

MINNESOTA STATUTES 1941

2591

SPECIAL PROVISIONS RELATING TO CERTAIN TOWNS 368.04

CHAPTER 368

SPECIAL PROVISIONS APPLYING TO CERTAIN TOWNS

Sec.		Sec.	
368.01	Certain towns to have certain powers of villages	368.26	Fund; anticipation warrants
368.02	Certain towns not to draw orders without funds in treasury	368.27	Warrants received in payment of assessments
368.03	Last preceding census to determine	368.28	Conveyance not recordable until assessment paid
368.04	Indebtedness in excess of limit to be personal claim against officials creating same	368.29	Assessment roll; letters, marks, and figures
368.05	May issue certificates of indebtedness	368.30	Irregularities not to invalidate assessment
368.06	To be on cash basis after January 1, 1934	368.31	Reassessment in case of invalidity
368.07	Bond issue to retire existing indebtedness	368.32	Confirmation of assessment; notice and hearing; statement of objections
368.08	Tax levy to retire bonds	368.33	Appeal; procedure; mode and scope of review
368.09	Violation a misdemeanor	368.34	Repair of sewers
368.10	Officers may be suspended from office for violation	368.35	Private connections with sewers; supervision
368.11	Continuance under provisions	368.36	Eminent domain
368.12	Certain towns may employ attorneys	368.37	Town to possess powers of village
368.13	Certain towns may establish sewage system, sewer districts, and sewage treatment plants	368.38	Town may bear part of cost of sewer system
368.14	Plan of system	368.39	Certain towns to receive special relief
368.15	Use of public grounds; acquisition of rights in other lands	368.40	Application to state auditor
368.16	Motion of or petition to town board; determination by board; resolution; districts, surveys, and plans	368.41	State auditor to determine facts
368.17	Fund available	368.42	Payments made pro rata
368.18	District sewer; special assessments	368.43	To be in force for ten years
368.19	Joint-district sewer; special assessments	368.44	Dissolution of certain towns; grounds
368.20	Lateral sewers; special assessments	368.45	Copy of dissolution resolution for secretary of state
368.21	Estimates; plans and specifications; filing and public inspection; copies, cost	368.46	Distribution of funds
368.22	Bids for construction; letting contract, bond; town may do work; supervision by engineer	368.47	Towns may be dissolved
368.23	Advances to contractor	368.48	Copy of resolution of dissolution for secretary of state
368.24	Estimate for assessment; landowners may install laterals; spreading assessment; notice; objections; hearing; approval; payment; interest; instalments; extending on tax rolls; penalties	368.49	Distribution of funds
368.25	Supplemental assessment	368.50	Towns may construct sewers and sewage disposal plants
		368.51	Payment of cost; bonds; interest
		368.52	Tax levy to retire bonds
		368.53	Form of bonds
		368.54	Proceeds of bonds, how used
		368.55	Powers additional
		368.56	Division of town by resolution of town board
		368.57	When resolution to be in force
		368.58	Changes and modifications

368.01 CERTAIN TOWNS TO HAVE CERTAIN POWERS OF VILLAGES.

Any town in this state having therein a platted portion on which there reside 1,200 or more people shall have and possess the same power and the same authority now possessed by villages in this state under the laws of this state in so far as such powers are enumerated in section 412.19 and in subdivisions 2, 8, 9, 11, 13, 14, 18, 19, and 24 thereof, also the powers enumerated in sections 412.22 and 412.27.

[1907 c. 193 s. 1; 1907 c. 397 s. 1] (1003) (1004)

368.02 CERTAIN TOWNS NOT TO DRAW ORDERS WITHOUT FUNDS IN TREASURY.

From and after January 1, 1934, no town which, in the year 1933, had a population (including the population of villages within such town not separated from the town for election and assessment purposes) exceeding 2,000, and not exceeding 10,000, and an assessed valuation of taxable property, exclusive of money and credits, such that a tax levy of 17 mills upon the dollar of such assessed taxable valuation would produce a total levy in excess of an average of \$1,000 per government section of the entire area of such town, according to the government survey thereof, shall draw any order or warrant on any fund until there is sufficient money in the fund to pay the same together with all orders previously issued against the fund.

[1933 c. 293 s. 1] (1108-4)

368.03 LAST PRECEDING CENSUS TO DETERMINE. In determining the application of sections 368.02 to 368.11 to any such town, the population thereof shall be determined by the last preceding state or federal census and the valuation shall be that used as a basis for spreading the 1932 taxes of the town.

[1933 c. 293 s. 2] (1108-5)

368.04 INDEBTEDNESS IN EXCESS OF LIMIT TO BE PERSONAL CLAIM AGAINST OFFICIALS CREATING SAME. Whenever, from and after January 1, 1934, the expense and obligations incurred, chargeable to any particular fund of

such town in any calendar year, are sufficient to absorb 85 per cent of the entire amount of the tax levy payable in that year, including such amount as may remain in the fund from the levy of the prior year or years, no officer or board of such town shall have the power, and no power shall exist, to create any additional indebtedness (save as the remaining 15 per cent of the tax levy is collected) which shall be a charge against that particular fund or shall be in any manner a valid claim against the town, but the additional indebtedness attempted to be created shall be a personal claim against the officer or members of the board voting for or attempting to create the same.

[1933 c. 293 s. 3] (1108-6)

368.05 MAY ISSUE CERTIFICATES OF INDEBTEDNESS. At any time after the annual tax levy has been certified to the county auditor, and not earlier than October tenth in any year, the governing body of such town may, for the purpose of meeting the obligations of the succeeding year, by resolution, issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes so levied for any fund named in the tax levy for the purpose of raising money for any such fund, but no certificate shall be issued for any of the separate funds exceeding 50 per cent of the amount named in the tax levy, as spread by the county auditor, to be collected for the use and benefit of the fund, and no certificate shall be issued to become due and payable later than December thirty-first of the year succeeding the year in which the tax levy, certified to the county auditor, as aforesaid, was made. The certificates shall not be sold for less than par and accrued interest and shall not bear a greater rate of interest than six per cent per annum. Each certificate shall state upon its face for which fund proceeds of the certificate shall be used, the total amount of the certificates so issued; and the whole amount embraced in the tax levy for that particular purpose. They shall be numbered consecutively and be in the denominations of \$100.00 or a multiple thereof, and may have interest coupons attached, and shall be otherwise of such form and terms and be made payable at such place as will best aid in their negotiation. The proceeds of the tax assessed and collected, as aforesaid, on account of the fund, and the faith and credit of such town shall be irrevocably pledged for the redemption of the certificates so issued. The certificates shall be paid from the moneys derived from the levy for the year against which the certificates were issued or, if they be not sufficient for such purpose, from other funds of the town. The money derived from the sale of the certificates shall be credited to such fund or funds for the calendar year immediately succeeding the making of the levy and shall not be used or spent until such succeeding year. No certificates for any year shall be issued until all certificates for prior years have been paid, nor shall any certificate be extended; provided, that money derived from the sale of the certificates for any one year may, if necessary, be used to redeem unpaid certificates issued in a prior year.

