

130278

# 1941 Supplement

To

# Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

Edited by  
the  
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and place of receiving bids. Provided, in case of special emergency, amounts in excess of \$500.00 may be expended without such notice being given. (Act Apr. 25, 1941, c. 447, §13.)

**1108-15n. Shall continue under provisions of act.**—When a town has once come under the provisions of this act, it shall continue under its provisions notwithstanding any subsequent change in assessed valuation or population. (Act Apr. 25, 1941, c. 447, §14.)

**1108-15o. Separability clause.**—If any section, part or provision hereof be found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon. (Act Apr. 25, 1941, c. 447, §15.)

**1108-31. Certain towns may establish sewage system, sewer districts, etc.**

A village within a town and assessed by town may not be considered a part of the town under this section. Op. Atty. Gen., (387G), Oct. 12, 1939.

**1108-36. Same—District sewer; special assessments.**

Although school district is not liable for a special assessment, and an assessment would not be a lien upon the property, it may pay part of cost of construction of a new sewer and sewage disposal plant to extent that it is benefited thereby. Op. Atty. Gen. (387f-1), Jan. 31, 1941.

**1108-56. Same—Town may bear part of cost of sewer system.**

Act Apr. 10, 1941, c. 186, §1, amends Laws 1939, c. 187, §1, by authorizing the board of supervisors in any town of this state bordering on any city of the first, second, or third class to regulate construction of buildings and make zoning regulations.

Act Apr. 22, 1941, c. 362, applicable to counties having populations of over 450,000, authorizes the electors of any town within such county to zone the town or parts thereof and make general building regulations for such town or district.

**1108-57. Towns may construct sewers and sewage disposal plants.**—The board of supervisors of all towns in the State of Minnesota having a population of more than 3,000 inhabitants exclusive of incorporated villages or cities therein and an assessed valuation of taxable property exclusive of moneys and credits of more than \$10,000,000 shall have the power to erect, construct, maintain and operate a system of waterworks and sewage disposal plant, and to lay and construct within the platted area thereof such sewers leading to said plant and such other equipment incidental and necessary to the operation thereof as such board deems necessary and advisable. Such 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 waterworks, sewage disposal plant, and sewers on such

terms and conditions as mutually may be agreed upon. (As amended Act Apr. 14, 1941, c. 225, §1.)

Act Apr. 14, 1941, c. 225, §4, amends the title to Laws 1939, Chapter 287 to read as follows:

An act to authorize the board of supervisors of certain towns to construct waterworks, sewers and sewage disposal plants; to pay therefor from the general revenue funds of such towns or in case such funds are insufficient, to issue and sell bonds not to exceed \$131,000 for that purpose and to validated contracts and bonds heretofore executed.

Act authorizes towns to make necessary repairs and replacements in water works system if necessary to efficient operation of sewage disposal plant. Op. Atty. Gen., (387g-9), Oct. 26, 1939.

**1108-58. Payment of cost—Bonds—Interest.**

See §§1108-60 and 1108-61.  
A bond election is not necessary and it is not necessary to advertise for bids when bonds are to be sold to the state, and town funds may be legally used to construct a sewer which will benefit only a portion of population. Op. Atty. Gen., (43B-7), May 16, 1940.

**1108-59. Tax levy to retire bonds.**

See §§1108-60 and 1108-61.

**1108-60. Form of bonds.**—All bonds issued under the authority of Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, as amended, 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 Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, as amended, and at such times as may be determined by said board of supervisors of such town, provided that such bonds shall be payable not more than 25 years after the date of their issue; provided further, the total principal amount of bonds issued hereunder shall not exceed \$131,000. (As amended Act Apr. 14, 1941, c. 225, §2.)

**1108-61. Proceedings to be used for purposes enumerated.**—The proceeds of any and all bonds issued and sold under the authority of Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, as amended, shall be used for the purposes hereinbefore enumerated. All contracts heretofore entered into by any such town board, all expenditures made, and all bonds issued under the provisions of Mason's Supplement 1940, Sections 1108-57 to 1108-62, inclusive, are hereby legalized and made valid obligations of such towns. (As amended Act Apr. 14, 1941, c. 225, §3.)

**1108-62. Powers additional.**

See §§1108-60 and 1108-61.

## CHAPTER 9

### Villages and Cities

#### VILLAGES

**1111. What territory may be incorporated.**—Any district, section or parts of section not in any incorporated village, and in the state of Minnesota, which has been platted into lots and blocks, also the lands adjacent thereto, when said plat has been duly and legally certified according to the laws of this state, and filed in the office of the register of deeds for the county in which said lands or the larger portion thereof lie, said territory containing a resident population of not more than 10,000 nor less than 100, may become incorporated as a village in the manner hereinafter prescribed. But the unplatted part of such territory must adjoin the platted portions and be so conditioned as properly to be subjected to village government. Provided, that any village, whose incorporation shall hereafter be declared void by judgment of court, may

re-incorporate under this act, notwithstanding the fact that such village does not contain 100 inhabitants, and in such re-incorporation may include all or part of the territory embraced in the original incorporation; provided, however, that any district, section or parts of sections which has been platted into lots and blocks, as herein provided, and which is contiguous to the state line and having a population of not less than 50 inhabitants, may upon a petition of not less than ten voters, residents therein, become incorporated as a village in the manner hereinafter prescribed. (As amended Act Feb. 28, 1941, c. 39, §1.)

In re-incorporation proceedings a petition signed by 25 legal voters of territory comprising foreclosed village is sufficient regardless of number of inhabitants living in such territory. Op. Atty. Gen. (484E-5), Mar. 6, 1941.

and place of receiving bids. Provided, in case of special emergency, amounts in excess of \$500.00 may be expended without such notice being given. (Act Apr. 25, 1941, c. 447, §13.)

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re-incorporate under this act, notwithstanding the fact that such village does not contain 100 inhabitants, and in such re-incorporation may include all or part of the territory embraced in the original incorporation; provided, however, that any district, section or parts of sections which has been platted into lots and blocks, as herein provided, and which is contiguous to the state line and having a population of not less than 50 inhabitants, may upon a petition of not less than ten voters, residents therein, become incorporated as a village in the manner hereinafter prescribed. (As amended Act Feb. 28, 1941, c. 39, §1.)

In re-incorporation proceedings a petition signed by 25 legal voters of territory comprising foreclosed village is sufficient regardless of number of inhabitants living in such territory. Op. Atty. Gen. (484E-5), Mar. 6, 1941.

**Construction and application of Laws 1885, c. 145.**

16.

A primary election should be held in advance of village election in Nashwauk. Op. Atty. Gen., (186E), Oct. 27, 1939.

Names of candidates on primary election ballots in village of Hibbing should be rotated, notwithstanding Laws 1939, chapter 345, part 11, chapter 2, §4. Op. Atty. Gen., (186E), Nov. 20, 1939.

19.

Village council may fill a vacancy in office of justice of the peace. Op. Atty. Gen., (266a-1), Nov. 8, 1939.

An assessor should have been elected in Heron Lake at Dec. 1938 village election to hold office for a 2-year term expiring first secular day in Jan. 1941, and any vacancies in such office should be filled by appointment by council for balance of any unexpired term. Op. Atty. Gen. (12B-5), Jan. 31, 1941.

Since the statute provides that interest shall be at rate of 6 per cent, village is without authority to change that rate. Op. Atty. Gen. (476c-3), Mar. 4, 1941.

21.

Mayor may vote at and anticipate in council meeting to same extent as other members, and there is no law forbidding him from seconding a motion. Op. Atty. Gen. (471h), Jan. 17, 1940.

Offices of clerk of village council and treasurer of school board are incompatible. Op. Atty. Gen., (358f), March 11, 1940.

A non-exclusive electric franchise may be granted for a "reasonable length of time," such to be determined by village council. Op. Atty. Gen. (204a-1), Dec. 3, 1940.

21(3).

Village council may construct a building to house city council chambers and fire department without a vote of electors if it has sufficient funds on hand. Op. Atty. Gen., (469c-6), Nov. 10, 1939.

Council has authority to execute lease of building extending beyond terms of office of councilmen. Op. Atty. Gen. (469a-9), Jan. 18, 1940.

Council has power to lease surplus space in village hall to an American Legion Post provided use does not interfere with use of building for legitimate public needs. Op. Atty. Gen. (469c-6), Jan. 19, 1940.

21(4).

Expenses of a councilman incident to duties of office may not be allowed in addition to salary. Op. Atty. Gen., (471k), Jan. 5, 1940.

21(6).

Where mayor of village in a dry county posted a notice in a beer parlor not to sell beer to a certain person, and was sued for libel, village council may reimburse mayor for attorneys fees and other expenses, and also a reasonable sum paid in settlement. Op. Atty. Gen., (469B-1), Nov. 16, 1939.

Where municipal judge adjudged president and recorder guilty of contempt for denying him use of room provided for municipal court in village hall, and village attorney appeared in behalf of officials found guilty of contempt, and district court set aside contempt order, village may pay costs, including a reasonable attorney's fee, if council is satisfied that president and recorder acted in good faith. Op. Atty. Gen. (476B-3), Nov. 20, 1940.

21(11).

In view of §§1842, 2578, village may make appropriation for improvement and maintenance of roads outside but leading into village. Op. Atty. Gen. (476B-13), March 7, 1940.

Village organized under Laws 1885, chapter 145, may not create a permanent improvement revolving fund for purpose of financing sewer construction, and a fund for that purpose may be created only by special assessment. Op. Atty. Gen. (476a-13), March 21, 1940.

21(13).

Village may regulate sale of farm produce and other products sold periodically in a sales pavilion, even when sold by farmer producing them. Op. Atty. Gen., (290j-9), Oct. 7, 1939.

21(23).

Village may issue bonds for establishment and maintenance of a municipal hospital. Op. Atty. Gen., (1001h), April 2, 1940.

Village may not contribute toward erection of a hospital, not to be owned or operated by village, nor may it accept donations for such a purpose from private individuals, build a hospital on a site owned by it, then turn management and operation thereof over to a private corporation. Op. Atty. Gen. (1001h), Nov. 6, 1940.

Authority to "provide" hospitals implies power to raise money by taxation and purchase land. Id.

21(28).

Council may enact reasonable ordinance regulating business of wrecking automobiles and selling used parts, but cannot prohibit conduct of such business within village. Op. Atty. Gen., (477B-17), Sept. 28, 1939.

22.

A waiting period of 10 days is required before payment after allowance in villages operating under 1905 village act, but no waiting period is necessary in villages operating under Laws 1885, chapter 145. Op. Atty. Gen. (476a-5), Dec. 20, 1939.

51.

In view of Municipalities Emergency Act of 1935, provision requiring letting of contract to lowest responsible bidder is not violated by separate purchase of materials and performance of work by day labor in connection with federal grant. Op. Atty. Gen. (396c-6), Jan. 10, 1940.

In absence of an ordinance so requiring, village council is not required to advertise for bids for an electric cash register for municipal liquor store. Op. Atty. Gen., (707a-15), May 28, 1940.

In absence of an emergency, there should be both published and posted notice by village before awarding contract for construction of city hall and fire station, and such notice should be for two weeks, though a shorter time might be sufficient. Op. Atty. Gen. (707a-9), Aug. 12, 1940.

It is not necessary to advertise for bids in purchase of electric energy for village pumping station and for lighting streets. Op. Atty. Gen. (707a-15), Dec. 3, 1940.

Village recorder cannot be appointed manager of municipal liquor store. Op. Atty. Gen. (218g-13), Dec. 17, 1940.

52.

President and trustees are entitled to benefit of Workmen's Compensation Act. Op. Atty. Gen., (523E-4), April 25, 1940.

**1112. Petition for election.**—Twenty-five or more of the voters who have resided within said territory continuously for a period of at least two years prior to the date of such petition, may petition the county board of the county in which the whole or larger part of said lands are situated to call an election for the determination of such proposed incorporation. They shall first cause to be taken a census of the resident population, and, if found to be within the numbers specified in section (R. L.) 700 the petition aforesaid shall be presented within eight weeks thereafter. It shall set forth the boundaries of such territory, the quantity of land embraced therein, the number of actual residents thereon, and the name of the village proposed. It shall be verified by the oaths of at least three of the petitioners, declaring that such census was accurately taken within the dates specified, and the statements made in the petition are true. (As amended Act Feb. 27, 1941, c. 27, §1.)

In re-incorporation proceedings a petition signed by 25 legal voters of territory comprising foreclosed village is sufficient regardless of number of inhabitants living in such territory. Op. Atty. Gen. (484E-5), Mar. 6, 1941.

County board has no discretion where petition in proper legal form is presented for a proposed reorganized village. Id.

**1113. Notice of election.**

County board has no discretion where petition in proper legal form is presented for a proposed reorganized village. Op. Atty. Gen. (484E-5), Mar. 6, 1941.

**1116. Election of officers—Expenses.**

Registration is not a prerequisite to voting on incorporation of a village. Op. Atty. Gen., (484E-1), Dec. 1, 1939.

Procedure set forth for election on question of incorporation of a village and election of officers. Op. Atty. Gen., (484E-4), Dec. 18, 1939.

**1117. General powers and duties.**

Village may purchase land outside limits for dumping ground without advertising for bids. Op. Atty. Gen., (707a-15), May 17, 1940.

Village may accept title by gift to a tract of land on which a building is located and repair building for use of public as a community building without obtaining vote of the people. Op. Atty. Gen. (476B-8), Mar. 12, 1941.

**1120½. Territory may be detached from villages in certain cases.**

Act Apr. 16, 1941, c. 271, authorizes certain villages consisting of over 15 sections of land, and having populations of less than 2,000, to detach territory therefrom.

**1129. Separation from villages of agricultural lands and annexation to towns.**

Village recorder cannot be appointed manager of municipal liquor store. Op. Atty. Gen. (218g-13), Dec. 17, 1940.

**1134. Elections—Officers—Terms—Vacancies.**

See §601-11(2)f.

Treasurer of village organized under 1905 Village Act is to be paid same fees as a town treasurer, and is entitled to 2% of a loan received from the state to pay outstanding warrants, subject to maximum yearly compensation of \$100. Op. Atty. Gen. (456f), Aug. 28, 1940.

This section may be treated as entirely repealed by Laws 1929, c. 413, §6. Op. Atty. Gen. (472f), Oct. 1, 1940.

There is no statutory procedure for removal of elective village officers for malfeasance or nonfeasance in office,

but any public office becomes vacant when incumbent is convicted of an infamous crime, or of any offense involving a violation of official oath of office. Op. Atty. Gen. (359a-20, 475h), Dec. 6, 1940.

One vacating office by conviction for crime cannot be appointed to fill such vacancy. Op. Atty. Gen. (471M), Jan. 4, 1941.

Compensation to be paid Treasurer of the village may not be increased or decreased during term of office. Op. Atty. Gen. (456f-1), Jan. 11, 1941.

**1152-4. Same—Date—Terms—Judges of Municipal courts. [Repealed.]**

Assessor is to be elected each year, notwithstanding §1075. Op. Atty. Gen., (12B-2), Nov. 8, 1939.

**1152-10. Officers to be elected. [Repealed.]**

Date of annual village election in Litchfield is now governed by Laws 1939, chapter 345, part 11, chapter 2, §8, but offices to be filled thereat are those specified in special acts under which village is organized and operating. Op. Atty. Gen., (472a), Oct. 6, 1939.

Village election in Brownsville should be held on first Tuesday after first Monday in December, notwithstanding Laws 1939, chapter 345. Op. Atty. Gen., (472f), Oct. 30, 1939.

Village council may fill a vacancy in office of Justice of the peace. Op. Atty. Gen., (266a-1), Nov. 8, 1939.

**1152-12. Terms of office. [Repealed.]**

Laws 1939, c. 185 repealed, Laws 1939, c. 345 and Laws 1941, c. 13, §2.

Laws 1939, chapter 185, amending this section, extended term of office of village president from one to two years, notwithstanding conflicting provision of Laws 1939, chapter 345, part 11, chapter 2, §8, which fixes term for that office at one year. Op. Atty. Gen., (471h), Oct. 30, 1939.

Village recorder is to be elected for a two year term, but it is not clear that legislature intended such officer to be elected only in the even numbered years. Op. Atty. Gen., (470k), Nov. 27, 1939.

Term of president of village council has been extended to two years by Laws 1939, chapter 185, notwithstanding provisions of Laws 1939, chapter 345. Op. Atty. Gen., (471h), Nov. 28, 1939.

**1163-1. Salaries of village officers in certain villages.—**

Subdivision 1. In all villages of this state, except those governed under a charter adopted pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, the salaries of the president and trustees shall be in amounts according to the following classifications of villages, provided that the village council of any village shall have the authority to fix the salaries of its president and its trustees in a lesser amount for the term of office during which the members of such council are elected. The classification and salaries are as follows:

Subdivision 2. In villages having both a population of not less than 5,000 inhabitants and an assessed valuation of not less than \$10,000,000, the salary of the president is fixed at \$200.00 per month and the salary of each trustee at \$150.00 per month.

Subdivision 3. In villages not included in any of the foregoing classifications, having both a population of not less than 1,500 inhabitants and an assessed valuation of not less than \$3,000,000, or having a population of not less than 1,200 inhabitants and an assessed valuation of not less than \$6,000,000, the salary of the president is fixed at \$80.00 per month and the salary of each trustee at \$60.00 per month.

Subdivision 4. In villages, not included in any of the foregoing classifications, having both a population of not less than 2,000 inhabitants and an assessed valuation of not less than \$1,500,000, the salary of the president is fixed at \$50.00 per month and the salary of each trustee at \$35.00 per month.

Subdivision 5. In villages, not included in any of the foregoing classifications, having both a population of not less than 300 inhabitants, and an assessed valuation of not less than \$925,000, the salary of the president is fixed at \$35.00 per month, and the salary of each trustee at \$25.00 per month.

Subdivision 6. In villages, not included in any of the foregoing classifications, either having both a population of not less than 5,000 inhabitants and an assessed valuation of less than \$1,000,000, or having both a population of less than 600 inhabitants and an assessed valuation of not less than \$1,000,000, the

salary of the president and each trustee is fixed at \$100.00 per year; provided, further, in villages having an assessed valuation exceeding \$1,500,000, and not over \$3,000,000, the salary of the president and each trustee shall remain \$100.00 per year, and in villages having an assessed valuation exceeding \$1,000,000 and not over \$1,500,000 such salary shall remain \$10.00 per year, unless the voters in any such village at a regular or special election therein held shall fix such salaries at a larger amount, within the limitations of this act; provided, further, this act shall in no way apply to villages having an assessed valuation of less than \$1,500,000 and an area of less than 1,300 acres.

Subdivision 7. In villages not included in any of the foregoing classifications, having both a population of less than 5,000 inhabitants and an assessed valuation of less than \$1,500,000 the president shall be entitled to receive as compensation for each day's service necessarily rendered or council meeting attended, the sum of \$2.00 per day or meeting, but no more than \$30.00 shall be paid in any one year to the president; and the trustees shall be entitled to receive as compensation for each day's service necessarily rendered or council meeting attended, the sum of \$1.50 per day or meeting but no more than \$20.00 shall be paid to each trustee in any one year in any such village; provided, however, that in any county of this state having a population of not less than 500,000 inhabitants according to the 1930 Federal census and having an assessed valuation, exclusive of money and credits, for the year 1935 of not less than \$280,000,000, the salary of the president is fixed at not more than \$20.00 per month and the salary of each trustee at not more than \$15.00 per month, in villages located therein and having a population of more than 500 inhabitants and having an assessed valuation at not less than \$100,000 and not more than \$925,000; provided further, in villages of this state having a population of not less than 2,100 inhabitants, according to the Federal census of 1940 and having an assessed valuation of not less than \$700,000, including money and credits, for the year 1940 and having a municipal electric light plant, the salary of the president may be increased to \$100.00 per annum and the salary of each trustee may be increased to \$60.00 per annum by resolution adopted by unanimous vote of the village council. (As amended Act Apr. 14, 1941, c. 221, §1; Act Apr. 16, 1941, c. 243, §1.)

Act Apr. 14, 1941, c. 221, §1, subd. (5) related to villages having an assessed valuation of not less than \$875,000, instead of \$925,000, as above. Such section 1, also validated payments of salaries made in accordance herewith since January 1, 1941.

