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Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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## CHAPTER 5B

## Public Officers and Employees in General

## STATE EMPLOYEES' RETIREMENT ASSOCIATION

**254-1. Definitions.**—That the following words and phrases as used in this Act, unless a different meaning is plainly required by the context, shall have the following meaning:

1. "State Employee" shall mean any person holding a state office or regularly employed by the state in any capacity whatever and whose salary is paid either by warrant of the state auditor or from the fees or income of any department or agency of the state, excepting court commissioners, district judges, and the president, deans, professors, and instructors in the state university and in the state teachers' colleges, but shall not include temporary employees. Any employee who has been employed for a period of over six months continuously shall become a member, any classification of employes as temporary, permanent, or otherwise, by the head of any department, or any commission or agency of the state notwithstanding.

2. "Head of Department" shall mean the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves and submits salary abstracts of its employes to the state auditor and state treasurer.

3. "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member and the total amount of assessments paid by a member in lieu of such deductions and credited to his or her individual account in the retirement fund, without interest.

4. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, and all other moneys paid into the state treasury or received by the retirement board pursuant to the provisions of this Act, together with all income and profits therefrom and interest thereon. (Act Apr. 15, 1929, c. 191, §1; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238.)

The title of the amendatory act (Laws 1933, c. 326) reads: "An act to amend Laws 1929, Chapter 191, Section 1, Subdivision 1; Sections 2, 4, 9, 10, 11 and 12, as amended by Laws 1931, Chapter 351; Laws 1929, Chapter 191, Sections 13 and 14; Laws 1929, Chapter 191, Sections 15 and 16, as amended by Laws 1931, Chapter 351; and Laws 1929, Chapter 191, Section 19, relating to the State Employees' Retirement Fund." The sections of the amendatory act do not correspond to those of the acts amended.

Act Apr. 22, 1935, c. 238, amending Laws 1929, c. 191, as amended, corrects the defect in the title of Laws 1933, c. 326. The title of Act Apr. 22, 1935, c. 238, is as follows: "An act to amend Laws 1929, Chapter 191, Sections 1, 2, 4, 6, 9, 10, 11, to re-number and amend sections 15, 16 and 17 thereof as amended by Laws 1931, chapter 351, sections 1, 2, 4, 6, 9, 10, 11, 15, 16, 17; to repeal Laws 1929, chapter 191, section 12, as amended by Laws 1931, chapter 351, section 12; to repeal Laws 1929, chapter 191, section 13, and Laws 1933, chapter 326; to amend Laws 1929, chapter 191, section 5, and to amend and re-number Laws 1929, chapter 191, sections 14, 18, 19, 20, 21 and 22, and to add thereto a new section as section 21; relating to state employes' retirement fund."

Officers and servants of Minneapolis-St. Paul Sanitary District are not state officers or employees within act creating State Employees' Retirement Association. State v. King, 193M405, 258NW583.

District boiler inspector from 1905 to 1919 was a state employee. Op. Atty. Gen., Oct. 16, 1933.

Employees in dormitories at state teachers' colleges are "state employees" though their income is from student meals, banquets, etc. Op. Atty. Gen., Oct. 19, 1933.

State teachers who are reemployed each year may become members of state employees' retirement association. Op. Atty. Gen., Nov. 25, 1933.

Persons paid entirely out of the state emergency relief administration fund are not state employees and are not entitled to remain as members of the state employee's retirement association unless they were in the employ of the state for more than five years, but employees paid partly from state funds and partly from state emergency relief administration fund are entitled to membership, but only to the extent of the amount received from the state. Op. Atty. Gen. (331a-8), Dec. 15, 1934.

Minneapolis-St. Paul Sanitary System employees are not state employees. Op. Atty. Gen. (331a-7), Mar. 8, 1935.

Special examiners employed in division of insurance are not state employees within meaning of retirement act, unless they are employed continuously for a period of six months or more. Op. Atty. Gen. (331a-8), Sept. 7, 1935.

All persons entering employment of state department of education since July 1, 1929, must become members of either the Teachers' Retirement Fund or the State Employees' Retirement Association, and such employees as would come within the terms of both bodies must become members of both. Op. Atty. Gen. (175p), Oct. 8, 1935.

Employees engaged in public health service and paid out of federal funds allocated to state are state employees. Op. Atty. Gen. (331a-7), May 19, 1936.

(1) Whether or not a person is entitled to receive credit for services during a period when only employed intermittently should be determined by his status rather than from extent of activity. Op. Atty. Gen. (331a-6), Apr. 22, 1936.

**254-2. State employes' retirement association created.**—There is hereby established a state employes' retirement association the membership of which shall consist only of state employes. Membership in such association shall be optional on the part of persons in the employ of the state on July 1, 1929, but all new state employes entering the service of the state after July 1, 1929, except elective state officers shall become members of said association by acceptance of state employment and the head of the department shall thereupon cause deductions to be made from the salary of such new employes. Persons in the employ of the state on July 1, 1929, who apply for membership in the retirement association prior to January 1, 1930, shall pay a membership fee of One Dollar (\$1.00) and persons in the employ of the state on July 1, 1929, who apply for membership therein after January 1, 1930, shall pay a membership fee of Ten Dollars (\$10.00), but no person in the employ of the state on July 1, 1929, shall be eligible to apply for membership in the retirement association after July 1, 1931. In addition to such membership fee, every person in the employ of the state on July 1, 1929, who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employe become a member of the retirement association July 1, 1929, with interest thereon at the rate of four per cent per annum compounded annually. (Act Apr. 15, 1929, c. 191, §2; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §2.)

Teachers who were in employ of state prior to July 1, 1929, and who did not make application for membership in association prior to July 1, 1931, are not now entitled to membership. Op. Atty. Gen., Dec. 20, 1933.

Employees in dormitories of Mankato State Teachers College must become members of retirement association. Op. Atty. Gen., Dec. 28, 1933.

It is necessary that employees make back payments from time of their employment. Id.

An employee of state on July 1, 1929, who did not exercise option to become member, could nevertheless become a member after July 1, 1931, where he assumed an elective office in January, 1931. Op. Atty. Gen. (331a-7), Feb. 1, 1937.

An elective state officer can elect to become a member at any time, and membership once voluntarily accepted

probably may not be terminated except as specifically provided in act. Op. Atty. Gen. (331a-14), June 17, 1937.

**254-3. Board of managers—officers.**—The management of said state employes' retirement fund is hereby vested in a board of seven members, who shall be known as the State Employes' Retirement Board. Said board shall consist of the state auditor, the state treasurer, the insurance commissioner and four state employes who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of said board so elected shall hold office for a term of four years and until their successors are elected and qualified; provided that at the first election held after the passage of this act one of said members shall be elected for the term of one year, one member for the term of two years, one member for the term of three years, and one member for a term of four years. Any vacancy in said board caused by the death, resignation or removal of either of the members so elected shall be filled by the retirement board for the unexpired portion of the term in which such vacancy occurs. The members of the retirement board shall serve without compensation, but shall be reimbursed out of the retirement fund expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and shall appoint a secretary and such other employes as may be necessary and fix their compensation. The board shall from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions of this act and for the transaction of its business. (Act Apr. 15, 1929, c. 191, §3; Apr. 25, 1931, c. 351, §3; Apr. 22, 1935, c. 238, §3.)

Compensation of secretary and other employes are to be fixed by governing board of retirement association and not the department of administration and finance. Op. Atty. Gen. (331e), Feb. 25, 1935.

There is no provision specifically requiring an annual meeting of association, and is within discretion of board to determine what business shall be transacted at annual meeting and what matters membership shall be allowed to vote on. Op. Atty. Gen. (331a-2), July 19, 1935.

**254-4. Members shall pay into retirement fund.**—

1. Every member of the retirement association shall pay into the retirement fund three and one-half per cent (3½%) of his or her regular salary, which shall be taken to mean the rate of salary payable to the member on the first day of each regular payroll period and shall be considered as continuing throughout such payroll period, including overtime, such payment shall be made by deduction thereof from such salary. The head of each department is hereby directed to cause such deduction to be made at least once each month from the salary of each member of the retirement association on the department payroll and to approve one voucher payable to the state treasurer for the aggregate amount so deducted from the salaries covered by said payroll, provided that deductions from salaries of employes paid direct by any department, institution or agency of the state shall be made by the officer or employe authorized by law to pay such salaries, and remitted by him to the Secretary of the Retirement Association with a statement showing the amount of each of such deductions and the names of the employes on whose account the same have been made. All such salary deductions shall be credited to a fund to be known as the retirement fund and all interest and other income of said association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from such fund. Under the direction of the Retirement Board the head of each department shall furnish such information and shall

keep such records as the Board may require for the discharge of its duties.

2. In computing the length of service of members for retirement purposes, who were required to pay a membership fee as provided by Section 2 of this Act, full credit shall be given for prior service, and in computing the length of service of those entering the state service after July 1, 1929, who have had service prior to July 1, 1929, full credit shall be given for prior service, but no credit for service rendered prior to the date of becoming a member by reason of being a "new state employe" shall be given to any person who was a state employe on July 1, 1929, and did not exercise his option to become a member.

3. In case an employe is laid off, or on leave of absence, without pay for a longer period than one month he shall be entitled to credit for service provided he pays into the retirement fund a sum equal to the deductions that would be made from his salary if he were receiving it, such payment to be made within 90 days from the time such member returns to state service.