[1933 c. 293 s. 4] (1108-7)

368.06 TO BE ON CASH BASIS AFTER JANUARY 1, 1934. From and after January 1, 1934, such towns shall be deemed for all purposes to be on a cash basis and shall thereafter remain on a cash basis. All taxes levied in 1933 shall be considered as the tax revenues for the year 1934, and thereafter in any such town taxes shall be levied as now provided by law, but for the succeeding year.

[1933 c. 293 s. 5] (1108-8)

368.07 BOND ISSUE TO RETIRE EXISTING INDEBTEDNESS. If any such town, prior to January 1, 1933, has incurred by proper authority a valid indebtedness, excluding bonds, in excess of its cash on hand, such town may, for the purpose only of paying and discharging such valid indebtedness (except bonds) and interest thereon, issue its bonds in the manner now provided by law, upon approval of the proposition of the issuance of the bonds by the electors of the town in the manner now provided by law; provided, that if any moneys received from taxes levied in 1932 and payable in 1933, or income from local sources received since January 1, 1933, have been used prior to April 17, 1933, for the retirement of indebtedness existing January 1, 1933, such bond issue may include the amount of such payments for the purpose of reimbursing the funds from which such moneys were so paid.

[1933 c. 293 s. 6] (1108-9)

368.08 TAX LEVY TO RETIRE BONDS. The town board of any such town issuing bonds pursuant to the authority of sections 368.02 to 368.11 shall, at the time of the issuance thereof, by resolution, provide for a levy for each year, until the principal and interest of the bonds are paid in full, of a direct annual tax in an

MINNESOTA STATUTES 1941

2593

SPECIAL PROVISIONS RELATING TO CERTAIN TOWNS 368.13

amount sufficient to pay the principal and interest thereon when and as such principal and interest become due. Such tax levy shall be within the limitations provided by section 275.10, and other laws, upon the tax levies of the town, and the county auditor, at the time of spreading the annual tax levy of the town, shall reduce the same so that the total levy shall be within the limitations of such laws.

[1933 c. 293 s. 7] (1108-10)

368.09 VIOLATION A MISDEMEANOR. Any member of the town board of such town, or any other town officer or employee knowingly participating in or authorizing any violation of sections 368.02 to 368.11 shall be guilty of a misdemeanor, and, upon conviction, punished by a fine of not exceeding \$100.00 or by imprisonment in the county jail for not exceeding three months, for each offense; and each contract attempted to be entered into or indebtedness or pecuniary liability attempted to be incurred in violation of the provisions of sections 368.02 to 368.11 shall be null and void in regard to any obligation thereby sought to be imposed upon the town, and no claim therefor shall be allowed by the town board of the town; nor shall the claim of the town or any other town officer or employee issue or execute, nor shall the town treasurer pay, any warrant or certificate of indebtedness issued on account thereof. Each member of the town board and each other town officer or employee participating in or authorizing any violation of sections 368.02 to 368.11 shall be individually liable to the town or to any other person for any damages caused thereby and for the purpose of enforcing such liability, without impairing any other remedy, one-fourth of the salary of each such officer and employee shall be withheld from him and applied towards reimbursing the town or any such other person for such damages until all claims by reason thereof have been fully paid. Every member of the town board present at a meeting of the board when any action is taken with reference to paying money or incurring indebtedness or entering into any contract shall be deemed to have participated in and authorized the same, unless he shall have caused his dissent therefrom to be entered upon the minutes of the meeting.

[1933 c. 293 s. 8] (1108-11)

368.10 OFFICERS MAY BE SUSPENDED FROM OFFICE FOR VIOLATION. Any member of the town board knowingly participating in or authorizing the violation of sections 368.02 to 368.11 shall be liable to suspension from office. Any vacancy created thereby shall be filled according to law.

[1933 c. 293 s. 9] (1108-12)

368.11 CONTINUANCE UNDER PROVISIONS. When a town has once come under the provisions of sections 368.02 to 368.11 it shall continue under those provisions, notwithstanding any subsequent change in assessed valuation or population.

[1933 c. 293 s. 10] (1108-13)

368.12 CERTAIN TOWNS MAY EMPLOY ATTORNEYS. The board of supervisors in any town in the state having a population of more than 3,000, exclusive of incorporated villages or cities therein, and an assessed valuation of taxable property, exclusive of money and credits, of more than \$10,000,000, shall have the power to employ an attorney or attorneys without a vote of the electors and shall have the power, without a vote of the electors, to acquire land by purchase or condemnation and build on such land garages, warehouses, offices, and other buildings for the use of such town; provided, that the total expenditure for the land and buildings during any one year shall not exceed eight per cent of the total annual town levy; and provided that all expenditures shall be within the present millage tax limitation.

[1937 c. 319 s. 1] (1108-16)

368.13 CERTAIN TOWNS MAY ESTABLISH SEWAGE SYSTEM, SEWER DISTRICTS, AND SEWAGE TREATMENT PLANTS. In any town of this state having not less than 1,500, and not more than 2,000, inhabitants according to the last federal census and having an assessed valuation of more than \$1,200,000, and less than \$1,750,000, and having an area of not less than 23,000, nor more than 26,000, acres, the town board shall have power to establish and maintain a general system of sewers, to create sewer districts, and change, diminish, or enlarge the boundaries thereof from time to time and to relay, alter, or extend any existing sewer system and to establish and maintain sewage treatment plants when deemed necessary. Any proceedings heretofore taken by any such town to establish and construct such a sewer system are hereby validated, ratified, approved, and confirmed and declared to be valid and effective and the town board of any such town

is hereby authorized to issue warrants to pay therefor and to levy assessments for the cost thereof in the same manner as though the proceedings had been commenced and the construction started after February 24, 1939.