(4).

Amendment by Laws 1939, c. 300, repealed Laws 1939, c. 13, amending this section. Op. Atty. Gen., (471k), Dec. 1, 1939.

Village of Calumet with population of 805 and assessed value of \$1,039,698, is governed by this subdivision. Op. Atty. Gen. (471k), Dec. 28, 1939.

Though village officers should draw their salaries each month, they should not lose their compensation because they waited until the end of each year. Id.

(5).

Provision that act shall in no way apply to villages having assessed valuation of less than \$1,500,000 and an area of less than 1300 acres is a limitation only upon provisions of par. 5. Op. Atty. Gen. (471K), Jan. 2, 1941.

(6).

Section grants nothing to councilmen for expenses actually incurred by them in performance of their duties, and viewing village streets and acting on board of equalization does not entitle member to any additional compensation for time spent. Op. Atty. Gen. (471k), Feb. 5, 1940.

Compensation of president and trustees of Blooming Prairie operating under Special Laws 1874, c. 9, is governed by this subsection. Op. Atty. Gen. (471K), Jan. 2, 1941.

(7).

This subdivision governs salaries of officials of village of Excelsior. Op. Atty. Gen., (471K), Sept. 22, 1939.

**1172. Special elections. [Repealed.]**

Section does not confer power on village to call a special election for any purpose, but authority for calling a special election on question of erection of an electrical distribution system must be found in law under which

village is organized or under some other law applicable to situation. Op. Atty. Gen. (476B-15), Dec. 17, 1940.

Upon filing of a proper petition calling of a special election is mandatory. Id.

**1174. Treasurer—Duties, bond, accounts, etc.**—The treasurer shall give such bond as the council may require. He shall collect, receipt for and safely keep all money belonging to the village, and shall promptly enter, in a book to be provided for the purpose, an account of all money received and disbursed by him as treasurer; showing the sources and objects thereof, with the date of each transaction. He shall pay out no money except upon the written order of the president of the council, attested by the clerk, which orders, being paid and cancelled, he shall retain as his vouchers. Such accounts and vouchers shall be exhibited to the council upon its request and he shall deliver to his successor all books, papers, and money belonging to said village. And the treasurer in office at the close of the calendar year shall immediately thereafter make out and file with the clerk for public inspection a detailed account of his receipts and disbursements, with the sources and objects of each. (As amended Act Apr. 16, 1941, c. 244, §1.)

Warrants may not be issued in payment of a well unless there are funds on hand or taxes levied and in process of collection sufficient to cover them. Op. Atty. Gen. (476c-1), Feb. 1, 1940.

All claims against village library fund should first be approved and ordered paid by library board, and should then be forwarded to village council, where they should be paid in same manner as other claims are paid, council passing upon propriety and legality of claims, but not upon wisdom of library board action. Op. Atty. Gen., (285a), May 21, 1940.

**1175. Financial statement by clerk.**—Thereupon the clerk in office at the close of the calendar year shall prepare a detailed statement of the financial affairs of the village for the preceding year, showing all money received, with the sources, dates and respective amounts thereof; all money paid, to whom and for what purpose; all outstanding and unpaid orders, to whom issued and for what purpose; all money remaining in the treasury; also all other items necessary to accurately show the financial condition of such village. He shall file such statement in his office for public inspection, and shall present it to the council not later than January 15. The clerk shall publish the same not later than January 31 in a newspaper published in such village to be selected by the village council, and if there be no such newspaper he shall post copies of such statement in three of the most public places in such village. (As amended Act Apr. 16, 1941, c. 244, §2.)

A detailed statement of operations of municipal liquor store is required, and a brief profit and loss statement would not constitute compliance with law, and the same is applicable to waterworks system, and sewer system and activities in connection with purchase and sale of electricity. Op. Atty. Gen. (277B-2), Oct. 31, 1940.

**1181. Justices—Powers—Duties, etc.**

Alexandria being a home-rule charter city and its charter providing for justice of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. State v. Weed, 294NW370. See Dun. Dig. 5263.

**1182. Prosecutions by village.**

Constable is only village officer who may charge a fee for serving justice court warrants or attending on justice court, and enforcement of village ordinances, including appearances in justice court in connection with prosecutions thereunder is a part of regular, official duties of village marshal and village policemen, for which their salaries are full compensation. Op. Atty. Gen., (847-2-4), Jan. 21, 1941.

**1186. Council—Powers—Ordinances.—**

Subdivision 1. The village council shall be composed of five members, of whom three shall be a quorum, and shall have power to adopt, amend, or repeal all such ordinances, rules, and by-laws as it shall deem expedient for the purposes set out in subdivisions 2 to 26.

Subdivision 2. The village council shall have power to regulate the mode of its own procedure, and to

fix the compensation of its employes, when not otherwise prescribed.

Subdivision 3. The village council shall have power to procure the books required to be kept by village officers, and such furniture, property, stationery, and printing as shall be necessary for village purposes.

Subdivision 4. The village council shall have power to provide for the prosecution or defense of actions or proceedings at law in which the village may be interested, and employ counsel therefor.

Subdivision 5. The village council shall have power to appoint when necessary, a village attorney, a poundmaster, a street commissioner, one or more keepers of cemeteries, one or more fire wardens, a marshal, and one or more policemen. Every such appointee shall give such bond as the council may require, conditioned for the faithful discharge of his duties, and the proper application and payment of all moneys by him officially received.

Subdivision 6. The village council shall have power to control and protect the public buildings, property, and records, and insure the same.

Subdivision 7. The village council shall have power to renumber the lots and blocks of the village or any part thereof, and to cause a devised and consolidated plat of the same to be made and recorded.

Subdivision 8. The village council shall have power to establish a fire department, appoint the officers and members thereof, and prescribe their duties; to provide fire engines and other fire apparatus, engine houses, pumps, water mains, reservoirs, and other waterworks; to compel the inhabitants to aid in the extinguishment of fires, and to raze such buildings in the vicinity of a fire as any two or more members of the council present may direct, for the purpose of preventing its communication to other buildings; to establish fire limits within which wooden or other combustible buildings shall not be erected; to require owners or occupants of buildings to provide and keep on their premises suitable ladders and fire buckets, and, after reasonable notice to, and refusal by, such owner or occupant, to procure and deliver the same to him, and assess the cost thereof as a special tax upon such real estate, to be collected as other village assessments are collected; to regulate the storage of gunpowder and other dangerous materials; to require the construction and use of safe places for the deposit of ashes; to regulate the manner of putting up stovepipes, and the construction and cleaning of chimneys; to prevent bonfires and the use of fireworks and firearms in the village; to authorize fire wardens at all reasonable times to enter into and examine lots, inclosures, and buildings, in order to discover whether any of them are in dangerous condition, and to cause such as may be dangerous to be put in safe condition; and, generally, to take such measures for the prevention or extinguishment of fires as may be necessary or proper.

Subdivision 9. The village council shall have power to lay out, open, change, widen, extend, or vacate streets, alleys, parks, squares, and other public ways and grounds, and to grade, pave, and repair the same; to establish and maintain drains, canals, and sewers, and to alter, widen, or straighten watercourses; to lay, repair, or otherwise improve, or to discontinue, sidewalks, paths, and crosswalks; to prevent the incumbering of streets or other public ways or grounds with vehicles, railway cars or engines, building material, or other substances; to prevent racing or the immoderate riding or driving of animals or vehicles in the village, or the use of sidewalks for other than pedestrian purposes; to require the owners or occupants of buildings to remove snow, dirt, or rubbish from the sidewalks adjacent thereto; and, in default thereof, to authorize such removal at the owner's expense. But no street or alley shall be vacated except upon petition as in this chapter provided.

Subdivision 10. The village council shall have power to define sprinkling districts and to require own-

ers or occupants of lots or lands abutting on any public street or alley, to pay the proportionate share of the expense of sprinkling with water or oil any such street or alley, and in default of such payment to provide for the assessment of such proportionate share against such lots or lands to be collected as other taxes are collected.

Subdivision 11. The village council shall have power to restrain the running at large of cattle, horses, mules, sheep, swine, poultry, and other animals, and to authorize the distraining, impounding, and sale thereof; to establish pounds, and regulate and protect the same; to require the fastening or confinement of animals while in the streets or alleys of the village, and to prescribe the place and manner thereof; to regulate the speed of electric or steam engines or cars running in or through the village; to prevent the running at large of dogs, and authorize the destruction, in a summary manner, or such as are unlawfully at large; to license public porters, solicitors, or runners, cartmen, hackmen, omnibus drivers, and guides, and establish regulations for their conduct as such; and to prevent unnecessary noise or other disorder.

Subdivision 12. The village council shall have power to establish and regulate markets, provide public scales, appoint a weighmaster, and restrain sales in the streets.

Subdivision 13. The village council shall have power to purchase and hold cemetery grounds within or without the village limits, to enclose, lay out, and ornament the same, and to sell and convey lots therein; such ground so acquired or portion thereof as may be required for that purpose shall be surveyed into lots of such size as the village council shall direct, with such avenue, alleys and walks as they shall deem proper and a map of such survey shall be filed in the office of the register of deeds of the county of its location; to establish public parks, parkways and walks; and enclose, improve, ornament and protect the same; to appoint a park board and provide for and regulate the setting out and protection of trees, shrubs and flowers in the village or upon its property; and when any parkway is established or improved along the street frontage of private property, the special benefits if any resulting therefrom to lots and parcels of land fronting on such parkway may be assessed against the same and collected as other special assessments are collected.

Subdivision 14. The village council shall have power to prevent or license and regulate the exhibition of circuses, theatrical performances, or shows of any kind, and the keeping of billiard tables, pigeon-hole tables, and bowling alleys; to restrain or license and regulate auctioneers, transient dealers, hawkers, and peddlers; and in all such cases to fix the price of said license, and prescribe the term of its continuance, and to revoke such license when, in the opinion of the council, the good order of the village requires it: Provided, that the council, in its discretion, may refuse to grant a license for any of the above purposes, and the term of no such license shall extend beyond the annual election next after the granting thereof.

Subdivision 15. The village council shall have power to prohibit gift enterprises, all gambling devices, and all playing of cards, dice, or other games of chance or skill for the purpose of gaming; to restrain and punish vagrants, tramps, mendicants, prostitutes, and persons guilty of lewd conduct; to punish drunkenness; and to license and regulate or prohibit the selling, bartering, disposing of, or dealing in spirituous, malt, fermented, vinous, or mixed intoxicating liquors of any kind, and to revoke any license for the sale of such liquors already granted whenever the council, after a hearing of the case, shall deem it proper.

Subdivision 16. The village council shall have power to establish and maintain public libraries and reading rooms, purchase books and periodicals therefor,

and make needful rules for the safekeeping and handling of the same.

Subdivision 17. The village council shall have power to remove any officer appointed or elected by the council, whenever, in its judgment, the public welfare will be promoted thereby.

Subdivision 18. The village council shall have power to purchase, lease, or build, and to maintain, a watchhouse or other place for the confinement of offenders against the rules, ordinances, and by-laws, and for the temporary detention of suspected persons.

Subdivision 19. The village council shall have power to establish a board of health, with all the powers of such boards under the general laws; to provide hospitals, and regulate the burial of the dead; to define nuisances, and prevent or abate the same; to require the owner or occupant of any grocery, cellar, tallow chandler's shop, factory, tannery, stable, barn, privy, sewer, or other unwholesome or nauseous building or place, to remove, abate, or cleanse the same; to direct the location and management of slaughterhouses, and to prevent the erection, use, or occupation of the same, except as authorized; to prevent the bringing, depositing, or leaving within the village of any putrid carcass or other unwholesome substance; to require the owners or occupants of lands to remove dead animals, stagnant water, or other unwholesome matter therefrom; to provide for the cleaning, and removal of obstructions from, any river, stream, lake, slough, or watercourse within the village; and to prevent the obstruction or retarding of the flow of waters therein, or the fouling of the same.

Subdivision 20. The village council shall have power to provide, and regulate the use of, wells, cisterns, reservoirs, waterworks, and other means of water supply.

Subdivision 21. The village council shall have power to provide for lighting the village streets, buildings or grounds by gas, electricity, or other means, and to contract with any one engaged in the business of furnishing gas or electric service for the supply thereof to the village and its inhabitants.

Subdivision 22. The village council shall have power to establish harbor and dock limits; to regulate the location, construction, and use of piers, docks, wharves, and boathouses on navigable waters; and to fix rates of wharfage.

Subdivision 23. The village council shall have power to levy and collect taxes, including poll tax and assessments, audit claims against the village, and direct orders to issue for their payment; to refund, wholly or in part, any tax or special assessment unjustly or illegally collected; to authorize village bonds to be issued in the cases provided by law; and, generally, to manage the financial concerns of the village; and they shall prepare and cause to be publicly read at the annual village election a detailed statement showing the amount in the treasury at the beginning of the year, when and from what sources all moneys paid into the treasury during the year were derived, and when, to whom, and for what purpose all money expended was paid, with the balance then in the treasury, which statement shall be recorded in the minute book and preserved in the recorder's office.

Subdivision 24. The village council shall have power to provide for the government and good order of the village, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of trade and commerce, and the promotion of health, by such ordinances, rules, and bylaws not inconsistent with the constitution and laws of the United States or of this state as they shall deem expedient.

Subdivision 25. The village council shall have power to regulate the construction of buildings within the village.

Subdivision 26. The village council shall have power to declare that the violation of any ordinance, rule, or by-law herein authorized shall be a penal offense,

and to prescribe penalties therefor: Provided, that no such penalty shall exceed a fine of one hundred dollars, or imprisonment in a village or county jail for a period of three months; but in either case the costs of prosecution may be added, and, in default of payment of fine or costs, the person committed may be confined in such jail until payment is made or said period has expired. (As amended Act Mar. 15, 1941, c. 70, §1.)

Village has no power to donate money or property to aid any private corporation notwithstanding the village may be incidentally benefited thereby. Op. Atty. Gen. (476B-2), Jan. 18, 1940.

Mayor of village cannot hire or discharge municipal liquor store employees contrary to objection of majority of council. Op. Atty. Gen. (353a-3), Feb. 1, 1940.

(1) Mayor as member of council is entitled to vote on matters coming before body, and may second motion if not contrary to rules adopted by council. Op. Atty. Gen. (847c-1), Jan. 15, 1940.

(3) Village councilmen of New York Mills attending court in defense of action against village are not entitled to reimbursement for expenses, though they are eligible to receive witness fees and mileage outside of village. Op. Atty. Gen. (469a-8), Jan. 4, 1940.

Village council may not compromise judgment in favor of village against public officials illegally expending public funds, in absence of inability to enforce full payment. Op. Atty. Gen., (471a), April 11, 1940.

(5) Permitting American Legion to construct a building on land of a village and lease of such building to American Legion Post for a reasonable time would constitute a "public purpose" within deed of land to village for public purposes only with right of reversion. Op. Atty. Gen., (469a-9), March 29, 1940.

Village may accept title by gift to a tract of land on which a building is located and repair building for use of public as a community building without obtaining vote of the people. Op. Atty. Gen., (476B-8), Mar. 12, 1941.

(8) County and village adjacent to a county ditch may not enter into contract whereby village would take over a ditch and use it for a sewer drain or overflow from septic tanks and installation of disposal plant at outlet of ditch. Op. Atty. Gen. (387G-3), Sept. 20, 1939.

Village cannot enact an ordinance requiring owners or occupants of property in business section to remove snow which has been piled in front of their property and on the pavements by snow plows and upon failure to do so to have snow removed by village and expense assessed against property. Op. Atty. Gen. (477B-25), Dec. 19, 1940.

**1186-1. Hospital board.**

Village council appointing a hospital board by ordinance may abolish the board for purposes of economy. Op. Atty. Gen. (1001h), Feb. 26, 1940.

**1189. Sewers and drains—Bonds.**

Certain villages authorized to enter into contracts for disposal of sewage and waste. Laws 1941, c. 41.

**1195. Meetings of council—Compensation, etc.**

In absence of president, his duties as presiding officer may be performed by a president pro tem named by council, and in no other manner. Op. Atty. Gen. (471b), Dec. 20, 1939.

**1199. Contracts—Members of council excluded, when—Bids.**

Village clerk may not be employed as manager of village water works, sewer system and parks. Op. Atty. Gen. (472h), Nov. 28, 1939.

Village may purchase land outside limits for dumping ground without advertising for bids. Op. Atty. Gen., (707a-15), May 17, 1940.

This section is applicable only to villages organized under the 1905 village act. Op. Atty. Gen., (707a-15), May 28, 1940.

In absence of an emergency, there should be both published and posted notice by village before awarding contract for construction of city hall and fire station, and such notice should be for two weeks, though a shorter time might be sufficient. Op. Atty. Gen. (707a-9), Aug. 12, 1940.

This section applies only to villages organized under 1905 law, but the laws of 1885 had a similar provision. Id. A village operating under the 1885 laws need not advertise for bids in purchase of electric energy for pumping station and lighting streets. Op. Atty. Gen. (707a-15), Dec. 3, 1940.

City contemplating purchasing water for its own use should advertise for bids. Op. Atty. Gen. (624d-4), Dec. 18, 1940.

Village desiring to drill a well should advertise for bids. Op. Atty. Gen., (707a-15), Jan. 3, 1941.

Village may make alterations in its powerhouse, by changing water pipes and installing electrical apparatus, by hiring day labor, but is required to advertise for

bids before making a purchase of any materials of value of \$100 or more. Op. Atty. Gen., (707d-6), Jan. 9, 1941.

Council of village organized under 1905 Act in buying certain brands of liquor for municipal liquor store from wholesale dealers need not advertise for bids. Op. Atty. Gen., (707a-15), Feb. 6, 1941.

**1200. Control of streets.**

Village has no authority to construct a cartway for a resident of village who cannot gain access to local road. Op. Atty. Gen. (377-a), July 31, 1940.

**1201. Vacating streets.**

On vacation of street along railroad right-of-way, no part of street would go to railroad, but would go to abutting lot owners. Op. Atty. Gen. (396g-16), Nov. 4, 1939.

Only abutting owners on part of street to be vacated need petition, and thereupon council may vacate either all or any part thereof in its discretion. Op. Atty. Gen. (396-g-16), July 26, 1940.

**1205. Street improvements—Assessments.**

Construction of a sewer in a street is discretionary with village council in proceeding proposed under §1880, et seq., or under §1918-1, et seq., but if proceedings are proposed under §1205 or §1918-15, et seq., a petition by owners of at least 51 per cent in frontage of the street is necessary. Op. Atty. Gen. (624d-9), Sept. 11, 1940.

Sections 1205 and 1918-35 are both applicable to 1905 villages in sewer proceedings. Op. Atty. Gen., (387g-3), Jan. 2, 1941.

**1215-1. Road taxes in villages—Assessment. [Repealed.]**

Repealed. Laws 1941, c. 249, §2.

**1215-2. Street and bridge taxes in villages—Assessment.**

The village council or governing board of any village may assess all the property of the village, other than money and credits, for the construction, maintenance, and repair of streets and bridges therein. The village may assess all of its said property not to exceed ten mills on the dollar on the last assessed valuation thereof and if an assessment is made, it shall be certified to the county auditor for extension and collection the same as other village taxes. Before such taxes are collected, the village council or governing board may pledge the credit of the village by issuing village orders not to exceed the taxes so assessed for the expense of construction, maintenance, and repair of streets and bridges in the village, provided this act shall not apply to villages having an assessed valuation of real and personal property of more than \$500,000. (Act Apr. 16, 1941, c. 249, §1.)

Act Apr. 16, 1941, c. 249, §2, repeals §1215-1.

**1222. Claims, how audited and paid.**

Commissioner of banks liquidating a bank can compel village to pay warrants held by bank notwithstanding that there are delinquent taxes on buildings owned by the bank far in excess of the amount of the warrants. Op. Atty. Gen. (476c-6), Oct. 30, 1939.

All claims against village library fund should first be approved and ordered paid by library board, and should then be forwarded to village council, where they should be paid in same manner as other claims are paid, council passing upon propriety and legality of claims, but not upon wisdom of library board action. Op. Atty. Gen., (285a), May 21, 1940.

