

24-705. Duties of commissioners upon second reference of petition; assessments; report; remonstrances; hearing; modification, change and approval of report. After the petition has been referred to the drainage commissioners for the second time, with directions to proceed with the work and make their final report, as provided in K.S.A. 24-702, the commissioners, in case there be no proceeding in error from the judgment and order of the court, or in case the petition be sustained on error, shall proceed accordingly and determine definitely the best and cheapest method of drainage, the route, location and character of the proposed work, and fix the same by metes and bounds, courses, distances, and description, grades and bench marks, including all necessary arms or branches, so as to provide for complete drainage of all the lands to be affected by the proposed work; divide the drain or ditch into sections, each not more than one hundred feet in length; compute and set out the number of cubic yards of excavation in each section; and assess the benefits or damages, as the case may be, to each separate tract of land to be affected and to easements held by railroads or other corporations, as well as to cities, school districts, or other municipalities, including any land, rights, easements or water power injuriously affected, and to make report to the court under oath, as directed. The drainage commissioners, in locating the line or lines of work of drainage, may vary from the line described in the petition as they may deem best, and may fix the beginning or outlet so as to procure [secure]the best results; they may run the line so as to avoid all injury possible to lands, easements, or public grounds, and so as to benefit public highways by using the earth excavated for roadbeds, or in any other way they deem best: Provided, That in no case shall they so change or construct the work as to sacrifice the object of drainage. They may determine that the method of drainage shall be by removing obstructions from a natural or artificial watercourse, or diverting such watercourse from its channel; by deepening, widening or changing the channel of such watercourse; by constructing an artificial channel, with or without arms or branches; by providing that such drain shall be open or tiled and covered, or partly open and partly tiled, and dug by shovel, dredge, or otherwise; by constructing levees or dikes, or by any or all of such methods combined: Provided, That such drain shall not be located so close to any lake covering two acres or more of ground as to lower the water level of the lake, and shall at no point be nearer than twenty rods to the high-water mark of such lake, except only where such drain empties into such lake.

Upon the filing of such report, ten days, exclusive of the day of filing and of Sundays, shall be allowed to any person or corporation affected by such drainage, or whose lands are assessed for benefits or damages, to remonstrate in writing against the report, which remonstrance shall be sworn to and made for any of the following causes: (1) That the report is not made according to law; (2) that the benefits assessed against or damages assessed for any person or persons, corporation or corporations, are either too great or too small. The right of remonstrance is preserved to all persons and corporations affected by said drainage, either on account of the manner in which the benefits are assessed against or damages assessed for the remonstrant, or for or against any other person affected by the drainage.

It is the intention that any person affected by such drainage, feeling aggrieved by any part of said report, shall have the right of remonstrance against the same. After the expiration of ten days from the filing of such report the court shall, at its earliest convenience, hear and consider all remonstrances filed against said report, and if upon the hearing, it being decided that the first of the abovenamed causes of remonstrance is true, the court may direct the drainage commissioners to amend and perfect their report, or may, in its discretion, set aside the report and refer the matter again to the commissioners for a new report. After making such order for the amendment of their report or for a new report, the court shall fix the time and place for the meeting of the commissioners and when they shall report; and when such amended report or such new report is made and filed, any person or corporation affected thereby, or whose lands are affected thereby, may remonstrate in writing, within the time and for the causes in this section hereinbefore provided. If any remonstrance on account of erroneous or unfair assessment of benefits or damages shall be sustained, the court may modify and equalize the assessments as justice may require, by diminishing or increasing any assessment for benefits, or by giving or withholding, increasing or diminishing damages. For the purpose of hearing and determining all remonstrances and modifying assessments, all persons or corporations who are shown by such report to be affected, or whose lands are shown to be affected, or who are named in the petition as affected, or who have appeared to the petition, or who have been served as provided for in K.S.A. 24-701, shall be deemed to be in court for all purposes by reason of such appearance, or by virtue of the notice theretofore given them. The assessments of benefits and damages as made by the drainage commissioners in the final report, and as changed, equalized and confirmed by the court, shall stand and be adjudged valid. If there be no remonstrance, or if the finding and judgment of the court be against all the remonstrances, or if the court shall have corrected and equalized the assessments as hereinbefore provided, it shall make an order approving the assessments as made by the drainage commissioners, or as modified and equalized by the court, and shall declare the proposed work established.

History: L. 1907, ch. 197, § 3; L. 1909, ch. 128, § 1; March 25; R.S. 1923, 24-705.