4. In case of lay-off or leave of absence of more than one month the head of the department shall, at the beginning of such leave or lay-off, certify to the Secretary of the Retirement Board on forms provided by the Retirement Board that such employe is on leave of absence or lay-off, giving the exact date the leave or lay-off begins and the date it will end, and in the absence of such certification the employe will be deemed to be out of the state service. Provided that no such employe shall be deprived of any rights under this act by reason of the failure or omission of any other person to make such certification.

5. No credit for service shall be allowed any member for periods such member may have been a state employe after June 30, 1929, unless deductions shall have been made from the salary of such member or he has made payment in lieu thereof.

6. No member shall be entitled to credit for former service upon entering the employ of the state after having received a refund from the retirement fund of accumulated deductions from his salary made pursuant to the provisions of this act, unless he shall restore the amount thereof to said fund as provided by Section 10 of this Act.

7. The final power to determine the status of any individual in the employ of the state for the purposes of this act is hereby vested in the Retirement Board. (Act Apr. 15, 1929, c. 191, §4; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §4.)

There is no way by which credit for service can be given to a person who was an elective state officer or a state employe, but not an elective state officer July 1, 1929, prior to time when he makes application for membership. Op. Atty. Gen. (331a-14), June 17, 1937.

(2) Whether or not a person is entitled to receive credit for services during a period when only employed intermittently should be determined by his status rather than from extent of activity. Op. Atty. Gen. (331a-6), Apr. 22, 1936.

**254-5. State Treasurer to be treasurer of association.**—The state treasurer shall be ex-officio treasurer of the retirement funds of said association, and his general bond to the state shall cover all liability for his acts as treasurer of said funds. All monies of said association received by him shall be set aside in the state treasury to the credit of the proper fund. He shall deliver to the secretary of the retirement board each month copies of all payrolls of the state together with the state auditor's warrants covering the deductions made on said payrolls for the retirement fund, whereupon the secretary shall cause to be made in triplicate a list of the auditor's warrants and said warrants shall then be deposited with the state treasurer to be credited to the retirement fund. He shall pay out said fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that

vouchers for investments may be signed by the secretary of the state board of investment. (Act Apr. 15, 1929, c. 191, §5; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §5.)

After July 1, 1935, salary deductions are to be based on salaries actually received in view of Laws 1935, cc. 159, 183, 320, 382 and 391. Op. Atty. Gen. (331a-12), June 8, 1935.

**254-6. Investment board to invest funds.**—The retirement board shall from time to time certify to the state board of investment for investment such portions of the retirement fund as in its judgment may not be required for immediate use. The state board of investment shall thereupon invest the sum so certified in such securities as are duly authorized legal investments for savings banks and trust companies, and shall sell any such securities upon request of the retirement board when necessary to provide money for the payment of refunds or annuities to members and/or other lawful obligations. (Act Apr. 15, 1929, c. 191, §6; Apr. 25, 1931, c. 351, §6; Apr. 22, 1935, c. 238, §6.)

State board of investment has no power to sell or accept payments before maturity of bonds held in teacher's retirement, public employee's retirement and state employee's retirement fund without a request of retirement board. Op. Atty. Gen. (928b-5), May 11, 1937.

**254-7. Department of Administration and Finance to make list of employees.**—Within thirty days after this bill becomes a law, the department of administration and finance shall submit to the retirement board a statement showing the name, age, sex, title, compensation, and length of service as a state employe of every employe of the state as defined in Section 1 of this Act, and shall upon request of the retirement board furnish to said board a like statement of all new officers or employes who have entered the service of the state. (Act Apr. 15, 1929, c. 191, §7; Apr. 25, 1931, c. 351, §7.)

**254-8. Attorney General to be legal adviser.**—The attorney general shall be the legal adviser of the retirement board. (Act Apr. 15, 1929, c. 191, §8.)

**254-9. Amount paid to be refunded in certain cases.**—Whenever any member of said association shall cease to be a state employe for any reason other than death or retirement for superannuation, he or she shall be paid, upon making application therefor on blanks furnished by the Retirement Board, the full amount of the accumulated deductions standing to the credit of his or her individual account, provided that any such member who has been in service of the state for not less than five years may, in lieu thereof, upon application in writing to the retirement board within 60 days from the termination of his or her employment, be permitted to retain membership in the retirement association and to enjoy all the rights and privileges thereof provided he pays into the retirement fund in lieu of salary deductions such amount as is provided in Section 4, subdivision 1 of this Act, such payment to be based upon his or her average salary during the entire time he or she has paid into the retirement fund prior to such termination of state service. Any member of the retirement association who has maintained his or her membership after leaving the employment of the state by the payment of such assessments may terminate such membership by notice in writing to the retirement board, whereupon he or she shall be paid, upon making application therefor, the full amount of the accumulated deductions standing to the credit of his or her individual account. (Act Apr. 15, 1929, c. 191, §9; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §9.)

Op. Atty. Gen., Dec. 15, 1934; note under 254-1.

There is an implied right on part of an appointive state employe who becomes an elective state officer to receive a refund of his payments when as such elective officer he exercises his right not to remain a member of association. Op. Atty. Gen. (331a-14), June 17, 1937.

**254-10. Members may be reinstated.**—Whenever a state employe, who has so withdrawn his accumu-

lated deductions shall re-enter the employment of the state within five years and shall restore to the retirement fund his or her accumulated deductions that were withdrawn the annuity rights forfeited at that time shall be restored. If the amount so withdrawn is not restored within 90 days from the date of returning to the state service, the employe becomes a member but not entitled to credit for former service. And in the case of a member returning to the service of the state without restoring a refund and again leaving and having a refund and later returning, such member can only restore the last refund and will not be entitled to credit for service prior to that covered by the last refund. (Act Apr. 15, 1929, c. 191, §12; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §10.)

**254-11. Retirement annuity.**—Whenever any member of the retirement association has been an employe of the state for a period of twenty (20) years and has attained the age of sixty-five (65) years or when any such employe has been in the service of the state for a period of thirty-five years, he shall be eligible for retirement for superannuation, but such retirement shall not be compulsory, provided that in computing such term of service the time during which any member of the association shall have maintained his membership by the payment of assessments after leaving the service of the state, in lieu of deductions, shall be included. Such retirement may be made upon application of the member or of someone acting in his or her behalf, or in case of an employe in active service upon the application of the head of the department in which such member is employed. Upon retirement such member shall receive an annuity for the remainder of his or her life equal to fifty (50) per centum of his or her average salary during the entire time he or she has paid into the retirement fund provided that no such retirement annuity shall exceed the sum of One Hundred Fifty (\$150.00) Dollars per month. If the total of annuities and refundments shall during any month become greater in amount than the monthly deductions from salaries, the Board shall proportionally reduce the amount of annuities. (Act Apr. 15, 1929, c. 191, §11; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §10.)

Seasonal employe is entitled to service credit for periods of inactivity. Op. Atty. Gen., Dec. 2, 1933.  
Veteran may not be discharged without cause for purpose of retirement under state retirement fund act. Op. Atty. Gen. (85e), June 27, 1935.

**254-12. [Repealed.]**

Repealed Apr. 22, 1935, c. 238, §2.  
Disability annuity once established under Laws 1929, Chap. 191, is not lost by agreement with association to suspend disability allowance during attempt of employe to work. Op. Atty. Gen. (331a), Sept. 18, 1936.

**254-13. [Repealed.]**

Repealed Apr. 22, 1935, c. 238, §2.

**254-14. Surviving spouse or legal representative of deceased member to receive lump sum.**—Whenever a member of said association shall die without having received an annuity, or without having received in annuities an amount equal to the total amount of the accumulated deductions from his or her salary, the full amount of said accumulated deductions, less such annuity payments, if any, as have been paid to such member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or, if none, to the surviving spouse, or, if none, to the legal representatives of such member, upon the establishment of a valid claim therefor. Any annuity payment to which a member is entitled at the time of his death shall be paid in the same manner. (Act Apr. 15, 1929, c. 191, §14; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §12.)

The title of the amendatory act (Laws 1933, c. 326) purports to amend this section, but the subject-matter of the amendment corresponds to §254-16. See title of act set forth in note under §254-1.

This section purports to be amendatory of Section 12 of Act Apr. 15, 1929, c. 191, as amended by Act Apr. 25,

1931, c. 351, but there is no correspondence in subject-matter. The subject-matter introduced by the amendment corresponds to Section 14 of Act Apr. 15, 1929, c. 191.

Amended and section of original act renumbered as section 12 by Act Apr. 22, 1935, c. 238, §3. Act Apr. 20, 1933, c. 326, is repealed by Act Apr. 22, 1935, c. 238, §2, but §3 of the latter act amends the section to read as above.

**254-15. To be paid in monthly installments.**—All annuities granted under the provisions of this act shall be paid in equal monthly installments, and shall not be increased, decreased, or revoked except as provided in this act. (Act Apr. 15, 1929, c. 191, §15; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §13.)

See note under §254-1.

Act Apr. 22, 1935, c. 238, §1, amends this section of Act Apr. 15, 1929, c. 191, by renumbering it section 13 instead of 15. No other change is made in the section.

**254-16. Date of retirement.**—No retirement on account of superannuation shall be granted until July 1, 1931, nor shall any member of the retirement association be entitled to receive an annuity for superannuation until he shall have paid into the retirement fund, either by deductions from salary or otherwise, before such retirement, an amount equal to five years' accumulated deductions from his or her average salary during the last five years of state service, and such additional amount as may be provided by law prior to July 1, 1931, and provided that until July 1, 1931, nothing done hereunder shall create or give any contract rights to anyone, except the right to receive back upon withdrawing from the association, any salary deductions made or assessments paid hereunder. (Act Apr. 15, 1929, c. 191, §16; Apr. 25, 1931, c. 351, §1; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §14.)