Warrants must be paid in order of presentation regardless of size. Op. Atty. Gen. (476c-6), June 18, 1940.

**1223. Taxpayer's appeal.**

A waiting period of 10 days is required before payment after allowance in villages operating under 1905 village act, but no waiting period is necessary in villages operating under Laws 1885, chapter 145. Op. Atty. Gen. (476a-5), Dec. 20, 1939.

Provision for a waiting period of 10 days before payment of claims is applicable to claims paid from library fund. Op. Atty. Gen., (285a), May 21, 1940.

**1225. Tax levy.**

A village cannot levy a tax which will exceed 2% of assessed valuation, and if village levy exceeds 20 mills, auditor should reduce levy to that amount, unless an excess is necessary to retire outstanding bonds or pay interest thereof, or is for some special purpose authorized by statute in addition to 20 mill limit. Op. Atty. Gen. (519i), Nov. 28, 1939.

A so-called "road and bridge fund" and "incidental fund" for a village must be a part of general revenue fund and limited to levy of 20 mills. Op. Atty. Gen. (519g), March 21, 1940.

**1225-24 1/2 f. Tax levy to pay bonds and interest.**

Although constitutionality of this law is somewhat doubtful, attorney general hesitates to pass on it, as



every law is presumed to be constitutional until declared otherwise by court. Op. Atty. Gen. (285a), Oct. 27, 1939.

**1225-55. Tax levy to retire bonds.**—The village council of any village issuing bonds pursuant to the authority of this Act shall, before the issuance thereof, by resolution provide for a levy for each year until the principal and interest are paid in full, of a direct annual tax in an amount sufficient to pay the principal and interest thereon when and as such principal and interest become due. Such tax levy shall be irrevocable until all of such bonds are paid. Such annual tax for the payment of such bonds shall be within existing per capita limitations upon tax levies applicable to such village and shall be derived from two sources: (a) 58% of the amount necessary to pay such bonds and interest, and no more, shall be levied as a special tax in addition to the annual tax levy for general corporation and library purposes, water, light, heat and building commission purposes, and any other special taxes which may be levied annually as provided by law; and (b) 42% of the amount necessary to pay said bonds and interest shall be raised and obtained from the annual tax levies made by said village. (As amended Act Apr. 25, 1941, c. 450, §1.)

**1225-103. Sale—Contracts to be null and void under certain conditions.**

Generally speaking, it is duty of the village treasurer to honor any warrants presented to him in regular way by proper village officers, but he would probably be liable if he knew as a matter of fact and law that a warrant was illegally drawn. Op. Atty. Gen., (456a), Feb. 17, 1941.

**1229. Water and light plants.**

Laws 1941, c. 89, legalizes proceedings of villages in connection with the construction of a waterworks plant and system and authorizes the sale of revenue bonds payable from the revenues of such systems.

Laws 1941, c. 119, legalizes proceedings of certain villages relating to the acquisition of water and electric utilities.

Cause of action, founded upon alleged wrongful, negligent and careless conduct on part of defendant in installing its municipally owned water supply system along road in which plaintiff individually maintained a water supply system must fail since pleading sounds in negligence, not trespass, and no notice was given or suit brought within the time limit required by statute. *Kuehn v. V.*, 292NW187. See Dun. Dig. 6739.

Whether superintendent of water and light department, totally disabled because of sickness, is entitled to receive his regular compensation, is largely a matter for village council. Op. Atty. Gen. (59a-41), Oct. 26, 1939.

A five-eighths vote is necessary to authorize construction of water works system by a village, notwithstanding that only a majority vote would be necessary to authorize sale of bonds to the state. Op. Atty. Gen. (44B-17), Nov. 10, 1939.

**1235-2. Not to affect pending legislation.**

Proceedings and bonds of certain villages having populations of from 1,000 to 2,000, for improvements to municipal waterworks system, validated. Act Apr. 18, 1941, c. 312.

**1235-3. Proceedings validated.**—In all cases where the governing body of any village has heretofore, by resolution duly adopted, determined to construct a waterworks plant and system and to finance such construction wholly or partly by the issuance of revenue bonds payable from net revenues and earnings of said system, and the proposition has been submitted to the electors of the village and approved by a majority of those voting thereon at an election duly and regularly called and held, all such proceedings are hereby legalized and declared to be valid, and the village shall be authorized to issue and sell revenue bonds and water-main certificates of indebtedness in accordance with the resolution and this act. (Act Mar. 28, 1941, c. 89, §1.)

**1235-4. Same—Bonds and certificates of indebtedness.**—The revenue bonds shall be payable from the net revenues of the waterworks system, but shall otherwise confer on the holders all the rights conferred by a negotiable instrument, and said bonds and certificates of indebtedness shall be sold in such manner as the governing body shall direct. The village shall be authorized to pay for services rendered to the

village by said plant and system in accordance with the initial resolution. (Act Mar. 28, 1941, c. 89, §2.)

**1235-5. Same—Works Progress Administration.**—Any such village shall be authorized to construct the waterworks plant and system pursuant to agreement with the Works Progress Administration and without requiring public bids. (Act Mar. 28, 1941, c. 89, §3.)

**1235-6. Same—Nature of act.**—This act is remedial in nature, being required in order to enable villages to take advantage of aid from the Works Progress Administration and to protect the public health and welfare of the inhabitants of said villages. (Act Mar. 28, 1941, c. 89, §4.)

**1235-7. Same—Application of act.**—This act shall not apply to any action or proceedings now pending in any courts in the State of Minnesota. (Act Mar. 28, 1941, c. 89, §5.)

**1235-8. Water and light to certain villages—Validation of proceedings and revenue certificates.**—In all cases where any village, pursuant to resolutions of its village council, has heretofore contracted to purchase as a unit a water utility and an electric utility which had been furnishing water and electricity to the village and its inhabitants and areas adjacent thereto, including such areas lying within the territory of a city of the first class, together with improvements contracted to be made to such utilities, and the proposal so to purchase has been approved by more than a majority of the qualified voters of the village voting thereon at a special election called and held for that purpose and contracts have been made for the furnishing of water to such utilities and granting a franchise in respect thereto and contracts or franchises have been entered into by and between such village and city of the first class, and the village council has by resolution determined to issue and deliver to the vendor of such utilities, to evidence the purchase price thereof, its electric and water certificates payable solely from the earnings of both such utilities, such contracts, resolutions, franchises, election and other proceedings, and the revenue certificates issued or to be issued in accordance therewith, are hereby in all things legalized, and such revenue certificates shall be valid and binding negotiable obligations of the village, but payable solely from the revenues of both such utilities. (Act Apr. 4, 1941, c. 119, §1.)

**1235-9. Same—Remedial nature of act.**—It is hereby expressly found and determined that this act is remedial in nature. (Act Apr. 4, 1941, c. 119, §2.)

**1235-10. Same—Pending proceedings.**—This act shall not apply to any action or proceeding now pending in any court. (Act Apr. 4, 1941, c. 119, §3.)

**1245. Tax levy for water and light plants.**

Levies under this section are included within \$100 per capita limitation provided by Laws 1929, ch. 206. Op. Atty. Gen., (519q), Feb. 25, 1941.

**1246. How collected; etc.**

Levies under this section are included within \$100 per capita limitation provided by Laws 1929, ch. 206. Op. Atty. Gen., (519q), Feb. 25, 1941.

**1253. Contract how made—Term.**

A village organized under Laws 1885 may grant an electric franchise by action of its council without vote of electors. Op. Atty. Gen. (624c-6), July 16, 1940.

Office of attorney-general has held that a village could not grant a perpetual franchise to a light and power company, but law is so uncertain that there should be a judicial determination of the question. Op. Atty. Gen. (204a-5), Dec. 10, 1940.

**1253-1. Sale of surplus electricity.**

This section only empowers villages owning and operating their own plant to sell surplus electricity, but §1867-1 does not limit authority to sale of surplus electricity, and would authorize a village to furnish electricity to a cooperative association within a distance of 30 miles upon a favorable vote of electors. Op. Atty. Gen. (624C-12), Dec. 6, 1940.

**1264-11. Association to have control of pension fund.**

Discharged policeman is not entitled to a refund of his contribution. Op. Atty. Gen. (785m), Oct. 8, 1940.

**1264-13½ d. Deductions from pay; etc.**

City of Chisholm must levy a tax of \$5,000 for a Firemen's Relief Fund and not a tax of one-tenth of a mill. Op. Atty. Gen. (785m), Oct. 8, 1940.

Money raised by levy of one-tenth of a mill under this act may not be used for purpose of purchasing fire fighting equipment for fire department. Op. Atty. Gen., (198B-10(c)), Jan. 14, 1941.

**CITIES****1265. How classified.**

Where a city of the fourth class becomes a city of the third class, pending proceeding for improvements should be continued under the old applicable laws, including those relating to issuance of certificates of indebtedness or improvement warrants. Op. Atty. Gen. (59a-13), Dec. 4, 1940.

**1266. Census governs.**

Computation of population of cities or villages for purpose of determining number of liquor licenses is governed by last official state or federal census, and no effect may be given a private census. Op. Atty. Gen. (218g-1), Feb. 6, 1940.

Unofficial census figures may not be used and village should wait proper publication thereof. Op. Atty. Gen. (218-G-6), June 4, 1940.

**1271. Framing charter.**

Justices of the peace are state officers and their courts are state courts and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. State v. Hutchinson, 288NW345. See Dun. Dig. 8011.

Validity of charter not submitted within 6 months after appointment of commission is so doubtful that a judicial determination of question is advised. Op. Atty. Gen. (58-L), July 25, 1940.

**1285. How adopted—Judicial notice.**

Office of attorney-general has held that a village could not grant a perpetual franchise to a light and power company, but law is so uncertain that there should be a judicial determination of the question. Op. Atty. Gen. (204a-5), Dec. 10, 1940.

**1286. Amendments to home rule charters, etc.**

Amendment of home rule charters of cities of the first class located in counties having an area of over 5,000 square miles, authorizing adoption of ordinances establishing zoning plan regulating use of land and buildings. Act Apr. 16, 1941, c. 261.

**1310½.****DECISIONS RELATING TO CITIES IN GENERAL****1. In general.**

There can be no justification for exercise of a power that is not possessed. City of Wasceca v. B., 288NW229. See Dun. Dig. 6575.

City has no authority to donate money to Red Cross from profits of liquor store. Ap. Atty. Gen. (59a-22), Nov. 1, 1939.

Funds of a municipal liquor store belong to the city and contributions may not be made to Red Cross or to any private charity, and store may not become a member in a local civic and commerce association or make appropriation to a fund to be used in attracting conventions to the city, though it may expend money for advertising in local papers, including directories and other advertising mediums. Op. Atty. Gen., (218E), April 20, 1940.

An ordinance requiring payment of delinquent taxes as condition precedent to granting license would probably be valid. Op. Atty. Gen. (62c), May 17, 1940.

City council may adopt an ordinance prohibiting playing of music or making of advertising announcements from aircraft flying over city at low altitude. Op. Atty. Gen. (234a), Nov. 8, 1940.

A city is without authority to compel its employees to enter into a group health and accident contract and deduct from their wages or salaries sum required to pay premiums, but may do so with consent of employees. Op. Atty. Gen., (249B-8), Jan. 31, 1941.

**2. Contracts.**

Municipalities have power to purchase equipment and finance it by revenue derived from its use. Hendricks v. C., 290NW428. See Dun. Dig. 6704.

A claim that in drawing specifications city engineer usurped function of council was without merit where there was a complete ratification by the council. Id. See Dun. Dig. 6576.

Municipal authorities must frame specifications so as to permit free and full competition, but a city may require bidders to meet proper standards, and can, within reason, require specific materials or particular methods of financing so long as requirements are in best interests of its inhabitants, though effect is somewhat to limit number of possible bidders. Id. See Dun. Dig. 6707.

On showing in support of application for temporary injunction, it could not be said that specifications for parking meters were so narrowly drawn as not to permit full and free competition. Id. See Dun. Dig. 6707.

Inasmuch as parking meters were to be installed under supervision of city engineer, there was no fatal variance from specifications because successful bidder stipulated two prices, lower to apply if its own method of installation be used. Id. See Dun. Dig. 6707.

Ordinance for parking meters does not contemplate illegal appropriation of public funds because meters are to be paid for only from receipts. Id. See Dun. Dig. 6723.

City of Minneapolis has power to lease land lawfully acquired for purposes of a river terminal, but thereafter found unnecessary for use as a part of public terminal facilities, it appearing that lease is adaptable to profitable private use in aid of and ancillary to public terminal, without interference with its efficient operation. Penn.-O-Tex Oil Co. v. C., 291NW131. See Dun. Dig. 6693.

When public bidding is required, proposals and specifications must be so framed as to permit full and free competition, and any substantial and material departure from specifications, beneficial to successful bidders, in the contract entered into will render it void, notwithstanding that it appears there was only one bid. Rice v. C., 295NW529. See Dun. Dig. 6707.

If city is not required to advertise for bids, it may accept a bid which is not in compliance with specifications. Op. Atty. Gen. (707a-4), Oct. 9, 1939.

Municipalities may not lawfully enter into installment lease purchase contracts. Op. Atty. Gen. (476a-6), Jan. 19, 1940.

Conditional sales contracts by municipalities have been sustained where payment was not made out of proceeds of a tax levy. Id.

Board of water, electric, gas and power commissioners of a city cannot enter into a closed shop contract. Op. Atty. Gen. (270), Feb. 28, 1940.

Village council may not compromise judgment in favor of village against public officials illegally expending public funds, in absence of inability to enforce full payment. Op. Atty. Gen., (471a), April 11, 1940.

Contract of city to employ engineer in case it should decide to construct a sewage disposal plant was not void because it extended beyond the term of officers making it. Op. Atty. Gen. (63B-2), May 15, 1940.

In absence of any charter or statute requirement to contrary, it is not necessary for a city to advertise for bids for sale of real estate belonging to municipality. Op. Atty. Gen. (59a-40), Sept. 23, 1940.

There is no authority, either in the statutes or charter of city of Albert Lea, which would authorize city to spend general tax funds in paying a part of premium on group life insurance. Op. Atty. Gen. (249B-8), Nov. 28, 1940.

Where a municipal corporation acts in a proprietary capacity as it does in selling city water, it has same authority that a private corporation has as to compromising of an account or closing an uncollectible account. Op. Atty. Gen., (624c-11), Feb. 25, 1941.

**3. Torts.**

**Editor's note:** Municipally owned parks and places of amusement are held to be governmental function in California, Connecticut, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, North Dakota, Oregon, Rhode Island, Tennessee, Utah, Virginia, Washington and Wisconsin; proprietary function in Colorado, Delaware, Indiana, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, West Virginia and Wyoming (1940).

Where members of fire department relief association were driving fire truck owned respectively by city and association, and there was a collision, city could not recover damage to city owned truck arising out of negligence of driver of association owned truck, notwithstanding that association carried liability insurance. Op. Atty. Gen. (844B-4), March 5, 1940.

City in lighting its streets is performing a governmental function, and in performance thereof is not liable for its negligence, and an agreement between city and railroad relative to installation of street lights at intersection or crossing would not increase its liability. Op. Atty. Gen., (844B-8), Jan. 14, 1941.

**4. Proceedings of council.**

Officers and employees of municipal corporation who, knowing city's financial straits and the need for retrenchment, have acquiesced in contributions from their salaries to the city by accepting pay checks and signing the payroll, are estopped from subsequently seeking to recover the amounts by which their salaries had been reduced, although the reductions were acted upon by the city by resolution of council, rather than by municipal ordinance. Pratts v. C., 289NW788. See Dun. Dig. 6575.

State statutes take precedence over municipal ordinances where there is a conflict. Op. Atty. Gen. (83f), Nov. 7, 1940.

**PROVISIONS RELATING TO ALL CITIES****1311. Public utilities—Definition.**

City may by ordinance amend artificial gas franchise so as to permit distribution of natural gas without a vote of electors. Op. Atty. Gen. (624B-3), Oct. 26, 1939.

**1312. Cities may own and operate or lease.**

Where a tenant occupies a dwelling house and there are no arrears in water rent, water board may not at instance of landlord turn off water over objection of tenant, unless it has reasonable grounds for believing that tenant will work a malicious damage to the premises. Op. Atty. Gen. (624d-3), Sept. 27, 1935.

Office of attorney-general has held that a village could not grant a perpetual franchise to a light and power company, but law is so uncertain that there should be a judicial determination of the question. Op. Atty. Gen. (204a-5), Dec. 10, 1940.

**PROVISIONS RELATING TO CERTAIN CITIES****1322. Gas, electric and water plants.**

In action to have a written agreement for furnishing electricity to plaintiff's dwelling at prices not exceeding a specified maximum rate, during life of defendant's franchise, adjudged void for want of consideration, judgment of dismissal cannot be reversed where proof fails to show want of consideration. *Macdanz v. N.*, 289NW58. See Dun. Dig. 2996d.

**1349. State's ownership of bed of navigable river.**

Where riparian owner of land bordering upon navigable river only a portion of entire bed of which was used for navigation under natural conditions built an embankment upon that part of his land lying between ordinary high-water mark and ordinary low-water mark of river which did not interfere with or obstruct navigation, United States was liable to compensate such riparian owner for injuries caused solely by raising waters of the river above their natural level. *U. S. v. Chicago*, M. St. P. & P. R. Co., (CCA8), 113F(2d)919. Cert. gr., 61SCR 318.

Title points and lines in lakes and streams. 24Minn LawRev305.

**1362. Contribution by teachers—Taxation—Age of retirement in cities of first class.**—Said plan shall include a provision that only such teachers as make a contribution to the said fund, as provided in said plan, shall be entitled to the benefits thereof, and may include a provision that a portion of said fund shall be raised by taxation upon the property of the said city, it being understood that all teachers who are willing to comply with the terms and conditions of the articles of association and by-laws of said association shall be entitled to participate in the benefits of said fund.

In any city of the first class where no automatic or compulsory retirement plan affecting such teachers has been established, every teacher coming within the provisions of this act who shall have attained the age of 70 years as of June 30, 1942, and any teacher who shall have attained the age of 69 years as of June 30, 1943, and any teacher who shall have attained the age of 68 years as of June 30, 1944, and thereafter any teacher who shall have attained the age of 68 years as of June 30th of any year, shall be automatically retired and severed from the service in the respective school system. (As amended Act Apr. 14, 1941, c. 214, § 1.)

**1372-¾. Cities and villages may acquire bridges.**—Any city or village of this state, however organized, bordering upon any navigable or non-navigable stream, river or body of water, including any international or inter-state navigable or non-navigable stream, river or body of water, is authorized to acquire, purchase, construct, maintain and operate a bridge or bridges and approaches thereto across any such navigable or non-navigable stream, river or body of water, whether all or any portion of such bridge or bridges and approaches be within or without the corporate limits of any such city or village, and shall have authority to exercise all such powers within its boundaries and in adjacent territory within this state not in excess of two (2) miles from the nearest boundary line thereof and in any adjoining domestic or foreign state, after first having obtained authority, if any be necessary, from the United States. (Act Apr. 17, 1941, c. 286, § 1.)

**1372-¾a. Same—Right of eminent domain.**—Every city and village which shall by ordinance have determined to exercise the powers granted by this act shall have the right to acquire, purchase, construct, maintain and operate any such bridge or bridges and

approaches thereto across, above or under any railroad or public utility right of way and in, upon, under or above any public or private road, highway, street, alley or public ground, or upon any property owned by any municipality, political subdivision or agency of this state, and any such city or village may acquire, occupy, possess and use all real estate, easements, rights in land, structures, buildings, equipment, appurtenances, machinery and other real, personal or mixed property necessary or incidental in the acquisition, purchase, construction, maintenance or operation of any such bridge or bridges and approaches thereto by purchase or by condemnation or expropriation, in accordance with the laws of the State of Minnesota governing the acquisition of private property for public purposes by condemnation or expropriation, and in accordance with the laws of any foreign state where it becomes necessary to so acquire real estate and other property needed for the acquisition, purchase, construction, operation or maintenance of any such bridge or bridges and approaches thereto. (Act Apr. 17, 1941, c. 286, § 2.)