[*Ex. 1937 c. 32 s. 1; 1939 c. 28*] (1108-31)

368.14 PLAN OF SYSTEM. The town board of such town may, at any time, establish a general sewer system and may classify sewers as general, district, joint-district, and lateral. General sewers shall be the designation of such large sewers as shall be common to the entire area used as outlets for district or joint-district sewers, and shall not include those which may or shall be constructed for the immediate draining of any particular district. District sewers shall be the designation of all main sewers laid for the immediate draining of a particular sewer district. Joint-district sewers shall be the designation of such large sewers as may be laid through or be used jointly by two or more sewer districts between a district sewer and a general sewer or independently of general sewers, and for all purposes of construction, maintenance, repairing, and taxation, or providing for the cost thereof, shall be treated as though in a single district. Lateral sewers shall be the designation of all sewers of whatever size, capacity, or length, which may be constructed to drain any portion of a sewer district directly into any district, joint-district, or general sewer.

[*Ex. 1937 c. 32 s. 2*] (1108-32)

368.15 USE OF PUBLIC GROUNDS; ACQUISITION OF RIGHTS IN OTHER LANDS. All general, district, and joint-district sewers shall be laid, when practicable, in public grounds, streets, or alleys. Whenever it shall be necessary, in the judgment of the town board, to lay and maintain any general, district, joint-district, or lateral sewer in or through other than public lands, the town may acquire the right thereto by purchase, gift, or condemnation under the right of eminent domain.

[*Ex. 1937 c. 32 s. 3*] (1108-33)

368.16 MOTION OF OR PETITION TO TOWN BOARD; DETERMINATION BY BOARD; RESOLUTION; DISTRICTS, SURVEYS, AND PLANS. The town board of any such town may, by resolution, on its own motion, or by petition, as hereinafter provided, determine that the public health and sanitation of an area in such town, to be described in the resolution, requires that a sanitary sewer or sewers shall be constructed, or it may be made on petition made by the owners of at least 51 per cent in area of real property within such proposed sewer district. The petition may be in formal language and may pray that such improvement be made and sewer constructed. It shall be filed with the town clerk, and the town board shall examine the same and be satisfied that the persons signing the same are owners of real estate within the proposed sewer district. The town board may thereupon determine, by resolution, whether or not the petition has been signed by the required percentage of owners and its determination so made shall be final and conclusive unless set aside by a court having jurisdiction thereof.

No action shall be taken for the construction of an entire or partial system, or for the extension of an existing sewer, except upon the adoption of a resolution by a majority vote of all the members of the town board. The creation of sewer districts and the alteration of the boundaries thereof shall be by resolution, and the town board may at all times cause inspection, surveys, plans, and profiles to be made by a competent engineer selected by the town board and reported to the town board for its guidance in determining the form and extent of any sewer district to be created, enlarged, or diminished, and such sewer districts shall be consecutively numbered.

[*Ex. 1937 c. 32 s. 4*] (1108-34)

368.17 FUND AVAILABLE. The cost of constructing a general sewer, plant or plants for treating the sewage therein or securing an outlet therefor shall be paid out of the sewer fund, if any, or, if there is no sufficient sewer fund, out of the general fund of the town.

[*Ex. 1937 c. 32 s. 5*] (1108-35)

368.18 DISTRICT SEWER; SPECIAL ASSESSMENTS. The cost of constructing any district sewer, plant or plants for treating the sewage therein and the securing of an outlet for such district sewer or treatment plant may be assessed against all the land in the sewer district subject to assessments for local improvements, according to special benefits to each lot, piece, or parcel of land in the district, without regard to cash valuation.

[*Ex. 1937 c. 32 s. 6*] (1108-36)

368.19 JOINT-DISTRICT SEWER; SPECIAL ASSESSMENTS. The cost of constructing every joint-district sewer, plant or plants for treating the sewage therein and the securing of an outlet for such joint-district sewer or treatment plant may be assessed against all the land in the two or more sewer districts which it drains, and for that purpose all of the districts so drained by any joint-district sewer shall be treated as one district, and the same plant, method, and means employed as in assessing for the cost of a district sewer, treatment plant for the same or outlet therefor.

[*Ex. 1937 c. 32 s. 7 (1108-37)*]

368.20 LATERAL SEWERS; SPECIAL ASSESSMENTS. The entire cost of constructing all lateral sewers may be assessed against every lot, piece, or parcel of land abutting thereon, subject to assessment for local improvement at an equal sum per front foot, without regard to cash valuation.

[*Ex. 1937 c. 32 s. 8 (1108-38)*]

368.21 ESTIMATES; PLANS AND SPECIFICATIONS; FILING AND PUBLIC INSPECTION; COPIES, COST. Whenever the town board shall determine, by resolution, to establish, alter, repair, relay, or extend any existing sewer or to construct any new sewer, the cost thereof shall be estimated by a competent engineer to be selected by the town board, who shall draw plans and specifications and tabulate the results of his estimate of the cost and report the same to the town board, and such plans and specifications shall be filed with the clerk of the town before any proposals for bids for work thereunder shall be advertised, and shall remain on file, open to the inspection of all persons, until after the contract for such work shall be let; copies of such plans and specifications shall be furnished by the engineer who shall prepare the originals to any person applying therefor, at a cost of 75 cents per hour for the time necessarily employed in making such copies.