Act Apr. 22, 1935, c. 238, §1, amends this section of Act Apr. 15, 1929, c. 191, by renumbering it section 14 instead of 16. No other change is made in the section.

See note under §254-1.

**254-17. Funds not subject to process.**—None of the moneys, annuities or other benefits mentioned in this act shall be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment or other legal process nor shall they be subject to any state income tax. (Act Apr. 15, 1929, c. 191, §16; Apr. 25, 1931, c. 351, §1; Apr. 25, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §15.)

The subject-matter of §§254-17 to 254-22, inclusive, is re-enacted by Act Apr. 20, 1933, c. 326, without change, except by a slight alteration of the language of §254-19. The sections of the amendatory act do not correspond with the sections of the act purported to be amended. The amendatory act is probably unconstitutional because it is not supported by its title.

Act Apr. 22, 1935, c. 238, §1, amends this section of Act Apr. 15, 1929, c. 191, by renumbering it section 15 instead of 17. No other change is made in the section.

**254-18. Insurance laws not to apply.**—None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. (Act Apr. 15, 1929, c. 191, §18; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §16.)

See note under §254-17.

Section of original act renumbered as section 16 by Act Apr. 22, 1935, c. 238, §3. No other change introduced.

**254-19. May receive gifts and bequests.**—The retirement board is hereby authorized and empowered to credit to the fund any moneys received in the form of donations, gifts, appropriations, bequests or otherwise, or derived therefrom, and every member of said retirement association who shall fail to make application for the amount of his accumulated deductions within five years after his separation from the service of the state shall be deemed to have donated the same to the fund, unless he shall have retained his membership in the retirement association as herein provided. (Act Apr. 15, 1929, c. 191, §19; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §17.)

See note under §254-17.

Amended and section of original act renumbered as section 17 by Act Apr. 22, 1935, c. 238, §3.

~~254-20. Provisions separable.—If any provision of this act shall be held to be unconstitutional such unconstitutionality thereof shall not affect the validity of the remaining parts of this act. (Act Apr. 15, 1929, c. 191, §20; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §18.)~~

See note under §254-17.

Act Apr. 22, 1935, c. 238, §3, amends this section of the original act by renumbering it as section 18. No other change introduced.

~~254-21. Payments to begin July 1, 1929.—This act shall take effect upon its passage and approval but no deductions from salary for the retirement fund shall be made from any salary earned prior to July 1, 1929. (Act Apr. 15, 1929, c. 191, §21; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §19.)~~

See note under §254-17.

Act Apr. 22, 1935, c. 238, §3, amends this section of the original act by renumbering it as section 19. No other change introduced.

**254-22. Board of directors may make rules and regulations.**—Any changes or additions which may be found necessary or advisable for the management of this fund, may be made by a majority vote of the board of directors, provided no increase is made in the amount of deductions from salaries, or decrease in the amount of benefits paid. (Act Apr. 15, 1929, c. 191, §22; Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §20.)

See note under §254-17.

Act Apr. 22, 1935, c. 238, §3, amends this section of the original act by renumbering it as section 20. No other change introduced.

**254-22a. Rights not affected by this act.**—The rights of any member who has prior to the passage of this act filed proof of disability with the retirement board shall not be affected hereby. (Act Apr. 20, 1933, c. 326, §1; Apr. 22, 1935, c. 238, §21.)

#### MUNICIPAL EMPLOYEES' RETIREMENT ASSOCIATION

**254-23. Definitions.**—The following words and phrases as used in this act, unless a different meaning is plainly required by the context, shall have the following meaning:

1. "Public employe" shall mean any person holding a position, either by election, appointment or contract in and for any of the several counties, cities, villages or school districts which are now or hereafter may be affected by the provisions of this act, whose salary is paid, in whole or in part, through taxation, or by fees, assessments or revenue from any one or more of the governmental subdivisions hereinbefore enumerated, irrespective of whether or not such person is directly employed by the authority of, or is under the control and supervision of the governing body of any such county, city, village or school district. The term "public employe" shall also mean any person appointed as a district court reporter in this state; but shall not be construed to include any person, who, by virtue of his employment in the public service is required to contribute any portion of his salary to any other retirement fund or pension system established by or pursuant to the laws of this state and in force and operation at the time of the passage of this act, and neither shall the term "public employe" be deemed to include temporary employes.

From and after the date of passage of this act, the term "public employe" shall be construed so as to exclude any employe of any governmental subdivision for such periods of time as such employe has been or is eligible for membership in any retirement association or pension system established by or pursuant to any one or more of the following laws, and all acts amendatory thereof, to-wit: Revised Laws 1905, Section 1655 [§3728], relating to the establishment of firemen's relief associations; Laws 1907, Chapter 24 [§§3748 to 3750], relating to firemen's pensions in cities of the first class; Laws 1909, Chapter 343 [§§1358 to 1366], relating to pensions for teachers in certain cities; Laws 1915, Chapter 68

[[§1436 to 1442], relating to police pensions in cities of the first class; Laws 1915, Chapter 199 [[§2936 to 2950], relating to teachers' pensions; Laws 1919, Chapter 152 [[§1643-1 to 1643-9], relating to police pensions in cities of the second class; Laws 1919, Chapter 430 [[§1442-1 to 1442-10], relating to pensions for employes of the bureau of health in certain cities of the first class; Laws 1919, Chapter 522 [[§1442-11 to 1442-34], relating to pensions and retirement allowances in certain cities of the first class; Laws 1923, Chapter 179 [[§3729 to 3736], relating to pensions in volunteer fire departments; Laws 1929, Chapter 191 [[§254-1 to 254-22], relating to retirement annuities for state employes; Laws 1931, Chapter 48 [[§1264-6 to 1264-13], relating to police pensions in certain villages, and Laws 1935, Chapter 92 [[§1716-4 to 1716-18], relating to police pensions in certain cities of the third class.

2. "Head of Department" shall mean the head of any department, institution, office or branch of service of any governmental subdivision which directly pays salaries out of its revenues or is empowered to authorize the payment of such salaries.

3. "Accumulated Deductions" shall mean the total of the amounts deducted from the salary of a member and the total amount of assessments paid by a member in lieu of such deductions and credited to his or her individual account in the retirement fund, without interest.

4. "The Retirement Fund" shall mean and include the aggregate of all accumulated deductions from the salaries of members of the retirement association, all assessments paid by such members in lieu of such deductions, and all other monies paid into the state treasury or received by the retirement board pursuant to the provisions of this act, together with all income and profits therefrom and interest thereon.

5. "Governmental subdivision" shall mean a county, or a city, or a village, or a school district, as the case may be.

6. "City" shall be deemed to mean and include any incorporated city of this state, whether operating under a home rule charter or otherwise.

7. "Village" shall be deemed to mean and include any incorporated village of this state now or hereafter having a population of more than 5,000 inhabitants.

8. "School District" shall be deemed to mean and include any independent, common or special school district of this state, which is now or hereafter may be wholly or partly within the limits of any such city, or any such village, and shall also mean any unorganized school territory governed by any county board of education.

9. "Salary" shall mean the periodical compensation of any public employe and shall also be deemed to mean "wages," and, in case of officers elected to a fee office, shall be deemed to include the term "fees."

10. "Present Public Employe" shall mean any public employe receiving salary from any county, city, village or school district on the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed or from whose funds his salary is paid.

11. "New Public Employe" shall mean any public employe who enters the public service in any county, city, village or school district subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision by or for which he is employed, or from whose funds his salary is paid. (Act Apr. 24, 1931, c. 307, §1; Apr. 21, 1933 c. 374, §1; Apr. 26, 1937, c. 466, §1.)

Judge of district court is not an employe and may not become member. Op. Atty. Gen., Mar. 25, 1933.

Public employes' retirement association is under control of state and must furnish budget. Op. Atty. Gen., Aug. 8, 1933.

Act is applicable to employes of special school district. Op. Atty. Gen. (331b-1), Mar. 28, 1935.

A city of the third class, such as South St. Paul, operating under home rule charter, need not establish police

pensions under §§1436 to 1442 but may establish pensions for all city employes under §254-23, et seq. Op. Atty. Gen. (785j), Aug. 19, 1936.

(1). Legislature did not intend to bar a public employe from membership in the association because of membership in another association or by reason of possible benefits from some other form of annuity or pension system not connected with his present employment. Op. Atty. Gen., May 23, 1931.

(1) (d). It was not the intention of the legislature to bar a public employe from membership because of membership in another association or by reason of possible benefits from some other form of pension systems not connected with his present employment. Op. Atty. Gen., June 26, 1931.

The qualifying clauses in paragraph (d) apply with equal force to paragraphs (a), (b) and (c). Op. Atty. Gen., June 26, 1931.

(2). If city clerk may issue orders or warrants only upon direction of the city council, the council is the only "head of department" within the meaning of the act. Op. Atty. Gen., June 10, 1931.

The "head of any department" means any officer of the city on whose certificate the city clerk is authorized to issue a warrant in payment of salary. Op. Atty. Gen., June 10, 1931.

(10). District court reporters were in public service as such on April 24, 1931, are to be deemed "present public employes," and those who have entered public service subsequent to that date are new public employes. Op. Atty. Gen. (331b), June 15, 1935.

