

MUNICIPAL ENGINEERS, CONTRACTORS, AND MATERIALS.

specifically given some other officer, were vested in its village Board. The contract, for a breach of which this action is brought against the city of Superior, the successor in interest and liability of the village, was entered into by and between the Board of Trustees of the village of Superior, and McCann, the assignor of the plaintiff, for the construction at a designated place, of a furnace known as the 'Eagle Garbage Cremating Furnace,' with Kilvington improvements, and all processes for consuming by fire manure, garbage and dead animals, as a means of conserving the health of the city, and of abating nuisances, and preventing sickness and disease. The authority of the village to make the contract is denied. It is urged that the village Board had no power, express or implied, for that purpose. Aside from what may be fairly considered within the general powers of the village to carry out the public purposes for which it was created, the village Board had express power 'to appoint a board of health, * * * to declare what are nuisances, and to prevent or abate the same; * * * and to prevent persons from bringing, depositing or leaving within the village any putrid carcass or other unwholesome substance; to require the owners or occupants of lands to remove dead animals, stagnant water or other unwholesome substance from their premises; and 'to ordain and establish all such ordinance and by-laws for the government and good order of the village * * * and the promotion of health, not inconsistent with the Constitution and laws of the United States or of this State, as they shall deem expedient.' Rev. St. § 892, subds. 20, 26. The powers vested by subdivision 26 were to be exercised by ordinances and by-laws, and, being for the enactment of general and permanent rules, cannot, it is contended (and many authorities are cited to that effect), be exercised in any other manner; while the powers conferred by subdivision 20 may be exercised 'by ordinance, resolution, law or vote.' Sec. 892. The power 'to prevent or abate nuisances'—that which occasions public hurt or inconvenience—is necessarily a very broad and comprehensive one, and essential, if not indispensable, to the purpose for which it was created. It would hardly be questioned by any one that if garbage, manure or dead animals were found within the village, in the interest of good order, cleanliness and public health, the Board of Trustees would have power to abate such nuisances by removing or otherwise making suitable disposition of them. To this end it might provide for destroying them, instead of fouling the waters of a lake or stream of water with them, to be again cast up to the prejudice of the public, or depositing them where they would create a new nuisance. To this end, if a garbage crematory becomes necessary, the Board may, within a fair and bona fide exercise of their discretion, contract for its construction, and the village will be bound by the contract.

(To be continued.)

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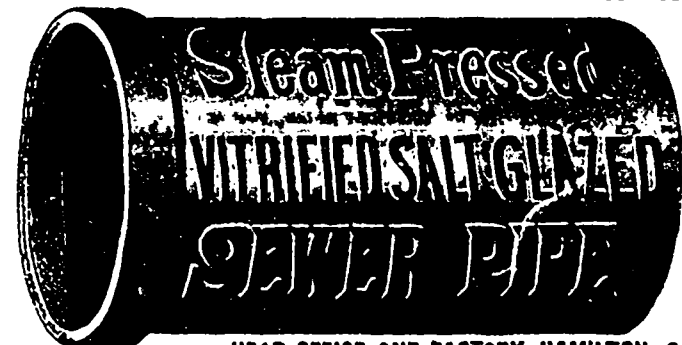
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