[*Ex. 1937 c. 32 s. 9 (1108-39)*]

368.22 BIDS FOR CONSTRUCTION; LETTING CONTRACT, BOND; TOWN MAY DO WORK; SUPERVISION BY ENGINEER. The town board shall then cause proposals for bids for such work to be advertised in the nearest newspaper published in the county and in some trade paper published in a city of the first class in the state. The publications shall continue at least once in each week for two successive weeks. The advertisement shall specify the work to be done and shall call for bids upon a basis of cash payment for the work, and shall state the time within which bids will be received and the time at which the same will be open for consideration by the town board. No bids shall be considered unless accompanied by a cash deposit or duly certified check payable to the order of the treasurer of the town for at least five per cent of the amount bid and directed to the clerk of the town, securely sealed so as to prevent its being opened without detection, and endorsed upon the outside wrapper with a brief statement as to the work for which the bid is made. In letting contract for any such work it shall be the duty of the town board to require the execution of a written contract and a bond in such sum as the town board may require, conditioned for the faithful performance of the contract, and for saving the town harmless from any and all liability in the prosecution and completing of the work. The town board, if a contract is awarded, shall award the same to the lowest responsible bidder. If any bidder to whom such contract is awarded shall fail to enter promptly into such written contract and to furnish such bond, the defaulting bidder shall forfeit to the town the amount of his cash deposit or certified check and the town board may thereupon award the contract to the next lowest responsible bidder; provided the town board shall have the right to reject all bids. When the estimates made for the town board for the entire work projected shall be less than \$500.00 the town board may directly purchase the materials therefor and cause the work to be done by day labor. Every contract awarded under sections 368.13 to 368.38 shall be made between the town, as one party, in the name of the town, and the successful bidder as the other party, and such contract shall be executed on behalf of the town by the chairman of the town board and countersigned by the clerk of the town, and an attested copy thereof shall be filed and remain in the office of the clerk of the town.

In every contract executed under sections 368.13 to 368.38, whether or not so stated therein, there shall be reserved the right of the town board to have the work supervised by an engineer or other person in behalf of the town; and, in case of improper construction or unreasonable delay in the prosecution of the work by the

contractor, to order and cause suspension of the work at any time and to relet the contract therefor or to order a reconstruction of any portion of the work improperly done, or where the remaining work to be done or the work of reconstruction to be made shall call for an expenditure of less than \$500.00, to complete the work of reconstruction by the employment of day labor.

[*Ex. 1937 c. 32 s. 10*] (1108-40)

368.23 ADVANCES TO CONTRACTOR. In case the contractor to whom such contract may be let shall properly perform the work therein designated, the town board may from time to time, before the completion of the work in its discretion pay to such contractor 80 per cent of the amount already earned thereunder upon the estimate of the engineer selected by the town board.

[*Ex. 1937 c. 32 s. 11*] (1108-41)

368.24 ESTIMATE FOR ASSESSMENT; LANDOWNERS MAY INSTALL LATERALS; SPREADING ASSESSMENT; NOTICE; OBJECTIONS; HEARING; APPROVAL; PAYMENT; INTEREST; INSTALMENTS; EXTENDING ON TAX ROLLS; PENALTIES. When any work or improvement provided for by sections 368.13 to 368.38 shall have been determined upon and a contract let therefor, or outlet secured, the engineer selected by the town board shall forthwith calculate the proper amount to be specifically assessed for such district, joint-district, and lateral sewers, treatment plants, or outlet against every assessable lot, piece, or parcel of land within the sewer district affected without regard to cash valuation in accordance with the provisions of sections 368.18 to 368.20.

In calculating the special assessment for any district sewer or joint-district sewer, the cost of laying or relaying such sewer in any public ground or public highway, and all catch basins, manholes, lamp holes, and flushing valves, tanks, and treatment plants shall be taken as a part of such district sewer or joint-district sewer, and to be paid for by such special assessment.

Private owners may lay, relay, or extend any lateral sewer through any public ground, street, or alley and connect the same with any general, district, or joint-district sewers, upon permission granted by a majority of the town board, and any private owner alone, or two or more owners jointly, may lay, relay, or extend lateral sewers through private ground pursuant to rights acquired therefor by agreement or purchase from any private owner or owners. In the event any private owner alone, or jointly with others, lay, relay, or extend any such lateral sewer through public ground, the town shall not be or become in any manner or in any respect liable for any act or negligence involved therein.

When the engineer shall have finished his calculation of the amount to be specially assessed, as aforesaid, against each tract, piece, or parcel of land in the sewer district affected, he shall at once prepare and file with the clerk of the town tabulated statements, in duplicate, showing the proper description of each and every tract, piece, or parcel of land to be specially assessed, and the amount he has calculated against the same, and such statements shall be the basis of the assessment and be known as the proposed assessment to be made by the town board, as hereinafter prescribed, and shall be laid before the town board for its approval at a meeting to be held not less than ten days thereafter. The clerk of the town shall thereupon cause notice of the time and place when and where the town board will meet in regular session to pass upon such proposed assessments to be published in a newspaper in the county once in each week, for two successive weeks, and by three posted notices thereof in the town, at least one of which posted notices shall be within the sewer district to be affected.

During all the time between the filing of the proposed assessment with the clerk of the town and such meeting of the town board such proposed assessment shall be opened to inspection and copying by all persons interested.

At such meeting of the town board all persons aggrieved by such proposed assessment may appear before the town board and present their reasons why such proposed assessment, or any particular item thereof, should not be adopted, and the town board shall hear and pass upon all objections thereto, if any, and may alter, or affirm and adopt such proposed assessment as may be deemed just in the premises; and, upon the adoption by resolution of the proposed assessment, the same shall be certified by the clerk of the town and filed in his office and thereupon constitute the special assessment. The amount assessed against each lot, tract, piece, or parcel of land by such special assessment shall bear interest from the date of the adoption of the special assessment until the same has been paid, at the rate of

MINNESOTA STATUTES 1941

2597

SPECIAL PROVISIONS RELATING TO CERTAIN TOWNS 368.26

interest to be designated by resolution of the town board at the time of the adoption of such special assessment, but not to exceed six per cent per annum, and such special assessment, with the accruing interest thereon, shall be a paramount lien upon the property included therein from the time of the adoption of the assessment by the town board and remain such lien until fully paid and have precedence over all other liens, except general taxes, and as to such shall be concurrent, and not be divested or impaired by any judicial sale, and no mistake in the description of the property or in the name of the owner shall invalidate the lien.