**254-24. Public employes' retirement association established.**—There is hereby established a public employes' retirement association, the membership of which shall consist only of public employes' and employes of said association. Membership in said association shall be optional on the part of the present public employes, but all new public employes except elective public officers shall become members of said association by acceptance of public employment. In all governmental subdivisions heretofore operating under and affected by the provisions of this act prior to January 1, 1933 present public employes who apply for membership therein after January 1, 1932, shall pay a membership fee of Ten (\$10.00) Dollars, but no present public employe shall be eligible to apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition to such membership fee, every present public employe who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such employe become a member of the retirement association July 1, 1931, with interest thereon at the rate of five per cent (5%) per annum, compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, present public employes who apply for membership in the retirement association after January 1, 1934, shall pay a membership fee of Ten (\$10.00) Dollars, but no such present public employe shall be eligible to apply for membership in the retirement association after July 1, 1935, except upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. In addition to such membership fee every such present public employe who becomes a member of the retirement association shall pay in a sum equal to all accrued deductions from his or her salary which would have been made had such public employe become a member of the retirement association July 1, 1933, with interest thereon at the rate of five per cent (5%) per annum compounded annually. In all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to May 1, 1935, present public employes may apply for membership in said association at any time within a period of two years from the first day of the first calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision con-

cerned and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such present public employe who shall apply for membership in said association shall be required to pay a membership fee of Ten (\$10.00) Dollars. In addition thereto, any such present public employe shall pay into the retirement fund a sum equal to all accrued deductions which [would] have been made had such present public employe become a member of said association on the first day of the first calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, together with interest thereon at the rate of five per cent (5%) per annum."

An elected public officer, eligible for membership in said association, may exercise his option to become a member thereof, but such option once exercised, may not be withdrawn during the incumbency of such officer in the office to which he was elected or re-elected. If holding office at the time of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, the terms and conditions of membership pertaining to a present public employe shall govern the admission of such elected public officer to membership in said association. Any person elected to a public office in any governmental subdivision affected by the provisions of this act, subsequent to the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned, may apply for membership in said association at any time within a period of two (2) years from the date he first became eligible for membership in said association, and at any time thereafter upon the payment of such additional penalties as the retirement board may, by general rule, prescribe. Any such person who applies for membership in said association shall be required to pay a membership fee of Ten (\$10.00) Dollars. In addition thereto, any such elected public officer shall pay into the retirement fund a sum equal to all accrued deductions which would have been made had such elected public officer become a member of said association on the first (1st) day of the first (1st) calendar month next succeeding the date he first assumed the office to which he was elected, together with interest thereon at the rate of five per cent (5%) per annum.

Any person appointed to fill a vacancy in an elective office and becomes eligible thereby to membership in said association may likewise exercise his option to become a member thereof under the terms and conditions that govern the admission of elective public officers to membership in said association.

Except as in this act otherwise provided, membership in said association may not be terminated by resignation, or in any manner other than by death, or by leaving the employ of the governmental subdivision concerned. On or after the passage of this act, no employe of any governmental subdivision shall be required to become a member of any retirement fund or relief association, or to contribute to any fund established for such purpose, except the retirement fund established pursuant to the provisions of this act. (Act Apr. 24, 1931, c. 307, §2; Apr. 21, 1933, c. 374, §1; Apr. 5, 1935, c. 106, §2; Apr. 26, 1937, c. 466, §2.)

The word "would" enclosed in brackets was omitted from the Apr. 26, 1937, amending act.

Elective officers have the option of joining or not joining the association. Op. Atty. Gen., June 10, 1931.

In determining who are new public employes, April 24, 1931, governs, and not the date of the approval of the act by the head of a department. Op. Atty. Gen., June 26, 1931.

Where a certain employe of the city of St. Paul was given "provisional employment" prior to passage of this act and later passed an examination and was certified for permanent employment, he is entitled to elect whether he will or will not become a member of the association. Op. Atty. Gen., Sept. 3, 1931.

Elective public official cannot withdraw after having elected to become member. Op. Atty. Gen., Aug. 3, 1933.

Time limits fixed by statute as to acceptance of membership may not be waived by retirement board nor may \$10 membership fee be waived. Op. Atty. Gen. (331b-1), Sept. 28, 1934.

Policemen in cities of third class covered by Laws 1935, c. 92, §1, are exempt from provisions of this act. Op. Atty. Gen. (331b-1), Apr. 15, 1935.

Application for membership may be accepted within two years after date a public official first assumed office to which he was elected. Op. Atty. Gen. (605b-30), May 15, 1936.

#### 254-25. Board of directors—membership—terms.—

The management of the said public employes' retirement fund is hereby vested in a board of nine (9) members, who shall be known as the Public Employes' Retirement Board. Said board shall consist of the state auditor, the state insurance commissioner, the state treasurer, and six (6) public employes who shall be elected by the members of the retirement association at a time and in a manner to be fixed by the retirement board. The members of said board so elected shall hold office for a term of three (3) years and until their successors are elected and qualified; provided that at the first (1st) election held after the passage of this act, two (2) of said members shall be elected for a term of one (1) year, two (2) members for a term of two (2) years, and two (2) members for a term of three (3) years. Within thirty (30) days after the passage of this act, at the call of state auditor, said association shall meet and elect the six (6) members to the retirement board. The members of the retirement board shall serve without compensation, but shall be reimbursed out of the retirement fund for expenses actually and necessarily paid or incurred in the performance of their duties, and shall suffer no loss of salary or wages through service on such board. The board shall elect a chairman and shall appoint a secretary and such other employes as may be necessary and fix their compensation. The board shall, from time to time, subject to the limitations of this act and of the law, establish rules and regulations for the administration of the retirement and other provisions of this act and for the transaction of its business. (Act Apr. 24, 1931, c. 307, §3.)

#### 254-26. Retirement fund.—

Every member of the retirement association shall pay into the retirement fund three and one-half per cent (3½%) of his salary as a public employe as and when paid. Such payment shall be made by deduction thereof from such salary, provided, however, that under such regulations as the retirement board may by general rule prescribe, any member may, at his option, continue to make contributions to the retirement fund on the basis of his last regular salary, in case said salary is diminished or reduced for any cause and thereby become entitled to the same annuity as though there had been no diminution or reduction in such salary. The head of each department is hereby directed to cause such deductions to be made at least once each month from the salary of each member of the retirement association and to issue or approve one voucher payable to the state treasurer for the aggregate amount so deducted from such salaries and to cause the same to be remitted within fifteen (15) days thereafter to the secretary of the retirement board together with a statement showing the amount of each of such deductions, the amount of salaries from which such deductions have been made and the names of the employes on whose accounts the same have been made. All remittances so received by the secretary of the retirement board shall be promptly deposited with the state treasurer. Deductions from the salaries of district court reporters shall be made by the several county auditors of the state. Each county auditor of the state shall make such deduction from the amount of each warrant issued by him in payment of the salary of a district court reporter and shall on or before the fifteenth (15th) day of each month issue a warrant to the order of the state treasurer for the aggregate amount of all such de-

ductions made by him during the preceding month and shall transmit the same to the secretary of the retirement board with a statement showing the amount of each of such deductions and the names of the district court reporters on whose account the same have been made, provided that the deductions from the salary of a district court reporter in a judicial district consisting of two or more counties shall be made by the auditor of the county in which the bond and official oath of such district court reporter are filed from the portion of his salary paid by such county. All salary deductions shall be credited to a fund to be known as the retirement fund and all interest and other income of said association shall be credited to said fund. The retirement fund shall be disbursed only for the purposes herein provided. The expenses of said association and the annuities herein provided upon retirement shall be paid only from said fund. (Act Apr. 24, 1931, c. 307, §4; Apr. 21, 1933, c. 374, §1.)

**254-27. State treasurer to be custodian of funds.**—The state treasurer shall be ex-officio treasurer of the retirement funds of said association and his general bond to the state shall be so conditioned as to cover all liability for his acts as treasurer of said funds. If the general bond of the state treasurer, at the time of the passage of this act, shall cover all liability for his acts as treasurer of said funds, no additional bond shall be required. If not, the said state treasurer shall execute to the State of Minnesota for the use and benefit of said State of Minnesota and all persons injured by failure to observe its conditions, a penal bond in such a sum as may be fixed by the retirement board and with such sureties as the governor and the state auditor may approve, conditioned that he will pay over to all persons on demand all monies to which they may be entitled which may have come into his hands in virtue of or by reason of his office as such treasurer of said funds. All monies of said association received by him shall be set aside in the state treasury to the credit of the proper fund. He shall transmit monthly to the secretary of the retirement board a detailed statement of all amounts so received and credited by him to said fund. He shall pay out said fund only on warrants issued by the state auditor, upon vouchers signed by the secretary of the retirement board, provided that vouchers for investment may be signed by the secretary of the state board of investment. (Act Apr. 24, 1931, c. 307, §5.)

The public employees' retirement board, if doubtful as to whether or not the general bond of the state treasurer covers his official acts as treasurer of the retirement fund, should obtain the consent of the sureties to the inclusion of the new liability, and if such consent cannot be had the board would be justified in requiring an additional bond. Op. Atty. Gen., June 26, 1931.

**254-28. State board of investment to invest funds.**—The retirement board shall from time to time certify to the state board of investment for investment such portions of the retirement fund as in its judgment may not be required for immediate use. The state board of investment shall thereupon invest the sum so certified in such securities as are duly authorized as legal investments for savings banks and trust companies, and shall sell any such securities upon request of the retirement board when necessary to provide money for the payment of refunds or annuities to members and for other lawful obligations. (Act Apr. 24, 1931, c. 307, §6.)