**1374-¾ b. May borrow money and issue Toll Bridge Revenue Bonds—Bonds, sale—Adoption of ordinance—Payable solely from bridge revenue.**

—For the purpose of acquiring, purchasing or constructing any such bridge or bridges and approaches, the governing body of each such city or village is authorized to borrow money and in evidence thereof to issue Toll Bridge Revenue Bonds of such city or village, payable solely from the revenues derived from the operation of any such bridge or bridges. Such bonds may be issued as serial or term bonds, maturing in not to exceed thirty (30) years from the date thereof, and may be made callable for redemption prior to maturity on any interest payment date, at the price of par plus a premium of not to exceed five (5%) per cent of the par value thereof, and accrued interest, after notice shall be given at the time and in the manner provided in the ordinance authorizing their issue. Such bonds may be issued in such amounts as may be necessary to provide sufficient funds to pay the cost of acquiring, purchasing or constructing such bridge or bridges and approaches thereto, including all property, real or personal or mixed, necessary or incidental in the acquisition, purchase or construction thereof, including reasonable legal and engineering fees and costs of financing. Such bonds shall bear interest at a rate not to exceed four (4) per centum per annum, payable semi-annually, and all bonds issued under the provisions of this act are hereby declared to be negotiable instruments and shall be executed by such officials of any such city or village as the ordinance authorizing their issue shall provide; provided that in case any official whose signature appears on any such bonds or coupons shall cease to be such official before delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such official had remained in office until such delivery.

Such bonds may be sold at either public or private sale, as the governing authority of any such city or village may provide; provided that all such bonds issued by any such city or village shall not be sold at a price of less than ninety-five (95%) per cent of par.

Whenever the governing body of any such city or village determines to issue bonds as provided for in this act, it shall adopt an ordinance prescribing in a general way the bridge or bridges and the general location thereof, and setting out the aggregate amount of the estimated cost of the acquisition, purchase or construction thereof as prepared by the engineers employed for that purpose, and shall determine the period of usefulness thereof and fix the amount of Toll Bridge Revenue Bonds to be issued, the maturity or maturities thereof, the interest rate, and all other details in connection therewith, and such ordinance shall be effective immediately upon passage and approval. Such ordinance may contain such covenants and restrictions upon the issue of additional Toll Bridge

Revenue Bonds thereafter as may be deemed necessary or advisable to assure the prompt payment of the bonds thereby authorized.

Such bonds issued under the provisions of this act shall be payable solely from the revenue derived from any such bridge or bridges, and it shall be plainly stated on the face of each bond that it does not constitute an indebtedness within any constitutional or statutory or charter debt limitation. (Act Apr. 17, 1941, c. 286, §3.)

**1372-¾ c. Creation of sinking fund.**—Any ordinance authorizing the issuance of bonds under this act shall provide for the creation of a sinking fund into which shall be payable from the revenues of any such bridge or bridges from month to month as such revenues are collected such sums in excess of the cost of the maintenance and operation of such bridge or bridges as may be sufficient to pay the interest upon and principal of such bonds at or before maturity, and the moneys in said sinking fund shall be applied solely to the payment of the maturing interest on bonds authorized under the provisions of this act and for the retirement of such bonds at or prior to maturity. The governing body of any such city or village shall have power by ordinance to make, enact and enforce all needful rules and regulations in connection with the acquisition, purchase, construction, maintenance, operation and management, care or protection of any such bridge, and it shall be the duty of such governing body to establish rates of toll or charges for the use of any such bridge or bridges, which shall be sufficient at all times to pay the cost of maintenance and operation thereof and to pay the principal of and interest on the bonds issued under the provisions of this act. Rates of toll or charges for the use of any such bridge shall be established, revised and maintained and be payable and be enforced as the governing body of each such city or village may determine by ordinance. (Act Apr. 17, 1941, c. 286, §4.)

**1372-¾ d. Publication of ordinance.**—All ordinances adopted for the issue of any bonds under the provisions of this act shall be published once within thirty (30) days from the date of passage, in a newspaper of general circulation in any such city or village, and shall be effective without the necessity of submitting such ordinance to any election, except that any such ordinance shall be subject to any referendum provision of any city organized and operating under a Home Rule Charter. (Act Apr. 17, 1941, c. 286, §5.)

**1372-¾ e. Bonds may be sold in accordance with ordinance.**—The bonds authorized by this act may be issued and sold by any such city or village in accordance with the terms of the ordinance adopted therefor, notwithstanding any limitation contained in the charter of any such city or village or in any law of the state prescribing or fixing any limit upon the bonded indebtedness of any such city or village, and such bonds shall not create or constitute an indebtedness of any such city or village within the meaning of any constitutional, statutory or charter limitation upon the incurring of indebtedness, but such bonds shall be payable only from the net income and revenues of any such bridge or bridges pledged to the payment thereof after payment of the actual operating expenses and actual cost of maintenance and repair of any such bridge or bridges under economical management, and while any of said bonds are outstanding, such net income and revenues shall be used solely for the payment of the principal of and interest on said bonds, and said bonds and the interest thereon shall constitute a first and prior lien on and against such net income and revenues and on and against all funds, from whatever source, paid into or set apart for the sinking fund hereinabove designated. (Act Apr. 17, 1941, c. 286, §6.)

**1372-¾ f. Income and account books.**—Every city or village owning and operating a toll bridge under

this act must keep all income and revenues derived from the operation thereof separate and distinct from all other revenues of such city or village, and shall keep books of account therefor distinct from all other city or village accounts and in such manner as to show the true and complete financial results of such public ownership and operation. Such accounts shall be kept so as to show in detail the actual cost to such city or village of such bridge or bridges, the daily tolls collected therefrom, all costs of maintenance, repair and improvement, all operating expenses of every description, and the amounts set aside for sinking fund purposes, and semi-annual reports showing the financial results of such public ownership and operation shall be published by the governing body of any such city or village. (Act Apr. 17, 1941, c. 286, §7.)

**1372-¾ g. Other statutory provisions regarding indebtedness not to apply to bond issue.**—All bonds issued under this act shall be exempt from and shall not constitute an indebtedness of any such city or village within the meaning of any provisions contained in the charter of any city or village or in any law of the state prescribing, limiting or fixing the time and manner of payment of municipal bonds or prescribing, limiting or fixing the time and manner of sale of municipal bonds, and all such bonds may be authorized, issued and sold by any such city or village as in this act provided, notwithstanding any such charter or statutory provision. (Act Apr. 17, 1941, c. 286, §8.)

**1372-¾ h. Rights of bondholders.**—Any holder of a bond or bonds, or any of the coupons of any bond or bonds, issued under the provisions of this act may, either in law or in equity, by suit, action, mandamus or other proceedings, enforce or compel the performance of all duties required by this act, including the fixing, maintaining and collecting of such rates of toll or charges for the use of any such bridge or bridges and approaches thereto as will be sufficient for all the purposes provided by this act and the application of the income and revenue thereof. All bonds of the same authorization issued under the provisions of this act shall enjoy equal rights in respect of the revenues of any such bridge or bridges, regardless of the time of actual issuance or delivery thereof. (Act Apr. 17, 1941, c. 286, §9.)

**1372-¾ i. Inconsistent acts repealed.**—All acts and parts of acts inconsistent herewith are hereby repealed. (Act Apr. 10, 1941, c. 286, §10.)

**1372-¾ j. Provisions severable.**—If any provision of this act shall be held invalid, the remainder of this act and the application thereof shall not be affected thereby. (Act Apr. 17, 1941, c. 286, §11.)

Sec. 12 of Act Apr. 17, 1941, provides that the act shall take effect from its passage.

**1372-7½ h. May hold property.**—The Port Authority, in its own name, shall have full power and authority to acquire, purchase, construct, lease or operate any terminal or transportation facility within said district; to make rules, regulations and charges for the use thereof, and for any service rendered; for such purposes to own, hold, lease or operate real and personal property, to borrow money, and to secure the same by bonds or mortgages upon any property held or to be held by it; to sell and exchange any real or personal property owned or held by it in such manner and on such terms as it may see fit, save that no real property owned by said Authority shall be so sold, exchanged or the title thereto transferred without the unanimous vote of all the members of the Port Authority. The Port Authority is hereby empowered to acquire by condemnation any property, corporeal or incorporeal, within said Port District which may be needed by it for public use; and the fact that the property so needed has been acquired by the owner under power of eminent domain, or is already devoted to a public use shall not prevent its acquisition by such Port Authority by the exercise of the

right of eminent domain hereby conferred; provided, however, that no property, now or hereafter vested in or held by the State of Minnesota, or any city, county, village, school district, township or other municipality shall be so taken or acquired by such Port Authority without the consent of such state, municipality, or public body. The necessity of the taking of any property by the Port Authority shall be determined by resolution duly adopted by the commissioners, which shall describe the property as nearly as may be, and state the use and purpose to which it is to be devoted. The acquisition of such property shall be thereafter accomplished by proceedings by law, as in taking land for public use by right of eminent domain under the laws of the State of Minnesota.

In addition to the power and authority heretofore conferred upon said Port Authority, the said Port Authority, in its own name, shall have full power and authority to acquire and thereafter operate and maintain any existing vehicular toll bridge or bridges across any waters which form a common boundary between any city of the first class in the State of Minnesota and any other city either within or without this State, and to reconstruct, improve and repair such existing bridge or bridges; and to construct, maintain and operate an additional vehicular toll bridge and approaches across the aforesaid waters at a point suitable to the interests of navigation, and to reconstruct, repair and improve the same; and to construct, maintain and operate a tunnel under the aforesaid waters, and to reconstruct, repair and improve the same; and to issue and sell the negotiable revenue bonds of the said Port Authority for such purposes. Such bonds shall be authorized by resolution or resolutions as said Port Authority may determine from time to time, such resolution or resolutions to contain such provisions with respect to the form thereof and maturity, interest rate, sinking fund, redemption and refunding as are customary and usual; and such bonds shall be issued under a trust indenture from said Port Authority to a corporate trustee, which indenture shall contain the usual and customary provisions with respect to the issuance of bonds, the application of the revenues of such bridge, bridges or tunnel for the creation of a sinking fund to provide for the payment of such bonds and interest thereon, and for the holding of the proceeds of said bonds in a special trust for the purpose of acquiring or constructing such bridge, bridges or tunnel, and for the pledge and assignment by the said Port Authority to the trustee under such trust indenture of the revenues of such bridge, bridges or tunnel over and above the cost of operation and maintenance thereof as security for the payment of the principal of and interest on such bonds. The said Port Authority shall establish, maintain and collect tolls for transit over such bridge or bridges or through such tunnel acquired or constructed hereunder, sufficient at all times to pay the cost of the operation and maintenance thereof and to pay the principal of and interest of the bonds issued hereunder; and such bonds and the coupons evidencing interest thereon shall constitute an irrevocable contract between the holders thereof and the said Port Authority that such tolls shall always be sufficient therefor. No bonds issued hereunder shall bear interest at a rate exceeding five per centum (5%) per annum, and all such bonds so issued hereunder shall be sold for not less than par and accrued interest to the date of delivery and payment, and may be sold at private sale without prior publication of notice thereof. All such bonds issued hereunder shall never constitute an indebtedness of any such city of the first class chargeable to its debt limit or payable from ad valorem taxes, but such bonds shall be payable solely and only from the toll revenues earned by such bridge, bridges or tunnel pledged to the payment thereof.

Whenever said Port Authority shall determine to acquire any of the aforesaid existing bridge or bridges, or to construct the aforesaid additional bridge or tun-

nel, said Port Authority shall have all rights and powers to enter upon lands and to acquire, condemn, occupy, possess, and use such real estate and other property as may be needed for the location, construction, operation and maintenance of such bridge, bridges or tunnel and approaches thereto as are possessed by railroad corporations for railroad purposes, or by bridge corporations for bridge purposes in the State in which such real estate or other property is situated, upon making just compensation therefor to be ascertained and paid according to the laws of the State in which such property may be located, and the proceedings therefor shall be the same as in condemnation or expropriation of property for public purposes in such State. (As amended Act Mar. 7, 1941, c. 52, §1.)

Act Mar. 7, 1941, c. 52, §2, provided that this act shall take effect and be in force from and after its passage and publication.

#### 1392. Appeal.

Requirement of bond on removal is unconstitutional, but requirement of \$5 for fees is valid. *Flour City Fuel & Transfer Co. v. Y.*, 150M453, 185NW934.

### PROVISIONS RELATING TO CITIES OF FIRST CLASS

#### 1410. Attaching new territory.

It is impossible for any territory to become a part of school district for Minneapolis without being annexed to that city for all purposes. *Op. Atty. Gen.* (59a-2), Oct. 10, 1940.

#### 1417-1. Salary of alderman in certain cities.

Alderman who, as chairman of ways and means committee of city council, served as an ex-officio member of board of estimate and taxation of city of Minneapolis, is entitled to compensation for his services on board at full rate prescribed by 1931 Act up to maximum of \$500 per year, notwithstanding that compensation of aldermen has been increased to \$2400. *Op. Atty. Gen.* (63a-2), Nov. 6, 1940.

**1437. Incorporation of police department as relief association—Pensions.**—That every paid municipal police department now existing or which may hereafter be organized, is hereby authorized to become incorporated pursuant to the laws of this state, or adopt a constitution and by-laws as a relief association, to provide for and permit and allow such police relief association, so incorporated or so organized, or any police pension relief association now in existence and incorporated according to law, to pay out of, and form any funds it may have received from any source, a service, disability, or dependency pension in such amounts and in such manner as its articles of incorporation or the constitution and by-laws shall designate, not exceeding, however, the following sum per month to each of its pensioned members who shall have reached the age of fifty years or more, and shall have served twenty years or more in such department, or their widows and children under sixteen years of age, viz:

A sum equal to one-half of the monthly compensation allowed such member as salary at the date of his retirement, when such member shall have arrived at the age of fifty (50) years or more and shall have served as a member of such paid municipal police department for a period of twenty (20) years or more in the police department of such city in which such relief association shall be so organized, or is so in existence, or who has been permanently disabled physically or mentally because of any injury received or suffered while a duly authorized member of such paid municipal police department, so as to render necessary his retirement from active police service. Provided, however, that any such member who has been a member of such paid municipal police department for twenty (20) years or more who shall sever his connection with said paid municipal police department before he shall have attained the age of fifty (50) years, shall be eligible to the benefits of such police relief association of such city when he arrives at the age of fifty (50) years. Provided, further, that if any member retires under the provisions of the act

before he has served one year in the grade in which he is serving when he retires, he shall receive the same compensation as though he had retired in the next lower grade. Provided, further, that no retired member shall receive less than Seventy Dollars (\$70.00) nor more than Seventy-five Dollars (\$75.00) per month, but commencing April 1st, 1932, all retired members shall receive Seventy-five Dollars (\$75.00) per month. Provided, however, that in the case of any applicant for a service pension who, following his entry into the service of any such police department, has served in the military forces of the United States in any war or national defense emergency subsequent to January 1, 1940, and has thereafter returned honorably discharged from such service, and resumed active duty in such police department, the period that such applicant has served in such military or defense emergency service shall be counted in computing period of service herein provided for, but during such period of military or defense emergency service, he shall not be considered as an active member of his association. Said pension shall be paid to any widow or child under sixteen years of age of any such pensioned and retired member of the police department or to any widow or child under sixteen years of age of any member who dies while in the service of the police department of any such city, or to any widow or child under sixteen years of age of any member who, after having been a member of such paid municipal police department for twenty (20) years or more, shall sever his connection with such paid municipal police department and who shall die before he arrives at the age of fifty (50) years, and such widow or child shall receive the sums hereinafter provided. Forty Dollars (\$40.00) per month to such widow and Ten Dollars (\$10.00) per month to each of such children under sixteen years of age; provided, that where such widow and such children reside together the money herein required to be paid to such children shall be paid to such widow for the support of such children but the money paid to such widow for herself and such children shall not exceed Seventy-five Dollars (\$75.00) per month in all; provided, however, that in the event that any such widow remarries, she shall receive no further benefits under this law; provided, further, that said fund shall not be used for any other purpose than for the payment of service, disability, or dependency pensions as herein provided.

The word "member" as used in this act shall include police women, police matrons, and assistant police matrons. (As amended Act Apr. 18, 1941, c. 306, §1.)

Act Apr. 18, 1941, c. 306, §2, provides that this act shall take effect and be in force from and after its passage.

Police officers who enlist or are drafted into military service are not eligible to continue as members of pension system. Op. Atty. Gen., (785J), Mar. 19, 1941.

#### 1440. Association to have charge of funds.

This section is applicable only to cities having a population of over 50,000, but Laws 1919, c. 152, authorizes incorporation of policemen's relief associations in cities having a population of between 20,000 and 50,000 inhabitants, and part of pension fund is to be derived from a sum equal to three-sevenths of a mill, and such tax must be levied. Op. Atty. Gen. (518c), Oct. 2, 1940.

**1442-40d. Compulsory retirement of certain employees of police and fire departments.**—Every employe, officer or person on the payroll of any fire or police department in any city of the first class, who is designated as a future beneficiary by the rules of any tax-aided pension, relief or retirement fund established and maintained by authority of the laws of this state, shall retire upon reaching the age of 65 years; provided, that any such employe, officer or person on the payroll of any such fire or police department, serving as such on or before January 1, 1939, who has attained the age of 65 years and who has not served a sufficient length of time to entitle him to benefits under the terms and provisions of any such pension act now in effect providing for benefits for

such firemen and policemen, employes, officers or persons on the payroll of the fire or police department in such city, may, subject to the provisions of any charter of any such city providing for a civil service commission and the rules and regulations of said civil service commission enacted pursuant thereto, remain in the service of any such city as an employe, officer or person on the payroll of such fire or police department until he has served a sufficient length of time to entitle him to such benefits. This proviso shall not apply to substitutes and persons employed irregularly from time to time, in either the fire or police departments of such city. (As amended Act Apr. 14, 1941, c. 426, §1.)

**Editorial note.**—The following memorandum followed text of above section:

#### MEMORANDUM

The purpose of the accompanying bill is to amend the existing statute with reference to the compulsory retirement of certain employes on the payrolls of fire and police departments in cities of the first class and to exclude such employes from the operation of the statute.

The language of Mason's Supplement 1940, Section 1442-40d, seems to include some persons on the payrolls of the fire and police departments of first class cities who are neither members of the fire or police departments nor beneficiaries of any tax-aided or tax-supported pension systems.

This is the situation in the cities of St. Paul and Duluth, where in some instances, clerks, stenographers, painters and mechanics are paid from the police or fire department payrolls, but are not admitted to the benefits of police or fire pension or relief association funds.

Such employes are future beneficiaries of the Public Employes Retirement Fund, which extends coverage to the general employes of such cities. Retirement officials of that fund request this amendment so as to correct the injustice of accelerating the maturity of the annuities of this particular class in advance of their normal retirement age at the expense of other general employes of the city, the taxpayers contributing nothing toward the support of such fund.

**1442-56a. Disability allowance—Inability to prove citizenship.**—In every city of the state now or hereafter having a population of over 50,000 inhabitants, which adopts or has adopted a system of paying pensions or retirement allowances to retired municipal employes, pursuant to Mason's Supplement 1940, Sections 1442-11 to 1442-56, the retirement board in control of such system is hereby authorized to pay a disability allowance to any member of the pension fund who has heretofore made application for disability allowance and, at the time of making application therefor, had reached the age of 61 years, but had not reached the age of 62 years, and who, on such date, had been in the service of the city for 18 years or more, notwithstanding the employee is unable to procure proof that he is a citizen of the United States of America, if all of the other conditions necessary to entitle him to the disability allowance have been complied with. (Act Apr. 28, 1941, c. 504, §1.)

