

HOUSE No. 1052

The Commonwealth of Massachusetts

REPORT OF THE ATTORNEY GENERAL ON THE CLAIM OF NAPOLEON BENOIT FOR DAMAGES IN CONNECTION WITH THE RE- LEASE OF SEWAGE FROM THE BELCHER- TOWN STATE SCHOOL SEWAGE DISPOSAL BEDS.

Pursuant to chapter 27 of the Resolves of 1934, I have investigated the claim of Napoleon Benoit, referred to in House Document No. 665 of the year 1934.

The property of Napoleon Benoit consists of a farm of about sixteen and one-half acres, situated about a mile and a half below the filter beds at the Belchertown State School. Mr. Benoit purchased the farm in 1915 and paid \$1,800 for it at that time. Since then he has made a number of improvements on the farm, having built a 100-foot coop, a 50-foot coop, and four brooder houses, the farm having been conducted by him, since he purchased it, as a chicken farm. He also, in 1920, built a two-car garage on the property.

The assessed valuation of the property for 1933 was as follows:

House lot (2 acres)	\$50 00
Clough lot (8 acres)	75 00
House	400 00
Barn	125 00
6 hen houses	250 00
Garage	100 00
Cow	40 00
450 hens	225 00
Total	\$1,265 00

Mr. Benoit claims to have been offered \$6,500 for the property in 1921. This included not only the land and buildings, but also some 400 odd hens. He states that he has at the present time about 900 hens and chickens, and during the spring the number runs as high as 2,000 hens and chickens.

The property of Napoleon Benoit is located in the western part of Belchertown, near the Granby line, and on both sides of a stream which receives the effluent from the filter beds at the Belchertown State School, at a point approximately two miles below the point where the filter beds are located. The brook runs through about 300 feet of the Benoit farm.

The filter beds were put into use on October 13, 1923, and have been operated since without interruption. An analysis of the effluent, taken every two months, where the main drain comes into the brook, and an analysis of the water in the brook where the brook first crosses the highway, taken every two months, by the Department of Public Health, show that the sewage disposal plant or filter system at Belchertown is a model one. These tests disclose that the effluent has been purified to a high degree, and that no pollution could have been caused to this stream by sewage escaping from the filter beds at the state institution after they were put into operation.

Prior to October 13, 1923, however, that is, during the year 1923 up to October and the latter part of the year 1922, raw sewage from the Belchertown State School was discharged directly into this brook, which ran through the petitioner's farm.

On October 25, 1922, 17 employees began to live at the main group of buildings. From this time until October 13, 1923, the sewage from the main group discharged into the brook running through the property.

November, 1922, found 228 patients and 40 employees at the main group.

March 31, 1923, found 302 patients and 73 employees at the main group.

May 24, 1923, the sewage from the Farm Colony buildings was turned into the main sewage line, which discharged into the brook.

June, 1923, the population increased to 400 patients and 96 employees.

On October 12, 1923, there were 479 patients and 96 employees at the main group.

On October 13, 1923, the discharge of sewage into the brook was stopped and the filter beds put into operation, since which time they have operated without interruption, and there has been no further contamination to the brook by sewage.

There is no doubt, therefore, that this brook was polluted in the latter part of 1922 and 1923 from a water supply standpoint on account of this sewage. This would necessarily be so because the brook is not large and does not have a very large run-off of water in it. There is dumped into the brook at the present time about 150,000 gallons of effluent daily, while the drainage area for the brook, at the point where Benoit's farm is located, is about four square miles; and the water run-off, during the dry weather in that drainage area, is estimated to be not more than about 50,000 gallons per square mile, or, in other words, the flow of water in this brook from this drainage area in dry weather is estimated to be as low as 200,000 gallons a day.

Consequently, it may be seen that the water in the brook at times is almost equal parts effluent from the filter beds and water from the drainage area. I mention this to show that the brook is of such size that the dumping of raw sewage into it in any considerable quantity could not help but have the effect of polluting it.