State board of investment has no power to sell or accept payments before maturity of bonds held in teacher's retirement, public employee's retirement and state employee's retirement fund without a request of retirement board. Op. Atty. Gen. (928b-5), May 11, 1937.

**254-29. Heads of departments to make monthly statements.**—Within ninety (90) days after the acceptance of the terms of this act by the governing body of any governmental subdivision, the heads of departments affected shall submit to the retirement

board a statement showing the name, age, sex, title, compensation, and length of service in his department of every public employe in his department as defined in Section 1 of this act, and on the first (1st) day of each calendar month thereafter shall furnish the retirement board a like statement of all new officers or employes who have entered the public service as public employes in his department, and at the same time shall notify the board of all removals, withdrawals and changes in salaries of any members of the retirement association which have occurred during the preceding month, and shall furnish to said board a like statement of all new officers or employes who have entered the service as public employes. (Act Apr. 24, 1931, c. 307, §7; Apr. 21, 1933, c. 374, §1.)

The department heads need not make the reports required by this section until the act is made applicable by compliance with Section 24 [§254-46], and strict compliance with this section is not required. Op. Atty. Gen., June 26, 1931.

**254-30. Attorney General to be legal advisor.**—The attorney general shall be the legal advisor of the retirement board. Said board may sue, or be sued, in the name of the Public Employees' Retirement Board of the Public Employees' Retirement Association, and, in all actions brought by it, or against it, said board shall be represented by the attorney general. (Act Apr. 24, 1931, c. 307, §8; Apr. 21, 1933, c. 374, §1.)

**254-31. Payments upon retirement.**—Whenever any member of said association shall cease to be a public employe for any reason other than death or retirement, he shall be paid, on demand, after fifteen (15) days' notice, the full amount of the accumulated deductions standing to the credit of his or her individual account, provided that any such member who has been in the public service for not less than four (4) consecutive years immediately prior thereto may, in lieu thereof, upon application in writing to the retirement board within sixty (60) days from the termination of his or her employment, be permitted to retain membership in the retirement association and to enjoy all the rights and privileges thereof upon such terms and conditions as to his employment and the payment of assessments in lieu of salary deductions as the retirement board may by general rule prescribe. Any member of the retirement association who has maintained his or her membership after leaving the public service by the payment of such assessments may terminate such membership by notice in writing to the retirement board, whereupon he or she shall be paid on demand, after fifteen (15) days' notice, the full amount of the accumulated deductions standing to the credit of his or her individual account. (Act Apr. 24, 1931, c. 307, §9; Apr. 21, 1933, c. 374, §1; Apr. 26, 1937, c. 466, §3.)

A public official who has spent twenty years in public service but who retires prior to reaching the age of sixty-five years may continue to make payments into the retirement fund and be eligible to an annuity upon reaching the required age. Op. Atty. Gen., July 24, 1931.

**254-32. Forfeited rights shall be restored.**—Whenever a public employe, who has so withdrawn his accumulated deductions shall re-enter the public service within five (5) years after such withdrawal, the annuity rights forfeited by such employe at the time of such withdrawal shall be restored upon repayment by such employe to the retirement fund of the full amount so withdrawn, with interest thereon at the rate of five per cent (5%) per annum, compounded annually from the date of withdrawal and in addition thereto an amount equal to the sum that he would have contributed to said fund had he elected to retain membership in said association, together with interest on the same computed at the rate of five per cent (5%) per annum, compounded annually. Unless such public employe shall make the payments as herein provided, with interest thereon at the rate of five per cent (5%) per annum compounded annually from the date he shall have so re-entered the public service, he shall be required, before any retirement

is granted to him, to make or to have made contributions to the retirement fund for a period of years equivalent to that originally required of him for the purpose of qualifying for a retirement annuity at the time he first became a member of said association. (Act Apr. 24, 1931, c. 307, §10; Apr. 21, 1933, c. 374, §1.)

**254-33. Retirement.**—Except as in this act otherwise provided, whenever any member of the retirement association has been a public employe for a period of twenty (20) years and has attained the age of sixty-five (65) years, or when any such employe has been a public employe for a period of thirty-five (35) years, he shall be eligible for retirement, provided that in computing such terms of service, the time during which any member of the association shall have maintained his membership by the payment of assessments after leaving the service as a public employe, in lieu of deductions, shall be included. Provided, however, that no person admitted to membership in said association after May 1, 1937 shall be entitled to receive a retirement annuity unless he has either attained the age of sixty-five (65) years and has been a public employe for a period of twenty (20) years, or has attained the age of sixty (60) years and has been a public employe for a period of at least thirty-five (35) years. Such retirement shall be made upon application of the member or of someone acting in his or her behalf, or in the case of any employe in active service upon the application of the head of the department in which such member is employed. Except as in this act otherwise provided, upon such retirement such member shall receive an annuity for the remainder of his or her life equal to fifty (50) per centum of the average annual salary received for the entire period of his or her membership in said association, provided, that in computing the average annual salary of members who have contributed by assessments, in lieu of salary deductions or otherwise, the average annual salary received while such member was in the public service as a member of said association shall, for the purpose of construing this section, be considered the salary of such member for that period of his membership in said association during which he made contributions to the retirement fund by assessments, in lieu of salary deductions or otherwise, and provided, further, that in computing the period of past service, employment by or for any of the governmental subdivisions as defined and enumerated by this act shall be counted, irrespective of whether or not the governing body of such governmental subdivision has qualified its public employes for membership in said association, and provided further, that no such retirement annuity shall, in any event, exceed the sum of One Thousand Eight Hundred (\$1,800.00) Dollars per annum. Membership in said association for any present public employe shall commence upon the date of the acceptance of the application for membership by the retirement board and, in no event, shall said retirement board grant to any member any pro rata annuity, as hereinafter provided for in Section 16 of this act, until and unless four full years of membership in said association shall have elapsed, nor shall said retirement board grant any pro rata annuity based on a greater number of years of contributions to the retirement board fund than stands to the credit of such member on the books of said association, or any full retirement annuity, as hereinafter provided, until and unless five full years of membership have so elapsed. (Act Apr. 24, 1931, c. 307, §11; Apr. 21, 1933, c. 374, §1; Apr. 5, 1935, c. 106, §2; Apr. 26, 1937, c. 466, §4.)

Board may grant annuities to take effect upon actual date of retirement, monthly installments to commence one month from time of such retirement. Op. Atty. Gen. (331h), Feb. 23, 1937.

**254-34. [Repealed.]**

Repealed Apr. 21, 1933, c. 374, §2.

**254-35. [Repealed.]**

Repealed Apr. 21, 1933, c. 374, §2.

**254-36. Heirs or legal representatives to receive benefit of funds.**—Whenever any member of said association shall die without having received an annuity, or without having received in annuity payments an amount equal to the total amount of the accumulated deductions from his or her salary, and such additional accumulated deductions, if any, as may have been paid into the retirement fund under and pursuant to the provisions of Section 16 of this act, exclusive, however, of any payments representing accrued interest, the full amount of such total accumulated deductions and additional accumulated deductions, if any, less such annuity payments, if any, as have been paid to such member, shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or, if none, to the legal representatives of such member, upon establishment of a valid claim therefor. Provided, however, if no valid claim is established therefor, the said accumulated deductions shall remain with and become the property of said retirement association. (Act Apr. 24, 1931, c. 307, §14; Apr. 21, 1933, c. 374, §1.)

**254-37. Annuities payable monthly.**—All annuities granted under the provisions of this act shall be paid in equal monthly installments, commencing one (1) month from the time of retirement and continuing only during the lifetime of the annuitant, and shall not be increased, decreased or revoked, except as provided in this act. (Act Apr. 24, 1931, c. 307, §15; Apr. 21, 1933, c. 374, §1.)

Board may grant annuities to take effect upon actual date of retirement, monthly installments to commence one month from time of such retirement. Op. Atty. Gen. (331h), Feb. 23, 1937.

**254-38. Retirement to begin July 1, 1935.**—No retirement annuity shall be granted under the provisions of this act until July 1, 1935, nor shall any member of the retirement association be entitled to receive a retirement annuity until he shall have contributed to the retirement fund either by salary deductions or otherwise for a period of four (4) full years and unless he shall have been a member of said association for a like period. Provided, however, that if any member who is eligible for retirement and who has attained to the age of sixty-five (65) years has contributed to the retirement fund for a period of less than twenty (20) years, he shall be entitled to receive a pro rata retirement annuity for the remainder of his life in an amount bearing the same ratio to the full retirement annuity that the period of his salary deductions, or assessments in lieu thereof, bears to twenty (20) years, but fractional parts of a year shall not enter into the computation of such pro rata retirement annuity. Provided, further, that whenever any such member shall have become eligible to receive a pro rata retirement annuity, as hereinbefore provided, and shall have contributed to the retirement fund for a period of five (5) full years, and shall have been a member of said association for a like period, such member may, if he shall so elect at any time before making application for such pro rata retirement annuity make application for a full retirement annuity, or for a pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then stand to his credit on the books of said association, and, in either case, the same shall be granted to him upon compliance with the following terms and conditions, to-wit:

(a) In case such member shall make application for a full retirement annuity, the retirement board, before granting said application, shall do the following things, to-wit:

1. Determine the number of full years of contributions required of such member to make a total of twenty (20) full years of contributions by him to the retirement fund.

2. Determine the average annual amount of the accumulated deductions of such member for the period of his membership in said association.