**1454-1. Payment of current bills—Issuance of drafts.**—This act shall apply to any city of the first class now or hereafter operating under a charter adopted pursuant to the Constitution of the State of Minnesota, Article 4, Section 36, which charter authorizes the payment of all employes of said city, including those of any of its boards or departments upon payrolls prepared as directed by such charter and ordinances adopted in accordance therewith, and which charter authorizes the governing body of the city to provide by ordinance for the immediate payment by the city treasurer of all current bills incurred by the city for goods, wares, and merchandise, the purchase of which has been duly authorized for the use of the city or any of its departments, and which bills have been approved by the city purchasing agent. The treasurer of any such city may issue drafts drawn on the city in the manner and subject to the restriction set forth in this act, for the purpose of saving the expense and inconvenience of issuing numerous city checks on depository banks. The treasurer shall issue such drafts only when there have been delivered to him warrants, orders, payrolls, or similar documents,

which are sufficient according to the applicable law or city charter to authorize him to disburse money to specified parties in specified amounts, and only when there is cash on hand, or on deposit and subject to check in a depository bank or banks, which is legally applicable and actually sufficient to pay the amounts so authorized; but, as to any draft actually issued by the city or its treasurer and in the hands of a bona fide holder for value it shall be conclusively presumed that these conditions have been complied with. Each draft shall show on its face the party to whose order and in what amount it is payable and shall contain a word or words sufficient for the treasurer to identify the fund from which payable.

Such drafts may be made collectible through, but shall not constitute checks on, a depository bank and may be executed with a mechanical, printed, or lithographed facsimile signature of the treasurer or of an assistant treasurer authorized by the governing body to sign such instruments, and may be prepared on business machines designed for such purpose. No draft issued hereunder shall be in an amount in excess of \$2,500. Such drafts shall be obligations of the city and shall be negotiable in like manner and to the same extent and with like effect as instruments governed by the uniform negotiable instruments act, except as herein otherwise provided. (Act Apr. 16, 1941, c. 260, §1.)

**1454-2. Drafts—Presentation and payment—Bank credits.**—Upon presentation of any such draft or drafts duly endorsed, the treasurer shall pay the same to the payee or transferee, either out of cash on hand available therefor, or by a check on the depository bank, through which the draft or drafts were made collectible. No recovery by the city or its treasurer from a depository bank to which any payment shall have been so made shall be allowed on the ground that any draft so paid was not issued by the city or its treasurer or was not in the form or amount as issued by the city or its treasurer, unless the draft shall be returned to the bank before noon of the second business day next following the date of its payment; but this limitation shall not restrict the rights of the city or its treasurer to recover on any other ground or grounds from any party other than a depository bank any amount improperly or erroneously so paid or from any such depository bank or any other party to the instrument on a draft bearing any forged or other irregular enforcement. Any credit given by a depository bank to any party who shall have transferred such a draft to it for collection shall be conditioned upon final payment. (Act Apr. 16, 1941, c. 260, §2.)

**1484. "Public utilities" defined.**

City of Minneapolis has power to lease land lawfully acquired for purposes of a river terminal, but thereafter found unnecessary for use as a part of public terminal facilities, it appearing that lease is adaptable to profitable private use in aid of and ancillary to public terminal, without interference with its efficient operation. Penn-O-Tex Oil Co. v. C., 291NW131. See Dun. Dig. 6693.

**1485. Acquisition and operation.**

Penn-O-Tex Oil Co. v. C., 291NW131; note under §1484.

**1569. Residence districts—Council may designate.**

It is within power of city council to enact a zoning ordinance. State v. Miller, 288NW713. See Dun. Dig. 6525.

**1591. Library board may extend privileges to counties and villages.**

Considering sections 673, 1591, and 5666 together, county cannot contract for library service for their county through cities outside county if there is a public library in the county, though inconveniently located. Op. Atty. Gen. (285), Nov. 10, 1939.

**1607-23. May contract with adjacent municipalities.**

Cities of fourth class that have entered into contracts with an adjoining city of the first class for disposal of sewage may collect and certify to county auditor maintenance charge made for services under such contracts. Laws 1941, c. 122.

**1607-23a. Sewage disposal contracts between first and fourth class cities—Maintenance charges.**—Any city of the fourth class that has entered into a con-

tract with an adjoining city of the first class for the conveying, treatment and disposal of the sewage of said city of the fourth class, pursuant to Mason's Supplement 1940, Section 1607-23, shall have the same authority to collect and certify to the county auditor the maintenance charge made for the services under said contract as do said cities of the first class pursuant to Mason's Supplement 1940, Section 1607-33. (Act Apr. 4, 1941, c. 122, §1.)

**1607-26. Contiguous municipalities shall treat sewage.**

Bonds issued under this section must be included in determining aggregate outstanding indebtedness of a city proposing to construct a trunk sewer, unless such sewer is determined to be a necessary part of the sewage disposal plant. Op. Atty. Gen. (36c-3), Sept. 13, 1940.

**1607-30a. Total bonded indebtedness—Bonds for other improvements.**—The outstanding and unpaid bonds of any city of the third class contiguous to a sanitary district organized under Laws 1933, Chapter 341 [1607-8 to 1607-30], which have heretofore been issued and sold, or shall be hereafter issued and sold, pursuant to Section 18-a thereof, for the costs and expenses incident to the construction of sewers, drains, intercepting sewers, treatment plants, and other structures for the treatment of its sewage and industrial waste, shall not be included within the amount of, and shall not constitute a part of said city's total bonded indebtedness when determining said city's right or authority to issue and sell its bonds for other public or municipal improvements, as such right or authority may be limited, by any law of the state of Minnesota, or any of its charter provisions. (Act Mar. 28, 1941, c. 90, §1.)

**1607-31. Equitable charges for sewage facilities.**—

Any city of the first class operating under home rule charters, and not embraced within the limits of any sanitary district which is authorized to provide a method or system for establishing and collecting equitable sewage service charges, which has installed and is operating, or which is proceeding to establish and install, or which may hereafter install a system of sewers, sewage pumping station, or a sewage treatment or disposal plant or plants for public use, in addition to all other powers granted to it shall have authority, by an ordinance duly adopted by the governing body thereof, to charge just and equitable rates, charges or rentals for the use of such facilities and for connections therewith by every person, firm or corporation whose premises are served by such facilities either directly or indirectly, or whose premises are connected in any way with any such sewers; or whose premises are served by a water distribution system which obtains its water supply from any source liable or subject to contamination or pollution as the result of the emptying or discharging of domestic sewage or industrial waste into the source of such water supply through any such sewers, sanitary sewer system, system of sewers, sewage pumping station, sewage treatment plant, or sewage disposal plant. Such charges, shall be, as nearly as reasonably possible equitable and in proportion to the service or benefit rendered, and may take into consideration the quantity of sewage produced, concentration, strength, the effect in general which such sewage may have in polluting or causing the pollution of any river, lake, bay or other body of water, forming the source, in whole or in part, of the water supply of any such water distribution system, and the cost of the disposal of such sewage; provided, however, that nothing herein contained shall authorize the imposition of any rate, charge or rental against any real estate unoccupied by dwelling, building or other structure designed for residential, commercial or industrial purposes. The charges may be fixed on the basis of water consumed or on some other basis of measuring the use made of the aforesaid facilities. In case of arrangements with other municipalities, districts or private parties for the supplying of sewers aforesaid, such

rates, charges or rentals may also be levied the same as in independent operations. (As amended Act Feb. 27, 1941, c. 35, §1.)

Act Feb. 27, 1941, c. 35, §2, provides: This act shall take effect and be in force from and after its passage.

#### 1618. Restricted residence districts.

Designation of industries excluded from light industrial zone by city counsel was a matter for the city counsel, and it is presumed that it investigated and found conditions such that legislation was appropriate. State v. Miller, 288NW713. See Dun. Dig. 6525.

Complaint, charging defendant with conducting a bag cleaning industry in light industrial zone of city where such industry is prohibited by a duly enacted zoning ordinance, states a public offense. Id.

### PROVISIONS RELATING TO CITIES OF SECOND CLASS

#### 1643-6. Same—Fund—Management and control, etc.

Assessment of tax is mandatory. Op. Atty. Gen. (519c), Oct. 2, 1940.

**1648-5. Firemen's relief association—Corporate existence.**—The fire department of each city of the second class in this state shall maintain a firemen's relief association which shall be incorporated under the laws of the state of Minnesota. All such associations now existing as such corporations, or hereafter incorporated under the laws of this state, shall have perpetual corporate existence. (Act Apr. 16, 1941, c. 267, §1.)

**1648-6. Same—Organization and powers—Regulations.**—Each relief association shall be organized, operated, and maintained in accordance with its own articles of incorporation and by-laws, by firemen, as hereinafter defined, who are members of said fire departments. Each association shall have power to regulate its own management and its own affairs, and all additional corporated powers which may be necessary or useful; subject, however, to the regulations and restrictions of this act, and other laws of this state pertaining to corporations, not inconsistent herewith. (Act Apr. 16, 1941, c. 267, §2.)

**1648-7. Fireman—Definition of term—Other pensions and benefits.**—A fireman under this act is one who is regularly entered on the payroll of one of said fire departments, serving on active duty with a designated fire company therein, or having charge of one or more said companies and engaged in the hazards of fire fighting; and shall include all members of the electrical and mechanical division of the fire departments who are subject to like hazards. Substitutes and persons employed irregularly from time to time shall not be included.

All persons who are members of the relief associations at the time of the passage of this act, whether their status is embraced within the definition of a fireman herein contained or otherwise, shall have the right to continue as members of their respective associations and be entitled to all benefits pertaining thereto, and any member included under the definition of firemen herein provided shall have the right to retain his membership on promotion or appointment to other positions to which such firemen herein may be subject.

This act shall not affect any pensions or other benefits which have been allowed or which are being paid by any such relief association under or in accordance with any prior act or acts, at the time this act becomes effective. Payment of such pensions and benefits shall be continued by the respective associations, and shall be subject only to the provisions of section 18 of this act. (Act Apr. 16, 1941, c. 267, §3.)

**1648-8. Same—Members—Eligibility—Applications—Investigation and approval.**—Every fireman as herein defined shall be eligible to apply for membership in the relief association in the city in which he is employed within the time and in the manner hereinafter set forth. Any such fireman desiring to be-

come a member shall, not later than 90 days from the time when he is regularly entered on the payrolls of the fire department, make written application for membership in the relief association on forms supplied by the association, accompanied by one or more physician's certificates as required by the by-laws of the association. After the application has been filed, the board of examiners of the association shall make a thorough investigation thereof and file their report with the secretary of the association. Such application must be acted upon by the association within six months from the date applicant was entered on the payroll of the fire department. No fireman who is more than 35 years of age when his application is filed can become a member of the relief association, except that such age limitation of 35 years shall not apply on application for reinstatement in the association. (Act Apr. 16, 1941, c. 267, §4.)

**1648-9. Membership—Exclusion of applicants—Fees and dues.**—Each firemen's relief association shall have the right to exclude all applicants for membership who are not physically and mentally sound, so as to prevent unwarranted risks for the association; and additional requirements for the entrance fees and annual dues for membership in the association may from time to time be prescribed in the by-laws of the association. (Act Apr. 16, 1941, c. 267, §5.)

**1648-10. Officers of association—Board of trustees—Fidelity bonds.**—The officers of the relief association shall be a president, one or more vice presidents, a secretary and a treasurer. The offices of assistant secretary and assistant treasurer may be created by the by-laws of any such associations. The affairs of each association shall be managed by a board of trustees elected in the manner prescribed by the articles of incorporation of the association.

The secretary and treasurer of each relief association shall each furnish a corporate bond to the association for the faithful performance of their duties, in amounts as the association from time to time may determine. Each relief association shall and is hereby authorized to pay the premiums on such bonds from its general fund. (Act Apr. 16, 1941, c. 267, §6.)

**1648-11. Same—Reports of secretary and treasurer—Filing duplicates.**—The secretary and treasurer of every association, prior to the 1st day of February in each year, shall jointly prepare and sign with the approval of the association's board of trustees, a detailed and itemized report of all receipts and expenditures in the association's special fund for the preceding calendar year, showing the source of said receipts, and to whom and for what purpose the money has been paid and expended, and the balance of the fund. They shall file duplicate original copies thereof with the clerk of the city in which the association is located, and with the state auditor. No money shall be paid to a relief association by either the state of Minnesota or the city in which the association is located until the report is filed. (Act Apr. 16, 1941, c. 267, §7.)

**1648-12. City clerks—Filing certificate with insurance commissioner.**—The clerk of every city of the second class having a firemen's relief association shall, on or before the 31st day of October in each year, make and file with the insurance commissioner of this state his certificate stating the existence of the firemen's relief association. (Act Apr. 16, 1941, c. 267, §8.)

**1648-13. Insurance commissioner—Annual statements of insurance companies—contents—certificate to state auditor.**—The insurance commissioner shall enclose in his annual statement blank sent by him to all fire insurance companies doing business in this state, a blank form containing the names of all firemen's relief associations in all cities of the second class and names of the cities, and shall require the companies at the time of making their annual state-



ments to the insurance commissioner to state on said blanks the amount of premiums received by them upon properties insured within the corporate limits of the cities named thereon during the year ending December 31st last past. Thereafter, and before July 1st in each year the insurance commissioner shall certify to the state auditor the information thus obtained, together with the amount of the tax for the benefit of the relief association paid in such year by said companies upon such insurance premiums. (Act Apr. 16, 1941, c. 267, §9.)

**1648-14. State auditor—Warrant for tax paid for benefit of relief associations—Other funds.**—The state auditor at the end of each fiscal year shall issue and deliver to the treasurer of each relief association his warrant upon the state treasurer for an amount equal to the total amount of the tax, for the benefit of the relief associations, paid by fire insurance companies upon the premiums by said companies received in the city upon properties insured within the corporate limits thereof in which the association is located, together with the other appropriations or funds as may hereafter be appropriated or created, and to which the association is entitled. (Act Apr. 16, 1941, c. 267, §10.)

**1648-15. State treasurer—payment of warrants.**—The state treasurer shall, upon presentation to him of the warrant of the state auditor specified in the foregoing section, pay out of the general revenue fund of the state the amount thereof to the treasurer of the relief association presenting the warrant. (Act Apr. 16, 1941, c. 267, §11.)

**1648-16. City council—Tax levy for benefit of relief associations—Deductions from firemen's salaries.—Return of deductions—Benefit payments.**—The city council or other governing body of each city wherein such a relief association is located shall each year, at the time the tax levies for the support of the city are made, and in addition thereto, levy a tax of three-tenths of one mill on all taxable property within said city. Whenever the balance in the special fund of any firemen's relief association in any city of the second class is less than \$50,000 the city council or commission or other governing body, shall, each year, at the time the tax levies are made for the support of the city, and in addition thereto, levy a tax of three-tenths of one mill on all the taxable property in such city; however, when said fund shall reach or exceed \$50,000, the levy, each year, shall be one-tenth of one mill. In addition, and only if such tax is levied, the city treasurer, finance commissioner or other officer charged with the responsibility of the city's finances, shall, each month, deduct two per cent of the basic pay of all firemen, and transfer the total thereof to the treasurer of the special fund of the firemen's relief association who shall credit said total to the special fund to the credit of the individual fireman. If a fireman in such city of the second class is separated from the service due to resignation or some reason not involving malfeasance, nonfeasance, moral turpitude, injury, death or other disability, the treasurer of the special fund shall return to the fireman all of the amounts so deducted from his base pay without interest. Members of the firemen's relief association in such city of the second class who were in cities of the second class receiving a firemen's pension on January 1, 1941, and who were active on January 1st, 1941, and who join the association thereafter, or their beneficiaries, shall receive as benefit payments, according to the rules of the association, amounts to be determined by the board of trustees of the association, but said amounts shall be no less than \$50.00, nor more than \$75.00, per month. The tax so levied shall be transmitted with other tax levies to the auditor of the county in which the city is situated, and by the county shall be collected and payment thereof enforced when and in like manner as state and county taxes are paid. (Act Apr. 16, 1941, c. 267, §12.)

**1648-17. City treasurer—Payments to treasurer of relief association.**—As soon as practical, after the first day of June and the first day of November in each year, the county treasurer of each county shall pay to the treasurer of each relief association within the county the amount of the tax then collected, and payable to said association together with all interest and penalties so collected, and all interest paid thereon between the time of collection and the time of payment to the relief association. The city treasurer of such city, in the event that the tax or any part thereof is paid to him, shall likewise pay the same to the treasurer of the relief association in said city as soon as the same has been collected, together with all interest and penalties collected thereon. (Act Apr. 16, 1941, c. 267, §13.)

**1648-18. Management of associations.**—Each relief association shall have full and permanent charge of, and the responsibility for the proper management and control of all funds that may come into its possession, and particularly funds derived from the following sources:

(a) Funds derived from the state of Minnesota, and interest from the investment thereof.

(b) Funds derived from the tax levies by the city in which such relief association is located, and interest from the investment thereof.

(c) Funds derived from private sources such as gifts, charges, rents, entertainments, dues paid by members, and from other sources. (Act Apr. 16, 1941, c. 267, §14.)

**1648-19. Funds of associations.**—The money received from the various sources shall be kept in two separate and distinct funds, one to be designated as the association special fund, and the other as its general fund. All money received from the state of Minnesota and from the city in which the relief association is located shall be deposited in the special fund, and shall be expended only for purposes hereinafter authorized. All money received from other sources shall be deposited in the general fund, and may be expended for any purpose deemed proper by such association. (Act Apr. 16, 1941, c. 267, §15.)

**1648-20. Same—Disbursement.**—The amounts so paid to relief association by the state and each city under the provision of this act, and by it set aside and deposited as a special fund, shall be appropriated and disbursed by each such association for the following purposes, to-wit:

(a) For the relief of sick, injured and disabled members of the relief association, their widows and orphans.

(b) For the payment of disability and service pensions to members of the relief associations. (Act Apr. 16, 1941, c. 267, §16.)

**1648-21. Sickness and disability benefits—Service pensions—Maximum amounts.**—Each relief association shall in its by-laws define the sickness and disability entitling its members to relief, and specify the amounts thereof, and also specify the amounts to be paid to its disability and service pensioners, and to widows and children of deceased members, and to fix the age limit of children to which pensions may be paid. When the total assets of the association shall amount to \$50,000 or more, it shall have the right to pay to its members the maximum amounts specified in this act. (Act Apr. 16, 1941, c. 267, §17.)

**1648-22. Reduction and increase of amounts of benefits.**—The firemen's relief association shall at all times have and retain the right to reduce the amount of pensions and benefits to be thereafter paid out of its funds whenever its total funds, as determined by its board of trustees, are less than \$25,000 and within the limits of this act described, said associations shall have and retain the right to increase or otherwise adjust said pensions and benefits after same have been so reduced. (Act Apr. 16, 1941, c. 267, §18.)

**1648-23. Sickness or accident benefits—Notice of disabilities—Application for benefits.**—A member of such association who, by reason of sickness or accident, becomes disabled from performing his assignment of duties on the fire department, shall be entitled to the relief as the by-laws of the association may provide. No allowances for the disabilities shall be made unless notice of the disability and application for benefits on account thereof shall be made by or on behalf of the disabled member to the secretary of the association within 30 days after beginning of such disability. (Act Apr. 16, 1941, c. 267, §19.)

**1648-24. Time for and amount of benefits.**—A member of any such relief association entitled to disability benefits as herein defined, shall receive the same from his association for such periods of time at such times, and in such amounts, not to exceed \$75.00 per month, as the by-laws of the association provide. (Act Apr. 16, 1941, c. 267, §20.)

**1648-25. Pensions—Amount—Computation of service period.**—A member of the association as herein defined who has completed a period, or periods of service on the fire department equal to 20 years or more, shall, after he has arrived at the age of 50 years or more, and has retired from the payroll of the fire department, be entitled to a pension of not less than \$50.00, nor more than \$75.00, per month for his natural life in conformity to the by-laws of each association. All leaves of absence of more than 90 days, except such as are granted to a member because of his disability due to sickness or accident, shall be excluded in computing the period of service; and all periods of time during which a member received a disability pension shall be excluded in the computation. No deductions shall be made for a leave of absence granted to a member to enable to accept an appointive position in said fire department. No member shall be entitled to draw both a disability and a service pension. The by-laws of each association may provide for said increases or any portion thereof, provided that in no event shall the total pension exceed the sum of \$75.00 per month. (Act Apr. 16, 1941, c. 267, §21.)

