

PRIVATE LAWS OF NORTH CAROLINA

SESSION 1925

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Chapter 124

AN ACT TO AMEND CHAPTER 48, PRIVATE LAWS OF 1911, INCORPORATING THE TOWN OF BANNER ELK.

The General Assembly of North Carolina do enact:

SECTION 1. That the town of Banner Elk in the county of Avery shall continue to be, as heretofore a body corporate under the name and style of "the town of Banner Elk" and in and by that name may sue and be sued, plead and be impleaded, contract and be contracted with, acquire and hold property both real and personal for the use of the town, adopt a common seal, have all the privileges and immunities, and all the powers granted by statute and those necessarily implied by law.

SEC. 2. That W. C. Tate, the present mayor of the town of Banner Elk, F. H. Stinson, Edgar H. Tufts and R. C. Lowe, the present commissioners, and S. W. Culver, the present marshal, be and the same are hereby declared to be the officers of said town and as such shall hold their respective offices until their successors are duly elected and qualified as hereinafter provided.

SEC. 3. That the corporate limits of the town of Banner Elk shall be and remain as they are now, that is to say: Beginning at S. W. Culver's southeast corner of his ten acre tract in Mrs. M. L. Hall's line on the side of the Horse Bottom ridge, running a northwesterly course with said Hall's line to her northwest corner; thence same course to the top of the ridge in the Dugger mountain field; thence a direct line to F. H. Stinson's hemlock corner; thence west with the line of said Stinson, Michael Banner and L. D. Lowe to L. D. Lowe's line to the creek; thence down with the meanders of the creek to a point where said creek approaches the margin of the turnpike road below R. L. Hodge's store; thence south to Elk Creek;

thence up with the meanders of the creek to the foot bridge at the head of the S. H. Banner mill pond; thence with the top of the Horse Bottom ridge to the high knob; thence to the first station.

SEC. 4. That the officers of the town of Banner Elk, North Carolina, shall consist as heretofore of a mayor and three commissioners to be elected by ballot on the first Monday in May, one thousand nine hundred and twenty-five, and biennially thereafter on the said first Monday in May; also a town marshal and clerk to the board, to be chosen by the board of town commissioners, to hold their offices for a term of two years or until their successors are duly elected and qualified and for that purpose an election is hereby ordered to be held on the said first Monday in May, one thousand nine hundred and twenty-five, and biennially thereafter for the purpose aforesaid. The said election shall be held under the same rules and regulations as prescribed by law for holding municipal elections in this State.

SEC. 5. That the board of commissioners of said town of Banner Elk shall have power to lay out and open up streets and alleys; to build concrete sidewalks, construct bridges and culverts, to condemn land for the purpose of making new streets or widening or lengthening those already made, to macadamize certain streets, and make any necessary improvements for the use and convenience of the town.

SEC. 6. That when it becomes necessary to acquire any land for the purpose of opening up any new street or the widening of any street already open and for want of agreement with the owner as to the value of said land, and if the same cannot be purchased from the owner at a fair price the same may be condemned and taken at a valuation, the same to be made by three disinterested freeholders, to be chosen, one by the landowner, one by the commissioners of the town, and

the two thus chosen may choose the third, or if the landowner shall fail or refuse to choose a freeholder as above directed the town commissioners may choose two, who shall elect a third; and in making said valuation the men selected after being duly sworn by some officer qualified to administer oaths shall take into consideration the loss or damage which may occur to the owner in consequence of the land being condemned and also any benefit or advantage such owner may receive by the opening or widening of such street or other improvement, and ascertain the sum assessed to be paid to the owner of said property, if any they find due, and report the same to the commissioners under their hands and seals, which report on being confirmed and spread upon their minutes shall have the effect of a judgment against said board of commissioners and shall also pass the title to the land to said board of commissioners in their corporate capacity for the use of the town. But nothing herein shall prevent either party from appealing to the Superior Court in case of dissatisfaction with the findings and report of the jury so chosen: Provided, such appeal shall not hinder or delay the opening or widening of any street or stop the work on any other necessary improvement.