The town board may at any time by resolution direct the clerk of the town to make up and file in the office of the county auditor a certified statement of the amount of all such unpaid assessments and the amount of interest which will be due thereon on the first day of January of the following year and the clerk of the town shall within 20 days thereafter make up and file such certified statement in the office of the auditor of the county, which statement shall contain a description of the lands affected by the assessment. The resolution may direct that such special assessment shall be payable in equal annual instalments, not exceeding five, and payable on the first day of January each year, each instalment to bear interest at the rate hereinbefore provided until fully paid; and the certified statement of the clerk shall show the amount of each instalment, the date when each instalment becomes due, and the amount of interest to be paid on each instalment in each year. After the statement is filed in the office of the county auditor it shall be the duty of the auditor to extend upon the tax roll of each year the amount of such assessment or instalment thereof, as the case may be, and the amount of interest which will become due on the first day of January of the following year, as shown by the certified statement, against the different lots or parcels of land therein described, and such amounts when so extended each year shall be carried into the tax becoming due or payable in January of the following year and enforced and collected in the manner provided for the enforcement and collection of the state and county taxes, and the assessment and interest paid to the county treasurer shall be paid over by him to the treasurer of such town upon the apportionment of general taxes but, in case such assessments or instalments thereof are to cover payments due for a district or joint-district sewer outlet, as herein provided, such payments shall be applied on the same. Any person named, at any time before the transmission of the certified statement of the clerk of such town to the county auditor, may pay such special assessment as to any lot, piece, or parcel of land affected thereby, together with the interest accrued thereon at the date of such payment, to the town treasurer and receive the proper receipt therefor, and the clerk of the town shall, upon the presentation of the receipt from the town treasurer, cancel upon the special assessment roll the special assessments so paid.

Any person may pay any such assessment, with accrued interest thereon, after the same has been so certified to the county auditor, provided the tax roll containing such assessments has not in due course been delivered to the county treasurer for collection, and the receipt of the county treasurer shall be sufficient authority, upon presentation to the county auditor, for him to mark such assessment "paid" upon his roll, but after the roll has been delivered to the county treasurer for collection the assessment must be paid to him, with the penalties allowed by law.

The same penalties and interest shall attach and be collected by the county treasurer on assessments as upon general taxes, which penalties and interest shall belong to the town and to be turned over by the county treasurer to the town with the assessment.

[*Ex. 1937 c. 32 s. 12*] (1108-42)

368.25 SUPPLEMENTAL ASSESSMENT. In case of omission, errors, or mistakes, in making such assessments in respect to the total cost of such improvement, or otherwise, it shall be competent for the town board to provide for and make supplemental assessments to correct such omissions, errors, or mistakes; and such supplemental assessments shall be a lien as in case of the original assessment, drawing interest at the same rate and be payable and enforceable in the same manner as is herein provided with respect to the original assessment.

[*Ex. 1937 c. 32 s. 13*] (1108-43)

368.26 FUND; ANTICIPATION WARRANTS. All moneys collected on any such special assessment shall constitute a fund for the payment of the cost of improvements for the district for which such assessment was made, and the same shall be credited to the proper sewer district fund under the designation "fund of

sewer district No." In anticipation of the collection of such special assessment, the town may issue warrants on such funds, to be known as sewer warrants, payable at such times and in such amounts as in the judgment of the town board the collections of such special assessments will provide for, which warrants shall bear interest at a rate not to exceed five per cent per annum payable annually and may have coupons attached representing each year's interest. Each warrant shall upon its face state for what purpose it is issued and specify the particular fund against which it is drawn and be signed by the chairman of the town board and countersigned by the town clerk and be in denominations of not less than \$50.00, nor more than \$500.00. The town board of any such town may by resolution adopted prior to the issuance of the warrant pledge the full faith and credit of the town for the payment of the principal and interest of such warrants out of funds in the treasury of the town when the moneys on hand in the appropriate sewer fund are insufficient to meet the payment of such principal and interest as the same matures. As to any such warrants for the payment of which the full faith and credit of the town is not pledged, these warrants shall be payable solely out of the proper sewer fund. It shall be the duty of the town treasurer on presentation to pay such warrants and interest coupons as they mature out of any funds on hand in the proper sewer fund or out of the general fund of the town if directed by the town board. The warrants may be used in making payments on contracts for the improvements and sold by the town for not less than par and the proceeds thereof used in paying for such improvements; provided, that no indebtedness created under sections 368.13 to 368.38 shall exceed two per cent of the assessable valuation of the town. The town board of any town which shall have issued any such sewer warrant shall have power by a majority vote to levy a tax not exceeding two mills in any one year for the support of the fund of any sewer district.

[*Ex. 1937 c. 32 s. 14*] (1108-44)

368.27 WARRANTS RECEIVED IN PAYMENT OF ASSESSMENTS. Any matured sewer warrant or interest coupon may be used in payment of any such special assessment on any particular property situate within the district for which such warrant or coupon shall have been issued; and the warrants and coupons so used shall be canceled and retired by the town treasurer.

[*Ex. 1937 c. 32 s. 15*] (1108-45)

368.28 CONVEYANCE NOT RECORDABLE UNTIL ASSESSMENT PAID. No conveyance of any land upon which any such special assessment, or portion thereof, is due and unpaid shall be recorded until the delinquent assessment, or portion thereof, shall have been paid.

[*Ex. 1937 c. 32 s. 16*] (1108-46)

368.29 ASSESSMENT ROLL; LETTERS, MARKS, AND FIGURES. In all proceedings and records prepared or used in the making, levy, or collection of these special assessments, letters, figures, and proper ditto marks may be used to denote lots, pieces, and parcels of land, and blocks, sections, townships, ranges, and parts thereof, and dates.

[*Ex. 1937 c. 32 s. 17*] (1108-47)

368.30 IRREGULARITIES NOT TO INVALIDATE ASSESSMENT. No errors or omissions which may be made in any of the proceedings of the town board or of the engineer or any officer of such town in refusing to, reporting upon, ordering, or otherwise acting, concerning any local improvement provided for in sections 368.13 to 368.38, or in making any such special assessment, or in levying or collecting the same, shall invalidate the assessment, unless it shall appear that, by reason of such error or omission, substantial injury has been done to the party claiming to be aggrieved.

[*Ex. 1937 c. 32 s. 18*] (1108-48)

368.31 REASSESSMENT IN CASE OF INVALIDITY. In all cases where any assessment, or any part thereof, as to any lot, tract, or parcel of land assessed under any of the provisions of sections 368.13 to 368.38, for any cause, whether jurisdictional or otherwise, shall be set aside or be declared void by any court, the town board shall without unnecessary delay cause a reassessment, or new assessment, to defray the expenses of such improvements to be made, whether such improvements were made under sections 368.13 to 368.38 or any other laws of this state, and such reassessment or new assessment shall be made as nearly as may be as herein provided for making the assessment therefor in the first instance; and when the same shall have been made and confirmed by the town board it shall be enforced

MINNESOTA STATUTES 1941

2599

SPECIAL PROVISIONS RELATING TO CERTAIN TOWNS 368.35

and collected in the same manner that other assessments are enforced and collected under sections 368.13 to 368.38 and, in all cases where judgments shall hereafter be refused or denied by any court for the collection and enforcement of any special assessment, or where any court shall hereafter set aside or declare void any assessment upon any lot, tract, or parcel of land for any cause, the lot, tract, or parcel may be reassessed, or newly assessed from time to time until each separate piece or parcel of land has paid its proportionate part of the costs and expenses of the improvements as nearly as may be.