**1648-26. Retirement—Deferred pension roll—Waiver.**—A member of such association who has performed service on the fire department for 20 years or more, but has not reached the age of 50 years, shall have the right to retire from the department without forfeiting his right to a service pension. He shall, upon application, be placed on the deferred pension roll of the association, and, after he has reached the age of 50 years, the association shall upon application therefor pay his pension from the date the application is approved by the association. Any person making the application thereby waives all other rights, claims or demands against his association for any cause that may have arisen from, or that may be attributable to, his service on the fire department. (Act Apr. 16, 1941, c. 267, §22.)

**1648-27. Military service.**—Any applicant for a service pension who subsequent to his entry into the service of the fire department has served in the military forces of the United States in the World War, or having during the war entered the employment of the government of the United States and in such service rendered fire prevention service during said war, and has returned after his honorable discharge from such service and resumed active duty in the fire department, the period of his absence in the service of the United States shall not be deducted in computing the period of service hereinbefore provided for, but shall be construed and counted as a part and portion of his active duty in the fire department. (Act Apr. 16, 1941, c. 267, §23.)

**1648-28. Death of pensioner—Pensions to widow and children.**—When a service pensioner, disability

pensioner, or deferred pensioner, or an active member of such relief association dies, leaving:

(a) A widow who became his legally married wife while or prior to the time he was on the payroll of the fire department and remained such continuously after the marriage until his death without having applied for any divorce or legal separation, and who, in case the deceased member was a service or deferred pensioner, was legally married to such member at least three years before his retirement from said fire department; and who, in any case, was residing with him at the time of his death. No temporary absence for purposes of business, health, or pleasure shall constitute a change of residence for the purposes of this section.

(b) A child or children who were living while the deceased was on the payroll of the fire department, or who were born within nine months after said decedent was withdrawn from the payroll of said fire department, such widow and said child or children shall be entitled to a pension or pensions as follows:

(1) To such a widow a pension of not less than \$25.00 and not to exceed the sum of \$50.00 per month, as the by-laws of said association provide, for her natural life; provided, however, that if she shall remarry, then such pension shall cease and terminate as of the date of her remarriage.

(2) To such child or children, if their mother is living, a pension of not to exceed \$15.00 per month for each child up to the time each child reaches the age of not less than 16 and not to exceed an age of 18 years, in conformity with the bylaws of each association. Provided, the total pension hereunder for the widow and children of said deceased member shall not exceed the sum of \$75.00 per month.

(3) A child or children of a deceased member receiving a pension or pensions hereunder shall, after the death of their mother, be entitled to receive a pension or pensions in the amount or amounts as the board of trustees of such association shall deem necessary to properly support the child or children until they reach the age of not less than 16 and not more than 18 years, as the by-laws of each association may provide; but the total amount of such pension or pensions hereunder for any child or children shall not exceed the sum of \$75.00 per month. (Act Apr. 16, 1941, c. 267, §24.)

**1648-29. Board of examiners—Reports and investigations.**—The relief association shall establish a board of examiners who shall, as and when requested by the association's board of trustees, make a thorough investigation of a report on all applications for membership in the association; investigate and make report on all applications for disability pension and make recommendations as to amount to be paid to the applicant; investigate and make report on all disability pensioners, and make recommendations as to amount of pension to be paid to them from year to year; and investigate and report on all applications for service pensions, and claims for relief. This board shall consist of a competent physician selected by the association, and at least three members of the relief association on active duty with the fire department. (Act Apr. 16, 1941, c. 267, §25.)

**1648-30. Examination of books and accounts of officers—Unauthorized expenditures.**—The public examiner of this state shall each year examine the books and accounts of the secretary and the treasurer of each such relief association. If he finds that any money has been expended for purposes not authorized by this act, he shall report the same to the governor, who shall thereupon direct the state auditor not to issue any further warrants to the association until the public examiner shall report that money unlawfully expended has been replaced. The governor may also take such further action as the emergency may demand. (Act Apr. 26, 1941, c. 267, §26.)

**1648-31. Payments of associations—Assignments—Exemptions.**—All payments made or to be made by any relief associations under any of the provisions of this act shall be totally exempt from garnishment, execution or other legal process, and no persons entitled to such payment shall have the right to assign the same, nor shall the association have authority to recognize any assignment; or to pay any sum on account thereof; and any attempt to transfer any such right or claim or any part thereof shall be void. (Act Apr. 16, 1941, c. 267, §27.)

**1648-32. Construction of act.**—This act shall not be construed as abridging, repealing or amending the laws of this state relating to the provisions of the law commonly known as the workmen's compensation act. (Act Apr. 16, 1941, c. 267, §28.)

**1648-33. Inconsistent laws.**—All laws and enactments of this state inconsistent herewith, or conflicting with the provisions of this act, and all prior laws of this state relating to firemen's relief associations in cities of the second class, the rights and obligations of the members thereof, and the use and control of the funds received by such associations, are hereby in all things repealed; except as hereinbefore provided in section 3. of this act. (Act Apr. 28, 1941, c. 267, §29.)

**1648-34. Severability clause.**—If any section or portion of a section of this act is declared invalid, the rest of this act shall nevertheless be and remain in full force and effect. (Act Apr. 16, 1941, c. 267, §30.)

**1648-35. Uniform payments.**—All pensions paid to firemen or their widows pursuant to the provisions of this Act shall be uniform except as may be specifically provided for herein. (Act Apr. 16, 1941, c. 267, §31.)

**1664-103. Candidates to file affidavits.**

Election Code of 1939 governs with respect to last day for filing as a candidate, and the period is not more than 90 days nor less than 40 days before primary election. Op. Atty. Gen. (911K), Nov. 30, 1940.

**PROVISIONS RELATING TO CITIES OF THIRD CLASS**

**1679. Annexation of territory to cities.**

Where lands were annexed to city of Austin by resolution adopted by city council on July 21, and filed for records with register of deeds and county auditor on Sept. 9, county auditor should tax annexed lands in the township and not the city, except that special assessments should be listed in political subdivision of which land was a part at time of levy, notwithstanding that levy of taxes in the city is made during month of October. Op. Atty. Gen., (59a-1), Sept. 27, 1939.

**PROVISIONS RELATING TO CITIES OF FOURTH CLASS**

**1719-1. Annexation of territory.**—Whenever platted or unplatted tracts, or a group of tracts or parcels of land, not used for agricultural purposes, and not within the corporate limits of any city or village and so conditioned as properly to be subjected to city government, and being contiguous to and surrounded on all sides by the corporate limits of a city of the fourth class, the city council may, by ordinance, annex such tract, or tracts, to the city upon notice to the owners thereof as hereinafter provided. (Act Apr. 16, 1941, c. 265, §1.)

**1719-2. Same—Resolution of city council.** Whenever the city council desires to annex any such tract, or tracts, it shall adopt a resolution stating its intention to so annex said tract or tracts and fixing a time and place for a hearing upon said proposed annexation, a copy of which resolution shall be served upon all owners of such tract, or tracts, at least ten days before the date of hearing. Service of such resolution shall be made in the same manner as provided for the service of a summons in a civil action. If, after such hearing, the council shall determine that the annexation of such tract, or tracts, to said city

will be to its interests and will cause no manifest injury to the persons owning such tract, or tracts, the city council may, by ordinance, declare said tract, or tracts, to be annexed to such city, and thereupon such tract, or tracts, shall become a part of such city as effectually as if it had been originally a part thereof. (Act Apr. 16, 1941, c. 265, §2.)

**1719-3. Same—Recording ordinance—Construction of act.** It shall be the duty of the council of any city adding territory under this act to cause a certified copy of the ordinance aforesaid to be recorded and filed in the office of the register of deeds of the county in which such city is located in the same manner as city charters are filed and recorded under the general laws of this state. Provided, that this act shall be construed to be supplementary to any other law providing for the annexation of territory to cities of less than 10,000 population, and not as repealing such law. (Act Apr. 16, 1941, c. 265, §3.)

**1731. Parks and golf courses.**

City may purchase land contiguous thereto for a municipal golf course or airport without approval of voters, but cannot issue bonds without approval. Op. Atty. Gen., (59B-11), May 24, 1940.

**1732. Park board—Powers and duties.**

Creation of a park board is not mandatory. Op. Atty. Gen., (59B-11), May 24, 1940.

**1737. Entertainment tax.**

Section 1933-17 gives certain cities more authority in regard to maintenance and employment of a band than that previously provided for musical entertainment under §1737, and uniforms should be considered within term "maintenance" of a band. Op. Atty. Gen., (59B-3), April 23, 1940.

If city has available money in other funds, and is authorized by charter or ordinance to transfer such money from its present fund, it is not necessary that tax be levied for musical entertainments. Op. Atty. Gen., (59B-3), May 22, 1940.

**1746-2. Cities of fourth class may appropriate money for improvement of parks, etc., outside of city limits.**

City may purchase land contiguous thereto for a municipal golf course or airport without approval of voters, but cannot issue bonds without approval. Op. Atty. Gen., (59B-11), May 24, 1940.

**1754. Waterworks and light plants.**

Authority granted by act is limited to all cities of 10,000 inhabitants or less, regardless of form of their organization. Op. Atty. Gen. (59B-13), Nov. 7, 1940.

**1774 to 1778. [Repealed.]**

Repealed. Laws 1941, c. 309.

**1799-½. Police departments—Acceptance of provisions of Act.** There may be created in any city of the fourth class situated in one county and adjoining or contiguous to a city of the first class situated in another county, a board of police commissioners with powers and duties as hereinafter provided.

Any city in the class mentioned in this act which may wish to avail itself of the provisions hereof, shall do so by a resolution of the governing body, expressly accepting the provisions hereof, which resolution shall be adopted by a vote of the majority of the members of the governing body, and be approved by the mayor of such city, and this act shall not apply to any such city until the adoption as aforesaid of such resolution. (Act Apr. 16, 1941, c. 266, §1.)

**1799-½a. Board of commissioners—Qualifications of members—Appointment and term of office.** Said board shall consist of three members, who shall be residents and electors of the city during their term in office, and shall be appointed by the mayor of the city, and the appointment confirmed by a majority vote of the governing body thereof. The members of the board shall hold office for a period of six years from the time of their appointment, and shall serve without pay; provided, however, that the members of the first board shall be appointed for two, four and six years respectively. (Act Apr. 16, 1941, c. 266, §2.)

**1799-½b. Same—Meetings—Officers—Salaries.** The board shall first meet immediately after its appointment, and thereafter on the second Monday in January of each year, at which meetings it shall select from its members a president and secretary who shall hold office until their successors are elected. The common council of said city may allow the secretary such compensation not to exceed \$200.00 per year as it deems commensurate with the services to be rendered by him. (Act Apr. 16, 1941, c. 266, §3.)

**1799-½c. Same—Powers and duties—Rules, orders, and regulations.** The board shall have absolute control and supervision of the government and administration, discipline and equipment of the police department of said city, and shall also have the power to appoint, promote, suspend, reprimand, dismiss and otherwise punish any member of the police department. The board may establish such reasonable rules, orders and regulations and prescribe and impose penalties for violation thereof, as it may deem necessary in carrying out the above powers. (Act Apr. 16, 1941, c. 266, §4.)

**1799-½d. Police officers—Increase in number.** Whenever the board shall deem it necessary to increase the number of police officers in the city, they shall recommend the necessity of such increase to the common council of the city with an estimate of the cost thereof, who shall, if they concur with such recommendation, provide by resolution for the increase and the extra expense to be incurred and provide funds for that purpose. (Act Apr. 16, 1941, c. 266, §5.)

**1799-½e. Same—Compensation—Expense of department.** The board shall fix the compensation of all members of the police department; provided, however, that the expense of the department shall not exceed in any one year the amount that is appropriated and set apart for this purpose by the common council of the city. (Act Apr. 16, 1941, c. 266, §6.)

**1799-½f. Special police—Appointment—Compensation.** Upon written petition by a resident of the city, the board, in its discretion, may appoint special policemen who shall serve without compensation and may be removed at the pleasure of the board and may also appoint special policemen and fix their compensation in case of emergency, insurrection, apprehension of riot, or when in the judgment of the board the public interest requires it. (Act Apr. 16, 1941, c. 266, §7.)

**1799-½g. Chief of police—Appointment.** The board may in its discretion appoint a chief of police who shall be the chief executive officer of the police department, subject to the authority of the board. (Act Apr. 16, 1941, c. 266, §8.)

**1799-½h. Board of commissioners—Abolishment—Petition—Election.** Any board of police commissioners hereafter created pursuant to the provisions of this act, may be discontinued and abolished as follows: A petition signed by ten per cent of the number of legal voters voting at the last general municipal election shall be filed with the governing body of the city and shall request that the following question be submitted to the voters: "Shall the board of police commissioners be abolished?"

When such petition is filed, the governing body of the city shall cause the question to be submitted to the voters at the first following general municipal election. The board shall be deemed to be abolished if a majority of the votes cast in the election be in favor of such abolishment; and the status of the police department and all of the employees thereof shall thereafter be deemed to be the same as if the board has not been created. (Act Apr. 16, 1941, c. 266, §9.)

**1799-1. Cities and villages may issue bonds for sewage disposal plant.**

Bonds issued for construction of sewage disposal plant for use of which village imposes charges are to be deducted in determining net indebtedness of village for purposes of authorized securities statute. Op. Atty. Gen., (928a-8), May 11, 1940.

**1815. Street and alley improvements of cities of fourth class or villages—Definitions.**

Property owned by an independent school district which includes all of city, and additional territory, is to be included in determining whether petition for street surfacing has required number of signatures, and school district is an "owner" who may sign petition by its president and secretary under resolution of board. Op. Atty. Gen., (396E), March 15, 1940.

**1822. County boards and school districts to pay assessments.**

On forfeiture of land to state for nonpayment of taxes all special assessments should be cancelled, and all special assessments made while state owned lands are void, and under no circumstances may county board pay for a special assessment for improvements made to property owned by state, though an obligation to pay a special assessment upon property owned by a school district or a county is created by statute independent of a lien. Op. Atty. Gen. (408c), Dec. 26, 1939.

Property owned by an independent school district which includes all of city, and additional territory, is to be included in determining whether petition for street surfacing has required number of signatures, and school district is an "owner" who may sign petition by its president and secretary under resolution of board. Op. Atty. Gen., (396E), March 15, 1940.

**1828-16¾k. Deductions from pay to be repaid in certain cases.**

Member of Police Relief Association organized under Laws 1931, c. 48, is not entitled to a refund of his contribution upon his discharge. Op. Atty. Gen. (735m), Oct. 8, 1940.

**1828-16¾. Retirement pensions for firemen in certain—Retirement at certain age.**—In any city of the fourth class having a population in excess of 6,000 and not more than 10,000 and a valuation in excess of \$9,000,000, exclusive of money and credits, and an area of more than four square miles, and having a fire department relief association organized under the laws of this state and authorized to pay pensions under Mason's Minnesota Statutes of 1927, Sections 1919 and 1920 and Sections 3723 to 3728, inclusive, or any amendments thereof, such fire department relief association may pay retirement pensions in excess of the amounts authorized by said statutes, but not in excess of the following total amounts:

\$75.00 per month to each member of the association who shall have reached the age of 55 years and shall have served 20 years or more as a member of the paid municipal fire department in such city. The monthly payments of \$75.00 may be increased by adding thereto an amount not exceeding \$3.00 per month for each year of active duty over 20 years of service before retiring; provided, that no such pension or payment hereunder shall exceed the sum of \$96.00 per month. No such pension shall be paid to any person while he remains a member of the fire department.

When any member of the paid municipal fire department shall have reached the age of 65 years and shall have served 20 years or more as a member of the department, the fire civil service commission if one exists in such city, or if not, the board charged with the administration of the department, may retire such member; or when it becomes necessary for the paid municipal fire department to reduce its personnel, the commission may retire any member who has reached the age of 62 years and shall have served 20 years or more as a member of the department.

This act shall become effective January 1, 1942. (As amended Act Apr. 10, 1941, c. 182, §1.)

Act Apr. 10, 1941, c. 196, §§1-8, provides for pensions for retired firemen in cities of the fourth class in counties with population of 24,000 to 26,000, assessed valuation of \$6,000,000 to \$8,000,000, and total acreage of 550,000 to 552,000.

**1828-16¾d. Deductions from pay—Tax levies.**

City of Chisholm must levy a tax of \$5,000 for a Firemen's Relief Fund and not a tax of one-tenth of a mill. Op. Atty. Gen. (785m), Oct. 8, 1940.

**1828-16 1/2 l. Treasurer to invest funds.**—The treasurer of the association shall, upon written direction of the governing body or board of directors thereof, invest the funds in interest-bearing securities as are specified, from time to time, by the board of directors; provided they are securities prescribed by laws of Minnesota, from time to time, as securities for investments, of the state board of investments, except that in addition thereto these funds may be invested in first mortgages upon improved real estate, the amount of such first mortgages on said improved real estate shall not exceed 60 per cent of the assessor's full and true value. (As amended Act Mar. 28, 1941, c. 74, §1.)

#### GENERAL INCORPORATION ACT FOR CITIES OF FOURTH CLASS

##### 1828-25. Removal of officers.

Justices of the peace are state officers and their courts are state courts and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. *State v. Hutchinson*, 238NW845. See Dun. Dig. 8011.

##### 1828-26. Vacancies.

Section is not applicable to city of fourth class operating under a home rule charter. Op. Atty. Gen. (63a-1), Jan. 3, 1940.

#### DUTIES OF OFFICERS

##### 1828-46. City assessor—Election—Duties—Term of office.

This section is not applicable to appointment of an assessor by city of the fourth class having a home rule charter. Op. Atty. Gen., (12a-3), April 26, 1940.

##### 1828-47. Justices of the Peace—Jurisdiction; etc.

Alexandria being a home-rule charter city and its charter providing for justices of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. *State v. Weed*, 294NW370. See Dun. Dig. 5340.

##### 1828-51. City printing.

This section is not applicable to a city such as Robbinsdale which has adopted a home rule charter. Op. Atty. Gen. (314B-7), Oct. 16, 1940.

#### MISCELLANEOUS PROVISIONS

##### 1828-105. Same—Change in classification of city.

Act Apr. 15, 1941, c. 233, §1, 2, validates certain contracts heretofore entered into by any city of the fourth class, or its water, light, power and building commissions, or both jointly.

#### PROVISIONS RELATING TO CITIES, VILLAGES, BOROUGHES, TOWNS AND COUNTIES

##### 1831. Damages—Notice of claim—Limitation.

Cause of action, founded upon alleged wrongful, negligent and careless conduct on part of defendant in installing its municipally owned water supply system along road in which plaintiff individually maintained a water supply system must fall since pleading sounds in negligence, not trespass, and no notice was given or suit brought within the time limit required by statute. *Kuehn v. V.*, 292NW187. See Dun. Dig. 6739.

Abandonment by city of platted street which had constituted an approach to a bridge removed for more than 20 years, did not as a matter of law, entitle city to a directed verdict in action by motorist who drove into river. *Ollgaard v. C.*, 294NW228. See Dun. Dig. 6831.

A non-resident driving down an abandoned street into a river where bridge had been removed, was not guilty of contributory negligence as a matter of law, though some parts of the street had been used as a garden for many years by abutting owners, and bridge had been removed more than 20 years before. *Id.* See Dun. Dig. 6838.

City in lighting its streets is performing a governmental function, and in performance thereof is not liable for its negligence, and an agreement between city and railroad relative to installation of street lights at intersection or crossing would not increase its liability. Op. Atty. Gen., (844B-8), Jan. 14, 1941.

##### 1841. Deposit of public funds.

Village treasurer is not liable for funds lost through failure of regularly designated depository, but is liable for funds deposited in bank not designated by council. Op. Atty. Gen. (140B-9), Jan. 24, 1940.

Where village has designated two banks as depositories, and council passes a resolution designating one of banks to carry general fund deposit, it is duty of treasurer to deposit that certain fund in that bank. Op. Atty. Gen. (140B-6), Aug. 30, 1940.

##### 1842. Roads, bridges and ferries outside city or village.

Village may not purchase land outside of limits for purpose of constructing a roadway thereon nor enter into a contract binding it to maintain a road outside limits for any definite number of years. Op. Atty. Gen. (476B-13), March 7, 1940.