SEC. 7. All male persons residing in the town of Banner Elk between the ages of eighteen and forty-five years shall be required to work on the streets of said town five (5) days in each year, and such work on the streets aforesaid shall exempt such persons from work on any other public road in the county: Provided, that if any person who is or may be liable to work on the streets aforesaid shall pay to the marshal of the town two dollars on the day before he is notified to work, the same shall be accepted in lieu of such work, and the sum so collected shall be paid over to the use of the town by the marshal or overseer whose duty it is to collect it. If any person who is liable to work on the streets as aforesaid who refuses to work the streets when notified to do so and fails and refuses

to pay the sum of two dollars as aforesaid shall be deemed guilty of a misdemeanor and upon conviction be fined not less than five nor more than ten dollars for each and every offense.

SEC. 8. The board of commissioners of the town of Banner Elk shall have power annually to levy and cause to be collected taxes for necessary town purposes on all real and personal property, all moneys, credits, investments in bonds, stocks, joint stock companies and all other personal property whatever and all taxable polls within the limits of said town: Provided, however, that the taxes levied by said commissioners shall not exceed fifty cents on the hundred dollars valuation on all real and personal property and one dollar and fifty cents on each taxable poll, and the valuation on all town property shall be the same as assessed for taxation for State and county purposes.

SEC. 9. That all taxes levied by said town commissioners shall be due and payable on the first day of October of each year to the town marshal or tax collector appointed by the commissioners, and in the matter of the collection of the taxes aforesaid the town marshal or tax collector appointed by the commissioners aforesaid shall have all the power conferred on sheriffs in the matter of the collection of taxes due for State and county purposes and the said town marshal or tax collector shall have power to sell any personal property for the nonpayment of taxes and shall have power to sell real estate under the same rules and regulations as land is now sold by the sheriff for the nonpayment of taxes and make title in fee to the purchaser thereof, and such deed shall be construed to be prima facie evidence of title to all intents and purposes the same as if the land had been sold by the sheriff.

SEC. 10. That the commissioners of the town of Banner Elk shall have the power to levy and cause to be collected privilege taxes on all traveling shows or sleight of hand performances or exhibitions of any kind not of a religious or educational character.

SEC. 11. That the commissioners of the town aforesaid shall have power and authority to pass and proclaim such town ordinances for the better government of the town as may seem necessary and proper.

SEC. 12. That the marshal of the town before entering upon the discharge of his duties as town marshal shall enter into a bond of five hundred dollars with approved security, payable to the town for the faithful discharge of his duties of the office, and whenever said marshal or tax collector appointed by the commissioners shall receive the tax books he shall enter into a bond, approved by the board of commissioners, in the sum of double the amount of the tax books. Such bonds shall be filed with the records of the town.

SEC. 13. That the jurisdiction of the mayor of the town of Banner Elk shall be the same as a justice of the peace, receiving the same fees as justices for similar duties, and any violation of a town ordinance shall be deemed a misdemeanor, triable before the mayor, who may upon his own motion issue his warrant for any person guilty of an offense when he is reasonably satisfied that an offense has been committed.

SEC. 14. That the commissioners of the town may require and compel the abatement of nuisances; have the power to remove or cause to be removed any old barn or other building when too near the street as to be offensive or a menace to health. But nothing herein shall be construed to authorize the removal or destruction of any house or barn without first giving notice to the owner of such intention and to pay to such owner what is reasonable and just as compensation for such removal or destruction.

SEC. 15. That the marshal or tax collector of the town of Banner Elk is hereby authorized and empowered to collect all the arrears of taxes now appearing on the tax books as may be due for the years one thousand nine hundred twenty-two, one thousand nine hundred twenty-three and one thousand nine hundred

twenty-four, and is hereby empowered to make immediate collection of the same by distraint and sale of personal property belonging to the delinquent taxpayer and to advertise and sell any real estate belonging to any delinquent taxpayer within the limits of the town and any sale made by him of either real or personal property is hereby validated.

SEC. 16. That all laws and clauses of laws of laws in conflict with this act are hereby repealed.

SEC. 17. That this act shall be in force from and after its ratification.

Ratified this the 6th day of March, A. D. 1925.