[*Ex. 1937 c. 32 s. 19*] (1108-49)

368.32 CONFIRMATION OF ASSESSMENT; NOTICE AND HEARING; STATEMENT OF OBJECTIONS. The notice of the time and place when and where the town board will meet in regular session to adopt any proposed assessment under section 368.24, and to be prepared by the clerk of the town to be published and posted, shall specify the particular sewer district or districts in which the improvement is to be made and describe with reasonable certainty the location, extent, and termini of the sewer or sewers to be laid, relaid, or extended; provided, that no omission or inaccuracy in such notice shall invalidate the notice or the assessment, unless substantial injury shall be shown by the person claiming to be aggrieved thereby.

When the town board shall meet for the purpose of adopting any proposed assessment under the provisions of sections 368.13 to 368.38 no grievance or objection thereto, or to any item therein, shall be heard by the town board unless the party objecting, or his duly authorized agent or attorney, shall, on or before the date of such session, file with the clerk of the town board for presentation to the town board, a complete written statement of the objection with specific reference to the matter or items in question and to which objection is made.

[*Ex. 1937 c. 32 s. 20*] (1108-50)

368.33 APPEAL; PROCEDURE; MODE AND SCOPE OF REVIEW. Any person feeling himself aggrieved by such special assessment may, by notice in writing served upon the chairman of the town board and upon the clerk of the town, a copy whereof with proof of service shall be filed in the office of the clerk of the district court of the county wherein such town is situated, within 20 days after the adoption of the special assessment, appeal from such special assessment to the district court, and such appeal shall be disposed of in a summary manner by the court. At the trial of the appeal no pleading shall be required but the party appealing shall, in his notice of appeal, specify and enumerate the particular grounds of his objection to the special assessment and shall not be entitled to have considered on the appeal any grounds of objection or items other than those specified in the notice, and no question shall be tried on the appeal as to any fact which may have arisen or existed prior to the letting of the contract or contracts for the improvement. A copy of the assessment roll in question and of the resolution of the town board confirming or adopting the same, certified by the clerk of the town, or the originals thereof, shall be prima facie evidence of the facts therein stated or denoted, and that such assessment was regular, just, and made in conformity to law. The judgment of the court on the determination of the appeal shall be final. The appeal shall be entered and brought on for hearing and be governed by the same rules, as far as applicable, as in appeals from justices of the peace in civil actions, and like bonds shall be given to the town by the person appealing as are required in appeals from justices of the peace in civil actions, but the bond shall, to render such appeal effective, be approved by the judge of the district court or the court commissioner of the county. No appeal to the district court shall be made, heard, or determined as to such special assessment, or any item therein, unless such objection shall have been, as specified in section 368.32, previously presented to and passed upon by the town board.

[*Ex. 1937 c. 32 s. 21*] (1108-51)

368.34 REPAIR OF SEWERS. When any such sewer shall be laid, relaid, or extended it shall be the duty of the town board to maintain and keep the same in repair at the expense of the town.

[*Ex. 1937 c. 32 s. 22*] (1108-52)

368.35 PRIVATE CONNECTIONS WITH SEWERS; SUPERVISION. All private connections shall be made with lateral sewers, unless some insurmountable obstacle of a practical nature shall prevent. No private connection with any sewer whatever shall in any event be made without permission therefor granted by the

town board. The making of all private connections with any sewer shall be subject to supervision and control by the town board; provided, that such supervision and control may be delegated by the town board to any engineer or other person selected by the town board at its discretion.

[*Ex. 1937 c. 32 s. 23*] (1108-53)

368.36 EMINENT DOMAIN. When it becomes necessary for the town to exercise the right of eminent domain for the purpose included within sections 368.13 to 368.38 all proceedings therein shall conform as nearly as may be to the provisions of General Statutes 1894, Sections 2620 to 2632, and amendments thereto.

[*Ex. 1937 c. 32 s. 24*] (1108-54)

368.37 TOWN TO POSSESS POWERS OF VILLAGE. For the purpose of carrying out the provisions of sections 368.13 to 368.38, a town, as defined in section 368.13, shall have and possess all the power, and have the same authority, now possessed by villages under the general laws of this state and the chairman of the town board shall be deemed the chief executive officer thereof, the town clerk shall be charged with the duty of performing all the clerical functions necessary therefor and the town board shall have and possess all the power and authority now possessed by a village council under the general laws of this state.

[*Ex. 1937 c. 32 s. 25*] (1108-55)

368.38 TOWN MAY BEAR PART OF COST OF SEWER SYSTEM. The town may contribute to the cost of the construction of such sewer such proportionate share thereof, as shall be determined by the town board before making the assessments for such sewer, and pay the share so determined out of the general funds of the town.

[*Ex. 1937 c. 32 s. 26*] (1108-56)

368.39 CERTAIN TOWNS TO RECEIVE SPECIAL RELIEF. When the value of the property within the boundaries of the corporate limits of any town in the state, which is exempt from local taxation because taxes thereon are paid into the state treasury under the provisions of the gross earnings tax law, is equal to or greater than the taxable value of all real and personal property, exclusive of money and credits, within the town, then such town shall be entitled to receive from the state treasury, in addition to all other taxes received thereby, such an amount as would be produced by computing a tax of one-third of the current tax rate for town purposes upon such property so exempt from local taxation, provided that the amount which any such town shall receive shall not exceed \$1,500 in any year.

[1939 c. 324 s. 1] (2087-5)

368.40 APPLICATION TO STATE AUDITOR. Any town desiring to take advantage of sections 368.39 to 368.43 shall apply in writing therefor to the state auditor and the application shall contain the following facts:

- (1) The valuation of the property within such town, but not within the corporate limits of any city or village therein, subject to taxation under the provisions of the gross earnings tax law;
- (2) The value of all real and personal property, exclusive of money and credits, within any such town subject to local taxation;
- (3) The rate of taxation, in mills, for town purposes for the current and the next preceding years;
- (4) The total amount spent for all town purposes by such town for the last preceding year, and an estimate of the expenses for town purposes for the current year;
- (5) The number of persons actually residing in the town, but not within the corporate limits of any city or village located therein, who are members of an immediate family in which some member thereof is employed in or on the property on which the gross earnings tax is paid.

