired, or diverted or made less pure, shall be a misdemeanor.

(L. 1950, ch. 535)

Sec. 166-y. Inconsistent provisions in other acts superseded.

In so far as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any local law of the city, the provisions of this title shall be controlling, except that all power and authority conferred by this article shall be limited

by the provisions of the conservation law of the State of New York, and in construing the provisions of this article and the conservation law, the latter shall control.

(L. 1950, ch. 535)

Sec. 166-z. Title not affected if in part unconstitutional or ineffective.

If any section, clause or provision of this title shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

(L. 1950, ch. 535)

ARTICLE XI. DEPARTMENT OF FIRE*

Sec. 167. [Number of commissioners.]

The fire department of the City of Elmira shall be under the general control and management of fire commissioners thereof, who shall be the mayor and two other persons (to serve without compensation), who shall constitute a board of fire commissioners for said city.

(L. 1906, ch. 477, § 167)

Editor's note—See general footnote to article XI.

Sec. 168. [Appointments and terms of office.]

The present fire commissioners shall respectively continue to be such until the expiration of the term or period for which they

***Editor's note**—Plan "C" of the Optional City Government Law, L. 1914, ch. 444, was adopted by Elmira in May 1932. Pursuant to section 37 of said law an ordinance was passed January 1, 1934, abolishing the offices of the fire commissioners and vesting their powers and duties in the city manager.

were appointed. At the first regular meeting of the common council after the expiration of the terms of office of the present fire commissioners, respectively, or as soon thereafter as may be, the mayor shall nominate from the electors of said city, and by and with the consent of a majority of all the members of the common council, appoint fire commissioners to fill such vacancies. At the first regular meeting of the common council in January, nineteen hundred and seven, and at the first regular meeting of the common council in January in each year thereafter, or as soon thereafter as may be, their successors shall be appointed in the same manner, each of whom shall hold his office for a period of two years. All appointments of said commissioners shall be so made that not more than one of said commissioners and the mayor shall be adherents of the same political party.

(L. 1906, ch. 477, § 168)

Editor's note—See general footnote to article XI.

Sec. 169. [Quorum; rules and bylaws.]

The mayor shall be president and the city clerk shall be clerk of said board, and any two of said commissioners shall form a quorum for the transaction of any business other than the appointment or dismissal of members of the fire department, and such board may adopt rules and bylaws for the government thereof, and also may establish, promulgate and enforce proper rules, regulations and orders for the good government and discipline of the whole department, and cause a suitable number of copies thereof to be printed for the use of the department, provided that such rules, regulations or orders shall not conflict with any of the provisions of this act, or with the laws or constitution of this state or of the United States; and said board shall have the charge and control of the fire engines, other apparatus and teams for the extinguishment of fires, and shall have au-