A village operating under Laws 1885, chapter 145, may make appropriations for improvements and maintenance of roads outside of village limits under this section. *Id.*

##### 1843. Annexation of territory to certain cities and villages having 10,000 inhabitants or less—Ordinance.

There is no law vesting authority in any state official to sign petition for annexation of state owned land to a village, and superintendent of state hospital located on such land cannot sign petition. Op. Atty. Gen., (484E-1), May 4, 1940.

##### 1846. Petition for election.

Term "resident population" does not include inmates of a state hospital for mental cases. Op. Atty. Gen., (484E-1), May 4, 1940.

##### 1849-1. Annexation of contiguous territory to cities of fourth class, villages or boroughs.

A village located in a dry county but on county line may buy adjoining land in other county and establish a municipal liquor store there. Op. Atty. Gen. (484E-1), March 2, 1940.

##### 1852. Power and light commission created.

Validation of certain contracts entered into by cities of the fourth class, or its water, light, power, and building commissions, or both jointly, see §1828-105(N).

##### 1854. Appointment of members; etc.

Members of commission may be appointed and assume their duties at some future date within a reasonable period of several months, or commencing on next fiscal or calendar year, even though terms of some of members of appointing council have expired at that time. Op. Atty. Gen. (624c-1), July 23, 1940.

Village council may not appoint one of their number to a water and light commission whose office on commission shall commence after his term as councilman has expired. *Id.*

##### 1856. Secretary of water, light and power commissions in certain municipalities—Etc.

Water, light, power and building commission of a village has no authority to engage private auditor. Op. Atty. Gen., (476a-1), April 1, 1940.

##### 1857. Powers of water, light and building commissions in certain cases.

Said commission shall have full, absolute and exclusive control, except as hereinafter provided, of and power over the water, light, and power plant or plants, and municipal heating plant or plants, and all parts, attachments and appurtenances hereto, and all apparatus and material of every kind and description used or to be used in operating said plants, or any or either of them in all said municipalities aforesaid, including all other public buildings and halls owned by said municipality, provided, however, that the village council of the village creating said commission may, by the same resolution which created such commission, limit the power and authority of said commission to the control of any one or more of said water, light, and power plant or plants, public buildings and halls owned by said village. They shall have the power and authority to operate the same and each thereof, and to extend, add to, change or modify the same, and to do any and all things in and about the same which they may deem necessary for a proper economical operation of the same; provided, they shall not have the right to sell, lease, rent or in any way dispose of or incur or suffer or permit, the said property or any part thereof, to come under the control of any other person or corporation whatever; provided, however this shall not prevent the said commission from renting or leasing public halls or buildings for public use and entertainments. They shall have authority to buy all material, and employ all help necessary, or they may contract, to extend, add to, change or modify said plants, building and halls, or any part thereof, they shall also have authority to buy all fuel and supplies, and employ all help necessary to operate said plant. (As amended Apr. 16, 1941, c. 269, §1.)

Whether superintendent of water and light department, totally disabled because of sickness, is entitled to

receive his regular compensation, is largely a matter for village council. Op. Atty. Gen., (59a-41), Oct. 26, 1939. Neither village council nor commission should engage a private auditor to audit books and records in reference to municipal light plant, at least in absence of special circumstances. Op. Atty. Gen. (476a-1), Dec. 5, 1939. City of Fergus Falls could amend its charter so as to provide for annual payment to city of a franchise tax based on value of properties of commission. Op. Atty. Gen. (624c-11), Dec. 5, 1939.

Village council may not appoint a light and power commission and exclude from its jurisdiction authority over municipal, water works and municipal buildings and leave authority over such buildings in village council. Op. Atty. Gen. (624c-1), July 23, 1940.

A city by its charter and regulations may provide for shutting off water, heat and power in case of delinquent customers. Op. Atty. Gen. (624c-4), Aug. 22, 1940.

Village organized under Laws 1885 may extend its water main and issue certificates of indebtedness, but village council, and not water, light, power and building commission, is agency authorized to carry improvement forward. Op. Atty. Gen. (476a-4), Aug. 24, 1940.

Commission should treat debt of a customer who filed a voluntary petition in bankruptcy as extinguished and should not make its payment prerequisite to restoration of service, but it may adopt a rule requiring a larger deposit from a customer who has gone through bankruptcy or from a customer who has a poor credit rating than required of other customers. Op. Atty. Gen. (624c-4), Oct. 25, 1940.

Commission is without authority to execute a contract for purchase of a water supply, since such a contract should be executed by village council. Op. Atty. Gen. (624d-4), Dec. 18, 1940.

Commission has no authority to invest its surplus funds in bonds of village. Op. Atty. Gen., (476B-15), Jan. 9, 1941.

Commission has power to borrow money for maintenance and other purposes without an affirmative vote or approval of city council or electors. Op. Atty. Gen., (476a-4), Feb. 7, 1941.

Where a municipal corporation acts in a proprietary capacity as it does in selling city water, it has same authority that a private corporation has as to compromising an account or closing an uncollectible account. Op. Atty. Gen., (624c-11), Feb. 25, 1941.

Certificate of indebtedness issued by Water and Light Commission for maintenance and replacement purposes should be offered for sale on bids after published notice. Op. Atty. Gen., (476a-4), Mar. 11, 1941.

#### 1858. Rates, how fixed—Warrants—Etc.

One publication a year is not a compliance with statute, and a condensed statement is not a detailed statement required by section. Op. Atty. Gen., (624E-9), April 27, 1940.

Practice of commission in giving one month's free electric current each year, considered as a portion of the city rate, was not illegal as failing to establish a uniform rate because some consumers have been out of the city during that month. Op. Atty. Gen. (624c-11), Aug. 27, 1940.

City authorities may furnish water service to churches and charitable institutions at a lesser rate than charged other customers, but may not furnish free water service. Op. Atty. Gen., (624c-11), Feb. 25, 1941.

City of Eveleth under its ordinance may not recover from occupants for water service furnished former occupants. *Id.*

#### 1860-½ c. Powers of water, light, power and building commission enlarged in certain cases.

Act Apr. 16, 1941, c. 279 grants additional powers to water, light, power, and building commissions already established in villages of 1750 to 2000 population and \$2,000,000 to 3,000,000 assessed valuation.

#### 1860-½ e. To create reserve fund.

Act is apparently applicable only to Village of Hibbing. Op. Atty. Gen., (476B-15), Jan. 9, 1941.

#### 1867-1. Municipalities may extend electric service.

This section does not limit authority to sale of surplus electricity, and would authorize a village on favorable vote of electors to furnish electricity to a cooperative association within a distance of 30 miles from village. Op. Atty. Gen. (624C-12), Dec. 6, 1940.

#### 1880. Cities and villages may construct sewage disposal plants.

Laws 1941, c. 23, legalizes proceedings taken by certain cities of the fourth class organized under home rule charters in connection with issuance of sewer district warrants.

Act Apr. 19, 1941, c. 319, validates proceedings by villages in certain cases for construction of sanitary sewers and treatment plant.

Normal expenses of operating system must be paid out of general fund, since no special assessment may be levied for repairs or maintenance. Op. Atty. Gen. (387-g-1), June 20, 1940.

Village council may impose charges and rentals for use of sewer facilities to pay administration expenses and to create a fund for maintaining and repairing system. *Id.*

Construction of a sewer in a street is discretionary with village council in proceeding proposed under §1880, et seq., or under §1918-1, et seq., but if proceedings are proposed under §1205 or §1918-15, et seq., a petition by owners of at least 51 per cent in frontage of the street is necessary. Op. Atty. Gen. (624d-9), Sept. 11, 1940.

#### 1881 to 1884.

See notes under §1880.

#### 1885. Spreading of assessments.

See notes under §1880.

A landowner is not liable quasi ex contractu for benefits to his land from an improvement, where assessment levied against his land is invalid. *Ind. School Dist. v. C., 292NW777.* See Dun. Dig. 9160.

While legislature may authorize assessment of school property for local improvements, such authorization must be explicit, otherwise, it is deemed to be withheld. *Ind. School Dist. v. C., 292NW777.* See Dun. Dig. 9151a.

Same piece of land may be assessed by special assessment for construction of a district sewer, a joint district sewer and a lateral sewer, and there is no objection to assessing cost of a district sewer system against areas which have not yet been assessed for such a system. Op. Atty. Gen. (387B-1), May 31, 1940.

It is permissible to assess property owners who have already paid costs of constructing a lateral sewer for additional cost of constructing a district sewer system, power to impose assessment being a continuing power and not being exhausted when one sewer has been built. *Id.*

Assessments must be used for construction of district sewer for which levied, but a surplus may be used to pay any costs incident to operation of system, including annual maintenance charge to Twin City Disposal Plant, and contract with city of Minneapolis. Op. Atty. Gen. (387-6-1), June 20, 1940.

#### 1886. Assessments in more than one district.

See notes under §1880.

#### 1887. Cost of lateral sewers.

See notes under §1880.

Village proceeding under §§1880, et seq., may not pay any part of cost of a lateral sewer or lift station connecting it with main sanitary sewer, but a village proceeding under §§1918-15, et seq., may pay entire cost of such a sewer together with lift station. Op. Atty. Gen. (387G-5), Jan. 20, 1940.

#### 1888. Estimates of cost.

See notes under §1880.

#### 1889. Advertisements for bids.

Laws 1941, c. 23, legalizes proceedings taken by certain cities of the fourth class organized under home rule charters in connection with issuance of sewer district warrants.

Advertisement for bids for constructing a sewer need be published only once, in view of Laws 1935, ch. 125, §3. Op. Atty. Gen., (707a-15), Feb. 26, 1941.

#### 1890. Allowance of estimates.

Laws 1941, c. 23, legalizes proceedings taken by certain cities of the fourth class organized under home rule charters in connection with issuance of sewer district warrants.

#### 1891. Amount of special assessment.

See note under §1890.

There is no personal liability quasi ex contractu on part of a landowner under invalid assessment for a local improvement upon grounds that landowner has received benefits of improvement and used it where statute authorizing assessment provides an exclusive remedy in rem against land only without personal liability on part of owner. *Ind. School Dist. v. C., 292NW777.* See Dun. Dig. 6880.

#### 1892. Supplemental assessment.

See note under §1890.

#### 1893. Fund for each proposed sewer.

Laws 1941, c. 23, legalizes proceedings taken by certain cities of the fourth class organized under home rule charters in connection with issuance of sewer district warrants.

Village need not advertise sewer warrants for sale. Op. Atty. Gen. (476c-4), Sept. 22, 1939.

A village establishing an additional sewer district and making assessments against property in area benefited may in its discretion issue sewer warrants constituting a general obligation of village, but if council fails to pledge credit of village sewer warrants are payable only out of money received from special assessments. Op. Atty. Gen., (387g-10), Feb. 26, 1941.

1893-1. Proceedings for construction of sewage disposal plants validated.—In all cases where a village has heretofore, acting through its village council, determined to lay sewers along certain streets and alleys within the village and construct a sewage disposal plant and the proposition has been submitted to the

electors of the village and approved by the required majority of those voting thereon at an election duly and regularly called and held, and has caused plans and specifications to be made therefor and has proceeded with the construction of such sewer and sewage disposal plant and has proceeded with the sale of sewer warrants or certificates of indebtedness, all proceedings heretofore taken are hereby legalized and declared to be valid and such village council is hereby authorized to complete such proceedings and to issue sewer warrants or certificates of indebtedness of such village in an amount not exceeding \$25,000 for such improvement, pursuant to the provisions of Mason's Supplement 1940, Section 1893 and to pledge the full faith, credit and taxing power of such village to the payment of such warrants or certificates of indebtedness. (Act Apr. 10, 1941, c. 181, §1.)

Act Apr. 10, 1941, c. 181, §2, provides that act shall not affect any actions or appeals pending when act was passed.

#### 1894 to 1906.

Laws 1941, c. 23, legalizes proceedings taken by certain cities of the fourth class organized under home rule charters in connection with issuance of sewer district warrants.

**1906a. Validation of proceedings for issuance and sale of sewer district warrants.**—In all cases where the governing body of any city of the fourth class organized under a home rule charter has adopted proceedings for the issuance and sale of sewer district warrants, pledging the full faith and credit of the city, in the aggregate amount of not more than \$12,000, bearing interest at not more than three (3) per cent per annum, for the purpose of financing the construction of sanitary sewers in substantial compliance with the provisions of Mason's Minnesota Statutes, 1927, Sections 1880 to 1906, inclusive, as amended, all said proceedings heretofore taken are hereby legalized and the governing body is authorized to complete said proceedings and deliver said warrants, and the warrants when issued and delivered are hereby legalized and declared to be valid and binding obligations of said city, notwithstanding any lack of authority for such issuance, or other defects which may have occurred in such proceedings, and the governing body is authorized to levy special assessments for the payment of said warrants against property benefited by said sewers not in excess of the benefits to said property. (Act Feb. 25, 1941, c. 23, §1.)

**1906b. Same—Pending proceedings.**—This act shall not apply to or effect any actions or proceedings now pending in which the validity of any such proceedings or said warrants is questioned. (Act Feb. 25, 1941, c. 23, §2.)

#### 1918-1. Water mains and appurtenances; etc.

Proceedings for installation and laying of water mains under Works Progress Administration contract, and bonds, not exceeding \$15,000, validated. Act Mar. 6, 1941, c. 50.

Village organized under Laws 1885 may extend its water main and issue certificates of indebtedness, but village council, and not water, light, power and building commission, is agency authorized to carry improvement forward. Op. Atty. Gen. (476a-4), Aug. 24, 1940.

Construction of a sewer in a street is discretionary with village council in proceeding proposed under §1880, et seq., or under §1918-1, et seq., but if proceedings are proposed under §1205 or §1918-15, et seq., a petition by owners of at least 51 per cent in frontage of the street is necessary. Op. Atty. Gen. (624d-9), Sept. 11, 1940.

#### 1918-4. Same—Plans and specifications—Advertisement for bids.

In view of Municipalities Emergency Act of 1935, provision requiring letting of contract to lowest responsible bidder is not violated by separate purchase of materials and performance of work by day labor in connection with federal grant. Op. Atty. Gen. (396c-6), Jan. 10, 1940.

#### 1918-10. Same—Certificates of indebtedness.

Certificate of indebtedness held in proper form. Op. Atty. Gen. (396c-6), Jan. 10, 1940.

Village may issue certificates of indebtedness for an amount in excess of special assessment which is made against abutting property, so long as amount does not exceed expense to be incurred in making improvement. Op. Atty. Gen. (476a-4), Nov. 28, 1940.

Certificate of indebtedness issued by Water and Light Commission for maintenance and replacement purposes should be offered for sale on bids after published notice. Op. Atty. Gen. (476a-4), Mar. 11, 1941.

#### 1918-14½. Governing body may construct and reconstruct sewers.

Proceedings for construction of sewers under Works Progress Administration contract, and bonds, not exceeding \$15,000, validated. Act Mar. 6, 1941, c. 50.

#### 1918-15. Public improvements in villages, boroughs, and cities of fourth class.

Act is applicable to a village organized under Laws 1885, chapter 145, and authorizes construction or extension of sanitary or storm sewers. Op. Atty. Gen. (476a-13), March 21, 1940.

Construction of a sewer in a street is discretionary with village council in proceeding proposed under §1880, et seq., or under §1918-1, et seq., but if proceedings are proposed under §1205 or §1918-15, et seq., a petition by owners of at least 51 per cent in frontage of the street is necessary. Op. Atty. Gen. (624d-9), Sept. 11, 1940.

#### 1918-16. Same—Making of improvements and assessment of costs.

Land forfeited to state for nonpayment of taxes is not subject to assessment for local improvements, but must be included in determining rate of assessment of other property, and one purchasing from the state is not liable for assessment made while land was owned by state. Op. Atty. Gen. (412a-26), Feb. 15, 1940.

#### 1918-23. Same—Cost of certain improvements paid by municipalities.

Village proceeding under §1880, et seq., may not pay any part of cost of a lateral sewer or lift station connecting it with main sanitary sewer, but a village proceeding under §1918-15, et seq., may pay entire cost of such a sewer together with lift station. Op. Atty. Gen. (387G-5), Jan. 20, 1940.

#### 1918-29. Same—Disposition of funds received from assessments—Etc.

Village organized under Laws 1885, chapter 145, may not create a permanent improvement revolving fund for purpose of financing sewer construction, and a fund for that purpose may be created only by special assessment. Op. Atty. Gen. (476a-13), March 21, 1940.

#### 1918-35. Sidewalks and sewers in villages and cities; etc.

Sections 1205 and 1918-35 are both applicable to 1905 villages in sewer proceedings. Op. Atty. Gen., (387g-3), Jan. 2, 1941.

#### 1918-54. Municipalities Emergency Act of 1935.

Village can contract with National Youth Administration for erection of a community building. Op. Atty. Gen., (476B-8), Feb. 25, 1941.

#### 1918-55. Definitions.

##### (g). "Public works project."

A county cannot sponsor or appropriate money for a federal fish hatchery. Op. Atty. Gen. (125-a-62), Aug. 30, 1940.

#### 1918-56. Powers of municipalities.

Township may not contribute money to a private organization organized for a project which would use money to pay expense of a promotional representative. Op. Atty. Gen., (442a-2), April 1, 1940.

School district may pay share of a National Youth Administration project not in excess of value of work construction and improvements district will derive therefrom, and in case of educational or recreational purposes may pay a share if project is limited for benefit of resident persons who are entitled to educational facilities of school district. Op. Atty. Gen., (159B-11), April 5, 1940.

County board may lawfully vote funds to pay part of rent on a building to be used by the National Youth Administration as a vocational training center. Op. Atty. Gen. (107B-1), Oct. 22, 1940.

County board may rent space outside of court house for rural habilitation office, term "municipalities" including county. Op. Atty. Gen. (107B-1), Oct. 30, 1940.

School district may not sponsor a W.P.A. nursery school project by providing housing for child pupils and milk and cheese and other dairy products, at expense of district. Op. Atty. Gen., (160M), Jan. 4, 1941.

In absence of any prohibition in city charter, city may lawfully expend public money for rental of quarters for relief agencies of federal government such as W.P.A. and N.Y.A., but cannot expend money for improvement of real estate owned by county. Op. Atty. Gen., (59a-3), Feb. 4, 1941.

##### (e).

Advertisement for bids need be published only once, notwithstanding prior law. Op. Atty. Gen., (707a-15), Feb. 26, 1941.

**1918-58. Acts must be approved.**

School board may not enter into an agreement with WPA for construction of a garage without a vote of electors. Op. Atty. Gen., (1661), April 20, 1940.

**1918-65. Act expires Dec. 31, 1943.**—Except in pursuance of any contract or agreement theretofore entered into by and between any municipality and any federal agency, no municipality shall exercise any of the powers conferred by this act after December 31, 1943. (As amended Act Apr. 16, 1941, c. 274, §1.)

**1918-66. Proceedings legalized and evidences of indebtedness validated.**

Act does not violate Const. Art. 4, §27. Vorbeck v. C., 288NW4. See Dun. Dig. 1684.

Act covers "all cases" where a city or village utility commission has contracted for sale of warrants or bonds payable solely from earnings of utility, including refunding obligations with similar limitation as to source of payment. Id. See Dun. Dig. 6683.

**1918-71. Certain cities may install sewage systems and pumping stations.**

Bonds issued for construction of sewage disposal plant for use of which village imposes charges are to be deducted in determining net indebtedness of village for purposes of authorized securities statute. Op. Atty. Gen., (928a-8), May 11, 1940.

**1918-74. Cities of third class and villages may establish sewers; etc.**

This section applies to all villages maintaining sewage systems, including one connected with Twin City Disposal Plant. Op. Atty. Gen. (387-g-1), June 20, 1940.

Village may enact an ordinance including a provision empowering council, by resolution, to annually fix charge to be collected where system is connected with Twin City Sewage Treatment Plant and contributions thereto will be increased or diminished from year to year. Id.

Village ordinance levying charges against water patrons may require creameries with private wells to install their own meters to measure water pouring through disposal plant. Op. Atty. Gen. (387g-9), Dec. 19, 1940.