The information called for in clause (1) shall be ascertained and certified upon the request of any such town by the railroad and warehouse commission; the information called for in clauses (2) and (3) shall be certified by the auditor of the county in which any such town is situated; and the information called for in clauses (4) and (5) shall be certified by the clerk of such town.

[1939 c. 324 s. 2] (2087-6)

368.41 STATE AUDITOR TO DETERMINE FACTS. The state auditor shall immediately consider the matter and determine whether or not such town is entitled

MINNESOTA STATUTES 1941

2601

SPECIAL PROVISIONS RELATING TO CERTAIN TOWNS 368.47

to aid under the provisions of sections 368.39 to 368.43; and, if he finds that such town is entitled to aid, he shall determine the amount to which it is entitled within the limitations of sections 368.39 to 368.43, and shall draw his warrant upon the state treasurer in favor of such town for the amount to which it is so entitled, and deliver the same thereto, taking proper vouchers and receipts therefor.

[1939 c. 324 s. 3] (2087-7)

368.42 PAYMENTS MADE PRO RATA. Not more than \$4,500 in the aggregate shall be disbursed in any one calendar year to all towns entitled to aid under the provisions of sections 368.39 to 368.43; and, in the event the amount of \$4,500 shall be insufficient to pay the full amount to which the town shall be entitled annually hereunder, the state auditor shall apportion the sum pro rata to each of the towns.

[1939 c. 324 s. 4] (2087-8)

368.43 TO BE IN FORCE FOR TEN YEARS. Sections 368.39 to 368.43 shall be in forcè for ten years from and after April 22, 1939.

[1939 c. 324 s. 6] (2087-10)

368.44 DISSOLUTION OF CERTAIN TOWNS; GROUNDS. When the voters residing within a duly organized town in any county in this state having more than 85 congressional townships of land and having an assessed valuation of not less than \$5,000,000, nor more than \$12,000,000, have failed to elect any town officials for more than three years continuously, or the town has failed and omitted to exercise any of the powers and functions of a town, as provided by law, which facts, or any of them, may be found and determined by the resolution of the county board of the county in which the town is located, according to the official records in the office of the auditor of the county, the county board by resolution duly adopted may declare any such town, naming it, duly dissolved and no longer entitled to exercise any of the powers or functions of a town.

[1925 c. 183 s. 1] (1002-5)

368.45 COPY OF DISSOLUTION RESOLUTION FOR SECRETARY OF STATE. A certified copy of any such resolution shall forthwith, after the adoption of the same by the county board, be forwarded by the auditor of such county to the secretary of state, who shall, on receipt thereof, make appropriate entry in the records of his office of the dissolution of such town.

[1925 c. 183 s. 2] (1002-6)

368.46 DISTRIBUTION OF FUNDS. Any funds belonging to the town remaining in, or hereafter coming into, the treasury of the county in which such town shall be located, shall be disposed of in the following manner:

Any road or bridge funds shall be expended by the county board of any such county for road and bridge improvements wholly within the limits of such town; any other funds of such town shall, by the auditor of such county, be used to pay, and he shall pay, all outstanding warrants or judgments against the town; and, if the funds so remaining are not enough to pay such outstanding warrants or judgments, upon petition of the holders thereof, the county auditor shall spread a levy against the taxable property of the town in an amount sufficient to pay the same; any other funds of such town shall, by the county auditor, be credited to the general fund of the county.

[1925 c. 183 s. 3] (1002-7)

368.47 TOWNS MAY BE DISSOLVED. When the voters residing within a town in this state have failed to elect any town officials for more than ten years continuously immediately prior to April 24, 1937, or the town has failed and omitted for a period of ten years to exercise any of the powers and functions of a town, as provided by law, or when the assessed valuation of any town drops to less than \$40,000, or when the tax delinquency of any such town, exclusive of taxes that are delinquent or unpaid by reason of taxes being contested in proceedings for the enforcement of taxes, amounts to 50 per cent of its assessed valuation, or where the state or federal government has acquired title to 50 per cent of the real estate of such town, which facts, or any of them, may be found and determined by the resolution of the county board of the county in which the town is located, according to the official records in the office of the county auditor, the county board by resolution may declare any such town, naming it, duly dissolved and no longer entitled to exercise any of the powers or functions of a town. In counties having a population according to the 1930 federal census of not more than 16,000, nor less than 15,000, and having not more than 77, nor less than 75, full or fractional congressional

townships, and in counties having a population according to the 1930 federal census of not more than 28,000, nor less than 27,000, and having not more than 91, nor less than 90, full or fractional congressional townships, and in counties having a population according to the 1930 federal census of not more than 210,000, nor less than 200,000, and having not more than 202, nor less than 200, full or fractional congressional townships, before any such dissolution shall become effective the freeholders of the town may express their approval or disapproval of such dissolution. The clerk of the town shall, upon the petition of ten legal voters of such town, filed with him at least 15 days before any regular or special town election thereof, give notice at the same time and in the same manner of such election that the question of dissolution of such town will be submitted for determination at such election. At such election when so petitioned for the question shall be voted upon by a separate ballot, the terms of which shall be either "for dissolution" or "against dissolution," which ballot shall be deposited in a separate ballot box to be provided and the result of such voting shall be duly canvassed, certified, and returned in the same manner and at the same time as other facts and returns of the election. If a majority of the votes cast at the election shall be for dissolution, such town shall be dissolved; and, if a majority of the votes cast at the election shall be against dissolution, the town shall not be dissolved.

When a town is dissolved under the provisions of sections 368.47 to 368.49 the county shall acquire title to any telephone company or any other business being conducted by such town and such business shall be operated by the board of county commissioners until such time as a sale thereof can be made; provided that the subscribers or patrons of such businesses shall have the first opportunity of purchase. If such dissolved town has any outstanding indebtedness chargeable to such business, the auditor of the county wherein such dissolved town is located shall levy a tax against the property situated in the dissolved town for the purpose of paying the indebtedness as it becomes due.