3. Determine the amount of the additional accumulated deductions to be required of such member by multiplying the number of years as determined by the method prescribed in sub-paragraph one (1) hereof by the average annual amount of his accumulated deductions, as determined in the manner prescribed by sub-paragraph two (2) hereof.

4. Require that such member shall pay into the retirement fund, before such full retirement annuity shall be granted, the total amount of his additional accumulated deductions, as determined by the methods prescribed by sub-paragraph three (3) hereof, and, in addition thereto, a further amount representing an accrued interest payment, to be determined as follows:

In the case of fifteen (15) years of additional contributions required, an amount equal to forty-eight (48%) per cent of the total accumulated deductions required for such period, and in case of fourteen (14) years of additional contributions required, or less, an amount to be determined in like manner, based on percentages of the total accumulated deductions required in each instance, as hereinafter set forth, to-wit: Fourteen (14) years, fifty (50%) per cent; thirteen (13) years, fifty-two (52%) per cent; twelve (12) years, fifty-four (54%) per cent; eleven (11) years, fifty-six (56%) per cent; ten (10) years, fifty-eight (58%) per cent; nine (9) years, sixty (60%) per cent; eight (8) years, sixty-two (62%) per cent; seven (7) years, sixty-four (64%) per cent; six (6) years, sixty-six (66%) per cent; five (5) years, sixty-eight (68%) per cent; four (4) years, seventy (70%) per cent; three (3) years, seventy-two (72%) per cent; two (2) years, seventy-four (74%) per cent; one (1) year, seventy-six (76%) per cent. Provided, that after the total amounts required of such member have been determined, as hereinbefore set forth, credit thereon shall be allowed such member for the amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for a full retirement annuity.

(b) In case such member shall make application for a pro rata retirement annuity based on a greater number of full years of contribution than then stands to his credit on the books of said association, the retirement board, in the manner hereinbefore provided, shall determine the amount of the additional accumulated deductions required under such application and shall require that such applicant shall pay into the retirement fund before such greater pro rata retirement annuity is granted, all additional accumulated deductions required, and, in addition thereto, such further and additional amounts representing accrued interest payments as may be determined in the manner hereinafter set forth, to-wit:

In case of one (1) additional year's credit, an amount equal to that percentage of the total accumulated deductions required for one (1) year as may be determined by multiplying the number of full years such member has contributed to the retirement fund by four (4%) per cent. In case of two (2) additional years' credit, an amount equal to that percentage of the additional accumulated deductions required as in the case of one (1) additional year's credit, and in addition thereto, a further amount equal to two (2%) per cent of the total accumulated deductions required. In like manner for three (3) additional years' credit, or more, an amount equal to that percentage required as in the case of one (1) additional year's credit, and, in addition thereto, a further amount computed on the following percentage of the total accumulated deductions required in each instance as hereinafter set forth, to-wit: Three (3) additional years' credit, four (4%) per cent;

four (4) additional years' credit, six (6%) per cent; five (5) additional years' credit, eight (8%) per cent; six (6) additional years' credit, ten (10%) per cent; seven (7) additional years' credit, twelve (12%) per cent; eight (8) additional years' credit, fourteen (14%) per cent; nine (9) additional years' credit, sixteen (16%) per cent; ten (10) additional years' credit, eighteen (18%) per cent; eleven (11) additional years' credit, twenty (20%) per cent; twelve (12) additional years' credit, twenty-two (22%) per cent; thirteen (13) additional years' credit, twenty-four (24%) per cent; fourteen (14) additional years' credit, twenty-six (26%) per cent; fifteen (15) additional years' credit, twenty-eight (28%) per cent. Provided that after such total amount required of such member has been determined, as hereinbefore set forth, credit thereon shall be allowed such member for any amount contributed by him to the retirement fund through salary deductions, or otherwise, during the fractional part of any year not included in the computation for such greater pro rata retirement annuity. Provided further, nothing done under the terms of this act shall create or give any contract rights to any person, except the right to receive back upon withdrawal from the association, through separation from the public service any salary deductions made or assessments paid hereunder.

As hereinbefore provided, the minimum requirements for a retirement annuity for any applicant who has attained to the age of sixty-five (65) years, shall be twenty (20) years of contributions to the retirement fund, or its equivalent, with an amount representing accrued interest earnings, as hereinbefore set forth. In the case of any member who becomes eligible for retirement at any age earlier than sixty-five (65) years, the said minimum requirements as to years of contributions before any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than then stand to his credit on the books of said association shall be granted, shall be twenty (20) years increased by one (1) year for each year that the said applicant is under the age of sixty-five (65) years, in accordance with the following schedule, to-wit: Age sixty-four (64), twenty-one (21) years; age sixty-three (63), twenty-two (22) years; age sixty-two (62), twenty-three (23) years; age sixty-one (61), twenty-four (24) years; age sixty (60), twenty-five (25) years, provided, however, that in the case of any member who shall have reached the age of 60 years on May 1, 1937, and who, prior to June 1, 1936, shall have left the public service and maintained membership by payment of assessments, the minimum requirements for a full retirement annuity shall be 20 years, regardless of the attained age at the time of any such retirement.

From and after May 1, 1937, no full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions than the number of years he shall have been a member of said association shall be granted to any member of said association who has not attained to the age of sixty (60) years, and with respect to any such member said retirement board may grant only a pro rata annuity in an amount bearing the same ratio to a full retirement annuity as the period of full years of salary deductions or assessments received in lieu thereof during his membership in the association, or its equivalent, with an additional amount representing accrued interest earnings, shall bear to the number of years expressed in the following schedule of requirements as to the years of contributions for a pro rata retirement annuity at any given age of the applicant, to-wit: Age fifty-nine (59), twenty-six (26) years; age fifty-eight (58), twenty-seven (27) years; age fifty-seven (57), twenty-eight (28) years; age fifty-six (56), twenty-nine (29) years; age fifty-five (55), thirty (30) years; age fifty-four (54),

thirty-one (31) years; age fifty-three (53), thirty-two (32) years; age fifty-two (52), thirty-three (33) years; age fifty-one (51), thirty-four (34) years, and age fifty (50), thirty-five (35) years.

The retirement board shall by general rule adopt regulations and schedules of rates of payments required of applicants who shall become eligible for retirement at ages earlier than sixty-five (65), which regulations shall provide for the granting of pro rata retirement annuities in amounts bearing the same ratio to a full retirement annuity as the period in full years of salary deductions, or assessments received in lieu thereof, or its equivalent with an additional amount representing accrued interest earnings, shall bear to the number of years expressed in the above schedule of minimum requirements as to years of contributions for a full retirement annuity at any given age of the applicant. Provided, however, that the retirement board shall not grant any full retirement annuity or any pro rata retirement annuity based on a greater number of years of contributions to the retirement fund than then stand to the credit of the applicant until such member shall have been a member of said association for a period of five (5) full years. If the total of annuities shall during any year become greater in amount than the annual contributions, the retirement board shall proportionately reduce the amount of annuities. (Apr. 26, 1937, c. 466, §5.)

If the total of annuities shall during any year become greater in amount than the annual contributions, the retirement board shall proportionately reduce the amount of annuities. (Act Apr. 24, 1931, c. 307, §16; Apr. 21, 1933, c. 374, §1; Apr. 26, 1937, c. 466, §5.)

**254-39. [Repealed.]**

Repealed Apr. 21, 1933, c. 374, §2.

**254-40. Annuities not assignable.**—None of the monies, annuities or other benefits provided for in this act shall be assignable, either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, nor shall the same be subject to any state income tax. (Act Apr. 24, 1931, c. 307, §18.)

**254-41. Insurance laws do not apply.**—None of the laws of this state regulating insurance or insurance companies shall apply to the retirement association or any of its funds. The books and accounts of said association and said retirement fund shall be examined and audited annually by the public examiner of the state and a full and detailed report thereof made to the retirement board, without expense to said retirement fund. (Act Apr. 24, 1931, c. 307, §19; Apr. 21, 1933, c. 374, §1.)

**254-42. Contributions, etc., to retirement fund.**—The retirement board is hereby authorized and empowered to credit to the fund any monies received in the form of contributions, donations, gifts, appropriations, bequests or otherwise; and every member of said retirement association who shall fail to demand the amount of his accumulated deductions within five (5) years after his separation or withdrawal from the public service shall be deemed to have donated the same to the retirement fund, unless he shall have retained his membership in the retirement association, as hereinbefore provided. (Act Apr. 24, 1931, c. 307, §20; Apr. 26, 1937, c. 466, §6.)

~~**254-43. Provisions separable.**—If any provision of this act shall be held to be unconstitutional, such unconstitutionality thereof shall not affect the validity of the remaining parts of this act. (Act Apr. 24, 1931, c. 307, §21.)~~

**254-44. Board may make regulations.**—Any changes or additions which may be found necessary or advisable for the management of this association, may be

made by a majority vote of the retirement board, provided that no increase is made in the amount of deductions from salaries, nor decrease in the amounts of benefits authorized under and pursuant to this act. (Act Apr. 24, 1931, c. 307, §22.)

Time limits fixed by statute as to acceptance of membership may not be waived by retirement board nor may \$10 membership fee be waived. Op. Atty. Gen. (331b-1), Sept. 28, 1934.

**254-45. Penalties for false information.**—Any person who shall give any false information to the retirement board or any officer or agent of the said retirement association for the purpose of obtaining membership in such association, or any person, who shall wilfully fail or refuse to perform or discharge any duty prescribed by this act, shall, upon conviction thereof, be guilty of a misdemeanor. (Act Apr. 24, 1931, c. 307, §23.)