**1918-76. Sewers and sewage disposal—Contracts for treatment of waste.**—Any village in this state which has heretofore submitted the proposition of constructing a sewer system to the vote of the electors of the village and a majority of those voting thereon have voted in approval, and which village has heretofore constructed a sewage treatment and disposal plant, and which has within the village limits a canning factory or other industry, producing a large amount of waste which, in the interest of public health, requires sewage treatment and disposal, may enter into a contract with the person, firm or corporation owning or operating such factory or industry, for the treatment of such waste, on terms and for a period of time as may be mutually agreed upon. (Act Mar. 5, 1941, c. 41, §1.)

**1918-77. Same—Construction bonds.**—Any such village which shall have made such a contract for the treatment and disposal of sewage or waste as authorized under Section 1, may issue the negotiable coupon bonds of the village in such amounts as the council shall determine will be necessary for the purpose of financing or assisting in financing the construction of necessary treatment and disposal plant enlargements, improvements, or additions. Said bonds and interest thereon shall be payable primarily from the payments to be received under such contracts and from other revenues from service charges for use of the disposal plant, but the council may pledge the full faith and credit of the village to the payment of said bonds and interest. The bonds shall contain such terms, mature over such period, and be sold in such manner as the council shall determine. (Act Mar. 5, 1941, c. 41, §2.)

**1918-78. Same—Validation of proceedings.**—This act is intended to be an additional grant of power, and shall not be construed to amend or repeal any existing law. Bonds may be issued hereunder without compliance with any other law or charger provision. All proceedings heretofore taken and all contracts heretofore entered into which could have been taken or entered into hereunder are hereby validated. (Act Mar. 5, 1941, c. 41, §3.)

**1919-2. Municipalities to arrange for compensation; etc.**

City may enter into contract with board of supervisors of adjacent town, subject to certain authorization from electors at annual town meeting. Op. Atty. Gen., (618K), Feb. 10, 1941.

**1919-3. Firemen serving on outside fires in line of regular duties.**

Fire department pursuant to direction of city council may respond to calls in neighboring state, and firemen responding to call are covered by workmen's compensation law. Op. Atty. Gen. (688a), Jan. 18, 1940.

**1920. Board of Trustees of firemen's relief associations.**

Moneys raised by tax authorized to be levied by Laws of 1935, ch. 192, may not be used for purpose of purchasing fire fighting equipment for fire department. Op. Atty. Gen., (198B-10(c)), Jan. 14, 1941.

Funds belonging to Firemen's Relief Association may be used to purchase a new fire truck, or may be invested in warrants or certificates of indebtedness of village, regardless of source of funds. Op. Atty. Gen., (198B-5), Jan. 16, 1941.

(5).

Where members of fire department relief association were driving fire truck owned respectively by city and association, and there was a collision, city could not recover damage to city owned truck arising out of negligence of driver of association owned truck, notwithstanding that association carried liability insurance. Op. Atty. Gen., (844B-4), March 5, 1940.

**1920-1. Certain towns and school districts may carry insurance.**

In absence of specific statutory authority, school district funds may not be used to purchase liability insurance to protect school district and board members. Op. Atty. Gen., (844j-3), Feb. 24, 1941.

**1933. Municipal forests.**

Levies under this section are included within \$100 per capita limitation provided by Laws 1929, ch. 206. Op. Atty. Gen., (519q), Feb. 25, 1941.

**1933-9a. Municipalities may acquire and operate recreational facilities.**

If school district is operating its recreation program under this section and not under a joint program with city, it can legally build bleachers and expend money without vote of electors. Op. Atty. Gen. (159B-1), Dec. 28, 1939.

A deed to land limiting its use to an athletic "practice" field is objectionable. Op. Atty. Gen. (622i-9), Jan. 31, 1940.

There is no expressed legislative authority for an independent school district to exercise right of eminent domain for play ground and recreational purposes, if property involved is separated from, and cannot be made a part of school house site. Op. Atty. Gen. (817o), Feb. 5, 1940.

At vote of electors, school district may condemn tract of land kitty-corner to school house site separated only by a street intersection for use as a recreational field. Op. Atty. Gen. ((817o), Feb. 21, 1940.

Although activities may be conducted upon park property, they are distinct from regular operations of improving and maintaining parks themselves and may be paid out of available fund other than park improvement fund. Op. Atty. Gen., (59a-22), May 2, 1940.

City may purchase land contiguous thereto for a municipal golf course or airport without approval of voters, but cannot issue bonds without approval. Op. Atty. Gen., (59B-11), May 24, 1940.

Board of Education of Winona may not use regular school funds for purpose of football equipment and supplies, but could probably purchase such supplies from recreational fund pursuant to a program of public recreation and playgrounds. Op. Atty. Gen., (159B-1), May 31, 1940.

If independent school district in Virginia, Minnesota, has never entered into a joint recreational program with that city, school board has power to build a public hockey rink with the primary purpose of encouragement and development of hockey among students, and secondary purpose of regularly scheduled semi-pro hockey games during winter. Op. Atty. Gen. (622g), Aug. 16, 1940.

Football equipment cannot be purchased out of general school fund, except to such extent as school board may determine as question of fact that certain equipment is an incident to operation of a recreational program, and same rule applies to purchase of uniforms for band members, but it is hard to see how robes for glee club might be in any way connected up with a community recreation program. Op. Atty. Gen., (159b-1), Jan. 30, 1941.

School district cannot make expenditures out of school general fund for recreation activities unless district is operating a recreation program, and such a program cannot said to be maintained without acquiring land for playgrounds and recreational facilities. Id.



**1933-9b. Same—May act independently or cooperatively.**

No vote of electors is required in order to transfer money over to recreation board. Op. Atty. Gen. (59a-22), Oct. 28, 1939.

Recreational board is not an independent body, but acts only as an arm of council, and is subject to the will of that body. Id.

**1933-9d. Same—State board of education to establish qualifications.**

Department of education has authority to issue certificate to directors and instructors of school recreational projects where person is not qualified for a teacher's certificate, and charge a fee therefor. Op. Atty. Gen. (172B), Oct. 18, 1939.

**1933-9e. Same—Recreation program; etc.**

School district may build a hockey rink if the primary purpose is encouragement of hockey among students. Op. Atty. Gen. (622g), Aug. 16, 1940.

**1933-17. Transfer of funds for maintenance of band.**

Band employed need not be incorporated, but if it is a voluntary association, claiming to have a president and other officers, village would deal with officers at its peril, and safety might require that village contract with each individual musician. Op. Atty. Gen. (469c-1), Jan. 30, 1940.

Power to maintain and operate a band includes power to erect a band stand. Id.

Section 1933-17 gives certain cities more authority in regard to maintenance and employment of a band than that previously provided for musical entertainment under §1737, and uniforms should be considered within term "maintenance" of a band. Op. Atty. Gen., (59B-3), April 23, 1940.

City has no authority to purchase uniforms for a private organization which has contracted to render concerts for the public. Op. Atty. Gen., (59B-3), April 26, 1940.

Monies raised by a tax levy pursuant to this act may not be used to maintain a public chorus of singers who sometimes perform with band. Op. Atty. Gen., (59B-3), May 24, 1940.

A municipality may contract with a local lodge for employment of its band to render public concerts, but it may not directly subsidize lodge band, where no municipal purposes are served, in line of rendition of public concerts. Id.

Money may not be used to assist a school band where "municipal purposes" are not served, but if public concerts are to be given by school band, city would be authorized to contract with band and make reasonable payment for such concerts, and fact that personnel trained by school band might be used later in municipal band would not of itself warrant payment of money to school band. Id.

A city of the fourth class maintaining a municipal band and levying a tax for band purposes, may use part of the funds for maintenance of an American Legion Drum and Bugle Corps also, but such expenditure must bear a direct relation to amount of public entertainment which drum and bugle corps renders to citizens of city. Op. Atty. Gen. (469c-1), Oct. 2, 1940.

Two mill tax authorized to be levied for municipal band purposes may be levied over and above, and in addition to, 25 mill levy limitation set out in city charter. Op. Atty. Gen., (519h), Mar. 19, 1941.

**1933-23. Civil Service Commission for Firemen; etc.**

Civil service commission established under statute may be supplanted by home rules charter if public policy expressed in statutes is satisfied, and charter may provide for combining of police and fire commissions, but cannot abolish existing commissions if it provides no other formal merit system as a substitute. Op. Atty. Gen. (785E-2), June 11, 1940.

Council may not provide that firemen's civil service commission act also as police civil service commission. Id.

**1933-25. City or village council to adopt resolution.**

In effect, mayor has power to veto a resolution adopting civil service, since his affirmative action approving resolution is required. Op. Atty. Gen. (785E-2), June 11, 1940.

**1933-29. Powers and duties of Commission.**—The commission shall have absolute control and supervision over the employment, promotion, discharge and suspension of all officers and employes of the fire department of such city or village and these powers shall extend to and include the chief and assistant chief of such, and all inspectors, fire wardens, electricians, engineers, auto mechanics, clerks and other persons engaged in the fire prevention and protection service in said city or village.

The commission shall immediately after its appointment and organization grade and classify all of said employes of the fire department of said city or village and a service register shall be prepared for the purpose, in which shall be entered, in their classes, the names, ages, compensation, period of past employment and such other facts and data with reference to each employe as the commission may deem useful.

The commission shall keep a second register to be known as the application register in which shall be entered the names and addresses in the order of the date of application of all applicants for examination and the offices, or employments they seek. All applications shall be upon forms prescribed by the commission and shall contain such data and information as the commission shall deem necessary and useful. (As amended Act Apr. 24, 1941, c. 434, §1.)

Volunteer firemen may be entirely excluded from classified service or may be considered as lowest class in that service, one from which promotion is made to positions of part time or full time firemen. Op. Atty. Gen. (785E-2), June 11, 1940.

Council may by ordinance require that employees live within city. Id.

Commission is given authority over suspension of employes for periods not longer than 60 days, and is to provide for such suspension by rule, and a superior officer also has authority to suspend a subordinate for a reasonable period not exceeding 60 days for purpose of discipline or pending investigation of charges. Id.

Civil service commission has the exclusive jurisdiction over leaves of absence and may promulgate rules providing for leaves of absence, period thereof, and effect upon status of employee and may grant individual leaves of absence, but may make rules and leave the mechanics of abiding by them to administrative officers or heads of departments. Id.

Special policemen appointed for an occasional evening's work need not be selected from civil service registers, and the same is true as to special police officers appointed to police dances. Id.

**1933-35. Charges to be filed—Trial.**

If mayor is head of department, he is authorized to file charges, but a member of city council may not do so. Op. Atty. Gen. (785E-2), June 11, 1940.

**1933-42. Municipalities may pass zoning ordinance.**

County board may authorize application for zoning under city zoning ordinance or state law. Op. Atty. Gen. (700a-6), May 10, 1940.

**1933-48. Police civil service commissions in certain cities.**

Resolution must be approved by mayor, notwithstanding city charter provision that failure of mayor to return resolution within five days would have same effect as approval. Op. Atty. Gen. (785E-1), Nov. 7, 1939.

Civil service commission established under statute may be supplanted by home rules charter if public policy expressed in statutes is satisfied, and charter may provide for combining of police and fire commissions, but cannot abolish existing commissions if it provides no other formal merit system as a substitute. Op. Atty. Gen. (785E-2), June 11, 1940.

In effect, mayor has power to veto a resolution adopting civil service, since his affirmative action approving resolution is required. Id.

**1933-52. Duties of commission.**

While mayor of Fergus Falls still nominates members of police department, and they are confirmed by the council, selection must be from name or names certified by commission. Op. Atty. Gen., (785E-2), April 20, 1940.

Applicable to all cities and villages, except cities of the first class, and all officers and employes of police department, including chief of police. Op. Atty. Gen., (785E-1), May 25, 1940.

Council may by ordinance require that employees live within city. Op. Atty. Gen. (785E-2), June 11, 1940.

Special policemen appointed for an occasional evening's work need not be selected from civil service registers, and the same is true as to special police officers appointed to police dances. Id.

Civil service commission has the exclusive jurisdiction over leaves of absence and may promulgate rules providing for leaves of absence, period thereof, and effect upon status of employee and may grant individual leaves of absence, but may make rules and leave the mechanics of abiding by them to administrative officers or heads of departments. Id.

Commission is given authority over suspension of employes for periods not longer than 60 days, and is to provide for such suspension by rule, and a superior officer also has authority to suspend a subordinate for a reasonable period not exceeding 60 days for purpose of discipline or pending investigation of charges. Id.

**1933-54. Officers discharged only after hearing.**

Where police civil service commission qualified an extra policeman, a veteran, as a "regular special policeman"

and permitted him to take police civil service examination with regular force, and then erroneously certified him at head of list of eligible appointees for position of "regular" policemen, commission has authority to revise its list and strike his name from it, without formality of notice or hearing, but this would not affect preferential position arising from his status as a veteran if and when a position as regular policeman is open. Op. Atty. Gen., (785E-2), May 17, 1940.

**1933-58. Charges to be filed with Secretary of commission.**

If mayor is head of department, he is authorized to file charges, but a member of city council may not do so. Op. Atty. Gen. (785E-2), June 11, 1940.

Misconduct of police officers while on duty may be grounds for removal by commission in exercise of its judgment. Op. Atty. Gen. (785-E-2), July 29, 1940.

**1933-63. Commission to be vested with powers in certain cases.**

Council may not provide that firemen's civil service commission act also as police civil service commission. Op. Atty. Gen. (785E-2), June 11, 1940.

**1933-65. Limit to appropriations.**

Act Apr. 17, 1941, c. 296, provides that any village having assessed valuation in excess of \$70,000, located in a county having 70 to 80 congressional townships may levy a tax of 2 mills to maintain and improve cemeteries.

**1933-71. Same—To approve plats, etc.**

Law is an enabling act, and if a village has not adopted a city plan it is not necessary that council be governed by provision with reference to approval of plats, before they may be filed. Op. Atty. Gen. (59a), Dec. 10, 1940.

All plats of territory within 2 miles of village limits must be approved by village council before they may be filed, providing that village has adopted a plan for future growth of city. Id.

Council has power to approve a plat outside of city or village and within 2-mile limit though it fails to conform to map described in preceding section, but it was contemplated by legislature that plat filed would conform to city plan. Id.

If village has not adopted a city plan, provision requiring approval of city council as a condition precedent to filing of a plat is not applicable. Id.

Filing of plats and holding of public hearings are mandatory. Id.

**1933-76. Bids for purchase of supplies.**

School district may accept sole bid for installation of pianos, victrolas, and music stands, specifications providing that contractor must furnish labor, supervision and work in setting up and installing equipment, and that pianos shall then be correctly tuned to 440 pitch, and left in perfect condition. Op. Atty. Gen. (707a-12), Oct. 27, 1939.

Where all eight bids for coal are identical city council may divide the purchases among bidders, if there is no collusion among bidders, but eight identical bids is a suspicious circumstance. Op. Atty. Gen. (707), July 5, 1940.

This section does not apply to contracts for printing proceedings of county commissioners for ensuing year. Op. Atty. Gen., (707a-7), Jan. 16, 1941.

**1933-78. Same—Application of act.**

City desiring to use only natural gas as a fuel in operation of sewage disposal plant must call for bids though there is only one company in vicinity able to furnish such gas, but city council may award contract to one bidder. Op. Atty. Gen., (707a-4), March 18, 1940.

Whether or not a snow plow is of a non-competitive type of supply so as to do away with necessity of accepting competitive bids, is a question of fact for determination of county board. Op. Atty. Gen., (707a-7), Jan. 21, 1941, Jan. 30, 1941.

**INCORPORATION ACT FOR CITIES**

**ACT OF 1895, AS AMENDED**

**Laws 1895, c. 8, §41.**

Laws Mar. 11, 1941, c. 55, authorizes reorganization of wards in cities organized and existing under this act.

**Laws 1895, c. 8, §51.**

City cannot enter into a contract with a cooperative society in which councilman is a stockholder, and member of board of directors. Op. Atty. Gen., (90e), Jan. 15, 1940.

**CHAPTER 10**

**Public Indebtedness**

**1934. Scope of chapter.**

Borrowing of funds for poor relief. Laws 1941, c. 403.

**1935. Net indebtedness defined.**

Village organized under 1905 Act can issue bonds to defray cost of new water tank upon a five-eighths vote for an amount not in excess of net indebtedness, fixed by law. Op. Atty. Gen. (44B-17), Aug. 22, 1940.

**(4).**

A sewage disposal plant upon which a village imposes charges for use of sewage disposal is a "public convenience" within this section. Op. Atty. Gen., (928a-8), May 11, 1940.

Bonds used for hospital are not deductible from gross debts. Op. Atty. Gen. (44a-4), July 18, 1940.

**1938-2½. Interest rates on municipal obligations.**

Interest rates may vary from year to year. Op. Atty. Gen. (43B-3), July 8, 1940.

**1938-3. Obligations of cities, villages, boroughs, counties, towns, and school districts—Definitions.**

In determining debt limit, the following are to be deducted: pavement bonds payable out of special assessments; water main bonds constituting an integral part of water works system; municipal light and power bonds; and certificates of indebtedness issued to finance purchase of light plant equipment made deductible by §1824. Op. Atty. Gen., (1001h), April 2, 1940.

Procedure for issuing bonds to state for a loan of state trust funds must be had under §1962, et seq., while procedure for issuance of bonds to general public is prescribed by §1938-3, and the procedures cannot be combined so that a town may sell to the state for individuals as its interests may dictate. Op. Atty. Gen. (43B-3), July 8, 1940.

Issuance of bonds to refund floating indebtedness in a township requires affirmative vote of electors. Op. Atty. Gen. (43B-3), Aug. 21, 1940, overruling Op. Atty. Gen. Jan. 25, 1932, and Op. Atty. Gen., July 8, 1940.

**(C).**

Bonds used for hospital are not deductible from gross debts. Op. Atty. Gen. (44a-4), July 18, 1940.

**1938-4. Same—Amount of limitation on net indebtedness—Etc.**

Village incorporated under 1885 village act may issue general obligation bonds to extent of 10% of last assessed

valuation as finally equalized, less net debts, and in computing net debts general obligation water bonds and municipal light plant bonds are not to be considered. Op. Atty. Gen., (476a-3), Oct. 10, 1939.

**1938-6. Same—Obligations—Etc.**

Laws 1939, c. 137, a curative act, did not intend to amend or repeal this section, but only to validate certain bonds issued in violation of it. Vorbeck v. C., 288NW4. See Dun. Dig. 6683.

City may purchase land contiguous thereto for a municipal golf course or airport without approval of voters, but cannot issue bonds without approval. Op. Atty. Gen., (59B-11), May 24, 1940.

Issuance of bonds to refund floating indebtedness in a township requires affirmative vote of electors. Op. Atty. Gen. (43B-3), Aug. 21, 1940, overruling Op. Atty. Gen. Jan. 25, 1932, and Op. Gen. July 8, 1940.

Where court house has become crowded and relief offices and various county offices are scattered in various rented buildings, it is discretionary with county board to purchase a building without a vote of electors and pay for the same from the "courthouse building fund." Op. Atty. Gen. (125a-20), Sept. 13, 1940.

Approval of voters is not required in case of refunding bonds at maturity where city charter does not require it, but a vote of electors would be necessary for issuance of bonds presently for purpose of later retiring old bonds. Op. Atty. Gen., (36I), Feb. 28, 1941.

City cannot legally issue refunding bonds to retire old bonds before their maturity, but this would not prevent a city from issuing a new bond issue for purpose of retiring old issue in the future when it shall mature. Id.

Village of Hawley, organized under 1885 Village Laws, has authority to issue bonds to fund outstanding floating indebtedness, but a favorable vote of electors is necessary, except warrants issued prior to Sept. 1, 1927. Op. Atty. Gen., (44B-12), Mar. 13, 1941.

**1938-11. Same—Sinking funds—Investment of surplus.**

School district may invest its sinking fund surplus in warrants issued by a municipality having a definite maturity date. Op. Atty. Gen. (159a-13), June 12, 1940.

City of Northfield may invest funds of library in special improvement certificates of the city. Op. Atty. Gen. (285), Oct. 11, 1940.