[1925 c. 40 s. 1; 1933 c. 377; 1935 c. 342 s. 1; 1937 c. 419 s. 1] (1002-1)

368.48 COPY OF RESOLUTION OF DISSOLUTION FOR SECRETARY OF STATE. A certified copy of any such resolution shall forthwith, after the adoption of the same by the county board, be forwarded by the auditor of the county to the secretary of state, who shall on receipt thereof make appropriate entry in the records of his office of the dissolution of such town.

[1925 c. 40 s. 2] (1002-2)

368.49 DISTRIBUTION OF FUNDS. Any funds remaining in, or hereafter coming into, the treasury of the county in which such town shall be located, shall be disposed of in the following manner:

Any road or bridge funds shall be expended by the county board of any such county for road and bridge improvements wholly within the limits of such town; any other funds of such town shall, by the auditor of such county, be credited to the general fund of the county.

[1925 c. 40 s. 3] (1002-3)

368.50 TOWNS MAY CONSTRUCT SEWERS AND SEWAGE DISPOSAL PLANTS. The board of supervisors of any town in the state having a population of more than 3,000, exclusive of incorporated villages or cities therein, and an assessed valuation of taxable property, exclusive of money and credits, of more than \$10,000,000, shall have power to erect, construct, maintain, and operate a system of water-works and sewage disposal plant and to lay and construct within the platted area thereof such sewers leading to the plant and such other equipment incidental and necessary to the operation thereof as the board deems necessary and advisable. The board of supervisors may enter into any contract with any city or village located therein or adjacent thereto for the care, maintenance, and operation of such water-works, sewage disposal plant, and sewers on such terms and conditions as mutually may be agreed upon.

[1939 c. 287 s. 1; 1941 c. 225 s. 1] (1108-57)

368.51 PAYMENT OF COST; BONDS; INTEREST. The cost of such erection, construction, maintenance, and operation may be paid from the general revenue funds of the town and, in case these funds are insufficient for that purpose, the board of supervisors is hereby authorized and empowered, for the purposes designated in section 368.50, to issue the negotiable bonds of the town to the amount authorized by the board; these bonds to be made in such denominations and payable

MINNESOTA STATUTES 1941

2603.

SPECIAL PROVISIONS RELATING TO CERTAIN TOWNS 368.57

in such places and at such times, not exceeding 30 years from the date thereof, as may be deemed best. The bonds shall mature serially and bear interest at a rate of not to exceed five per cent per annum payable semiannually. No such bonds shall be sold for less than the par value thereof and accrued interest thereon. The bonds shall be issued, negotiated, and sold in accordance with the provisions of section 475.15.

[1939 c. 287 s. 2] (1108-58)

368.52 TAX LEVY TO RETIRE BONDS. The full faith and credit of the town shall at all times be pledged for the payment of any bonds issued under sections 368.50 to 368.55 and for the payment of the current interest thereon and the board of supervisors of the town shall each year include in the tax levy a sufficient amount for the payment of such interest as it accrues and for the accumulation of a sinking fund for the redemption of the bonds at their maturity.

[1939 c. 287 s. 3] (1108-59)

368.53 FORM OF BONDS. All bonds issued under the authority of sections 368.50 to 368.55 shall be sealed with the seal of the town issuing the same and signed by the chairman and clerk thereof, except that the signatures to the coupons attached to such bonds, if any, may be lithographed thereon. The sale of such bonds shall be in such manner and in such proportions of the whole amount authorized by sections 368.50 to 368.55 and at such times as may be determined by the board of supervisors of such town. Such bonds shall be payable not more than 25 years after the date of their issue. The total principal amount of bonds issued under those sections shall not exceed \$131,000.

[1939 c. 287 s. 4; 1941 c. 225 s. 2] (1108-60)

368.54 PROCEEDS OF BONDS, HOW USED. The proceeds of any and all bonds issued and sold under the authority of sections 368.50 to 368.55 shall be used for the purposes enumerated therein. All contracts heretofore entered into by any such town board, all expenditures made, and all bonds issued under the provisions of sections 368.50 to 368.55 are hereby legalized and made valid obligations of such towns.

[1939 c. 287 s. 5; 1941 c. 225 s. 3] (1108-61)

368.55 POWERS ADDITIONAL. The powers granted by sections 368.50 to 368.54 are in addition to all existing powers of such towns.

[1939 c. 287 s. 6] (1108-62)

368.56 DIVISION OF TOWN BY RESOLUTION OF TOWN BOARD. For the purpose of promoting health, safety, order, convenience, prosperity, and general welfare, the electors of any town in this state located within a county having a population of more than 450,000 and an assessed value in 1935, exclusive of money and credits, of over \$280,000,000 shall have power at their annual town meeting or at any special town meeting called pursuant to the provisions of sections 212.03 and 212.04 by resolution adopted by 50 per cent of those voting at the meeting to divide the town, or any prescribed and limited area within the town, into districts or zones of such number, shape, and area as they may deem best suited to carry out the purposes of sections 368.56 to 368.58; and, within such zones, to regulate and restrict the location, height, bulk, number of stories, size of buildings and other structures, the location of roads and schools, the percentage of lot which may be occupied, the sizes of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, or other purposes; to provide for the administration of such resolution by such officers of the town as they may deem advisable and in such manner as they may deem advisable, and to provide for penalties for the violation of the provisions of such resolution. All such regulations shall be uniform for each class and kind of buildings and for the use of land throughout each district but the regulations in any one district may differ from those in other districts.

[1941 c. 362 s. 1]

368.57 WHEN RESOLUTION TO BE IN FORCE. The provisions of any resolution so adopted shall become operative and effective ten days after the date of such town meeting unless there shall be filed with the town clerk within this ten-day period the written objections of 50 per cent or more of the owners of the real property located within the district, zone, or area affected by such resolution

MINNESOTA STATUTES 1941

368.58 SPECIAL PROVISIONS RELATING TO CERTAIN TOWNS

2604

and, in the event such objections be filed by 50 per cent or more of such owners within this period, then such resolution shall be of no further force or effect.

[1941 c. 362 s. 2]

368.58 CHANGES AND MODIFICATIONS. No change or modification of any of the terms or provisions of any resolution so adopted shall be made in any manner unless and until two-thirds or more of the owners of real property within the district, zone, or area affected by such resolution shall consent in writing, filed with the clerk of such town, to such change or modification.

[1941 c. 362 s. 3]