Mr. Benoit is not real definite as to when he first noticed pollution in the brook. He states, however, that after he noticed trouble from the brook, that is, after he detected an odor in the water and considerable discoloration of the water as it was going through his property, he received complaints from purchasers of his

eggs. He states that this was because he used the water from the brook for his hens, having filled pans in his hen yard with the water for the hens to drink. He also testified that his cow and horse would not drink the water.

Mr. Benoit also testified that after receiving a number of such complaints, and after personally observing the condition of the brook itself, he consulted some poultryman who told him that the water was unquestionably the cause of the trouble with the eggs.

Since having this trouble with the water, Mr. Benoit states that he has felt obliged to carry water from another source to his hens and cow. He states that he has not attempted to use the water since the time he first had trouble with it because there is still some slight odor from the brook.

It is a fact that there is still some slight odor from the brook when the effluent mixes with the water in the stream, but, as pointed out earlier in this report, this effluent is well purified.

In answer to a question as to why Mr. Benoit did not make his claim earlier, he stated that he had been considering selling his farm, and he felt that if he made a claim it would be an encumbrance upon his title and might affect his chances to sell his property.

In addition to hearing Mr. Benoit and his witnesses and counsel, I have gone over the matter very carefully with Dr. George E. McPherson of the Belchertown State School and Messrs. Arthur D. Weston and Edward Wright of the Department of Public Health.

I have tried to consider the matter broadly, even though the claim made by Mr. Benoit in House Document No. 665 would be limited to release of sewage from the sewage disposal beds and not for the damage caused by the discharge of sewage before the construction and operation of the filter beds.

The damage suffered by Mr. Benoit I believe to be similar to that suffered by Fred T. Doerpholz and others. A report in connection with these claims was filed by former Attorney General Jay R. Benton in 1926, being House Document No. 220 of that year.

I believe that Mr. Benoit suffered damage from the discharge of raw sewage in this brook during the years 1922 and 1923, and while it is difficult to estimate the amount of the damage, having in mind that the raising of chickens was his principal and almost entire work, and having in mind the number of chickens which were raised by him and the extra work made necessary by the pollution that existed, I believe that fair compensation for that damage at the present time would be \$900.

It is my opinion that there is no other person owning property in this section besides Mr. Benoit who has not already been compensated for damage which was suffered from this condition. The brook, after it travels through the Benoit property, is considerably augmented in size and has a much larger volume of water because of additional brooks running into it, so that the effect of pollution in the brook further away from the Benoit property would not be felt.

I append hereto draft of legislation necessary to carry this recommendation into effect.

Respectfully submitted,

JOSEPH E. WARNER,
Attorney General.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Five.

Resolve in Favor of Napoleon Benoit of Belchertown.

1 *Resolved*, That, after an appropriation has been
2 made, there be allowed and paid out of the state
3 treasury to Napoleon Benoit, of Belchertown, the
4 sum of nine hundred dollars, in full compensation
5 and satisfaction for all claims and demands whatso-
6 ever against the commonwealth which he ever had,
7 now has, or which he or his heirs, executors, ad-
8 ministrators or assigns, hereafter can, shall or may
9 have for all damages to his property or business by
10 reason of sewage escaping or released from the
11 Belchertown state school or sewage or treated sew-
12 age which may escape or be released from the sewage
13 disposal beds erected on the grounds of said school,
14 as now maintained and operated, into the brook
15 flowing down through the farm of the said Benoit.
16 The said amount shall be certified by the comptroller
17 of the commonwealth only upon the filing of a re-
18 lease, in form approved by the attorney general,
19 duly executed by the said Napoleon Benoit, agreeing
20 that the said sum is received in full satisfaction of
21 any and all claims against the commonwealth and
22 against any officer, agent or employee of the com-
23 monwealth on account of such damages.

HOME

Dear Mother, I received your letter of the 10th and was glad to hear from you. I am well and hope these few lines will find you the same.

I have not much news to write at present. The weather here is very pleasant and I am enjoying my work.

I have not heard from you for some time and I am sure you are busy. I hope you will write soon and let me know how you are getting on.

I am sure you will be glad to hear from me and I will be glad to hear from you.

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