**254-46. Application of act.**—The provisions of this act shall not apply to any county, city, village or school district, or the employes thereof, until and unless the governing body of any such county, city, village or school district, shall have duly approved by a majority vote and by a resolution in writing of salary deductions for public employes, as contemplated by Section 4 of this act, and shall have filed a duly certified copy of such resolution of approval with the proper officials of the county, city, village or school district, whose duty it is to pay or authorize the payment of salaries, and one (1) such certified copy with the secretary of the retirement board. Salary deductions for present public employes in all governmental subdivisions heretofore operating under and affected by the provisions of this act prior to January 1, 1933, shall be computed from the first day of July, 1931, and in all governmental subdivisions wherein the governing body thereof has duly accepted the provisions of this act subsequent to January 1, 1933, and prior to May 1, 1935, shall be computed from the first day of July, 1933. Salary deductions for present public employes in all governmental subdivisions wherein the governing body thereof has duly accepted the terms and provisions of this act subsequent to May 1, 1935, and who shall thereafter become members of the retirement association shall be computed from the first day of the first calendar month next succeeding the date of the acceptance of the terms of this act by the governing body of the governmental subdivision concerned. (1st) day of July, 1933. (Act Apr. 24, 1931, c. 307, §2; Apr. 21, 1933, c. 374, §1; Apr. 5, 1935, c. 147, §3.)

**MISCELLANEOUS PROVISIONS**

**254-47. Auto hire for municipal employes.**—The maximum amount which shall be paid by the State, any department or bureau thereof, or any county, city, village, town or school district, to any officer or employe except sheriffs or deputy sheriffs, as compensation or reimbursement for the use by such officer or employe of his own automobile in the performance of his duties, shall not exceed five cents per mile. In case of sheriffs and deputy sheriffs the maximum amount so to be paid shall not exceed seven cents per mile. (Act Apr. 24, 1931, c. 307, §24; Feb. 6, 1933, c. 13; Apr. 20, 1935, c. 225, §1.)

This law does not apply to trips made prior to its approval. Op. Atty. Gen., April 27, 1931.

It is lawful to allow additional compensation of one cent per mile to a state officer or employe for the use of his car where another state officer or employe travels with him. Op. Atty. Gen., April 27, 1931.

This act applies to mileage allowance to sheriff for use of his car in county work, but it has no application to his permissible fees for serving civil papers, and generally speaking county may make an additional allowance to sheriff for transporting prisoner in his car where such an allowance is otherwise authorized. Op. Atty. Gen., May 6, 1931.

County commissioners are only entitled to be reimbursed at the rate of seven cents per mile for the use of automobile in the performance of their official duties. Op. Atty. Gen., May 18, 1931.

Law applies to a sheriff driving his own automobile in criminal cases, and to a deputy sheriff, where the deputy received no salary. Op. Atty. Gen., May 18, 1931.

Law does not affect rights of a sheriff under the old law where he employs a taxi or automobile livery of a third person. Op. Atty. Gen., May 18, 1931.

This act does not affect Section 657. Op. Atty. Gen., May 23, 1931.

This act affects mileage allowance of sheriffs of some counties under Section 6993. Op. Atty. Gen., May 23, 1931.

The limitation of seven cents per mile for use of automobile applies to Section 5353-2 if the county nurse furnishes her own automobile and bills the county for use thereof, but not if the county furnishes the automobile and gasoline and repairs. Op. Atty. Gen., May 23, 1931.

This act modifies Section 962 so as to limit allowance for use of automobile to seven cents per mile. Op. Atty. Gen., May 23, 1931.

This act is not applicable to the city of Minneapolis where employees are paid a specific sum per month as automobile allowance. Op. Atty. Gen., June 2, 1931.

In the absence of a special statute applicable to a particular county, this act is applicable and limits allowance for use of sheriff's own automobile. Op. Atty. Gen., June 4, 1931.

If a county attorney is entitled to receive reimbursement for the use of his own car on county business, it is limited to seven cents per mile by this act. Op. Atty. Gen., June 4, 1931.

Expense allowances of county commissioner governed by Section 657 are affected by this act, but if the county is governed by Section 656, allowance for reimbursement for use of car is limited by this act. Op. Atty. Gen., June 4, 1931.

Allowance for traveling expenses of members of county child welfare board is limited specifically by Laws 1931, c. 242. Op. Atty. Gen., June 4, 1931.

This act does not prevent sheriff collecting taxes pursuant to Section 2090 from charging mileage at the rate of ten cents and adding it to the tax. Op. Atty. Gen., June 8, 1931.

A sheriff transporting a feeble-minded person to a state institution is entitled to reimbursement for his actual expenses in transporting the person mentioned, and where he uses his own car the expense may exceed seven cents per mile while the feeble-minded person is in the car. Op. Atty. Gen., June 15, 1931.

This act only limits the amounts which may be paid by the state or any governmental subdivision thereof, and does not limit the mileage which a public officer may charge to an individual in connection with official services rendered. Op. Atty. Gen., July 2, 1931.

Where the statute allows a certain sum per mile as mileage without any statement that it is as reimbursement for automobile or other expenses of traveling, the allowance is not affected by this law. Op. Atty. Gen., July 7, 1931.

This act does not affect the mileage allowance provided in §657 to county commissioners. Op. Atty. Gen., Jan. 22, 1932.

This section does not affect the mileage allowance provided for in §854 to county commissioners. Op. Atty. Gen., Jan. 22, 1932.

County attorney may not collect mileage for use of his personal automobile, but he may be reimbursed for gas and oil. Op. Atty. Gen., June 14, 1932.

Assessor is not entitled to charge for use of his automobile while actually assessing property. Op. Atty. Gen., July 6, 1932.

No provision is made for compensation when sheriff uses his own automobile in transporting prisoner to state prison or state reformatory, but sheriff is entitled to allowance of amount equivalent to railroad fare for himself, prisoner and guards. Op. Atty. Gen., July 6, 1932.

This act does not supersede Mason's Stats., 1927, §6995. Op. Atty. Gen., Oct. 14, 1932.

Act does not affect mileage of jurors or witnesses. Op. Atty. Gen., Jan. 25, 1933.

Mileage allowed county commissioners of Lake County with valuation below \$3,000,000 is governed by this act. Op. Atty. Gen., Feb. 15, 1933.

This section supersedes §822-1, to extent that members of county board are entitled to 7c mileage when they use their own cars, and Laws 1933, c. 13, further reduces it to 5c per mile. Op. Atty. Gen., Feb. 23, 1933.

This section does not affect §657. Op. Atty. Gen., Feb. 25, 1933.

Laws 1933, c. 13, is not applicable to mileage of members of county board whose salaries are determined by general statutes, §656. Op. Atty. Gen., Mar. 4, 1933.

This act does not prevent allowance of 1c per mile on each additional passenger, not exceeding total of 10c per mile. Op. Atty. Gen., Mar. 10, 1933.

Court reporter is entitled to charge 5c per mile for use of automobile, but not for week-end trips home. Op. Atty. Gen., May 2, 1933.

Sworn monthly statements by county commissioners presenting bills for mileage on a monthly basis are sufficient. Op. Atty. Gen., May 20, 1933.

Laws 1927, c. 220, does not place Hennepin County in different class than other counties as far as mileage allowance is concerned. Op. Atty. Gen., May 22, 1933.

County commissioner must itemize monthly mileage statement. Id.

Sheriff may not receive mileage for use of automobile in transporting other county officials in the performance by them of their official duties. Op. Atty. Gen., May 24, 1933.

State, and not county, pays mileage fee to sheriff for transportation of prisoners to state institution. Id.

This act has no application to rights of a sheriff under old law employing taxi or automobile livery of third person. Op. Atty. Gen., May 26, 1933.

Mileage of constable in transporting a prisoner to county jail is not affected by this section, as amended by Laws 1933, c. 13. Op. Atty. Gen., Sept. 22, 1933.

Sheriff is not entitled to compensation for mileage but to a reimbursement in proceedings to collect delinquent motor vehicle taxes where no collections are made. Op. Atty. Gen., Sept. 23, 1933.

Fees for transporting convict prisoner to jail are not affected by this act as amended by Laws 1933, c. 13. Op. Atty. Gen., Oct. 2, 1933.

If superintendent of schools hires a livery, she is entitled to be reimbursed by county for amount actually paid, provided it is usual and customary charge for such services. Op. Atty. Gen., Nov. 1, 1933.

Under this section, as amended by Laws 1933, c. 13, sheriff is not entitled to reimbursement for damages to his own automobile. Op. Atty. Gen., Dec. 11, 1933.

Where sheriff uses his own car in serving warrants in proceedings to enforce payment to delinquent motor vehicle taxes, he is entitled to reimbursement at rate of 5c per mile, though no collections are made. Op. Atty. Gen., Dec. 26, 1933.

Flat daily or monthly allowance to state employees for use of privately owned automobile on state business is prohibited. Op. Atty. Gen., Feb. 21, 1934.

This act must be construed as amending Laws 1925, c. 143, relating to allowances to members of county boards of certain counties. Op. Atty. Gen., Mar. 27, 1934.

County attorney may not use his automobile in connection with his duties as county attorney and collect mileage therefor, notwithstanding that he is required to transport other officers and witnesses. Op. Atty. Gen. (121c-4), Aug. 1, 1934.

Five cents per mile may be used as a reasonable basis for allowance for automobile expense to person taking patient to Minnesota general hospital under §4580. Op. Atty. Gen. (107b-8), Nov. 23, 1934.

County highway engineer may not charge in excess of 5c per mile for use of his automobile in connection with his official duties. Op. Atty. Gen. (104a-8), Nov. 26, 1934.

Laws 1933, c. 96, §4, should not be construed as repealing Laws 1917, c. 312, as amended by Laws 1933, c. 24, and sheriff is entitled to compensation for use of his automobile in addition to his salary, limited to \$3.05 per mile by Laws 1933, c. 13. Op. Atty. Gen. (390a-12), Dec. 28, 1934.

This section does not affect mileage under §§657 and 2051. Op. Atty. Gen. (104a-8), Mar. 8, 1935.

An officer or employee transporting another state officer or employee may receive compensation for the additional service in transporting the other person. Op. Atty. Gen. (359a-14), May 4, 1935.

This section governs allowance for use of automobile where specific statute does not fix rate, and governs maximum which may be allowed sheriff under §920-3. Op. Atty. Gen. (390a-11), May 29, 1935.

Laws 1935, c. 225, does not affect mileage under §6996. Op. Atty. Gen. (847a-5), July 17, 1935.

Mileage which coroner is entitled to charge for necessary travel is governed by §6995 and not this section, and this applies to deputies. Op. Atty. Gen. (103a), May 8, 1935.

Village of Crystal may not reimburse officer or employee for expenses incurred by him in use of his own automobile. Op. Atty. Gen. (359a-14), Dec. 22, 1936.

County commissioner in carrying out duties under §2139-23 is entitled to mileage under §657 and not under §254-47. Op. Atty. Gen. (124j), Jan. 19, 1937.

**254-48. Construction.**—This act shall be construed as amending all existing laws authorizing such allowances or reimbursements by imposing the maximum limit above set forth, and shall not be construed as permitting the payment of such allowance or the making of such reimbursement to any officer or employee where it is not now permitted or hereafter authorized by law, or by authority of the governing body of any municipality above named or by any commission or board of any county. (Act Apr. 24, 1931, c. 331, §2; Feb. 6, 1933, c. 13.)

This act as amended by Laws 1933, c. 13, does not affect mileage provisions in §§657 and 2051. Op. Atty. Gen., May 16, 1933.

A town supervisor has no legal right to charge township for use of his automobile in official business or for his personal expenses of any kind in transacting the business of the town. Op. Atty. Gen. (442a-11), June 27, 1934.

254-48½. \* \* \*

## DECISIONS RELATING TO OFFICERS IN GENERAL

## 1. In General.

Liability of a public officer for nonfeasance attaches only when duty is ministerial and not mandatory. *Cook v. T.*, 274NW165. See Dun. Dig. 8001, 8002a.

Two attorneys associated together in same office but not partners may respectively hold offices of county attorney and city attorney. *Op. Atty. Gen.*, May 6, 1933. Judge of probate may also act as secretary of production credit association, organized to refinance chattel mortgage loans. *Op. Atty. Gen.*, Feb. 23, 1934.

## 2. De facto officers.

There can be no de facto officer unless there is a de jure office for him to fill, but where there is a legislative act or municipal ordinance in form creating an office and an officer is elected or appointed to such office, then, though legislative act or ordinance is unconstitutional or invalid, officer is an officer de facto until act

or ordinance is declared unconstitutional or invalid. *State v. City of Eveleth*, 189M229, 249NW184. See Dun. Dig. 8014.

## 3. Officials not to be interested in contracts.

A county is not authorized to pay rent to a surveyor for his use of instruments belonging to him personally. *Op. Atty. Gen.*, Jan. 9, 1932.

A license is not a contract and an alderman of a city may receive a license to sell intoxicating liquors, except that he cannot vote on his own application. *Op. Atty. Gen.* (218g), Feb. 15, 1935.

## 4. Term of office.

The term of office of a city employe, appointed by city council without term, does not expire at expiration of term for which members of council appointing him were elected, unless employe was appointed for a fixed term. *State v. City of Eveleth*, 189M229, 249NW184. See Dun. Dig. 7988.

Payments to retirement fund by regular state employes shall be based upon their regular salary schedule without considering emergency reduction in salaries. *Op. Atty. Gen.*, May 11, 1933.

## CHAPTER 6

## Elections

R 39-345

**255-1. Cities may change date of municipal elections.**—That the governing body of any city of the first class operating under a home rule charter be and is hereby authorized to change, by resolution adopted by the majority vote of said governing body, the date of the biennial municipal election from the first Tuesday in May to the last Tuesday in April of even-numbered years, in the event that the charter under which such city is operating provides for such biennial election on the first Tuesday in May of even-numbered years. (Act Mar. 9, 1933, c. 71, §1.)

**255-2. Resolution to be filed with County Auditor and Secretary of State.**—A copy of any resolution so passed and approved by the majority of the members of such governing body shall, before it becomes effective, be filed with the county auditor and the Secretary of State of the State of Minnesota not later than sixty days preceding such election. (Act Mar. 9, 1933, c. 71, §2.)

Sec. 3 of Act Mar. 9, 1933, cited, provides that the act shall take effect from its passage.

This act is unconstitutional as not operating uniformly. *Hiler v. C.*, 189M618, 250NW579. See Dun. Dig. 1683.

This act is unconstitutional. *Op. Atty. Gen.*, Dec. 12, 1933.

This act being unconstitutional election of officers of cities operating under Laws 1895, c. 8, are to be elected in odd numbered years. *Op. Atty. Gen.* (86a-20), Sept. 29, 1934.

**255-3. City election in certain cities.**—The regular city election in all cities in this state, operating under Laws 1895, Chapter 8 [Masons Minn. Stat. 1927, pp. 439 to 466], and having a population of less than 3500 inhabitants, shall be held on the first Tuesday after the first Monday in November of each even-numbered year. (Act Apr. 8, 1933, c. 181, §1.)

Held unconstitutional. See note in *Mason's Minnesota Annotations*, Feb. 1934, Vol. 6, No. 1.

**255-4. Officers to hold over in certain cases.**—There shall not be any city election in such cities in the year 1933, and elective and appointive officers, now holding office in said cities, shall continue to hold their respective offices until the first Tuesday after the first Monday in the year 1935, or until their successors are elected or appointed and have qualified, unless such officers are removed in the manner provided by law. (Act Apr. 8, 1933, c. 181, §2.)

## 256. Definition of terms.

*Gen. Stat.* 1923 (1 *Mason*, 1927) §§488-492, providing for contest of elections, does not apply to towns. *Danculovic v. Z.*, 184M370, 238NW695. See Dun. Dig. 2915, 9660a.

Child over 21 years of age upon entering United States does not become citizen of United States on naturalization of parent. *Op. Atty. Gen.*, Mar. 3, 1933.

Unincorporated village cannot issue licenses or operate municipal liquor store. *Op. Atty. Gen.*, Feb. 26, 1934.

Indians who have been residents of state for at least six months and residents of established election district for at least 30 days are entitled to vote at school elections. *Op. Atty. Gen.* (490g), Sept. 21, 1934.

## 257. Term of office, when it begins.

*Op. Atty. Gen.*, Mar. 20, 1934; note under Const., art. 6, §10.

Judges of municipal court are state officers and not officers of the municipality electing them, and where a municipal judge was elected to a term commencing on the first secular day of February, 1928, his term of office did not expire until four years thereafter, and his term of office could not be changed by adoption of home rule charter changing dates of election, and where the only proper general election of a city next preceding first secular day of February, 1932, was in November, 1930, at which the same judge was elected, his four-year term of office under the second election began the first secular day of February, 1932. *State v. Benschel*, 194M55, 259NW389. See Dun. Dig. 6899a.

Person appointed to fill vacancy in office of probate judge holds office until first Monday in January following general election in November, and there can be no short term between November and January. *Op. Atty. Gen.* (347k), May 29, 1936.

## 258. Election districts.

Laws 1929, c. 95, repealed and reenacted by Laws 1929, c. 344, provides for setting apart unincorporated platted territory within a township as a separate election district. The act is so restricted as to territorial operation as to require its exclusion from this compilation as a local or special act.

Villages separated from the town with population between 3,000 and 3,700 and valuation between \$750,000 and \$1,500,000 and an area of at least one square mile, may subdivide into election districts. Laws 1935, c. 55.

*Op. Atty. Gen.* (442a-11), Apr. 19, 1934; note under § 1096.

After an election district has once been established it cannot be changed or a new one created with authorization of electors at either annual election or at special election called for that purpose. *Op. Atty. Gen.*, Jan. 10, 1934.

**259-1. Election districts created.**—The village council of each village that is separated from the town for election purposes, which according to the last state or federal census has a population between 3,000 and 3,700 inhabitants and which has an assessed value between \$750,000 and \$1,500,000 and which contains an area of at least one square mile, shall divide, consolidate and rearrange said village into parts for voting purposes, from time to time, so that the number of voters in each part shall be substantially equal and not to exceed six hundred. Such changes shall be made by resolution of the village council adopted at least 90 days before the next ensuing election and sixty days' posted notice shall be given before the same shall take effect. (Act Mar. 20, 1935, c. 55, §1.)

**262. (Special elections in certain cases.**—Whenever any vacancy occurs in any office, the filling of which is not otherwise provided for, the governor, within ten days after he is informed of such vacancy, shall issue a proclamation directing a special election to be held at a time therein specified not more than twenty days from the date of such proclamation, to fill such office. One copy of such proclamation shall be mailed to the auditor of each county wherein such special election is to be held. But if the vacancy